

# LAW OF GEORGIA

## ON COMPETITION

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

### 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 municipal 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.

[a) actions and decisions of undertakings, state authorities, authorities of Autonomous Republics, and municipal authorities and their public officials or other administrative bodies, which, cause and/or are able to cause restriction, exclusion and elimination of free trade and competition on the national markets for goods and services. **(Shall enter into force from 4 November 2020)**]

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.

[c) (deleted – 21.9.2020, No 7126). **(Shall enter into force from 4 November 2020)**]

d) relations arising from the exercise of resolutions powers in accordance with the Organic Law of Georgia on the National Bank of Georgia and the Law of Georgia on Commercial Bank Activities.

5. (Deleted – 21.3.2014, No 2159).

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

*Law of Georgia No 5662 of 20 December 2019 – website, 31.12.2019*

*Law of Georgia No 6893 of 17 July 2020 – website, 28.7.2020*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*



## 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 municipal 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 the Autonomous Republics and/or municipal 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.

*Law of Georgia No 6893 of 17 July 2020 – website, 28.7.2020*

## [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) safeguard the principle of equality of undertakings in their activities;
- b) ensure proper conditions for free access of undertaking to the market;
- c) prevent unlawful restriction of competition between undertakings, in particular, the prohibition of the abuse of a dominant position, a restrictive agreement, decision or concerted action, and the inadmissibility of concentrations which substantially restrict effective competition, as well as the prohibition of unfair competition;
- d) prevent the imposition of administrative, legal and discriminative barriers to entry into the market by state authorities, authorities of the Autonomous Republics and/or municipal authorities;
- e) prevent state authorities, authorities of the Autonomous Republics, municipal authorities and other administrative authorities from granting to an undertaking such exclusive powers and selective economic advantage that unlawfully restrict competition;
- f) ensure maximum publicity, fairness, non-discrimination and transparency of an authorised body in the decision-making process.  
***(Shall enter into force from 4 November 2020)***

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## 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;



[a] undertaking – a natural person, legal person, or other association who carries out entrepreneurial activities irrespective of residency, and the legal form of a legal person; **(Shall enter into force from 4 November 2020)**

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;

[h] (deleted – 16.9.2020, No 7126); **(Shall enter into force from 4 November 2020)**

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%. 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%, and, at the same time, the market share of each of them is at least 15%;

i.b) the joint market share of not more than 5 undertakings holding the most significant market share exceeds 80%, and, at the same time, the market share of each of them is at least 15%;

[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%. Each out of two or more undertakings shall be considered to be in a dominant position if it does not encounter any significant competition within the group under consideration and 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%, and, at the same time, the market share of each of them is at least 15%;

i.b) the joint market share of not more than 5 undertakings holding the most significant market share exceeds 80%, and, at the same time, the market share of each of them is at least 15%; **(Shall enter into force from 4 November 2020)**

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;

[n<sup>1</sup>) cooperation program - a special procedure for full or partial release of a person from a fine for violating Article 7 of this Law if the conditions established by the Law are met; ***(Shall enter into force from 4 November 2020)***]

o) horizontal agreement – an agreement between actual or potential competitors;

[o) horizontal agreement – an agreement between undertakings and/or potential undertakings operating at the same level of production ring and/or distribution ring; ***(Shall enter into force from 4 November 2020)***]

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 Energy and Water Supply, 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 municipal 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;



[p] vertical agreement – an agreement between undertakings and/or potential undertakings operating at a corresponding market, for the purpose of this agreement, operating at different levels of production and distribution, which concerns the conditions related to purchasing, or selling goods and/or services by the parties;

q) regulated sectors of the economy – sectors defined by the Organic Law on the National Bank of Georgia, the Law of Georgia on Electronic Communication, the Law of Georgia on Broadcasting and the Law of Georgia on Energy and Water Supply, 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 – granting a selective economic advantage to a undertaking by transferring budget funds or state resources or imposing other benefits by the provider of state aid;

s) provider of state aid – a public authority, an authority of an Autonomous Republic and/or a municipal 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; **(Shall enter into force from 4 November 2020)**

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;

[t] (deleted – 16.9.2020, No 7126); **(Shall enter into force from 4 November 2020)**

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.

[u] (deleted – 16.9.2020, No 7126). **(Shall enter into force from 4 November 2020)**

*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*

*Law of Georgia No 5650 of 20 December 2019 – website, 27.12.2019*

*Law of Georgia No 6893 of 17 July 2020 – website, 28.7.2020*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

#### **Article 4 – Authorised 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*

#### **[Article 4 – Authorised Body**

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



2. In the cases provided for by this Law, the powers specified in paragraph 1 of this article shall be exercised by the regulatory body regulating the economic sphere. **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **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 5 – Dominant position and criteria for its determination**

1. The dominant position is determined on the basis of the share of an undertaking on the relevant market, the share 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, and the market power thereof shall be determined by the Agency using methodological guidelines of market analysis approved by a relevant legal act issued by the Agency. **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### **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 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) establishing an additional condition/imposing an obligation for a party to enter into a transaction that is neither materially nor commercially related to the subject of the transaction, etc. **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **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.

[1. Any agreement, decision or concerted practice ('the agreement') of undertakings, or association 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 non-competitive conditions;

e) establishing an additional condition/obligation for a party to enter into a transaction that has no substantive or commercial connection with the subject of the transaction. **(Shall enter into force from 4 November 2020)]**

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*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*



## 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%;

b) the market share of each party to a vertical agreement in the relevant market does not exceed 15%;

c) the agreement concluded between undertakings contains characteristics of a horizontal as well as vertical agreements, making it 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%.

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 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%;

b) the market share of each party to a vertical agreement in the relevant market does not exceed 15%;

c) the agreement concluded between undertakings contains characteristics of a horizontal as well as vertical agreements, making it 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%.

