

**ORDER №39 of the Chairman of the Competition Agency**

26 October, 2020

Tbilisi, Georgia

**On the Approval of the Rule of Submitting and Reviewing Concentration Notifications**

On the basis of the Paragraph 4 of the Article 17<sup>1</sup> and Paragraph 2 of the Article 11<sup>1</sup> of the Law of Georgia “On Competition” and sub-paragraph b of paragraph 1 of the Article 25 of Organic Law of Georgia “On Normative Acts”, I order:

**Article 1**

“The Rule of Submitting and Reviewing Concentration Notifications” annexed to this Order shall be hereby approved.

**Article 2**

Order №30/09-4 of the Chairman of the Competition Agency adopted on September 30, 2014 on “the Rule of Submitting and Reviewing Concentration Notifications” shall be hereby repealed.

**Article 3**

This order shall come into effect from November 4, 2020.

**Chairman of the Competition Agency**

**Irakli Lekvinadze**

## **The Rule of Submitting and Reviewing Concentration Notifications**

### **Article 1. General Provisions**

1. The Rule for Submitting and Reviewing the Concentration Notifications (hereinafter, "the Rule") is developed in accordance with the Law of Georgia „On Competition“ (hereinafter, "the Law").
2. The purposes of this Rule is:
  - a) Determining the threshold, notification and review procedures of the concentration subject to prior mandatory written notification to the Georgian National Competition Agency (hereinafter referred to as the "Agency");
  - b) Assessing the concentration changes on the relevant commodity/services market, disallowance of the concentration of the undertakings, which substantially restricts effective competition on the relevant market;
  - c) Defining the notification submission form;
  - d) Ensuring the impartiality and transparency of the concentration notification review process.
3. This Rule determines:
  - a) Concentration criteria subject to prior mandatory written notification to the Agency (hereinafter referred to as "the Notification");
  - b) Notification submission rule and review procedures.

### **Article 2. The rights and obligations of the concentration party/interested party**

1. The concentration party has the right to:
  - a) Have a lawyer and/or a representative in the notification review process;
  - b) Submit position, information and/or evidence to the Agency at any stage of the notification review;
  - c) To get familiar with the case materials in accordance with the procedure established by Article 99 of the General Administrative Code of Georgia;
  - d) Request an extension of the deadline for submission of information/evidence;

- e) In accordance with the rules established by the legislation, request to classify the submitted information to the Agency as a commercial secret;
  - f) Propose to the Agency a change of operation as a structural and/or behavioural remedy.
2. The interested party participating in the proceedings shall enjoy all the rights conferred on the party by the Paragraph 1 of this Article, except for the right provided for in the Subparagraph (f).
  3. The concentration party is obliged to:
    - a) In the case provided for by the Law, pay the fee for notification review;
    - b) Provide the Agency with the information requested by it (including confidential), which is required in the process of exercising the relevant authority by the Agency;
    - c) At the request of the Agency, appear for an explanation.

### **Article 3. Concentrations subject to notification and consequences of notification**

1. Concentration is subject to notification to the Agency if the aggregate (total) annual turnover of its participants in the territory of Georgia, as of the previous financial year of the obligation to submit the notification, exceeds 20 million GEL and the annual turnover of at least two persons participating in the concentration exceeds 5 million GEL.
2. In the case of a concentration involving a person registered in the year of the concentration, the annual turnover at the time of the notification of the concentration during the current calendar year shall be taken into account.
3. Concentration subject to notification is allowed only on the basis of the Agency's decision on its compatibility with the competitive environment.
4. A negative decision of the Agency is a ground for refusing the concentration registration.

### **Article 4. Calculation of the annual turnover**

1. The aggregate annual turnover represents the total annual turnover of the concentration participants during the previous financial year.
2. If the concentration relates to the acquisition of a part or parts of one or more undertakings, whether or not they are independent entities, the calculation of the aggregate annual turnover of the concentration participants shall take into account only the corresponding turnover of the

part(s) subject to the concentration of those undertakings, based on the methodological instructions of the relevant market analysis.

