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Georgia is one of the former Soviet Republics, and neighbours Armenia, Azerbaijan, Russia and Turkey. Georgia has successfully maintained its ancient culture against successive invaders and regional overlords. Georgia has its own Orthodox Christian Church, which has been autocephalous for much of its history and played an important role in preserving the nation's identity, culture and traditions.

Economy

Georgia's main economic activities include the cultivation of agricultural products such as grapes, citrus fruits, and hazelnuts; mining of manganese and copper; and output of a small industrial sector producing alcoholic and nonalcoholic beverages, metals, machinery, and chemicals. The country imports the bulk of its energy needs, including natural gas and oil products. It has sizeable but underdeveloped hydropower capacity.

Georgia, like the other former Soviet republics, was hit badly by the Russian financial crisis of August 1998, and it took the country a long time to start recovering. The economy suffered severe damage due to civil strife. Nevertheless, Georgia, has made substantial economic gains since 2000, achieving positive GDP growth and curtailment of inflation.

Georgia suffers from energy shortages due to aging and badly maintained infrastructure, as well as poor management. The country is pinning its hopes for long-term growth on its role as a transit state for pipelines and trade. The construction of the Baku-Tbilisi-Ceyhan oil pipeline and the Baku-Tbilisi-Erzurum gas pipeline have brought much-needed investment and job opportunities.

In the summer of 2000, Georgia became a member of the WTO. Georgia is the fourth former Soviet republic to become a member of the WTO, after the Kyrgyz Republic, Latvia and Estonia, and has done so in less than four years after applying for membership.

PROFILE	
Population:	5.1million***
GDP (Current US\$):	4 billion***
Per Capita Income: (Current US\$)	770 (Atlas method)*** 2,260 (at PPP)**
Surface Area:	69,700 sq. km
Life Expectancy:	73.5 years**
Literacy (%):	100 (of ages 15 and above)
HDI Rank:	97***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Competition Evolution and Environment

In Georgia, as well as in the other former Soviet Republics, the state anti-monopoly regulation was introduced at the very beginning of political and economic independence. At the same time, the process of de-monopolisation of the national economy and privatisation of state property, along with the liberalisation of trade and prices, took place.

In February 1992, the Anti-monopoly Department was created within the Ministry of Economy of Georgia, the main tasks of which were the following:

- restriction of monopolistic activity;
- promotion of competition;
- support of entrepreneurs; and
- protection of consumer rights.

The activities of the Department were essentially based on a *Decree* of the State Council: '*On Restriction of Anti-monopoly Activity and Competition Development*' (was in force until 1996). Anti-monopoly enforcement was also envisaged by some Articles of other normative acts, for example, the Law '*On Basic Principles of Entrepreneurial*

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Activity’ and the Decree of the Council of Ministers of Georgia ‘On Measures for the De-monopolization of the National Economy’.

In the autumn of 1993, a medium-term programme for economic reform was implemented. One of the main tasks of the reforms was the creation of the legal and institutional base for Anti-monopoly regulation, in order to protect consumers and businesses; to restrict and prohibit monopolistic activity; and to promote competition. In 1996, the law “On Monopolistic Activity and Competition” was adopted. According to this law the State Anti-monopoly Service of Georgia (SASG) was created in December 1996 to administer the competition law. The SASG was attached to the Ministry of Economy.

Competition Law

The sphere of implementation of the competition law is defined by Articles 4, 5, and 6, according to which, ‘this Law pertains to matters that affect competition in the commodity market (production, labour, services) in which legal and physical persons (including foreign) or departments of Government in Georgia take part’. The Law is also applicable in cases where an agreement or an activity conducted outside of the borders of Georgia restricts (or may restrict) competition, or may negatively influence a product market within the country.

According to Article 5 of the law, ‘the law shall not apply to the terms related to copyright and patent law, trademarks, and industrial designs’. Bearing in mind the interests of the country, the Parliament of Georgia has the right to limit, in full or in part, the application of this law to different kinds of monopolistic activities.

According to article 6 of the law, competition in the securities and financial services markets shall be regulated by the appropriate legislative acts, except in those cases where these activities affect competition in commodities markets.

As for international governmental agreements, article 7 stipulates that if the provisions of an international agreement to which Georgia is a party are inconsistent with the provisions of the antimonopoly law, the provisions of the international agreement take priority.

Moreover, the competition law of Georgia contains legal provisions (Article 10) for the state control of the behaviour of executive and local administrative bodies, which may influence, and lead to a lessening or restriction of, competition and free pricing.

In accordance with international principles, Georgia’s competition legislation does not consider the holding of a monopolistic position by economic agents to be *per se* illegal. Only the law prohibits the abuse of a monopolistic position.

