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Recent Developments in the Competition Law of Georgia. Changes Resulting from the Association Agreement

by

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I. Introduction

After regaining its independence, Georgia signed the Partnership and Cooperation Agreement (hereafter, PCA) with the European Community in 1996. According to Articles 43 and 44 PCA, Georgia has undertaken to approximate its future laws and standards with those of the European Community. In September 1997, the Parliament of Georgia adopted Resolution #828-IS whereby all legislation and other normative acts adopted in Georgia after 1 September 1998 were to comply with the standards and rules existing in the European Community.

In 1996, the Georgian legislator adopted the Law on Monopolistic Activities and Competition; a competition authority – the Antimonopoly Service – was established in the same year to monitor the application of the Law. The authority played an active role in the promotion of fair competition in Georgia for a number of subsequent years. However, after the 'Rose Revolution' held

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in Georgia in 2003, the newly elected government was of the opinion that Georgia's antimonopoly legislation and its enforcement authority hindered in fact fair competition because of the widespread corruption present in Georgia at that time. The legislation was thus revoked and a new Law on Free Trade and Competition adopted in 2005 for a transitory period. A new Agency on Free Trade and Competition was created, but with limited institutional powers. The Law on Free Trade and Competition was not practically applied. As a result, undertakings were unrestrained in their market activities: they could merge freely, misuse their dominant positions, and engage in cartel activities.

After the war of 2008 between Georgia and the Russian Federation, negotiations begun on a Deep and Comprehensive Free Trade Area (hereafter, DCFTA) between the European Union and Georgia. In this context, Georgia was obliged to meet requirements set forth by the EU as preconditions for the signing the DCFTA agreement. The country was, in particular, obliged to carry out structural and policy reforms.

The European Commission published in May 2011 a Country Report on Georgia on the Implementation of the European Neighborhood Policy in 2010. The report stressed Georgia's preparedness for the DCFTA. The Report stated also that Georgia has made some progress in drafting and adopting strategies and legislation in key areas. According to the opinion of the European Commission, Georgia should successfully accomplish its ongoing reforms.

The aim of this article is to show recent developments in Georgian competition provisions and explain the major flaws of its current Law on Competition (adopted in 2012 and extensively amended in 2014).

II. Law on Free Trade and Competition of 2012

Within the preparatory works on the DCFTA, the Government of Georgia started in 2009 working on reforming the domestic competition law system, issuing a Comprehensive Strategy in Competition Policy[1] in December 2010. The Document stressed the need to adopt new national legislation that would comply with EU rules. It was also said that establishing a new competition law enforcement agency was necessary, with sufficient power to monitor the application of the new legislation. By the decree of the President of Georgia

[1] See, Comprehensive Strategy in Competition Policy, The Government of Georgia, available at: www.government.gov.ge/files/41_32357_225550_Comprehensive20StrategyinCompetitionPolicy.pdf, 20.07.14.

No. 143, the Free Trade and Competition Agency was subsequently created in 2010. By the decree of the President of Georgia No. 829, the Free Trade and Competition Agency merged in January 2012 with another independent legal entity of public law – the State Procurement Agency – into a single entity named the Competition and State Procurement Agency of Georgia.

On 8th May 2012, the Parliament of Georgia adopted a new Law on Free Trade and Competition (hereafter, LFTC). Despite the progressiveness of the LFTC's provisions compared to its 2005 predecessor, the new act retained some serious flaws when it comes to the approximation of national legislation with EU rules.

According to the LFTC, the holding of a dominant position was not illegal, only its abuse was prohibited. Article 6 LFTC contained an exhaustive list of inadmissible activities of dominant undertakings. This provision had some flaws compare to Article 102 TFEU and so the list has been modified by the amendments introduced in March 2014.

Article 7 LFTC prohibited agreements, decisions and concerted practices among economic agents that intentionally and unlawfully distort competition. Article 7 LFTC contained an exhaustive list of inadmissible activities also, and was thus modified in 2014.

According to Article 9 LFTC, cartel activities were exempt provided they benefited consumers and:

1. improved production and/or supply; or
2. promoted technical and economic progress.

Article 8 LFTC concerned agreements of minor importance. In its original version, the *de minimis* rule was applicable if the parties' aggregate market share did not exceed 25% for horizontal agreements, and if each party's market share did not exceed 40% for vertical agreements. If a multilateral practice contained the characteristics of both a horizontal as well as a vertical agreement and, consequentially, it was difficult to classify it as a horizontal or a vertical agreement, the aggregate share on the relevant market of the parties to the agreement could not exceed 40%. Also this provision was amended in 2014.

