

THE LAW OF GEORGIA ON MONOPOLISTIC ACTIVITY AND COMPETITION

Basic Definitions Used in the Law

Economic agent (enterprising subject) - physical or legal person carrying out enterprising irrespective of organizational - legal form of an enterprise, kind of property or nature of the activity.

Interchangeable commodity - the group of commodity which are so alike by their function, purpose, use, quality, price, technical characteristic and other parameters, that buyer changes or is ready to change the commodity of one kind with the other one in the process of consumption, as well as in the process of enterprising.

Competition - rivalry among the economic agents, independently acting at the market, when the action of every of them restricts the possibility of its rival to gain advantage at the market and promotes production of the goods necessary for the consumers.

Competition derives when several economic agents simultaneously appear at the market, interchangeable commodity is being delivered and the decision on consumption is being adopted according to the price, quality, packing, service and other economic parameters.

Monopolistic Position-particular position of an economic agent or state organ, when this position gives possibility to exert important influence over the market and to restrict competition.

Monopolistic activity-activity, which gives possibility to an economic agent to exert important influence over the market price of interchangeable commodity at the commodity market and to restrict competition.

Natural monopoly-situation at the commodity market when satisfaction of demand is more effective because of technological peculiarities of production (in connection with substantial cut in production expenditures per unit of output in accordance with enlargement of production scale) and when, in the consumption it is impossible to change the commodity produced by the subject of natural monopoly with other commodity. Because of this the demand for the output produced by the natural monopoly, compared with the demand for the commodity of other kind, is less depended on alteration of prices of this commodity.

CHAPTER I

Common Regulation

Article 1.

1. The purpose of this Law is to provide enterprising with organizational-legal foundation and to ensure competitive environment in Georgia, as well as to protect the rights of consumers.

2. This Law specifies responsibility of an economic agent (enterprising subject) for abuse of monopolistic position, unfair competition and other actions which cause or may cause restriction or suppression of competition at the market.
3. Economic agent is prohibited to carry out monopolistic activity.
4. State register of natural monopolies is approved by the President of Georgia.

Article 2.

Antimonopolistic legislation of Georgia comprises the Constitution of Georgia, this Law and other legal documents.

Article 3.

State control over the fulfilment of this Law is imposed on Antimonopolistic Service of Georgia. Within the territories of the Autonomous Republics of Abkhazia and Achara it is imposed on the service authorized by this Law and relevant to the antimonopolistic organ.

CHAPTER II

Scope of the Law

Article 4.

1. This Law concerns those relations, which exert influence upon competition at the commodity market (production, labour, service) and in which physical and legal persons (including foreigners) and organs of executive authority of Georgia (ministries, other state institutions and offices, organs of executive and local power of all level territorial units) take part.

2. This Law also concerns those cases, when the actions carried out by the abovementioned persons or the agreement concluded by them out of the borders of Georgia restrict (or may restrict) competition or exert negative influence on the commodity market of the country.

Article 5.

1. This Law does not concern the relations connected with copyright, inventor's right trade marks and industrial patterns.

2. The Parliament of Georgia is, in compliance with the interests of the country, entitled not to exercise (fully or partially) operation of this Law over the separate kinds of monopolistic activity.

Article 6.

Relations linked with monopolistic position and unfair competition at the market of securities and financial service are regulated by the appropriate legal documents, except the cases when these relations exert influence over the competition at the commodity market.

Article 7.

If in the sphere of antimonopolistic activity the rules different from this Law are established by the international treaty of Georgia, priority is given to the rules provided by the international treaty.

CHAPTER III Prohibition of Restriction of Competition

Article 8.

Economic agent is prohibited to conclude an agreement or take decision, which directly or indirectly causes restriction of competition, in particular:

- a) restricts one of the parties in the selection of market, sources of supply, providers or consumers;
- b) charges obligation on one of the parties to the agreement, in exchange for the goods stipulated in the agreement, additionally supply or buy the goods not connected with the goods specified by the agreement;
- c) substantially restricts competition at the interchangeable commodity market.

Article 9.

- 1. Unfair competition is prohibited.
- 2. The following cases are considered as unfair competition:
 - a) to transfer the information on commodity through any mean of communication, when this information gives wrong notion to the addressee and in
 - b) to hide a real aim of the deal by the economic agent on purpose to mislead the contractor and to gain advantage in the competition.
 - c) to gain advantage in the competition through the use of dumping prices and by misleading the consumer.
 - d) to damage the reputation of competition by the economic agent (to establish the wrong opinion on the enterprise, production; enterprise or trade activity) as well as to discredit and criticize competitor without any foundation.
 - e) to use willfully the name of the firm or the commodity mark of the competitor or of the third person.
 - f) misappropriation of the form. packing or design of the goods produced by the competitor or by the third person.
 - g) to receive, collect, use and divulge scientific-tecknical, enterprise and trade information or commercial secrecy without the assent of its owner.

