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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –
Contribution from Georgia**

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More documentation related to this discussion can be found at: oe.cd/icar.

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Interactions between Competition Authorities and Sector Regulators

– Contribution from Georgia–

Introduction

1. Effective co-operation between competition authorities and sector regulators is a crucial factor for enforcing competition policy objectives and promoting competition. However, despite the importance of this relationship, sometimes the objectives and mandates are not well distributed between the sector regulators and competition authorities and this uncertainty might cause problems in practice. Without clear distribution of objectives, it is impossible to ensure a consistent and coherent competition policy. In order to combat this issue different jurisdictions have developed different models for the relationship between the regulators and competition authorities.¹ The models of the relationship are usually grouped into three general categories: a) exclusive jurisdiction, b) cooperative jurisdiction and c) concurrent jurisdiction. If we try to categorize the nature of the relationship between the competition authority and sector regulators in Georgia it will classify as a combination of exclusive and cooperative jurisdiction, while the regulators enjoy exclusive jurisdiction over the alleged infringements in their sectors, there is a path for optional cooperation prescribed by the relevant legislation and this legal pathway is further strengthened by the actual practice. The model of this interaction has been created by the amendments to the Law of Georgia “on Competition” in 2020 in order to separate competences between the competition authority and sector regulators.

2. This written contribution aims to provide insights on how the framework of this important relationship is set up in Georgia. The paper will review the institutional context, legislation (including bylaws) and practical examples of interactions between the Georgian National Competition Agency (Hereinafter – GNCA) and sector regulators.

1. Institutional Context and the Separation of Competences

3. The law of Georgia “On Competition”² describes the GNCA as the main authority to ensure the fulfillment of the law. Additionally, the law also states that the powers of the GNCA shall be exercised by sector regulators where the alleged infringement occurs in a regulated sector.³ Additionally, there is a dedicated chapter on co-operation between GNCA and sector regulators that clarifies and explains the mandates of sector regulators, which will be explained in detail in this chapter.

¹ For further reading: MAHER M. DABBAH, THE RELATIONSHIP BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS, Cambridge Law Journal, 70(1), March 2011, pp. 113–143.

² The Law of Georgia “On Competition”. English translation is available at: <https://admin.competition.ge/uploads/ce0c357cdaec42e7b44e09b25b8c6ef7.pdf>

³ Ibid. Article 4.

4. In order to clarify the institutional context that is set up in Georgia, it is needed to identify the sector regulators that, according to the law “on Competition”, enjoy the rights of the competition authority. The law of Georgia “on National Regulatory Bodies”⁴ defines the Georgian National Communications Commission (hereinafter - COMCOM) and the Georgian National Energy and Water Supply Regulatory Commission (hereinafter - GNERC) as national regulatory bodies. The organic law of Georgia “on The National Bank of Georgia”⁵ defines The National Bank of Georgia (hereinafter NBG) as a regulator in the financial sector. Accordingly, COMCOM, GNERC and NBG are identified by the respective legislation as sector regulators and may act as competition authorities.

5. As mentioned previously, there is a dedicated chapter on co-operation between the GNCA and sector regulators in the Law “On Competition”⁶. According to the provisions of this chapter, the GNCA and the relevant regulatory authorities of a regulated sector of the economy shall cooperate in the investigation and prevention of the distortion of competition in the regulated sector of the economy. Moreover, it is stipulated that a complaint/application on the alleged violation of competition in a regulated sector of the economy, or a notification on a merger (concentration) is to be submitted to the sector regulator or to the GNCA. However, the GNCA is able to examine the case only in limited circumstances which are the following:

- a. The alleged violator of the Law, or one of the parties to the concentration is not an undertaking in the regulated sector of the economy;
- b. The alleged violators of the Law and the parties to the concentration are the undertakings of various regulated sectors of the economy;
- c. The entity/entities allegedly violating the Law is/are the undertaking(s) of the regulated sector of the economy, but the said action (subject of dispute) has not been carried out in the regulated sector of the economy.

6. On every other occasion, where the complaint/application is submitted to the GNCA and not directly to the relevant sector regulator and the abovementioned exceptions are not applicable, the GNCA has the obligation to send the complaint/application to the sector regulator for considering the case. The law also stipulates that while examining/considering the alleged infringement, the sector regulator shall use the relevant provisions of the law “On Competition” with some exceptions. These exceptions are mostly procedural provisions which are applicable only in such occasions when the special legislation of the relevant sector does not provide otherwise. Therefore, according to the law, the roles and objectives of the GNCA and sector regulators are clearly distributed and defined.

