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Armenia

COMPETITION LITIGATION

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This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in Armenia.

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ARMENIA
COMPETITION LITIGATION

1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

Civil action for the breaches of the competition law is not a common practice in Armenia. The Law on the Protection of Economic Competition of Armenia regulates actions and omissions that can be grounds for administrative punishment by the Commission on Protection of Competition (CPC). Those grounds are the following:

- Enactment of Concentrations subject to filing without consent of the CPC,
- Abuse of dominant position,
- Implementation of Anti-competitive (Cartel) agreements,
- Unfair competition,
- Coordination of economic activities,
- Anti-competitive actions of state bodies and officials thereof.

Suppose the anti-competitive actions of the private person caused damage to the other parties (competitors). In that case, the latter can apply to the CPC with the request to investigate and punish for the breach and to apply to the civil Court for claiming recovery of damages (tort claim). As indicated, the practice is not common, but in rare cases, the most suggested causes would be the abuse of the dominant position and the acts of unfair competition.

2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

There are no special requirements to commence competition damages claims. The civil claim is an ordinary tort claim, where the breach of the Law would be the breach of the competition legislation. It would also be necessary to prove a nexus between the breach and damages and the amount of damages claimed.

It may be advisable (but not compulsory for all breaches) to apply to the CPC with an administrative complaint, where the latter would investigate the situation, collect evidence, and eventually establish the violation. However, in most cases, the breach can also be established within civil litigation.

3. What remedies are available to claimants in competition damages claims?

Depending on the specific breach and consequences, several remedies are available to claimants for the breach of the competition legislation.

- **Monetary Compensation** (recovery of damages caused by the breach): The Civil Code of the Republic of Armenia provides for compensation for actual damages and lost benefits (forgone profit) resulting from the competition law violation. For the claim, one needs to prove the breach, volume of damage, and nexus between them.
- **Annulment of Contracts and Transactions** (restitution to the situation preceding the breach): It is possible to claim the annulment of contracts that were concluded via a breach of competition legislation (contracts contrary to the Law can be found void and null). However, it is necessary to prove the existence of standing in the annulment of contracts. Generally, only the parties to the contract have the right to file a lawsuit for annulment. There is no court practice on the following, but one of the competitors may also file for annulment of concentration if that would have been denied by the CPC.

Declaration of Void Anti-competitive Clauses of the contract: Clauses in contracts that are anti-competitive may be declared void by a claim from one of the parties to the contract. This means that the specific anti-competitive clauses will no longer be enforceable, but the other contract provisions will remain in force.

Require Specific Performance: In case of abuse of dominant power, the claimant may request the Court to order the breaching party to comply with specific obligations (require undertaking specific action or inaction).

4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

Damages shall comprise expenses incurred by the person whose right has been violated, which have been or must be covered by said person in order to restore the violated right, the loss of or harm to the property thereof (actual damage), unearned income that this person would have received under the usual conditions of civil practices had the right thereof not been violated (lost benefit), as well as intangible damages.

If, in the case of actual damage in legal practice, no significant problem arises because these are directly caused damages and it is possible to determine the measure of damage, in case of lost benefit, it becomes more difficult, so several methods are applied by the experts to calculate the damage. In practice, however, the damages are usually estimated based on forensic expertise or professional opinion, where possible.

In cases involving multiple defendants, they may be subject to joint and several liabilities. This means that each defendant is entirely liable for the damages claimed by the plaintiff. If one defendant pays more than their share of the fault, they have the right to seek recourse against other infringers for the excess amount paid.

If it is impossible to determine the extent of fault of each defendant, the shares of fault are recognised as equal among them.

Concerning the exceptions for leniency applicants, the competition protection law includes rules designed to allow participants in anti-competitive agreements to be exempt from administrative liability for being involved in such agreements if they cooperate with the competition authorities. This cooperation involves reporting their participation in anti-competitive activities competition and providing evidence to reveal and confirm such practices. Concerning the caused damages, depending on the circumstances, on the amount of caused damage, and on the fault of the person causing the damage, the responsibility can be reduced. The cooperation can be seen as a ground for the reduction of responsibility.

