



To: Mr. Kakhaber Kutchava
Chairman of the Parliament of Georgia

Mr. Davit Songulashvili
Chairman of the Parliamentary Committee for Sectoral Economics and Economic
Policy

Members of the Parliament of Georgia

This is an open letter to the Parliament of Georgia reflecting Magticom's public statements on the Georgian National Communications Commission's Annual Report for 2020 that is fraught with manifestly ill-founded and downright false information as well as on the acts of Mr. Kakha Bekhauri, the Chairman of the Georgian National Communications Commission.

The Communications Commission seems extremely opposed to nearly all the undertakings operating in the sector. The companies operating in the sector have been embroiled in endless legal disputes with the Communications Commission. Incompetency, lies, unjustified sanctions (illegal decisions) and selective enforcement have become a standard/style of operation espoused by the Communications Commission. The sector led by the Communications Commission is being destroyed, as the Commission has no understanding of the sector's importance, cybersecurity, or the principles of economics. Disregarding the increasing risks of cybersecurity may bring the country – whether its defence, healthcare, education, banking and financial sector, commerce, tourism or any other area – to the point of paralysis.

In 2017-2018, two major international investors (Telia Sonera and Metromedia) left the Georgian market. In general, the Commission's unpredictable decisions hamper investors' business and scare them away.

It is noteworthy that due to the Commission's wrong, incompetent and illegal approaches, our company has had to take an extremely careful look at the future in terms of introducing new technologies and making substantial capital investments in contrast with the recent past when

Magticom used to deploy 40 km optic-fiber cable daily to support the internetization of Georgian regions and provide accessibility to fixed broadband internet services.

The clueless decisions of the Commission were the reason why the Communications Commission found a negative reflection in the US State Department's Annual Report for 2020.

You are well aware of the Venice Commission's negative conclusions on the legislative amendments authored by the Communications Commission.

The Report by Freedom House gave a negative review of the Communications Commission's conduct.

The Commission often tends to misinterpret EU regulations and adjusts laws and regulations to its agenda that poses major problems to the sector. For instance, re-electing the chairman of the Commission to the office several times, adjusting the Competition Law to the Communications Commission for as long as Mr. Bekauri holds office, etc.

A logical question arises: what is the next adverse measure that the current Communications Commission may come up with to further destroy the sector?

We'd like to note that the Parliament has not yet reviewed the Georgian National Communications Commission's Annual Report for 2019. We hope the parliamentary hearings of the Communications Commission's Annual Reports for 2019 and 2020 are held in the nearest future.

We invite the members of the Parliament to rate the activity of the Georgian National Communications Commission either positive or negative and state **whether Mr. Chairman Kakha Bekauri of the Communications Commission is deserving confidence or not.**

Magticom's statement on the Georgian National Communications Commission's Annual Report for 2020 that is fraught with manifestly ill-founded and downright false information

The Communications Commission masquerading as the fighter against fake news has itself engaged in spreading fake news

Communications Commission's Annual Report for 2020 – genuine or made up?

The Communications Commission's Annual Report for 2020 (<https://www.comcom.ge/uploads/other/7/7775.pdf>) is deliberately designed to mislead the public, spread false information and discredit the companies.

The Commission's Report is fraught with striking examples of ill-founded assumptions and misstatement of facts. To illustrate, we'll cite just a few of them below:

Amendments made to the Law of Georgia on Electronic Communications

The Commission hails the amendments made to the Law of Georgia on Electronic Communications as success and a beneficial and positive event for the State despite the public knowledge of the Venice Commission's extremely negative opinion on the amendments (references – page 12 of the Commission's Report for 2020 and the Opinion of the Venice Commission - <https://www.venice.coe.int/webforms/documents/?opinion=1008&year=all>; <https://idfi.ge/public/upload/Analysis/Venice-and-GNCC.pdf>).

