Government of Georgia

Comprehensive Strategy in Competition Policy

Prepared by:

The Inter-Agency Task Force for Coordination of Preparatory Works for the Deep and Comprehensive Free Trade Agreement with the EU under the Commission for the EU Integration of Georgia

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Content

Executive Summery

The aim of the Government of Georgia (GoG) is to further institutionally and legally promote market economy, free entrepreneurship and competition through development of the legal framework and by upgrading the competition policy in line with the EU and international standards.

Based on the recommendation of the European Commission, GoG decided to prepare a Comprehensive Strategy and Operational Program for free and fair competition in Georgia.

The Strategy has been prepared in the framework of the activities by the Task Force for Coordination of the Preparatory Works for the DCFTA with the EU.

By this Comprehensive Strategy in Competition Policy (hereafter the Strategy) and Operational Program GoG manifests its genuine political commitment to establish a modern competition policy and its intention to bring the legislation and institutions in compliance with international best practice in this area.

The main aim of the Strategy is to promote competition and thus strengthen the efficiency of production and distribution of goods and services through the greatest possible transparency and equity of competitive conditions.

It addresses the following issues:

- *Support of free and fair competition through:*
  - *Prohibition of the abuse of dominant position*
  - *Concentration regulations*
  - *Regulation of restrictive agreements, concerted practices, decisions by undertakings and collusive tendering*
- *Definition of the relevant market*
- *Introduction of block exemptions*
- *Further development and streamlining effectiveness of special rules for the state aid granting procedures*
- *Independence and effective investigative powers of the competent authority*
- *Strengthening the competition authority's administrative capacity*
- *Ensuring effective enforcement of the competition legislation*

First the Strategy examines existing legislative and institutional framework in the area of competition. Second, it describes working process of the preparation of the Comprehensive Strategy in Competition Policy. Third, the Strategy describes and explains major principles applied in the competition policy. Fourth, it outlines main components of competition policy.

Part 1. The Existing Legislative and Institutional Framework in the Area of Competition

1.1. Overview of the Legislative Framework

Currently, competition issues in Georgia are regulated by a number of normative acts.

The *Constitution of Georgia*, Article 30, Paragraph 2 states: "*Government is obliged to assist the development of free entrepreneurship and competition. Monopolistic activities are prohibited, except the cases stipulated by the law...*"

The *Criminal Code of Georgia*, Article 195, stipulates criminal liability for monopolistic activities and restriction of free and fair competition by imposing sanctions or imprisonment.

The Law on *Protection of Consumer Rights* includes the provisions on protection of consumer rights under non-competitive conditions.

Anti-monopoly regulation in Georgia was introduced in 1996 through adoption of the Law on *Monopoly and Competition*. In 2005, the new Law on *Free Trade and Competition* was adopted and replaced the previous one.

The Law on *Free Trade and Competition* was adopted as part of the reform of the competition policy aiming, among others, at reducing reportedly widespread corruption accompanying the enforcement of the then existing Law on *Monopoly and Competition* and thus creating level playing field for market actors.

The scope of the Law on *Free Trade and Competition* is mainly focused on the state aid. It defines the state aid as any form of one-time assistance rendered by the government for a certain period of time. The Law identifies the following forms of state aid:

- Tax exemption or prolongation
- Writing off debts
- Restructuring
- Granting concessionary loans
- Favorable loan guarantees
- Providing special conditions for buying immovable property
- Preferential conditions in the process of state procurement
- Profitability guarantees
- Granting other exclusive rights to certain economic agents or to production of certain commodities

Any form of state aid, which distorts or threatens to distort competition is prohibited, except for cases stipulated by the Law, namely force majeure circumstances, state involvement for development of certain economic activities or development of economic zone and/or support of culture and protection of cultural heritage.

As it was mentioned above, the existing Law is mainly focused on state aid. This particular feature of the Law can be explained by a number of reasons:

- **Existing Law on *Free Trade and Competition* was adopted for a transitory period**. Before the reform of 2005, perception of widespread corruption regarding the then existing Antimonopoly Agency was high. Therefore, in order to address this issue and mitigate future corruption risks the Law on *Free Trade and Competition* in its current form was adopted. Compared to similar institutions in the EU member states, the Law grants limited institutional powers to the Agency for Free Trade and Competition.
- **Sector regulations of competition exist and are applied.** According to the international practice, the sectors where the risk of concentrations and abuse of dominant position are rather high, are so called non-liberalized sectors regulated by special laws and sector regulators. This is applied in Georgia as well, where regulations of the non-liberalized sectors such as energy, communications, and financial sectors were introduced (see chronology of relations between Antimonopoly Agency and Sector Regulators in the non-liberalized sectors in the Annex 4). Therefore, when the reform of 2005 was implemented and the new Law on *Free Trade and Competition* was focused mainly on state aid, these sectors remained under special competition regulations. It is also notable, that non-liberalized sectors in Georgia are characterized by a substantial share of total FDI in the sectors of economy and existence of large companies. During the recent years, FDI in these sectors amounted to approximately 50% of total FDI.
- **Relatively low risk of obtaining dominant position and abuse thereof on the Georgian market.** Nearly 98% of enterprises in Georgia are either small or medium. Therefore, the risk of gaining dominant position on the market in liberalized sectors is substantially low, than in the non-liberalized sectors.
- **Low tariffs and non-tariff barriers to trade.** The economic reforms undertaken since 2004 introduced low import tariffs on goods and sufficiently reduced non-tariff barriers. As a result of the reform, Georgia achieved substantial openness of its economy. Therefore, market

entrance barriers internally as well as internationally and accordingly risk of obtaining of dominant position and abuse thereof were further minimized.

As mentioned above, the Law on *Free Trade and Competition* does not address other issues, as the relevant definitions, principles and regulations in the competition area (See Annex 5).

However, as outlined later in Chapter 1.4. neither initial nor current laws meet the requirements of the EU and best international practice in the competition area.

1.2. Overview of the Institutional Framework

Currently, the institutional framework in the competition area in Georgia is composed of:

- The Agency on Free Trade and Competition (hereafter - Agency)
- Sector Regulators in the non-liberalized sectors:
  - Georgian National Communications Commission (hereafter GNCC), which is the Sector Regulator in electronic communications and post services sector – established in 2000.
  - Georgian National Energy and Water Supply Regulatory Commission (hereafter GNEWSRC), which is the Sector Regulator in energy, natural gas and water supply – established in 1997.

Competition policy in the non-liberalized sectors (e.g. electronic communications, electricity, gas and water utilities) is regulated by sector laws, which are enforced by the relevant Sector Regulators. These are sectors, where tariffs are defined by the Sector Regulators as well as the other market conditions still have to be regulated in the absence of liberalization.

Thus, in the absence of liberalization, Sector Regulators are responsible for economic, technical and competition regulations of non-liberalized sectors, including the regulation of concerted practices and abuse of dominant position.

1.3. Major Legislative and Institutional Shortcomings

The current legislation on competition has a number of shortcomings (see Annex 5), which need to be addressed in the Strategy as well as in subsequent reforms initiated by the Government in order to implement the Strategy.

- **First, the existing Law cannot be considered as a Framework Law**[1] due to the shortcomings related to the absence of key definitions, principles and procedures of the competition area.
- **Second,** although the Law is mainly focused on state aid, **state aid and its granting procedures are not sufficiently defined,**.
- **Third, the Agency for Free Trade and Competition lacked independence and competences**. The Agency was Legal Entity of Public Law accountable to the Ministry of Economic Development. It had almost no competences in the area of antitrust. This institution was established for the transitional period. Currently, the institutional reform is underway (see Chapter 4.2.1).

[1] *Framework Law will be the general competition act, which will cover all relevant issues in the area of competition and all sectors of economy*

Part 2. Working Process of the Preparation of the Comprehensive Strategy in Competition Policy

In order to approximate competition policy and regulatory framework of Georgia with the EU and international best practice, the GoG undertook the following steps:

1. **Inter-Agency Task Force for Coordination of Preparatory Works for the Deep and Comprehensive Free Trade Agreement with the EU has drafted this strategy in coordination with relevant ministries and agencies.**

   The Task Force has undertaken the following:

   - Study and analyse the Georgian legislation in competition sphere
   - Study and analyse international and European experience/requirements in the area of competition
   - Identify priorities and principles of the competition policy of Georgia
   - Identify and analyse possible shortcomings in Georgian legislation
   - Elaborate a draft comprehensive strategy in competition policy and coordinate preparatory works for its implementation
   - Involve relevant Government institutions and agencies in the drafting process of the Strategy
   - Ensure stakeholder dialogue, among others through cooperation and organization of meetings with the appropriate bodies, interested parties and donor organizations, facilitation of information exchange between them

This work was based on the analysis undertaken by the Advisory Group under the Office of the Prime Minister of Georgia. During the drafting process of the Strategy the Task Force has been supported by the staff of the Prime Minister's office. Chief advisors to the Prime Minister have guided the process.

Further, in the course of the preparation process, for better understanding of the basic principles of relevant EU *acquis* in the competition area, the Task Force at the PM office analysed related articles of the Treaty on the Functioning of the European Union (TFEU), EC regulations and guidelines on competition issues, UNCTAD Modal Law on Competition, Green Paper dealing with "Damages Actions for Breach of EC Antitrust Rules"[2], OECD Competition Assessment Toolkit, competition legislation and best practices of different countries, including the EU

[2] *Doc. SEC(2005)1732, of 19-12-2005*

member states. In parallel, consultations were held with international experts on competition invited by GEPLAC.

The Office of the Prime Minister prepared the Concept and Basic Principles of the Comprehensive Strategy in Competition Policy. The EU Integration Commission (held on July 28, 2009) chaired by the Prime Minister discussed and examined the concept of strategy. Members of the Commission were given 2 weeks to present their comments to the document, while the Task Force continued elaboration of the Strategy.

In the beginning of September, 2009 the initial draft Strategy was sent for comments to the relevant agencies and authorities. On September 8, 2009 the draft Strategy was discussed and fully supported by the EU Integration Commission and submitted to DG TRADE on September 10, 2009. Commission Services sent comments on Strategy to Georgian authorities on November 5, 2009. The expert meeting between Commission services and Georgian authorities on Competition issues was held in Brussels, on November 25, 2009. During the meeting, the Strategy was discussed in a detailed manner. The meeting was followed by the Operational Conclusions demonstrating the key issues agreed during the expert meeting. The Operational Conclusions of the Expert Meeting were agreed in January, 2010 and were reflected in the draft Strategy.

The draft Comprehensive Strategy was sent to the GEPLAC Swedish expert Mr. Christian Blume (representative of the Swedish Competition Agency) prior to his visit to Georgia. The expert made the revision of the draft Strategy as required by the Operational Conclusions of the Expert meeting between Commission services and Georgian authorities on Competition issues held in Brussels, on November 25, 2009. Three consequent meetings were held on 2-4 March, 2010 in Tbilisi between Mr. Christian Blume and representatives of the Government of Georgia (GoG).

On February, 2010, Chief Advisor to the Prime-Minister of Georgia attended the Global Forum on Competition organized by the OECD.

The representatives of the Prime-Minister's Office and Ministry of Economic Development of Georgia participated in the Study Visit, which covered Competition Policy issues in Germany, organized by the GTZ.

Revised final draft Strategy was submitted to the EU Integration Commission and reasonable time was given to the members of the Commission for the follow-up comments. The final draft strategy was approved by the EU Integration Commission and sent to DG Trade on March 13, 2010.

In May, 2010 GoG has received COM services' comments on final draft Strategy and Operational Program.

On 3rd of June, 2010 the meeting between representatives of newly established Agency for Free Trade and Competition as well as Prime Ministers' Office and representatives of Estonian embassy and SIDA was held in Tbilisi. Further steps of future cooperation and capacity building were discussed on the meeting. The aim of the meeting was the efficient coordination of donors' assistance in the area of competition.

On 10th of June 2010 the meeting between Georgian authorities and donors was held in Tbilisi. Swedish side was represented by the Swedish Competition Agency and SIDA. Georgian side was represented by the Agency for Free Trade and Competition of Georgia and the chief advisors to the Prime Minister of Georgia as well as the representatives of the Prime Minister's Office. Within the scope of the meeting draft Comprehensive Strategy was once more discussed in a detailed manner. Georgian side was provided with helpful recommendations by the Swedish side. Both sides expressed the readiness and willingness for the further cooperation.

On the 25th of June, 2010 the expert meeting was held in Brussels, where EU and Georgia have discussed all remained issues and agreed to finalize the strategy according to the elaborated Operational Conclusions.

Georgian side has revised the Strategy and sent it to COM services on 7th of July, 2010.

GoG received the COM services comments on the Strategy on 8th of September, 2010 and reflected them in the Strategy.

The Strategy was finalized and sent to COM services on 8th of October, 2010.

