



This project is funded by the EU



**AEPLAC**  
ARMENIAN-EUROPEAN POLICY  
AND LEGAL ADVICE CENTRE

Assessment of  
institutional standing  
in the fields of  
competition and  
state aid

July 2007

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## Summary

Pursuant to the provisions of the Work Plan adopted by the Steering Committee of the Armenian-European Policy and Legal Advice Centre (AEPLAC) on 14 December 2006 and approved by the Decree of the Government of Armenia No. 1039-A on 30 December 2005, AEPLAC implements the evaluation of administrative capacities of the state agencies. The evaluation of administrative capacities of the state agencies will be implemented based on the guidelines developed by the EU. These guidelines include the benchmarks necessary for effective implementation of EU integration process.

The evaluation of administrative capacities of the State Commission for the Protection of Economic Competition of Armenia (hereinafter the Commission) constitutes an integral part of the project. The work has been done by AEPLAC Senior Capacity Building Expert Davit Harutyunyan. A brief description of the evaluation results are presented below.

### Protection of Economic Competition

The EU requirements in the field of economic competition protection state that it is necessary to set up a National Authority with necessary competences for effective competition protection. In this context the activities of judiciary are also of great importance.

The protection of economic competition in the Republic of Armenia is regulated by the Law of Armenia on Protection of Economic Competition (hereinafter the Law), which was adopted on 6 November 2000. The Law regulates protection of economic protection in the fields of anti-competitive agreements, abuse of dominant position, concentrations and unfair competition. Upon the entry into force the Law has undergone many amendments. The last amendment to the Law was made on 22 March 2007. Despite the fact that these above-mentioned amendments are aimed at the improvement of the Law, however, there exist provisions within the Law which *differ from EU criteria*.

The competent authority responsible for the protection of economic competition in Armenia is the State Commission for the Protection of Economic Competition of Armenia, which was established according to the provisions of the Law. The *Commission is independent of other state bodies* in performing its tasks set forth by the Law. In the field of economic competition protection the Commission is competent to regulate the following fields.

- ❖ Anti-competitive agreements
- ❖ Abuse of dominant position
- ❖ Concentrations
- ❖ Unfair competition
- ❖ State aid

The Main Structural Subdivisions of the Commission are as follows:

- ❖ Methodology and Registrar Maintenance Department
- ❖ Analysis Department
- ❖ Research and Enforcement Department
- ❖ Law and Administrative Proceedings Department
- ❖ International Cooperation Department

The responsibilities of the above-mentioned subdivisions stipulated by the Commission Statute allow them to fully enforce the provisions of the Law.

*The Commission and the Ministry of Trade and Economic Development of Armenia are responsible for the enforcement of the provisions of the National Programme for PCA Implementation (hereinafter NP)* related to economic competition. The Ministry of Trade and Economic Development

of Armenia will assist the Commission in the adoption of legal acts in the course of NP implementation since the Commission has no right of legislative initiative.

One of the important amendments to the Law is that the *Commission was granted a right of inspection* which will essentially enhance the powers of the Commission in terms of supervising the competitive environment. In general, establishment and development of the inspection institute is a long-term process and requires significant financial resources. Therefore, the inspection power of the Commission will be currently limited to inspecting the *basis of the documents submitted by economic entities*.

*The provision on proving the anti-competitive agreements* is of great importance (which was incorporated while amending the Law) in terms of widening the scope of the Commission functions. This provision states that to prove anti-competitive agreements there must be factual evidences (written document) or the investigations of the Commission point out the existence of the above-mentioned anti-competitive agreements.

The important amendmend in the Law is inclusion of bid riggings during tenders and auctions in the list of anticompetitive agreement. This fact raises new issues and new scope of work for the Commission related to the control over tenders and auctions.

The so-called *leniency programme* is of great significance in efficiently disclosing anti-competitive agreements which will be developed by the Commission. The leniency programme proposes the elimination or alleviation of sanction for those entities involved in anti-competitive agreements who provide information on anti-competitive practices.

Although the financial system as a service is regulated within the framework of the Law, it is necessary to present the *provisions on financial systems in a separate chapter*.

In the course of competition policy implementation in the field of public services there exist conflict of interests between the Commission and the state body regulating the given field since the latter is also empowered to ensure free competitive environment.

The Law considers competition protection in terms of consumer protection. In this respect, the Commission should focus on consumer protection for which the Commission needs additional powers.

*The shadow economy* greatly hinders the Commission in performing its responsibilities which misinterpret the real picture of the competitive situation of some commodity markets.

The Law delegates sufficient rights to the Commission to impose sanctions for infringements made by economic entities in the field of competition protection. Moreover, as a result of the *new amendments to the Law, sanctions were made significantly stricter* which would enable the Commission to fight against infringements more effectively. *Unfair competition, reluctance to provide information, or delaying the provision of information* are cases of infringement of the Law which occur the most. However, it is worth mentioning that the Commission has recorded one case of *anti-competitive agreement*. Unfortunately, *since 2001 the Commission has not investigated any cases on concentrations* because of imperfection of the Law and incomplete cooperation of other state bodies with the Commission.

With regard to financial resources of the Commission it should be noted that *after the unexpected 2002 budget reduction* (when the budget of the Commission reduced by approximately 38%), *the Commission budget in 2006 increased by 66% (compared to the 2005 Commission budget)*. This can be considered as a positive trend. Moreover, in terms of Competition Authority Budget/GDP indicator the Commission is just a little behind the Competition Authorities of other countries. But the indicator of 2001 which was 2.5 times more than that of 2006 was as much as possible in compliance with the requirements of a newly established authority.

*All the employees of the Commission have higher education*. Moreover, since its establishment the number of employees having post-education has increased and mainly employees having sufficient professional level work in the Commission. Unfortunately, the budget reduction in 2002 was one of the most important reasons why *a number of qualified employees left the Commission, however, the current salary rate does not contribute to the involvement of experienced and qualified employees*.

In terms of professional qualification, right of inspection granted to the Commission is a serious challenge. This newly established institution needs not only a legal framework but also

qualified staff. To implement the wide scope of powers delegated by the right of inspection the *Commission will need a separate subdivision*; it will take time to establish and develop this subdivision.

The Commission attaches importance to enhancing professional qualifications of the staff. In general, *the employees of the Commission passed a sufficient number of training courses* but the issue remains on the agenda of the Commission. In this respect, *the knowledge of the Commission staff on EU matters, EU-Armenia relations is, in general, not on satisfactory level*. With regard to the command of foreign languages *particularly the command of the English language can be considered satisfactory*.

In general, *the level of technical equipment of the Commission staff can be considered satisfactory*. Almost all the employees have their personal computers with access to the Internet. Local network is also available which is maintained by an IT specialist.

The transparent activities of the Commission are mainly ensured through the website which contains information on all the activities of the Commission. The press secretary and periodically published official bulletins also secure the transparency of the Commission activities. The above-mentioned allows to state that, in general, *the Commission activities can be considered transparent*.

For effective implementation of competition policy in Armenia it is necessary to have sufficient level of competition culture. But *the culture of competition in Armenia is still at a low level* which essentially hinders the Commission activities in terms of applying competition rules in Armenia.

The fact that the *judges of Economic Court are not sufficiently specialized in the field of economic competition* results in serious problems for the Commission by significantly decreasing its effective activities.

The Commission closely cooperates with different international organizations and projects which is of great importance in terms of the introduction of international best practice and of the provision of technical assistance.

## **State Aid**

The EU requirements in the field of state aid relate to the need of establishing National State Aid Monitoring Centre which should receive relevant information from state aid grantor and have a chance to effectively control existing and new state aid. The development of a state aid register is also of great importance.

Until recently, *there existed no legal act in Armenia that would regulate the state aid granted to economic entities by the State in terms of its influence on economic competition*. All prudential legal acts acting in Armenia do not consider the state aid in the context of competition. But *due to recently made amendments to the Law a separate chapter was added devoted to the state aid*. In general, the provisions incorporated in the Chapter comply with the EU requirements but it should be noted that they are not sufficient for regulating the whole framework of the state aid. It is necessary to present the peculiarities related to the regulation of the field in more details and together with it clearly specify the regulatory mechanisms.

Preliminary studies show that *the state aid in Armenia is mainly granted to small and medium-sized enterprises, agriculture, gas supply, public TV, healthcare, education and printed media*. As compared to EU countries where *the state aid account to 0.6% of total GDP that indicator in Armenia in 2006 amounted to 6.6%*, which is largely preconditioned by the volume of the state aid granted to agriculture.

As a result of amendments made to the Law in 2007 *the Commission was delegated a right to control the state aid in Armenia* which causes a big problem for the Commission in terms of qualified employees.

# 1. Economic Competition Protection

## 1.1 EU requirements

The EU requirements in the field of economic competition protection are as follows:

- ❖ For taking effective steps in enforcing competition rules, particularly in preventing anti-competitive agreements, abuse of dominant position, in controlling concentrations it is necessary to establish a National Competition Authority.
- ❖ National Competition Authority should be vested necessary powers to investigate and examine anti-competitive practices as well as prevent and eliminate such practices by applying different sanctions.
- ❖ National Courts should have an important role in the protection of competition.

## 1.2 Situation in Armenia

### ***Legal framework***

Legal acts regulating the field of economic competition protection in Armenia have been illustrated within the framework of National Programme for PCA implementation where the overview of compliance of the Armenian legislation with the EU criteria has also been provided in detail. Within the framework of National Programme a clear Action Plan has been also provided which is aimed at complying the Armenian legislation of the given sector with the EU criteria according to the set time schedule.

### ***Question 1: Which are the legal acts that regulate the protection of economic competition in Armenia?***

The protection of economic competition in Armenia is regulated by the Law of Armenia on Economic Competition Protection (hereinafter the Law) which was adopted on 6 November 2000.<sup>1</sup> The Law regulates economic competition protection in the field of anti-competitive agreements, abuse of dominant protection, concentrations and unfair competition.<sup>2</sup> Upon its adoption a number of amendments have been made to the Law and the last amendment was made on 22 March 2007. Despite the fact that the above-mentioned amendments are aimed at improving the law, there exist provisions that differ from the EU criteria. Particularly it refers to preconditions necessary for the declaration of concentrations. Pursuant to the new version of the Law the value of assets of concentration participants is taken as criteria for declaration of concentration, whereas the EU takes as criteria for declaration the sales volume of economic entities.<sup>3</sup> The mentioned amendment is largely explained by the peculiarities of economy in transition when most of undertakings do not fully utilize their capacities and after concentration between undertakings may significantly enhance their opportunities to increase their share in the market and influence on competitive situation. Moreover, since consolidation of assets underlies in concentration, it was considered expedient in the current stage to observe them in terms of bringing to the abuse of dominant position. However, in our opinion

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<sup>1</sup> Law of Armenia on Protection of Economic Competition, HO-112, 06.11.2000

<sup>2</sup> The competitive field in Armenia is also regulated by the following legal acts adopted by the Commission: Decision on Definition the product market boundaries and volumes, N 24, 04.03.02  
Decision on the Approval of the order of definition of the dominant position of economic entity on product market. N 27, 04.03.02  
Decision on Definition of selling and purchase (artificial) unjustified price, 62-N, 09.07.03

Decision on Definition of anti-competitive agreements, 122-N, 01.09.04

<sup>3</sup> Council Regulation No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings.

concentration shall be subject to declaration taking as a basis the volume of turnover since they express the real potential of the participants in the given commodity market.<sup>4</sup>

#### **EU criteria for Declaration of Concentrations**

The Concentration is considered to have a Community dimension:

- ❖ where the aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 billion and
- ❖ where the aggregate turnover in the EU of each undertakings concerned is more than EUR 250 million.

These provisions do not act unless each of the undertakings concerned generates more than two thirds of its aggregate EU-wide turnover.

#### **Declaration of Concentrations in Estonia**

Concentration is subject to control (declaration) by the Competition Board if the aggregate turnover of participants on the market in the preceding year exceeded 100 mln. Kroon and in terms of each participant turnover of at least two of them exceeded 30 mln. Kroon.

The existing incompliances of the Law with the EU criteria are mainly explained by the fact that the Law of Armenia on Economic Competition Protection does not sufficiently cover those important issues in detail which are regulated in the EU by separate regulations.

***Question 1: Which state body regulates competition policy in Armenia? What is the structure and powers of that state body? Which state body is responsible for the implementation of NP for PCA implementation in the field of competition protection?***

The responsible competent body for the protection of economic competition in Armenia is the State Commission for the Protection of Economic Competition of Armenia (hereinafter the Commission). It was established pursuant to the provision of the Law<sup>5</sup>. The Commission consists of seven members: chairman, deputy chairman and five members. The commissioners are appointed by the President of Armenia for a 5-year period (except for the first composition).<sup>6</sup> The Commission shall be independent of other state bodies in performing its powers defined by this Law:<sup>7</sup>

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<sup>4</sup> In principle, adopting the logics of amendments made to the Law, however, it should be noted that it is not deprived of drawbacks. First and foremost, a question arises why the production capacities are not fully utilized. If the reason is physical and moral depreciation than the justification of amendments made to the Law loses its logics. Second, when saying assets it is understood only tangible assets, if yes, we neglect intangible assets and if no, a need of assessing intangible assets arises (since the real value of intangible assets is not presented in the balance and its necessity occurs when the undertaking is being sold), which is of vital importance and is a complex process (In Armenia an evaluation of intangible assets is not legally regulated). In this respect, it is also necessary to observe one hypothetic version. Since tangible assets are presented in the balance by their historic value and since in the current stage of economic development tangible assets of various undertakings are almost physically depreciated then it is possible that the sum of assets of concentration participants does not exceed the established threshold but those undertakings have a significant share in the market and, thus, can essentially hinder the free competition in future.

<sup>5</sup> Law of Armenia on Economic Competition Protection, HO-112, 06.11.2000, Article 17:

<sup>6</sup> Terms of the first Commission members' powers shall be defined as follows: one member - one year, one member - two years, three members - three years, Commission Deputy Chair - four years, Commission Chair - five years.

<sup>7</sup> Here it should be noted that the initial version of the Law significantly limited the independence of the Commission. The issue is that in the above-mentioned version there existed a provision according to which if the National Assembly of Armenia had not approved the annual Report on the previous year's activity and Activity

## Status of Competition Authorities in the EU Countries<sup>8</sup>

Office for the Protection of Competition **of Czech Republic** is an independent body and none of public administration bodies may intervene in the decision-making process of the Office. The Office shall submit its reports to the Government.

The **Danish** Competition Authority is working under the Ministry of Economic and Business Affairs, however, it shall be not subject to political leverage.

**Estonian** Competition Board is accountable to the Ministry of Economic Affairs and Communications. The relevant Minister exercises supervision over the activities of the Competition Board.

**Finnish** Competition Authority is an independent agency and administratively subordinates to the Ministry of Trade and Industry.

The Bundeskartellamt of **Germany** is an independent higher federal authority which shall be not subject to political leverage during the decision-making process. It is working under the Federal Ministry of Economics and Technology.

**Italian** Competition Authority is not accountable to the Government of Italy. It is an independent body and submits its reports to the Parliament of Italy.

**Competition Council of Latvia** is supervised by the Ministry of Economics. The Government appoints the chairperson and the Council members by the presentation of the Minister.

Competition Council of **Lithuania** is an independent body which acts in accordance with the Law and submits its reports to the Parliament.

Office of Competition and Consumer Protection of **Poland** is directly accountable to the Prime Minister.

**Competition Authority of Romania** is an autonomous body which is obliged to submit activity reports and publish them without any obligation to discuss them with any other bodies.

Antimonopoly Office of **Slovak** is an independent statutory body and its chairmen are appointed by the President of the Slovak Republic on the ground of the proposal submitted by the Government of the Slovak Republic.

**Slovenian Competition Protection Office** is independently functioning body during the implementation of its tasks. It is not accountable to any law enforcement and executive authorities. However, CPO provides its opinion on certain cases to the Government and to the Parliament of Slovenia.

**Swedish Competition Authority** is an independent government body working under the Ministry of Industry, Employment and Communications.

