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The Term of Undertaking in Georgian Competition Law

Through the Association Agreement with EU, Georgia has committed to creating comprehensive competition legislation, that, in turn, gave rise to the need to approximate Georgian national competition law to the European one. In the process of approximation thorough analysis of respective case law established at EU and its member states' level is of great significance. Sharing the achievements of European legal science plays an important role as well. Precisely this is the preceding article's principal objective, which serves to discuss the term of undertaking as one of the most substantial concepts of competition law. Moreover, the paper makes a distinction between institutional and functional approaches to the undertaking based on European experience. It focuses on the relative nature of the notion as well. Finally, the research examines one of the most significant theories acknowledged in the European competition law, known as the "Single Economic Entity Doctrine."

Keywords: *Competition, Competition Law, Undertaking, Single Economic Entity Doctrine.*

1. Introduction

The primary addressee of the prohibitive norms of the competition law is an undertaking. It constitutes the critical element of every type of competition infringements and is the central subject of this legal field. For the effective enforcement of competition law, it is essential to follow and use the universal definition of the term of undertaking concerning every legal instrument of competition law and to take into consideration main essence, legal nature or critical objectives of these instruments.

Competition law is a self-sufficient and autonomous field of law. With its own unique and independent principles and legal concepts, it has a precise scope of application. Definition of the concepts and institutions of competition law, including the concept of the undertaking, usually occurs without any reference to other fields of law.[1] In this regard, noteworthy is the fact that Georgian competition law has adopted a unique approach regarding the notion of the undertaking, insofar as it contains a legal definition of this term.

Unlike Georgian legislation, neither the primary nor the secondary sources of EU competition law do not include any legal definition of the undertaking. Due to this fact, the establishment and development of the concept of undertaking have become the duty of ECJ. Therefore, the case-law of ECJ has an essential scientific value in the process of identification of the critical elements and the unique characteristics of the notion in question.

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1 *Zimmer D.,* in Immenga/Metsmäcker GWB Kommentar, 3. Auflage, München 2001, § 1, Rn. 24.

Compared to the competition law of the EU or its member states, in Georgia, there is not established sufficient theoretical basis or gathered enough experience to determine true legal nature or exact characteristics of an undertaking. However, for the proper functioning of the Georgian competition rules, the legal definition of the term of the undertaking is of crucial importance. Henceforth, based on the achievements of European and German legal doctrine and case law preceding paper, provides with thorough discussions regarding the elements of the concept of the undertaking.

2. Institutional Concept of Undertaking

As noted above, the definition of this concept and the identification of its essential elements fell within the competence of the ECJ. Noteworthy is also the fact that before establishing a unified and final definition of undertaking in the case-law of ECJ, the concept has experienced significant changes and transformations over the years. Based on the interpretations of the ECJ, legal literature makes a distinction between institutional and functional approach regarding the concept of the undertaking.[2]

According to the institutional approach, legal form and organizational structure of an entity constitute a milestone of the concept of the undertaking.

The case law of ECJ barely applies the institutional approach, but still, in the first practice, there can be found some decisions where the Court relies on it. Over the sixties of the last century, the case-law of ECJ defines an undertaking as a single organization of personal, tangible and intangible elements, attached to an autonomous legal entity and pursuing a given long term economic aim.[3] Accordingly, the Court further notes that the creation of every new legal entity indicates the establishment of a separate undertaking.[4] In this case, the Court disregards a form and activity carried out by a particular entity. In determining whether an undertaking is present or not in this exceptional case, it is sufficient for the Court to state that it refers to the subject with particular legal form, organizational structure or purpose.

Over this period, ECJ was applying this approach due to several grounds, and it served particular objectives. E.g., such kind of definition of the undertaking was a convenient and straightforward way for the Court to prove that a parent and a subsidiary company constitute a single economic unit.[5]

However, this approach has lost its relevance over time.[6] It has failed to gain recognition and further development in the subsequent case law of ECJ. It could not respond to the challenges faced by competition law and policy since the institutional approach was significantly narrowing the scope of the undertaking, that, in turn, was limiting the area of application of competition law.

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2 *Füller T. J.,* in Kölner Kommentar zum Kartelrecht, Bd. 3. 2016, § 101. Rn. 11; *Zimmer D.* in Immenga/Metsmäcker GWB Kommentar, 3. Auflage, München 2001, § 1, Rn. 24.