Article 10.

All organs of state power are prohibited:

- a) to unify or merger fiscal enterprises, to establish alliances, associations, concerns, consortiums, interim section of governing, intersector and regional unions if this action weakens or restricts competition.
- b) to lay down such a tax or other privileges for the economic agent, which gives advantage to it over the competitors (or potential competitors) and leads to restriction of competition.
- c) to prohibit, stop or empede the enterprising activity and independence of the economic agent, except the cases specified by the laws of Georgia.
- d) in order to monopolize production and to realize goods, to set up state structures or to give the rights to the existing structures, which leads to restriction of competition.

e) to take decision, if it puts the economic agent in monopolistic position and restricts competition or free price formation, except the cases specified by the laws of Georgia.

CHAPTER IV

Monopolistic Position

Article 11.

1. Economic agent shall be considered to be in a monopolistic position if its part at the particular commodity market directly or indirectly (through the branch, branch establishment or through the other way) exceeds the maximum norm established by the Antimonopolistic Service.

Article 12.

Agreement (coordinated activity) between the economic agents, which are not competitors, one of them takes monopolistic position and other is supplier or consumer and this agreement leads or may lead to restriction of competition, is prohibited.

Article 13.

Economic agent taking monopolistic position is prohibited to misuse this position on purpose to discriminate other participants of the market. The action, which causes or may cause infringement of interests of other economic agent or consumer shall be considered as misuse of monopolistic position. Such actions are:

- a) decrease or cessation of production, withdrawal of goods from economic circulation in order to establish or maintain deficit at the market and exert influence on prices;
- b) to lay down conditions hampering the other economic agent to penetrate into the market or leave it, or empeding the activity of the economic agent already acting on the market;
- c) to lay down discriminative conditions for the participant of the market, which impose irrespectively high or low purchasing or selling prices on it, as well as to conclude an agreement, when additional conditions, not connected with the agreement in accordance with trade rule are laid down;
- d) compulsion of any kind in order to conclude an agreement;
- e) to establish high or low monopolistic price, which, within a certain period, considerably differs from the expenditure on production and realization;
- f) to decrease or cease commodity production in demand, when the order of consumer is at hand and it is possible to produce the goods without damage;
- g) to use the dumping prices;
- i) other actions leading to the restriction of competition or infringement of lawful interests of the economic agent and consumer.

Article 14.

1. Economic agent taking monopolistic position, in order to be registered, in the unification (amalgamation) with another economic agent is obliged to undergo an examination.
2. In the event of negative conclusion by the Antimonopolistic Service the court rejects to register economic agent.

Article 15.

In the repeated infringement of antimonopolistic laws by the economic agent taking monopolistic position, Antimonopolistic Service is authorized to raise a question on its compulsory devision before the appropriate organs, if the possibility of territorial or organizational seperation exists, or to implement other antimonopolistic measures (to establish fixed prices, maximum norm of profitability etc.)

CHAPTER V

Antimonopolistic Service

Article 16.

The State Antimonopolistic Service of Georgia set up at the Ministry of Economics of Georgia is the subject of public law. The service is led by the head, who is appointed or dismissed by the President of Georgia, after the presentation by the Ministry of Economy.

Article 17.

On purpose to carry out antimonopolistic policy Antimonopolistic Council is established at the Antimonopolistic Service for the term of five years. It includes the head and ten members. The members of council are appointed by the President of Georgia. Three of them are representatives of consumers, manufacturers and scientific organizations and institutions. The chairman of Antimonopolistic Council is approved by the President of Georgia.

Article 18.

Appropriate antimonopolistic services operate in the Autonomous Republics of Abkhazia and Achara. Their heads are appointed or dismissed by the head of Antimonopolistic Service of Georgia in agreement with the executive bodies of the Autonomous Republic and territorial units.

Article 19.

Authorization of the Antimonopolistic Service of Georgia and its territorial, services is defined by this Law and regulations of the Antimonopolistic Service, which is confirmed by the President of Georgia.

Article 20.

