

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](#); [Legal Notice 425 of 2007](#); and Acts [VI of 2011](#), [VI of 2012](#), [XXV of 2017](#), [XVI of 2019](#) and [XLV of 2021](#).

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;
VI. 2011.121;
XVI.2019.30;
XLV.2021.3.
Cap. 510.*

"Authority" means the [Malta Competition and Consumer Affairs Authority](#) established by article 3 of the [Malta Competition and Consumer Affairs Authority Act](#); Cap. 510.

"the Board" means the Board of Governors as established by article 8 of the [Malta Competition and Consumer Affairs Authority Act](#); Cap. 510.

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

"Court" means the Civil Court (Commercial Section) established by article 3 of the [Civil Courts \(Establishment of Sections\) Order](#); S.L. 12.19.

"Director General" means the Director General (Competition) as appointed by article 13 of the [Malta Competition and Consumer Affairs Authority Act](#); Cap. 510.

"document" includes information recorded in any form;

"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;

"European Commission" means the European Commission as established by article 13 of the Treaty on European Union;

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

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

"Minister" means the Minister responsible for competition matters;

"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 of the TFEU;

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"Office" means the Office for Competition as established by article 13 of the [Malta Competition and Consumer Affairs Authority Act](#);

"product" includes goods and the supply of services;

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"qualified entity" shall have the same meaning assigned to it under article 2 of the [Consumer Affairs Act](#);

"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 101 of the TFEU and, or an abuse by one or more undertakings of a dominant position prohibited under article 9 of this Act or Article 102 of the TFEU;

"settlement submissions" means a voluntary presentation by, or on behalf of, an undertaking and, or an association of undertakings to the Office, describing the undertaking's and, or association of undertakings' acknowledgement of, or its renunciation to dispute, its participation in an infringement of articles 5 and, or 9 of the Act and, or Articles 101 or 102 of the 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

"TFEU" means the Treaty on the Functioning of the European Union;

"total worldwide turnover" means the annual total worldwide turnover of an undertaking and, or association of undertakings concerned;

"undertaking" means any person whether an individual, a body corporate or otherwise, or any other entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.

Responsibility of
the Director
General and the
Court.

Amended by:
XXVIII. 2000.3;
III. 2004.127.

Substituted by:
VI. 2011.122;
XVI.2019.31;
XLV.2021.4.
Cap. 510.

3. The Director General and the Court shall have the exclusive competence to apply the provisions of this Act and, for this purpose, the Director General shall exercise the responsibilities vested in the Office for Competition under article 14 of the [Malta Competition and Consumer Affairs Authority Act](#) and under this Act except where competences are assigned to the Court in this Act and in the [Malta Competition and Consumer Affairs Authority Act](#):

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

4. (Deleted by Act VI. 2011.123.).

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

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 sub-article, any agreement, decision or practice which:

Prohibited
agreements and
practices.
Amended by:
XXVIII. 2000.5;
III. 2004.129;
VI. 2011.124.

- (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 sub-article (1) shall be *ipso jure* null and unenforceable.

(3) The provisions of sub-article (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 sub-article (3) shall bear the burden of proving that the conditions of that sub-article are fulfilled.

(5) Article 101 of the TFEU 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 sub-articles (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 101(1) of the TFEU or which fulfil the conditions of Article 101(3) of the TFEU, or which are covered by a Regulation for the application of Article 101(3) of the TFEU.

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

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.

(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.

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

7. (*Deleted by Act III. 2004.131*).

General
exemptions.
Substituted by:
XXVIII. 2000.8.
Amended by:
III. 2004.132;
VI. 2011.125;
XVI.2019.32.

8. (1) The Minister may, after consultation with the Board , 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.

(2) The regulations referred to in sub-article (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 sub-article (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;
VI. 2011.126.

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 sub-article (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) limit production, markets or technical development to

the prejudice of consumers;

- (c) 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;
- (d) 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 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.

(4) Article 102 of the TFEU shall also apply where any abuse by an undertaking may affect trade between Malta and any one or more Member States.