According to Article 13 of the law, *an economic agent holding a monopoly position shall be prohibited from misusing this position for the purpose of discriminating against other agents in the market. Actions shall be deemed as the misuse of a monopoly position if they lead or may lead to the infringement of interests of other economic agents or consumers.*

The same Article defines acts or behaviour that is considered as abusive. It must be noted that the list of actions defined, by the Law, as abuse of a monopolistic

Box 74.1: Prohibition of Abuse of Dominant Position

In this case, the SASG received a complaint from the TV Company ‘Caucasia’ against Telecentri, wholly owned by the Ministry of Telecommunication and Post, with exclusive rights to operate the country’s telecommunication system.

Caucasia was using Telecentri’s network to transmit TV programmes in the capital: Tbilisi. Whilst the existing contract was running smoothly, Telecentri imposed additional conditions, which Caucasia found onerous. Telecentri quoted a very high price for the broadcast of services all over the country (US\$100), whilst Caucasia was interested only in the transmission of its programmes inside Tbilisi (US\$10).

Consequently, Caucasia complained to the SASG. The Authority conducted an enquiry and found that Telecentri was violating Article 13 of the competition

law. According to the law, the monopolistic economic agent will be prohibited from:

- Any kind of compulsion for forcing a party to an agreement;
- Unilateral imposition of high or low prices which considerably differs from the costs of production or realisation for a certain period; and
- Reduction or stopping of production or goods/ services, which are in demand, if its production can be maintained without possible losses.

The SASG sent a letter to Telecentri explaining this abuse of its dominant position and directed Telecentri to cease and desist. Telecentri’s supervisory body, the Ministry of Telecommunications and Post was also informed about Telecentri’s violation of the Antimonopoly Legislation.

position is not exhaustive, thus enabling SASG to include other kinds of abuse in the enforcement process.

Merger enforcement also exists in the Anti-monopoly Law, but its implementation has been weak because of the deficiency of state control mechanisms. It should be noted that the Law of Georgia regulates mergers, based on the decisions of the State administrative bodies, and only when one of the parties holds a monopolistic position. Furthermore, Article 12 of the Law bars dominant firms from entering into agreements with suppliers or customers where the agreements restrict, or may restrict, competition significantly.

According to Article 14 of the law, a proposed merger that would create a monopolistic enterprise, must be scrutinised *ex ante*, in order to avoid the monopolisation of the market. This Article requires the SASG to review M&As by monopolistic economic agents; and bar a merger registration if the SASG comes to a negative conclusion concerning the possible consequences of the merger. In the case of an adverse finding by the SASG, the Court shall refuse the registration of the merger. According to Article 23, “When acquiring stocks or shares of another economic agent (or its subsidiary), an economic agent with a monopoly position shall obtain the SASG expert’s report”.

In addition, as noted earlier, Article 10 of the law prohibits state administrative bodies from merging, or the creation of unions, associations, concerns, consortia, management

agencies, inter-sectoral and regional associations, if this leads to the diminution or restriction of competition.

It is clear that if the prohibitions to monopolistic firms, stipulated in various Articles of the law, are interpreted with a competition lens, market participants will be protected from abuses of monopolistic position by the dominant firms. However, it should be noted that the existing condition of corresponding normative and methodological bases makes the law less effective than it should be. The latest developments indicate a far less effective law, on which please see below.

The State Anti-monopoly Service of Georgia (SASG)

The SASG, under the Ministry of Economy of Georgia, is the Government regulatory body with responsibility for the enforcement of the Anti-monopoly law, as well as the Consumer Protection and Advertising laws. The principal tasks of the SASG are to implement anti-monopoly policy, to create and protect conditions favourable for the development of competition in Georgia, and to oversee their implementation (a task more important for the competition agencies of transition economies than for those of the developed countries), to ban monopolistic activity, and to regulate the protection of the rights of consumers and advertising activity.

The SASG is required to carry out analyses of markets, to investigate possible restrictions of competition or instances of unfair competition (using information provided in complaints as well as other available information), and to issue appropriate decisions within its jurisdiction.

Box 74.2: Caucasia Takes Bigger TV Company to the SASG

In yet another case, Caucasia complained to the SASG against the TVR Corporation of Georgia for interrupting the transmission of its translated telecast of the Davis Cup tennis matches. By such an action, the TVR Corporation had infringed the Competition Law, which bans any restriction of competition, namely:

- Restricts one of the parties in the choice of market, supplier of resources, provider or consumer; and
- Essentially restricts the competition on the substitution of goods markets.

