Competition in Georgia

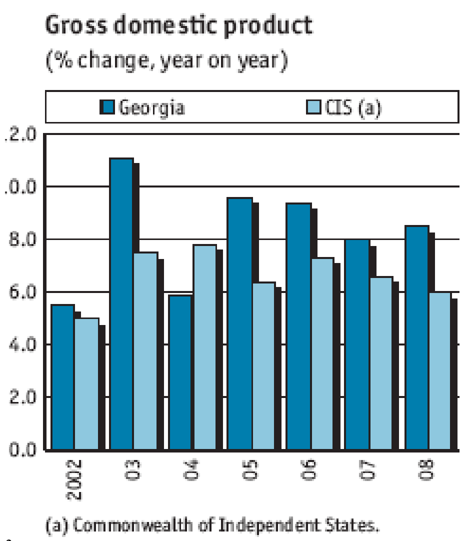
Introduction

This paper offers a brief overview of competition law in Georgia. Apart from the fact that "competition is the basic organising principle of our economic system,"[1] the importance of an examination of competition practices is underlined because of Georgia's commitment "to ensure that its legislation [in terms of competition] will be gradually made compatible with that of the Community [the European Union]."[2]

Competition economics is an academic discipline in itself and so a report of this kind is inherently no more than a snapshot. We do, however, offer an examination of the state of competition in Georgia, its causes and implications, a case study of the telecom sector, and recommendations.

Background

Economic progress in Georgia over the past few years has been spectacular. GDP has nearly doubled since 2003, reaching almost GEL 17 billion in 2007.



[3]

This success has been built on a series of reforms that have seen bureaucratic red tape slashed and taxes reduced. The World Bank ranked the country among the two top reforming countries in 2006 and 2007 and 18th worldwide in the ease of doing business[4]. EBRD figures, below, are an indication of the progress made in various fields:

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[1] Competition economics, Royal Economic Society annual public lecture, John Vickers, Chairman of the UK's Office of Fair Trading, December 4, 2003, http://www.oft.gov.uk/shared_oft/speeches/spe0503.pdf

[2] Competition-related extracts from the Partnership and Co-operation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part, http://www.globalcompetitionforum.org/regions/europe/Georgia/ge2a_en.pdf

[3] Georgia Country Report, June 2007, The Economist Intelligence Unit

[4] World Bank's *Doing Business Report2008* http://www.doi.gov/oia/procurement/reports/2008%20World%20Bank%20EoDB%20Rankings.pdf

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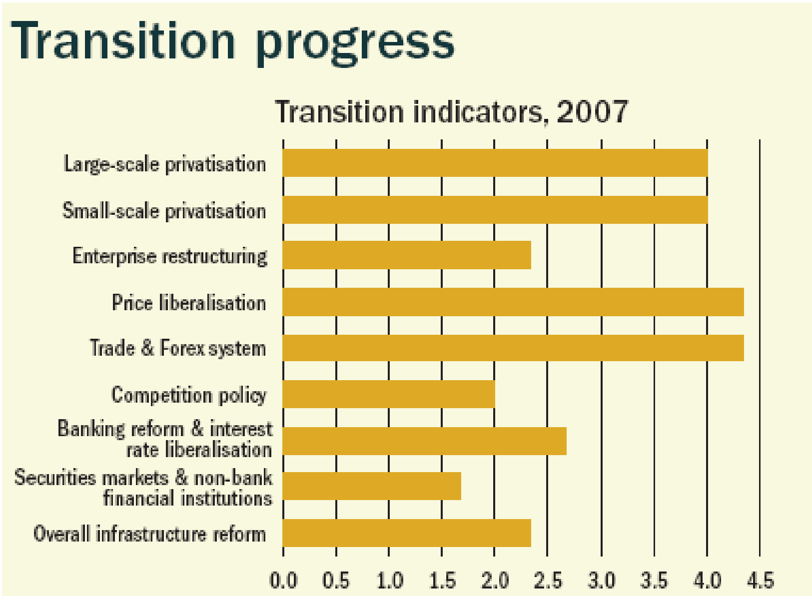

[5]

The Dark Side of the Economic Moon

The figures, whilst impressive, also reveal one area of concern: competition policy.

