

CHAPTER 379

COMPETITION ACT

To regulate competition, enable the application of Council Regulation (EC) 1/2003 and provide for fair trading in Malta. Amended by: III. 2004.125.

1st February, 1995

ACT XXXI of 1994, as amended by Acts XXVIII of 2000, IV of 2003 and III of 2004; and Legal Notice 425 of 2007.

1. The short title of this Act is the Competition Act.

Short title.

2. In this Act unless the context otherwise requires -

Interpretation.

"association of undertakings" means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interest of its members or of persons represented by its members;

Amended by: XXVIII. 2000.2; III. 2004.126.

"chairman" means the chairman of the Commission;

"Commission" means the Commission for Fair Trading established under article 4;

"Director" means the public officer heading the Office for Fair Competition established under article 3;

"dominant position" means a position of economic strength held by one or more undertakings which enables it or them to prevent effective competition being maintained on the relevant market by affording it or them the power to behave, to an appreciable extent, independently of its or their competitors, suppliers or customers;

"EC Treaty" means the Treaty establishing the European Community;

"European Commission" means the Commission of the European Community;

"group of undertakings" includes:

- (a) the undertaking concerned;
- (b) those undertakings in which the undertaking concerned, directly or indirectly:
 - owns more than half the capital or business assets; or
 - has the power to exercise more than half the voting rights; or
 - has the power to appoint more than half the members of the board of directors or other body or bodies legally representing the undertakings; or
 - has the right to manage the undertakings' affairs;
- (c) those undertakings which have in the undertaking concerned the rights or powers listed in paragraph (b);

- (d) those undertakings in which an undertaking as referred to in paragraph (c) has the rights or powers listed in paragraph (b);
- (e) those undertakings in which two or more undertakings as referred to in paragraphs (a) to (d) jointly have the rights or powers listed in paragraph (b);

"Member States" means all Member States of the European Union;

"Minister" means the Minister responsible for commerce;

"National Competition Authority" means a national competition authority as designated in terms of Article 35(1) of Council Regulation (EC) 1/2003;

"office" means the Office for Fair Competition established by article 3;

"product" includes goods and the supply of services;

"relevant market" means the market for the product whether within Malta or limited to any particular area or locality within Malta, or outside Malta, and whether or not restricted to a particular period of time or season of the year;

"restrictive practice" means an agreement between undertakings, a decision by an association of undertakings or a concerted practice prohibited under article 5 of this Act or Article 81 of the EC Treaty and, or an abuse by one or more undertakings of a dominant position prohibited under article 9 of this Act or Article 82 of the EC Treaty;

"turnover" means the total turnover of an undertaking realised during the preceding financial year on the affected market;

"undertaking" means any person whether an individual, a body corporate or unincorporate or any other entity, pursuing an economic activity, and includes a group of undertakings.

Establishment of
Office for Fair
Competition.
Amended by:
XXVIII. 2000.3;
III. 2004.127.

3. (1) There shall be an Office for Fair Competition, which shall be a government department having the following functions, that is to say:

- (a) to advise undertakings, associations of undertakings and the public in relation to matters concerned with fair trading practices and procedures under this Act;
- (b) to advise and make proposals and recommendations to the Minister in relation to any matter concerning the exercise of his functions under this Act;
- (c) to carry out all the functions and duties assigned to it under this Act related to the investigation, determination and suppression of restrictive practices; and
- (d) generally to exercise the powers conferred upon it under this Act, and as may be assigned to it by the Minister, within the context of this Act.

(2) The Office shall be under the control of a Director. In

carrying out the functions of the Office, the Director may delegate any of his powers under this Act to any public officer employed with or attached to his department.

4. (1) There shall be a Commission to be known as the Commission for Fair Trading, and which shall be composed of a chairman and two other members appointed by the President on the advice of the Prime Minister.

Establishment of
Commission.
Amended by:
XXVIII. 2000.4;
III. 2004.128.

(2) The Commission shall have the functions assigned to it by this Act and as may be assigned to it under any other law.

