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# Antitrust Litigation 2021

Armenia  
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# ARMENIA

## Law and Practice

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## 1. OVERVIEW

### 1.1 Recent Developments in Antitrust Litigation

The antitrust litigation lawsuits in the Republic of Armenia (RA) mainly involve cases concerning the protection of consumers' interests, as well as appeals of decisions of the Competition Protection Commission of RA (hereinafter the CPC or "the Commission"). The private antitrust litigation is a developing area in RA and, although this field is expected to develop over the next few years, there have not been any notable developments in the relevant case law to date. There are several active antitrust litigation cases, one of which is against the ex-management of the company for using confidential information thus leading to unfair competition in the telecommunications field.

### 1.2 Other Developments

Recently, legislative amendments were made to the RA Law on Protection of Economic Competition (hereinafter, "the Law" or "the Competition Law") and a number of related laws; these amendments, which entered into force on 31 May 2021 (new reduction of the law was adopted), will also have some impact on litigation procedure. For example, as a result of the new amendments, Article 2(2) of the Law provides that its scope extends to the actions or conduct of economic entities in foreign countries, which may restrict, prevent or prohibit economic competition, and harm the interests of consumers in the RA. These changes can lead to an increase in the number of court cases with the participation of foreign entities.

## 2. THE BASIS FOR A CLAIM

### 2.1 Legal Basis for a Claim

Article 98 of the Law provides a right to compensation from the economic entity, state body or official who has committed a violation of the Competition Law, therefore claimants can bring private actions to protect their rights if they are violated by someone's failure to comply with antitrust laws (including claims for damages, which include actual damage and lost profits).

There is no distinction drawn between stand-alone and follow-on actions in RA. However, according to the recent legislative amendments to the Law, the fact of anti-competitive actions is established by the decision of the CPC. Although there is no relevant court practice in this regard, after the entry into force of this provision, theoretically, the party who claims it has suffered an alleged competition law violation can bring the case before the courts without filing an application before the CPC; this right also derives from the right to judicial protection.

In stand-alone actions, the claimant must prove that a breach of the Competition Law has occurred and that it has suffered loss as a result.

Follow-on actions are more common in practice, as a prior finding by the CPC significantly reinforces the claimant's case in terms of factually proving a violation. Claimants can therefore benefit from the evidence gathered by the Commission and will usually prefer to bring a follow-on action.

The court practice in coming years will show if it is judicially possible to prove the breach of competition legislation before prior decision by the CPC, or the civil courts will adopt a position, according to which the only admissible evidence

showing the breach will be the decision of the CPC.

## 2.2 Specialist Courts

In RA, there is no designated tribunal for competition issues. There are proceedings for transferring cases between different courts, but these do not arise incidentally from the question of expertise in competition matters. The claims against companies breaching competition legislation are heard by civil courts, while the administrative courts have a jurisdiction to oversee the decisions, actions and inactions of the CPC.

## 2.3 Decisions of National Competition Authorities

Formally, the decision of the CPC has no prejudicial effect on civil antitrust cases tried in a court, unless such a finding is recognised as lawful by an effective judgment of an administrative court of RA in the course of its appeal. However, once entered into force, the decision of the CPC will become an unappealable administrative act, as a result of which the claimant will be disburdened from proving the illegality of the defendant's conduct.

In addition, legislative amendments were made to the Law (2.1 **Legal Basis for a Claim**), according to which the fact of anti-competitive actions is established by a decision of the CPC. Although there is no relevant court practice on this matter, it is believed that since these amendments an antitrust violation established by a decision of the CPC that has entered into legal effect does not need to be proved anew in private antitrust litigation. Furthermore, the courts may adopt a narrow interpretation of the law. In this case, the only admissible evidence showing the breach would be the decision of the CPC on the breach, and no other evidence would be admissible (ie, the only way to bring a private antitrust claim would be to apply to the CPC to establish a breach of the competition legislation

and only afterwards to the civil court to claim damages). We still believe (based on interpretation of the regulation of the civil procedure and the Constitution) that the courts will adopt a wider interpretation and it shall be admissible to claim a breach by direct evidence, without the need to apply to the CPC.

The finding of an infringement by a court can be binding on another court under Article 61(2) of the Civil Procedure Code of RA. For this to apply the parties to both cases must be the same and the judgment of the first court must be final.

