

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2021 - Georgia

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Legislation overview

The Constitution of Georgia (Article 6.2) lays down the framework for free and undistorted competition in the Georgian market. The Competition Chapter of [the Association Agreement between the European Union \(“EU”\) and Georgia](#) emphasizes the importance of “*free and undistorted competition in the trade relations*”. It also concretizes the obligation of the Parties to maintain “*comprehensive competition laws*” and have “*appropriately equipped, effective authority*”.

In recent years, Georgia has amended competition rules in compliance with the obligations under the Association Agreement: following a large-scale reform in 2014, the Georgian National Competition Agency (“the Agency” or “GNCA”) – an independent Legal Entity of Public Law – was established. The GNCA is responsible for enforcement of the Law on Competition and relevant by-laws. The Law on Competition is generally modelled on EU competition rules and contains prohibitions of anticompetitive agreements and abuses of a dominant position, as well as merger control rules and state aid provisions. The GNCA also conducts market monitoring (similar to the Sector Inquiry in the EU system), prevents the distortion of competition by administrative bodies and enforces unfair competition rules. Finally, the GNCA has recently been designated as an enforcer of anti-dumping legislation.

Recent legislative reforms

In September 2020, after almost two years of discussions by the Parliament of Georgia, [the Law on Competition](#) and related secondary legislation were substantially amended. On an **administrative** level, the independence of the GNCA was further strengthened. The GNCA’s **enforcement** (investigatory and fining) powers have also improved. Simultaneously, the amendments equip market players with additional tools to effectively exercise their **right to defence** and enhance **procedural justice**. Legislative changes also include improved procedures for concentration control, enhancements to the enforcement system of competition rules in the regulated

sectors, changes to the GNCA's institutional set-up, as well as new functions and enforcement tools, *etc.* The key amendments are summarized below:

- **Mergers:** a new two-phase merger review procedure with the duration of 25 working days for Phase I and additional 90 calendar days for Phase II; possibility to impose structural or behavioural remedies; more effective information gathering powers; the right to impose fines up to 5% of an undertaking's annual turnover for gun-jumping.
- **Investigative powers:** extended investigation period, with the overall time-limit, increased from 10 to 18 months; the GNCA's right to conduct unannounced inspections; the obligation to send draft decisions (similar to the Statement of Objections in the EU system) to the parties and allow them to comment and present additional evidence, *etc.*
- **Unfair competition:** the fining powers in case of infringements up to 1% of annual turnover.
- **Anti-dumping:** the GNCA was designated as an enforcer of the new [Law on the Introduction of Anti-dumping Measures in Trade](#) adopted in 2020.

The GNCA's enforcement practice in 2021

Prior to the amendments, one of the main challenges for effective enforcement was the GCNA's inability to collect relevant information during merger proceedings or market monitoring, as undertakings were not legally obliged to provide requested information. After the amendments, providing for penalties for the failure to provide information, the data flow has significantly improved, enabling the GNCA to base its decisions on complete and accurate information.

Moreover, to identify unnotified concentrations, the GNCA introduced a new cooperation mechanism with the Public Registry of Georgia. The Public Registry periodically transfers information about registered mergers and acquisitions to the GNCA. The existing legal framework allows the GNCA to access the Revenue Service of Georgia databases. By combining these two resources, the GNCA can conduct preliminary analysis (*e.g.*, check apparent annual turnovers of the parties) in order to establish whether a given concentration was subject to mandatory notification. In 2021, the GNCA issued the first-ever gun-jumping fine, amounting to 15,000 Georgian Lari (around 4,800 EUR). The undertaking responsible for the failure to notify was mandated to do so. The GNCA has subsequently [cleared](#) the concentration. Besides, the GNCA examined and cleared two merger notifications, whereby [one](#) concerned the companies active in different sub-segments of the retail sector, and the [other](#) was a concentration between foreign undertakings (Mondelez and Chipita), which had subsidiaries in Georgia.

The amendments fundamentally changed competition law enforcement in the regulated sectors. Previously, the Law on Competition did not apply in the regulated sectors (such as financial services, energy, telecoms), and by extension, the GNCA had no enforcement authority in those domains. Minimal competition provisions, included in the sectoral regulation, were to be enforced by the relevant regulators. This legal

gap made enforcing the competition law in the regulated sectors very challenging. After the amendments, the Law on Competition is set to be enforced in all sectors of economy by relevant sector regulators. In certain cases, and upon certain conditions, the GNCA has enforcement powers. The law establishes a cooperation procedure for cases where the GNCA investigates a potential infringement involving undertakings operating in the regulated sectors and vice versa. In practice, the GNCA has **already been involved** in ongoing investigations by all three sectoral regulators by providing non-binding opinions and participating in oral hearings, *etc.*

The GNCA completed five investigations in the course of 2021 involving one case of an anticompetitive agreement, three cases of unfair competition, and one case of a distortion of competition by an administrative body. In three cases, the GNCA established infringements of the law and imposed fines on the undertakings involved.

Notably, 2021 marked the first case where the GNCA established bid rigging. The case concerned an agreement by the companies participating in the public tenders for free canteens and catering services. The Agency concluded that four out of seven respondent undertakings violated Article 7 of the Law on Competition, which prohibited anti-competitive agreements. Based on the investigative findings, including direct evidence of meetings between competitors and subsequent cooperation, the Agency determined that the undertakings partitioned the market by allocating specific public tenders among themselves. The GNCA **sanctioned the undertakings** with a fine of 40.000 Georgian Lari (around 13.000 EUR). The appeal is pending before the Tbilisi City Court.

