

The Economics of Regulatory Impact in Evolving Industries: Case of Georgian Postal and Courier Service Market

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Abstract

An economic impact analysis of legal barriers imposed by the Georgian Government on an evolving postal and courier service market and statutory monopoly's economic rationale are dealt with in this article while assessing its shortcomings and reviewing commitments incurred by Georgia with the EU-Georgia Association Agreement (specifically, with the Deep and Comprehensive Free Trade Area).

Findings of the paper demonstrate that the legal barriers restricted free and fair competition in the postal and courier service market by fostering a statutory monopolist, a state-run Ltd Georgian Post, which enjoyed preferential treatment through establishing statutory but discriminatory barriers against its competitors. The precedent of curbing free and fair competition is bound to impede economic growth as the government is not in the position to uphold openness and transparency of the market, enforce competition policy and respect the spirit of liberalizing access to trade in the postal and courier services of Georgia.

Keywords: EU-Georgia; Liberalization; Regulations; Economy;

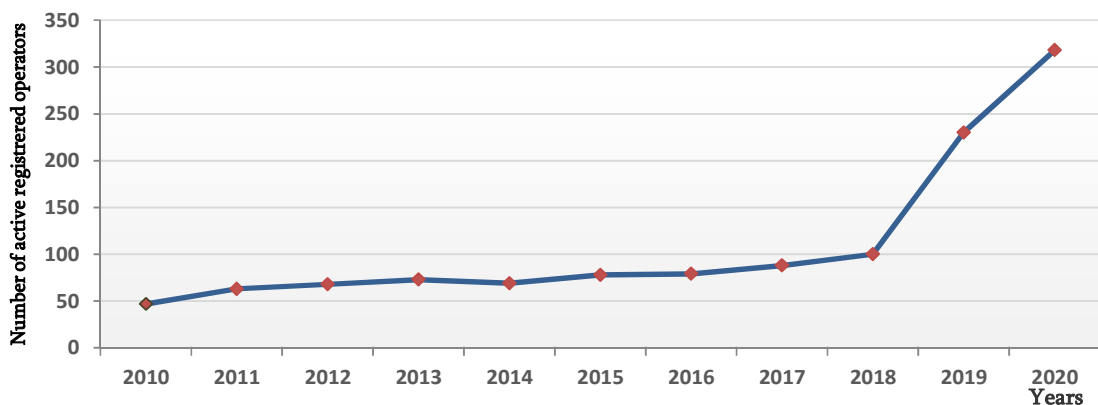
Preface

While assessing the efficacy of the public policy and, specifically regulations pertaining economic sectors, it's important to examine major business sectors where the negative impact of the regulation can cause serious damage to overall economic growth and introducing a statutory monopoly can result in upsetting a natural equilibrium and a deliberate breakdown of the business environment that is traditionally open to competition. It's also important that regulatory legislation be compliant with international best practices. The paper scrutinizes an

economic impact analysis of legal barriers imposed by the Georgian Government on an evolving postal and courier service market and statutory monopoly's economic rationale, while assessing its shortcomings and reviewing commitments incurred by Georgia with the EU-Georgia Association Agreement (specifically, with the Deep and Comprehensive Free Trade Area).

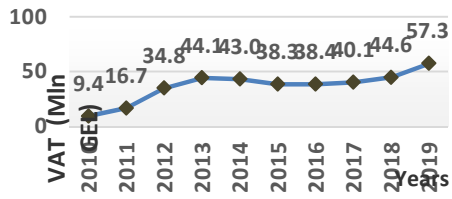
Postal and courier service sector plays a crucial role in the development of the Georgian economy and is characterized by robust growth potential. Since the last decade of the 20th century, various types of postal services have gained various momentum for expansion: demand for postal and courier service of letter mails/printed materials/periodicals has considerably reduced; however, demand for parcel delivery service has enjoyed substantial growth. The change is effected by advances of adjacent businesses, like e-commerce and IT. Figure 1 illustrates the statistics of active registered operators on the postal and courier service market in Georgia from 2010 to 2020 [Figure 1 about here]. Figure 2 and Figure 3 illustrate VAT generated and the average number of people employed by companies operating in postal and courier service market from 2010 to 2019 [Figure 2 and Figure 3 about here].

Figure 1: Number of active registered operators
on the postal and courier service market in Georgia from 2010 to 2020.