3 ECLI:EU:C:1962:30, *Klöckner-Werke AG,* Joined cases 17/61 and 20/61.

4 Ibid.

5 *Füller T. J.,* in Kölner Kommentar zum Kartelrecht, Bd. 3. 2016, § 101. Rn. 11.

6 *Zimmer D.,* in Immenga/Metsmäcker GWB Kommentar, 3. Auflage, München 2001, § 1, Rn. 24.

3. The Functional Concept of Undertaking

In contrast to the institutional approach, the functional concept of undertaking extends the scope of the term of the undertaking. According to the letter approach, the determination of a particular entity as an undertaking is not dependent on the legal form or organizational structure of it. The landmark of the functional path is a practical activity, regardless of the particular legal type or organizational structure.

German case-law shares this concept as well and is reluctant to apply the institutional approach of the undertaking.[7] According to the German Federal Court, every entity that carries out an economic activity is to be regarded as an undertaking.[8] The Federal Court also notes that German competition legislation is based on the autonomous functional concept of an undertaking. An entity to be considered as an undertaking it is sufficient for this entity to be engaged in independent and active economic activity of any kind.[9]

Over the period, the case-law of ECJ also switched to the functional approach of an undertaking and its definition tightly linked to the engagement in economic activity. Similar to the German Federal Court, ECJ also defined an undertaking as an entity that carries out economic activity.[10] According to the established case-law[11] of ECJ and prevailing opinion,[12] precisely the engagement in an economic activity constitutes an essential precondition for an entity to be regarded as an undertaking.

However, this definition of an undertaking requires the exact determination of the content of an economic activity to ascertain precisely what kind of activity leads to the presence of an undertaking. According to the established case-law of ECJ, economic activity is any activity consisting in offering goods and services on a given market.[13] Furthermore, economic activity does not require the activity to be profit-oriented.[14] However, in the case of profit-oriented activity, an entity should be regarded as an undertaking. Furthermore, any kind of offering goods or services for payment on a given market always constitutes an economic activity.[15] However, ECJ states that if providing goods or services occurs without any kind of payment it is to be determined whether it is possible to offer particular goods or services for payment or whether other entities carry out the similar activity for payment.[16]

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7 *Zimmer D.,* in Immenga/Metsmäcker GWB Kommentar, 3. Auflage, München 2001, § 1, Rn. 30.

8 BGH NJW 1962 196.

9 BGH Urt. v. 05.05.1981, KZR 9/80, §. 5.

10 ECLI:EU:C:1984:271, *Hydrotherm,* Case 170/83, § 11; ECLI:EU:C:1991:161, *Klaus Höfner,* Case C-41/90, § 21.

11 ECLI:EU:C:1993:63, *Poucet,* Joined Cases C-159/91 und C-160/91 § 17; ECLI:EU:C:1994:7, *Sat Fluggesellschaft,* Case C-364/92 § 18; ECLI:EU:C:1997:603, *Job Centre,* Case C-55/96 § 21; ECLI:EU:C:2000:428, *Pavlov,* Joined Cases C-180/98 to C-184/98 § 74; ECLI:EU:C:2002:98, *Wouters,* Case C-309/99 § 47.

12 *Füller T. J.,* in Kölner Kommentar zum Kartelrecht, Bd. 3. 2016, § 101. Rn. 11 {cited, Säcker/Hermann, in: MünchKommKartR, Einl. Rn. 946; Weiß, S. 76.}.

13 ECLI:EU:C:2000:428, *Pavlov,* Joined Cases C-180/98 to C-184/98 § 75; ECLI:EU:C:1987:283, *Commission v Italy,* Case C-118/85 § 7; ECLI:EU:C:1998:303, *Commission v Italy,* Case C-35/96, § 36.

14 *Faul J., Nikpay A.*, the EU Law of Competition, 3rd ed., 2014. § 3.28.

15 ECLI:EU:C:2000:428, *Pavlov,* Joined Cases C-180/98 to C-184/98 § 76 ; ECLI:EU:C:1998:303, *Commission v Italy,* Case C-35/96, § 37; ECLI:EU:C:2002:98, *Wouters,* Case C-309/99.

16 *Füller T. J.,* in Kölner Kommentar zum Kartelrecht, Bd. 3. 2016, § 101. Rn. 14.

