

Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

Legal Entity of Public Law – Georgian National Competition Agency, Georgia

The following template is submitted by the Legal Entity of Public Law – Georgian National Competition Agency (hereinafter - Agency), Georgia pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

In 2014, on the basis of the Law of Georgia „On Competition“ and Ordinance of the Government of Georgia N288 of 14.04.2014, the independent Legal Entity of Public Law – Competition Agency was established.

The Agency is created to enforce the competition law and policy in Georgia. The main objectives of the Agency are: implement the provisions of the Law of Georgia “On Competition”; further enhance and develop competition law; to preserve fair competitive environment in the country; monitor and analyze the commodity and services markets or detection of competition infringements and unfair competition; make obligatory assessment of competitive impact of concentrations; conduct investigations, detect violations of competition law, impose fines and issue recommendations; monitor the implementation of the adopted decisions and recommendations; raise a competition culture in society by improving public awareness on competition; perform other functions provided for by the Statute of the Agency.

As it was already mentioned, GCA is the independent Legal Entity of Public Law. Agency is accountable to the Prime Minister and the Parliament of Georgia.

In September 2020, the Law of Georgia “On Competition” and related sub-legal acts were substantially amended (Entered into force on 4 November). As a result of the amendments, national competition legislation was approximated to the standards used in the EU to the fullest extent. Besides meeting the challenges the Agency faces and serving as a tool for eradicating different practical and legal shortcomings, these amendments will also assist in better protection of the rights of the parties in competition-related legal proceedings and ensuring the procedural justice.

Addition information can be found: <https://competition.ge>

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

According to Article 17 of the Law of Georgia “On Competition”, the principles of the Agency’s activities are as follows: independence, non-discrimination, impartiality, transparency and accountability.

In addition, Article 4 of the Law of Georgia “General Administrative Code” (hereinafter “General Administrative Code of Georgia”) sets one of the main principles, equality before the law and states that everyone is equal before the law and administrative bodies. Moreover, Impeding or restricting the exercise of rights and freedoms or legal interests of any party to the administrative-legal relation, as well as granting any privileges not provided for in the legislation to, or taking discriminatory measures against, any party shall not be permitted. Since, the Agency is the administrative body, the mentioned provision of the General Administrative Code of Georgia also applies to its activities.

It should be highlighted, that the principle of equality before the law, also applies to Persons of another jurisdiction.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

i. Law of Georgia “On Competition” sets forth the principles for protecting free and fair competition from unlawful restrictions in order to create a basis for development of free trade and a competitive market. The Law defines the actions unlawfully restricting free trade and competition, the legal basis for the prevention and elimination of the distortion of free trade and competition and defines the authority of the Agency.

The Law of Georgia “On Competition” is publicly available at the official website of the Legal Entity of Public Law – The Legislative Herald of Georgia (public authority under the governance of the Ministry of Justice of Georgia, which is responsible for performing the final stage in the law-making process (registration, publication, codification); compiling and renewing the complete database of Georgian normative acts; providing society with maximum access to a Georgian normative law database in both electronic and printed form) in three languages – Georgian, English and Russian (<https://matsne.gov.ge/ka/document/view/1659450?publication=10>). Besides, the Law of Georgia “On Competition” is publicly available at the website of the Agency in two languages –

Georgian

and

English

(<https://admin.competition.ge/uploads/c75d805e69be45a2be8ef28be02aa85b.pdf>).

On the basis of the Law of Georgia “On Competition” the following orders were issued by the Agency: Order № 33 of 22 October 2020 “On Approving the Procedure for Applying the Leniency Program Towards a Person and Fully or Partially Exempting from Liability Imposed Due to Infringing Article 7 of the Law of Georgia “On Competition”; Order № 37 of 23 October 2020 “On Approval Methodological Guidelines of Market Analysis”; Order № 38 of 23 October 2020 “On Approval of the Form of Complaint, Rule for its Submission and Procedures and Deadlines Related to the Admissibility of the Complaint”; Order № 39 of 26 October 2020 “On Approval the procedure on Submission and Consideration of Notification about Concentration”; Order № 40 of 28 October 2020 “On Approval of the Rule and Procedures of Investigation”. Besides, by the Government of Georgia there were issued following regulations: Regulation № 526 of 1 September 2014 “On Exemption from prohibition on Competition Restricting Agreements”; Regulation № 529 of 1 September 2014 “On Approving Small Amounts of Individual State Aid and General Procedure for Granting State Aid”.