3. When calculating the annual turnover of the concentration participants, the total annual turnover of the following units shall be taken into account:
  - a) Person participating in the concentration;
  - b) Undertakings directly or indirectly controlling or directly or indirectly controlled by the persons participating in the concentration;
  - c) Undertakings that are under the joint control of the persons participating in the concentration.
4. When calculating the aggregate annual turnover of the concentration participants with the participation of a foreign company, the annual turnover received by this company only on the territory of Georgia shall be taken into account.

#### **Article 5. The person submitting the notification**

The obligation to submit a notification is imposed upon:

- a) In case of purchasing, acquisition of control by contracts or other means - the acquirer and/or the person acquiring the right of control;
- b) In case of merger - all the participants of the operation by submitting a joint notification;
- c) In case of setting up a joint venture - all participants in the operation by submitting a joint notification.

#### **Article 6. Term of notification**

1. The notification obligation for concentration participants arises prior to the entry into force of the relevant agreement and/or the actual implementation of the concentration (including registration with the registering authority).
2. If the control provided for in paragraph 2 of Article 11 of the Law is obtained through more than one transaction, for a continuous period of three calendar years, the obligation of notification for the person acquiring the control arises before the immediate execution of the transaction by which the control is obtained.

## **Article 7. Notification submission rule and admissibility procedure**

1. The person shall submit the notification to the Agency in written or electronic form entirely filled-in in accordance with Annex № 1, which shall include information on the parties to the concentration and their characteristics, as well as information on the planned concentration, a detailed description of the concentration, additional notes, etc.
2. The notification foreseen in the Paragraph 1 of this Article shall be accompanied by the following information:
  - a) All the parties to the concentration and the undertakings owned by their controlling entity(ies);
  - b) Volume of basic commodity / services produced, purchased and sold by each party to the concentration during the last financial year according to the assortment;
  - c) Data for the last financial year on the main suppliers and buyers / consumers of each party to the concentration.
3. The notification is considered to be submitted to the Agency from the moment of its registration, and the calculation of the relevant period defined by the legislation shall commence from the next working day of the registration day.
4. The Agency shall, within 3 working days from receiving the notification, verify its compliance with the requirements set forth in the Paragraphs 1 and 2 of this Article and Annex № 1.
5. If the submitted notification does not comply with the relevant requirements, the Agency shall identify the deficiency to the person submitting the notification and set a deadline for the elimination thereof.
6. The letter on deficiency shall indicate the specific issues and circumstances that the Agency requests to address and/or clarify.
7. If the person submitting the notification does not address the deficiency within the time limit set by the Agency, the Agency is authorized to make a decision not to review the notice.
8. The calculation of the notification review time-period commences from the moment of submitting the complete notification to the Agency.
9. Within 5 working days after receiving the complete notification, the Agency checks whether the planned concentration falls within the scope of the Law and within its competence, and notifies the notifying person(s) thereon.

10. If the planned concentration falls within the scope of the Law and within the competence of the Agency, the Agency shall commence the review of the notification of the concentration from the second working day of the submission of the document confirming the payment of the notification review fee.
11. The notification review fee is 5000 GEL, regardless of number of the parties of concentration and the persons submitting the notification.
12. In case of non-submission of the document confirming the payment of the notification review fee, the notification will not be reviewed.
13. If the Agency has been notified of a concentration in the regulated field of the economy, it shall forward this notification to the relevant regulatory body of the regulated field of the economy within 5 working days as an authorized body, except the cases provided for in the Paragraph 2 of the Article 31 of the Law.
14. If the body authorized to review the notification is not explicitly defined, the time-period referred to in paragraph 13 of this Article shall be extended up to 30 calendar days for consultations between the Agency and the regulatory body of the regulated field of the economy in order to determine the relevant authority.
15. In the case provided for in the Paragraph 14 of this Article, the calculation of the notification review time-period shall commence after the designation of the Agency as the body authorized to review the notification.
16. If, after payment of the notification review fee, it is determined that the notification is not subject to review by the Agency, the fee paid will be refunded to the person concerned.

