

Law of Georgia

On Free Trade and Competition

Chapter 1

General Provisions

Article 1

Law of Georgia on Free Trade and Competition consists of the Georgian Constitution, International Agreements and Contracts, Georgian Laws, this Law and other sub-legislative statutory acts.

Article 2

Terms used in this Agreement have the following meanings:

Economic agent – a legal entity or natural person, which, notwithstanding its residence, organization, ownership and legal form runs enterprise. The term also refers to nonprofit unions, foundations as well as other associations being market players or acting in line with interests of entrepreneurs, charity organizations and professional associations;

Economic competition – contention between economic agents endeavoring to run their enterprise more successfully than others proposing better conditions of pricing, quality, packaging, service standards and other economic features to consumers;

Replacement goods – goods or a group of goods, which may replace any other goods or a group of goods in view of functionality, use, quality, technical specifications;

State support – any kind of a single support from state for certain term, in particular – immunization from taxation or postponing taxes, write-off debts, restructuring, purchase of real estate with special conditions, preferential conditions for public purchases and profit guarantee as well as granting any other exclusive rights restraining or intending to restrain competition by giving priority to certain economic agent or certain goods production;

Target governmental program – complex of social and economic measures secured by resources, executive governmental organizations in charge, schedule times and consumers based on feasibility study from the government with the intention to actively influence economic processes;

Noncompetitive environment – commodity markets where competition may be available but is restrained or/and restricted by governmental or local governmental authorities;

Monopolistic position – market position when the only trader of goods exists and no replacement goods are available;

Controlled economic areas – economic activities, which as proceeding from requirements of economic interests protection of consumers are subject to tariff regulations or/and state enterprises existing in the infrastructural spheres;

Infrastructural sphere – sphere where unfreely circulated goods are being manufactured, supplied and served;

Special property – one or more facility for transportation of unfreely circulated goods;

Special property holder – economic agent, which is an owner (owners) or a tenant (tenants) of one or more facilities for transportation of unfreely circulated goods;

Unfreely circulated goods – goods which are manufactured, imported, supplied and used under the special limited (specific) conditions;

Tariff regulation – price (tariff) defined by an administrative authority for production and services in restricted competition environment;

Administrative barrier – abuse of authority by a governmental or local authorities delegated to it under the applicable law (request for additional documents, unreasonable delay of the documents required for start-up of economic activities etc.);

Discriminatory barrier – making unreasonable, non-standard and unfair demands or granting priorities to any economic agent by a governmental or local governmental authority by form of ownership, residence or any other separate criteria.

Article 3

The Law is aiming to raise any barrier in free trade and competition for natural persons and legal entities notwithstanding their organizational, ownership and legal form, in particular:

- a) Non-impeding competition processes of economic agents;
- b) Barring any administrative barrier for market entry and non-impeding free access of any economic agents to market;
- c) Barring any discriminatory barriers on the part of governmental or local authorities or banning creation of these barriers;
- d) Protecting vital and economic public interests within economical areas controlled in restricted competition environment;
- e) Interdicting undertaking the international obligations by governmental or local authorities which may impede free trade both in the country and abroad.

Article 4

The Law applies to:

- a) The relationship influencing competition and free trade on the national commodity and service markets, parties of which are legal entities or/and natural persons or/and governmental or local authorities;
- b) The activities and decisions of governmental or local authorities which influence (or may influence) competition and free trade in either way;

Article 5

This Law does not apply to any relationship associated with copyrights and allied rights, trademarks and industrial models.

Article 6

Fulfillment of requirements of this Law shall be controlled by the Agency for Free Trade and Competition (hereinafter referred to as the “Agency”) – entity within the jurisdiction of the Ministry for Economic Development.

Chapter II Prohibition of Competition Restraints

Article 7

Each and every entity of governmental or local authority shall be prohibited to:

- a) Set tax or any other remissions for any economic agent, which as compared to other competitors (potential competitors) may give it advantageous conditions restraining competition;
- b) Prohibit, detain or prevent otherwise business activities as well as independence of any economic agent unless exemptions are provided for by the Georgian legislation;
- c) Establish governmental or local agencies for the monopolization purposes of goods production or realization or delegate the already established agencies with the authorities which may restrain competition;
- d) Make decisions leading to monopolistic position of an economic agent thus significantly limiting competition as well as free pricing unless exemptions determined by the Georgian legislation.

