

The Georgian Law “On Free Trade and Competition”

Chapter I

General Provisions

Article 1

The Georgian Law “On Free Trade and Competition” consists of the Georgian Constitution, international agreements, the Georgian laws, this law and other statutory normative acts.

Article 2

The terms defined in this law shall have the following meaning:

- a) “Economic agent” means a juridical or natural person who irrespective of residency, form of legal enterprise and property follows business activities. This term also refers to non-profit-oriented unions, funds and other associations, which are market participants or act in the interests of businessmen, charity organizations or professional unions.
- b) “Economic competition” means rivalry in which economic agents try to excel their competitors in the execution of their business practices, which offer consumers better standards of prices, quality, packaging, services and other economic characteristics.
- c) “Substitutional goods” shall be deemed to include commodities or a group of commodities, which by their function, application, quality and technical characteristics can substitute other commodities or a group of commodities.
- d) “State assistance” shall provide for one-time, any form of assistance rendered by the government for a certain period of time; particularly – tax exemption or prolongation of the terms of tax payment, writing off debts, restructuring, granting concessionary loan terms, favorable loan guarantees, providing special conditions for buying immovable property, preferential conditions in the process of state purchases and profitability guarantees, or granting other exclusive right, which allow to restrict competition or provide conditions of its restriction offering advantages to certain economic agents or to production of certain commodities.
- e) “Public purpose-oriented program” means a complex of social and economic measures worked out on well-grounded technical and economic basis aimed at active governmental control over economic processes provided with resources, responsible executive state offices, terms of implementation and consumers.
- f) “Non-competitive environment” means a commodity market where competition may exist, but it is restricted and/or prohibited by the state or local authorities.
- g) “Monopoly situation” means such market situation when there is only one seller of goods and there are no substitutional goods.
- h) “Regulated economic spheres” mean types of economic activities, which protecting consumer interests are guided by tariff regulations and/or state-owned enterprises functioning in the infrastructural sphere.
- i) “Infrastructural sphere” means a field in which non-freely circulated commodities are produced, supplied and serviced.

- j) "Specific property" means one or several means of transportation (custom clearance) of non-freely circulated commodities.
- k) "Specific property owner" shall be deemed to be an economic agent who is considered as owner (owners) or leaseholder (leaseholders) of one or several means of transportation (custom clearance) of non-freely circulated commodities.
- l) "Non-freely circulated commodities" mean goods production, import, delivery and use of which are done under limited (specific), special conditions.
- m) "Tariff regulation" means prices (tariffs) fixed by the administrative authority for products and services in the conditions of restricted competition.
- n) "Administrative barrier" means abuse of powers vested by the relevant legislation practiced by the state or local authorities (such as: demand of additional documents, ungrounded impediment when issuing documents necessary for the initiation of economic activities, and etc.).
- o) "Discriminative barrier" refers to cases when state or local authorities using proprietary, residency or any other criteria demand from an economic agent ungrounded, specific and unfair requirements or grant privileges.

Article 3

This law is aimed at breaking barriers for the development of free trade and competition in Georgia whatever organizational, legal and proprietary form any judicial or natural person may possess. In particular:

- a) promoting competition between economic agents;
- b) removing any administrative barriers to enter the market and providing economic agents free access to the market;
- c) breaking down any discrimination barriers set up by the state or local authorities and elimination of any grounds for their appearance;
- d) protection of vital and economic interests of society in the conditions of restricted competition in the regulated economic spheres;
- e) not allowing state or local authorities to assume such international obligations which could impede free trade within and outside Georgia.

Article 4

This law applies to:

- a) such interrelations which influence competition and free trade in commodity and services' markets, and which incorporate participation of juridical and/or natural persons and/or state or local authorities;
- b) such actions and/or decisions made by state or local authorities which in this or other form affect (or may affect) competition environment and free trade.

Article 5

This law does not apply to copyrights and closely related rights, and relations connected with trademarks, industrial standards.

Article 6

Control over due execution of requirements of this law shall be exercised by the Free Trade and Competition Agency (hereafter referred to as the “Agency”) acting as a state subdivision under the Ministry of Economic Development of Georgia.

Chapter II Prohibition of Competition Restriction

Article 7

Any state or local authorities are prohibited:

- a) to impose such taxes or other privileges for economic agents which can appear more advantageous than those for their rivals (potential competitor) and may lead accordingly to restriction of competition;
- b) to ban, cease or otherwise infringe in the business activities and independence of economic agents, except for the cases stipulated by the Georgian legislation;
- c) to set up any state or local administrative authority or entrust the existing authorities with powers which may cause restriction of competition by means of monopolization of production and realization of goods;
- d) to make decisions which create monopolized situation for economic agents that essentially restricts competition and the process of free pricing, except for the cases stipulated by the Georgian legislation.

