

**Grigol Robakidze State University**

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**SLAVA FETELAVA**

**THE EVOLUTION OF THE COMPETITION THEORY AND  
ANTIMONOPOLY REGULATION IN GEORGIA**

**THESIS**

**For obtaining academic degree of the Doctor of Economics (PHD)**

Scientist guide: **Mikheil Jibuti**

Doctor of Economic Sciences, Professor

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## I. Introduction to the Work

### Preface

**The Actuality of the Problem.** For complete Market economy development in the country it is necessary to protect **Competition**, to promote and develop the competition. That is the reason that one of the main tasks of the developed countries of the world was and up to now is to keep working out the legal mechanisms securing the reveal and interruption of dominating agents at the appropriate goods markets which use maliciously their position, meanwhile the task is to provide the promotion of fair competition. Exactly this kind of competition (antitrust, antimonopoly) legal regulation mechanisms adoption was the aim of the US Congress adopting “Sherman’s”, “Clayton’s” and other Antitrust Acts at the end of the XIX and at the beginning of the XX centuries. The same goal was pursued by the Agreement signed by the European countries in the 50-ies of the past century (March 25, 1957) in the capital of Italy – “On Economic Development of Europe”, known as “Rome Agreement”. It is the main legal regulatory norm of the economic relationship for the countries of the European Union. It is to mention similarly about those diverse Agreements and Regulations by the World Trade Organization (WTO), founded on December 8, 1994, organizing the relations of the countries of this union in the filed of competition. Though the fact is that the competition regulatory norms (except initial postulates) undergo temporary improvement and completion, as by single legal, as by new precedent norms, which should not be left behind by single countries with market economy goals. It is impossible to keep the fair competition in the country ignoring the mentioned and attaining of the economic stabilization in the country is impossible by the withheld of the mentioned norms.

From the very first days of obtaining of independence by Georgia current economic reforms agenda included the necessity of creation of new, adequate legal basis for competition. In the early 90-ies of the past century the government of Georgia which had inherited nothing in the filed of antimonopoly regulation, had to carry out the competition policy like the countries having Market Economy and to create appropriate legal basis. In fact, the State Counsel Decree “On Limitation of Monopoly Activities and Development of Competition” (1992) was adopted, the accomplishment

and supervision function was vested to the Ministry of Economy of Georgia. Later, the Decree was changed by the Georgian Law “On Monopoly Activities and Competition” (1996), though it was obvious at that period that the Competition Law existing in Georgia was far not perfect lacking further improvement and harmonization to approach the developed and firstly- the European Union countries from the legal point of view.

For today, not only the developing but also the developed countries are not able to maintain competition without harmonized antimonopoly policy towards outside world, which in its own course has to be conforming to the norms stated by International standards and undertaken International obligations. Unfortunately the Antimonopoly Policy carried out in Georgia recently does not fully consider the undertaken obligations under European Union on the way to the improvement of the Competition Policy Legislation in the country. Moreover, the draft of the Law “On Free Trade and Competition” adopted on June 3, 2005 is even more strayed than approached to the International standards and the obligations undertaken in the filed by the country. At present stage the main part of the Competition Law existing in Georgia importantly varies from the norms accepted and approved in the developed countries and is supported mainly by the concept of “Free will of the economy”. The mentioned is twice more harmful for the country when the formation of the State is still in the process and the probability of founding of the transnational companies and large conglomerates still exists, and the withheld of the free trade and fair competition is not eliminated from their side, which will be harmful for the interests of the local entrepreneurs and customers.

The problem of the Antimonopoly regulation, which in 1992-2005 also included the questions of protection of customers’ rights and the advertisement activity, was always on the top in Georgia but from 2005 it became more actual. The main reason of increase of the actuality of the problem is that the draft of the Law for the Competition existing in Georgia together with its execution body does not conform to the time requirements. It may become the infringing circumstance for the formation of full value Market Economy, moreover when at one side “...the full range of the import fields is monopolized in Georgia ...” (39, page 3), and from the other side, the Law does not consider the reveal and cessation mechanisms of the maliciously use of the economic agents having monopoly position. The fact that unlike the highly developed industrial countries the main goal of Georgian government is not the provision of security for the existing competition but organizing of the competition environment in general, what requires more efforts.

In regard to the above mentioned it is obvious that the inconsistency of the competition policy, ignore of its economic and social outcome shall result in economy crisis (or in prolongation of the existing crisis situation). From this point of view the transformation of the problems of the competition policy in Georgia and the development of the scientific opinion is not only of practical but also of theoretical importance.

**The situation of scientific elaboration of the problem.** In regard to the actuality of the subject, many works of famous scientist-economists were dedicated to the problem but they do not include the formation and development of the competition policy formation and development in Georgia. It is evident that the works of single scientists promoted the development of antimonopoly thinking but the fact is that there is no single work dedicated to the formation and development problems of the antimonopoly policy in Georgia. Meanwhile the matters of change and perfection of antimonopoly regulation mechanisms are not yet studied. Accordingly we may possibly mention that the process of antimonopoly policy formation and realization (antimonopoly regulation) did not become the subject of research of Georgian scientists-economists and the antimonopoly topic still did not obtain its worthy place in the works of Georgian researchers.

**The Aim and the Tasks of the Research.** The aim of the Research in general is the development of the competition theory evolution and the development of competition (antimonopoly) opinion in Georgia; also the study-analyze of the main directions of antimonopoly regulation from 1992 up till today (March, 2008). Meanwhile it aims the reveal of the existing problems and the inconsistencies existing between the competition legislation in Georgia and appropriate legislation basis in the developed countries.

The following tasks are set and solved in the work in order to reach the aim:

- On the basis of critical analyze the realization mechanisms of the competition policy were approved, what functions and tasks are to become the prerogatives of the State in this field;
- The theory and the practice of the developed countries were monographically studied for the first time in Georgian Economic Science. In fact, the so called American, European and European Union models were discussed and the comparative analysis was carried out.
- The systematization of the competition legislation in Georgia and executive bodies was carried out, the preconditions of the formation of competition policy and the stages were presented;
- The situation of the International obligations implementation in Georgia in the field of the competition was analyzed;

- The results of practical activity of the competition body of Georgia were studied and its strong and weak sides displayed;

- The efficiency showings of the competition legislation and its executive institution was determined on the basis of existing legal practice analyze;

- The objective and the subjective hindering circumstances of the competitions policy were revealed. The detailed analyze of these circumstances is carried out;

- The range of the conclusions and practical recommendations for the improvement and development of the competition in the country was worked out on the basis of international experience and existing situation in Georgia in the field of *competition*.

**The Theoretical and Methodological Base of the Research.** The theoretical and methodological basis of the research is represented by the works of Georgian and foreign scientists on the policy (antitrust, antimonopoly) problems, the legislation of European Union and other developed countries of the world and the practical results of its realization, the recommendations of international experts on competition, legal and normative Acts of Georgia, the decisions by Parliament of Georgia, the President and Government of Georgia (orders, decrees, statements) on carry out of the competition policy in the country and its improvement, also in the direction of its de-monopolization.

Historic, complex, system and comparison methods are used in the scientific research, the materials of Antimonopoly Service, also information on statistics and international organizations.

