

# Disclosure and Regulation of Bid Rigging Practices in Georgia's State Procurement Market



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## Abstract

This article examines the practical aspects of legal regulation, detection, and mitigation of bid-rigging practices within Georgia's state procurement market. It highlights the critical role and functions of state procurement in fostering the country's economic development and underscores the principles of maintaining free and fair competition, as outlined by Georgian legislation. These principles aim to prevent unlawful restrictions on relevant market competition.

The discussion also explores the importance of competition law in assessing the overall economic damage caused by concerted practice and non-compliance with competition regulations by undertakings in state procurement processes.

The study draws on local practices to illustrate the regulation, detection, and suppression of concerted practice within the state procurement sector, specifically focusing on the procurement of services for Food Assistance Centers serving vulnerable populations. As a result, it provides practical insights into the challenges and solutions associated with combating bid-rigging in this critical market segment.

**Keywords:** concerted practice, cartel, relevant market, state procurement, bid-rigging, sanctions, business environment.

## Introduction

As Adam Smith noted in the 18th century, *“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”*<sup>31</sup> This observation largely pertains to competition-restricting agreements, commonly known as cartels. Competition authorities worldwide prioritize the detection and severe punishment of such practices, particularly the most blatant forms, often referred to as “naked cartels.”<sup>32</sup>

In legal theory and practice, cartels are often described with strong metaphors, such as “the ‘tumor metastases’<sup>33</sup> of the free market” or “the supreme evil of antitrust.”<sup>34</sup> The term “cartel” originated in the late 19th century, derived from the Italian word *cartello*, meaning “paper sheet” or “poster,” which itself traces back to the Latin *charta*, meaning “card.”<sup>35</sup>

Cartels involve collusion among competing undertakings to coordinate their competitive behavior or manipulate competition parameters through illicit means. The primary objective of cartel members is to maximize collective profits and maintain or enhance their market positions. This often leads to artificially inflated or stabilized prices, offering no corresponding benefit to consumers in return.

In countries with advanced competition law frameworks, cartel agreements are classified as illegal activities. Both the United States and the European Union, as well as Georgia, recognize cartel agreements as serious offenses,

<sup>31</sup> The Wealth of Nations, Book I, Chapter X. <https://www.rrojasdatabank.info/Wealth-Nations.pdf>

<sup>32</sup> Whish, Richard and Bailey, David, “Competition Law”, 7th ed., Oxford University Press, 2012, pg. 514

<sup>33</sup> Monti, Mario, „Fighting Cartels Why and How? Why should we be concerned with cartels and collusive behavior?“, 3rd Nordic Competition Policy Conference, Stockholm, 11-12 September 2000, [http://europa.eu/rapid/press-release\\_SPEECH-00-295\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-00-295_en.htm)

<sup>34</sup> US Supreme Court, Verizon Communications Inc. v Law Offices of Curtis V Trinco, LLP 540 US 398, 408 (2004).

<sup>35</sup> DIRECTIVE 2014/104/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0104>

typically punishable through administrative sanctions such as fines. Some jurisdictions, like the United States and the United Kingdom, extend penalties to include criminal liability for engaging in cartel activities.

Before the legislative changes introduced in Georgia in 2005, which significantly weakened widely accepted mechanisms for regulating competition, the Georgian Criminal Code included specific sanctions for violations of competition law. These offenses included monopolistic practices, restrictive agreements, unauthorized use of trademarks, dissemination of false advertisements, and counterfeiting. In some cases, penalties extended to imprisonment for up to two years.<sup>36</sup>

### Enforcement Policy

Current Georgian legislation establishes principles to maintain free and fair competition from unlawful restrictions.<sup>37</sup> These principles form the foundation for developing a competitive market and ensuring the freedom of trade. The scope of the law applies equally to the actions and decisions of undertakings, as well as to those of government bodies, including autonomous republics, municipal authorities, and other administrative entities whose activities may restrict free trade and competition.

Of particular importance is the role of these authorities in organizing state procurements, where public funds are utilized. Reasonable application of public funds is a core responsibility of state procurement organizations. Alongside this obligation, these organizations are required to adhere to the standards set forth by Georgia's Law on Competition.

State procurements account for significant financial expenditures annually. According to the State Procurement Agency's report, the total value of contracts signed under state procurement reached 7.4 billion GEL<sup>38</sup> in 2022, increasing to approximately 10.5 billion GEL in 2023.<sup>39</sup> These figures underscore the critical role and significance of state procurement in supporting the country's economic development.

The authorities outlined in Article 10 of Georgia's Law "On Competition" (Government entities, the government of autonomous republics, municipal authorities, and other administrative bodies)<sup>40</sup> play a vital role in the country's economic development and the promotion of a healthy competitive environment in relevant markets. In the current economic context, state procurements add further importance to the State's role, representing a significantly public management function. „These procurements aim to ensure that their legal outcomes promote lawful governance, the efficient allocation and use of public funds, and the establishment of the State's reputation as a reliable contractual partner. Additionally, they contribute to fostering a competitive environment for businesses, advancing a free market economy, and supporting fair and legal economic transactions“.<sup>41</sup>

Law of Georgia on "Public Procurement" is to ensure the prudent use of public funds allocated for procurement<sup>42</sup>, supply goods required for state needs, promote healthy competition in service provision and construction, and guarantee fair, non-discriminatory treatment of participants in procurement processes. Furthermore, it seeks to enhance the transparency of state procurements through the creation of a unified electronic procurement system<sup>43</sup>, thereby fostering public trust.

Through state procurements, procuring organizations actively participate in the market, which inherently enables them to influence the structure and development of various markets within the country. One such market is the Provision of services for Food Assistance Centers serving vulnerable populations.

