

Shares of Major Economic Entities on “Beer” Product Market in 2002-2003 (*in %*)

**STATE COMMISSION FOR PROTECTION OF ECONOMIC  
COMPETITION OF  
THE REPUBLIC OF ARMENIA**

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## Introduction

2002 Annual Activity Plan of the State Commission for Protection of Economic Competition of the Republic of Armenia is prepared in compliance with the provisions of Article 27 of the Law on “Protection of Economic Competition” of the Republic of Armenia.

Protection of economic competition is one of the important functions of the state, called to promote the process of the economic progress of the country, formation of civilized market, ensuring of fair competition and protection of consumers’ rights.

The necessity of creating equal conditions for economic competition is conditioned by peculiarities of the current phase of the economic development of the country, which, among other issues, require setting up and strengthening of the legal ground for effective protection of economic competition and free competition.

- Adoption of the Law of the Republic of Armenia on “Protection of Economic Competition” by the National Assembly of Republic of Armenia is one of the fundamental steps in setting up the economic competition protection policy, which implementation requires accomplishment of measures in line with the development of the economic priorities of the Republic. In this respect, the current year is the year of launching the implementation of the state policy in the field of economic competition protection;
- The Law of the Republic of Armenia on “Protection of Economic Competition” was adopted on 6 November, 2001<sup>1</sup>;
- The members of the State Commission for Protection of Economic Competition of the Republic of Armenia were appointed upon the order of the President of the Republic of Armenia on 13 January 2001;
- In January-July of 2001 the Commission Statute was adopted, Commission structure approved, the staff was recruited, legislation regulating the economic competition field was studied, the methodological instructions, procedures, documents for the regulation on the internal work necessary for the further performance of Commission were elaborated and adopted, the relevant international experience and other related information were studied;
- In April-September 2001 a number of product markets were studied to identify the current state of competitiveness;
- Links with relevant organizations of the CIS countries were established, and a participation in “Interstate Council of CIS Antitrust Policy” workshop took place.

Action Plan program is prepared in compliance with the state policy implemented in the economic competition protection field and is aimed to analyze competitive environment in a number of product markets in the Republic of Armenia, reveal key issues, introduce their regulatory mechanisms and measures directed to their solution during 2002.

Based on the requirements of the Law, Chapter 1 of Action Plan presents the brief outline and current key issues of the economic competition in different product markets. Chapter 2 is devoted to the accomplishment of measures boosting competition in 2002 and the regulatory mechanisms. Simultaneously, Action Plan describes also the measures connected with the expansion of international relations, ensuring of publicity and improvement of professional qualification of the Commission staff. Action Plan provides the implementation schedule of the measures as well.

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<sup>1</sup> Hereinafter the Law

# 1. Analysis of Economic Competitive Environment and Identification of Current Key Issues

## 1.1 Analysis of Economic Competition Environment

Commission studied the competition environment of a number of product markets in the course of its activity. Taking into account the current economic competitive environment in the Republic, Commission, in general, selected several product markets with high concentration for its studies. Therefore, the presented data cannot cover and characterize the whole economy.

Analyses cover sales volumes and concentration level of each economic entity operating on relevant market, including concentration and anti-competitive agreements and unfair competition cases for separate markets, dominant economic entities were detected as well.

Analysis of the concentration level of the studied product markets showed that at least two or three of their players obtained joint market power potential on a number of markets (Table 1).

**Table 1. Concentration Level of Several Product Markets**

##	Product Market	Share of Major Economic Entities in the Total sales Volume (%)		
		Top 1	Top 2	Top 3
1	2	3	4	5
1	Table & technical salt	99.99	100	-
2	Beer	74.62	99.53	99.56
3	Mineral waters bottling	37.10	57.40	74.80
4	Coffee	34.86	55.50	72.00
5	Soft drinks	66.41	87.01	88.15
6	Cigarette	39.74	75.22	84.17
7	Cognac	83.60	91.10	95.10
8	Sparkling wine & champagne	84.70	91.10	95.30
9	Ice-Cream	38.60	73.70	86.30
10	Plaster	55.70	100	-
11	Medications	12.67	22.95	28.83

As seen from Table 1, in 10 out of 11 presented product markets the concentration level is rather high (the share of the top two entities exceeds 50%, and the share of the top three exceeds 70%). In addition, in eight out of these 11 product markets the share of the top three entities exceeds 80%. This proves that two or three entities have joint market power on these product markets. Nine of the presented markets are food products (including alcohol drinks and cigarette). In addition, the concentration level is the highest in this particular branch of economy (the share of the top two entities exceeds 50% and the share of the top three – 70% on these product markets).