In 2005 competition legislation was, according to Tamara Kovziridze, former deputy minister for economic development[6], reformed.[7] In reality, the entire existing legislative framework was dismantled, with state aid to industry the only area covered in the subsequent "Law on Free Trade and Competition." The new law "does not touch the traditional fields of competition law, such as agreements restricting competition, concerted practices, abusing dominant position in the market, takeovers and mergers, state enterprises and so called natural monopolies."[8]

The Agency for Free Trade and Competition – the body charged with overseeing the law – moreover operates within the Ministry of Economic Development, thereby lacking the independence such agencies normally have[9]. Its powers are restricted to giving recommendations and it has no enforcement mechanism. Effectively it is toothless. According to one observer, there is "no competition law and no competition policy."[10] A recent European Commission study, while less trenchant, found that the "current legal and institutional framework does not provide for a solid basis for an effective competition policy."[11]

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[5] EBRD's Georgia Country Fact Sheet, http://www.ebrd.com/pubs/factsh/country/georgia.pdf

[6] Kovziridze was on December 16, 2008 appointed senior advisor to the prime minister on international economic issues.

[7] Interview with author, November 23, 2008.

[8] Implementation of the National Program for Harmonisation of the Georgian Legislation with that of the EU (NPLH) – Current Status as of June 2006, GEPLAC Report http://geplac.org/files/10150_9_397548_NPLH_report_Jun06_fin.pdf

[9] See Independence and Accountability of Competition Authorities, Deborah Healey, presented at the Intergovernmental Group of Experts on Law and Policy, Geneva, July 16-18, 2008, http://www.unctad.org/sections/wcmu/docs/c2clp_ige9p12DeborahHealey_en.PDF

[10] Prof. Ketevan Lapachi, International Black Sea University, in interview with author, December 12, 2008.

[11] Economic Feasibility, General Economic Impact and Implications of a Free Trade Agreement between the European Union and Georgia, CASE Network reports, 2008. http://www.case.com.pl/upload/publikacja_plik/21136629_rc79.pdf

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Implications

With the Free Trade and Competition Agency, unlike in other countries, devoid of investigative powers, it is difficult to quantify the effects of such an extreme *laissez faire* approach. The EBRD, however, has concluded that "[t]ransition economies' experience demonstrates in order to be effective privatization needs to be complemented by reforms stimulating the development of institutions such as competition authorities, as well as prudent rules and regulations."[12]

Policy makers in Tbilisi have yet to take on board this experience and in the meantime "Georgia is beginning to learn the hard way."[13] "[I]t is obvious that the economy exhibits clear symptoms of under-regulation and there is an urgent need to recreate a regulatory system that would help sustain economic growth and spread the benefits to a larger part of the Georgian nation,"[14] the authors of a recent study concluded. Their view is backed by many people we have spoken to in the course of researching this survey.[15]

Anecdotally, we have heard many stories suggesting that major monopoly bottlenecks exist, particularly in the pharmacy, airlines and import sectors. One company – an Israeli pharmaceutical importer – it was alleged, was, for instance, denied an import license by the Drug Agency, leaving the market solely to the few established importers.[16] Pharmaceutical products have incidentally dramatically increased in the past few years,[17] despite a strong lari, which should have brought the cost of imports down.