Competition Commission of **the United Kingdom** shall submit its annual report to the Parliament's judgment.

Powers of the Commissioner may be terminated by the President of Armenia upon request of the Commissioner.

In the field of economic competition protection the Commission is authorized to regulate the following fields:

- ❖ Anti-competitive agreements
- ❖ Abuse of dominant position
- ❖ Concentrations
- ❖ Unfair competition
- ❖ State aid

The Commission shall be entitled to adopt decisions, draft and adopt legal acts, monitor commodity markets, impose sanctions, apply to court for protecting its interests and etc. within the limits of the powers provided for in the Law.<sup>9</sup>

The Commission's activities shall be organized through its Staff, the composition and number of which shall be defined by the Commission. The Commission Statute shall define the procedure of the Commission activity, its structural subdivisions and the procedure of their activity, the limits of

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Report of the upcoming year submitted by the Commission then the Commission should be wind up within 10 days. Fortunately, this provision was later reviewed and currently the Commission publishes the mentioned documents in RA National Assembly for consideration.

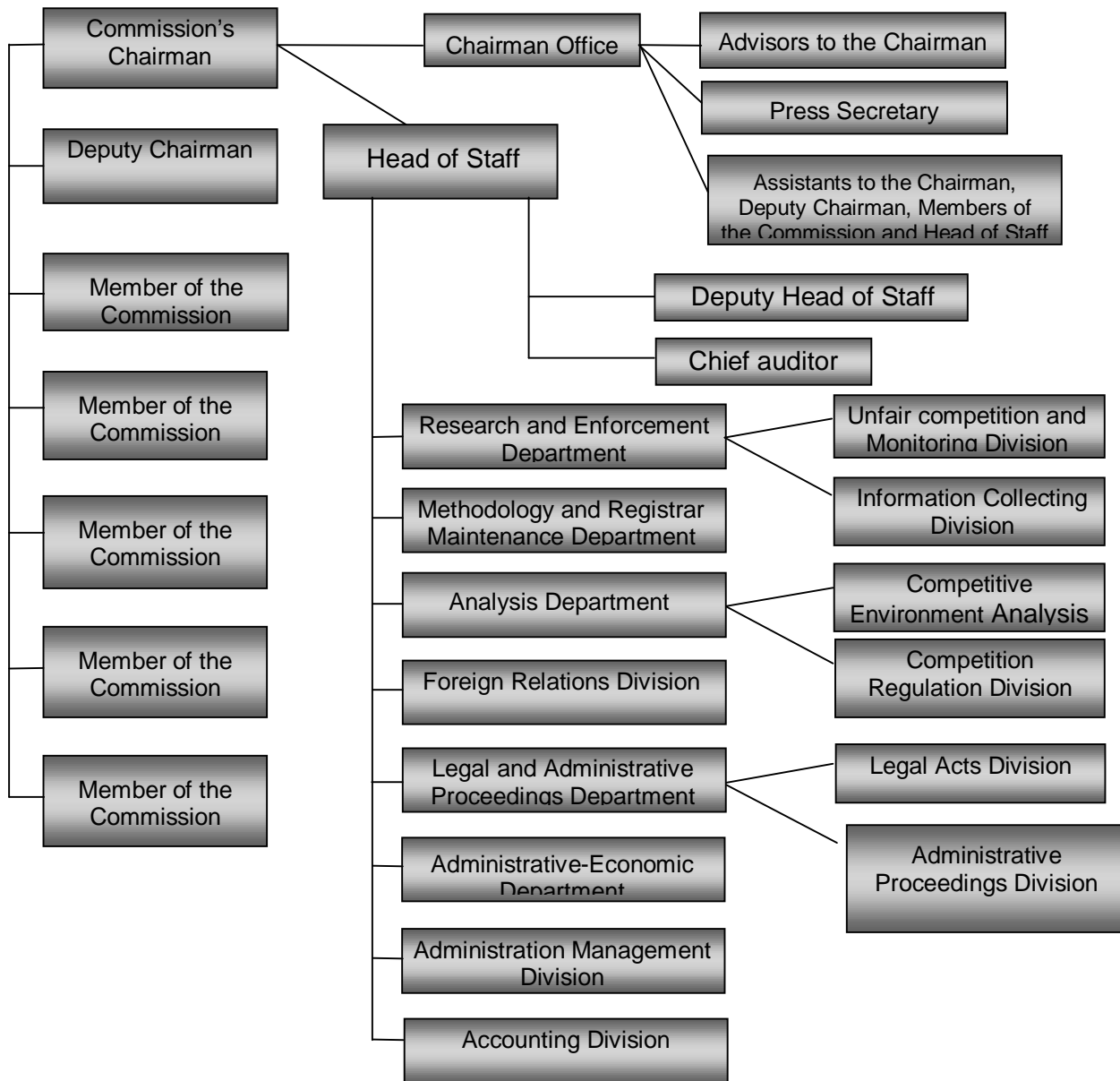
<sup>8</sup> See: "The 2006 Handbook of Competition Enforcement Agencies" published by Global Competition Review.

<sup>9</sup> The complete list of competences of the Commission is presented in Annex 1.

powers of their heads and employees as well as other issues referring internal management of the Commission<sup>10</sup>.

The organizational structure of the Commission is presented in the following graph.

Graph 1. Organizational Structure of the Commission



The content of functions of the Commission's structural subdivisions dealing with various dimensions of economic competition protection policy is the following<sup>11</sup>.

*Department of Methodology and Registrar of Staff* is mainly responsible for the development of methodology for effective enforcement of the Law, for the development of the Commission activity report and annual programme as well as maintains the Centralized Log (Register) of economic entities having dominant position.

<sup>10</sup> As a result of amendments made to the Law the Commission Statute shall be subject to amendments.

<sup>11</sup> The functions of structural subdivisions of the Commission are detailed in Annex 2.

*Analysis Department of Staff* shall mainly perform analyses to assess the competitive environment on product markets which assumes comprehensive application of economic aspect of competition.

*Department of Research and Enforcement of Staff* shall carry out the monitoring of commodity markets, reveal cases of violation of the RA legislation, accomplish research regarding unfair competition and process data necessary for the study of commodity markets.

*Legal and Administrative Proceedings Department of Staff* shall elaborate draft legal acts related to economic competition protection and ensure legal aid to the Commission and Staff activities.

*International Cooperation Department of Staff* shall be responsible for the presentation of international practice in the field of economic competition protection, ensure relationships of Commission and Staff with competent bodies of foreign countries and international organizations and for ensuring the enforcement of the provisions stipulated by international agreements.

As can be seen from the abovementioned the responsibilities set forth by the Statute of the Commission allow the Commission Staff to enforce the provisions of the Law.

The Commission and the Ministry of Trade and Economic Development of Armenia are responsible for the implementation of the provisions of NP for PCA implementation related with economic competition. To this end, it is necessary to establish a separate subdivision based on Foreign Relation Division of the Commission which will be responsible for NP implementation. The Ministry of Trade and Economic Development of Armenia will support the Commission to adopt legal acts in the course of NP implementation since the Commission has no right of legislative initiative.

### ***Question 2: Does the Commission have enough powers to properly perform its duties?***

One of the important amendments to the Law is granting the right of inspection to the Commission which will essentially enhance the powers of the Commission in terms of supervising the competitive environment. The study of international practice shows that availability of the right of inspection is one of the most important preconditions which is necessary for any Competition Authority to properly perform its functions. The right of inspection granted to the Commission causes new problems for the Commission. First the Commission is not institutionally well developed and the second issues related to distribution of powers of inspection within the Commission Staff (as an option the establishment of a new subdivision within the corresponding Department of the Commission Staff or granting a right of inspection to employees can be considered) and to human resources will occur<sup>12</sup>. In general, the establishment and development of the inspection institute is a long-term process and requires significant financial resources. Thus, currently the Commission's powers of inspection will be limited only to checking the basis of documents provided by economic entities<sup>13</sup>.

#### **Competences of EU Commission in the field of inspection.<sup>14</sup>**

... During the inspection the entities authorized by the Commission are entitled to:

- to enter the premises and the place of activity of economic entities,
- to examine the books and other records related to the business, irrespective of the of the medium on which they are stored,
- to take or obtain in any form of copies of or extracts from such books and records,
- to seal any business premises and books or records for the period and to the extent necessary for the inspection,
- to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.

<sup>12</sup> In this respect, the structure of Competition Authority of Romania is interesting which is provided in Annex 3.

<sup>13</sup> The responsibilities of Bundeskartellamt of Germany for implementing inspection are presented in Annex 4.

<sup>14</sup> Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

In terms of widening the scope of powers of the Commission the provision on revealing anti-competitive agreements is worthy which was incorporated while amending the Law.<sup>15</sup> Pursuant to this provision the anti-competitive agreements shall be deemed proven if any factual evidences (including any written document) are available. The Commission also reserves the right to take the results of the investigations conducted in that field as a proof. The reason to draft this provision is objectively insufficient capacities of the Commission to obtain material evidences on anti-competitive agreements<sup>16</sup> which is a serious issue almost in the entire world and given the fact that according to expert opinion numerous anti-competitive agreements are observed in Armenia, in our opinion incorporation of such a provision in the Law in the current stage is justified.<sup>17</sup>

#### **Extract from Estonian Competition Law**

The entry into anti-competitive agreement by a member of the management board or a body substituting for the management board of a legal person shall be punished by a fine or up to 3 years' imprisonment.<sup>18</sup>

The important amendment in the Law is inclusion of bid riggings during tenders and auctions in the list of anticompetitive agreement. This fact raises new issues and new scope of work for the Commission related to the control over tenders and auctions.

The so-called leniency programme is the most important manifestations of the policy aimed at exposing anti-competitive agreements which offers elimination or alleviation of sanctions for those persons involved in anti-competitive agreements who provide information on anti-competitive agreements. The leniency policy has proved its viability since international practice shows that the overwhelming majority of anti-competitive agreements are exposed with the support of this programme<sup>19</sup>. The law does not stipulate a similar provision and this institution is likely to be inapplicable in Armenia<sup>20</sup>, however, this practice is increasingly being applied to EU countries<sup>21</sup>.

While talking about the powers of the Commission one should pay an attention to the fact that the Commission does not actually regulate issues related to competition in financial sector. Although the Law stipulates that the service sector (financial services as well) is within the scope of the Commission powers, however, as per the international practice the Law includes the provisions regulating the competition issues in financial sector in a separate section. In fact, the settlement of the mentioned issues is not related only to the legal base but also to the qualification of the Commission staff<sup>22</sup>.

The Commission faces certain issues in the field of public services while protecting competition. Here there exist conflict of interests between the Commission and RA Public Services Regulatory Commission which regulates activities of organizations acting in the mentioned field. The matter is not only related to separation of authorities of two bodies in terms of competition protection,

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<sup>15</sup> Law of Armenia on Economic Competition Protection, Article 5, clause 4.

<sup>16</sup> For instance, Competition Authorities in the USA cooperate with law enforcement authorities with the view to prove anti-competitive agreements.

<sup>17</sup> But it should be mentioned that, as a rule, only researches may not serve a sufficient ground for proving anti-competitive agreements. There may be cases when economic entities shall be subject to sanctions not really being involved in anti-competitive agreements. The thing is that there may be cases on a market when at first sight it may be seen that there exist anti-competitive agreements whereas in reality there exist the so-called "tacit collusion" or "following the leader" which are not considered as infringement of competition rules.

<sup>18</sup> Competition Act. Passed June 5 2001

<sup>19</sup> In reality, even in developed countries where Competition Authorities are institutionally well developed it is very hard to find material evidences on anti-competitive agreements. And since anti-competitive agreements are subject to more severe criminal penalties the leniency programme enables to evade the responsibility.

<sup>20</sup> The fear is that the institute of "informer" is not yet accepted in Armenia among public at large. But there existed fear that in case of anti-competitive practices economic entities will not apply to the Commission to protect their rights whereas currently the Commission receives a number of appeals from economic entities (however, the mentioned psychological complex is not yet completely overcome in this case).

<sup>21</sup> The relevant experience of Romania in this field and the EU policy are provided in Annexes 5 and 6.

<sup>22</sup> Estonian experience of regulating concentrations in financial sector is presented in Annex 7.

the Commission has to control the activity of undertakings that have monopoly power in the fields of public utilities.

The Law considers competition protection in terms of consumer protection. In this respect, the Commission should focus on consumer protection for which the Commission needs additional powers.

During the implementation of its powers provided for in the Law the Commission faces serious obstacles in commodity markets while evaluating the competitive environment. This is largely preconditioned by the fact that the share of shadow economy is extremely high in certain branches of Armenian economy. This leads where the results of the examination in certain commodity markets conducted by the Commission do not correspond to reality because the volume of commodity markets is not clearly determined. To correct the situation the Commission produces efforts to find out economic entities operating in the shadow by wasting time and resources. Certainly, the Commission with this action obviously supports the competent bodies combating the shadow economy. But in reality the Commission should not deal with similar issues and it should direct its resources only to the settlement of economic competition issues.

Concluding it should be mentioned that the Commission faces the following challenges in terms of properly implementing its powers:

- ❖ Issues related to the granting of the right of inspection.
- ❖ Issue related to the clear proof of anti-competitive agreements,
- ❖ Elaboration of Leniency programme with the view to expose anti-competitive agreements,
- ❖ Effective implementation of competition protection policy in financial sector,
- ❖ Effectiveness of competition protection in the field of public services,
- ❖ Existence of the shadow economy.

### ***Question 3: Does the Commission have enough powers to fight infringements of the Law?***

The Law delegates enough powers to the Commission to impose sanctions for the infringement of the Law by economic entities.<sup>23</sup> It relates to anti-competitive agreements, concentrations, the abuse of dominant position, unfair competition, the provision of unreliable information or non-provision of information at all, the creation of hurdles for the Commission in the course of performing its duties and granting illegal state aid. Particularly, in case of anti-competitive agreements economic entities are fined in the amount of 2% of the turnover in the given commodity market but no more than 300 mln. AMD.<sup>24</sup> In case of illegal concentrations economic entities are fined in the amount of 4% of the turnover in the given commodity market but no more than 500 mln. AMD. If abuse of dominant position is observed economic entities are fined in the amount of 2% of the turnover in the given commodity market but no more than 300 mln. AMD. In case of unfair competition economic entities are fined up to 500 000 AMD and if the same violation is repeated within one year the size of the sanction reaches up to 1 mln. AMD. Provision or non-provision of unreliable information by economic entities shall lead to the imposition of a fine in the amount of 500 000 AMD. If the same violation is repeated within one year the economic entities shall be fined in the amount of 2 mln. AMD. If economic entities hinder the Commission employees from performing their duties they will be fined

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<sup>23</sup> It should be noted that after the adoption of the Law the amendments made to it have significantly made stricter the sanctions provided for in the infringement of the Law.

<sup>24</sup> Pursuant to the amendments made to the Law in May 2005 the defined amount of the fine for anti-competitive practices became as a per cent of the turnover. Sanctions for the provision of unreliable information or non-provision of any information at all were also made stricter. This fact essentially strengthened the administrative capacities of the Commission in terms of supervising the implementation of the Law provisions. Recent amendments to the Law (March 22, 2007) made sanctions provided for in the infringement of the Law much stricter.

in the amount of 500 000 AMD.<sup>25</sup> With regard to illegal state aid the Commission has stipulated sanctions for economic entities which contradict the functional logics of granting state aid.<sup>26</sup>

### Sanctions imposed for the infringement of competition rules in the EU<sup>27</sup>

The EU Commission may impose sanctions against economic entities in the amount of 1% of the turnover of the preceding year if they intentionally or negligently:

- Supply incorrect or misleading information,
- Don't supply information within the set timeframe,
- Supply incorrect or misleading in the course of inspection,
- Provide false information during the interviews,
- Refuse to provide information on issues related to the case,
- Seal affixed as a result of prohibition is broken.

In case of infringement of competition rules the EU Commission may fine the economic entities in the amount of the sum not exceeding 10% of their turnover of the preceding year.