2. The provisions set forth in paragraph 1 of this article do not apply to the cases provided for by Article 7(1)(a), and (c) of this Law. *(Shall enter into force from 4 November 2020)*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## Article 9 – Exceptions to the prohibition of restrictive agreements

### [Article 9 – Exceptions to the prohibition of restrictive agreements *(Shall enter into force from 4 November 2020)*

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.

[1. 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 undertakings participating in the agreement the possibility of eliminating competition with respect to a substantial part of the relevant market. **(Shall enter into force from 4 November 2020)**

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.

**[3. Circumstances referred to in paragraph 1 of this Article – the special conditions under which exceptions are made and which are related to the specific type of agreement shall be established for a specified period by the relevant normative act of the Government of Georgia. (Shall enter into force from 4 November 2020)]**

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

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **Article 10 – Inadmissibility of distortion of competition by the state authorities, authorities of Autonomous Republic and municipal authorities**

State authorities, authorities of Autonomous Republic and municipal 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*

*Law of Georgia No 6893 of 17 July 2020 – website, 28.7.2020*

**[Article 10 – Inadmissibility of distortion of competition by the state authorities, authorities of Autonomous Republic, municipal authorities and other administrative authorities (Shall enter into force from 4 November 2020)]**

State authorities, authorities of Autonomous Republic, municipal authorities and other administrative authorities:

may not:

a) establish a union, association, or other type of entrepreneurial structure, if it leads to the weakening or restriction of competition, except in cases provided for by the legislation of Georgia;



b) grant such benefits to undertakings that place them at an advantage over their competitors, or 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. **(Shall enter into force from 4 November 2020)**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

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

**[Article 10<sup>1</sup> – Assessment of the competitive impact of regulatory actions (Shall enter into force from 4 November 2020)]**

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*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **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 – Concentration

1. Concentration shall be:

a) merger of two or more independent undertakings resulting in the formation of a single undertaking;

b) gaining of direct or indirect, full or partial, control over one or more undertakings through the purchase of securities or interests, or through an agreement or otherwise, by one or more undertakings, or a person already controlling at least one undertaking who are not considered to be undertakings for the purposes of this Law;

c) establishing a joint enterprise if it has been performing all the functions of an independent undertaking.

2. For the purposes of concentration, control is exercised through rights, agreements or other means which, individually or in combination, have the potential to have a material effect on the economic agent, in particular:

a) possession of a share of an undertaking, and the right to use this share and/or its assets fully or partially;

b) a right (a right under a contract, etc.) that enables the economic agent to have a substantial influence over the composition, voting rights and decision-making bodies.

3. 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, resulting in the acquisition or enhancement of a dominant position, shall be compatible with a normal competitive environment.

4. A concentration that substantially distorts effective competition of the goods or services market of Georgia or of any significant part of Georgia, shall be inadmissible.

5. If a concentration creates or strengthens a dominant position, it is presumed that such a concentration substantially restricts effective competition in the goods or services market of Georgia or part thereof, unless an undertaking proves otherwise.

6. For the registration of the 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. If a substantial restriction of effective competition is expected as a result of the concentration to be exercised, an undertaking(s) may propose to the Agency the change of operation (modification) as a structural and/or behavioural measure. If the Agency considers that, as a result of such modification, the concentration will satisfy the requirement set forth in paragraph 3 of this article, the Agency shall decide on the compatibility of the concentration with the competitive environment.

8. The decision of the Agency referred to in paragraph 7 of this article may indicate the information on the structural and/or behavioural activity to be carried out by an undertaking(s), and the period of its implementation.

9. If the concentration is carried out, but an undertaking(s) has not implemented/have not implemented the structural and/or behavioural measure provided for in paragraph 8 of this article within the relevant period, the Agency shall impose a fine on the undertaking in accordance with Article 33 of this Law. The agency, in addition to imposing a fine on the economic agent, shall file a motion with the court to revoke the concentration in order to restore it to its original state. In order to achieve this, an undertaking may be subject to a variety of obligations, including obligations to sell an enterprise, shares, assets, securities or parts thereof, reorganise, and terminate a particular contract. In addition, an undertaking is set a deadline for fulfilling the imposed



## 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.

## [Article 11<sup>1</sup> – Notification of Concentration

1. The Agency shall be notified on the concentration, when the value of individual or aggregate annual turnover of an undertaking/undertakings participating in this concentration, during the financial year preceding the 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 fee set by the Agency for the consideration of the notification on concentration shall be GEL 5,000, which shall be paid into the budget of the Agency.
4. No later than 5 working days after receiving the notification on the concentration, the Agency shall check whether the planned concentration is within the scope of regulation of this Law, and shall notify the person/persons submitting the notification thereon.
5. If the planned concentration falls within the scope of the regulation of this Law, the Agency shall start considering the notification on the concentration after the submission of the document confirming the payment of the consideration fee.
6. In the case provided for by paragraph 5 of this article, the Agency shall consider the said notification on the concentration no later than 25 working days after the submission of the document confirming the payment of the notification fee and make one of the following decisions:
  - a) on the compatibility of the planned concentration with the competitive environment;
  - b) on the extension of the concentration notification period if there is a reasonable doubt that the planned concentration may not be compatible with the competitive environment or if, due to the complexity of the case, further consideration is required.
7. If the Agency fails to make one of the decisions within the period provided for by paragraph 6 of this article, it shall be deemed to be a positive response.
8. In the case provided for by paragraph 6 of this article, the Agency shall publish on its official website information on the ongoing administrative proceedings and shall allow the interested person to submit his or her views within the time limit set by the Agency. The confidentiality of the data on the persons participating in the concentration must be protected when publishing this information. In addition, this information should include information on the identity of the parties, the subject matter of the concentration and the sector/market of the economy to which the planned concentration relates.



9. In case of making the decision provided for by paragraph 6(b) of this article, the Agency shall consider the notification on the concentration no later than 90 calendar days after the decision on the extension of the notification on the concentration is considered. Failure to respond to this notification by the Agency within this period shall be deemed a positive response.