At the moment, abovementioned Orders and Regulations are publicly available at the Agency’s website only in Georgian (<http://competition.ge/en/page.php?p=4>). But the Agency plans to translate the mentioned normative acts in English and make it publicly available through its webpage.

ii. As it was already mentioned, On the basis of the Law of Georgia “On Competition” the following orders were issued by the Georgian National Competition Agency: Order № 33; Order № 37; Order № 38; Order № 39 and Order № 40. Regulation № 526 and Regulation № 529 – were issued by the Government of Georgia.

iii. Law of Georgia “On Competition” is publicly available at the website of the Georgian National Competition Agency in two languages – Georgian and English (<https://admin.competition.ge/uploads/c75d805e69be45a2be8ef28be02aa85b.pdf>) and at the website of the LEPL - The Legislative Herald of Georgia.

Abovementioned Orders and Regulations are publicly available at the website of the Georgian National Competition Agency only in Georgian (at the moment).

iv. Georgian National Competition Agency strictly follows applicable procedural rules in conducting Investigations and enforcement proceedings. When it comes to the legal basis for exercising powers under law, as it was mentioned before, the Agency, as the administrative body, is obliged to follow the requirements set by the General Administrative Code of Georgia. For the purposes of this particular case, the Agency is obliged to follow the requirements of Article 5 of the General Administrative Code of Georgia, according to which: administrative body may not carry out an activity that contradicts the requirements of law. In addition, officials of an administrative body shall be liable for failing to perform their official duties properly or for exceeding their powers.

It should be highlighted, that there are special rules on the form of complaint, rules for its submission and procedures and deadlines related to the admissibility of the complaint (Order № 38) and on the rule and procedures of investigation (Order № 40).

v. Creating Guidelines on important topics of the competition law is one of the main priorities of the Agency. Until now, the following guidelines have been elaborated by the Agency: Guidelines on Setting the Fines; Leniency Program – Information Document for Undertakings; Main Obligations of the Undertakings Envisaged by the Law of Georgia “On Competition”; Protecting Confidential Information during the Competition-law-related administrative proceedings. These

guidelines are publicly available at the website of the Agency in Georgian (<https://competition.ge/legislation/guidelines>). Except the mentioned guidelines, the Agency elaborated Guidelines to interpreting Article 6 (Abuse of dominant position) and 7 (Restrictive agreements, decisions and concerted practices) of the Law of Georgia “On Competition” on the bases of the case law developed by the European Commission and the Court of Justice of the European Union.

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

i. According to the Law of Georgia “On Competition”, the Agency is obliged to send the submitted complaint to the respondent, except the complaint related to the alleged infringement of the Article 7 (Restrictive agreements, decisions and concerted practices) of the Law of Georgia “On Competition”. The respondent undertaking may submit to the Agency its comments and opinions regarding the complaint within the time limits set by respective by-laws (Art. 23). According to the Order № 38 of 23 October 2020 “On Approval of the Form of Complaint, Rule for its Submission and Procedures and Deadlines Related to the Admissibility of the Complaint”, after receiving the complaint for the review, within 5 working days, the Agency is obliged to inform the relevant undertaking about the complaint/send the complaint (except the complaint related to the alleged infringement of the Article 7 (Restrictive agreements, decisions and concerted practices) of the Law of Georgia “On Competition”) to the respondent and give possibility to submit its/their own opinion/evidences regarding the complaint (Art. 7.2) within the time frame set forth by the Agency.

In addition, Chairman of the Agency on the basis of complaint takes a decision on admissibility or refusal of the complaint. This decision is sent to the parties. The decision on admissibility of the complaint is the ground for launching the investigation. The decision on admissibility of the complaint involves a provision on the legal basis for the Investigation.

ii. In addition to the abovementioned, Law of Georgia “On Competition” and relevant by-laws entail provisions on hearing. It gives another opportunity to the person, which is subject to investigation for meaningful engagement in the administrative proceedings.

iii. According to Article 18 of the Law of Georgia „On Competition”, the Agency is authorized to request any type of information/documentation (including confidential data) from an economic entity/party/stakeholder regarding its activities and/or concrete actions/operations. This issue is further elaborated in Chapter III (request for information) of Order № 40 of 28 October 2020 “On Approval of the Rule and Procedures of Investigation”. More precisely, the Agency is authorized

to request information which is necessary for the Agency to conduct its activity and will contribute to determination of important circumstances of the case (Art. 8.1); Moreover, in the letter on request of information sent by the Agency, there shall be stated legal basis for the request of information, the subject-matter, the purpose and time-limit within which the information shall be provided, as well as possible effect of non-delivery of information and the possibility and time frame for its appeal shall be noted (Art 8.2). When it comes to time-limit, according to Order № 40, the time-limit for providing information may not be less than 5 working days. The Agency is authorized to extend the time frame for delivery of document or other information on the basis of a reasoned application, but only once and for no more than 15 working days (Art. 8.3).

