

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

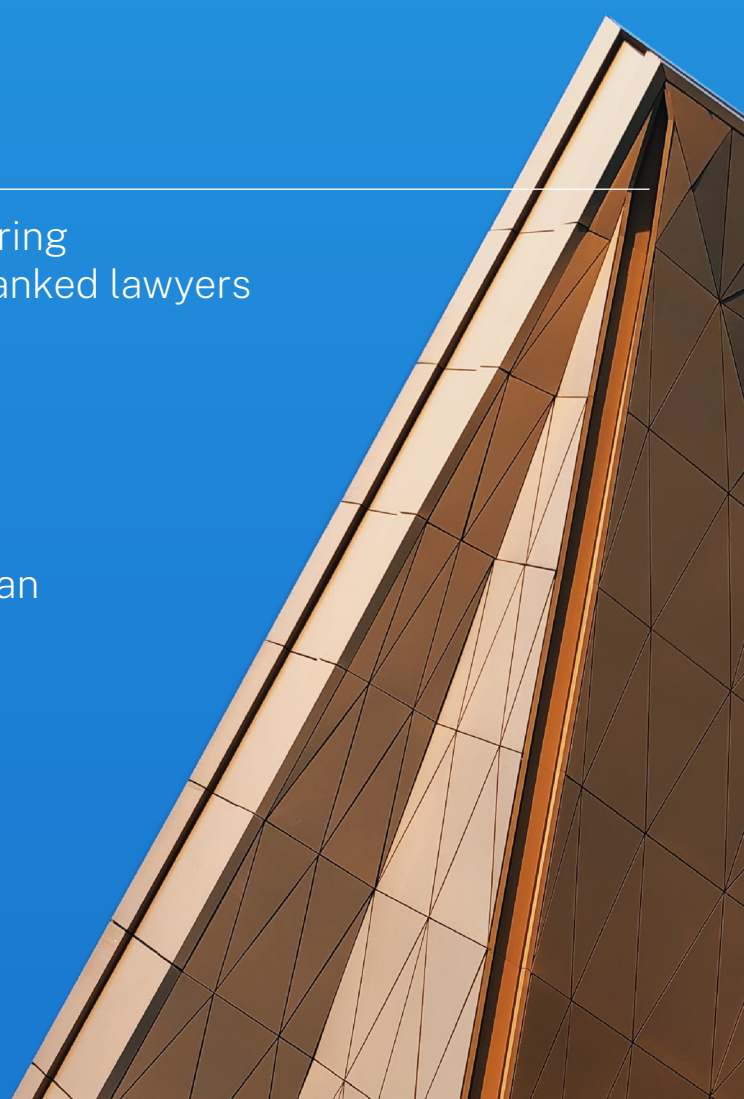
# Merger Control 2024

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

**Armenia: Law & Practice**

Lilit Karapetyan, Arianna Adamyan  
and Kima Davoyan  
Concern Dialog



# ARMENIA



## Law and Practice

### Contributed by:

Lilit Karapetyan, Arianna Adamyan and Kima Davoyan  
**Concern Dialog**

## Contents

### 1. Legislation and Enforcing Authorities p.5

- 1.1 Merger Control Legislation p.5
- 1.2 Legislation Relating to Particular Sectors p.5
- 1.3 Enforcement Authorities p.5

### 2. Jurisdiction p.5

- 2.1 Notification p.5
- 2.2 Failure to Notify p.6
- 2.3 Types of Transactions p.7
- 2.4 Definition of “Control” p.8
- 2.5 Jurisdictional Thresholds p.8
- 2.6 Calculations of Jurisdictional Thresholds p.8
- 2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds p.8
- 2.8 Foreign-to-Foreign Transactions p.9
- 2.9 Market Share Jurisdictional Threshold p.9
- 2.10 Joint Ventures p.10
- 2.11 Power of Authorities to Investigate a Transaction p.10
- 2.12 Requirement for Clearance Before Implementation p.10
- 2.13 Penalties for the Implementation of a Transaction Before Clearance p.10
- 2.14 Exceptions to Suspensive Effect p.11
- 2.15 Circumstances Where Implementation Before Clearance Is Permitted p.11

### 3. Procedure: Notification to Clearance p.12

- 3.1 Deadlines for Notification p.12
- 3.2 Type of Agreement Required Prior to Notification p.12
- 3.3 Filing Fees p.12
- 3.4 Parties Responsible for Filing p.12
- 3.5 Information Included in a Filing p.12
- 3.6 Penalties/Consequences of Incomplete Notification p.13
- 3.7 Penalties/Consequences of Inaccurate or Misleading Information p.13
- 3.8 Review Process p.13
- 3.9 Pre-notification Discussions With Authorities p.14
- 3.10 Requests for Information During the Review Process p.14
- 3.11 Accelerated Procedure p.14

## **4. Substance of the Review** p.14

- 4.1 Substantive Test p.14
- 4.2 Markets Affected by a Transaction p.15
- 4.3 Reliance on Case Law p.15
- 4.4 Competition Concerns p.16
- 4.5 Economic Efficiencies p.16
- 4.6 Non-competition Issues p.16
- 4.7 Special Consideration for Joint Ventures p.16

## **5. Decision: Prohibitions and Remedies** p.17

- 5.1 Authorities' Ability to Prohibit or Interfere With Transactions p.17
- 5.2 Parties' Ability to Negotiate Remedies p.18
- 5.3 Legal Standard p.18
- 5.4 Negotiating Remedies With Authorities p.18
- 5.5 Conditions and Timing for Divestitures p.18
- 5.6 Issuance of Decisions p.18
- 5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions p.19

## **6. Ancillary Restraints and Related Transactions** p.19

- 6.1 Clearance Decisions and Separate Notifications p.19

## **7. Third-Party Rights, Confidentiality and Cross-Border Co-operation** p.19

- 7.1 Third-Party Rights p.19
- 7.2 Contacting Third Parties p.20
- 7.3 Confidentiality p.20
- 7.4 Co-operation With Other Jurisdictions p.20

