

ORDER №38 of the Chairman of the Competition Agency

23 October, 2020

Tbilisi, Georgia

Complaint form, Rules on its Submission, Procedure and Terms related to the Admissibility of the Complaint

On the basis of the Paragraph 4 of the Article 17¹ and Paragraph 8 of the Article 23 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.

“Complaint form, Rules on its Submission, Procedure and Terms related to the Admissibility” annexed to this Order shall be hereby approved.

Article 2.

Order №30/09-1 of the Chairman of the Competition Agency adopted on September 30, 2014 on “the forms of applications and complaints, rule on their submission and procedure and terms related to their admissibility” shall be hereby repealed.

Article 3.

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

Chairman of the Competition Agency

Irakli Lekvinadze

Complaint form, Rules on its Submission, Procedure and Terms related to the Admissibility of the Complaint

Chapter I

General Provisions

Article 1. Introductory Provisions

1. Complaint form, Rules on its Submission, Procedure and Terms related to the Admissibility of the Complaint (hereinafter, “the Procedure”) is developed in accordance with the Law of Georgia “on Competition” (hereinafter, “the Law”).
2. This Procedure defines the form of the complaint to be submitted to the Georgian National Competition Agency (hereinafter, “the Agency”) in relation to the violation of the provisions of the Law, the rules for its submission, and procedure and terms of admissibility.

Article 2. The complainant, the respondent, their rights and obligations

1. The complainant is an undertaking that considers that the violation of the Law causes direct property damage to him/her, and submits a respective complaint to the Agency thereon.
2. The complainant shall submit evidences to the agency together with the complaint. The complainant is considered a party and bears the burden of proof.
3. The respondent is a person against whom a complaint is filed with the Agency for the alleged violation of the relevant Article / Articles of the Law or against whom the Agency has initiated an investigation on its own initiative.
4. The complainant is obliged:
 - a) to submit a complaint to the Agency in line with the form and rules prescribed for by this Procedure;
 - b) to submit the requested additional information and/or evidences regarding the complaint within the timeframe set by the Agency.
5. The complainant and the respondent are obliged to submit the Agency information requested by it which is needed during the exercise of the relevant authority by the Agency and at the request of the Agency, to appear separately or jointly for an explanation.
6. The complainant and the respondent have the right to:

- a) Have a lawyer and / or representative;
 - b) To get familiar with the case materials in accordance with the rule established by Article 99 of the General Administrative Code of Georgia;
 - c) Request an extension of the deadline for submission of information / evidence;
 - d) To request recusal of an employee of the Agency at any stage of the complaint consideration.
7. The complainant has the right to withdraw the complaint submitted to the Agency at any stage of the proceedings. The Agency is authorized to use the information submitted prior to the withdrawing the complaint for the purposes of conducting an investigation on its own initiative.
8. The respondent has the right to:
- a) Provide the Agency with its own opinions and relevant evidence regarding the case;
 - b) To take commitments on exercising specific actions for the purposes of eliminating the alleged violations of the Law.

Article 3. Grounds for recusal

1. A party has the right to recuse an employee of the agency who is interested in the subject-matter under consideration.
2. The ground of recusal is the existence of a conflict of interest as defined in Article 21 of the Law.
3. In the case provided for in the Paragraph 2 of the Article 21 of the Law, in particular, if there are relations foreseen by the Article 19 of the Tax Code of Georgia and the Article 92 of the General Administrative Code of Georgia between the authorized person of the Agency and the undertaking against whom the Agency conducts an investigation, the relevant employee of the Agency should immediately self-recuse due to the conflict of interest.
4. In case of non-fulfillment of the obligation provided for in the Paragraph 3 of this Article, the disciplinary measures foreseen in the Internal Regulations of the Agency shall be imposed upon the employee of the Agency.

Article 4. Public and confidential information

1. Decisions and researches made by the Agency are public, except for the confidential information specified in Article 20 of the Law.