Another high-profile example was when British Airways sought to enter the Tbilisi – Baku route, but was prevented, allowing Airzena to extract monopolist rents in the form of exorbitant air fares.[18] Very few allegations can be backed by hard information,[19] but anyone living in Tbilisi who has ever bought a litre of milk – and paid twice the price charged in Europe – will testify that something is wrong in the market.[20] That an import monopoly or cartel exists, or that downstream price fixing takes place should come as no surprise, though. Even Adam Smith – the darling of liberal economists – saw what would happen in an unregulated market. "People of the same trade seldom meet together, even for merriment and diversion," he wrote, "but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices."[21]

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12 The EBRD Promoting Transition Through Competition, http://www.ebrd.com/pubs/legal/lit041g.pdf

13 Under-regulation in the Georgian economy, Eric Livny and Sandro Shelegia, International School of Economics, Tbilisi State University

14 *.ibid*

15 Very few people we spoke to were willing to go on the record

16 The market is controlled by three importers – Aversi-Pharma, PSP and GPC Pharma, all of whom have downstream operations in the form of drugstore networks. Such vertical arrangements are usually frowned upon by competition agencies in other countries.

17 NBG Says Pharmacy Plays Worst Role in Inflation, Finchannel, http://www.finchannel.com/index.php?option=com_content&task=view&id=27535&Itemid=47

18 Georgian Economic Trends 2000, No. 2, Georgian European Policy and Legal Advice Centre (GEPLAC), p.34, http://www.geplac.org/publicat/economic/archives/get00n2e.pdf

19 The cconsumer price index rose by 8.2% in 2004 / 05. 2007/2008 Human Development Report http://hdrstats.undp.org/indicators/138.html 8.2 . Interestingly, the figures supplied by the Department of Statistics – which operates within the Ministry of Economic Development – paint a much rosier picture. See 2008 Statistical Year Book of Georgia, http://www.statistics.ge/publication.php?plang=1&pform=-510

20 High prices can also be explained by the fact that the Georgian market is extremely small. Bank deposits – a good measure of the size of a middle class – stood at a mere GEL 351.38 million in December 2008 (http://www.nbg.gov.ge/uploads/statisticaldata/english/moneratystatistics/centralbanksurveyeng/central_bank_surveyeng.xls).

21 http://www.econlib.org/library/Smith/smWN4.html#B.I,%20Ch.10,%20Of%20Wages%20and%20Profit%20in%20the%20Different%20Employments%20of%20Labour%20and%20Stock

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Another danger – an irony indeed, given the rush to deregulate – is that ineffective competition legislation will undermine the market reforms thus far introduced. "Successful deregulation policies typically include effective laws and institutions to protect economic competition."[22]

While an unregulated market does indeed pose threats, the potential repercussions can be overstated.[23] One often cited area of concern is a free trade agreement with the EU, which seems dependent upon Georgia streamlining its competition policy with EU norms.[24] The reality, however, is different. A decision on free trade is ultimately political, as was demonstrated following the August 2008 war with Russia[25] Free trade is not a technical matter for the EU, but rather a political consolation prize that the EU can offer Georgia in the absence of something more tangible.

In the long term, possible EU accession, despite Georgia's go-it-alone approach, is not necessarily endangered, either. Vladimer Papava of the Georgian Foundation for Strategic and International Studies points to the Baltic example, where despite massive deregulation – which Papava sees as an East Asian phenomenon – the three countries were accepted into the union. "Like Columbus, the Georgian Government has not fully realised that it is heading toward its goal", "eventually arriv[ing] in Europe by traveling eastward."[26] If Georgia were ever to join the EU, competition policy would be a matter for the European Commission, and like in the latest wave of accession countries – where pre-accession, competition policy remained at odds with the EU *acquis communautaire* – monopoly bottlenecks would be dealt with subsequently.

Rationale

There are many reasons why competition policy has been put on the backburner, or that Adam Smith's "conspiracy against the public" has been tolerated. The old Georgian bogeyman – corruption – is one that reoccurs in interviews conducted by TI Georgia. Guguli Magradze, doctor of Psychological Sciences at Tbilisi State University and former MP before she quit to form the nascent opposition Woman's Party, said the change in competition policy could be ascribed to a simple reason: "because it's easier to gain money when you haven't one."[27] Whether in the form of direct bribes – the so-called elite corruption phenomenon[28] – or in the form of party funding,[29] anecdotal evidence suggests a strong relationship between the corporate world and the government.