## **8. Appeals and Judicial Review** p.20

- 8.1 Access to Appeal and Judicial Review p.20
- 8.2 Typical Timeline for Appeals p.20
- 8.3 Ability of Third Parties to Appeal Clearance Decisions p.21

## **9. Foreign Direct Investment/Subsidies Review** p.21

- 9.1 Legislation and Filing Requirements p.21

## **10. Recent Developments** p.21

- 10.1 Recent Changes or Impending Legislation p.21
- 10.2 Recent Enforcement Record p.21
- 10.3 Current Competition Concerns p.21

Contributed by: Lilit Karapetyan, Arianna Adamyan and Kima Davoyan, **Concern Dialog**

**Concern Dialog** is a top-tier, full-service law firm headquartered in Yerevan, Armenia, and has been a trusted partner to businesses and individuals seeking legal counsel and representation since 1998. Concern Dialog is renowned for its work in the areas of corporate law, labour law, competition law, tax law, contract law, family law (including child abduction cases), and regulatory issues. The firm has extensive experience in regulatory matters in the TMT, mining, energy, utilities, banking and finance, medical

services, real estate, and not-for-profit sectors. In addition to its highly regarded consulting and transaction practice, its litigation practice is regarded as one of the leaders in Armenia for landmark litigation and arbitration cases. Concern Dialog's membership of TagLaw and Next-law networks, as well as its co-operation with individual law firms from various jurisdictions, allow it to provide services to its Armenian clients more or less worldwide.

## Authors



**Lilit Karapetyan** is a partner and attorney at Concern Dialog, leading the company's Move to the Armenia practice, and is actively involved in corporate and competition law (both advisory and litigation). Lilit joined Concern Dialog in 2017 and also lectures at the French University in Armenia.



**Arianna Adamyan** is an associate at Concern Dialog, specialising in corporate law, M&A, and contract law. Arianna joined Concern Dialog team in 2023.



**Kima Davoyan** is a legal assistant at Concern Dialog, specialising in administrative, civil, and public law. Kima joined Concern Dialog in 2023.

---

## Concern Dialog

Office 207,  
1, Charents Str.,  
0025, Yerevan,  
Armenia

Tel: +374 60 27 88 88  
Email: [info@dialog.am](mailto:info@dialog.am)  
Web: [www.dialog.am](http://www.dialog.am)



## 1. Legislation and Enforcing Authorities

### 1.1 Merger Control Legislation

Regulations on merger control are mainly provided by the following:

- the Law on Protection of Economic Competition (“the Law”);
- the decision of the Competition Protection Commission (“the Commission”) on “defining the amount of assets and incomes of the participants of concentration subject to declaration, the procedure for declaration of concentration and the form of declaration”; and
- the Commission’s decision “on determining the methodology for choosing the means of liability and calculating the fine”.

In addition, there are other legal acts that contain regulations related to the sector, in particular, including the Code of Administrative Offenses and the Law on State Registration of Legal Entities, State Enrollment of Separate Divisions of Legal Entities, Institutions and Individual Entrepreneurs.

### 1.2 Legislation Relating to Particular Sectors

There are no separate regulations for foreign investments regarding the sector of merger control. Foreign investments are regulated by the Law on Foreign Investments. This is outside of the scope of this piece, as the law focuses mainly on the types of foreign investments, the rights of foreign investors and their protection, but not on merger control. At the same time, the Law also applies to those actions or behaviours of economic entities in foreign countries that may prevent, limit or prohibit economic competition or harm the interests of consumers in the Republic of Armenia.

Additionally, some industries, such as telecommunications or energy, have industry-specific laws that provide for certain regulations regarding foreign transactions and investments. In particular, transactions and investments in these industries, including foreign transactions and investments, require the approval of the Public Services Regulatory Commission.

### 1.3 Enforcement Authorities

The enforcement of merger control legislation has mostly been entrusted to the Commission, which carries out its activities in accordance with the Constitution, the Law and other legal acts, and is independent in carrying out its functions and the powers entrusted to it. The Commission is empowered by law to define the amount of assets and the income of the participants of concentrations subject to declaration, as well as procedures for declaration by concentrations, the forms of declaration, to allow or prohibit concentrations based on an assessment process, to impose fines for offences, and also has further powers related to merger control.

In addition, the Public Services Regulatory Commission exercises certain supervisory powers in some industries. As mentioned in **1.2 Legislation Relating to Particular Sectors**, in industries such as telecommunications or energy, the PSRC acts as a regulator, wielding the power to approve specific transactions and investments.

## 2. Jurisdiction

### 2.1 Notification

Certain types of transactions, investments and other action taken by economic entities are defined as “notifiable concentrations” in Armenia. Concentrations must be notified before the Commission prior to the closing of a transaction

(in cases where the concentration is determined to be declarable under the Law).

According to the Law, a concentration is defined as the following:

- the consolidation of economic entities;
- a merger of economic entities;
- the acquisition of 20% or more of the assets or shares of an economic entity by another economic entity;
- the acquisition of the right to use an intellectual property object, including a means of personalisation;
- the establishment of a legal entity by more than one economic entity; and
- any transaction, action, reorganisation or conduct of an economic entity which results in the entity directly or indirectly influencing the decision-making or competitiveness of another economic entity, directly or indirectly influencing the decision-making or competitiveness of another economic entity or having an impact on the competitive situation in any commodity market.