Besides, inefficiency of the recent legal amendments are corroborated by the fact that **since the Special Manager was appointed in Caucasus Online, even the 51% shareholding interest has been sold without the Commission's approval.**

Mandatory access regulation of Mobile Virtual Network Operator (MVNO)

The attempt to justify the regulation requiring the incumbent undertakings to provide mandatory MVNO access with absurd and ill-founded arguments, having regard to the fact that no Member-State in the European Union has introduced any regulation in such form, turns the Georgian National Communications Commission into a party siding with potential MVNOs and deprives it of the role of a neutral arbiter regulating the sector. In particular:

- Attempting to “back up” the need to provide MVNO **mandatory** access with ITU recommendation (page 15 of the Commission's Report for 2020), the Commission claims that if the operating margin is higher than 25%, this demonstrates the need to provide **mandatory** MVNO access. This is a lie, as the recommendation referred to by the Commission is not related to ITU. Rather, it is a document published by a natural person 20 years ago. In this regard, the Commission drew a detailed response by the international audit and consulting companies BDO LLC and Kalba International, Inc. (p. 11 - https://www.magticom.ge/files/BDO_Kalba_International-ka.pdf).
- The Commission claims (page 15 of the Commission's Report for 2020) that the operating margins (EBITDA) of mobile operators were higher than 40% but the companies had not reduced charges for their communications services. Even a greenhorn financial analyst is well aware that the operating margin and EBITDA are different terms. The existence of a high EBITDA alone does not mean that the company is making a profit. It is a fact

that two of the three incumbent undertakings with significant market power in the market have incurred net losses for several years (the supporting accounts are publicly accessible on the portal of Service for Accounting, Reporting and Auditing Supervision of Office of the Ministry of Finance of Georgia - www.reportal.ge).

- The Commission's positions on tariffs are mutually exclusive. The Commission's Annual Reports for 2019 and 2020 contradict each other. While the Commission's Annual Report for 2019 reads (p. 30 - <https://www.comcom.ge/uploads/other/5/5671.pdf>) that the retail market was competitive and no need for imposing a regulation had been identified, in its Annual Report for 2020 the Commission concludes (page 16), despite more affordable packages and lower prices having appeared in the market, that competition is limited and rates are high.
- According to page 15 of the Commission's Annual Report for 2020, the Communications Commission seems not to interfere with the tariff regulation, leaving the pricing aspect on commercial terms among the undertakings. However, this is yet another lie – the Commission does interfere with both access and tariff regulation by introducing a compulsory methodology to calculate prices (Retail-Minus Methodology), if the parties fail to agree.
- According to page 15 of the Commission's Annual Report for 2020, small and medium-size operators are claimed to have applied to the undertakings with significant market power for access to their networks and facilities as MVNOs but to no avail. This, too, is pure lie – there is not even a single occasion, on which the undertakings with significant market power denied MVNOs access and no complaint has been lodged with or heard by the Communications Commission in this regard. Moreover, not even a letter of application has been filed by anyone seeking access as an MVNO.
- According to page 15 of the Commission's Annual Report for 2020, "... summing up the current competition in the market, EY's Report finds that the improvement of the competition requires a proper regulation." In reality, though, the EY Report (on page 5) reads that "EY has not conducted an analysis/study on the need for MVNO regulation in Georgia, the relevant analysis has been prepared by GNCC."
- MVNO **Mandatory** access in Georgia has drawn negative reviews by leading audit companies out of economic as well as cybersecurity considerations (in particular, the reports issued by the G6 audit companies - Deloitte; KPMG; BDO; Grant Thornton; RSM; Nexia International that conducted comprehensive analyses of the impact that the introduction of the **binding** obligation to grant MVNOs access may have on the Georgian market <https://www.magticom.ge/ka/mvno-news>)

As it has been made public, none of the incumbent mobile network operators in Georgia opposes a mutually beneficial B2B relationship with MVNOs on a non-obligatory basis, free of interference on the part of the regulatory authority. Rather than being a forced one, such a relationship must be based on partnership, as has been practiced across EU Member-States. Two of the three mobile network operators in Georgia have incurred net losses! And the mobile communications services in Georgia are one of the cheapest across Europe even by the study that the Commission has conducted (p. 6 - <https://www.magticom.ge/files/price-analysis-of-mobile-and-fixed-communication-services.pdf>). A logical question arises: for what or for whom are MVNOs being brought in Georgia in a binding (forced) procedure?