Part 3. The Strategy Vision – Major Principles Applied in the Competition Policy

The Strategy is to achieve the implementation of the following principles:

- Free and fair competition is guaranteed
- The mission of the Competition Authority (hereafter CA) is to achieve economic welfare through effective markets
- The competition legislation of Georgia is brought in compliance with the EU and international practices
- Legal and institutional framework provides for a solid basis to establish an effective competition policy
- Framework Law is uniformly applied across all sectors of economy
- Framework Law enables action against deviation from principles of free and fair competition in markets and restores contestability in markets
- The general principles of block exemptions are defined by the Framework Law
- Independence of the CA is ensured in all relevant areas
- The CA is independent in its decisions. Any interference from government bodies in its activities is prohibited
- Investigative powers are granted to the CA
- Effective enforcement mechanisms of the competition legislation are introduced
- For the implementation of Framework Law and respective legal acts adequate institutional and capacity building are ensured
- Gradual implementation in accordance with the Operational Programme is underway.

Part 4. Components of the Comprehensive Strategy in Competition Policy

4.1. Drafting and Adopting of a Competition Framework Law

As it was mentioned in the section on major legislative and institutional shortcomings, the existing Law on *Free Trade and Competition* has a number of shortcomings, which need to be brought into compliance with the EU and international best practice.

For this purpose, in accordance with this Strategy, the Framework Law will include relevant definitions, principles and regulations in the competition area, namely:

- Prohibition of the abuse of dominant position
- Concentration regulations
- Regulation of restrictive agreements, concerted practices, decisions by undertakings and collusive tendering
- Definition of the relevant market
- Introduction of principles of block exemptions
- Special rules for the state aid granting procedures
- Independence of the CA

The Framework Law will be generally applicable and will cover all sectors of economy, including non-liberalized sectors.

4.1.1. Relation between Framework Law and Laws in the Non-liberalized Sectors

At present, sector laws in non-liberalized sectors cover the core competition issues. This Strategy takes as an objective, that fundamental principles of competition policy will be covered by the Framework Law and applied to all sectors of economy, including the non-liberalized sectors.

The laws regulating non-liberalized sectors will be amended to bring them in accordance with the Framework Law, collisions will be removed and full coherence will be achieved.

4.1.2. Approximation of the Competition Legislation

According to the international best practice, the law on competition should regulate antitrust issues such as abuse of dominant position, terms of relevant market, concentration regulations etc.

In order to bring the competition legislation in line with the international standards, the Framework Law should include the following definitions, regulations and implementation provisions:

- **Antitrust provisions:**
  - Abuse of dominant position
  - Concentration regulations
  - Restrictive agreement, concerted practices, decisions by undertakings and collusive tendering
  - Terms of relevant market
  - Principles of block exemptions
- **State aid provisions:**
  - General rules of state aid granting procedures
  - *De minimis* state aid
  - Sector exemptions
- **Institutional provisions:**
  - Institutional independence
  - Investigative powers
  - Decision-making powers

Above-mentioned definitions, regulations and implementation provisions will apply across all sectors of economy. In addition, the Framework Law will apply to public as well as private sector.

The following chapters of the Strategy will focus on each of the above-mentioned components typically covered by competition legislation and practices in the EU.

4.1. 3. Abuse of dominant position

EC legislation defines that any abuse by one or more undertakings of a dominant position within the relevant market shall be prohibited.

Abuse of dominant position consists of:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions
- limiting production, markets or technical development to the prejudice of consumers
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts[3].

The Framework Law will incorporate the definition of the abuse of dominant position according to the EU *acquis*.

According to the international practice, the threshold indicating possible dominant position can be defined case-by-case or by the law[4]. In different EU countries the threshold defined by the law varies between 30%-50%[5].

Activities of companies with market share below the threshold defined either by the legislation or by case law, are not covered by the respective competition regulations.

The issue of putting the threshold indicating possible dominant position in the law or defining case-by-case will be addressed in the drafting process of the Framework Law, as it may require more granular approach. Both practices are fully in line with the EU and international standards.

The dominant position by definition does not imply the competition infringement, until it comes to the abuse of dominance. A market share threshold determined in a certain way may only be seen as one factor of many as regards the company's relative strength on a market in order to define dominance and not as a threshold above which an abuse is at hand. Market power is not in itself an abuse. Accordingly, the Framework Law will focus on identifying the abuse of dominant position.

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[3] *TFEU, Article 102*

[4] *The threshold regulation by case law is used by a number of countries, such as Luxemburg, Netherlands, Spain, UK, France, Finland, Denmark, Ireland, Italy.*

[5] *In Austria and Bulgaria the threshold is 30-35%, in Estonia, Greece, Latvia and Sweden - 40-50%.*

In certain cases, the abuse of dominant position should not be proven only by the statistical data on observed economy. In addition, all other available criteria and sources should be applied, including data on unobserved economy (see Chapter 4.1.7), impact analysis etc. The parties concerned may include unobserved economy in the calculation of the relevant market if and when it is appropriate. The Framework Law will include just the principle of considering of unobserved economy in certain cases. Secondary legislation will provide a detailed explanation how and when the unobserved economy should be applied.

The regulation will not cover the activities of the companies with market share below the threshold defined either case-by-case or by law.

4.1.4. Concentration Regulations

EC legislation defines that:

1. A concentration shall be deemed to arise where a change of control on a lasting basis results from:
    a. the merger of two or more previously independent undertakings or parts of undertakings, or
    b. the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings.
2. Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
    a. ownership or the right to use all or part of the assets of an undertaking;
    b. rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.
3. Control is acquired by persons or undertakings which:
    a. are holders of the rights or entitled to rights under the contracts concerned; or
    b. while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving there from[6].

[6] *Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)*

International practice envisages both merger *ex-ante* and *ex-post*[7] regulations.

In case of *ex-ante* regulation, prior notification to the CA on the merger is mandatory, while *ex-post* regulation does not require such a prior notification.

The statistical data of the EU commission decisions on mergers show that large majority of mergers is approved without any limited obligation[8].

Georgia will apply *ex-ante* merger control system in the non-liberalized sectors, where the possibility of concentration is relatively high.

The Framework Law may consider the voluntary notification of mergers above the threshold indicating the possible dominant position in liberalized sectors where *ex-post* merger control system is applied.

It is suggested that in case of Georgia, *ex-post* merger control system is more appropriate in liberalized sectors, given the rather small size of Georgian economy, fragmented landscape of enterprises, whereby the largest majority is small and medium enterprises, and low risks associated with abuse of dominant position. This is also supported by the EU statistics and the latest EC practices showing that the risk of abuse of dominant position by mergers is insignificant to apply uniform preventive measures.

In case a merger results in the abuse of dominant position, relevant behavioral remedies related to the abuse of dominant position will apply according to the Framework Law. Accordingly, the CA can deal with the case if and when a complainant exists.

The issue of legal certainty for businesses under *ex-post* regulation will be addressed by the legislation.

4.1.5. Restrictive Agreements, Concerted Practices and Decisions by Undertakings

The TFEU defines that:

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which

[7] *Merger ex-post regulation is used in Luxemburg, where a prior notification to the regulatory body on mergers is not required. In case of possible abuse, a potentially affected person can appeal to the regulatory body or court (source: www.concurrences.com).*

[8] *Statistical data of the EU commission decisions: 89% of the mergers are approved in the first phase (to present to the commission the application on companies merger without any limited obligations); 5% of the mergers are allowed in the second phase (with the several limited obligations); only 0,3% of the mergers are prohibited; around 5,7% of the mergers are under investigation (source: European Commission – www.ec.europa.eu)*

may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- directly or indirectly fix purchase or selling prices or any other trading conditions
- limit or control production, markets, technical development, or investment
- share markets or sources of supply
- apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void

3. The provisions of Paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings, any decision or category of decisions by associations of undertakings, any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
- impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives
- afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question [9]

The Framework Law will incorporate the EC definition of restrictive agreements, concerted practices and decisions by undertakings.

The Framework Law will define the restrictive agreements as illegal agreements between competitor companies, which:

- Fix or increase prices as a result of coordinated actions
- Limit the supply by decrease of production or selling
- Purposefully share the markets or consumers

The Framework Law will also define the restrictive agreements as illegal agreements between companies operating at different levels of the production or distribution chain, which:

- contain restraints on the supplier or

[9] *TFEU, Article 101*

- contain restraints on the buyer (vertical restraints)

Restrictive agreements should be considered as void when discovered or disclosed.

According to the international practice, restrictive agreements, decisions of undertakings and concerted practices are in general prohibited. However, there are a number of exemptions from this general rule, stipulated by the legislation of different countries, which are in line with the regulations set by the TFEU. In 2004, as a result of the reform, Article 101, Paragraph 3 of the TFEU became more general and exemptions from prohibition were expanded. These exemptions from the general rule are known as block exemptions.

Besides the abovementioned, EC regulations (Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the Application of Article 81(3) of the Treaty to Categories of Vertical Agreements and Concerted Practices; Commission Regulation (EC) No 2658/2000 of 29 November 2000 on the Application of Article 81(3) of the Treaty to Categories of Specialisation Agreements) define exemptions from restrictive vertical and horizontal agreements.

The Framework Law will define general criteria for block exemptions as stipulated by Article 101, paragraph 3 of the TFEU. The application of block exemptions will be defined in a more detailed manner by the secondary legislation.

The regulation of restrictive agreements and decisions by undertakings would be declared inapplicable if any agreement or decision of undertakings contributes to:

- Improving the production or distribution of goods and services
- Promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits

There are a number of possible exemptions from the prohibition. First of all, in some EU member states, restrictive agreements of minor importance do not qualify under this regulation. An agreement is deemed to be of minor importance if the joint share of the participating undertakings and undertakings which are not independent of them does not exceed 10%[10] on the relevant market unless its object is:

- to fix, directly or indirectly, purchase or selling prices between competitors, or
- to share markets between competitors.

[10] *Commission Notice Guidelines on Vertical Restraints (2000/C91/01)*

The restrictive agreements of minor importance are prohibited in cases where competition is significantly prevented, restricted or distorted by the cumulative effect of those agreements and similar other agreements on the relevant market.

Certain categories of agreements may be exempted from the prohibition by Government regulations. The Government may adopt regulations on agreements taking into account the criteria stipulated by the law. Namely, agreements are not prohibited, if:

- they contribute to a more reasonable organisation of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or protection of the environment
- they allow consumers a fair share of the resulting benefits
- they do not create the possibility of excluding competition in respect of a substantial part of the products concerned
- competition officials conclude that the agreement as a whole will produce net public benefit[11]

In some EU member states, the prohibition of the agreements, decisions by undertakings and concerted practices do not apply to agreements and practices of agricultural producers or to the decisions by associations of agricultural producers, which concern the production or sale of agricultural products or the use of joint facilities, unless competition is substantially restricted by such agreements, practices or decisions.

[11] *Guidelines on the Application of Article 81(3) of the Treaty (2004/C 101/08)*

4.1.6. State Aid

EC legislation defines the state aid as any advantage granted by the state or through state resources, where:

- It confers an economic advantage to the recipient
- It is granted selectively to certain firms or to the production of certain goods
- It could distort competition and
- It effects trade between member states[12]

The Framework Law will incorporate the definition of state aid according to the EU *acquis*.

The existing Law on *Free Trade and Competition* is mainly focused on state aid. Any form of the state aid, which distorts or threatens to distort competition is prohibited, except for the cases stipulated by the Law, namely *force majeure* circumstances, state involvement for development of certain economic activities or development of economic zones and/or support of culture and protection of cultural heritage.

According to the EC regulations and the practices of EU member states, *ex-ante* regulation of state aid is used, which means that member states are obliged to give prior notification on the planned state aid to the European Commission. The state aid cannot be granted without the approval of the Commission. In case if the provider of state aid infringes the decision of the Commission, the Commission has the right to appeal to the court.

EC regulation[13] stipulates the terms of *de minimis* state aid. *De minimis* state aid is defined as a total aid granted to any one enterprise, which shall not exceed EUR 200 000 over any period of three years. This ceiling shall apply irrespective of the form of the aid or the objective pursued.

De minimis state aid is excluded from the prior notification provision of the European Commission as provided by Article 108 (3) of the TFEU.

Council regulation[14] also stipulates the group exemptions from the general rule of granting state aid. The Commission may declare that the following categories of aid should be compatible with the common market and shall not be subject to the notification requirements of Article 113 (3) of the TFEU:

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[12] *TFEU, Article 107*

[13] *Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid*

[14] *Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal state aid*

- aid in favour of:
  - small and medium-sized enterprises
  - research and development
  - environmental protection
  - employment and training
- aid that complies with the map approved by the Commission for each member state for the grant of regional aid

It is not necessary to apply for the permission of the European Commission in order to grant state aid covered by the group exemption.

Taking into account the abovementioned, similarly to what exists in the EU legislation, exemptions from general regulation of state aid will be based on objectives of state aid and those will be defined by the competition legislation.