2. The confidential information is disclosed in accordance with the legislation of Georgia.
3. In case the information submitted to the Agency is classified as a commercial secret in accordance with Article 20 of the Law and the General Administrative Code of Georgia, the Agency is authorized to request a person to submit an unclassified/non-confidential version of the document and to set a relevant deadline.
4. The version of the document is considered non-confidential if all data related to the commercial secret is properly concealed and it can be disclosed to other interested person as the materials of administrative proceedings.
5. The Agency is entitled to disagree with the non-confidential version of the document submitted by the person and additionally request him/her to conceal the data in another way or to ensure the creation of an non-confidential version of the document and to inform the person thereon.
6. Disclosure, dissemination or use of confidential information by an employee of the Agency, including for personal, academic, scientific and other activities, excluding in exceptional cases provided for by the legislation of Georgia, will result in disciplinary liability under the Internal Regulations of the Agency.

Chapter II

Accepting the complaint in the proceedings

Article 5. Rule and form of submitting a complaint

1. The complainant shall file a complaint with the Agency in accordance with Annex N1, which must include the following information:
 - a) Complainant (identity/name, personal/identification number, address and contact information);
 - b) Complainant's representative (name, surname, personal number, address, contact information);
 - c) Respondent (identity/name, personal/identification number, address and contact information);
 - d) The type of complaint, which should indicate the relevant article/articles of the Law, the alleged violation of which takes place;

- e) A detailed description of the circumstances of the case, indicating the relevant facts, circumstances and evidence of the alleged violation of the Law. As well as discussing established or anticipated property damage;
 - f) A list of evidence proving the circumstances set out in the preceding subparagraph;
 - g) An indication of requesting the Agency to classify certain information as a commercial secret (if any);
 - h) Notes and additions;
 - i) List of documents annexed to the complaint;
 - j) An indication of the accuracy of the information provided in the complaint;
 - k) Complainant's or his/her representative's name, surname, signature and date of submission of the complaint;
2. The complaint shall be considered submitted to the Agency from the moment of its registration, and the calculation of the relevant time period defined by the legislation shall start from the next working day of the day of registration.

Article 6. Formal admissibility of the complaint

1. The Agency shall, within 3 working days from the receipt of the complaint, verify the formal compliance of the complaint with the requirements provided by the Law, Article 5 of this Procedure and the Annex.
2. If the complaint does not meet the relevant requirements, the Agency shall identify the deficiency to the complainant and set a time limit for eliminating it.
3. The letter on the deficiency shall indicate the specific issues and circumstances that the Agency requests to address and/or clarify.
4. If the complainant does not address the deficiency within the time period set by the Agency, the Agency is authorized to make a decision to leave the complaint unconsidered.
5. The calculation of the material admissibility time period of the complaint starts from the moment of submitting the complete complaint to the Agency.
6. If a complaint is submitted to the Agency regarding a possible distortion of competition in the regulated field of the economy, it shall forward the complaint within 5 working days to the regulatory body of the regulated field of economy as an authorized body, except the cases provided for in Paragraph 2 of the Article 31 of the Law.

7. Unless the body authorized to study the subject-matter is clearly identified, the time limit referred to in paragraph 6 of this Article shall be extended to 30 calendar days for consultations between the Agency and the regulatory body of the regulated field of economy in order to determine the relevant authority.
8. In the case provided for in Paragraph 7 of this Article, the calculation of the period of material admissibility of the complaint shall begin after the designation of the Agency as the body authorized to review the complaint.