According to Article 11 LFTC, concentrations were defined as a merger of two or more independent economic agents, when one or more economic agents merge with the other or when two or more economic agents merge as a single new economic agent. A concentration also meant controlling an economic agent through direct or indirect control by means of an agreement. Despite the fact that this provision stressed the importance of concentrations, as they may result in the creation or straightening of a dominant position, the LFTC did not prohibit such activities. Moreover, notifications of concentrations were voluntary allowing (but not obliging) economic agents to notify a planned or

existing concentration to the Georgian competition authority. The content of this article was modified in March 2014 as well.

Finally, state aid could be allowed by the competition authority if it did not significantly distort competition, or did not create a threat for its significant distortion, and its purpose was to develop certain economic activities or economic sectors. The following list of state aids did not require the consent of the Agency:

a. State aid issued in case of a *force majeure*;
b. Individual aid of a social character;
c. State aid related to regional development;
d. State aid provided for the purpose of promoting the conservation of culture and cultural heritage;
e. State aid granted for reasons of national security;
f. State aid for scientific researches;
g. *De minimis* individual state aid (its amount determined by a governmental decree);
h. In cases of tax reduction and restructuring, if the decision on the matter was taken by the Georgian government;
i. In cases of the suspension of the payment of tax arrears, ensuring measures, and writing off tax arrears.

According to the LFTC, the grantor of the state aid was obliged to submit an application to the Competition and State Procurement Agency, containing information about the aim, its form and its beneficiaries. The grantor was also obliged to prove that the aid in question did not significantly distort competition. The Agency was able to assess the conformity of the state aid with the provisions laid down by the LFTC and issue a legal opinion (within no later than 30 working days from submitting information on state aid) about the non-conformity of the aid. Failure to deliver such an opinion on time would be deemed as consent.

If a granted state aid leads to a significant distortion of competition on the relevant market, or if there is an infringement of legislation concerning free trade and competition in relation to the state aid granting procedures, the person who directly suffered damages as a result of the distortion or infringement may appeal a granted state aid to the court.

As mentioned, the Competition and State Procurement Agency was established in early 2012 to monitor the application of the LFTC. According to Article 16 LFTC, the main aims of the Agency's activities were: a) creating favorable conditions for the development of competition in every sector of the economy; b) detecting violations of competition rules by economic agents; c) formulating recommendations in the case of the detection of state actions or decisions that distort competition; d) formulating recommendations related to

competition distorting state aid; e) executing responsibilities conferred upon the Agency by the 'Law of Georgia on Public Procurement'; f) cooperating with state authorities and international organizations with the view to promote free competition in the country.

According to the LFTC, the Agency could start an investigation only on the basis of an application and/or complaint (Article 18(1(a)) LFTC). Article 3(m) and (n) determined who could act as an 'applicant' and who could be a 'complainant'. A person having information or evidence on an infringement of Georgian competition rules, even if he/she had not suffered damages directly from the infringement, could be an applicant. The applicant was not considered a party to the proceedings according to Article 22(1) LFTC. By contrast, only an economic agent that had directly suffered damages as a result of an infringement of competition rules could act as a complainant. The complainant was a party to the proceedings and had to bear the burden of proof (Article 22(2) LFTC).

Article 19 LFTC concerned the institutional powers of the Agency. Accordingly, the priorities of the authority's activities would be approved periodically by the Georgian government. Moreover, the Agency was able to consider applications and complaints only in accordance with these priorities. Article 19 LFTC was abolished by the amendments of 2014.

In the beginning, the Competition and State Procurement Agency had limited institutional powers. It was not able to deliver final decisions or fine economic agents for their infringements of national competition rules. The authority was obliged to refer a case to the Tbilisi City Court if it found that an infringement of the provisions of the LFTC had occurred. Therefore, final decisions on Georgian competition law cases were left to the judiciary. Under the LFTC, the Agency could only impose fines on economic agents if the latter admitted to a distortion of competition, as revealed in the course of the investigation (Article 26(2) LFTC). Incidentally, the rule has not been changed however (Articles 18(1(f)) and Article 32 of the LFTC as well as the current Law on Competition) whereby the authority is entitled to impose administrative fines of between 1000 GEL to 3000 GEL (around 1305 EUR). on economic agents if they do not submit the requested information, or if they submit incorrect or incomplete information (Article 25(9) LFTC).