Moreover, only the transactions that meet the requirements below shall be deemed “notifiable” or declarable (and the consent of the Commission shall be obtained before closing of the relevant transaction):

- the total value (amount) of the assets or income of the participants of the concentration at the time of submitting the declaration of concentration or in the last financial year preceding it exceeded AMD4 billion, or the value (amount) of the assets or income of at least one of the participants at the time of submitting the declaration in the last financial year preceding it exceeded AMD3 billion;

- the total amount of income of the participants of the concentration that did not perform any activity in the fiscal year preceding the year of submitting the notification of concentration or carried out an activity for a period of less than 12 months in the 12 months preceding the submission of the declaration exceeded AMD4 billion, or the amount of income of at least one of the participants in the calculation of the 12 months preceding the submission of the declaration exceeded AMD4 billion, or the amount of income of at least one of the participants in the calculation of the 12 months preceding the submission of the declaration exceeded is AMD3 billion; and
- at least one of the participants of the concentration has a dominant position in any commodity market in Armenia.

The concentration within the group of persons is considered an exception to the above. The Law provides for the concept of the group of persons, according to which it is a group of legal and/or natural persons between which there is actual connection or control, and in respect of which at least one of the conditions stipulated by the Law is met. Accordingly, if the group of persons submits the list of economic entities that constitutes a group of persons and the justifications to the Commission at least one month before the concentration, it is sufficient to assess the authorisation of the relevant action, and declaration will not be required. In the meantime, the parties shall inform the Commission after the transaction has been closed.

## 2.2 Failure to Notify

As mentioned above, the obligation to notify on concentration is fulfilled through the submission of a declaration to the Commission. At the same time, failure to file gives rise to a liability, defined by the Law. If the economic entity is obliged to

submit a declaration but does not do so, it is threatened with a fine of up to AMD5 million. The amount of the fine may depend on the aggravating or mitigating circumstances based on the Commission's decision "on determining the methodology for choosing the means of liability and calculating the fine".

Examples of aggravating circumstances are the motives, circumstances and intention of committing an offence by the economic entity. When evaluating this, the Commission takes into account recidivism, or the economic entity knowing that it needed to declare the concentration but did not.

A mitigating circumstance can be, for example, the submission of evidence by the economic entity beyond the obligations stipulated by the Law, or cooperating with the Commission.

The law also provides for the possibility of applying accelerated proceedings. If the consequences of the offence have been eliminated and the commission of an offence has been accepted by the economic entity, accelerated proceedings may be applied during which only mitigating and aggravating circumstances are assessed. As a result of the accelerated proceedings, the amount of the fine imposed for not declaring the concentration cannot exceed half of the most severe penalty for the given offence – in other words, the amount of the fine can be up to AMD2.500.000.

The decisions regarding the application of liability by the Commission are posted on the website of the [Competition Protection Commission](#), blocking only information that is considered a trade secret. The amounts of the fines charged as liability for undeclared concentrations are different, depending on the various aggravating or

mitigating circumstances. For example, in one of the cases, a natural person participating in the concentration was fined AMD700,000 and the company AMD1 million. In another case, the company was fined AMD2 million, and in another AMD950,000, and so on.

## 2.3 Types of Transactions

The types of concentration were presented in **2.1 Notification**.

Sub-clause 6 of **2.1 Notification** is fairly wide in scope and defines concentration as encompassing not just traditional mergers or share acquisitions but also a wider range of transactions, actions, and even specific behaviours. These can include reorganisations, transactions or any activity that allows one economic entity to influence the decision-making or competitiveness of another, or that can have an impact on the competitive landscape in any commodity market. Therefore, technically, a shareholder agreement or changes to the Articles of Association might fall under the definition of a concentration if it influences the decision-making or competitiveness of another entity. For example, if there is an option agreement, which allows a third person to affect the decisions of the legal entity or its behaviour prior to the exercising of the option, this, theoretically, may constitute a concentration.

The following should be mentioned regarding internal reorganisations: the law provides that actions performed by a group of persons are also subject to declaration in certain cases. In particular, when the list of economic entities that constitutes a group of persons and the relevant justifications are not submitted to the Commission, the group of persons also files a declaration. An exception to this is considered an organisation, and a natural or legal person that

is a group of persons, if that natural or legal person exercises the powers of the sole executive body of that organisation for at least one year; or organisations, if the same natural or legal person exercises the powers of sole executive bodies of organisations for at least one year.

## 2.4 Definition of “Control”

“Control” can be characterised as influencing the decision-making or competitiveness of another economic entity.

In the case of acquisition of shares, the threshold is set at 20% of the value of the assets of the economic entity that realises the asset. Sub-clause 6 of **2.1 Notification** covers a wider range of activities that may be considered a concentration. However, in each case, the Commission has the authority to review and determine whether there is effectively a change in control.

## 2.5 Jurisdictional Thresholds

The Commission defines cases where only the concentration is subject to declaration if certain thresholds are exceeded. The conditions for the concentration to be declared are presented in clause **2.1 Notification**. In addition, there are no special thresholds for other separate sectors.

## 2.6 Calculations of Jurisdictional Thresholds

Thresholds are calculated based on the total value (amount) of the assets or income of the participants of the concentration at the time of submitting the concentration declaration, in the last financial year preceding it, or on the total amount of income of participants of the concentration that did not perform activities in the financial year preceding the year of submission of the declaration of concentration or carry out activities over a period of less than 12 months, calcu-

lated for the 12 months preceding the moment of submission of the declaration of concentration.

Thresholds are calculated based on the balance sheet of the company. For valuation, book value is taken into account, or the market value but this is used only if book value is not available. For example, in practice, there are cases when intellectual property created by a company’s employees is not registered in the balance sheet of the company. In this case, value is considered based on fair market value.

There is no clear regulation regarding foreign currency, but, in practice, sales or assets booked in foreign currency are converted to AMD based on the rate set by the Central Bank of Armenia that is in effect at the time of submitting the declaration.

