

# The Law of Georgia on Electronic Communications

## Chapter I

### General Provisions

#### Article 1. Scope of application of the present law *(20.11.2013 # 1591)*

The present law shall establish legal and economic grounds for the pursuit of activities by means of electronic communications networks and facilities in the territory of Georgia as well as principles for the development and regulation of competitive environment in this sector, define the functions of the national regulatory authority (the Georgian National Communications Commission), specify the rights and obligations of natural persons and legal entities owning, using or providing services by means of electronic communications networks and facilities.

#### Article 2. Definition of terms of the present law

The terms used in the present law shall have the following meanings:

- a) “Access”** shall mean the provision, under defined conditions (including tariffs), by an electronic communications network operator, of relevant network elements, technical facilities, their free functional resources and capacities or types of electronic communications services rendered with their use, which involves: *(27.06.2008 # 67)*
- a.a) provision of an electronic communications network operator with elements and technical facilities relevant to its physical infrastructure;
  - a.b) provision with local access network elements and their free resources, including ducts, subscriber pairs, towers and masts;
  - a.c) provision with the use of co-location area;

- a.d) provision of fixed and mobile communications operators with elements relevant to their networks, with free operational functional resources and capacities (including the resources required for the provision of roaming);
- a.e) provision of subscribers with resources of individual access systems and the electronic summary (guide) of programs (services);
- a.f) provision of resources related to technical operational support system for electronic communications networks and those related to user data bases and subscriber number portability (translation);
- a.g) provision of different types of services related to virtual networks.
- a.h) provision of other functional resources and capacities of relevant elements of electronic communications networks or use of types of communications services;
- b) “**Access and/or interconnection applicant**” shall mean an authorised undertaking requesting an electronic communications network operator to provide access to relevant elements of the network, their functional resources and free capacities and/or electronic communications services.
- c) “**Access and/or interconnection provider**” shall mean an electronic communications network operator who is bound to provide an applicant operator with access and/or interconnection to its network, system, network elements, technical facilities and free functional resources and capacities, or to the types of electronic communications services provided by means of these networks or facilities.
- d) “**Access (interconnection) tariff**” shall mean a fee to be paid for the provision of access and/or interconnection to an electronic communications network operator's network elements and its resources and capacities. (27.06.2008 # 67)
- e) “**Acquisition of significant shares**” shall mean acquisition by one authorised undertaking of such number of shares in the share capital of another authorised undertaking, which will enable the former authorised undertaking to exercise significant control (control share) of activities pursued by the latter. Acquisition of significant shares will determine interrelation between the undertakings. (27.06.2008 # 67)
- f) “**Advance regulation of competition**” shall mean ascertainment by the Commission that an authorised undertaking has significant market power and imposition of specific pre-defined obligations pursuant to the present law. (27.06.2008 # 67)

- g) **“Application Program Interface”** (API) shall mean software interface between the services rendered by digital broadcasters or providers of electronic communications services, subscribers’ resources and the functional resources of the digital broadcasting equipment.
- h) **“Auction”** shall mean a way of obtaining the right of use of radio frequency spectrum in cases defined by the law, whereby a license is granted to the winner applicant. (20.12.2011. # 5546 in force from 1 February, 2012)
- i) **“Authorisation”** shall mean registration, in compliance with the rule specified in the present law, of activities pursued by natural persons or legal entities providing public switched electronic communications network and facilities and/or services, by the Georgian National Communications Commission.
- j) **“Authorised undertaking”** shall mean an entrepreneurial entity registered by the Georgian National Communications Commission as well as a non-entrepreneurial legal entity, which provides electronic communications networks (electronic communications network operator) and/or electronic communications services (electronic communications service provider).
- k) **“Billing information”** shall mean data on the volume of services provided to users or on loading the operator’s network with relevant network elements (traffic) as well as the use of their operational resources within a defined period of time, which are exchanged between operators or provided to end-users for the purposes of financial settlement.
- l) **“Capacity”** shall mean a quantitative characteristic of functional resources of the electronic communications network element.
- m) **“Certificate”** shall mean a document certifying that appropriately identified equipment or service conforms to the defined requirements.
- n) **“Closely linked segments of the market”** shall mean relevant segments of the market, in which, due to contractual relations between one or more authorised undertakings or structural links between their networks, authorised undertakings can, separately or in agreement with one another, exercise significant market power in one market segment with a view to obtain or strengthen their significant market power in another segment.
- o) **“Co-location”** shall mean access of an applicant authorised undertaking to a co-location area of a specific width allocated by an electronic communications network operator, as well as operational support and location of an applicant authorised

undertaking facilities, with a view to rendering access and/or interconnection to the relevant elements of electronic communications network.

- q) **“Demand-side substitution”** shall mean a possibility allowing users to select types of interchangeable services, which satisfy their needs by being of approximately the same price, quality and volume.
- r) **“Departmental electronic communications network”** shall mean a non-commercial network designed for internal needs of a department and connected to the public switched electronic communications network.
- s) **“Digital broadcasting equipment”** shall mean the terminal equipment of an end-user connected to or integrated into a TV set and used to receive digital, interactive broadcasting service.
- t) **“Digital terrestrial TV network”** shall mean electronic communications network with relevant elements (including multiplex platform), used to spread digital TV broadcasting; (20.02.2014. # 2039)
- u) **“Direct access”** shall mean direct access of an applicant authorised undertaking to the network elements, functional resources or free capacities, provided by an electronic communications network operator.
- v) **“Economic activity”** shall mean any activity defined by the Tax Code of Georgia. (27.06.2008 #67)
- w) **“Electronic communications network elements”** shall mean functionally separated technical and technological facilities, being an integral part of the electronic communications network, their operational functional resources and capacities which, due to their characteristics provide services, such as: transit, transmission and commutation of calls and information signals; collection of billing information; management of the terms of services provided to end users and interoperability; portability of subscriber numbers; operational directory of an operator, supplementary and special services; synchronization and signalling of networks; access to data bases related to calls; multimedia; rendering digital broadcasting services; conversion, coding, protection; paging; TV processing of digital data and their transmission by means of Internet or other protocol, etc. (27.06.2008 # 67)
- x) **“Electronic communications network operator”** shall mean an authorised undertaking which intends to provide or provides public switched electronic communications networks or their relevant elements, and, for a defined fee, provides access of an

applicant authorised undertaking to these network elements, their resources and capacities; provides electronic communications services to users by means of these networks or their relevant elements.

- y) **“Electronic communications network provider”** shall mean an electronic communications service operator or an authorised undertaking having access to relevant elements or resources of the operator’s network, that provides or intends to provide electronic communications services using the elements or resources of the network.
  
- z) **“Electronic communications networks”** shall mean a technological system permitting electronic processing of calls and various information signals, their commutation, transfer and transmission by means of wire (including fiber-optic), satellite, radio-frequency or optic facilities, other technological facilities and an operational support system, including fixed (circuit- and packet switched, including Internet) and mobile communications, digital broadcasting, air/channel broadcasting networks. Provision of the Government authorities in charge of defence, security and public order with electronic communications networks shall foresee also the existence of special electronic communications networks.
  
- aa) **“Electronic communications service”** shall mean a service provided by means of public switched electronic communications networks and facilities, which is offered by an authorised undertaking to an applicant operator or user for a defined fee.
  
- bb) **“Elements relevant to electronic communications networks”** shall mean elements of network or technical facilities directly linked to the provision of electronic communications networks or electronic communications services, and their functional resources including resources of subscribers' individual access systems relating to the provision of digital broadcasting.
  
- cc) **“End-user”** shall mean a user who utilizes or intends to utilize services provided by public switched electronic communications networks and facilities for private purposes and does not intend to sell these services to another user.
  
- dd) **“Exhaustible resources”** shall mean a radio frequency spectrum and/or numbering resources.
  
- ee) **“Fee for the use of exhaustible resources”** shall mean a fee to be paid by an undertaking applying for a license of the use of radio frequency spectrum and/or for permission of numbering resources. The amount of the fee shall be defined by auction or/and according to “The rule of issue, use and payment of the numbering resources”

approved by the resolution of the Georgian National Communications Commission or pursuant to other rules defined by this law. The whole amount of the fee shall be transferred to the State Budget of Georgia. (20.02.2014. # 2039)

ff) **“Free element of an electronic communications network”** shall mean electronic communications network element, its functional resource or capacity which is not loaded and which may be used to provide electronic communications services given its technical and operational requirements are met.

gg) **“Harmful interference”** shall mean interference which endangers the functioning of radio equipment and/or subscribers terminal equipment.

hh) **“Indirect access”** shall mean access of a user or an interested authorised undertaking to the network elements, their functional resources and free capacities by an electronic communications network operator, or to the types of electronic communications services through the networks of other transit (service) operator. (27.06.2008 # 67)

ii) **“Interconnection”** shall mean a physical and logical link between electronic communications networks used by one or several electronic communications network operators with a view to enabling users of one electronic communications network to connect to users of the same or another electronic communications network, and/or use services of another electronic communications service operator. This link is maintained by means of unrestricted, obligatory and non-discriminatory mutual access provided by operators to the relevant elements of their networks.

jj) **“Interdependence”** shall mean the existence of special relations between interdependent (affiliated) persons, which may have direct influence on the terms of deals between them and their economic outcomes. These relations shall be deemed special: where these persons are founders (participants) of the same company provided their joint share is not less than 20%; where one person directly or indirectly participates in another person’s company, provided its share is not less than 20%; where one person is subordinated to another or is under direct or indirect control of another; where persons represent subsidiaries or are directly or indirectly controlled by a third party; where persons jointly, directly or indirectly, control a third party; and where persons are relatives (For the purposes of the present law relatives shall be: household members; direct ascending and descending relatives; adopted children; and siblings as well as adopted children of a parent or a child).

kk) **“Interface”** shall mean the physical or logical framework permitting interface between electronic communications network elements, technical facilities, operational software resources and systems, which is characterized by common

functional, electrical, optical, structural and other compatible features as well as similar protocol requirements.

- ll) **“Interoperability”** shall mean mutual compatibility and/or controllability of electronic communications networks and system interfaces as well as technical, operational and functional characteristics. (27.06.2008 # 67)
  
- mm) **“License”** shall mean a special permission giving an undertaking the right to use radio frequency spectrum for a defined period and conditions. (20.12.2011. # 5546 in force from 1 February 2012.)
  
- nn) **“Local access network”** shall mean operator's wire (electric wire or fiber-optic) ducting and cabling facilities or facilities for wireless (fixed radio-frequency or open optic) access located in the local service area and used for the provision of electronic communications services, also, to transmit calls or information signals as well as digital broadcasting signals between the end user's fixed network termination point and the commutation point or switchboard.
  
- oo) **“Local service area”** shall mean a geographical (territorial) segment of the market, on which an authorised undertaking provides public switched electronic communications services to the end user.
  
- oo) **“Market condition”** shall mean the situation that has developed in the market as a result of interaction between the structural and dynamic factors of the market and demand and supply of specific types of services.
  
- pp) **“Maximum tariff”** shall mean tariff ceiling for access to elements of an electronic communications network established by the Georgian National Communications Commission pursuant to the legislative provisions.
  
- qq) **“Merger”** shall mean, in conformity with the “Law of Georgia on Entrepreneurs,” uniting two authorised undertakings into one entrepreneurial entity, which is a legal successor of the initial authorised undertakings.
  
- rr) **“Multiplex platform”** shall mean an electronic system combining TV programs and data related to them, as well as other relevant data in digital format to be spread in digital terrestrial TV network. (20.02.2014. # 2039)
  
- ss) **“Numbering resources”** shall mean a system of symbols established on the basis of the numbering system and used while issuing permission of using numbering

resources and/or assigning numbering resources. (20.12.2011. # 5546 in force from 1 February 2012.)

- tt) **“Numbering system”** shall mean a defined combination of symbols used to identify electronic communications operator’s network or users terminal equipment in the course of provision of electronic communications services.
- uu) **“Operating assets”** shall mean tangible and intangible assets of significant importance used by an authorised person to provide electronic communications network and/or electronic communications services, including electronic communications network, local access network, backbone, wired networks, ducts, towers and masts, as well as a license for exhaustible resources, which is most important in respect to significant market power of an authorised undertaking. (8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)
- vv) **“Permission”** shall mean permission for the use of exhaustible resources issued according to the rule and period defined in this law; (20.12.2011. # 5546 in force from 1 February 2012)
- ww) **“Point of access (interconnection)”** shall mean the point located on the co-location area at which the authority of one operator to provide access and/or interconnection ends and that of another operator begins. (27.06.2008 # 67)
- xx) **“Portability of subscriber numbers” (translation)** shall mean possibility of choice for end-users (subscribers) to keep the same subscriber number when changing authorised undertaking to another authorised undertaking providing fixed or mobile communications network and facilities or services.
- yy) **“Principle of technological neutrality”** shall mean the principle whereby in making regulatory decisions the main focus is placed on the type of electronic communications services provided to end-users rather than on the technologies used to provide these services.
- zz) **“Provision of electronic communications networks”** shall mean the installation, operational management, exploitation of networks, their technical facilities or relevant elements and economic activities by their means; also, provision of access of applicant authorised undertakings to the elements of these networks, their resources and capacities.
- aaa) **“Public switched electronic communications network”** shall mean a common system of electronic communications networks, which is designed to provide users with public switched electronic communications services.



- bbb) **“Regulation fee”** shall mean a fee established pursuant to the present law and the “Law of Georgia on Broadcasting.”
- ccc) **“Relevant geographical borders of the market”** shall mean a geographical (territorial) segment of the market, characterized by homogeneous conditions of competition.
- ddd) **“Relevant segments of the market”** shall mean types of services, including types of interchangeable services, which are identified by taking into account tariffs, conjuncture, competition and changes on the part of users and providers, established in the market.
- eee) **“Revocation of a license”** shall mean declaring a decision on issuing a license as void pursuant to the General Administrative Code of Georgia (28.12.2005 # 2564)
- fff) **„Revocation of a permission”** shall mean declaring a decision on issuing a permission as void pursuant to the General Administrative Code of Georgia (20.12.2011. # 5546 in force from 1 February 2012)
- ggg) **“Shared access”** shall mean access of two or more applicant authorised undertakings to separable functional resources or capacities of a specific element of electronic communications network.
- hhh) **“Shared significant market power of authorised undertakings”** shall mean significant market power shared by two or more authorised undertakings in a particular segment of the market, i.e. the condition where the market analysis carried out by the Georgian National Communications Commission certifies that the conditions and competition established in this particular segment of the market enable the undertakings to pursue concerted activities and to jointly obtain non-competitive privileges in the market, even in the absence of structural, or other, including contractual relations between them.
- iii) **“Significant market power”** shall mean significant market power exercised by an authorised undertaking in a relevant segment of the market, i.e. the condition where the market analysis carried out by the Georgian National Communications Commission certifies that the authorised undertaking has no competitors, is protected from significant competition or that the authorised undertaking's competitive market position enables it to unilaterally make a significant influence restricting competition in this segment of the market.

