

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[Agency name, Jurisdiction]

The following template is submitted by **[Competition Protection Commission, Armenia]** pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

Please add brief presentation/link to agency website.

The Competition Protection Commission (hereinafter “the Commission”) was established on January 13, 2001 for the purpose of implementation of state policy in the sphere of economic competition protection, and acts pursuant to the Law “On Protection of Economic Competition” adopted by the RA National Assembly on November 6, 2000. In the course of its more than twenty-year formation, the Competition Protection Commission as a state institution has come a long way. Nowadays, CPC is an autonomous body with a high degree of independence.

2007 –The Commission reserved the right to carry out inspections; the state aid provisions were included in the scope of controlled spheres.

2011 – The sequence and jurisdiction of monitoring and test purchase were defined, clarified, the amounts of fines were clarified. Moreover, other legislative institutes of dominant position and competition were reformed.

2015 –For the first time, the status of the Commission as an autonomous body was constitutionally enshrined significantly increasing the guarantees of its independence.

2018 – The provisions of the Commission specified in the Constitution were made, the law was conformed to the Treaty on Eurasian Economic Union and the best international experience.

2019 – The right to nominate a candidate for the Committee members’ vacant position was retained to the leading, opposing fractions of the National Assembly, (that is) the Government of the Republic of Armenia.

2021 – [The Law “On Protection of Economic Competition”](#) (hereinafter “the Law”) have undergone comprehensive amendments. The status of the Commission was set on a completely new basis. As a result of making amendments to the Law the Commission carried on its activities under the new name called Competition Protection Commission (previous name: State Commission for the Protection of Economic Competition of RA).

The Commission is entrusted with several distinct responsibilities, including:

1. Exercising supervision to ensure compliance with the provisions pertaining to the protection of economic competition.
2. Granting approval for competition guidelines.

3. Disseminating information to the public regarding competition-related matters.
4. Providing elucidations on matters relating to the application of economic competition rules.
5. Offering opinions on draft legislation in relation to competition matters.
6. Issuing warnings to business entities, state authorities, or their officials, whose actions may result in the restriction or obstruction of competition, engage in acts of unfair competition, or detrimentally impact consumer interests.
7. Conducting proceedings in cases of infringements of the provisions safeguarding economic competition, and holding accountable business entities, state authorities, and their officials for such violations.
8. Undertaking market research endeavors.

The Commission is composed of a chairman and six members, all of whom are appointed by the National Assembly. It is imperative that at least one member possess a law degree, while another member holds an economics degree. The positions of Commission members are classified as autonomous.

The specific responsibilities of Commission members and the extent of the Commission's powers are delineated in the relevant bylaws.

Additional information can be found: www.competition.am

For English version of the Law, please see https://www.translation-centre.am/pdf/Translat/HH_orenk/2000/HO-112_06112000_04032022_en.pdf

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

According to Article 7 of the [Law on the Fundamentals of Administrative action and Administrative Proceedings](#):

1. Administrative bodies are prohibited from taking an unequal approach to uniform factual circumstances, if there is no basis for their differentiation.
Administrative bodies are obliged to take an individual approach to significantly different factual circumstances.

2. If the administrative body exercised any discretionary authority in a certain way, then in similar cases, it is obliged to exercise that discretionary authority in the same manner in the future.

The administrative body may waive this restriction if, due to the existence of an overriding interest, it intends to permanently adopt another discretionary decision in the future.

According to Article 1 (1) of the Law this Law shall apply to actions, conduct or acts of economic entities, state bodies, as well as officials thereof, which lead or may lead to prevention, restriction, blocking of economic competition, or to an act of unfair competition, as well as harm the consumer interests.

Moreover, Article 1 (2) of the Law stipulates that the Law shall also apply to actions or conduct of economic entities in foreign states which may prevent, restrict or block economic competition or harm the consumer interests in the Republic of Armenia.

Considering the legal acts mentioned above establish the principles of non-discrimination and equal treatment in administrative decision-making processes and extend the scope of the law to encompass actions or conduct of economic entities in foreign states that could affect economic competition or consumer interests within the Republic of Armenia. Thus, the parties in administrative procedure are treated equally in any conditions.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

According to Article 25 (1) of the Law “On normative legal acts” the official publication of normative legal acts, including cryptographed ones, is accomplished by posting them on the unified website for the publication of normative legal acts maintained by the Ministry, hereinafter referred to as the 'unified website'.