Noteworthy is also the fact that the legal definition of the undertaking offered by Georgian legislator is mostly based on the functional concept of the undertaking. However, unlike the European practice, under Georgian competition legislation, the mandatory precondition of an undertaking is engagement in entrepreneurial and not in economic activity, that significantly limits the scope of this term.

According to the definition given in Article 3 of the Georgian law on competition, an undertaking is a person who carries out entrepreneurial activities. However, the law does not contain any special instructions on what kind of activity should be considered as an entrepreneurial activity. Therefore, in this case, the concept of entrepreneurial activity is defined with reference to the Georgian law on entrepreneurs,[17] according to which the critical precondition of entrepreneurial activity is profit orientation.

In the case-law of the ECJ, the connection of the notion of undertaking with economic activity and the broad definition of economic activity serve to fulfil the objectives of competition law. Usually, the assessment of particular anticompetitive conducts starts with the identification of potential infringer of competition law. When the potential breach of competition legislation reveals in an anticompetitive agreement, abuse of dominant position or unfair competition, the initial stage of legal appraisal is to determine whether the entity of which conduct is under investigation constitutes an undertaking. Accordingly, the application of basic competition rules mostly depends on whether there is a possibility particular entity to be regarded as an undertaking. For the effective enforcement of competition law and policy, the application of competition law to any action influencing the competitive environment is of crucial importance. Consequently, if the vital objective of competition law is to respond to a wide range of anticompetitive practices, then the notion of an undertaking should also be interpreted as broadly as possible. Due to this fact, competition legislation shall provide with a broad definition of the concept of undertaking to encompass every entity that can make an adverse effect on the market structure and competitive environment.

However, a broad definition of an undertaking is not available when it is linked only to entrepreneurial activity. The necessity to carry out entrepreneurial activity significantly limits the scope of the concept of the undertaking, since it makes it mandatory to be engaged only in a profit-oriented activity. Such a kind of approach adopted by Georgian legislator leaves behind the competition law all activities that are not profit-oriented but may have some effect on the market and cause significant damage to a competitive environment. The clear evidence of this position is the case-law of ECJ, which states that engagement in entrepreneurial activities is not a mandatory element of the term of the undertaking.[18]

Thus, taking into account the critical objectives of competition law, the starting point for the notion of an undertaking should also be other market actions that may go beyond profit-oriented activities. According to the prevailing opinion delivered in the German legal literature, the need for a broad definition of the concept of an undertaking is derived from the necessity to maximize the

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17 *Zukakishvili K., Japaridze L. (eds.), Kobadze N., Zhvania N., Gvelesiani Z., Akolashvili M., Sergia N., Momtselidze S.,* Georgian Competition Law, Tbilisi, 2019, 180.

18 ECLI:EU:C:1995:392, *Fédération Française,* Case C-244/94.

protective effects of competition law.[19] For the comprehensive and effective enforcement of competition law, the main feature of undertaking should be the involvement in the competitive process, and its ability to influence a competitive environment on a particular market.[20] Such influence may be exerted not only with the profit-oriented activities but also with other ways of offering goods or services that may not be intended to make any profit.

Besides, the connection of the term of undertaking with the entrepreneurial activity leaves the free professions, whose actions are not considered as entrepreneurial activities under Article 1, section 3 of the Georgian Law on Entrepreneurs, beyond the scope of competition law. The exclusion of these professions from the competition rules is contrary to the case-law of ECJ, which states that the representatives of free occupations should be considered as undertakings. E.g., representatives of legal professions are regarded as an undertaking because they operate on the legal service market and offer respective services in return for remuneration.[21]

4. Relativity of the Concept of the Undertaking

The connection of the notion of the undertaking and economic activity, in turn, gives rise to a specific obstacle when it comes to an entity whose shares are owned by the state. According to ECJ, a particular entity, on the one hand, may exercise public authority, and it can not be perceived as an undertaking. However, on the other hand, it may engage in economic activity and be considered an undertaking.[22] Hence, the same entity may be an undertaking in one case and not in another. Precisely this is an indication of the relative and not absolute character of the notion of the undertaking.[23]

From the abovementioned interpretation of the Court,[24] it is clear that the concept of an undertaking is directly linked to the potential infringement action, which is being judged in a particular competition case. An entity is not considered as an undertaking when through the disputed action, it executes public authority. Such kind of situation takes place when there is an action that is typical for the exercise of a public body.[25]