- jjj) **“Special electronic communications networks”** shall mean networks being physically separate from the public switched electronic communications network, and designed for non-commercial use and activities in the spheres of state defence, security and public order.
- kkk) **“Specific obligation”** shall mean an obligation imposed by the Commission on an authorised undertaking executing significant market power, with a view to ensure competition in the relevant segment of the market.
- lll) **“Structural division”** shall mean a functional division within the internal organizational structure of an electronic communications network operator, which pursues specific assignments and provides electronic communications services of a specific type in conformity with the scope of activities carried out by an authorised undertaking.
- mmm) **“Subscriber”** shall mean the end-user of publicly available electronic communications services when the services are provided on the basis of a prior written agreement with the provider of public switched electronic communications services.
- nnn) **“Subscriber numbering”** shall mean a digital system established on the basis of the numbering system and used to identify subscriber's terminal equipment.
- ooo) **“Supply-side substitution”** shall mean a possibility allowing authorised undertakings operating in a competitive market, to provide users with types of interchangeable services.
- ppp) **“System providing individual access to subscribers”** shall mean a technological system, technical facilities and associated resources of technical operational support system, enabling subscribers' access to individual, coded digital broadcasting services.
- qqq) **“Technical facilities”** shall mean electronic communications network equipment and facilities used to originate, process, transfer, transmit or receive electronic communications calls and information signals.
- rrr) **“Terminal equipment of the user”** shall mean technical facilities required for the provision of electronic communications services to subscribers or end-users, which may be either mobile or located at a fixed address, and not part of an operator's network, although connected to it.

- sss) **“The Commission”** shall mean the Georgian National Communications Commission.
- ttt) **“Traffic”** shall mean the total loading of an operator's network elements and technical facilities in a defined period of time.
- uuu) **“Transfer”** shall mean partial or full transfer of rights and obligations of a license holder defined in the license for the use of radio frequency spectrum to another undertaking, pursuant to the provisions of the present law. (20.12.2011. # 5546 in force from 1 February, 2012.)
- vvv) **“Transit link (service) operator”** shall mean an undertaking pursuing activities by means of transfer or transmission network elements which it owns and which connects networks owned by different operators operating in one or several local service areas, or transfers and/or transmits information signals pertaining to various electronic communications services or digital broadcasting.
- www) **“Transit of broadcasting”** shall mean authorised activity including transmitting TV or radio channel by an undertaking without any changes (without any editorial changes in TV or radio programs), which is received on a legal basis from a broadcaster and providing it to end-users via public switched electronic communications networks and facilities. Transmission without any changes implies cases when despite changes in broadcasting net, the Commission considers that TV or radio transit of a broadcaster is essentially fulfilled. (27.06.2008 N 67)
- xxx) **“Types of interchangeable services”** shall mean types of services that are functionally so similar in their type, quality, price and other features, that users exchange or are ready to exchange one type of service for another. (27.06.2008 # 67)
- yyy) **“Undertaking”** shall mean any industrial as well as any non-industrial legal entity. (28.12.2005 # 2564)
- zzz) **“Use of radio frequency spectrum for additional technological purposes”** shall mean use of radio frequency spectrum for additional technological purposes by a person whose activities are not related to provision of public switched electronic communications networks and facilities and/or services provided by this networks and facilities on the basis of the permission issued by the Commission; (20.12.2011. # 5546 in force from 1 February 2012)
- aaaa) **“User”** shall mean a natural person or a legal entity using or intending to use electronic communications service.

bbbb) “**Vertically integrated operator**” shall mean an electronic communications network operator, which owns and uses a full range of relevant network elements as well as their functional resources while carrying out activities in a specific segment of the market; significantly controls the entire process of provision of a particular electronic communications service.

cccc) “**Widescreen digital TV broadcasting service**” shall mean TV broadcasting, the programs of which are produced, edited and provided to users in a wide-screen format (16/9).

dddd) “**Wired networks**” shall mean an electronic communications network cable, air, radio-relay, satellite lines of physical circuits and wired trunks and/or common complexes of mechanisms, equipments and structures of their technological system, which are used to transfer and/or transmit electronic communications calls and information signals; (27.06.2008 # 67)

§30) withdrawn (28.12.2005 # 2564)

§31) withdrawn (28.12.2005 # 2564)

§32) withdrawn (28.12.2005 # 2564)

### Article 3. Legislation of Georgia in the field of electronic communications

1. The basis for organizing activities and regulating relations in the field of electronic communications in Georgia is the Constitution of Georgia, international agreements which Georgia is signatory to, the present law and other normative acts.
2. Citizens and legal entities of foreign states, as well as persons who are not citizens of Georgia, shall enjoy the rights and obligations provided by the present law for Georgian entrepreneurial entities, given the Georgian legislation does not provide otherwise.

#### Article 4. Principles and objectives of activities in the field of electronic communications

1. The objective of activities in the field of electronic communications shall be to satisfy the demands of natural persons and legal entities for electronic communications networks and facilities and promote the development of an information-based society.
2. Activities in the field of electronic communications shall be pursued in conformity with the main principles of state policy in this field, namely to:
  - a) Ensure provision of equal rights to natural persons and legal entities while pursuing these activities and using their results;
  - b) Prohibit monopoly conditions while pursuing activities in the field of electronic communications and liberalization of the market;
  - c) Develop competition and free entrepreneurship;
  - d) Prohibit the execution of exclusive contracts between authorised undertakings including granting exclusive rights to authorised undertakings pursuing activities in the field of electronic communications; *(27.06.2008 # 67)*
  - e) Encourage modern technologies and management experience as well as attracting financial and material resources and their effective use;
  - f) Broaden the range of services and ensure quality conforming to technical standards;
  - g) Protect the legitimate rights of consumers;
  - h) International integration of electronic communications networks;
  - i) Actively cooperate at the international level;
  - j) Ensure that regulatory decisions of the Commission are taken in an open, objective, non-discriminatory, transparent and technologically neutral way. *(27.06.2008 # 67)*

## Article 5. Regulatory authority in the field of electronic communications

Activities pursued in the field of electronic communications shall be regulated by the Commission.

## Article 6. Definition and implementation of the State policy in the field of electronic communications

1. Main directions of the State policy in the field of electronic communications shall be developed by the Government of Georgia, taking into account proposals of the Ministry of Economy and Sustainable Development of Georgia, and submit to Parliament for approval. *(9.03.2011. #4319)*
2. The main directions of the State policy in the field of electronic communications shall be led by the Prime Minister of Georgia. The main trends of the State policy in the field of electronic communications, approved by the rule defined in Georgian legislation, shall be implemented by the Government of Georgia within the competence determined by the Constitution, the present law and the law of Georgia “on structure, authority and operation of the Government of Georgia”. *(06.09.2013. # 1036 in force from the moment the elected President of Georgia takes an oath after Presidential elections of October 2013)*
3. While executing its authority, the Commission shall be guided by the main directions of the State policy in the field of electronic communications.

## Article 7. Ownership and management of special electronic communications networks *(06.09.2013. # 1036 in force from the moment the elected President of Georgia takes an oath after Presidential elections of October 2013)*

The right to own or manage special electronic communications networks shall be enjoyed by the bodies authorised under the legal act signed by the Government of Georgia. Their structure and organizational activities shall be defined by the Georgian legislation.

Article 8. Protection of secret information in the field of electronic communications  
(24.09.2010. #3619 in force from 1 October 2010)

1. Information on users of electronic communications networks as well as information transmitted by users by means of electronic communications networks are confidential and shall be protected by the legislation of Georgia.
2. Every person/entity working in the field of electronic communications shall protect confidentiality of information noted in paragraph 1 of this article. Persons employed in the electronic communications sectors as well as other persons shall be answerable for violating privacy of information, according to the legislation of Georgia.
3. Obligation of protection of information confidentiality envisaged in paragraph 2 of this article does not apply to cases when bodies authorised for operative activities carry out measures envisaged in the Law of Georgia on Operative Investigation Activity, article 7, paragraph 2, subparagraph h.

Article 9. International cooperation in the field of electronic communications

1. International cooperation in the field of electronic communications shall be undertaken pursuant to the legislation of Georgia, *inter alia*, international agreements, and treaties Georgia is signatory to.
2. In pursuing cooperation with international organizations working in the field of electronic communications as well as with electronic communications administrative bodies of foreign countries, Georgia shall be represented by the Government of Georgia, also the Commission within the competence delegated to it by the Government of Georgia.
3. In international bodies comprised of national regulatory authorities operating in the field of electronic communications, Georgia shall be represented by the Commission. The Commission shall retain the right to represent Georgia in those international organizations operating in the field of electronic communications where Georgia is already a member.
4. While cooperating with communications administrative bodies in the electronic communications sectors of foreign countries and international organizations, the Government of Georgia and the Commission shall represent interests of Georgia.

## Chapter II

### The Commission

Article 10. Status of the Commission, the rule of its formation and activity (8.12.2006 # 3921)

1. The status of the Commission, the rule of its formation and activity, as well as the rights and obligations of the Chairman, tenure of the Commission members, their independence and immunity, basis of termination of duty and discharge from obligations, as well as legal acts of the Commission, conflicts of interest of the Commission members and staff shall be provided by “The Law of Georgia on Broadcasting” and the regulation of the Commission.
2. The regulation of the Commission is approved by the resolution of the Commission.

Article 11. Main objectives and functions of the Commission in the electronic communications sector

1. The Commission shall independently regulate activities pursued by authorised undertakings in the field of electronic communications, as well as the use of radio-frequency spectrum and/or numbering resources by permission and/or license holders, *inter alia*, adopting normative and specific legal acts, monitoring and controlling their implementation and, within the competence provided for in the present law, impose sanctions for violations pursuant to the same law and the Georgian Code of Administrative Offenses. (20.12.2011. # 5546 in force from 1 February 2012)
2. The main objectives of the Commission are:
  - a) to establish, maintain and develop a competitive environment in the field of provision of electronic communications networks and facilities and electronic communications service;



- b) to ensure that electronic communications service provider authorised undertakings provide users (including disabled users) with services of good quality, a wide range of electronic communication services and affordable tariffs;
- c) to encourage authorised undertakings owning electronic communications networks and facilities to efficiently invest in innovative technologies.

3. The main functions of the Commission are:

- a) to authorize activities in the field of electronic communications;
- b) to manage exhaustible resources and ensure their efficient use; to optimally and effectively distribute radio frequency spectrum in order to ensure introduction of innovative communications technologies and develop competitive environment; to ensure transparent and non-discriminatory conditions and rules in acquiring rights to use radio frequency spectrum and/or numbering resources; to issue and revoke licenses and permissions for the use of exhaustible resources; *(20.12.2011. # 5546 in force from 1 February 2012)*
- c) to carry out study and analysis of relevant segments of the market; to define authorised undertakings with significant market power; to impose specific obligations pursuant to the present law and to supervise and control their fulfillment in order to ensure competition;
- d) to ensure provision of certification of electronic communications facilities, standardization and metrology services, pursuant to the statute on certifying radio facilities and telecommunications terminal equipment;
- e) to regulate access to the electronic communications network elements and/or technical, economic and legislative relations relevant to interconnection;
- f) to regulate, within its competence, disputes between authorised undertakings operating in the field of electronic communications, as well as between authorised undertakings and their customers;
- h) to supervise compliance with the conditions of licenses and/or permission and authorisation of activities in the electronic communications sector as well as the execution of measures against their breach pursuant to the law; *(20.12.2011. # 5546 in force from 1 February 2012)*
- i) to ensure open and transparent relations with the public;

- j) to coordinate electromagnetic compatibility of radio-electronic facilities as well as measures for their protection pursuant to international legislation;
- k) to represent Georgia in international organizations engaged in the electronic communications sector and protect Georgia's interests within its competence and within the competence delegated by the Government of Georgia to the Commission;
- l) to define guidelines for the use of amateur radio communications and amateur radio stations;
- m) to execute other functions defined in the present law and consistent with the objectives of the Commission.
- n) to solve disputes related to the rights issued by license and/or permission arisen between license and/or permission holders within its competence, pursuant to rules determined in chapter VI of the present law; *(20.12.2011. #5546 in force from 1 February 2012)*
- o) To approve the resolution on subscriber number portability, to reveal central data base system administrator of subscribers number portability by means of open contest, to sign the contract and monitor fulfillment of the contract provisions. *(8.04.2011. N4526 in force on the 15<sup>th</sup> days from the date of publishing)*
- p) In case of a situation in international and/or regional electronic communications market, which has a significant and intransitive negative impact on activities of authorised undertakings operating in Georgian electronic communications market, before eliminating such significant and intransitive negative impact, define appropriate effective regulations for all relevant authorised undertakings operating in electronic communications field by a justified decision in compliance with public administrative procedures. *(20.12.2011. N 5546 in force from 1 February 2012)*

## Article 12. The budget of the Commission

1. The Commission shall, by December 1 of each year, draw up and publish a budget for the following year to include all the expenditures of the Commission, *inter alia*, remuneration of the Commission members and staff, as well as income.