10. *(Deleted by Act III. 2004.134).*

Negative clearance.
Substituted by:
XXVIII. 2000.10.

11. *(Deleted by Act XXVIII.2000.11).*

Price orders.

11A. (1) Where the trend of trade, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the Maltese market, the Director General may conduct an inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. In the course of that inquiry, the Director General may request the undertakings or association of undertakings concerned to supply the information necessary for the application of articles 5 and 9 of the Act and Articles 101 and 102 of the TFEU and may carry out any

Inquiries into sectors of the economy and into types of agreements.
Added by:
VI. 2011.127.
Amended by:
XVI.2019.33.

inspections necessary for that purpose.

(2) For the purposes of sub-article (1), article 12 shall *mutatis mutandis* apply.

(3) The Director General may publish a preliminary report on the results of the inquiry into particular sectors of the economy or particular types of agreements across various sectors and invite comments from interested parties before publishing the final report.

Investigations.
Amended by:
XXVIII. 2000.12;
III. 2004.135;
VI. 2011.121, 128.
XVI.2019.34;
XLV.2021.5.

12. (1) It shall be the duty of the Director General to ensure that the provisions of this Act are observed by all, and to gather information that may be necessary for him to carry out his 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.

(2) (a) During the course of any investigation carried out by the Office in accordance with sub-article (1), the Director General may request any undertaking or association of undertakings to furnish him with any information or document which are 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 the Act and, or Articles 101 and, or 102 of the TFEU, which the Director General has reason to believe are necessary to the matter under investigation within such time that 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 are to be produced or provided:

Provided further that during the course of any investigation carried out by the Office in accordance with sub-article (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 of the TFEU within a specified and reasonable time limit.

(b) During the course of any investigation carried out by the Office in accordance with sub-article (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 the 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 sub-article 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.

(3) When sending a request for information to an undertaking or association of undertakings, the Director General shall state the legal basis and the purpose of the request, specify what information is required and fix a time limit within which the information is to be provided.

(4) Where undertakings and associations of undertakings submit information which contains business secrets or other confidential information, article 29 of the [Malta Competition and Consumer Affairs Authority Act](#) shall apply.

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(5) Any undertaking that shows that its operations are directly affected by the investigation being carried out by the Director General, any association of undertakings, any person or any registered consumers' association claiming that it or its members are being adversely affected by, any breach of the provisions of this Act constituting the subject-matter of those investigations, may request in writing to make submissions before the Director General at any stage thereof and the Director General shall accede to the request if he considers it justified and determine the manner in which such submissions shall be made.

(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.

(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 a 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 for the application of articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the 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 a Magistrate, may, for the purpose of any investigation under this article, conduct all necessary unannounced inspections and enter

into and search any premises, land or means of transport, other than those referred to in 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 of the 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 are 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 premises;
- (iii) require any information which is stored in a computer or any other object or device including external servers and cloud services which are 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.

Cap. 9.

(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 shall 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 the said 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.

(9) (a) In the course of any search as is referred to in sub-article (7), the Director General and, or any of his officers and, or any person authorised or appointed by the Director General may request the assistance of the Police and in such case the Police shall require a warrant issued by the Magistrate to assist the Director General in the search.

(b) Where police assistance is sought by the European Commission in terms of Article 20(6) of [Council Regulation \(EC\) No 1/2003](#), a warrant from a Magistrate shall be required.

(10) In issuing a warrant enabling the European Commission to carry out an inspection in terms of Article 21 of [Council Regulation \(EC\) No 1/2003](#) the Magistrate shall follow the provisions of paragraph (3) thereof.

(11) In the course of an inspection under this article, the undertakings or association of undertakings or persons subject to the inspection may be assisted by legal counsel of their choice:

Provided that officers may wait a reasonable time for the legal counsel to arrive before starting the inspection and during this time, officers may take any reasonable measures to prevent any potential tampering with evidence or to prevent any potential communication by which other undertakings will be informed that

an investigation is taking place:

Provided further that the right of such assistance may delay but shall not have the effect of suspending the inspection.

