

**A BILL  
entitled**

*An ACT to amend the Competition Act, Cap. 379 and the Malta Competition and Consumer Affairs Authority Act, Cap. 510 to implement Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market and also to provide for such matters ancillary or incidental thereto or connected therewith.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and commencement

1. (1) The short title of this Act is the Competition Act and the Malta Competition and Consumer Affairs Authority Act (Amendment) Act, 2020.

(2) This Act shall come into force on such date as the Minister for Tourism and Consumer Protection, may by notice in the Gazette establish, and different dates may be so established for different provisions of this Act.

**Part I**

**Amendments to the Competition Act**

Amendments to the Competition Act.

Cap. 379.

2. This Part amends the Competition Act and it shall be read and construed as one with the Competition Act, hereinafter in this Part referred to as "the principal Act".

Amendment of Article 2 of the Principal Act.

3. Article 2 of the principal Act shall be amended as follows:

(a) immediately after the definition "the Board" there shall be added the following new definition:

“competition authority” means a national competition authority, the European Commission or both, as the context may require;

(b) immediately after the definition of “Director General” there shall be added the following new definition:

“document or documents” includes information recorded in any form;

(c) immediately after the definition “European Commission” there shall be added the following new definition:

“European Competition Network” means the network of public authorities formed by the national competition authorities and the Commission to provide a forum for discussion and cooperation as regards the application and enforcement of Articles 101 and 102 TFEU;

(d) the definition of “National Competition Authority” shall be substituted by the following:

“National Competition Authority” means a national competition authority as designated in terms of Article 35(1) of Council Regulation (EC) 1/2003 as being responsible for the application of Articles 101 and 102 TFEU;

(e) immediately after the definition “restrictive practice” there shall be added the following new definition:

“settlement submissions” means a voluntary presentation by, or on behalf of, an undertaking, and, or association of undertakings to the Office, describing the undertaking's and, or association of undertaking's acknowledgement of, or its renunciation to dispute, its participation in an infringement of article 5 and, or 9 of the Act and, or Articles 101 or 102 TFEU and its responsibility for that infringement, which was drawn up specifically to enable the Office to apply a simplified or expedited procedure in terms of article 12B of the Act”;

(f) the definition of “turnover” shall be substituted by the following:

“turnover” means the total worldwide turnover of an undertaking realised during the preceeding business year;

(g) the definition of “undertaking” shall be substituted by the following:

“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 regardless of its legal status and the way in which it is financed;

Amendment of Article 3 of the principal Act

**4.** The proviso to article 3 of the principal Act shall be substituted by the following:

“Provided that the Director General may delegate any of his powers to any officer within the Office”.

**5. Article 12 of the principal Act shall be amended as follows:**

a) subarticle (2) thereof shall be substituted by the following:

“(2)(a) During the course of any investigation carried out by the Office in accordance with subarticle (1), the Director General may request any undertaking or association of undertakings to furnish him with any information or document which is accessible to such undertaking and, or association of undertakings, irrespective of where it is stored for the application of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU, which the Director General has reason to believe is necessary to the matter under investigation within such time as in the circumstances of the investigation the Director General may consider reasonable:

Provided that such requests for information shall be proportionate and the Director General may also request the manner and form in which the information or document is to be produced or provided:

Provided further that during the course of any investigation carried out by the Office in accordance with subarticle (1), the Director General may request any other natural or legal persons to provide any information or document that may be relevant for the application of articles 5 and, or 9 of this Act and, or Articles 101 and 102 TFEU within a specified and reasonable time limit.

(b) During the course of any investigation carried out by the Office in accordance with subarticle (1), the Director General may also summon any representative of an undertaking or association of undertakings, any representative of other legal persons, and any other person, where such representative or person may possess information relevant for the application of articles 5, and or 9 of this Act and, or Articles 101 and, or 102 of the TFEU, to appear for an interview at a place and time as specified by the Director General to answer questions with respect to any matter relevant to the investigation:

Provided that the Director General may record the interview in any manner and form deemed appropriate by him.

(c) Nothing in this subarticle may be construed as authorising the Director General to order the production of any document or the disclosure of any information which may be subject to the duty of professional secrecy, except where such disclosure is allowed under the law.