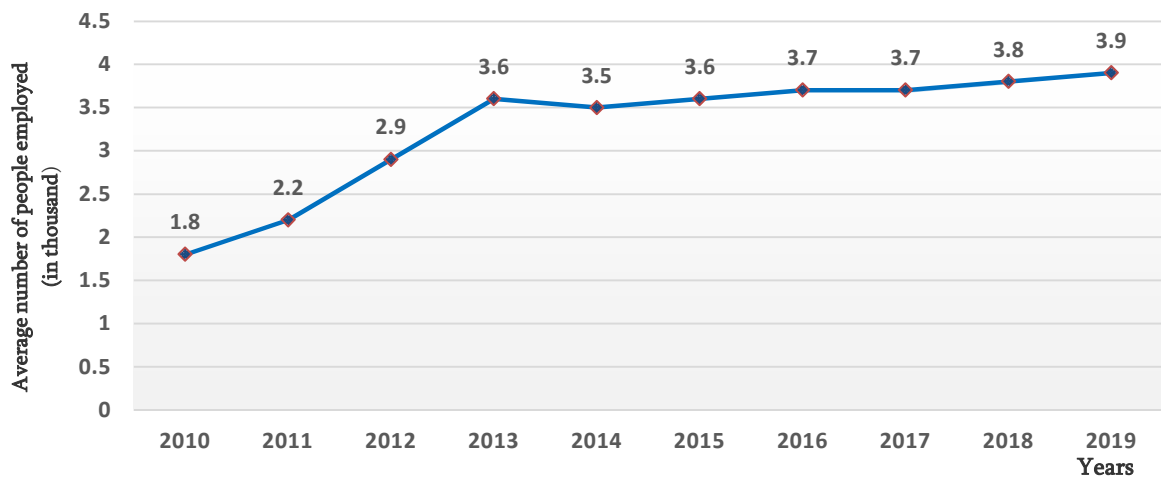
Source: National Statistics Office of Georgia.

Figure 2: Value-added generated by companies operating in postal and courier sector from 2010 to 2019.



Source: National Statistics Office of Georgia.

Figure 3: Average number of people employed in postal and courier sector from 2010 to 2019.



Source: National Statistics Office of Georgia.

Research Methodology

Research methodology implies economic impact analysis of a legal framework and regulations imposed by the Georgian government in postal and courier service market of the Georgian economy, as well as reviewing commitments incurred by Georgia with the EU-Georgia Association Agreement (specifically, with the Deep and Comprehensive Free Trade Area) and assessing implementation process compliance of Georgian legislation harmonization obligation with that of the EU. Economic activity indicators are analyzed against impact from legislation shortcomings and legal barriers imposed by the Georgian government applicable to postal and courier service market since 2013 or are forthcoming as of the date of this research.

The paper is based on statistics analysis reported by National Statistics Office of Georgia as per „Economic Activity Classificators – EAC 006-2016, Group 53” and through 2010-2020 years. Also, it aims to provide a list of specific recommendation to promote effective economic policy applicable to postal and courier service sector.

Chapter 1. Analysis of legal framework and EU-Georgian legislation harmonization obligations applicable to postal and courier service market

The analysis of the postal and courier service market in Georgia should start with a short review of events that were the first attempts to develop legislation applicable to the sector. In 1999 the Georgian Parliament has passed a Law „on Communication and Post”. The law envisaged as a policy-making authority - the Ministry of Communication and Post and an authority to regulate the sector to the National Commission of Communication and Post.

Liberalization of the postal service sector started in 2003 and ended in 2005. In the same year a Law „on Communication and Post” of 1999 was revoked. The legislator has envisaged to draft a Law „on Post” that was supposed to ensure a full compliance of Georgia’s regulatory framework with that of liberalized postal market standards. The Parliament has been tasked to pass a Law „on Post” within 6 months after the revocation of the law[2]. Later the deadline has been postponed few times and up to now the Parliament has not passed the law yet. It’s worthwhile to note that on 24th of June, 2005, the Georgian Parliament has passed a Law „on Licenses and Permits” that has made postal service exempt from a requirement of license. It meant that a business operator did not have to secure a license from the National Commission of Communication and Post in order to start operation on the market[3].

Additionally, starting from 2006 the National Commission of Communication and Post (later The Georgian National Communications Commission) has ceased its regulatory supervision of the postal sector service. The liberalization has promoted competition on the postal services market of Georgia illustrated by the Figure 1 that shows statistics of the increasing number of business operators on the postal and courier service sector of Georgia [Figure 1 about here].