10. The Agency has the right to request a person/persons submitting the notification on the concentration to submit additional information, and to set a new deadline for its submission, which is the basis for the suspension of the deadlines provided for in paragraphs 6 and 9 of this article.

11. Concentration is prohibited till the expiration of the time limit provided for by paragraphs 6 and 9 of this article, or before the relevant decision is made by the Agency.

12. Concentration is prohibited in case of a negative decision by the Agency.

13. In case of the non-submission of notification on concentration in accordance with paragraph 1 of this article, the imposition of a fine shall not release an undertaking from the obligation to submit the said notification to the Agency. The Agency shall, in addition to imposing a fine on an undertaking, set a time limit for the submission of such notice, which shall not be less than 14 calendar days.

14. Notwithstanding a negative decision by the Agency, if an undertaking carries out concentration, and/or in the case provided for by paragraphs 11 or 13 of this article, if negative decision on is made by the Agency after the consideration of the notification of concentration, together with the imposition of a fine on an undertaking, the Agency shall file a motion with the court on the cancellation of concentration in order to restore the original state. To achieve this, an undertaking may be subject to a variety of obligations, including obligations to sell the enterprise, shares, assets, securities or parts thereof, reorganise, and terminate a particular contract. In addition, an undertaking shall be set a time limit for fulfilling imposed obligations. **(Shali enter into force from 4 November 2020)**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **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*



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

1. In the case of concentration, a relevant undertaking shall not be obliged to submit notification of concentration to the Agency if:

a) concentration is the result of insolvency and is carried out in accordance with the procedures established by the Law of Georgia on Insolvency Proceedings, as well as in the liquidation process, except for the case, when a competing enterprise, or a group belonging to competitors of an insolvent enterprise gains control of this process;

[a) concentration is the result of insolvency and is carried out in accordance with the procedures established by the Law of Georgia on Rehabilitation and Collective Satisfaction of Creditors, as well as in the liquidation process, except for the case, when a competing enterprise, or a group belonging to competitors of an insolvent enterprise gains control of this process; **(Shall enter into force on 1 April 2021)]**

b) control is gained temporarily, provided that the rights acquired by owning a share (including voting rights) will not be exercised, except for the right to receive information, the right to sell shares/dividends and receive dividends, and the right to take ownership in case of securing a loan;

c) concentration refers to interdependent persons.

2. If all the parties to the concentration are undertakings of one regulated sector of the economy, the notification of concentration shall be submitted to the regulatory body of the regulating the sector of the economy, taking into account the grounds for the exemption from the obligation to notify on the concentration specified in this article.

3. For the purposes of this article, the regulated areas of the economy within the competence of one regulatory body shall be considered as one regulated area of the economy. **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

*Law of Georgia No 7167 of 18 September 2020 – website, 25.9.2020*

## **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.

[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, for example:

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. ***(Shall enter into force from 4 November 2020)***

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

## Chapter III – State Aid

### Article 12 – State Aid

1. State aid 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.

[1. State aid 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. ***(Shall enter into force from 4 November 2020)***

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*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### **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 and the authorities of Autonomous Republic 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*

*Law of Georgia No 6893 of 17 July 2020 – website, 28.7.2020*

### **[Article 13 – Rules and procedures for agreeing state aid with the Agency**

1. The Government of Georgia shall approve by the Ordinance, with the agreement of the Agency, rules for granting state aid provided for by Article 12(3) of this Law.

2. On the basis of the rule on the agreement of state aid with the Agency provided for by paragraph 1 of this article, a body providing state aid shall submit to the Agency an application, which shall include the information on the purpose of providing state aid, the form of state aid, amount, and on the receiving undertaking.

3. A body providing state aid shall, together with the application provided for by paragraph 2 of this article, substantiate that the state aid to be granted shall not substantially restrict competition.

4. On the basis of the application (information) submitted, the Agency shall verify the compliance of the state aid to be provided with the provisions of this Law and shall issue an appropriate conclusion no later than 30 working days. Depending on the size and complexity of the case, this period can be extended up to 3 months. Failure to issue a conclusion by the Agency within the established period shall be considered as consent.

5. The Agency shall have the right to request additional information from the body providing state aid and/or the receiving undertaking, which shall be the basis for the suspension of the period provided for by paragraph 4 of this article.

6. The conclusion provided for by paragraph 4 of this article shall be submitted by the Agency to the body providing state aid and the Government of Georgia.





7. The Government of Georgia shall make a decision on the relevant issue if the negative conclusion of the Agency is submitted. **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

#### **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 14 – The insignificant amount of individual state aid**

1. The insignificant amount of individual state aid, which does not require an agreement with the Agency, shall be determined by the ordinance of the Government of Georgia.
2. The body providing the insignificant amount of individual state aid shall be obliged to provide the Agency with the information on the insignificant amount of individual state aid granted, the term of granting and the receiving undertaking/undertakings by the first of February of the year following the reporting year.
3. The Agency shall enter the information on the insignificant amount received in accordance with paragraph 2 of this article in the register of individual state aid.
4. If, in the process of keeping the register of the insignificant amount of individual state aid provided for by paragraph 3 of this article, the Agency finds that the amount of individual state aid granted exceeds the insignificant amount of individual state aid defined by the legislation of Georgia, it shall prepare an appropriate report and send it to the state aid providing body, as well as to its superior body (if any). **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

#### **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.



## Article 16 – Authorised body and its organisation

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.

[2. The aims, objectives, authority and organisational issues of the Agency shall be determined by this Law, the Law of Georgia on the Introduction of Anti-Dumping Measures in Trade, and the Statute of the Agency. *(Shall enter into force from 1 January 2021)*]

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.