Besides, the commodity market analysis department of the SASG determined the relevant market and the market shares of the market participants: the TVR Corporation owned 77 percent; and Caucasia, only 23 percent of the total ether time. The Index of the market concentration was 6458. Therefore, the TVR Corporation was in a dominant position. The TV market was a highly concentrated market with high

entry barriers. Therefore, the abuse of the dominant position also led to the restriction of competition

According to Article 21 of the competition law of Georgia, the SASG obtained the details of the contracts between Telecentri, another company, and from the TVR Corporation. The SASG held that the terms of the contracts were a violation of Article 13 of the Law, which prohibits the ‘creation of such discriminating conditions to participants of the market’, and that such action shall be deemed as misuse of monopolistic position, which leads or may lead to the infringement of legal interests of other economic agents or the consumer.

In disposing off the complaint, the SASG directed the TVR Corporation to revoke its illegal decision. The SASG also directed Telecentri to reconsider the contract in accordance with requirements of the Anti-monopoly legislation, so that consumers would not suffer.

The decisions, resolution, instructions, and regulations, as well as other normative acts, adopted by the SASG within its areas of competence, are required to be followed and implemented by the Ministries and Departments of the Government of Georgia; by regional and local bodies of the Government; by enterprises and organisations, regardless of their forms of ownership and organisational and legal status; as well as by the individual entrepreneurs.

The SASG is empowered in its domain by the Constitution of Georgia; the Laws '*On Monopolistic Activity and Competition*', '*On the Protection of Consumer Rights*', and '*On Advertising*', resolutions of the Parliament; Presidential decrees and orders; and normative acts adopted in accordance with the above mentioned laws. The SASG earlier reported to the President of Georgia through an annual report and was situated in the Ministry of Economy. After a statutory change in 2004, it now reports directly to the Ministry of Economic Development. Its main funding comes from the central budget of Georgia, however, it could generate additional funding through special resources and grants.

Sectoral Regulation

Telecommunications Sector

Georgian National Communications Commission was established on July 01, 2000. Its four members (including Chairman) are appointed by the President. Its sources of revenue are the license fee and the regulation fee paid by the licensees.

The Commission was established pursuant to the issuing of the law on post and communications in July 1999 by the Parliament of Georgia. The law defines and separates the functions of the Communications Department of the Ministry of Economy as the body defining policy and those of the Commission as the regulatory body.

Some of the main goals and tasks of the Commission are as follows:

- inadmissibility of monopolistic activity in the field of communications and post;
- establishment of fair and equal competitive environment;
- attraction of modern technologies and establishment of effective cooperation with international organisations for these purposes; and
- defense of the consumers' legal interests.

The Georgian National Communications Commission is empowered to issue, suspend or annul licenses in the field of communications and post. The Commission is required to carry out monitoring on fulfillment of license conditions, make a license register, and for effective and stable functioning of the market, consider disputes raised between license holders, as well as disputes between consumers and license holders.

The competence of the Commission includes definition and allocation of radio frequency spectrum, certification of communications and post facilities, standardisation, provision of metrological service etc. The Georgian National Communications Commission regulates technical, economical and legal issues on interconnection between telecommunications network operators.

One of the main functions of the Commission is to have open, public and transparent relationship with the public. The Resolutions and Decisions of the Commission are available for public discussion.

Energy Sector

The Georgian National Energy Regulatory Commission (GNERC) was established in 1996. The President appoints the three Commissioners (including Chairman). The GNERC establishes prices for imports and exports, wholesale, retail, distribution tariffs for electricity and natural gas, issues licenses, promotes privatisation and the operation of the wholesale electricity market; settles disputes between the licensees and the customers. It is financed through regulatory fees.

The wholesale power market of Georgia is under Ibedrola's (Spain) management for 5 years since January 2002. The transmission and distribution companies have been consolidated and are under the management of ESBI (Ireland) for 5 years since December 2002. The main supplier of natural gas is Gazprom. The biggest consumer TBILGAZI (Tbilisi distribution Company) is under the management contract executed by the Georgian group "New management". Natural gas is distributed by distribution companies, among them 19 are private and 25 are state owned.

Interface between Competition Authority and Regulatory Agencies

Competition provisions are also included in other laws of Georgia: '*On Advertising*', '*On Insurance*', '*On Securities Market*', '*On the Activity of Commercial Banks*', '*On Telecommunications and Post*', '*On the Power Engineering and Gas*' etc. For example: Article 22 of the Law '*On the Activity of Commercial Banks*,' prohibits banks that 'independently or together with other enterprises may find themselves in a dominant position in the market of money, finance, or credit', from making certain kinds of deals and from acting in such a way that they or third persons might be in a position to obtain undeserved advantages.