#### **Article 8. Notification review procedure**

1. If the notification complies with the requirements of the Article 7 of this Rule, the Agency is obliged to review the notification and verify the compliance of the planned concentration with the requirements of the legislation within 25 working days after the submission of the document confirming the payment of the fee.
2. The Agency is authorized, if necessary, to request the party of the planned concentration to submit additional information and/or evidence or to appear for explanation.
3. Until the submission of additional information and/or evidence by the concentration party, the flow of the time-period provided for in the Paragraph 1 of this Article shall be considered suspended, and the submission of information and/or evidence shall be the basis for renewal of the said period.

4. The Agency publishes information on the current administrative proceedings on the official webpage and gives interested persons the opportunity to submit opinions on the planned concentration within the timeframe set by the Agency. The published information, considering the confidential data protection of the persons participating in the concentration, must contain data on the identity/name of the parties, the subject of the concentration and the economic sectors/markets to which the planned concentration relates.
5. The Agency is authorized to consider the positions of interested parties, competing undertakings of the concentration parties and industry experts regarding the planned concentration during the notification review process.
6. After processing and analysing the received information, within the time-period specified in the Paragraph 1 of this Article, the Agency shall make one of the following decisions:
  - a) On the compatibility of the planned concentration with the competitive environment;
  - b) Extending the notification review period when there is a reasonable suspicion that the planned concentration may not be compatible with a competitive environment or the complexity of the case requires further investigation.
7. In the case provided for in the Subparagraph (b) of the Paragraph 6 of this Article, the Agency is obliged to review the notification not later than 90 calendar days after the decision is made on the extension of the time-period.
8. The failure to respond within the time-period specified in the Paragraphs 1 and/or 7 of this Article shall be deemed a positive response.
9. If the Agency considers that the planned concentration does not substantially restrict effective competition on the goods or services market of Georgia or part thereof, it shall make a decision on the compatibility of the planned concentration with the competitive environment.
10. If the Agency considers that the planned concentration substantially restricts effective competition in the market of goods and/or services in Georgia or its part, it shall make a decision on the disallowance of the concentration.
11. If a concentration gives rise to or strengthens a dominant position, it is presumed that such a concentration substantially restricts effective competition in the market for goods or services in Georgia or its part, unless the party to the concentration justifies the opposite.
12. If, in the case referred to in the Paragraph 11 of this Article, a concentration party justifies to the Agency that the planned concentration does not substantially restrict effective competition and has significant positive effects despite the emergence or strengthening of a dominant position,

the Agency is authorized to consider the planned concentration compatible with the competitive environment.

13. In the case provided for in the Paragraphs 10 and 11 of this Article, the Agency shall, before making a decision on the disallowance of concentration, give the person submitting the notification the opportunity to state its position, verbally or in writing.
14. In the case specified in the Paragraph 13 of this Article, in case of orally recording the position by the person submitting the notification, a protocol shall be drawn up, which shall be signed by the authorized employee of the Agency and the person submitting the notification to the Agency.
15. The Agency shall send to the registering authority a copy of the order approving the Agency's decision on the concentration within 5 working days of its adoption.

#### **Article 9. Forms of cooperation**

1. In the cases provided for in the Paragraph 2 of the Article 31 of the Law, the Agency is obliged to apply to the regulatory body of the regulated field of the economy with the request to participate in the review of the issue and/or to present its position.
2. For the purposes of participating in the review of the issue, regulatory body of the regulated field of the economy is authorized to:
  - a) Request and get familiar with the case materials;
  - b) Take appropriate position regarding the decision to be made by the Agency;
  - c) Get familiar with and take the appropriate position on the structural and/or behavioural remedies to be taken by the parties to the concentration.
3. The relevant documentation must be submitted to the regulatory body of the regulated field of the economy within a reasonable period of time before the relevant position is taken regarding the decision to be taken by the Agency or on the structural and/or behavioural remedies to be taken by the parties to the concentration.
4. When making a decision, the Agency is not bound by the position of the regulatory body of the regulated field of the economy, although the decision must indicate the relevant justification.