**The Subject and the Object of the Research.** The object of the research is in general the evolution of the competition theories and concretely their realization practice in various countries, among them in Georgia. Georgia has adopted the legislative-normative basis in the field of competition (antimonopoly regulation) from 1992 up till today (March, 2008), the legislation on competition in the developed countries, the activity carried out by the State Antimonopoly Service and Agency for Free Trade and Competition, the recommendations of foreign experts and antimonopoly regulation as for local as for foreign scientists-economists works. The object of the research is - the pattern of formation of competition policy in Georgia, its evaluation of present stage and determination of the optimal ways for its development.

**Scientific Novelty of the Research.** For the first time in Georgia the legal basis for the competition legislation is discussed and systematized, this is the precondition of its formation.

Taking into consideration international obligations of the country the optimum complex scheme and its perspectives are worked out for carry out of the competition policy implementation, in fact:

- The uninterrupted process of scientific development of opinions on competition policy was studied for the first time in Georgia;
- Existing models of competition are analyzed and the evolution of appropriate opinions is shown;
- The legal basis of competition legislation basis and its execution institutions is discussed on its basis;
- The preconditions of the competition policy formation and international obligations of the country in this field are systematized;
- The formation stages of the competition policy are logically approved and divided;
- The hindering circumstances for the competition policy realization are analyzed and scientifically approved;
- The complex system of the competition policy implementation is worked out and its perspectives are presented.

**Practical Importance of the Work** is that analyze and study of the creation is included, formation and development of competition legislation (antimonopoly, antitrust) history (the experience of the developed countries) and the competition legislation tasks in Georgia are discussed. In fact, the work represents the full but compact history of formation and practical realization of the competition in Georgia with its achievements and failures. Those negative sides are shown the eradication of which is necessary for carry out of full value competition policy in the country. And this will finally support the improvement of the production environment and protection of the customers' rights. The practical recommendations to be carried out by the government in regard to the competition are worked out.

The Work is based on abundant statistic and factual material including existing Court trials and factual lawsuit results, with the participation of interested economic agents and executive government.

The opinions and definite decisions formed in the work may be used in the high schools (from September 2007 used at Ivane Javakhishvili State University Faculty of Economics and Business in the process of study) for improvement of study disciplines especially during lecture



course on competition. Meanwhile the practical recommendations by the Government are worked out in connection with the competition policy (antimonopoly regulation).

**Approbation of the theses** : The thesis had been approved while dean of Ivane Javakhishvili Tbilisi State University, Economy and Business Faculty International Economy and Economy Science History session, held on June 17, 2006 (Report N8).

**The review has been renewed at** Grigol Robakidze State University Business and Management faculty Thesis Council March 10, 2008 resolution (Report N2).

**Seminar.** The Seminar on “Antimonopoly Regulation in Georgia” was held on the expanded session of the Dissertation Council for awarding Doctor’s Degree on February 15, 2008 (Report N1) at Grigol Robakidze State University faculty of Business and Management. The report was praised positively by the members of the Council. The material of the Seminar (Word, Power-Point) is placed at the website of the university: [www.gruni.edu.ge](http://www.gruni.edu.ge).

**The Publication of the results of the Work.** The main results of the work are published at:

1. International Obligations of Georgia in the Field of Antimonopoly Regulation. “Economy of Georgia” magazine N1 (122), 2008, pages 61-64 (in Georgian language);
2. The Evolution of the Opinions on Competition. “Social Economy” magazine N2, Tbilisi, 2006, pages 80-87 (in Georgian language);
3. The Hindering Circumstances of the Realization of the Competition Policy in Georgia. “Social Economy” magazine, N5, Tbilisi, 2006, pages 106-113 (in Georgian language);
4. The Review of the Antitrust Legislation in the USA. “Social Economy” magazine, N1, Tbilisi, 2007, pages 96-113 (in Georgian language);
5. The Models of Competition Policy Implementation. “Economy” magazine, N2, Tbilisi, 2006, pages 175-181 (in Georgian language);
6. The Stages of Formation of the Competition Policy in Georgia (1992-2005), “Economy” magazine, N3, Tbilisi, 2006, pages 5-10 (in Georgian language);
7. The World Trade Organization and Georgia (discussion on Competition topic). “Economy” magazine N9-10, Tbilisi, 2006, pages 103-108 (in Georgian language);
8. The Perspectives of Antimonopoly Regulation in Georgia. “Economy” magazine, N11-12, Tbilisi, 2006, pages 10-15 (in Georgian language );
9. The Review of the Competition Policy of the Great Britain (the legislation, the institutions). “Economy” magazine, N1-2, Tbilisi, 2007, pages 166-176 (in Georgian language);

10. The Aid to Georgia for the Competition Policy Realization by International Organizations in 1995-2006. “New Economist” magazine, N2, Tbilisi, 2007, pages 16-19 (in Georgian language);

11. Discussion on Improvement of Georgian Competition Law. “New Economist” magazine, N5, Tbilisi, 2007, pages 16-19 (in Georgian language);

12. The Monography - Competition Theory and Antimonopoly Regulation in Georgia. “Loi”, Tbilisi, 2007, page 376 (in Georgian language);

13. The Monography - Discussion on Improvement of Georgian Competition (Antimonopoly) Law. “Loi”, Tbilisi, 2007, page 96 (in Georgian language);

14. Circumstances Creating Barriers to Antimonopoly Regulation in Georgia. HESP-Higher Education Support Program, Regional Seminar for Excellence in Teaching, Tbilisi State University, Georgian University; International Conference: „Shadow Economics and Social Economic Consequences of Corruption, tax evasion and Property rights violation.” Collection of Scientific Works, Research Papers and Articles, Publishing House “Universal,” Tbilisi 2008, p.5-11, (to be published soon on English language).

**The Structure and the volume of the work.** The Dissertation work consists of the Preface, 4 Chapters, the Summary-recommendations and the Annex. The Work includes 326 printed pages and literature list of 218 titles.

## II. THE CONTENTS OF THE WORK IN BRIEF

The actuality of the researched topic is approved in the Preface of the work, also the Task and the Goals, the Subject of the Research, the Object and the scientific novelties adopted by the Author during the research process.

**At Chapter I** the opinions of the representatives of Classic and Neo classic schools are discussed, with the emphasize on the weak sides of the theories of the representatives of these schools (abundant attention towards Price Competition, ignore of the dynamics and time factor of the competition activity and etc), the contradictions between complete (fully excluding any kind of substantial control of the market) and non-complete (the monopoly competition, oligopoly

competition and absolute monopoly) models of competition. The opinions of Georgian scientists-economists are given in connection with this matter.

It is noted that “Full value competition (and, thus, Free Market) is only the theoretical construction...” (17, page 26), moreover, “...absolutely free and complete competition and completely independent, self regulated clear Market Economy does not exist and never existed in any country” (36, pages 158-169). Accordingly, it is outlined that in the conditions of total globalization when the part of the goods markets is monopolized, the economic agents control mechanisms by the State towards Goods markets is not justified. By its side, the experience of the practical realization of the antimonopoly regulation is temporary stimulus towards the direction of formation and perfection of appropriate theoretical basis.

It is emphasized that the doctrines on competition, outcome from the epochs and real situation change was in constant alteration. The competition always stayed unaltered what in one or another type shall exist together with the society.

For full value study of the theory and practice of the competition we should understand the defining statements and basic principles of the competition legislation. For this purpose the so called “American” (based on the market forces), “European” (based on the domination) and “European union” (formed and developing on the basis of the international legislation norms) models of competition comparative analysis is made. Accordingly, the similarity and difference between these models is outlined and Georgian draft of the competition (Antimonopoly) legislation is discussed.