(3) (a) The chairman shall be a magistrate and the two other members shall be an economist and a certified public accountant;

(b) More than one magistrate, one economist and one certified public accountant may be appointed to sit on the Commission, but only one magistrate, one economist and one certified public accountant shall sit in any one case.

(4) (a) The members of the Commission, other than the chairman, hereinafter in this article referred to as "the lay members", shall be appointed for a period of three years and shall be eligible for reappointment.

(b) The lay members of the Commission may resign their office by letter addressed to the President but may not be removed except by the President acting on the recommendation of the Commission for the Administration of Justice.

(c) Notice of all appointments to the Commission and of all other changes in its membership shall be published in the Gazette.

(d) The lay members of the Commission shall receive such remuneration for their services as may be prescribed: provided that such remuneration may not be altered during the tenure of their appointment.

(e) A person shall not be qualified to be appointed or remain a lay member of the Commission if -

(i) he is an undischarged bankrupt; or

(ii) he has been sentenced to imprisonment for six months or more by any court; or

(iii) he has been found guilty for any offence against this Act; or

(iv) if he is a Member of the House of Representatives.

(f) Any member of the Commission shall before the commencement of any case declare any interest he may have in the proceedings.

Cap.12.

(5) The Minister responsible for justice shall appoint a public officer to be secretary to the Commission. The secretary shall *mutatis mutandis* have the same powers and duties of the Registrar of Courts, and shall take instructions from the chairman in all circumstances that the said registrar in accordance with the Code of Organization and Civil Procedure is to take instructions from a magistrate presiding a particular court.

(6) (a) The Commission shall have the powers and shall follow the procedures laid out in the Schedule to this Act or in any other law.

(b) The Commission may with the approval of the Minister make rules not inconsistent with this Act or the provisions of the Schedule, prescribing the procedures and the forms to be followed and used before it.

(c) In the absence of provisions or rules as aforesaid the Commission shall regulate its own procedures.

Prohibited
agreements and
practices.
Amended by:
XXVIII. 2000.5;
III. 2004.129.

5. (1) Subject to the provisions of this Act, the following is prohibited, that is to say any agreement between undertakings, any decision by an association of undertakings and any concerted practice between undertakings having the object or effect of preventing, restricting or distorting competition within Malta or any part of Malta and in particular, but without prejudice to the generality of this subarticle, any agreement, decision or practice which:

(a) directly or indirectly fixes the purchase or selling price or other trading conditions; or

(b) limits or controls production, markets, technical development or investment; or

(c) shares markets or sources of supply; or

(d) imposes the application of dissimilar conditions to equivalent transactions with other parties outside such agreement, thereby placing them at a competitive disadvantage; or

(e) makes the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Agreements or decisions prohibited in accordance with subarticle (1) shall be *ipso jure* null and unenforceable.

(3) The provisions of subarticle (1) shall not apply in the case of -

(a) any agreement between undertakings; or

(b) any decision by an association of undertakings; or

(c) any concerted practice,

which contributes towards the objective of improving production or

distribution of goods or services or promoting technical or economic progress and which allows consumers a fair share of the resultant benefit and which does not:

- (i) impose on undertakings concerned any restriction which is not indispensable to the attainment of the said objective; or
- (ii) give the undertakings concerned the possibility of eliminating or significantly reducing competition in respect of a substantial part of the products to which the agreement, decision or concerted practice refers.

(4) The undertaking or association of undertakings claiming the benefit of subarticle (3) shall bear the burden of proving that the conditions of that subarticle are fulfilled.

(5) Article 81 of the EC Treaty shall also apply where any agreements between undertakings, any decision by an association of undertakings or any concerted practice may appreciably affect trade between Malta and any one or more Member States.

(6) The application of subarticles (1), (2) and (3) shall not be deemed to include the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States but which do not restrict competition within the meaning of Article 81(1) of the EC Treaty or which fulfil the conditions of Article 81(3) of the EC Treaty, or which are covered by a Regulation for the application of Article 81(3) of the EC Treaty.

