

Translated by GCCA



Georgian Competition
and Consumer
Agency

**Order of the Chairman of the Competition Agency N 37 – “On
Approving of the Methodological Guidelines of Market Analysis”**

Consolidated Version: 13.06.2024

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Order of the Chairman of the Competition Agency

N 37

23 October, 2022,

Tbilisi, Georgia

On Approving of the Methodological Guidelines of Market Analysis

On the basis of Article 17¹ (4) and Article 33¹ (3) of the Law of Georgia on Competition, Article 25 (1b) of the Organic Law of Georgia on Normative Acts, I hereby order:

Article 1

Approve the attached Methodological Guidelines of Market Analysis.

Article 2

Order No. 30/09-3 of the Chairman of the Competition Agency from September 30, 2014 On the Approval of the Guidelines for the Market Analysis shall be declared invalid.

Article 3

This order will come into effect on November 4, 2020.

Chairman of the Competition Agency
Lekvinadze

Irakli

Methodological Guidelines of Market Analysis

Chapter I

General Provisions

Article 1. Purpose and terms of reference of the Guidelines for the Market Analysis

1. The Guidelines for market analysis (hereinafter referred to as the Guidelines) have been developed on the basis of the Law of Georgia on Competition (hereinafter referred to as the Law).
2. The methods of market analysis determined by these guidelines may be used in the process of reviewing the notification about the concentration, initiating case investigation, performing market monitoring and other procedures defined by law.

Article 2. Definition of terms

1. For the purposes of these Guidelines, the terms used herein shall have the following meanings:
 - a) Effective Competition - such an optimal combination of market structure and market behavior of undertakings, when market efficiency is equal to the highest possible rate;
 - b) [deleted].
 - c) [deleted].
 - d) [deleted].
 - e) [deleted].
 - f) Consumer - a person who acquires goods/services for personal use or business purposes;
 - g) Herfindahl–Hirschman Index (HHI) - market concentration index which is the sum of the squares of the market shares of all undertakings operating in the relevant market.
2. Other terms used in the Guidelines have the meaning defined by law.

Article 3. Principles of the relevant market analysis

The Agency performs market analysis in compliance with the principle of objectivity and relies on:

- a) the principle of inquisitiveness and the circumstances of the case, and additionally it is possible to investigate the market segment that is not specified in the relevant application of the interested person;
- b) the principle of functional analogy, which implies the use of functionally similar criteria by the Agency and analytical factors in uniform cases, taking into account the specifics of the market/markets, when conducting the evaluation and analysis of the competitive environment on the relevant market segments;
- c) the principles of necessity and proportionality and market analysis by conducting necessary and proportionate research to achieve the objective.

Article 4. Stages of Relevant Market Analysis

1. The market analysis carried out by the Agency includes the stages of identifying the relevant market and evaluating the competitive environment in the market.
2. The Agency uses the parameters established by these Guidelines at both stages of the relevant market analysis.

Article 5. Parameters of the Market Analysis

1. The relevant market should be defined using the following parameters:
 - a) product dimension of the goods/services market;
 - b) geographical dimension of the goods/services market;
 - c) timeframes of the goods/services market.
2. When evaluating the competitive environment in the relevant market based on the parameters defined in the first paragraph of this article, the Agency takes into account the following parameters:
 - a) undertakings operating in the relevant market;
 - b) the volume of the relevant market and the distribution of shares to undertakings;
 - c) level of relevant market concentration;
 - d) entry barriers to the relevant market;
 - e) market power of undertakings;
 - f) additional parameters, which the Agency will definitely take into account depending on the specifics of the specific market.