[3. The Agency shall be accountable to the Parliament and 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. In addition, the Agency shall implement the policy of protection of local industry from dumping imports on the customs territory of Georgia, in particular, in accordance with the Law of Georgia on Introduction of Anti-Dumping Measures in Trade. In order to avoid harm to local industry by dumping imports on the customs territory of Georgia, the Agency shall conduct a study and submit a relevant report to the Government of Georgia. *(Shall enter into force from 4 November 2020)*]

[4<sup>1</sup>. The Agency shall also implement the policy of the protection of local industry from dumping import in Georgia, in particular, in accordance with the Law of Georgia on the Introduction of Anti-Dumping Measures in Trade. In order to avoid harm to the local industry as a result of the dumping import of a product on the customs territory of Georgia, the Agency shall conduct a study and submit an appropriate report to the Government of Georgia. *(Shall enter into force from 1 January 2021)*]

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 municipal authorities and undertakings.

[5. Compliance with the decisions, instructions and other legal acts of the Agency shall be binding upon state authorities, authorities of the Autonomous Republics, municipal authorities and other administrative authorities, and undertakings. *(Shall enter into force from 4 November 2020)*]

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.

[6. In its activities, the Agency shall be guided by the Constitution of Georgia, international treaties of Georgia, this Law, the Law of Georgia on the Introduction of Anti-Dumping Measures in Trade, the Statute of the Agency and other legal acts, and shall be responsible for the fulfilment of its objectives and functions. *(Shall enter into force from 1 January 2021)*]

7. The Statute and the structure of the Agency shall be approved by the Government of Georgia.

[7. (deleted – 16.9.2020, No 7126). *(Shall enter into force from 4 November 2020)*]

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.

[9. Not later than the first of May each year, the Agency shall prepare and present to the Parliament and Prime Minister of Georgia, and to the public the annual report on the work performed in the previous year. *(Shall enter into force from 4 November 2020)*]



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*

*Law of Georgia No 6750 of 13 July 2020 – website, 21.7.2020*

*Law of Georgia No 6893 of 17 July 2020 – website, 28.7.2020*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### **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>1</sup> – Managing the Agency**

1. The managing body of the Agency shall be the Board, which shall consist of five members.
2. The Prime Minister of Georgia shall nominate the candidates of members of the Board to the Parliament of Georgia for selection.
3. The Prime Minister of Georgia shall establish a selection commission to select candidates for membership in the Board.



4. The selection commission shall announce a public competition for the selection of the candidates of the Board on the website administered by the Legal Entity under Public Law called Civil Service Bureau. Any interested person shall have the right to participate in the said competition. The time limit for the submission of applications for participation in the said competition shall not be less than 10 days.

5. No later than 20 days after receiving applications, the selection committee shall, from the persons, who meet the qualification requirements for the membership of the Board established by this Law, select double as many candidates for the vacant position of the member of the Board. The selection committee shall be guided by the principles of objectivity and impartiality in the process of selecting candidates for the membership of the Board.

6. The Prime Minister of Georgia shall nominate as many candidates for the membership of the Board selected as a result of a public competition to the Parliament of Georgia, as the vacant positions.

7. If the Parliament of Georgia does not approve a candidate nominated for the vacant position of the member of the Board, the Prime Minister of Georgia shall nominate other candidates selected for the vacant position through a public competition within 30 days.

8. The member of the Board shall be elected and dismissed by the Parliament of Georgia in accordance with the Rules of Procedure of the Parliament of Georgia.

9. The member of the Board is elected for a term of five years. A person may be elected to the Board only twice in a row.

10. If the position of the member of the Board is vacated early, the Parliament of Georgia shall elect the new member of the Board for a term of five years in accordance with the rules established by this article.

11. The candidate of the new member of the Board shall be submitted to the Parliament of Georgia:

a) not earlier than 60 calendar days and not later than 40 calendar days before the expiry of the powers of the member of the Board;

b) in case of the dismissal of the member of the Board, no later than the 30th calendar day from the day of his/her dismissal.

12. A person may be elected as the member of the Board if he/she:

a) is a citizen of Georgia;

b) has an academic degree in economics, law or business administration;

c) has at least 10 years of work experience.

13. Within one month after the election of the members of the Board by the Parliament of Georgia, the Board shall elect the Chairperson of the Board from among its members by a majority of votes for the term of the office of this person as a member of the Board. The Chairperson of the Board shall have the right to refuse the status of the Chairperson of the Board by a personal application.

14. If the position of the Chairperson of the Board is vacated early, the Board shall elect a new Chairperson of the Board from among its members, in accordance with the rules established by this article, within one month for the term of the office of this person as a member of the Board.

15. The termination of the powers of the Chairperson of the Board shall not lead to the termination of the term of the office of this person as a member of the Board, unless at the same time there are grounds provided for by paragraph 20 of this article.

16. A person may be elected as a Chairperson of the Board only twice in a row.

17. The Chairperson of the Board shall appoint the Deputy Chairperson of the Board from among the members of the Board.

18. After the expiry of the powers of the member of the Board, the powers shall be automatically extended once before he/she or another person is elected as a member of the Board in accordance with the rules established by this article, but not more than 3 months.



19. After the expiry of the powers of the member of the Board, paragraph 18 of this article shall not apply to a member of the Board if there are at least 3 members left in the Board.

20. The grounds for dismissal of a member of the Board shall be:

a) the existence of a conflict of interest provided for by paragraph 22 of this article;

b) the entry into force of a judgement of conviction against a member of the Board;

c) the declaration of missing by a court or death of a member of the Board;

d) the loss of citizenship of Georgia by a member of the Board;

e) the violation of the requirements established by the Law of Georgia on Conflict of Interest and Corruption in Public Institutions by a member of the Board;

f) the non-performance of official duties by a member of the Board for three consecutive months due to unreasonable excuse;

g) the resignation of the member of the Board;

h) the death of the member of the Board.