- 1<sup>1</sup> The Commission is entitled to transfer the budget funds, remained after covering the expenses defined by the Commission budget, to the State Budget of Georgia. *(28.12.2005 # 2564)*
2. The source of the Commission budget shall be regulation fees as well as other sources of financing provided for in The Law of Georgia on Broadcasting and The Law on Legal Entity of Public Law.
3. The regulation fee shall be the main source of the Commission budget, it is linked to the execution of the authority endowed upon the Commission pursuant to the legislation of Georgia, and shall not be deemed as income from economic activities. Annual regulation fees shall be used to cover budgetary expenditures of the Commission. In the electronic communications sector the regulation fee shall be paid by authorised undertakings; in the broadcasting sector – by the persons/entities defined in The Law of Georgia on Broadcasting.
4. The sum of the regulation fee shall amount to 0,75% of total value (excluding VAT) of the regulated service and/or work provided by an authorised undertaking. An authorised undertaking shall, no later than on 20<sup>th</sup> of the following month to the reporting month, and in a form defined by the resolution of the Commission, provide information on the regulation fee and transfer it to the account of the Commission. *(16.07.2010 # 3450 in force from 1 September 2010)*

#### Article 13. The report of the Commission

1. The Commission shall, pursuant to the relevant rules, draft an annual report on its activities and undertake a financial audit of its expenditures and accounting reports. The Parliament of Georgia shall be empowered to decide on undertaking, not more than once a year, a financial audit of the budget approved by the Commission. In such cases Parliament shall, by tender, select an internationally recognized auditor. The composition of the Tender Commission shall be approved by the Parliament of Georgia on the proposal of parliamentary committee of Branch Economy and Economic Policy. Funds for the payment of compensation to the auditor selected for studying financial activities defined in this Article shall be paid by the Commission.
2. No later than by June 1 of each year, the Commission shall submit to the Parliament, the President and the Government of Georgia and publish a report on its activities during the previous year and the result of the financial audit. *(06.09.2013. # 1036 in force from the moment the elected President of Georgia takes an oath after Presidential elections of October 2013)*

3. The President, a Member of Parliament, and the Government of Georgia may, pursuant to Georgian legislation, request and receive any information on the activities carried out by the Commission.

### Chapter III

#### Authorisation of undertakings in the electronic communications sector, general rights and obligations of authorised undertakings

##### Article 14. Grounds for activities in the electronic communications sector

1. The pursuit of activities in the electronic communications sector shall be subject to authorisation.
2. Regulation of activities in the electronic communications sector shall be undertaken pursuant to the principle of technological neutrality. *(27.06.2008 # 67)*
3. No authorisation of activities shall be required, where electronic communications networks and facilities are used to:
  - a) establish special electronic communications networks;
  - b) establish a departmental electronic communications network to be used for non-commercial purposes and provision of internal communications within the enterprise, institution or organization.

##### Article 15. Body in charge of authorizing activities in the electronic communications sector

Activities in the electronic communications sector shall be authorised by the Commission which, in compliance with the provisions of the present law shall:

- a) issue authorisations for undertakings pursuing activities in the electronic communications sector and maintain the registry of such undertakings;

- b) supervise the compliance of authorised undertakings pursuing activities in the electronic communications sector with the Georgian legislation, *inter alia*, resolutions and decisions of the Commission.

#### Article 16. Application for authorisation

1. An undertaking applying for authorisation for the provision of electronic communications networks and facilities and/or services by means of electronic communications networks and facilities, shall file an application to the Commission. The application form shall be approved by the Commission.
2. The application form shall contain the following data:
  - a) for private entrepreneurs - name, surname, place and date of birth, data from the business register, private and office address; *(3.11.2009 # 1968 in force from 1 January 2010)*
  - b) for legal entities - company name, legal form, legal address (location), data from the business register, name and surname of an authorised representative; *(3.11.2009 # 1968 in force from 1 January 2010)*
  - c) types of activities and/or services to be authorised, as requested by a private entrepreneur or legal entity;
  - d) a brief description of the network and/or service applied for.
3. The data from the business register, a copy of the statute of a legal entity, as well as a copy of the document certifying the identity of a natural person shall be attached to the application. *(3.11.2009 # 1968 in force from 1 January 2010)*

#### Article 17. Departmental register of authorised undertakings

1. The Commission shall maintain a departmental register of authorised undertakings, where data from applications shall be recorded.
2. Any person shall be empowered to see the data contained in the departmental register of authorised undertakings.

## Article 18. General authorisation procedure

### 1. The Commission shall ensure:

- a) authorisation of electronic communications networks and facilities;
- b) authorisation of services by means of electronic communications networks and facilities.

2. Within 10 (ten) working days from the date of receiving an application, the Commission shall authorise the provision of electronic communications networks and facilities and/or services by means of electronic communications networks and facilities, by registering authorised undertakings in the departmental register;

3. Where annexed documents of an application are submitted in an incomplete form, the Commission shall set an additional term of 5 (five) days for the submission of full documentation. Where the applicant fails to submit documents during this term, authorisation shall not be granted. However, the undertaking is entitled to submit a second application for authorization to the Commission. Where within 5 (five) working days from the date of receiving an application, the Commission fails to set an additional term for the submission of full documentation, the undertaking shall be deemed authorised. *(28.12.2005 # 2564)*

4. Within 3 (three) working days a certificate of authorisation shall be issued from the departmental register. *(27.06.2008 # 67)*

5. Where an authorised undertaking ceases to provide electronic communications networks and facilities and/or services by means of electronic communications networks and facilities, or intends to modify its activities, the undertaking shall notify the Commission of this intent within 7 (seven) working days. Information on the seizure of authorisation as well as data on the modification of authorised activities shall be introduced in the departmental register of authorised undertakings.

6. Authorisation of activities in the electronic communications sector shall be granted for an unlimited period.

7. An undertaking shall be empowered to commence its activities from the date of its introduction to the register of authorised undertakings.

## Article 19. General rights and obligations of authorised undertakings

### 1. An authorised undertaking shall be empowered to:

- a) request a public switched electronic communications network operator to provide access and/or interconnection to relevant elements of its network;
- b) use exhaustible resources in compliance with the rules defined in this law and establish tariffs for access to and provision of an electronic communications network and services;
- c) fully or partially transfer, pursuant to the present law, the rights and obligations defined by the license for the use of radio frequency spectrum to another undertaking;
- d) Withdrawn *(28.12.2005 # 2564)*
- e) appeal to court against a legal act issued by the Commission.

### 2. An authorised undertaking is obliged to:

- a) provide the Commission duly with full information related to the pursuit of its objectives and activities defined in the present law and in the normative acts issued by the Commission, including financial and economic documentation, irrespective of its confidentiality, as well as documentations conforming compliance with author's and allied rights defined by Georgian legislation. The Commission shall maintain confidentiality of that information, which, pursuant to the General Administrative Code of Georgia and Law of Georgia on Personal Data Protection is regarded as commercial secret or private data. General information on the market as well as information on the number of subscribers, traffic, incomes and expenditure shall not be deemed confidential. Provision of wrong or incomplete information by an authorised undertaking shall be deemed as failure to provide information; *(25.05.2012 #6328)*
- b) observe the provisions of Georgian legislation in the electronic communications field, including resolutions of the Government of Georgia and resolutions and decisions of the Commission; *(20.12.2011. # 5561)*

- c) within 7 (seven) working days notify the Commission of any modification of activities and/or services as well as changes related to shareholders. The Commission shall introduce these changes in the departmental register of authorised undertakings; *(8.04.2011. #4526 in force on the 15<sup>th</sup> days from the date of publishing)*
- d) when requested, provide unrestricted access of an authorised undertaking to relevant free elements, functional resources and capacities of its network; *(27.06.2008 # 67)*
- e) maintain integrity and security of the network;
- f) prohibit unsanctioned use of electronic communications networks and facilities;
- g) ensure observance of service quality norms defined in the legislation;
- h) ensure, pursuant to the provisions of the present law, that allocated numbering resources are unrestricted and available to all end-users;
- i) ensure that user-safety rules are observed during utilization of electronic communications networks and facilities;
- j) ensure electromagnetic compatibility and protection from interference and hazardous impact on health while using radio frequency spectrum;
- k) pay regulation fees and, pursuant to the cases defined in the present law, the fee for use of exhaustible resources and license/permission charge; *(20.12.2011. # 5546 in force from 1 February 2012)*
- l) where the data provided in sub-paragraphs a) and b) of paragraph 2 of Article 16 of the present law are changed, notify the Commission in writing and submit relevant documents within 7 (seven) working days from the date of registration of the changes;
- m) by means of the system of central data base of subscriber number portability and at its own expense ensure subscriber number portability (translation) according to the regulation of the Commission on subscriber number portability; *(8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)*
- n) fulfill obligations imposed on it as on a provider of electronic communications services by normative acts of the Government of Georgia; *(20.12.2011.# N5561)*



3. An electronic communications network operator providing services to end-users in the local service area by means of subscriber numbering resources, shall, by giving unrestricted and non-discriminatory access to relevant elements of its network with expenditure-oriented tariffs, ensure the provision of direct or indirect interconnection to other interested operators and owners of departmental communications networks. Termination of on-going interconnection between the network operators shall be prohibited. In case of non-fulfillment of provisions of on-going interconnection agreement by an interconnected electronic communications network operator, the second party is empowered to suspend on-going interconnection in order to ensure these provisions only with the consent of the Commission and terms and conditions defined by the Commission.

Article 19<sup>1</sup>. Suspension and revocation of authorisation (8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)

1. The Commission is empowered to suspend authorisation:
  - a) by request of an authorised undertaking for a period indicated by it.
  - b) on its own initiative, only in case if an authorised undertaking within the period of more than 1 (one) year do not jointly:
    - b.a) pursue authorised activities;
    - b.b) submit to the Commission calculation of regulation fee or submits zero sum calculation;
    - b.c) pay regulation fee.
2. In case of suspension of authorisation, implementation of authorised activities by an authorised undertaking is inadmissible without notifying the Commission about renovation of the activities.
3. Revocation of activities is inadmissible except the cases when revocation is requested by an authorised undertaking itself. In this case the authorised undertaking should have fulfilled all legal obligations towards the Commission.
4. Revocation of authorisation does not prevent an undertaking to once again apply for authorisation pursuant to the rule defined by the law.

## Chapter IV

### Development of competitive environment in the electronic communications sector

#### Article 20. Aims of regulation of competition and objectives of the Commission

1. Regulation of competition in the electronic communications sector shall pursue the following objectives:
  - a) ensure equal opportunities in activities by authorised undertakings and encourage efficient competition;
  - b) encourage investments in electronic communications networks and facilities as well as promote technological innovations;
  - c) avoid excessive concentration of significant market power in hands of several authorised undertakings;
  - d) ensure the provision of transparent structure of risk management related to regulatory decisions that concern activities pursued by authorised undertakings;
  - e) establish a transparent, objective and efficient regulatory regime overseeing the pursuit of activities, mergers, and acquisition of shares by authorised undertakings exercising significant market power in a relevant market segment.
2. Objectives of the Commission shall be as follows:
  - a) Develop conditions ensuring efficient competition in the electronic communications sector;
  - b) Ensure equal rights and non-discrimination of authorised undertakings. Upon request of interested authorised undertakings, provide non-discriminatory access and/or interconnection by an electronic communications network operator to the relevant elements of its network, their functional resources and free capacities;

- c) In the course of providing electronic communications services, prohibit discrimination of end-users, protect their rights, prohibit subsidizing services, and provide equal access to public switched electronic communications networks and services;
- d) Monitor and control the observance of those specific obligations of authorised undertakings with significant market power, which may be imposed on them to ensure efficient competition;
- e) Ensure the development of a transparent, equal and competitive environment in the use of exhaustible resources.

Article 21. Advance regulation of competition; principles of study and analysis of the market

1. Advance regulation of competition in the electronic communications sector shall be carried out in accordance with the segments closely linked with and compatible to the market defined by the Commission as well as the geographical borders relevant to the market.
2. For the purposes of advance regulation, the Commission shall define relevant segments of the market by using types of electronic communications services and geographic borders as criteria.
3. Study and analysis of the market carried out with a view to identifying authorised undertakings with significant market power in relevant electronic communications market segments shall be undertaken by the Commission in conformity with the methodology and procedures referring to market competitiveness and identification of authorised undertakings with significant market power, approved upon the Commission's decision.
4. Regulatory activities in the electronic communications sector, provision of competition in relevant segments of the market and identification of authorised undertakings with significant market power in these segments pursued in conformity with the primary and secondary criteria, shall be undertaken by giving full regard to the principles of objectivity, technological neutrality, functional equivalence (homogeneous use of functional criteria), minimal regulation, imposition of proportionately equal specific obligations, encouraging efficient competition, and transparency and non-discrimination.

5. While deciding to carry out market study and analysis, identifying authorised undertakings having significant market power, or making a decision on imposing specific obligations on authorised undertakings with significant market power, the Commission shall give consideration to the conditions provided in international agreements and treaties, *inter alia*, World Trade Organization General Agreement on Trade and Services.

Article 22. Stages of market study and analysis, general provisions used to define authorised undertakings with significant market power

1. The market study and analysis shall be carried out in the following stages:
  - a) Definition of closely linked segments relevant to the market as well as relevant geographic borders of the market;
  - b) Carrying out analysis of competitiveness of segments relevant to the market;
  - c) Definition of authorised undertakings with significant market power in a relevant segment of the market.
  - d) Definition of authorised undertakings with significant market power in closely linked segments relevant to the market according to primary and secondary criteria and imposing specific obligations with specific conditions according to Chapter V of this law.
2. The procedure for analyzing the market as well as other procedures described in this chapter, shall be carried out in compliance with public administrative procedures.
3. While defining relevant segments of the market, the Commission shall give regard to those objective criteria which define closely linked segments relevant to the market in a homogeneous way.
4. While carrying out analysis of competitiveness of segments relevant to the market, the Commission shall give regard to the following analytical factors:
  - a) Condition established on closely linked and relevant segments of the market, the level of concentration and proportionate market shares held by authorised undertakings;

- b) Characteristics (flexibility, increase of demand, etc.) of types of demand for and supply of services in the relevant segment of the market as well as conditions for the execution of supply-side and demand-side substitutions;
- c) The level of tariffs for types of potentially non-competitive and interchangeable services and their historical changeability;
- d) Financial and economic characteristics of authorised undertakings operating in the relevant segment of the market, the level of their interdependence and opportunities for the commencement of activities in the relevant segment, infrastructure and dynamic factors obstructing their market access, and relevant investment risks;
- e) The quality and type of vertical integration of an electronic communications network operator pursuing activities in the relevant segment of the market;
- f) Withdrawn (28.12.2005 # 2564)
- g) other related characteristics which are defined by the Commission's decision.

5. Commission shall make a decision regarding commencement of the market analysis:

- a) where an authorised undertaking initiates a request substantiating that the relevant segment of the market is not competitive and requires to commence study and analysis of the market and this substantiation is adopted by the Commission;
- b) where government authorities initiate a request substantiating the need to undertake study and analysis of the relevant segment of the market and the substantiation is adopted by the Commission;
- c) on its own initiative.

