

# **COMPETITION ENFORCEMENT AGENCIES**

## HANDBOOK 2019

Published in association with:

Atsumi & Sakai

Bowmans

Cooley

ELIG Gürkaynak Attorneys-at-Law

Lapidot, Melchior, Abramovich & Co

Morrison & Foerster LLP

SRS Advogados

Van Bael & Bellis



# Competition Enforcement Agencies Handbook 2019

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A Global Competition Review Special Report

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*Global Competition Review's* 2019 edition of the *Competition Enforcement Agencies Handbook* provides full contact details for competition agencies in over 100 jurisdictions, together with charts showing their structure and a Q&A explaining their funding and powers. The information has been provided by the agencies themselves and by a panel of specialist local contributors.

The *Competition Enforcement Agencies Handbook* is part of the *Global Competition Review* subscription service, which also includes online community and case news, enforcer interviews and rankings, bar surveys, data tools and more.

We would like to thank all those who have worked on the research and production of this publication: the enforcement agencies and our external contributors.

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Member of the Commission

## Questions and answers

### How long is the head of agency's term of office?

The chairman of the State Commission for the Protection of Economic Competition (SCPEC RA) is appointed by the National Assembly of the Republic of Armenia upon the proposal of Prime Minister for a five-year period. He or she may be reappointed to the same position after expiry of the term of his or her power. However, the same person shall not be appointed as a member of SCPEC RA for more than two consecutive terms of office.

### When is he or she next due for reappointment?

Artak Shaboyan was appointed for a second term as chairman on 2 March 2015, by the decree of the President, for a five-year period. It should be mentioned that according to the Law on Making Amendments and Supplements to the RA Law on Protection of Economic Competition (2018), the first composition of SCPEC RA shall be formed and members of the commission shall be appointed within one year after the date of the

inauguration of newly elected President, that is until 9 April 2019.

### Which posts within the organisation are political appointments?

There are no political appointments as SCPEC RA is an autonomous body.

### What is the agency's annual budget?

The annual budget for 2019 is 393.5 million Armenian drams.

### How many staff are employed by the agency?

There are currently 76 employees, including the seven members of SCPEC RA and 47 civil servants.

### To whom does the head of agency report?

SCPEC RA is an autonomous body and is independent from other state bodies in performing the tasks and functions provided under the Law on Protection of

Economic Competition (the Law). Each year, SCPEC RA publishes its annual programme of activities for the coming year in the National Assembly by 1 October of that year. It also publishes a report on the previous year's activity by 1 May.

**Do any industry-specific regulators have competition powers?**

SCPEC RA is the only authority in charge of enforcing the Law.

**If so, how do these relate to your role?**

SCPEC RA performs the functions of economic competition with regard to persons regulated or supervised by the Central Bank of the Republic of Armenia, as well as with regard to persons operating in the regulated sector of public services based on the principle of cooperation with the Central Bank of the Republic of Armenia and Public Services Regulatory Commission of the Republic of Armenia (the Regulatory Bodies). The Regulatory Bodies shall – before the adoption of secondary legal acts on the prevention of abuse of dominant position, anticompetitive agreements and concentrations – submit them to SCPEC RA for an opinion. SCPEC RA shall refrain from making any intervention related to an issue raised with regard to economic competition, with the Regulatory Bodies reasonably informing SCPEC RA that the given issue is reserved, based on the objectives of regulation prescribed by Law, to the Regulatory Bodies and that the Regulatory Bodies perform functions prescribed by Law. The Regulatory Bodies shall, while undertaking measures and within the scopes prescribed by Law, provide SCPEC RA with the opportunity of expressing its position. The Regulatory Bodies shall mandatorily address all the issues raised and positions expressed by SCPEC RA, by providing justifications for the acceptance or non-acceptance thereof.

The Regulatory Bodies shall mention the position of SCPEC RA in their final opinion or decision, and, in case of rejecting the position of SCPEC RA, the justifications thereon. Where SCPEC RA finds that the information provided by the Public Services Regulatory Commission of the Republic of Armenia (SPRC) is not justified, it may apply to the Prime Minister by filing a motion for including the given issue in the agenda of the regular sitting of the government. In this case, the government shall, by adoption of an individual legal act, determine the competent body performing the functions of economic competition related to the issue raised with regard to the economic competition.

At the same time, the SPRC is authorised to develop guidelines, in consultation with SCPEC RA, with respect to the following:

- types of anticompetitive practices that the competitive safeguard rules apply; and
- procedures for determining whether or not to impose competitive safeguards in relation to such practice.