Through Association Agreement with the EU, Georgia has committed itself with a further enhancement of postal service regulations. According to Annex XV-C of the Agreement, Georgia is obliged to adopt requirements stipulated by EU 97/67/EC directive within a timeframe of 5 years after Association Agreement enters into force [5]. As per the directive and its annexes, full liberalization of the postal sector, promotion of the free competition and elimination of reserved areas of the market (an area of market reserved for a monopoly) for a universal postal service provider are conceived as a condition towards a successful reformation of the postal sector.

Moreover, the EU-Georgia Association Agreement[4] provides with normative guidance in terms of postal service, in particular: Title IV TRADE AND TRADE-RELATED MATTERS, CHAPTER 6, Section 5, Sub-Section 4 (Postal and Courier Services), Article 99 of the Agreement envisages the definition of universal postal service as “the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users”. Furthermore, according to the Article 100 of the Agreement, is envisaged: „Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party”. Economic analysis of international best legal framework practices and the EU-Georgia Association agreement for Postal and Currier services finds full liberalization and free competition support as a necessary tool to successful reformation of the sector. That can be achieved through effective competition policy and fair competition regulations. Yet, competition policy analysis is a vital part of the economic reforms. Academic research proves that the more robust competition is on the market the more motivation the companies have to minimize expenses and improve quality of their products. A correlation between competition and efficiency and competition and productivity growth rate is a prerequisite for the economic growth [7,8].

Chapter 2. Economic impact analysis of legal barriers imposed by the Georgian Government

Economic impact analysis of legal barriers imposed by the Georgian government on postal and courier service market shows that since 2013 Georgian government kept trying to limit free competition on this market of economy that went unnoticed and un-responded by the Competition Agency. The legal barriers have been implemented into several stages, in particular: at the first stage, the legal barriers have been established by the Order #30 of Ministry of Finance on 25th of January, 2013. The Ministry's Order implemented substantial changes to customs procedures for importing and exporting of goods that inflicted plenty of barriers to businesses. An economic impact analysis of these regulations make it obvious that actually it was substantially restricting free competition. Namely, according to the Ministry's Order, to proceed with undertaking a business operator needed access to a „special automated customs data system” of the Revenue Service of Georgia. On the other hand, the Revenue Service would grant the access to the business operator if he, among other things, would meet requirements as follows:

- Have a prior experience of transporting goods and an excellent reputation. The requirement was setting a legal entry-barrier for businesses and putting a new-business entities in unfavorable position against other incumbent-business operators;
- Have a customs warehouse of their own. The requirement was substantiated neither legally nor economically. Why should a business operator be required to have its own customs warehouse and not rent in the service on an as-needed basis? Usually, medium and small companies do rent in customs warehouse as they can not afford and maintain their own one;
- A carrier-operator was required to ensure that import taxes and service fees were paid by their clients (an importer of goods) in a timely manner. But a thing here is that a carrier is just carrying goods and he can not be held liable for tax liabilities of his customers – an importer of goods. That was contradicting the Georgian legislation as a function of collecting tax revenues is responsibilities of Georgian Revenue service;
- A carrier-operator was required to secure access with the Revenue Service servers and advance report goods through electronic system. For the purpose a carrier was expected to submit a special program that would take time and fundings. Also, they were expected to do

it within a timeframe of 7 days. The task of developing a program, testing and securing access for the program from the Revenue Service was unachievable and unrealistic.

It must be noted that by introducing the above-mentioned conditions (through the Order of Minister of Finance) legal barriers have been established that contradicted a Law „on Licenses and Permits” [3]. Namely, the carrier-operator was supposed to clear goods through customs department, but he could not do it without having access to a „special automated customs data system” of the Revenue Service. In order to secure the right to do business, the carrier-operator was supposed to meet criteria set by the Order of Minister of Finance as securing access to a „special automated customs data system” of the Revenue Service was an absolute prerequisite for a carrier-operator to perform its business operation. Meeting the requirements of the decree and securing approval from the Revenue Service was a must for a carrier-operator to conduct its business. However, introducing new legal barriers was contradictory to WTO rules that envisages that its member states would reduce paperwork and simplify a red tape. Based on the analysis of the #30 Order of Minister of Finance of 25th January 2013 it can be inferred that Ltd Georgian Post was the only national-carrier that could meet all criteria of the Ministry of Finance – a customs warehouse of its own, prior experience of transporting goods and ability to get connected to servers of the Revenue Service of Georgia. Other carriers in fact got their business-operations restricted.

