

Chapter I - General Provisions

**Article 1 - Scope of the Law**

1. This Law sets forth the principles for protecting free and fair competition from unlawful restrictions in order to create a basis for the development of free trade and a competitive market.
2. This Law defines the actions unlawfully restricting free trade and competition, the legal basis for the prevention and elimination of the distortion of free trade and competition, and defines the authority of the competent agency.
3. This Law shall apply to:
  - a) actions and decisions of undertakings, state authorities, authorities of Autonomous Republics, and local self-government authorities and/or their public officials, which, except for the cases specified in this law, cause and/or are able to cause restriction, exclusion and elimination of free trade and competition on the national markets for goods and services.
  - b) actions performed outside the country, which affect and restrict competition on the internal market of the country and/or substantially deteriorate the competitive environment.
4. This Law shall not apply to:
  - a) labour relations;
  - b) relations connected with intellectual property rights, except for the cases where those rights are exercised for the restriction and elimination of competition.
  - c) relations defined by the Law of Georgia on Securities Market, except where these relations impact competition on the goods market of the country and/or restricts it or may cause its substantial restriction.
5. (Deleted - 21.3.2014, No 2159).

*Law of Georgia No 2150 of 21 March 2014 - website, 27.3.2014*

**Article 2 - Purpose of the Law**

The purpose of this Law is to support the liberalisation of the Georgian market, free trade and competition, in particular to:

- a) prevent the imposition of administrative, legal and discriminative barriers to entry into the market by state authorities, authorities of the Autonomous Republics and/or local self-government authorities;
- b) ensure proper conditions for free access of undertaking to the market;
- c) prevent unlawful restriction of competition between undertakings;
- d) safeguard the principle of equality of undertakings in their activities;
- e) prevent the abuse of a dominant position;
- f) prevent state authorities, authorities of Autonomous Republic's and/or local self-government authorities from granting to undertakings such exclusive powers that unlawfully restrict competition;
- g) ensure maximum publicity, fairness, non-discrimination and transparency of an authorised body in the decision-making process.

**Article 3 - Definition of terms used in the Law**

The terms used in this Law have the following meanings:

- a) undertaking - a person who, irrespective of residence, the legal form of an entity, carries out entrepreneurial activities; also a non-entrepreneurial (non-commercial) legal person or other organisations that are market participants and/or carry out entrepreneurial activities;
- b) competition - rivalry between actual or potential undertakings in the relevant market to gain advantage in the market;
- c) competing undertaking - an actual or potential economic agent operating in the relevant market;



- d) potential competing undertaking - an interested undertaking who has a substantiated intention to enter the relevant market;
- e) non-competing undertaking - an undertaking that is not a competing undertaking;
- f) substitutable goods and services - goods and services and/or group of goods and services, which could substitute for each other in the process of use and/or production according to their functional purpose, use, or ability to substantially satisfy the requirements, or any other characteristics;
- g) relevant market - an area of circulation of goods, substitutable goods or services within a defined territory the borders of which are established according to the economic opportunities and feasibility of the purchase of the goods/services and may cover the entire territory of Georgia, any of its parts or the entire territory of Georgia, or its part, together with the territory of another country, or its part;
- h) unobserved economic activities – a production that is not reflected in statistical recordings, including: production for personal consumption or unorganised household production for the purpose of sale, where its aggregate market share may impact the relevant market. Unobserved economic activities may also include organised production that is not reflected in statistical recordings if, due to the structural characteristics of the sector, its classification for the purpose of attributing it to the relevant market is difficult;
- i) dominant position - a position of an undertaking/undertakings operating on the relevant market, which allows it/them to act independently from competing undertakings, suppliers, clients and final consumers, and to substantially influence the general conditions of circulation of goods on the market and restrict competition. Unless there is any other evidence, an undertaking/undertakings shall not be deemed to hold a dominant position if their share of the relevant market does not exceed 40 per cent. Each out of two or more undertakings shall be considered to be in a dominant position if it does not encounter any significant competition from other undertakings, taking into account the limited access to their raw materials and the sales markets, market entry barriers and other factors, and at the same time:
- i.a) the joint market share of not more than 3 undertakings exceeds 50 per cent, and, at the same time, the market share of each of them is at least 15 per cent;
- i.b) the joint market share of not more than 5 undertakings holding the most significant market share exceeds 80 per cent, and, at the same time, the market share of each of them is at least 15 per cent;
- j) (deleted - 21.3.2014, No 2159);
- k) related parties - parties whose special relationship between each other may impact the conditions or economical outcomes of their activity or the activity of the persons that they represent. The following persons shall be regarded as related parties:
- k.a) a person who is a supervisory board member or has managerial or representative authority in one undertaking and, at the same time, is a supervisory board member or has managerial or representative authority in another undertaking, which allows him/her to exercise direct or indirect control over this undertaking;
- k.b) a person who is a member of the supervisory board of an undertaking and, at the same time, holds such amount of voting shares/interest in another undertaking that enables him/her to exercise direct or indirect control over this undertaking;
- k.c) a person who holds a significant voting right in one undertaking and, at the same time, holds a significant voting right in another undertaking, which allows him/her to exercise control, directly or indirect, over such undertaking;
- k.d) related parties provided for by the Tax Code of Georgia;
- l) control – situation where a person may substantially, directly or indirectly, influence the decisions of an undertaking, and at the same time:
- l.a) a person holds such amount of voting shares/interest in an undertaking that allows him/her to appoint the majority of the members of the management body;
- l.b) a person holds all of the operating assets or their significant part;
- l.c) a person is a member of a supervisory board or holds managerial or representative authorities;
- l. d) a person has significant voting rights with respect to transactions;
- m) applicant - a person who has information or evidence of gross violations of the Georgian legislation on competition, although this does not cause direct property damage to him/her, and based on this information, submits a relevant application to the Competition Agency;
- n) complainant- an undertaking that believes that the violations of the Georgian legislation cause direct property damage to him/her, and submits a relevant application to the Competition Agency;
- o) horizontal agreement - an agreement between actual or potential competitors;
- p) vertical agreement - an agreement between two or more undertakings operating at different levels of production and distribution, which concerns the conditions under which the parties can purchase, sell or resell particular goods or services;
- q) regulated sectors of the economy - sectors defined by the Organic Law on the National Bank of Georgia, the Law of Georgia on the Activities of Commercial banks, the Law of Georgia on Investment Funds, the Law of Georgia on Electronic Communication, the Law of Georgia on Broadcasting and the Law of Georgia on Electric Energy and Natural Gas, as well as municipal service sectors, where free pricing and competition are restricted, and which are defined as regulated sectors of the economy under an ordinance of the Government of Georgia and are subject to tariff regulations;
- r) state aid (subsidies) - a decision made with respect to an undertaking stipulating tax exemptions, tax reductions or tax deferrals, debt relief, debt restructuring, granting loans on favourable terms, transfer of operating assets, monetary assistance, granting of profit guarantees, privileges, or other exclusive rights;