21. In the cases provided for by sub-paragraphs (a), (e), or (f) of paragraph 20 of this article, the decision on dismissal of a member of the Board shall be made by the Parliament of Georgia by a majority of the total number of members, and in the cases provided for by other sub-paragraphs of the same paragraph, the powers of the member of the Board shall be terminated automatically upon the occurrence of the relevant legal fact.

22. The member of the Board may not be at the same time:

a) state servant, state political official, political official, public servant;

b) the member of the governing body of a legal entity/the member of the governing body and/or a shareholder;

c) the member of a political party.

23. The Board shall make its decision in a closed session by a simple majority of votes of the members of the Board present. The member of the board participating in the board meeting has one vote. In the case of the equal distribution of votes, the vote of the Chairperson of the Board shall be decisive, and in his/her absence, the vote of the Deputy Chairperson of the Board.

24. The meeting of the Board is usually convened by the Chairperson of the Board. The meeting of the Board may also be convened upon the written request of two members of the Board.

25. The meeting of the Board is chaired by the Chairperson of the Board, and in his absence, by the Deputy Chairperson of the Board. The meeting of the Board shall be authorised if more than half of the members of the Board are participating.

26. Procedural issues related to the conduct of the Board meeting shall be determined by the legal act of the Agency.

27. The Board shall use the procedures established by this Law and the legal acts adopted on its basis in order to adopt an administrative legal act.

28. The Agency shall have an Executive Director, who shall be appointed through an open competition for a term of five years and dismissed by the Prime Minister of Georgia.

29. A person may be appointed as the Executive Director of the Agency if he/she:

a) is a citizen of Georgia;

b) has an academic degree in economics, law or business administration;

c) has at least 5 years' experience of working in a managerial position.



30. The provisions of paragraphs 20 and 22 of this article shall apply to the Executive Director of the Agency.

31. A new public competition shall be held no later than one month before the expiration of the powers of the Executive Director of the Agency. After the expiration of the powers of the Executive Director of the Agency, he/she shall exercise his/her powers till the new Executive Director of the Agency is appointed.

32. In the case of early dismissal of the Executive Director of the Agency, his/her powers shall be exercised by a person designated by the Board before the appointment of a new Executive Director of the Agency by the Prime Minister of Georgia. ***(Shall enter into force from 1 June 2021)***

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **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;

**[b) monitor the goods and services markets of Georgia with an aim to examine the situation and evaluate the competitive environment;**

**c) if there is concentration as provided for by Article 11 and 11<sup>1</sup> of this Law, make obligatory assessment of its competitive impact, and prepare and adopt a relevant decision; *(Shall enter into force from 4 November 2020)***

d) monitor compliance with the legislation of Georgia on competition, detect violations of this legislation, examine them and make relevant decisions within its authority;

**[d<sup>1</sup>) perform functions determined by the Law of Georgia on the Introduction of Anti-Dumping Measures in Trade; *(Shall enter into force from 1 January 2021)*].**

e) monitor the implementation of the adopted decisions;

**[e) monitor the implementation of the adopted decisions and given recommendations; *(Shall enter into force from 4 November 2020)***

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*

*Law of Georgia No 6750 of 13 July 2020 – website, 21.7.2020*



## 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;

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

b) request information/documents related to an activity and/or a certain operation (including confidential information) from an undertaking/party/interested party, which is required for exercising the relevant powers by the Agency;

c) if the required information/documents are not received, request the court to order the undertaking/party/interested party to submit the information/documents in the process of executing relevant powers;

d) require the party/interested party to provide oral explanations in the process of exercising powers;

e) on the basis of the decision of a court, carry out the on-site inspection of a relevant undertaking;

f) if the requested information is not provided within the time limit, impose administrative fine determined by Article 32 of this Law on the undertaking/party/interested party; **(Shall enter into force from 4 November 2020)**

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

[g<sup>1</sup>) agree or refuse to accept contingent liabilities, in order to take specific action to eliminate alleged violations of the law, suggested by an undertaking;

[g<sup>2</sup>) present binding recommendations to an undertaking for consideration; **(Shall enter into force from 4 November 2020)**

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;

[j) (deleted – 21.9.2020, No 7126); **(Shall enter into force from 4 November 2020)**

k) in the case of repeated violation of the legislation of Georgia by an undertaking that holds a dominant position, raise the issue o



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;

[k) in the case of repeated violation of this Law by an undertaking that holds a dominant position, raise the issue of its forced division with the court if the division of economic agent is possible (organisational and territorial division of the undertaking);

k<sup>1</sup>) agree or refuse a structural and/or behavioural measure proposed by an undertaking participating in the concentration;

k<sup>2</sup>) submit a motion to the court on the revocation of concentration in order to restore the original condition; *(Shall enter into force from 4 November 2020)*

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;

[n) in case of a substantiated request of an undertaking, make a decision on the redistribution of the fine imposed on it for a period not exceeding one year. *(Shall enter into force from 4 November 2020)*

2. In relation to the state authorities, authorities of the Autonomous Republics or municipal 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;

[d<sup>1</sup>) Submit a report to the Government of Georgia on the expediency of introducing, reviewing or repealing an anti-dumping measure; *(Shall enter into force from 1 January 2021)*];

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.

[2. In relation to the state authorities, authorities of the Autonomous Republics, municipal authorities, or other administrative authorities the Agency shall be authorised to:

a) investigate a case of alleged violation of Article 10 of this Law on the basis of a complaint or on its own initiative;

b) request the relevant body to submit the relevant information/documents required for exercising relevant powers by the Agency;





and in case of non-compliance with the said requirement, raise the issue of disciplinary liability of its authorised person;

c) in case of violation of this Law, submit a reasoned decision and relevant recommendation to the said body on the illegal decision made, or the illegal action taken by this body, including request to revoke this decision or prohibit the action, and in case of the non-fulfilment of this request to raise the issue with the superior body or official;

d) in case of the violation of the agreement with the State Aid Agency by the state aid providing body, raise the issue of liability of the relevant authorised person with a superior body or official;

e) submit to the said body binding recommendations for consideration on the existence of legislative barriers and/or administrative barriers to the improvement of the competitive environment in the commodity and service markets of Georgia, and the need for their elimination;

f) on the basis of the Tax Code of Georgia, request and receive identified information on individual taxpayers from the tax authority;

g) if necessary, request appropriate consultation in order to exercise its powers;

h) within the framework of the investigation of the case of the alleged violation of Article 10 of this Law, request the said body to appear for an explanation;

i) apply to the National Bank of Georgia in accordance with the procedures established by the Organic Law of Georgia on the National Bank of Georgia in order to request and receive information (including confidential information), necessary for the Agency to perform its functions, from the entity under its supervision.