According to Article 25 LFTC, the Agency was obliged to deliver its decisions no later than 6 months after having taken the decision to launch an investigation. This period could be extended by the Agency depending on the importance and gravity of the case, but it should have not exceeded 15 months. These timeframes were decreased by the amendments of 2014.

The LFTC provided sanctions for economic agents only for their infringements of the ban placed on the misuse of a dominant position and on

cartel activities. According to Article 33 LFTC, the amount of the fine could not have exceeded 10% of the profit made by the economic agent during the previous financial year. If the economic agent did not make a profit during that year, the amount of the fine could not have exceeded 2% of its turnover during the same period of time. Damages caused by the infringement, its duration and its scope should have been taken into account while deciding on the amount of the fine.

According to the transitional and final provisions of the LFTC, the act would not apply to the electronic communication sector until 1 January 2016 and to the electricity and natural gas sectors until 1 January 2018 (Article 34 LFTC). Besides, on the basis of Article 1(4) LFTC, the following fields were exempt from the application of the LFTC:

a) intellectual property rights;
b) interactions envisaged by the 'Law of Georgia on Securities Market';
c) activities of economic agents in a free economic zone;
d) objects of importance for national security;
e) labor relations:
f) markets the total turnover of which did not exceed 0.25% of the Gross Domestic Product;
g) goods and services necessary for defense and public safety.

III. Recent amendments of the existing Law on Competition

Political negotiations between Georgia and the European Union on the DCFTA commenced soon after the war of August 2008; talks on the Association Agreement (hereafter: AA) officially began in July 2010. On 29 November 2013, an official ceremony was held at the Eastern Partnership Summit in Vilnius, to mark the initialing of the AA between the EU and Georgia. The AA was ultimately signed in Brussels on 27 June 2014 by Georgia and the EU which includes a Deep and Comprehensive Free Trade Area. The AA will replace the Partnership and Co-operation Agreement (hereafter, PCA) signed in 1996 as a more comprehensive and politically stronger document than the PCA. The AA aims to achieve qualitatively new and higher levels of co-operation between Georgia and the EU in many important sectors. The AA is around 1000 pages long and provides for the harmonization of the legislation of Georgian with 300 EU laws.[2]

[2] See, 'The European Union and Georgia have initiated their Association Agreement', available at: http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=464&info_id=16997, 24.07.14.

The Georgian Parliament has unanimously ratified the AA at an extraordinary session held on 18 July 2014. Although it may take several years before all EU member states ratify this agreement, some of the provisions of the AA can be applied provisionally even before the ratification process is completed in Europe (in all EU member states and by the European Parliament)[3].

With the signing of the AA, Georgia has accepted the obligation to reform almost all areas of its political, economic and social life. The agreement is likely to have a positive impact on the national market, since economic and trade relationships will increase among the parties (after the removal of EU import duties, Georgia may freely export its products to the EU, including those from the agricultural sector).

Title IV of the AA concerns Trade and Trade–related Matters. Chapter 10 of Title IV covers competition issues. Under Article 204 AA, Georgia is obliged to maintain comprehensive competition rules effectively addressing all anti-competitive behaviors of economic agents, including anti-competitive agreements, concerted practices and unilateral conduct of enterprises with a dominant market power. Georgian competition rules must also provide an effective control mechanism over concentrations in order to avoid significant impediments to effective competition and abuse of dominance. Under Article 204(2) AA, Georgia must establish a competition authority and equip it with the power to effectively enforce its competition rules.

In order to meet the EU's requirements for the AA, the government of Georgia drafted extensive amendments to the LFTC of 2012. These legislative changes were meant to improve the institutional framework of competition protection in Georgia, promote free competition, and the development of a competitive national market. The Parliament adopted the draft proposed by the government as part of a general completion law reform on 21 March 2014. After its signing and publication by the President of Georgia, the amendments entered into force at the beginning of April 2014. The amendments managed to eliminate some of the original flaws of the LFTC. Even now however, some important provisions of Georgian competition law need to be harmonized still. Discussed below will be the changes introduced into the LFTC in 2014 as a result of the adoption by the Georgian Parliament of the new amendments.

It should be noted, first of all, that the title of the Law on Free Trade and Competition (LFTC) has been changed into the Law on Competition (hereafter, LC).

Fields outside the application of the LC were decreased; the LC now only exempts: labor relations, intellectual property rights (provided they do not distort or eliminate competition), and interactions envisaged by the law of

[3] See, 'Georgia, EU Sign Association Agreement', available at: http://www.civil.ge/eng/article.php?id=27417, 22.07.14.