For better discovering of the similarity and difference between known models of competition legislation the legislation norms of the United States of America (“American” model), Great Britain (“European” model) and “European Union” (mainly serving for the erase of difference existing between American and European models), together with their executive institutions is discussed. The comparison of these models with Georgian Antimonopoly legislation and the activities of appropriate institutions gave us the basis to show fuller the defects existing in this field and to offer definite recommendations.

Together with that the efficiency of the competition legislation and the work of appropriate institutions depend on adequacy of their supervision and control activity, on the right of the decision making and imposing fines. The decision made by US Federal Trade Commission, The Competition Commission of the Great Britain and also by the Euro Commission –on competition actions of single

subjects are given and discussed in the Dissertation (together with the examples) and the defects of Georgian competition legislation defects are shown in similar (close) situations.

The summary is outlined: the relationship connected with the definition of the conditions existing on the market and the control implementation by the participant sides represents the regulation subject itself. Accordingly, the norms defining the State interference into the Market relationship should be considered in the legislation of all developed countries. Unfortunately at present stage the draft of legislation on competition in force – in the form of Georgian Law “On Free Trade and Competition” does not consider the reveal and eradication mechanisms of the facts of the malicious use of the positions of dominating economic agents. Thus, Georgian competition legislation does not conform neither European nor the “American” nor the European Union models.

**In Chapter II** the International Obligations undertaken by Georgia before European Union, World Trade Organization, Commonwealth of Independent States (CIS), Competition bodies of Ukraine and Romania are critically analyzed. Definite recommendations are given accordingly.

The cooperation of Georgia with the European Union is based over Agreement signed on April 22, 1996 in Luxembourg – on partnership and cooperation, according to which the obligation taken by Georgia is to approximate the existing and future legislation, among them the regulatory norms of the competition and questions of customer rights to the appropriate legislation of the European Union. Accordingly the European Union expressed its readiness of technical support to the country (Georgia) on the matter of implementation of these obligations.

The part of the agreement reached between Georgia and European Union connected with the competition field and according to which Georgian competition legislation is to be précised, is the outcome of the Article 81 (Anti-competition actions) and Article 82 (malicious use of monopoly) [*Articles 85 and 86 of previous edition of the Agreement*] of the Founding Agreement of the European Union (“Rome Agreement”). In the process of approximation of the legislations of Competition Law of European Union of 1989, Regimen 4064/89, with the changes incorporated in 1997 (Regimen 1310/97) and 2004 (Regimen 139/2004) are to be considered (the limitation of competition concentrations in the European Union is prohibited by the mentioned regimen).

Unfortunately the obligations taken before European Union are not fulfilled up to today what is not the fault of the European side. With participation of their experts (“Tacis” “Geplac” technical support) it was five years ago when the draft of Georgian law “On Monopoly and Competition” was prepared the discussion-presentation of which was held in the society by the State Antimonopoly

Service with the support of “Konrad Adenauer Foundation” on June 1, 2003 though it is not still adopted for definite reasons.

Besides European Union Georgia has taken obligations in the competition field in the World Trade Organization. In fact, on October 6, 1999 during the joining the membership in the WTO “...the obligation not to implement Trade retaliations (security, anti-dumping and compensation fee impose) until the appropriate regulatory and legislation Acts conforming to the WTO requirements are not adopted ...” (46, page 27).

It is evident, at this stage in Georgia does not exist internal legislation basis (the legislation acts fully considering the security mechanisms) regulating anti-dumping and compensation fee imposing measures. Accordingly, under the conditions of existence of non-complete legislation basis on competition the non fair trade of foreign markets in the country internal market is not eliminated (import of the production in dumping prices) though the real decision on the situation lies in the margins of the WTO regulation (“On protective operations”).

In fact the country wishing to adopt the security procedures does not need to approve whether the imported product receives non fair subsidies or it is dumping product. It is quite sufficient to find out whether the competitor of the imported product (similar, substitute) harms the local production or creates a threat to it. As we can see, despite the non-existence of Anti dumping and compensation fee imposing measures regulatory basis, it is really possible to implement full value competition policy in Georgia on the basis of WTO definitions if not the absence of the State institution for the research (study) and decision making.

In regard to the above mentioned the summary of present Dissertation is that Georgia is in urgent need of timely founding of the State body which shall be the execution body of the regulations defined by the WTO Agreement. By our point of view, this kind of Institution should also simultaneously represent the Main Body for the competition in the country. Internal Competition legislation in the country is also necessary in parallel, where the limitation mechanisms of the competition are decreased only to the prohibition of the limiting activities on competition by the State. The WTO member has to conform to the analogue standards of the developed countries.

The Work also outlines that from 1993 Georgia participates in the realization process of the Antimonopoly policy of the CIS countries space. The basis of which is the Interstate Agreement signed in Ashkhabad on December 23, 1993 “On carry out of Common Antimonopoly Policy” (later, the single parts of the Agreement were précised and expanded on January 25, 2000). The mentioned

Agreement finally defined the main directions of activities and the tasks in the field of competition of the members of the CIS countries.

For the practical realization of the taken obligations the Interstate Antimonopoly Council is created in the work of which Georgian Ministry of Economy participated in 1994-1996 and the State Anti-monopoly Service in 1997-2004. From 2005 Georgian side does not participate in the work of the mentioned Council what is not the right decision. From the topics discussed during the meetings of the Council in different years it is clear the widely spread breaches in the CIS were the following questions: the malicious use of dominating position by the economic agent; the illegal use of other trade mark; the work out of the control mechanisms of the trade-financial groups and the creation of transnational corporations and etc; so the matters which were actual and stay actual for Georgia today were those of a problem in the CIS space. Accordingly we suppose that under the conditions of unfair boycott to the Georgian products at the Russian market Georgian competition body would make benefit for Georgian producers by participation in the work of Interstate Council of Anti-monopoly Policy of the CIS countries and the appropriate Council of consumers' rights protection, particularly when the mentioned Council actually had previously used the tools for protection of Georgian producers' rights. In fact, at the end of the 90-ies of the last century, Georgian Anti-monopoly Service reached important success at the CIS countries market for the "Borjomi" mineral water trademark protection, the result of which was the closure of over 100 production facilities of false "Borjomi" product.

Present Dissertation also outlines that in the conditions of growing integration processes of economy the key role is the activity of the multilateral and bilateral Interstate cooperation in the field of competition relationship. With the aim of intensification of the relationship in this direction the Agreement between Ukraine and Georgia was signed on July 16, 2002 "On Cooperation in the Field of the Competition between the Governments of Georgia and Ukraine". The aim of the mentioned Agreement is the cooperation of the sides in the field of the development and aid of competition.

Unfortunately, because of the defects of Georgian legislation in this field, Georgian Agency for Free Trade and Competition could not participate more actively in the work to find out and eradicate by Ukraine Anti-monopoly Committee on the commonly posed defined questions: non-fair competition for mineral water; malicious use of the dominating position of the economic agents on the train ferries cargo transportation.

Similarly, with the aim of cooperation on the development of competition and intensification of antimonopoly regulation matters the Agreement on cooperation between Georgian State Antimonopoly Service and Competition Council of Romania was signed on November 18, 1999.