Chapter III State Assistance and Purpose-Oriented Programs

Article 8

- 1) Any form of state assistance, which affects competition or creates risks of such interference shall be prohibited, except for the cases stipulated by paragraph 2 of this Article.
- 2) State assistance shall be allowed in:
 - a) force majeure circumstances stipulated by the Georgian legislation;
 - b) cases aimed at development of certain economic activities or economic zone and/or preservation of cultural heritage.
- 3) The Agency shall work out and approve with respective statutory normative acts general rules specifying the cases when state assistance can be granted.
- 4) In compliance with the rules mentioned in paragraph 3 of this Article the state and local authorities shall establish state assistance granting procedure, which shall specify its necessity, forms and assistance-receiving objects.
- 5) Assistance-receiving procedure established in compliance with the statutory normative acts drawn up by the Agency is to be submitted to the Agency for coordination.
- 6) The Agency shall be notified on the plan of assistance rendering, change of assistance and/or any assistance rendered.

Article 9

- 1) Any state purpose-oriented program, which may in any way affect competition or create risks of such interference, is prohibited.

- 2) By means of statutory normative acts the Agency shall approve general rules concerning authorization of state purpose-oriented programs of economic character.
- 3) State purpose-oriented programs of economic character provided for by the Georgian legislation and drawn up in compliance with statutory normative acts drawn up by the Agency are to be submitted to the Agency for coordination.
- 4) The Agency shall be notified on the plan concerning state purpose-oriented programs and/or change of the program.

Article 10

- 1) The Agency is entitled to approve the submitted state assistance and/or state purpose-oriented program within 30 days otherwise the approval is considered as given.
- 2) In case of contradictions revealed in the actions of the state or local authorities or fulfillment of provisions stipulated by relevant laws, or in case of their improper application, the Agency is entitled to demand substantiation from the relevant state or local authorities.
- 3) On the basis of the information submitted the Agency determines conformity of provided state assistance and/or state purpose-oriented program to the regulations stipulated in this law and within 30 days makes recommendation on the conformity of the said assistance to the relevant law.
- 4) A state authority having received information specified in paragraph 3 of Article 10 of this law makes decision within 10 days on the abrogation, amendment or not to change the said assistance and/or state purpose-oriented program.
- 5) A state authority is obliged to notify the Agency on its decision pertaining to the recommendation submitted.

Chapter IV Regulated Economic Spheres

Article 11

1. Specific property owner in case of purchase and/or sale is obliged to provide access to his network or infrastructure to economic agents on non-discriminative conditions.
2. Specific property owner is authorized to refuse economic agents in access to his network if the refusal is conditioned by the following objective reasons:
 - a) if the established technical requirements and norms are not satisfied, which accordingly threatens the integrity of the whole network or safety of user interactions;
 - b) if the economic agent who claims the access to the network does not possess enough financial resources to carry out necessary works in order to satisfy the relevant technical requirements and norms.
3. On the basis of the claims submitted by the economic agents the Agency shall check up whether the reason of refusal in access to the network of specific property owner conforms to this law.

4. Provisions stipulated in paragraphs 1, 2 and 3 of this Article shall not apply to the means of transportation (custom clearance) of non-freely circulated commodities produced in the infrastructural sphere by private investments.
5. Aimed at fulfillment of provisions of this law the Agency shall analyze the activities of economic agents acting in the regulated economic spheres, and work out and promulgate the relevant recommendations.
6. Should the economic agent acting in the regulated economic sphere violate any provision of this law, the Agency shall provide the violator its recommendations aimed to bring the relevant agreement (decision) in conformity with the legislation in force.
7. In 10 days after the receipt of recommendations the economic agent acting in the regulated economic sphere makes decision whether to bring the agreement (decision) in conformity with the legislation or leave it unchanged.
8. The economic agent acting in the regulated economic sphere is obliged to notify the Agency on his decision pertaining to the recommendations submitted.
9. Paragraphs 1, 2, 3 and 4 of this Article shall not apply to relations connected to the cases when a specific property owner allows a third party to access his network, if the reasons of such access are stipulated by a separate law and the consequent relations are regulated by a relevant independent national authority.