SCPEC RA and the SPRC have signed a memorandum of understanding for closer cooperation and exchange of information on issues of common interests. SCPEC RA has also entered into a memorandum of understanding with the Central Bank of Armenia in the financial sector and the Ministry of Finance in the field of public procurement as well as with the police on cooperation and information sharing.

**May politicians overrule or disregard authority's decisions? If they have ever exercised this right, describe the most recent example.**

No. The Minister of Economic Development and Investments deals with the creation of economic policy in Armenia. SCPEC RA is independent in its decision-making and politicians do not have a legal right to overrule or disregard SCPEC RA decisions.

It should be noted that article 16.1 of the Law prohibits state officials provision of prohibited state aid and article 16.3 prohibits the anticompetitive activities of state bodies and their officials, including acts adopted by bodies that restrict, prevent or prohibit competition. Furthermore, due to the latest legislative amendments, the RA Code on Administrative Offences considers administrative responsibility measures (including fines) for state officials who violate respective provisions of competition law.

**Does the law allow non-competition aims to be considered when taking decision?**

No. The Law does not provide for non-competition aims to be considered by SCPEC RA in the decision-making process. The purpose of the Law is to protect and encourage free economic competition, ensure appropriate environment for fair competition, promote development of entrepreneurship and protect consumers' rights.

**Which body hears appeals against agency's decisions?**

Decisions of SCPEC RA may be appealed through administrative procedure within a period of 10 days following its entry into force. The decisions of SCPEC RA

may be appealed in the court following disagreement with the results of an administrative appeal:

- within one month from the adoption of a decision on appeal; or
- in case of not filing administrative appeal, within one month following the effective date of the SCPEC RA decision.

The decisions of the RA Administrative Court are subject to review by the RA Court of Appeal (RA Administrative Appeal Court). Based on the complaint, in cases and order stipulated by Administrative Procedure Code, the Administrative Appeal Court reviews judicial acts deciding the case on merits and interim judicial acts of Administrative Court that have not come into legal force. In the same way, the decisions of the Administrative Appeal Court are subject to review by the RA Court of Cassation in cases and orders stipulated by Administrative Procedure Code.

**Is there any form of judicial review beyond that mentioned above? If so, which body conducts this? Has any competition decision by the agency been overturned?**

No.

**Has the authority ever blocked a proposed merger? If yes, please provide the most recent instances.**

Yes. Economic entities applied to SCPEC RA for concentration permission and SCPEC RA started an administrative proceeding based on this application. One of the economic entities refused to submit information to SCPEC RA that was necessary to assess the permission of the concentration.

For this reason, SCPEC RA rejected the concerned concentration.

**Has the authority ever imposed conditions on a proposed merger? If yes, please provide the most recent instances.**

Yes. SCPEC RA imposed conditions on a proposed concentration for two cases.

First, SCPEC RA allowed the concentration while imposing the following conditions:

- a physical person cannot exercise the powers of the executive body of a company or otherwise participate in the work of the executive body; and
- the economic activity of companies must be independent of each other.

SCPEC RA allowed the concentration while imposing the condition that the company refrains from the use

of discriminatory conditions to other economic entities acting in the laying hen, chicks and incubation egg product markets as well as in other affiliated markets.

Meanwhile, according to article 10 of the Law:

- Concentration subject to declaration shall be permitted or prohibited upon the decision of SCPEC RA, which may also contain conditions and obligations binding for participants of the concentration.
- While assessing concentration subject to declaration, SCPEC RA shall take into consideration the circumstances impeding economic competition, including leading to or strengthening dominant position or deteriorating the competitive conditions.
- SCPEC RA shall also permit concentration subject to a declaration where the economic entity proves that competitive conditions shall be ensured in the commodity market as a result of the given concentration.
- The economic entity shall be prohibited to put the concentration into effect:
  - before the rendering of a decision by SCPEC RA (undeclared concentration); and
  - in case a decision on prohibition of concentration is rendered by SCPEC RA (prohibited concentration).
- A concentration prohibited upon the decision of SCPEC RA and put into effect shall be subject to liquidation (rescission, termination) upon the decision of SCPEC RA as prescribed by the legislation.

**Has the authority conducted a Phase II investigation in any of its merger filings? If yes, please provide the most recent instances.**

No. According to SCPEC RA decision N478-N, dated 16 December 2016 'On Defining the value (amount) of the assets and profit(s) of the participants(s) of concentration subject to declaration, on the procedure for declaration of the concentration of economic entities and on the form of the declaration' and according to the Law, a unified one phase investigation applied for all types of concentrations.