5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

According to the Civil Code of the RA, the statute of limitation is three years, and there are no specific regulations regarding competition damages. So, persons whose rights have been violated can file a competition damages claim within three years starting from the day they have become aware or should have become aware of the violation of their right. However, if a person applied to the CPC to undertake administrative proceedings, the term should be calculated from when the CPC established the breach of competition legislation.

As a basis for interrupting the statute of limitations, the Civil Code of the Republic of Armenia provides for filing a claim in the prescribed manner and for performing actions evidencing the acknowledgement of the debt by the person obliged.

The relevant limitation periods for competition damages claims can be suspended in the cases provided by the Civil Code of RA. Such cases are, for example.

- An unusual and unavoidable circumstance (force-majeure) under the existing conditions has impeded the filing of the claim,
- a period of delay for the performance of obligations (moratorium) has been defined, based on Law, by the Government of the Republic of Armenia or the Central Bank of the Republic of Armenia,
- effectiveness of the Law or other legal act regulating the relevant relations has been suspended, a conciliation process has been started based on a conciliation agreement for the period from starting the conciliation process until the completion of the conciliation.

6. Which local courts and/or tribunals deal with competition damages claims?

In Armenia, competition damages claims are heard in civil courts of general jurisdiction.. There are not any specialised courts or tribunals dealing with competition law issues. In addition, a party may apply to the CPC to investigate and punish the breach via an administrative procedure, and in case the CPC fails to do so (including failing to establish that there is a breach), the applicant may also apply to the Administrative Court of Armenia.

7. How does the court determine whether it has jurisdiction over a competition damages claim?

The civil courts of general jurisdiction deal with all civil cases except bankruptcy and anti-corruption cases. As a rule, the lawsuit must be filed in the Court where the defendant is located. The Court decides on the jurisdiction at the stage of accepting the claim: if there are no grounds to dismiss or return the claim, the judge decides to accept the case. If the jurisdictional rules are breached, the Court returns the claim by indicating the lack of jurisdiction.

In rare cases, the Court may find that it lacks jurisdiction as the fact of breach of competition legislation (mostly for unfair competition) can be proved only by the CPC. In those cases, the Court still will examine the case but reject the claim due to lack of evidence (the breach in those cases can be established only via a specific type of evidence – the decision of CPC establishing the breach).

8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

Armenia is a unitary state with a unified legal system. Thus, in most cases (practically all), whenever the Court would have jurisdiction, the applicable legislation would be that of the Republic of Armenia. There is no specific regulation dealing with competition law damages; thus, the applicable legislation would be the general provisions on compensation for damage of the RA Civil Code and the Law on the Protection of Economic Competition. The case would be discussed as a standard tort claim, and to satisfy claims related to harm caused by a violation of competition law, the following four conditions (elements) are necessary:

1. Existence of an unlawful act (breach of the competition legislation).
2. Occurrence of harm or damage (and volume).
3. Appropriate causal link (nexus) between the competition law violation and the harm/damage suffered as a result thereof.
4. The fault of the person causing the damage (which is assumed).

The plaintiff must prove the existence of (1), (2) (3) conditions. It also needs to be mentioned that at the same time, the defendant is presumed guilty (presumption of the presence of guilt) and bears the burden to prove the lack of his guilt (fault) (4).

9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

The decision of the CPC has no prejudicial effect as such (the Civil Procedure Code does list administrative acts establishing prejudice for the court case). However, in practice, and based on Law on the Principles of Administration and Administrative Procedure, when the CPC decision enters into force and becomes an unappealable administrative act, the claimant shall be relieved from proving the defendant's conduct's illegality. Moreover, for some breaches (e.g. unfair competition), the Law on the Protection of Economic Competition directly foresees the authority of the CPC to establish the breach, which means that the relevant final and binding CPC decision shall be deemed the only appropriate evidence establishing the breach of Law.