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

According to Article 7 of the Order № 38 of 23 October 2020 “On Approval of the Form of Complaint, Rule for its Submission and Procedures and Deadlines Related to the Admissibility of the Complaint”, the Agency is obliged to study the complaint within 30 working days after its submission, however depending on the complexity of the case the mentioned time may be extended by the Agency for no more than 15 working days. In the said time frame, the Agency shall make decision on commencement of investigation or on refusal of commencement of investigation. The parties are immediately informed about the decision.

According to Article 6 of the Order № 40 of 28 October 2020 “On Approval of the Rule and Procedures of Investigation”, the Agency, after adoption of decision on commencement of the investigation, shall commence investigation of the case and shall make final decision no later than 6 months. Investigation process, in view of its importance and complexity, may be extended for the time frame determined by the Agency, but for no more than 18 months.

The Agency is obliged, in no less than 10 working days prior to expiration of the time frame for investigation, to inform the parties continuation of the investigation.

When it comes to the Concentrations, it has to be highlighted that the process of reviewing of the notification regarding the concentration consists of two phases: In particular, the Agency shall assess the compatibility of the concentration with competitive environment and issues a positive conclusion within 25 working days (after the submission of the document confirming the payment of the notification fee) (1st phase). If the case requires additional investigation or there is a suspicion that the concentration may not be compatible, a second phase starts, which lasts for 90 calendar days (Law of Georgia “On Competition”, Art. 11¹).

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

i. According to national legislation of Georgia, there are following types of confidential information: commercial secret; state secret; personal data; professional secret, bank and tax secrets. There are separate rules/laws with regard identification and treatment each type of information confidential (for example Article 39 of the Tax Code of Georgia and Article 27² of the General Administrative Code of Georgia). When dealing with confidential information, the Agency acts in line with the requirements of these laws. In addition to the abovementioned, competition legislation also entails the rules regarding confidential information. The relevant laws are publicly available at the official website of the Legal Entity of Public Law – The Legislative Herald of Georgia.

ii. According to Article 20 of Law of Georgia “On Competition”, the Agency is obliged: to protect the confidentiality of information regarding undertaking that, along with other confidential information, which may, among other secrets, might include commercial, bank and/or tax secrets; protect the confidentiality of personal data of a person who provides information to the Agency; ensure confidentiality and non-disclosure of state secrets.

Any disclosure and dissemination of confidential information shall be inadmissible, except where otherwise provided for by the legislation of Georgia. It is prohibited to use and disclosure of confidential information by employees of the Agency, including for personal, academic, scientific purposes or for other activities.

iii. According to Article 20 of Law of Georgia “On Competition”, any disclosure and dissemination of confidential information shall be inadmissible, except where otherwise provided for by the legislation of Georgia. Moreover, generalized information regarding relevant market, also information about the number of undertakings, received income and incurred costs is not confidential.

It has to be highlighted that according to the Article 20.a. of the Law of Georgia “On Competition”, if the information submitted to the Agency by the undertaking is classified as a commercial secret, the Agency shall be entitled to request the submission of a non-confidential version of the document containing the said information (dashed to cover confidential data), and set an appropriate deadline.

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is

encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

According to Article 21 of Law of Georgia “On Competition”, an authorized person of the Agency shall be independent from parties/interested parties in his/her professional activities, assessments and decision-making. If there exist relations provided for by Article 19 of the Tax Code of Georgia¹ or Article 92² of the General Administrative Code between an authorized person of the Agency and an undertaking with respect to which the Agency carries out an investigation, the authorized person of the Agency is obliged to immediately declare the conflict of interest. An authorized person may not carry out other activities that may affect his/her impartiality and the independence of his/her decisions.

¹ Article 19 – Related parties

1. Parties shall be regarded as related if the existence of a special relationship between them may affect the conditions or economic results of their activity or the activity of the persons that they represent.

2. Special relationships shall be the relationships, where:

- a) persons are the founders (participants) of one enterprise, provided their combined share is at least 20%;
- b) one person has a direct or indirect interest in another person’s enterprise, provided such participation is at least 20%;
- c) a person controls the enterprise;
- d) a natural person is subordinated to another natural person;
- e) one person directly or indirectly controls another person;
- f) the persons are controlled, directly or indirectly, by a third person;
- g) the persons jointly control, directly or indirectly, a third person;
- h) the persons are relatives;
- i) The persons are members of a partnership.