6. The Commission shall be empowered to make a discretionary decision on undertaking study and analysis of the entire market as well as its separate segments.

7. Where an authorised undertaking with significant market power does not pursue activities in the relevant segment of the market, competition in this segment shall be deemed sufficient. Where one or more authorised undertakings execute joint significant market power in the relevant segment of the market, competition in this segment shall not be deemed sufficient. Where an authorised undertaking executes

significant market power on the relevant segment of the market; the same power shall be executed in a closely linked segment of the market.

8. While carrying out analysis of competitiveness in the relevant segment of the market, the main criteria for determination of significant market power shall be proportionate market share of an authorised undertaking or a group of interrelated undertakings in the relevant segment of the market. Proportionate market share of an authorised undertaking acquired in the relevant segment of the market shall be defined by taking account of its income, number of end-users and subscribers, or the volume of services (traffic) provided in a defined period, also loaded and free capacities of the relevant elements of the network or reserve of functional resources owned by the authorised undertaking. In each case, guided by the principle of objectivity, the Commission, using objective principles and taking into account characteristics of the relevant market segment, shall decide to measure the share held by an authorised undertaking in the relevant segment of the market and apply relevant basic criteria. (27.06.2008 # 67)
9. Where as a result of the study and analysis of the relevant segment of the market the Commission establishes that one or more authorised undertakings exercise joint significant market power, the Commission shall, depending on the nature of this market power, define specific obligations to be imposed on the undertakings, pursuant to Chapter V of the present law.
10. Pursuant to the basic criteria for the definition of significant market power in the relevant segment of the market, an authorised undertaking shall be deemed to be executing significant market power if it holds not less than 40% (forty per cent) of the market share in the relevant segment of the market.
11. Several undertakings shall be deemed executing joint significant market power if on the relevant segment of the market:
  - a) the joint market share of two authorised undertakings amounts to at least 60% (sixty per cent) while the market share of each undertaking is not less than 25% (twenty-five per cent);
  - b) the joint market share of three authorised undertakings amounts to at least 80% (eighty per cent) while the market share of each undertaking is not less than 15% (fifteen per cent).
12. While identifying an authorised undertaking with significant market power in the relevant segment of the market and imposing specific obligations, in addition to the basic criteria, secondary criteria shall be used to objectively define possibilities of

restricting competition and pursuit of non-competitive activities by authorised undertakings with significant market power in the relevant segment of the market. The secondary criteria shall be defined by the Commission on the basis of analytical factors.

#### Article 23. Abuse of significant market power

1. An authorised undertaking shall not abuse its significant market power in the relevant segment of the market.
2. Abuse of significant market power shall be deemed as a failure by an authorised undertaking to meet the provisions of Chapter V of the present law and specific obligations imposed by the Commission's decision.

#### Article 24. Publication of information on the market analysis (25.05.2012 # 6328)

The Commission's decisions taken pursuant to the provisions of this Chapter concerning advance regulation of competition and analysis of the market, except for the parts containing information on State and commercial secret or personal data, shall be published on the web-page of the Commission. The following information shall also be made public:

- a) A list of relevant segments of the market with an indication of criteria defining geographic borders and economic indicators;
- b) A list of authorised undertakings with significant market power in the relevant and closely linked segments of the market;
- c) Specific obligations imposed on authorised undertakings with significant market power and concrete conditions of these obligations;
- d) A description of main or secondary criteria for granting an undertaking the status of an authorised undertaking with significant market power.

Article 25. Regulation of merger with an authorised undertaking, acquisition of shares and operating assets of an authorised undertaking (8.04.2011. #4526 in force in force on the 15<sup>th</sup> days from the date of publishing)

1. Articles 26 and 27 of the present law shall be applicable in case if:

- a) operational assets of an authorised undertaking are acquired;
- b) two or more persons/entities merge and one of them is an authorised undertaking.
- c) shares of an authorised undertaking are acquired and in the result the entity and/or interdependent ((affiliated) entities which have acquired the shares shall own 5 (five) per cent or more of shares of the authorised undertaking.

1. Articles 26 and 27 of the present law shall not be applicable in case of acquisition of shares of authorised undertakings if the entity and/or interdependent ((affiliated) entities jointly acquire under 5 (five) per cent of shares of the authorised undertaking:

Article 26. Obligation of notification and request for information (8.04.2011. # 4526 in force in force on the 15<sup>th</sup> days from the date of publishing)

- 1. An intention to merge or acquire shares or operating assets shall be notified to the Commission prior to the merger or acquisition.
- 2. An obligation of notification shall be imposed on the authorised undertaking taking part in a merger or acquisition of shares or operating assets.
- 3. The notification shall contain information on the form of merger or acquisition. The notification shall also contain data on each authorised undertaking and its interdependent (affiliated) persons participating in the merger or acquisition, such as:
  - a) company name, types of activities and registration data;
  - b) data on incomes from services provided to Georgian and foreign operators;
  - c) proportionate shares of the relevant segments of the market, basis for their calculation and assessment, if the total share of all the authorised undertakings



participating in the merger or acquisition in a relevant market segment defined by the Commission is over 25% (twenty-five per cent);

- d) in case if one authorised undertaking acquires shares or operating assets of another one, the number of acquired shares and the total number of the owned ones in relevant market segments;
- e) information on the owners of shares, relations between authorised undertaking and its interdependent (affiliated) persons including data on the possibility of executing mutual control and shareholding.

4. Notification shall not contain wrong or insufficient information.

5. The Commission shall verify the information on merger or acquisition of shares or operation assets indicated by an authorised person in the notification according to paragraph 3) of this article. In case if the notification of an authorised person does not include documents or information required by paragraph 3) of this article, the Commission shall set additional term to submit the documents or information, which shall not exceed 15 working days.

6. To assess possible restriction of competition during a merger of authorised undertakings or acquisition of their shares or operating assets, the Commission shall be empowered to request additional information from authorised undertakings on their activities carried out in relevant segments of the market and on their future plans, as well as information on share holders, their registration data, etc.

7. After receiving from an authorised person full notification on merger or acquisition, The Commission is empowered to fulfill its authority defined in Article 27 of this law.

Article 27. Study and further regulation of merger or acquisition of shares and operating assets (8.04.2011. # 4526 in force in force on the 15<sup>th</sup> days from the date of publishing))

- 1. Within 15 (fifteen) days from receiving a full notification on merger or acquisition from an authorised undertaking the Commission is empowered to approve merger or acquisition or in order to determine possible impact on competition in the relevant segment of the market, make a decision to commence administrative procedures. The term of the administrative procedures shall not exceed 3 (three) months.
- 2. Study of merger or acquisition is necessary in case of existence of the following conditions:

- a) If after merger or acquisition structures of vertically and horizontally integrated economic agents will be established in the retail market and segments of the wholesale market closely linked to it, which by means of mutual control will be able to gain significant market advantage in these segments, obstruct market access and restrict competition;
  - b) If one or several economic agents participating in merger or acquisition is a vertically integrated authorised undertaking having significant market advantage in the segments of the retail market, as well as in the wholesale market closely linked to it;
  - c) If an initiator economic agent participating in merger or acquisition owns significant market advantage in the segments of the retail (wholesale) market and possibly merges with an economic agent or acquires shares or operating assets from an economic agent which has significant market advantage in closely linked segments of the wholesale (retail) market in ascending (descending) direction.
3. Before commencing administrative procedures to study merger or acquisition in order to determine possible impact on competition in the relevant segment of the market, a notification on merger or acquisition and attached documents submitted to the Commission are confidential.
  4. After approval the Commission shall be empowered to request an authorised undertaking having merged or acquired operative assets, to pursue activities that will ensure competition in the relevant segment of the market in future.
  5. The Commission shall be empowered, by reasoned decision, to request a change of conditions of merger or acquisition or entirely prohibit merger or acquisition of shares or operating assets of an authorised undertaking, where it considers that merger or acquisition will cause significant distortion of competition in relevant segments of the market.
  6. In case of significant distortion of competition in relevant segments of the market in the result of merger or acquisition by an authorised undertaking with significant market power, approved by the Commission, the Commission is empowered to request functional separation (detachment in separate legal entity/entities of functionally separated structural units) from an authorised undertaking established as a result of merger, acquisition of operating assets or an authorised undertaking whose shares were acquired.

8. To avoid significant distortion of competition on the relevant segments of the market, participants of merger or acquisition are empowered to submit their proposals to the Commission, at any stage of merger or acquisition.

#### Article 28. Authority of the Commission to safeguard competition

1. If the Commission establishes that activities pursued by an authorised undertaking do not conform with the provisions of competition in the field of communications defined in the present law, or that an authorised undertaking with significant market power fails to meet one or more obligations in a relevant segment of the market, or one or more obligations imposed on an authorised undertaking during a merger or share acquisition, the Commission shall be empowered to apply sanctions defined in Chapter VII of the present law.
2. The Commission shall be empowered to impose or preclude the pursuit of certain activities by authorised undertakings abusing significant market power; and apply sanctions determined in Chapter VII of the present law in case if the authorised undertaking fails to comply with the Commission's relevant decisions.
3. Where an authorised undertaking with significant market power fails to comply with the obligations imposed and thus creates a direct threat to public security and jeopardizes human health, or may possibly create significant problems of economic and operational nature for other providers or users of electronic communications services, the Commission is empowered to ensure the fulfillment of obligations of the authorised undertaking by means of compulsion, pursuant to the General Administrative Code of Georgia.
4. The burden of evidence to objectively provide nature and reasons for failure by an authorised undertaking to fulfill the specific obligations imposed by the Commission, shall be placed on the authorised undertaking. Where objectively substantiated evidence is submitted, the Commission shall be empowered to amend the conditions for the specific obligations, taking into account the reasons of the failure.
5. Amendment of the specific obligations imposed by the Commission pursuant to paragraph 4 of this article shall not discharge an authorised undertaking from its liability to meet its specific obligations.

6. The Commission may select only those objective measures which ensure speedy and cost-effective removal of breaches and will not inflict damages on users or the relevant authorised undertaking.

## Chapter V

### Specific obligations applicable to authorised undertakings with significant market power

#### Article 29. Specific obligations applicable to authorised undertakings with significant market power

1. The Commission shall be empowered to issue a decision imposing one or more specific obligations on an authorised undertaking with significant market power in a relevant segment of the market, such as:
  - a) obligation of transparency of information;
  - b) obligation of non-discrimination;
  - c) obligation of registration of income and expenditures separately, in compliance with the guidelines approved by Commission;
  - d) obligation to provide access to the relevant elements of electronic communications network;
  - e) obligation of tariff regulation and cost accounting.
2. The fulfillment of specific obligations defined in paragraph 1 of this Article does not preclude an authorised undertaking from fulfillment of other obligations provided for in Georgian legislation.

### Article 30. Imposition of specific obligations

1. Specific obligations shall be imposed only on authorised undertakings with significant market power pursuing activities in relevant segments of the market.
2. The date of enforcement of specific obligations shall be specified in the decision issued by the Commission. Where the Commission fails to specify the date, an authorised undertaking shall begin the fulfillment of obligations from the date the Commission issues the decision.
3. The Commission shall be empowered to provide details of specific obligations defined in the present law and conditions of their fulfillment, as well as to introduce changes and additional provisions to specific obligations, pursuant to the results of the study and analysis.
4. Specific obligations imposed on an authorised undertaking by the Commission shall correspond to the nature of significant market power of an authorised undertaking in the relevant market segment as well as with the type of its abuse; they should be objectively substantiated and proportional.
5. Where the results of the market study and analysis show the absence of an authorised undertaking with significant market power in the relevant segment of the market, specific obligations shall be annulled and the relevant segment of the market shall be deemed competitive.

### Article 31. Obligation of transparency of information

1. An authorised undertaking with significant market power shall ensure transparency of information related to access and interconnection to the relevant elements of its network as well as publish information on:
  - a) financial accounts describing its activities;
  - b) a description of elements relevant to the network, its technical facilities, functional resources and interfaces, as well as information on free capacities;
  - c) technical specifications of the network, including description of used interfaces, inter-location areas and interconnection points;

- d) conditions for the provision of interconnection and access to the relevant elements of the network, their functional resources and free capacities, taking into account the requirements of interested authorised undertakings;
  - e) access and interconnection tariffs and terms of payment.
2. An authorised undertaking shall publish a proposal (offer) on access and interconnection to the relevant elements of its network including detailed information on: tariffs for the use of operator's network elements; their functional resources and free capacities, and their access and interconnection so that an interested authorised undertaking is not required to pay an additional fee for those network elements, technical facilities or functional resources that were not required.
  3. To ensure transparency of information, the Commission shall be empowered to define what basic details are to be included in the information provided for in paragraph 1 of this Article as well as in the proposal (offer) of access and interconnection of an authorised undertaking with significant market power, and to request that an operator introduces amendments or additions to already published information in order to ensure compliance with the defined conditions.
  4. Where the Commission imposes an obligation of unhindered access of an authorised undertaking to the local access network, a local service operator shall ensure the publication of the offer on access and interconnection including basic conditions of access to the local access network, as well as for shared access and other conditions established by the Commission.
  5. Information that essentially concerns the development of a competitive environment in the relevant segment of the market, provision of non-discriminatory and free choice for an access-seeker, and assists the latter in making decision on choosing conditions of electronic communications services, shall not be deemed commercial secret of an operator providing access.

#### Article 32. Obligation of non-discrimination

1. While offering access to relevant elements of the network, technical facilities, free functional resources and capacities, an electronic communications network operator with significant market power shall, in essentially the same circumstances and under the same conditions, ensure non-discriminatory (unrestricted) provision of requested

electronic communications services and related information to an applicant authorised undertaking, in the same time frame and under the same conditions.