The legislation of the RA does not provide the requirement of binding foreign competition authorities' decisions unless otherwise provided by international agreements. Local courts in Armenia are bound by foreign court decisions only after those decisions have been officially recognised by Armenian courts. If there is no applicable treaty, the foreign competition authorities' decision can serve as evidence proving a breach of Law. However, it shall not have a prejudicial effect (still, in practice, there is a high probability that the findings of the said decision will be confirmed, and for the other party, it will be very problematic to rebut the findings of the said decision).

10. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

There are no limitations to introducing and proceeding private damages actions related to public enforcement action under Armenian Law. However, in some situations, the Court might suspend the proceedings until a final decision (and, if the CPC decision is appealed to the Court, then the final Court decision) is reached in the public enforcement case. This could happen when the subject matter of the public enforcement case is exceptionally significant in the private damages case, meaning that the civil case cannot proceed without the decision from the public enforcement case. Under Article 61(2) of the Civil Procedure Code of RA, if a court determines infringement, its decision can hold legal weight for another court. However, for this to apply, the

parties involved in both cases must be identical, and the judgment rendered by the initial Court must be conclusive.

11. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation)? What, if any, threshold criteria have to be met?

There is a specific mechanism of "Group Action" in Armenian legislation and the possibility of a public "class" action initiated by the Commission for Protection of Economic Competition (CPC). Armenia has adopted this approach to address collective competition damages claims, considering that the country's legislation does not recognise class actions.

Group Action: Under Armenian Law, a private group action can be initiated by twenty or more claimants who share a common interest. These claims are brought on behalf of a specified group of claimants, and a group representative acts on behalf of the group members. This mechanism allows claimants with similar competition damages claims to join and seek compensation as a group.

Public "Class" Action by CPC: The Commission for Protection of Economic Competition (CPC) has the authority to initiate a public "class" action on behalf of a group of class members. In such cases, the CPC can apply to the Court to declare unlawful or invalid acts, actions, and inaction of state bodies and their officials that violate the legislation on the protection of economic competition. This action aims to cancel or prevent these violations when they cannot be resolved through administrative proceedings. This type of action is limited to the protection of competition and is not a proper mechanism for recovery of damages.

12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

There are no established defence mechanisms that are unique to competition damages cases in the Republic of Armenia. According to the general rule, each person participating in the case is obliged to prove the facts that are the basis of his claims and objections and are significant for the resolution of the case.

The pass-on defence (concept) can be used to release from responsibility. The respondent can prove the lack of his guilt and justify that he didn't breach the competition legislation, justifying that the reason for setting an unjustified price is not the result of his actions (for example, if the supplier was responsible for the high pricing). This will, however, work if the CPC cannot prove that the supplier and the respondent are not forming a group of entities, and thus, their actions shall be evaluated as a whole.

13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

An expert's opinion is the permitted type of evidence in a trial. It's a written document obtained while examining the case to reveal and clarify issues that require applying special knowledge (in competition proceedings, an expert's opinion is usually necessary to determine the amount of damages). Mostly, the Court calls for an expert examination upon motion of a person participating in the case or upon own initiative. An expert's duties are to draw up the conclusion personally, indicate its methods, and provide the correct conclusion. The Civil Procedure Code of the Republic of Armenia also allows the submission of an extrajudicial expert opinion. Still, such a conclusion becomes evidence after a particular judicial procedure (the expert confirms the opinion and findings in a court procedure).

14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

The trial process, according to the legislation of the Republic of Armenia, includes both written and oral components. The process involves submitting claims, motions, and other documents in written form, followed by the examination of the case during oral hearings.

The process in civil proceedings is based on the principles of equality, dispositivity and competition. During the proceedings, the involved parties present evidence to support their claims and objections, and the Court decides based on the review and evaluation of this evidence. The sole exception situation, when the courts obtain evidence by themselves, is when the Court, based on its own initiative, appoints an expert in cases explicitly specified by the Law. The scope of evidence under the RA Civil Procedure Code includes:

- Testimony of witnesses.