Some Statistics on the Commission activities related to the infringement of the Law is presented in the below presented Table.

Table 1. Commission Activities related to the Infringement of the Law Provisions

Cases of Law Infringement	2001	2002	2003	2004	2005	2006
Anti-competitive agreements	0	0	0	0	1	0
Concentrations	0	0	0	0	0	0
Abuse of dominant position	0	1	2	15	2	1
Unfair Competition	0	10	2	39	7	10
Non-supply or delay in the supply of information	1	3	8	21	39	54
Hampering the Commission in performing its activities	0	0	0	0	0	0
Total	0	14	12	75	49	65
Total Number of Decisions Adopted	72	101	110	157	143	146
Imposed fines (mln. AMD)	-	-	-	-	235.2	78
Amount transferred to the State Budget (mln. AMD)		5.3	11.5	17	167.1	54.2

<sup>25</sup> In general, the protection issue of the members of competition authorities is of great importance which requires individual legal approach especially given the fact that there exist conflict of interests between competition authorities and the largest economic entities.

<sup>26</sup> Illegal state aid is granted by the state bodies and to punish economic entities for this is an illogical step. But if we take into account that this is done to reduce corruption risks in state aid beneficiary and state aid grantor relations then in this stage incorporation of the mentioned provision is to some extent justified.

<sup>27</sup> Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty

As the figures of the Table show, unfair competition and supply of information by economic entities were the cases of infringement of the Law that were recorded the most. Moreover, the number of cases related to the supply of information by economic entities is increasingly growing. This is largely preconditioned by the fact that the capacities of the Commission to record the infringement of the Law provisions for this part and impose sanctions have strengthened. It is noteworthy that the Commission has recorded one case of anti-competitive agreement which does not reflect the current situation of Armenian economy. The same holds true on concentrations: since 2001 the Commission investigated no case related to concentrations. This is mainly preconditioned by the imperfection of the Law (for instance as a result of recent amendments to the Law, natural persons are considered as a party to concentration, however, the participation of them in concentration is not clearly formulated), as well as not full cooperation of other state bodies with the Commission.

#### **Extract from Estonian Competition Law**

Concentrations occur when:

The natural person who already exercises control over any economic entity is granted a right to fully or partially control another economic entity or entities (or part of them).

With regard to the sanctions imposed by the Commission it is obvious that the amendments to the Law in 2005 have essentially influenced the size of the sanctions. The figures of the Table show that as a result of sanctions imposed in 2005 the sum transferred to the state budget has increased approximately 10 times compared to that of in 2004.

#### **Extract from the activities of Romanian Competition Authority<sup>28</sup>**

During 2005 the Competition Authority of Romania has imposed fines in the amount of 45 mln. EUR. Compared to the preceding business year this indicator has increased 18 times. Competition Authority has conducted inspections in the premises of 12 economic entities.

#### ***Question 4: Does the Commission have enough financial resources to properly implement its powers provided for in the Law?***

The availability of sufficient financial resources and a qualified staff are one of the most important factors for effective implementation of the Commission's functions. The budget of the Commission for 2001-2007 is presented below.

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<sup>28</sup> More information on the activities of Competition Authority of Romania in 2005 is presented in Annex 8. In general, the experience of Romania in this field can be enlightening for Armenia since until the start of the EU integration process the level of establishment and development of Competition Authority was almost comparable with that of Armenia. The picture was changed when Romania became EU Member State as a result of which competition protection institute became to play a significant role. The reason to choose Romania is that international organizations conduct essential studies on development issues of competition institute and information related to them are available (See: Annual Report on Competition Policy Developments in Romania. OECD 2006. DAF/COMP (2006) 12).

Table 2. Commission Budget by Years

Years	Budget		Growth Rate as Compared to the Preceding Business Year (%)	
	AMD	USA Dollar <sup>29</sup>	AMD	USA Dollar <sup>30</sup>
2001	120.000.000	216.189		
2002	74.335.400	129.651	-38.05	-40
2003	77.235.000	133.447	+3.9	+2.9
2004	97.152.400	182.121	+25.8	+36.5
2005	95.960.000	209.661	-1.2	+15.1
2006	159.210.500	382.681	+65.9	+82.5
2007	165.646.200	463.995 <sup>31</sup>	+4.04	+21.2

As Table 2 shows, from the outset the Commission's budget (in a relative term)<sup>32</sup> was rather large. First and foremost, this was largely preconditioned by the logics that the Commission was reserved a responsible mission, i.e. protect economic competition in Armenia which is of vital importance for the sustainable economic development. In fact, competition protection is one of the most complex institutions for the regulation of the economy which requires involvement of highly qualified specialists; however this is impossible without sufficient financial resources. The next factor relates right to the activities of the Commission which deals with various economic entities and influences the Commission's material interests. This factor requires objectivity and impartiality the necessary (but not sufficient) condition of which is the availability of relatively high level of financial resources. However in 2002, the Commission's budget was unexpectedly decreased by approximately 38% which could have disastrous consequences for the newly established body. The thing is that the institute of competition protection made its first steps in Armenia and international experience shows that it takes approximately 5-7 years on average for the body to be institutionally well established. The most important factor is qualified staff with a high level of professionalism. But such decrease in the budget was a serious blow for the establishment and development of the institute of competition protection. The budget was significantly increased in 2006 when compared to the preceding business year it grew by about 66% which shows that the importance of the role of economic competition protection was reviewed in the overall logics of economic competition policy in terms of ensuring sustainable economic growth and competitive economy.

#### **Budget of Romanian Competition Authority**

Financing of Romanian Competition Authority in 2005 has grown by 30% as compared to 2004 whereas the growth rate of the amount allocated in 2006 accounted to 36%.

In this respect, it is interesting the analysis of comparative statistics presented in Annex 9 which shows that the ratio of Competition Authority Budget/GDP in terms of different countries. As can be seen from the magnitude of the Competition Authority Budget/GDP coefficient Armenia does not lack behind the mentioned countries as of 2006. Moreover, Armenia ranks in top ten in the list of countries. It should be mentioned that in 2006 the growth rate of the mentioned indicator as compared to the preceding business year accounted to 50%. All this proves the fact that currently the

<sup>29</sup> The annual average settlement rate of AMD against USD calculated by the CB RA was applied to express the Commission budget in USD terms. 2001: 555.07 AMD, 2002: 573.35 AMD, 2003: 578.77 AMD, 2004: 533.45 AMD, 2005: 457.69 AMD, 2006: 416.04 AMD.

<sup>30</sup> The difference of the budget growth rate in USD and AMD terms is preconditioned by AMD volatility against USD.

<sup>31</sup> Settlement rate – 357 AMD for 1 dollar set in 2007 state budget served as a basis for AMD-USA dollar ratio for 2007.

<sup>32</sup> If we take into account the fact that totally 40 employees work in the Commission staff (Commission members, staff and technical support staff).

Competition Authority in Armenia is not underfinanced coming from the “capacities” of the country’s GDP. But the 2001 indicator which was 2.5 times more than that of 2006, corresponded to a maximum extent to the requirements of the newly established body.

Given the above-mentioned we can conclude that for fully establishment and development of competition protection institute it is necessary that the Commission budget should continuously grow.

**Question 5: Does the Commission have enough human resources with corresponding qualifications for properly implementing powers provided for in the Law?**

The effective work of the Commission is largely dependent on the availability of the qualified human resources. The structure of the Commission staff by professions is presented in the Table below.<sup>33</sup>

*Table 3. Structure of the Commission Staff by Professions*

<b>Profession</b>	<b>2002<sup>34</sup></b>	<b>2006</b>	<b>Growth Rate (%)</b>
Economist	9	14	+ 55.5
Lawyer	3	7	+133.3
Other profession	18	15	-16.7
Total	30	36	+ 20

Table 3 shows that the number of employees of the Commission in 2002-2006 has increased by 20%. Moreover, an increase was observed among economists and lawyers and the number of other professions has decreased. In general, this can be considered a positive trend since coming from the peculiarities of the subject matter the core burden of the work shoulders economists and lawyers. With regard to the share of specialists in the total number, then the comparative analysis reflected in Annex 10.1 is noteworthy which provides the structure of Competition Authorities by professions of several countries. As the Annex shows the change in the increase of specialists of the Commission in 2002-2006 led to the change in their share, i.e. the share of economists and lawyers has increased and the share of other professions has decreased. The comparative statistics shows that, in general, there exists no clear ratio by professions: in Competition Authorities of some countries dominate economists, in some of them – lawyers.<sup>35</sup>

The picture of the staff by the level of education and of professional qualification is the following.

<sup>33</sup> The distribution of employees involved in structural subdivision of the Commission staff is presented in Annex 10.

<sup>34</sup> We take 2002 since in 2001 during the whole year the Commission staff was being replenished.

<sup>35</sup> This fact can be explained by the fact that economic competition protection which is an extremely complicated sector presumes the combination of two professions which means that lawyers of competition law have also thorough knowledge on sector-specific economic bases and the economists respectively - the competition law provisions (certainly, there are some issues which require only professional knowledge).

Table 4. Structure of the Commission Staff by the Level of Education

Education	2002	Share (%)	2006	Share (%)	Growth Rate (%)
Vocational college	-	-	-	-	-
Incomplete higher education	-	-	-	-	-
Higher education	24	80	26	72.2	+ 8.3
Post Graduate Education /Master's degree, PhD/	6	20	10	27.8	+ 66.7

The Table figures show that all the employees of the Commission have higher education whereas in the reporting period the number of specialists who obtained postgraduate education has increased by positively influencing the share of employees.

The below presented Table data show the level of professional qualification of the staff according to which in 2006 as compared to 2002 the number of specialists, of those having Bachelor's and Master's degree has increased whereas the number of candidate of sciences in the staff has decreased.

Table 5. Structure of the Commission Staff by the Level of Qualification

Professional Qualification	2002	Share (%)	2006	Share (%)	Increase (%)
Specialist	25	83.3	28	77.8	+12
Bachelor's degree	-	-	2	5.6	-
Master's degree	-	-	3	8.3	-
Candidate of Sciences	5	16.7	3	8.3	-40
Doctor of Sciences	-	-	-	-	-

Distribution of the Staff by Age Group is presented below.

Table 6: Staff of the Commission by Age Groups

2002			2006			Growth Rate (%)
Age Group	Number of Employees	Share in the Total	Age Group	Number of Employees	Share in the Total	
18-30	11	36.7	18-30	15	41.7	+36.4
31-45	5	16.7	31-45	11	30.5	+120
46-65	14	46.6	46-65	10	27.8	-28.6

As can be seen, mainly young employees replenished the Commission for the period of 2002-2006 which proved the indicators of shares of relevant age groups. Thus, we can record that the staff rejuvenation took place in the Commission which is, in general, a positive trend.

We can conclude from the above-mentioned analysis that only employees with the necessary professional qualifications are mainly involved in the Commission, nevertheless, to have a clear picture on the subject matter it is necessary to touch upon the issues related with the salary of employees and human resources turnover.

**Question 6. Is the level of salary of the Commission staff is enough for them to properly implement their duties?**

The presence of employees with necessary level of knowledge is the most important precondition for the effective work and success of any Competition Authority. In its turn, one of the pledges to have a qualified staff is the provision of the sufficient level of salary against the work they do. Currently, the issue of public service quality is valid for all state bodies of Armenia but this issue acquires double significance for the Commission which is in process of establishment and development. The dynamics of average salary of the Commission staff by years is presented in the Table below.

*Table 7. Salary of the Commission Employees*

Year	Average Salary	Annual Growth Rate (%)	Number of Employees
2001	152 800		30
2002	96 600	-36.8	31
2003	111 100	+15	30
2004	119 262	+7.3	30
2005	95 265	-20.1	30
2006 <sup>36</sup>	123 231	+29.4	39 <sup>37</sup>

The Table figures show that the reduction of the Commission budget has naturally left its negative consequences on the level of salary of the staff which was reduced by 37% in 2002 as compared to the preceding business year. As we have already mentioned this phenomenon could have led to undesirable consequences for the Commission, i.e. to the turnover of qualified human resources. It is very gratifying that in 2006 the Commission succeeded in significantly rectifying this situation but, however, the average salary of the given year accounts to totally only 80.1% of 2001 salary.<sup>38</sup>

To have a picture on the level of salary of the Commission staff as compared to the level of salary of other public administration bodies it is necessary to examine the figures of the Table presented below.

<sup>36</sup> Quarterly bonuses given to the employees in the amount of one salary are taken into account in the average salary of 2006 which, in general, led to the increase in the level of salary by 25%.

<sup>37</sup> 36 civil servants work in the Commission, 3 positions for civil service are vacant.

<sup>38</sup> If we take into account the purchasing parity of AMD for the period of 2001-2006 this indicator is definitely smaller.

Table 8. Comparison of the average salary of the Commission staff with that of other public administration bodies.

Year	Average salary of the Commission staff	Average salary in Other Public Administration Bodies <sup>39</sup>	Difference with Public Administration Bodies (%)
2001	152 800	36034	+ 324
2002	96 600	38612	+ 150.2
2003	111 100	53465	+ 107.8
2004	119 262	67243	+ 77.4
2005	95 265	75250	+ 25.6
2006	123 231	88332	+ 39.5 <sup>40</sup>

The Table shows that on average the level of salary of the Commission staff in the reporting period was higher than the average salary of other public administration bodies. This proves the fact that, in general, the salary of the Commission staff is not low in terms of public sector.<sup>41</sup> However, the average salary of public administration bodies in 2006 slightly differs from the average salary of Commission staff (without increase in bonuses) and if we compare the salary of the Commission staff with the salary of other public bodies (for instance CBA), we can see that the salary of the Commission staff is less than that of other bodies although the issues the Commission faces are not less important for the sustainable economic development of Armenia. In fact, the figures provided show that the Commission “competitiveness” in 2001-2006 is significantly less than that of other bodies and the current level of salary does not contribute to involvement of qualified human resources.<sup>42</sup>

As the practice of **Romania** shows the body responsible for the economic policy in that country has attached great importance to the competition policy and as a result the salary of employees regulating the given sector in recent years has significantly increased and currently it is about 3 times more than that of other public administration bodies.

Moreover, salary reduction in 2002 had its role in the turnover of human resources.<sup>43</sup> The turnover of human resources in 2001-2006 is presented in the Table below.<sup>44</sup>

Table 9. Turnover of Human Resources in the Commission, 2001-2006

Outflow			Inflow			Balance
2003			2003			
By Professions	Number of Employees	Share in the Total (%)	By Professions	Number of Employees	Share in the Total (%)	
Economist	5	38.3	Economist	10	52.6	+5
Lawyer	2	15.4	Lawyer	6	31.6	+4
Other	6	46.1	Other	3	15.8	-3
<b>Total</b>	<b>13</b>	<b>100</b>	<b>Total</b>	<b>19</b>	<b>100</b>	<b>+6</b>

<sup>39</sup> Source: National Statistical Service of Armenia.

<sup>40</sup> If we do not take into account the quarterly bonuses given to the Commission staff the difference will account 9.8%.

<sup>41</sup> Certainly, we could have clearer picture if we had the weighted averages of the mentioned indicators.

<sup>42</sup> Whereas in 2001 comparatively favourable conditions were created for the Commission to involve qualified specialists.

<sup>43</sup> Naturally, the level of salary is only one of the factors for human resources turnover but in our opinion one of the most important factors.

<sup>44</sup> Human resources turnover by years is presented in Annex 11.

