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# The Legal 500 Country Comparative Guides

## 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?

Armenian Competition law is rooted in the Constitution of the Republic of Armenia (**the Constitution**). Specifically, Article 11 of the Constitution promulgates free economic competition as a constitutional principle and the economy's foundation. Article 59 ensures economic competition by prohibiting abuse of dominant position, anti-competitive agreements and unfair competition. Besides the Constitution, the primer legal bases for competition legislation in Armenia are the following: (1) The Partnership and Cooperation Agreement between Armenia and the Member States of the European Community; (2) The Civil Code of the Republic of Armenia; (3) The Law of the Republic of Armenia "On Protection of Economic Competition" (**the Law**). The Law applies to actions, conduct or acts of economic entities, state bodies, and officials thereof, which lead or may lead to prevention, restriction, blocking of economic competition, or unfair competition, as well as harm the consumer interests.

According to the Law, the actions, conducts or acts, which can be relied upon as the basis of a competition damages claim are as follows: a) Concentration, b) Abuse of dominant position, c) Anti-competitive (Cartel) agreements, d) Unfair competition, e) Coordination of economic activities, f) Anti-competitive actions of state bodies and officials thereof.

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

The Law on Economic Competition entered into force on July 1<sup>st</sup> 2021. The Law, in contrast to the previous wording of the same Law, envisaged that the fact of anti-competitive actions (described above) is established by the decision of the Commission on Protection of Competition (**the CPC**). There is no relevant court

practice after the entry into force of the Law, so it is not clear if, without such decision, civil/commercial claims for the breach of competition regulations can be brought directly, or it is compulsory to have the relevant decision before bringing a civil/commercial claim.

Based on the complex analysis of the civil code and the Law, we believe the court practice will develop based on the broader interpretation. It is (will be) possible to bring the relevant claims without any preliminary actions/processes at the CPC.

In general, the claimant shall be obliged to include the main facts that constitute the cause of action, the requested remedies, the value of the claim, and the defendant's connection to the claim (nexus).

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

The Armenian jurisdiction provides monetary compensation to a plaintiff for the damage caused due to an offence in the field of economic competition. The Civil Law Code of the Republic of Armenia provides for actual loss and loss of profits to be compensated.

Further, it is possible to claim annulment of contracts concluded in breach of the competition legislation (as in general contracts contradicting the Law); however, it may be problematic to prove the proper standing. The general rule is that only the parties to the contract have standing to bring a claim on annulment (however, there are some exceptions, which may be applicable in this case, especially what concerns the illegal concentrations /M&A/).

Also, anti-competitive clauses in the contract (e.g. limiting the competition by imposing obligations to a "weaker" party) may be declared void by a claim of a party to the contract. In contrast, the other contract regulations shall still be in force (partial invalidity).

And finally, it is possible to receive a declaratory relief (declaring specific actions or clauses contradicting the

Law), although we have not come to such practice yet.

**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)?**

The legislation of Armenia does not provide a specific method of calculation of damages. However, the Civil Procedure Code of the Republic of Armenia provides an opportunity for expertise if the issues to be resolved are beyond the knowledge of the court. In general practice, the experts determine the valuation of damages.

Direct damages are more or less straightforward to calculate: those are the costs the party shall bear to keep the status quo or loss of property or property rights.

At the same time, the issue of lost profit (forgone profit) is more problematic. Many damage experts use the term “but-for world” when it comes to lost profit damages. The basic theory is what would have happened “but-for” the incident, breach or disagreement leading to litigation.

Within the “but-for world,” experts can use a couple of approaches to calculate damages: (1) the “before-and-after” method and (2) the yardstick, or benchmark, method. The expert’s choice depends on the facts and circumstances of each case. A lost profits damages expert considers many factors such as seasonality, customer trends, economic factors, and industry factors.

The before-and-after method is the most reliable method of proving damages for lost profits. The analyst compares the plaintiff’s performance during two periods, one (the “benchmark period”) in which the plaintiff’s performance is not affected by the defendant’s conduct, and another (the “loss period”) in which it was.

The yardstick or benchmark method applies revenue trends and the results of a similar business to the one suffering damages. Comparative businesses could be competitors, other locations of business that have not suffered damages, or general industry averages.

In any case, the lost profit shall be objective and based on evidence. The court shall not grant lost profit for speculative claims of a possible best scenario of development.

Defendants (if several) are subject to joint and several liabilities. As each several infringers are entirely liable for the damages claim brought by the claimant, if one of

them has paid more than their share of the fault attributed to them, this defendant has the right of recourse against the other infringers for the excess amount paid.