#### **Article 10. Agency's right to request the information**

1. The Agency is entitled to request relevant information from both the concentration party and other undertakings / interested parties if necessary in the course of exercising the relevant



authority by the Agency and for the purposes of establishing significant circumstances of the case.

2. The request of the Agency on the provision of the document/information shall indicate the legal basis, subject, purpose and term, during which the information shall be provided, as well as the possible consequences of the non-provision of information.
3. The term specified in the Paragraph 2 of this Article may not be less than 5 working days. The Agency is authorized to extend the deadline for the submission of a document/information only once, but not more than 15 working days, based on a substantiated application.

#### **Article 11. Submission of information**

1. The information is deemed to be submitted if it has been entirely submitted within the time limit specified by the Agency to the legal address of the Agency and/or official e-mail.
2. If the receipt of this information by the Agency is related to the calculation and/or renewal of the time limit provided by the legislation, the relevant time period shall be calculated/renewed from the day following the registration of the information.
3. A person is entitled to request the Agency to classify the specific information submitted by him/her as a commercial secret, in accordance with the rules established by the General Administrative Code of Georgia and to submit the relevant justification.
4. The Agency shall consider the request submitted in accordance with the Paragraph 3 of this Article in accordance with the rule established by Article 27<sup>2</sup> of the General Administrative Code of Georgia.

#### **Article 12. The failure to submit the information**

1. The information will be considered as non-submitted in the following cases:
  - a. Failure to provide information within the established time limit;
  - b. Submission of incorrect information;
  - c. Submission of incomplete information.
2. The information will not be considered as non-submitted in case of substantiated response on the lack of requested information within the time limit specified by the Agency.

### **Article 13. Consequences of the non-submission of information**

1. The failure to provide the information requested by the Agency within the established time limit, provision of incorrect or incomplete information will result in a fine of three thousand GEL for a legal entity and a fine of one thousand GEL for an individual.
2. Despite the imposition of a fine, in case of failure to provide the information within a re-determined time period by the Agency, the legal entity will be fined in the amount of five thousand GEL and the individual - in the amount of three thousand GEL.
3. Imposition of a fine does not release a person from the obligation to submit the information to the Agency.
4. In case of non-submission of information, in addition to imposing a fine, the Agency has the right to apply to the court in accordance with the rules established by Article 18, Paragraph 1, Subparagraph "c" of the Law and the Article 21<sup>73</sup> of the Administrative Procedure Code of Georgia for the purposes of requesting information/documentation from the undertaking/party/interested party in the process of exercising the relevant authority.

### **Article 14. Structural and behavioural remedies**

1. If at any stage specified in the Paragraphs 6 and 9 of the Article 11<sup>1</sup> of the Law, the Agency has a reasonable suspicion that the planned concentration may not be compatible with a competitive environment and, as a result, a substantial restriction of effective competition is expected, it shall notify in writing the concentration parties thereon.
2. In the case referred to in the Paragraph 1 of this Article, the concentration parties shall be notified of all circumstances which give rise to a reasonable doubt as to a substantial restriction of an effective competition. The party shall also be informed of its rights and responsibilities, including the right to propose a change of operation as a structural and/or behavioural remedy as defined in the Paragraph 7 of the Article 11 of the Law. Furthermore, the Party shall be given a time limit for the submission of opinions and additional information.
3. The period specified in the Paragraph 2 of this Article may not be less than 5 days. The Agency is authorized, upon a substantiated request of the party, to extend the deadline for submission of a document or other information for not more than 15 working days, which is the basis for the suspension of the deadline provided for the Paragraphs 6 and 9 of the Article 11<sup>1</sup> of the Law.
4. Pursuant to the Paragraph 7 of the Article 11 of the Law, a party/parties may propose to the Agency a change in the operation as a structural and/or behavioural remedy:
  - a) A structural remedy is an obligation assumed by a party/parties, the implementation of which changes the market structure and the position of the relevant undertaking in that

market. Structural change can be achieved through the sale of an activity/business or assets/share, as well as through other means that affect the market structure;