As the Table shows, 13 employees left the Commission since its establishment and 19 new employees replenished the Commission at that period. The staff replenishment in terms of quantity fully covered the possible unproportionality caused by the outflow of human resources and moreover, the inflow of human resources has exceeded the outflow indicator. But if we take into account that 43% of the primary staff has left the Commission and the fact that the sector is still in process of establishment and development and those specialists were the professional basis of the Commission then in this context the picture is not that consoling.<sup>45</sup> One consideration as well: with some exceptions employees replenished the Commission lack behind the employees left the Commission by the level of education and of professional qualifications which means that generation change does not take place smooth and sound in the Commission and in terms of qualifications of human resources the Commission faces serious problems.<sup>46</sup>

Concluding it should be noted that the issue of salary is of vital importance for the Commission and since this issue is not properly addressed at the state level the effective work of the Commission will not comply with the expected standards.<sup>47</sup>

In terms of professional qualification of the staff granting of the right of inspection to the Commission is a serious challenge for latter. This newly established institution needs not only legislative regulation but also qualified human resources. With the view of enforcing its wide scope of powers related to the right of inspection the Commission will need to establish and develop a separate subdivision which will take time. Despite the fact that in the initial stage the Commission plans to inspect only the authenticity of documents, however, even in this case only an employee with corresponding qualifications in the Commission is not sufficient to settle the issue. Thus, in this field the Commission should set a clear schedule of measures for involving human resources and for arranging their further training. Here, the involvement of extra funds is also important since without funds the establishment and development of the above-mentioned institute will be naturally impossible.

The Commission does not also have corresponding specialists who have thorough knowledge of modern statistical and econometric software package which essentially weakens the analytical capacities of the staff. Thus, it is necessary to undertake measures for acquiring similar software packages and for organizing training courses for the specialists.

In this field the problems the Commission faces are as follows:

- ❖ Insufficient level of salary,
- ❖ Lack of qualified specialists,
- ❖ Establishment of a body carrying out inspection.

### ***Question 7. Has the Commission staff passed sufficient number of training courses?***

More than 90% of the Commission staff passed compulsory training courses (organized by the Civil Service Council, pursuant to the law of Armenia on Civil Service). Currently, 12 members of the staff already participated in a professional training courses whereas 6 members took part in different conferences. The number of employees who passed a training course abroad is not too big. About 60% of the employees also took part in training courses organized in the Commission by the EU and

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<sup>45</sup> Certainly, skillful and professionally experienced employees work in the Commission staff but given the problems the Commission faces their number is definitely not enough.

<sup>46</sup> It is enough to state that the Commission left 3 candidates of sciences and 1 employee who obtained his Master's degree abroad, let alone other skilled specialists. Currently, the Commission does not have employees who obtained their university education overseas.

<sup>47</sup> The remuneration of the Commission staff is regulated by the rules of Civil Service Council which does not contribute to the development of the given sector (whereas the remuneration of RA Public Services Regulatory Commission staff is regulated by a separate law and it is significantly high from the average salary of public administration bodies). But as a result of new legal changes the Commission will be able to provisionally hire qualified specialists for separate cases.

USAID technical assistance programmes. In general, the picture of the staff in terms of their participation in training courses can be considered satisfactory. But here there is a problem related to the efficiency of training courses. To settle this issue it is necessary to undertake some organization steps.

**Question 8. Does the Commission staff have enough knowledge on EU matters and NP for PCA implementation? What level the command of the English language of the Commission staff is on?**

With the view to assessing the training needs on EU issues in governmental bodies the findings of the survey<sup>48</sup> conducted by AEPLAC in 2006, the following results were observed particularly for the Commission<sup>49</sup>.

*Table 10. The Level of Knowledge of the Commission Staff on the European Union*

Sphere of Knowledge	Well Informed (%)	Familiar with the Main Provisions (%)	Superficial Knowledge (%)	Non-informed (%)
EU history	19	57,1	19,1	15,8
EU structure	4,8	52,4	33,3	9.5
EU accession criteria and tools	9.5	52,4	33.3	4.8
EU relations with non-member states	9,5	47,6	42.9	-
EU-Armenia Relations	9.5	47.6	42.9	-
EU-Armenia Integration Process	9.5	47.6	38.1	4.8

The Table shows that the knowledge of the Commission staff on EU matters and EU-Armenia relations is, in general, not satisfactory.<sup>50</sup>

With regard to the command of English, as per the findings of the above-mentioned survey the picture is as follows:

*Table 11. The Level of the English Language of the Commission Staff*

Level of English	Number of Employees (% in Total)
Fluent	23.8
Good	28.6
Fair	38.1
Don't know	9.5

As the Table shows the level of English can be assessed as satisfactory but if it refers to the command of professional English the picture can be unsatisfactory.

Foreign Relation Division of the Commission staff deals with issues of cooperation with the EU whereas information on involvement of the whole staff and their participation in National Programme for PCA implementation is presented in the Tables below.

<sup>48</sup> See the Report on "Needs assessment for undertaking of EU related training courses".

<sup>49</sup> 21 employees from the Commission were interviewed in the framework of the survey.

<sup>50</sup> But as compared with other governmental bodies the Commission shows better results.

Table 12. Staff Handling of EU Matters

Handling of EU Matters	Number of Employees (% in Total)
Always	4.8
Often	23.8
Seldom	38.1
No handling	33.3

Table 13. Staff Handling of EU Matters

Participation in the Elaboration of the National Programme for PCA Implementation	Number of Employees (% in Total)
Direct Participation	9.6
Indirect Participation	23.9
No participation	66.5

**Question 9. Does the Commission staff have satisfactory level of technical equipment?**

In general, the level of technical equipment of the Commission staff can be considered satisfactory. Almost all specialists have their personal computers which have access to the Internet. There is a local network which maintains a corresponding IT specialist. The lack of copy machines, the purchase of stationery and items necessary for the maintenance of computer equipment cause insignificant problems which is a result of imperfection of public procurement mechanism.

**Question 10. To what extent does the Commission ensure the transparency of its activities?**<sup>51</sup>

The transparency of the Commission activities is mainly warranted via its web site. The latter incorporates information related to the Commission activities. The web site of the Commission was developed in 2006 within the framework of a relevant USAID project which enables the location of necessary information on the Internet at least within 3 working days. The information incorporated in the web site is diverse and comprehensive ranging from legal framework, information on the Commission's activities to an on-line library. The web site also allows accepting complaints and declaration on-line (on-line forms are still in an experimental stage).<sup>52</sup>

The press secretary and periodically published official journals also ensure the transparency of the Commission activities.

The fact that the Commission sessions are open to the public is one of the most important pledges for the transparency of the Commission activities.

In general, the Commission activities can be considered transparent.

**Question 11. Has culture of competition been formulated in Armenia?**

Various studies prove that no matter how large the capacities of competition authority may be it is not enough yet to ensure level playing field and to effectively settle the competition protection issues in the country. The fact is that some governmental bodies can essentially distort competition by their decisions and proposed legislation. Thus, competition protection issue acquires republican significance and the public at large should be involved in competition campaign. The key goal of the above-mentioned is that the state bodies which are entitled to make decisions should have a clear

<sup>51</sup> As a result of Freedom of Information award ceremony organized by the Freedom of Information Centre the Commission was recognized as the most transparent state agency in 2005 for undertaking activities aimed at ensuring transparency and publicity of its activities and access to information.

<sup>52</sup> The address of the Commission web site is: [www.competition.am](http://www.competition.am)

idea on competition rules and realize their significance. It can be achieved not only through administrative measures but through the organization of relevant trainings. Particularly, the Commission organized training courses for journalists and business representatives. However, these measures are not enough to inculcate the idea that competition protection is important.

Thus, culture of competition in Armenia is still on an insufficient level.

The EU attaches a serious attention to the content of legal acts to be adopted in terms of distortion of competition rules in the framework of Lisbon strategy for making the European Union the most **competitive economy**. Moreover, the EU Commission has envisaged to screening the acting EU legislation in the context of the protection of competition rules therein.<sup>53</sup>

### **Question 12. What is the role of the judiciary in competition protection?**

The judiciary, particularly, the Economic Court (hereinafter the Administrative Court) has its unique role in economic competition protection. The judges should be specialized in the field of competition protection, otherwise the efforts of the Commission to protect competition will be vanished due to judges' incompetency.<sup>54</sup> Its vivid example is the repeal of the Commission Decision by the Economic Court in 2005 against "Coca-Cola Hellenic Bottling Company Armenia" CJSC. As per the Commission Decision the mentioned Company abused its dominant position to take back its refrigerators provided to several economic entities given them according to the signed contracts merely because the economic entities also placed refrigerators belonging to the competitor economic entity in their selling outlets (probably based on the availability of exclusive agreements). However, after conducting its "own investigation" the Court decided that the Commission had not sufficient ground to punish the Company. In our opinion, the Commission Decision was justified given the fact that currently the Economic Court is not able to ensure "quality" economic analysis of competition cases. In this respect, it is worth mentioning the EU Commission Decision on "Coca-Cola Company" CJSC. Part of the Decision is presented below<sup>55</sup>.

Competition Commissioner Neelie Kroes commented: "This decision will benefit consumers by improving competition in the markets for carbonated soft drinks in Europe. Thanks to the Commission's decision, consumers will be able to choose from a larger range of fizzy drinks at competitive prices."

The commitments offered by The Coca-Cola Company and three major bottlers (Coca-Cola) relate to carbonated soft drinks (CSDs) and provide:

- **No more exclusivity arrangements:** At all times, Coca-Cola customers will remain free to buy and sell carbonated soft drinks from any supplier of their choice.

It becomes clear from the above-mentioned that there are lots of thing to do in this field in terms of enhancing professional qualifications of judges.<sup>56</sup>

<sup>53</sup> More information is provided in Annex 12.

<sup>54</sup> It can be seen from the first glance that the the responsibility of judges is to approve or reject the Commission Decision and they don't need in-depth knowledge on competition issues but not in this case. There is a vivid example which proves that professional capacities of judges while investigating such issues are extremely important. It refers to a case taken place in the USA which is known as "USA against ALCOA". The investigation of the case lasted 4 years and the problem is that according to Federal Trade Commission ALCOA abused its dominant position in commodity market whereas ALCOA disputed that it did not have dominant position since the boundaries of the market were wider than it is presumed. This means that 4 years was needed for answering only one question: are the market boundaries assessed correctly or not? If we take into account that the case occurred in a country which has an extensive experience in this field then it is beyond doubt that the judges in Armenia need to accumulate relevant knowledge.

<sup>55</sup> Competition: Commission makes commitments from Coca-Cola legally binding, increasing consumer choice. Reference: IP/05/775 Date: 22/06/2005.

<sup>56</sup> As an alternative method for increasing the efficiency of Commission-judiciary cooperation it is necessary that in the current stage the Economic Court investigates competition cases not from the viewpoint of content but of

**The European Union** attaches importance to the continuous training of judges which is necessary in terms of effective implementation of competition legislation. To that end, the EU Commission has allocated 600 000 Euro for education and training of judges in EU25 member states in 2005.

**Question 13. Cooperation of the Commission with International Organizations and receipt of technical assistance.**

Development trends in the world economy bring competition protection issues beyond national borders. Thus, in this case cooperation with competition authorities of various countries and with international organizations is of great importance. Cooperation with them is also valuable in terms of receipt of technical assistance.

Since 2001 the Commission is a member of International Competition Network (ICN).

The Commission is also a member of the Interstate Council for Antimonopoly Policy of CIS countries (ICAP).

The Commission has also cooperated with the following international organizations:

- Organization for Economic Cooperation and Development (OECD)
- Armenian-European Policy and Legal Advice Centre (AEPLAC)
- EC delegation to Armenia and Georgia
- United States Agency for International Development (USAID)
- World Bank
- Organization for Security and Cooperation in Europe (OSCE)
- Relevant Competition Authorities of foreign countries.

The Commission and United States Agency for International Development (USAID) cooperate within the framework of “Commercial Law and Economic Regulation” Assistance Programme.

Since October, 2005 the Commission in cooperation with the European Commission delegation to Armenia and Georgia implemented “Support to the State Commission for the Protection of Economic Competition in Armenia and widening its capacities” Assistance Programme which was completed in 2006.

The Commission actively cooperates with Armenian-European Policy and Legal Advice Centre (AEPLAC) for achieving the priorities of National Programme for PCA implementation.

It can be concluded from the above-mentioned that the Commission closely cooperates with international organizations which, in general, can be considered effective.

### **1.3 Recommendation**

Based on the above-mentioned evaluation results the following recommendations are made for implementation of provisions of NP for PCA implementation and for effective economic competition protection in Armenia.

1. Establish a separate subdivision in the Commission which will be responsible for carrying out inspections.
2. Involve specialists in a subdivision with sector-specific knowledge and professional skills and attach importance to their continuous training.
3. Develop a specific order on procedures to carry out inspections.
4. Draft main provisions of “leniency” programme for effectively struggling anti-competitive agreements.
5. Develop specific order for the control over tenders and auctions.

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functions. Thus, if the Commission did not violate the procedure of decision making which is established by the Law then its decision is approved by the Court.

6. For effectively exercising control over concentrations amend the provisions of the Law and adopt a separate secondary legal act for regulating procedural issues of the subject matter.
7. Increase salary of the Commission staff by not regulating it with the rules of Civil Service Council but by a separate law.
8. Involve highly qualified specialists, particularly experienced economists and competition law lawyers.
9. Encourage staff training paying a particular attention to opportunities of long-term education (for instance distance learning) and develop a mechanism for evaluating the efficiency of training courses (for example, propose the trained employees to organize training courses by teaching the mastered material). In this context, attention should be attached to the command of the English language (or other EU official language) and the knowledge of EU matters.
10. Statistical and econometric software packages should be added to the Commission technical “arsenal” and through the relevant training courses enhance the level of knowledge of employees in that field making the use of those packages possible in the commodity market in the course of examining the competitive situation.
11. Legislative amendments and new legislative packages in Armenia should pass peer review by all means in the Commission in terms of ensuring competition rules therein and not distorting competition.
12. Gradually implement the monitoring of entire Armenia legislation in the context of maintaining competition rules therein.
13. With the support of international organizations ensure the continuous provision of training courses for keeping informed of competition rules by involving particularly state officials and judges therein.
14. Cooperate with the Central Bank of Armenia for jointly combating those violating competition rules in financial sector and for effectively exercising control over concentrations. For effectively controlling concentrations it is necessary to cooperate with the State Register of Armenia.
15. Cooperate with RA Public Services Regulatory Commission to clarify approaches of both sides for effective application and supervision of competition rules.
16. For effective implementation of competition protection in financial and public services sectors it is necessary to clearly distinguish the powers of the Commission and of the bodies regulating the mentioned fields on the subject matter for which it is necessary to amend the laws regulating the fields.

## 2. State aid

### 2.1 EU requirements

For implementing effective policy in the field of state aid the EU puts forward the following requirements:

- ❖ A National State Aid Monitoring Authority must be established the main goal of which will be the regulation of state aid in compliance with the provisions provided for in the Acquis.
- ❖ The mentioned authority shall receive relevant information from the state aid grantor and have an opportunity to effectively controlling existing and new state aid.
- ❖ The authority should have a centralized Register which will include information on any kind of state aid granted to all economic entities or branches of economy.

### 2.2 Situation in Armenia

#### *Legal framework*

Until recently there existed no legal act in Armenia which would regulate the state aid granted to economic entities by the state in terms of its influence on economic competition. All prudential legal acts existing in Armenia do not consider state aid in the context of competition. But thanks to the recent amendments made to the Law a special chapter was added therein devoted to state aid. In general, the provisions incorporated in the chapter comply with the EU criteria but it should be noted that they are not enough to regulate the whole framework for state aid. It is necessary to present peculiarities related to the regulation of the sector in more details and together with that to clearly mention regulation mechanisms. For example, State Aid legislation in the EU consists of a regulation implementing the provisions of the Treaty on the European Union, then there are some regulations which regulate de minimis state aid and issues related to the transparency of financial flows among economic entities who define state aid in different fields taking into account their influence on the state aid. For regulation of state aid in EU countries either separate laws are adopted or state aid provisions in Competition Law are presented more comprehensively.<sup>57</sup>

The introduction of the institute of state aid control in Armenia is a global issue in itself in terms of respecting competition rules. It presumes a logical review of economic policy development which will require either time or financial and human resources.

#### ***Question 14. Does state aid exist in Armenia? To which sectors and in what forms is the state aid granted?***

The EU attaches much importance to the role of the state aid since it is considered as a pillar of cohesion policy. But the EU pays a serious attention to state aid in terms of its influence on competition.<sup>58</sup> State aid also exists in Armenia and is granted to economic entities or any branches of economy and this state aid is not controlled in the context of its influence on economic competition.