Georgia 'On Securities Market' (except for cases when these interactions affect competition existing in the domestic goods market and/or distort it, or may result in its substantial distortion (Article 1(4) LC)).

The definition of a dominant position was changed also. The LC defines dominance as a position held by an economic agent (agents) acting in a relevant market, which enables it to act independently from competing economic agents, suppliers, clients and final consumers, to exercise a substantial influence on the general conditions of the circulation of goods in the market, and to distort competition. Unless proven otherwise, an economic agent shall not be considered to hold a dominant position if its (their) market share(s) in the relevant market does not (do not) exceed 40%. In a group of two or more, each economic agent shall be considered to hold a dominant position if it does not face significant competition from other economic agents (taking into account the limited accessibility to sources of raw materials and sales markets, entry barriers and other factors) and simultaneously:

a) joint share of no more than 3 economic agents exceeds 50% while, at the same time, the market share of each makes up no less than 15%;
b) joint share of no more than 5 economic agents holding the most significant share of the market exceeds 80% while, at the same time, the market share of each makes up no less than 15%.

The contents of Articles 6 and 7 LFTC were modified to comply with Articles 102 TFEU and 101 TFEU respectively. According to Article 6 LC, the misuse of a dominant position by one or more economic agents is prohibited. Although Article 6 still contains a list of prohibited activities, the list is now **not** exhaustive. Accordingly, the following actions shall be regarded as an abuse of a dominant position:

a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
b) limiting production, markets or technical development to the prejudice of consumers;
c) setting discriminatory conditions to equivalent transactions with specific trading partners, thereby placing them in an uncompetitive environment;
d) setting such precondition of a contract that impose additional obligations on other parties to the transaction that are not logically connected with the subject of the transaction, and etc. (tying/bundling).

According to Article 7 LC, it is currently forbidden in Georgia to conclude agreements, adopt decisions or carry out concerted practice having their object or effect the prevention, restriction or distortion of competition in the relevant market and, in particular:

a) directly or indirectly setting (fixing) purchase or selling prices or other trading conditions;

b) restricting production, markets, technical development or investments;
c) dividing markets or sources of supply based on consumers, territories or other factors;
d) applying dissimilar/discriminatory conditions to equivalent transactions with specific trading partners, thereby placing them at a competitive disadvantage;
e) imposing such additional obligations as preconditions for transactions which by their nature or according to commercial usage have no connection with the subject of the transaction;
f) setting such terms of tenders (to ensure material gain or advantage for the concerted economic agents or other parties participating in the public procurements), which cause substantial damage to the legal interests of the purchasing organization.

According to Article 7(2) LC, conducts prohibited by Article 7 LC are void unless the exceptions laid down by the LC apply thereto.

It should be noted that, according to Article 195^1 of the Criminal Code of Georgia, bid rigging in public procurement is punishable if it causes substantial damage to the legal interests of the purchasing organization.

The amendments decreased also the thresholds for agreements of minor importance. The following market share thresholds apply according to Article 8 LC since 1 April 2014:

- In case of horizontal agreements – 10%;
- In case of vertical agreements – 15%;
- If it is difficult to classify the agreement – 10%.

These thresholds are not applicable to practices covered by the prohibitions of Article 7(1(a)(d)(f). The definition of hard core restriction is not provided by the Law on Competition. Though these three restrictions provided by Article 7 (a)(d)(f) can be qualified as an hard core restrictions.

Article 9 has undergone changed also and now provides the same four cumulative requirements enshrined in Article 101(3) TFEU. Article 9(3) authorizes the government of Georgia to adopt for a certain period of time the exemptions on prohibition of contracts restricting competition provided they meet the four requirements.

On 1st September 2014, the Government of Georgia has adopted the Resolution #526 on this issue. According to the document, exemptions apply to the following agreements:

- concluded between distributor economic agents provided that each of their turnover does not exceed GEL 15 000 000 (around 7 000 000 EUR) during the last fiscal year, and they are not competing economic agents;
- concluded between economic agents operating in a motor vehicle sector;

- technology transfer agreements (in case of competing economic agents market share threshold is 20%, whilst in non-competing economic agents' case the threshold is 30 percent);
- specialisation agreements (market share threshold is 20%);
- joint research agreements (market share threshold is 25%).