6. (1) Agreements, decisions or concerted practices between undertakings shall not be subject to the prohibition in article 5(1) if the impact of the agreement, decision or practice on the relevant market is minimal.

Agreements, etc., where impact is minimal.
Substituted by: XXVIII. 2000.6.
Amended by: III. 2004.130.

(2) In determining whether such impact is or is not minimal, consideration shall be given to all relevant circumstances including the aggregate share of all the undertakings concerned of the relevant market.

(3) The foregoing provisions of this article shall not apply where in a relevant market competition is restricted by the cumulative effect of parallel networks of similar agreements established by several undertakings.

7. *Repealed by Act III. 2004.131.*

Certain agreements, etc., may be declared exempted.
Amended by: XXVIII. 2000.7.

8. (1) The Minister may, after consultation with the Director, by regulations prescribe that there shall be exempted from the provisions of article 5(1) such categories of agreements, decisions and concerted practices as may be specified in the regulations.

General exemptions.
Substituted by: XXVIII. 2000.8.
Amended by: III. 2004.132.

(2) The regulations referred to in subarticle (1) shall only be made where the agreement, decisions or concerted practice satisfy

the requirements mentioned in article 5(3).

(3) Without prejudice to the provisions of subarticle (2) the Minister may in such regulations make an exemption subject to such conditions and limitations as he may deem appropriate.

Abuse of dominant position.
Amended by:
XXVIII. 2000.9;
III. 2004.133.

9. (1) Any abuse by one or more undertakings of a dominant position within Malta or any part of Malta is prohibited.

(2) Without prejudice to the generality of the provisions of subarticle (1), one or more undertakings shall be deemed to abuse of a dominant position, where it or they -

- (a) directly or indirectly impose an excessive or unfair purchase or selling price or other unfair trading conditions;
- (b) charge prices which are below the average variable cost price of a product in order to drive rival competitors out of the market;
- (c) limit production, markets or technical development to the prejudice of consumers;
- (d) refuse to supply goods or services indiscriminately in order to eliminate a trading party from the relevant market to the prejudice of consumers;
- (e) apply dissimilar conditions, including price discrimination to equivalent transactions with different trading parties, thereby placing any or some of the trading parties at a competitive disadvantage;
- (f) make the conclusion of contracts subject to the acceptance by the other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) For the purpose of determining whether one or more undertakings are in a dominant position, an undertaking which alone or in conjunction with others has a share of at least forty per cent of the relevant market shall, in the absence of proof to the contrary, be deemed to be in a dominant position:

Provided that one or more undertakings which alone or in conjunction with others have a share below forty per cent of the relevant market may, notwithstanding the above, be determined to be in a dominant position.

(4) For the purpose of determining whether the purchase or selling price is excessive or unfair, all relevant factors shall be considered and in particular:

- (a) the price charged for the product (in absolute terms);
- (b) the percentage increase or increases in the price over the long and short term;
- (c) the relationship between the price and the cost of the product;
- (d) the period of time for which the price has been

charged;

- (e) the economic value of the product;
- (f) the importance of the product to consumers;
- (g) the economic or other risks associated with bringing the product to the market;
- (h) the investment of capital and other resources necessary to bring the product to the market;
- (i) the expected, probable or possible changes in the market for the product; and
- (j) the price charged for the product by other undertakings in Malta and by the same or other undertakings in other analogous markets.

(5) Article 82 of the EC Treaty shall also apply where any abuse by an undertaking may affect trade between Malta and any one or more Member States.

10. *Repealed by Act III. 2004.134.*

Negative clearance.
Substituted by: XXVIII. 2000.10.

11. *Repealed by Act XXVIII.2000.11.*

Price orders.

12. (1) It shall be the duty of the Director to ensure that the provisions of this Act are observed by all, and to gather information that may be necessary for him or the Commission to carry out their functions; and for such purpose he shall have power to carry out investigations of his own motion or at the request of the Minister or upon a reasonable allegation in writing of a breach of the provisions of this Act, by a complainant or at the request of any designated national competition authority of any other Member State or the European Commission.