## 2.7 Businesses/Corporate Entities Relevant for the Calculation of Jurisdictional Thresholds

Thresholds are calculated in relation to the assets and income of all participants in the concentration. Participants in the concentration are considered to be:

- in a merger, the entities reorganised in the form of merger;
- in a consolidation, the consolidating economic entities;
- in an acquisition of assets, the economic entities that realise and acquire assets;
- when shares are acquired, the economic entity acquiring the shares and the economic entity in whose statutory (dividend) capital the shares are acquired;
- when acquiring the right to intellectual property, as well as in the case of any transaction, action, reorganisation or the behaviour of economic entities, due to which the busi-



ness entity may directly or indirectly influence the decision-making or competitiveness of another economic entity or may directly or indirectly influence decision-making or competitiveness, or may gain influence on a competitive situation in any commodity market in the Republic of Armenia, the economic entities involved in the legal relationship; and

- when more than one economic entity is establishing a legal entity in the Republic of Armenia, by the founding economic entities.

Therefore, the sellers may also be considered participants in the concentration, depending on the type thereof. Since the legislation requires the assets and income of all participants be taken into account when calculating thresholds (and, when there is a group of persons, the group of persons also), the seller's turnover is also included with the target.

The group of persons includes all the economic entities included in that group, and therefore the calculation is based on the sum of the assets or the income value (amount) of the economic entities included in the group of persons.

The annual financial statements of the economic entity's activity as of the end of the financial year preceding the declaration are indicated in the declaration. In cases provided for by the decision of the Commission, the economic entity may also submit a financial report available as of a different date.

As mentioned above, the information on the assets and income will be calculated based on the results of the end of financial year preceding the declaration date. Therefore, any material change in numbers between the end of the preceding year and the date of submission will not be reflected in the declaration. The list of

entities that forms a group of persons with the participants of concentration will be submitted, and this should include details as of the date of declaration. Should this list change when the Commission is still considering the application, it is advised to notify the Commission in writing regarding such changes.

## 2.8 Foreign-to-Foreign Transactions

The Law directly provides that merger control also applies to any actions or behaviours of economic entities in foreign countries that may prevent, limit or prohibit economic competition or harm the interests of consumers in the Republic of Armenia. Therefore, merger control is also carried out over the transactions of foreign economic entities. A further regulation has established an exception for relations governed by uniform rules of competition in cross-border markets – ie, relations over which control is reserved to the jurisdiction of the Eurasian Economic Commission. However, the legislation provides for limited regulation of foreign entities.

## 2.9 Market Share Jurisdictional Threshold

In Armenia, concentration can take place:

- in the same commodity market (horizontal concentration);
- in different commodity markets with some interconnection (vertical concentration); and
- in different commodity markets (mixed concentration).

The Law directly provides that concentration is subject to declaration not only when it exceeds certain thresholds but also when at least one of the participants in the concentration has a dominant position in any commodity market in the Republic of Armenia.

Therefore, regardless of whether the merging parties act in the same or different commodity markets, having a dominant position in even one of them is sufficient for declaring a concentration, even if they do not exceed the statutory thresholds.

## 2.10 Joint Ventures

The establishment of a legal entity by more than one economic entity which acts as an independent economic entity is considered a joint venture, which is also a subject to merger control. There are no specific rules for joint ventures to determine whether they meet the jurisdictional thresholds. Joint ventures are governed by the rules that apply to other subjects of concentration.

## 2.11 Power of Authorities to Investigate a Transaction

A declaration of concentration is carried out for the purposes of assessing the competitive climate as a result of the concentration preventing, limiting, prohibiting competition, or identifying or predicting the potential for restricting economic competition in the relevant commodity market in any other way, or identifying the issue of leading to a dominant position or possible damage to the interests of consumers.

Since the actions of entities that do not exceed the thresholds do not pose a threat to the competitive situation in the market or possible damage to the interests of consumers, the concentrations of these economic entities fall outside the scope of the Commission's supervision, so they do not file a declaration.

The obligation to declare exists not only in the case of exceeding thresholds, but also when an economic entity occupies a dominant position in any commodity market regardless of whether

the thresholds are passed. Thus, there are possible cases when the Commission, as a result of certain investigations, decides that the economic entity occupies a dominant position in any commodity market, and applies measures of responsibility for not declaring.

There is no statute of limitations on authorities' ability to investigate a transaction.

## 2.12 Requirement for Clearance Before Implementation

A notifiable concentration can be implemented only after receiving the Commission's decision on the clearance of the concentration. Therefore, the concentration is subject to suspension until the Commission's clearance. Moreover, implementation without clearance causes certain negative consequences for economic entities, which will be discussed in **2.13 Penalties for the Implementation of a Transaction Before Clearance**.

## 2.13 Penalties for the Implementation of a Transaction Before Clearance

The Law requires that a transaction subject to declaration be implemented after filing a declaration and obtaining the Commission's clearance.

The law provides for cases of unnotified and prohibited concentrations. A notifiable concentration is considered undeclared if it was implemented without filing a declaration and obtaining the Commission's clearance. Prohibited concentration is considered to be the case when, even if a declaration is submitted, the Commission has made a decision to prohibit it for some reason (for example, the mandatory performance of any obligation was violated by the economic entity).

Accordingly, liability is also provided for both cases. If the concentration was implemented without filing a declaration and obtaining the Commission's clearance (early closing), the economic entity could face a fine of up to AMD5 million (see 2.2 Failure to Notify).

The amount of the fine imposed for implementation of the prohibited concentration is up to 10% of the revenue of the economic entity in the year preceding the offence. For an official of an economic entity and for the natural person participating in the concentration, a warning will apply, or a fine in the amount of AMD3 million-AMD5 million.

Furthermore, there could be other negative consequences. If the concentration subject to declaration is prohibited by the Commission's decision but has been established, the Commission makes a decision to:

- separate the merged legal entity;
- divide consolidated legal entities;
- dissolve the newly established legal entity;
- terminate the contract and return to the other party what each of the parties received before termination of the contract.

The last actions listed above are carried out if, due to such actions, favourable competitive conditions will be restored in the relevant commodity market, according to the results of the Commission's investigations.

In practice, there was a case when the Commission prohibited the acquisition of 100% of the shares of an Armenian company by a foreign organisation.