State aid is granted in Armenia to the following sectors.<sup>59</sup>

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<sup>57</sup> Provisions related to state aid in Estonian Competition Law are presented in Annex 13.

<sup>58</sup> Information on state aid in the EU is presented in Annexes 14-17. As it can be seen, the volume of the state aid in the EU for the period of 1992-2003 has sharply decreased which proves the fact that a policy aimed at making the control over the state aid in the EU stricter and at effectively distributing the resources is being implemented.

The EU state aid action plan is presented in Annex 18.

<sup>59</sup> We attempt to present the situation in the field of state aid not analyzing its influence over competition.

**Small and Medium-Sized Enterprises**<sup>60</sup> – the State grants state aid to economic entities operating in this field. The state aid is granted in the form of preferential loans, direct financing, co-financing, business consultation and organization of training courses.

**Agriculture** – the main aid granted by the State in this field is the exemption from VAT on agricultural product. The State also grants aid in the form of sapling, fertilizers and etc.<sup>61</sup>

**Gas Supply** – the provision of subsidies to economic entities for the alleviation of consequences of gas price increase is also a form of state aid.<sup>62</sup>

**Tax incentives for foreign investments**– provision of preferences to enterprises with foreign capital in terms of profit tax is also considered as state aid.

**National TV**– financing of National TV by the State is considered state aid.<sup>63</sup>

**Printed Media** – financing of printed media is, in fact, an example of state aid.

Services of “general economic interests” include the below-mentioned sectors where the State conducts a special policy related to state orders and purchase of services.

**Healthcare** – state order in healthcare sector is considered as state aid.

**Education** – state-subsidized higher education can be considered as state aid.

Information on state aid in Armenia is presented in the Table below<sup>64</sup>.

Table 14. Volumes of State Aid in Armenia<sup>65</sup>

Sector	2005 (mln. AMD)	2006 (mln. AMD)
SME	300	350
Subsidization of Gas		17 858.1 <sup>66</sup>
Agriculture	96 800	111 900
Public TV	2 255.7	2 317.7
Publishing house		26.4
Total	999409.7	132452.2
% of GDP	4.4	4.9
Education System	4 193.2	3 328.5
Healthcare <sup>67</sup>	31 079.7	39 436
Total	35272.9	42764.5
% of GDP	1.6	1.6
Total Aid	134 628.6	175216.7
% of GDP	6	6.6

<sup>60</sup> State aid directed to SME in the EU is considered as horizontal state aid which do not usually produce serious influence on competition distortion and is included in group exemption.

<sup>61</sup> It should be mentioned that the Government of Armenia on behalf of the Ministry of Agriculture of Armenia develops a state aid programme in the field of agriculture.

<sup>62</sup> Not touching the issue of subsidization of economic entities in the given field it should be only mentioned that this factor is worth mentioning in terms of harmonisation with the WTO rules according to which export subsidies are prohibited (for instance the export of cement for the production of which gas is utilized).

<sup>63</sup> In general, the fact that the State owns national TV is a matter of serious concern in the EU. Private TVs considered that public TVs had serious competitive advantages against them. This fact induced the EU Commission to draft a special Communication that would explain the need and importance of having public TV and to elaborate the so-called special “private-investor” test according to which the expediency of state ownership in the given branch of economy is justified.

<sup>64</sup> The Table is developed based on preliminary estimates. To have a real picture of the state aid it is necessary to conduct a more thorough analysis.

<sup>65</sup> The majority of figures are taken from RA state budget performance, publications of RA NSS and surveys implemented by AEPLAC.

<sup>66</sup> The fact that 58.8 mln USD would be directed to this end in the given year and the fact that 73% of gas consumption falls upon the branches of economy were taken for the calculation of gas subsidization in 2006.

<sup>67</sup> The total amount directed for financing of healthcare is taken in this field which, in fact, is totally not considered as a state aid.

The Table shows that relative volume of state aid in Armenia (% out of GDP) is significantly larger than in the EU where the volume of state aid in 2005 accounted to 0.6% of GDP<sup>68</sup>. Moreover, even if we leave only agriculture and gas supply in the list (while considering others as horizontal state aid and state aid of general economic interest), anyhow, the volume of the state aid remains large which accounts for 4.9% of GDP in 2006<sup>69</sup>.

**Question 14. Is there any state body in Armenia which exercises control over state aid?**

As a result of amendments made to the law in 2007 the Commission was reserved the right to exercise control over state aid in Armenia. Usually it is the Competition Authority that is entitled to control state aid but there may be some other options<sup>70</sup>.

For instance, till May 1, 2004 (before accession to the EU) the control over implementation of State aid control rules in **Latvia** was provided by the State Aid Surveillance Commission. It is an independent body which consisted of the representatives of 13 other state bodies including Competition Authority.

But the provisions of the Law are not enough yet for effectively controlling state aid in Armenia. It is necessary to more clearly regulate the whole procedure of state aid control as well as establish close cooperation with the Ministry of Finance and Economy of Armenia and other state agencies.

Particularly, pursuant to the Law provisions, state aid grantor is entitled to obtain the Commission's opinion before granting state aid (whereas in EU countries state aid grantor is required to obtain the opinion of corresponding structure). The Commission is entitled to provide such an opinion in the initial stage of the state budget formulation on the possible anti-competitive nature of state aid therein. Currently, in this case the positive opinion of the Commission cannot be compulsory. The second case relates to the so-called "ad hoc" issues when unplanned state aid is granted to economic entities during a year according to the corresponding Decision of the Government of Armenia. In this case, the draft Decision of the Government of Armenia is submitted to the Commission's opinion the positive nature of which can be compulsory (coming from the importance of the main issue) for further adoption of the document. The third case relates to the fact when as per the state budget the state aid is granted to any branches of economy but the recipients are not clearly defined, i.e. issues can occur here in the distribution of the given state aid in the context of violation of competition rules in the course of this process. All these issues shall be regulated by Armenian legislation.

In parallel with the development of economy, the establishment and development of the institute of services purchase becomes increasingly important in case of which the transparency of financial resources distribution and ensuring of free competitive environment during this process are also of great importance.

Coming from the peculiarities of the State role in Armenian economy it will be necessary to draft a corresponding legal framework on procedures of granting state aid in different branches (including horizontal state aid) and sectors of "general economic interests".

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<sup>68</sup> The overall state aid in the EU cover the aid granted to industry, services, agriculture, coal mining and part of transport sector. Here, railway transport sector and services of "general economic interest" are not covered. See "State Aid Scoreboard". Brussels, 11.12.2006, COM (2006)716 final.

<sup>69</sup> The main reason is that as of 2006 the share of agriculture in GDP in Armenia accounts to 17.7% whereas this indicator in the EU varies around 2%. Even if we set apart the extra outcome from gross agricultural product which accounts to 65% on average and we calculate state aid from that amount (VAT amount), then even in that case the volume of state aid granted to agriculture would account to 2.7% of GDP.

<sup>70</sup> Information on competent bodies for state aid control in several EU countries is provided in Annex 19.

**Question 15. Is there in Armenia a Centralized Log (Register) for information on the state aid?**

The state aid in Armenia as budget financing is granted by the Ministry of Finance and Economy of Armenia but information on it separated as a state aid is not considered.

**Question 16. Does the Commission have qualified human resources for effectively exercising control over state aid?**

The fact that the Commission was reserved the right to control state aid causes the most serious problems for the Commission, particularly, in terms of qualified human resources. State aid is a sector which requires extensive and in-depth professional knowledge. Although international experts conducted seminars dedicated to state aid in the Commission, however, they are not sufficient for having clear and exhaustive knowledge on the sector. Given the complexity of the sector it will be necessary to undertake serious measures for training of the staff and involving qualified staff.

### **3.3 Recommendations**

It is recommended the following activities for state aid control in Armenia:

1. For effective control of state aid in Armenia amend the Law and adopt separate legal act(s) where procedures for granting state aid in various fields (including horizontal state aid and sectors of “general economic interests”) will be clearly regulated.
2. Establish a separate subdivision within the Commission which will be responsible for the settlement of issues related with state aid.
3. Establish cooperation with the Ministry of Finance and Economy of Armenia and other state agencies for regulating the procedures of granting state aid in various sectors.
4. Jointly with the Ministry of Finance and Economy of Armenia and other state agencies implement monitoring of economic policy conducted in Armenia and of legal framework for disclosing elements of state aid therein.
5. With the support of International organizations make possible the training of the Commission staff abroad, particularly with the view to studying economic and legal bases of state aid in one of EU member states and the practice of the country concerned.
6. Establish Information Register on State Aid where any information on state aid in Armenia will be collected.

## Annex 1

### **Powers of the State Commission for the Protection of Economic Protection.**

The Commission is entitled to:

- a) Make decisions on
  - the possible and actual infringement of this Law,
  - the study of commodity markets
  - conduct research, check, study and/or monitor for initiating administrative proceedings and enforcing the latter,
    - boundaries of commodity markets, existence of dominant economic entities on that market, as well as implementation of activities conditioned with the latter;
    - disaggregation (split, separation, alienation of share or means) of dominant economic entity, which abused its position two or more times within one year;
    - termination of the Law infringements by the economic entity or elimination of its consequences, restoration of the initial situation, change or termination of agreements conflicting with the Law and signing of contracts with other economic entities;
    - provide conclusions regarding acts adopted by the state or self-government bodies or their officials— those conflicting with the economic competition protection legislation, anti-competitive agreements, state aids, as well as concentrations,
    - suspend, cease, repeal concentration or state aid,
    - imposition of sanctions for the infringement of this Law upon economic entities and their officials, as well as officials of state and local self-governing bodies,
- b) Exercise supervision over the enforcement (maintenance) of the Commission decision,
- c) With the view of checking the credibility of the information provided by economic entity, disclosing the activities of economic entity or to supervising the enforcement of the Commission decision conduct research, check and study according to the order prescribed by the Law,
- d) Apply to the court for the Law infringements, including the request to recognize fully or partially void the contracts signed with the Law infringements as well as with the request to introduce changes or terminate them;
- e) Request the Government of Armenia to terminate activities of state bodies and their officials contradicting this Law,
- f) Impose penalties or apply other means of responsibility as envisaged by the Law;
- g) Adopt individual and prudential legal acts including regulations connected with anticompetitive agreements, abuse of dominant positions, concentrations, unfair competition, state aid as well as related with boundaries of commodity market
- h) Provide explanations regarding issues connected with the enforcement of the economic competition protection legislation;
- i) Perform other powers as envisaged by the legislation.

## Annex 2

### Functions of the Staff of RA SCPEC

*Department of Methodology and Registrar Maintenance of Staff shall:*

- ❖ Develop the necessary methodology deriving from the provisions of the RA Law on “Protection of Economic Competition”,
- ❖ Develop the draft annual action plan of the Commission for the upcoming year,
- ❖ Develop draft report on the Commission’s activity of the past year,
- ❖ Submit proposals regarding the legal acts related to the economic competition, if necessary,
- ❖ Prepare materials for conducting public and explanatory activities of the Commission,
- ❖ Ensure the maintenance of the Centralized Log (Register) of Dominant Economic Entities,
- ❖ Assess the changes of economic indices of economic entities’ activities and offer appropriate proposals based on the data received regularly by the economic entities which are registered in the Centralized Log (Register) of Dominant Economic Entities,
- ❖ Ensure implementation of appropriate researches and analyses related to concentrations,
- ❖ Prepare materials necessary for the publication of data contained in the Log (Registrar),
- ❖ Perform other powers delegated according to the legislation of the Republic of Armenia.

*Analysis Department of Staff shall:*

- ❖ Perform appropriate analyses to assess the competitive environment on product markets,
- ❖ Perform activities related to defining product type and geographical boundaries of product markets,
- ❖ Perform activities related to defining dominant position of economic entities on product markets,
- ❖ Ensure accomplishment of appropriate researches and analyses regarding the possible abuse of dominance,
- ❖ Ensure accomplishment of appropriate researches and analyses regarding possible anticompetitive agreements,
- ❖ Set up database based on the activities implemented by the Department,
- ❖ Perform other powers delegated according to the legislation of the Republic of Armenia.

*Department of Research and Enforcement of Staff shall:*

- ❖ Carry out monitoring with the purpose of revealing possible violations of the economic competition protection legislation by economic entities,
- ❖ Reveal and assess cases of RA legislation violations on economic competition protection based on monitoring, informative and other materials and submit appropriate proposals related to them,
- ❖ Accomplish appropriate researches regarding the unfair competition based on the applications, appeals forwarded to the Commission, publications in mass media means, monitoring conducted by the Department as well as other materials under the disposal of the Commission,
- ❖ Ensure collection and preliminary processing of data from economic entities, state and local self-government bodies, other organizations and prepare appropriate references to perform the functions of the Commission,
- ❖ Update the database of activities of economic entities,
- ❖ Perform other powers delegated according to the legislation of the Republic of Armenia.

*Legal and Administrative Proceedings Department of Staff shall:*

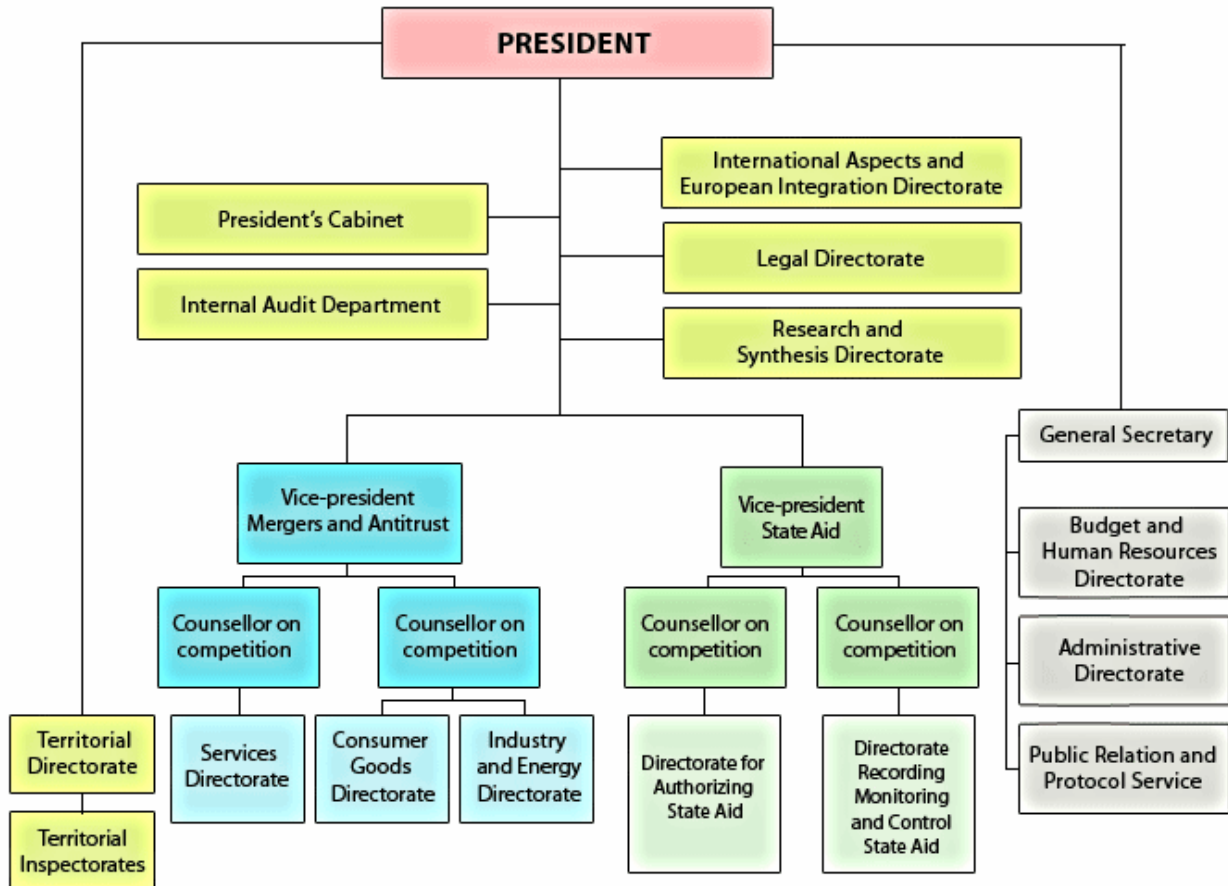
- ❖ Ensure legal support to the Commission and Staff,
- ❖ Ensure the legal analysis of the Commission activity,
- ❖ Provide legal conclusions regarding the drafts of the Commission Decisions prepared by other structural sub-divisions of the Commission Staff, drafts of documents to be submitted to the Commission Chair and Head of Staff for their signature as well as regarding other draft documents,
- ❖ Prepare relevant draft acts related to the economic competition protection,
- ❖ Submit proposals, upon the instruction of the Commission Chair, regarding the drafts included in the agenda of the GOA session,
- ❖ Ensure the presence of the representative of the Department in preparing legal draft acts by other sub-divisions of Staff and activities connected with the implementation of administrative proceeding, if necessary,
- ❖ Compile appropriate claims or applications in case of failure to accomplish the Commission Decisions, if necessary; present Commission in the court or other bodies upon the instruction of the Commission Chair, by the appropriate letter,
- ❖ Perform other powers delegated according to the legislation of the Republic of Armenia.