(12) The Director General shall always issue a receipt to the person on the premises or in control of any object that has been seized. Anything which has been lawfully seized by the Director General and any order given by the Director General in accordance with sub-article (7) may be retained or shall remain in force as long as it is considered necessary by the Director General.

(13) No search may be commenced on any premises, land or means of transport after seven o'clock in the evening and before seven o'clock on the next following morning, unless there is reason to believe that delay could cause the loss of information and the search is expressly authorised by the Magistrate, to take place between the said times.

Cap. 9. (14) Nothing in this article shall be deemed to detract from the powers of the Police under the [Criminal Code](#) or under any other law.

Contents of the
sworn application.
Added by:
XXVIII. 2000.13.
Substituted by:
III. 2004.136;
VI. 2011.129;
XVI.2019.35.
Amended by:
XLV.2021.6.
Cap. 510.

12A. (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 in Court a sworn application:

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) of the TFEU, the Director General may institute proceedings against a number of undertakings which are less than those undertakings who actually are a party or were a party to that agreement or concerted practice, or are, or were engaged in that conduct.

(2) The sworn application mentioned in sub-article (1) shall:

(a) Set the facts which led the Director General to find a suspected infringement of articles 5 and, or 9 of the Act and, or a suspected infringement of Articles 101 and, or 102 of the TFEU.

(b) Where appropriate, contain a request by the Director General for the Court to issue a judgement finding an infringement of articles 5 and, or 9 of this Act and, or an infringement of Articles 101 and, or 102 of the TFEU against the undertaking and, or association of undertakings concerned.

(c) Where appropriate, contain a request by the Director General for the Court to impose a penalty, and, or any other remedy on the undertaking and, or association of undertakings concerned as contemplated in this Act:

Provided that the Director General may also indicate a specific amount of the penalty either in its sworn application or by a note presented in Court during proceedings:

Provided further that the provisions of article 156 of the [Code of Organization and Civil Procedure](#) shall, where applicable, also apply to the sworn application.

Cap. 12.

(3) In addition to the above, the Director General may also include a report in the Maltese or English language with the findings of the investigation carried out by him:

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.

(4) Without prejudice to the provisions of article 12A(1), the Director General may also file a sworn application requesting the imposition of a penalty on the undertaking, and, or association of undertakings concerned in all the other instances pursuant to the provisions of article 21.

(5) The undertaking and, or association of undertakings against whom the sworn application is served, shall file by no later than twenty days from date of service, a sworn reply and the provisions of article 158 of the [Code of Organization and Civil Procedure](#) shall, *mutatis mutandis*, apply in this case.

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(6) During court proceedings, the undertaking and, or association of undertakings concerned in receipt of a sworn application, shall, upon a request to this effect, be entitled to have access to the file of the investigation concerning their case, without prejudice to the non-disclosure of information or documents identified by the Director General deemed to contain business secrets, or other confidential information, or internal documents of the Director General or of the Competition Authorities of other Member States. The Director General shall provide access to the file of the investigation at any time:

Provided that any document forming part of the access to the file may be provided by the Director General to the defendant in different sittings.

(7) In the interpretation of this Act and of any regulations made thereunder and in the exercise of his responsibilities under this

Act and any regulations made thereunder, the Director General shall have recourse to the judgements of the Court of Justice of the European Union, to relevant decisions and statements of the European Commission including interpretative notices on the relevant provisions of the TFEU and secondary legislation relative to competition and may have recourse to his decisions, and those of the Court and to those of the Competition and Consumer Appeals Tribunal and the Commission for Fair Trading:

Provided that the Director General may have recourse to other sources as long as they are consistent with the competition law judgements of the Court of Justice of the European Union and to decisions and statements of the European Commission.

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(8) Notwithstanding any other provision in the [Code of Organization 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.

Settlement
procedure.
Added by:
VI. 2011.130.
Substituted by:
XVI.2019.36.
Amended by:
XLV.2021.7.