Article 6. Request for Information

1. In the process of market analysis, the Agency is authorized to request any document/information (including confidential) from the undertaking, state government, autonomous republic government, municipality body, or other administrative body, which is needed in the process of exercising the relevant powers and will facilitate defining the important circumstances of the case.
2. In the request for the documents/information, the Agency should specify the legal basis of the request, the subject, the purpose and the timeframe for the provision of the information, as well as an indication of the possible consequences of non-provision of the information.
3. The period established by paragraph 2 of this article cannot be less than 5 working days. The Agency is entitled to extend the deadline for submission of the document/information only once, but not more than 15 working days, based on a reasonable application.
- 3¹. [deleted]
- 3². [deleted]
4. The information is deemed submitted if it has been fully submitted to the Agency's legal address and/or via official e-mail within the period determined by the Agency.
5. The person/organization is entitled to demand from the Agency to recognize the submitted specific information as a commercial secret, in accordance with the rules established by the General Administrative Code of Georgia, and submit relevant justification.

Article 6¹. The Rule and Procedure for Submitting Correspondence

1. The agency sends and/or presents the document to the person in written or electronic form.
2. The agency chooses the form of sending and/or presenting the document to the person.
3. In the event that one document is submitted to a person multiple times or in several forms, the date of submission of the document is considered the date of its first submission.
4. When presenting a document to a person in written form, if the person refuses to accept the document, the person presenting the document shall make a corresponding notation.
5. The document may be sent to the person by mail and/or e-mail.
6. A document sent to a person by e-mail will be considered delivered if the addressee confirms its receipt.
7. The written document of the agency must be delivered to the addressee, their representative, a family member, or the administration of their workplace. For the purposes of this clause, the family members of the addressee are considered to be close

relatives permanently living with them, including: spouse, mother, father, sister, brother, grandmother, grandfather, adult child, adult grandchild, and any other adult person (regardless of family relationship with the addressee) who engages in common family activities with them.

8. If the written document of the agency, in accordance with the procedure established by paragraph 5 of this article, fails to be delivered to the addressee within 5 working days after sending, if the addressee refuses to accept the document, or if the addressee does not confirm its receipt by e-mail, the agency is authorized to send the document to the public law legal entity - Revenue Service for uploading the document to the page of the authorized user of the taxpayer request, after which the Revenue Service provides the taxpayer with the document through the page of the authorized user. In this case, the document is considered delivered from the moment it is opened by the addressee.
9. If the decision and/or order of the agency cannot be delivered to the party in the manner established by paragraphs 5-8 of this article, the decision and/or order is considered delivered to the party on the 60th day after its publication on the official website of the agency.

Article 7. Consequences of failure to submit information

1. Failure of the undertaking to provide the information requested by the Agency within the established period and provision of incorrect or incomplete information shall result in the imposition of a fine of three thousand (3 000) Gel for a legal person, and one thousand GEL- for a natural person.
2. 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.;
3. A reasoned answer of not having the requested information within the period determined by the Agency is not considered a failure to provide the information requested.
4. Despite the imposition of a fine, in case of failure to provide the information within the timeframe established by the Agency repeatedly, the legal person will be fined in the amount of five thousand Gel, and a natural person - three thousand Gel.
5. The imposition of a fine does not release a person from the obligation to submit information to the Agency.

6. In case of non-submission of information, together with the imposition of a fine, the Agency is authorized to apply to the court with a petition in the process of exercising the relevant authority to request information/documentation from the undertaking in the manner established by Article 18 (1c) of the Law and Article 21⁷³ of the Administrative Procedure Code of Georgia.

7. In case of non-provision of the information or provision of incorrect or incomplete information by the state government, autonomous republic government, municipality body or other administrative body, the Agency is entitled to raise the issue of disciplinary liability of its authorized person.

Chapter II. Identification of the relevant market

Article 8. Product boundaries of the relevant market

1. The product boundaries of the relevant market include all goods or services that can be considered substitutable based on the characteristics, prices and purposes of their use.
2. When determining the product boundaries of the relevant market, the substitutability criteria defined in the first paragraph of this article may be considered both from the point of view of the consumer and the supplier/manufacturer.
3. In the process of determining the product boundaries of the market, the degree of substitutability of potentially interchangeable products is assessed through qualitative and quantitative analysis. The method of quantitative analysis can be used in the process of determining the geographical boundaries of the market.