Finally the Dissertation context outlines that Georgia should implement the harmonization of the draft of competition legislation towards appropriate legislation of European Union following undertaken International obligations (European Union, WTO, CIS and bilateral Interstate or Inter-institutional obligations) what finally supports the attraction of investments to the country and improvement of production environment (establishment of fair competition). Meanwhile appropriate Institutions (Services for protection of competition and customer rights) should intensify bilateral inert country relationship and especially, the relationships with the similar institutions of neighbor countries (Azerbaijan, Turkey, Armenia, Russia, Ukraine, Bulgaria, Romania and Hungary) because the inflow of the products from these markets is implemented to Georgia as well as the main target market for Georgian products are these countries.

Single paragraph of present Dissertation is dedicated to the analyze of the aids issued by various International Organizations in 1992- 2007 (The World Bank, TACIS, GEPLAC, CEPAR, OECD, UNDP, USAID, UNCTAD, “Open Society- Georgia” Foundation, Konrad Adenauer Foundation, Restructuring and Management Aid Center for Private Enterprises and etc) for the improvement of the Antimonopoly policy realization in Georgia. In the field of realization of not so positive changes in the competition Policy the aids from various International organizations continue mainly serving the advance of the Georgian experts’ qualifications and arrangement of the technical questions. The above mentioned creates the basis for improvement of the realization of the competition policy mechanisms in Georgia.

**In Chapter III** the formation and realization process of the Competition Policy in Georgia is discussed (antimonopoly regulation) divided to four stages. Meanwhile the legislative norms existing in Georgia are critically analyzed and on the basis of precise (practical) examples the efficiency showing of the appropriate executive institutions is studied.

**The period of 1992 - the first half of 1996 is accepted as the First Stage of realization of the competition policy** coinciding with the starting phase of the root reforms in Georgian economy in fact the period when the process of transition from Planned Economy to the Market economy began in the country. Exactly for the promotion of economy organization based on the Market economy and for avoidance of any kind of contingencies Economy Reforms Staff under the

governing of R.Gotsiridze-Vice-Premier (M. Jibuti-Deputy) was created at the Cabinet of Ministers of Georgia the efforts of which were directed towards the first steps in the field of realization of the competition policy in the country.

The first normative Act on competition preparing the basis for the realization of the competition policy in the country (Antimonopoly regulation) was the Statement N323 by the Cabinet of Ministers of Georgia issued on March 17, 1992 “On Several Measures for De-monopolization of Economic Activity in the Republic of Georgia”. By the Statement, it was necessary to adopt antimonopoly regulation mechanisms in order not to impede the economic freedom and economic de-monopolization processes by the initial economic units (concerns, associations, unions and etc) created as a result of the reorganization at various national economic fields and the execution function of it was vested to the Ministry of Economy.

The Decree by the State Council was adopted later “On Limitation of Monopoly Activities and Competition Development” (October 16, 1992) on the basis of which the organizational and legal basis of the development of competition, monopoly activity and non-fair competition avoidance, limitation and eradication was defined. By the Decree the functions of the support of the production in the country and the development of the competition, also the customer protection functions (1992-1996) were to be fulfilled by the Ministry of economy of Georgia which at the end of 1995 was also ordered to protect the consumer rights from the non-conscientious advertisement.

Besides the Statement by the cabinet of Ministers of Georgia (04.26.95 N325) was issued according to which the definition of permanent State control objects became obligatory in order to provide competitive environment on product markets and protection of customers’ rights (for further regulation of their activities); Accordingly, by the Charter “On State Register of Monopoly Enterprises and Unions” (adopted by the decision of the meeting of Collegiate of Ministry of Economy, Minutes N12 April 30, 1993, Minister M. Jibuti) the first monopolist economic agents in the country were named by the Ministry of Economy of Georgia (the Decision taken by the meeting of the Collegiate of Ministry of Economy, Minutes N10, July 6, 1995, Minister: VI. Papava). The defining criteria of the monopolist was not the share of the definite economic agent on the appropriate product market but the volume of the goods (imported) by them; In single cases the principle of exclusivity of their product or provided service on the market. The Subjects of natural monopoly (ports, “Aeronavigation”/air navigation, Railway Station, “SakGas”(Georgian gas), the service and unit price of which could be regulated) and also other (non-regulated) monopolist



economic agents were included together into the State Register and the practice shows that it was not justified. That was the reason that later (1998-2000) according to the Georgia Law “On Monopoly Activity and Competition” the normative Acts were accepted defining separately the observation rules for the natural monopoly subjects and economic agents of monopoly positions at appropriate product markets (mechanisms of entry-withdrawal of economic agents into the Register as well as the implementation of observation and regulation).

It should be mentioned that the first stage of formation of competition policy in Georgia coincided in time with the massive privatization process, what increased the functional meaning of the competition body for banning new monopoly promotion and support of sound production environment. It is to mention that the Ministry of Economy implemented the above with more-less success, what is also approved by the announcement of the Government of Georgia in the WTO “Before massive privatization process commencement in 1992 the danger of transformation into the private monopolies of the State monopolies existed. In order of its avoidance the merge of the enterprises was implemented under the control of the Antimonopoly Services messing the creation of many monopoly subjects” (5, page 3).

**The period of the second half of 1996-the first half of 2002 is accepted as the Second Stage** when the codification of the Civil Code and Civil legislation in the country begins towards legislation of the European Union though today we can unambiguously declare that codification was not implemented completely.

The fact is that this period coincides with the processes of the formation and complication of the more-less independent antimonopoly body- Georgian State Anti-monopoly Service on the basis of Constitutional Competition Law of Georgia (New Constitution was adopted on 08.24.95). The Georgian Law “On Protection of the Customers’ Rights” (1996) and “On Advertisement” (1998) are adopted in the same period. Also the process of the basis creation (the first stage) for the entry into force of the Georgian Law “On Monopoly Activity and Competition” (December 2000) is completed what afforded the State Anti-monopoly Service work full force. Accordingly, the hundreds of facts of unfair competition, malicious use of dominating position, abuse of customers’ rights and inappropriate advertisement was revealed and eradicated in this period. An important input was done into not so easy process of successful formation of market economy in the country. In fact the activities of **separate natural monopolies was analyzed and critically evaluated in this period** [“Sakartvelos Rkinigza”/Georgian Railway Ltd (demonopolization program was prepared together

with foreign experts), “Sakaeronavigatsia” /Georgian Navigation Ltd, “Sakartvelos Posta”/Georgian Post Ltd, JSC “Sakartvelos telekomi”/Telecom of Georgia, “Sakartvelos elektrokavshiri”/Georgian Electro communication Ltd.(with the efforts of Anti-monopoly Service the privatization by one lot of “Telecom” and “Elektrokavshiri” failed because the Service considered that by common privatization the horizontal integration would take place at the market, what would importantly limit the competition on the International Market of Telephone Service, because “Telecom” represented the only International operator for that period) and etc]. Also, an important amount of work was carried out on the reveal and eradication of the facts of **unfair competition** (the illegal use of other trademarks) [“Nescafe” coffee (Inscafe), “Congress” cigarettes (Congressman), “Meskhuri bread” (bakery technology), Chocolates “Mars” and “Bounty” (the colours) Mineral water “Borjomi” (illegal use of the label), wine “Shuamta” (MtaShua (change of words order)), School textbooks (realization of copied books and printing the faces of famous people on the cover of the school note books without permission of definite physical persons) and etc], **Limitation of competition** [“duty free” trade zone on the territory of Tbilisi International airport, cement, mineral water, aviation, insurance and other], **malicious use of dominant position** [railway cargo transportation, cosmetic pencils, telecommunications, obligatory insurance of auto transport owners and etc] **and in the direction of reveal and eradication of the limiting decisions by the State and local government bodies** [confer of exclusive right for the school books realization (Ministry of Education), confer of exclusive right for one of the stations for the young tourists (Government of the District of the capital), confer of exclusive right of kerosene realization for one of the stations (one of the Government of District of the capital) aviation service (administration of air transportation, Ministry of Transport and Communications), mineral water (Ministry of Protection of the Environment and Natural Resources), definition of unapproved tariff for the bus and trolleybus passengers (decision of Field Commission of Kutaisi Government)] and other markets, also **definition of differentiated tariff on water**.