Other countries have such a symbiotic relationship, too,[30] but in Georgia it is combined with a fervent *laisez faireism* that even Thatcherism or Reagonomics never came close to in their intensities. That ideology

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[22] See Implementation of the National Program for Harmonisation of the Georgian Legislation with that of the EU, GEPLAC Report, Tbilisi, June 2006, http://www.geplac.org/files/10150_9_397548_NPLH_report_Jun06_fin.pdf

[23] see Convergence of the Regulatory Framework with the EU: an important challenge for trade and investment, Kakha Gogolashvili, http://www.geplac.org/newfiles/glr/2007/gogolashvili(Eng).pdf

[24] Under the European Neighbourhood Action Plan, which Georgia has signed, the country is committed to bringing its competition law into line with European norms. The European Commission in Tbilisi also told TI Georgia that negotiations on a free trade agreement would start no later than November 2009 regardless of whether or not Georgia had fulfilled its obligations on competition policy. The EC insisted that competition policy needed to be streamlined with EU norms before a free trade agreement could be concluded.

[25] EU Summit Decisions on Georgia, Civil Georgia, September 1, 2008. http://www.civil.ge/eng/article.php?id=19366&search=free%20trade

[26] On the Essence of Economic Reforms in Georgia, or How European is the European Choice of Post-Revolution Georgia?, Vladimer Papava, http://www.tepav.org.tr/tur/admin/dosyabul/upload/Karadeniz%20makale_Papava.doc

[27] Interview with the author on November 24, 2008

[28] Public Defender Tells Saakashvili to Make a Positive U-Turn, Civil Georgia, January 14, 2008, http://www.civil.ge/eng/article.php?id=16894

[29] Giorgi Chkheidze, the chairman of the Georgian Young Lawyers' Association, said the recent elections "showed that all major enterprises are donating to the election fund of the National Movement" and "the major flaw of our system is that no state agency or actor is available to look at what is spent and what are the sources…" Interview with the author, November 29, 2008.

[30] See, for instance, *Captive State – The Corporate Takeover of Britain*, George Monbiot, (Paan Books 2001)

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is personified by Kakha Bendukidze[31], the former state minister in charge of reforms. Although no longer occupying this position[32], his hand is still felt, according to most observers.[33] Bendukidze, described by one commentator as "the main driver" behind economic reform, is "on the extreme right in terms of regulation versus free markets." He believes "the market will ultimately dictate." "Others are believers and take it as dogma."[34]

Bendukidze, of course, is no new economic messiah preaching doctrine unheard of before. The efficacy of competition policy is not internationally accepted, particularly in the United States. The US Department of Justice (the US antitrust authority), for instance, generally takes the view "that if powerful firms abuse their strength, they may attract competition rather than crush it."[35] Many economists actually see competition law as "the sixth finger [of Adam Smith's invisible hand]; it is more embarrassing than useful."[36] Even Joseph Schumpeter – hardly a neo-liberal – acknowledged that the inefficiencies and bottlenecks associated with deregulation may not necessarily be a bad thing.

> A system – any system, economic or other – that at every given point of time fully utilizes its possibilities to the best advantage may yet in the long run be inferior to a system that does so at no point in time, because the latter's failure to do so may be a condition for the level and speed of long-run performance."[37]

That Bendukidze *et al* ascribe to this view is understandable given the Georgian reality and experience. Given the kleptocracy that characterized the Georgian state in the Shevardnadze era, any form of state control or regulation is seen as suspect.[38] Moreover, the ability of the state to properly regulate and enforce competition law is questionable. "If your human capacity or your institutional capacity to regulate is very bad, if your public service is very poor and you cannot improve it over night, maybe you're better off not regulating at all," one observer notes. "Georgia absolutely did the right thing by abolishing all these agencies that did no good for the country, including the anti-monopoly agency."[39]

The new Georgian nomenclature's ambiguity – its fear of the state and its determination to create a minimalist Hayek-style state, and at the same time its inability to wean itself off feeding at the state (and increasingly, the corporate) trough – is nicely encapsulated by one writer:

> The person in post-communist transformation is homo transformaticus. He cannot emancipate himself from his fear of the state and from his habit of living at its expense, even as he gradually begins to act in his own interests to achieve maximum utility and profit.[40]

Hallow competition legislation and a neutered regulator are the results of that fear, and the causes of the feeding frenzy.