- b) A behavioural remedy is an obligation assumed by a party/parties, which means taking a specific action by it/them or refraining from taking a specific action for the purposes of maintaining an effective competition in the market.
5. When reviewing structural and behavioural remedies submitted by a party/parties, the Agency shall analyse, *inter alia*, whether the remedies proposed are proportionate and sufficient to avoid the restriction of an effective competition in the goods or services market of Georgia or its part. In addition, the Agency analyses the feasibility of the proposed remedies.
  6. The Agency is authorized to invite the parties of the concentration to obtain explanations regarding the structural and/or behavioural remedies, at the request of the party/parties or on its own initiative.
  7. The Agency is authorized, if necessary, to give the concentration Parties additional time to adjust the proposed structural and/or behavioural remedies.
  8. If the Agency considers that, as a result of the modification, the concentration does not substantially restrict effective competition in the goods or services market of Georgia or its part, it shall decide on the compatibility of the concentration with the competitive environment.
  9. If the Agency considers that, in spite of the structural and/ or behavioural remedies proposed by the Party/Parties, the planned concentration substantially restricts effective competition in the in the goods or services market of Georgia or its part, it shall decide on the disallowance of the planned concentration. The Agency's decision, among other circumstances, shall also indicate the reasons why the Agency considered the proposed structural and/ or behavioural remedies unacceptable.
  10. The decision taken pursuant to the Paragraph 8 of this Article shall contain information on the specific action to be taken by the party/parties, indicating the relevant time limit.
  11. The Agency is authorized, on the basis of a substantiated request of the concentration party/parties, to extend the deadline for the implementation of the relevant remedy only once, within a reasonable period of time.
  12. If the concentration has already taken place and the remedies specified by the Agency are not carried out by the concentration party/parties within the defined time-period, the Agency shall impose a fine on the concentration party/ parties in accordance with the Paragraph 3 of the Article 33 of the Law. This case equals with the situation when the remedies are partially

implemented or the Agency considers that the remedies taken by the party/parties are not in full compliance with its decision.

13. The amount of the fine for each overdue day shall not exceed 5% of the average daily turnover of the undertaking during the previous financial year before the relevant decision was made by the Agency.
14. The amount of the fine determined in the Paragraph 13 of this Article if imposed on a natural person or another person who is not considered an undertaking for the purposes of this Law, shall not exceed GEL 500 for each overdue day.
15. In the case provided for in the Paragraph 13 of this Article, for the purposes of determining the amount of the fine, the previous financial year shall be considered as the previous financial year of the relevant decision by the Agency. If the undertaking is registered in the year of the decision by the Agency in accordance with the rules established by the legislation, the relevant financial year shall be considered as the year of the decision.
16. In the case provided for in the Paragraph 12 of this Article, the Agency, in parallel with the imposition of a fine, shall apply to the court and request the cancellation of the concentration in order to restore the initial condition. To achieve this, a person may be subject to various obligations, including the divestiture of the undertaking, shares, assets, securities or parts thereof, reorganization, termination of specific contracts. In addition, a person is set a deadline for fulfilling the imposed obligations.
17. The Agency is authorized to request the parties to the concentration to provide information on the implemented structural and/or behavioural remedies at certain intervals.
18. The failure to provide the information referred to in the Paragraph 17 of this Article within the time-period specified by the Agency, as well as incomplete or incorrect submission shall result in a fine of the relevant person in accordance with Article 32 of the Law.

#### **Article 15. Inadmissibility of carrying out the concentration via bypassing the requirements of the Law and its consequences**

1. If the concentration falls under the regulation of the Law, the parties to the concentration are prohibited from exercising it without notification of the Agency, before the decision of the Agency and/or in the event of a negative decision of the Agency.
2. In order to register the concentration of persons who have an obligation to notify the Agency, it is necessary to obtain the decision of the Agency on the competitive effect of the expected concentration. Issuance of a negative decision by the Agency is a ground for refusal to register

the concentration of undertakings by the legal entity of public law - National Agency of Public Registry.