Thus, the concentration level of the studied product markets is rather high and this shows that the competition is restricted on these product markets, which is typical for small countries with transitional economies. Therefore, to prevent and limit possible abuses on the highly concentrated markets, Commission will hold a continuous control over these markets during the planning year.

Data of Table 2 prove the market power of economic entities on the studied product markets.

**Table 2. Number of Economic Entities on Different Product Markets and Presence of Dominant Entities**

##	Product market	Number of competitive economic entities	Presence(+)/absence(-) of dominant entities
1	2	3	4
1	Coffee	20	+

2	Beer	5	+
3	Plaster *	2	+
4	Table & technical salt	2	+
5	Soft drinks	54	+
6	Cigarette	12	+
7	Cognac	17	+
8	Sparkling wine & champagne	6	+
9	Ice-Cream*	8	+
10	Medications	77	-
11	Mineral waters bottling	20	+

\* Two dominant economic entities are present.

As seen from Table 2, five studied product markets have maximum ten players. Two product markets (plaster and table & technical salt) have only two players. Ten out of 11 product markets have dominant economic entities. All of the nine food product markets (including alcohol drinks and cigarette) have dominant economic entities.

Only one product market (medications) has no dominant economic entity among the studied markets. The low concentration level of medications market (the shares of the top two and top three entities are approximately 23% and 29% respectively) proves the fact of the market competitiveness.

One dominant economic entity was detected on coffee product market; however, Commission made no decision referring the case since this economic entity was liquidated at the time of study. Simultaneously, it should be mentioned that the concentration indices (which comprise approximately 56% and 72%, respectively) do not exclude the existence of economic entities with market power. Therefore, Commission will keep an eye on this product market in the planning year as well.

In addition to the aforementioned markets, mineral waters extraction seven product markets were also studied, in which five economic entities were recognized as dominant with 100% share.

Along with the stated studies, Commission has launched studies on other eight product markets (petrol, greasing oils, diesel fuel, vehicles, rice, reactive fuel, rubber tires, and sugar). According to the preliminary data, three of these product markets have dominant economic entities. Simultaneously, Commission has initiated the study on some of the telecommunication service markets.

Among the studied markets, concentration levels are high on the markets which players have been founded during the Soviet time as major specialized enterprises called to meet fully the demand of Armenia as well as significant portion of the Soviet Union. Nowadays, having lost the greater part of those markets, such enterprises mainly operate on the domestic market (breweries, plaster and cognac factories, champagne wineries, salt combinat). This statement is proved also in the aforementioned Table which clearly illustrates the presence of the dominant economic entities on the listed markets, moreover, the share of one economic entity with large sales volumes varies from 55.7% to 99.9%, and the share of the top three in the range of 95.1% - 99.9%.

High concentration level of the aforementioned product markets based on “domestic production” is partially conditioned with several market entry impediments:

- Necessity to make big capital expenses in already saturated market;
- Slow turnover of capital (long-term redemption period);
- Difficulties to obtain borrowings for the real sector of economy etc.

Opposite to the “domestic production” based product markets, the concentration level of the “import” based product markets is comparatively low. Thus, four subject matter “import”

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\* two available entities with dominant position

markets have no dominant economic entities, the share of one economic entity with the largest sales volume varies from 15.7% to 82.5%, and the top three major entities from 35.5% to 95.5%.