*Foreign Relation Division of Staff shall:*

- ❖ Study and summarize the economic competition protection processes in foreign countries and submit appropriate proposals to Commission,
- ❖ Ensure relationships of the Commission and Staff with competent bodies of foreign countries and international organizations,
- ❖ Coordinate implementation of activities envisaged in the international contracts signed on the issues referring the Commission competencies,
- ❖ Implement and coordinate activities of the Commission and Staff connected with international projects,
- ❖ Ensure the preparation of the Commission website, updating and servicing activities,
- ❖ Ensure relationships of Commission and Staff with representatives of non-state structures,
- ❖ Perform other powers delegated according to the legislation of the Republic of Armenia.

### Annex 3

### The structure of Romanian Competition Authority



## Annex 4

### Exrtact from Competition Legislation of Germany

#### (ACT AGAINST RESTRAINTS OF COMPETITION)

##### § 57. Investigations, Taking of Evidence

- (1) The cartel authority may conduct any investigations and collect any evidence required.
- (2) §§ 372 (1), §§ 376, 377, 378, 380 to 387, 390, 395 to 397, 398 (1), §§ 401, 402, 404, 404a, 406 to 409, 411 to 414 of the Code of Civil Procedure shall apply *mutatis mutandis* to the taking of evidence by inspection, testimony of witnesses, and experts; detention shall not be ordered. The Court of Appeal [*Oberlandesgericht*] shall decide on appeals.
- (3) The testimony of witnesses should be recorded, and the record signed by the investigating member of the cartel authority; if a recording clerk attends, he shall also sign. The records should indicate the place and the date of the hearing as well as the names of those who conducted it and of the parties.
- (4) The record shall be read to the witness for his approval or be presented to be read by himself. The approval given shall be recorded and signed by the witness. If the signature is omitted, the reason for this shall be indicated.
- (5) The provisions of paragraphs 3 and 4 shall apply *mutatis mutandis* to the questioning of experts.
  - (6) The cartel authority may request the Local Court [*Amtsgericht*] to administer the oath to witnesses if it considers such an oath to be necessary to obtain truthful testimony. The court shall decide whether the oath is to be administered.

##### § 58 Seizure

- (1) The cartel authority may seize objects which may be of importance as evidence in the investigation. The person affected by the seizure shall be informed thereof without delay.
- (2) Within three days of the seizure, the cartel authority shall seek judicial confirmation by the Local Court in whose district the seizure took place, if neither the person affected nor any relative of legal age was present at the seizure or if the person affected or, in his absence, a relative of legal age explicitly objected to the seizure.
- (3) The person affected may at any time request judicial review of the seizure. He shall be informed of this right. The court having jurisdiction under paragraph 2 shall rule on the request.
- (4) The court decision may be appealed. §§ 306 to 310 and 311a of the Code of Criminal Procedure shall apply *mutatis mutandis*.

##### § 72 Inspection of Files

- (1) The parties referred to in § 67(1) no. 1 and 2 and (2) may inspect the court files and may obtain certified and other copies and excerpts at their own expense from the court clerk. § 299(3) of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (2) The inspection of preparatory files, supplementary files, expert opinions and other information shall be allowed only with the consent of the authorities to whom the files belong or who

have obtained the information. The cartel authority shall refuse to consent to an inspection of its records if this is necessary for important reasons, in particular to protect operating or business secrets. If inspection is refused or impermissible, the decision may be based on such records only insofar as their content formed part of the pleadings. The appellate court may, after hearing the person affected by such disclosure, order by decree the disclosure of facts or evidence, the confidentiality of which is demanded for important reasons, in particular to protect operating or business secrets, insofar as such facts or evidence are relevant for the decision, there is no other way to ascertain the facts and, considering all circumstances in the particular case, the significance of the matter in protecting competition outweighs the interests of the person affected in maintaining confidentiality. The decree shall contain a statement of reasons. In proceedings pursuant to sentence 4, the person affected need not be represented by a lawyer.

- (3) The appellate court may permit the parties referred to in § 67(1) no. 3 to inspect files to the same extent, having heard those to whom the files belong.

### **§ 111 Inspection of Files**

- (1) The parties may inspect the files at the public procurement tribunal and may obtain certified and other copies and excerpts from the clerk's office at their own expense.
- (2) The public procurement tribunal shall refuse the inspection of documents where this is necessary for important reasons, in particular for the protection of secrets or to protect operating or business secrets.
- (3) Every party shall indicate the secrets named in paragraph 2 when sending its files or statements, and shall mark them in the documents. If this is not done, the public procurement tribunal may assume that the party consents to the inspection.
- (4) Refusal to allow an inspection of the files may be challenged only in connection with an immediate complaint in the main issue.

## Extract from Competition Legislation of Estonia

### § 60. Inspection of seat or place of business of undertaking

(1) In order to establish a violation or possible violation of this Act, an official or representative of the Competition Board authorised by a directive of the Director General of the Competition Board or his or her deputy (hereinafter person conducting an investigation) has the right, without prior warning or special permission, to inspect the seat and place of business of an undertaking, including the enterprises, territory, buildings, rooms and means of transport of the undertaking, both during working hours and at any time the place of business is used. With the consent of the undertaking, the seat, place of business or enterprises of the undertaking may also be inspected at any other time.

(2) An inspection provided for in subsection (1) of this section shall be conducted with the knowledge of the undertaking, or a representative or employee thereof, and they have the right to be present during the inspection.

(3) At the seat of the undertaking or the location of the place of business of an undertaking under inspection, the person conducting such inspection shall present to the undertaking, its representative or employee the directive issued by the Director General of the Competition Board or his or her deputy concerning the authorisation of the person conducting the inspection.

(4) During an inspection provided for in subsection (1) of this section, the person conducting the inspection has the right to:

1) immediately examine documents relating to the activities of the undertaking, drafts thereof and other materials and to obtain, at the expense of the person under inspection, copies or transcripts thereof, the authenticity of which shall be certified by the signature of the person submitting them;

2) immediately examine data or databases kept in electronic form on computer at the seat or place of business of the undertaking under inspection and electronic data media held at the seat or place of business and to make printouts and electronic copies thereof at the expense of the undertaking under inspection, the authenticity of which shall be certified by the signature of the person under inspection or the representative thereof or employee on the printout or on a separate page;

3) request the undertaking or a representative or employee thereof to submit explanations which shall be documented pursuant to subsection 57 (3) of this Act.

(5) The person conducting an inspection is required to prepare a report of the results of the inspection.

(6) A report specified in subsection (5) of this section shall set out:

1) the time and place of preparation of the report;

2) the name and position of the person preparing the report;

3) in the case of a natural person under inspection, the name and position of the person or his or her representative or employee or, in the case of a legal person, the name of the legal person and the name and position of the representative or employee of the legal person;

4) a description of the course of the inspection;

5) a notation concerning presentation of the directive specified in subsection (3) of this section to the undertaking under inspection or the representative or employee thereof;

6) a list of the explanations received from the undertaking under inspection or the representative or employee thereof;

7) a list of the materials obtained in the course of the inspection;

8) a notation concerning the participation of an interpreter or translator if one is involved;

- 9) the notes of the undertaking under inspection or the representative or employee thereof concerning the inspection;
- 10) a notation indicating that the undertaking under inspection or the representative or employee thereof has received one copy of the report.
- (7) If an undertaking or the representative or employee thereof interferes with an inspection, a corresponding entry shall be made in the report indicating the reasons for such interference, if possible.
- (8) A report shall be prepared in two copies which shall be signed by the person preparing the summary and the representative or employee of the undertaking under inspection. Each page of the report shall be signed and the undertaking under inspection and the Competition Board shall each receive one copy of the report. All materials obtained in the course of the inspection shall be annexed to the copy held by the Competition Board.
- (9) If an undertaking under inspection or the representative or employee thereof refuses to sign the report, a corresponding entry shall be made in the report indicating the reasons for such refusal.

## Annex 5

### Leniency Program in Romania

#### The Leniency Policy

*“The undertakings do not have any interest to remain in a vicious competition environment, because the Competition Council can find out, at any time, the means to prove the existence of that cartel and then the consequences will be very serious for those involved”*

Mihai Berinde

President of the Competition Council

The secret cartels aimed at fixing prices, production or sales quotas, sharing markets or clients, restricting imports or exports, bid-rigging are serious infringements of the Competition Law no.21/1996 and are sanctioned with fines up to 10% of the total turnover and by confiscating the supplementary incomes obtained by the undertakings from infringing the Law.

By applying the leniency policy, the Competition Council encourages undertakings to give up these agreements and to come forward with information and evidence regarding to these agreements.

#### The system of granting leniency

The undertakings can benefit of total immunity from fines or of reduction of fine in accordance with the information presented to the Competition Council.

A decisive contribution for starting the investigation on a cartel case may justify granting the immunity from fines to the undertakings concerned. Immunity from fines represents exoneration from the fines stipulated in Art.56 (1), (a) of the Competition Law no.21/1996, with subsequent amendments and completions.

Competition Council will grant immunity from fines for an undertaking if that undertaking is the first to submit evidence:

- *that, in the Competition Council's view, may enable it to open the investigation pursuant to the art.40 of the Competition Law no.21/1996, with subsequent amendments and completions;*
- *that, in the Competition Council's view, may enable it to prove an infringement of Art. 5 of the Competition Law no.21/1996, with subsequent amendments and completions.*

An undertaking may benefit of immunity from fines if it cumulatively fulfils the following conditions:

- *the undertaking cooperates fully, continuously and expeditiously with the Competition Council;*
- *the undertaking ends its involvement in the alleged illegal activity, no later than the date at which it submits evidence;*

*- the undertaking did not take steps to coerce other undertakings to participate in the illegal alleged activity .*

A cooperation by one undertaking with Competition Council may justify a reduction of a fine. In order to qualify, the undertaking must cumulatively meet the following conditions:

*- the undertaking must provide the Competition Council with evidence of the alleged infringement which represents significant added value with respect to the evidence already in its possession;*

*- the undertaking must end its involvement in the suspected infringement no later than the date at which it submits the evidence to the Competition Council.*

For the first undertaking which informs The Competition Council with respect to the existence of a cartel, the Competition Council grants:

### **IMMUNITY**

The reduction level an undertaking will benefit from, relative to the fine which would have been normally imposed, will be granted within next bands:

30-50 %

20-30 %

0-20 %

In order to determine the reduction level within each of those bands, the Competition Council will take into account the date at which the evidence was submitted, as well as the significant added value brought by it.

## Annex 6

### EU Leniency Program

#### *The Commission's leniency programme*

Leniency remains a very important enforcement tool in cartel cases. Under the Commission's leniency programme, immunity from fines can be available for the first undertaking to provide evidence of a cartel to the Commission, and a substantial reduction in fines for any subsequent applicant. Whilst the Commission's first Leniency Notice of 1996 resulted in more than 80 applications in six years of operation, the Leniency Notice of 2002 has increased the number of applications (both for immunity and a reduction of fines) to 165 in less than four years (i.e. about three per month on average): 86 of these applications were for immunity and 79 for reduction of fines.

However, the high number of applications received does not reflect the number of cartel investigations the Commission has opened since 2002. In deciding which hardcore cartels to target, the Commission, within the framework of the European Competition Network, focused its efforts on violations that have an impact in at least several Member States or in the EEA as a whole. A number of cases, although formally falling within the prohibition set out in Article 81 EC, concerned violations that were of limited size, often limited to a single Member State or even part of a Member State. In such cases, the applications were sometimes given an investigative follow-up by a national competition authority (NCA) in the Member State concerned rather than the Commission, in particular when similar applications were also made by the undertaking to the NCA in the Member State. However, such cases are included in the above statistics as the Commission initially issued a conditional immunity decision in these cases. Moreover, under the 2002 Notice, immunity may be granted when an undertaking has provided sufficient evidence for the Commission to launch inspections. Such evidence may not be sufficient to actually prove the infringement and complementary fact-finding is most often necessary. In deciding which cases to pursue, the Commission therefore has to set its priorities. For instance, where the applications concerned cases where the alleged infringement had ceased a number of years earlier, it may be considered that a new investigation was unlikely to bring any conclusive results. In other cases, the evidence presented may be too scarce or imprecise to justify a decision of conditional immunity and/or the opening of an inquiry.

The number of applications which did not meet the substantive conditions for immunity increased in 2005 as compared with previous years. Five immunity applications were formally rejected as the information provided to the Commission neither allowed it to carry out surprise inspections nor to find an infringement under Article 81 EC. (The undertakings concerned chose, however, not to withdraw the evidence provided, but asked the Commission to consider the information for a reduction of a fine instead, should the Commission nevertheless impose a fine in the future in relation to the alleged violation.) In one case, where it was clear from the outset that the Commission would not open an investigation, an applicant was informed of the Commission's intention not to take action on the immunity application because it was unlikely that the conditions for immunity were met and the case was not suitable for further investigation by the Commission. Three applications were considered non-eligible in 2005 because the facts reported were not covered by the material scope of the Leniency Notice. The Commission must ensure that the leniency programme is not misused to bring agreements to the attention of the Commission that previously would have fallen under the notification system that was abolished with the entry into force of Regulation (EC) No 1/2003. Finally, the Commission informed an undertaking to which it had granted conditional immunity that its status would not be confirmed in the final cartel decision. The undertaking had breached its duty of cooperation by disclosing to other competitors that it had applied for immunity before inspections were carried out by the Commission.

As regards applications for a reduction in fines, the statistics provided should be seen in the light of the fact that in a single investigation normally more than one undertaking applies for a reduction in fines.

Three years of experience in working with the Commission's 2002 Leniency Notice give rise to a number of general observations. The benefits of immunity are granted to undertakings which fulfil the conditions and duties set out in the Leniency Notice. Undertakings which are awarded conditional immunity must cooperate fully and continuously with the Commission. This duty of cooperation includes, *inter alia*, the duty not to disclose the application to third parties without the prior consent of the Commission, to search for and provide to the Commission all possible information regarding the alleged cartel and to answer all questions the Commission may ask, which includes the possibility of taking oral statements from company employees. A paperless procedure (i.e. recorded oral corporate statements) which the Commission has put in place is used in many cases and serves only to avoid immunity applicants being placed at a disadvantage compared to other cartel participants before civil courts. Pre-existing documents relevant to the infringement must, however, always be supplied.

