

ნოდია, ურუმაშვილი და პარტნიორები NODIA, URUMASHVILI & PARTNERS

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1. Economic Constraints Associated with Covid-19

According to the Resolution № 322 of the Government of Georgia of May 23, 2020, following economic activities are restricted throughout the territory of Georgia:

- Operation of ski tracks and ski lifts;
- Organizing/conducting entertainment activities and events;
- Providing early educational services or pre-school and educational services and/or carrying out a school readiness program;
- Sports/gym, saunas, and other spa treatments, as well as swimming pool activities.

For hotel and other accommodating facility guests visiting restaurants/bars/cafés, gym, sport facilities, swimming pools is only allowed till 21:00 PM, from 21:00 PM only room service can be available.

Also, in certain locations (Tbilisi, Batumi, Kutaisi, Rustavi, Gori, Zugdidi, Poti, Telavi, Bakuriani of Borjomi municipality, Gudauri of Kazbegi municipality, Goderdzi resort in Khulo municipality and Mestia of Mestia municipality) additional restrictions are imposed and certain economic activities are only permitted remotely/electronically, namely:

1. Any wholesale or retail sale of goods/products.

Restriction does not apply to:

- sale of groceries/animal feed, animal, animal and plant products, household chemicals and hygiene, veterinary preparations, pesticides and agrochemicals, seed and planting materials;
- supply of electrical communication, electricity, natural gas, water, gasoline, diesel, liquefied gas;
- sale of medical goods, pharmaceutical products;
- newspaper kiosks.
- Shopping Malls and Markets can operate only from 07:00 Am till 19:00 pm, in accordance with the guidelines established by the Minister of Internally Displaced Persons from Occupied Territories, Labour, Health and Social Affairs.

2. Open and closed markets/market activities shall be allowed only remotely.

Restriction shall not apply to activities of agrarian markets/fairs and Shopping malls.

Following activities are only allowed electronically/with delivery service or take away service:

- Providing gambling services and prize-winning game services with the exception of promotional/ prize draws;
- The operation of food-providing facilities/restaurants/bars/cafes is allowed via so-called 'delivery' service and product delivery - so-called 'Take Away' and 'Drive'; as for food-providing facilities/restaurants/bars/cafes operating in shopping malls, they can function only via delivery service.

The activity of hotels and similar accommodation/hospitality facilities shall be permitted only:

- For the purpose of arranging quarantine areas;
- Based on the approval granted as a result of an inspection carried out by the Labor Conditions Inspection Department, or any other responsible body with regard to compliance with recommendations of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia.

General disclaimer: all economic activities shall be performed in compliance with the Recommendations of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia. The Labor Inspection Department may suspend the operation of an entity if there is a critical non-compliance with the above-described recommendations.

Lastly, it is noteworthy that, the constitutionality of certain norms of the first and second paragraphs of Article 45³ of the Law of Georgia on Public Health (on the basis of which the Resolution № 322 of the Government of Georgia is adopted) and of the Resolution № 322 of the Government of Georgia (on delegation of power to the Government for restriction of constitutional rights) are being challenged at the Constitutional Court of Georgia, both formally and substantively.

- See [№1505](#), [№1515](#) , [№1516](#) and [№1529](#) Constitutional claims.

2. Amendments to the Law of Georgia on Medicines and Pharmaceutical Activities

Amendments to the Law of Georgia on "Medicines and Pharmaceutical Activities" of September 7, 2020 refined definitions of "pharmaceutical product" and "biologically active additive". Under amendments, grounds for suspension of registration of a pharmaceutical product under the recognition regime have been specified, as well as grounds for suspension of registration of differently packaged and labelled products under the recognition regime have been added. According to the explanatory note amendments aim to conceptualize detailed regulation for products registered under the recognition regime as in case of pharmaceutical products registered under the national regime. It is noteworthy that the terms of registration procedures have also been extended.

3. New Era of Competition Law in Georgia

3.1. Significant changes

Amendments of September 18, 2020 introduced number of substantive and technical changes to the Law of Georgia on Competition and other related acts. Significant changes are as follows:

- The scope of application of the law has been expanded, namely, relations stemming from the Law of Georgia on the Securities Market no longer fall under the exception category.
- It has been emphasized that the law does not only envisages to prevent state authorities, authorities of the Autonomous Republics, municipal authorities and other administrative authorities to grant exclusive powers to an undertaking, but also the *selective economic advantage* that unlawfully restricts competition shall be regarded as inadmissible.