2. The establishment of non-discriminatory conditions by an electronic communications network operator envisages ensuring the provision of similar conditions for services, such as availability, quality, tariffs, terms, transparency of any essential information as well as interoperability.
3. An applicant authorised undertaking shall be empowered to request non-discriminatory access to relevant elements of the network under conditions that are not less favourable than those provided to structural divisions of the operator providing access, affiliated persons/entities and other authorised undertakings in case of essentially similar relations.
4. An electronic communications network operator shall be empowered to offer an applicant authorised undertaking provision of access and interconnection under better conditions than is suggested in his offers of access or interconnection. To avoid discrimination, the operator, while proposing better conditions, shall introduce changes in the relevant conditions of its offer within 30 (thirty) days from the date of signing the contract.
5. Where an interested authorised undertaking is successfully provided with access or interconnection under the terms which differ from those stipulated in the access or interconnection offer, the operator of an electronic communications network shall have an obligation to introduce relevant amendments and additions to its offer, as well as to publish the above conditions of access to the relevant network elements, their functional resources and capacities.
6. Withdrawn (28.12.2005 # 2564)

#### Article 33. Obligation of separate registration of income and expenditures

1. An authorised undertaking with significant market power shall not permit the pursuit of activities restricting competition including subsidizing one group of users with tariff benefits at the expense of other users or authorised undertakings.
2. An electronic communications network operator shall, in compliance with the methodological rules approved by the Commission, keep objective, transparent and separate record of incomes and expenditures and their distribution according to

network elements, operational activities and types of electronic communications services.

3. To ensure that the specific obligations of separate registration and distribution of incomes and expenditures, transparency of information and prohibition of discrimination are fulfilled, the Commission shall be empowered to request an authorised undertaking to submit registration and financial information, including information on cost distribution as well as information on income received from other authorised undertakings. Pursuant to Paragraph 5 of Article 31 of the present law, the General Administrative Code of Georgia on the Protection of Commercial Secret or Personal Data and Law of Georgia on Personal Data Protection, the Commission, upon its decision, shall be empowered to fully or partially publicize the part of information provided by an authorised undertaking, which efficiently promotes competition in the relevant segment of the market.
4. To prohibit discrimination while providing electronic communications service to interested authorised undertakings, an operator of a vertically integrated electronic communications network or operators of electronic communications networks with shared significant market power, shall ensure transparency of transfer tariffs of access to free elements of the electronic communications network as well as of wholesale and inter-departmental transfer tariffs offered by authorised undertakings at the market.

#### Article 34. Obligation of access to relevant elements of an electronic communications network

1. An authorised undertaking with significant market power owning an electronic communications network shall ensure unrestricted, transparent and non-discriminatory access of another authorised undertaking to relevant elements of its network, technical facilities, and types of electronic communications services.
2. To duly meet the obligation of ensuring access to relevant elements of a network, an electronic communications network operator with significant market power shall provide technical and functional specifications of elements relevant to its network, in compliance with the technical standards defined by the legislation.
3. To duly meet the obligation of ensuring interconnection and access to relevant elements of a network, an electronic communications network operator with significant market power, which provides services to end-users in the local service



area by means of subscriber numbering resources shall provide technical and functional specifications of its relevant network elements, sufficient co-location areas and supply of operational capacities to the interconnection points located in these areas

4. An applicant authorised undertaking shall clearly indicate in its application its unconditional acceptance of the conditions specified in the offer of authorised undertakings with significant market power to provide access and interconnection and, in case of a request for interconnection, basic conditions for the provision of access and interconnection to the relevant elements of its network.
5. Parties shall take just and reasonable measures, within 30 (thirty) days from the date of submitting application agree and execute contracts on access and/or interconnection with the relevant elements of the network and submit their copies to the Commission within 3 (three) working days from the date of signature of the contracts by both parties. *(27.06.2008 # 67)*
6. Where a contract fails to comply with the legislation of Georgia, or basic conditions of an offer submitted by an operator providing access and interconnection, or where legislative changes were adopted during the lifetime of the contract, the Commission shall be empowered to request the review, amendment or annulment of the contract terms.
7. To promote the future development of electronic communications networks, as well as to expand the types of services provided to users and promote the introduction of new communications technologies, the Commission shall, taking into account the requirements of the applicant authorised undertaking, be empowered to request an electronic communications network operator to provide access to the relevant elements of the operator's network or their functional resources and capacities for an applicant authorised undertaking. While making a decision, the Commission shall give consideration to the following factors:
  - a) the level of development of the relevant segment of the market;
  - b) the technical and economic capacities of the operator providing access;
  - c) the presence of free functional resources and required capacities of network elements of the operator providing access;
  - d) the volume of investments to be made by an electronic communications network operator and relevant investment risks;

- e) the necessity to ensure long-term competition in the relevant segment of the market;
  - f) ensuring the protection of intellectual property rights.
8. On the Commission's decision, an electronic communications network operator shall be bound to ensure separation of functional resources relevant to its network, the use of which is reasonably requested by an applicant authorised undertaking, including cases where the resources were never separated by the operator before.
9. An electronic communications network operator shall be empowered to refuse separation of functional resources of relevant network elements of his network, where separation:
- a) is not feasible technically or technologically or violates the integrity of the operator's network;
  - b) restricts the provision of access and/or interconnection or electronic communications services to end users pursuant to contracts with other operators due to the lack of sufficient capacities required for network elements;
  - c) is not essentially related to the provision of required access or interconnection.

#### Article 35. Obligation of tariff regulation and cost accounting

1. An electronic communications network operator with significant market power shall provide access and/or interconnection and electronic communication services of an applicant authorised undertaking to the relevant elements of his network, their functional resources and free capacities for cost-oriented and non-discriminatory tariffs.
2. The tariff established by an electronic communications network operator shall incorporate expenses incurred in relation to relevant network elements, resources and capacities used for the provision of services, the right of the operator to receive reasonable returns from investments made by the electronic communications network operator, and a long-term tendency to further develop and expand the operator's communications networks.

3. While imposing an obligation of tariff regulation and cost accounting, the Commission shall be empowered to issue a decision to require:
  - a) Justification of cost-oriented nature of tariffs established by an authorised undertaking as well as their compliance with the methodology guidelines set by the Commission;
  - b) Submission by an authorised undertaking to the Commission of the data approved by an independent auditor;
  - c) Change of the tariffs that restrict competition which are established by authorised undertakings;
  - d) Ceilings of tariffs for the provision of access to relevant network elements, their functional resources and free capacities as well as electronic communication services.
4. Tariffs established by the provider of electronic communications access and services or tariff ceilings set by the Commission pursuant to the provisions of the present law shall promote long-term and efficient competition in the field of electronic communications, provide economically affordable and high quality services to end-users, and avoid the establishment of unreasonably high tariffs or tariff burdens in a relevant segment of the market.
5. The Commission shall establish methodological guidelines for separation of cost accounting and expenditures by authorised undertakings. To duly meet the obligations of tariff regulation and accounting, compliance of authorised undertakings with these guidelines shall be obligatory.
6. Where the obligations of tariff regulation and accounting are imposed, the authorised undertaking, pursuant to the conditions established by the Commission, shall establish a system of registration of expenses, publish their description, submit it to the Commission, and register expenses in conformity with this system.

## Chapter VI

### Consideration and resolution of disputes between authorised undertakings

#### Article 36. Commencement of dispute consideration

1. The Commission shall regulate disputes between authorised undertakings within the scope of competence provided by the legislation of Georgia; as for the disputes having arisen before the enforcement of the present law, they shall be regulated in compliance with the normative acts made void upon the entry into force of the present law, unless the parties wish to settle a dispute pursuant to the present law.
2. An authorised undertaking shall be entitled to apply to the Commission for consideration and resolution of disputes.
3. Parties shall initiate the proceeding by submitting relevant application to the Commission which should include:
  - a) name, surname, office or home address and telephone number (if any) of an applicant; if an applicant is a legal entity – data from business register or foundation documents, telephone number (if any); *(3.11.2009 # 1968 in force from 1 January 2010)*
  - b) if an application is filed by an authorised representative, the name, surname, office or home address and telephone number (if any) of the representative;
  - c) name of the person against whom the application is filed;
  - d) request of an applicant;
  - e) factual circumstances used as grounds for the request of the applicant;
  - f) evidence proving the circumstances.
4. A document certifying authority of a representative shall be attached to the application.

5. Application shall be accepted where the request does not go beyond the scope of the Commission's competence.
6. If a request presented in the application is related to a request or conditions regarding which the Commission has made a decision concerning provision and preliminary regulation of the competition, the dispute between the parties shall not be considered. In this case the Commission is empowered to commence administrative procedures on abuse of significant market power by a person having significant market power according to Article 28 of this law. (27.06.2008 # 67)

#### Article 37. Principles of dispute consideration

1. Disputes shall be considered at the Commission session on the basis of contest principle. Parties shall enjoy equal rights and opportunities for justifying their requests, or rejecting, overruling requests, views or evidence of the other party. Parties shall define which of the factual circumstances should serve as grounds for their requests and which evidence should prove these circumstances.
2. The contest principle defined pursuant to the preceding paragraph, shall not restrict the Commission to collect factual circumstances and request for evidence on its own initiative in order to familiarize itself with the case.
3. The Commission shall hold a public hearing of a dispute except for cases stipulated in the provisions of the Law of Georgia on State Secret and the General Administrative Code of Georgia.
4. Disputes shall be considered in Georgian being the official language.

#### Article 38. Preliminary session

1. Within 10 (ten) working days from the date of registering an application, the Commission shall schedule a preliminary session. The Commission shall be empowered to issue a decision to terminate an administrative proceeding of dispute settlement, where it establishes that the subject of dispute is outside the scope of the regulatory functions incumbent upon the Commission by legislation, or to refuse

consideration of an application where the applicant fails to submit additional information or documents within a defined period.

2. The Commission shall notify parties of the date, time and place of a preliminary session.
3. Parties shall present to the Commission their views and evidence regarding the dispute before the preliminary session or at the session.
4. In addition to the main application, parties shall be entitled to submit cross applications to be considered by the Commission at the preliminary session. Cross applications shall be submitted pursuant to the rules of the present Article.
5. An applicant shall be entitled to familiarize with the submitted cross application.
6. At a preliminary session the Commission shall make a decision on scheduling the date of dispute consideration.

#### Article 39. Notification and summons

1. Parties or their representatives shall be notified of the date, time and place of dispute consideration.
2. The Commission, when required, shall summon witnesses, experts, specialists and interpreters to attend the session.
3. Notification shall be delivered by post or courier, or may be handed over to the parties upon conclusion of the preliminary session. Notification shall contain the following data:
  - a) the address of the Commission;
  - b) the date, time and place of the Commission session;
  - c) the title of the case for which summons is sent;
  - d) the identity of a person to whom summons is sent and reason(s) for the summons;

- e) request to the parties to present all the evidence;
  - f) notification that in case of the absence of the person to whom summons is sent, the person receiving summons shall be liable to deliver the summons to the addressee at the earliest convenience.
4. In addition to notification, the Commission shall post or deliver to the parties copies of applications on dispute consideration and all the attached documents. The Commission shall post or deliver a copy of a cross application of one party to the other, where it is submitted to the Commission by the time of sending a notification. Copies of all documents submitted to the Commission may also be sent to the parties after the notifications have been posted or delivered.
  5. When required, parties may be summoned to the Commission session by e-mail or fax.

#### Article 40. Collection and weighing of evidence

1. Parties shall be bound to prove factual circumstances on which they ground their requests.
2. To confirm evidence, parties shall provide explanations, where required, testimony by witnesses, and reports by experts and specialists submitted in writing.
3. Documents containing data on important circumstances in respect of the case shall be deemed as written evidence. As a rule, written evidence shall be submitted in the original.
4. A person knowing circumstances of the case shall be interrogated as a witness.
5. For explanations or conclusions of a specific issue an expert may be invited.
6. The Commission shall weigh evidence on the basis of detailed, complete and objective consideration.

#### Article 41. Consideration of disputes

1. Where a party fails to attend the session, consideration of a dispute shall be postponed to the following session of the Commission. Continuous failure of a party to attend the session with no reasonable grounds shall not prevent the Commission from considering the dispute.
2. Consideration of a case at the Commission's session shall commence with presenting the circumstances of the dispute, naming the parties, the subject and grounds of the dispute.
3. The process of identifying important circumstances shall commence with provision of explanations by the parties.
4. Refusal of one party to provide explanations at the session shall not preclude the hearing of explanations from the other party.
5. The chairman and members of the session shall pose questions to parties in order to obtain complete and detailed description of significant circumstances in respect of the case. Parties shall be entitled to pose questions to each other.
6. Minutes of the Commission session shall be drafted. The minutes shall contain all the main data of the session, namely: the date, month, year and place of the session; the time of commencement and conclusion of the session; its composition and secretary of the session; title of the case; data on the attendance of representatives, witnesses, experts and interpreters; explanations provided by the parties and their representatives; testimony, explanation of conclusions provided by experts; and information on the content of the decision.

#### Article 42. Resolution of disputes

1. Disputes are resolved on the decision of the Commission.
2. The parties shall be entitled to request amicable settlement at any stage of dispute consideration.
3. The Commission shall be empowered to approve amicable settlement by decision.



4. The Commission shall be empowered to refuse amicable settlement and make a different decision, where the proposed settlement breaches provisions defined in the Georgian legislation.
5. An applicant party shall be entitled to withdraw an application whereas the other applicant party shall be entitled to accept the withdrawal. In such cases the Commission shall be empowered to issue a decision on the termination of proceedings.
6. The term for disputes in respect of interconnection shall be 1 (one) month. Where no settlement between parties is reached while considering disputes regarding interconnection, the Commission is empowered to define terms of interconnection.
7. The Commission decision may be appealed in court. *(28.12.2005 # 2564)*

## Chapter VII

### Control of activities and liabilities in the electronic communications sector

#### Article 43. Control of activities in the electronic communications sector *(8.12.2006 # 3921)*

1. The Commission shall control activities pursued by authorised undertakings in the electronic communications sector, also, compliance of these activities with the requirements and obligations provided for in the legislation on electronic communications as well as the decisions and resolutions of the Commission.
2. The Commission shall control the compliance of activities pursued by undertakings using departmental and special networks with the requirements and obligations provided for in the Georgian legislation on electronic communications as well as with the decisions and resolutions of the Commission. For infringement of these obligations natural persons and legal entities shall be answerable according to the Georgian Code of Administrative Offenses.
3. The Commission shall control the fulfillment of license and/or permission conditions by the license and/or permission holders using exhaustible resources. In case of infringement of license and/or permission conditions by the license and/or permission

holders the Commission shall use sanction defined in Article 45 of this law. (20.12.2011. # 5546 in force from 1 February 2012)

3. Pursuit of activities in the electronic communications sector without authorisation, also, the use of radio frequency spectrum and/or numbering resources without a license or permission is inadmissible and punishable pursuant to Georgian Code of Administrative Offenses. (8.04.2011. #4526 in force on the 15<sup>th</sup> days from the date of publishing)
4. Where required, the Commission may use the administrative authority it enjoys pursuant to the administrative legislation of Georgia but not envisaged by the present law.