The Framework Law will define that the regulation of state aid should not apply to:

- *De minimis* state aid defined by the Framework Law
- Group exemptions defined by the Framework Law

The main principles of the state aid related issues and the special rules for granting procedures will be included in the Framework Law. According to the Framework Law, provider of state aid (e.g. state and local authorities, public entities, legal entities of private law in case of granting the aid from public sources, etc.) should in advance justify the objectives and necessity of state aid, its forms and beneficiaries and should submit notification including these information to the CA. The state aid provider should also submit the relevant market analysis and evaluation to the CA, to justify the insignificance of distortions, advantages and restrictions caused by the foreseen state aid. Based on this evaluation the CA should verify the authenticity and correctness of notified documents.

In case the CA has any reasonable doubt regarding the presented information or considers that the state aid can result in the restriction and/or significant distortions of free and fair competition, the CA would refer with an opinion to the Cabinet of Ministers (Government) which has the eventual decision-making power (whether to grant or not or change the state aid). All the relevant information on state aid is public.

If the granted state aid significantly distorts competition, interested parties will have the right to appeal to the court.

4.1.7. Terms of Relevant Market

EC legislation provides a definition of the terms of relevant market as follows:

- ***The relevant geographic market*** *- comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighboring areas because the conditions of competition are appreciably different in those area.*
- ***The relevant product market*** *- comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.* [15]

The definition of relevant geographical market can be local, national, international or even global, depending on the particular product under examination, the nature of alternatives in the supply of the product, and the presence or absence of specific factors (e.g. transport costs, tariffs or other regulatory barriers and measures) that prevent imports from counteracting the exercise of market power domestically.

According to the international practice, flexible definition of the relevant market is widely used, taking into consideration both geographical area and substitutable goods. The relevant market does not necessarily coincide with the state borders of the countries. Namely, relevant market should include all reasonably substitutable products and services and all nearby competitors, to which consumers could turn in short term.

The EU member states refer to the definition of the relevant market taking into account the goods that are subject to the agreement and the geographical area, meaning the territory outside which:

- a consumer is unable to purchase goods or is able to purchase them only under considerably less favourable conditions; or
- a seller of goods is unable to sell goods or is able to sell them only under considerably less favourable conditions.

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15 *COMMISSION NOTICE on the definition of relevant market for the purposes of Community competition law (97/C 372/03)*

In addition to goods, which are subject to the agreement, any goods that can reasonably be substituted for them, in view of their intended use, price and quality and the terms and conditions of the fulfilment are also taken into account.

Taking into consideration the abovementioned, the Framework Law will provide a definition of the relevant market that fully takes into account the following realities on the ground:

- Georgia is a relatively small market with open economy. Therefore, the law should not limit the relevant market definition only to the territory of Georgia. Georgia has FTAs with all bordering neighbors. Given the abovementioned, in particular cases bordering neighbors' markets or their parts should be deemed as neighboring areas, considering that the conditions of competition are not appreciably different.
- Flexible and for case by case definition of the relevant market of goods and services and consideration of all its possible substitutes or interchangeable goods should be taken into account. For particular cases, relevant market will be defined on the merits of this case.
- The share of unobserved economy should be considered, where appropriate, when defining the relevant market in order to identify the dominant position on the market. Excluding from analysis of the unobserved economy can result either in disincentive for unobserved business or can be punitive for recorded business. Unobserved economy includes informal production not captured by regular statistical observations, namely, production of households for own final use or economic activities directed at sale conducted by unincorporated enterprises in the household sector, that are unregistered and/or are less than a specified size in terms of employment, but their total market share can be significant to impact on the market[16]. Unobserved economy also covers the activities of those registered undertakings, which according to the Georgian legislation are exempted from certain taxes and thus the type of their activities is not captured by regular statistical observations. Therefore, unobserved economy is not illegal economic activity and does not coincide with grey economy, as it mostly concerns legal businesses (e.g. subsistence production). National Statistics Service of Georgia periodically conducts special surveys to measure the unobserved economy in the different sectors. CA will use results of special surveys on unobserved economy conducted by the National Statistics Service or order the special survey for this purpose. The Framework Law will include general principle of considering of unobserved economy in certain cases. Secondary legislation will provide a detailed explanation how and when the unobserved economy should be applied.

[16] *This concept is based on the definition provided by the OECD Handbook "Measuring the Non-observed Economy", excluding illegal activities.*

4.2. Institutional Reform of the CA

The institutional reform expresses the commitment of the GoG to undertake the fundamental reform in the competition area.

The aim of the reform is to ensure the independence and adequate powers of the Competition Agency, significantly strengthen the Agency's administrative capacities and improve its functioning in terms of transparency, efficiency and effectiveness.

4.2.1. Institutions

EU regulations provide sufficient room for institutional arrangement of the competition authority. Therefore, various models exist in EU member states. According to the common practice, the CA should have the power of competition enforcement in all sectors of the economy. In some cases, the power can be shared with other competent authorities e.g. sector regulators in non-liberalised sectors.

According to international practice, CA can be quasi-autonomous or independent body from the government. In case the CA is a quasi-autonomous body, it is a part of various state institutions, ministries, etc. with investigative powers. In case of Georgia, EC recommendation is to create sufficiently independent competition authority.

GoG decided to create the competition authority taking into consideration the EC recommendations of institutional framework in competition area. Accordingly:

- The CA will be sufficiently independent
- The CA will have the power of competition enforcement in all sectors of economy

In order to fulfill the EC recommendation on sufficient independence of the CA, GoG started to undertake the reform in 3 steps:

- Creation of independent competition authority
- Equip the CA with respective powers
- Ensure capacity building and institutional strengthening

The abovementioned steps of the reform in competition policy are reflected in the Operational Program (see Annex 1).

At the first step, respective legal amendments to Georgian Law *on Free Trade and Competition* for establishment of a competition authority were prepared in January-February, 2010. The essence of the amendments was to establish a new competition authority as an independent Legal Entity of Public Law, which would not any more be part of the Ministry of Economic Development. Amendments are adopted and Presidential Resolution on establishment of the new independent competition authority is issued (February 26, 2010).

As a result of the first step of the reform in competition area, the following conditions are met:

- The CA is not in subordination of any governmental institution any more
- The CA is legally founded (namely an independent Legal Entity of Public Law) in such a way as to ensure financial and decision-making autonomy

At the second step, Georgia will continue to undertake necessary legal and implementation measures in accordance with the Operational Program to ensure the independence of the CA, significantly strengthen the Agency's administrative capacities, improve its functioning in terms of transparency and efficiency and equip it with adequate powers comparable with those in the EU and the present draft Strategy. Necessary legal drafting has started.

As a result of the second step of the reform in competition area, the following conditions will be met:

- The CA will be independent in decision-making process. Neither executive government nor Parliament will be able to interfere in its activities and influence its competition enforcement power, including decision-making process. The CA's decisions can be overruled or changed only by the Court
- The CA will be empowered with effective investigative powers
- Sustainability of the CA management will be achieved through the fixed terms of appointment of management
- The only institution, which will be empowered to financially control the activities of the CA will be the Chamber of Control (the supreme auditing institution) as in cases of any other institution, according to the Georgian legislation
- Georgian Law *on Conflict of Interests and Corruption in the Public Sector* will apply to the employees of the CA

As for the second recommendation of the EC on CA's power of competition enforcement in all sectors of economy, the Framework Law will consider that the CA will be empowered with

competition enforcement in all sectors of economy including non-liberalised sectors e.g. energy, gas, water utilities, electronic communications. For this purpose, the CA will be a single authority responsible for competition enforcement in all sectors. The CA will incorporate the functions of the existing Sector Regulators in competition area.

Accordingly, amendments will be made to the respective sector laws to bring them in compliance with the Framework Law.

As a result of the proposed institutional setting:

- duplication and overlap of competition enforcement among various authorities will be avoided
- uniform competition policy enforcement in all sectors of economy will be ensured.

The objective of the CA will be to promote effective competition in private and public sector and effective public procurement for the benefit of the society and market players. Accordingly, the CA will be a state authority working in order to safeguard competition and supervise public procurement under the Georgian Law on Public Procurement.

The CA will be responsible for the following:

- Competition enforcement in all sectors of economy
- State aid regulation
- Monitoring of public procurement process

The competition enforcement power will be the exclusive power of the CA and no shared powers with Sector Regulators in non-liberalised sectors will be considered.

During the drafting of the Framework Law, the following fundamental legal principles of the CA will be ensured:

- Non-discrimination
- Equal treatment
- Transparency
- Proportionality
- Accountability

The Framework Law should define the structure of CA management. The activities of the CA will be carried out by the Board and the relevant chambers/departments. The Board will consist of the commissioners. Commissioners will be appointed for a fix term. The transparency and competitiveness principles of appointment will be designed by the Framework Law.

The decisions will be made at the Board meetings of the commissioners. Board meeting will be empowered to make a decision if the majority of commissioners attend it.

The administrative management of the CA will be carried out by the Executive Secretary. Executive secretary will not be a commissioner and will not participate in the voting and decision-making process. Executive secretary and his/her supporting staff will be responsible for the organization of Board meetings and day-by-day management of the institution.

4.2.2. Enforcement

According to the international practice, both integrated and separated systems for enforcing competition issues can be applied. In case of separated system, investigation and decision-making/execution power is divided between different authorities. In particular, the competition authority has the investigative power, while the actual decision-making and imposition of the sanctions are the prerogatives of the court[17].

In case of integrated system, the court can delegate the sanction imposing power to the competition authority[18].

The Strategy proposes that the CA will have the investigative power. As for the decision-making power, it will be the competence of the Court.

a. The Competences of the CA

The CA will have the right to conduct the following actions under the Georgian legislation:

- Investigate and study the case if a application or complaint is presented by a complainant or informant
- Require information on particular cases from the administrative bodies and interested parties and call for and receive testimony in case the compliant is presented
- Require documentary information from the parties involved
- Make investigations on-spot
- Appeal to the Court if the investigation reveals the competition law infringement
- In case of non-reporting by economic agent, impose administrative-procedural fines

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[17] *In Malta, imposition of a sanction is not in the competence of the National Competition Agency, as sanctions are determined by the Court of Magistrates following prosecution by the executive police.*

[18] *In Denmark, the competition authority issues orders, but cannot impose fines as this is a competence of the Ordinary Courts. In certain circumstances where precedents exist, the competition authority may end a case by issuing administrative fines.*

- Make notice to the GoG on impediments against effective competition in public and private sectors
- Recommend to the government to abolish legal, administrative and discriminative barriers to market entry
- Recommend to the government to remove technical barriers in trade in case they distort competition
- Refer cases of state aid infringement issues to the government
- Appeal to the government with the legal opinion if the granted state aid significantly distorts market competition
- Promote growth and welfare of the Georgian economy through effective procurement process
- Monitor and supervise the compliance of public procurement process with the Georgian Law on Public Procurement
- Ensure competitive procurement process
- Invite experts during the investigation of competition infringement
- Organize meetings with the interested parties
- Prepare conclusions and recommendations on the issues related to the complaint
- Protect the confidentiality of the information obtained from enterprises containing legitimate business secrets. The confidential information submitted to the CA or obtained by it can also be protected, in general, by the national legislation regarding secrecy.
- Protect the identity of persons who provide information to CA and who need confidentiality to protect themselves against economic retaliation

The Framework Law may further extend the competences of the CA, as deemed necessary for efficient and effective operations.

The CA will have the right of documentary investigation on public information without Court authorization. In case the CA considers that non-public information (including the investigation of financial records, sales records, production records, etc.) is to be requested, Court consent should be required.

The CA will have the right to issue cease and desist order in case the competition law infringement continues to harm other market players or there is an imminent risk of harm to other companies. For imposition of interim measures court consent should be required. In this case, the existing

general procedural system will apply, namely the CA asks for a court's authorization within a specific– short – deadline.

The statute of limitation will be applied for competition infringement cases and merger control and will be directly stipulated by the Framework Law.

The CA studies the complaint according to the pre-approved priorities. The list of priorities will be prepared by the CA. The procedures for approval of the priorities will be defined by the Framework Law. Priorities may be the subject of review.

The pre-approved priorities may be regarded as guidance for the handling of complaints. If the complaint on infringement is not reflected in the priorities list, this can become the ground for rejection of compliant. The CA must always be able to handle all possible serious violations of competition law.

If the case is rejected by the CA and this rejection is justified by its pre-approved priorities or other legal grounds, but later the infringement still occurs, there will be no liability of the CA on missed opportunity on the investigation of the competition infringement case.

The competition infringement may be identified by the existence of a "complainant" as well as an "informant". Complainant is a potentially affected person who is directly affected by competition law infringement. While informant is a person who is aware of, has a perception or evidences on competition law infringement.

Complainant as well as informant can file the application or complaint in the CA. Informant may address the CA, but he/she could not be regarded as a party. Accordingly, informant can not appeal to the Court.

Complainant can address the CA with a complaint. If the complaint is rejected by the CA based on reasonable explanations, complainant has the right to appeal directly to the Court.