## 2.14 Exceptions to Suspensive Effect

The Law defines the reorganisations, actions and transactions that are not considered concentration. It is thus not necessary to file a notification for their implementation and wait for the clearance from the Commission. These include the following:

- reorganisations, the actions or transactions of economic entities that take place between economic entities that are a group of persons, if they have presented the list of economic entities included in the group of persons and justifications for being a group of persons;
- transactions on the acquisition of securities listed on stock exchanges;
- transactions concluded through auctions based on a court order; and
- acceptance of inheritance.

If concentration takes place in the form of realisation (sale) of the subject of collateral and thresholds are exceeded, only the economic entity acquiring the subject of collateral needs to file an application and notify the Commission to start the review process, if such a transaction is considered a concentration and exceeds the thresholds.

## 2.15 Circumstances Where Implementation Before Clearance Is Permitted

As discussed above, if the transaction is subject to declaration, the economic entity must submit a declaration to the Commission before closing it. This is an unconditional obligation for economic entities. At the same time, there can be cases when the Commission's clearance is not required at all. Concentrations where the participants do not exceed the thresholds or occupy a dominant position on any commodity market do not submit a declaration and do not obtain

the clearance of the Commission before closing. In other words, such concentrations are set up without the clearance of the Commission.

The global closing of businesses or assets in the jurisdiction may be regulated by an agreement, where a condition precedent may be provided, that the closing of such a transaction in Armenia will come into effect only after obtaining the Commission's clearance.

## 3. Procedure: Notification to Clearance

### 3.1 Deadlines for Notification

The notification of the concentration must take place before its implementation. Missing the deadline would be considered to be a declaration of the transaction after its closing. In this case, fines would apply, not for delay but for non-declaration of the concentration, and are discussed in **2.2 Failure to Notify**.

### 3.2 Type of Agreement Required Prior to Notification

The text of the agreement does not need to be finalised for the declaration, but it is only required for parties to determine the essential terms of the agreement, including the parties, the subject, the price, and the purposes of the transaction. The law does not provide for other requirements.

### 3.3 Filing Fees

There are no filing fees in Armenia.

### 3.4 Parties Responsible for Filing

The obligation to file a declaration is intended for the participants of the concentration and is covered in **2.7 Business/Corporate Entities Relevant for the Calculation of Jurisdictional**

**Thresholds** who are the participants of the concentration.

### 3.5 Information Included in a Filing

The declaration must include the following information: a) the description of the concentration; b) information about the participants, the amount of income and the value of the assets of the participant in the last financial year preceding the moment of submitting the declaration; c) information about the natural and legal entities included in the group of persons with the participant of the concentration; d) information on the acquisition of assets, the acquisition of shares, the acquisition of an object of intellectual property, transaction, action, reorganisation or behaviour of economic entities; e) the establishment of a legal entity in the Republic of Armenia by more than one economic entity; and f) the purpose, type, basis of the concentration, information about the participant of a concentration having a monopoly or dominant position in any commodity market and other information.

The following are attached to the declaration of concentration:

- the annual financial reports of the activity as of the end of the financial year preceding the declaration, and in the presence of the requirement for the mandatory audit of financial reports established by law, and the auditor's conclusion on these;
- if the person submitting the concentration declaration is a legal entity, a copy of the legal entity's charter;
- if the person presenting the concentration declaration is a natural person, a copy of the identity document;
- if presenting information on a group of persons, evidence of being considered a group of persons, except in cases defined by law;

- in the case of horizontal and vertical concentrations not carried out within the group of persons, the volumes of products produced, imported and sold during the year preceding the submission of the declaration of concentration, by assortment;
- in the case of horizontal and vertical concentrations not carried out within the group of persons, information on the services provided and the work performed during the year preceding the submission of the concentration declaration;
- in the case of horizontal and vertical concentrations that are not carried out within the group of persons, a description of production capacities and infrastructures;
- in the case of horizontal and vertical concentrations not carried out within a group of persons, the analysis performed by the participant of the concentration regarding the competitive situation arising in the commodity market (markets) as a result of the concentration;
- copies of the pledge agreement, if the right of pledge is subject to registration, the registration, confiscation notice and the documents certifying the fact that it has been handed over to the pledger, if the subject of the pledge is acquired by ownership by the concentration participant; and
- a document certifying the relevant powers if the declaration of concentration is submitted through a representative; if the powers of the representative are certified by power of attorney, it must also directly provide for the power to submit the concentration declaration to the Commission.

The application and the declaration of concentration must be submitted in Armenian. When presenting a document in a foreign language, it is necessary to simultaneously present its Arme-

nian translation carried out in accordance with the law.

### 3.6 Penalties/Consequences of Incomplete Notification

The Commission may request necessary documents and information from the participants of the concentration within the framework of the concentration assessment proceedings. Accordingly, specifying unreliable, false or incomplete information in the declaration of concentration causes liability under the law. Each participant of the concentration is responsible for the reliability of the information indicated or presented by them in the declaration of concentration. The amount of the fine imposed by an economic entity for not submitting documents or other information defined by the Law within the specified period or for submitting unreliable or incomplete information is up to AMD5 million.

Submission of false information by a participant in a concentration may also be grounds for prohibiting the concentration with all its consequences (see 2.13 Penalties for the Implementation of a Transaction Before Clearance).

Such fines are often applied in practice.

### 3.7 Penalties/Consequences of Inaccurate or Misleading Information

See 3.6. Penalties/Consequences of Incomplete Notification.

### 3.8 Review Process

The general procedure for the implementation of administrative proceedings is applied to the concentration proceedings, according to which concentration proceedings consist of the initiation, current and final phases of the proceedings, which are interconnected. The basis for initiation of the concentration assessment proceedings is

the submission of the application and declaration in accordance with the Law. There are no separate deadlines for each phase. The term of the concentration assessment procedure is three months, which can be extended once for up to three months.