12B. (1) The Director General together with any undertaking and, or association of undertakings shall have the right to demand, either during the course of the investigation before the Office or at any stage after the closure of the said investigation, 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 the imposition of a penalty by the Court in terms of article 21(1) as provided for in this article.

(2) The termination of the investigation before the Office or the termination of proceedings before the Court by means of settlement, shall be granted by virtue of a judgement delivered by the Court upon the demand made jointly by the Director General and any undertaking, and, or association of undertakings concerned, where the Director General and the undertaking, and, or association of undertakings concerned agree that the investigation before the Office or the proceedings before the Court, as the case may be, are terminated by means of the settlement procedure, 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:

Provided that not all undertakings and or, association of undertakings which are under investigation or which are subject to proceedings before the Court must agree to submit to a settlement procedure.

(3) The joint demand mentioned in sub-article (2) shall be made by means of a joint application filed in Court:

Provided that the Court must be satisfied that all the requirements of sub-article (7) are reflected in the joint application:

Provided further that after the Court considers that the requirements of sub-article (7) have all been satisfied, the Court shall appoint a sitting to confirm that the undertaking, and, or association of undertakings concerned are not contesting the contents of the settlement submissions and that all the parties concerned express their unconditional willingness to terminate the investigation before the Office or the proceedings before the Court by means of the settlement procedure, after which sitting, the Court shall pronounce judgement on the basis of the joint application.

(4) In the course of an investigation concerning an alleged infringement of articles 5 and, or 9 of the Act and, or an alleged infringement of Articles 101 and, or 102 of the TFEU, the Director General may prior to the filing of a sworn application in Court pursuant to article 12A of the Act, if he deems it appropriate for the expeditious and efficient conclusion of the investigation, invite all, some or one of the undertakings concerned and, or the association of undertakings concerned to indicate in writing, within the time limit set by him, whether they are prepared to engage in settlement discussions with a view to possibly introducing settlement submissions:

Provided that, the Director General shall not be obliged to take into account the replies received after the expiry of that time limit:

Provided further that, at any time during the course of an investigation, any undertaking and, or association of undertakings concerned may also request to engage in settlement discussions with the Director General:

Provided further that, the decision regarding the initiation of the settlement discussions falls within the exclusive competence of the Director General.

(5) Should the Director General ascertain that sufficient progress in the settlement discussions have taken place, the Director General shall invite the undertaking and, or association of undertakings concerned to introduce their settlement submissions before the Office within a time limit as set by the Director General with a view to conclude the settlement procedure:

Provided, that before the Director General sets a time limit to introduce their settlement submissions, the undertaking and, or association of undertakings concerned may be informed of the main elements of the suspected infringement, consisting of:

- (i) the evidence found;

(ii) the legal assessment of the facts; and

(iii) the specific amount of the penalty to be requested by the Director General in the joint application:

Provided further that before the Director General sets a time limit for the undertaking and, or association of undertakings to introduce their settlement submissions, the undertaking and, or association of undertakings concerned may have limited access to the file of the investigation concerning their case which is granted only to the extent that the Director General deems reasonable in view of the objectives of the settlement procedure. If access to the file is granted, the Director General shall provide partial access to the case file by providing non-confidential versions of any specified accessible document listed in the case file at that point in time:

Provided further that before the Director General sets a time limit for the undertaking and, or association of undertakings to introduce their settlement submissions, the undertaking and, or association of undertakings concerned shall be given the opportunity to present their views on the alleged infringement and make observations:

Provided further, that if the undertaking and, or association of undertakings fails to submit the settlement submissions within the time limit set by the Director General, it shall be considered that the undertaking, and, or association of undertakings concerned has withdrawn from the settlement procedure.

(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 in regard to 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 the 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 submitted in terms of the Act 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 of the TFEU.

(iv) The parties granted access to settlement submissions together with their legal counsels who are granted 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.

