American University of Armenia
Political Science and International Affairs Program

Evaluation of the effectiveness of the RA Competition Law implementation

Student: Kristine Arakelova
Advisor: Dr. Arpie G. Balian

Master's Essay in partial fulfillment of the requirements for the degree of Master of Arts in Political Science and International Affairs

May 2016

ACKNOWLEDGEMENTS

I would like to sincerely thank my dearest advisor Dr. Balian not only for her invaluable support and encouragement while working on my thesis, but also for everything she has taught me for the past two years. She taught me not to give up when the task seems to be too difficult to tackle, work to my full capacity to achieve the final result, and recognize that the there is always a room for improvement. During these two years, she shared with me not only her priceless experience and knowledge, but also taught me the practical skills essential for my carrier development. Thanks to her courses now I feel more competitive in the job market. But, most importantly, she influenced my way of thinking, contributing to my personal development. Finally, I want to thank her for being very demanding with me as a teacher, while extremely kind as a person. I feel proud for having been her student.

Also, I would like to express my gratitude to Dr. Ter-Matevosyan, who is one of the few professors able to present the most difficult and boring topic in the simplest and funniest way. I want to thank him for the warmest welcome in the first year of studies, and the kind and respectful attitude he showed to each of his students during these two years.

I want to thank my family, especially my husband for his patience and my mother for her huge support.

Finally, I am thankful to AUA and the PSIA faculty for the precious work they do for the future of the Armenian youth.

TABLE OF CONTENTS

Introduction 4
Literature Review 7
U.S. Antitrust Law 7
EU Competition Law 10
Review of Specific Foreign Laws 12
Developing countries 14
Evaluation Goal, Objectives and Research Design 16
Evaluation Goal and Objective 16
Evaluation questions 16
Research Methodology 17
Data Analysis 18
Analysis of Cases of Prohibition of Anti-Competitive Practices 18
Anaysis of the Annual Reports of the Commission 21
Analysis of the Interviews 23
Findings and Recommendations 24
References: 30
Appendix I — Logic Model 32
APPENDIX II – Interview Questions 33
APPENDIX III – Annual Reports of the commission 34

INTRODUCTION

Competition can be defined as a process of rivalry among firms for gaining market share and maximizing profits. Competition is the driving force of any market, fostering innovation, productivity and growth, while anti-competitive actions create higher entry barriers to the business, which affects primarily the poor, and as a result slows down the development (Godfrey 2008).

Competition policies include a set of laws and policies, targeted at the promotion of competition and facilitation of efficient resource allocation. Thus, Chadwick Teo (2003) posits that "*efficiency is the goal of competition policies, and competition is the process*." Competition policy promotes economic growth and poverty reduction in developing countries in the following ways:

a) Higher level of competition leads to decrease of the price on goods and services, thus increasing the consumption
b) Firms are forced to use more productive and efficient measure and technologies
c) To stand the competitiveness, the firms switch to innovative approaches
d) Resources are used in their most efficient way, as uncompetitive sectors have to close down
e) Easy entry barriers create more opportunities for poor people to start small businesses (Teo 2003; Godfrey 2008).

Being a developing country with underdeveloped competition (mostly based on left-overs from the former Soviet economy), the independent Armenia in the wake of the new millennium

adopted competition policy mostly based on the competition law of Western countries. In the Soviet Union a command economy had prevailed, which limited ownership to the privileged political elite and promoted state-owned monopolies. Competition did not exist. Following the collapse of the Soviet Union, the independent Republic of Armenia inherited an economy that did not facilitate entrepreneurship or market infrastructure. In the early decade of independence, the absence of appropriate public policies that could directly or indirectly encourage competition, thereby triggering the development of the private sector cannot be overlooked. In addition, Armenia's intent to move to a free market economy was characterized by intensive privatization, often realized too arbitrarily and unevenly, further undermined economic liberty and competition concentrating wealth in the hands of a few that also triggered the emergence of monopolies. At the same time government regulation of competition lacked the legal framework for protecting the economy (Friedrich-Ebert-Stiftung 2013).

Today, the body of legislation and associated economic policies include the Constitution of the Republic of Armenia, the Civil Code, the Law on the Protection of Economic Competition, the Law on the Protection of the Domestic Market, the Law on Anti-Dumping and Compensation Measures, and others. Other branches of legislation of Armenia, such as the Law on Banks and Banking, the Law on Energy, the Law on Credit Organizations, and the Law on Regulation of Public Services also contain provisions that prohibit activities that work against competition.

The Law on the Protection of Economic Competition was adopted on 6 November 2000. This Law aimed at protecting and promoting free competition, thereby easing doing business and protecting consumers throughout the Republic of Armenia. In addition, with the goal of

transitioning to a free market economy, the aforementioned competition policy was intended to complement trade liberalization and regulatory reform. Thus,

> "*While trade policy eliminates governmental barriers to international trade and deregulatory reform eliminates domestic regulation that restricts entry and exit, competition policy targets business conduct that limits market access and reduces actual and potential competition*" (Teo 2003, p.2).

Nevertheless, despite several improvements in the RA anti-monopoly policy, the positive impact or effectiveness of the performance of the RA Human Rights Defender was slim to none in 2011, particularly raising issues at the level of domestic competition and the effectiveness of anti-monopoly policies (Friedrich-Ebert-Stiftung 2013). In the more recent years, more improvements have been made; however, Armenia is still lagging in standing by the global competitiveness index, ranking 85th (Sala-i-Martín et al. 2015).

This means that despite the existing policy on economic competition, as provided in the RA Constitution and Law on the Protection of Economic Competition, the measures adopted by the government have not resulted in the protection and promotion of economic competition and curtailment of monopolization. This leads to the purpose of the current policy paper that evaluates the existing policy, identifying the weaker provisions in the law(s) together with the existing flaws and drawbacks that may have slowed down development. As a distinct part of the evaluation, this study reviews EU Competition law, specifically drawing examples from three developed countries, and looks to the U.S. antitrust policies, as the father of all competition policies that were developed worldwide.