The main lines of the activity of the Antimonopolistic Service are:

- a) to lay down advantageous conditions for the development of competition;
- b) to suppress misuse of monopolistic activity or monopolistic position;
- c) to carry out preliminary measures in order to prevent unfair competition;
- d) to protect the right of consumers;
- e) to regulate advertising financial markets in order to reveal the facts of unfair competition or restriction of competition;
- g) to elaborate the measures for demonopolization of production, circulation and financial sectors;
- i) to present the obligatory proposals for examination to the executive bodies in order to promote competition and to carry out the measures for restriction of monopolistic activity;
- j) to examine the facts of violation of antimonopolistic activity and to take decision within the framework of its competence;
- k) to collaborate with the organs of executive power, as well as with international organizations with a view to settle organizational, legal, technical and financial problems related to the antimonopolistic laws and consumers rights protection.

Article 21.

1. Antimonopolistic Service is authorized:

- a) to raise a question before the appropriate organ on purpose to stop or prohibit the activity of that organization, which has violated the antimonopolistic laws.
- b) to request from the organ, which has violated this law to abolish the unlawful decision and if it does not make so, to raise a question before the corresponding organ or official above;
- c) to request from the economic agent to abolish the agreement or decision, concluded or adopted in violation of this Law and if the demand is not satisfied to lodge a complaint in the court and to take part in the examination of the case;
- d) to demand from the economic agent to give information on its legal, organizational and economic relations;

e) to get acquainted with the documentation related to the activity of economic agent;
f) on the basis of court's decision to verify and withdraw the documentation related to the activity of economic agent. The withdrawn documents may be only used in the examination of the case. It is prohibited to publish them.

If the suspicion of Antimonopolistic Service is not proved in verification of the documents or facts related to the case. Antimonopolistic Service is obliged to pay all damage to the economic agent under the rule provided by the laws of Georgia;

g) to raise a question on administrative and criminal responsibility of the official who has violated the antimonopolistic laws.

i) to demand from the ministries, other state agencies and institutions, executive bodies of territorial units any essential information and if this demand is not satisfied to raise a question on administrative or disciplinary responsibility of the officials, who are representatives of these organs;

j) in order to take decision, to demand information related to the arraigned case, from the corresponding state organ or official of the economic agent and on this purpose to send preliminary written notification on the violations and date of hearing of the case;

If the necessity of official hearing is at hand, economic agent must be given the opportunity to get acquainted with the documentation collected by the Antimonopolistic Service, related to its case.

If within 30 days after the presentation of demand by the Antimonopolistic Service, corresponding state organ or economic agent will not communicate necessary information to this service, the latter will take decision in connection with the arraigned case according to the facts and data at its disposal;

k) on the basis of economic analysis to define maximum amount of the part of economic agents in the commodity and financial markets in the sector of economic activity.

2. The Antimonopolistic Service is entitled to exercise the rights specified in subparagraphs "d" and "e" in the case, when the proved suspicion of the misuse of monopolistic position by the economic agent and its taking part in unfair competition is at hand.

Article 22.

If the fact of misuse of monopolistic position by the economic agent is proved by the Antimonopolistic Service, this service can demand from the economic agent to put the end to this situation.

Article 23.

When the economic agent taking monopolistic position acquires the shares and part of other economic agent (its branch establishment) the decision of a commission of experts is necessary.

Article 24.

Fulfillment of a decision taken by the Antimonopolistic Service within the framework of its competence, is obligatory as for economic agent, as for corresponding state organ.

Article 25.

1. The Antimonopolistic Service is obliged:

- a) to observe the antimonopolistic laws;
- b) to examine the received applications and to notify the conclusion in written form not later than within 30 days after the application was handed in;
- c) to protect and not to disclose official or commercial secrecy.

The damage caused by disclosure of data, including the secrecy, shall be payed by the Antimonopolistic Service under the established rule and amount provided by the laws of Georgia.

Article 26.

The Antimonopolistic Service is obliged once a year to report on its work to the President of Georgia.

CHAPTER VI

Responsibility for Violation of the Law “on Monopolistic Activity and Competition”

Article 27.

The person, who will violate this Law shall be charged material, administrative and criminal responsibility.

Article 28.

The amount of a fine is established by the Laws of Georgia.

CHAPTER VII

The Rule of Appeal Against Decision Taken By the Antimonopolistic Service

Article 29.

The economic agent, as well as other interested persons are entitled to go directly to the court, corresponding organ or official in order to prevent violation of laws and to compensate the damage, also they have the right to lodge a complaint in the court on the decision taken by the Antimonopolistic Service.

Article 30.

Economic agent shall be repaid the damage, caused by illegal activity of the Antimonopolistic Service, in accordance with the laws of Georgia.

The President of Georgia

Eduard Shevarnadze.

**Tbilisi,
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