It is necessary to have a clear interpretation of the functions, dividing exactly the competence and responsibilities, of the SASG and Independent Industry Regulatory Commission. According to the Georgia's Law '*On National Independent Regulatory Authorities*' (2002) and the

amendments (2003) to the same Law; in order to provide additional guarantees for consumers' interests, the services of the public defender of consumers' interests were established by the regulatory authorities and the public defenders were appointed for two years term.

Actually, these services are carried out by independent Advocacy Institutes and conducted independently from staff/apparatus of the regulatory commissions. Taking into consideration that the institutes are financed by the appropriate commission's budget, it is difficult to believe that these institutes are able to protect consumer interests in the case of the adoption of the commission's incorrect regulatory rulings.

A common problem in Georgia, as well as in many countries, is that the relationship between the competition authority and sector specific regulators is often confused. It is clear that there are overlaps between industry specific regimes governing access to the networks, and economy wide rules governing the misuse of market power. The amendments made in the Laws 'On Consumers' Rights Protection' and 'On Monopolistic Activity and Competition' make it evident that the first generation of the industry regulatory reforms in Georgia resulted in the fragmentation of the competition and consumer policies. That is, sector-specific regulators are responsible for dealing with classical competition problems, under their own statutes rather than under competition law.

For example, the Law 'On Monopolistic Activity and Competition' (Article 5) was amended in the following manner: "The National Independent Regulatory Commission, as well as the Georgian Regulatory State Agency of Gas and Oil Recourses, are the only authorised bodies to provide the regulation and control within the framework of the competence determined in the appropriate law".

Taking into consideration all that mentioned above, the interaction between the competition and public utilities regulatory regimes should be defined clearly, there should be a single, economy-wide framework of sound competition policy principles that is applied equally everywhere; independent regulators should not be able to establish sector-specific competition and consumer policies.

Consumer Protection

The Law of Georgia 'On Consumers' Rights Protection' was adopted in March 1996. This law regulates the legal relations between consumers and producers, in the sphere of trade, as well in the process of performing work and rendering services, and in defining the rights of consumers. The law provides for the opportunity for community protection (i.e. through NGOs) of consumer's rights, and

guarantees protection by the Government; defines the authority of governmental institutions and other subjects in the sphere of protection of consumer's rights.

The SASG is the implementing body for this law as well. For executing this law, the SASG has formulated 27 Regulations for trade and service. Violations of the Consumer Law also necessitate administrative sanctions and criminal liability. However, it is very difficult to implement the law in its entirety because of a lack, either of suitable provisions, or coherence with corresponding institutions.

The establishment of the Independent Industry Regulatory Commissions in fields of energy and communication, and the adoption of relevant laws, has significantly advanced the measures for consumer rights protection in the sphere of natural monopolies. The independent Advocates (defenders) Institute, which was created by the Regulatory Commissions in 2002, has aided the development of the system for protecting consumer's rights, and could certainly strengthen the commission's ability to protect consumer's rights. Nevertheless, there are certain problems in terms of substituting responsibilities.

Concluding Observations and Future Scenario

The competition legislation of Georgia requires significant changes by strengthening its provisions on all types of anticompetitive behaviour. It also needs to reflect universal competition principles and rules included in the appropriate provisions of the EU Treaty and the UNCTAD's Set on Multilaterally Agreed Set of Equitable Principles and Rules for the control of restrictive business practices.

Alas, what has happened recently is exactly the reverse.

In February 2004, the Government adopted a new law: "Concerning the Structure Proxy and Activity Rules of the Georgian Government". This law required restructuring of the state apparatus. The Ministry of Economic Development was made into a super ministry handling many portfolios. Changes were also made in the State Antimonopoly Service of Georgia. This involved two major changes. Firstly, the head of the authority is nominated by the Minister for Economic Development and appointed by the Prime Minister, whereas earlier it was a Presidential appointment. Secondly, the staff was whittled down, from 150 to 19. However the functions, powers and responsibilities were not changed.

In June 2005, a new competition law was adopted: "On Competition and Free Trading". The old competition law of 1996 was repealed. Not only that but it was an absolute disaster. The SAGS was wound up to be replaced by the Free Trade Agency under the Ministry of Economic Development, with much reduced scope of only covering

anticompetitive actions by the government. Provisions on anticompetitive practices by the business, abuse of dominance and combinations were removed. Further, the number of staff was reduced to just 12.

Taking into consideration the content of the present competition law (of 2005), statute and institutional capabilities of the new established agency (was formed in November of 2005) we can say that: In the current phase of economic reforms, actually, Georgia has neither a competition law nor a competition authority.

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