LITERATURE REVIEW

U.S. Antitrust Law

The first antitrust statute in the U.S. was enacted in 1890 and is, to this date, considered to be the grandfather of antitrust regulation in the world (Gerber 2002). In those times, the concept of "*antitrust law*" was distant in most countries. Today, more than 100 countries have adopted anti-trust regulation thereby making competition policy a prevalent feature of economic activity worldwide. Gerber (2013) calls the U.S. antitrust law a "*shot in the dark*" primarily because it was a totally new way of thinking and, also because U.S. legislators "*were shooting at something without actually knowing what they are going to hit*" (Gerber 2013, p.53). He argues that the term "*anti-trust*" reflects the initial primary intent of the law. Thus, besides its economic provisions, it had transnational reference in the sense of being viewed as a part of a more global mission against fascism in support of freedom (Gerber 2013).

The foundation of the U.S. antitrust statute is found in the two key provisions of the Sherman Act: Section 1 dealing with governing cartels and Section 2 addressing governing monopolies. The Sherman Act is often referred to as "*a foundational act of great importance for society*" despite the fact that it has not been studied from that perspective. Instead it has been characterized as a political act, rather than technocratic, regulatory, or economic, leaving much ambiguity in its language and, therefore, open to different interpretations offered by different specialists (Gerber 2002).

Three main reforms of the U.S. antitrust law can be characterized by changes in the role of the system and the methods and degrees of enforcement. Naturally, this process has involved

instituting the legal apparatus, in the first instance. In this period, the effectiveness of the law and degree of enforcement were largely sporadic. The next reform phase in the decades following World War II can be largely characterized by the significant increase in the level of enforcement and the authority vested by law in implementing and enforcement personnel. Subsequently, more reforms became necessary considering the changing conditions in the U.S. economy in the 1970s and the move toward integration and increased international competition. The resulting blend of case law analysis and social-political values were replaced by new economic models (Letwin 1981; Rudolph J. Peritz 1988).

The major goal of the modern antitrust law is to limit the free exercise of market power — power in the sense of "*the ability of an enterprise/firm to maintain the price at which it sells its product at a level that is significantly above its average (unit) costs, when 'costs' are understood to encompass 'opportunity costs' and thus include a competitive return on the investment that has been made in the enterprise*" (White 1987).

Steuer (2012) argues that the purpose of antitrust law is to fight against two prime offenses of competition, resulting from the exercise of market power: "*single actor bullying and multi-actors ganging up.*" The former is labeled as "*monopolization, attempted monopolization, unfair practices, or abuse of dominance*" in the law, and the latter "*combination, conspiracy, cartelization or boycott*." It is argued that any activity deviating from the antitrust law falls into one of these two categories. This simplification helps recognize and articulate the fundamental principles of the law thereby making it easier to understand. Moreover, this explains why despite of the high costs of compliance and enforcement, the economy actually gains enforcement of the law (Steuer 2012).

Antitrust policy can limit the exercise of market power in the following ways:

1. Prevent/restrict agreements among firms limiting competition, thus allowing individual firms to continue exercising market power;
2. Prevent/stop mergers that would afford the bigger firm to dominate in the market or to enhance existing market power;
3. Prevent/stop greedy behavior by a firm that would enhance its market power and drive competitors out of market;
4. Prevent/stop exclusionary behavior by a firm that can enhance its market power; and
5. Structural dismemberment, meaning breaking a firm into competitors or vertically connected entities, in order to limit the exercise of individual market power (White 1987).

Unlike the systems in most other countries, enforcement of the U.S. competition law is vested in two agencies: the U.S. Department of Justice and the U.S. Federal Trade Commission. There is not only evident coordination between these two, but also some overlap in their enforcement prerogatives, matters of conflict with the law, and differences in their methods of analysis. This has made enforcement more complex and less predictable. Nonetheless, the investment of power in two enforcement agencies reduces regulatory supremacy and creates a system of checks and balances. Thus, the U.S. Federal Trade Commission cannot act alone in enforcement proceedings. The Department of Justice must be involved to bring suit in the U.S. federal courts against entities that are not in compliance with antitrust laws (White 1987).

Scholars also have raised several drawbacks in the U.S. antitrust system. While many competition laws (those of EU particularly) emphasize the need for consistency in language interpretation and outcomes, U.S. competition laws are often unpredictable often causing varying

consequences. Moreover because of the ambiguity of language, interpreters outside the system argue that enforcement of U.S. competition law is politically driven thereby questioning its legal power and enforceability. Additionally, goals and objectives pertaining to competition are not well defined in the law. Thus, the century-old track record of judicial decisions often provide authoritative articulations of the intent of the law (after the fact). Nonetheless, articulations have shifted often with changing circumstances and, as a result, they may be considered to be imprecise. Absent a well-developed administrative tradition in the regulatory apparatus of the U.S. antitrust system, another drawback is observed at the higher level of vagueness in the law, such as what is used in Continental European countries (Gerber 2002; Rudolph JR Peritz 2000).

EU Competition Law

EU competition law follows the civil law tradition. It does not use criminal sanctions, instead relying mainly on administrative fines (Venit 1996; Waller 1992). The key competition rules of the EU are provided in Articles 85 and 86 of the Treaty of Rome. Article 85 prohibits agreements restrictive of competition. More specifically, for the stated Article to be infringed the following must be present: an agreement or concerted practice; "*a restriction on competition within the common market; and a potential appreciable effect on trade between Member States*" (Venit 1996, p.81). Based on the decision of the European Court of First Instance, participation in meetings at which competitors disclose confidential information about their outputs and prices is sufficient to establish evidence of concerted practice. Thus, for example, attending a Cartel meeting will by itself constitute an infringement of Article 85 (Venit 1996).