3. Within its authority, the Agency may issue a recommendatory explanation and consult an interested person on the application of the legislation of Georgia on competition. ***(Shall enter into force from 4 November 2020)***

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

[4. The Agency shall be authorised to exercise other powers provided for by the Statute of the Agency and the legislation of Georgia, including the Law of Georgia on the Introduction of Anti-Dumping Measures in Trade. ***(Shall enter into force from 1 January 2021)***].

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

*Law of Georgia No 6750 of 13 July 2020 – website, 21.7.2020*

*Law of Georgia No 6893 of 17 July 2020 – website, 28.7.2020*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **[Article 18<sup>1</sup> – The powers of the governing body of the Agency (the Board) and executive director**

1. The Board shall:

a) act on behalf of the Agency, and make decisions on issues within the competence of the Agency, except for the issues, the decision of which is empowered by this Law and the Statute of the Agency to the Chairperson of the Board and/or the Executive Director of the Agency;

b) upon the recommendation of the Chairperson of the Board, adopt normative administrative legal acts to be adopted by the Agency on the basis of this Law;

c) upon the recommendation of the Chairperson of the Board, adopt individual administrative legal acts in accordance with the procedures established by the legislation of Georgia;

d) upon the recommendation of the Executive Director of the Agency, adopt the Statute of the Agency, the staff list, and the Statute of the structural subdivisions of the Central Office of the Agency.



2. The Chairperson of the Board shall:

- a) chair the Board and represent the Agency in relations with other bodies and organisations;
- b) appoint and dismiss the Deputy Chairperson of the Board;
- c) invite and conduct the meetings of the Board;
- d) submit draft normative and individual administrative legal acts to the Board for adoption;
- e) delegate the powers of resolving certain issues within his/her competence to the Deputy Chairperson of the Board and to another employee of the Agency;
- f) perform other functions determined by the Statute of the Agency.

3. In the case of the absence of the Chairperson of the Board, his/her powers shall be exercised by the Deputy Chairperson of the Board.

4. The executive director of the Agency shall:

- a) coordinate the activities of the structural subdivisions of the Agency;
- b) submit to the Board for approval the draft of the Statute of the Agency, the staff list and the Statute of the structural subdivisions of the central office of the Agency;
- c) issue individual administrative legal acts on internal organisational and personnel issues;
- d) request information/documents from an undertaking, public authority, the Government of Autonomous Republic, municipal body, or other administrative body required for exercising powers by the Agency;
- e) invite a person to a consultation meeting, and to receive an explanation;
- f) performs other functions determined by the Statute of the Agency. *(Shall enter into force from 1 June 2021)*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

**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;

[a) protect the confidentiality of information on an undertaking, which may, among other secrets, include commercial, bank and/or tax secrets; *(Shall enter into force from 4 November 2020)*]

- 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



[2<sup>1</sup>. Information shall be classified as a commercial secret in accordance with the procedures established by the General Administrative Code of Georgia. If the information submitted to the Agency by the Economic Agent is classified as a commercial secret, the Agency shall be entitled to request the submission of a non-confidential version of the document containing the said information (dashed to cover confidential data), and set an appropriate deadline. **(Shall enter into force from 4 November 2020)**]

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.

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

#### **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.

[1. An authorised person of the Agency shall be independent from parties/interested parties in his/her professional activities, assessments and decision-making.

2. If there exist relations provided for by Article 19 of the Tax Code of Georgia, or Article 92 of the General Administrative Code between an authorised person of the Agency and an undertaking with respect to which the Agency carries out an investigation, the authorised person of the Agency shall immediately declare the conflict of interest. **(Shall enter into force from 4 November 2020)**]

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 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*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### **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.



[1. Applications may be submitted to the Agency by applicants. The applicant shall not be considered as a party to the case. The Agency shall take the notice of the application on the alleged violation of the Law and, in case of reasonable doubt, the Agency may use it to initiate an investigation on its own initiative. **(Shall enter into force from 4 November 2020)**]

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.

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### **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 23 – Rules for the acceptance of complaints by the Agency; the exercise of the right of defence by the respondent undertaking**

1. After receiving a complaint, the Agency shall study the issue of the admissibility of the complaint within the time limit established by the legislation of Georgia.

2. The Agency shall be obliged to send the complaint submitted to it to the respondent undertaking, except for the complaint regarding the alleged violation of Article 7 of this Law. The respondent undertaking is entitled to submit its opinions on the complaint to the Agency within the specified time limit.

3. If the respondent undertaking submits its opinion on the complaint to the Agency, the Agency shall make a decision on the investigation of the case on the basis of the information provided by the applicant and the respondent undertaking, within the time limit established by the legislation of Georgia.

4. The Agency shall notify the complainant and the respondent undertaking of the commencement of the investigation on the



basis of the complaint, or of the refusal to initiate the investigation on the basis of the complaint. The Agency shall have the right to request the applicant to submit additional information and/or evidence and to determine a time limit for its submission, which shall be the basis for the suspension of the time limit provided for by paragraph 1 of this article.

5. At the stage of the examination of the admissibility of the complaint, the respondent undertaking shall be entitled to offer the Agency to accept contingent liabilities to take a specific action in order to eliminate the alleged violation of the law.