3. The Agency is authorized, on the basis of information disseminated through the mass media and/or received from any source, to review the issue of concentration, to determine whether the concentration is subject to notification to the Agency and to take appropriate measures provided by law.
4. In case of non-submission of the concentration notification to the Agency, in case of exercising concentration despite the negative decision of the Agency and/or before the expiration of the notification period or before the issuance of the decision by the Agency, the person obliged to submit the notification shall be imposed a fine not exceeding 5 per cent of its annual turnover during the preceding fiscal year of the Agency's decision.
5. In the case provided for in the Paragraph 4 of this Article, for the purposes of determining the amount of the fine, the previous fiscal year shall be the previous fiscal year of the relevant decision by the Agency. If the undertaking is registered in the year of decision-making by the Agency in accordance with the rules established by the legislation, the relevant financial year shall be considered as the year of decision-making.
6. The imposition of a fine for non-submission of notification of a concentration subject to notification shall not release the person from the obligation to submit a notification of concentration to the Agency. In parallel with the imposition of a fine, the time limit for submitting a notification shall be determined by the Agency in each specific case and it may not be less than 14 calendar days.
7. In parallel with the imposition of the fine provided for in the Paragraph 4 of this Article, the Agency shall apply to the court and request the cancellation of the concentration in order to restore the initial condition if:
  - a) There is a decision of the Agency on the disallowance of the planned concentration;
  - b) The agency reviewed the concentration bypassing the legislation and declared it unacceptable.
8. The motion provided for in the Paragraph 7 of this Article shall be reviewed by the court in accordance with the rules established by the Administrative Procedure Code of Georgia.

## **Article 16. Publishing the decisions of the Agency**

1. The decision made by the Agency is subject to publication on the official webpage of the Agency within 7 days of its adoption.
2. State, commercial, banking, professional, or tax secrecy shall be protected by the Agency when publishing the decisions referred to in the Paragraph 1 of this Article.

**Notification on Concentration**

<b>1. General Information</b>
<b>Participating subjects</b>
a) Name and surname of the undertaking/person;
b) Identification number/personal number;
c) legal address;
d) field of activity;
e) Contact person and his contact details (e-mail, telephone).
<b>1.</b>
<b>2.</b>
<b>3.</b>
<b>4.</b>
<b>5.</b>
<b>2. General information on concentration</b>
Form of concentration

Purpose of concentration

### 3. Characteristics of the participating subjects

*a) Shareholders of the parties to the concentration*

*b) Interdependent undertakings of the Parties;*

*c) Scheme / diagram reflecting the data referred to in points (a) and (b) as an annex (indicate the annex number);*

*d) Indicate which of the above mentioned undertakings are operating in the relevant market of the declared concentration;*

*e) Indicate in the form of an annex the shares you have acquired during the last 3 years from the undertakings operating in the market referred to in paragraph (d);*

*f) Indicate the turnover of each party to the concentration during the previous financial year in which the obligation of notification arose:*

*„f.1“ Domestic market*

*„f.2.“ International market (including domestic market)*

**Note:** *If a person's entrepreneurial activity has started in the current year, then the annual turnover at the time of the notification of the concentration during the current calendar year shall be indicated.*

1.

2

3

4

5



#### 4. Detailed description of the concentration

**Indicate:**

- Relevant market of planned concentration (product, geographic and time frame of the relevant market);
- The method you used to determine the relevant market;
- What is the purpose of this concentration and what is the relevant entity planning after the concentration (its economic and business plans for the next 24 months);
- What will be the consequences of concentration on the market;
- Information on the positive and negative effects of concentration
- Do you have any legal or economic research that can provide qualified answers to the above questions (in case of research, attach it to the notification as an annex);
- At least three issues that may affect the resolution of the issue, positively or negatively, and what you think the agency should focus on.

#### 5. Additional remarks

(Please note, in addition to the above information, any other information or comments you may have that may be relevant to your decision)

◆ We hereby certify that all information provided in this notification is true and that we are aware of the legal consequences of providing incorrect information as defined by the legislation of Georgian.

Signature of the representatives of the persons participating in the concentration:

1. -----

2. -----

3. -----

4. -----

5. -----

**Signature of the person submitting the notification:**

**Date:**