The amendments refined several terms in the law:

- Economic agent is defined as a natural person, legal person, or other association carrying out entrepreneurial activities irrespective of residency and legal form;
- Concept of "horizontal agreement" has been modified by outlining that horizontal agreement may occur between undertakings operating at the same level of production

and/or distribution. The definition prior to this amendment unjustifiably expanded the concept and made the distinction between vertical and horizontal agreements ambiguous.

- State authorities, authorities of autonomous republics and municipal authorities are prohibited not only from imposing tax benefits that give undertakings an advantage over competitors or potential competitors and restrict competition, but also from any type of benefit that has a similar effect.

Concentration

Per amendments, concentration is considered as:

- a) A merger of two or more independent undertakings resulting in the formation of a single undertaking;
- b) Gaining of direct or indirect, full or partial control over one or more undertakings through the purchase of securities or shareholding, or through an agreement or otherwise, by one or more undertakings, or a person already controlling at least one undertaking which is not considered to be an undertaking for the purposes of this Law;
- c) establishing a joint enterprise, if it performs all the functions of an independent undertaking for a continuous period.

Unlike the previous edition, today, holding position by one and the same person of management board in different entities does not lead to a concentration. The amendment established the presumption that if a concentration creates or strengthens a dominant position, it is regarded that such concentration substantially restricts effective competition of the goods or services market of Georgia or part thereof, unless an economic agent proves otherwise.

If an expected concentration is deemed to hinder effective competition, economic agent willing to accomplish concentration may propose to the Agency structural or behavioral alteration/modifications aiming to avoid restriction of competition. Based on the approval by the Agency the economic agent becomes entitled to effectuate concentration only after the implementation of proposed changes. Failure to implement proposed alterations may lead to the imposition of fines by the Agency or restoration of

the original state of being with the Court's involvement. Beyond that, an undertaking may be subject to a variety of obligations within the timeframe set by the Agency, including selling an enterprise, shares, assets, securities, or parts thereof, reorganization, and termination of a particular contract.

The amendments also set forth the requisites for concentration notification, Agency fees and deadlines, requirements for publicity and transparency of proceedings.

Exemption from the concentration notification obligation is applicable only in the following circumstances:

- Concentration due to insolvency of the economic agent - reference was made to the procedures of the Law on Rehabilitation and Collective Satisfaction of Creditors, which becomes effective as of April 1, 2021. Until now, the current Law of Georgia on Insolvency Proceedings applies.
- Control is gained temporarily, provided that the rights acquired by owning a share (including voting rights) will not be exercised, except for the right to receive information, the right to sell shares / dividends and receive dividends, and the right to take ownership in case of securing a loan;
- Concentration refers to interdependent persons.
- It was specified that if all parties to the concentration are economic agents of a regulated sector of the economy, the notification of concentration shall also be submitted to the relevant regulatory body. Such notification shall include reference to the grounds for exemption, if any.

Supplementing Concentration Rules

It should be noted that on October 26, 2020, **Order N 39** of the Chairman of Competition Agency has been issued on **the Approval of the Rules for Submitting and Reviewing Concentration Notification**. The Order repeals previously operating Order №30/09-4 of 2014 and presents much detailed regulation complementing to concentration rules laid down by the Competition Act.

According to the Order, concentration shall be subject to notification if the total annual turnover of concentration participants on the territory of Georgia for the period of previous financial year exceeds GEL 20 million and, meanwhile, the total annual turnover of at least two of the participants exceeds GEL 5 million. In case concentration involves a person registered in the year of the concentration, the annual turnover existing at the time of the notification during the current calendar year shall be taken into consideration.

The Order also instructs on the calculation of annual turnover, the procedures for notification submission and admissibility, as well as its reviewal and scope of cooperation with the Agency.

It is noteworthy, that concentration participants upon meeting the notification prerequisites are always required to notify prior to the entry into force of the relevant agreement or before the actual implementation of the concentration. If, however, control is exercised through rights, agreements or other means, that, individually or in combination, have potential to have a material effect on the economic agent, and acquisition of control is materialized through more than one transaction, the obligation to notify arises before execution of each of the transaction for a continuous three calendar years.

The Order became affective from November 4, 2020.