According to Article 11 LC, concentrations substantially distorting effective competition on the goods or service markets of Georgia (or a significant part of Georgia) and resulting in the acquisition or strengthening of a dominant position are inadmissible.

A new Article 11^1 has been added to the LC. On its basis, a pre-emptive notification of a concentration is now compulsory if the value or annual turnover (based on data from the previous financial year) throughout the whole territory of Georgia of individual, as well aggregate, assets of an economic agent(s) (with the exception of the economic agents acting in 'regulated' fields) participating in the concentration exceeds the limits stipulated by the 'Procedure on submission and consideration of notifications about concentration'[4].

Article 11^2 provides a list of concentrations exempted from the duty of an advance notification. They include:

- minor market share;
- rescue concentrations;
- temporal control etc.

Article 11^3 is another new provision of the LC prohibiting unfair, dishonest competition. Still, the LC does not provide for any penalties for such activities.

Important provisions have been amended regarding the competences of the Georgian Competition Agency. The new body is accountable to the Prime Minister of Georgia; its chairperson is appointed and dismissed by the Prime Minister. The Agency is independent in its activities and decision-making process. Importantly also, it can now start an investigation on its own initiative (Article 18(1(a)) LC) as well as upon an application or complaint. Furthermore, the Agency has been authorized to impose fines under Article 33 LC on economic agents if they infringe the provisions of the LC.

The Competition Agency's main duty is to monitor the application of the LC – that is, to uncover, assess and make relevant decisions within its competences relating to infringements of the LC. In order to fulfill its duties, Article 18 LC makes the Agency able to:

a) Request information in relation to a specific case from a relevant economic agent and other interested party about their legal, organizational

[4] The Procedure is under preparation.

and logistic relationship, get acquainted with the relevant documents pertaining to the activities of an economic agent;

b) If an economic agent fails to deliver the requested documents, for the purposes of an investigation, the Agency may ask the court to compel such economic agent to submit the information;
c) If a complaint is filed, the Agency invites the parties for oral clarifications and, if necessary, organizes meetings with interested parties;
d) For the purposes of an investigation, and upon judicial consent, the Agency can carry out on-the-spot inspections of economic agents involved;
e) Require an economic agent to bring its activities in line with the requirements of the LC;
f) If necessary, invite experts in the process of investigating the case;
g) If considered appropriate, the Agency can perform an inquiry with the view of defining the scale of unobserved economy on a relevant market, in order to define the market share indicating a dominant position;
h) Upon repeated violation of Georgian legislation by an economic agent holding a dominant position, the Agency can raise the issue of its forced division before relevant bodies if there is an opportunity for organizational and territorial separation of an enterprise, or carry out any other measures provided by competition policy;
i) Raise before relevant authorities the issue of the responsibility of an individual (a managing official of an undertaking) who has violated Georgian legislation;
j) Ask the court to suspend a given activity of an economic agent temporally, until the Agency delivers its final decision, if there is sufficient evidence that this activity can restrain competition pursuant to Articles 6 and 7 LC.

According to Article 25 LC, the Agency is entitled to carry out an on-the-spot inspection of an economic agent against whom a complaint and/or application has been filed. Yet with the contextual meaning of Article 27(7), the Agency does not have the power to inspect an economic agent against which it has started an investigation *ex officio*. According to Article 25(8) of the LC, the Agency is entitled to submit to the court a motivated petition so as to carry out an on-the-spot inspection. This provision does not require the Agency to get such court permission in advance before carrying out the on-the-spot inspection. Procedural issues of on-the-spot inspections are regulated by the Administrative Procedures Code of Georgia. The latter allows the Agency to start an on-the-spot inspection in exceptional cases without prior permission of the court (for example, if there is an immediate danger of evidence being destroyed). Still, the Agency is obliged to apply for such court permission

within 24 hours after starting of the inspection and substantiate the urgent need for the inspection (Article 21^2 of the Administrative Procedure Code).

Article 25(8) LC entitles the Agency to carry out on-site inspections of economic agents only in the following cases:

- if economic agents and interested persons failed to submit the requested documents /information necessary for the investigation;
- a danger exists of information related to the circumstances of the case being destroyed or hidden;
- the parties do not fulfill the obligation to submit documentation and information;
- if it is necessary to inspect the assets visually.

During the inspection procedures, Article 25(10) LC entitles the Agency only to:

a. have access to the documentation related to the activities of an economic agent, including financial and economic documentation, regardless of their confidentiality;
b. make copies of the documentation;
c. receive clarifications on the spot;
d. have access to the premises of the legal or factual activities of an economic agent.