(7) The settlement submissions submitted before the Office pursuant to sub-article (5) shall 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:

(a) a statement by the undertaking and, or association of undertakings concerned, clearly and unequivocally admitting their participation in the infringement as well as their liability regarding articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU;

(b) a factual and brief description of the conduct of the undertaking and, or the association of undertakings concerned, the objective of the conduct and the way in which it was carried out, its duration and the extent in which the undertaking and, or association of undertakings were involved;

(c) a statement of the undertaking and, or association of undertakings concerned declaring that they accept the amount of the penalty that is being requested by the Director General in the joint application;

(d) a statement of the undertaking and, or association of undertakings concerned to the effect that they were sufficiently informed by the Director General regarding the main elements of the suspected infringement contained in sub-article (5) and a declaration of the undertaking and, or association of undertakings that they were given sufficient opportunity to be heard and to make their views known to the Director General;

(e) a statement of the undertaking and, or association of undertakings concerned that they will waive their right to

obtain further or full access to the file of the investigation concerning their case;

(f) a statement of the undertaking and, or association of undertakings concerned containing its waiver of its right to appeal or challenge in any way the settlement procedure, the investigation related to the settlement procedure, or the judgement of the Court including the penalty; and also waiver of any action or claim deriving from the same settlement procedure and, or related to the investigation related to the settlement procedure and, or related to the judgement of the Court and, or the penalty;

(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 established by the Director General in the joint application:

Provided that together with the settlement submissions the joint application shall also include a statement by the Director General:

(i) agreeing with the settlement submissions of the undertaking and, or association of undertakings concerned;

(ii) specifying the amount of the penalty he is requesting to be imposed on the undertaking and, or association of undertakings concerned; and

(iii) requesting the Court to deliver a judgement to terminate proceedings by means of settlement based on the settlement submissions of the undertaking and, or association of undertakings concerned contained in the joint application and to impose the amount of the penalty as requested by the Director General;

(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 facts of

the infringement and the legal assessment of the infringement; and

(ii) the specific amount of the penalty that the Director General is requesting to be imposed on the undertaking and, or association of undertakings concerned;

(8) Settlement discussions may also be proposed jointly by the parties at a later stage, when a sworn application would have already been filed by the Director General before the Court:

Provided that the Court may adjourn two sittings so that within such time the parties would be able to attempt to settle the dispute by filing a joint application as referred to in sub-article (3):

Provided further that if the Director General and, or the undertaking and, or association of undertakings concerned fail to file a joint application within the adjourned two sittings allocated by the Court, proceedings against the undertaking, and, or association of undertakings concerned shall continue according to the stage where the proceedings before the Court had arrived.

(9) If the undertaking, and, or association of undertakings concerned agree to terminate the investigation before the Office or the proceedings before the Court by means of settlement, by filing together with the Director General the joint application, the Director General shall reward the undertaking and, or association of undertakings for the settlement, 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%).

(10) The Director General may decide at his own discretion at any time during the settlement discussions to discontinue settlement procedure altogether in a specific case or with respect to one or more of the parties involved, if, for instance:

(a) procedural efficiencies are not likely to be achieved; or

(b) the settlement submissions do not contain all the requirements mentioned in sub-article (7); or

(c) the undertaking and, or association of undertakings do not have a sincere intention of settling the case or do not cooperate or have breached the confidentiality obligation by revealing to any third party the content of the settlement meetings held with the Director General or the contents of the documents to which access has been granted:

Provided that in case where the Director General discontinues the settlement discussions for any reason as provided for in this sub-article, or in the case where the undertaking and, or association of undertakings concerned or the Director General, as the case may be, withdraw or discontinue the settlement procedure as provided for in sub-articles in (5) and (8), the case shall proceed according to the stage where the investigation or proceedings have arrived.