s) provider of state aid - a public authority, an authority of an Autonomous Republic and/or a local self-government authority, a non-entrepreneurial (non-commercial) legal entity, a legal entity under public law, an undertaking in which the State holds more than 50% interest or an intermediary undertaking acting on behalf of the State, which directly or indirectly exercises the authority to grant state aid;

t) critical infrastructure - facilities through which the goods not in free circulation are produced and/or supplied and which is functionally significant for the country's security and essential to ensure public needs;

u) goods not in free circulation - goods that are produced, imported, supplied and used under restricted (specific), special conditions, which may be caused, among other things, by exhaustible resources, and/or limited nature of the means of supply.

*Law of Georgia No 6544 of 22 June 2012 - website, 4.7.2012*

*Law of Georgia No 1040 of 6 September 2013 - website, 23.9.2013*

*Law of Georgia No 1586 of 20 November 2013 - website, 3.12.2013*

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 4 - Authorized Body**

A body authorised to ensure compliance with and fulfilment of the provisions of this Law is an independent legal entity under public law - Competition Agency ('the Agency'), established under this Law.

*Law of Georgia No 1040 of 6 September 2013 - website, 23.9.2013*

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

### **Chapter II - Restriction of Competition between Undertakings; Concentration**

#### **Article 5 - Dominant position and criteria for its determination**

1. The dominant position of an undertaking is determined on the basis of its share of the relevant market, financial status of competing undertakings, barriers to market entry or to production expansion, buyer market power, availability of raw material sources, degree of vertical integration, network effects and other factors determining market power.

2. The share of an undertaking in the relevant market shall be determined by the Agency using methodological guidelines of market analysis approved by a relevant legal act issued by the Agency.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 6 - Abuse of dominant position**

1. Any abuse of a dominant position by one or more undertakings (in the case of joint dominance) is prohibited.

2. The following may be regarded as the abuse of dominant position:

a) imposing, directly or indirectly, unfair purchase or selling prices or other unfair trading conditions;

b) limiting production, markets or technical development to the prejudice of consumers;

c) applying dissimilar conditions to equivalent transactions with specific trade parties,

thereby placing them at a competitive disadvantage;

d) entering into contracts subject to acceptance by other parties of supplementary obligations that have no connection to the subject of the contract, etc.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 7 - Restrictive agreements, decisions and concerted practices**

1. Any agreement, decision or concerted practice ('the agreement') of undertakings that have as their object or effect the prevention, restriction and/or distortion of competition within the relevant market, shall be prohibited, in particular those which:

a) directly or indirectly fix purchase or selling prices or any other trading conditions (fixing);

b) limit production, markets, technical development, or investment;



- c) share markets or sources of supply by consumers, location or other characteristics;
  - d) apply dissimilar conditions to equivalent transactions with the particular trade parties, thereby placing them at a competitive disadvantage;
  - e) entering into contracts subject to acceptance by other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of the contracts.
  - f) setting terms of a tender proposal agreed with undertakings or other parties participating in public procurement, with the objective of ensuring material gain or advantage, which substantially prejudices the legal interests of the purchasing organisation.
2. Any agreement prohibited under this article shall be void, unless the exceptions provided for by this Law are applicable.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 8 - Agreements of minor importance**