Article 9. Determination of product boundaries from a consumer perspective

1. From a consumer perspective, when determining product boundaries the substitutability criterion is presented by the product characteristics determining the choice of the consumer.
2. The product characteristics determining the consumer's choice are: consumption properties, level of freshness, terms of use (consumption) of the product by a consumer, purpose of consumption, sales conditions, the relative level of prices, and any other characteristics that may be important and essential in determining consumer's choice.
3. Product characteristics determining consumer's choice may be revealed through sociological surveys, experts' opinions, sociological observation of consumer behavior, experiments or other methods that allow identification of these characteristics and at the same time do not contradict the law and the principles of market analysis determined by these Guidelines.

Article 10. Determination of product boundaries

1. From a manufacturer/supplier perspective, when determining product boundaries the substitutability criterion is the degree of ability to switch easily from the production of one product in question to the production of another during the inspection of which both operating and spare production capacity should be taken into account.
2. From a manufacturer/supplier perspective, the criteria of substitutability of products may be established through observations, experiments, and inspection, based on expert opinion or using other sources that do not contradict the law and the principles of market analysis determined by these Guidelines.

Article 11. Geographical boundaries of the relevant market

The geographical boundaries of the goods/services market are the territory in which the buyers of the selected group acquire or have the economic, technical, and other opportunities to purchase the goods/services in question.

Article 12. Determining the geographical boundaries of the relevant market

1. When determining the geographical boundaries of the relevant market, the Agency shall consider:
 - a) the possibility of free movement/transfer of supply and demand of goods;
 - b) the specifics and peculiarities of the territory (including the specificity of natural-climatic, socio-economic, and political conditions, particularities of demand and consumer behavior, and particularities of the rules and habits of business relations);
 - c) homogeneity of product prices in the territories in the composition of the relevant geographic market.
2. If during establishing homogeneity of prices it was discovered that the price of goods/services in a geographic area is determined to be more than 10% higher than the weighted average price of the product market determined within the scope of the analysis, then the markets of the such geographic area shall not be deemed homogeneous.
3. Regardless of the circumstances specified in paragraph 2 of this article, if the analysis has established that consumers consider a product sold in one region to be a substitute for the goods/services sold in another region, then these regions should be considered as a single geographic market for the given product.
4. In the market conditions of natural monopolies in the regulated fields of the economy, the geographical boundaries of the goods/services market are established taking into account the

location of the technological infrastructure (networks), the accessibility of the buyers to the infrastructure and ability to connect to the networks.

Article 13. Timeframes of relevant market

1. If the product and geographical borders of comparable goods/services match, the criterion for differentiation is the timeframe.
2. The timeframe of the relevant market represents the period of time during which the market functions under the conditions of the specific product and geographical boundaries.
3. The relevant market is considered to be identified if, along with the product boundaries, the area of its geographical distribution, the time during which the market functions and represents the object of observation are established.
4. Markets with the same production and geographical boundaries operating in different seasons are different markets.
5. A season is any alternating period of time, the complete cycle of which does not exceed two years and repeats at least twice.

Article 14. Determination of relevant market timeframes

Relevant market timeframes are determined based on market observation, materials obtained from various sources, officially received or obtained during other production/market analysis, depending on the expediency of monitoring, research or other activity.

Chapter III Analysis of the competitive environment in the market

Article 15. Undertakings operating in the relevant market and their identification

1. The undertaking operating in the relevant market is the supplier and the consumer.
2. The detection of undertakings operating in the relevant market implies the identification of their group.
3. Identification of the customer group means the identification of all such customers operating in the relevant market, each of whom can receive the goods or services in question from any supplier operating in the relevant market.
4. Identification of a group of suppliers implies the identification of all such suppliers, which operate in the relevant market and can supply the consumer with goods on the basis of product substitutability.

5. Undertakings operating in the relevant market are identified based on statistical or tax records, surveys, or other means.