From the second half of 2001 and till the end of 2002 State Antimonopoly Service implemented the research of definite goods markets [kerosene, petrol, diesel, black oil, liquid gas, banana, cocoa, tobacco, matches, coffee, buckwheat and rice, milk products, butter and margarine, macaroni, mayonnaise, insurance (different types), salt, beer, chewing gum (medical), spirit, infants’ food, hygienic napkins for infants, tea, tyres, mineral fertilizers, black metal scrap, manganese, engine oil, gypsum, toothpaste, aircraft transport cargo and passengers transportation, mineral water,

cement, grapes purchase, bread products, grocery realization, construction materials, non-alcohol drinks and etc)] in order to evaluate the existing competition environment. Accordingly, the definite proposals and recommendations were worked out for the arrangement and improvement of the competition field, what was presented as to the field Ministries, as to the State Minister and President of the country. Meanwhile on the basis of the research of the definite markets the monopolist economic agents were revealed at the end of September 2001 (as an outcome of the market forces). In fact, the first monopolist subjects were named: JSC “Rustavcement” (Cement market), “Achi” Ltd (matches market), “Sotobi Enterprises Limited” Ltd and “Agrotechnic” Ltd (banana market), JSC “Sakartvelos minisa da mineraluri tsklebis kompania”/Georgian Glass and Mineral Water Company (mineral water market), “Batumi Oil Terminal” (black oil market), JSC “Kazbegi” (beer market), “Lomi” Ltd (sugar market), “Satsvavit momsakhureobis kompania”/Fuel Service Company Ltd (kerosene market), which were registered in the State Register of monopolist enterprises. Later three more times (four times in sum) economic agents with monopolist positions were revealed. Among them, the last update of the register was based on the data of 2002, the first half of 2003.

The first cartel agreements were revealed at this period on the markets of the aircraft kerosene and cigarettes, also on the butter and its substitute markets. As the common share of these companies on the appropriate goods markets exceeded 35% (the defining criteria of monopoly) the Antimonopoly Service named these companies as *monopolists* on the definite markets and subscribed to the monopolist enterprises register, and the representatives of the companies did not agree and lodged the complaints to the district courts. The lawsuit of the participants of cartel agreements continued for years and finally ended up with the deprivation of the antimonopoly Service (the Service won the lawsuit on kerosene and butter market in the court of the second instance).

Unfortunately the Court did not recognize the companies acting on these markets as the connected parties despite that one of the companies participating in the cartel agreement represented the 50% founder of another company; the cigarettes market agreement participant companies owned common use warehouse (what was the base of the Antimonopoly service while cartel agreement), and the founder of the companies acting on the butter and margarine markets was one and the same person (with the changed initials of his name). We can say that the definite part of the monopolists declared by the Antimonopoly Service in 2001-2005 had court trials in connection with the

procedures of proclaiming as monopolists by the service. The mostly part of the lawsuits ended up with the deprivation of the Antimonopoly Service (2004-2005) what by our point of view was defined by the weakening of the role and status of Antimonopoly Service.

The activity was noticed also in the direction of consumers' right protection and advertisement activity. In this period the Antimonopoly Service as inside as outside the country (especially at the CIS countries market made important input in the work of protection of Georgian trademarks (mineral water "Borjomi", wines "Khvanchkara", "Kindzmarauli") revealed and eradicated the dozens of facts of unfair competition and abuse of consumers' rights. Several sensational trials were won as are the break up of the agreements non conforming Antimonopoly legislation – on production and confer of exclusive right of trademark use of Georgian vintage wine ("Khvanchkara", "Kindzmarauli") to department "Samtrest" and Belts (Moldova) (at supreme Court). By this agreement were harmed as Georgian peasants and producers as well as CIS countries customers. Georgian budget incurred dozens of thousands of losses and the image and the world wide known Georgian brand and image was effected. Only Moldavian side benefited from bottling and realization of Georgian vintage wines together with getting financial profit meanwhile seriously harmed the Georgian trademark production - decent competitor of Moldavia wines at CIS countries market. The volcanic negative result of these yearly actions was the outcome- unfair embargo imposed over Georgian wines on Russian market.

The lawsuit against National Commission of Energy Distribution (the prolongation of the agreement relationship between electric energy distribution companies and their consumers) was won (in the district court). At the same period the consumers were reimbursed the material and physical loss caused by high voltage in amount of 100 thousand Georgian Lari.

In general, the work implemented by the State Antimonopoly Service at that period was highly praised by the European Bank for Reconstruction and Development in its 1999 report, in regard to the processes of competition policy in post-communist countries.

**The second half of 2002 –October 2004 is the Third Stage,** the period beginning with the adoption of the Georgian Law "On Independent Regulating Bodies" (09.13.02). We can easily name it as the beginning of the stage of separation (distribution) in narrow field cut of the realization mechanisms of the common centralized competition policy. It should be mentioned that it was not groundless. In fact, in the 90-ies of the last century, the basis was prepared in the country in order to exclude the Anti-competition actions supervision matter out of the competence of the main body on

the protection of the competition in the country – out of the competence of Georgian State Antimonopoly Service. The conclusion is made by us on the basis of the definite laws adopted in that period in infrastructure fields, according to which National Commission in the field of Georgian communication and post and Transport administration functions were defined in these fields as supervisory and controlling over execution of the norms of the Georgian Laws “On Monopoly Activities” and “On Protection of the Consumers’ Rights”. Despite such kind of the records in the legal base the State Antimonopoly Service anyway tried to reach the common competition policy in the country the implementation of which the service tried often by definite Anti-competition actions and eradication of abuse of customers’ rights with the help of the Court. It is evident that it did not result in positive reaction from the appropriate regulating bodies in the field. Accordingly, “the daily agenda” became the adoption of the norm, which excluded any kind of interference of Antimonopoly Service into these fields (by direct regulation, non direct regulation). For this purpose and harming common competition policy, the Georgian law “On independent Regulatory Bodies “ was adopted, simultaneous to which (06.21.02, N1553-II) Sub-article 3 of Article 5 of the Georgia Law “On Monopoly Activity and Competition” was added, meaning excluding from the State Antimonopoly Service Supervision area completely those fields, where did not exist regulatory bodies.

At the same time, in Georgian Law “On Statistics” (December 25, 2002, N1851RS) the change was incorporated according to which the initial data on production activity of economic agents (the production volume) could not be accessed by the State Antimonopoly Service. Without mentioned information the Antimonopoly service could not execute the task of “Analyze of product and financial markets for limitation of the competition and reveal of the unfair competition facts” defined by the Law “On Monopoly Activity and Competition” (Article 20, sub-article “f”). The same kind of change was incorporated into the tax Code, what made factually impossible (from January 2003) the activity of State Antimonopoly Service, as from the point of view of the analyze of the State product markets as from the point of view of the review of State Register monopolist enterprises.