State Aid

Changes also affect state aid regulations. Based on the application (information) submitted by State Aid Provider, the Agency is being given maximum 30 working days to verify the compliance of the state aid to be provided with the provisions of this Law and shall issue an appropriate conclusion. Depending on the size and complexity of the case, this period can be extended up to 3 months. Failure to issue a conclusion by the Agency within the established period shall be considered as consent. The conclusion of the Agency shall be submitted to the state aid issuing body and the Government of Georgia, which in case of a negative conclusion shall make its own decision on the relevant issue. Furthermore, the amendments contain rules and procedures for insignificant amount of individual state aid.

Agency's Organizational Arrangement and Power

Based on amendments, the Agency is accountable to both, the Parliament of Georgia, and the Prime Minister of Georgia. Regulations on the management of the Agency are completely altered. From June 1, 2021 the Agency will be managed by the Board and the Executive Director.

As a result of these amendments, the Agency is obliged to protect not only commercial or tax secrecy, but also any confidential information which may, among other secrets, include commercial, bank and/or tax secrets. Further to this, in case of a substantiated request of an economic agent, the Agency is now entitled to decide on a redistribution of imposed fine for a period not exceeding 1 year.

Enforcement

Amendments to the Law of Georgia on Competition also affected enforcement procedures. The Agency became obliged to pass on a submitted complaint to the respondent economic agent, except for the complaint regarding the alleged violation of the restrictive agreement, decision and concerted action.

It is also noteworthy, that grounds for Agency's refusal to launch an investigation on the basis of a complaint have been expanded. The new version of the law also sets forth preconditions and consequences of fulfillment of contingent liabilities. It shall also be emphasized that procedure for a case investigation has been modified. The agency has obtained a right to carry out an on-site inspection of a relevant undertaking on the basis of a court decision.

Furthermore, prior to the final decision of the Agency, a meeting shall be held to provide parties with an opportunity to present their opinion on the draft decision. The advance time for invitation to the meeting shall be no less than 25 working days. Amendments also stipulate that period of limitation for investigation on infringements shall be 3 years from the completion of the relevant action. Initiating an investigation shall be a ground for suspension of the limitation period.

Enforcement of Competition Policy in the Regulated Sectors of the Economy

According to the amendments, rules laid down in the Law of Georgia on Competition may also be applied by the regulatory authority of the economy regulated sectors. Within its scope, procedure and cooperation forms have been identified. If violation

by the economic agent of a regulated sector is reported to the Agency, it shall within 5 working days send information on such violation to the regulatory authority, unless it can assert own competence.

It is also noteworthy that the period prior to June 1, 2021 is defined as a transitional period for the regulated sector of the economy to reach full compliance with the competition law.

Sanctions and Fines

Amendments related to sanctions enlarged the scope of fine imposition, altered some of amounts of fines and introduced dependability to the nature of violation:

- In case of failing to provide information requested by the Agency on the basis of this Law within the time limit determined by the Agency, or providing incorrect or incomplete information to the Agency, a legal entity shall be fined in the amount of GEL 3,000, and a natural person in the amount of GEL 1,000. Recurrent violation results into fine in the amount of GEL 5,000, a natural person – in the amount of GEL 3,000.
- Participation in a restrictive agreement, decision or concerted action shall result in a fine of 5% of its annual turnover for the previous financial year and in case of recurrence the amount of the fine shall not exceed 10% of its annual turnover for the previous financial year.
- In case of incompatibility of the concentration with the competitive environment, the Agency shall impose a fine on an undertaking, the amount of which shall not exceed 5% of the average daily turnover of an undertaking during the financial year prior to the relevant financial decision and in case of imposition on a natural person or another person, who is not considered to be an undertaking for the purposes of this Law, the amount of the fine shall not exceed GEL 500 for each overdue day.
- In case of unfair competition, the fine is determined by the Agency, the amount of which shall not exceed 1% of the annual turnover of the undertaking during the financial year prior to the relevant financial decision, and in case of non-elimination of the legal basis of the said

violation, or repeated violation, the amount of fine shall be 3%.

The amendments also specified the criteria for participation in the leniency program. With the amendments, an appeal of Agency's decision shall occur in Tbilisi City Court.