Mixed concentrations or concentrators of economic entities included in a group of persons are evaluated by the Commission in an accelerated procedure, the term of which is one month.

### 3.9 Pre-notification Discussions With Authorities

Economic entities have the right to apply to the Commission for obtaining a conclusion on the prevention, restriction, prohibition of economic competition and/or damage to the interests of consumers, as well as other issues related to the protection of economic competition, before relevant transactions or other actions. A conclusion on issues related to economic competition is provided within one month after the date of receiving the application. If necessary, the Commission may invite the applicant or other persons to a hearing or discussion of the Commission.

Such applications are frequently submitted to the Commission. Generally, the trade secrets information the process contains is kept confidential.

### 3.10 Requests for Information During the Review Process

As mentioned in clause 3.6 **Penalties/Consequences of Incomplete Notification**, the Commission can request additional information during the proceedings, to which the party is obliged to respond; failure to do so incurs liability of up to AMD5 million. In practice, similar requests are carried out fairly frequently.

### 3.11 Accelerated Procedure

Mixed concentration and concentration of economic entities included in a group of persons is permitted under an accelerated procedure, if there are no apparent grounds for rejecting the concentration. The concept of economic entities included in a group of persons is presented in clause 2.1 **Notification**, and the concept of mixed concentration in 2.9 **Market Share Jurisdictional Threshold**.

The Commission makes a decision on allowing the concentration under the accelerated procedure within one month after the initiation of the proceedings, which contains information on the participants of the concentration, their fields of activity or commodity markets and the justifications for allowing the concentration under the accelerated procedure.

The Law does not provide for other cases or circumstances of acceleration of clearance.

## 4. Substance of the Review

### 4.1 Substantive Test

Under the Law, the Commission shall consider whether:

- the concentration could impede, restrict, prohibit or otherwise degrade economic competition within the relevant commodity market;
- the concentration could result in the establishment or reinforcement of a dominant market position; or
- the concentration could harm consumer interests.

A critical issue here is that the guidelines and processes of the Commission for indicating the commodity market and the respective posi-

tions of the participants in such markets can sometimes be unpredictable. Although there is a procedure in place guiding the process, the Commission as an independent and specialised body is authorised to evaluate and indicate the relevant market. Further details of determining the commodity market are presented below in question 4.2 **Markets Affected by a Transaction**.

## 4.2 Markets Affected by a Transaction

Based on the Law, a concentration can take place in the following markets:

- horizontal concentration – in the same commodity market;
- vertical concentration – in different commodity markets with some interconnection; and
- mixed concentration – in different commodity markets.

The Commission considers various sources of information to determine the affected market, including official statistics, data from government bodies such as tax and customs authorities, research provided by businesses, information from individuals and legal entities involved in transactions, economic research and expertise, reports from specialised organisations and experts, data from information centres and services, input from consumer and producer associations, media reports, studies conducted by the Commission and the competition authorities of other states, marketing and sociological studies, state standards and regulations, and additional data from various market participants.

The legislation does not provide a minimum level below which competitive concerns are deemed unlikely. Each assessment of market impact is conducted individually, considering factors such as the specifics of business activities within the

commodity market, the number of economic entities involved, and the nature of their operations or legal relationships.

However, in general, a dominant position (of an economic entity) in a commodity market will be assumed if:

- an economic entity has market clout; in particular, it does not encounter any significant competition as a seller or acquirer, and/or based on its financial standing or other qualities it can have a decisive influence on the general conditions of circulation of goods in that commodity market and/or oust other economic entities from the commodity market and/or obstruct their entry into the commodity market;
- the entity is a seller or acquirer and captures at least one third of the given market in terms of sale or acquisition volumes;
- each of the two economic entities with the largest sale or acquisition volumes jointly capture, as sellers or acquirers, at least half of the market in terms of sale or acquisition volumes; and
- each of three economic entities with the largest sale or acquisition volumes jointly capture, as sellers or acquirers, at least two-thirds of the market in terms of sale or acquisition volumes.

## 4.3 Reliance on Case Law

The legislation does not explicitly provide for the application of case law; however, the Commission may take into account its previous decisions and use information from the studies of the competition authorities of other countries or international organisations engaged in competition protection. There are no notable examples or cases made public by the Commission where

such reliance on case law from other jurisdictions has been taken into consideration.

#### 4.4 Competition Concerns

Declaration of concentration is carried out in order to assess the competitive landscape resulting from concentration to prevent, restrict, prohibit competition, or to identify or predict the possibility of restricting economic competition in any way on the relevant commodity market or to clarify the issue of dominant position or possible damage to the interests of consumers. Given this, the Commission has the authority to investigate all competition-related concerns.

#### 4.5 Economic Efficiencies

In certain cases when assessing a concentration, the Commission may take into account efficiency considerations that could compensate for its potential anti-competitive effects, including technical and economic progress. However, the legislation does not specify the methods or tests to be used for this evaluation.

#### 4.6 Non-competition Issues

Armenia's legal framework does not explicitly address non-competition concerns related to industrial policy, employment, the environment, or national security during the competition review process by the Commission. These factors are generally not taken into account as part of the assessment by the Commission. Moreover, it does not fall within the scope of the Commission's authorities to take into account such factors either.

However, the Commission does have the discretion to consider these issues if they are deemed relevant to evaluating the competitive landscape and potential impact on consumers. If such factors significantly influence market analysis, they can affect the Commission's final decision.

Additionally, besides the control carried out by the Commission, in specific sectors of higher importance, the Public Services Regulatory Commission (PSRC) carries out further controls. In the Energy and Telecommunications sector, in particular, the PSRC will consent to the merger prior to its closing. Among other issues, in these cases, the PSRC considers the following matters and has the right to withhold consent if:

- the documents and/or information submitted for consent do not comply with the requirements of the procedure established by the PSRC;
- in the assessment of the PSRC, the merger is prejudicial or likely to harm national security or the public interest; or
- in cases involving tenders or licences issued through auctions, where the requisite experience is not confirmed.