Article 16. Determination of the relevant market volume

1. Market volume represents the volume of sales of goods/services delivered to the market in a specific time period.

2. The relevant market volume is calculated by the sum of the volumes of goods/services sold by the undertakings operating in this market. Repeated calculation of the same goods/services is not allowed.

3. The volume of the relevant product market of the country can be determined by taking into account the volumes of goods produced in the country, exported and imported from the country, by the following method: $V_m = V_p + V_{im} - V_{ex}$, where V_m is the volume of the market; V_p – is the volume of goods produced within the geographical boundaries of the relevant market, which does not include the stocks of the undertaking and that volume of produced goods which is used for its own manufacturing; V_{im} – the volume of imports/imported goods within the geographical boundaries of the relevant market.

V_{ex} – the volume of export/ exported goods from the respective product market.

Article 17. Determining the share of the undertaking operating in the relevant market

1. The share of the undertaking (supplier) is calculated in percentages, corresponding to the volume of the relevant market.

2. In assessing the competitive environment in the relevant market, the potential suppliers may be taken into consideration that can provide goods or services with minor technical adaptation or additional physical capital.

3. If the market analysis is carried out due to the alleged fact of violation of the competition law, then the share is calculated according to the actually formed structure of the market (without taking into account potential suppliers).

Article 18. [deleted].

Article 19. Concentration level of the relevant market

1. The level of relevant market concentration is a qualitative characteristic of the market and evaluates the ratio of shares of undertakings and the density of their distribution in the market.

2. The Herfindahl–Hirschman Index (Appendix No. 1) is used to calculate the relevant market concentration level.

3. According to the level of concentration calculated on the basis of the Herfindahl-Hirschman index, the relevant market can be a competitive market, moderately concentrated, or highly concentrated:

a) competitive market - $HHI < 1250$;

b) moderately concentrated market- $1250 < HHI < 2250$;

c) highly concentrated market - $HHI > 2250$.

4. If necessary, other similar indices/coefficients widely used in practice can be used in the assessment of the relevant market.

Article 20. [deleted].

Article 21. [deleted].

Article 22. [deleted].

Article 23. Barriers to entry the relevant product market

1. The analysis of entry barriers to the relevant market includes the assessment of the qualitative indicators of the market structure, within the framework of which the Agency examines:

a) presence/absence of the market entry, expansion and market exit barriers for potential competitors and the simplicity/difficulty of overcoming them;

b) possible costs and deadlines for overcoming barriers;

c) the actual possibility for a potential supplier to become a given market participant;

d) the possibility of undertakings already operating in the relevant market to expand the scale of their economic activity;

2. The following undertakings can be considered as potential competitors (suppliers):

a) undertakings who have the material and technical base, personnel and technologies to produce, supply or provide services, but for various reasons cannot (don't) use these opportunities;

b) undertakings who produce and/or deliver relevant goods or provide services, but do not sell/supply them in the relevant market area;

c) [deleted].

3. When using the indicators determined by the first paragraph of this article, the Agency will study the existence of technical, financial, and institutional barriers in the market.

4. Within the framework of the study of financial and technical barriers, the following are considered:

- a) the need to make initial significant capital investments;
- b) limited availability of financial resources for potential suppliers;
- c) losses from the market exit in case of termination of economic activity, including unreimbursed investments;
- d) high costs for accessing resources and obtaining intellectual property rights, advertising, and obtaining necessary information;
- e) transportation restrictions;
- f) need for an economically justified minimum production volume to reduce high costs per unit product for the economy of scale;
- g) the advantage of the undertaking/undertakings operating in the market compared to the potential market participant/participants in terms of costs per unit product, demand level, and/or concluding long-term contracts with buyers;
- h) other barriers of a financial and technical nature.

5. Within the study of institutional barriers, the following are considered:

- a) difficulty of registration of undertakings;
- b) decision of administrative bodies regarding restriction of product export/import;
- c) assessment of the impact, necessity, and expediency of the legal regulations of the activities belonging to the relevant goods/services market;
- d) the degree of market infrastructure development;
- e) other barriers of an institutional nature.