(11) If the settlement procedure is discontinued either by the Director General or by the undertaking and, or association of undertakings concerned during the investigation before the Office or during Court proceedings while attempting to settle the dispute, any information and document provided by the undertaking, and, or association of undertakings concerned during the settlement procedure cannot be used as evidence to establish an infringement of articles 5, and, or 9 of the Act, and, or an infringement of Articles 101 and, or 102 of the TFEU against the undertaking and, or association of undertakings concerned or other parties to the investigation before any court of law:

Provided that the foregoing provision of this sub-article is without prejudice to sub-regulation (4)(c) of regulation 6 of the Competition Law Infringements (Actions for Damages) Regulations in the Schedule:

Provided further that documents and, or information which were already in the possession of the Office prior to being presented by the undertaking and, or association of undertakings concerned and any information which can be requested by the Office pursuant to article 12 of the Act, can be used as evidence by the Office and before any court of law to establish an infringement of articles 5, and, or 9 of the Act, and, or an infringement of Articles 101 and, or 102 of the TFEU against the undertaking, and, or association of undertakings concerned or against other parties to the investigation.

Commitments.
Added by:
VI.2011.130.
Substituted by:
XVI.2019.37.
Amended by:
XLV.2021.8.

12C. (1) Instead of delivering a judgement finding an infringement pursuant to article 13(1), the Court may issue a judgement declaring commitments offered by the undertaking and, or the association of undertakings concerned involved in a suspected infringement to be binding on them, if the commitments are such as to bring the suspected infringement to an end and where those commitments meet the competition concerns expressed in that case:

Provided that when delivering such judgement, the Court shall not impose any penalty and shall not specify as to whether there has been an infringement of articles 5, and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU.

(2) Commitments shall not be applicable where the suspected infringement concerns secret cartels or any other agreements,

decisions or concerted practices which involve price fixing, market sharing or output limitation:

Provided that in all other cases, the Court shall make a case by case assessment, after taking into consideration all the submissions of the parties to the proceedings, and any third party comments as provided in sub-article (5) as to whether commitments are the most appropriate measures to address the suspected infringement in the case at issue.

(3) The judgement may specify that those commitments may be adopted for a specific period of time and shall conclude that there are no longer grounds for action that can be taken by the Director General against the undertaking, and, or association of undertakings concerned.

(4) Where the Court intends to deliver a judgement under sub-article (1) and accepts the commitments proposed, it shall seek the views of market participants by publishing a concise summary of the case and the main contents of the commitments or of the proposed course of action on the Gazette, having regard to the legitimate interests of the undertakings as well as the protection of business secrets or other confidential information:

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, which request shall also include the authorization of the Court on the manner in which the said proposed commitments are to be published and the time within which all views of market participants or of any other third parties should be received in the registry of the Court.

(5) Any interested party may submit their observations in the records of the case within the time limit fixed by the Court in its publication:

Provided that the Director General and the undertaking and, or association of undertakings concerned shall be notified and given a copy of the third party comments.

(6) The Court shall reopen the proceedings upon a sworn application by the Director General only where:

- (a) there has been a material change in any of the facts on which the judgment was based; or
- (b) the undertaking and, or association of undertakings concerned acted contrary to its commitments; or
- (c) the judgment was based on incomplete, incorrect, or misleading information provided by the undertaking, and, or association of undertakings concerned.

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

Access to file by parties and limitations on the use of information.
Substituted by:
XLV.2021.9.

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 proceedings before the Courts of Malta, unless the Court has closed its proceedings before it with respect to all parties under investigation by delivering 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 delivering a decision in accordance to 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

Finding of an infringement by the Court
Amended by:
XXVIII. 2000.14.
Substituted by:
III. 2004.136.
Amended by:
VI. 2011.121, 131.
Substituted by:
XVI.2019.39.
Amended by:
XLV.2021.10.

13. (1) The Court may decide that an infringement of articles 5 and, or 9 of the Act, and, or an infringement of Articles 101 and, or 102 of the TFEU has occurred.

(2) Where upon hearing the case the Court finds no infringement of articles 5 and, or 9 of the Act, it shall deliver a judgement to that effect:

Provided that if the Court concludes that the suspected infringement does not constitute a breach of articles 101 and, or 102 of the TFEU, the Court shall state in its judgement that there are no grounds for action in accordance with Article 5 of Council [Regulation \(EC\) 1/2003](#).

(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 closes those proceedings, the Office shall inform the European Commission accordingly.

Cease and Desist Order and Compliance Order
Added by:
III. 2004.136.
Substituted by:
VI. 2011.132.
XVI.2019.40.