Nevertheless, some scholars have criticized the substance of Article 85. Bright (1996) argues that the Article is too broad and allows the Commission or other readers to interpret

prohibitive activity differently than its intent. The author points to the sentence that states to "*prevent, restrict and distort competition*" as the core stipulation in Article 85 and argues against the Commission's interpretation and/or application of what it is meant to convey. He further states that those words could be interpreted broadly and do not necessarily provide adequate direction, guidance, or meaning to a resulting breach of the law. According to this author and the examples he provides in support of his argument, the wording of the Article affords the Commission the right to infringe the provision of Article 85 without any explicit manifestation of anti-competition activity (Bright 1996).

Another important provision in the EU competition law is Article 86 on the abuse of position or power. The creation of large firms for securing a position of dominant power is not restricted by law, but the behavior of such firms is closely scrutinized. Unless it affects trade among member states, market dominance by a firm is considered to be lawful (Waller 1992).

The enforcement of Articles 85 and 86 is the responsibility of the EU executive body — i.e., the European Commission. The enforcement powers are set forth in Council Regulation No.17, 1962 and consist mainly of (a) requesting information by means of written interrogatories; (b) conducting inspections of company premises; and (c) requiring the respective authorities of Member States to conduct similar inspections on behalf of the Commission (Commission 1994). In case the Commission finds sufficient evidence of infringement of competition law, it is empowered to enforce ending it and impose fines of up to 10% of the group's turnover worldwide. The Commission's decisions may be appealed to the Court of First Instance and European Court of Justice (Venit 1996).

In his criticism of European Commission's enforcement methods, Bright (1996) points to its dogmatic approach and lack of "*sense of proportion*." In addition, Danov (2012) argues that Brussels' suitability in the control and enforcement of EC Competition law is being questioned on the basis of the differences with the national legal systems of member states relative to the same infringement (Bright 1996; Danov 2012).

There is an ongoing debate whether it is desirable and necessary to prosecute breaches of competition law or not. Wils (2005) argues that imprisonment is advantageous because (1) deterrence based on the level of restriction of competition would require excessive fines; (2) not always do such fines directly affect individuals responsible for the breaches of competition law within the company; and (3) imprisonment is very effective, as it carries a strong moral message. But legalizing criminalization could be successful only if there is adequate due process built in and commensurate judicial empowerment, as well as enough public support and political will. However, there are alternatives to imprisonment, specifically in the form of increasing individual responsibilities (Wils 2005).

Review of Specific Foreign Laws

Competition policies of three EU countries were examined: Switzerland, Sweden and Norway. The Swiss competition law was found to be the weakest among those three. There, the lack of competition is still a primary driver of the high prices in the Swiss market. In earlier times the Swiss competition policy had a low profile, but after related reforms in 2003 that strengthened the law, it has become more visible particularly by the introduction of direct sanctions. These steps brought the Swiss competition law closer to those of other OECD countries (Switzerland: The Role of Competition Policy in Regulatory Reform, 2005).

Despite these measures, however, the Competition Commission did not manage to raise the level of competition in the country mainly because of several reasons. First, the law about restrictive agreements is based on the principle of "*abuse*" and not "*prohibition*" as are the requirements of most OECD countries. Second, the Swiss regime about mergers is significantly more permissive than in other EU countries. Third, consumer protection does not establish a priority. Moreover, the methods of investigation are relatively weaker and the law is unclear on the tools available for investigation. As for international cooperation, Swiss competition authorities are segregated and no formal cooperation exists with other competition authorities (Switzerland: The Role of Competition Policy in Regulatory Reform, 2005).

In Sweden, competition policy largely relies on prohibitions of abuse of dominance and support for academic research. The enforcement is fulfilled by the Swedish Competition Authority (SCA) and relies clearly on vigorous enforcement against infringements. The SCA is recognized to be a robust agency with a clear identity. The government sets its annual budget, overall mission and tasks, and appoints the Director General for six years. However, the nomination process is not transparent and the Government cannot intervene in the SCA's decisions. Unlike the Swiss law, the Swedish one is largely harmonized with the European Community competition rules. Sanctions against infringements are administrative fines, which can reach up to 10% of the company's annual turnover. No criminal penalties are used ("Sweden: The Role of Competition Policy in Regulatory Reform" 2006).

The Norwegian competition policy is the strongest among the three. Back in 2001, Norway developed a five-point action plan to strengthen the policy, and OECD concluded that that goal was achieved successfully. This placed greater emphasis on strengthening the

Norwegian Competition Authority; enhancing open access to markets; ensuring privatization of public companies; and ensuring that the public sector is promoting competition. Unlike Switzerland, Norway participates in international efforts and works toward the further development of competition policy. The so-called "Nordic Network" involves cooperation among the competition authorities of Denmark, Finland, Iceland, and Sweden. Moreover, in 2001 Norway, Iceland and Denmark signed a cooperative agreement for the exchange of confidential information among the competition authorities party to the agreement. By the 2002 MMI survey findings, the Norway Competition Authority (NCA) is perceived by the public as honest and highly knowledgeable ("Norway - Updated Report" 2004).

Developing countries

It is widely acknowledged, that economic growth is the driving force of development. In order to succeed, governments should create the necessary environment that enables private companies to flourish. One of the conditions to achieve this goal is the implementation of economic competition protection policy. In developing countries the policy is important for pro-poor growth. Consumers benefit both directly (lower prices and better quality products) and indirectly (state economic growth). Farmers also benefit, when their outputs are sold in a competitive market. Moreover, competition in the domestic market leads to innovations, as the companies are pressured to introduce them in order to face the competitive environment; creation of new jobs, and attraction of foreign investments (Implementing Competition Policy in Developing Countries 2007; Qaqaya and Lipimile 2008; Davies and Thiemann 2015).