(d) During the course of any investigation, when a person, undertaking or association of undertakings answers to questions raised by the Office both in writing and verbally, the person, undertaking or association of undertakings concerned shall not be obliged

to provide any answer which might involve an admission on its part of the existence of an infringement of articles 5, and, or 9 of the Act, and, or Articles 101 and, or 102 of the TFEU but it is in any event obliged to answer factual questions and to provide documents;”;

b) Sub-article (6) thereof shall be substituted by the following:

“(6) In the course of any investigation whether during an interview or inspection, the Director General may take statements from any person, 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 General shall be producible as evidence before the Court and before any other court of law;”;

c) Sub-article (7) thereof shall be substituted by the following:

“12(7)(a) The Director General and, or his officers authorised by him and, or any other person authorised or appointed by the Director General duly authorised by a warrant issued by the Magistrate may, for the purpose of any investigation under this article conduct all necessary unannounced inspections and enter into and search premises, land or means of transport of undertakings and, or association of undertakings where the Director General has reasonable grounds for suspecting an infringement of articles 5, and or 9 of this Act and, or Articles 101 or 102 TFEU.

(b) The Director General and, or his officers authorised by him and, or any other person authorised or appointed by the Director General duly authorised by a warrant issued by the Magistrate may, for the purpose of any investigation under this article conduct all necessary unannounced inspections and enter into and search other premises, land or means of transport other than those referred to in sub-paragraph (a) of this sub-article, including the homes of directors, managers, and other members of staff of undertakings or associations of undertakings where the Director General has a reasonable suspicion that documents related to the undertaking and, or association of undertakings and to the subject matter of the inspection, which may be relevant to prove an infringement of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 TFEU are being kept in those premises, land or means of transport:

Provided that the Magistrate in deciding whether to issue a warrant under sub-articles (7)(a) and (b) shall ensure that the coercive measures envisaged are neither arbitrary nor excessive.

(c) In the course of any search pursuant to paragraphs (a) and (b) of this sub-article, the Director General and, or any authorised officer and, or any other person authorised or appointed by the Director General shall be empowered to:

(i) inspect and examine any object or document, including books and other records related to the business irrespective of the medium on which they are stored and access any information or document which is accessible to the entity subject to the inspection;

Provided that this includes the power to search for documents, files or data on devices which are not precisely identified in advance:

Provided further that the power to examine books or records covers all forms of correspondence, including electronic messages irrespective of whether they appear to be unread or have been deleted.

(ii) seize and confiscate any object or document, or take or obtain in any form copies of or extracts from such books or records or any other document and where they consider it appropriate, to continue making such searches for information and the selection of copies or extracts at the premises of the office or at any other designated places;

(iii) require any information which is stored in a computer or any other object or device including external servers and cloud services which is accessible from the premises, land or means of transport and which the Director General and, or his officers consider relevant to the investigation, to be delivered in a form in which it can be taken away and in which it is visible and legible;

(iv) order the non-removal of objects or documents from any such premises, land or means of transport;

(v) close and seal any or all parts of such premises, land or means of transport, or put any books or records or any other object or document under seal for the period and to the extent necessary for the inspection;

(vi) ask any representative or member or staff of the undertaking or association of undertakings concerned for an explanation of any fact or document relating to the subject-matter and purpose of the inspection or to state to the best of their knowledge and belief where the documents may be found and record the answers;

(vii) take any steps which appear to be necessary to preserve any object or document or to prevent any interference with such object or document.

(d) Notwithstanding any provisions contained in the Criminal Code, the Director General shall have the right to appeal against a decision of the Court of Magistrates to refuse to issue a warrant under this sub-article, before the Court of Criminal Appeal within five days from the date of such a decision and the Court of Criminal Appeal shall endeavour to decide in the shortest time possible ”.

d) Sub-article (8) thereof shall be substituted by the following:

“12(8)(a) The warrant mentioned in sub-articles (7)(a) and (b) shall specify the subject-matter, purpose of the inspection, the date on which the inspection is to begin and the relevant penalties provided for in article 21.

(b) The powers conferred by article 12(7) are to be exercised by the Director General and, or his officers and, or any person authorised or appointed by the Director General on production of a warrant issued under that article.

(c) The Director General and, or any of his officers and, or any person authorised or appointed by the Director General entering premises, land or means of transport by virtue of a warrant issued under sub-articles (7)(a) and (b) may take with them such equipment as appears to them to be necessary”.

Amendment to article 12A of the principal Act

**6.** Article 12A of the principal Act, shall be amended as follows:

a) Sub-article (1) thereof shall be substituted by the following:

“(1) Where, following an investigation, the Director General considers that an infringement of articles 5 and, or 9 of this Act and, or an infringement of Articles 101 and, or 102 of the TFEU may have occurred, he shall file a sworn application in Court:

Provided that for the purposes of this sub-article, the Director General may also consider that an infringement of articles 5 and, or 9 of this Act and, or an infringement of Articles 101 and, or 102 of the TFEU may have occurred at some time in the past:

Provided further that for the purposes of the previous proviso, it is immaterial whether the agreement, decision, concerted practice or conduct in question remains in existence:

Provided further that where the Director General considers that an agreement or concerted practice infringes article 5(1) of this Act and, or Article 101 (1) TFEU, the Director General may file a sworn application against a number of undertakings which is fewer than those undertakings who actually are party or were party to that agreement or concerted practice or are or were engaged in that conduct”;

b) In sub-paragraph (c) of sub-article (2) thereof the words “Contain a request” shall be substituted with the words, “Where appropriate, contain a request”.

c) In sub-article (3) thereof the words, "investigation carried out by him." shall be substituted by the words "investigation carried out by him:" and immediately there after there shall be added the following new proviso:

“Provided that where the Director General institutes proceedings relating to a matter in respect of which he has received a complaint, he may provide the complainant with a copy of the non-confidential version of the report.”.;

d) In sub-article (6) thereof the words, “at any time prior to the conclusion of his evidence.” shall be substituted by the words “at any time prior to the conclusion of his evidence:” and immediately there after there shall be added the following new proviso:

“Provided that any documents in the access to the file may be provided by the Director General to the defendant in different sittings”.

e) Immediately after sub-article (7) thereof there shall be added the following new sub-article (8):

“(8) Notwithstanding any other provision in the Code of Organisation and Civil Procedure, the evidence admissible before the Court and in case of an investigation, before the Office, shall include documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which the information is stored”.

Amendment to article 12B of the principal Act

7. Article 12B of the principal Act shall be amended as follows:

a) sub-article (1) thereof shall be substituted by the following:

“(1) The Director General together with any undertaking and, or association of undertakings shall have the right to demand, either during the investigation before the Office or at a later stage when the Director General would have already filed a sworn application against the undertaking and, or association of undertakings concerned that the investigation or the proceedings before the Court, as the case may be, are terminated by mutual consent between the Director General and the undertaking and, or the association of undertakings concerned by means of the settlement procedure which includes the finding of an infringement in terms of article 13(1) and imposition of a penalty by the Court in terms of article 21(1) as provided for in the following provisions of this article;”.

b) “in sub-article (2) thereof the words “which includes the imposition of a penalty by the said Court.” shall be substituted by the words “which includes the finding of an infringement in terms of article 13(1) and the imposition of a penalty in terms of article 21(1) by the said Court.”;

c) “in sub-article (5) thereof the words “by a joint application to be filed before the Court” shall be substituted by the words “before the Office”.

d) sub-article (6) thereof shall be substituted by the following:

“(6) (i) The documents and the information exchanged between the Director General and the undertaking and, or association of undertakings concerned during the settlement procedure are confidential:

Provided that the information given pursuant to sub-article (5) shall be confidential *vis-à-vis* other parties subject to the relevant investigation before the Office, save where the Director General has given a prior explicit authorization for disclosure.

(ii) Settlement submissions shall only be accessible to the undertakings and, or association of undertakings which are subject to the relevant investigation before the Office or are subject to relevant proceedings before the Court instituted in terms of the

Act or are subject to any relevant proceedings before the Court of Appeal and only for the purposes of exercising their rights of defence.

(iii) The party who has obtained access to the file during investigations before the Office or proceedings before the Court or the Court of Appeal may only use information taken from settlement submissions where necessary to exercise its rights of defence in proceedings before the courts of Malta in cases that are directly related to the case for which access has been granted, and only where such proceedings concern:

- (a) the allocation between cartel participants of a penalty imposed jointly and severally on them by the Court; or
- (b) the appeal before the Court of Appeal of a judgement by the Court finding an infringement of articles 5 and, or 9 of the Act or Articles 101 and, or 102 TFEU.

(iv) The parties getting access to settlement submissions together with their legal counsels getting access on their behalf cannot make any copy by mechanical or electronic means of any information in the settlement submissions to which access is being granted and to ensure that the information to be obtained from the settlement submissions will solely be used for the purposes for the application of articles 5, and or 9 of the Act and, or the application of Articles 101 and, or 102 TFEU at issue in the related proceedings.”;

e) sub-article (7) thereof shall be amended as follows:

a) in the introductory part preceding paragraph (a) thereof the words “The settlement submissions which are to be included in the joint application shall contain a voluntary statement by the undertaking and, or association of undertakings concerned containing the following information:” shall be substituted by the words, “The settlement submissions submitted before the Office pursuant to sub-article (5) are to be produced together with the joint application and shall contain a voluntary statement by the undertaking and, or association of undertakings concerned containing the following information:”

b) in paragraph (c) thereof, the word ‘maximum’ shall be deleted.

c) paragraph (g) thereof, shall be substituted by the following:

“(g) a statement of the undertaking and, or association of undertakings concerned that it agrees with the contents of the settlement submissions and that it agrees with the facts together with the legal assessment of the facts of the infringement as set out by the Director General in the joint application”;