#### Article 44. Monitoring and inspection

1. The Commission undertakes permanent and regular monitoring of observance of the requirements and obligations by authorised undertakings in the field of electronic communications according to the legislation of Georgia, as well as the decisions and resolutions of Commission. (28.12.2005 # 2564)
2. The Commission undertakes inspection of observance of license conditions by a license holder by selection check of license conditions and/or by regular accounts of a license holder. Besides, the Commission is empowered to undertake inspection on the basis of complaints submitted to the Commission, *ex parte* notifications, and information received from newspaper or other sources. (28.12.2005 # 2564)
3. When carrying out monitoring and inspection of the fulfillment of license conditions and the requirements and obligations provided for in the Georgian legislation in the field of electronic communications, as well as the decisions and resolutions of the Commission, the latter is not empowered to inspect or request submission of those facts, which are not directly related to the fulfillment of requirements and obligations provided for in this article, the decisions and resolutions of the Commission, as well as to observance of license conditions. (28.12.2005 # 2564)
4. Decision to undertake inspection shall be made by the Commission with reference to the person responsible for the inspection. (28.12.2005 # 2564)
5. The person in charge of an inspection shall, prior to commencing the inspection, submit to the authorised representative of an undertaking his/her identity card and a document certifying his/her authority. This person is empowered to undertake on-site

inspection of documentation relevant to the activities pursued by an authorised undertaking, make copies of the documents, check technical equipment by special means, request officials and other staff to provide information and written and verbal explanations on the issues subject to the inspection. *(28.12.2005 # 2564)*

6. The person in charge of an inspection shall draft an inspection report pursuant to the special form approved by the Commission. The report will be included in a special register created for this purpose. The report shall specify: the date, time and place of inspection; the grounds for inspection; the name of the person attending inspection on the part of the inspected; a list of inspected documents in case of on-site inspection (in case of copies of inspected documents, they should be attached to the report); a list of inspected equipment and their technical parameters; a review of verbal explanations (if they are provided in writing, copies will be attached to the report); comments (if any) of the person undertaking inspection; other explanations (if any) provided by the person subject to inspection (or their official representative); and signatures of the person undertaking inspection and of the person subject to inspection (or his/her official representative); if the person subject to inspection refuses to sign, signatures of at least 2 (two) attending witnesses. *(28.12.2005 # 2564)*
7. Where there is sufficient evidence on the breaches even without inspection, the Commission, pursuant to Sub-paragraph b of Paragraph 1 of Article 76 of the General Administrative Code of Georgia, shall initiate administrative proceeding with a view to making a decision on imposition of liabilities on person(s) having committed the breach.
8. Where as a result of inspection it is established that the breach of the Georgian electronic communications legislation also contains a criminal offence as defined by the Criminal Law of Georgia, the person in charge of an inspection shall immediately submit their files to the Commission for subsequent actions.

*Article 45. Liabilities (8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)*

1. Where an authorised undertaking breaches requirements and obligations defined by the Georgian legislation on electronic communications as well as the Commission's decisions and resolutions, or a license holder breaches license conditions, the Commission shall be empowered to notify the undertaking in writing. In case of failure to repair continuous breaches within the period prescribed by the Commission or occurrence of a new single breach within a period of 1 year, the Commission shall impose a fine amounting to 0.5 % (zero point five per cent) of the undertaking's revenue (total income excluding VAT as defined by the Georgian Tax Code)

generated during the last 12 (twelve) calendar months, but not less than 3000 GEL (three thousand Georgian Lari) and no more than 30000 GEL (thirty thousand Georgian Lari).

2. Where an authorised undertaking and/or a license holder commits continuous breaches after being fined, and/or commits a single breach during one year from the date of the fine, the Commission shall be empowered to impose a fine amounting to 1 % (one per cent) of the authorised undertaking's revenue gathered during the last 12 (twelve) calendar months, but not less than 9000 GEL (nine thousand Georgian Lari) and no more than 90000 GEL (ninety thousand Georgian Lari), or act according to Article 54 of present law.
3. Where an authorised undertaking and/or a license holder commits continuous breaches after being fined for the second time, and/or commits a single breach after being fined for the second time during one year from the date of the fine, The Commission shall be empowered to impose a fine for each new single breach amounting to 3% (three per cent) of the authorised undertaking's and/or a license holder's revenue gathered during the last 12 (twelve) calendar months, but not less than 27000 GEL (twenty-seven thousand Georgian Lari) ) and no more than 270000 GEL (two hundred seventy thousand Georgian Lari), or act according to Article 54 of present law.
4. Where a license holder breaches license conditions he will be fined at amount of 1000 GEL (thousand Georgian Lari) and in case of a new single breach within a period of 1 year from the date of the fine or in case of failure to repair continuous breaches within the period prescribed by the Commission, the Commission shall be empowered to impose a fine amounting 3000 GEL (three thousand Georgian Lari), or act according to Article 54 of present law. *(20.12.2011. # 5546 in force from 1 February 2012)*

#### Article 46. Administrative proceedings in regard to sanctions

1. The Commission decisions in regard to notices and fines shall be adopted by simple administrative proceeding. Notification of the Commission decisions shall be provided in writing within 7 (seven) days from the date of adoption of the decision. *(28.12.2005 # 2564)*
2. The fine shall be paid within 30 (thirty) working days from the date of submitting the decision imposing a fine on the undertaking responsible for the breach. The fine shall be transferred to the State budget of Georgia.

3. Where the undertaking responsible for a breach fails to meet the provision of the decision imposing a fine, execution of the decision shall be ensured by the National Bureau of Enforcement – the Legal Entity of Public Law of the Ministry of Justice of Georgia, pursuant to the Execution Act issued by the Commission. *(15.07.2008 # 224 in force from 1 October 2008)*
4. In the absence of grounds for notices or fines, an administrative proceeding shall be terminated at once.

## Chapter VIII

### Regulation of use of exhaustible resources

#### Article 47. Radio frequency spectrum *(28.12.2005 # 2564)*

1. The position allocated for Georgia on the geostationary orbit shall be the property of Georgia. The position allocated for Georgia on the geostationary orbit as well as the radio frequency spectrum that is used in the field of electronic communications networks and facilities is not subject to private property, transfer for permanent use, or privatization. The radio frequency spectrum and the position of the communications satellite of Georgia on the geostationary orbit shall be protected by the State.
2. Pursuant to international rules and requirements, the use of Georgia's position on the geostationary orbit shall be provided by the Government of Georgia. The Government of Georgia in consent with the Commission defines radio frequency which shall be used to ensure execution of public functions of the State, such as defence, state security and public order.
3. Radio frequency bands for air moving and air radio navigation service are allocated pursuant to the charter of International Organization of Civil Aviation and Radio Regulation of International Telecommunications Union.
4. The allocation of radio frequency spectrum, as well as regulation of the use of radio frequency spectrum shall be carried out by the Commission.

5. The National Plan of allocation of radio frequency spectrum shall be determined by the Commission in accordance with the Radio Regulation of the International Telecommunications Union, taking into account radio-frequencies defined by the Government of Georgia in consent with the Commission to ensure execution of the State public functions.
6. The authorization for the use of radio frequency spectrum shall be obtained on the basis of a license, by means of an auction or a contest. *(20.02.2014. # 2039)*
6. The authorization for the use of radio frequency spectrum for digital terrestrial TV network shall be obtained on the basis of a license, by a contest in accordance with Article 51<sup>1</sup> of this Law. *(20.02.2014. # 2039)*

Article 47<sup>1</sup> Assignment of radio signals, decrypting codes and radio frequency *(20.12.2011. # 5546 in force from 1 February 2012)*

1. The radio frequency bands for amateur radio services are allocated pursuant to the Radio Regulation of the International Telecommunications Union. The Commission shall assign radio signals to radio amateurs to establish radio amateur connection in these radio frequency bands.
2. The radio frequency bands for sea moving and sea radio navigation service are allocated pursuant to the Radio Regulation of the international Telecommunications Union. The Commission shall assign radio signals and decrypting codes to vessels. The frequency bands allocated pursuant to the Radio Regulation of the international Telecommunications Union used to transmit international wrecking signal by sea vessels got into trouble are applied according to the rules and provisions defined in the attachment #13 of the same Regulation, part I of volume II and does not require permission of the Commission.
3. The Commission will issue permission by simple administrative proceeding to use radio frequency spectrum for additional technological purposes temporarily – for a 1 (one) year period, to a non-authorized undertakings the activities of which are not related to public switched electronic communications networks and facilities and/or services provided by these networks and facilities, but which uses radio frequency spectrum for additional technological purposes. During this period the non-authorized undertaking shall pay permission charge, and the Commission shall issue the permission certificate.

4. The Commission shall be empowered to issue radio frequency to an authorised undertaking, which needs one or several segments of radio-relay network or radio-relay line for subsidiary technological non-commercial purposes for a period of 10 (ten) years without carrying out an auction. The radio frequency shall be issued in accordance with an application submitted to the Commission by the authorised undertaking. The application shall include basic technical characteristics of a network and stations. In this case in order to gain right to use these resources, the authorised undertaking shall pay the initial price of the auction. The price shall be defined by the regulation on conducting an auction for the right to use a radio frequency spectrum. When changes are made in the National Plan for allocation of radio frequency spectrum, the Commission is empowered to substitute radio frequency issued to the authorised undertaking by another radio frequency envisaged by this plan. In this case the authorised undertaking is not entitled to request compensation.

Article 48. Numbering resources *(20.12.2011. # 5546 in force from 1 February 2012)*

1. The national system of numbering shall be defined by the Government of Georgia in agreement with Commission.
2. The Commission regulates issues related to the use of the numbering resources.
3. The Commission shall:
  - a) approve “the rule of issue, use and payment of the numbering resources”;
  - b) issue permission for the use of numbering resources and establishes permission conditions. The permission for the use of numbering resources is issued on the basis of the Commission decision by simple administrative proceeding;
  - c) be empowered to issue numbering resources without a permission to persons determined by the legislation of Georgia, for a defined period, by its decision in cases envisaged in the legislation of Georgia.
4. The basis for issuing permission for the use of numbering resources is existence of free resources and an application of an applicant.
5. Permission for the use of numbering resources is issued by the Commission according to this law, Georgian law “on licenses and permissions”, Georgian law “on license

and permission fees”, “regulation of the national system of numbering of electronic communications networks of Georgia”, and “the rules of issue, use and payment of the numbering resources”.

6. To get permission for the use of numbering resources, the applicant pays a levy defined by Georgian law “on license and permission fees” and a fee according to “the rules of issue, use and payment of the numbering resources”. Non-payment of a levy defined by Georgian law “on license and permission a fees” and a fee according to “the rules of issue, use and payment of the numbering resources” is the basis of refusal for issuing the permission.
7. Permission for the use of numbering resources is issued only for the authorised activities in electronic communications field, without time-limit and with a condition of annual renewal.
8. Renewal of permission for the use of numbering resources is carried out before the expiration of 1 (one) year period from the date of issuing/renewal of permission for the use of numbering resources and by submitting to the Commission the documents confirming payment of the fee for the use of numbering resources. In this case the Commission shall introduce the information on renewal of the permission in the relevant departmental register. In case if the documents confirming payment of the fee for the use of numbering resources are not submitted to the Commission in due time the permission shall be deemed revoked.

#### Article 49. Licenses and term of their validity

1. The Commission shall issue licenses for the use of radio frequency spectrum.  
*(20.12.2011. # 5546 in force from 1 February 2012)*
2. Licenses for the use of radio frequency spectrum shall be issued by the Commission on the basis of an auction or a contest, pursuant to the present law, the Georgian laws “on licenses and permissions” and “on license and permission fees” and the “Regulation on carrying out an auction for the use of radio frequency spectrum” approved by the Commission’s Resolution. *(20.02.2014. # 2039)*
3. Licenses shall be issued for a period of 10 (ten) years.
- 3<sup>1</sup>. A license holder is obliged to use exhaustible resources defined by a license according to the provisions of legislation of Georgia, as well as according to the Commission



decision on license issue. A license holder shall ensure optimal and efficient use of exhaustible resources defined by a license by introducing innovative electronic communications technologies. (8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)

4. The license holder is entitled to submit the Commission an application to prolong period of validity of the license 1 (one) month earlier before the expiration of the license. Where radio spectrum is used in compliance with the provisions of the present law, the license shall be extended for a period of 10 (ten) years on the Commission's decision. (20.12.2011. # 5546 in force from 1 February 2012)
5. Where the term of a license is extended: (20.12.2011. # 5546 in force from 1 February 2012)
  - a) a license holder shall pay average rate of the price established on auctions held during the last 2 year for granting the right of use of a radio frequency spectrum band allocated in compliance with the National Plan for allocation of radio frequency spectrum.
  - b) If during the period defined in subparagraph a) of this article (2 years) no more than 2 auctions have been held for granting the right of use of a radio frequency spectrum band, the license holder shall pay average rate of the price established on auctions held during the last 3 years for granting the right of use of a relevant radio frequency spectrum band.
  - c) If during the last 3 (three) years no more then 2 auctions have been held for the right to use a relevant radio frequency spectrum band allocated according to the National Plan for allocation of radio frequency spectrum, the license holder shall pay average rate of the price established on the last 3 (if not, the last 2) auctions held for granting the right of use of a radio frequency spectrum.
  - d) If only 1 (one) auctions has been held for the right to use a relevant radio frequency spectrum band allocated according to the National Plan for allocation of radio frequency spectrum, the license holder shall pay the price established on this auction.
  - e) If no auctions has been held for the right to use a relevant radio frequency spectrum band allocated according to the National Plan for allocation of radio frequency spectrum, in order to prolong period of validity of the license the license holder shall pay the initial price of the auction to be held for the right to use a relevant radio frequency spectrum. The price shall be defined by the regulation on conducting an auction for the right to use a relevant radio frequency spectrum.

f) A license holder shall also pay the license levy.

6. The rule defined in paragraph 5 of this article shall not be applied to prolongation of period of validity of a license issued by the rule of contest. (20.02.2014. # 2039)

Article 50. Grounds for the issue of license (20.12.2011. # 5546 in force from 1 February 2012)

1. Licenses for the use of radio frequency spectrum shall be issued on the grounds of the existence of free resources, application of an undertaking, and winning an auction.