This post-Soviet mindset is juxtaposed with a specific Georgian official personality trait that can also partially account for the absence of effective competition legislation. Revolutions are about drastically

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31 Bendukidze famously said that Georgia should be ready to sell "everything that can be sold, except its conscience." Kakha Bendukidze, a different sort of oligarch, The Economist, July 29, 2004. http://www.economist.com/people/displaystory.cfm?story_id=2963216

32 Bendukidze was Minister for Economic Development (2004 June -December), State Minister for Reform (2004-2008) and Head of the State Chancellory (2008-current)

33 Vladimer Papava said he was "the real prime minister", for instance. Papava interview with *Akhali Taoba*, December 5, 2008. (In Georgian). http://www.papava.info/

34 Eric Livny in an interview with the author, November 12, 2008.

35 Oceans Apart, The Economist, May 1, 2008, http://www.economist.com/displaystory.cfm?story_id=11289179

36 Is it Reasonable to Rely on Competition Law?, Pierre Garello, http://www.freeuni.edu.ge/uploads/is_it_reasonable_garello.pdf

37 Joseph Schumpeter, *Capitalism, Socialism and Democracy*, (1942), p.83

38 Abuse of competition law by vested interests is, of course, not a solely Georgian phenomenon. See Shopworn arguments, The Economist, Jan 3, 2008,

39 Eric Livny, in interview with the author

40 Necroeconomic Foundations and the Development of Business Post-Revolution Georgia, Vladimer Papava and Micheil Tokmazishvili, http://www.papava.info/publications/post-revolution_Georgia_en.pdf

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changing the old order and they invariably involve the destruction of the status quo ante. At some point, however, revolutionaries must become administrators, with policy orientated goals, defined and worked out in consultation with a wider constituency than the revolutionary inner circle. In post-Rose Revolutionary Georgia, however, that necessary "transition from one mindset to another, from the destructive to the constructive"[41] seems to be only partial. As one observer noted, "reforms are born in the minds of our elite on Sunday, published on Monday and implemented on Wednesday."[42] That reflex has of course produced results – as evidenced in the World Bank's *Doing Business Report* – but it has also left many vacuums, one of which is in the area of competition legislation.

Sector Regulation

While competition legislation is effectively non-existent, Georgia does have regulation of key sectors. "In sectors worldwide where monopolies are created like in banking, communications, energy, water utilities, etc, we have regulation that is compatible with European principles," Deputy Minister Kovziridze told TI Georgia. 'Their [regulators'] competences comprise of areas that are typically covered by anti-monopoly agencies, like merger, abuse of dominant position, and others." The deputy minister went on to say that "they are entirely independent; they are not part of the government" and they have "powers to supervise and control mergers, the abuse of dominant position, etc."[43]

Telecoms[44]

Of the regulated sectors we have chosen telecoms because of its importance to the wider economy. This was recognized by Georgia in a WTO General Agreement in Trade on Services, wherein "[m]embers recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services."[45] We specifically focus on two areas – mobile telephony and internet provision – as the former constitutes 65% of the entire sector and the latter has recently been at the centre of intense public scrutiny and controversy.

War of the ISPs

The internet market in Georgia is, at least on the surface, unhealthy from a competition point of view. Caucasus Online – the result of the horizontal takeover of Sanet and Georgia Online in 2006 – had, as of 2007, 90% of the market.[46] United Georgia Telecom (UGT) – formerly the state telecoms monopoly until it was bought by Kazakh bank TuranAlem and Georgian partners in 2006 – although the incumbent player by virtue of the fact that it owns and controls the underground cable infrastructure – was until recently a non-player in the Internet market.