The GNCA has also concluded the Competition Impact Assessment related to the ex-post monitoring of the Poti Sea Port case. For the background, in 2017, the GNCA considered that the forthcoming measures of the Poti seaport operator JSC “Poti Sea Port” to integrate certain offerings amounted to an abuse of its dominant position. In particular, the GNCA considered that the practice at hand would foreclose competitors in the terminal services market if implemented. The Tbilisi City Court later confirmed the GNCA’s findings, but the case is still pending before the Court of Appeals. The GNCA’s **ex-post evaluation concluded** that, in general, there is a competitive environment in the terminal services market.

In 2021, the GNCA also conducted monitoring of two - fuel and pharmaceutical - markets. The former is still ongoing, and the latter was concluded in December 2021. As it was an issue of public interest, the GNCA examined the existing structure of the pharmaceutical market in Georgia, assessed the overall competitiveness of the market at various levels, such as production or import of medicines and wholesale and retail distribution. The Agency has focused on six groups of commonly used medicines and assessed the retail price formation based on factors such as production/import costs, exchange rate impact, *etc.* The Agency concluded that there is a scope for strengthening legislative regulation and effective enforcement to ensure maximum competition between substitute products and to increase the share of generics, leading to a significant reduction in consumer expenditure on medicines. The GNCA **recommended** (1) to address the apparent negative impact of high market concentration and holding structures, including potential conflicts of interest in pharmaceutical supply chains; and (2) to strengthen the regulatory control of the

sector *inter alia* via ensuring maximum competition between substitute products, leading to an increase of the share of generics on the market; raising awareness and recommending generic prescriptions; introduction of a Unified Electronic System for prescription monitoring, *etc.* These corrective measures aim to attain the highest quality and increased choice of medicines on the Georgian market while ensuring affordable prices without interventionist price regulation, wherever possible.

The GNCA becomes an anti-dumping enforcer

Georgia made an important step forward in the area of trade remedies by adopting its first anti-dumping legislation in full compliance with the EU-Georgia Association Agreement and the World Trade Organization rules (Article VI of GATT 1994). The new Law on the Introduction of Anti-dumping Measures in Trade entered into force in June 2021 with the adoption of the secondary rules (*i.e.*, the Government resolutions on (i) the launching and execution of an investigation, (ii) the decision-making procedure to introduce an anti-dumping measure; and (iii) the implementation of anti-dumping measures by the Revenues Service of Georgia).

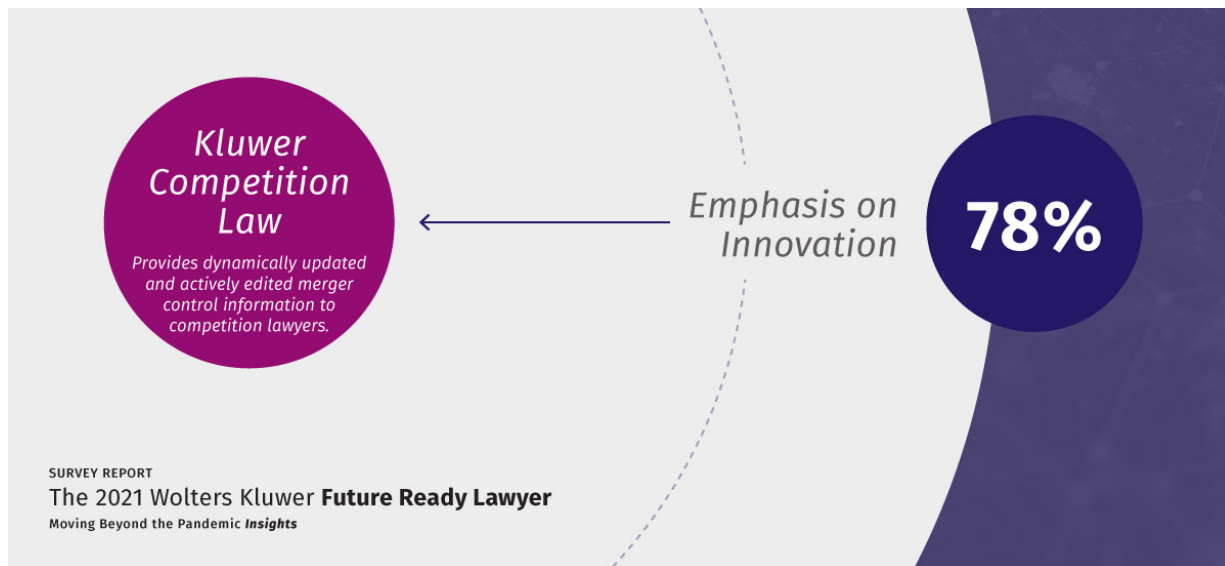
The anti-dumping law designates the GNCA as an enforcement authority. Consequently, a separate department for Anti-Dumping Measures has been created within the Agency. The department is responsible for investigating and assessing anti-dumping cases and submitting its opinions to the Government of Georgia - a final decision-making body in the field of trade remedies.

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