2. The Commission shall decide to hold an auction, in case of:

a) existence of free radio frequency spectrum envisaged in the National Plan for allocation of radio frequency spectrum and request of an undertaking to hold an auction for granting the right of use of radio frequency spectrum. The Commission's decision on holding an auction shall define the initial price for the use of exhaustible resources to be auctioned, pursuant to the regulations on holding an auction for granting the right of use of radio frequency spectrum;

b) existence of an application of a license holder for the right of use of radio frequency spectrum for full or partial transfer to any other undertaking of its right for the use of radio frequency spectrum. In such cases, the Commission shall hold an auction pursuant to the general rule defined by the present law.

3. On the Commission's decision, the right of use of radio frequency spectrum may be restricted for those undertakings which in case of winning the auction and/or by direct transfer and/or along with interdependent (affiliated) persons become owners of 25% or more of the specific sector of the radio frequency band defined (allocated) by the Commission.

Article 50<sup>1</sup>. Grounds for the issue of license for the use of radio frequency spectrum to ensure digital terrestrial TV network (20.02.2014. N2039)

1. The license for the use of radio frequency spectrum to ensure digital terrestrial TV network, is issued in case of existence of free radio frequency spectrum resources, on

the Commission's initiative or on the basis of application of an interested person as a result of announcing a contest and after revealing a winner.

2. The Commission shall decide to hold a contest, in case of:

- a) existence of free radio frequency spectrum to ensure digital terrestrial TV network, envisaged in the National Plan for allocation of radio frequency spectrum;
- b) existence of an application of a license holder for the right of use of radio frequency spectrum to ensure digital terrestrial TV network, for full transfer to any other undertaking of its right for the use of radio frequency spectrum, except undertakings envisaged by paragraph 5 of Article 52<sup>1</sup> of the present law. In such cases, the Commission shall hold a contest pursuant to the rule defined in paragraph 52<sup>1</sup> of the present law.

Article 51. Handing over of the right of use of radio frequency spectrum to another undertaking *(20.12.2011. # 5546 in force from 1 February 2012)*

1. A license holder with the license for the use of radio frequency spectrum shall be empowered to hand over the right of use of radio frequency spectrum in full or in part, to any person by means of direct transfer and without auction, signing a contract on direct transfer. The Commission on the basis of an application on direct transfer shall start public administrative procedures related to the direct transfer of the license.

1. The Commission by its decision may restrict direct transfer of the license for a license holder owning a license for the use of radio frequency spectrum, in case if:

- a) a person interested in transfer has arrears of regulation fees before the Commission or arrears of fees for the use exhaustible resources before the State Budget of Georgia;
- b) by direct transfer of a license, a person independently or with interdependent (affiliated) persons becomes owner of 25% (25 per cent) or more of a specific sector of radio frequency band defined (allocated) by the Commission;
- c) an end-user is provided by telecommunications service by means of exhaustible resources defined by a license and it is not confirmed that a license holder has an

obligation to provide this service according to provisions of the contract signed with end-users during the contract period.

3. In case provided be paragraph 2 of this Article, except subparagraph b) of the same paragraph, public administrative procedures are suspended and shall be renewed after a person interested in transfer, fully satisfies his obligations.
4. The license holder is entitled to begin the use of radio frequency spectrum in compliance with the license conditions and requirements of the present law, only after the decision of the Commission on the license transfer and authorization issued by the rules defined by the present law.
3. The authorised undertaking having obtained the right of use of radio frequency spectrum by auction shall be empowered to apply to the Commission with a request to hold auction with a view to handing over, in full or in part, the right of use of radio frequency spectrum to any authorised undertaking.

Article 51<sup>1</sup>. Handing over of the right of use of radio frequency spectrum to ensure digital terrestrial TV network, to another undertaking (20.02.2014. # 2039)

1. A license holder of the use of radio frequency spectrum to ensure digital terrestrial TV network, is empowered to hand over the right of use of radio frequency spectrum owned by it to another undertaking, except undertakings envisaged by paragraph 5 of Article 52<sup>1</sup> of the present law, fully, by direct transfer, without a contest, signing a contract on direct transfer. The Commission on the basis of an application on direct transfer shall start public administrative procedures related to the direct transfer of the license.
2. The Commission by its decision may restrict direct transfer of the license for a license holder owning a license for the use of radio frequency spectrum to ensure digital terrestrial TV network, if a license holder has arrears of regulation fees before the Commission.
3. In case provided be paragraph 2 of this Article, public administrative procedures are suspended and shall be renewed after a person interested in transfer, fully satisfies his obligations.
4. The license holder of the use of radio frequency spectrum is entitled to begin the use of radio frequency spectrum in compliance with the license conditions and requirements

of the present law, only after the decision of the Commission on the license transfer and authorization issued by the rules defined by the present law.

5. The authorised undertaking having obtained the right of use of radio frequency spectrum by a contest shall be empowered to apply to the Commission with a request to hold a contest with a view to handing over in full the right of use of radio frequency spectrum to any authorised undertaking.

#### Article 52. Issuing licenses by means of auction

1. The Commission shall make a decision to hold an auction for granting licenses for the use of radio frequency spectrum and disseminate it by mass media and via Internet on official web-site of the Commission at least 1 (one) month earlier. *(20.12.2011. # 5546 in force from 1 February 2012)*
2. The Commission's decision on holding an auction shall indicate:
  - a) the relevant geographic borders of the market;
  - b) technical and operational conditions which ensure the avoidance of harmful interference and hazardous impact on human health while using exhaustible resources;
  - c) initial or proposed price;
  - d) opening and closing dates for submitting application, and the dates for holding an auction.
  - e) Other data defined in paragraph 10, article 18 of the Georgian law "on licenses and permissions". *(28.12.2005 # 2564)*
3. Withdrawn *(28.12.2005 # 2564)*
4. While holding an auction, the Commission shall be guided by the principles of objectivity, transparency, publicity and non-discrimination.
5. The Commission shall decide on identifying the winner of the auction. The criterion for identifying the winner shall be the maximum prices offered for the use of

exhaustible resources, 30% (thirty per cent) of which shall be paid within 1 (one) month from the date the winner of the auction is identified. The Commission's decision on identifying the winner of the auction shall be disseminated by mass media and Internet.

6. A license shall be issued within 7 (seven) working days from the date of payment of 30% (thirty per cent) of the price for the use of exhaustible resources. The remaining price shall be paid within 1 (one) year from the date of issuing the license, pursuant to the conditions defined by the Commission.
7. In case if the aim of the winner authorised undertaking is to start authorised activities (provision of services) and which requires permission from other bodies for the use of radio frequency spectrum, the winner authorised undertaking is empowered, pursuant to "one-stop-shop" principle, submit to the Commission relevant documentation required by Georgian legislation. The Commission, in turn, shall ensure the issue of relevant permission from the relevant body. In such cases, within 5 (five) working days from the date of receipt of relevant documentation, the Commission shall apply to relevant bodies and send them the documentation submitted by the winner of the auction. Where within 20 (twenty) working days the relevant body refuses to issue a permission, the document shall contain non-compliances with the Georgian legislation and the ways to repair irregularities. The winner of the auction shall be given additional time to repair the irregularities. (28.12.2005 # 2564)
8. The license holder shall start practical activities within a period defined by the Commission decision on issuing the license. (27.06.2008 # 67)
- 8<sup>1</sup>. The license holder is prohibited to terminate using exhaustible resources and practical activities by using exhaustible resources consecutively for more than 3 (three) months or for 6 (six) months during a year. (8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)
9. To commence practical activities a holder of a license for using resources envisaged by the present law, shall ensure: (8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)
  - a) installation, operational management and exploitation of electronic communications networks, technical facilities or relevant elements of a network in each geographical segment defined by the license;
  - b) fulfillment of economic activities using electronic communications networks, technical facilities or relevant elements of network;

- c) access of an interested authorised undertaking to its electronic communications networks, resources and capacities and provision of an interester authorised undertaking with services of public switched electronic communications networks and facilities for a defined fee;
- d) provision of services for users (including end-users) for a defined fee using electronic communications networks and facilities on the basis of corresponding authorisation.

Article 52<sup>1</sup>. The rule of issuing the license for the use of radio frequency spectrum to ensure digital terrestrial TV network (20.02.2014. # 2039)

1. The decision on holding a contest for issuing license for the use of radio frequency spectrum is made by the Commission.
2. The Commission's decision on holding a contest shall indicate:
  - a) frequencies set out in the contest and their geographical area;
  - b) technical and operational conditions of using exhaustible resources in order to avoid of harmful interference and hazardous impact on human health;
  - c) initial price for the use of exhaustible resources set out in the contest, defined by the Commission in each specific case taking into account international practice, on the basis of conclusions of authoritative international organizations;
  - d) a list of documents to be attached to the contest application;
  - e) dates of the preliminary session, hearing and the contest;
  - f) conditions of the use of radio frequency spectrum;
  - f) criteria and corresponding indicators for assessment of the consent application and attached documents;
  - g) grounds for disqualification of a contestant;

- h) other data – by decision of the Commission.
3. The Commission shall ensure publishing information on announcing a contest and accept the contest applications during 1 (one) month after its publishing.
  4. In order to get a license an applicant shall submit the Commission a contest application indicating:
    - a) in case of a natural person – name, surname, place and date of birth, data from the register, address, citizenship;
    - b) in case of a legal entities - company name, legal form, legal address (location), data from the business register, name and surname of an authorised representative, data on partners, as well as shareholders owning 5% (five per cent) or more of shares;
    - c) by decision of the Commission, in case if a contest is announces in order to gain more than one license – corresponding license / licenses.
  5. The contest shall be restricted to:
    - a) an administrative body, official of an administrative body and other public servants;
    - b) a political party;
    - c) legal entity the shares of which directly or indirectly are owned by the State or a person defined in subparagraphs a) and b) of this paragraph.
  - 6) The following shall be attached to the application:
    - a) financing plan of activities to be implemented, information on financing sources and bank guarantee on the amount defined by the Commission decision;
    - b) the data from the business register, in case of a natural person – a copy of the document certifying the identity;
    - c) technical offer for provision of digital terrestrial TV network, indicating date of commencement of practical activities;



- d) tariff conditions offered to TV broadcasters;
  - e) corresponding offer in case of offering more than an initial payment for the use of exhaustible resources set out at the contest;
  - f) other documentation – by the Commission decision.
7. Within 3 (three) working days after completion of accepting the contest applications, the Commission carries out a preliminary session. The session considers the contest applications and in presence of applicants opens sealed documentation attached to contest applications. In case if attached documents are submitted in an incomplete form, the Commission shall set an additional term of 5 (five) days to ensure compliance of documentation with defined requirements. Sending the contest applications and attached documents to the Commission by post is inadmissible.
  8. The contest applications and attached documents shall be accessible for public viewing within the next 20 days.
  9. After 20 days from informing about presenting documentation for public viewing, the Commission carries out hearing.
  10. In case if an applicant within a period defined by the Commission will not ensure compliance of documentation with defined requirements or submits documentation in an incomplete form, the Commission makes a decision to refuse consideration of an application and denies an applicant to participate in the contest. And in case of ascertaining grounds for disqualification of the contestant, the Commission makes a decision on disqualification.
  11. The Commission carries out the contest at public hearing.
  12. While holding a contest, the Commission shall be guided by the principles of objectivity, transparency, publicity and non-discrimination.
  5. The Commission shall decide on identifying the winner of the contest that should be justified in detail. The Commission's decision on identifying the winner of the contest shall be disseminated by mass media and Internet.
  14. A license shall be issued within 5 (five) working days from the date of payment of an initial price for the use of exhaustible resources. In case of offering more than an initial payment for the use of exhaustible resources set out at the contest, the sum will

be paid within a period of 1 (one) year from the date of the license issue according to a schedule defined by the Commission decision identifying the winner of the contest.

15. In case if permission from other bodies for the use of radio frequency spectrum is required, pursuant to "one-stop-shop" principle, the contestant is empowered submit to the Commission relevant documentation required by Georgian legislation. The Commission, in turn, shall ensure the issue of relevant permission from the relevant body. In such cases, within 5 (five) working days from the date of receipt of relevant documentation, the Commission shall apply to relevant bodies and send them the documentation submitted by the winner of the contest. Where within 20 (twenty) working days the relevant body refuses to issue a permission, the document shall contain non-compliances with the Georgian legislation and the ways to repair irregularities. The winner of the auction shall be given additional time to repair the irregularities.
16. The license holder shall start practical activities within a period defined by the Commission decision on issuing the license.
17. Termination of the use of exhaustible resources and practical activities by using exhaustible resources by a license holder is admissible on conditions that a license holder informs the Commission about it in advance, 6 (six) months earlier.
18. To commence practical activities, a holder of a license for the use of radio frequency spectrum to ensure digital terrestrial TV network, shall ensure:
  - a) installation, operational management and exploitation of relevant elements of electronic communications networks, in geographical segment defined by the license;
  - b) fulfillment of economic activities using electronic communications networks on the basis of relevant authorisation and transmission TV signals;
  - c) access of an interested broadcaster to relevant elements of electronic communications network, its resources and capacities.

#### Article 53. Modification of licenses

1. The grounds for the modification of licenses shall be:

- a) changes introduced to the legislation of Georgia in the field of electronic communications;
- b) reasonable request of the Commission or a license holder.

2. Decisions on modification of licenses shall be made by the Commission.

Article 54. Revocation of licenses / permissions *(20.12.2011. # 5546 in force from 1 February 2012)*

1. The grounds for revoking a license shall be:

- a) Request of a license-holder;
- b) Termination of using resources envisaged by a license and practical activities by using these resources by a license holder consecutively for more than 3 (three) months or for 6 (six) months during a year.
- c) Non-commencement of practical activities within a period defined in a license;
- d) Violation of license conditions by a license holder, continuous breaches after being fined and/or occurrence of a new single breach within a period of 1 year from the date of the fine.
- e) Violation of permission conditions, continuous breaches after being fined and/or occurrence of a new single breach within a period of 1 year from the date of the fine.

2. Only the Commission has the right of revocation of a license / permission.

3. In case of a license / permission revocation a fee paid for the right of the use of exhaustible resources shall not be returned to a license / permission holder.