As the abovementioned regulation requires, laws related to competition, such as the Law “On Protection of Economic Competition”, the Law “On Fundamentals of Administrative Action and Administrative Proceedings”, and Law “On Organizing and Carrying out Inspections in the Organizations on the Territory of the Republic of Armenia”, etc., are also published on the unified website “ARLIS”, which is accessible via the following link: <https://www.arlis.am/>.

Moreover, draft legal acts developed by state bodies, including the Commission are placed on the unified website for publication of legal acts. An online platform, E-DRAFT, accessible via the following link: <https://www.e-draft.am/>, is created with the introduction of the Unified Website, which provides the possibility of presenting legal acts' drafts to the public, organizing

online discussions, and as a consequence - the active participation of representatives of civil society in law-making process.

In addition, according to Article 42 (1) of the Law Decisions and opinions of the Commission are sent to the addressee within a period of three days after being signed. Decisions, opinions of the Commission and special opinions of Commission members are published on the official website of the Commission, except for the parts containing state or other secret protected by law.

Within the Commission's official website, alongside the Commission's decisions, methodological and non-normative sub-legislative acts crafted by the Commission can be found.

According to Article 48 (1 and 2) of the Law

1. The Commission ensures the publicity and transparency of its activities through mass media, official website and other means.

2. Each year, by 1 May, the Commission publishes a report on the activities of the previous year, which shall at least contain summary information on the activities of the Commission, on the analysis of the goods markets, on the implemented measures aimed at the protection of and supervision over the economic competition, on the process of implementation of the proposals aimed at improvement of the competitive situation, and on the financial report on its activities.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

Article 83 of the Law stipulates the regulations about Initiating proceedings on the offence in the field of economic competition, according to which:

1. Where there are no grounds for refusing the initiation of the proceedings, readdressing or returning the report, the Commission shall render a decision on initiating proceedings on the offence in the field of economic competition, which shall indicate the following:

- (1) name of the body conducting the proceedings;
- (2) description of prima facie violation;
- (3) provision of this Law, which provides for liability for the given violation;
- (4) the name, surname of the respondent natural person or the name of the respondent legal person in the proceedings;
- (5) time (year, month, day) of signing the decision;
- (6) position, initial of the name, surname of the official signing the decision.

2. The decision on initiating proceedings may contain provisions on the time and place of examination of the case, as well as on the request for providing information.

3. The decision on initiating proceedings shall — within a period of three days after adopting the decision — be sent to the respondent in the proceedings and the person having submitted the report.

Moreover, as mentioned in Article 79 of the Law before the adoption of a decision as a result of consideration of the reasons for initiating proceedings on the offence in the field of economic competition, the Commission may (...) request and receive information to verify the reliability of the fact of prima facie violation of this Law.

According to Article 64 (1) of the Law, the right of the participant of the administrative proceedings to be heard is ensured through submission thereby, within a period of two weeks after being notified on the initiation of proceedings, to the Commission a written position on the issues under consideration in the proceedings and materials substantiating it. Based on the substantiated motion of the participant of the administrative proceedings the time limit prescribed by this part may be extended to up to two weeks upon the letter of the Commission Chairperson.

Article 43 of the Law imposes a legal obligation on both state bodies and economic entities to furnish necessary information to the Commission. According to which:

1. Based on a letter of the Commission Chairperson or a decision of the Commission or a requirement prescribed by the legislation, state bodies, as well as officials thereof, shall be obliged to submit, within the time limit prescribed, documents, materials and other information necessary for the Commission to exercise its powers, except for information containing strategic, bank, insurance, pension and medical secret.

2. Based on a letter of the Commission Chairperson or a decision of the Commission or a requirement prescribed by the legislation, economic entities shall be obliged to submit, within the time limit prescribed, documents, materials and other information necessary for the Commission to exercise its powers prescribed by law, except for information containing bank, insurance, pension and medical secret.

3. When requesting necessary documents, materials and other information by a letter of the Commission Chairperson or a decision of the Commission, the Commission shall inform the economic entity about the time limits for their submission, as well as on the legal consequences of the failure to submit the necessary documents, materials and other information within the time limit prescribed or of submitting inaccurate or incomplete information.