Article 7. Material admissibility of the complaint

1. The Agency examines the material admissibility of the complaint and the feasibility of initiating the investigation on its basis within 30 working days after the registration of the complete form of the complaint. Depending on the complexity of the case, this period may be extended with a maximum of 15 working days.
2. The Agency is obliged to inform the respondent about the complaint within 5 working days after receiving the complete form of complaint, except for the complaint on the alleged violation of Article 7 of the Law, and to set a deadline for the submission of opinions/evidence. Respondent is entitled to submit opinions/evidence on the complaint to the Agency within the time limit defined by the Agency.
3. The Agency has the right, if necessary, to request the complainant and / or the respondent to submit additional information and/or evidence or to appear for explanation.
4. Prior to the submission of additional information and/or evidence by the complainant, the period provided for in paragraph 1 of this Article shall be considered suspended, and the submission of information and/or evidence by the complainant within the period defined by the Agency shall be grounds for the renewal of the said period.
5. In the case provided for in the Paragraph 2 of Article 31 of the Law, in the process of examining the material admissibility of a complaint about a possible breach of competition, the Agency shall send the complaint to the economic field regulatory authority for consideration and receives appropriate consultations.

Article 8. Commitments

1. At the stage of examining the material admissibility of the complaint, the respondent undertaking is entitled to offer the Agency to assume a commitment to take a specific action for the purposes of eliminating the alleged violation of the Law (hereinafter, commitments).
2. Within 5 working days after accepting the commitments, Agency is obliged to inform the complainant thereon and to set a deadline for the submission of opinions and relevant

information, which is the basis for the suspension of the period provided for in the Paragraph 1 of Article 7 of this Procedure.

3. The complainant is entitled to submit opinions and relevant information on the commitments within the time limit defined by the Agency. The submission of information by the complainant within the time limit set by the Agency shall be the basis for the renewal of the time limit provided for in the Paragraph 1 of Article 7 of this Procedure.
4. The Agency is authorized to request additional information and/or evidence from the respondent undertaking, which will help to establish the circumstances relevant to the review of and decision on the commitments.
5. In the case provided for in the Paragraph 2 of the Article 31 of the Law, in the process of examining the material admissibility of a complaint about a possible breach of competition, the Agency shall notify the regulatory body of the regulated field of economy within 5 working days after accepting the commitments.
6. The Agency is authorized to consent to or refuse to accept a commitment offered by the respondent undertaking. When making a decision, the agency is not constrained by the position of the complainant and/or the regulatory body of the regulated field of economy, although the decision must indicate the relevant justification.
7. At the stage of examining the admissibility of the complaint, in case of offer of commitments by the respondent undertaking, the Agency refuses to initiate an investigation on the basis of the complaint if it considers that the fulfillment of the commitments no longer raises a reasonable suspicion of a violation of the Law and consents to accept the commitments offered by the party.
8. If the Agency does not consider it reasonable to accept commitments, it shall notify the respondent undertaking and continue consideration of the material admissibility of the complaint. In this case, the regulation provided for in Part 4 of Article 177 of the General Administrative Code of Georgia shall apply.
9. In case of accepting commitments, the Agency is entitled to request the undertaking to provide information on the fulfillment these commitments on periodic basis.
10. If the respondent undertaking does not fulfill the commitments within the time limit and in the manner defined by the Agency, the review of the material admissibility of the complaint shall be resumed and the time limit provided for in the Paragraph 1 of Article 7 of this Procedure will be renewed.

Chapter III

Information Request

Article 9. Information Request by the Agency

1. The Agency is authorized to request from the undertaking/ party/ interested party any document/ information (including confidential) about its activities and/or specific operation, which is needed in the process of exercising the relevant authority by the Agency and will help to establish important circumstances for the case.
2. The request of the Agency on the provision of information/document shall indicate the legal basis, subject, purpose and term of the request for information, during which the information should be provided, as well as an indication of the possible consequences of 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 submission of a document/information only once, but not more than 15 working days, based on a substantiated application.

Article 10. 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 27² of the General Administrative Code of Georgia.