Low concentration level of “import” based product markets is mainly conditioned with the fact that these markets are based on commercial capital, which ensures rapid turnover and stable profitability; the market accessibility degree, nevertheless, is high, and the country has liberated foreign trade regime. This is the reason why the studied “import” based product markets have incomparably higher number of economic entities-players as compared with “production” based markets.

Undoubtedly, a number of circumstances should be taken into consideration as well; in particular, the possible detection of “group of persons”, “anti-competitive agreements” may have certain impact on the results of the study.

It should be also mentioned that Commission performs its activities based on the official and available information that does not reflect always the real picture of the market.

## ***1.2 Key Issues***

Key issues detected in the course of Commission activities within the several months may be classified as follows: legislative and methodological, information collection and other issues.

### ***a) Legislative and Methodological Issues***

The Law application set forth a number of legislative and methodological issues, the complex solution of which will enable to implement the protection of economic competition and Commission functions in the regulated and comprehensive manner. In this connection, it is necessary to introduce a number of changes and supplements in the RA Law on “Protection of Economic Competition” in the planning year, in particular:

- Distinguish between “natural monopoly”, “monopoly” and “dominant position” concepts since the Law defines only the concept of “dominant position”, whereas “monopoly” and “natural monopoly” economic categories partially coincide with “dominant position” concept. In doing so, the provisions regarding the abuse of dominance in Chapter 3 of the Law will be identified;
- Identify “it has no competitors or it is not exposed to any significant competition” expression; it is necessary to specify the criteria for “not exposed to any substantial competition” in the Law;
- Fix a provision about “joint dominant position” since the concentration level is comparatively high on the market;
- Add a clause about “market geographical boundaries” that will define the circumstance that market covers a certain territory and may include territories outside the territory of the Republic of Armenia;
- Supplement the provisions of the Law that refer to providing data to Commission, including both by the state administration bodies and economic entities (the argument of this offer is provided in Sub-Clause “b” of Clause 1.2);
- Identify the Commission powers in elaborating and approving of the normative-legal acts. The power delegated to Commission pursuant Clause f) of Clause 1 of Article 19 of the Law on “to adopt legal acts” give rise to different interpretations. The proposed changes will clearly regulate these issues very important for Commission.

### ***b) Data Collection Issues***

The next series of key issues detected during the Commission activities is conditioned with the lack of the available database. Product market analysis requires access to reliable information on both macroeconomic and microeconomic indices, and first of all, on economic indices according to separate economic entities. At present, such data is processed in a number

of departments and services (National Statistics Service of the Republic of Armenia, Ministry of State Revenues of the Republic of Armenia, State Customs Committee at the Government of Republic of Armenia, State Register of Juridical Persons, Securities Commission of the Republic of Armenia, other state administration bodies). However, Commission faced certain difficulties and obstacles while setting up the database necessary for its performance in the previous months. None of the Departments of the Republic of Armenia collects and summarizes data regarding total sales volumes of product markets as well as sales volumes of major economic entities carrying out significant activities on relevant product market. Demand for the stated data and necessity of their computation were lacking before adoption of the Law and establishment of Commission. Nowadays, it is necessary to collect data on an on-going basis and regularly submit them to Commission by a respective body.

Second, despite of the fact that Article 28 of the Law obliges provision of data, state administration bodies and, in many cases, also economic entities fail to provide or submit the data requested by Commission with inappropriate delays due to different reasons.

Third, the data submitted is not reliable always. For example, there are significant differences between the data on several product markets submitted by economic entities and those received from the National Statistics Service (coffee, ice cream, beer, champagne and sparkling wines, white & technical salt, cognac, tobacco, soft drinks). This is partially conditioned with the data processing methodology (initial statistical data is collected from limited number of economic entities via sampling method and is applied to the rest of entities via extrapolation method).

Fourth, sometimes the data on the same entity provided by different bodies do not match each other. Conditioned with differences of the data collection and processing methodology (measures of units of the same indices, aggregation level etc), the same indices become incomparable (e.g., those of National Statistics Service of the Republic of Armenia and State Customs Committee at the Government of Republic of Armenia).