1. Prohibitions provided for by Article 7 of this Law shall not apply to the agreements concluded between undertakings, if:
- a) the aggregate share of the parties to a horizontal agreement in the relevant market does not exceed 10 per cent;
  - b) the market share of each party to a vertical agreement in the relevant market does not exceed 15 per cent;
  - c) the agreement concluded between undertakings contains characteristics of a horizontal as well as vertical agreements, making it is difficult to classify it as a horizontal or a vertical agreement, and the market share of each party to the agreement in the relevant market does not exceed 10 per cent.
2. The provisions set forth in paragraph 1 of this article do not apply to the cases provided for by Article 7(1)(a, c and f) of this Law.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 9 - Exceptions to the prohibition of restrictive agreements**

1. With due regard to public and state interests, the provisions of Article 7(1) of this Law shall not apply to the agreements, decisions and concerted practices which contribute to the improvement of the production and/or supply of goods, to technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not:
- a) impose any restrictions upon the undertakings participating in the agreement that are not indispensable to the attainment of these objectives;
  - b) afford such undertakings the possibility of eliminating competition with respect to a substantial part of the relevant market.
2. The burden of proof with respect to the circumstances stipulated in paragraph 1 of this article rests with the undertaking concerned.
3. Exceptions provided for by this article shall be determined for a specific period of time, by a respective normative act of the Government of Georgia in which the mentioned period of time and the circumstances under which these exceptions are determined is indicated.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 10 - Inadmissibility of distortion of competition by the state authorities, authorities of Autonomous Republic and local self-government authorities**

State authorities, authorities of Autonomous Republic and local self-government authorities:

may not:

- a) carry out a merger of undertakings created with the state participation, establish unions, associations, corporations or other forms of business entities if this results in the weakening or distortion of competition, except as provided for by the legislation of Georgia;
- b) grant such tax or other benefits to undertakings that place them at an advantage over their competitors (potential competitors) and lead to the distortion of competition, except as provided for by the legislation of Georgia;
- c) ban, suspend and/or otherwise hinder the entrepreneurial activities and independence of undertakings, except as provided for by Georgian legislation;
- d) create state agencies for the monopolisation of production or distribution of goods or grant such powers to already existing agencies that causes the distortion of competition, except as provided for by the legislation of Georgia;
- e) make decisions that result in the monopolistic position of undertakings, thereby substantially restricting free pricing and competition, except as provided for by the legislation of Georgia.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*



## **Article 10<sup>1</sup> - Assessment of the competitive impact of regulatory actions**

In order to ensure the advocacy of the competition process, the Agency, based on the decisions of the Government of Georgia, shall assess the decisions and legal acts related to the economic sector, and privatization and investment projects to be implemented, in order to determine their conformity with this law.

*Law of Georgia No 2150 of 21 March 2014 - website, 27.3.2014*

## **Article 11 - Concentration**

1. Concentration shall mean:

- a) merger of two or more independent undertakings resulting in the formation of a single undertaking;
- b) gaining of direct or indirect control over an undertaking or its business share through the purchase of securities or interests, or through an agreement or otherwise, by a person already controlling at least one undertaking;
- c) participation of one and the same person in the management boards of different undertakings.

2. The establishment of a joint venture, provided that it performs all the functions of an independent undertaking for a long period, shall be regarded as a concentration within the meaning of paragraph 1 of this article.

3. For the purposes of this article, control means rights, agreements or other means that separately or together create the possibility to substantially influence over an undertaking or its part, in particular:

- a) ownership of an undertaking and/or the right to use its assets, fully or partially;
- b) the right (including contractual rights) that allows for substantial influence over the composition of the management boards, voting rights, and decisions of an undertaking.

4. A concentration that does not substantially distort effective competition in the goods or services market of Georgia or of any significant part of Georgia, and that results in the gaining or strengthening of a dominant position, shall be compatible with a normal competitive environment.

5. A concentration that substantially distorts effective competition of the goods or services market of Georgia or of any significant part of Georgia, and that results in the gaining or strengthening of a dominant position, shall be inadmissible.

6. For the registration of the merger/concentration of undertakings that have an obligation to submit a notification as provided for by article 11<sup>1</sup> of this Law, the Agency's opinion on the competitive impact of the expected merger/concentration is required. The Agency's negative opinion shall serve as the grounds for the Legal Entity under Public Law, National Agency of Public Registry to refuse the registration of an undertaking.

7. The Agency may require from an undertaking that as a result of a concentration acquires a dominant position, to periodically submit information about transactions that may significantly distort competition in the relevant market.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

## **Article 11<sup>1</sup> - Notification of Concentration**

1. Parties to a concentration shall notify the Agency, when the value of individual or aggregate assets or the annual turnover (according to the data for the financial year before the concentration year) of an undertaking/undertakings (with the exception of undertakings in a regulated sector of the economy) participating in this concentration in the territory of Georgia exceeds the limit established by the Procedure for the Submission and Consideration of Notifications of Concentration.

2. The Procedure for the Submission and Consideration of Notification of Concentration shall be approved by a relevant legal act issued by the Agency.