3.2. Other Legal Acts Modified

- **The amendments to the Law of Georgia on Commercial Bank Activities stipulates that** commercial banks may be merged, acquired or divided only upon a written consent of the National Bank of Georgia.
- **According to the amendments to the Organic Law on the National Bank of Georgia,** the National Bank becomes the recipient of a complaint / application and concentration notification by a representative of the financial sector (other than an accountable enterprise), lending entity or credit information bureau on a possible violation of competition policy. According to the new wording, the National Bank is entitled to give priority to ensuring financial stability over the competition legislation of Georgia.
- **Within the amendment to the Law of Georgia on Electronic Communications,** the Commission has been awarded with additional functions and tasks defined by the Law of Georgia on Competition to ensure proper enforcement of competition. Case review and investigation rules became subject to additional requirements in cases when: a) operating assets of an authorized person are being purchased; b) two or more persons are joined as a result of a merger and one of them is an authorized person; c) an ownership interest or shares of an authorized person are acquired and as a result of the acquisition, 5 percent or more, in total, of the ownership interest or shares of the authorized person is transferred into the ownership of the acquiring person and / or interdependent (affiliated) persons.

It is noteworthy, that in case of non-compliance by an authorized person with the established requirements and obligations, the liability may be set under the Law on Competition. As an example, it is permissible to request actions of a structural and behavioral nature, such as changing the terms of the transaction, invalidating the transaction,

restoration of the initial state of affairs, withdrawal or disposal of shares, appointment of a special manager, etc.

4. Important Amendments to the Labor Code of Georgia

On September 29, 2020 fundamental changes were made to the Labor Code of Georgia. Among them:

- **Discrimination** - the concept of discrimination has been incorporated within the Code. Direct and indirect discrimination has been defined. Clarifying the scope of discrimination prohibition serves as a warning notice to employer while selecting employment criteria at any stage of the employment relationship.
- **Contract form** – through implemented changes, written contract became mandatory for any contracts concluded for a period of more than one month. It is obligatory to lay down detailed rules on termination of employment in the contract.
- **Working hours** – amendments include the rules for night and shift work. Under this regulation, the employer is obliged to provide an employee with at least 24 hours of rest during the week.
- **Internship** is defined as a performance of an employee for an employer with or without remuneration to improve qualifications, gain professional knowledge, skills or practical experience of the employee. Herewith, it is important to note that there is a restriction of an employer to hire an intern with the purpose to avoid entering an employment contract or to replace another employee. An internship agreement shall in detail define its scope, tasks and essence.
- **Social guarantees for pregnant women** - law provides additional social guarantees for pregnant women: reimbursable time spent on medical examinations; A pregnant, having a newborn or breastfeeding woman has a right, within reasonable limits, to request working condition with the same employer in accordance with her state of health. If this becomes unfeasible, the employee is obliged to maintain her position and release her from performing the duties defined by the employment agreement.

- **Contract termination** – under some circumstances employer is obliged to explain reasons for employee's dismissal in the notice of termination. The employee is directly entitled to re-apply for a dispute over the termination of the contract, even if he / she has withdrawn a lawsuit.
- **Limitation period** - in addition to the special term that is set for a termination of an employment agreement, a one-year limitation period has been established for filing any other claim. This development unequivocally regulates the heterogeneous practice of the court.
- **Working hour records** - from January 1, 2021, it becomes mandatory for employers to record working hours of employees and provide them with information on such records. The recording instructions and form is being developed by the Minister of IDPs from the Occupied Territories of Georgia, Labor, Health and Social Affairs of Georgia.

According to the draft order, working hours recording obligation becomes mandatory for employers organized under the Labor Code of Georgia (natural or legal persons and / or associations) and for public institutions defined under the Law of Georgia on Public Service.

Working hours recording form is foreseen to be a monthly document in written or electronically, that, beyond the actual employee's working time shall include data on temporary working incapacity, delays, forced waiting, as well as remote working hours and presence at work.

Under the draft order, the employer is obliged to keep a working hour record for one year period.

- **Accountability requirements** – in cases of regularly employing at least 50 employees, employers shall ensure provision of information and holding consultation with the employees on following matters:
 - Recent and potential developments within undertaking, its economic situation;
 - Employment conditions, structure and probable development within the undertaking and any measures

envisaged which might significantly affect the employees' remuneration and employment conditions, and/or may pose a risk to the continuation of labor relations;

- Decisions that are likely to lead to substantial modification in work arrangement.

- **Labor Inspection** - state supervision over the implementation of labor legislation of Georgia is ensured by a legal entity under public law - Labor Inspection.