That all changed in 2007. UGT in an attempt to gain market share, essentially abused its upstream powers – in controlling the infrastructure – to benefit its downstream retail business. It cut Caucasus Online cables,[47] disconnecting consumers and causing chaos for businesses all over the country.[48]

[41] Eric Livny in interview with author
[42] Giorgi Chkheidze, the chairman of the Georgian Young Lawyers' Association, in interview with the author, November 29, 2008.
[43] In interview with the author, November 23, 2008.
[44] Defined by the European Commission as "all forms of communications by electronic means, whether via telephone (fixed line or mobile), facsimile, internet, cable, satellite, etc." http://ec.europa.eu/competition/sectors/telecommunications/overview_en.html
[45] http://www.wto.org/english/docs_e/legal_e/26-gats.pdf
[46] The GNCC told TI the figure was now 58%, with the entry of the incumbent operator – UGT – into the market.
[47] TI Georgia has been unable to confirm allegations that the Tbilisi Mayor's Office was involved in cutting the cables, but many commentators believe them to be true.
[48] Clash Between Internet Providers Continues, TeleGeography, http://www.telegeography.com/cu/article.php?article_id=25719&email=html

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The GNCC eventually intervened, setting collocation fees that reflected the market cost of supplying the infrastructure, and in so doing, settled the conflict[49].

The affair, however, raised a number of issues related to the regulation of a free competitive market.

Firstly, Caucasus Online's monopoly status. Monopolies are indeed inherently suspect, but if a certain number of criteria are satisfied, their creation is not always blocked by regulators[50]. In an Internet market, these are service to the consumer – measured by price and speed of connection – the maintenance of an environment conducive to further investment in the technology required to move on the sector, and low entry barriers for potential competitors.

In terms of service, the Georgian Internet consumer essentially pays European prices but gets a South Caucasus type product. Services and therefore pricing are difficult to determine and compare, but a World Bank survey revealed that Georgians paid USD 9.90 a month for a so-called "price basket for Internet services," while Europeans paid USD11.10.[51] Quality – measured in Internet bandwidth (bits per person) – however is extremely bad. Georgia scored seven and Europe 268.[52] Internet users in Georgia also suffer constant breaks in service, sometimes lasting hours.

Meanwhile Caucasus Online's profits jumped by 95% in 2007[53].

The company has however ploughed back considerable profits into its business, spending USD 75 million on new fiber optic lines under the Black Sea[54].

The Caucasus Online merger has also not acted as an impediment to others wishing to enter the market. Not owning the infrastructure has thankfully meant they have not been in a position to do so.

Given that the first criterion has patently not been met – and that it was a likely possibility at the time of the merger – the merger should, in accordance with European Commission standards, have been blocked. The GNCC, however does not actually possess the authority to prevent mergers. Although Gela Butbaia[55] of the GNCC claimed that the 2005 Law on Telecommunications was fully compatible with EU norms, he acknowledged that the regulator had no power to prevent the creation of a monopoly, so long as it didn't subsequently abuse its dominant position in terms of stymieing potential market entrants.

A further issue raised by the recent "Internet war" is the regulatory control exercised over incumbent abuses. Standard practice dictates that all comers should have access to existing essential infrastructure and should pay cost price for its provision. The regulator should determine that price. The GNCC did this, thereby bringing the dispute to an end.

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49 The GNCC told TI Georgia that the fee was set at GEL 11. 68 per subscriber per month

50 The European Commission even approved the merger of Boeing and McDonnell Douglas, for instance. See Boeing Concession Averts Trade War with Europe, The New York Times, July 24, 1997, http://query.nytimes.com/gst/fullpage.html?res=9C04E0D61E3BF937A15754C0A961958260&sec=&spon=&pagewanted=all

51 *Information and Communications for Development 2006: Global Trends and Policies,* The World Bank, http://devdata.worldbank.org/ict/geo_ict.pdf

52 *ibid*

53 Georgian Internet Provider Doubles 2007 Profits, Reuters, February 7, 2008, http://in.reuters.com/article/idINMCH72882720080207