- d) Immediately after paragraph (g) thereof there shall be added the following new paragraph (h):

“(h) a statement by the undertaking and, or association of undertakings concerned that it agrees that a joint application is filed in Court together with the Director General to terminate the investigation or the proceedings as the case may be, by means of the settlement procedure, and to request the Court to deliver a judgement on the basis of the joint application:

Provided that the joint application shall also include the following information by the Director General:

- (i) a short description of the the facts of the infringement and the legal assessment of the infringement; and
- (ii) the specific amount of the penalty the Director General is requesting to be imposed on the undertaking and, or association of undertakings concerned; and

f) in sub-article (9) thereof, the words “by reducing between ten to thirty-five percent the amount of the penalty requested to be imposed by the Court on the undertaking, and, or association of undertakings concerned” shall be substituted by the words, “by reducing the penalty which would otherwise have been requested by the Director General to be imposed by the Court in terms of article 21(1) of the Act by ten to thirty-five per centum (10-35%)”;

Amendment to article 12C of the principal Act.

**8.** Article 12C of the principal Act shall be amended as follows:

a) In sub-article (4) thereof, the words "or other confidential information." shall be substituted by the words "or other confidential information:" and immediately there after there shall be added the following new proviso:

“Provided that, the Director General may request the authorisation of the Court, to seek the views of market participants or of any other third parties by informing them directly regarding the proposed commitments as accepted by the Court either by post or by email and, or by publishing the said proposed commitments on the website of the Authority or by communicating the said proposed commitments through any other means of communication as the case may require. In such a case, the Director General shall specify in the said publication, means of communication, email or post that all views of market participants or of any other third parties must be received at the Registry of the Court within the time limit as determined by the Court in that specific case.”.

b) immediately after sub-article (6) thereof, there shall be added the following new sub-article (7):

“(7) The Office shall have the powers to monitor the effective implementation of the commitments referred to in sub-article (1) of this article or in article 17 and for this purpose, article 12 shall *mutatis mutandis* apply.”

Substitution of article 12D of the principal Act

**9.** Article 12D of the principal Act shall be substituted by the following:

“**Access to file by parties and limitations on the use of information**

12D. The following categories of information obtained by a party during an investigation of the Office or during proceedings before the Court shall not be used by that party in other proceedings before the courts of Malta, unless the Court has closed its proceedings before it with respect to all parties under investigation by adopting a judgement referred to in articles 12C, 13 or 13A or otherwise has terminated its proceedings or unless the Office has closed its investigation before it with respect to all parties under investigation by adopting a decision referred to in article 17 or otherwise has terminated its investigation:

- (a) information that was prepared by other natural or legal persons specifically for the investigation carried out by the Office or the proceedings before the Court;
- (b) information that the Office has drawn up and sent to the parties in the course of its investigation; and
- (c) settlement submissions that have been withdrawn.”

Amendment of article 13 of the principal Act.

**10.** Immediately after sub-article (2) of Article 13 of the principal Act, there shall be added the following new sub-article (3):

“(3) Where the Office had informed the European Commission in accordance with Article 11(3) of Regulation (EC) No 1/2003 and the Court decides that there are no grounds to continue proceedings before it and as a result close those proceedings, the Office shall inform the European Commission accordingly”;

Amendment of article 13B of the principal Act

**11.** Article 13B of the principal Act shall be amended as follows:

a) "in sub-article (6) thereof the words "enforcement of judgements." shall be substituted by the words "enforcement of judgements and decrees";"

b) In sub-article (7) thereof the words, "may have recourse" shall be substituted by the words "shall have recourse"; and

c) Immediately after sub-article (7) thereof there shall be added the following new sub-article (8):

"(8) Proceedings before the Court concerning alleged infringements of articles 5 and, or 9 of the Act and, or Articles 101 or 102 TFEU, including the exercise of the powers by the Director General and the Office under this Act and, or any regulation made thereunder applying those articles shall comply with general principles of Union law and the Charter of Fundamental Rights of the European Union".

Amendment of Article 14 of the principal Act.

**12.** Article 14 of the principal Act shall be amended as follows:

a) In sub-article (2) thereof the words, "he shall inform the complainant." shall be substituted by the words "he shall inform the complainant:" and immediately there after there shall be added the following new proviso:

"Provided that where, having informed the European Commission in accordance with Article 11(3) of Regulation (EC) No 1/2003, the Office decides that there are no grounds to continue the investigation and as a result closes the investigation, the Office shall inform the European Commission accordingly";

b) In sub-article (4) thereof the words, "twenty days from the date of the judgment of the Court." shall be substituted by the words "twenty days from the date of the judgment of the Court:" and immediately there after there shall be added the following new proviso:

"Provided that in case of any proceedings instituted under this article before the Court or the Court of Appeal, the Director General shall act as an official party to the proceedings and enjoy the same rights which pertain to his counterparty".