3. The Agency shall consider the notification within one month and notify the applicant of the decision. Considering the complexity of a case, this time limit may be extended for not longer than two weeks. Absence of a reply within the indicated time limit shall be deemed as a positive answer.

*Law of Georgia No 2150 of 21 March 2014 - website, 27.3.2014*

## **Article 11<sup>2</sup> - Exemption from the obligation to notify of a concentration**

Actions provided for by Article 11 of this Law shall not be regarded as the concentration of market power, and the relevant undertakings shall not be obliged to give prior notification to the Agency, if:

- a) there is a merger/concentration of undertakings whose market power is less than the limit defined by Article 11<sup>1</sup>(1) of this Law;
- b) the concentration is caused by an insolvency and is carried out under the procedures prescribed by the Law of Georgia on Insolvency Proceedings, also in the process of liquidation, except where control is acquired by a competing undertaking or by a group of competitors of the insolvent undertaking;



c) control is gained temporarily, to secure a loan, provided that the rights gained through the ownership of the assets are not exercised, except for the right to sell;

d) the concentration involves participants of related parties;

e) a financial institution, within the scope of its statutory activities, acquires through its own or client funds an interest or shares in another undertaking and gains control over it temporarily or acquires assets for their further disposal, provided that this transaction is made not later than one calendar year after their purchase/gaining control over them, in addition:

e.a) such an institution has no rights with respect to the ownership of shares or participation interest, except for the right to receive dividends;

e. b) such an institution uses the rights solely to prepare the undertaking, its assets or shares and interest for full or partial sale.

*Law of Georgia No 2150 of 21 March 2014 - website, 27.3.2014*

## **Chapter II<sup>1</sup> - Unfair Competition**

*Law of Georgia No 2150 of 21 March 2014 - website, 27.3.2014*

### **Article 11<sup>3</sup> - Prohibition of the unfair actions of undertakings**

1. Unfair competition is prohibited.

2. For the purposes of this article, any action of undertakings that contradicts the norms of business ethics and infringes the interests of consumers shall be regarded as unfair competition, in particular:

a) provision of information about goods by any means of communication (including, through improper, unfair, unreliable or clearly false advertising), which misleads consumers and encourages them to perform certain economic actions;

b) concealment by an undertaking of the actual purpose of a transaction for the purpose of misleading a party [to the transaction], and thereby gaining advantage in the competition;

c) undermining by an undertaking of a competitor's business reputation (by creating an incorrect impression regarding the undertaking, products, entrepreneurial or trade activities), its unreasonable criticism or discrediting;

d) misappropriation of a competitor's or a third person's form of goods, their packaging or appearance;

e) receipt, use or dissemination of scientific-technological, production or trade information or commercial secrets without the consent of their owner;

f) bribing of a buyer, supplier, its employee or a person authorised to make decisions-in order for him/her to act against the interests of their employer or neglect consumers' interests;

g) call for a boycott.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

## **Chapter III - State Aid**

### **Article 12 - State Aid**

1. State aid provided to an undertaking or for a specific type of activity in a form that hinders competition or endangers it shall be prohibited, except for the exceptions provided for by paragraph 2 of this article.

2. State aid that does not require the consent of the Agency shall be permissible if:

a) state aid is granted to individual consumers as a social allowance, provided that the aid does not lead to the discrimination against the producer of the relevant goods/services;

b) state aid is intended to eliminate the consequences of natural disasters and force-majeure events;

c) state aid is intended to carry out environmental protection activities;

d) state aid is intended to exercise the rights or fulfil the obligations stipulated under the relevant legislative act of Georgia or an international agreement to which Georgia is a party;

e) state aid is granted in an insignificant amount in the form of individual state aid. The insignificant amount of individual state aid shall be determined by an ordinance of the Government of Georgia;

f) state aid is intended to implement an important state project, and if the Government of Georgia has made a decision in this respect.



3. State aid shall be permissible with the consent of the Agency if it does not significantly distort competition or does not create a threat of its significant distortion and shall be granted:

- a) for the economic development of certain regions;
- b) to promote the preservation of culture and cultural heritage.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 13 - General rules for granting state aid**

1. The Government of Georgia shall prepare and approve the general rules for granting state aid provided for by Article 12(3) of this Law.
2. On the basis of the rule specified in paragraph 1 of this article, the state authorities, authorities of Autonomous Republic and local self-government authorities shall prepare and submit for approval to the Agency the procedure for granting state aid, specifying its purposes, forms of state aid and beneficiaries.
3. On the basis of the rule specified in paragraph 1 of this article, the provider of state aid shall submit to the Agency an application, which contains information on the purpose of the state aid, its form and beneficiaries.
4. The provider of state aid, together with the application provided for by paragraph 3 of this article, shall submit to the Agency relevant reasons demonstrating that the state aid in question will not significantly distort competition.
5. The provider of state aid shall notify the Agency of the conditions for granting state aid, of any substantial changes made to it and about the state aid granted.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 14 - Agreement on state aid**