**Has the authority ever pursued a company based outside your jurisdiction for a cartel offence? If yes, please provide the most recent instances.**

No.

**Do you operate an immunity and leniency programme? Whom should potential applicants contact? What discounts are available to companies that cooperate with cartel investigations?**

The concept of leniency was introduced in amendments to the Law, which entered into force in April 2011. SCPEC RA may adopt a decision not to apply a liability measure with respect to an economic entity if the economic entity, prior to the instigation of an administrative proceeding by SCPEC RA in connection to the given agreement, is the first to apply on its own initiative to SCPEC RA, as prescribed by Law, and voluntarily undertakes a commitment to terminate its participation in that anticompetitive agreement and exclude such in the future, simultaneously submitting such evidence regarding that anticompetitive agreement that, in the opinion of the SCPEC RA, is sufficient grounds for instigating an administrative proceeding in connection to the given anticompetitive agreement.

There has been no specific case on leniency up to now.

The absence of dawn raids competence does not allow SCPEC RA to get direct and strong evidence and thus establish many cartel cases. For this reason, there are few cases on anticompetitive agreements (including cartels) that in turn results in having no opportunity for applying leniency.

**Is there a criminal enforcement track? If so, who is responsible for it? Does the authority conduct criminal investigations and prosecutions for cartel activity? If not, is there another authority in the country that does?**

Criminal enforcement is not subject of the Law. However, according to the article 195 (illegal anticompetition activity) of the Criminal Code of the Republic of Armenia:

- Establishment and maintaining of illegal artificially high or low monopolistic prices, as well as, restriction of competition by prior agreement or by coordinated actions, in order to divide the market by territorial principle, to restrict the penetration into the market, to force other economic subjects out of the market, to establish and maintain discriminative prices, is punished with a fine of 500 to 1000 minimum salaries (500,000–10,000,00 Armenian drams), with arrest for a term of two to three months or with imprisonment for the term of up to three years.
- For the same action committed by violence or threat of violence, damaging or destruction of somebody's

property, or by threat of damaging abuse of official position or by an organised group, is punished with imprisonment for the term of three to eight years, with or without property confiscation.

The responsible authorities are the police and the Prosecutor General's Office.

**Are there any plans to reform the competition law?**

The Law was amended 23 March 2018 and the following amendments and supplements have been included:

- harmonising the Law with international standards;
- ensuring a unified approach as regards sanctions by introducing a margin of discretion for setting all fines;
- increasing the effectiveness of control over the procurement processes;
- imposing personal administrative responsibility measures for state officials and for officials of economic entities for violation of competition law;
- clarifying and supplementing elements of manifestation of abuse of dominant position, unfair competition and anticompetitive agreements;
- correcting issues and filling gaps that were revealed during administrative complaints and court procedures; and
- aligning the Law to the new RA Constitution (2015).

**When did the last review of the law occur?**

See above.

**Do you have a separate economics team? If so, please give details.**

SCPEC RA does not have a separate economics unit. The economists who are part of the staff work jointly with the lawyers in each case. An Analysis and Competition Assessment Department is responsible for carrying out general economic research.

**Has the authority conducted a dawn raid?**

No, because SCPEC RA does not have competence to conduct dawn raids.

**Has the authority imposed penalties on officers or directors of companies for offences committed by the company? If yes, please provide the most recent instances.**

No. Only in 2018 due to legislative amendments, did SCPEC RA gain competence to impose fines on officers or directors of companies for violation of competition law.

**What are the pre-merger notification thresholds, if any, for the buyer and seller involved in a merger?**

According to the Law, there is no pre-merger notification procedure; however, for merger notification, the SCPEC RA issued a decision N478-N dated 16 December 2016 'On defining the value (amount) of the assets and profit(s) of the participants(s) of concentration subject to declaration, on the procedure for declaration of the concentration of economic entities and on the form of the declaration'.

