

Communication of the Office for Competition published pursuant to Article 12(C)(2)(a) of the Competition Act, Chapter 379 of the Laws of Malta

I. Introduction

1. According to Article 12 (C)(1) of the Competition Act, Chapter 379 of the laws of Malta (hereinafter “the Act”), where the Director General intends to adopt a decision requiring that an infringement be brought to an end and the undertaking or association of undertakings concerned offers commitments to meet the concerns expressed to it by the Director General in a preliminary assessment of the case, the Director General may by decision make those commitments binding on the undertaking or association of undertakings. Such decision may be for a specified period and shall conclude that there are no longer grounds for action by the Director General.
2. According to Articles 12(C)(2)(a) and (b) of the Act, where the Director General intends to adopt a decision under sub article (1), he shall publish a concise summary of the case and the main contents of the commitments or of the proposed course of action. Interested third parties may submit their observations within the time-limit fixed by the Director General in the publication.

II. Summary of the case

3. The Office for Competition (hereinafter “the Office”) had initiated an investigation following a complaint by a competitor against the following undertakings - who have now offered commitments to the Office in order to meet the competition concerns expressed by the Director General -
 - a) In Design (Malta) Limited
 - b) St Edward’s College
4. The case commenced following a complaint received from a uniform supplier claiming that St Edward’s College had sent an email to parents of students attending the school, informing them that the school uniforms were to be purchased from In Design Ltd., the approved official sole distributor.
5. The Office subsequently investigated the complaint and on 1 May 2015, the Headmaster of St Edward’s College had responded to the concerns initially expressed by the Office by sending the following circular to all parents whose children attend St Edward’s College:

“As you are by now well aware, school uniforms as per St Edward’s College specifications are produced and sold by In Design (Malta) Limited. We however been instructed by the Malta Competition and Consumer Affairs Authority to draw your attention to the fact that whilst insisting on the necessity of students attending school in full uniform, the College does not in

any way prohibit parents from purchasing uniforms from other suppliers, as long as these are in line with specifications provided”.

6. The Office considered that the above correspondence did in fact address the issues raised in the abovementioned complaint. This notwithstanding, the Office subsequently decided on its own motion to further investigate the case and in view of this, it requested the parties to provide the Office with a copy of the agreement which was entered into between St Edwards College and In Design (Malta) Limited.
7. In its assessment, the Office had expressed its concern that the agreement concluded between In Design (Malta) Ltd and St Edward’s College did in fact raise concerns of market foreclosure which hinder and restrict competition because the exclusivity agreement was valid for five years, the duration of which was to be further prolonged through automatic renewal for further years.
8. The Office believes that a five year agreement of this kind is too long and will hinder competition. Moreover the automatic renewal clause makes this agreement further restrictive.
9. In Design (Malta) Limited stated that it cannot reduce the length of the current agreement from five years to four, claiming that with two scholastic years until the end of the current term of the agreement, they still have some remaining stock and it will be left with massive surplus if the agreement would terminate a year earlier than that agreed upon by the parties. In Design (Malta) Limited also argued that this stock was ordered much before these amendments were suggested by the Office.

III. Main content of the offered commitments

10. The parties have emphasised that even though they were offering commitments, they are in no way admitting liability/ responsibility. The parties have offered commitments pursuant to Article 12(C)(1) of the Act to meet the concerns identified by the Office in relation to the above mentioned agreement.
11. The commitments are as follows:
 - a) The parties agreed that the current agreement needs to be amended, removing the clause providing for automatic renewal.
 - b) Moreover, a notice identical to the one approved by the Office for Competition, which the Headmaster had sent to all parents, was inserted with the same text on the school website, on the 2nd August 2016 in the uniform section which indicates the following: *“School uniforms as per St Edward's College's specifications are produced and sold by In Design (Malta) Limited.*

Kindly note that whilst insisting on the necessity of students attending school in full uniform, the College does not in any way prohibit parents from purchasing uniforms from other suppliers, as long as these are in line with specifications provided”.

This notice can be accessed on the following link:

<http://www.stedwards.edu.mt/en/uniformsupplier>

- c) St Edward’s College has also agreed and has committed itself to issue a new Request for Quotations at the end of the term of the agreement, such agreement not having a duration longer than four years.

IV. Invitation to make comments

12. Subject to market testing, the Office intends to adopt a decision under Article 12(C)(1) of the Act where it declares to make the abovementioned commitments binding and to publish the decision on the Malta Competition and Consumer Affairs Authority website.
13. In accordance with Article 12(C)(2)(b), the Office invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Office by not later than one month following the date of the publication on the Government Gazette. Interested third parties are also asked to submit a non-confidential version of their comments, where any information which they deem constitutes business secrets or other confidential information is deleted and replaced as required by a non-confidential summary, or else marked with the words ‘business secrets’ and ‘confidential’.
14. Answers and comments should be reasoned and should set out clearly the relevant facts. If a problem is encountered with any part of the proposed commitments, the Office also invites third parties to recommend a possible solution.
15. This communication will also be published on the Government Gazette.
16. Written observations are to be sent to the Office referring to Case COMP/MCCAA 27/2014 – either by email on godwin.mangion@mccaa.org.mt or by post in the following address:

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