Whether or not evidence can be recorded as having significant added value – and therefore qualifying for a reduction in the fine – depends on the facts of the case and the strength of the evidence already in the possession of the Commission. Where the information provided by the immunity applicant and the inspections is still insufficient to prove the infringement, new evidence provided by an applicant for a reduction of fines may allow the Commission to actually prove the infringement. Significant added value can also occur where the leniency applicant does not provide new evidence, but corroborates the already existing evidence and this corroboration is needed to prove the infringement. Even where the Commission has already been able to find an infringement, additional evidence can still have a significant added value if it has a direct bearing on the gravity or duration of the suspected cartel. The Commission's task in the years ahead is to maintain and further strengthen the effectiveness of its leniency policy. The purpose is to ensure effective deterrence of cartels to allow for prompt investigation and to ensure that cartels are severely penalized, in order to ensure a competitive environment for the benefit of consumers.

## Annex 7

### Estonian experience on control of concentration in financial sector

#### § 23. Turnover of parties to concentration

(3) The turnover of a credit or financial institution is deemed to comprise the total amount of the following income items after deduction of value added tax and income tax:

- 1) interest income;
- 2) income from financial investments;
- 3) income from service charges;
- 4) income from financial operations;
- 5) other operating income.

(4) The turnover of a credit or financial institution in Estonia consists of the income earned by a credit or financial institution established in Estonia, or an Estonian branch of a foreign credit or financial institution.

(5) The turnover of an insurer is deemed to comprise the value of the gross insurance premiums which includes all insurance premiums received and receivable in respect of insurance contracts issued by or on behalf of the insurer, including outgoing reinsurance premiums after deduction of the taxes and other fees and payments charged on individual insurance premiums or the total volume of insurance premiums

#### § 25. Notification of concentrations

(4) Credit institutions, financial institutions and insurers shall notify of a concentration after obtaining permission from the supervisory authority of the corresponding field.

## Annex 8

### Activities of Competition Council of Romania in 2005<sup>71</sup>

Cases of Law Infringement	Decisions Adopted	New Cases
Anti-competitive agreements	14	4
Concentrations	115	131
Abuse of dominant position	5	2
Sectoral examinations	-	-
Infringements by State Authorities	1	2
Non-enforcement of decisions adopted	1	-
Reservation Request for the law provisions implementation	2	-
Non-submission of declarations	19	17
<b>Total</b>	<b>157</b>	<b>156</b>

<sup>71</sup> Annual Report on Competition Policy Developments in Romania. OECD 2006. DAF/COMP(2006)12

**Annex 9**  
**Budgets of Competition Authorities of Various Countries**

Country	Budget of Competition Authority (USA dollar)	GDP (million dollar)	Volume USA	Budget Competition Authority/GDP (%) of
Peru	11 000 000	78 430,8		0,014
Australia	97 328 000	700 671,6		0,014
Romania (2006)	11 921 000	98 558,7		0,012
Armenia (2001)	216 189	2118,4		0,010
Netherlands	47 060 000	594 755,5		0,008
Greece (2006)	14 560 000	213 697,6		0,007
Hungary	7 280 000	109 153,9		0,007
Armenia (2006)	382 681	6 405,7		0,006
Latvia	940 427	15 770,5		0,006
Portugal	10 140 000	173 085,3		0,006
Panama	900 000	15 467,0		0,006
Czech Republic	6 614 846	122 345,0		0,005
Lithuania	1 295 180	25 495,2		0,005
Estonia	664 265	13 106,6		0,005
Korea (2006)	38 000 000	787 624,5		0,005
Turkey	17 062 500	363 299,9		0,005
Canada	49 000 000	1 115 192,0		0,004
South Africa	10 548 560	240 151,6		0,004
Norway	12 350 000	283 920,0		0,004
Armenia (2005)	209661	4902,8		0,004
Macedonia	245 570	5 762,1		0,004
Ukraine (2004)	3 458 000	81 664,2		0,004
Zambia	300 000	7 257,4		0,004
Ireland (2006)	7 475 000	196 387,7		0,004
Israel	4 500 000	123 433,6		0,004
Finland	6 500 000	193 175,5		0,003
Slovakia	1 560 000	46 411,9		0,003
Kenya	600 000	17 977,3		0,003
Sweden	10 700 000	354 115,4		0,003
Slovenia	942 500	34 029,6		0,003
Poland (2004)	8 283 600	299 150,9		0,003
Chili	3 125 000	115 250,0		0,003
Bulgaria (2004)	704 682	26 648,1		0,003
Dania	6 264 000	254 400,9		0,002
Great Britain	46 000 000	2 192 553,0		0,002
Mexico	15 000 000	768 437,5		0,002
Japan (2004)	74 500 000	4 505 912,0		0,002
Russia (2004)	12 500 000	763 720,0		0,002
Switzerland	5 390 000	365 937,4		0,001
Italy	25 000 000	1 723 044,0		0,001
USA	144 500 000	12 455 070,0		0,001
France (2006)	17 550 000	2 110 185,0		0,001
Malta	45 500	5 569,6		0,001
Germany	22 100 000	2 781 900,0		0,001
Argentina	720 000	183 309,4		0,0004
Spain	3 770 000	1 123 691,0		0,0003
Philippines	199 456	98 305,9		0,0002
Belgium	247 000	364 735,4		0,0001

## Annex 10

### Structure of Subdivisions of RA SCPEC

Department	Economist	Lawyer	Other professions	Total
Head of Staff	1			1
Deputy Head of Staff			1	1
1. Methodology and Registrar Maintenance Department	2		1	4
2. Analysis Department	4		3	7
3. Research and Enforcement Department	4		3	7
4. Law and Administrative Proceedings Department		7		7
5. Foreign Relations Division	1		2	3
6. Administration Management Department	1		3	4
7. Accounting Division	1		1	2
<b>Total</b>	<b>14</b>	<b>7</b>	<b>15</b>	<b>36</b>

## Annex 10.1

### Structure of Competition Authorities Staff

Country	Number of Employees	Economists	% in Total	Lawyers	% in Total	Other professions	% in Total
Armenia (2001)	30	9	30,0	3,0	10,0	18	60,0
Armenia (2006)	39	14	35,9	7	17,9	15	38,5
Romania (2005)	267	160	59,9	36,0	13,5	71	26,6
Poland (2004)	274	47	17,2	159,0	58,0	68	24,8
Croatia (2005)	40	32			80,0	8	20,0
Norway (2005)	106	42	39,6	32,0	30,2	32	30,2
Slovakia (2005)	70	31	44,3	17,0	24,3	7	10,0
Switzerland (2005)	53	12	22,6	21,0	39,6	20	37,7
USA (2005)	770	569			73,9	201	26,1

## Annex 11

### Turnover of RA SCPEC Staff <sup>72</sup>

Outflow			Inflow			Balance
2003			2003			
By Professions	Number of Employees	Share in Total (%)	By Professions	Number of Employees	Share in Total (%)	
Economist	1	33.3	Economist	-	-	-1
Lawyer	1	33.3	Lawyer	-	-	-1
Other	1	33.3	Other	-	-	-1
<b>Total</b>	<b>3</b>	<b>100</b>	<b>Total</b>	<b>-</b>	<b>-</b>	<b>+6</b>
2004			2004			Balance
By Professions	Number of Employees	Share in Total (%)	By Professions	Number of Employees	Share in Total (%)	
Economist	1	20	Economist	3	60	+2
Lawyer	-	-	Lawyer	-	-	-
Other	4	80	Other	2	40	-2
<b>Total</b>	<b>5</b>	<b>100</b>	<b>Total</b>	<b>5</b>	<b>100</b>	<b>0</b>
2005			2005			Balance
By Professions	Number of Employees	Share in Total (%)	By Professions	Number of Employees	Share in Total (%)	
Economist	-	-	Economist	1	33.3	+1
Lawyer	1	50	Lawyer	2	66.7	+1
Other	1	50	Other	-	-	-1
<b>Total</b>	<b>2</b>	<b>100</b>	<b>Total</b>	<b>3</b>	<b>100</b>	<b>+1</b>
2006			2006			Balance
By Professions	Number of Employees	Share in Total (%)	By Professions	Number of Employees	Share in Total (%)	
Economist	3	100	Economist	6	54.5	+3
Lawyer	-	-	Lawyer	4	36.4	4
Other	-	-	Other	1	9	+1
<b>Total</b>	<b>3</b>	<b>100</b>	<b>Total</b>	<b>11</b>	<b>100</b>	<b>+8</b>

<sup>72</sup> Turnover of human resources in 2002 was not recorded.

## Annex 12

### COMPETITION SCREENING OF EU LEGISLATION

A key action identified in the Lisbon Strategy, which was relaunched on 22-23 March, was to improve the regulatory environment at both EU and national level in order to enhance competitiveness. Work aimed at achieving “better regulation” began in 2002 under a Commission Action Plan, which was revised on 16 March. This covers all pending EU legislative proposals, existing rules (simplification) and new legislative and policy proposals. In line with the Action

Plan, the Commission adopted revised Impact Assessment Guidelines in June covering all legislative and policy initiatives included in the Commission’s Annual Work Programme. Such assessments explore alternative options to solve a defined problem and evaluate their economic, environmental and social impact.

The Impact Assessment Guidelines recognise that “vigorous competition in a supportive business environment is a key driver of productivity growth and competitiveness”. *Competition screening* therefore forms an integral part of impact assessment. The Impact Assessment Guidelines list – non-exhaustively – the types of proposals which need to be screened for possible negative impacts on competition (for instance rules on liberalised network industries, measures which have an impact on barriers to entry and exit, exemptions from competition rules, etc.) The basic “competition test” applied in the context of competition policy screening involves asking two fundamental questions at the outset. First: *what restrictions* of competition may directly or indirectly result from the proposal (does it place restrictions on market entry, does it affect business conduct, etc.)? Second: are *less restrictive means* available to achieve the policy objective in question? Competition screening may result in the choice of less restrictive regulatory or in market-based methods to achieve certain policy objectives, thereby avoiding unnecessary or disproportionate restrictions of competition. This is in the interests of both consumers and industry.

## Annex 13

### Extract from Competition Legislation of Estonia

#### Chapter 6 State Aid

##### § 30. State Aid

- (1) State aid shall be deemed to be the aid laid down in Article 87(1) of the Treaty establishing the European Community (hereinafter referred to as “the Treaty”).
- (2) State aid shall be granted for a specified term and to the extent necessary to achieve the objective specified in articles 87(2) and (3) of the Treaty.
- (3) The provisions of this Chapter shall not apply to aid granted to the transport sector or aid related to the production, processing or marketing of the products listed in Annex I of the Treaty.

##### § 30<sup>1</sup>. Grantor of state aid

- (1) The grantor of state aid shall be the state, local government or other body such as foundation, non-profit association, legal person in public law, or public undertaking specified in subsection 31(3<sup>1</sup>) of this Act, which directly or indirectly use the resources of the state or a local government for granting state aid.
- (2) Upon the grant of state aid the grantor of state aid is required to ensure the transparency and efficiency of the grant and use of state aid and to inspect the purposefulness of use of state aid.
- (3) The Minister of Finance has the right to request from the grantor of state aid information about the performance of the duties specified in subsection (2) of this section.

##### § 31. Public undertaking and undertaking providing services of general interest

- (3<sup>1</sup>) A public undertaking is an undertaking over which the state or a local government exercises a dominant influence either directly or indirectly by virtue of right of ownership or financial participation, on the basis of the legislation applicable to the person or in any other manner.
- (3<sup>2</sup>) An undertaking providing services of general interest is an undertaking to which the state or a local government has assigned the duty to provide a service of general interest which is not available on the market and the provision of which the state or the local government considers necessary. Services of public interest shall be defined and the duty to provide such services shall be established by legislation or a contract.

##### § 33. De minimis aid

- (1) De minimis aid shall be deemed to be the aid specified in Article 2 of Commission Regulation No 69/2001/EC on the application of Articles 87 and 88 of the EC Treaty on de minimis aid.
- (2) It is not necessary to apply for the permission of the European Commission to grant state aid, as provided in Article 88(3) of the Treaty and § 34 of this Act, in order to grant de minimis aid.
- (3) De minimis aid shall be granted pursuant to the procedure provided for in Commission Regulation No 69/2001/EC.
- (4) Upon the grant of de minimis aid the grantor shall be obliged to request, before adopting the decision of granting de minimis aid, from the beneficiary a notice concerning de minimis aid granted to the beneficiary within previous three years. The format and the procedure for

submission of the notice concerning de minimis aid shall be established by the Minister of Finance.

#### **§ 34. Permission to grant state aid**

(1) State aid shall be granted only with the prior written permission of the European Commission.

(2) The grantor of state aid shall not commence the grant of state aid before the European Commission has granted permission to grant state aid or deemed the state aid to be permitted pursuant to Article 4(6) of Council Regulation No 659/1999/EC laying down detailed rules for the application of Article 93 of the Treaty establishing the European Community

#### **§ 34.1. Submission of application to the European Commission for permission to grant state aid**

(1) The grantor of state aid shall submit an application for permission to grant state aid (hereinafter application for permission), which is in conformity with the requirements set by the European Commission, to the Minister of Finance together with all necessary information.

(2) The Minister of Finance shall review the application for permission and submit this together with all necessary information to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

(3) If the application for permission is not complete, the Minister of Finance shall have a right within one month after the date of receipt of the application for permission, to request the submission of additional information or to return the application to the grantor of state aid with the proposal to supplement it.

(4) The grantor of state aid shall submit the additional information requested by the European Commission in the course of processing the application for permission via the Minister of Finance to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

#### **§ 34.2. State aid covered by group exemption**

(1) State aid covered by group exemption shall be deemed to be the aid specified in Article 1 of Council Regulation 994/1998/EC on the Implementation of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid, with regard to which the European Commission has adopted the corresponding group exemption regulation.

(2) It is not necessary to apply for the permission of the European Commission to grant state aid, as provided in Article 88(3) of the Treaty and § 34 of this Act, in order to grant state aid covered by group exemption.

(3) Upon the grant of state aid covered by group exemption the grantor of state aid shall be obliged to submit, before granting the state aid, to the Minister of Finance the draft of notice (hereinafter in this Chapter the draft), which is in conformity with the requirements set by the European Commission, together with the description of the individual state aid or state aid scheme proving the conformity of the planned state aid with the conditions laid down in the relevant group exemption regulation. When reviewing the draft, the Minister of Finance has the right to request additional information, if necessary.

(4) The Minister of Finance shall within one month as of receipt of the draft adopt a position concerning the conformity of the planned state aid with the conditions laid down in the relevant group exemption regulation.

(5) The grantor of state aid has no right to start granting state aid before receiving the position adopted by the Minister of Finance.

(6) Upon starting the implementation of the individual state aid or state aid scheme, the grantor of state aid shall immediately submit to the Minister of Finance a notice concerning the grant of state aid covered by group exemption, if necessary corrected in accordance with the position adopted by the Minister of Finance.

(7) The Minister of Finance shall forward the notice referred to in subsection (6) of this section to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward it to the European Commission.

(8) The notice referred to in subsection (6) of this section shall be forwarded to the European Commission not later than within 20 days of commencement of implementation of the individual state aid or state aid scheme.

#### § 42. Recovery of unlawful state aid or misused state aid

(1) Unlawful state aid shall be deemed to be the aid laid down in Article 1(f) of Council Regulation 659/1999/EC.

(2) Misuse of state aid shall be deemed to be the activities specified in Article 1(g) of Council Regulation 659/1999/EC.

(3) If the European Commission or the European Court of Justice has forwarded a decision that unlawful state aid or misused state aid has to be recovered by the beneficiary of the state aid, the Minister of Finance shall forward this decision to the grantor of unlawful state aid or misused state aid. The grantor of state aid is required to demand recovery of the state aid pursuant to the decision of the European Commission or the European Court of Justice.

#### § 49. Reporting on state aid and de minimis aid.

(1) Grantors of state aid are required to submit by 1 March each year a report on state aid granted in the previous calendar year. The report shall be made in writing and submitted electronically in accordance with the requirements set by the European Commission.

(2) Grantors of de minimis aid are required to submit by 1 March each year a report on de minimis state aid granted in the previous calendar year. The report shall be made in writing and submitted electronically. The format and the procedure for submission of the report on de minimis aid shall be established by the Minister of Finance.