The Commission does not directly intervene in civil proceedings. Moreover, according to Article 43(2)(6) of the Civil Procedure Code of RA a member of the Commission cannot be questioned as a witness in connection with the administrative proceedings conducted by the Commission during his/her term of office or after it.

## 2.4 Burden and Standard of Proof

In private antitrust litigation cases the burden of proof falls on the plaintiff, and this shifts to the defendant in respect of any counterclaim in the statement of defence.

## 2.5 Direct and Indirect Purchasers

Whether direct or indirect purchasers can bring a claim depends on the question of damages. If they can demonstrate that they have a legitimate interest (standing) and have suffered loss, they can claim compensation as a result of the breach.

## 2.6 Timetable

According to the Civil Procedure Code of RA, the trial will start within approximately two months of the filing of a lawsuit. However, because of court overload, the start of the trial can be delayed. An action brought before a first instance court can last several years depending on the court's workload and the complexity of the case in

question. The factors that are likely to extend the litigation process include the need to appoint forensic expertise by a court, and the possibility to appeal first instance court judgments to appeal and cassation courts of RA.

The RA legislation does not provide legal grounds for suspending civil proceedings that are taking place at the same time as proceedings before the Commission, however in practice, especially if the courts adopt a narrow interpretation of the law, the suspension may take place to ensure the availability of the relevant evidence (showing the breach or its absence).

## 3. CLASS/COLLECTIVE ACTIONS

### 3.1 Availability

As for collective actions, associations and other legal entities can bring an action on behalf of themselves to protect the interests of their members or the people who can be considered their beneficiaries according to their charters.

According to Article 224(1) of the Civil Procedure Code, a joint lawsuit filed by at least 20 co-plaintiffs is considered a class action, if the lawsuit is filed against the same respondent(s) and the grounds and subject of the lawsuits are the same.

RA does not use a classical opt-in or opt-out system (as it does not recognise a class action – action brought on behalf of an unidentified class). If the collective action is rejected, parties who intervened will not be able to file an individual action against the same respondent(s), if the grounds and subject of the lawsuit are the same. However, individuals who did not intervene are able to file individual private actions, at any time, before or after a decision is issued. On the other hand, if the plaintiffs opt-out from

the claim (decide to discontinue the collective claim), they cannot bring their own claim.

### 3.2 Procedure

Although in RA legislation there is no special certification process for collective action, to be classified as a collective action the following requirements should be met:

- number of co-plaintiffs should be at least 20;
- the respondent should be the same; and
- the grounds and subject of the lawsuit should be the same (Article 224(1) of the Civil Procedure Code).

If the plaintiff opts-out, the examination of the case shall continue in accordance with the rules on collective action, if the number of plaintiffs is still 20 or more. Otherwise, the case shall be examined in accordance with the general procedure established by the Civil Procedure Code.

### 3.3 Settlement

According to Article 151 of the Civil Procedure Code of RA, the parties can complete the case with a settlement agreement at any stage of the judicial process; the agreement should be submitted to the court for approval. The court will not approve the settlement agreement if:

- it contradicts the law or other legal acts;
- it violates the rights or legal interests of another person;
- it contains conditions that do not allow determination of the amount of the allocated amount, the property to be transferred or the actions that the party is obliged to perform; or
- it contains such obligations, the fulfilment of which is conditioned by the fulfilment of the obligation of the other party (amicable agreement with conditional clauses are allowed).

If the settlement agreement is not approved by the court, the examination of the case continues.

## 4. CHALLENGING A CLAIM AT AN EARLY STAGE

### 4.1 Strikeout/Summary Judgment

Strikeout/summary judgment is not a concept established in RA civil court proceedings. However, the defendant can request the court to dismiss the claims due to reasons other than those of merit, eg, lack of jurisdiction; existence of a court ruling which came into effect, in relation to a dispute between the same persons, over the same subject and on the same grounds; etc (Article 182 of the Civil Procedure Code).

### 4.2 Jurisdiction/Applicable Law

In RA, there is one set of laws that applies to the entire country. The Competition Law is a territorial law that applies to the RA territory. Private claims on competition law breaches are heard by the civil court of the location of the defendant.

### 4.3 Limitation Periods

In RA, there is no specific limitation period for private antitrust actions. Thus, the general provisions set out under RA Civil Code are applicable. According to the Article 332 of the Civil Code, the overall limitation period is three years from the day on which a person becomes (or should have become) aware that his/her right has been violated.