1. The Agency shall, on the basis of the information submitted to it, establish the compliance of the state aid in question with the provisions of this Law and issue a legal opinion not later than within 14 working days if the state aid is not in conformity with the provisions of this Law. In certain circumstances, this term may be extended up to two months. Failure to issue a legal opinion within the established term shall be regarded as consent.
2. In cases, where the Agency detects that actions of the provider of state aid are not in conformity with the provisions of this Law, the Agency may require from the provider of the state aid additional justification and/or produce a relevant recommendation.
3. The Agency shall submit the legal opinion and recommendation provided for by paragraphs 1 and 2 of this article, to the Government of Georgia and to the provider of the state aid.
4. Upon receipt of the legal opinion and recommendation provided for by paragraphs 1 and 2 of this article, the Government of Georgia shall decide the matter.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 15 - Appeal against granted state aid**

If the granted state aid significantly distorts competition in the relevant market and/or there is a violation of the Georgian legislation on competition with respect to the procedure for granting state aid, the person who has suffered damages as a result of such distortion or violation may appeal to court against the state aid granted.

### **Chapter IV - The Agency**

#### **Article 16 - Authorised body and its organization**

1. The Agency shall be established to implement the competition policy.
2. The aims, objectives, authority and organisational issues of the Agency shall be determined by this law and the Statute of the Agency.
3. The Agency shall be accountable to the Prime Minister of Georgia.
4. The main objective of the Agency is to implement the competition policy, create an environment conducive to the development of competition in Georgia and for this purpose identify, eliminate and render inadmissible all types of anti-competitive agreements and actions.
5. Compliance with the decisions, instructions and other legal acts of the Agency shall be binding upon state authorities, authorities of the Autonomous Republics and local self-government authorities and undertakings.



6. In its activities, the Agency shall be guided by the Constitution of Georgia, international agreements, this Law, the Statute of the Agency and other legal acts, and shall be responsible for the fulfilment of its objectives and functions.
7. The Statute and the structure of the Agency shall be approved by the Government of Georgia.
8. The Agency shall be financed from the state budget of Georgia and other sources provided for by the legislation of Georgia.
9. Not later than the first of May each year, the Agency shall prepare and present to the Prime Minister of Georgia and to the public the annual report on the work performed and the competitive environment of the Georgian market for goods and services.
10. The Agency shall be independent in its activities and decision-making.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 17 - Principles of the Agency's activities**

1. The principles of the Agency's activities are as follows: independence, non-discrimination, impartiality, transparency and accountability.
2. To ensure the transparency of the activities of the Agency its decisions shall be made public.

#### **Article 17<sup>1</sup> - Chairperson of the Agency**

1. The chairperson of the Agency shall be appointed and dismissed by the Prime Minister of Georgia.
2. The chairperson of the Agency shall make decisions independently on the issues falling under the authority of the Agency; shall act on behalf of the Agency; represent it in relations with other agencies and organisations; decide issues determined by the objectives, functions and authorities of the Agency.
3. The chairperson of the Agency shall determine the powers of the deputy chairpersons, structural subdivisions of the central office of the Agency and the powers of the regional representatives of the Agency.
4. The chairperson of the Agency, within his/her authority, in accordance with the rules prescribed by the legislation of Georgia, issues normative and individual legal acts (orders, instructions and methodological guidelines).
5. A person to be appointed as the chairperson of the Agency shall comply with the following requirements:
  - a) be a citizen of Georgia;
  - b) hold a master's degree in economics, law or business administration or any equivalent degree;
  - c) have at least 10 years' work experience in his/her specialty;
  - d) comply with other requirements prescribed by the legislation of Georgia.
6. The powers of the chairperson of the Agency shall be terminated on the basis of his/her personal application, or in other cases provided for by the legislation of Georgia.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 17<sup>2</sup> - Functions of the Agency** Functions of the Agency shall be to:

- a) implement the policy provided for by the legislation of Georgia on competition and for this purpose, draft proposals for the development and application of the relevant normative acts;
- b) monitor and analyse the goods and services markets with an aim to detecting competition distortion and unfair competition;
- c) if there is concentration as defined by article 11<sup>1</sup> of this Law, make obligatory assessment of its competitive impact, and prepare and issue an opinion;
- d) monitor compliance with the legislation of Georgia on competition, detect violations of this legislation, examine them and make relevant decisions within its authority;
- e) monitor the implementation of the adopted decisions;
- f) cooperate with international organisations and bodies authorised to implement the competition policies of other countries.
- g) cooperate with the legislative and executive bodies of Georgia, international organisations for the purpose of improving the competition legislation of Georgia and the competition policy, as well as resolve organisational-legal, technical and funding issues;





h) raise public awareness regarding the legislation of Georgia on competition and the aims and purposes of the competition policy, and ensure publicity of the Agency's activities.

i) perform other functions provided for by the Statute of the Agency.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

## **Article 18 - Powers of the Agency**

1. With relation to undertakings the Agency shall be authorised to:

a) carry out investigation on the basis of submitted applications and/or complaints, or on its own initiative;

b) request information related to a case from the relevant undertakings or other interested parties, including information concerning their legal, organisational and business relations, have access to documentation related to the activities of undertakings.