The Competition Framework Law will define clearly a complainant and an informant. As for the general procedures of providing of the compliant or application and respective administrative hearings, they are defined by the General Administrative Code of Georgia. The secondary legislation will clearly specify other peculiarities regarding this issue, including information to be presented by a complainant or informant. Decision by relevant authorities should be based on these legally specified preconditions. This would limit speculative application of the legislation

driven by vested interests. The legislation would place the burden of proof on a complainant, while the informant can not be regarded as a party.

Protection of the confidentiality of the information obtained from enterprises containing legitimate business secrets will be ensured. The confidential information submitted to the CA or obtained by it will be protected, in general, by the national legislation regarding secrecy.

b. The Competences of the Court

Competences of the Court will be to:

- Study the complaint of affected person if rejected by the CA due to its priorities
- Make a final decision on competition infringement cases
- Make decision on investigations on spot by the CA upon the application of the CA
- Study the complaints of any interested party related to state aid, if granted state aid distorts the market competition through giving significant priority to a particular market participant
- Make decision on documentary investigation related to the confidential information of company upon the application of the CA
- Give the authorization to the CA on imposition of interim measures
- Impose sanctions and fines other than administrative

The Framework Law may further extend the competences of the Court in this regard.

Competition issues can become the subject of Court hearings in 2 ways:

- The CA will study the case and if appropriate, the CA will appeal to the Court for the final decision. Accordingly, in such cases the CA acts as a "state prosecutor" on the Court hearings.
- Complainant has the right to appeal directly to the Court, if the complaint is rejected by the CA based on reasonable explanations. The right to appeal will be guaranteed by the Framework Law.

The judiciary system of Georgian courts consists of three levels, namely:

- District and City Courts are the first instance courts, which makes the judgments on factual and legal circumstances.
- Appeal Courts, which considers claims on judgments made by the District and City Courts.
- Supreme Court (Cassation) represents the court of the highest and final instance for justice administration in the country. The Supreme Court of Georgia represents a court of cassation, which considers cassation claims on judgments made by the Courts of Appeal.

The following chambers are established within the courts of all three instances:

- Chamber of Criminal Cases
- Chamber of Civil, Entrepreneurial and Bankruptcy Cases
- Chamber of Administrative and Other Cases

The creation of the specialized courts is explicitly prohibited by *Constitution* of Georgia (Article 83, Paragraph 4). Therefore, the possibility to create the special competition court is out of the options.

The Strategy foresees that the Court of Tbilisi will deal with competition cases. Accordingly, the Court of Tbilisi will be responsible for judgment of competition infringement cases. The main reason of the decision to have one Court responsible for judgment of competition infringements is to safeguard the building up of relevant competence as well as a uniform application and case law in the field of competition law.

Court of Tbilisi will be the first instance Courts to deal with competition cases. As for the appellation and cassation, they will be carried out according to the existing general rule and no special rules will be applied.

The judges will be trained for the purposes of enhancing their knowledge and qualification in this field. This will give the possibility to judges to be specialized in competition issues.

In case of on-site investigation, the CA will address the court with reason to believe that an infringement of competition has been committed and in case of urgent situation.

In case if the competition law infringement continues to harm other market players, the CA will have the right to address to the Court to impose interim measures.

The types of sanctions and fines will be stipulated in the Framework Law. The Framework Law will be compliant with other respective legal acts. CA will be able to impose administrative-procedural fines, the imposition of all other sanctions will be the competence of the Court.

The fines and sanctions should be administrative and civil. No criminal liability can be applied. The current regulation of criminal liability will be abolished.

According to the EU and international practice, the amount of the fine should not in any case exceed [10%] of the total turnover in the preceding business year.

4.3. Institutional Capacity Building

To ensure strengthening of the administrative and institutional capacity of the institutions to be involved in DCFTA negotiations and sufficient knowledge of the EU and international competition related legislation and best practices, GoG took the following steps:

- With the support of GEPLAC, trainings for public officials involved in the preparation process for negotiation on the DCFTA were conducted. On 29th of July, 2009, a special training session was dedicated to competition policy, with the purpose to facilitate better understanding of the basic principles of relevant EU *acquis* in the competition area and share knowledge and competences. The seminar was devoted to the EU policy, regulatory and institutional framework on competition with particular emphases on anti-trust regulation. The Georgian competition legislation as well as relevant institutional setup was discussed. The seminar was conducted by Spanish legal expert Mr. Juan Ramon Iturriagagoitia. The expert made a Concordances Table, which includes the legal assessment of the former Law *on Monopoly and Competition* (1996) and the Law *on Free Trade and Competition* (2005) (see Annex 5) under the project on Elaboration of a Technical Background Paper on DCFTA with Georgia in the Field of Competition.

- Seminar on EU Best Practice of Competition Institutional Setup took place on 10th of December, 2009 with cooperation of GEPLAC. The seminar was conducted by Swedish expert Mr. Christian Blume, Senior Case Officer of Department for Communication and International Affairs of Swedish Competition Authority. The objective of the expert mission was to contribute to preparation for negotiations on DCFTA and development of reform agenda in the area of competition policy by providing a seminar on the institutional aspects of the competition policy to, among others, the task force created by GoG in the form of a special working group (WG).

- TAIEX workshops on competition policy and capacity building/negotiation skills have been requested by the GoG.

- Video Conference (VC) titled: "Facilitation of Dialogue to Share Experiences on EU acquis, and EU- DCFTA Negotiation Processes" was organized by the World Bank in February, 2010.

- VC titled: "Workshop on Addressing Competition Policy in the Framework of the EU-DCFTA Negotiation Processes" was organized by the World Bank in March, 2010.

- Chief Advisor to the Prime-Minister of Georgia attended the Global Forum on Competition organized by the OECD on February 18-19, 2010.
- The representatives of the Prime-Minister's Office and Ministry of Economic Development of Georgia participated in the Study Visit, which covered Competition Policy issues in Germany, organized by the GTZ on February 21-27, 2010.

A special targeted training programme will be developed for the capacity building of the competition authority to ensure proper implementation of the current strategy. In addition, a special training programme will be elaborated for judges.

On January 25, 2010 Donor Coordination Roundtable was organized. Along with the Prime-Minister's Office, the event was co-organized by the Office of the State Minister for European and Euro-Atlantic Integration.

The primary aim of the gathering was to identify possible partners and donors willing and able to contribute to the Georgia-EU DCFTA preparatory and negotiation process. The roundtable was to coordinate and create a synergy between the programs and the assistance providers on the one hand, and the recipients of the assistance, on the other. It was designed to match the needs and requirements of the Georgian government structures and sector institutions, with the relevant assistance potential (skills, capabilities, facility improvement, funds, etc) of the donors. GoG will continue communication with relevant partners as a follow up of Donor Roundtable.

As a follow-up of the abovementioned Donors' Roundtable, GoG has started a long-term, systemic structured assistance project with SIDA, Swedish Competition Agency and Estonian embassy. A number of meetings have been held in the framework of this cooperation and further steps have been already planned in this regard.

In order to assist the institutional and administrative strengthening of the state institutions involved in competition policy, GoG has requested TAIEX workshop on competition policy. The workshop is planned to take place on November 9, 2010 in Tbilisi. All relevant state institutions will participate in the abovementioned workshop.

Capacity building and institutional strengthening of the Agency for Free Trade and Competition, as well as all relevant institutions will be held on a permanent basis.

Conclusion

By the Comprehensive Strategy in Competition Policy and Operational Program GoG manifests its genuine political commitment to establish a modern competition policy and its intention to bring the legislation in compliance with international best practice in this area.

Inter-Agency Task Force for Coordination of Preparatory Works for the Deep and Comprehensive Free Trade Agreement with the EU has drafted the Strategy and Operational Program in coordination with relevant ministries, agencies and interested parties.

The Strategy outlines that the existing Law on *Free Trade and Competition* was adopted for a transitory period and is dealing specifically with state aid issues. In parallel, in the non-liberalized sectors special sectoral competition regulations exist and are applied.

In order to bring the competition legislation in line with international standards, competition Framework Law will be elaborated, which will cover all sectors of economy, including non-liberalized sectors. Accordingly, the respective amendments will be made in the sector laws to bring them in compliance with the Framework Law.

The Framework Law will include the following definitions, regulations and implementation provisions: abuse of dominant position, concentration regulations, restrictive agreements, concerted practices and decisions by undertakings, state aid, terms of relevant market and principles of block exemptions, institutional provisions aimed at creation of independent competition authority with sufficient powers in the area of competition.

The Strategy specifies how and in which manner GoG intends to meet this goal. There are special sections dedicated to each of the abovementioned major issues of competition policy.

These sections of the Strategy include the relevant terms as defined in the *acquis communautaire* in order to bring Georgia's legislation in compliance with the international and EU common practice. The respective proposals aim to introduce modern competition legislation in Georgia in the areas of abuse of dominant position, concentration regulations, restrictive agreements, concerted practices and decisions by undertakings, state aid, terms of relevant market and principles of block exemptions.

The Strategy outlines foreseen institutional reform in the area of competition. This reform aims at creation of the independent competition authority responsible for the competition enforcement in all sectors, including non-liberalized sectors. In this regard, GoG already started to undertake necessary measures. As a first step, the independent Competition Agency was established by the

Presidential Resolution (February 26, 2010). The further steps are aimed at the equipment of the agency with sufficient powers and capacities, as defined by the Operational Program. In addition, the Strategy reflects the enforcement issues related to both investigative and decision-making powers.

The Strategy provides views on further capacity building of the Competition Agency.

Finally, the Strategy includes the Operational Program.

Annex 1.

Operational Program for Competition Policy				
Preparation Process of Comprhensive Strategy on Competition Policy				
Objective	**Activities**	**Responsible Body**	**Funding**	**Timeline**
Ensure effective coordination of a preparation process for reforms in Competition Policy	Creation of Inter-Agency Task Force (hereafter Task Force) for Coordination of Preparatory Works for the Deep and Comprehensive Free Trade Agreement with the EU	EU Integration Commission	State budget	April 14, 2009
	Inter-Agency Task Force Meetings	EU Integration Commission	State budget	April, 2009 – March, 2010
Enhancement of knowledge in competition area	Analysis of EU legislation in competition	Inter-Agency Task Force	State budget	From April, 2009 to March, 2010
Elaboration of Competition Policy	Drafting the Comprehensive Strategy in Competition Policy	Inter-Agency Task Force Office of the Prime Minister	State budget	From May, 2009 to July, 2010
Drafting and Finalisation of Comprehensive Strategy in Competition Policy				
Objective	**Activities**	**Participiants**	**Funding**	**Timeline**
Elaboration of initial draft Strategy	Elaboration initial draft strategy based on EC recommendations regarding Georgia's preparedness for the DCFTA negotiations	Inter-Agency Task Force Office of the Prime Minister	State budget	May-September, 2009
	Submitting of concept and basic principles of the Comprehensive Strategy in Competition Policy to the EU Integration Commission	Inter-Agency Task Force Office of the Prime Minister	State budget	July 28, 2009
	Sending initial draft Strategy for comments to the relevant agencies and authorities	Inter-Agency Task Force Office of the Prime Minister	State budget	In the beginning of September, 2009

	Approval of initial draft Strategy by the EU Integration Commission	Inter-Agency Task Force Office of the Prime Minister	State budget	September 8, 2009
	Submitting initial draft Strategy to DG TRADE	Office of the Prime Minister	State budget	September 10, 2009
	Receiving Commission Services' comments on Strategy to Georgian authorities	Commission Services	State budget	November 5, 2009
	Expert meeting between Commission services and Georgian authorities on Competition issues in Brussels	Office of the Prime Minister, Ministry of Economic development, DG TRADE, DG RELEX, DG COMPETITION	State budget	November 25, 2009
To Bring Strategy in conformity with EC requirements	Revision of draft Strategy by EU Technical Assistance	GEPLAC Expert Inter-Agency Task Force	GEPLAC	February – March, 2010
To Present Revised Draft Strategy to COM services	Submitting revised draft strategy to the EU Integration Commission	Inter-Agency Task Force Office of the Prime Minister	State budget	March, 2010
	Providing with revised draft Strategy to Commission Services	GoG	State Budget	March 13, 2010
Finalization of the draft Strategy and Operational Program	Receiving Commission Services' comments on revised draft Strategy to Georgian authorities	Commission Services	State budget	April 30, 2010
	Expert meeting between Commission services and Georgian authorities on Competition issues in Brussels	Agency for Free Trade and Competition, the Office of the Prime Minister, Ministry of Economic development, DG TRADE, DG RELEX, DG COMPETITION	State budget	June 25, 2010