Chapter III State Support and Target Programs

Article 8

- 1) Any kind of state support which impedes or makes for impediment for competition excluding the exemptions provided for in Paragraph 2 of this Article;
- 2) State support may be admitted in the events stipulated below:
 - a) Force majeure circumstances as defined by the Georgian legislation;
 - b) With the aim to support certain economic activities or economic zone development or/and maintenance of culture and cultural heritage;
- 3) The Agency shall develop and approve under the relevant by-laws the general rule for the granting procedures of state support.
- 4) Under the rule provided for by Paragraph 3 of this Article 8, governmental and local authorities shall develop procedure for granting state support which shall define its necessity, respective forms and recipients;
- 5) State support procedure developed under the by-laws determined by the Agency shall be submitted to the latter for approval;
- 6) The Agency shall be notified on the plan, any modifications or/and supports already granted;

Article 9

1. The target governmental program shall be prohibited which impedes in either way competition or makes for the impediment of it;
2. The Agency shall develop and approve under the by-law the general rule for acceptance of target governmental programs of economic nature;
3. Target governmental programs of economic nature defined by the Georgian legislation shall be submitted to the Agency for approval as in compliance with the by-law determined by the Agency;
4. The Agency shall be notified on the target program plan or/and modification of the latter.

Article 10

1. The Agency shall coordinate any state support procedure or/and target program submitted to it within a 30-day period, otherwise the consent shall be deemed valid.
2. In case of any inconsistency between the activities of governmental or local authorities and the provisions provided for by this Law or if any risk exists of incorrect application of the provisions therein the Agency may request for reasoning from the respective governmental or local authority;
3. Based on information submitted, the Agency shall determine the conformity of the target governmental program with the provisions therein and shall within a 30-day period make a recommendation on conformity of the aforesaid support with the Law;
4. Governmental authority to which the information was submitted in compliance with Paragraph 3 of this Article 10, shall within a 10-day period decide upon the foregoing support or/and revoking, amending or leaving unaltered the target governmental program;
5. Governmental authority shall notify the Agency on the decision made upon the submitted recommendation.

Chapter IV Controlled Economical Areas

Article 11

1. Special property holder shall, for the purposes of purchasing or/and selling any service, admit other economic agents to its network or infrastructure under non-discriminatory conditions;
2. Special property holder may reject admittance of other economic agents to its network provided that the rejection is based on the following objective reasons:
 - a) Determined technical requirements and standards are not met and respectively the risk of maintaining the network integrity or safe service interaction;
 - b) Economic agent requesting for admittance to the network has no sufficient financial resources in order to ensure accomplishment of works necessary to meet the technical requirements as well as standards;
3. Conformity of rejection of admittance of other economic agents to the network by the special property holder with the provisions therein is determined by the Agency;

4. Requirements given in Paragraphs 1, 2 and 3 of this Article 10 do not apply to the facilities for transportation of unfreely circulated goods made through private investments in any infrastructural spheres;
5. In order to meet the requirements defined by this Law the Agency shall analyze activities of economic agents within the controlled economical areas and develop and publish the corresponding recommendations;
6. In case any infringement of the requirements of this Law by economic agent acting in controlled economical area is revealed the Agency shall give to the infringer a recommendation on bringing the respective agreement (decision) into line with the applicable law;
7. Economic agent acting within the controlled economical area shall within a 10-day period from receiving the abovementioned recommendation decide upon bringing the agreement (decision) into line with the law or leaving it unaltered.
8. Economic agent acting within the controlled economical area shall notify the Agency on decision made upon the presented recommendation;
9. Paragraphs 1, 2 and 3 of this Article 10 shall not apply to the relations associated with admittance of any special property holder to the third party's network provided that the admittance conditions are defined by a separate law and the relations therein are regulated by the relevant independent regulatory body.

Chapter V **Agency for Free Trade and Competition**

Article 12

1. Head of the Agency for Free trade and Competition, upon nominated by the Minister for Economic Development of Georgia, shall be commissioned and dismissed by the Premier Minister of Georgia;
2. The Agency, with respect to governmental or local authorities, shall be authorized to:
 - a) Make prescription to any infringer of this Law whether governmental or local authorities on any illegal decision made by them;
 - b) Request from governmental or local authority any documents relative to any action done through infringing the provisions herein;
 - c) Bring up a question on calling governmental or local authority to account before the respective higher organ or functionary if no adequate response for the prescription is shown on the part of the governmental or local authority;
 - d) Bring up a question on disciplinary, administrative or/and criminal sanction against the functionary having infringed free trade and competition rules.
3. With respect to economic agents acting in controlled economic areas the Agency shall be authorized to:
 - a) Request from the agent any documents relative to the action done through infringing the provisions therein;
 - b) Solicit the court for submitting by the agent the requested documents for conducting analysis in case the agent fails to do so;
 - c) Request from the agent to bring the action made by it into accord with this Law;
 - d) Apply to the court for canceling the decision or action made by the agent through infringing the provisions herein.