### ***c) Other Issues Subject to Regulation***

Commission faces some obstacles in the relationship with state and local government bodies. According to provisions of the Law, actions and behavior of the mentioned bodies might also lead to restriction, prevention, prohibition of economic competition or to unfair competition. Lack of preliminary co-ordination of decisions adopted by the state and local government bodies with Commission in some cases makes Commission to regard already formulated non-equal competitive environment. Therefore, it is necessary on a regular basis to seek preliminary consent of Commission for those decisions of the state and local government bodies that may bring to the mentioned effects.

## **2. Measures of Economic Competition Protection, their Implementation Schedule and Regulations Mechanisms**

Economic competition environment and current key issues dictate the measures which should be undertaken in the coming year for the regulation of competition environment as much as possible, establishment of the most favorable conditions for economic entities for their business, detection and elimination of market entry impediments, improvement of the legislative field, and creation of a comprehensive database.

### ***2.1 Study and Regulatory Mechanisms of Product Markets***

To carry out protection of economic competition and eliminate existing restrictions it is necessary to study product markets. To this end, Commission envisages to study the following product and service markets in 2002:

1. Food products:
  - grain;
  - grain flour;
  - sugar;
  - animal oil;
  - vegetable oil;
  - ethyl spirit;
  - vodka;
  - cognac;
  - wine.
2. Medications
3. Oil products:
  - petrol;
  - diesel fuel.
4. Construction materials:
  - cement;
  - stone (tuff, basalt, granite, marble);
  - metal.
5. Transportation (vehicle).
6. Tourism.

The objective of studying product markets is to analyze the competitiveness of markets and detect actions prohibited by Law:

- anti-competitive agreements;
- abuse of the dominance;
- prohibited concentrations;
- unfair competition.

To accomplish the mentioned tasks, in studying product markets the following should be defined:

- volumes of product markets, product and geographical boundaries;
- economic entities operating on market, their position on relevant market;
- impact of economic entities with market power on the concrete product market;
- concentration level of markets, market entry impediments;
- impact of the state economic policy implemented on such markets.

Simultaneously, parallel to study of product markets included in the implementation schedule of activities for 2002, it is envisaged to hold control over the product markets studied in the previous year.

In the course of studies, special attention will be paid to the detection of *anti-competitive agreements* between economic entities. The main measures aimed at the detection, prevention, restriction and prohibition of such agreements are as follows:

- study of current prices on product markets,
- detection of market division based on sales or purchase volumes, assortments of products, consumer or supplier groups as well as on the territorial principle;
- detection and elimination of the market entry impediments for economic entities.

Taking into account that anti-competitive agreements (including agreed actions) are based on verbal agreements, their detection and possibility of proof of such facts is connected with difficulties.

Commission will continue to reveal *dominant* economic entities through studying product markets and maintain their Centralized Register in the coming year. Here, the main objective of Commission is to exclude abuse of dominance by economic entities.

The measures for the prevention, warning and restriction of abuse of dominance by dominant economic entities are as follows:

- detection of dominant economic entities and maintenance of the Register;
- study of activities of economic entities recognized as dominant;
- detection and elimination of abuse,
- implementation of policy directed at the elimination of the market entry impediments.

To detect and regulate *concentrations* mainly expressed in mergers of economic entities, acquisition of means or shares of one economic entity by other economic entity, Commission, in the close cooperation with the Securities Commission of the Republic of Armenia and Central Depository of the Republic of Armenia, will accomplish the following measures to:

- regulate entrepreneurial activities of participants, to hold control over organizations created in the result of mergers of economic entities;
- detect concentrations on different product markets, study of their impact on market;
- detect and liquidate existing prohibited concentrations.

To reveal cases of *unfair competition* expressed in creating confusion with respect to economic entity or its activity, discrediting economic entity or its activity, misleading of the society, damaging reputation, creditability of economic entity, Commission will hold control over the cases of forgery and imitation of trademarks, illegal use of brand names, violations of principles of honesty, fairness and equality together with other authorized and interested bodies. In the process of detection and elimination of unfair competition, Commission will focus also on commercials since in the majority of cases the unfair competition is expressed through advertising. To this end, Commission will cooperate with the National TV-Radio Board of the Republic of Armenia, Municipality of Yerevan and Marzpetarans, as well as NGO-s protecting consumers' interests and other authorized bodies to ensure effective operation.