	Providing with revised draft Strategy to Commission Services	GoG	State Budget	July 7, 2010
	Receiving Commission Services' comments on revised draft Strategy to Georgian authorities	Commission Services	State budget	September 8, 2010
	Reflecting COM services' comments into the final draft Strategy and providing it to COM services	GoG	State budget	October 8, 2010
Capacity Building				
Objective	**Activities**	**Participants**	**Funding**	**Timeline**
To ensure strengthening of knowledge of public officials in competition area	EU Competition Policy	Agency for Free Trade and Competition, Ministry of Economic Development, Ministry of Energy, Ministry of Finance, State Minister Office on European and Euro-Atlantic Integration, Office of the Prime Minister	GEPLAC	May, 2009
	Seminar on EU Best Practice of Competition Institutional Setup	Agency for Free Trade and Competition, Ministry of Economic Development, Ministry of Energy, State Minister Office on European and Euro-Atlantic Integration, Office of the Prime Minister	GEPLAC	December, 2009
	Global Forum of Competition	Office of the Prime Minister	OECD	February, 2010
	Video Conference (VC) titled: "Facilitation of Dialogue to Share Experiences on EU *acquis,* and EU- DCFTA Negotiation Processes"	Ministry of Economic Development, Office of the Prime Minister	World Bank	February, 2010

	Study visit on Competition Policy in Germany	Ministry of Economic Development, Office of the Prime Minister	GTZ	February, 2010
	Workshop on Addressing Competition Policy in the Framework of the EU-DCFTA Negotiation Processes	Ministry of Economic Development, Office of the Prime Minister	World Bank	March, 2010
	Meeting between Georgian Authorities, SIDA and Estonian embassy	Agency for Free Trade and Competition, Office of the Prime Minister, SIDA, Estonian embassy	SIDA Estonian Embassy	June 3, 2010
	Meeting between Georgian Authorities, SIDA and Swedish Competition Agency	Agency for Free Trade and Competition, Office of the Prime Minister, Swedish Competition Agency, SIDA	Agency for Free Trade and Competition, SIDA	June 10, 2010
	Study-visit to Swedish Competition Agency	Agency for Free Trade and Competition, Office of the Prime Minister, Ministry of Economic Development	SIDA	September 27-29, 2010
	Workshop on competition policy	Agency for Free Trade and Competition, Ministry of Economic Development, State Minister Office on European and Euro-Atlantic Integration, Office of the Prime Minister,	TAIEX	November 9, 2010
	Workshop on capacity building/negotiation skills	Agency for Free Trade and Competition, Ministry of Economic Development, State Minister Office on European and Euro-Atlantic Integration, Office of the Prime Minister	TAIEX	TBD
	Elaboration of a special targeted	Agency for Free Trade and	Agency for Free	2010

	training program for relevant authorities	Competition, Office of the Prime Minister, Ministry of Economic Development	Trade and Competition, SIDA, Estonian embassy	
	Elaboration of a special targeted training program for judges	Agency for Free Trade and Competition Office of the Prime Minister	TBD	2011
	Continue communication with relevant partners as a follow up of Donor Roundtable	Office of the Prime Minister, State Minister Office on European and Euro-Atlantic Integration	TBD	Ongoing
Involvement of Stakeholders				
Objective	**Activities**	**Participants**	**Funding**	**Timeline**
To enhance involvement of Parliament	Consultations with parliament on future DCFTA related issues including Competition	Office of the Prime Minister, Ministry of Economic Development, EU Integration Committee of Parliament	State Budget	Regularly
	Meeting with the Parliament minority factions to carry out consultations on institutional reform in competition area	Office of the Prime Minister, Ministry of Economic Development, Parliament minority	State Budget	February, 2010
Improvement of involvement of International Organizations	Donor Roundtable Coordination for identification of TA in competition	Office of the Prime Minister, State Minister Office on European and Euro-Atlantic Integration, representatives of various International Organizations and embassies	State Budget	January 25, 2010
Enhancement of awareness of Private Sector	Meetings with private sector representatives	Agency for Free Trade and competition, Office of the Prime Minister, Ministry of Economic Development, Georgian Businessmen	Georgian Business Association, Georgian Employers Association, GoG	Regularly

			Association		
Institutional and Legislative Reform					
Action			**Responsible Body**	**Legal Act/document**	**Timeline**
Creation of the Competition Agency	1.1.	Creation of a new institutionally independent Legal Entity of Public Law (LEPL) – Free Trade and Competition Agency	Government of Georgia	Resolution of the President	February 26, 2010
	1.2.	Amendments to the Law on Free Trade and Competition		Parliament Procedures	March 12, 2010
	1.3.	Institutional Replacement of the Agency for Free Trade and Competition under the Ministry of Economic Development by the Independent Competition Agency		Government Decree	May 3, 2010
Comprehensive Legislative Framework	2.1	Develop concept and structure of the Framework Law	Agency for Free Trade and Competition Office of the Prime Minister of Georgia Ministry of Economic Development	Concept and structure of the Framework Law	April, 2010
	2.2.	Drafting of the Competition Framework Law		Draft Law	March-November, 2010
	2.3.	Drafting of amendments to the respective laws, including public procurement, for reflecting institutional reform in the legislation		Draft Law	
	2.4.	Alignment of sector regulator laws with the Framework Law		Draft Law	April-November, 2010

Intra-governmental Procedures	3.1.	Intra-governmental procedures for approval of the draft Framework Law and legislative amendments to the respective laws	Government of Georgia	Draft Law	December, 2010 – January, 2011
Cooperation with stakeholders	4.1.	Presentations and discussions of the draft Framework Law with the stakeholders	Agency for Free Trade and Competition, Office of the Prime Minister	Draft Law	October, 2010 – January, 2011
Hearings in the Parliament	5.1.	Hearings of the legislative package in the Parliament of Georgia	Government of Georgia	Draft Law	Starting from February, 2011 (indicative)
	5.2.	Subsequent hearings of the legislative package in the Parliament of Georgia			Starting from March, 2011 (indicative)
Strengthened Competences of Competition Agency	6.1.	Elaboration and adoption of the Statute of the strengthened Free Trade and Competition Agency	Government of Georgia Agency for Free Trade and Competition	Decree of the Government of Georgia	After the legislative package is enacted
	6.2.	Appointment of Management of the Free Trade and Competition Agency	Government of Georgia	In accordance with the Framework Law	After the legislative package is enacted

	6.3.	Equip new established independent competition agency with sufficient power and start activity	Government of Georgia	In accordance with the Framework Law	After the legislative package is enacted
	6.4.	Continue capacity building and institutional strengthening exercise	Agency for Free Trade and Competition Office of the Prime Minister	TBD	After the legislative package is enacted

Annex 2.

PARTNERSHIP AND COOPERATION AGREEMENT (PCA)

(22 April 1996)

Legislative Cooperation

Article 43

1. The parties recognize that an important condition for strengthening the economic links between Georgia and Community is the approximation of Georgia's existing and future legislation to that of the Community. Georgia shall endeavor to ensure that its legislation will be gradually made compatible with that the Community.

2. The approximation of laws shall extend to the following areas in particular:

- laws and regulations governing investments by companies,
- customs law,
- company law,
- banking law,
- company accounts and taxes,
- intellectual property,
- protection of workers at the workplace,
- financial services,
- rules on competition,
- public procurement,
- protection of health and life of humans, animals and plants,
- the environment,
- consumer protection,
- indirect taxation,
- technical rules and standards,
- nuclear laws and regulations
- transport

3. The Community shall provide Georgia with technical assistance for the implementation of these measures, which may include *inter alia*:

- the exchange of experts,
- the provision of early information especially on relevant legislation,
- organization of seminars,
- training activities,
- aid for translation of Community legislation in the relevant sectors.

Article 44

1. Further to Article 43, the Community shall provide with technical assistance regarding the formulation and implementation of legislation in the field of **competition**, in particular as concerns:

   - agreements and associations between undertakings and concerted practices which may have the effect of preventing, restricting or distorting competition,
   - abuse by dominant undertakings of a dominant position in the market,
   - state aids which have the effect of distorting competition,
   - state monopolies of a commercial characters,
   - public undertakings and undertakings with special or exclusive rights,
   - review and supervision of the application of competition laws and means of ensuring compliance with them.

2. The Parties agree to examine ways to apply their respective competition laws on a concerted basis in such cases where trade between them is affected.

Article 50 – Public Procurement

The Parties shall cooperate to develop conditions for open and competitive award of contracts for goods and services in particular through calls for tenders.

Annex 3.

European Neighborhood Policy

European Unions – Georgia Action Plan

Competition Policy

Anti-trust and control on state aids policy

– Ensure enforcement of the competition law, in particular by optimization of the administrative capacity enhancing the independence of the Free Trade and Competition Agency.

Converge with EU principles on Competition according to Title V article 43 and 44 of the Partnership and Co-operation Agreement

– Examine the possibility of establishing further transparency as regards State aid granted in Georgia, in particular by:
  - elaborating general rules of state aid and
  - drawing up annual reports on the amounts, types and recipients of aid.

Public Procurement

– Converge with and effectively implement key principles in the EU legislation on public procurement (e.g. transparency, non-discrimination, **competition** and access to legal recourse).

– Develop conditions for open and competitive award of contracts between the parties, in particular through calls for tenders, in line with Article 50 of the PCA.

– Improve the functioning of the current system through increased transparency, information provision, access to legal recourse, awareness and training among contracting authorities and business community, as well as the limited use of exceptions.

Annex 4.

The role of the Court in competition issues and chronology of relations between Antimonopoly Agency and Sector Regulators

This note was prepared by the GoG as a follow-up of the Expert meeting between Commission services and Georgian authorities on Competition issues, held in Brussels on November 25th, 2009.

For further clarification, sides agreed, that Georgia will provide brief description of:

- *The role of the Court in decision-making and enforcement process regarding competition issues*
- *The chronology of relations between Antimonopoly Agency and Sector Regulators in the non-liberalized sectors*

1. Proposed System of Court Participation in Decision-making and Enforcement Process Regarding Competition Issues

At the expert meeting in Brussels on 25 November 2009, parties agreed that investigative and decision-making power could as a principle be separated, as not contradicting EU acquis.

The following main issues are reflected in the second part of the present note:

- Proposed Court system dealing with competition issues
- Role of the Court in decision-making and enforcement process regarding competition issues

1.1. Foreseen Court System Dealing with Competition Issues

Georgia plans to apply the system, where only Court of Tbilisi and Court of Kutaisi[19] will be the first instance Courts to deal with competition cases. This will be ensured by the Georgian legislation. As for the appellation and cassation, they will be carried out according to the existing general rule and no special rules will be applied.

Special chambers will be established within the Court of Tbilisi and Court of Kutaisi. These chambers will deal with competition cases. The judges in these chambers will be trained for the purposes of enhancing their knowledge and qualification in this field. This will give the possibility to judges to be specialized in competition issues[20].

1.2. Role of the Court in Decision-making and Enforcement Process Regarding Competition Issues

The foreseen system, as further reflected in the draft Strategy will consider that final decision regarding competition cases will be the competence of the Court.

As for the imposition of fines, CA will impose administrative-procedural fines (e.g. for non-reporting, non-cooperation, etc.), the imposition of all other sanctions will be the competence of the court.

Competition issues can become the subject of Court hearings in 2 ways:

[19] *Georgia does not have specialized court system.*

[20] *Similar system of Court is applied in insolvency cases. Insolvency cases of legal entities are subject of Courts of general jurisdiction. Carrying out insolvency procedures requires the special knowledge from judges. Currently, cases regarding insolvency of legal entities are heard only by the Court of Tbilisi and Court of Kutaisi, where the judges are qualified in this field.*

- The CA will study the case and if appropriate, the CA will appeal to the Court for the final decision. Accordingly, in such cases the CA is a complainant and acts as a "state prosecutor" on the Court hearings.

- Complainant has the right to appeal directly to the Court, if the complaint is rejected by the CA based on reasonable explanations. The right to appeal will be guaranteed by the Framework Law.

2. The Chronology of Relations between Antimonopoly Agency and Sector Regulators in the Non-liberalized Sectors[21]

The following main issues are reflected in this part of the present note regarding relations between Antimonopoly Service and Sector Regulators in non-liberalized sectors (hereafter the Sector Regulators):

- Functions of former Antimonopoly Agency
- Types of the Sector Regulators
- Chronology of establishment of the Sector Regulators
- Legal division of competences between Antimonopoly Agency and the Sector Regulators
- Complete independence of the Sector Regulators in enforcing anti-trust legislation in non-liberalized sectors

2.1. Establishment of the Antimonopoly Agency

The Law on Monopolistic Activities and Competition was adopted in 1996. According to the Law, the responsible authority for implementation of anti-trust policy, creation and protection of the conditions for competition development, regulation of advertising activity, etc. was Antimonopoly Agency (hereafter "Agency").

The Agency was empowered to carry out *only* documentary investigation. The Agency did not have the power of on site documentary investigations and dawn-raids. In case of reasonable doubt, the Agency could have requested the documents from the company for investigation of the case. In case the company did not present the requested documents, the Agency could have imposed administrative fines.

2.2. Sector Regulators in Non-Liberalized Sectors

At present, competition issues in the non-liberalized sectors (e.g. electronic communications, electricity, gas and water utilities) is regulated by sector laws, which are enforced by the relevant authorities/regulators.