4. Based on the substantiated motion of an economic entity, the time limit for submitting information prescribed by a letter of the Commission Chairperson or a decision of the Commission may respectively be extended by a letter of the Commission Chairperson or a decision of the Commission, and the information shall be subject to submission within the mentioned time limit.

5. Where any economic entity fails to submit the necessary documents, materials and other information within the time limit prescribed, the economic entity shall not be exempted from the obligation to submit documents, materials and other information or from the liability prescribed for failure to submit them within the time limit prescribed in case of rendering a decision by the Commission based on the documents, materials and other information at the disposal thereof.

(...)

Furthermore, it is worth noting that the "Law on Fundamentals of Administrative Action and Administrative Proceedings" includes provisions that mandate the lawful requirement for notifying all participants involved in the procedure.

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

Time limit for administrative proceedings is envisaged by Article 63 of the Law, as follows

1. The time limit for the administrative proceedings conducted by the Commission shall be three months. Upon a reasoned decision of the Commission, the time limit for the proceedings shall once be extended to up to three months.

2. Administrative proceedings on offences related to anti-competitive agreements, abuse of a dominant position and strong negotiating position, prohibited coordination of economic activities shall be six months.

3. The time limit for the administrative proceedings on administrative offences conducted by the Commission shall be determined under the Code of the Republic of Armenia on Administrative Offences.

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The relations regarding to keeping by the Commission a secret protected by law is envisaged by Article 44 of the Law, according to which:

1. Information constituting commercial, bank, official or other secret protected by law, which has been obtained while exercising powers provided for by this Law, shall be kept by the Commission as prescribed by law.

2. Members and employees of the Commission shall not have the right to disclose or otherwise disseminate, as well as use for any purpose beyond their official powers or by abuse thereof, any secret information obtained during the performance of their official duties.

3. In case of disclosure of information referred to in part 1 of this Article, damages caused to an economic entity shall be compensated by the Republic of Armenia in the manner prescribed by the legislation.

4. The Commission shall prescribe the procedure for dealing by members and employees of the Commission with information constituting a secret.

Moreover, the Commission's decision N-325-Ն, issued on November 9, 2021, specifically addresses the submission and encryption of reports, ensuring a secure and confidential means of communication. Additionally, the Commission's decision N-349-Լ, adopted on December 7, 2021, establishes the procedure for handling confidential information by the

Commission's members and employees,

These legal acts collectively reinforce the provisions related to confidentiality outlined in the given provisions. They ensure that each participant, including the Commission, has publicly available rules, policies, or guidance regarding the identification and treatment of confidential information. They also require the protection of confidential information from unlawful disclosure during investigations and enforcement proceedings. Importantly, the interests of the individuals involved and the public are taken into consideration when determining the legal basis of disclosing confidential information during an enforcement proceeding, promoting fairness, effectiveness, and transparency in the Commission's activities.

The Commission consistently places a paramount emphasis on safeguarding confidential information throughout its practical operations. It is noteworthy that the Commission's decisions are discreetly published on the website, devoid of any confidential information maintained by law.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Commission member's recusal related issues granting the impartiality of the administrative procedure are prescribed by Article 40 of the Law

1. A Commission member may not participate in the consideration of and voting on an issue where there are any of the grounds for recusal prescribed by the Law "On fundamentals of administrative action and administrative proceedings".

2. A Commission member shall be obliged to recuse himself or herself in writing or verbally immediately upon becoming aware of the ground for self-recusal, stating the circumstances serving as a ground for self-recusal.

3. A Commission member may make the issue of recusal of other Commission member a subject of consideration.

4. The person presiding over the Commission sitting shall submit the issue of selfrecusal or recusal for consideration, which shall be discussed with the participation of the Commission member having recused himself or herself or whose recusal is being sought.

5. After consideration of the issue, the Commission shall render a decision. The Commission member having recused himself or herself or the member whose recusal is being sought, as well as the member having sought recusal shall not participate in the voting on self-recusal or recusal.