6. If the Agency considers that the performance of contingent liabilities accepted by the respondent undertaking no longer raises a reasonable doubt of the violation of the Law, and agrees to the contingent liability offered by the party, the Agency shall refuse to initiate an investigation on the complaint and set a time limit for the respondent party to fulfil its contingent liabilities.

7. If the respondent undertaking does not fulfil the contingent liabilities within the time limit determined by the Agency, the study of the issue of the admissibility of the complaint shall be resumed and the countdown of the time limit provided for by paragraph 1 of this article shall start.

8. The form of the complaint, the procedure for its submission and the procedures and time limits related to the admissibility of the complaint shall be determined, and the relevant act shall be adopted by the Agency. **(Shall enter into force from 4 November 2020)**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

#### **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 24 – Grounds for refusing to initiate an investigation on the basis of a complaint by the Agency**

The Agency shall refuse to initiate an investigation of a case on the basis of a 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(5) of this Law;
- d) insolvency procedures are pending against the respondent undertaking;
- e) as a result of the investigation of the case, the Agency has made a decision on the subject of the same dispute between the same parties and there are no new circumstances;
- f) the Agency has made a decision to reject the admissibility of the complaint on the same dispute between the same parties, and there are no new circumstances, except for the decision to refuse to admit the complaint on the grounds provided for by subparagraph (c) of this article;
- g) the dispute is between the same parties on the same subject, or the court has made a decision on the same subject, or other decision to reject the claim by the plaintiff, to recognize the claim by the defendant, or to approve the settlement of the parties;



h) while examining the admissibility of a complaint, the Agency agrees to accept contingent liabilities offered by the undertaking to take specific action to eliminate an alleged violation of the Law. **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **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.



## [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 6 months.
2. An investigation, depending on its significance and complexity, may be extended up to 18 months by the decision of the Agency.
3. The Agency shall notify the complainant of the extension of the time limit 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 to submit information and documents required for the investigation from an undertaking/party/interested party.
5. In the process of the investigation, the Agency shall be entitled to invite the party/interested party for an explanation.
6. The Agency shall be entitled to inspect the relevant undertaking onsite on the basis of a court decision.
7. The Agency may file a reasoned request with the court to carry out an on-site inspection of the undertaking as specified in paragraph 6 of this article if:
  - a) in the case provided for by paragraph 4 of this article, it is impossible to obtain the information and documents necessary for the investigation;
  - 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 of an undertaking is required.
8. An onsite inspection of an undertaking provided for by paragraph 7 of this article, shall mean:
  - a) having access to documents related to the activities of the undertaking, including financial and economic documents, irrespective of their confidentiality and retention procedures;
  - 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.
9. 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.
10. Before the final decision is made by the Agency, a final meeting shall be held to give the applicant and the party the opportunity to present their positions.
11. The Agency shall send the final draft decision of the Agency and the case materials in writing to the applicant and the party before the final meeting. In addition, the applicant and the party shall be explained that they have the right to present their positions and relevant additional information (evidence).
12. In the case provided for by paragraph 11 of this article, the time limit set for the applicant and the party for the submission of their positions shall not be less than 25 working days. Information submitted after the expiration of this period may not be taken into account by the Agency when making its final decision.
13. Prior to the adoption of the draft final decision of the Agency, the respondent undertaking shall be entitled to offer the Agency a contingent liabilities to take specific action in order to eliminate the alleged violation of the Law.



14. If the Agency considers that there is no longer a risk of alleged violation of the Law as a result of the performance of a contingent liability by the respondent undertaking, and accepts its contingent liability to take specific action to eliminate the alleged breach of the law, the Agency shall make a final decision without evaluating the alleged violation of Law, and shall set a time limit for fulfilling the contingent liability assumed by the undertaking.

15. If the respondent undertaking does not fulfil the contingent liability provided for by paragraph 14 of this article within the time limit determined by the Agency, it shall be fined in accordance with Article 33 of this Law and the investigation of the case shall be resumed. *(Shall enter into force from 4 November 2020)*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

#### **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 27 – Limitation period for the investigation]**

1. The period of limitation for investigation regarding infringements of this Law shall be 3 years from the completion of the relevant action.

2. The initiation of an investigation of the violation of this Law shall be ground for suspension of the limitation period for the investigation. *(Shall enter into force from 4 November 2020)*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

#### **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*

### **[Article 31 – Forms of cooperation. Application of the provisions of this Law by the regulatory body of the economy**

1. A complaint/application on the alleged violation of competition in a regulated sector of the economy, or a notification on a concentration shall be submitted to the regulatory body of the regulated sector of the economy or to the agency. If a complaint/application, or concentration notification regarding the alleged violation of competition in the regulated sector of the economy is submitted to the Agency, it shall send the said complaint/application, or notification to the regulatory body of the economy sector within 5 working days, except for the case provided for by paragraph 2 of this article.



2. The Agency shall examine the issue provided for by paragraph 1 of this article if:

a) the alleged violator of the Law, or one of the parties to the concentration is not an undertaking in the regulated sector of the economy;

b) the alleged violators of the Law and the parties to the concentration are the undertakings of various regulated sectors of the economy;

c) the entity/entities allegedly violating the Law is/are the undertaking(s) of the regulated sector of the economy, but the said action (subject of dispute) has not been carried out in the regulated sector of the economy.

3. If the body with the authority to investigate the case is not identified, the time limit provided for by paragraph 1 of this article shall be extended up to 30 calendar days for consultations between the Agency and the regulatory body of the economy in order to determine the relevant authority.

4. If, in the case provided for by paragraph 3 of this article, the relevant competent authority has not been identified, the issue shall be examined by the Agency.

5. If, in the case provided for by paragraphs 2 or 4 of this article, the Agency considers an alleged violation of competition in the regulated sector of the economy, or a notification on the concentration, it shall apply to the regulatory body of the regulated sector of the economy to participate in the discussion and/or present its position.