Grounds for initiating inspection:

- Complaint of the interested person;
- Labor Inspection's own initiative; or
- Notification of any identifiable person on the violation of the requirements established by the Organic Law of Georgia on Labor Safety.

Scope and Procedure of Inspection

For admission to the workplace, the labor inspector issues an identification card, which must be presented to the employer / representative or the owner/ representative of the workplace:

- Labor Inspector is authorized to enter and inspect the workplace at any time, require workplace inviolability, request and investigate any material, item or substance related to a possible administrative offense, seal or remove any material, item, substance or document, take samples, carry out measurements, photos, videos, interview any person in the workplace, inspect the employer's workplace, materials, machinery or any other device and / or equipment, request any person to transfer the material, item, substance or document at the disposal of that person and / or to explain the record contained in any document;
- In case of violation of labor law requirements, Labor Inspector is authorized to apply following administrative penalties:
 - Warning;
 - Fine;
 - Suspension of work process.

The Labor Inspection has the discretionary power to determine the type and amount of administrative penalty to be applied in compliance with the Labor

Code of Georgia and the Organic Law of Georgia on Labor Safety. Administrative penalty for the violation must be proportionate to the violation.

- **Establishment of a trade union** - According to amendments to the Law of Georgia on Trade Unions, a trade union can be established at the initiative of at least 25 employees. Prior to the changes, initiation right was granted to 50 employees.
- **Transfer of an enterprise** – amendment defined the concept as a transfer of an enterprise, business or part of a business to another employer by virtue of law or a contract/transaction, that, inter alia, includes passing on economic activities and grouping resources for pursuing primary and ancillary economic activities provided that substantially similar identity is bared by the transferee.

In case of an enterprise transfer, employees or employee representatives, employee unions, as well as other related third persons shall in advance be provided with the following information:

- Date and reason of an enterprise transfer;
- Legal, economic and social consequences for employees associated with the transfer;
- Information on any behavioral and structural changes/ consequences to be applicable to employees.

It shall be noted that restrictions above do not apply to enterprises subject to insolvency proceedings under Georgian Act on Insolvency.

5. Amendments to the Civil Procedural Code of Georgia

As part of the Labor Law Reform Package, two important chapters have been added to the Civil Procedural Code of Georgia: a) **Chapter XLIV¹⁴**, which regulates court enforcement mechanisms for collective labor mediation agreements; b) **Chapter XLIV¹⁵** regulating strikes and lockout-related civil proceedings. In particular, procedures and grounds for illegal recognition, postponement and suspension of strikes and lockouts were defined. Under the amendments, similar claims will be dealt expeditiously - within one month after court receiving a claim. The district (city) court asserts its competence according to the location rule of the "employer".

6. The Law of Georgia on Rehabilitation and Collective Satisfaction of Creditors has been published

It should be noted that the Law on Rehabilitation and Collective Satisfaction of Creditors was adopted, which contains completely new, modernized procedures for insolvency proceedings. The law will mainly come into force on April 1, 2021.

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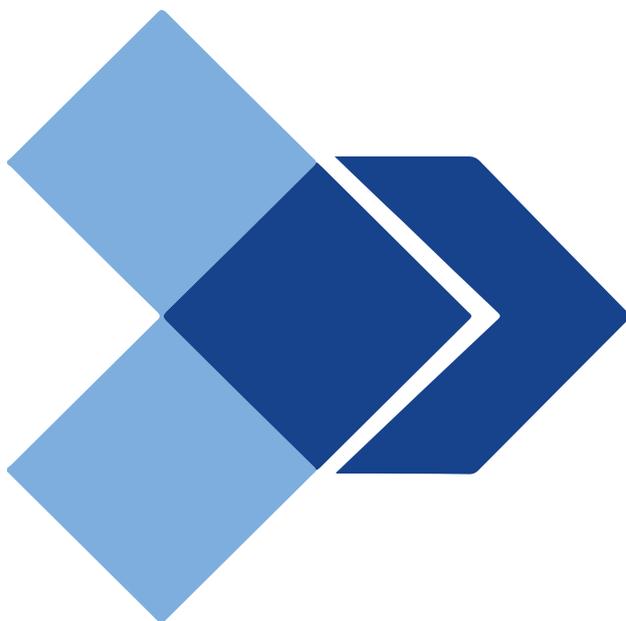
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