Amendment of article 15 of the principal Act.

**13.** Article 15 of the principal Act shall be amended as follows:

a) The first proviso to sub-article (1) thereof shall be substituted by the following:

"Provided that any decree imposing interim measures issued according to this provision shall be enforceable upon its delivery and any interim measures shall be proportionate and shall apply either for a specified period of time to be determined by the Court or until the final judgement on the merits of the case is delivered by this Court:"

b) Sub-article (3) thereof shall be substituted by the following:

“The application shall be served on the undertakings and, or associations of undertakings concerned which shall file a reply thereto within eight days from the date of notification of the application containing all submissions to be made together with all documents in support of the reply that is being filed:

Provided that the Court may reduce the said period in this sub-article as it deems fit in the circumstances”.

c) In sub-article (5) thereof the words "service of such an application." shall be substituted by the words "service of such an application:" and immediately there after there shall be added the following proviso:

“Provided that an appeal filed in accordance with this sub-article shall not have the effect of suspending any interim measures imposed by the Court.”

d) Immediately after sub-article (6) thereof, there shall be added the following new sub-article (7):

“The Office shall inform the European Competition Network of the interim measures imposed in case of a *prima facie* finding of an infringement of Article 101 and, or Article 102 TFEU, referred to in sub-article (1).”;

Substitution of article 16 of the principal Act

**14.** Article 16 of the principal Act shall be substituted by the following:

**“Immunity or reduction of penalties for infringements of article 5 of the Act and, or 101 TFEU**

16. When an undertaking and, or an association of undertakings cooperates with the Office to uncover agreements between undertakings and, or decisions of an association of undertakings and, or a concerted practice that infringes article 5 of this Act and, or Article 101 TFEU and the existence of such agreement, decision or concerted practice is partially or wholly concealed, the provisions contained in the Immunity from Penalties and Reduction of Penalties in Cartel Investigations Regulations shall apply *mutatis mutandis*.;”;

Substitution of article 17 of the principal Act

**15.** Article 17 of the principal Act shall be substituted by the following:

**“Commitments decision by the Director General**

17(1) Notwithstanding anything contained in this Act, the Director General may at his own discretion instead of instituting judicial proceedings according to article 12A of this Act requesting the Court to issue a judgement declaring commitments to be binding on undertakings and, or association of undertakings pursuant to article 12C of this Act, he may decide to issue a commitments decision to make commitments binding on the undertaking or association of undertakings.

(2) For the purposes of sub-article (1) the Director General may in an investigation initiated with a view to adopt a decision requiring that an infringement of article 5 and, or 9 of this Act and, or Article 101 and, or 102 TFEU be brought to an end, the Director General may, after formally or informally seek the views of market participants, by decision make commitments offered by undertakings or associations of undertakings binding, where those commitments meet the concerns expressed by the Director General. Such a decision may be adopted for a specified period, and shall conclude that there are no longer grounds for action by the Director General:

Provided that the Director General may re-open the proceedings where it results to him that there has been a material change in any of the facts on which the decision was based, where the undertakings or association of undertakings act contrary to their commitments, or where a decision referred to in this sub-article was based on incomplete, incorrect or misleading information provided by the parties.

(3) (a) Where the Director General intends to adopt a decision under this article he shall besides other methods that the Director General may adopt to seek the views of market participants publish a concise summary of the case and the main contents of the commitments or of the proposed course of action.

(b) Interested third parties may submit their observations within the time-limit fixed by the Director General in the publication.

(c) The time-limit mentioned in paragraph (b) may not be less than one month.

(d) In the publication mentioned in paragraph (a) the Director General shall have regard to the legitimate interest of undertakings in the protection of business secrets or other confidential information.

(4) Any person, undertaking or association of undertakings concerned may appeal by application filed before the Court from any commitments decision adopted by the Director General within twenty days from the date of publication of the decision on the Authority's website:

Provided that the appeal shall be notified to the Director General and the Director General shall file his reply thereto within twenty days from the date of the notification of the appeal.

(5) The Court may either confirm in whole or in part, or modify or quash the decision of the Director General.

(6) The Director General and any party to an appeal before the Court who feels aggrieved by a judgement of the Court under this article may appeal on points of law, and or fact to the Court of Appeal by means of an application filed in the registry of that court within twenty days from the date of the judgement of the Court:

Provided that in case of any proceedings instituted under this article before the Court or the Court of Appeal, the Director General shall act as one of the parties to the proceedings and shall enjoy the same rights which pertain to his counterparty.