6. Where self-recusal or recusal is accepted, the member in question shall not participate in the examination of and voting on the issue with regard whereof a ground for self-recusal or recusal exists

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

According to Article 74 (1) of the Law: the right of the participant of the administrative proceedings to be heard shall be ensured through submission thereby, within a period of two weeks after being notified on the initiation of proceedings, to the Commission a written position on the issues under consideration in the proceedings and materials substantiating it. Based on the substantiated motion of the participant of the administrative proceedings the time limit prescribed by this part may be extended to up to two weeks upon the letter of the Commission Chairperson.

Participants in administrative proceedings, with the aim of upholding transparency in the actions of the administrative body and ensuring its impartiality throughout the course of administrative proceedings, possess the privilege of acquainting themselves with the materials related to the proceedings directly within the implementing body. This entitlement is enshrined in Article 75(1)(1) of the Law.

Article 75 encompasses a range of other important rights, such as submitting evidence; addressing questions to the participants of the proceedings; filing motions and giving explanations; expressing position with regard to motions and arguments of other participants of the proceedings; recusing; appealing against decisions of the Commission subject to appeal; performing other actions provided for by the law.

The authority to undertake any other actions stipulated in this Law or other applicable laws.i)
Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

According to article 74 of the Law

1. Participants of the proceedings on offence in the field of economic competition shall be:
 - (1) respondent in the proceedings;
 - (2) stakeholder;
 - (3) competent bodies.
2. Respondent in the proceedings shall be the economic entity, state body or official that the commission of prima facie offence is attributed to.
(...)
7. During the proceedings the persons provided for by points 1 and 2 of part 1 of this Article may act both in person or through a representative, and together with a representative.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

Article 41. Procedure for adopting and signing decisions and opinions of the Commission

1. At Commission sittings, decisions and opinions shall be adopted by a majority vote of the members participating in the sitting. In the event of a tie, the vote of the person presiding over the sitting shall be decisive.
2. Refraining from voting or transfer of one's vote to another member shall not be permitted.
3. In case a Commission member has a different opinion on the reasoning or concluding part of the decision or opinion of the Commission, he or she shall submit a written special opinion within one day. The special opinion of the Commission member shall be signed and attached to the relevant decision or opinion.
4. The decision and opinion adopted by the Commission shall be signed by the Commission Chairperson within one day.
5. The decision or opinion adopted by the Commission, which has been adopted by submitting certain comments and recommendations, shall be revised in compliance therewith and signed by the Commission Chairperson within five days.

Article 42 of the Law is regulating the relations concerning to the Informing about adoption of decisions and opinions of the Commission and entry into force thereof

1. Decisions and opinions of the Commission shall be sent to the addressee within a period of three days after being signed. Decisions, opinions of the Commission and special opinions of Commission members shall be published on the official website of the Commission, except for the parts containing state or other secret protected by law.
2. Decisions of the Commission shall enter into force from the moment of adoption, except for administrative acts and secondary regulatory legal acts adopted by the Commission, as

well as except for the case when the Commission has prescribed a later time limit for the entry into force of the decision.

3. Opinions of the Commission shall enter into force from the moment of adoption.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The Article 75(7) of the Law provides a right to participants of the proceedings, in observance of the requirements of this Law and other laws, to appeal against decisions of the Commission which are subject to appeal.

It's worth emphasizing that the right to appeal decisions can be pursued through both judicial and administrative channels. Manually, the Commission's administrative acts can be appealed in order of superiority based on the Article 67 of Law on the Fundamentals of Administrative action and Administrative Proceedings and through judicial procedure as prescribed by [Administrative Procedure Code](#). Additionally, it's important to mention that judicial appeals to the Commission's decisions are addressed by specialized courts, specifically the Administrative Court of the Republic of Armenia.

Furthermore, Article 103 of the Law introduces a provision allowing for the review of Commission decisions in light of newly-emerged circumstances. In a nutshell:

1. Administrative acts of the Commission, that have become unappealable, shall be subject to review based on newly-emerged circumstances.

2. The review of administrative acts based on newly-emerged circumstances shall be conducted by the Commission.

3. Reasons for reviewing an administrative act based on newly-emerged circumstances shall be:

(1) applications of participants of the proceedings;

(2) identifying by the Commission, while exercising its powers, a newly-emerged circumstance serving as a ground for reviewing an administrative act.

(...)