Also, it’s worthwhile to note that before introducing the new system, the Ministry was supposed to carry out special procedures to inform the companies about the new regulations, to ensure software compatibility, smooth transition and sustainability to the new system. Before promulgating the Order the Ministry was supposed to do preliminary work and set a reasonable timeframe. The Ministry of Finance has not done it that has resulted in a hiatus of customs clearance, delays in business operations that was even further aggravated by the fact that the officials of Ministry of Finance and the Revenue Service have not been doing anything to support the business operators with the transition.

The local carriers filed a complaint before the Competition Agency in the efforts to defend their rights. But after the Agency could not respond to the complaint (because of the nonexistence of a precondition as defined by the Article #10 prime of Law „on Competition”) the carriers took the case to court for annulment of the mentioned Order of the Minister of Finance. The carriers have won the case in all 3 levels of court. The court verdict has satisfied the complainants with annulling the Order of Minister of Finance of 25th of January, 2013 and an Order #4257 of the Head of Revenue Service of 6th February, 2013.

Here we need to note that coincidentally to the court hearings, on May 8, 2013 the Minister of Finance has revoked his controversial Order himself. However, still coincidentally to the court hearings and despite the court verdict Georgian government continued setting up legal barriers on the postal and courier service market.

On 6th of January, 2014, Georgian government issued a new Decree #40 „on Provisional Measures on Postal Sector”. The Decree was temporarily empowering Ltd Georgian Post with a sole authority to carry out postal business of accepting, forwarding and delivering of mail correspondence and parcels on the territory of Georgia by land or by sea until the postal legislation would have been fully harmonized with that of the EU and the best international practice. The Decree was in effect prohibiting other postal operators to do the business.

An analysis of the Decree #40 of Georgian government shows that it was in essence the same as the Order #30 of Ministry of Finance voided by the court ruling and establishing similar regulations. However, according to the Order of Minister of Finance, postal operators had a theoretical chance to meet requirement of the Order, but in case of the Decree of Georgian government it was solely authorizing Ltd Georgian Post with an exclusive privilege of doing postal business on the territory of Georgia. The Competition Agency could not apprehend the anticompetitive impact of the decree mostly because of the reasons cited above. The Post operators had to appeal to the Constitutional Court of Georgia in the effort to get the Decree acknowledged as unconstitutional.

An analysis of Decree #40 of Georgian government shows that a situation on the postal sector did not change after the Order #30 of Ministry of Finance had been annulled. Once the Decree # 40 of Georgian government had been brought into effect, Ltd Georgian Post became not only de facto but also de jure a sole postal operator that had a legal permit to operate on Georgian postal market. Yet, Georgian government has granted a preferential treatment to Ltd Georgian Post and prohibited other operators on the market. It has established a statutory monopolist upsetting a natural equilibrium and a deliberate breakdown of the business environment that traditionally has to be open to competition. The regulations envisaged by Decree contradicted the article # 10 of the Law „on Competition” of Georgia. The law inhibits any measure taken by Georgian government, governments of Autonomous republics and local authorities that limits competition and establishes a statutory monopolist[12] except in the very specific cases that are stipulated by Georgian legislation. The Decree #40 of Georgian government can be viewed as the state assistance to the business operator. However, the state assistance can be accomplished only for the purposes that are stipulated

by Georgian legislation that did not take place in this case. Additionally, any assistance to a business operator that restrains competition or puts it at risk is contradictory to the Article 12 of the Georgian Law „on Competition”[12].

Before a hearings have started at the Constitutional Court of Georgia, on 2nd of October, 2014, Georgian Government had been forced to revoke its own decree with a new Decree #586. As of today there is no formal barriers on postal and courier service market. But, alongside to the court hearings, at the beginning of 2014 the Ministry of Economy and Sustainable Development has developed a draft postal reform package „on Postal Union” and presented it to postal market stakeholders that envisaged new legal framework for postal and courier service business.

The draft postal law of the Ministry of Economy and Sustainable Development was targeted towards re-introduction of state regulations and re-regulation of postal and courier service market. The draft law will eliminate free competition and contradict the commitments undertaken by the Parties with the EU-Georgia Association Agreement on further liberalisation of trade in services[4]. The regulations proposed by the draft law was not compatible with the best international practice that advocates full market liberalization, free competition promotion and elimination of „postal reserved” areas as successful strategies for postal sector reform. The EU commission has disapproved the regulations envisaged by the draft law. Nevertheless, as of the date of the research the Ministry of Economy and Sustainable Development could not manage to ensure compatibility of the draft postal law with the EU-Georgia Association agreement commitments. Hence, the postal and courier service market reform is far from over and business-operators of the sector are facing uncertainties of the institutional framework that affect business operations, business environment and investment decisions.