(3) The Minister of Finance shall forward the reports on state aid submitted to him/her to the Permanent Representation of the Republic of Estonia to the European Union, which shall forward these to the European Commission.

#### § 49<sup>1</sup>. Co-operation with European Commission as regards supervision and on-site inspections

(1) The Ministry of Finance shall provide assistance; if necessary, to the European Commission as regards supervision over the state aid and on-site inspections.

(2) In the case provided for in Article 22 (6) of Council Regulation No 659/1999/EC, the Minister of Finance or a person authorised by him/her for such purpose shall submit a written application to the Administrative Court of Tallinn for permission to the officials authorised by the European Commission to conduct inspection. An authorisation specifying the reason and purpose of the inspection shall also be submitted to the Administrative Court of Tallinn together with the application for permission. The grant of permission specified in subsection (2) of this section shall be decided pursuant to the procedure provided for in Chapter 4 of the Code of Administrative Court Procedure.

Annex 14

Volumes of State Aid in EU15 Countries, 2003

	EU15	Belg	Den	Germany	Greece	Spain	France	Ireland	Italy	Lux	Neth	Austria	Port	Fin	Swed	G. Britain
Total aid (excluding railway) bln. Euro	52,8	1,1	1,3	16,4	0,6	4	8,8	0,9	7,1	0,1	1,5	1,5	1,6	2	1,6	4,2
Total aid (excluding agriculture, fisheries and transport) bln. Euro	37,3	0,7	0,9	14,4	0,3	3,2	4,8	0,4	5,7	0,01	0,5	0,6	1,3	0,5	1	3
Total aid (excluding railway) as a per cent of GDP	0,57	0,4	0,67	0,77	0,4	0,54	0,57	0,69	0,54	0	0,33	0,66	1,24	1,41	0,6	0,26
Total aid (excluding agriculture, fisheries and transport) as a per cent of GDP	0,4	0,24	0,49	0,68	0,22	0,43	0,31	0,31	0,44	0,15	0,11	0,26	0,96	0,36	0,39	0,19

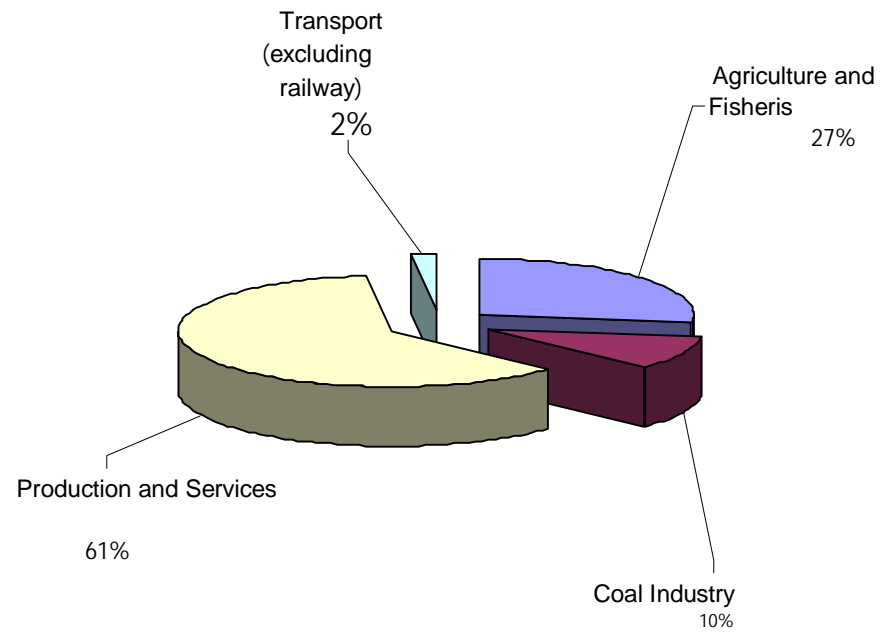
## Annex 15

### Trends of Grating State Aid in EU15, 2003

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	1999- 2001 on average	2001- 2003 on average
Total aid (excluding railway) bln. Euro	75,1	80,2	77,3	76	73,9	93,8	62,8	55	55,2	55,3	57,4	52,8	55,2	55,2
Total aid (excluding agriculture, fisheries and transport) bln. Euro	57,9	64,1	59	56,4	55,4	774,9	47,6	39	39,8	40,2	40,9	37,3	39,7	39,5
Total aid (excluding railway) as a per centage of GDP	1,09	1,18	1,1	1	0,95	1,15	0,74	0,63	0,6	0,59	0,61	0,57	0,61	0,59
Total aid (excluding agriculture, fisheries and transport) as a per centage of GDP	0,84	0,94	0,84	0,74	0,71	0,91	0,56	0,45	0,43	0,43	0,44	0,4	0,44	0,42

## Annex 16

### Total State Aid by Sectors, EU15



## Annex 17

### State Aid Distribution By Sectors in EU15, 2003 (% in Total)

	Production	Services	Agriculture	Fisheries	Coal Industry	Transport (excluding railway)	Other
<b>EU-15</b>	55	6	26	1	10	2	0
<b>Belgium</b>	57	4	37	0	0	1	0
<b>Denmark</b>	71	3	20	0	0	6	0
<b>Germany</b>	62	5	12	0	20	1	0
<b>Greece</b>	51	2	44	2	0	0	1
<b>Spain</b>	49	2	18	3	28	0	0
<b>France</b>	40	3	40	0	10	5	0
<b>Ireland</b>	37	8	55	1	0	3	0
<b>Italy</b>	74	6	16	1	0	3	0
<b>Luxemburg</b>	51	0	49	0	0	0	0
<b>Netherlands</b>	33	0	66	1	0	0	0
<b>Austria</b>	36	3	60	0	0	0	0
<b>Portugal</b>	14	63	22	1	0	0	0
<b>Finland</b>	24	1	74	0	0	0	0
<b>Sweden</b>	57	7	25	0	0	10	0
<b>Great Britain</b>	70	0	24	2	1	3	1

## EU state aid action plan

### State Aid Action Plan

The State Aid Action Plan presented by the Commission launches a comprehensive reform of state aid policy that will cover a five-year period (2005-2009). The objective is to guarantee the Member States a clear and predictable framework, which enables them to grant state aid, targeted towards achieving the Lisbon Strategy objectives.

#### ACT

**State Aid Action Plan - Less and better targeted state aid: a roadmap for state aid reform 2005 - 2009 [Consultation document - not published in the Official Journal]**

#### SUMMARY

The State Aid Action Plan submitted by the Commission is a roadmap for the reform of state aid policy that will cover a five-year period (2005-2009).

The aim of the reform is to encourage Member States to help achieve the Lisbon Strategy objectives. The new policy on state aid will thus help them to target state aid towards improving the competitiveness of European industry and creating sustainable jobs.

The reform will also rationalise and simplify procedures to guarantee Member States a clear and predictable framework in the area of state aid.

#### Rationale for Community state aid policy

State aid control, as an integral part of competition policy, helps to maintain competitive markets. The EC Treaty prohibits any aid that distorts or threatens to distort competition in the common market (Article 87(1)). State aid may lead to distortion of competition by favouring certain firms or the production of certain goods. Controlling state aid therefore guarantees a level playing field for all firms operating within the internal market.

However, the Treaty allows some exceptions where the proposed aid may have a beneficial impact in overall Union terms. State aid measures can sometimes be effective tools for achieving objectives of common interest (services of general economic interest, social and regional cohesion, employment, research and development, sustainable development, promotion of cultural diversity, etc.) and for correcting "market failures". For various reasons (externalities, market power, coordination problems between market operators), market sometimes do not function efficiently from an economic point of view. Member States may then intervene by granting state aid. By doing so, they improve the efficiency of the market and promote growth.

State aid may therefore be compatible with the Treaty provided that it fulfils clearly defined objectives of common interest and does not distort competition to an extent contrary to the common interest. Control of state aid is fundamentally about balancing the negative effects of

aid on competition with its positive effects in terms of common interest, although the presumed advantages for the common interest must outweigh the negative effect of the distortion of competition. This task is entrusted to the European Commission by the Treaty.

Increasingly numerous and complex rules on state aid, enlargement of the European Union to include ten new Member States in 2004 and the need for renewed impetus for the Lisbon Strategy have underscored a need to streamline state aid policy and clarify its fundamental principles.

### **Action plan guidelines**

The reform of state aid policy must be a consistent and comprehensive. The action plan sets out guidelines for this reform that will be common to the various instruments involved.

- **Less state aid more efficiently applied:** The objective is to target state aid towards activities to which the financial markets are reluctant to loan money or which contribute to growth, competitiveness or the creation of sustainable jobs. However, achieving this objective depends partly on a more refined economic approach.
- **A more refined economic approach:** This involves finding out why, without public intervention, the market does not achieve an optimum result, whether it is because there is a "market failure" or because it produces social or regional inequalities which must be corrected. It is therefore necessary to better evaluate whether state aid is justified, whether it represents the most appropriate solution and how it can be implemented without distorting competition to an extent contrary to the common interest. This approach would facilitate and speed up authorisation of the aid which least distorts competition and, at the same time, would focus attention on the aid likely to have the most serious distortive effect on competition.
- **More effective procedures, better enforcement, higher predictability and enhanced transparency:** Improving the rules on state aid will require more effective and more transparent procedures, extension of the scope of block exemptions, a reduction in the number of aid measures to be notified, faster decision-making and procedural rules adapted to the enlarged European Union. This will result in greater legal certainty and will facilitate administrative tasks for the Commission and the Member States. Moreover, as a result of enhanced transparency, firms, competition specialists, consumers and the public will find it easier to take action against unlawful aid, particularly before the national courts.
- **Shared responsibility between the Commission and Member States:** However, the rules and procedures on state aid cannot be improved without the active support of the Member States, which must undertake to notify all planned aid and to respect the rules on state aid.

### **State aid targeted towards the Lisbon Strategy priorities**

The action plan also encourages Member States to target state aid towards achieving the objectives of the Lisbon Strategy. State aid policy should therefore enable market failures to be targeted in such a way as to promote these objectives. Eight priority areas have been identified:

- **Innovation and research and development (R&D):** The rules on state aid should encourage industry to invest in R&D and to take into account the increasing importance of public-private partnerships.

- **Creating a better business climate and stimulating entrepreneurship:** the rules on state aid should facilitate the rapid start-up of new businesses and stimulate investment in the form of risk capital.
- **Investing in human capital**
- **Services of General Economic Interest (SGEI):** State aid measures will fulfil their public service aims by providing effective high-quality SGEI.
- **Better prioritization through simplification and consolidation:** This means implementing the principle that state aid policy should focus on the most distortive types of aid.
- **A focused regional aid policy:** State aid policy will help to reduce disparities between the regions of Europe and will therefore be a factor for cohesion and stability.
- **Encouraging an environmentally sustainable future**
- **Setting up modern transport, energy, and information and communication technology infrastructures:** the rules on state aid should take into account the increasing importance of public-private partnerships.

### Next steps

Between 2005 until 2009 the Commission will present proposals detailing the reform outlined in the action plan for each area relating to state aid. It will re-examine all the instruments involving state aid to ensure that the same principles are applied in a consistent and comprehensive manner. Some sectors that are subject to specific rules (agriculture, fisheries, coal and transport) will, however, not be concerned by the reform initiated by the action plan.

## **Anex 19**

### **The “mission” of state aid control bodies in EU member states**

#### **Czech Republic**

With effect from the date of accession of the Czech Republic to the EU, the competence to assess the compatibility of State Aid with the common market was taken over by the European Commission. At the same time the Act No. 215/2004 Coll., on Regulation of Relations in the Area of State Aid and on Amendment to the Act on the support of Research and Development came into force. The Act modifies the role of the Office in the area of State Aid, rights and duties of providers and beneficiaries of State Aid towards the Office and some other relations in connection with provision of State Aid. The Act does not apply to agriculture and fisheries sectors.

The Office is the central coordination, advisory, consulting and monitoring authority in the area of State Aid. The Office has an important role in the notification procedure as it co-operates with both the State Aid providers and the Commission and sends the notification forms to the Commission by electronic transmission. The aim of co-operation with the State Aid providers is to ensure that the notification form is duly prepared in accordance with the Commission Regulation No. 794/2004 implementing Council Regulation No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, and that the relevant documents are enclosed to it so that the notification could be regarded as complete and the Commission could initiate preliminary examination of the notification and take its decision.

The Act furthermore obliges the Office to maintain a register of all granted aids in the Czech Republic and to submit to the Commission annual reports on all existing aid schemes. The Office also controls observance of the enforceable State Aid decisions made by the Office under legislation applicable before the accession to the EU and decides on imposition of penalties pursuant to this Act.

The Act lays down the following obligations:

1. for the providers of the State Aid:
  - to provide the Office with information about all State Aids granted in the previous year and information about the State Aid schemes
  - to provide the Office with the duplicates of all documents submitted to the Commission within the framework of formal procedures (procedures concerning notified aids, unlawful aids, misuse of aid, existing aid and aid schemes, on-site monitoring regarding the notified aids). This obligation is fulfilled with sending of the notification forms by electronic transmission.
2. for the beneficiaries of the State Aid:
  - to offer the Office co-operation needed in the case the Commission is carrying out an on-site monitoring visit at the territory of the Czech Republic
  - to provide the Office upon its written request, within the set deadline, with all documents and information concerning the State Aid.

In case of violation of the above-mentioned obligations, the Office is entitled to impose on the provider and the beneficiary of the State Aid a fine up to 1% of the amount of State Aid provided.

## Malta

The State Aid Monitoring Board was established in 2000, with the aim of monitoring and reviewing existing and new State aid granted in Malta.

The terms of reference of the State Aid Monitoring Board are:

- to establish and update a comprehensive state aid inventory
- review and assess existing and new state aid, and provide advice about their compatibility with the principles contained in the relative present and future acts of the European Union
- establish and implement appropriate rules of procedure and methodological systems which lead to an effective State aid monitoring and reporting system
- provide expert opinions, positions and proposals for the formulation and implementation of state aid policy
- prepare an annual report on state aid in Malta, on the basis of the established methodology used in the European Union
- assist in the identification and implementation of appropriate capacity building concerning state aids
- act as the pertinent body concerning state aid in Malta
- exercise such other functions and duties as may be prescribed

## Cyprus

The Office of the Commissioner for State Aid Control was set up in June 2001 as part of the harmonization process of Cypriot legislation with the *acquis communautaire* in the field of state aid.

On 8th of March 2001 the Public Aid Control Law was passed (Law 30(I)/2001) which entered into force on 30th April 2001 following the decision of the Council of Ministers no.53.538 dated 11th April 2001. This legislation incorporated Community law provisions into the Cyprus legal order that are directly effective in the EU Member States, for the monitoring of the application of which the European Commission - and not the Member States - is responsible.

The enactment of the Public Aid Control Law was followed by secondary legislation in the form of regulations which provided for the criteria of approval of the granting of state aid to various sectors.

On 1st June 2001 the Council of Ministers, in consultation with the Parliamentary Committee of Foreign and European Affairs, appointed Mr. Christos Andreou as the Commissioner for State Aid Control for six years.

With the recruitment of the required professional and administrative personnel to the Office, intensive efforts were devoted in order to conclude the Chapter on Competition **within the tight time limits set by the European Commission.**

In June 2002, a year after the establishment of the Office, with all the requirements set by the European Commission having been fulfilled (i.e. necessary legislative framework, adequate administrative capacity and credible enforcement record on the effective application of the *acquis* on Competition) the Chapter on Competition was provisionally closed, with regard to both state aid and anti-trust matters.

As provided by the Law, by 30th March 2003, the assessment of all existing aid schemes / individual aid was completed.

On 29th April 2004 the State Aid Control (Amendment) Law of 2004 was passed. The role of the Commissioner was reviewed and his title was changed from Commissioner for Public Aid to Commissioner for State Aid Control.

It is worth noting that the Office, when necessary, cooperates with the European Institute of Public Administration in Maastricht according to a bilateral agreement. It should also be noted that the Office is in regular contact and cooperates closely with the Directorate-General Competition of the European Commission