Investigations.
Amended by: XXVIII. 2000.12; III. 2004.135.

(2) During the course of any investigation carried out by the Office in accordance with subarticle (1), the Director may request any person to furnish him with any information or document in his possession which the Director has reason to believe is relevant to the matter under investigation, within such time as in the circumstances of the investigation the Director may consider reasonable.

(3) Nothing in subarticle (2) may be construed as authorising the Director to order the production of any document or the disclosure of any information which may be subject to the duty of professional secrecy.

(4) In the course of any such investigation the Director may receive written or verbal statements from witnesses as well as make copies of any document produced to him, and the record of such statements and such copies duly attested by the Director shall be producible as evidence before the Commission.

(5) The Director, duly authorised by a warrant issued by the chairman of the Commission, may, for the purpose of any investigation under this article enter into and search any premises

and any other place, or search any means of transport where he has reason to believe that information relevant to the investigation may be found, and in the course of any such search may seize any object or document, or order the non-removal of any object from any such premises, and in connection with any such order may close and seal any or all parts of any premises and any other place, or means of transport, or put any object under seal.

(6) In the course of any search as is referred to in subarticle (5) the Director may request the assistance of the Police; however, in the case of a search which is to be carried out in a residential premises, the Director shall always be accompanied by a Police officer not below the rank of inspector.

(7) Any order given by the Director in accordance with subarticle (5) shall remain in force until it is cancelled by the Director or by the Commission.

(8) No search may be commenced on any premises after 7 o'clock in the evening and before 7 o'clock on the next following morning, unless there is reason to believe that delay could cause the loss of necessary information and the search is expressly authorised to take place between the said times in the relevant warrant.

Cap. 9.

(9) Nothing in this article shall be deemed to detract from the powers of the Police under the Criminal Code or under any other law.

(10) Any information disclosed to the Director or any document produced to him during an investigation shall be secret and confidential and may only be disclosed before the Commission in any matter before it, or before a competent court in relation to the prosecution of any offence against this Act.

Director's findings
of an infringement.
Added by:
XXVIII. 2000.13.
Substituted by:
III. 2004.136.

12A. (1) Where, upon the conclusion of an investigation, it results to the Director that the agreement, decision, concerted practice or abusive conduct investigated is in breach of the provisions of article 5(1) and, or article 9(1), he shall issue a decision finding an infringement, giving his reasons therefor.

(2) Where it results to the Director that a serious infringement of article 5(1) and, or of article 9(1) has taken place due to the gravity and duration of the agreement, decision, concerted practice or abusive conduct which have been investigated, the Director shall make a report to the Commission of the conclusions arrived at by him in the said investigations, giving his reasons therefor and making reference to the evidence in support thereof, which evidence shall at the request of the Commission be produced before it, following which the Commission shall issue a decision thereon.

(3) Where it results to the Director that an infringement of Article 81 and, or Article 82 of the EC Treaty has occurred, subarticle (2) shall *mutatis mutandis* apply.

13. (1) On issuing a decision finding an infringement under article 12A(1), the Director shall cause a copy of the decision to be delivered on the undertaking or association of undertakings concerned by registered post or such other documented delivery as the Director may deem fit, and he may together with such decision issue a cease and desist order whereby he orders it or them, as the case may be, to cease and desist immediately from participating in such agreement, decision, practice or conduct, and, or a compliance order setting behavioural or structural remedies addressed to it or them, as the case may be, for the purpose of bringing the infringement to an immediate and effective end.

Cease and desist order and compliance order.
Amended by: XXVIII. 2000.14.
Substituted by: III. 2004.136.

(2) The power to issue a cease and desist order or a compliance order in cases of infringements as defined in article 12A(2) and (3) shall rest solely with the Commission.

(3) Any behavioural or structural remedies set out in a compliance order shall be proportionate to the infringement committed and necessary to bring the infringement effectively to an end.