Chapter V Free Trade and Competition Agency

Article 12

1. The head of the Free Trade and Competition Agency is appointed by the Georgian minister of economic development and removed by the Prime Minister of Georgia.
2. With respect to the state and local authorities the Agency is entitled to:
 - a) provide its directions to the state or local authority, violator of this law specifying illegal decisions of the latter;
 - b) demand documents connected with practices of the state or local authorities contradictory to provisions of this law;
 - c) raise the question of liability to a higher level authority or office should the state or local authorities fail to fulfil the instructions specified by the submitted directions;
 - d) raise the question of disciplinary, administrative and criminal liability of an official body for the violation of free trade and competition laws.
3. With respect to economic agents acting in the regulated economic sphere the Agency is entitled to:
 - a) demand documented substantiation from the agent pertaining to the actions which violate provisions of the present law;
 - b) act as intermediary in court in case the agent fails to submit the required documentation;
 - c) demand bringing of illegal actions to conformity with the present law;
 - d) appeal to the court with the claim to terminate practices or decisions contradicting the provisions of the present law.

4. The Agency is authorized to establish rules of state assistance procedure and/or state purpose-oriented program coordination, which will specify forms and terms of approval and other points of order.

Article 13

The major obligations of the Agency include:

- a) removal of administrative barriers which affect the development of free trade and competition;
- b) reveal and elimination of cases of discrimination, unsubstantiated government grants (direct or indirect) and privileges from the state or local authorities;
- c) examination and working out of relevant directions pertaining to the cases of violation of the Georgian laws on free trade and competition;
- d) should the state or local authority and economic agents acting in the regulated economic sphere fail to fulfill the requirements of the directions submitted:
 - d.a) appeal to the court and participate in the consideration of the case;
 - d.b) public declaration of lawfulness of actions of persons specified in subparagraph "d" of Article 13 of this law in case of motivated refusal;
- e) keeping and non-divulgence of governmental and commercial secrets;
- f) recovering of damages caused by disclosure of confidential information in compliance with the rules and amount stipulated by the legislation;
- g) annual submission of reports on the carried out works and relevant recommendations to the Georgian government:
 - g.a) on the fulfillment of provisions of the present law by the state and local authorities;
 - g.b) on the fulfillment of provisions of the present law in the regulated economic spheres.

Article 14

The violator of this law shall bear disciplinary, administrative or criminal liability.

Chapter VI Transitional Provisions

Article 15

- a) Following one month from the date this law enters into force the Georgian government shall terminate the process of liquidation of public offices, such as: the Georgian State Antimonopoly Department and State Price-Regulatory Inspection acting under the Ministry of Economic Development of Georgia.
- b) The Ministry of Economic Development of Georgia shall surrender the property to the Agency which was left after the liquidation of the Georgian State Antimonopoly Department and State Price-Regulatory Inspection acting under the Ministry of Economic Development of Georgia (11.04.2006, No. 2836).
- c) Within 9 months after this law enters into force the Georgian government shall submit for parliamentary consideration amendments to the legislation necessary for the setting up of the Free Trade and Competition Agency as a state subdivision of the Ministry of Economic Development of Georgia.

Chapter VII
Final Provisions

Article 16

After this law enters into force the following orders shall be considered invalid:

- a) the Georgian law entitled “Monopoly and Competition” (parliamentary decree No. 22-23 of October 17, 1996, p. 19);
- b) the Georgian law entitled “Prices and principles of pricemaking” (parliamentary setting No. 9, 1993, Article 189);
- c) decree No. 596 of September 13, 1996 of the President of Georgia to the Georgia law entitled “Consumer Rights Protection” pertaining to the introduction of necessary normative acts;
- d) decree No. 95 of February 22, 1998 of the President of Georgia on “The mechanisms of governmental regulation of natural monopoly”;
- e) decree No. 262 of April 23, 1998 of the President of Georgia on the approval of regulations adopted by the antimonopoly council under the State Antimonopoly Department of Georgia;
- f) decree No. 314 of May 11, 1998 of the President of Georgia on the setting up of coordination council for consumer rights protection and approval of its regulations under the State Antimonopoly Department of Georgia;
- g) decree No. 426 of September 30, 2000 of the President of Georgia on the approval of regulations of state registration of economic agents acting in the conditions of monopolized commodity markets;
- h) decree No. 8 of January 10, 2002 of the President of Georgia on the approval of instructions pertaining to inspections carried out by the State Antimonopoly Department of Georgia;
- i) decree No. 145 of March 31, 1998 of the President of Georgia on the setting up of coordination council for consumer rights protection and approval of its regulations under the State Antimonopoly Department of Georgia;
- j) order No. 8/42 of December 12, 2000 of the head of the State Antimonopoly Department of Georgia under the Georgian Ministry of Economics, Industry and trade pertaining to the determination of monopoly situation for economic agents (business units) acting in a corresponding (definite) commodity market.

2. The present law shall enter into force following 15 days after its promulgation.

Mikheil Saakashvili
President of Georgia
Tbilisi
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