4. The Agency may determine rule for coordinating state support procedures or/and target state program, where the forms and terms of coordination and other procedure related aspects will be defined.

Article 13

Main obligations of the Agency are as follows:

- a) Raising administrative barriers preventing development of free trade and competition;
- b) Revealing and restraining the facts of discriminatory actions, unfounded state subsidies (direct and indirect) and privileges granted by governmental or local authorities;
- c) Considering the facts of infringement of the Georgian legislation on free trade and competition and elaborating respective prescriptions;
- d) In case any governmental or local authority or economic agent acting within the controlled economic area fails to fulfill the prescription:
 - d.a) Applying to the court with a suit and taking participation in the legal investigation;
 - d.b) In case of a reasoned rejection, declaring publicly on justified action of persons listed in Paragraph (d) of this Article 13;
- e) Keeping state as well as commercial confidentiality and non-disclosure rules;
- f) Indemnifying any damages resulted from confidential information disclosure under the rules and at the amount provided for by the Georgian legislation;
- g) Submitting annual reports on activities performed as well as respective recommendations to the government of Georgia:
 - g.a) On fulfillment of requirements of this Law by governmental or local authorities;
 - g.b) On fulfillment of requirements of this Law within the controlled economic areas.

Article 14

Any infringer of this Law shall be imposed disciplinary, administrative or criminal sanctions.

Chapter VI Transitional Provisions

Article 15

- a) Government of Georgia shall accomplish liquidation process of the State Antimonopoly Service of Georgia and State Inspection of Prices – the entities in charge of the Ministry of Economic Development of Georgia within a month period upon putting this Law into effect;
- b) The Ministry of Finance of Georgia shall ensure transfer of appropriations to the State Antimonopoly Service and State Price Inspection – the entities in charge of the Ministry of Economic Development of Georgia - provided for by the state budget under the Law of Georgia on State Budget of the Year 2005 as well as any property retained after liquidation of these organizations to the Agency;
- c) Within a 9-month period upon putting this Law into effect, the government of Georgia shall submit to the Parliament of Georgia any corresponding legislative alterations for the purpose of establishing the Agency for Free Trade and Competition as an independent entity on the basis of the Agency for Free Trade and Competition – a state entity in charge of the Ministry of Economic Development of Georgia.

Chapter V²²
Final Provisions

Article 16

Upon putting this Law into effect, the following documents shall be deemed null and void:

- a) Law of Georgia on Antimonopoly Activities and Competition (Bulletin of Parliament #22-23, October 17, 1996, pg. 19);
- b) Law of Georgia on Prices and Price Formation Fundamentals (Bulletin of Parliament #9, 1993, Art. 189);
- c) Decree #596 of President of Georgia (of September 13, 1996) on normative acts required for putting into effect the Law of Georgia on Consumer Rights Protection;
- d) Decree #95 of President of Georgia (of February 22, 1998) on Mechanisms of State Regulation of Natural Monopolies;
- e) Decree # 262 of President of Georgia (of April 23, 1998) on approving the Statute of Antimonopoly Council at the State Antimonopoly Service of Georgia;
- f) Decree #314 of President of Georgia (of May 11, 1998) on Establishing Interdepartmental Council for Coordination of consumer rights protection at the State Antimonopoly Service of Georgia and Approving its Statute;
- g) Decree #426 of President of Georgia (of September 30, 2000) on Approving the Provisions for the State Registry of economic agents possessing monopolistic status on the Georgian commodity market;
- h) Decree #8 of President of Georgia (of January 10, 2002) on Approving the Instruction for Inspection to be carried out by the State Antimonopoly Service of Georgia;
- i) Decree # 145 of President of Georgia (of March 31, 2002) on Amendments to the Decree #314 of President of Georgia (of May 11, 1998) on Establishing Interdepartmental Council for Coordination of Consumer Rights Protection at the State Antimonopoly Service of Georgia and Approving its Statute;
- j) Order #8/42, December 12, 2000 of Head of State Antimonopoly Service of Georgia at the Ministry of Economy, Industry and Trade of Georgia on Defining the Monopolistic Status of Economic Agent (entrepreneur) on the respective (concrete) commodity market.

2. This Law to be put into effect on the 15th day upon publishing.

President of Georgia

Mikheil Saakashvili

Tbilisi
June 3, 2005

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