Despite the importance of competition policy for the advancement of developing countries, the latter are typically reluctant to adopt such laws because of their relatively higher

vulnerability to anti-competitive practices. First and foremost entry barriers are higher, thus governments of developing countries often establish state-owned corporations in the private sector in order to have stronger control in trading and production thereby controlling the tax base. Moreover, very often owners of large businesses are politically well connected and have considerable influence on government, thus restricting the introduction or proper implementation of competition policy. Another factor is that many governments consider their local market size too small to maintain competition (Qaqaya and Lipimile 2008; Langhammer J. 2000; Plessis, Lurie, and van Buuren 2011).

The literature reviewed shows that the implementation of competition policy is successful in those developing countries, which have strong institutions. As the latter usually learn from the laws of developed countries, the standing and authority of local institutions is most crucial for effective enforcement. Furthermore, to achieve noticeable improvements in economic growth, parallel economic reforms need to be initiated. Conversely, there are other factors that hinder the success of competition policy implementation in developing countries. First and foremost, it is the lack of political will. The reason comes from the high level of interconnection between government and the private sector. The second important factor is the incompatibility of competition law with the local environment. Typically, the governments of developing countries adopt the laws of developed countries with only slight modifications, which very often leads to weaknesses in the practical applicability of the law (Implementing Competition Policy in Developing Countries 2007; Gal and Fox 2014).

EVALUATION GOAL, OBJECTIVES AND RESEARCH DESIGN

Evaluation Goal and Objective

The goal of this evaluation was to measure the performance of the RA State Commission for the Protection of Economic Competition with respect to enforcement of the RA Competition Law, and to provide policy recommendations. The key objective was to assess the effectiveness of the implementation of the law and to identify the main challenges of the implementation.

Evaluation questions

The evaluation questions that this evaluation answered were the following:

- What is the effectiveness of the performance of the State Commission on Protection of Economic Competition vis-à-vis the RA Competition Law?
- What are the barriers to and challenges of implementation of the RA Competition Law?
- Are there policy improvement options that would improve the effects and/or results of the implementation?

To enable the evaluation research, the following objectives of the RA State Commission for the Protection of Economic Competition were considered (as articulated by the RA Competition Law, under tasks):

- Prohibition of anti-competitive practices
- Cooperation with local and international institutions and organizations
- Carrying out activities aimed at raising public awareness of the Commission's accomplishments and on the issues of economic competition.

This policy paper evaluated the performance of the first objective only, as it has a relatively higher effect on both private and public sector. To assess the effectiveness of the first objective (prohibition of anti-competitive practices), its underlying components were measured. In that regard, it became important to specify how the law defines anti-competitive practices. Any of the following were deemed acceptable.

- **Anti-competitive agreements —** Agreements between units of economic entities that directly or indirectly lead to prevention or prohibition of competition.
- **Abuse of dominant position —** Exhibiting unjustifiable prices; restricting commerce by another entity; restricting market entry by others; unjustified changes in product prices; unjustified contraction of product import or production.
- **Concentration of economic entities —** Union and merger of economic entities; acquisition by entity 1 shares of entity 2, where the transaction constitutes 20% or more of the total assets of entity 1.
- **Unfair Competition —** Creating confusion with respect to the economic entity (trademarks); discrediting an economic entity (making false statements); misleading (providing misinformation in advertising a product or product label); rendering damage to the reputation of another economic entity; revealing undisclosed information (technical, organizational or commercial data, trade secrets).

Research Methodology

This is a summative evaluation which used a descriptive retrospective evaluation design, as the evaluator set out to measure the level of success of the policy. The evaluation used a mixed method of primary data analysis and sequential transformative design. To answer the

evaluation questions first qualitative analysis was conducted, then quantitative. Content analysis of selected cases of infringements, State Commission's annual reports and in-depth interviews were performed.

The selection of cases followed random and purposive sampling. One hundred (100) cases of infringements were selected by random sampling; in addition, 50 cases were selected using purposive sampling to enable a more detailed analysis. Thus, five (5) annual reports were selected through purposive sampling. In that regard, the years of the Commission's relative activity were considered. Also, five (5) in-depth interviews were conducted with representatives of major stakeholders of the policy, including two lawyers, two members of the Commission and one representative of the RA Ministry of Economy. The descriptors used for the content analysis were derived from the RA Competition Law and the literature review. The quantitative analysis dealt with the statistical measurements of the effectiveness of the RA State Commission using secondary data.

DATA ANALYSIS

Analysis of Cases of Prohibition of Anti-Competitive Practices

In this section 100 cases of probition of anti-competitive practices were analyzed using conceptual content analysis. As mentioned earlier, these cases were selected randomly (each 6th case on the master list of cases) from a population of 651 cases processed in the years 2010-2016. In addition, 50 cases dealing with those companies with dominant positions in the market were analyzed using both conceptual and relational content analysis. The second population of cases examined was selected using purposive sampling in order to add new layers of possible analysis.

The purpose of the conceptual analysis was to draw conclusions about the effectiveness of the prohibition of anti-competitive practices by measuring the intensity and frequency of the descriptors including, anti-competitive agreements, dominant position, concentration, and unfair competition. The selected descriptors were anti-competitive practices derived from the RA Competition Law. The intensity of each descriptor was measured on a scale of 1 to 5, where 1 indicated the weakest intensity of the term in context, 3 moderate, and 5 the strongest.