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

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

The statute of limitations is three years from the date the antitrust violation was or should have been discovered by exercising ordinary care. There are no special regulations of suspension of limitation periods applicable to specifically competition damages claims. The Civil Code of the Republic of Armenia provides seven situations when limitation periods should be suspended. Those are as follows: (1) an unusual and unavoidable circumstance (force-majeure) has impeded the filing of the claim; (2) the plaintiff or the respondent is enrolled in armed forces specially placed under the martial law; (3) 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; (4) the incapacitated person does not have a legal representative; (5) effectiveness of the law or other legal act regulating the relevant relations has been suspended; (6) payment order has been submitted, from the moment of handing that over to court up to the moment of submitting of an objection by the defendant. (7) Mediation process has been started based on an agreement to mediate for the period from starting the conciliation process until the completion of the conciliation.

The Civil Code of the Republic of Armenia also states that the limitation period interrupts when the plaintiff files a lawsuit or the defendant performs actions evidencing the acknowledgement of the debt.

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

Damages claims are brought in courts of general jurisdiction at the location of the defendant. Neither specialised courts are dealing with the competition law issues, nor do commercial courts exist in Armenia.

**7. How does the court determine whether it has jurisdiction over a competition**

## damages claim?

As a general rule, the plaintiff shall file a lawsuit where the defendant is located. There are some exceptions to this rule. The court decides on the jurisdiction at the stage of the acceptance of the claim: when a claim is submitted, it is assigned to a judge, who decides whether to accept the case or not. If the court finds the jurisdiction rules are breached, the court returns the claim by indicating the lack of jurisdiction. The complainant may appeal this decision (returning the claim) or bring a new claim to a different court.

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

The Civil Code of the Republic of Armenia provides that obligations arising as a result of causing damage shall be covered by the state's (countries) law in which the fact, action or negligence that caused the damage occurred unless otherwise agreed by the parties.

The applicable standards of proof are those for tortious liability. Therefore, a plaintiff seeking compensation based on harm stemming from a competition law violation must prove the existence of the following three cumulative elements:

- (1) Existence of an unlawful act.
- (2) Occurrence of harm/damage.
- (3) Appropriate causal link (nexus) between the competition law violation and the harm/damage suffered as a result thereof.

At the same time, the defendant may prove the lack of guilt (fault) if the damages were caused not by their fault (the general rule is the presumption of the presence of guilt).

## 9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) 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 final judgment of the Administrative Court of RA. However, after entering into force, the decision of CPC will become an unappealable administrative act, resulting in the claimant being disburdened from proving the illegality of the defendant's conduct.

In addition, legislative amendments were made to the Law, according to which the decision of the CPC establishes the fact of anti-competitive actions. Although there is no relevant court practice on this matter, we believe that after these amendments, an antitrust violation established by decisions of the CPC that have entered into legal effect does not need to be proved anew in private antitrust litigation.

After the said amendments, it is not clear if the courts will be allowing any other relevant evidence to be adequate as proof of illegal action, or they will initially require a proceeding in the CPC to prove the breach, and only after that to bring the claim to civil court.

Regarding foreign decisions, the local courts are bound by such decisions only after recognition of such decisions by Armenian courts. By the Civil Procedure Code, the foreign court decisions can be recognised either based on an international treaty or on the reciprocity principle, which is assumed unless proven otherwise.

## 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?

A private damage action can proceed while a related public enforcement action is pending. The court may also suspend the proceedings to await a judgment in another case, e.g. public enforcement if such a case's subject matter is of exceptional importance in the private enforcement case (if the civil case cannot proceed without the decision of the public enforcement). Also, as indicated above, there may also be the adequacy of the evidence if the court practice developed to narrow the scope of the competition litigation (after the recent amendments) and recognise the CPC decision as the only acceptable evidence to prove the breach of the law.

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

## 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?**

A class action is not recognised under the Armenian legislation. At the same time, the Civil Procedure code recognises so-called Group Action. Twenty or more claimants may initiate a private group action. Such claims may be brought on behalf of a specified group of claimants (with the indication of each group member) by a group representative.

The CPC may also initiate a public “class” action to act as a claimant on behalf of a group of class members. In particular, Commission shall apply to the court with a claim to declare unlawful or invalid the acts, actions and inaction of state bodies and their officials violating the legislation on protection of economic competition, to cancel them or refrain from them, if it is not possible to resolve that dispute through administrative proceedings. We are not aware of any such case in practice.

**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 unique defences for competition damages claims in the Republic of Armenia. However, if, for example, the case is linked to illegal pricing, it will be a legitimate defence to prove that this is caused by the actions of another party not related to the party concerned.

**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?**

Expert evidence is permitted. Experts may be appointed with the request of the parties and sometimes on the initiative of the court. Experts are commonly appointed to prove the amount of the damages. Experts shall exercise due care and skill, comply with any relevant code of ethics, act independently, and inform the parties of relevant conflicts of interest. However, the experts’ primary duty is to help the court provide objective, unbiased opinions on matters within their expertise.

Parties may present an already completed expert opinion to the court, which may become accepted evidence after some formalities are completed within the court process (the expert is called to the court and requested to confirm the expertise under oath).