(7) Upon publication of the decision of the Director General pursuant to article 19 such decision shall, without prejudice to the right of appeal under this article constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure:

Provided so however that, notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in this sub-article shall not be enforceable before the lapse of twenty days from the publication of the decision on the Authority's website.

(8) Without prejudice to paragraph (c) of sub-article (1) of article 14 of the Malta Competition and Consumer Affairs Authority Act, for the purposes of this article, the Office:

- a) shall also have the responsibility to determine and suppress restrictive practices through the issuing of a commitments decision and;
- b) with regard to the application of Articles 101 and 102 of the TFEU, shall also be designated as the competent competition authority together with the Court pursuant to Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L1 of 04/01/2003, p.1 (Regulation 1/2003) to adopt commitments decisions.”;

Amendment of article 19 of the principal Act.

**16.** Article 19 of the principal Act shall be amended as follows:

a) Sub-article (2) thereof shall be substituted by the following:

“The Director General shall have the power, subject to the protection of business secrets and other confidential information to publish any information and any other material in connection with this Act or any regulations made thereunder or in connection with the responsibilities of the Office under article 14 of the Malta Competition and Consumer Affairs Authority Act”.

b) Immediately after sub-article (2) thereof, there shall be added the following new sub-article (3):

“(3) Notwithstanding the provisions of sub-article (1) or of any other law, judgements of the courts of Malta shall not disclose evidence taken from leniency statements submitted pursuant to the Immunity from Penalties and Reduction of Penalties in Cartel Investigations Regulations and evidence from settlement submissions:

Provided that the identity of the undertaking and, or association of undertakings which submitted the settlement submissions or the leniency statement shall be published in the judgement”.

**17.** Article 21 of the principal Act shall be amended as follows:

a) Sub-article (3) thereof shall be amended as follows:

in sub-paragraph (i) of paragraph (a) thereof the words, "pursuant to article 12C" shall be substituted with the words, "pursuant to articles 12C or 17;"

b) Immediately after sub-paragraph (iv) of sub-article (4)(b) thereof there shall be added the following new sub-paragraph (v):

"(v) the disclosure of information to any third party not part of the relevant proceedings under this Act or the copying of any documents made contrary to the provisions of article 12B(6)".

c) Sub-article (5) thereof shall be substituted by the following:

"(5) The Court shall impose a penalty on any person, undertaking and, or association of undertakings not exceeding fifty thousand euro (€50,000) or a penalty not exceeding one *per centum* (1%) of the total turnover of the undertaking or association of undertakings whichever is the highest achieved in the preceding business year where any person, undertaking and, or association of undertakings in the course of any investigation pursuant to article 12 of the Act or in the course of a sector inquiry pursuant to article 11A of the Act, intentionally or negligently:

- (a) gives any false, misleading, incomplete or incorrect information in response to a request for information or question referred to in article 12 or do not supply information within the specified time limit;
- (b) 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 particular material;
- (c) fails to comply with an inspection and, or obstructs the Director General and, or his officers and, or any other person authorised or appointed by the Director General in the exercise of their powers under a warrant issued under article 12(7)(a) and (b);
- (d) breaks the seals affixed by officers or other accompanying persons authorised by the Director General during an inspection;
- (e) in response to a question referred to in article 12(7)(c)(vi), gives an incorrect, misleading answer, fails or refuse to provide a complete answer;
- (f) discloses information to any third party not party of the relevant proceedings under this Act or makes copies of any documents contrary to the provisions of article 12B(6)".;
- (g) fails to appear at an interview referred to in article 12; or
- (h) prevents or hinders any investigation or sector inquiry"

d) Sub-article (6) thereof shall be substituted by the following:

“(6) Where during the course of any investigation or inquiry conducted under this Act a person, being a director, manager, secretary or any other similar officer of an undertaking or association of undertakings or any other person who has to reply to a request for information or a question pursuant to article 12 knowingly or recklessly-

- (a) gives any false, inaccurate or misleading information; or
- (b) supplies incomplete information; or
- (c) prevents or hinders any investigation; or
- (d) 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 particular material; or
- (e) fails without reasonable cause to supply the information requested;

may be liable to the payment of a penalty of not less than one thousand five hundred euro (€1,500) and not more than ten thousand euro (€10,000) and may also be liable to a penalty of up to two thousand and four hundred euro (€ 2,400) for each day in default.

e) Sub-article (7) thereof shall be substituted by the following:

“(7) The Court shall impose on an undertaking or association of undertakings, periodic penalty payments determined in proportion to the average daily total turnover of the undertaking and, or association of undertakings concerned achieved in the preceeding business year, for each day of delay, calculated from the date set in the judgement or decision issued by the Director General as the case may be, in order to compel it or them:

