

**NON OFFICIAL TRANSLATION**

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**STATE COMMISSION FOR THE PROTECTION OF ECONOMIC COMPETITION OF THE  
REPUBLIC OF ARMENIA**

18 July 2007  
Yerevan

No 55-N

**DECISION**

**ON OFFICIAL CLARIFICATION ON GIVING EFFECT TO THE CONCENTRATION OF  
ECONOMIC OPERATORS OR PARTICIPATION THEREIN**

In the public session held on 18 July 2007 the State Commission for the Protection of Economic Competition of the Republic of Armenia (hereinafter referred to as the Commission) discussed, upon the application No. PM/2007-09 of 4 July 2007 (hereinafter referred to as "the Application") of the "Corporate Governance Centre" Fund (hereinafter referred to as the Fund), the issue of providing official clarification on giving effect to the concentration of economic operators or of participation therein envisaged by the Law of the Republic of Armenia on the Protection of Economic Competition (hereinafter referred to as "the Law"). During the discussion the Commission stipulated the following:

In its application, the Fund requested the Commission to officially clarify whether Article 9 of the Law is effective or legally enforceable (has legal effect) in terms of fulfilment of obligations of economic operators at the moment of filing the Application, whether the absence of legal act provided for in Article 9(3) implies that Article 9 of the Law will be effective at the moment of entry into force of the legal act envisaged by Part 3 and whether this enables a foreign investor to acquire 20 percent and more of the statutory capital of a resident of the Republic of Armenia without declaration of concentration and authorisation of the Commission.

The application also specified that the need for clarification of the issue had arisen taking into account the fact that pursuant to Article 9(1) of the Law "1. Concentration of economic operators shall be subject to declaration prior to giving effect to the concentration of economic operators or participation therein if..." and pursuant to Part 3 of the same Article "3. The procedure for declaration of concentration and the form of declaration shall be defined by the Commission." No such procedure has been laid down by the Commission (it is not published in the Journal of State Agency Prudential Legal Acts of the Republic of Armenia). Thus, the compulsory declaration system is stipulated by the Law but it lacks implementation mechanisms.

Quoting Article 68(4) of the Law of the Republic of Armenia on Legal Acts, the Fund also informed that the application of Article 9(1), as to its legal effect, leaves room for various questions.

Guided by Section 3 of the Law of the Republic of Armenia on Legal Acts, the Fund proposed the following option for clarification with regard to this issue: «Foreign investors shall have the right to acquire 20 percent and more of the statutory capital of a resident of the Republic of Armenia without declaration of concentration and authorisation of the Commission unless the procedure for and form of declaration approved by the Commission have legally entered into force».

Examining the Application, the Commission stipulates that Chapter 4, including Article 9 have been rephrased by the Law of the Republic of Armenia No LA-107-N of 22 February 2007 on Amendments and Additions to the Law of the Republic of Armenia on the Protection of Economic Competition whereby Article 9(3) stipulates that the procedure for declaration of concentration and the declaration form shall be defined by the Commission. The procedure for declaration of concentration and the declaration form to be defined by the Commission shall correspondingly include provisions regulating legal relations concerning declaration of concentration provided for in Chapter 4 of the Law which, in particular, are related to issues such as: who should apply for the declaration of concentration (one of the participants, each of them separately or all participants together), who should submit information on each of the participants, what form the declaration shall be, etc. Thus, the application of Chapter 4, including Article 9 of the Law shall be possible only in case the procedure for declaration of concentration regulating the aforementioned relations and the declaration form are defined by the Commission.

Pursuant to Article 68(4) of the Law of the Republic of Armenia on Legal Acts, where the requirements of a rule provided for in a legal act can only be fulfilled by adopting another legal act envisaged by this legal act or its fulfilment is directly conditional upon the adoption of another legal act, the legal act, as regards this rule, is effective from the time of entry into force of the other relevant legal act. Thus, economic operators shall have the right to give effect to the concentration or participate therein without declaration and/or authorisation by the Commission pending the establishment of a procedure for declaration of concentration and a declaration form by the Commission.

Based on the aforementioned and having regard to Article 87(2)(c) of the Law of the Republic of Armenia on Legal Acts and Article 19(1)(h)(i) of the Law, the Commission **has decided to:**

1. Officially clarify that economic operators shall have the right to give effect to the concentration provided for by the Law or participate therein without declaration and/or authorisation by the Commission pending the establishment (entry into force) of the procedure for declaration of concentration and the declaration form provided for in Article 9(3) of the Law of the Republic of Armenia on the Protection of Economic Competition.

2. This Decision shall enter into force on the tenth day following its official publication.

Chairperson

A. Shahnazaryan