The following Sector Regulators in absence of liberalization are responsible not only for economic and technical regulations of sectors, but also for enforcing concerted practices and abuse of dominant position:

- Georgian National Communications Commission (hereafter GNCC), which is the sector regulator in electronic communications and post services sector – established in 2000.

[21] *Sectors, where tariffs are defined by the Sector Regulators as well as the other market conditions still have to be regulated in the absence of liberalization.*

- Georgian National Energy and Water Supply Regulatory Commission[22] (hereafter GNEWSRC), which is the sector regulator in energy, natural gas and water supply – established in 1997.
- National Bank of Georgia[23] (hereafter NBG), which is the sector regulator for commercial banks, insurance and security markets – established in 1991.

2.3. Transitional Relations between Antimonopoly Agency and Sector Regulators

According to the former Law on Monopolistic Activities and Competition, during 1996-2002, GNCC and GNEWSRC had to cooperate with the Agency *only* on mergers and acquisitions related issues.

2.4. Complete Independence Sector Regulators in Non-liberalized Sectors

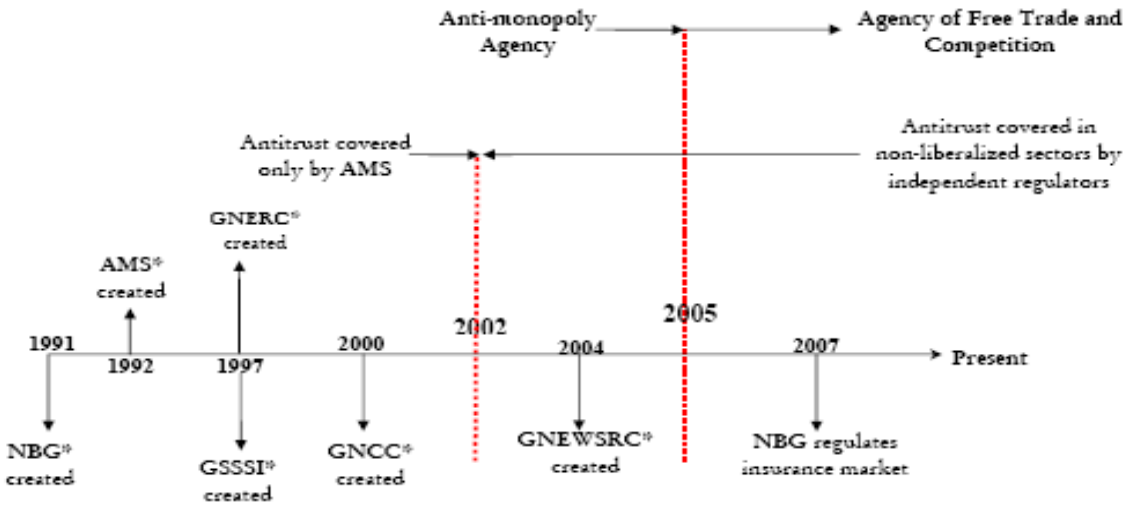
In 2002, after full-flagged institutional development of the Sector Regulators, the amendments were made to the *Law on Monopolistic Activity and Competition*, according to which all the Sector Regulators were empowered to fully enforce regulation and control prescribed by the Law in non-liberalized sectors. Hence, the Sector Regulators became completely independent in all their activities including anti-trust and currently, they are empowered to make final decisions on all competition related issues including mergers and acquisitions in the non-liberalized sectors. Accordingly, the Sector Regulators were completely independent in enforcement of anti-trust legislation and they were not accountable before any state body even before the reform of 2005. Neither Executive Government, nor Parliament can interfere with the activities of the Sector Regulators and can influence their decisions.

The following table aims to demonstrate the chronology of legal division of competences between Antimonopoly Agency and Sector Regulators.

[22] *During 1997-2004, the Georgian National Energy Regulator Committee (GNERC) was responsible in the sphere of energy and natural gas. In 2004, the reform took place according to which Georgian National Energy Regulator Committee transformed as Georgian National Energy and Water Supply Regulator Committee (GNEWSRC). Accordingly, GNEWSRC became the independent Sector Regulator in the sphere of energy, natural gas and water supply.*

[23] *During 1997-2007, there was the Georgian Service of State Supervision on Insurance, which was the sector regulator in insurance sphere. In 2007, the Service of State Supervision on Insurance of Georgia was abolished and the Financial Supervisory Agency (hereafter FSA) became the sole regulator in this sector. FSA is under the umbrella of NBG. In 1997-2002 the Georgian Service of State Supervision on Insurance was obliged to agree mergers and acquisitions related issues with Antimonopoly Agency. After the reform in 2007, all competition related issues in this sector are under the responsibility of the NBG.*

Sector Regulators for Commercial Banks, Insurance and Security Markets				Conclusion
Area	**Terms**	**Sector Regulator**	**Relations with Antimonopoly Agency in Anti-trust Policy**	
Insurance	1997 - 2002	Georgian Service of State Supervision on Insurance	Georgian Service of State Supervision on Insurance was obliged to agree all issues related to mergers and acquisitions with Antimonopoly Agency.	Currently, NBG is the independent regulator for commercial banks, insurance and security markets including anti-trust issues.
Insurance	2002-2007	Georgian Service of State Supervision on Insurance	Georgian Service of State Supervision on Insurance became independent in enforcement of anti-trust legislation.	
Commercial banks, security markets	1991 - present	NBG	NBG was independent in its anti-trust activities.	
Insurance	2007 - present	NBG	NBG is independent in its anti-trust activities.	
Insurance, commercial banks, security markets	2007 - present	NBG	NBG is independent in its anti-trust activities.	
Sector Regulators for communications and post services				**Conclusion**
Area	**Terms**	**Sector Regulator**	**Relations with Antimonopoly Agency in Anti-trust Policy**	Currently, GNCC is the independent regulator for communications and post services, including anti-trust issues.
Communications and post services	2000 – 2002	GNCC	GNCC had to cooperate with the Service only on mergers and acquisitions related issues.	
Communications and post services	2002 - present	GNCC	GNCC enforces anti-trust legislation independently.	
Sector Regulators for Energy, Natural Gas and Water supply				**Conclusion**
Area	**Terms**	**Sector Regulator**	**Relations with Antimonopoly Service in Anti-trust Policy**	Currently, GNERC is the independent regulator for communications and post services, including anti-trust.
Energy and natural gas	1997-2002	GNERC	GNERC had to cooperate with the Service only on mergers and acquisitions related issues.	
Energy and natural gas	2002 - 2004	GNERC	GNERC enforces anti-trust legislation independently.	
Energy, natural gas, water supply	2004 - present	GNEWSRC	GNERC enforces anti-trust legislation independently.	



* NBG – National Bank of Georgia
* AMS - Anti-monopoly Service
* GNERC – Georgian National Energy Regulator Committee
* GSSSI – Georgian Service of State Supervision on Insurance
* GNCC – Georgian National Communications Commission
* GNEWSRC - Georgian National Energy and Water Supply Regulator Committee (In 2004, GNERC covered water supply)

Annex 5.

Concordance Table from the Report

made by Legal Expert Mr. Juan Ramon Iturriagagoitia

Chapter I
International best-practices in the field of competition law

The premise for this chapter concerns the non-existence of a Competition Code in Community Law. In fact, the Common Market (now the EU) legislators have avoided to create a Competition Code; they have rather adopted numerous Regulations (and rarely Directives) dealing with different aspects of Competition Policy. To make it even more complicated, the European Union institutions have furthermore used "soft laws" in the form of Guidelines, Notices and other similar documents.

While at the end the Georgian rules on competition need to be EU-conform for the success of an effective Free Trade Area between these two entities, the present debate within Georgia should profit from simplified best practices having a supra-national origin. Thereby we intend to avoid any suspicion on an alleged legal imperialism that consulted individuals may support.

For this reason, we undertake in the next pages a brief comparison between the UNCTAD Model Law on Competition (2004) with the two successive laws dealing with competition in Georgia[24].

We have chosen to integrate in this Memo a Concordances Table with a view to facilitating the reference to specific rules and comments. This exercise should be viewed however as a preliminary assessment to Georgia's regulatory needs; comments resulting from each article in the UNCTAD Model Law have been avoided.

For Georgian negotiators it is sufficient to visualize the blank boxes (notably in the third column) of the Concordances Table. Georgian law does not regulate at all these issues.

These blank boxes constitute a possible thread for developing a coherent legislative roadmap (or strategy) in order to upgrade Georgian competition law to EU standards. It is worth recalling here however that a very thorough analysis should precede the formulation of this roadmap (or strategy).

[24] *The UNCTAD Handbook on Competition Legislation can certainly be useful in the next stage. See http://www.unctad.org/en/docs/tdrbpconf6d2_en.pdf.*

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
CHAPTER I **Objectives or purposes of the Law**			
To control or eliminate restrictive agreements or arrangements among enterprises, or mergers and acquisitions or abuse of dominant positions of market, power, which limit access to markets or otherwise unduly restrain competition, adversely affecting domestic or international trade or economic development.	Art. 1. 1. The aim of this Law is to create the organizational and legal base for promotion of entrepreneurship and arrangement of competitive surrounding in Georgia as well as protection of consumer's rights. 1. Art. 4. 1. The present Law applies to the relations influencing upon competition in the merchandise (production, work, service) market and where the legal and physical (including foreign) persons, governmental bodies of Georgia: ministries, other state departments and institutions, executive and local administration bodies of territorial units of any level take part. 2. The Law applies also to those events where any action or agreement executed by the said persons outside Georgia restrict (or may restrict) the competition or affect adversely on the merchandise market of the country.	Art. 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.	
	Art. 2 The antimonopoly law of Georgia comprises the Constitution of Georgia, the present Law and other appropriate legislative acts. Art. 7. If the international agreement in the sphere of antimonopoly activity where Georgia is the party establishes the rules other than in this Law, then the rules stipulated by the	Art. 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.	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	international agreement obtain the priority.		
CHAPTER II **Definitions and scope of application**			
I. Definitions (a) "*Enterprises*" means firms, partnerships, corporations, companies, associations and other juridical persons, irrespective of whether created or controlled by private persons or by the State, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them.	"*Economic Agent* (*subject - entrepreneur*)" - any legal and physical person engaged in entrepreneurship without respect of organizational and legal type of company, kind of ownership and nature of activity. Art. 24. The decision of the State Antimonopoly Service made within the terms of its reference is binding upon both the economic agent and the appropriate state body.	Art. 2. *Economic agent* – a legal entity or natural person, which, notwithstanding its residence, organization, ownership and legal form runs enterprise. The term also refers to non-profit unions, foundations as well as other associations being market players or acting in line with interests of entrepreneurs, charity organizations and professional associations;	
(b) "Dominant position of market power" refers to a situation where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control the relevant market for a particular good or service or group of goods or services.			
(c) "Mergers and acquisitions" refers to situations where there is a legal operation between two or more enterprises whereby firms legally unify ownership of assets formerly subject to separate control. Those situations include takeovers, concentrative joint ventures and other acquisitions of control such as interlocking directorates.			
(d) "Relevant market" refers to the general conditions under which sellers and buyers exchange goods, and implies the definition of the boundaries that identify groups of sellers and of buyers of goods within which			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
competition is likely to be restrained. It requires the delineation of the product and geographical lines within which specific groups of goods, buyers and sellers interact to establish price and output. It should include all reasonably substitutable products or services, and all nearby competitors, to which consumers could turn in the short term if the restraint or abuse increased prices by a not insignificant amount.			
	"*Substitutional Goods*" - group of products which are so similar in their functional purpose, use, quality, technical characteristics or any other parameters, that the buyer substitutes or is ready to substitute one product to another within the process of consumption (including production).	Art. 2. *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;	The 2005 Law defines the term "replacement goods", but does not regulate at all issues related thereto.
	"*Competition*" - the process of rivalry of economic agents where the independent actions of any of them restrict the ability of the rival to gain in advantage at the market and promote the production of consumer-needed goods. The competition will arise in the event when some economic agents simultaneously enter the market, the delivery of substitutional goods takes place and decision on consumption will be made due to price, quality, wrapping, service and other economic parameters.	Art. 2. *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;	
	"*Monopoly Position*" - the unique position of an economic agent, public agency when he (it) is enabled to make significant influence	Art. 2. *Monopolistic position* – market position when the only trader of goods exists and no replacement goods are available;	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	upon market and to restrict competition.		
	"*Monopoly Activity*" - the activity where an economic agent is enabled to influence upon market price of the substitutional competitive (compatible) goods in the merchandise market and to restrict competition.		
	"*Natural Monopoly*" - the position of merchandise market where satisfaction of the demand at this market proceeding from the technological features of production (related to essential decrease in operating costs for a unit of production according to the expansion of operations) will be more efficient in the terms of non-existence of competition, and where the goods produced by the subjects of natural monopoly cannot be substituted to any other goods, resulting that the demand for natural monopoly goods, as compared with the demand for goods of other kind, is less depended on alteration in the price of those goods.		
		Art. 2. *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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
		by giving priority to certain economic agent or certain goods production;	
		Art. 2. *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;	
		Art. 2. *Noncompetitive environment* – commodity markets where competition may be available but is restrained or/and restricted by governmental or local governmental authorities;	
		Art. 2. *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;	
		Art. 2. *Infrastructural sphere* – sphere where unfreely circulated goods are being manufactured, supplied and served;	
		Art. 2. *Special property* – one or more facility for transportation of unfreely circulated goods;	
		Art. 2. *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;	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
		Art. 2. *Unfreely circulated goods* – goods which are manufactured, imported, supplied and used under the special limited (specific) conditions;	
		Art. 2. *Tariff regulation* – price (tariff) defined by an administrative authority for production and services in restricted competition environment;	The 2005 Law defines the term "tariff regulation", but does not regulate at all issues related thereto. It is possible however, that the definition relates to the agencies that are to be liquidated, as stipulated in art. 15.
		Art. 2. *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.);	
		Art. 2. *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.	
II. Scope of application (a) Applies to all enterprises as defined above, in regard to all their commercial agreements, actions or transactions regarding goods, services or intellectual property.	Art. 1. 2. The present Law determines the responsibility of an economic agent (subject - entrepreneur) for misuse of monopoly activity, unfair competition and other actions which provoke or may provoke the restriction or elimination of competition in the market. Art. 1. 3. The economic subject shall be banned the monopoly activity. Art. 5. 1. The Law shall not apply to the terms related to the copyright	Art. 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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	and patent law, trade marks and industrial designs.	way. Art. 5. This Law does not apply to any relationship associated with copyrights and allied rights, trademarks and industrial models.	
(b) Applies to all natural persons who, acting in a private capacity as owner, manager or employee of an enterprise, authorize, engage in or aid the commission of restrictive practices prohibited by the law.			
(c) Does not apply to the sovereign acts of the State itself, or to those of local governments, or to acts of enterprises or natural persons which are compelled or supervised by the State or by local governments or branches of government acting within their delegated power.	Art. 1. 4. The state list of natural monopolies shall be approved by the President of Georgia. Art. 5. 2. Proceeding from interests of the country the Parliament of Georgia has the right to limit in full or partially the effect of this Law to separate kinds of monopoly activity. Art. 6. The terms related to monopoly position and unfair competition in the securities and financial service market shall be regulated by the appropriate legislative acts except those events where those terms affect on the existing competition in the merchandise market of the country. Art. 10. The following shall be prohibited to the state administration bodies: a. joining, merger, creation of unions, associations, concerns, consortia, management agencies, intersectoral and regional associations if this leads to slackening or restriction of competition; b. establishment of such tax exemptions or other privileges for the economic agent that	Art. 7. Each and every entity of governmental or local authority shall be prohibited to: a) … ; 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) … ; 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.	The term "sovereign acts" is not related to the so-called "natural monopolies". Similarly, the powers of public entities with respect to intervening in the markets is not necessarily a matter to be regulated in the Competition Law.