The Civil Code of RA provides seven situations when limitation periods should be suspended, as follows:

- an unusual and unavoidable circumstance (force-majeure) has impeded the filing of the claim;
- the plaintiff or the respondent is enrolled in armed forces specially placed under the martial law;
- a period of delay for the performance of obligations (moratorium) has been defined by the

- government of the Republic of Armenia or the central bank of the Republic of Armenia;
- the incapacitated person does not have a legal representative;
- the effectiveness of the law or other legal act regulating the relevant relations has been suspended;
- a payment order has been submitted, which runs from the moment it is handed over to court up to the moment an objection is made; and
- the mediation process has been started on the basis of a conciliation agreement, which runs from the start of the conciliation process until the completion of the mediation.

The Civil Code of RA also states that the limitation period is interrupted when the plaintiff files a lawsuit or the defendant performs actions evidencing the acknowledgement of the debt.

Also, according to the Article 342 of the Civil Code, a limitation period can be reinstated for plausible reasons related to the claimant's personal situation (eg, serious illness, incapacity, illiteracy, etc).

## 5. DISCLOSURE / DISCOVERY

### 5.1 Disclosure/Discovery Procedure

The person participating in the civil proceeding is obliged to disclose and, if possible, to provide the evidence known to him/her at the moment, on which he/she relies to prove his/her claims and objections before the end of the period established by the decision on the division of the burden of proof.

The court of first instance shall accept the additional evidence submitted after the expiry of the term established by the decision on the division of the burden of proof, if the party substantiates

the impossibility of presenting the evidence or motion before the expiry of established time-period.

If other persons participating in the case did not have the opportunity in advance to familiarise themselves with the evidence taken after the expiry of the established period, the court of first instance provides a reasonable time-period for them to familiarise themselves with this evidence.

The person participating in the case, who has no means of obtaining evidence from the person who possesses the evidence, is entitled to file a motion demanding such evidence. The motion must indicate the evidence, the considerations relevant to the case which can be verified with this evidence, as well as the whereabouts of the evidence, if known.

If the party which has the evidence is not providing the evidence to the court, the latter may decide to shift the burden of proof.

## 5.2 Legal Professional Privilege

According to RA legislation, legal professional privilege encompasses any communications and files related to an attorney-client relationship (Article 25 of the RA Law on Advocacy).

Advocates may lawfully refuse to provide the courts with documents protected by legal privilege. Also advocates cannot be questioned as witnesses to find out information that they may be aware of in connection with providing legal assistance, unless otherwise agreed by the attorney-client. The obligation to maintain confidentiality is not limited in time and also applies to a lawyer whose attorney licence is suspended or revoked.

## 5.3 Leniency Materials/Settlement Agreements

In RA legislation there are no statutory provisions restricting disclosure of leniency and/or settlement agreements with competition authorities.

At the same time, according to the Law on mediation, the materials and position of the parties provided during the mediation (conducted by a licensed mediator) are confidential and without prejudice towards the parties, and cannot be used during the court proceedings.

# 6. WITNESS AND EXPERT EVIDENCE

## 6.1 Witnesses of Fact

The Civil Procedure Code of RA provides for several types of evidence: witness testimony, written and physical evidence, photos, records, expert reports and specialists' explanations.

A witness testimony can be in writing or given orally. If the evidence is given in writing (eg, in the form of an attorney inquiry), the other party has a right for cross-examination.

The court can summon the witnesses as suggested by the party. Any person summoned by the court as a witness must appear before the court and provide the information and considerations known to him/her in relation to the case. If the summoned witness does not appear before the court, the court is entitled to rule an enforced appearance of the witness in court. The court's ruling is carried out immediately, in accordance with the procedure established by the RA Law on Enforcement of Court Acts.

A witness summoned to the court of first instance at the request of a person participating in the case is first interrogated by the person who sub-

mitted the request, then by other persons acting on his/her side, and then by the opposite party.

The witness is warned by the court of the consequences of criminal liability for giving false testimony or refusing to give testimony. Giving false testimony by a witness or refusing to give testimony entails responsibility provided for by the Criminal Code of the Republic of Armenia.