(4) Structural remedies set out in a compliance order may be imposed only where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy.

13A. (1) The undertaking or association of undertakings concerned may, within fifteen days from the notification of the decision issued by the Director, request him to submit the same for review by the Commission and the Director shall forthwith comply with such request.

Review by Commission.
Added by: III. 2004.136.

(2) The undertaking or association of undertakings concerned may within fifteen days from the notification of the cease and desist order or the compliance order issued by the Director, request him to submit the same for review by the Commission, and the Director shall forthwith comply with such request, provided that such review shall not have the effect of suspending the cease and desist order or the compliance order.

14. (1) (a) Where the Director receives a complaint in writing as is referred to in article 12(1), he shall in the first place examine whether such complaint is admissible or otherwise, and where he is of the opinion that the complaint is *prima facie* inadmissible, he shall not carry out or proceed with the relative investigation.

Admissibility of complaints.
Amended by: XXVIII. 2000.15;
III. 2004.137.

(b) Where the complainant does not agree with the decision of the Director that the complaint is *prima facie* inadmissible or the decision of the Director after an investigation that the complaint is not justified, the provisions of article 13A(1) shall *mutatis mutandis* apply.

(2) Where the Commission does not agree that the complaint is

inadmissible it shall inform the Director accordingly, and the Director shall thereupon commence or resume the investigations.

Interim measures.
Amended by:
XXVIII. 2000.16.

15. (1) The Commission may, at the request of the Director or of an undertaking or of a complainant, through the Director, take interim measures intended to suspend any restrictive practice under investigation if it is urgently necessary to avoid a situation likely to cause serious, immediate and irreparable prejudice to the interests of any undertaking, or to harm the general economic interest.

(2) Where the request is made by the Director such request shall be accompanied by a reasoned report stating the measures he deems necessary in order to suspend the practices under investigation.

(3) Where the request is made by a complainant the Commission shall, unless the Director has already done so when he refers the complaint, transmit the request to take interim measures to the Director who shall draw up a reasoned report stating the measures which he deems necessary in order to suspend the practices under investigation.

(4) Where the Director deems that the adoption of interim measures is required, he shall submit the report to the Commission within fifteen days and shall serve a copy of the report by registered post to the undertaking or association of undertakings under investigation which may make written submissions to the Commission on the report within fifteen days of its receipt: provided that the said periods may be abridged by the Commission as it deems fit in the circumstances.

(5) The Commission shall, within ten days from the last date on which the submissions of the undertaking or association concerned are due to be received, by reasoned decision order any interim measure it may deem appropriate in the circumstances.

(6) The decision shall be notified by the secretary to the Commission to the Director and to those undertakings or associations whose activity is being investigated.

(7) An order given under this article shall have immediate effect and shall remain in force for a period of three months unless it is previously revoked by the Commission or unless the matter under investigation has been determined by the Commission before the said period of three months. Nothing in this subarticle shall preclude the Commission from issuing the same order for a further period or periods of three months:

Provided that such order may in no case extend beyond a maximum period of one year.

Interim orders.
Added by:
XXVIII. 2000.17.

15A. *Repealed by Act III. 2004.138.*

Director to abide
by decisions of
Commission.
Added by:
XXVIII. 2000.17.