c) if the documents related to the case are not received, for the purpose of an investigation, request the court to order the undertaking concerned to submit the relevant documentation;

d) in the case of a complaint, invite the parties to provide oral explanations, and if necessary, arrange meetings with the interested parties;

e) for the purpose of an investigation and on the basis of a consent of a court, carry out an on-site inspection of the undertakings involved in the case;

f) if the information related to a case is not submitted, impose administrative fines on the undertaking;

g) demand that the undertaking ensure compliance of its performed actions with this Law;

h) in the case of non-compliance with the requirements of this Law, impose an appropriate fine in accordance with Article 33 of this Law;

i) if necessary, invite experts to participate in the investigation of a case;

j) where appropriate, carry out a study to ascertain the scope of the unobserved economy for the purpose of identifying the market share that determines a dominant position in the relevant market;

k) in the case of repeated violation of the legislation of Georgia by an undertaking that holds a dominant position, raise the issue of its forced division with the relevant authorities, where there is a possibility of organisational and territorial division of the undertaking, or take other measures provided for by the competition policy;

l) raise the issue with the relevant authorities of the liability of the manager of an undertaking that violates the legislation of Georgia.

m) request a court to temporarily suspend certain actions of an undertaking until a final decision is made by the Agency, if there is clear evidence that such actions significantly restrict competition provided for by Articles 6 and 7 of this Law.

2. In relation to the state authorities, authorities of the Autonomous Republics or local self-government authorities, the Agency shall be authorised to:

a) in accordance with the procedure laid down by the legislation of Georgia, request from the above authorities the submission of documents related to an alleged infringement of this Law;

b) in the case of infringement of this law, submit to the above authorities a reasoned written opinion and a relevant recommendation regarding unlawful decisions made by these authorities, and demand from the authorities the revocation of the unlawful decisions, and in the case of failure to fulfil the demand, raise said issue with the relevant higher authorities or officials;

c) submit to them for consideration obligatory proposals and/or recommendations for the improvement of the competitive environment for the goods and services market of Georgia, including:

c.a) on the existence of legislative and administrative barriers to entry into the relevant market and the necessity to eliminate them;

c.b) on the revocation of the technical trade barriers prescribed by the legislation of Georgia, if they restrict competition;

d) address the Government of Georgia with an opinion and, if necessary, with recommendations where granted state aid significantly distorts competition;

e) in order to exercise its powers, request, if necessary, from the appropriate authority the submission of the relevant information, and in case of failure to comply with this request, raise the issue of disciplinary liability of the relevant officials of this authority;

Based on the Tax Code of Georgia, request and receive from the tax authorities identified information regarding certain taxpayers;

3. Within its authority, the Agency may issue a recommendatory explanation regarding the application of the legislation of Georgia on competition.

4. The Agency shall be authorised to exercise other powers provided for by the Statute of the Agency and the legislation of Georgia.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*



## **Article 19 - (Deleted)**

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

## **Article 20 - Protection of the confidentiality of information**

The Agency shall:

- a) protect the confidentiality of information regarding undertakings that includes commercial and/or tax secrets;
  - b) protect the confidentiality of personal data of a person who provides information to the Agency and requests the Agency to protect the confidentiality of his/her personal data;
  - c) ensure the confidentiality and non-disclosure of state secrets.
2. Any disclosure and dissemination of confidential information shall be inadmissible, except where otherwise provided for by the legislation of Georgia.
  3. Use and disclosure of confidential information by employees of the Agency, including for personal, academic, scientific purposes or for other activities shall be inadmissible.
  4. Non-compliance with the provisions of this article by employees of the Agency shall entail liability stipulated by the relevant subordinate legislative act.
  5. Generalised information regarding the relevant market, also information about the number of undertakings, received income and incurred costs shall not be confidential.

## **Article 21 - Conflict of interest**

1. An authorised person of the Agency shall be independent from interested parties in his/her professional activities, assessments and decision-making.
2. If, taking into account the peculiarities of this Law, there exist relations provided for by

Article 19 of the Tax Code of Georgia between a person authorised by the Agency and an undertaking with respect to which the Agency carries out an investigation, the person authorised by the Agency shall immediately declare the conflict of interest.

3. An authorised person of the Agency may not carry out other activities that may affect his/her impartiality and the independence of his/her decisions.
4. Failure of an authorised person of the Agency to perform the obligations specified in paragraph 2 of this article shall entail liability as prescribed prescribed by the relevant subordinate legislative act.
5. A person whose case is under consideration may challenge the relevant authorised person of the Agency if this person has a vested interest in the issue in question.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

## **Chapter V - Enforcement**

### **Article 22 - Persons authorised to submit applications and/or complaints**

1. Applications may be submitted to the Agency by applicants. The applicant shall not be considered as a party to the case.
2. Complaints may be submitted to the Agency by a complainant. Together with the complaint, a complainant shall submit evidence to the Agency. Complainants shall be regarded as a party to the case and shall bear the burden of proof.