Imposed legal barriers and shortcomings of legislation applicable to the postal and courier service market, also forthcoming regulations, have adversely affected on statistical indicators of economic activity of the sector and have recessed economic growth of the sector. The negative effects of the state regulations of 2013-2014 are illustrated on Figures 1÷3 [Figure 1 to 3 about here] with the economic indicators as follows:

(1) the Figure 1 illustrates [Figure 1 about here] that the number of active postal and courier service operators of the sector is decreasing during 2013-2014 when the legal barriers were enforced (initially by Ministry of Finance and then by the government of Georgia). Since 2015 (after court cases have been won by postal operators) number of active operators of the sector has increased slightly that continued up to 2018. The slight increase of the active

operators of the sector amid the absence of legal barriers and market liberalization can be explained by legislation uncertainties induced by the Ministry of Economy and Sustainable Development to present a draft postal reform package that the Georgian Government was going to run through the Parliament by the end of 2016 (later the deadline has been postponed until 2018). As the Georgian Government could not get it approved within the timeframe and increasing emphasis from the EU Commission underscoring the importance of preserving liberalized postal market environment in Georgia made it possible to trigger „relative predictability” on the postal and courier service market. The factors boosted an apparent growth of number of active operators of the sector during 2019-2020 that testifies the evolving potential of the sector for growth which can be accomplished not under unpredictable legislation, but under a liberalized market environment;

(2) the Figure 2 illustrates [Figure 2 about here] that Added Value generated in the postal sector is decreasing from 2013 to 2015. A trend of decreasing Added Value has lasted for 2 years, unlike a decreasing trend of Figure 1 that has lasted only 1 year. The trend shows that reversing an adverse impact of undue governmental regulations in terms of Added Value is marked by much longer „inertia”. Moreover, Added Value generated in the postal sector from 2016 to 2018 is seen as of low growth rate but that is replaced by a quite robust growth rate from 2019. The trends of these economic indicators can be explained by the factors described in the part (1) of the paper;

(3) the Figure 3 gives [Figure 3 about here] an average number of people employed in the postal and courier service market that approximately follows the pattern shown in Figure 1 (Number of active operators of the sector), in particular: it is decreasing from 2013 to 2014; and the trend changes to increasing from 2016 to 2019. Again, it can be explained by the factors described in the part (1) of the paper; also, it points to an apparent trend of an economic indicator - an increasing number of people employed by the sector - can be marked by a „delay effect” that could become more obvious anytime soon provided economic activity stimulating factors of liberalized market environment on postal and courier service market is preserved in Georgia. Furthermore, it should be also noted that as of the date of this research the business operators have to do their business amid uncertainties of the institutional environment and are facing the future with volatile expectations. That give us a ground to predict that an actual growth potential of indicators of economic activity is even higher than those shown on Figures 1÷3 [Figure 1 to 3 about here].

Conclusions

An economic impact analysis of legal barriers imposed by the Georgian Government on an evolving postal and courier service market points towards governmental attempts of an illegitimate meddling in free and fair competition that manifested in granting only a sole business-operator a preferential treatment and by setting up discriminatory legal and administrative barriers against other business-operators on the postal and courier service market.

The cases like these can seriously damage growth potential of the economic sector as the government is making decisions based not on a public interest but on a private interest. A preventive measure against anticompetitive governmental decisions on the market can be an efficient competition policy and an effective competition agency in order to exercise effective state supervision over a free, fair and competitive environment on the market, avert cases like this, ensuring market openness and transparency, fair treatment for all business-operators and that competition in the marketplace is not restricted in a way that is detrimental to society.

Based on economic impact analysis of imposed legal barriers on postal and courier service market and in order to promote an effective state supervision and free competition, the Georgian government shall follow the recommendations as follows:

- Promoting a free, fair and competitive business environment on postal and courier service market in order to prevent governmental agencies from establishing statutory monopoly (by setting up discriminatory legal and administrative barriers) and illegitimately restricting free competition;
- Avoiding re-regulation of postal and courier service market is crucial as well as protecting of natural market equilibrium; competitive environment and market openness;
- Empowering the Competition Agency is very important considering risks of restriction of free competition that necessitates competition agency's investigation/intervention.

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