Table 1: Measurement of the intensity of the prohibition of anti-competitive practices

Anti-Competitive Practices	Intensity Mean	Frequency (N of cases)
Anti-Competitive Agreement	0	0
Dominant Position	1.9	14
Concentration	1	1
Unfair Competition	4.6	85

The table illustrates, that the prohibition of unfair competition has a strong intensity as it was the case with the majority of the cases examined. At the same time, among 100 randomly selected cases, there was none dealing with anti-competitive agreements, hence the intensity and frequency for this descriptor is 0. And the remaining two descriptors had a relatively low intensity and frequency, which infers that the Commission fell short of addressing those anti-competitive practices effectively. After calculating the intensity of each descriptor under the category dealing with prohibition of anti-competitive practices, the intensity of the category itself was calculated by finding the intensity mean of all 4 descriptors together, that is 1.5, which is considered to be very low.

Table 1 showed that the Commission focused attention mostly on cases of unfair competition. Further, the conceptual analysis of the selected cases revealed that in the majority of cases, the Commission dealt with small and medium-size businesses, whereas the monopolies and oligopolies were smaller in proportion.

The next analysis was to analyze whether or not the Commission used the harshest or the mildest type of penalty against severe infringements of the RA Competition Law — i.e., abuse of dominant position by measuring the strength of the relation between *dominant position* and *warning* and *fine*. The strength of the relation is measured by the frequency of occurence and interpreted on a scale of 1 to 5, where 1 is the weakest possible relationship and 5 is the strongest one. The population constitutes 50 cases, selected through purposive sampling. Only cases dealing with those companies having dominant positions in the market were selected for the analysis.

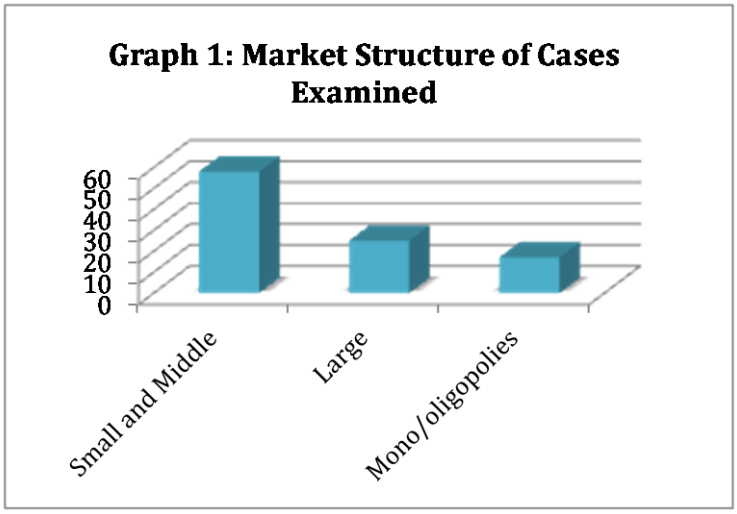
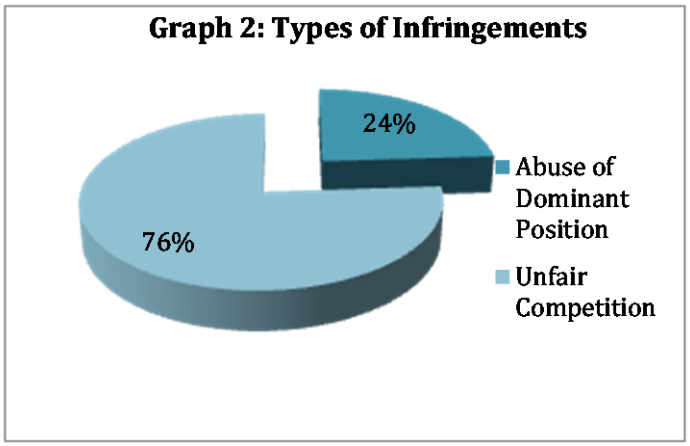


Table 2: Strength of relation between dominant position and type of penalty

Anti-competitive practice	Type of penalty	Strength of the relation
Dominant Position	Warning	2.5
Dominant Position	Fine	1.9

The analysis showed that, in general, there is a weak relationship between *abuse of dominant position* and *penalty*. Morevoer, there also is a very weak relationship between *abuse*

of dominant position and *use of administrative fines* to prohibit such actions. This means, that the Commission tends to punish the most severe types of infringements with the mildest penalty in the majority of cases avoiding penalizing according to the extent of non-compliance with the law.



The analysis of the 50 selected cases of companies with dominant market position revealed that only in six (6) of the cases the Commission identified abuse related to dominant position. In 19 of the 50 cases analyzed, having dominant market position was penalized for unfair competition. The rest of the cases did not find any infringement at all.