- Written evidence.
- Material evidence.
- Photos, recordings, and videos.
- Specialist's explanations.

Contrary to civil litigation, the administrative Court is entitled to obtain evidence on its own initiative and carry out the case investigation ("ex officio" collection of evidence).

In most situations, the expert is not invited to the hearing, and the expert opinion is studied in the court hearing. However, when there are questions related to the expert opinion, the expert may be invited by the motion of the parties or by the discretion of the Court. The cross-examination of a witness is foreseen for both procedures [civil and administrative]; once the party who called the witness completes their questioning, the opposing party may proceed to ask questions to the witness. After examining the parties, the judge may ask questions if necessary.

15. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

In general, the Courts do not have clear deadlines for examining cases (except for the Civil Court of Appeals, where the duration of investigation is set within six months from the acceptance of the appeal into proceedings). Typically, the examination of cases at first instance requires a minimum of one to two years on average (this includes the trial phase). For complex cases, it may take three or four preliminary hearings before the case is appointed to a trial, lasting from six months to one year [and sometimes more]. The case may be ready for trial during one preliminary hearing for simpler and straightforward cases.

There are two levels of appeal: the Courts of Appeals (Civil/Criminal/Administrative) and the Courts of Cassation. Consequently, decisions made by the First Instance are subject to appeal at the Court of Appeal, and decisions issued by the Court of Appeal can be further appealed to the Court of Cassation. At the same time, the Court of Cassation exclusively handles appeals pertaining to the infringement of fundamental rights and when there is an issue of unified application of the Law.

16. Do leniency recipients receive any benefit in the damages litigation context?

In Armenian legislation, no provisions offer any beneficial treatment to leniency applicants concerning potential private damages claims or gaining any procedural advantages. As indicated above, the only statutory benefit is the possibility of being exempt from the administrative proceedings and not penalised.

17. How does the court approach the assessment of loss in competition damages cases? Are "umbrella effects" recognised? Is any particular economic methodology favoured by the court? How is interest calculated?

The compensation for damages aims to restore the situation that existed before the competition violation and recover the lost profits due to the breach.

The Court, as such, does not show a preference for any specific economic methodology. The court practice related to the methodology of the calculation of damages for competition claims is still not developed (there are very few civil litigations in this regard). In practice, the courts usually rely on expert opinions and forensic reports for damages claims for areas without specific legislative regulation on the methodology of calculating damages (such regulations are present, for example, for car accident claims).

18. How is interest calculated in competition damages cases?

Interest shall be calculated from the day the damage occurred until the day the damages are fully paid. The civil code foresees a statutory interest rate equal to the refinance rate established by the Central Bank of Armenia. As of now, this rate stands at 12% per annum.

19. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?

As a rule, the Civil Code of RA provides that persons who jointly caused the damage must be held jointly and severally liable towards the injured person. However, based on the injured person's application, depending on the extent of the fault of the persons causing that damage, the Court shall be entitled to impose liability on the persons who jointly caused damage in shares. The person causing the damage, who has compensated for jointly caused damage, shall have the right to require from the other persons causing damage the share of the compensation paid to the injured person depending on

the extent of the fault. When it is impossible to determine, the shares are recognised as equal.

20. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

The dispute can be resolved by obtaining the Court's approval of a settlement agreement, and it becomes legally binding when the Court approves it. In the case of concluding a settlement through an extrajudicial procedure, the plaintiff has the option to withdraw the claim. Besides, the parties can choose alternative dispute resolution options, such as mediation or arbitration. Also, if the defendant accepts the claim, the Court may satisfy the claim without a full examination and trial.

21. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

In the context of group actions, collective settlements reached by the claimant on behalf of group members must receive court approval. However, these settlements cannot include persons who don't participate in the legal process. The Court's approval is necessary to ensure fairness and protect the interests of all group members involved in the action.