## **6.2 Expert Evidence**

Expert opinions are permitted evidence according to the Civil Procedure Code of RA. Experts are commonly appointed to prove the amount of the damages or to clarify other technical issues outside of general knowledge. Experts may be appointed with the request of the parties and sometimes on the initiative of the court. When submitting a request for the appointment of an expert examination, the party is obliged to indicate the fact to be proved, which must be confirmed by the expert's conclusion, and ask questions that must be clarified through the expertise. Also, the parties may submit an expert opinion obtained by them, where the court will accept this evidence as expert statement, after requesting the expert to appear in front of the court and confirm the statement (after being notified of the consequences of false opinion).

The expertise is carried out by the employees of specialised expert institutions or other specialists with relevant knowledge and expertise appointed as experts by the decision of the court of first instance.

The expert evidence is given in a written opinion. The experts may also be summoned at the initiative of the court of first instance or at the request of a person participating in the case in order to clarify his/her opinion. The experts shall be interrogated in accordance with the procedure established for the interrogation of a witness, thus they can be the subject of a cross-exami-

nation. The experts are only interrogated within the framework of a preliminary written opinion.

The court of first instance may appoint more than one expert having the same or different specialties. Experts have the right to consult with each other and give a joint conclusion. Experts who do not agree with a joint conclusion can submit a separate conclusion.

In case of ambiguity or incompleteness of the expert opinion, the court of first instance, on its own initiative or at the request of a person participating in the case, may appoint an additional expert examination, entrusting it to the same or another expert.

## **7. DAMAGES**

### **7.1 Assessment of Damages**

According to the Civil Code, damages can constitute actual harm or lost profits. However, there is no particular method by which the damage caused to an injured party is quantified. In most cases, the damages are estimated via the opinions of experts who are familiar with the field of competition. When setting damages, the courts will compare the claimant's condition in the market before and after the violation of the Competition Law and the plaintiff's damage will be the difference between what it would have had if the breach of the Competition Law had not taken place.

### **7.2 "Passing-On" Defences**

The RA legislation does not specifically define "passing-on" defence in civil damages claims. However, there is no restriction preventing defendants from putting forward a "passing-on" defence: the civil code foresees that the defendant may prove that the damages were not their fault. In this case, the burden of proof will transfer from the claimant to the defendant to prove



that the claimants passed the overcharge onto their customers. Furthermore, if for example, the prices were raised as a result of an increase by the contractor, the court may decide that there is no breach by the defendant, as the higher purchase prices will form basis for the calculation.

### 7.3 Interest

No interest accrues on the damages.

## 8. LIABILITY AND CONTRIBUTION

### 8.1 Joint and Several Liability

According to Article 1073 of the Civil Code of RA, the persons who jointly caused the damage are jointly and severally liable to the victim. If there is joint and several liability, a defendant who has paid compensation to the claimant for the damages has recourse to the other infringers and can seek to recover compensation from them to the extent appropriate to the degree of their guilt. If it is impossible to determine the degree of guilt, the divisions are recognised as equal.

### 8.2 Contribution

RA legislation provides a legal basis for bringing contribution proceedings against a third party. In particular, according to Article 1074(1) of the RA Civil Code, the person who has compensated the damage caused by another person has the right to reclaim (recourse) to that person in the amount of compensation he/she has paid, unless otherwise provided by law.

## 9. OTHER REMEDIES

### 9.1 Injunctions

A claimant can request from the court a decision on interim measures at any stage of the proceedings, or, in some limited cases, when there is no private action filed at all (preliminary secu-

urity measure). A preliminary security measure decision can be rendered where there is a concern that a change in the current circumstances could make it significantly difficult (or completely impossible) to enforce a right, or that a delay could cause significant damage to one of the parties. When there is no private action filed, the party must substantiate the impossibility of filing a lawsuit at that time (usually, where there is a mandatory ADR mechanism foreseen in a contract before applying to court). In this case, there is no need to notify the other parties of the application.

The court examines the application within three working days of receiving it, if the latter is submitted together with a claim, otherwise on the next working day. Based on the application of the interested person, the court can remove a preliminary security measure within three days; this decision is final and cannot be appealed.

A claimant can also seek injunctive relief for an alleged antitrust infringement in any phase of the litigation. In this instance, the motion to apply a preliminary injunction can be filed with the lawsuit, and there is no need to notify the other parties. The party can also bring a separate motion to apply a preliminary injunction. In this case, the party should also send the motion to the other parties. The court shall consider the motion to apply a security measure without convening a court hearing no later than the day after its receipt, and if the motion was filed with the lawsuit, then together with the acceptance of the lawsuit (within three working days of submission of the claim). The parties may appeal the judge's decisions on whether to award a preliminary injunction to the court of appeal. The decision of the court of appeal is final and cannot be appealed in a cassation court.