- (i) to comply with a cease and desist order and, or a compliance order pursuant to article 13A;
- (ii) to comply with interim measures pursuant to article 15;
- (iii) to comply with a commitment made binding pursuant to articles 12C or 17;
- (iv) to submit to an inspection and to produce the required objects, documents or other records as referred to in article 12;
- (v) to supply complete information in response to a request for information referred to in articles 12 and 11A;
- (vi) to supply correct information and, or to produce the requested documents in response to a request for information referred to in articles 12 and 11A;
- (vii) to appear at an interview as referred to in Article 12;
- (viii) to stop from pursuing any other conduct which is hindering the investigation or sector inquiry and, or to rectify any acts or omissions”.

f) subarticle (9) thereof shall be substituted by the following:

“(9) The Court may consider compensation paid as a result of a consensual settlement when determining the amount of a penalty to be imposed for an infringement of articles

5 and, or 9 of this Act and, or Articles 101 and, or 102 TFEU in accordance with regulation 17(3) of the Competition Law Infringements (Action for Damages) Regulations as contained in the Schedule to the Act”;

(g) immediately after sub-article (9) thereof, there shall be added the following new sub-articles (10) and (11):

“(10) For the purposes of the imposition of penalties on parent companies and legal and economic successors of undertakings, the notion of undertaking in accordance with the case law of the Court of Justice of the European Union applies”; and

“(11) The liability for the payment of any type of penalty arising under this article shall be without prejudice to any other liability that a person, undertaking and, or association of undertakings may be subject to under any other law.”

Amendment of article 26A of the principal Act.

**18.** Article 26A of the principal Act shall be amended as follows:

a) Sub-article (1) thereof shall be substituted by the following:

“(1) Penalties or periodic penalty payments shall only be imposed under article 21 of the Act when judicial proceedings concerning infringements contemplated in the Act are instituted within five years after the termination of the infringement:

Provided that in the case of infringements of the Act concerning requests for information, production of documents and the conduct of inspections penalties or periodic penalty payments shall only be imposed under article 21 of the Act when judicial proceedings are instituted within three years after the termination of the infringement”.

b) Sub-article (3) thereof shall be substituted by the following:

“(3) (a) The prescription period for the imposition of penalties or periodic penalty payments by the Court pursuant to article 21 shall be interrupted by any formal investigative measure of the Director General or, in the case of the application of Articles 101 and 102 of the TFEU also, by any formal investigative measure of a competition authority with a view to investigating or instituting proceedings for the infringement.

(b) The prescription period for the imposition of penalties or periodic penalty payments by the Court pursuant to article 21 shall be interrupted for the duration of the investigation or proceedings before national competition authorities of other Member States or the European Commission in respect of an infringement concerning the same agreement, decision of an association of undertakings, concerted practice or other conduct prohibited by Article 101 or 102 TFEU.

(c) The prescription period referred to in this sub-article shall be interrupted with effect from the date of notification of the first formal investigative measure to at least one

undertaking or association of undertakings which has participated in the infringement.”.

d) In sub-article (4) thereof the words “Actions which interrupt” shall be substituted with the words “Formal investigative measures which interrupt.”;

e) Sub-article (7) thereof shall be substituted by the following:

“(7) The interruption of the prescription period shall end on the day the Court closes the proceedings before it by delivering a judgement pursuant to articles 12C, 13, 13A or 21 of this Act or when the Director General issues a decision in terms of article 17 or when the Director General or the Court conclude that there are no grounds for further action on their part.”;

f) Immediately after sub-article (7) thereof, there shall be inserted the following new sub-article (8):

“(8) The prescription period for the imposition of penalties and periodic penalty payments shall be suspended for as long as proceedings instituted pursuant to the provisions under this Act are pending before the Court or the Court of Appeal”.

Amendment of article 30 of the principal Act

**19.** Sub-article (1) of Article 30 of the principal Act shall be substituted by the following:

“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:

Provided that the provisions of article 460(1) of the Code of Organisation and Civil Procedure shall not apply to the provisions of this sub-article and to causes instituted by the Director General pursuant to the provisions of this Act against any government department, authority, agency or any other government body where in the opinion of the Director General the government department, authority, agency or any other government body performs the function of an undertaking as defined under this Act.”

## **Part II**

### **Amendments to the Malta Competition and Consumer Affairs Authority Act**

Amendments to the Malta Competition and Consumer Affairs Authority Act.

Cap. 510.

**20.** This Part amends the Malta Competition and Consumer Affairs Authority Act and it shall be read and construed as one with the Malta Competition and Consumer Affairs Authority Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 13 of the principal Act.