Article 24. Assessment of market power of undertakings

1. One of the criteria for assessment of the competitive environment in the relevant market is the analysis of the activity of undertakings operating in the said market in relation to competitors.

2. At this stage of the market analysis, the Agency examines the ability of the undertaking to increase profits by increasing prices or reducing costs/quality over a long period of time without losing significant market share.

3. The following methods are used in the assessment of the market power:

- a) structural method which involves the analysis of the undertaking's position in the relevant market;
- b) analytical method which implies:
 - b.a) assessment of the level of effectiveness of the undertaking activity;

- b.b) the level of profitability of the undertaking in the short and long term;
 - b.c) evaluating the activity of undertakings using the method of financial analysis and analogy;
 - b.d) comparing similar indicators of activity of competing undertakings.
4. During the assessment of the market power, it is also possible to use economic and financial indicators recognized in practice.

Chapter IV. Monitoring

Article 25. Market monitoring and grounds for its initiation

1. In order to assess the competitive environment in the goods and services markets, the Agency carries out market monitoring.
2. The basis for starting monitoring can be: reports spread through mass media, appeals to administrative bodies, high public interest, additional methodological document(s) developed by the Agency, and/or information received from any other source.

Article 26. The general procedure of market monitoring

1. After determining the market that is subject to monitoring, the Agency starts monitoring, the duration of which is not limited.
2. The monitoring process includes the stages of identifying the relevant market defined by this order and assessing the competitive environment in the identified relevant market.
3. In the course of monitoring, if the information sought and processed by the Agency provides the basis for the aforementioned, an interim monitoring report/reports may be developed in such a way as not to interfere with the monitoring process.
4. After the monitoring is completed, a monitoring report is drawn up, which does not represent an administrative-legal act and which evaluates the competitive environment in the market.
5. Within the framework of monitoring, it is possible to issue recommendation(s) for the purpose of improving the competitive environment in the relevant market;
6. In the case defined by paragraphs 3 and 4 of this article, the report developed by the Agency shall be published on the Agency's official website within 10 working days, with the protection of confidentiality principles.
7. If the circumstances revealed during the monitoring process give rise to a reasonable suspicion of the alleged violation of the Georgian Law on Competition by the relevant undertaking/undertakings, the Agency initiates the investigation of the case against the said person(s).

Article 27. Assessment of the impact of the Agency's decision on the competitive environment

1. The Agency may monitor the relevant market in order to assess the impact of the decision it has made on the competitive environment, which was related to this relevant market or the undertakings acting in it.
2. The impact assessment of the Agency's decision is based on a comparative analysis of the market for the periods before and after the decision.
3. When assessing the impact of the decision, attention is paid to the analysis of the competitive environment in the relevant market, as well as to the general economic indicators of the market, such as market volume, jobs, price levels, investments, and others.
4. In order to assess the impact of the Agency's decision, market monitoring may begin at least one year after the assessment decision is made.
5. At the end of the impact assessment of the decision, a report is drawn up, which does not represent an administrative-legal act.
6. In accordance with paragraph 5 of this article, the report developed by the Agency shall be published on the official website of the Agency within 10 working days, with the protection of confidentiality principles.
7. If the circumstances revealed during the monitoring process of the impact assessment of the decision on the competitive environment give rise to a reasonable doubt about the alleged violation of the Law of Georgia on Competition by the undertaking/undertakings, the Agency shall initiate an investigation of the case.

Annex1

Determining the Herfindahl-Hirschman index of market concentration

The Herfindahl-Hirschman (HHI) market concentration index is calculated as the sum of the squares of the market shares of all active suppliers.

List of suppliers of goods in the market	The volume of sale of goods/services of each supplier (V_j)	Each supplier's share of sales in the total volume of the market ($D_j = V_j / V_m$)	Squares of market shares (D_j^2)

1, 2, 3, n			
Total n +... + D²n	$(\sum_{j=1}^n j)$	100%	HHI = D1² + D2²