## ***2.2 Improvement of Legislative Field and Methodological Base***

Commission activities in the previous months revealed the need of adopting normative legal acts, as well as introducing changes in some of the laws closely related with economic competition key issues, conditioned with the necessity of complying the laws, reacting quickly to events and changes in market and preventing infringements of competition protection legislation.

The greater part of changes will refer to improvements of the Law on “Economic Competition Protection” of the Republic of Armenia, presented in Sub-Clause “a” of Clause 1.2 of the present Action Plan.

State Commission for Protection of Economic Competition of the Republic of Armenia is drafting legislative documents since its establishment. A number of legal acts regulating the Commission activities have been developed, in particular:

- Definition of product markets boundaries and volumes: “Methodological Instructions for Defining Product Markets Boundaries and Volumes” envisaged to

- ensure methodology for implementation of the Law on Protection of Economic Competition;
- “Methodological Instructions for Defining Dominant Economic Entities on Product Market” specifying the criteria for definition of dominant economic entities;
- Procedure on “Maintenance of the Centralized Register of Dominant Economic Entities”.

In addition to the mentioned legislative acts, the State Commission for Protection of Economic Competition of the Republic of Armenia adopted about fifty decisions concerning definition of product type and geographical boundaries of various product markets, carrying out of studies in product markets, summarizing of findings, and dominant economic entities.

To ensure full enforcement of the Law, it is envisaged to elaborate a number of normative legal acts referring in particular to:

- analysis and assessment of competitiveness on product markets;
- control over concentrations;
- application of provisions of anticompetitive agreements,
- abuse of dominance;
- infringements of fair competition.

The objective of adopting new legal acts and introducing changes and modifications in the laws of the competition legislation by Commission is to clarify a number of provisions of the Law which give rise to disagreements, expand powers of Commission in collecting data, make sanctions imposed by Commission more realistic, specify powers of Commission in adopting normative legal acts.

### ***2.3 Collection of Information and Creation of Database***

Availability of complete and reliable information is the main precondition to study and analyze and as a result to identify and eliminate the Law infringements on product markets. Activities implemented in the current year showed that no serious outcome is expected from the regulation of competition environment without solution of this key issue.

Solution of the issue envisages, first, the introduction of changes in the Law through provisions expanding the Commission powers in data collection. It is necessary to identify how state administration bodies shall provide to Commission the data, their volumes, sources, terms and regularity.

Throughout the year Commission shall summarize the data regarding product markets envisaged in Action Plan as well as the data on markets not envisaged in Action Plan and update database, for the implementation of which the following measures are anticipated:

- expansion and update of database;
- classification, summarization and analysis of collected data;
- cooperation with the state administration bodies;
- cooperation with the state and local government bodies.

### ***2.4 Schedule of Economic Competition Protection Measures***

The list of measures to be conducted by Commission in the direction of the economic competition protection presents the names and implementation time of the planned measures.

**Table 3. Schedule of Implementation of Economic Competition Protection Measures in 2002**

	<b>Measures</b>	<b>Timing</b>
<b>1</b>	Study and analysis of product & service markets (anticompetitive agreements, abuse of dominance, concentrations and unfair competition prohibited by the Law) 1. Food products:	During the year
	– grain	2 <sup>nd</sup> quarter
	– grain flour	3 <sup>rd</sup> quarter
	– sugar	1 <sup>st</sup> quarter
	– animal oil	3 <sup>rd</sup> quarter
	– vegetable oil	3 <sup>rd</sup> quarter
	– ethyl alcohol	1 <sup>st</sup> quarter
	– vodka	1 <sup>st</sup> quarter
	– cognac	2 <sup>nd</sup> quarter
	– wine	2 <sup>nd</sup> quarter
	2. Medications	2 <sup>nd</sup> quarter
	3. Oil products:	3 <sup>rd</sup> quarter
	– petrol	3 <sup>rd</sup> quarter
	– diesel oil	3 <sup>rd</sup> quarter
	4. Construction materials	4 <sup>th</sup> quarter
	– cement	4 <sup>th</sup> quarter
	– stone (tuff, basalt, granite, marble)	4 <sup>th</sup> quarter
	– metal	4 <sup>th</sup> quarter
	5. Transportation (vehicle)	3 <sup>rd</sup> quarter
	6. Tourism	4 <sup>th</sup> quarter
<b>2</b>	Submission of draft changes and modifications in the RA Law on “Protection of Economic Competition” and in other legal acts	2 <sup>nd</sup> quarter
<b>3</b>	Elaboration of normative legal acts ensuring the Law enforcement	1 <sup>st</sup> quarter
<b>4</b>	Creation of database necessary for the Action Plan implementation	2 <sup>nd</sup> quarter