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	grant him advantage as compared with his rivals (potential rivals) and leads to the restriction of competition; c. banning, suspension or otherwise prevention of economic activity and independence of the economic agent in cases other than those provided by the legislation of Georgia; d. creation of state structures or granting of existing structures with such powers that lead to restriction of competition for purpose of monopolization of production or realization of goods; e. passing decisions that may lead to granting the economic agent with monopoly position and essentially restricts the competition and free pricing in cases other than those provided by the legislation of Georgia.		
CHAPTER III **Restrictive agreements or arrangements**			
I. Prohibition of the following agreements between rival or potentially rival firms, regardless of whether such agreements are written or oral, formal or informal: (a) Agreements fixing prices or other terns of sale, including in international trade; (b) Collusive tendering; (c) Market or customer allocation; (d) Restraint on production or sale, including by quota; (e) Concerted refusals to purchase; (j) Concerted refusal to supply; (g) Collective denial of access to an arrangement, or	Art. 8. The economic agent shall be banned the execution of any agreement or making of any decision which lead to the restriction of competition, namely: a. restricts one of the parties in choice of a market, supply resources, provider and consumer; b. a party to agreement commits one of the partner to deliver or to purchase instead of or in addition to the goods to the agreement, such goods that neither in object nor by trading procedures is related to the goods determined in the agreement; c. essentially restricts the competition in the		

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
association, which is crucial to competition.	substitutional goods market. Art. 9. 1. The unfair competition shall be prohibited. 2. The following shall be deemed as unfair competition: a. dissemination by means of communication of such information that creates false understanding to the addressee and this prevents him from a certain economic action; b. concealment of the real aim of transaction made by the economic agent for misleading of a counterpart and obtaining advantage within the competition; c. gaining advantage in competition by use of dumping prices and misleading of a consumer; d. harming reputation (creation of false view on an enterprise, production, economic and trading activity) of his rival, groundless criticism or libel of the rival; e. unauthorised use of the trade mark and firm name of a rival or any third person; f. misappropriation of shape, design or packing of goods of the rival or any third person; g. receipt, obtaining, use or dissemination of technological, scientific, industrial and business information and commercial secrets without the owner's consent.		
II. Authorization or exemption Practices falling within paragraph I, when properly notified in advance, and when engaged in by firms			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
subject to effective competition, may be authorized or exempted when competition officials conclude that the agreement I as a whole will produce net public benefit.			
CHAPTER IV **Acts or behaviour constituting an abuse of a dominant position**			
1. Prohibition of acts or behaviour involving an abuse, or acquisition and abuse of a dominant position of market power A prohibition on acts or behaviour involving an abuse or acquisition and abuse of a dominant position of market power: (i) Where an enterprise, either by itself or acting together with a few other enterprises, is in a position to control a relevant market for a particular good or service, or groups of goods or services; (ii) Where the acts or behaviour or a dominant enterprise limit access to a relevant market or otherwise unduly restrain competition, having or being likely to have adverse effects on trade or economic development.	Art. 11. 1. The economic agent shall be deemed as holding monopoly position if his part in the concrete merchandise market directly or indirectly (through affiliates, subsidiaries or otherwise) exceeds the limited value established by the State Antimonopoly Service. 2. Indices of limited value established by the State Antimonopoly Service shall come into effect on promulgation. Art. 12. The agreement (co-ordinating action) between non-competing economic agents is prohibited where one of the economic agents holds monopoly position and the second is his supplier (provider) or consumer that leads or may lead to the essential restriction of competition.		
II. Acts or behaviour considered as abusive: (a) Predatory behaviour towards competitors, such as using below cost pricing to eliminate competitors; (b) Discriminatory (i.e. unjustifiably differentiated) pricing or terms or conditions in the supply or purchase of goods or services, including by means of the use of pricing policies in transactions between affiliated enterprises which	Art. 13. The economic agent holding the monopoly position shall be prohibited of misuse of his position for purpose of discrimination of other partners in the market. Such action shall be deemed as misuse of monopoly position, which leads or may lead to the infringement of interests of other economic agent or a consumer, that is: a. decline in production or cessation of		

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises; (c) Fixing the prices at which goods sold can be resold, including these imported and exported; (d) Restrictions on the importation of goods which have been legitimately marked abroad with a trademark identical with or similar to the trademark protected as to identical or similar goods in the importing country where the trademarks in question are of the same origin, i.e. belong to the same owner or are used by enterprises between which there is economic, organizational, managerial or legal interdependence, and where the purpose of such restrictions is to maintain artificially high prices; (e) When not for ensuring the achievement of legitimate business purposes, such as equality, safety, adequate distribution or service: (i) Partial or complete refusal to deal on an enterprise's customary commercial terms; (ii) Making the supply of particular goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods; (iii) Imposing restrictions concerning where, or to whom, or in what form or quantities,	production, withdrawal of goods from circulation and its stocking for creation or maintenance of deficit as well as for influence upon prices; b. creation of conditions preventing the entering or leaving the market of other economic subject or his being in the market; creation of such discriminating conditions to participants in the market that foist on them disproportionally low or high purchase or selling prices, or that connect the execution of agreement with execution of such additional terms which neither in object nor in trading procedures are connected with the agreement; c. any kind of compulsion for entering the agreement; d. monopoly establishment of high or low price which rather differs the expenses for production and realization of produce for a certain period; e. reduction in or halting of production of goods which are in demand if its production may be continued without possible losses; f. application of dumping prices; g. other action arising the restriction of competition or infringement of legal interests of an economic agent or a consumer.		

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
goods supplied or other goods may be resold or exported; (iv) Making the supply of particular goods or services dependent upon the purchase of other goods or services from the supplier or his designee.			
III. Authorization or exemption Acts, practices or transactions not absolutely prohibited by the law may be authorized or exempted if they are notified, as described in article 7, before being put into effect, if all relevant facts are truthfully disclosed to competent authorities, if affected parties have an opportunity to be heard, and if it is then determined that the proposed conduct, as altered or regulated if necessary, will be consistent with the objectives of the law.			EU law does not provide for authorizations or exemptions in the case of an abuse of a dominant position.
CHAPTER (NOT INCLUDED IN THE UNCTAD MODEL LAW) **State aids**			
	Art. 10. The following shall be prohibited to the state administration bodies: a. …; b. establishment of such tax exemptions or other privileges for the economic agent that grant him advantage as compared with his rivals (potential rivals) and leads to the restriction of competition; …	Art. 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) … ; 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;	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
		d) ….	
		Art. 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	
		Art. 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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
		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.	
		Art. 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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
		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 (NOT INCLUDED IN THE UNCTAD MODEL LAW) **Regulated markets**			
		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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
		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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
		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 **Notifications**			
1. Notification by enterprises 1. When practices fall within the scope of articles 3 and 4 and are not prohibited outright, and hence the possibility exists for their authorization, enterprises could be required to notify the practices to the Administering Authority, providing full details as requested.			
2. Notification could be made to the Administering Authority by all the parties concerned, or by one or more of the parties acting on behalf of the others, or by any persons properly authorized to act on their behalf.			
3. It could be possible for a single agreement to be notified where an enterprise or person is party to restrictive agreements on the same terms with a number of different parties, provided that particulars are also given of an parties, or intended parties, to such agreements.			
4. Notification could be made to the Administering Authority where any agreement, agreement or situation notified under the provisions of the law has been subject to change either in respect of its			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
terms or in respect of the parties, or has been terminated (otherwise than by affluxion of time), or has been abandoned, or if there has been a substantial change in the situation (within (…) days/months of the event) (immediately).			
5. Enterprises could be allowed to seek authorization for agreements or arrangements falling within the scope of articles 3 and 4, and existing on the date of the coming into force of the law, with the provision that they be notified within (…) days/months) of such date.			
6. The coming into force of agreements notified could depend upon the granting of authorization, or upon expiry of the time period set for such authorization, or provisionally upon notification.			
7. All agreements or arrangements not notified could be made subject to the full sanctions of the law, rather than mere revision, if later discovered and deemed illegal.			
II. Action by the Administering Authority 1. Decision by the Administering Authority (within (…) . days/months of the receipt of full notification of all details) whether authorization is to be denied, granted or granted subject where appropriate to the fulfilment of conditions and obligations.			
2. Periodical review			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
procedure for authorizations granted every (…) months/years, with the possibility of extension, suspension, or the subjecting of an extension to the fulfilment of conditions and obligations.			
3. The possibility of withdrawing an authorization could be provided, for instance, if it comes to the attention of the Administering Authority that: (a) The circumstances justifying the granting of the authorization have ceased to exist; (b) The enterprises have failed to meet the conditions and obligations stipulated for the granting of the authorization; (c) Information provided in seeking the authorization was false or misleading.			
CHAPTER VI **Notification, investigation and prohibition of mergers affecting concentrated markets**			
I. Notification Mergers, takeovers, joint ventures or other acquisitions of control, including interlocking directorships, whether of a horizontal, vertical, or conglomerate nature, should be notified when: (i) At least one of the enterprises is established within the country; and (ii) The resultant market share in the country, or any substantial part of it, relating to any product or service, is likely to create market power, especially in industries where there is a high degree of market concentration, where there are barriers to entry and where there is a lack of substitutes for a product supplied by	Art. 14. 1. When joining another economic agent the economic agent of the monopoly position shall pass through the antimonopoly examination for registration. 2. In event of negative finding issued by the antimonopoly department the court shall refuse of registration to the economic agent. Art. 15. In event of more than one violation of antimonopoly legislation by the economic agent of monopoly position the state antimonopoly department is entitled to raise a question before the appropriate bodies for the forced splitting,		