#### 4.7 Special Consideration for Joint Ventures

Armenian legislation defines activities considered concentrations (for more details please see **2.1 Notification** and **2.10 Joint Ventures**). This includes the establishment of joint ventures as well as a further broader definition encompassing any transaction between economic entities that may affect the Armenian market. Therefore, establishing a joint venture, including possible coordination issues between parent companies, can be qualified as a concentration and be subject to declaration. It should be noted that the assessment process for concentrations is the same regardless of type, and that no special tests apply specifically to joint ventures.



## 5. Decision: Prohibitions and Remedies

### 5.1 Authorities' Ability to Prohibit or Interfere With Transactions

As mentioned in **2.1 Notification**, if the threshold established by the Commission is met, the declaration of the concentration becomes mandatory, and the participants are then obliged to submit to the Commission a concentration declaration and application. Subsequently, the Commission assesses the concentration and can either authorise or prohibit it through a binding decision. This is compulsory for all participants.

In order to prohibit the concentration, the Commission will show that:

- the concentration would result in prevention, restriction, blocking or otherwise worsening of economic competition in the relevant commodity market;
- the concentration would result in the establishment or strengthening of a dominant position;
- the concentration would harm the consumer interests;
- a participant to the concentration has not submitted information considered by the Commission to be essential for assessing the impact of the concentration in the relevant commodity market, and it is impossible to obtain the information from other sources; or
- a party to the concentration has submitted false information considered by the Commission to be essential for assessing the impact of the concentration in the relevant commodity market which has had a negative impact on the progress and results of the study conducted by the Commission.

In cases where there are grounds mentioned in the last four points above, the Commission shall allow the concentration if the participants can show that, as a result of this concentration on the commodity market, favourable competitive conditions will be ensured and the interests of consumers will not be harmed.

In cases where the Commission authorises a concentration, it may impose conditions and obligations on the participants that shall continue indefinitely unless otherwise specified. Breaching these conditions prohibits the transaction, subjecting it to the consequences applicable to prohibited concentrations.

Furthermore, if the Commission discovers a non-declared concentration, it has the authority to initiate proceedings to investigate potential breaches of economic competition laws. It can require participants to provide information, and may decide to either declare the concentration as non-declared or prohibited (for the consequences please see **2.13 Penalties for the Implementation of a Transaction Before Clearance**).

The Commission, as part of its activities, conducts comprehensive market monitoring. In practice, there have been instances where, during its monitoring activities, the Commission has identified changes in the ownership of a company through the State Register of legal entities. Based on this information, the Commission initiated administrative proceedings to determine whether there was a violation.

In another instance, the companies declared a concentration to the Commission where, during the assessment process, the Commission identified a prior transaction that should have been declared. Consequently, the Commission initi-

ated administrative proceedings and imposed a non-declaration fine of AMD2 million.

## 5.2 Parties' Ability to Negotiate Remedies

If the Commission has concerns regarding a proposed concentration, it can request further information and clarification from the participants. Following these enquiries – eg, if the Commission determines that the concentration would create a dominant market position – it may still conditionally approve the transaction.

Conditional approval hinges on the participants' justification for the concentration. This justification, for example, will demonstrate that the concentration will ultimately benefit the relevant commodity market and not harm consumer interests.

Justification can be achieved through offering remedies, which are assessed on a case-by-case basis. The Law itself does not prescribe specific remedies; rather, both divestitures or behavioural remedies can be considered.

## 5.3 Legal Standard

While the Law does not specify a legal standard for proposed remedies, in practice, the Commission will expect remedies to be sufficient to fully address the identified competition concerns.

## 5.4 Negotiating Remedies With Authorities

The concentration review process in Armenia is not divided into distinct phases. From the initial assessment, the Commission can engage with involved participants on various topics. This may include requesting additional information, discussing potential negative impacts on competition, and proposing remedies to address those concerns. Participants can also submit their own

views and propose remedies they believe would mitigate negative effects.

However, the Commission ultimately retains the discretion to apply and propose only the remedies it deems acceptable and impose remedies that may not be fully agreed upon by all parties.

These remedies are detailed in the Commission's final decision, outlining the specific conditions and obligations participants need to fulfil according to established deadlines.

## 5.5 Conditions and Timing for Divestitures

The approach to competition remedies is determined on a case-by-case basis, and there is no standard method. The specific terms and conditions imposed by the Commission depend on the industry involved and the parties in the concentration.

Completion may occur before or after the imposed conditions are met. Additionally, there is no set timeframe for compliance unless explicitly stated otherwise in the Commission's decision, or unless it derives from the specific remedy that will be met prior to completion.

Where participants fail to comply with the established conditions, the transaction becomes prohibited, subjecting it to the consequences applicable to prohibited concentrations.

## 5.6 Issuance of Decisions

The Commission issues a formal decision either allowing or prohibiting the concentration and sends it to all participants. Simultaneously, the Commission publishes a brief description of the transaction on its [website](#) indicating whether the transaction has been permitted or prohibited.

Confidential information will not only be withheld from public disclosure, but is not to be disclosed to the other participants involved in the concentration.

## 5.7 Prohibitions and Remedies for Foreign-to-Foreign Transactions

The Commission has not recently imposed prohibitions or required remedies on foreign-to-foreign transactions.

Current practice shows that, as assessed by the Commission, such transactions are generally considered unlikely to significantly affect Armenia's competitive market. Therefore, in most cases, the Commission authorises such transactions.

However, it is important to note that any foreign-to-foreign transaction which has an impact on the Armenian market and exceeds the thresholds set by the Commission still requires notification to the Commission – as these transactions are also qualified as concentrations under Armenian law.