The Agency may conduct an investigation only within three months after deciding to start the investigation. Taking into consideration the importance and complexity of the case, this time period can be extended up to 10 months.

Article 27 LC provides now for a three-year time limitation period for infringements of the LC. The time shall begin on the day on which the infringement is committed. There is no time limitation for repeated or continuing infringements.

Penalties for the infringements of the LC are set out in Article 33 LC. The Agency may now impose upon economic agents a fine not exceeding 5% of their annual turnover achieved in the previous financial year. The authority can impose the fine only on economic agents for infringements stipulated in Articles 6 LC and 7 LC. However, as an exemption, the Agency cannot impose a fine on an economic agent from a regulated economic field. According to Article 3(p) LC, regulated economic fields include: commercial banks, investments funds, electronic communications, electricity and natural gas, as well as other sectors with tariffs defined by the government via a resolution.

Article 33 LC stipulates a fine of up to 10% of previous year's turnover for repeated offenders or if the economic agent has not eradicated the legal basis of an infringement. It must be noted that in determining the amount of the fine, regard shall be paid to the damages caused by the infringement as well as its duration and scope.

Article 33^1 has been added to the LC. It provides for a leniency programme and grants partial or full immunity to economic agents which simultaneously meet the following conditions:

a. admit to the participation in agreements stipulated in subparagraphs "a", "c" or "f" of Article 7 LC;
b. submit to the Agency the identified information in an oral and/or written form and, if necessary, evidence about the agreement stipulated in paragraph "a" before this information becomes known to the Agency from other sources;
c. continuously and unreservedly cooperate with the Agency in its investigation of the case.

According to Article $33(2)^1$ LC, immunity does not apply to the sole organizer and/or initiator of an agreement, as well as the person (economic agent) who forced others to participate in the agreement.

Economic agents or interested persons may go directly to the court. They are entitled to appeal the decisions of the Agency to the Tbilisi City Court.

The Agency is obliged to formulate and issue other legal acts envisaged in the LC no later than by 1 October 2014. The list of these acts includes:

a. procedure of the submission and consideration of notifications of concentrations (Article $11(2)^1$);
b. rules and procedures of investigation [Article 25(13)];
c. rules on submitting applications and complaints and procedures and terms related to the admissibility of complaints and applications [Article 23(7)];
d. rules and procedure for the application of the Leniency Programme (Article $33(3)^1$);
e. rules on the methodology of market analysis [Article 5(2)].

Aside from the above, the LC obliges the Georgian government to issue by 1 September 2014 necessary legal acts on *de minimis* state aid, exceptions from the prohibition of competition restricting agreements, and general rules for the granting of state aids.

The competences of the Agency provided by the LC shall be fully enacted upon adopting/ approving the respective legislative acts.

IV. Conclusion

To summarize Georgian legislation in the field of competition law, it is clear that it has undergone a long way of modifications and developments. The current Law on Competition (LC) is more effective than its initial version

(the Law on Free Trade and Competition issued in 2012). However, although the LC is now better approximated with EU competition rules, it still has some flaws.

First, the Competition Agency should have more powers in order to effectively detect infringements. According to the LC, the Agency does not have a clear entitlement to carry out dawn raids. Although it does have such right according to the Administrative Procedures Code of Georgia, its practical execution may be difficult because the authority must notify the relevant (defendant) economic agents about the fact that it received an application/complaint about its practices or had taken a decision to start an investigation *ex officio*. Moreover, the Agency does not have the right to seize the property of economic agents.

Second, Georgian competition law envisages penalties for infringements of Articles 6 and 7 LC only (equivalent to Article 102 & 101 TFEU). There are no penalties for breaching the pre-emptive notification requirements for concentrations or breaching the unfair competition ban of Article 11^3 LC. In these cases, the Agency may only require the economic agent to bring their activities in line with the requirements of the LC. Apart from this, it may also raise before relevant authorities the issue of the responsibility of an individual (managing official of an economic agent) who has violated the legislation of Georgia.

Third, the law should provide adequate penalties for competition law infringements. Fines of up to 5% turnover cannot be considered as an effective penalty with an adequate deterrent effect, taking into consideration that the price of relevant goods or services increases as a result of a competition law infringement by between 10% and 30%.

It can be hoped that these, and other minor flaws of the LC will soon be eradicated and Georgia's Law on Competition will comply with Article 204 of the Association Agreement.