Regulating the retail market for mobile communications services

According to page 21 of the Commission's Annual Report for 2020, "with a view to protecting consumer interests and maintain the affordability of tariffs, the Communications Commission adopted a critically important decision – Magticom, Silknet and Veon Georgia (with Beeline as a brand name) may no longer increase their rates for mobile services without the Communications Commission's approval." In reality, though, this is a decision that harmfully affects the sector that has no analogy in any of the EU Member-States. Retail rates are not regulated by the regulatory authority in any of the EU Member-States.

Miscellaneous

In general, it should be noted that the information provided in the Commission's Annual Report for 2020 has a structure typical for the so-called fake news: first, it gives a few correct facts (for instance, Magticom and Silknet hold substantial shares of the market; there are relatively low-price offers available in the market, etc.), then it develops discussions and arrives at conclusions in such a logic that in no way arises out of such facts given earlier but does suit the Commission. And this is not the first time that the Commission has done it so. As a matter of fact, pretending to fight fake news, the Commission resorts to fake news and attempts to establish such a practice.

The Commission must normally be comprised of five members. Currently, the Commission is comprised of four members. The authority of the member whose seat has so far been vacant ceased in October 2019. It is rather surprising that the requirement of the Law on Broadcasting to hold by competitive selection in order to fill the opening of a ceased member within 10 days from such cessation has so far been ignored. The same law provides for the necessity to fully staff the Commission – the Commission may by a four/fifth majority of all of its members vote dismiss the Chairman. Therefore, rhetorical question arises: is this why the law has been ignored and is this also why the Commission's Annual Report for 2020 is silent on the issue?

The Commission's Annual Report for 2020 makes it abundantly obvious that rather than being "the architect of the sector," as the Commission refers to itself, the Commission actually acts as a police authority hampering the development of the sector whose pressure and "bullying"

adversely affect the development of the companies as well as of the entire industry. We, the companies rather than devoting our thoughts and efforts aimed at developing the sector, have been reduced to accommodating unreasonable demands and whims of the Commission.”

Magticom’s statement on the acts of Mr. Kakha Bekauri, the Chairman of the Georgian National Communications Commission

- Since the amendment made to the Law of Georgia on Electronic Communications on 23 December 2017, (reference - <https://matsne.gov.ge/ka/document/view/3980112?publication=0>) the fee for the use of exhaustible resource **has been transferred to the account of the Communications Commission, not to the account of the State Budget**. The amendment was “justified” with the addition of the Commission’s function to promote the development of media literacy in the society. For the records, as a result of the amendment, the State Budget in 2018, 2019 and 2020 lost for the benefit of the Commission GEL 1 499 775, GEL 3 458 472 and GEL 3 120 111, respectively (the three year-total of **GEL 8 078 358**). It should also be mentioned that for no earthly reason the Commission has kept the detailed expenditure part of the above amount secret and non-transparent. IDFI, a non-governmental organization, has had to initiate judicial proceedings in an attempt to secure the disclosure of the information. (reference: <https://www.comcom.ge/uploads/other/5/5671.pdf>; <https://www.comcom.ge/uploads/other/7/7775.pdf>; https://idfi.ge/ge/tbilisi_city_court_recognized_media_academy_as_a_public_institution_and_obliged_to_provide_public_information)
- The Chairman of the Commission has hidden from the general public, the President, the Parliament and the Government of Georgia that by Commission Resolution №8 dated 25 December 2018 (that came into force in 2019), the fee for the use of the number resource allocated for mobile communications services had increased, without any argument or substantiation, by 150% to the effect that the annual fee for a single mobile number rose from 10 to 25 tetri. However, for some reason, neither did this fact find reflection in the Commission’s Report for either 2018 or 2019 (reference: <https://matsne.gov.ge/ka/document/view/4426587?publication=0>; <https://www.comcom.ge/uploads/other/3/3706.pdf>; <https://www.comcom.ge/uploads/other/5/5671.pdf>).
- By its Decision #455/22 dated 2 August 2018, the Communications Commission founded Media Academy as a non-entrepreneurial (non-commercial) legal entity to promote the development of media literacy in the society and achieve the relating objectives. According to the Charter of Media Academy (Article 5), the activity of the Academy is run and the Academy is represented by the Executive Director who is appointed to and removed from office **solely** by the Chairman of the Georgian National Communications Commission. The media literacy expenses in 2018, 2019 and 2020 ran as high as GEL 410 438, GEL 2 415 808 and GEL 1 979 053, respectively (the three year-total of **GEL 4 805 299**). However, no breakdown of these costs is made public or transparent (reference: <https://www.comcom.ge/ge/legal-acts/solutions/2018-455-22.page>; <https://www.comcom.ge/uploads/other/5/5671.pdf>; <https://www.comcom.ge/uploads/other/7/7775.pdf>).
- In light of the fact that the specific Media Academy budget and a detailed breakdown of its expenditure part have been kept under wraps, it should be mentioned that Mrs. Eka Beridze (the wife to the Chairman of the Commission) is involved in the specific activities of the above legal entity but as the expenditure part of the entity is for some reason non-public information, **the specific terms and**