### **Article 23 - Rules for the acceptance of applications and/or complaints; the exercise of the right of defence by the respondent undertaking**

1. Within the time limits established by the legislation of Georgia, the Agency shall examine the admissibility of an application and/or a complaint.
2. If an application satisfies the requirements imposed by the legislation of Georgia, the Agency is authorised to decide whether or not the undertaking concerned will participate in the consideration of the application and whether or not to allow the undertaking to submit its comments and opinions regarding the application.
3. The Agency shall inform the respondent undertaking about the complaint. The respondent undertaking may submit to the Agency its comments and opinions regarding the complaint within the time limits prescribed by the legislation of Georgia.



4. If the respondent undertaking submits to the Agency its comments and opinions regarding the complaint, the Agency shall, within the time limits prescribed by the legislation of Georgia, make a decision regarding the investigation of the case on the basis of information provided in the complaint and by the respondent undertaking.

5. The Agency shall inform the applicant and/or the complainant about the commencement of an investigation on the basis of the application and/or complaint, or about the refusal to start an investigation.

6. The Agency is authorised to request from the applicant and/or complainant submission of additional information and/or evidence and set the time limit for its submission; such a request shall serve as the basis for suspension of the time limit specified in paragraph 1 of this article.

7. Application and complaint forms, the rules for their submission and the time limits and procedures related to the admissibility of applications and complaints shall be prepared and approved by the Agency

8. (Deleted - 21.3.2014, No 2159).

9. (Deleted - 21.3.2014, No 2159).

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 24 - Grounds for refusing to initiate an investigation**

The Agency shall refuse to initiate an investigation of a case on the basis of an application and/or complaint, if: a) a complaint is not submitted by an authorised person;

b) there is no legal basis provided for by this Law;

c) the requested information and/or evidence is not provided within the time limit set under Article 23(6) of this Law;

d) insolvency procedures are pending against the respondent undertaking.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 25 - Investigation procedure**

1. After making a decision to initiate a case investigation, the Agency shall start the investigation and make a decision not later than 3 months.

2. An investigation, depending on its significance and complexity, may be extended for a period determined by the Agency, but not longer than 10 months.

3. The Agency shall notify the applicant and/or complainant of the extension of the investigation at least 10 days before the expiry of the time limit established for the [final] decision.

4. The Agency may, in the process of investigation, where necessary, request information and documents from an interested party.

5. The Agency may, in the process of investigation, request information and documents from the undertaking concerned.

6. In the process of investigation the Agency shall invite the interested parties in order to hear their explanations.

7. The Agency may carry out an on-site inspection of the undertaking against whom the application and/or complaint is submitted.

8. The Agency may file a reasoned request with the court to carry out an on-site inspection of the undertaking as specified in paragraph 7 of this article, if:

a) the information and documents required for the case investigation cannot be obtained by the means provided for by paragraphs 4 and 5 of this article;

b) there is a danger of destruction and/or concealment of the information related to the case;

c) the parties fail to comply with the obligation to provide information and documents;

d) visual inspection of tangible assets is required.

9. Intentional submission of incorrect or incomplete information by the party shall be regarded as the failure to submit information.

10. An inspection provided for by paragraph 7 of this article, shall mean:

a) having access to documents related to the activities of the undertaking, including financial-economic documents, irrespective of their confidentiality;

b) making copies of documents specified in sub-paragraph (a) of this paragraph;

c) receiving explanations on the site;

d) accessing the place where an undertaking conducts its legal and actual activities.



11. If, after the commencement of an investigation, the complainant withdraws the complaint, the investigation shall be terminated, except where there is a proven evidence that competition is significantly restricted.

12. The Agency's decisions may be appealed to a court in accordance with the procedures prescribed by the legislation of Georgia.

13. The rules and procedures for a case investigation shall be prepared and approved by the Agency.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 26 - (Deleted)**

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 27 - Statute of limitations**

The period of limitation for any disputes regarding infringements of this Law shall be 3 years.

#### **Article 28 - Competent court**

1. Any person may apply to a court with respect to the infringement of this Law without applying to the Agency.

2. Disputes relating to the infringement of this Law shall be considered by the Tbilisi City Court.

3. Initiation of insolvency proceedings against the respondent undertaking in court shall be the basis for the dismissal or termination of the case specified in paragraph 2 of this article.

#### **Article 29 - (Deleted)**

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

### **Chapter VI - Cooperation of the Agency with authorities regulating a regulated sector of the economy**

*Law of Georgia No 1586 of 2 November 2013 - website, 3.12.2013*

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 30 - Cooperation for the investigation and prevention of the distortion of competition in a regulated sector of the economy**

The Agency and the relevant regulatory authorities of a regulated sector of the economy shall cooperate in the investigation and prevention of the distortion of competition in the regulated sector of the economy. *Law of Georgia No 1586 of 20 November 2013 - website, 3.12.2013*

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

#### **Article 31 - Forms of cooperation**

1. If a complaint regarding an alleged distortion of competition in a regulated sector of the economy is submitted to the Agency, the Agency shall forward this complaint to the regulatory authority of the relevant regulated sector of the economy.

2. The regulatory authority shall inform the Agency about the initiation of an investigation regarding the infringement of competition in the relevant regulated economic sector.