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
firms whose conduct is under scrutiny.	if there is the possibility of organizational and territorial division of the enterprise, or other measures of antimonopoly effect shall be used (establishment of fixed prices, limit of profitability, etc.).		
II. Prohibition Mergers, takeovers, joint ventures or other acquisitions of control, including interlocking directorships, whether of a horizontal, vertical or conglomerate nature, should be prohibited when: (i) The proposed transaction substantially increases the ability to exercise market power (e.g. to give the ability to a firm or group of firms acting jointly to profitably maintain prices above competitive levels for a significant period of time); and (ii) The resultant market share in the country, or any substantial part of it, relating to any product or service, will result in a dominant firm or in a significant reduction of competition in a market dominated by very few firms.	Art. 23. When acquiring stocks or share of another economic agent (or its subsidiary) the economic agent with monopoly position shall obtain the State Antimonopoly Service expert's report.		
III. Investigation procedures Provisions to allow investigation of mergers, takeovers, joint ventures or other acquisitions of control, including interlocking directorships, whether of a horizontal, vertical or conglomerate nature, which may harm competition could be set out in a regulation regarding concentrations.			
In particular, no firm should, in the cases			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
coming under the preceding subsections, effect a merger until the expiration of a (…) day waiting period from the date of the issuance of the receipt of the notification, unless the competition authority shortens the said period or extends it by an additional period of time not exceeding (…) days with the consent of the firms concerned in accordance with the provisions of Article 7 below. The authority could be empowered to demand documents and testimony from the particulars and from enterprises in the affected relevant market or lines of commerce, with the parties losing additional time if their response is late.			
If a full hearing before the competition authority or before a tribunal results in a finding against the transaction, acquisitions or mergers could be subject to being prevented or even undone whenever they are likely to lessen competition substantially in a line of commerce in the jurisdiction or in a significant part of the relevant market within the jurisdiction.			
CHAPTER VII **The relationship between the Competition Authority and regulatory bodies, including sectoral regulators**			
I. Advocacy role of competition authorities with regard to regulation and regulatory reform An economic and administrative regulation issued by executive authorities, local self-government bodies or bodies enjoying a governmental	Art. 6. The terms related to monopoly position and unfair competition in the securities and financial service market shall be regulated by the appropriate legislative acts except those events where those terms affect on the existing competition in the		

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
delegation, especially when such a regulation relates to sectors operated by infrastructure industries, should be subjected to n transparent review process by competition authorities prior to its adoption. Such should in particular be the case if this regulation limits the independence and liberty of action of economic agents and/or if it creates discriminatory or, on the contrary, favourable conditions for the activity of particular firms – public or private – and/or if it results or may result in a restriction of competition and/or infringement of the interests of firms or citizens.	merchandise market of the country.		
In particular, regulatory barriers to competition · incorporated in the economic and administrative regulation, should be assessed b competition authorities from an economic perspective, including for general-interest reasons.			
II. Definition of regulation The term "regulation" refers to the various instruments by which Governments impose requirements on enterprises and citizens. It thus embraces laws, formal and informal orders, administrative guidance and subordinate rules issued by all levels of government, as well as rules issued by non-governmental or professional self-regulatory bodies to which Governments have delegated			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
regulatory powers.			
III. Definition of regulatory barriers to competition As differentiated from structural and strategic barriers to entry, regulatory barriers to entry result from acts issued or acts performed by governmental executive authorities, by local self-government bodies, and by non-governmental or self-regulatory bodies to which Governments have delegated regulatory powers. They include administrative barriers to entry into a market, exclusive rights, certificates, licenses and other permits for starting business operations.			
IV. Protection of general interest Irrespective of their nature and of their relation to the market, some service activities performed by private or government-owned firms can be considered by Governments to be of general interest. Accordingly, the providers of services of general interest can be subject to specific obligations, such as guaranteeing universal access to various types of quality services at affordable prices. These obligations, which belong to the area of social and economic regulation, should be set out in a transparent manner.			
CHAPTER VIII **Some possible aspects of consumer protection**			
In a number of countries, consumer protection legislation is separate from restrictive business practices			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
legislation.			
CHAPTER IX **The Administering Authority and its organization**			
1. The establishment of the Administering Authority and its title.	Art. 3. The state control over the implementation of the present Law shall be exercised by the antimonopoly department of Georgia, and by respective authorised agencies - in Abkhazia and Adjaria autonomous republics and other territorial units. Art. 16. The State Antimonopoly Service of Georgia is the subject of public law existing at the Ministry of Economy of Georgia. The head of the State Antimonopoly Service shall be appointed by nomination of the Minister of Economy, and released by the President of Georgia.	Art. 6. Fulfilment 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.	
2. Composition of the Authority, including its chairmanship and number of members, and the manner in which they are appointed, including the authority responsible for their appointment.	Art. 17. For executing the antimonopoly policy the antimonopoly council consisting of the chairman and 10 members shall be created at the State Antimonopoly Service for term of 5 years. The members of council, where 3 are the representatives of consumers, entrepreneurs and scientific organizations and institutions, shall be appointed by the President of Georgia. The chairman of the antimonopoly council is at the same time the head of the State Antimonopoly Service. The statute of antimonopoly council shall be approved by the President of Georgia. Art. 18 (first sentence). Appropriate Antimonopoly Services shall operate in	Art. 12. 1. The 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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	Abkhazia and Adjaria autonomous republics and other territorial units.		
3. Qualifications of persons appointed.			
4. The tenure of office of the chairman and members of the Authority, for a stated period, with or without the possibility of reappointment, and the manner of filling vacancies.			
5. Removal of members of the Authority.			
6. Possible immunity of members against prosecution or any claim relating to the performance of their duties or discharge of their functions.			
7. The appointment of necessary staff.	Art. 18 (second sentence). The heads of those Antimonopoly Services shall be appointed and released by the head of State Antimonopoly Service of Georgia under consent of the executive bodies of autonomous republics and other territorial units.		
CHAPTER X **Functions and powers of the Administering Authority**			
1. The functions and powers of the Administering Authority could include (illustrative): (a) Making inquiries and investigations, including as a result of receipt of complaints; (b) Taking the necessary decisions, including the imposition of sanctions, or recommending same to a responsible minister; (c) Undertaking studies, publishing reports and providing information to the public; (d) Issuing forms and maintaining a register, or registers, for	Art. 19. The terms of reference of the State Antimonopoly Service of Georgia and its territorial Antimonopoly Services shall be determined by this Law and the statute of the State Antimonopoly Service which shall be approved by the President of Georgia. Art. 20. Main directions of activity of the State Antimonopoly Service are as follows: a. creation of conditions for development of competition; b. eradication of misuse of monopoly activity and	Art. 12. 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	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
notifications; (e) Making and issuing regulations; (j) Assisting in the preparation, amending or review of legislation on restrictive business practices, or on related areas of regulation and competition policy; (g) Promoting exchange of information with other States.	monopoly position; c. implementation of preliminary measures for preventing unfair competition; d. protection of consumer's rights; e. regulation of advertising; f. analysis of merchandise and financial markets for revealing the facts of restriction of competition and unfair competition; g. the working out of measures for demonopolising spheres of production, circulation and finances; h. submission to the executive power for consideration of obligatory proposals for implementation of measures for development of competition and restriction of monopoly activity; i. consideration of facts of violation of antimonopoly law and passing appropriate decisions within its terms of reference; j. co-operation with governmental bodies as well as with international organizations for solution of problems of organizational and legal, technical and financial ensuring of protection of antimonopoly law and consumer's rights. Art. 20. 1. The State Antimonopoly Service shall be entitled: a. to raise the question before the appropriate bodies on halting or prohibition of activity of that organization which violate the antimonopoly law; b. to demand from the body having violated this	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. 3. 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. Art. 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,	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	Law the abolishment of the illegal by passed decision, otherwise, to raise the question before the superior body or official; c. to demand from the economic agent the abolishment of the agreement executed and decision passed with violation of this Law. Otherwise, to lodge a complaint with the court and take a part in the consideration of the case; d. to demand from the economic agent the information of his legal, organizational and economic relations; e. to formalise with documentation related to the activity of an economic agent; f. on the grounds of court's ruling to examine and receive documentation connected with the activity of an economic agent; the received documentation is not subject to publication and shall be used for the consideration of the case only. If following the examination of documents and facts connected with the case does not prove the suspicion of the Antimonopoly Service has not been proved, it shall compensate to the economic agent the total damages in amount and by order established by the legislation of Georgia; g. to raise a question on administrative or criminal responsibility of the official having violated the antimonopoly law; h. to demand any necessary information	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 fulfilment of requirements of this Law by governmental or local authorities; g.b) On fulfilment of requirements of this Law within the controlled economic areas.	

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	from the ministries, other state departments and institutions, governmental bodies of territorial units. In event of non-implementation of the demand to raise the question on disciplinary or administrative responsibility of officials of those bodies; i. for passing the decision to demand from the appropriate state body or economic agent the information related to the instituted case and to send prior notification in writing indicating the committed violation and the date of hearing on this matter. In event of arising the necessity of official hearing of the case the economic agent shall be given the possibility to formalise with the documentation on his case created in the antimonopoly department. If within 30 days following the demand of the antimonopoly department the appropriate state body or economic agent does not provide the said department with the required information the antimonopoly department shall make decision on the instituted case on the grounds of facts and data being in its hands; j. to determine the limit of economic agent's share in the merchandise and finances market on the grounds of economic analysis in the concrete sphere of economic activity; this limit shall be valid after promulgation. 2. The antimonopoly		

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
	department shall execute its powers stipulated by clauses "d" and "e" of this Article only in event of substantiated suspicion of misuse of the economic agent of his monopoly position and of facts of unfair competition. Art. 25. The State Antimonopoly Service shall: a. protect the antimonopoly law; b. examine the entered applications and petitions and respond to the applicants in writing within 30 days following the date of their receipt; c. protect and not disclose the state and commercial secrets. The damage incurred as a result of disclosure of the data containing secrets shall be compensated by the antimonopoly body in amount and by order established by the legislation of Georgia. Art. 26. The State Antimonopoly Service shall once a year submit the report of its work done to the President of Georgia.		
II. Confidentiality 1. According information obtained from enterprises containing legitimate business secrets reasonable safeguards to protect its confidentiality.	(See art. 20 and 25.)		
2. Protecting the identity of persons who provide information to competition authorities and who need confidentiality to protect themselves against economic retaliation.			
3. Protecting the deliberations of government in regard to			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
current or still uncompleted matters.			
CHAPTER XI **Sanctions and relief**			
1. The imposition of sanctions, as appropriate, for: (i) Violations of the law; (ii) Failure to comply with decision or orders of the Administering Authority, or of the appropriate judicial authority; (iii) Failure to supply information or documents required within the time limits specified; (iv) Furnishing any information, or making any statement, which the enterprise knows, or has any reason to believe, to be false or misleading in any material sense.	Art. 22. If the State Antimonopoly Service fixes the fact of misuse of economic agent of his monopoly position, it may oblige the economic agent to stop the existing situation. Art. 27. A person violating this Law shall bear the financial, administrative or criminal responsibility. Art. 28. The amount of penalty imposed for violation of this Law shall be determined in accordance with the legislation of Georgia.	Art. 14. Any infringer of this Law shall be imposed disciplinary, administrative or criminal sanctions.	
II. Sanctions could include: (i) Fines (in proportion to the secrecy, gravity and clear cut illegality of offences or in relation to the illicit gain achieved by the challenged activity); (ii) imprisonment (in cases of major violations in involving flagrant and intentional breach of the law, or of an enforcement decree, by a natural person); (iii) Interim orders or injunctions; (iv) Permanent or long term orders to cease and desist or to remedy a violation by positive: conduct, public disclosure or apology, etc.; (vi) Divestiture (in regard to completed mergers or acquisitions), or rescission (in regard to certain mergers, acquisitions or restrictive contracts); (vii) Restitution to			

UNCTAD Model Law	*1996 Law*	*2005 Law*	*Some Comments*
injured consumers; (viii) Treatment of the administrative or judicial finding or illegality as prima facie evidence of liability in all damage actions by injured persons.			
CHAPTER XII **Appeals**			
1. Request for review by the Administering Authority of its decisions in the light of changed circumstances.	Art. 29. An economic agent as well as other person concerned shall be entitled to apply to the court, appropriate body or any official directly, for stopping the violation of antimonopoly law and for compensation of the incurred damage. He shall be entitled also to appeal in the court against the decision of the State Antimonopoly Service.		
2. Affording the possibility for any enterprise or individual to appeal within (…) days to the (appropriate judicial authority) against the whole or any part of the decision of the Administering Authority, (or) on any substantive point of law.			
CHAPTER XIII **Actions for damages**			
To afford a person, or the State on behalf of the person who, or an enterprise which, suffers loss or damages by an act or omission of any enterprise or individual in contravention of the provisions of the law, to be entitled to recover the amount of the loss or damage (including costs and interest) by legal action before the appropriate judicial authorities.	Art. 30 The damage incurred to the economic agent by the illegal actions of the State Antimonopoly Service shall be compensated to him in accordance with the legislation of Georgia.		

It is worth recalling here that the term "international best practices", as used here should not be understood as a synonym to "EU standards". In fact, the UNCTAD Model Law does not contain the whole array of areas covered by EU Competition Law (notably State aids).

The Concordances Table developed here serves thus merely as an instrumental display of blank boxes that the EU wish to see filled with substantive regulations that harmonize with EU competition law.