**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?**

In RA legislation, civil proceedings are based on the adversarial principle. During the trial, The decision-maker is the judge, and there is no jury system.

Armenian civil procedure provides for several types of evidence: witness testimony, written and physical evidence, photos, records, expert report and specialist’s explanation.

In the civil procedure, the parties are required to submit and present their evidence to the court. The latter reach a verdict solely based on the evidence submitted by the parties (the only exception is the right of the court to appoint an expert if they find it necessary). In contrast, the court plays quite an active role in the administrative procedure (appeal of the decisions of the CPC). In particular, the court has the right to demand additional evidence and should not limit itself to the evidence presented by the parties to the proceedings. The court has the authority to require the parties to present additional evidence or explanation. It can appoint an investigation or conduct other reasonable actions to receive adequate evidence to form an opinion.

On the cross-examination of a witness, when the party who called a witness finishes asking questions, the adversary may ask questions to the witness. After the interrogation of parties, the judge may decide to ask questions if they find it necessary.

In the Armenian legal system, the court cases mostly proceed through written petitions (claim) and oral hearings (trials).

**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?**

There are no statutory provisions concerning the lengths of the proceedings. Generally, it takes around one to two years before the judgment is rendered in the first instance. The preparation of the case (initial hearings) to the trial lasts from four to six months.

Under Armenian law, the appellate court system consists of two tiers: (1) Civil/Criminal/Administrative Court of Appeals of Republic of Armenia and (2) Court of Cassation of the Republic of Armenia. Judgments of the court of the first instance can initially be appealed before

the relevant Court of Appeals. In turn, the decisions of the Courts of Appeals can be appealed before the Court of Cassation. The Court of Cassation has a limited jurisdiction/function to ensure the unified application of the law, which means that the Court of Cassation accepts a limited number of cassation appeals to hearing in practice.

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

Armenian law has no provision for the beneficial treatment of leniency applicants/recipients concerning the potential private damages claims and/or for gaining any advantage on procedural matters.

**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?**

Damages are compensatory, aiming to put the claimant in the position it would have been in had the breach of competition law not occurred. This may include the claimant’s lost profits.

Armenian jurisdiction does not recognise “umbrella effects.”

The court favours no particular economic methodology. The methodology is applied by the expert and shall ground the application of the specific methodology in a specific case (based on the facts of the case).

Interest is calculated from the day the damage occurred until the day the damages are paid. The base rate for calculating interest is determined by the Central Bank of the Republic of Armenia. Currently, the said rate is 12% annually.

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

According to Article 1073 of the Civil Code, 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. It 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. 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 has paid unless otherwise provided by law.

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

The parties can dispose of a competition damages claim if they agree on a settlement and the claimant withdraws its claim. Such a settlement can be confirmed in an enforceable judgment if requested by the parties.

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

Collective settlements entered into by the claimant on behalf of group members of a group action must be approved by the court. Such settlements can’t include parties outside of the process.

**21. 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)?**

In Armenia, the general rule for hearings is to be in public. If the documents provided by parties are confidential, the parties can submit a request to hold hearings in private (closed court hearing). In that case, the court warns participants of responsibility for the disclosure of confidential information.

The parties must disclose all documents which are in their control. In general, a party may request the court instruct the other party to disclose a document or instruct a third party to disclose a document in its

possession or control. Such a motion must indicate the evidence as well as the facts which that evidence will prove.

**22. 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?**

According to the general rule, the losing party should bear the legal costs. The winning party can recover the litigation costs from the losing party, including counsel fees and expert fees. The costs may also be apportioned between the parties depending on the degree of success.

There is no upper limit for the compensation. However, if the opposing party objects to the claim for compensation, the court will try whether the costs are reasonable. The court may decrease the amount of the compensation if it deems that the costs are high. In practice, for the complex litigations, the court rule to recover only a smaller portion of the costs, as in practice, they claim the costs for complex cases to be excessive.

**23. 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?**

No provisions are regulating third party funding of legal actions in Armenia. In general, the issue was not considered by courts, and it is allowed and practiced.

The Civil Code of the Republic of Armenia provides that attorneys' fees can be freely determined in the contract between the attorney and the client. Therefore, it does not prohibit entering into a conditional fee arrangement.

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

The main obstacle to litigating competition damages claims is the duration of the proceedings: the procedure is very lengthy due to the complexity of the factual and legal questions and a heavy workload of courts.

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

Competition litigation is not yet a developed topic in Armenia, especially what concerns private litigation initiatives. Several significant cases are being heard now, which may "open the door" for other cases. Also, the new legislation entered into force this year (the new law on the protection of the economic competition) may further impact the practice of the evidence and proceedings stages.

Another new development direction would be transboundary cases within the Eurasian Economic Union (similar to the EU actions), which is also in the very early stage of the development.

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