15B. *Repealed by Act III. 2004.138.*

- 16.** Any person who acts in breach of articles 5 and, or 9 of this Act, and, or Articles 81 and, or 82 of the EC Treaty, shall be guilty of an offence under this Act.
- Offences.
Amended by:
XXVIII. 2000.18.
Substituted by:
III. 2004.139.
- 17.** Any person who acts contrary to a cease and desist order or a compliance order issued by the Director or the Commission in accordance with article 13 shall, without prejudice to any other liability under this Act or any other law, be guilty of an offence against this article.
- Disobedience of a cease and desist order and a compliance order.
Substituted by:
XXVIII. 2000.19.
Amended by:
III. 2004.140.
- 18.** Any person who makes any act contrary to an interim measure issued by the Commission in accordance with article 15, after such measure has been published, shall be guilty of an offence against this article.
- Offences against article 15.
Amended by:
III. 2004.141.
- 19.** Any decision or order of the Commission or the Director shall be deemed to have been published where it has been published by notice in the Gazette, or where in relation to any particular individual it has been notified to him either by judicial act or by delivery of a copy thereof by the Director:
- Publication of decisions, etc., of Commission.
Amended by:
XXVIII. 2000.20;
III. 2004.142.
- Provided that where the undertaking or the person against whom the complaint has been made had been given notice of the proceedings before the Commission, in relation to that undertaking or person the decision or order of the Commission in respect of that complaint shall be deemed to have been published on the date on which it was pronounced.
- 20.** Repealed by Act III.2004.143.
- Offences against interim orders.
Amended by:
XXVIII. 2000.21.
- 21.** (1) Any person guilty of an offence against articles 16 or 18, shall, on conviction, be liable to a fine (*multa*) from one to ten *per centum* of the turnover of the undertaking in the economic interests of whom the person so guilty was acting, so however the fine shall not be less than six thousand and nine hundred and eighty-eight euro and twelve cents (6,988.12):
- Penalty for offences under articles 16, 17, 18 and 20.
Amended by:
XXVIII. 2000.22;
III. 2004.144;
L.N. 425 of 2007.
- Provided that where the person so found guilty is the Director, manager, secretary or other similar officer of the aforesaid undertaking the said person shall, for the purposes of this article, be deemed to be vested with the legal representation of the same undertaking which accordingly shall be liable *in solidum* with the person found guilty for the payment of the said fine.
- (2) The fine referred to in subarticle (1) shall be recoverable as a civil debt in favour of the Government by the Director, and the undertaking in the economic interests of whom the person found guilty was acting shall be liable *in solidum* with the person found guilty for the payment of the said fine.
- (3) The provisions of the Probation Act and of article 21 of the Criminal Code shall not apply with respect to offences referred to in subarticle (1).
- Cap. 446.
Cap. 9.

Offences against article 10(5).
Amended by:
XXVIII. 2000.24.

22. *Repealed by Act III.2004.145.*

Penalty for offences against article 17.
Added by:
XXVIII. 2000.23.
Amended by:
L.N. 425 of 2007.

22A. (1) Any person guilty of an offence against article 17 shall on conviction be liable to pay a fine (*multa*) of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) for each day during which the offence persists.

(2) The provisions of article 21(2) and (3) shall also apply.

Offences in connection with investigations, etc.
Amended by:
XXVIII. 2000.25;
L.N. 425 of 2007.

23. Any person who in the course of any investigation under this Act or in the course of any proceedings before the Commission knowingly or recklessly -

- (a) gives any false, inaccurate or misleading information; or
- (b) supplies incomplete information; or
- (c) being an owner, Director, officer, administrator or manager of an undertaking fails, without reasonable cause, to supply information requested within the time given; or
- (d) prevents or hinders any investigation; or
- (e) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in any material particular,

shall be guilty of an offence against this article and shall, on conviction, be liable to a fine (*multa*) of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) or to imprisonment for a term from three to six months, or to both such fine and imprisonment.

Director may assist prosecution.

24. (1) In criminal proceedings instituted by the Police before the Court of Magistrates for an offence against the provisions of this Act, the Director may assist the Police in the conduct of the prosecution and in the production of the evidence.

(2) The Director or any officer deputed by him for the purposes of subarticle (1) may nevertheless be produced as a witness but should his evidence be required as part of the case for the prosecution, his evidence shall be heard before that of any other witness for the prosecution unless the necessity of his evidence arises subsequently.

Right of appeal.
Cap. 9.

25. Notwithstanding the provisions of the Criminal Code, the Attorney General shall have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings arising out of the provisions of this Act.

Prescription.
Cap. 9.

26. Notwithstanding the provisions of the Criminal Code or of

any other law, criminal action for offences under this Act is prescribed by the lapse of five years.