On December 18, 2019, a complaint was filed with the National Competition Agency of Georgia (hereinafter referred to as the "Agency") by an undertaking (the "Claimant") operating in the market for services for Food Assistance Centers serving vulnerable populations (the "Relevant Market"). The complaint alleged violations of Articles 7 (Restrictive agreements, decisions and concerted practices)<sup>44</sup> and 10 (Inadmissibility of distortion of competition by the state authorities, authorities of

<sup>36</sup> S. Fetelava [https://dspace.nplg.gov.ge/bitstream/1234/6152/1/Fetelava\\_Slava.pdf](https://dspace.nplg.gov.ge/bitstream/1234/6152/1/Fetelava_Slava.pdf)

<sup>37</sup> Law of Georgia No 2159 of 21 March 2014 – website, 27.3.2014 [https://gcca.gov.ge/uploads\\_script/legislation/tmp/phpYzLKg6.pdf](https://gcca.gov.ge/uploads_script/legislation/tmp/phpYzLKg6.pdf)

<sup>38</sup> <https://procurement.gov.ge/files/showfiles?id=6fb43adb-0b03-41da-9a1a-4a8c6e10ab00> [01.10.2024]

<sup>39</sup> <https://procurement.gov.ge/files/showfiles?id=fb7018f3-6637-4dc3-ae3-8e1f97b3891b> [01.10.2024]

<sup>40</sup> Law of Georgia No 2159 of 21 March 2014 – website, 27.3.2014 [https://gcca.gov.ge/uploads\\_script/legislation/tmp/phpYzLKg6.pdf](https://gcca.gov.ge/uploads_script/legislation/tmp/phpYzLKg6.pdf)

<sup>41</sup> Decision of the Supreme Court of Georgia - 21/07/2014, BS-667-642(K-13)

<sup>42</sup> LAW OF GEORGIA ON PUBLIC PROCUREMENT <https://matsne.gov.ge/en/document/view/31252?publication=58>

<sup>43</sup> <https://tenders.procurement.gov.ge/login.php?lang=en>

<sup>44</sup> LAW OF GEORGIA ON COMPETITION [https://gcca.gov.ge/uploads\\_script/legislation/tmp/phpYzLKg6.pdf](https://gcca.gov.ge/uploads_script/legislation/tmp/phpYzLKg6.pdf)

Autonomous Republic, municipal authorities and other administrative authorities)<sup>45</sup> of the Georgian Law “On Competition.” The Claimant identified certain undertakings within the Relevant Market as respondents under Article 7 and noted that municipal authorities from one of the country’s cities were involved under Article 10.

According to the Claimant, the Relevant Market had been monopolized by the aforementioned respondents, who were allegedly linked through open-ended contracts, with some acting as subcontractors to one another or sharing a common director and full ownership (100%) of shares. The respondents had divided the city’s districts among themselves, resulting in a situation where only the same group of individuals consistently won state procurement contracts issued by the administrations of all districts for several years. The Claimant presented evidence to support these claims.

Based on the materials presented by the Claimant and those collected by the Agency, there was no reasonable doubt regarding the alleged violation of Article 10. Therefore, the application concerning this article was deemed inadmissible. However, regarding the violation of Article 7, the Agency found sufficient grounds to proceed with the investigation against the respondent undertakings. Consequently, the Agency initiated an inquiry into the alleged breach of Article 7 as outlined in National Legislation.

During the investigation, the Agency reviewed all state procurement contracts for the period between 2017 and 2019, specifically focusing on procurements related to procurement of services for Food Assistance Centers serving vulnerable populations. In order to fully understand the conditions and specifics of the Relevant Market, the Agency deemed it necessary to extend its investigation to include data from 2011. To address key issues within the scope of the inquiry, the Agency requested relevant materials from the respondent undertakings, as well as from government bodies and other third parties.

Following the Agency’s established practice (Order No. 113, 07/08/2015)<sup>46</sup>, each tender for the procurement of services for Food Assistance Centers serving vulnerable populations was considered a separate Relevant Market. Additionally, the Agency defined the product market boundary of the Relevant Market as the Provision of services for Food Assistance Centers serving vulnerable populations, with the geographical scope limited to the individual districts of the city in question. Since the

services were continuously provided to beneficiaries, the Agency concluded that the Relevant Market did not have a specific time frame.

Based on the thorough analysis of the information gathered by the investigative team, including confessions obtained during the relevant explanatory sessions, the Agency concluded that tenders manipulation occurred in this case. Specifically, certain respondent undertakings participated in state procurements under prearranged conditions, redistributing the market for providing aforementioned services. This was primarily reflected in the fact that the participants in this market did not compete with each other. In each certain state procurement, only one predetermined undertakings participated without any competition. The Agency obtained confession regarding this during explanatory sessions, which constitutes a violation of the provisions of Article 7 of Georgian Law “On Competition.”

## Conclusion

The case in question was the first ever examined by the Georgian Competition and Consumer Agency in relation to the procurement of services for Food Assistance Centers serving vulnerable populations. As a result, two specific undertakings were fined a total of 40,000 GEL. The Agency’s decision was appealed by the respondent undertakings in the City Court, where the Agency prevailed. However, the case was further appealed to the Court of Appeal, where the dispute is still ongoing. This case is considered precedential for the relatively young Georgian Competition and Consumer Agency (which has been in operation in its current form since 2014). Once the court proceedings are concluded, the case will likely play a significant role in strengthening the enforcement of competition law in Georgia and may serve a preventive function in future cases.

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<sup>45</sup> Ibid

<sup>46</sup> Case of “Intertechnics” [https://gcc.a.gov.ge/index.php?m=354&cat\\_id=76&page=2&lng=eng](https://gcc.a.gov.ge/index.php?m=354&cat_id=76&page=2&lng=eng)

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