54 Tyco Telecommunications to Construct Fiber-Optic Cable for Georgia, Civil Georgia, September 13, 2007, http://www.civil.ge/eng/article.php?id=15787&search=tyco%20caucasus%20online

55 Gela Butbaia, chief of the GNCC's Strategy Development and Competition Department, in an interview with the author, November 25, 2008

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As well as cutting lines, UGT also offered Internet at GEL15 a month (compared to Caucasus Online's price of GEL 50). Its marginal cost, according to the GNNC, is GEL 11.34, and so below cost selling is not an issue here. Even if it were, however, the GNCC would not have intervened, as UGT is not the dominant player on the market.

Mobile

There are two key requirements for a competitive mobile sector: interconnection fees and number portability.

"Interconnection charges represent one of the biggest items of expenditure for new market entrants,"[56] and so they represent a major barrier to the development of potential competition. Without regulation, major existing operators have an incentive to raise the cost of receiving or making calls to new smaller networks, thereby making it unattractive for consumers to switch to newer players on the market.

The GNCC has recognized this and accordingly set a cap on the interconnection fee charged. It is also due to facilitate number portability, which will allow consumers to switch operator while at the same time allowing them to hold onto their cell number.

This regulatory approach has allowed the mobile market to rapidly expand, with user numbers reaching European rates, and has facilitated considerable investment in the sector. Prices paid by consumers are also reasonable by European standards.

Politicization

Telecom sector regulation, on the whole, works reasonably well, but there is one area of concern. While an EBRD report described the GNCC as "one of the more progressive and independent regulators in the CIS,"[57] it is subject to undue political interference.

Although the GNNC moved to diffuse the Caucasus Online - UGT dispute by setting cost orientated charges on the essential underground infrastructure, it only did so after a considerable time delay.

The dispute erupted on October 19, and for at least a month nothing was done, leaving the population and the economy at a loss, and Caucasus Online's reputation as a reliable provider in tatters. Over the period, Caucasus Online lost market share, as consumers switched over to the one ISP – UGT – they knew could provide secure and reliable service.

There is of course no evidence to prove political interference in the GNCC's decision-making process, but a number of factors would indicate so.

Although no one has been prepared to go on the record, the suggestion has been made by some people TI Georgia has spoken to that UGT, or rather its parent company TuranAlem Bank, has political connections at the highest level, allowing it to ride rough shot over the regulatory body. Interestingly, the Mayor's Office was reportedly active in cutting Caucasus Online's lines.[58]

That such allegations have credibility is based on the fact that the GNCC, in dealing with mass media, has been proven to have acted politically in the past. It denied Maestro TV a license to broadcast political

[56] http://ec.europa.eu/archives/ISPO/infosoc/telecompolicy/en/r3148-en.htm
[57] Commercial Laws of Georgia: an assessment, EBRD, http://www.ebrd.com/country/sector/law/cla/georgia.pdf
[58] That Lot Destroyed our Cables, Says Caucasus Online, The Messenger, October 21, 2008, http://messenger.com.ge/issues/1715_october_21_2008/1715_sopo.html

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programmes, offering less than convincing reasons for its decision. That argument disappeared just as quickly as it appeared when it became politically convenient for the government to allow Maestro to have a license.[59] Either the GNNC's initial rationale was valid – in which case it should have stuck to it – or it never had any validity at all. Either way, the episode suggests that the regulatory body is indeed subject to political inference.

Recommendations

To address some of the problems identified, TI Georgia recommends that the following actions be taken:

1. Overhaul competition legislation to bring it into line with European practice, thereby ensuring competition in areas not covered by sector regulation.

2. Include provisions in privatization contracts stipulating the terms and conditions governing access to essential infrastructure. In this way, when state monopoles are privatized, even in the absence of adequate competition legislation or sector regulation, potential market entrants would have access to essential infrastructure, such as the rail network, etc. An incumbent operator denying access could be sued in the courts for breach of contract.