Anaysis of the Annual Reports of the Commission

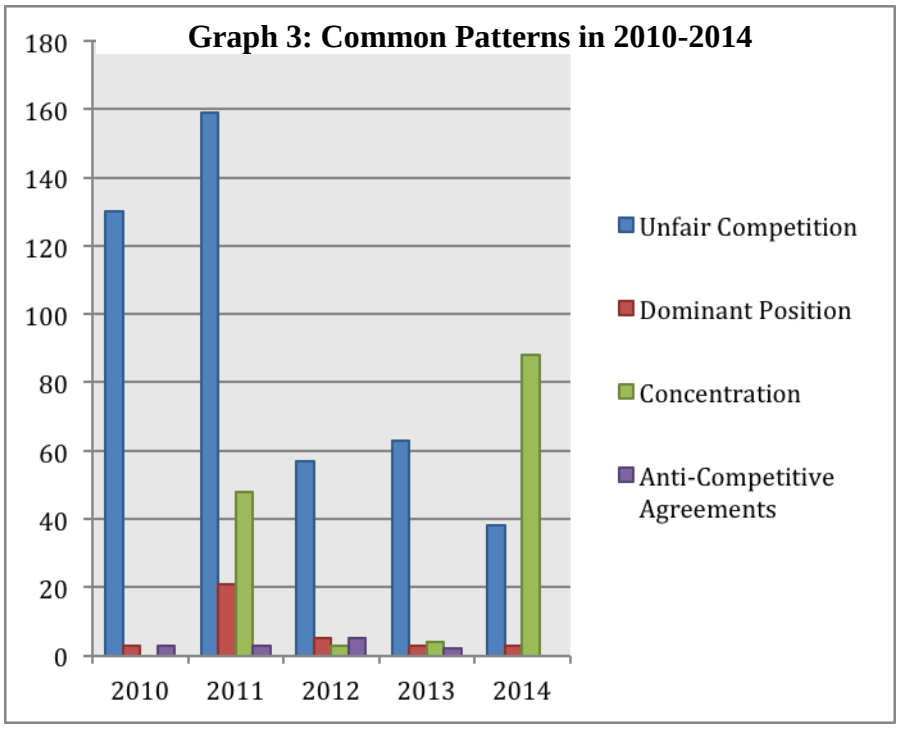
The 2015 report of the Commission was not yet published as of the date of this policy paper, and the reports for the years preceding 2010 are too simple and lack the adequate description of the Commission's activities. Thus five (5) annual reports depicting the Commission's work for 2010 through 2014 were selected for the current analysis. As mentioned earlier, the fundamental purpose of the analysis was to assess the quality of the Commission's performance by way of measuring the intensity of efforts in prohibiting anti-competitive practices thereby establishing a dominant pattern across the years. Thus, intensity was measured on a scale of 1 to 5, where 1 indicated the weakest, 3 moderate and 5 the strongest intensity of effort by the Commission. This meant that the analysis characterized the intensity of the

prohibition of anti-competitive practice by the prohibitive actions or penalties used by the Commission.

Table 3: Measurement of intensity of the prohibition of anti-competitive practices

Prohibition of Anti-Competitive Practices	Intensity
Prohibition of the anti-competitive agreements	1.4
Prohibition of abuse of dominant position	1.2
Prohibition of concentrations	1.1
Prohibition of unfair competition	4.1

The results of the above analysis showed relatively poor performance in terms of the failure of the Commission to address all four types of anti-competitive practices equally.



The quantitative analysis showed a pattern of decisions made by the Commission in four types of non-compliance with the law, in the period 2010-2014.

Graph 3 illustrates the disproportion in the prohibition of anti-competitive practices and weak performance by the Commission, particularly in each type of non-compliance except for "unfair competition". While it is difficult to draw an exact pattern through the years, as the increase and decrease were disproportionate, an overall decrease is

noticeable. Notably, year 2011 stands out with the number of decisions made against infringements in all four types of anti-competitive practices and obvious activity of the Commission.

Analysis of the Interviews

Five interviews are conducted with the major stakeholders of the Competition Protection Policy in Armenia: State Commission on Protection of Economic Competition of RA, Ministry of Economy of RA, and the representatives of the legal aspect of the policy. Interviews were analyzed using the same approach, measuring the intensity of the following descriptors, on a scale of 1 to 5, where 1 indicated the lowest intensity and 5 the strongest.

Table 4: Intensity of categories identified by major stakeholders

Descriptor Category	Lawyers	Commission	Ministry of Economy
Impact of the weaknesses in the RA Competition Law on the performance of the Commission	4.5	3.0	3.2
Effectiveness of the Commission's performance	1.0	4.0	3.7
Impact of the Commission's activities on the level of competition in Armenia	1.0	1.0	2.0

Policy Stakeholders

The content analysis of interviews revealed that there is some degree of disagreement among different stakeholders on this issue. They are summarized as follows:

1. The imperfections of the RA Competition Law have a considerable effect on the level of performance of the Sate Commission. The lawyers interviewed have stressed that the drawbacks of the RA Competition Law have served as a justifying factor for the low performance of the Commission; the Commissioners do not take the same position. According to the former, considering the lack of harmony between the local political and

economic environment, implementation of the RA Competition Law has suffered. Conversely, the Commissioners argue that the Law does not provide the implementing body with enough power to take better corrective action. The representative of the RA Ministry of Economy has a moderate position on the issue.

2. Though the lawyers refer to the Commission's performance as being highly ineffective, the Commissioners and the Ministry staff stress that given the local market conditions and limited power vested in the Commission, its performance is acceptable albeit not perfect.
3. The only point upon which the lawyers and the Commissioners totally agree is the extremely low impact of the Commission's activities on the level of competitiveness in Armenia. However, in the Ministry the impact is assessed as slightly better than extremely low.

FINDINGS AND RECOMMENDATIONS

This section summarizes major findings of the study in the form of answering the evaluation questions established early in the research and provides policy recommendations to improve the implementation of the RA Competition Law.

EQ_1. What is the effectiveness of the performance of the State Commission on Protection of Economic Competition vis-à-vis the RA Competition Law?

The effectiveness of the performance can be concluded to be low based on the following findings:

- Unequal distribution of the State Commission's efforts against the law infringements. The results of the qualitative analysis showed that, though the Commission should

address all four types of anti-competitive practices equally, it has mostly concentrated on revealing and punishing the cases of unfair competition.

- Low impact on the level of competition in Armenia. As was stated earlier, the most frequent cases addressed by the Commission are unfair competition practices. According to the law, the "unfair competition" is the weakest type of anti-competitive practices among all, having less impact on the reduction of the level of competition in the market. Hence, the focus of the Commission on the prohibition of the weakest type of the law infringement will consequently weaken the impact of the Commission's activities in promoting competition in Armenia. Moreover, the results of the interviews indicate the same.
- Ineffective use of penalties. The law enables the Commission to use administrative fines to prohibit the cases of law infringements. However, the results of the qualitative analysis revealed, that the Commission prefers to penalize infringements in the least number of cases. Moreover, when it does so, it tends to a) penalize the harshest infringements with the weakest measure; b) set the same amount of administrative fine to different companies, not taking into consideration their sizes and revenue (in the case of the same infringement).
- Higher activity against smaller businesses. The analysis of the cases of the prohibition of law infringements revealed that in most of the cases the Commission dealt with small and middle size businesses. Moreover, in many cases, the Commission set the same amount of administrative fine on a small company and a large monopoly.