Concentrations of economic entities, prior to being put into action, shall be subject to declaration where:

- the total value of the assets of the participants of the horizontal concentration in the fiscal year preceding the transaction amounted to at least 1.5 billion drams or the value of assets for at least one of the participants amounted to at least 1 billion drams in the fiscal year preceding the transaction;
- the total amount of profits of the participants of the horizontal concentration in the fiscal year preceding the transaction amounted to at least 3 billion drams or the amount of the profit for at least one

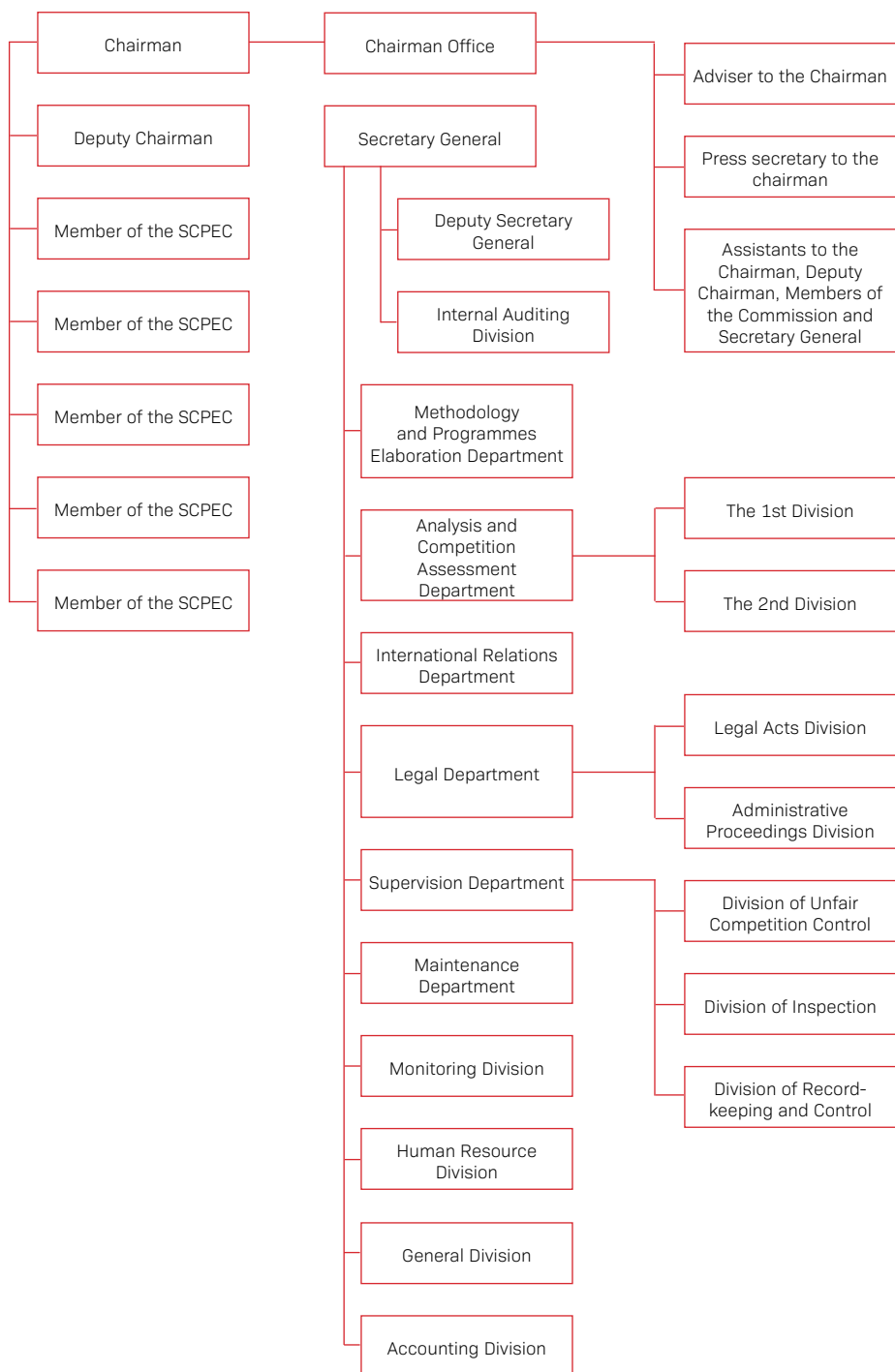
of the participants amounted to at least 2 billion drams in the fiscal year preceding the transaction;

- the total value of the assets of the participants of the vertical or mixed concentration in the fiscal year preceding the transaction amounted to at least 3 billion drams or the amount of the assets for at least one of the participants amounted to at least 2 billion drams in the fiscal year preceding the transaction; and
- the total amount of profits of the participants of the vertical or mixed concentration in the fiscal year preceding the transaction amounted at least to 4 billion drams or the amount of the profit for at least one of the participants amounted to at least 3 billion drams in the fiscal year preceding the transaction.

**Are there any restrictions on minority investments that involve less than a majority stake in the business?**

No.

## Organisation chart



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