3. For the purposes of the tax legislation of Georgia, a natural person’s relatives shall be:

- a) the first line of relatives: spouse, parent, child, sister, brother;
- b) the second line of relatives: spouse, parent, child, sister, brother of each relative in the first line, except for the natural person who already belongs to the first line;
- c) Persons who are related to one other as parents and children as a result of long-term guardianship.

4. In determining kinship, step sisters (brothers) shall be treated as equal to full sisters (brothers) and adoptees shall be treated as equal to biological children. At the same time, guardianship relations shall be regarded as equal to a family unity (where persons are related to one another as parents and children) which, in turn, shall be deemed equal to kinship relationship. Termination of family unity between these persons shall not be taken into account if a parent-and-child relationship between them is maintained under paragraph 3(c) of this article.

5. For the purposes of this article, control shall mean: a supervisory board membership, directorship and the right to appoint persons to such offices; holding 20% of voting share or interest.

6. For the purposes of this article, a natural person shall be an indirect holder of the interest if his/her relative holds this interest.

² Article 92 – Inadmissibility of participation in administrative proceedings

1. An official of an administrative body may not participate in administrative proceedings if he/she:

- a) is personally an interested party in the case;
- b) is related to an interested party in the case or to its representative;
- c) is the representative of an interested party to the case;
- d) was an expert with respect to the issue in the case;
- d¹) was a mediator with respect to the same case or another case essentially related to this case;
- e) is in labour relations with an interested party to the case;
- f) or his/her family member holds stocks or a share in the charter capital of the enterprise representing an interested party;
- g) is a family member of an interested party to the case or of its representative.

2. For the purposes of this Code, the following persons shall be considered as relatives:

- a) a lineal relative;
- b) a spouse, siblings of a spouse and a lineal relative of the spouse;
- c) siblings of a lineal ascendant;
- d) siblings, their spouses and children.

3. An official shall be obliged to notify a superior official of the circumstances and his/her refusal to participate based on the circumstances specified in the first paragraph of this article. The application for refusing to participate shall be reviewed in the manner provided for in under Article 93 of this Code.

There is a liability for violating the rules related to conflict of interest. In addition, it has to be mentioned, that a person whose case is under consideration may challenge the relevant authorized person of the Agency, if this person has a vested interest in the issue in question.

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

i. As it was already mentioned, according to the Law of Georgia "On Competition", the Agency is obliged to inform the respondent undertaking about the complaint (except the complaint related to Article 7 of the Law of Georgia "On Competition"). In practice, by "inform about the complaint" means, that the Agency sends the respondent undertaking the complaint together with the additional information submitted by the complainant (except confidential information). The respondent undertaking may submit to the Agency its comments and opinions regarding the complaint within the time limits set by respective by-laws (Art. 23). According to Order № 38 of 23 October 2020 "On Approval of the Form of Complaint, Rule for its Submission and Procedures and Deadlines Related to the Admissibility of the Complaint", after receiving the complaint for the review, within 5 working days, the Agency is obliged to inform the relevant undertaking about the complaint/send the complaint (except the complaint related to the alleged infringement of the Article 7 (Restrictive agreements, decisions and concerted practices) of the Law of Georgia "On Competition") to the respondent and give possibility to submit its/their own opinion/evidences regarding the complaint within the time frame set forth by the Agency.

ii. According to Order № 38 of 23 October 2020 "On Approval of the Form of Complaint, Rule for its Submission and Procedures and Deadlines Related to the Admissibility of the Complaint", the complainant and respondent have the right to get acquainted with the materials of the case pursuant to rule set forth in Article 99, of General Administrative Code of Georgia. Article 99 of General Administrative Code of Georgia set the rules related to the right to access the materials of administrative proceedings.

It has to be highlighted, that the Agency does not "automatically" send the investigation materials to the parties to the proceeding. The interested party shall request from the Agency access the relevant materials and only after that Agency sends them materials (except confidential information).

iii. As it was already mentioned, there is guaranteed the opportunity to present, respond to, and challenge evidence for Persons subject to an Administrative Proceeding. When it comes to opportunity to be heard, it is also guaranteed by the Law of Georgia "On Competition" (as well

as the relevant by-laws) regulate the issues related to the hearings, when the parties have opportunity to present oral explanations. If necessary, there is opportunity to arrange meetings with the interested parties with regard the oral explanations.

In addition, after the Agency collects relevant information and evidences, a final hearing with the involvement of the Parties and investigation team is held. During the meeting the parties are given the floor, furthermore, the participants are allowed to ask each other questions.