- The decrease of the Commission's activities in recent years. There is a visible decrease in the number of decisions on the prohibition of anti-competitive practices. However, in-depth interviews did not reveal the possible underlying reasons.

EQ_2 What are the barriers to and challenges of implementation of the RA Competition Law?

Based on the results of the qualitative analysis, the following challenges of implementation were identified:

- Specificities of the Law. The interviewees stated that considering that the RA Competition Law is borrowed from Europe and, therefore, it is incompatible with the local environment, this creates obstacles related to implementation. Besides, according to them, the law has undergone significant simplifications, which create further problems with interpretation and implementation.
- Vagueness of the Law. The provisions in the law are defined in ways that quite often are interpreted differently. This weakens the prohibitive power of the Commission.
- Lack of an investigative and prohibitive power of the Commission. During the in-depth interviews with the Commissioners, this factor was stressed as a major obstacle to improved implementation of the law. According to the RA Competition Law, the State Commission relies mainly on citizen and company exposures of infringements. Whereas in many countries the Commission has the power to record or take photos and videos and anonymously, and has the right to the use of military force. Also, the power in the U.S., for example, includes imprisonment, which is a more effective penance, according to the interviewee.

- State Protection. In one of the articles, the Competition Law prohibits the state protection of anti-competitive practices. However, according to the lawyers interviewed, there is still some degree of state protection, which hinders the successful implementation of the law, especially in cases of abuse of dominant position. Another deterring factor is that business and politics are highly interlinked in Armenia.

EQ_3 Are there policy improvement options that would improve the effects/results of the implementation?

Based on the findings of the evaluation several policy recommendations can be offered to improve the State Commission's performance. They are divided into two categories: designed for the Government and the Commission.

Recommendations to the Government:

- Changes in the law. More specifically, it should be narrowed to avoid broad interpretation. As the interviewees mentioned, the broad interpretation of the law often creates barriers to implementation. Also, the investigative and prohibitive powers of the Commission should be augmented. For example, the current law stipulates that the Commission should provide 3-day advance warning to a company subject to investigation. A commissioner raised concern that it is almost impossible to catch anti-competition agreements because the parties manage to negotiate their responses. If the Commission were granted the right to sudden intervention into the company, as in many European countries, the cases of anti-competitive agreements and concentrations would be easier to catch. Another suggestion is to increase the level of individual responsibility for the infringements.

The literature reviewed suggests that the spread of the responsibility among various actors within one company lessen the level of responsibility for the infringement. As an alternative to imprisonment (as this would be a radical action at this point) increasing the individual responsibility could be a good solution.

- Promotion of competition by the state. The successful cases of the Competition Law enforcement in EU suggest that the public sector's role is crucial in the promotion of the competition. Learning from the example of more developed countries, Armenia should minimize state protection of anti-competitive practices to the extent such that they the state does not negatively influence competition, and continue protecting only natural monopolies.
- Decrease entry barriers. The literature reviewed showed, that one of the major problems deterring the successful implementation of competition policies in developing countries are high entry barriers to private sector. Parallel to competition promotion practices, the Government should adopt economic reforms to achieve higher results in the restriction of anti-competitive practices. Ease of entry to the private sector will facilitate the creation of new businesses, raising the level of competitiveness, creating new jobs, and thus contributing to the economic growth and development.

Recommendations to the State Commission

- Decrease the disproportion in addressing the cases of anti-competitive practices. The findings showed that out of four types of anti-competitive practices, only one is dealt effectively. This leads to the general ineffectiveness of the Commission's performance

and low impact on the level of competition in Armenia. Thus, it is highly suggested to start addressing the rest practices as actively as the practices of unfair competition.

- Develop an action plan, clear and robust ideology, and promote academic research. Norway Competition practice is considered to be the most successful in Europe. In 2001, they set the target of improving the implementation of the Competition Law, and in a year after following these steps they had tangible results. The interviews with the Commissioners left an impression that the Commission lacks a clear ideology. Together with a certain action plan, that would specify their measurable targets; the results would be more noticeable. Besides, during the interview the Commissioner mentioned, that they do not conduct any research to follow the improvement of the competition situation in Armenia. However, the successful cases of other countries show, that research is necessary not only to follow the trends and align the actions according to them, but also to borrow successful practices found as a result of the academic research.
- Strengthening Competition Authority. The image of the law implementing body and perceptions about it in the general public, as well as the private sector is crucial. The case of Norway shows that after working on the strengthening of their authority for a year, the implementing body started to be perceived by the public as honest and highly knowledgeable. This perception can have a reverse effect, reducing the level of infringements by creating a reasonable level of fear among the businessmen.

REFERENCES:

Bright, Christopher. 1996. "EU Competition Policy: Rules, Objectives and Deregulation." *Oxford Journal of Legal Studies* 16: 535.

Commission, European. 1994. "Commission Regulation (EC) No 3385/94."

Danov, Mihail. 2012. "EU Competition Law Enforcement: Is Brussels I Suited to Dealing with All the Challenges?" *International and Comparative Law Quarterly* 61 (01): 27–54.

Davies, John, and Ania Thiemann. 2015. "Competition Law and Policy: Drivers of Economic Growth and Development." Organisation for Economic Cooperation and Development.

Friedrich-Ebert-Stiftung. 2013. "Monopolies in Armenia." *Hrayr Maroukhian Foundation*, February, 5–88.