**21.** Article 13 of the principal Act, shall be amended as follows:

Immediately after sub-article (2) thereof, there shall be added the following new subarticles (3) and (4):

“(3) The Office for Competition shall have a sufficient number of qualified staff and sufficient financial, technical and technological resources that are necessary for the effective performance of their duties, and for the exercise of their powers for the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 TFEU”. and;

“(4) Without prejudice to national budgetary rules and procedures, the Office for Competition shall be granted independence in the spending of the allocated budget for the purpose of carrying out its duties as set out in article 14 of this Act, the Competition Act and any regulations made thereunder.”

Introduction of a new article 13A of the principal Act.

**22.** Immediately after article 13 of the principal Act, there shall be added the following new article 13A:

“**Independence**

13A (a) The Director General, his officers working at the Office for Competition and any other person assisting the Office for Competition shall:

- (i) perform their duties and exercise their powers for the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 TFEU, and any other responsibility vested in the Office for Competition as emanating from this Act, the Competition Act or any other regulation made thereunder impartially and in the interests of the effective and uniform application of Articles 101 and, or 102 TFEU and independently from political and other external influence;
- (ii) neither seek nor take any instructions from Government or any other public or private entity when carrying out their duties and exercising their powers for the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 TFEU without prejudice to the right of the Government, where applicable, to issue general policy rules that are not related to sector inquiries or specific investigations of the Office for Competition;

- (iii) refrain from taking any action which is incompatible with the performance of their duties and/or with the exercise of their powers for the application of article 5 and, or article 9 of the Competition Act and, or Articles 101 and, or 102 TFEU and are subject to procedures that ensure that, for a reasonable period of time after leaving office, they refrain from dealing with cases which are or were before the Office for Competition, that could give rise to conflicts of interest as provided in article 46 of this Act.”;

(b) Any person who takes decisions at the Office for Competition exercising the powers contemplated in the Competition Act or under any regulations made thereunder shall not be dismissed from the Office for Competition for reasons relating to the proper performance of their duties or to the proper exercise of their powers for the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 TFEU:

Provided that the person may be dismissed only if he no longer fulfills the conditions required for the performance of his duties or if he has been found guilty of serious misconduct under national law, which includes the following:

- (i) If the person fails to perform his duties impartially and independently, in relation to the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 TFEU or of any duties in relation to his Office emanating under this Act, the Competition Act and any regulation made thereunder;
- (ii) If the person has been found guilty by a competent court of an offence under article 28 of this Act;
- (iii) If the person has been convicted of a criminal offence affecting public trust, or of theft or fraud.

Amendment of Article 14 of the principal Act

**23.** Article 14 of the principal Act shall be amended as follows:

a) paragraph (a) of sub-article (1) thereof shall be substituted by the following:

“(a) to investigate practices which allegedly distort or restrict competition and to act as an official party in proceedings instituted by the Director General and in such manner he shall enjoy the same rights which pertain to his counterparty in court proceedings, before the Civil Court under the Competition Act and in case when there is an appeal from judgements of the Civil Court delivered under the Competition Act, before the Court of Appeal;”

b) paragraph (f) of sub-article (1) thereof shall be substituted by the following:

“(f) to encourage undertakings and associations of undertakings to comply with competition law and to promote sound trading practices and to promote public awareness of Articles 5 and 9 of the Competition Act and Articles 101 and 102 TFEU”;

c) paragraph (k) of sub-article (1) thereof shall be substituted by the following:

“(k) to cooperate closely in the European Competition Network with a view to ensuring the effective and uniform application of Articles 101 and 102 TFEU and to participate in meetings organised by international agencies and organisations;”

Amendment of article 15 of the principal Act.

**24.** In paragraph (f) of sub-article (1) of article 15 of the principal Act, the words "under its regulatory regime." shall be substituted by the words "under its regulatory regime:" and immediately thereafter there shall be added the following new proviso:

“Provided that the Office for Competition may reject complaints on the grounds that it does not consider such complaints to be an enforcement priority”.

Amedment of article 58 of the principal Act.

**25.** In article 58 of the principal Act the words "from time to time require." shall be substituted by the words "from time to time require:" and immediately thereafter there shall be added the following new proviso:

“Provided that with reference to such report, the sections relating to the Office for Competition shall include information about the appointments and dismissals of the Director General and the Directors, the amount of resources that were allocated in the relevant year, and any changes in that amount compared to previous years.”

## **Objects and Reasons**

*The object of this Bill is to affect amendments to the Competition Act and the Malta Competition and Consumer Affairs Authority Act in order to transpose and implement the relevant provisions of Directive (EU) 2019/1 of The European Parliament and of the Council to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market and also to provide for such matters ancillary or incidental thereto or connected therewith.*