When such a settlement can be reached, parties may choose to drop the court proceedings, settle the dispute via mediation with all the parties engaged, and have the mediation agreement confirmed by the Court. Such confirmation makes the agreement legally binding and subject to compulsory execution if any of the parties do not follow it (in practice, it becomes equal to the court decision).

22. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

As a general rule, court proceedings are public. At the same time, during the court trial, the parties can request to have closed court hearings if any of the submitted evidence contains confidential information (the Court has the authority to decide to have a closed hearing on its own initiative). In such cases, all participants are cautioned about their responsibility regarding the disclosure of confidential information.

In Civil litigation, the party may be required to provide certain information or evidence under their control. However, the usually applicable privileges, like attorney-client privilege, also apply to the competition litigation cases. In addition, the party still may choose not to provide the evidence. In this case, if the Court finds such refusal not to be confirmed by a ground foreseen by law /e.g. privilege/, the Court may decide to shift the burden of proof of the relevant fact which was to be confirmed by the said evidence.

23. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?

Typically, the costs of persons participating in the case (attorney fees, state duties, forensic expert fee, etc.) are distributed proportionately to the satisfied claims to the extent the Court finds them reasonable. This means that the party who lost the case must compensate the court costs, including the other party's costs, such as state fees, as well as attorney's, expert's and interpreter's fees. The Court, while distributing these costs, takes as a basis only the costs justified by the documents available in the case. As for their amounts, state duty is determined by the Law; the amount of other expenses depends on the facts of the specific case. At the same time, the Civil Procedure Code of RA requires the Court to assess attorney's fees reasonably and fairly, and in practice, courts often reduce the requested amount of attorney's fees.

24. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

There are no special legal regulations regarding third-party funding. The same applies to the compensation of court costs by third parties. If a third party wishes to

cover court costs, the Law doesn't prohibit it. In case of a positive outcome of the case, the Court will be evaluating the reasonableness of the costs for the purposes of reimbursement. In addition, some proper paperwork may be necessary for the costs to be recoverable (for the Court not to qualify it as a gift to the party).

The legislation in force (Civil Code, Law on advocacy, Code of Ethics of Advocates and other applicable regulations) permits concluding contracts for legal services with a lawyer and allows setting the fee under certain conditions (for example, a success fee). In practice, especially for certain types of legal work, lawyers sign contingency fee agreements (or mixed fee arrangements – reduced hourly rates or upfront fees with premiums to be paid in case specific results are reached).

25. What, in your opinion, are the main obstacles to litigating competition damages claims?

There are general obstacles applicable to all cases, such as the heavy workload of the court system, leading to delays in cases. The complexity of the specific case's facts and the specifics of the legislation can also contribute to further delays in resolving the case.

Regarding the topic-specific issues, the lack of broader knowledge about the competition law concepts and lack of full understanding of economic concepts behind the competition law among the lawyers (including attorneys and judges) can be named further obstacles in developing competition damages cases. Another issue, as indicated above, is the lack of clarity in damages calculation methodologies.

However, developments in the area are happening. We see more and more new competition law damages issues being brought to the courts, which will contribute to clarity and predictability of the claims. We'll see complex competition law issues being litigated.

26. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

Currently, competition litigation is not highly advanced in the Republic of Armenia. However, considering the substantial legislative amendments in this area (in 2021) and the presence of separate important cases, the future progress of the field holds promising prospects. At the moment, several potential landmark cases are being litigated in courts. In particular, the issues of applicable civil law remedies for unfair competition and calculation of damages for unfair competition (corporate opportunity doctrine), limits of authority of the CPC in determining markets, namely the geography of the specific market, issues of securing evidence for trademark infringements, and security measures for those breaches and some others are being heard in the courts. All those topics, and especially the methodology of calculating damages, are of utmost importance for businesses to better understand where they can use the competition litigation to effectively protect their businesses and recover damages.

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