As a result of the above mentioned, we can unambiguously say that the activity of Georgian State Anti-monopolist Service from 2003 continued with certain obstacles what was mainly caused by the listed legislation changes. Accordingly, the advertisement activity (outside advertisement control) and protection of the customers’ rights was mainly accentuated, though in this field there

were also certain impeding circumstances (exclusion of sudden (not notified) checking). In this period the realization of competition policy in the country was mainly implemented on the basis of definite lawsuits, the most part of which was readdressed (outcome of the mentioned legislative changes) to the regulatory commissions of the definite fields. The result of this was the decrease of the efficiency coefficient of the carried out Antimonopoly policy by the country.

**The Fourth Stage beginning from December 2004 and continuing up to present** includes the period when the radical lessening of the number of Main Competition body happened without amending the competition legislation of Georgia (in Georgian Laws and approximately 40 sub-articles “On Monopoly Activity and competition”, “On Protection of the Customers’ Rights” and “On Advertisement”). By this change the competition policy current begun from 1992 was refused and the intense work began over new competition policy formation based on different view. Its formation factually ended by adoption of Georgian Law “On Free Trade and Competition” on June 3, 2005. This Law cancelled all existing for that moment competition legislation norms together with appropriate institutions and became the basis in the understanding of different from European, American and European Union legislation about the principles of competition legislation. Professors V. Papava (18, 19), P. Leiashvili (14), Sh. Gogiashvili (6), K. Laphachi (13) and others discuss openly its negative results. Moreover, the discussion topic of Georgian Government meeting on October 24, 2007 was the abolishment of the existing monopolies in the country (meaning unfair) (39, page 4), though by our point of view at present stage the tools for its re-arrangement are not included in the Georgian draft of Competition Law. The latter may cause serious problems to the definite customers and harm the economy of the country in general. Moreover on the background of the Georgian Law “On the Protection of the Customers’ Rights” which is not yet completed and the execution of which is not implemented by neither of State bodies.

The legislation norms of competition legislation in force (as the draft, as the regulatory norms of competition conditions in the economic fields) and appropriate executive institutions are studied in present dissertation. It is shown, that that the practical realization of Antimonopoly Policy from 1992 up to present is implemented by the Ministry of Economy of Georgia (of Economy, Production and Trade, Economic Development) which already represents the body of field interests. Accordingly, the full balance of realization mechanisms of competition policy and field ministry functions is impossible because of the conflict of interests. As an outcome the Agency of Free Trade and Competition as it is on present stage (staff of 6 persons) in the system of economic development

is unjustified. It is also evident that the efficiency coefficient of the Agency activities is much lower than the one by its predecessor Georgian State Antimonopoly Service (together with its 12 regional departments and 170 person staff) in the work of establishment of fair competition principles in the economy of the country what is obviously proved by the below listed information. In fact, the implemented checking and study of received complaints, for the provisions of Law on Antimonopoly, protection of customers' rights and advertisement, the following volume of work was implemented by **State Anti-monopoly Service and its regional bodies** in 1997-2005 in order to eradicate the revealed infringements:

**In 1997** mainly the formation of State Anti-monopoly Service central body and its regional service was implemented (the work out of main legal norms of Antimonopoly regulation, the organization of their adoption and wide society information in regard to all);

**In 1998** the instructions were sent to over 1200 economic agents in order to conform their production activity with the antimonopoly legislation in force (especially with the norms of advertisement activity arrangement) and over two hundred objects were fined (the rest part executed the instructions). Approximately 50 thousand Georgia Lari benefited the State budget from those producers who broke the Law. Approximately twenty lawsuits were passed to the Court. Over one hundred lawsuits were lodged by the consumers and the most part of problems was solved by interference of the Antimonopoly Service;

**In 1999** approximately 800 cases were considered, concluded and sent to the Court over 400 Administrative Acts of the infringements. Approximately 220 agents were imposed the fine in favour of the budget in the amount of 75 thousand Georgian Lari. Also approximately 130 cases were in process in the Court;

**In 2000** approximately 350 entrepreneurs were instructed, over 500 Administrative Acts of infringements were concluded, approximately 357 of which were sent to appropriate district Courts for examination. Economic agents breaking the Law were imposed the fine in favour of the budget in the amount of 130 thousand Georgian Lari; over 70 complaints /lawsuits were brought to the Court by the consumers the most part of which were decided;

**In 2001** the instruction with the infringement eradication time defined was sent to 212 economic agents, the Acts on Administrative-Law infringement were concluded against 697 subjects, 229 of which were sent to appropriate district Courts, and the rest part was imposed fine payment by their good will. On the basis of the Acts on Administrative-Law infringement concluded

by the Service 71760 Georgia Lari was transferred to the State budget by the infringers. Over 100 complaints of the consumers were received by the central body, 59 of which were connected with the service provided by “AES Telasi” (Electricity provision company), 20- with the gas supply matters, 15- the telecommunication field, 5- the problems in water supply. Meanwhile the complaints on the gas supply and water supply were collective and expressed the interests of the hundreds of the citizens. The most part of the matters in the complaints was satisfied by the interference of the service;

**In 2002** the Antimonopoly Service inspected over 500 objects, and the Administrative-Law infringement Acts were concluded towards over 100 subjects, and approximately 50 thousand Georgia Lari was the fine in favour of the State budget; over 20 written requests of the citizens were discussed. Hundreds of the customers were consulted by the telephone on the matters of fair competition, protection of consumers’ rights and regulation of advertisement activities;

**In 2003** the inspection in the direction of Antimonopoly legislation requirements was implemented in over 380 objects, the Acts on Administrative-Law infringement were concluded towards 150 subjects, 60 of which were passed to the appropriate district Courts. Over forty thousand Georgian Lari was transferred in favour of the State budget; hundreds of customers were consulted by the telephone the most part of which was connected with the description of the products in Georgia language in the direction of changes incorporated to Georgian Law “On Protection of Consumers’ Rights”;

**In 2004** approximately twenty cases on factual complaints, on the facts of unfair competition and inadequate advertisement, also on the customers’ rights abuse reveal and eradication by the State Antimonopoly Service was studied (inspected). Meanwhile, mainly continued the study of the cases began earlier and consultations provided in the field of Antimonopoly regulation, protection of Human rights and regulation of advertisement activities;

**In 2005** in the margins of regulatory legal norms of protection of customers’ rights and advertisement activity, the activity of several economic agents was inspected by the State Antimonopoly Service on the basis of certain complaints. Meanwhile, the liquidation process of State Antimonopoly Service ended up in this period. Accordingly, from the second half of 2005 the work in this direction did not continue, because newly found Agency for Free Trade and Competition (founded by the Order of the Minister of Economic Development of Georgia dated August 23, 2005) competence did not include the supervisory functions over protection of



customers' rights and advertisement activities. Meanwhile, new draft of Competition Law did not include the mechanisms of limited decisions reveal and eradication from the economic agents' side. In regard to the mentioned the Agency for Free Trade and Competition up to today did not find out the hindering circumstances of the competition limitation and free trade by the means of sending the instruction (obligation for law infringement correction) and/or by conclusion of the Acts of Administrative-law infringement.