4. In case if a license term is expired a license shall be deemed revoked

Article 55. Use of state-owned territory, land use and protection of electronic communications networks

1. To ensure the protection of wired networks, the Government of Georgia defines the rule of protection of wired networks and secure areas. Any groundwork in the secure area of wired networks may be undertaken only in agreement with the owner of wired networks.
2. The local self-government bodies, in coordination with the Commission, shall define transparent and non-discriminatory procedures for granting to authorised undertakings the right of installation of systems of electronic communications networks, their elements, technical facilities, equipment and additional resources on the territories and land-plots owned by the local self-government.
3. The electronic communications network operators, pursuant to agreements with the owners of land plots and sites, have the right to install electronic communications on any part of the land, bridges, tunnels, streets, engineering facilities, collectors and secure areas.
4. Natural persons and legal entities engaged in planning, construction and reconstruction of social infrastructure, shall, in cases defined by law, take into account and conduct planning, construction and reconstruction of engineering facilities in order to install electronic communications networks and facilities.
5. The cost of planning, construction and installation of electronic communications networks and facilities shall be born by the client who has ordered construction and shall be undertaken pursuant to the technical standards established for construction of electronic communications networks and facilities.

## Chapter IX

### Digital broadcasting and individual access systems

#### Article 56. Wide-screen digital broadcasting service

1. Operators of public switched electronic communications networks providing digital TV broadcasting services to end-users by means of local access network facilities shall ensure that technical specifications of their networks and technical facilities permit distribution of programs and transmission of widescreen digital TV broadcasting signals.
2. Transit (services) operators providing digital broadcasting and implements transit distribution of widescreen digital TV broadcasting signals for end-users, shall ensure that technical specifications of its networks facilities permit transmission of widescreen TV broadcasting programs to end-users by maintaining the same format.

#### Article 57. Provision of digital interactive TV broadcasting services and interoperability

1. An operator providing digital interactive TV broadcasting services, shall ensure use of open applied program interface, unlimited access of an applicant authorised undertaking to the relevant elements of the digital interactive TV broadcasting network, including subscriber's individual access system, and resources of the electronic directory (guide) of programs (services).
2. Authorised operators providing digital TV broadcasting networks and facilities shall ensure interoperability and compliance of open applied program interfaces with defined technical standards. The operators shall also submit to the Commission information on specifications of a selected applied program interface.
3. Operators authorised to provide digital TV broadcasting networks and facilities shall ensure that digital interactive TV broadcasting services providers are provided with all the significant information, in a fair, reasonable and non-discriminatory manner, that ensures unbounded access of applicant authorised undertakings to their technical facilities, functional resources and operational capacities.

4. Operators providing digital interactive TV broadcasting services and digital broadcasting equipment for subscribers shall ensure interoperability of their technical facilities and systems, as well as availability of all information that ensures uninterrupted provision of digital TV broadcasting services in a non-discriminatory and transparent manner.
5. Subscriber equipment for digital broadcasting intended for the receipt of digital interactive TV broadcasting signals shall ensure:
  - a) deciphering of coded signals received by means of coding algorithm defined pursuant to the standards of the present law;
  - b) clear and high-quality appearance of digital signals on a TV screen, transmitted by digital TV broadcasting;
  - c) uninterrupted provision of types of digital interactive broadcasting services to end-users;
  - d) interoperability of types of technical facilities and services.

## Chapter X

### Standardization, certification and metrology norms in the electronic communications sector

#### Article 58. Standards applicable in the electronic communications sector

1. A list of European harmonized standards applicable in the electronic communications sector shall be approved by the Government of Georgia.
2. Radio equipment and telecommunications terminal equipment shall be compliant with the basic requirements of the regulations on the certification of radio equipment and telecommunications terminal equipment.

Article 59. Certification of radio equipment and telecommunications terminal equipment

1. Radio equipment and telecommunications terminal equipment shall be certified pursuant to the Regulations on certification of radio equipment and telecommunications terminal equipment approved by the Commission.
2. Radio equipment and telecommunications terminal equipment shall be certified at the testing certification centers and laboratories which, on the Commission's proposal, are accredited by the National Agency for Standardization, Metrology and Certification of Georgia. Where an accredited testing center (laboratory) breaches relevant normative acts, the accreditation of the center (laboratory) shall be revoked on the basis of Commission's proposal.
3. Certification of radio equipment and telecommunications terminal equipment shall be carried out pursuant to relevant technical norms.

Article 60. Observance of metrology norms of electronic communications facilities

1. Testing certification centers and laboratories shall observe metrology norms of electronic communications facilities.
2. The Commission, pursuant to the established rules, within its competence, shall regulate and control the observance of metrology norms in the field of electronic communications.

Chapter XI

Service quality and protection of users' rights (28.12.2005 # 2564)

Article 61. Withdrawn (28.12.2005 # 2564)

Article 62. Protection of users' rights and general rules for services

1. Users shall have the right of free choice of public switched electronic communications networks and services.
2. Protection of the rights of users and their legitimate interests in the field of electronic communications shall be supervised by the Commission.
3. Users shall have the right of obtaining information on the tariffs for provided or selected electronic communications services, terms of provision of services and cost accounting, and detailed billing during the period of reporting.
4. Providers of electronic communications services shall provide services to subscribers in compliance with defined standards and pursuant to a relevant contract, including the following information:
  - a) the name and address of the electronic communications service provider;
  - b) terms indicating types, quality and time of first connection;
  - c) terms for suspension and termination of services;
  - d) terms for repairing damages;
  - e) detailed information on service tariffs, and, in case of changes, updated information;
  - f) terms of validity, termination and extension of the contract;
  - g) the mechanisms provided to ensure quality of services according to the contract as well as compensation in case of failure to maintain quality;
  - h) the procedure of appeals and regulation of disputes related to services.
5. The Commission shall establish quality standards for services and shall supervise compliance of electronic service providers with these standards.
6. Electronic communications service providers shall provide their subscribers with free directory service, including billing information, information on arrears and relevant bills free of charge.



7. Electronic communications service providers shall make available telephone numbers of special services to their subscribers free of charge.
8. Rules for the provision of electronic communications services and Regulations for protection of rights of users shall be defined by the normative act of the Commission.

Article 63. Rule of dispute consideration between providers and end-users of electronic communications services

1. Disputes between providers and end users of electronic communications services shall be regulated pursuant to the present law, other legislative normative acts and by-laws of Georgia.
2. Providers of electronic communications services shall establish an efficient internal mechanism for consideration of and reacting to complaints. Where providers of electronic communications services breach requirements of the legislation of Georgia on the protection of rights of users, an interested person shall be entitled to apply to the provider of electronic communications services, and/or the Commission, or directly to court.
3. Electronic communications service providers shall consider a complaint within 15 (fifteen) days.
4. Withdrawn (28.12.2005 # 2564)
5. The Commission shall consider applications and complaints at a hearing, by means of formal administrative procedure, save for cases defined by the General Administrative Code of Georgia and cases where consideration of disputes does not require the pursuit of organized procedures. Applications and complaints regarding the interests of a wide range of users and also related to the issues provided for in Paragraph 1 of Article 115 of the General Administrative Code shall be considered by the Commission only by public administrative procedure.
6. In the course of a hearing the Chairman of the hearing shall ensure the study of important circumstances relevant to the case, request relevant documentation, and protection of the right of free expression of opinions by persons attending the hearing.

7. While considering disputes between the providers and end-users of electronic communications, the Commission shall apply the provisions defined in Chapter V of the present law, without prejudice to the provisions of the present Chapter.
8. Minutes of a hearing shall be drafted. The minutes shall comprise: the name of the administrative procedure on which the hearing is held; the name of an administrative body; year, month and date, time and place of the hearing; the identities of the Chairman of the hearing, interested bodies taking part in the hearing, experts and witnesses; subject of the hearing; application summary; summaries of testimonies of witnesses and experts; and description of the results of scene of actio (in case of existence).
9. The minutes of the hearing shall be signed by the Chairman of the hearing and the secretary. An interested party shall be entitled to familiarize with the minutes and submit comments within 3 (three) working days, indicating wrong or incomplete information contained in the minutes. Where the Commission agrees with the comments, they shall be approved; where there is no agreement, the Commission shall issue an administrative act refuting the comments.
10. The main objective of a hearing shall be the resolution of disputes by amicable settlement.
11. Within 10 (ten) working days from the date of hearing, the Commission shall make a decision pursuant to Georgian legislation. The fulfillment of the decision is obligatory for parties. Only those Commission members who have taken part in the hearing shall have the right of voting on the decision.
12. Where a breach is confirmed, the Commission shall make a decision to impose relevant sanctions against the person/entity having committed the breach and to award restitution of the rights breached.

## Chapter XII

### Transitional and final provisions

#### Article 64. Transitional provisions

1. Within 1 (one) year from the date of enactment of the present law the Commission, pursuant to the present law, shall automatically issue authorisations and relevant certificates to all license-holders pursuing activities in the field of electronic communications; the Commission shall also make modifications according to the present law regarding licenses of undertakings using exhaustible resources.
2. All undertakings using exhaustible resources internally, for industrial or technological as well as non-commercial purposes, shall, within 6 (six) months from the date of entry of the present law into force, ensure compliance of their activities with the provisions of the present law.
3. Transition to a new numbering system shall take place until 1 January 2011 pursuant to the rule defined by the Government of Georgia. Electronic communications network operators, owners of departmental networks and electronic communications service providers shall ensure conformity of systems of the network with the new national numbering system at their own expense. *(26.12.2008 # 888)*
4. Withdrawn *(28.12.2005 # 2564)*
5. The Government of Georgia shall present draft of the law of Georgia on Post to the Parliament of Georgia for consideration until 1 May 2009. *(27.06.2008 # 67)*
6. Upon enactment of the present law, the Law of Georgia on Communications and Post shall be declared void. *(28.12.2005 # 2564)*
7. In one (1) year from the date of enactment of the present law, the Commission shall issue the following normative acts:
  - a) “On universal service in the electronic communications sector”;
  - b) On the approval of “the National Plan of allocation of radio frequency spectrum;”
  - c) On the approval of the “Rules on the provision of services in the electronic communications sector and of Regulations on the protection of users’ rights”;

- d) On the approval of the “Regulation on carrying out an auction for the right to use radio frequency spectrum and/or numbering resources”;
- d) On the approval of the “Methodological rules of definition and analysis of relevant segments of the market and competition analysis;”
- e) On the approval of the “Methodological rules of separate submission of cost accounting and expenditures by authorised undertakings.”

7<sup>1</sup>. Until 1 February 2012 the Commission shall:

- a) adopt the resolution on the approval of “the rule of issue, use and payment of the numbering resources”;
- b) conform the resolution on “Regulation on carrying out an auction for the right to use radio frequency spectrum and/or numbering resources” to this law.

8. Until the system of authorisation is fully adopted and the normative act of the Commission “On the National Plan of allocation of radio frequency spectrum” is approved, all license-holders who, in pursuit of their activities defined in Paragraph 2 of Article 36 of the Law of Georgia on Communications and Post, are using radio frequency spectrum (except for broadcasting license-holders and those to whom radio-frequencies were assigned for internal and technological purposes, non-commercial activities, or for the establishment of special communications networks for the purposes of defence, state security, public order and environmental monitoring), shall use the radio frequency spectrum solely for the activities defined in their licenses.

9. The European harmonized standards applied to the electronic communications sector and recognized by Georgia before the enactment of the present law shall be defined in the “Regulations on the certification of radio facilities and TV terminal equipment.”

10. Withdrawn (8.04.2011. # 4526 4526 in force on the 15<sup>th</sup> days from the date of publishing)

11. Withdrawn (27.06.2008 # 67)

12. The Georgian National Communications Commission shall declare void the Resolution 10<sup>1</sup> of the Georgian National Communications Commission “on universal service in the field of electronic communications”. (28.12.2005 # 2564)

13. Change of radio frequency assigned on the basis of a license and/or the Commission's decision, within the period of license and/or the period defined by the Commission's decision is possible solely in agreement with the license holder. In case if, the undertaking was damaged as a result of changing the radio frequency, the amount of compensation of the damage received shall be defined on the basis of an independent audit's conclusion. The payment conditions and payment form shall be agreed and defined by the Commission. *28.12.2005 #2564*)
14. The funds existing on the special account of the Georgian National Communications Commission opened for the provision of universal service shall be transferred to the State Budget of Georgia. *(28.12.2005 # 2564)*
15. Withdrawn *(27.06.2008 # 67)*
16. The Commission shall adopt the decree on approving the resolution on "subscriber number portability". *(26.12.2008 # 888)*
17. In case if the term of commencement of practical activities of license holders using resources envisaged in this law, is not defined, they shall commence their practical activities from 1 September 2011. *(8.04.2011. # 4526 in force on the 15<sup>th</sup> days from the date of publishing)*
18. The entities received licenses for the right to use numbering resources before 1 February 2012 or received the right to use numbering resources according to the Commission decision, shall maintain the right to use numbering resources during the period of validity of the license or the period defined by the Commission decision on the right to use numbering resources. *(20.12.2011. # 5546 in force from 1 February 2012)*

Article 64<sup>1</sup>. The enforcement of the law *(28.12.2005 # 2564)*

If the present law establishes rules of issuing licenses in the field of electronic communications as well as inspecting the implementation of license conditions, which are different from rules defined by the Georgian law "on licenses and permissions", as well as different form and/or size of responsibility, the present law shall be used.

Article 65. Normative acts made void

1. Upon enactment of the present law, the following normative acts of the Commission shall be made void:

- a) Decree of the Commission of 1 September 2000 on the approval of the regulation “On the terms and conditions for the renewal of registration of license-holders pursuing activities in the communications sector;”
  - b) Decree of 10 July 2001 on the approval of the regulation “on interconnection of communications networks”;
  - c) Decree of 20 December 2002 on the approval of the regulation “On the rule of calculation and payment of initial amount of license fees for international telephone communications using codes and activities using frequency spectrum.”
2. Pursuant to the present law, all other relevant normative acts regulating relations in compliance with normative acts adopted by the Commission, shall be deemed void.

Article 66. Entry into force

1. The present law shall be in force upon its publication, except Article 45.
2. Article 45 shall be in force on the 15<sup>th</sup> day from the date of publication of the present law.

President of Georgia

*Mikheil Saakashvili*

Tbilisi

2 June 2005

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