Article 11. 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 12. Consequences of the non-submission of information

1. The failure to provide the information requested by the Agency within the established time limit period, 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. The failure by the complainant to provide the information and/or evidence requested by the Agency within the defined time limit, in parallel with the imposition of a fine, shall be the ground for rejecting the admissibility of the complaint.
5. Within the framework of the investigation conducted against the state authorities, authorities of autonomous republic, municipal authorities or any other administrative body on the alleged violation of the Article 10 of the Law, in case of non-submission of the requested information by the respondent within the established time period, provision of incorrect or incomplete information, the Agency shall raise the issue of disciplinary liability of the authorized person.

Chapter IV

The decision of the Agency and the rule for its appeal

Article 13. The Decision of the Agency

1. Within the period specified in the Paragraph 1 of the Article 7 of this Procedure, the Agency shall examine the information, evidence, additional information obtained by the parties and reconcile them. The Agency also analyzes whether there are grounds for refusing to initiate an investigation under the legislation and whether there is a reasonable suspicion of an alleged violation.

2. Within the period specified in the Paragraph 1 of the Article 7 of this Procedure, the Agency shall take one of the following decisions:
 - a) To declare the complaint admissible and to launch the investigation of the case;
 - b) To declare the complaint inadmissible and to refuse to initiate an investigation.
3. The Agency refuses to initiate an investigation on the basis of a complaint if:
 - a) The complaint was not submitted by an authorized person;
 - b) There is no legal basis provided by this Law;
 - c) The requested information and/or evidence is not submitted within the period specified in accordance with the Paragraph 4 of the Article 23 of the Law;
 - d) Insolvency proceedings have been initiated against the respondent undertaking;
 - e) There is a decision made by the Agency as a result of the investigation of the case between the same parties, on the same dispute subject-matter and there are no newly discovered circumstances revealed;
 - f) There is a decision of the Agency to reject the admissibility of the complaint between the same parties, on the same dispute subject-matter and there are no newly discovered circumstances revealed, except for the decision to reject the admissibility of the complaint on the grounds provided for in subparagraph (c) of this Article;
 - g) A dispute between the same parties on the same subject matter is in litigation or there is a court decision or ruling on the same dispute subject-matter about the complainant's rejection of the claim, the recognition of the claim by the respondent, or the approval of the settlement of the parties;
 - h) At the stage of examining the material admissibility of the complaint, the Agency consents to accept the commitments offered by the undertaking.

Article 14. Rule for appealing a decision

The decision of the Agency on declaring the complaint inadmissible and refusing to initiate an investigation is being appealed in the Tbilisi City Court.

Complaint**1. General Information****Complainant:**

1. Name, surname, personal number (in case of a natural person); Name, identification number (in case of legal entity):
2. Address:
3. Phone number:
4. E-mail:

Complainant's representative:

1. Name, surname, personal number:
2. Address:
3. Phone number:
4. E-mail:

Respondent:

1. Name, surname, personal number (in case of a natural person); Name, identification number (in case of legal entity):
2. Address:
3. Contact details:

The type of the complaint

(Indication of which article/articles of the Law of Georgia “on Competition” is allegedly violated)

2. Detailed description of the circumstances of the case

(Detailed information regarding the alleged violation of the Law, indicating the relevant facts, circumstances and evidence, as well as a discussion of the property damage that has been established or is expected)

3. Evidences

1. Evidence confirming the above circumstances

(Annex N)

2. Evidence confirming the above circumstances

(Annex N)

3. Evidence confirming the above circumstances

(Annex N)

4. Request for classifying information as a commercial secret

(If any)

(Please indicate specifically what kind of information you want to classify as a commercial secret - with the appropriate justification)

5. Notes and Additions

(Information on what the legal outcome if the Agency investigates the matter)

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Other notes and additions:

6. List of documents attached to the complaint:
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Title:

Title:

Title:

Title:

Title:

I, hereby, certify that all information presented in the complaint is true and I am aware of the legal consequences of the provision of incorrect information as defined by the legislation of Georgia.

Complainant / complainant's representative -----

Signature: -----

Date: -----