6. If the fact of the alleged violation of competition in the regulated field of the economy, or the notification on the concentration is considered by the regulatory body of the regulated sector of the economy, it shall apply to the Agency to participate in the discussion and/or present its position.

7. When examining issues provided for by this Law, the regulatory body of the regulated sector of the economy shall be guided by Articles 3, 6, 9, 11(1-8), 11<sup>1</sup>(1), (2), (4), (6-12), 27, 33 and 33<sup>1</sup> of this Law. Articles 3(i), 5, 11<sup>1</sup>(13) and (14), 11<sup>2</sup>, 18, 22-25 and 32 shall be applied only if the special legislation of the relevant sector of the economy does not provide otherwise.

8. The issues provided for by the legal acts of the Agency adopted on the basis of this Law shall be regulated by a special legislation regulating the relevant regulated sector of the economy.

9. For the purposes of paragraph 2 of this article, the regulated sectors of the economy within the competence of one regulatory body shall be considered as one regulated sector of the economy.

10. This Article shall not restrict the regulatory body of the sector of the economy to apply the provisions of special legislation governing the relevant regulated sector of the economy in the event of purchasing an operating asset of an undertaking, the merger of undertakings, or purchasing a direct or indirect holdings or shares of an undertaking. **(Shall enter into force from 4 November 2020)]**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## 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 1000 to GEL 3000.

### [Article 32 – Failure to provide information to the Agency within the specified time limit, provision of incorrect or incomplete information

1. In case of failing to the information requested by the Agency on the basis of this Law within the time limit determined by the



Agency, or provision of incorrect or incomplete information to the Agency, a legal entity shall be fined in the amount of GEL 3,000, and a natural person in the amount of GEL 1,000.

2. Notwithstanding the imposition of a fine, in case of non-delivery of information to the Agency within the time limit determined by the Agency, a legal entity shall be fined in the amount of GEL 5,000, and a natural person - in the amount of GEL 3,000.

3. The imposition of a fine shall not release a person from the obligation to provide information to the Agency. *(Shall enter into force from 4 November 2020)*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### 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% 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% 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 – Fines

1. In cases provided for by Articles 6 and 7 of this Law, a party shall be subject to a fine, which must not exceed 5% 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 a fine shall be imposed on a party, which must not exceed 10% of its annual turnover for the previous financial year.

3. In the case provided for by Article 11(9) of this Law, the Agency shall impose a fine on an undertaking, the amount of which shall not exceed 5% of the average daily turnover of an undertaking during the financial year prior to the relevant financial decision. The amount of the fine specified in this paragraph in case of imposition on a natural person or another person, who is not considered to be an undertaking for the purposes of this Law, shall not exceed GEL 500 for each overdue day.

4. In case of violation of the requirements of Article 11<sup>1</sup>(1), (11) and (12) of this Law, on a person obliged to submit a notification on concentration shall be imposed a fine, the amount of which shall not exceed 5% of its annual turnover during the financial year prior to the relevant financial decision by the Agency.

5. In case of the confirmation of the violation provided for by Article 11<sup>3</sup> of this Law, an undertaking shall be fined, the amount of which shall not exceed 1% of the annual turnover of the undertaking during the financial year prior to the relevant financial decision, and in case of non-elimination of the legal basis of the said violation, or repeated violation, the amount of fine shall be 3%.

6. In the case provided for by Article 25(15) of this Law, the Agency shall impose a fine on an undertaking, the amount of which shall not exceed 5% of the average daily turnover of an undertaking during the financial year prior to the relevant financial decision.

7. 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.

8. In the cases provided for by paragraphs 3, 4 or 6 of this Article, the Agency shall examine the issue of the adoption of an administrative legal act through simple administrative proceedings established by the General Administrative Code of Georgia, for



which it shall use the relevant powers provided for by Article 18 of this Law.

9. A person/party shall be obliged to pay the fine imposed in accordance with this Article to the State Budget of Georgia within 1 month after the imposition.

10. In case of non-payment of the fine specified in this Article, it shall be enforced in accordance with the procedures established by the legislation of Georgia.

11. The regulatory body of the regulated sector of the economy shall be authorised, in addition to the imposition of the fine specified in this Article, to apply other sanctions and/or supervisory measures provided for by the legislative acts regulating the relevant regulated sector of the economy. *(Shall enter into force from 4 November 2020)*

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### **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>1</sup> – Leniency programme**

1. A person shall be fully or partially exempted from the imposition of a fine for the violation of this Law if he/she meets all of the following conditions:

a) admits, in writing, participation in the agreements provided for by Article 7 of this Law;

b) provides to the Agency, orally or in writing, important information and evidence known to him/her on the agreement provided for by Article 7 of this Law, before the Agency receives this information and evidence from other sources;

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

d) terminate its participation in an agreement against the law, unless the Agency considers that the continued participation of the person in the agreement will facilitate the investigation of the case;

e) does not destroy documents and evidence relevant to the case;

d) does not disclose information about the participation in the leniency program.

2. The benefits provided for by this article shall not apply to the sole organisers and/or initiators of the agreements provided for by Article 7 of this Law, or to persons who coerced other persons to participate in the agreements.



3. The procedure for applying the leniency programme and releasing a person from the exemption of a fine fully or partially for the violation of Article 7 of this Law shall be approved by a legal act of the Agency. **(Shall enter into force from 4 November 2020)**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

### **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*

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

1. A person has the right to appeal the decision of the Agency in the Tbilisi City Court.

2. The court is authorised to fully review the decision of the Agency, including the amount of the fine. **(Shall enter into force from 4 November 2020)**

*Law of Georgia No 7126 of 16 September 2020 – website, 21.9.2020*

## **Chapter VIII – Transitional and Final Provisions**

### **Article 34 – Transitional and final provisions**

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. By 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. By 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>. By 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-ლს**

