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Global Forum on Competition

DOES COMPETITION KILL OR CREATE JOBS?

Contribution from Georgia

-- Session I --

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THE LINKS BETWEEN COMPETITION AND EMPLOYMENT IN GEORGIA

-- Georgia --

1. Introduction of the Competition Agency of Georgia

1. Competition Agency of Georgia as it functions now was established in April 2014 as the law on Free Trade and Competition was amended and the law on Competition was enacted.¹ The new law has empowered competition agency with its current functions characteristic to the modern competition authority. The competences of the agency were defined as follows:

- i) Implementation of the policies provided by Georgian legislation on competition and for this reason, preparation of proposals for development and application of the relevant normative acts;
- ii) Monitoring and analysis of the commodities and services markets for the purpose of detecting of the facts of competition distortion and unfair competition;
- iii) In case of concentration specified by the Law, obligatory assessment of competitive effect, preparing of the conclusion and issuance thereof;
- iv) Control over compliance with Georgian legislation on competition, detection of the facts of violation of this legislation, their consideration and making relevant decisions within its competence;
- v) Monitoring of fulfillment of the decisions made;
- vi) Collaboration with international organizations and the bodies authorized to implement the competition policies of the other countries;
- vii) Cooperation with the legislative and executive authorities of Georgia, as well as with the international organizations, for the purpose of improvement of Georgian legislation on competition and competition policies, as well as dealing with the organizational-legal, technical and funding issues;
- viii) Ensuring public awareness in Georgian legislation on competition and goals and objectives of competition policies, ensuring publicity of the Agency's activities;
- ix) Performing other functions provided for by the Agency's statute.

¹ Please see the website of Competition Agency of Georgia at: <http://competition.ge/en/page2.php?p=4&m=62>

2. The links between competition and employment in Georgia

2. When speaking on the drivers of creating jobs we would like to provide basic statistical data concerning the employment index in the country.

3. According to the official data of National Statistics Office of Georgia (GEOSTAT) the unemployment rate in 2014 was 12,4 %.² According to the 2015 report of GEOSTAT number of persons employed in business sector by second quarter of 2015 is 568,5 thousand which amounts to 15,2 % of whole population (3 729 500 according 2015 data).³

4. Considering the fact that unemployment still remains one of the main concerns of the state as well as the society in general it is out of question that any matter even indirectly related to the job market is very sensitive.

5. Georgian competition agency takes the position that competition policy and its effective implementation facilitates to strengthen the job market in the state. Cartel agreements are aiming to remove competitors from the market which logically results in downsizing of many small and medium size enterprises. It is out of question that working places vanish together with the entity. With respect to the competition among private entities Georgian Law on Competition provides an effective mechanism to avoid collusive actions, decisions and agreements limiting competition.⁴ Such regulations support competition which by itself fosters the rapid growth of business and enhances the level of production. It is certainly the precondition for better and diverse job market.

6. The Georgian Law on Competition provides mechanisms against state authorities and local self-government authorities as well. They are deprived to hinder the entrepreneurial activities and independence of economic agent or in any other way distort the competition.⁵ These kind of guarantees establish free platform for economic agents where increased need of working power is expected rather than the decline.

7. Because of the short time period for which competition agency is active it is hard to name any facts and figures in which the development of competition law has influenced the job market in the country. However we can evaluate the current regulatory framework with regard the relationship of competition and employment.

8. From the perspective of Georgian legislation on competition it would be hard to say that agency has any power to take possible employment effects into consideration when conducting its' duties.

9. The Georgian Law on Competition establishes the principles for protection of free and fair competition from unlawful restrictions and provides basis for free trade and market development. The Law defines the actions unlawfully restricting free trade and competition, legal basis for the prevention of violations with respect of free trade and competition and relevant enforcement measures, as well as the competence of the authorized body. Hence the competence is limited and it shall not be extended to the cases which are out of the scope of violation of competition rules.

² Please see the website of GEOSTAT at: http://geostat.ge/index.php?action=page&p_id=146&lang=eng

³ Please see the website of GEOSTAT at:
http://geostat.ge/cms/site_images/_files/english/business/CHarts_ENG_II_2015.pdf

⁴ Article 7 of the Georgian Law on Competition.