2. Forms of Interactions

7. It is stipulated by the Law “On Competition” that if the GNCA is considering the case and the limited circumstances explained above exist, the sector regulator must be

⁴ The law of Georgia “on National Regulatory Bodies”, English version available at: <https://matsne.gov.ge/en/document/view/14062?publication=18>

⁵ The organic law of Georgia “on The National Bank of Georgia” English version available at: <https://www.matsne.gov.ge/en/document/view/101044?publication=38>

⁶ The Law of Georgia “On Competition”, Articles 30-31.

invited to participate in the discussion and to present its position.⁷ This provision is further explained in the bylaw of the GNCA which deals with the rules and procedures on investigation.⁸ According to the bylaw, the GNCA is obliged to notify the sector regulator on the commencement of the investigation and the sector regulator is authorized to get access to the case materials, participate in explanatory and summary hearings/sessions, express its position on the commitments of the undertaking, get familiar with and express position on the final draft decision of the Agency and on the amount of the fine to be imposed on the undertaking. Additionally, it has to be noted that the GNCA is not bound by positions provided by the sector regulator.

8. The law “On Competition” indicates the same obligation for sector regulators. Similarly, the sector regulators must include the GNCA in discussions and provide the agency with the ability to present its position.⁹ The special secondary legislation of sector regulators mirror the provisions of the bylaw of the GNCA. Therefore, when the alleged infringement of the competition legislation is considered by the sector regulator, the GNCA enjoys the same rights to access case materials, participate in hearings/sessions and provide its position on the draft decision. Similarly, the sector regulators are not bound by the positions provided by the GNCA.

9. Additionally, the GNCA and sector regulators have signed the co-operation memorandum in 2021 in order to strengthen co-operation and promote competition policy. The parties agreed to jointly organize the annual conference, where they will discuss and evaluate the conducted work, results and challenges. The signed memorandum further strengthens the co-operation framework set up by the law and secondary legislation. The joint discussions on the process and possible challenges on co-operation ensure less uncertainty and more effective enforcement of competition policy in all sectors.

3. Interactions in Practice

10. After the amendments to the legislation, the GNCA has been actively co-operating with all three regulators – NBG, GNERC and COMCOM. The co-operation procedure follows the rules provided by the law and the relevant secondary legislation.

11. The GNCA has been actively involved in the investigation process commenced by the NBG. The ongoing case concerns the situation in the payment services market, the issue is related to the travel fee in public transport. The NBG in accordance with the Law of Georgia “on Competition” investigates the actions of the winning banks in the tenders announced by various municipalities for the payment, control and management system of public transport. The GNCA has been actively involved in the process and has already provided its opinions on various issues on the case. Another interaction with the NBG involved the merger case, which was considered compatible with the competitive environment and, similarly, the GNCA was actively involved and received the final draft decision from the NBG.

12. The ongoing case in the communications sector involves the major Georgian TV broadcasters. The investigation was started by the COMCOM on the alleged violation of

⁷ Ibid. Article 31.5

⁸ ORDER №40 of the Chairman of the Competition Agency on the Approval of the Rules and Procedures of Investigation. English version available at: <https://admin.competition.ge/uploads/866c1a8a05dc49bf83088d7a12800981.pdf>

⁹ The Law of Georgia “On Competition”, Article 31.6.c

Article 7 of the competition law (Restrictive agreements, decisions and concerted practices). The GNCA has been actively involved in the process from the beginning of the investigation. Apart from formal ways for involvement prescribed by the law (familiarizing with the case materials, participation in hearings/sessions and expressing positions/opinions), several ad-hoc meetings were conducted between the representatives of GNCA and COMCOM where relevant issues on the admissibility and case law on alleged violations were discussed.

13. Third and the final ongoing case with the sector regulator is in the energy sector. The investigation was launched by the GNERC on the alleged violation of the Article 6 of the law (abuse of dominant position). The GNCA is actively participating in the case according to the law and secondary legislation. Similarly, several ad-hoc informal meetings on the admissibility/inadmissibility issues and case law were discussed.

14. As discussed earlier, the law and other relevant secondary legislation provide detailed rules on interactions between the GNCA and sector regulators. However, the interactions show that ad-hoc informal meetings are useful in order to effectively investigate the case. It should be reminded that the amendments that defined the powers and objectives of sector regulators are relatively recent, therefore, the need for expertise on some issues related to the competition law is needed due to lack of experience.