The relative nature of the undertaking and its functional understanding is closely related to the activities carried out by a particular entity. However, its relativity and functional definition do not have a similar meaning, and they follow different goals. As introduced, according to the functional understanding, the main element of the concept of an undertaking is the engagement in an activity, which under case law of ECJ means economic, and under Georgian competition legislation - entrepreneurial activity. The relative nature of undertaking disregards the nature of the usual activity

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19 *Zimmer D.,* in Immenga/Metsmäcker GWB Kommentar, 3. Auflage, München 2001, § 1, Rn. 31 {ბოს: *Emmerich* § 2 1 a (S.17); *Möschel* Rdnr. 100; *Hootz* in GK Rndn. 12; *Bunte* in Langen/Bunte Rdnr. 8.}.

20 *Füller T. J.,* in Kölner Kommentar zum Kartelrecht, Bd. 3. 2016, § 101. Rn. 13.

21 Opinion of Advocate General Leger, delivered on 10 July 2001, ECLI:EU:C:2001:390, § 46.

22 ECLI:EU:C:1987:283, *Commission v Italy,* Case C-118/85 § 7.

23 *Jellis J.,* The concept of undertaking in EC competition law and its application to public bodies: Can you buy your way into article 82, Competition Law Journal, Vol.2, 2003, 118.

24 ECLI:EU:C:1987:283, *Commission v Italy,* Case C-118/85 § 7.

25 ECLI:EU:C:1994:7, *SAT Fluggesellschaft mbH v Eurocontrol,* Case C-364/92 § 30.

and relies on the essence of the particular disputed action. Accordingly, an entity may generally engage in economic/entrepreneurial activity. However, specific contested action may exceed its regular activity. This entity may not be considered as an undertaking and vice versa - the entity may typically not engage in economic /entrepreneurial activity. However, a disputed action may be conducted as such kind of activity that makes this entity an undertaking.

Such relative nature of an undertaking determines and ensures the flexibility of competition law and the additional possibility of its effective enforcement. Accordingly, the determination of the presence/absence of an undertaking in each particular case depends not on the entity's usual activities but the content of the specific disputed action. If a specific contested action is carried out within the exercising of public authority, then the economic activity is absent in this case, and the entity is no longer regarded as an undertaking. Moreover, if the disputed action refers to economic activity, the entity should be deemed as an undertaking and fall within the scope of the respective provisions of competition law. Thus, acknowledgement of the relative nature of the concept of undertaking serves to provide the broadest possible range of application for competition law and to cover all actions that may harm the competitive environment.

An additional function of the relative concept of undertaking in Georgian competition law lies in the fact that it enables to make a clear separation of the actions carried out within the public authority from the scope of application of the critical instruments of competition law, such as the prohibition of abusive practices, anticompetitive agreements and unfair competitive practices.

The Georgian Law on Competition entails special norms regarding the restricting of competition in the process of exercising public authority, which prohibits the state, autonomous republic or local self-government bodies to restrict certain types of anticompetitive actions. In particular, such actions fall within the scope of the Georgian law on competition in the cases envisaged by Article 10 and the provisions regarding the state aid regulation. In this regard, the problem arises when, for example, a legal entity under private law, in one case, acts to exercise the public authority delegated by the state, and in the other case, carries out entrepreneurial activities. According to the Law of Georgia on Entrepreneurs, this entity is an entrepreneur and therefore, it is an undertaking. However, in the context of an action that is carried out to exercise public authority, it cannot fall within the scope of the respective provision regarding abuse of a dominant position, anticompetitive agreements or unfair competition.

The rules provided by Georgian law on competition which regulates the state aid also serve to prevent the threat of competition restriction by the state authorities. In this case, the relevant state bodies appear on the market in the role of granting state aid and intervene in various ways in the process of the free market process. However, the same entity may, at the same time be an undertaking to the extent that it may engage in economic activity in conjunction with the exercise of public authority. Therefore, it is essential to create a clear dividing line between the granting authority of state aid and an undertaking. Fully separation of the undertaking and the entity exercising public authority is impossible by using the institutional understanding of the concept of the undertaking, since institutionally the same entity may simultaneously perform an economic activity and exercise public authority. According to the institutional understanding of an undertaking, if the main starting point for identifying a relevant addressee of competition law is the organizational arrangement and

legal form of a particular entity, then in the process of qualifying the specific disputed action, the content of this action will be neglected that threatens mobility and effective enforcement of competition law. Consequently, it is once again clear that the institutional understanding of the undertaking cannot meet the objectives and modern challenges of competition law.

