

BGI Law Brief

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Amendments to the Law on Competition

On September 16, the Parliament passed amendments to the Law on Competition, which will enter into force on November 4, 2020.

According to the amendments, while determining a dominant position of an economic agent, the Agency is to evaluate the market power of such economic agent in addition to its share on the relevant market.

The amendments provide revised definitions of a concentration and an economic agent. The term “economic agent” will be construed broader to include any individuals, entities, other associations, and organizations, carrying out economic activities irrespective of their residence and legal form. As for the concentration, an acquisition of a control by an economic agent in a target undertaking will constitute a concentration even if an acquiring undertaking does not control another economic agent (as was previously prescribed by law). Furthermore, if a concentration results in a creation or strengthening of a dominant position, the latter shall be presumed as violation of antitrust laws, unless proven otherwise by the economic agent.

The Law establishes a standstill obligation of economic agents during the application review process. The Agency is authorized to apply to the court and request a demerger if concentrations were carried out without a mandatory notification or against the decision made by the Agency (including in case of violation of a standstill obligation). As for the threshold triggering notification, only turnover thresholds will be considered to determine whether concentration notification is to be filed or not.

The amendments vest the Competition Agency with the power to decide on structural and/or behavioral activities to be carried out by economic agents in case of an expected substantial restriction of the effective competition. Failure to comply with such measures may result in fines and/or a compulsory demerger.

Furthermore, the Law entitles the Competition Agency to request from the relevant economic agent any information/documentation (including confidential information) related to

the relevant case or any particular transaction (that is necessary to exercise its powers properly) throughout the investigation of any matter. In addition, the Agency has the authority to obtain such information by means of a court order and/or impose a fine on the undertakings in case the requested information is not submitted.

Amendments were also adopted regarding the expected anti-competitive agreements (cartel cases). In particular, in such cases, the Agency has no obligation to deliver the complaint to the economic agent as it may give the target of the investigation opportunity to destroy relevant evidence.

In addition, several amendments were introduced to various laws granting the National Bank of Georgia and the Georgian National Communications Commission authorities similar to those enjoyed by the Agency to conduct supervision of their respective sectors.

The Parliament Adopts New Law on Insolvency Proceedings

On September 18, the Parliament passed the Law on Rehabilitation and Collective Satisfaction of Creditors (the “Law”) which will replace fully the Law on Insolvency Proceedings as of April 1, 2021.

The main principle of insolvency proceedings has changed and instead of equal protection of the interests of the debtor and creditor, the stipulated aim is collective satisfaction of creditors’ claims through a successful rehabilitation, or, if failing that, by distribution of funds received from a sale of the insolvency mass.

The Law introduces and defines that only an insolvency practitioner may be appointed as a manager/rehabilitation supervisor/supervisor of regulated agreement, except for cases provided under the Law. All insolvency practitioners must be authorized by the Enforcement Bureau. An insolvency practitioner will be selected automatically, through an electronic system, based on principle of random distribution of cases.

Furthermore, the Law provides for a regulated agreement, which is an agreement that can be concluded between an insolvent debtor and a creditor. This is an alternative procedure which enables a debtor to find ways to overcome financial difficulties and reach an agreement with creditors without court's substantial intervention and at a lower cost.

The Law now authorizes a judge to make decision on rehabilitation/bankruptcy of the debtor. Along with this decision, the court also considers the issue of granting voting rights to creditors from the primary registry whose claims are being disputed.

Further, the Law also regulates procedures for filing and consideration of insolvency applications, commencement of a rehabilitation or bankruptcy regime, organization of electronic case management system, etc.

Georgia Introduces Electronic Apostille

Georgia becomes 19th country out of 119 member states of the Hague Convention on Abolishing the Requirement of Legalisation for Foreign Public Documents to introduce an electronic apostille. The electronic apostille service is provided by the Public Service Development Agency (the "Agency") and it enables citizens of Georgia, as well as citizens of other countries to certify up to 100 types of documents issued by Georgia's public authorities and health and educational institutions. Marriage and birth certificates, health-related documents, court orders and other documents for use abroad can be certified by an electronic apostille.

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Compiled and edited by Salome Meladze. For any further questions or inquiries please contact:

Sandro Bibilashvili, Partner; or
sandro.bibilashvili@bgi.ge

Salome Meladze, Junior Associate
salome.meladze@bgi.ge

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