conditions of cooperation between the above persons, including the compensation paid to the above person, are unknown. Besides, spending the Commission's money to promote and advertise her own husband with the slogan "Learn from the Best" seems to cause no discomfort whatsoever to the Chairman of the Communications Commission (reference: <https://www.comcom.ge/ge/news/gncc-news/iswavle-sauketesosgan-mediaakademiam-onlain-masterklasi-daiwyo.page>). He does not seem to think the following provisions of the specific law are any problem. In particular, this is what the law has to say:

Law of Georgia

On Conflict of Interest and Corruption in Public Institutions

Article 2, paragraph 1 – “For the purposes of this Law, the term 'official' includes the following persons: ...

(r) any member of the National Regulatory Commission of Georgia“;

Article 3, paragraph 3 - “Conflict of interest in a public institution' is the conflict of property or other private interests of a public servant with the interests of a public institution”.

Article 4 – “For the purposes of this Law:

(a) “family member' is a person's spouse, minor child, stepchild, or a person permanently residing with him/her”;

Article 10, paragraph 1 - “A public servant may not, based on his/her personal interests: ...

(d) enter into a property transaction with his/her family member or close relative as a public servant.

2. Any transaction concluded in violation of paragraph 1 of this article shall be void”.

Article 13

Paragraph 3 – “A public servant may not receive income from an organization that is under his/her official supervision”.

Paragraph 16 – “Unless otherwise provided for by the Constitution of Georgia and the organic law, an official shall be dismissed if:

(a) he/she or a member of his/her family violates the incompatibility provisions under this Law“;

Article 13⁴

„1. A public servant may not offer or receive any benefit related to the position that he/she holds in state service and/or public service, except as provided for by the legislation of Georgia.

2. A public servant shall:

(a) pay attention to any existing or possible conflict of interest;

(b) take measures to prevent any conflict of interest“;

- According to a study conducted by IDFI (NGO), during the pandemics in 2020, the Chairman of the Communications Commission earned a total of GEL 33 000 in bonuses. We do not know how the Chairman of the Communications Commission substantiated the necessity (reason) for his bonus pays but it should be mentioned that according to the tax return for 2020, Mr. Kakha Bekauri earned the spendable amount of GEL 188 585,36 as the Chairman of the Communications Commission and the spendable amount of GEL 4 299 570 from business (reference - Asset declarations filed by public officials: <https://declaration.gov.ge/Home/DownloadPdf/132523>; reference - NGO IDFI [https://idfi.ge/ge/bonuses and salary supplements issued in 2020](https://idfi.ge/ge/bonuses%20and%20salary%20supplements%20issued%20in%202020))
- It should also be mentioned that Mr. Kakha Bekauri has failed to provide a full disclosure of his assets in the official's asset declaration, consequently engaging penalties from the relevant public authority – Public Service Bureau (reference: <https://www.mediachecker.ge/ka/mediagaremo/article/79060-deklaraciis-arastsorad-shevsebisthvis-vasil-maghlafidze-gaafthkhiles-kakha-beqauri-ki-daajarimes>)

Let society, non-governmental organizations and other competent authorities draw proper conclusions on the facts provided above.