3. Establish a competition watchdog. In compiling this report, the dearth of statistical information was alarming in itself. An agency, even an NGO without enforcement powers, dedicated to tracking the businesses and institutions from a competition point of view, doing analysis and compiling related data, would facilitate others in highlighting abuses and championing new approaches and reforms. Consumer pressure groups or legislators, given material to build upon, could then champion better laws and regulations.

4. Give the State Department of Statistic institutional independence. Currently it operates within the Ministry of Economic Development. "Any government has a temptation to make statistics produce politically advantageous information. Under these circumstances, official statistics are unreliable."[60]

5. Renegotiate the European Neighbourhood Policy Action Plan. Currently Georgia is obliged to have competition legislation in compliance with EU norms only "in such cases where trade between them is affected[61]." When the ENP Action Plan is re-negotiated in 2010 the EU needs to insist that this provision is applied even in areas where trade is not affected.

6. Give the GNCC power to prevent the creation of monopolies.

7. Consider the possibility of functionally separating UGT's network infrastructure from the unit offering internet services. This has been done in the UK with great success in terms of enhancing investment in services and infrastructure. It also allows new, market entrants access to incumbent infrastructure, while at the same time maintaining overall ownership structures in place.

Conclusions

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[59] GNCC Confirms Readiness to Modify Maestro TV's License, Civil Georgia, October 15, 2008, http://www.civil.ge/eng/article.php?id=19761&search=maestro%20GNCC

[60] The Essence of Economic Reforms in Post-Revolution Georgia, What about the European Choice?, p 5, Vladimer Papava, http://www.papava.info/publications/Economic_Reforms_in_Post-Revolution_Georgia_EuropeanChoice.pdf

[61] Partnership and Cooperation Agreement between the European Communities and Georgia, http://www.globalcompetitionforum.org/regions/europe/Georgia/partnership%20eu%20georgian.pdf

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Recommendations of the sort we have outlined will ultimately be only accepted if there is the political will to do so. Vested interests in transition countries, where consumer rights are poorly understood or protected, invariably mean that such will rarely materializes.

This was borne out in recent EU accession countries, where competition policy remained unchanged until the European Commission took charge of it when the various candidate countries finally joined the union.

Membership of the EU is, however, not an immediate or even mid term possibility for Georgia.

Meanwhile, the EU refuses to exercise its leverage to encourage change. Preferential free trade is offered despite Georgia's failure to fulfill the ENP Action Plan. Even though competition is meant to only apply where EU – Georgia trade is affected, "competition issues arising in bilateral trade cannot be resolved unless the parties concerned have effective domestic competition rules."[62] The EU has been soft-pedaling on this issue – and losing the opportunity to affect real change in competition policy – because it has other priorities, encapsulated by the French ambassador to Georgia – admittedly paraphrased and in a throwaway remark – as "Chernobyl, immigrants and drugs."[63] In any case, the commercial stakes for the EU are not particularly high. As a percentage of total EU imports, Georgian goods constitute a mere 0.03%.[64]

It's a shortsighted view, however, and one that fails to recognize that monopoly bottlenecks and perceived threats to Europe are ultimately part of the same equation. European security is dependent on the creation of stable free market democracies on its fringe. For a transition country like Georgia – where the market, and consequently democracy – have been a hard sell because of the uneven gains and disproportionate losses, a failure to tackle monopolies and associated rent seeking practices is especially dangerous. "[A]dopting a laissez faire stance of competition policy bodes the danger for a free market economy to be corrupted and its social legitimacy to be undermined."[65]

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[62] Guide to the Implementation of the Partnership and Cooperation Agreement Between Georgian and the European Communities and their Member States, Georgian-European Policy and Legal Advice Centre (GEPLAC) http://www.geplac.org/publicat/pca/pca_guide_eng.pdf

[63] Said at a round table discussion at the Boell Foundation, Tbilisi, on November 12, 2008.

[64] See http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113383.pdf

[65] Manfred Neuman, *Competition Policy: history, theory and practice*, Cheltenham: Edward Elgar (2001), pp. 27-8.

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