According to Articles 25.11 and 25.12 of the Law of Georgia “On Competition”, the Agency is obliged to send the final draft decision of the Agency and the case materials in writing to the applicant and the party before the final hearing. In addition, the applicant and the party shall be explained that they have the right to present their positions and relevant additional information (evidence). In this case, the time limit set for the applicant and the party for the submission of their positions shall not be less than 25 working days. Information submitted after the expiration of this period may not be taken into account by the Agency when making its final decision.

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.*

i. According to Article 86 of the General Administrative Code of Georgia, everyone has the right to conduct relations with an administrative body through a representative, as well as to enjoy assistance of a defence attorney. This principle is affirmed by the national competition legislation of Georgia. More precisely, according to the Order № 40 of 28 October 2020 “On Approval of the Rule and Procedures of Investigation” and Order № 38 of 23 October 2020 “On Approval of the Form of Complaint, Rule for its Submission and Procedures and Deadlines Related to the Admissibility of the Complaint”, the parties are authorized to have attorney and/or representative in the course of investigation/administrative proceeding.

ii. A Person has right to present views regarding substantive and procedural issues via counsel in accordance with applicable national law. Also each party is not limited to present any kind of information, explanation or expert opinion verbally or in writing on any stage of investigation.

iii. It should be highlighted that legal privileges, including privileges for lawful confidential communications between persons and their legal counsel relating to the solicitation or rendering legal advice is regulated in the framework of the national law “On Lawyers”. The Agency fully recognizes the importance of the mentioned legal privilege and adheres the relevant rules in its procedures.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

i. Georgian National Competition Agency issues its final decision in writing. As it was already mentioned, the Agency is an administrative body, hence, in its activities, it adheres the rules and obligations regulated by the relevant legal acts (and not only national competition legislation), among them, there is a General Administrative Code of Georgia, which sets the mandatory rules for every administrative body. In this case, there should be mentioned, article 53 of the General Administrative Code, which sets the rules with regard substantiation of administrative act. More precisely, according to the mentioned article: an individual administrative act issued in writing must include written substantiation; substantiation shall precede the operative part of an administrative act; an administrative legal act must make a reference to the legislative or subordinate normative act or its respective standard serving as the basis for its issuance; an administrative body may not base its decision on circumstances, facts, evidence or arguments not examined or studied during the course of its administrative proceedings. If the law provides for an expert opinion for issuing an administrative act, contents of the opinion shall be included in the written substantiation. Accordingly, as an administrative body, the Agency, when issuing its final decision, strictly follows the rules set in Article 53 of the General Administrative Code of Georgia.

According to Article 29 of the Order № 40 of 28 October 2020 “On Approval of the Rule and Procedures of Investigation”, the final decision of the Agency approved by the Chairman has to be sent to the parties/applicant within the 5 working days and shall be published on Agency’s web-site within the 10 working days, within the period prescribed in the Georgian Legislation.

ii. Commitment-related issues are regulated by the Law of Georgia “On Competition”, in general and Order № 38 of 23 October 2020 “On Approval of the Form of Complaint, Rule for its Submission and Procedures and Deadlines Related to the Admissibility of the Complaint” and Order № 40 of 28 October 2020 “On Approval of the Rule and Procedures of Investigation” in details. Issues related to the structural and behavioral remedies (in case of concentrations) are regulated by the Law of Georgia “On Competition”, in general and by Order № 39 of 26 October 2020 “On Approval the procedure on Submission and Consideration of Notification about Concentration” in details.

Neither Law of Georgia “On Competition” or abovementioned normative administrative acts expressly indicate that commitments, as well as structural and/or behavioral remedies offered by the party/parties should be in writing. But according to Article 78 of the General Administrative Code of Georgia, an application submitted to an administrative authority must be in writing. Besides, the Agency has obligation to inform/send the commitment offer submitted by the respondent, to the complainant. From the mentioned provisions derives the obligation to submit the commitment as well as structural and/or behavioral remedies offer to the Agency in writing.

Obligations prescribed by Article 53 (substantiation of an administrative act), which was already discussed above, also applies to Agency's decisions related to commitment/ structural and/or behavioral remedies decision.

According to Article 17 of the Law of Georgia "On Competition", to ensure the transparency of the activities of the Agency, its decision shall be made public. The obligation to make the decisions public also applies to commitment, as well as structural and/or behavioral remedies decisions.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

According to 28 of the Law of Georgia "On Competition", any person may apply to a court with respect to the infringement of the Law of Georgia "On Competition" without applying to the Agency. Disputes relating to the infringement of the Law of Georgia "On Competition" is considered by the Tbilisi City Court.

According to Article 33² of the Law of Georgia "On Competition", a person has the right to appeal the decision of the Agency in the Tbilisi City Court. The court is authorized to fully review the decision of the Agency, including the amount of the fine.