The complete elimination of the problem of separation cannot be achieved by using only the functional concept of the undertaking since its central starting point is the general activity of the entity and not the content of a particular action. To make a clear distinction between an undertaking and a public authority, the main starting point must be the content of the disputed action of a particular case and consequent determination of the category of activity (economic activity or exercising of public authority) to which the disputed action belongs. Therefore, it is vital to acknowledge the relative nature of the concept of the undertaking, along with the functional definition of it.

Whereas the relativity of an undertaking requires in each particular case to focus solely on the content of the disputed action, it also ensures the correct qualification of that action with maximum accuracy. In particular, if the challenged operation is carried out within the framework of economic/entrepreneurial activity, then the subject implementing the action is automatically regarded as an undertaking. Therefore it will be assessed within the context of the norms prohibiting abuse of a dominant position, anticompetitive agreements or unfair competition. Moreover, if the disputed action is carried out within the public authority, then the entity implementing it will not be considered as undertaking and the activity will be assessed only under Article 10 of the Law on Competition or the rules regulating state aid.

5. Single Economic Entity Doctrine

Involvement in anticompetitive agreements constitutes one of the most common infringements of the competition law. In particular, Article 7 of the Georgian law on competition prohibits any agreement, decision or concerted practice between undertakings that have as their object or effect the prevention, restriction or distortion of competition within the relevant market. Accordingly, the primary precondition of this provision is the coordination of at least two undertakings.

However, the existence of two or more legally independent and separate entities may not be sufficient for the presence of two independent undertakings for the application of this provision in a particular case. In particular, for competition law, different actors of the relevant market may be considered as one entity, which precludes the possibility of anticompetitive coordination between them, since there is no agreement between two or more independent undertakings.

Besides, the consideration of several individuals as one economic entity also plays an essential role in determining the liability deriving from the competition law. According to the established case-law of ECJ, the unlawful conduct of a subsidiary may be attributed to the parent company if, despite the separate legal personality, the subsidiary cannot determine its market actions independently. It merely follows the instructions given by the parent company.[26]

[26] ECLI:EU:C:2009:536, *Akzo Nobel NV*, Case C-97/08 P. § 58; ECLI:EU:C:1972:70, *Chemical Industries,* Case 48-69, §§ 132/133; ECLI:EU:C:1972:73, *Geigy AG*, Case 52-69, § 44; ECLI:EU:C:1973:22, *Europemballage and Continental Can,* Case 6/72, § 15.

In European legal literature and case law, this approach is based on the theory known as the "single economic entity doctrine." The Court of Justice clarifies that several natural persons and legal entities may be considered as one undertaking based on this doctrine.[27] According to the single economic entity doctrine, legally distinct entities are not considered as independent undertakings if there is a certain degree of interdependence between them, which justifies the consideration of these entities as one undertaking. Sufficient degree of interdependence is determined by the extent of real autonomy in decision-making and the ability to decide on their economic policies.[28] Furthermore, the Competition Agency of Georgia clarifies that the mere existence of interdependence of two legal entities does not mean in itself that they have to be regarded as one economic entity. Despite a certain degree of dependence, an entity may enjoy autonomy to some extent that excludes the formation of a single economic unit.[29] Therefore, if a particular entity enjoys real independence in the decision-making process and a sufficient degree of autonomy, it constitutes a separate undertaking.

However, determining the degree of independence of any legal entity in a particular case may be related to specific problems. According to the case-law of ECJ, if one company owns 100 per cent of the shares in another company, then there is a presumption that the parent company has a decisive influence on the economic policy of the subsidiary. This means that the subsidiary does not have real autonomy in determining its economic policy.[30] Its competence is limited to merely following the instructions given by the parent company.[31] The Court also clarifies that in such a case, the actions of the subsidiary that violates competition law will be fully imputed to the parent company unless the latter proves with appropriate evidence that the subsidiary enjoys the ability to act independently in the market.[32] Therefore, in the case of a 100 per cent shareholding, it is presumed that the parent and subsidiaries form a single economic entity unless they substantiate the contrary. In such a case, all relevant circumstances related to economic, organizational, or legal ties should be taken into account. The mere fact that the parent company does/did not interfere in the decision-making process of the subsidiary is not sufficient.[33] At the same time, it is noteworthy that to rebut this presumption is in the interests of the relevant entities only if the violation of competition law by the subsidiary is stated. If the presumption is denied, the action will not be attributed to the parent company. The sanction will be imposed only on the subsidiary.