In cases where the party succeeds in obtaining an injunction but fails at the trial of the substan-

tive case, the other party participating in the case or another person against whom an interim measure has been applied has the right to file a lawsuit against the claimant demanding compensation for damages, if any.

## 9.2 Alternative Dispute Resolution

Alternative dispute resolution methods, such as arbitration and mediation, are available in RA in accordance with the RA Law on Commercial Arbitration. For the ADR mechanisms to be applicable, the explicit agreement of the parties to apply to ADR is required (arbitration agreement or agreement to mediate).

However, there is no obligation for parties to engage in alternative dispute resolution methods prior to the trial.

## 10. FUNDING AND COSTS

### 10.1 Litigation Funding

Procedural laws of RA require that the filing fees be formally paid by the party or on behalf of the party. However, there is no restriction for third parties to fund the costs of bringing an action as the source of the funds is irrelevant. There are neither specific statutory nor court practice based regulations regarding third party funding, which means that third party funding is allowed and occasionally used in Armenia.

### 10.2 Costs

According to Article 101 of the RA Civil Procedure Code, procedural costs consist of state fees and other costs related to the examination of the case, including lawyers' fees, experts' and specialists' fees, courier or postal expenses, etc. There is no specific provision that applies to private antitrust lawsuits, thus general provisions of the RA Civil Procedure Code on the allocation of the costs of litigation are applicable.

At the same time, the courts satisfy the "reasonable costs" only, which in practice, for complex cases, means that only part of the costs may be recovered from the unsuccessful party.

Litigation costs are distributed among the parties participating in the case, in proportion to the size of the satisfied claims. The unsuccessful party bears the litigation costs (Article 109(1) of the RA Civil Procedure Code). The parties cannot bring a separate claim for litigation costs and they should demand it exclusively within the framework of the corresponding case (the regulation was enacted in the 2018 edition of the Civil Procedure Code).

In RA, the parties cannot bring an application for security for costs.

## 11. APPEALS

### 11.1 Basis of Appeal

The trial court judgment can be appealed at a court of appeal of RA. This decision is then subject to a final appeal before the court of cassation of RA.

An appeal can be filed if one or more of the following circumstances are in place:

- substantive or procedural law has been violated or improperly applied; and/or
- if newly revealed or new circumstances are available.

The norms of substantive law are considered violated or incorrectly applied, if the court:

- has not applied the law or the international treaty or other legal act of the RA that it should have applied;

- has applied the law or the international treaty or other legal act of the RA, which it should not have applied; or
- misinterprets the law or the international treaty or other legal act of the RA.

Violation or misuse of the norm of substantive law is a ground for reversal of the judgment if it has led to a wrong decision of the case.

Violation or misuse of the rules of procedural law is a ground for overturning a judicial act if it has led or could have led to a wrong decision of the case. In fact, the correct judicial act of a court cannot be overturned only for formal reasons.

Furthermore, if the court of appeal finds that, based on the evidence examined in the court of first instance, a different conclusion as to the existence or absence of fact should have been established, the decision at first instance can also be overturned. However, no trial and full examination of the evidence in the court of appeal is allowed.

A cassation appeal is accepted for consideration if the court of cassation considers that:

- the decision of the court of cassation on the issue raised in the protest may be essential for the uniform application of the law and other regulatory legal acts; or
- it is obvious that there is a fundamental violation of human rights and freedoms.

**Concern Dialog Law Firm** is a Yerevan-based full-service law firm established in 1998. Concern Dialog is one of the oldest and largest law firms in Armenia. The firm provides services in litigation, representation and legal advice. Concern Dialog is one of the few ranked firms which, in addition to corporate and business law, also specialises in criminal and family law. The firm has 63 employees (four partners), of which 17 are licensed attorneys. Concern Dialog is a member of the TAGLaw Alliance of Independ-

ent Law Firms and the Nextlaw referral network (by Dentons), which allows it to provide services practically worldwide. The firm is also a member of the American Chamber of Commerce in Armenia, the German Business Association in Armenia, the Chamber of Commerce and Industry France Armenia, the Armenian British Business Chamber, the ICC Armenian National Committee, as well as the IsFIN platform (Islamic finance advisory for emerging markets).

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