Simultaneously the Prices Inspection worked on appropriate product markets in 1992-2005 on arrangement of improper price setting mechanisms (liquidated on 07.12.05), which on the facts of use of regulated prices regularity imposed the fine of approximately 24.6 million Georgian Lari towards single economic agents in 2000-2005 in favour of the State budget.

At last, we can group those matters, connected with the State Antimonopoly Service, in the following way:

- 1) Unfair competitions;
- 2) Limitation decisions on competition adopted by Executive government bodies;
- 3) The malicious use of the economic agents of monopoly position (monopoly activity);
- 4) Court trials;
- 5) the evaluation of competition situation on product markets and reveal of economic agents of monopoly position;
- 6) Protection of consumers' rights;
- 7) Inappropriate advertisement;
- 8) De-monopolization and restructuring of the infrastructure (natural monopolies).

There are dozens of real facts behind each of the listed directions, the eradication work of Georgian State Anti-monopoly Service in anti-competition actions of which is undoubtedly very important. Though it is without controversy that in the work of construction of Market Economy the main antimonopoly body of the country could not act as engine, what by our point of view is caused by the range of hindering circumstances, in fact:

- 1) The realization of ambitious Antimonopoly legislation adopted in 1996 in Georgia faced definite difficulties because of its novelty and inexperience of appropriate executive institutions;
- 2) The Competition Law of the developed countries as the spine of the Market Economy, demands (undergoes) constant improvement (expansion) and the legislative government input is non-compromise and highly professional. In our real situation, as we can see with numerous

practical examples, the lower unit of Georgian legislative government (the first and the second instances), were not ready to be fully responsible and the lodging of lawsuit procedure to the Supreme Court was prolonged in time senselessly (for years). The law infringement objects benefited from it, and the competitor economic agents were harmed, what in the upshot impeded the development and improvement of the competition in the country;

3) The work of Antimonopoly Service territorial units (Bureaus) was also ineffective. In fact, if we do not take into consideration the activities of Tbilisi Antimonopoly Service (Bureau), we can see that the execution process of the territorial antimonopoly bodies was not full to control the related territory. It was basically caused as by objective as by subjective reasons (the space of the territory, the lack of business trip and expertise funds and etc);

4) Central body of State Anti-monopoly Service could not provide for years the local control of work of the appropriate regional services (bureaus) and to provide appropriate aid on the site in case of need (consultation, regulation of definite problematic matters with the chiefs of local government bodies and etc);

5) Despite their subordination to the central bodies of the regional Antimonopoly Services they represented the structures subordinate to the local administration what contradicted to the basic principles of the competition and accordingly had the negative effect in the field of development and protection of the competition;

6) The existing (minimum) level of the employees' (state public employees) salaries of State control body – State Antimonopoly Service was very low;

7) As the practice showed the single chapters (norms) of Antimonopoly legislation in force in Georgia were not full value. In fact, the main competition legislative norm – Georgian Law “On Monopoly activities and Competition” (old edition of draft of Anti-monopoly Law) could not appropriately (fully) regulate also neither Georgian Law “On Free Trade and Competition” (new edition of draft of Anti-monopoly Law) could regulate those important (fundamental) chapters of the Competition Law (on Anti-competition agreements and agreed actions, malicious use of dominant position and anti-competition merge prohibition) which should have provided (should provide) the right functioning of the competition system.

In regard to the Institution formed by Ministry of Economic Development of Georgia after the liquidation of the State Antimonopoly Service – The Agency for Free Trade and Competition, it should be mentioned that the margins of its competence are very limited. Despite the fact the activity

field of the Georgian Law on “Free Trade and Competition” almost coincides with the context of the chapters of its precedent Georgian Law “On Monopoly activity and Competition”, the difference between single chapters of these two Laws is obvious and does not count in favour of new Law.

One of the important novelties of the Law and the step forward is the prohibition of State aid and issue of purpose program, hindering the competition or creating the danger of it ( Article 8 or 9). Accordingly, in the Georgian Law “On Free Trade and Competition” the prohibition mechanisms of State aid and State purpose programs are listed and the exclusions of their use are defined, i.e. the Law lists the control rule of the State aid and purpose programs issue mechanisms. Though it is the fact that it is not fully perfect, what creates definite problems while its implementation. The result of such kind of vagueness is that beginning from July 12 2005 up to present (from the day the Law is in force) the adoption of lawful normative acts on “the general rule for adoption of State purpose programs of economic character” and “general rule for issue of State aid” is not implemented. We suppose this problem may be solved in case if:

- The inconsistencies between single chapters of Georgian Law “On Free Trade and Competition” are eradicated (special attention should be paid to those chapters according to which from one side the issue of State aid and State purpose programs limiting the competition is prohibited (the State purpose programs represent State aid by the context) and from the other side, the Agency for Free Trade and Competition is authorized to work out and issue only the recommendations what does not represent obligatory for implementation document for State bodies);

- Until the approval of the “General Rule of adoption of State Purpose Programs of economic Character” by the Agency of Free Trade and Competition, special normative act should define the economic character of the State purpose programs;

- The stage is defined at which the Agency for Free Trade and Competition shall be included into the agreement process of the State purpose programs of economic context. By our point of view, Agency shall be included until the sum defined by a certain program shall be issued to the economic agents. It will be correct if the State purpose programs and State aid issue procedure arrangement chapters are unified and listed in one article.

**The Chapter IV** of present Dissertation shows the impeding circumstances of the competition policy realization and its realization perspectives. It is outlined that the competition-legislation norm existing for present in Georgia is based over so called “Economy by its own will” concept. The base for such summary is supported by the chapters of Law, the main part of which

importantly varies from the approved and accepted competition (antitrust, antimonopoly) norms in the developed countries. Main difference is that neither of the chapter of the Law except for the general formulation of the Law (Sub-article “a” of Article 4), does not consider the eradication mechanisms of anti-competition actions of economic agents, as well as the reveal of unfair competition facts from the economic agents’ side and the mechanisms of control of merge of agents. It also does not consider the controlling chapters of horizontal and vertical integration processes. Meanwhile the Law does not include (is not supported by) the initial postulate of the Antimonopoly Law on domination (“market force”). Besides the mentioned, it does not consider the comprehension of the monopoly activity (which is unconditionally prohibited all over the world), the product (productive) and geographical margins of the market and etc.

In regard to the above mentioned we suppose that today when “the economy step by step loses only the national-economic importance and transnational companies are founded, which are mainly stimulated by their own and not by the State interest” (1, page 7), the arrangement of legal norms of fair competition should be acknowledged as the first priority of the country particularly at the background of existing defects in the Law like Article 4 of Paragraph 11, in fact, “...the needs (of the Law) do not include the means for non freely circulation of goods transportation in infrastructure fields” (38, page 5). It means that the private companies do not include the Antimonopoly regulation field, what necessarily lacks the correction. Because, according to the European Union directives, the main essence of the creation of the competition environment is the spread of principles of free acceptance and opening the market. In real, according to the appropriate norm of Georgian Competition Law, the owner of special property has the right not to allow the third person to its own network, if such kind of network is created by private investor.