## 6. Ancillary Restraints and Related Transactions

### 6.1 Clearance Decisions and Separate Notifications

The Commission generally does not assess ancillary restraints during its review of concentrations. It should be noted that the review process does not involve examining draft transaction agreements, and the Commission primarily focuses on the potential impact of the concentration on the Armenian market. Consequently, restrictions or agreements established within the transaction agreement itself are not reviewed by the Commission.

However, if the Commission requests information related to the transaction's terms during their assessment, and this information might influence their evaluation of the concentration's impact, such information will be disclosed to the Commission. In such instances, it is possible that the Commission's decision might address these ancillary restraints, although, in our experience, such cases are unknown. The bottom line is that the consent of the Commission to exercise the concentration does not, in any case, ensure that all the terms of the agreement are in compliance with Competition law. For example, if there is a non-compete clause in the agreement, this might still serve as a grounds for concluding an anti-competition agreement (which will result in detrimental consequences for the parties) in the future.

## 7. Third-Party Rights, Confidentiality and Cross-Border Co-operation

### 7.1 Third-Party Rights

Third parties whose rights or legitimate interests may be affected by the administrative act of the Commission, which will be adopted as a result of the assessment proceedings, have the right to participate in the review process.

If a third party participates in the proceedings, it will have the right to:

- review the case materials, and take excerpts, photos, photocopies, and copies from them, except for confidential information;
- submit evidence;
- address questions to the participants in the proceedings;
- file motions and provide explanations;

- state its position regarding motions and arguments from other participants in the proceedings;
- request recusal; and
- appeal decisions of the Commission that are subject to appeal.

## 7.2 Contacting Third Parties

In cases where the Commission deems that information provided by third parties could influence the assessment decision, it is authorised to contact the third party and request the relevant information, which is considered pertinent to the assessment (including the third party's position on the concentration). Where such a request is made to a third party, the party is obliged to provide the Commission with all required information.

With regard to the form of the communication, the Law provides that decisions, notifications, or other documents from the Commission ("Correspondence") shall be dispatched via postal delivery, courier service, or delivered in person. Additionally, where stipulated by Law, correspondence may be sent via email or other approved means of communication. When the participants are legal entities or individual entrepreneurs, Correspondence is typically sent via both postal services and official email addresses, unless an alternative email address has been provided. For natural persons, Correspondence is ordinarily dispatched via postal delivery unless the individual has formally requested electronic communication.

There is no known practice where the remedies have undergone a market test.

## 7.3 Confidentiality

Decisions regarding the approval or prohibition of a concentration by the Commission are

publicly available and published on the [Commission's](#) official website. They include a brief overview of the transaction and the identities of the participants involved. Any information deemed commercial or confidential shall be kept confidential, and will not be subject to public disclosure. Moreover, commercial information and trade secrets will not be subject to disclosure to other participants in the concentration.

## 7.4 Co-operation With Other Jurisdictions

The Commission cooperates with other competition authorities around the world. They participate in various multilateral cooperations, such as the Eurasian Economic Commission, International Competition Network, OECD, and UNCTAD. Additionally, they have signed bilateral agreements with the competition authorities of countries such as Albania, Moldova, Russia, Poland and Greece, among others.

However, these agreements primarily focus on sharing non-confidential information. This means they often exchange experiences and best practices in competition enforcement rather than share sensitive details on specific cases.

# 8. Appeals and Judicial Review

## 8.1 Access to Appeal and Judicial Review

Decisions of the Commission can be appealed administratively to the Commission itself, or judicially to the RA Administrative Court, within two months after the decision comes into force.

## 8.2 Typical Timeline for Appeals

As mentioned in [8.1 Access to Appeal and Judicial Review](#), decisions of the Commission can

be appealed within two months after the decision comes into force.

In practice, lawsuits have been filed against the Commission's decisions on applying a measure of responsibility, some of which were satisfied by the Administrative Court. For example, case No:/6081/05/22, in which the Administrative Court declared as invalid the Commission's decision No 320-A "On the application of a measure of responsibility against economic entities", and case No./1952/05/20, in which the Court declared as invalid Commission's 184-A decision with the same content.

### 8.3 Ability of Third Parties to Appeal Clearance Decisions

The Law does not regulate who has the right to appeal the Commission's clearance decision. Nevertheless, the Commission's review process does not include direct participation from third parties. This means third parties cannot appeal clearance on concentration.

## 9. Foreign Direct Investment/ Subsidies Review

### 9.1 Legislation and Filing Requirements

In general, mergers involving foreign direct investments in Armenia are governed by the RA law "On Protection of Economic Competition" and do not necessitate any specific filings. However, certain sectors, such as banking and electronic communications, require approval not only from the Commission but also from other regulatory bodies encompassing both foreign and local investments.

For example, in the banking sector, an individual or an affiliate may acquire a participation in the authorised capital of a bank as a result of one or

more transactions only with the prior consent of the Central bank of the RA (the CBA). To receive the CBA's preliminary consent for acquisition of the participation in the bank's statutory fund the person, through the request of the bank, must submit to the CBA (via the electronic system of CBA to which the bank has access) the documents and information specified by the relevant decision of the CBA.

## 10. Recent Developments

### 10.1 Recent Changes or Impending Legislation

For the last few years there have been no major changes in legislation. However, most of the official clarification given by the Commission with regard to concentration has lost its power by decision of the Commission. Therefore, it can be inferred that new clarifications may be provided in near future.

### 10.2 Recent Enforcement Record

According to the website of the [Competition Protection Commission](#), recent enforcement actions include both prohibiting a concentration and imposing fines for failing to notify the Commission about the concentration. These cases involved Armenian entities, and there have not recently been any public records of similar actions for mergers solely between foreign companies.

With regard to fine amounts, for instance, in one case, both parties were fined AMD2 million each, and in another, the fine was AMD1 million for each party.

### 10.3 Current Competition Concerns

Currently, regulatory authorities have not expressed any specific concerns or identified notable trends in either merger reviews or enforcement actions.

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Katie.Burrington@chambers.com](mailto:Katie.Burrington@chambers.com)