3. Upon request of the regulatory authority of the relevant regulated sector of the economy, the Agency shall be authorised to prepare expert opinions on the cases of competition infringement in the regulated economic sector and submit them to the relevant regulatory authority.

4. A regulatory authority of the regulated sector of the economy may consult the Agency on competition-related issues.

5. A joint working group consisting of the personnel of the Agency and of the relevant regulatory authority may be established to investigate competition infringement cases in the regulated sector of the economy.

6. The relevant regulatory authority of the regulated sector of the economy may request the Agency to participate in the investigation of competition infringement cases in the regulated sector of the economy.

7. Relations related to a third party's access to a network or interconnection in the relevant regulated sector of the economy shall be governed by the



relevant legislation of Georgia.

8. The Georgian National Communications Commission carries out ex-ante regulation in the electronic communications sector, and monitors the performance by the authorised persons of specific obligations imposed by the Georgian National Communications Commission and ensures their fulfilment in accordance with rules prescribed by the Law of Georgia on Electronic Communications. Based on the procedure laid down in the Law of Georgia on Electronic Communications, the Commission shall consider and resolve disputes between the authorised persons, including disputes related to the performance of specific obligations imposed upon the authorised persons.

9. Actions of undertakings operating in the electronic communications sector, which have as their object or effect the restriction or distortion of competition (except for the pricing, interconnection and standard service terms and conditions) shall be regulated by this Law.

*Law of Georgia No 1586 of 20 November 2013 - website, 3.12.2013*

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

## Chapter VII - Sanctions

### Article 32 - Failure to submit information to the Agency

Failure to submit information provided for by this Law to the Agency shall result in a fine, in the amount of from GEL 1 000 to GEL 3 000.

### Article 33 - Fines

1. In cases provided for by Articles 6 and 7 of this Law, undertakings (except for undertakings of a regulated sector of the economy) shall be subject to a fine, which must not exceed 5 per cent of the annual turnover for the previous financial year.

2. In case of failure to eliminate the legal grounds of the violation provided for by paragraph 1 of this article or repeated violations, the Agency may impose a fine on the undertaking, which must not exceed 10 per cent of the annual turnover for the previous financial year.

3. In calculating the amount of fine provided for by this article, account shall be taken of the damage caused by the violation, of the duration of the violation and its gravity.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

### Article 33<sup>1</sup> - Leniency programme

1. A person shall be fully or partially released from liability under this Law if he/she simultaneously meets the following conditions:

a) admits participation in the agreements provided for by Article 7(1)(a, c or f) of this Law;

b) provides to the Agency, orally or in writing, information known to him/her, and, where possible, evidence related to an agreement provided for by paragraph 1(a) of this article, before the Agency receives this information from other sources;

c) during an investigation process, continuously and unrestrictedly cooperates with the Agency.

2. The benefits provided for by this article shall not apply to the sole organisers and/or initiators of the agreements or to persons who coerced other persons to participate in the agreements.

3. The procedure for applying the leniency programme and for releasing persons from liability shall be determined by the relevant legal act issued by the Agency.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

### Article 33<sup>2</sup> - Procedure for appealing a decision of the Agency

Undertakings, or other interested parties, may apply to a court, relevant authorities or officials directly and request the elimination of a violation of the competition legislation of Georgia and compensation for damage caused by such violation, as well as appeal the decision of the Agency to a court.

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

## Chapter VIII - Transitional and Final Provisions

### Article 34 - Transitional and Final Provisions

<http://www.matsne.gov.ge>



1. (Deleted - 21.3.2014, No 2159).
2. (Deleted - 21.3.2014, No 2159).
3. (Deleted - 21.3.2014, No 2159).
4. This Law shall not apply to state aid granted prior to the entry into force of this Law, and the amendment of the terms and conditions of that state aid need not be agreed to by the Agency.
5. Before 15 April 2014 the Government of Georgia shall approve the Statute of the Agency and its structure, and the Prime Minister of Georgia shall appoint the chairperson of the Agency.
6. Before 1 September 2014, the Government of Georgia shall, by its ordinance, determine the insignificant amount of individual state aid, the exceptions from the prohibition of restrictive agreements and the general rules for granting state aid.
- 6<sup>1</sup>. Before 1 October 2014 the Agency shall draft and approve the relevant legal acts provided for by this Law.
7. The Law of Georgia on Free Trade and Competition (Legislative Herald of Georgia, No 31, 27.6.2005, Art. 188) of 3 June 2005 shall be deemed repealed upon entry into force of this Law.
8. The powers of the Agency provided for by this Law that require the approval/adoption of the legal acts provided for by this Law shall be fully effective upon approval/adoption of the relevant legislative acts.
9. This Law shall enter into force on the 60<sup>th</sup> day after its promulgation.

*Law of Georgia No 6544 of 22 June 2012 - website, 4.7.2012*

*Law of Georgia No 2159 of 21 March 2014 - website, 27.3.2014*

**President of Georgia**

**M. Saakashvili**

**Tbilisi,**

**8 May, 2012**

**No 6148-IS**