In connection with the above mentioned and the range of other circumstances, we suppose that the main impeding factors of execution of legal norms may become the following circumstances:

- 1) the ignore of prohibition mechanisms of monopoly activity and malicious use of dominant position;
- 2) absence of legal basis for adoption of preliminary measures for avoidance of unfair competition;

3) ignore of necessity of analyze of product and financial markets for limitation of competition and find out of the facts of unfair competition (for evaluation of competition environment on appropriate markets);

4) unambiguous uncertainty ( vagueness) of economic agents and infrastructure fields in the State property at regulated economic fields, what is undecided matter after cancellation of Law on price fixing;

5) The exclusion of those relationship of economic agents (especially owning property) included into regulation field of independent regulating bodies in the Georgian Law “On Free Trade and Competition”, which limit or may limit the competition;

6) absence of legal mechanism of anti-competition agreements and statements;

7) incompleteness of legal basis of obtaining information for analysis of activity of economic agents referring to regulated economic fields;

8) absence of the list of economic agents owning special property;

9) absence of regulating charters of retaining minimum price during new resale of the product (vertical definition of the prices) prohibited by international legal norms, as well as the ignore of the retaining of the maximum price while new resale of the products accepted by European Union exclusions (Statement 2790/99 of 1999 by European Commission) (the definition of new resale prices for the goods is prohibited as a rule, if it effects the competition between the countries);

10) impeding circumstances on provision of the materials on expired tax payment and credit indebtedness restructuring for the Agency for Free Trade and Competition about “necessary material and financial resources for implementation of State aid with the showing of appropriate terms”;

11) non obligatory character of preliminary antimonopoly expertise on normative acts of economic character by State government (executive-central and local) bodies;

12) inconsistencies between charters of the legal norms of regulating single fields and Georgian Law “On Free Trade and Competition”;

13) Disuse of precedent legal norms, because of which Georgian competition policy is definitely isolated;

14) less efficiency of Georgian competition (antimonopoly) body in the interstate work of Antimonopoly Council of CIS countries;

15) absence of obligatory mechanism of price fixing after cancellation of the legal basis on prices and price setting (according to the recommendations by the European Union the changes and additions were incorporated to Georgian Law “On Protection of the Customers’ Rights” on June 23, 2006 (N3398-Is), with the aim of regulation of the problem, according to which the buyer is obliged to provide the indication of the sale and the unit price of the good. Meanwhile the indication of the unit price is not obligatory if it is similar to the sale price. The date the Article comes into force is July 1, 2008);

16) weakening of main body of competition in Georgia;

17) the conflict of interests between the Ministry of Economic development of Georgia as the field Ministry and State institution subordinate to it - Agency for Free Trade and Competition; 18) unambiguous uncertainty of State executive bodies on considered mechanisms by World Trade Organization agreement “On protective Measures”;

19) weakening of cooperation mechanisms with the international organization for solving of organizational-legal, technical and financial provisions problems;

20) incompleteness of qualification and retraining of the staff (mainly abroad and under the direction of foreign specialists) and the attestation system;

21) less efficiency of the substitution of State antimonopoly service by local government bodies in the field of regulation of advertisement activity (one of the aims of the advertisement is the obtaining of the advantages in the competition, thus the fact that the non conscientious advertisement takes place is not eliminated (abusing the competitor company rights));

22) the realization of competition (antimonopoly) policy is in direct connection with the protection of the customers’ rights; as an outcome, the impeding may become the factor that after liquidation of Georgian State antimonopoly Service the legal basis existing in this field has not the implementation body thus leaving open the matter of the protection of customer’s rights- one of the most important directions in the realization of the competition policy in the country;

23) incompleteness of the mechanism of protection of undefined amount of the customers;

24) absence of customer education system;

25) non efficiency of the fixed penalty fee sanctions for the infringement of competition, consumers’ rights protection and advertisement activity regulation according to the Administrative-law infringement code, because of the small amount of the fee definition.

We should also outline that one of the main aims of the Competition Law (antitrust, antimonopoly) is the reveal and eradication of the facts of limitation of competition (independently from the State, because of the Market force) by the dominant companies acting on the goods market (of strong market force). In regard to the interference of the State into the economic activity and taking decisions on competition limitation, it is mainly the characteristic of post-socialist countries and the countries with transitory economy, though the fact is that in such cases the quality of the control of the decisions adopted by the upper instances in the executive government is very low. In connection with the above mentioned it is obvious that because of the conflict of the interests between the Ministry of Economy and realization mechanisms of the competition policy the independence of the main body of the country competition and its separation from the Ministry of Economic Development is the subject of an urgent necessity. So it is necessary to implement in minimal time the chapter of the Georgian Law “On Free Trade and Competition” (Article 15, sub-article “c”) which considers the question of formation of main body of competition of the country as of an independent structural unit. Simultaneously, it is necessary to begin the approximation of the legal basis of competition and customer’s rights protection to the legal base of the developed countries of the world, for keeping Georgian competition and customers’ rights’ protection legal norms in the margins of basic principles of the competition.

As an outcome, until the consistency of the acting Georgian competition and customers’ rights protection legislation with the European standards is reached, because of the incompleteness of the legislation of the competition and the protection of the customer’s rights the following may take place:

1) the abundant quantity of the economic agents having dominant position at appropriate (definite) goods market and malicious use of one of more companies at their common market or its important part of its (their) dominant position;

2) concentration of main part of the capital by the (dominant) monopolist economic agents which does not exclude if not increase a) manipulation of the prices by dominant economic agent in order to remove the competitors; b) conclusion of the agreements the aim of which (or result of which) is the unapproved (artificial) increase, decrease of the prices or keeping of the prices at the same level (in all these cases of the competition limitation the society is harmed);

3) limitation of the competition on the goods markets by signing cartel agreements (horizontal agreements) between the economic agents;

4) such kind of coordinated (vertical agreements) between economic agents which may cause the limitation of the competition;

5) an unapproved increase of the product prices of the consumer package;

6) creation of barriers for entry to the market of the economic agents with dominant position;

7) such kind of merge of economic agents, which creates the dominant position what in its own way may importantly limit the competition on definite product market or large part of it;

8) reaching of those scales of the production concentration in the process of international integration of the State economy what may create serious menace to the functioning of the competition and economy of the country in general (efforts of transnational corporations to obtain important segment of various markets in Georgia);

9) ignore of international legal norms of competition during the privatization process of the enterprises;

10) formation of invalid State aid control;

11) decision making on competition limitation by the State bodies (especially in the regions);

12) elimination of small entrepreneurs at the market;

13) abuse of the consumers' rights;

14) abuse of the Agency for Free Trade and Competition- main body of competition of the country-subordinate to the Ministry of Economic Development of Georgia as an outcome of its limited authority and competence, as inside the country as at the international level. All above mentioned may cause (in fact it has already caused) the criticism from the experts of international organizations (in the field of the protection of the competition (antimonopoly regulation) and the customers' rights) what shall not support the development and completion of the free production environment in the country because it is impossible to offer cheap and quality goods without existence of sound competition, what finally is the basis of the stability of the population welfare and economy.

The recommendations for the overcoming the existing problems are given in the conclusion to present Dissertation. Meanwhile it is outlined that necessary condition for any success is the incorporating changes into the Georgian Law "On Free Trade and Competition" or it is better to adopt completely new Antimonopoly Law, because at present stage in the conditions of existing legal basis for the competition it is impossible to establish right competition principles (to establish fair competition environment) and to protect as the rights of fair entrepreneurs as well as the rights



of the consumers. Accordingly, it is necessary to eradicate the defects in the Georgian Law “On Free Trade and Competition” and to approximate it with the appropriate legal norms of the European Union. The main body of the competition has to be empowered by our point of view being the institute of independent collegial arrangement, where its director and other members of the commission are assigned by President of Georgia with the approval of Georgian Parliament for definite period of time.

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