There is no such presumption if the parent company does not own the entire shares of the subsidiary.[34] According to the ECJ, in such a case, the competition authority must base on economic,

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27 ECLI:EU:C:2009:536, *Akzo Nobel NV*, Case C-97/08 P. § 55; ECLI:EU:C:2006:784, *Confederación Española,* Case C-217/05 § 40.

28 ECLI:EU:T:2005:322, *DaimlerChrysler AG*, Case T-325/01 § 85; ECLI:EU:T:2012:46, *DuPont Performance Elastomers*, Case T-76/08, § 58.

29 Decision of Competition Agency of Georgia №04/166, 06/07/2018, 17.

30 ECLI:EU:C:2009:536, *Akzo Nobel NV*, Case C-97/08 P. § 61;

31 ECLI:EU:C:1996:405, *Viho Europe BV*, Case C-73/95 P, § 16.

32 Ibid.

33 ECLI:EU:C:2012:479, *Alliance One International Inc*, Joined Cases C-628/10 P and C-14/11 P, § 45; ECLI:EU:C:2013:514, *Stichting Administratiekantoor Portielje,* Case C-440/11 P § 66;

34 *Faul J., Nikpay A.,* the EU Law of Competition, 3rd ed., 2014. § 3.59.

organizational, or legal ties to prove that the parent company exercised decisive influence over the subsidiary.[35] In this case, the competition authority bears the burden of proof.

An agreement between legal entities, which are regarded as a single economic unit, is usually considered a division of specific functions in a single corporate group. It does not constitute an anticompetitive agreement between independent competitors,[36] because the particular degree of interdependence existing between them already precludes the competition with each other. Therefore their agreement is not able to restrict competition since they are not competitor undertakings. Furthermore, the unlawful conduct of a subsidiary is attributed to the parent company if the letter exercises a proper degree of influence on the decision making of the subsidiary.

6. Conclusion

A review of the best German and European practices and western scientific trends discussed in this paper reveals that there are two distinct understandings of the concept of the undertaking.

According to the institutional understanding, an entity is considered as an undertaking based on its legal form or its organizational arrangement. However, over time, this approach has lost its relevance. It has failed to gain recognition in the case-law and legal doctrine, as it has significantly narrowed the concept of the undertaking and was unable to meet the challenges facing by competition law and policy.

Unlike institutional understanding, under the functional concept, the consideration of a particular entity as an undertaking does not depend on its legal form or organizational arrangement. The cornerstone of functional understanding is an entity's practical activities, regardless of its legal type or organizational arrangement. In European practice, an entity who carries out economic activities is considered as an undertaking in this sense. Furthermore, economic activity means delivering goods and services to the market in any form.

Besides, it was revealed that the legal definition of the concept of undertaking proposed by the Georgian legislator shares a functional approach. However, instead of economic activity, the idea of an undertaking is associated with entrepreneurial activity, which significantly narrows the notion and thus the competition legislation. To achieve large-scale and effective enforcement of competition law and policy, it is necessary to use economic activity in defining the concept of undertaking instead of entrepreneurial activity.

Moreover, the relative nature of the undertaking must be acknowledged. In each case, the existence/absence of undertaking must be determined based on the content of the disputed action of a particular situation.

Also, based on the practice of the Competition Agency of Georgia and the ECJ, the "Single economic entity doctrine" was analyzed, according to which companies with separate legal personalities are considered as one undertaking for competition law.

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35 ECLI:EU:T:2012:46, DuPont Performance Elastomers, Case T 76/08, § 61.

36 ECLI:EU:C:1974:114, *Centrafarm BV*, Case 15-74, § 41.

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19. ECLI:EU:C:1994:7, *SAT Fluggesellschaft,* Case C-364/92 §§ 18, 30.
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29. ECLI:EU:T:2012:46, *DuPont Performance Elastomers*, Case T 76/08, §§ 58, 61.
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31. ECLI:EU:C:2013:514, *Stichting Administratiekantoor Portielje*, Case C 440/11 P § 66.
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