26A. Notwithstanding the foregoing provisions of this Act, in the case of an offence against article 17, where the Director after making the investigation that led to the cease and desist order in accordance with article 12A, had not made a report to the Commission in accordance with article 13, the Director may impose a penalty of not less than two hundred and thirty-two euro and ninety-four cents (232.94) and not more than four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) as an alternative to proceedings in Court.

Compromise penalties.
Added by:
XXVIII. 2000.26.
Amended by:
L.N. 425 of 2007.

26B. Notwithstanding any other provision of this Act, the Director may, only as far as the provisions of this Act are concerned, enter into an agreement in writing with the offender whereby the said offender pays or gives security to the satisfaction of the Director for the payment of a sum being not less than fifty *per centum* of the minimum penalty applicable for the offence and not more than seventy *per centum* of the maximum penalty applicable for the offence as the Director may with the concurrence of the Commission establish and upon the signing of the agreement by the Director and the offender all criminal liability of the offender under this Act with regard to the offence in relation to which the agreement has been entered shall be extinguished:

Extinction of criminal liability in certain cases.
Added by:
XXVIII. 2000.26.

Provided that where the penalty for the offence is a sum fixed with no minimum or maximum then the sum payable under such agreement shall be fixed as aforesaid in an amount being not less than twenty and not more than seventy *per centum* of such penalty.

27. Where before any court of civil jurisdiction it is alleged that any agreement or decision is null and unenforceable in accordance with article 5 or, where it is alleged that there is an abuse of a dominant position, in accordance with article 9, that court shall, unless the allegation is admitted by all the parties to the case, stay the proceedings and refer the matter to the Commission which shall have the right to determine the question and the court shall decide the matter in accordance with the decision of the Commission.

Certain matters to be referred to Commission.
Amended by:
III. 2004.146.

28. It shall not be lawful to issue any precautionary warrant referred to in the Code of Organization and Civil Procedure against the Director or the Commission in respect of the exercise of their functions under this Act.

It shall be lawful to issue any precautionary warrant.
Substituted by:
III. 2004.147.
Cap. 12.

29. Notwithstanding anything contained in this Act the Director may, within the context of a reciprocity agreement in matters of mutual assistance relating to competition practices, pass documents and disclose information in his possession to authorities outside Malta having responsibility in competition matters and who are restricted in divulging such information in an analogous manner and purpose to that of the Director under this Act.

Reciprocity agreements.

Applicability of Act to government departments.
Substituted by: XXVIII. 2000.27.
Amended by: IV. 2003.24.

30. (1) Subject to the provisions of subarticle (2), the provisions of this Act shall also apply to any Government departments or to any body corporate established by law or to any company or other partnership in which the Government, directly or indirectly, holds a controlling interest or to which the Government has granted special or exclusive rights in any field.

(2) Undertakings entrusted with the operation of services of a general economic interest or having the character of a revenue producing monopoly shall be subject to the provisions of this Act insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

(3) The Minister may by order in the Gazette declare a specific service entrusted to a particular undertaking to be a service in the general economic interest.

Action in good faith.
Amended by: XXVIII. 2000.28.

31. No action shall lie against any member of the Commission, the Director, or any of his officers or contractors for any act or omission in connection with this Act done or omitted by him unless such act or omission were done in bad faith.

Power to make regulations.
Substituted by: XXVIII. 2000.29.

32. The Minister may from time to time make regulations for the better carrying out of the provisions of this Act and may in particular by such regulations prescribe rules for the control of concentrations including concentrative joint ventures which may prevent, restrict or distort competition within the relevant market.

Power to make regulations.
Added by: XXVIII. 2000.30.
Amended by: III. 2004.148.

33. (1) The Minister may by regulations:

- (a) prescribe the fees payable to the Director in connection with any request made to him under this Act and in connection with procedures before the Commission;
- (b) exempting any agreement, decision or practice in connection with agriculture and fisheries from the provisions of article 5 under such conditions as he may prescribe.