In addition to the measures fixed in the Schedule, Commission shall implement other activities and studies based on the appeals received, mass media publications and upon own initiatives.

### **3. Other Issues Related to Economic Competition Protection**

#### ***3.1 Ensuring Publicity for Commission Activity***

Commission envisages implementing numerous measures to inform the society about its goals and objectives and ensure publicity of its activities. To this end, Commission will collaborate with the following groups:

- economic entities;
- consumers;
- state and local government bodies;
- other interested groups (mass media etc).

Collaboration with the mentioned groups will be carried out through discussions, round tables, seminars (including in marzes), press conferences, creation of website, printing of official bulletin of Commission, publications, explanations, and interpretations.

Collaboration with public envisages the following:

- publish main laws and legal acts which ensure free economic competition, present interpretations and explanations by the Commissioners, other officials and specialists;
- elucidate the most typical detected cases referring infringements of the legislation and competition restrictions;
- elucidate activities accomplished and measures envisaged by Commission;

- publish the list of dominant economic entities;
- comment on the competition related issues which are of interest for the public on a regular basis;
- present materials regarding activities of similar bodies of foreign states.

To ensure effective implementation of the policy directed at the protection of economic competition and publicity of the Commission activities, Commission envisages multilateral cooperation with the territorial administration bodies of the Republic of Armenia.

### ***3.2 Professional Qualification of Staff***

Productivity of activities implemented by Commission is significantly conditioned with the professional qualification of the staff. To recruit qualified specialists and increase professional qualification of Commission it is anticipated to:

- recruit employees for the Commission staff through tenders, if necessary;
- implementation of targeted educational programs with the participation of local specialists;
- organize training courses and seminars for the implementation of competition policy and study of international experience with the assistance of international organizations; collaboration with the Ministry of Education and Science of the Republic of Armenia for the preparation of relevant specialists.

### ***3.3 Collaboration with International Organizations***

Commission will continue its cooperation with similar bodies of the CIS countries and foreign states as well as with relevant international institutions in the planning year. The contacts and relations established within the framework of CIS countries will develop into practical contractual relationships. It is envisaged to sign bilateral cooperation agreements with similar bodies of the Russian Federation, Georgia and Ukraine.

As a representative body of the Republic of Armenia in the Council, Commission will continue its activities (drafting of respective documents on anti-trust policy and other activities) within the framework of Interstate Council of CIS Anti-Trust Policy.

Commission will continue its collaboration with international organizations working in the field of economic competition protection during the planning year, namely with the Organization for Economic Cooperation Development (OECD), World Bank (WB), and Technical Assistance to CIS Countries (TACIS), World Trade Organization, and United States Agency for International Development (USAID) etc. Taking into account the restricted state budgetary funds of the Republic of Armenia, Commission expects the assistance of the National Assembly of the Republic of Armenia and the Government of the Republic of Armenia in the appropriate presentation of the Commission needs in the programs subject to implementation with the assistance of international organizations. Commission is not able accomplish all of its regulatory objectives without relevant technical means, one of the sources of which is the technical assistance offered by respective international organizations. Commission thinks that such assistance might be in the form of:

- provision of international consultations;
- targeted training programs in aboard;
- technical equipment.