⁵ Article 10 of the Georgian Law on Competition.

10. Goal of the Law is to support the liberalization of Georgian market, promotion of free trade and competition. Therefore the decision dictated by any other economical or social factors, even though legitimate in some cases, cannot be justified by the goals of competition.

11. The Law does not specify employment or broader public interest issues that could justify any consideration of this element in the decision making process. It is worth mentioning though that generally employment is one of the priorities of the state policy, however administrative body which is competition agency in our case is entitled to use its discretionary power only if it is explicitly written so in the law. According to the General Administrative Code of Georgia if an administrative body is granted discretionary powers to resolve any issue it shall be obliged to exercise the powers within the scope of the law. Even if the agency had the possibility to rely on public interest issues in its' decisions, it is unexpected that it can prove the existence of threat to public interest in every single upcoming merger, for instance.

12. Employment concerns are of much greater importance in merger cases for sure, however it might become crucial in cartel cases as well. In July 2015 Competition Agency of Georgia has found the cartel agreement on car fuel market and imposed significant fines up to 55 000 000 GEL in total to 8 economic agents. One of the comments expressed through the media was related to employment issues. Opinions stated that fines impose burden on the business, therefore they have to cut in their expenditures which will finally be reflected in the reduction of staff. Even though it was not a valid argument in this particular case it made clear that employment issues will most probably arise in the future in similar cases.

3. Regulatory framework provided by labor law

13. When it comes to mergers and acquisitions when business is taken over by another employer the rights of employees are protected according to the general labor protection tools provided by labor code of Georgia. There is no special act addressing the employees' on transfer undertakings.

14. One of the main tool as in other jurisdictions is considered to be the employment contract. The new employer is legally obliged to take on the existing employees of the business, while according to the law of Georgia on Entrepreneurs an enterprise that has taken over another enterprise created as a result of merger shall be the successor of the former enterprise. Therefore it is responsible for obligations taken by its' successor, including the obligations taken by employment contracts. It is the topic of different discussion, though, how employment contracts are drafted, whether there is a practice to stipulate unfair 'boiler plate' terms in those contracts.

15. With regard to the employment agreements the Labor Code of Georgia determines grounds for their termination which are similar to generally accepted grounds throughout the world.

16. Special regulation for massive layoffs has been introduced by 2013 reform of the labor law in Georgia. It is the most relevant regulation with regard the huge take over cases where newly formed entity plans to change the employment policy or cut down the staff.

17. When economic circumstances, technological or organizational changes require downsizing the employer is entitled to terminate the contracts of employees. This regulations involves significant precondition while the economic, technological or organizational changes by itself is not sufficient ground for termination, but the necessity of downsizing dictated by latter changes should be present at the same time.

18. Herewith the overall understanding of this article deprives the company from taking the advantage of reorganization to fire individuals. In this case the legitimacy of the reorganization should be evaluated – whether it was dictated by interests of the company.

19. In case of massive layoffs which is defined as a termination of at least 100 employees' labor agreements within 15 calendar days employers shall be obliged to notify in writing the Ministry for Labor, Health and Social Affairs of Georgia (the Ministry) and the employees whose contracts are terminated at least 45 calendar days before the massive layoffs.

20. The obligation towards the ministry is to notify the upcoming downsizing, though, it is not determined what kind of information should the notification contain. Moreover the Ministry is not entitled to make any influence (change) on the decision of downsizing. However ministry can be involved in the process within the format of trilateral commission of social partnership which is a consultative body. Commission consists of government representatives together with representatives of employees' and employers' associations. The commission is empowered to obtain and draft recommendations with regard the issues of massive layoffs, however such recommendations are not binding for employer which means they do not have restraining effect. However, the obligation to notify the government puts certain burden on the employer and therefore creates certain guarantee that massive layoff is consistent with the requirements of the law.

4. Conclusion

21. As stated above, Competition Agency is not entitled to focus on employment issues when dealing with specific case. Legislation does not provide any specific clause which would for instance enable the competition authority to deny the upcoming merger on the grounds of foreseeable downsizing in the merged company.

22. On the other hand competition agency has its vital role in terms of job creation while reaching its goal of creating free market competition facilitates creation of jobs.