Gal, Michal S., and Eleanor M. Fox. 2014. "Drafting Competition Law for Developing Jurisdictions: Learning from Experience." *Economic Characteristics of Developing Jurisdictions: Their Implications for Competition Law, Edward Elgar*, 14–11.

Gerber, David J. 2002. "Competition Law." *The American Journal of Comparative Law*, 263–96.

———. 2013. "Us Antitrust: From Shot in the Dark to the Global Leadership." *IIT Chicago-Kent College of Law*.

Godfrey, Nick. 2008. "Why Is Competition Important for Growth and Poverty Reduction?" Global Forum VII. OECD Global Forum on International Investment: Organisation for Economic Cooperation and Development.

"Implementing Competition Policy in Developing Countries." 2007. Promoting Pro-Poor Growth: Policy Guidance for Donors. Organisation for Economic Cooperation and Development.

Langhammer J., Rolf. 2000. "Changing Competition Policies in Developing Countries: From Policies Protecting Companies Against Competition to Policies Protecting Competition." *Kiel Institute of Wolrd Economics*, February.

Letwin, William. 1981. *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act*. University of Chicago Press. https://books.google.com/books?hl=en&lr=&id=JQG1IrnrenoC&oi=fnd&pg=PR9&dq=Letwin,+1981&ots=OdGlTaUxt5&sig=MGkSg7vDmzRK16ah9MtWw0Rgkvk.

"Norway - Updated Report." 2004. Country Studies. Organisation for Economic Cooperation and Development.

Peritz, Rudolph J. 1988. "Rule of Reason in Antitrust Law: Property Logic in Restraint of Competition, The." *Hastings LJ* 40: 285.

Peritz, Rudolph JR. 2000. *Competition Policy in America, 1888-1992: History, Rhetoric, Law ISBN: 0195144090 ISBN-13 (EAN): 9780195144093...* Oxford University Press, 1996. http://books.google.com/books/about/Competition_Policy_in_America_1888_1992.html?id=nxBK-gNazpwC.

Plessis, Louise du, Judd Lurie, and Amy van Buuren. 2011. "Competition Law in the Developing World: A Fish out of Water?" http://www.compcom.co.za/wp-content/uploads/2014/09/FINAL-PAPER-2011.pdf.

Qaqaya, Hassan, and George Lipimile. 2008. "The Effects of Anti-Competitive Business Practices on Developing Countries and Their Development Prospects." *Retrieved September* 16: 2013.

Sala-i-Martín, Xavier, Beñat Bilbao-Osorio, Attilio Di Battista, Margareta Drzeniek Hanouz, Caroline Galvan, and Thierry Geiger. 2015. "The Global Competitiveness Report 2014-2015." World Economic Froum.

Steuer, Richard M. 2012. "The Simplicity of Antitrust Law." *University of Pennsylvania Journal of Business Law* 14 (2): 543.

"Sweden - The Role of Competition Policy in Regulatory Reform." 2006. Country Studies. Organisation for Economic Cooperation and Development.

"Switzerland - The Role of Competition Policy in Regulatory Reform." 2005. Country Studies. Organisation for Economic Cooperation and Development.

Teo, Chadwick. 2003. "Competition Policy and Economic Growth." *ASEAN Conference on Fair Competition Law and Policy*, March.

Venit, James S. 1996. "EU COMPETITION LAW—ENFORCEMENT AND COMPLIANCE: AN OVERVIEW." *Antitrust Law Journal* 65 (1): 81–104.

Waller, Spencer Weber. 1992. "Understanding and Appreciating EC Competition Law." *Antitrust Law Journal*, 55–77.

White, Lawrence J. 1987. "Antitrust and Merger Policy: A Review and Critique." *The Journal of Economic Perspectives* 1 (2): 13–22.

Wils, Wouter PJ. 2005. "Is Criminalization of EU Competition Law the Answer?" *World Competition: Law and Economics Review* 28 (2). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=684921.

APPENDIX I — LOGIC MODEL

Input	Activity	Output	Outcome	Outcome Indicators
▪ RA Competition Law ▪ Expertise of the staff of the RA Commission ▪ Website	Research Decisions Collaboration Raising public awareness	Law infringements revealed Law infringements penalized Meetings/forums/seminars with local/international institutions and organizations Publications of activities, updated website, meeting with media	Protection of economic competition Prohibition of anti-competitive practices Exchange of experience Accountability to public	Prohibition of: anti-competitive agreements abuse of dominant position concentrations unfair competition Relevant use of penalties Local/international agreements Active report of activities in media and website

APPENDIX II – INTERVIEW QUESTIONS

1. What drawbacks can you pinpoint in the RA Competition law?
2. Does the law enable the Commission with all the necessary tools to fight against the infringements?
3. Are the penalty measures set by the law adequate for the successful prohibition of the anti-competitive practices?
4. Are all four types of anti-competitive practices set by the law equally addressed by the Commission?
5. If there is any discrepancy, what is the reason for it?
6. Does the Commission consider cases dealing with monopolies equally often as the cases dealing with small and middle businesses?
7. In what ways the law hinders the effectiveness of the Commission's work?
8. Is the law modified after the Commission's suggestions to change a point in it?
9. What is the reason of the Commission's outstanding activity in 2011?
10. What is the impact of the Commission's 16 years old existence? Has the level of competitiveness risen in Armenia?

APPENDIX III – ANNUAL REPORTS OF THE COMMISSION

1. 2011 Annual Program of Activities of the State Commission for the Protection of Economic Competition
2. 2011 Annual Program of Activities of the State Commission for the Protection of Economic Competition
3. 2012 Annual Program of Activities of the State Commission for the Protection of Economic Competition
4. 2013 Annual Program of Activities of the State Commission for the Protection of Economic Competition
5. 2014 Annual Program of Activities of the State Commission for the Protection of Economic Competition