Cap. 460.

(2) Without prejudice to the provisions of subarticle (1), and the provisions of the European Union Act, the Minister may make regulations enabling the application of Council Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty and may in particular provide for:

- (a) the power to the Office for Fair Competition to conduct joint investigations, to co-operate, and to exchange information with other national competition authorities;
- (b) the procedure for co-operation between the Commission, the European Commission and the national courts and competition authorities;
- (c) the power to waive or reduce the applicable fine in cartel investigations.

SCHEDULE

(Article 4)

*Amended by:
XXVIII. 2000.31;
III. 2004.149.***Rules of Procedures relative to the Commission
for Fair Trading**

1. The Commission shall determine any matter before it with fairness and impartiality and in accordance with the provisions of this Act.
2. Before entering upon their functions, the lay members of the Commission shall take before the chairman an oath to perform their functions with fairness and impartiality and in accordance with the provisions of this Act.
3. A member of the Commission shall abstain and may be challenged in the same circumstances, *mutatis mutandis*, as a judge of the superior courts shall abstain or may be challenged in accordance with the Code of Organization and Civil Procedure.
4. Any challenge shall be determined by the chairman. Decisions of the Commission shall state the reasons therefor and clearly indicate the undertakings or categories of undertakings to which they apply.
5. Such decisions may be made to apply limitedly to a particular area, time or season.
6. Any decision of the Commission may be overturned or altered by the Commission where it results that:
 - (a) the information upon which it was based had been false, misleading or incomplete; or
 - (b) market conditions have changed significantly.
7.
 - (a) Procedures before the Commission shall be commenced by a request in writing made by the Director, or by an undertaking or a complainant through the Director according to the provisions of this Act.
 - (b) Any undertaking which shows that its operations are directly affected by the proceedings before the Commission and any person claiming to be the victim of, or to be adversely affected by, any breach of the provisions of this Act constituting the merits of those proceedings, including a consumer who so claims or a registered consumers association acting on behalf of consumers generally, may request in writing to be admitted to intervene in the proceedings before the Commission at any stage thereof.
 - (c) For the purposes of paragraph (b) hereof, a registered consumers association means a Consumers Association registered in accordance with the Consumer Affairs Act.
8. Meetings of the Commission shall be held *in camera*:
Provided that:
 - (a) the Director shall have a right to be present during all meetings;
 - (b) the relevant undertaking and any complainant shall have a right to make submissions on any matter before the Commission, as well as to present any documents or other evidence that may be relevant to the matter;
 - (c) the European Commission in all cases involving the application of Article 81 and, or Article 82 of the EC Treaty shall have a right to make

submissions on any matter before the Commission, as well as to present any documents or other evidence that may be relevant to the matter.

9. Before proceeding with any complaint, the Commission shall first determine whether the complaint is admissible, and shall inform the complainant of any such determination.

10. The Commission shall also inform the Director, the relevant undertaking and the complainant of any decision on the matter before it.

Where a report is sent to the complainant, the chairman of the Commission shall ensure that any confidential business information on the undertaking subject of the proceedings is not included in the report.

11. The Commission shall have, exercisable through its chairman, the powers vested in the Civil Court, First Hall, and in particular the power to summon witnesses, the power to appoint expert witnesses and referees and the power to administer the oath.

Where a witness duly summoned fails to appear on the day on which he is summoned, the chairman may order the Police to arrest such witness and produce him before the Commission to give evidence.

12. Without prejudice to article 19, decisions of the Commission shall be published in such manner as the chairman of the Commission with the concurrence of the Director may determine:

Provided that the chairman shall ensure that no business secret of any undertaking shall be disclosed.

13. In the interpretation of this Act, the Commission shall have recourse to its previous decisions, judgements of the Court of First Instance and the Court of Justice of the European Community. It shall also have recourse to relevant decisions and statements of the European Commission including interpretative notices on the relevant provisions of the EC Treaty and secondary legislation relative to competition.