13A. (1) The Court may in its judgement issue a cease and desist order whereby it orders the undertaking and, or association of undertakings concerned to cease and desist from participating in such agreement, decision, practice or conduct, and, or issue a compliance order setting behavioural or structural remedies addressed to the undertaking and, or association of undertakings concerned for the purpose of bringing the infringement to an immediate and effective end.

(2) 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.

(3) 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.

13B. (1) The Director General and any party to the proceedings before the Court, who feel aggrieved by a judgement of the Court delivered under this Act may appeal on points of law and, or of fact before 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 that court:

Procedure before
the Court and
appeals from
decisions thereof.
Added by:
XVI.2019.41.
Amended by:
XLV.2021.11.

Provided that the Court of Appeal shall appoint the case for hearing by not later than six months from the date of service of the appeal application on the parties.

(2) If during an investigation the Director General institutes proceedings pursuant to article 12A(4) of the Act concerning requests for information, production of documents or the conduct of inspections, the Court shall endeavour to deliver a judgement upon hearing the parties in the shortest time possible:

Provided that an appeal from such a judgement as referred to in this sub-article, shall only lie after the definitive judgment in terms of articles 12C, 13, 13A or 21 of the Act is delivered and together with an appeal from such definitive judgement. The judgement mentioned in this sub-article may not be challenged before the definitive judgement is delivered:

Provided further that, if following the investigation, the Director General does not proceed to institute proceedings in terms of article 12A(1) of the Act, the Director General shall inform the undertaking and, or association of undertakings concerned which shall have twenty days from the notification of the Director General of this fact to appeal from the judgement delivered by the Court pursuant to this sub-article.

(3) The undertaking or association of undertakings concerned, the Director General or the complainant may request the Court to be heard behind closed doors where the submissions to be made or evidence to be produced is of a confidential nature or contains business secrets.

(4) In all cases involving the application of Article 101 and, or 102 of the TFEU, the European Commission shall have a right to make submissions on any matter before the Court.

(5) (a) A confidential and a non-confidential version shall be produced of any written observations and documentary evidence

submitted before the Court; and

(b) The Court shall verify the confidentiality or otherwise of the information submitted.

Cap. 12.

(6) Subject to the provisions of this Act, the provisions of the [Code of Organization and Civil Procedure](#) shall, *mutatis mutandis*, apply to all judicial proceedings instituted according to this Act before the Court and the Court of Appeal and to the enforcement of judgements and decrees.

(7) When delivering judgements and decrees pursuant to the provisions of this Act, the Court shall have recourse to the judgments of the Court of Justice of the European Union, and to relevant decisions and statements of the European Commission including interpretative notices on the relevant provisions of the TFEU and secondary legislation relative to competition and may also refer to its decisions and those of the Competition and Consumer Appeals Tribunal and the Commission for Fair Trading.

(8) Proceedings before the Court concerning alleged infringements of articles 5 and, or 9 of the Act and, or Articles 101 or 102 of the 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.

Handling of
complaints.
Amended by:
XXVIII. 2000.15;
III. 2004.137.
Substituted by:
VI. 2011.132.
Amended by:
XVI.2019.42;
XLV.2021.12.

14. (1) Complaints are to be received by the Director General in writing, who shall set out the general requirements for information to be provided by the complainant.

Provided that the complainant shall request in his complaint that an investigation be carried out on the alleged restricted practices.

(2) Where the Director General considers that on the basis of the information in his possession there are insufficient grounds for acting on a complaint or fails for some other reason to investigate a complaint against an undertaking and, or association of undertakings concerned in terms of this Act, he shall inform the complainant:

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.

(3) If the Director General considers that there are insufficient grounds to act on a complaint or fails to investigate a complaint in terms of the Act as referred to in the previous sub-article, it shall be lawful for the complainant to file a sworn application in Court, within twenty days from notification of the decision of the Director General, to request the Court to order the Director General to act on a complaint or investigate a complaint in terms of the Act against the undertaking and, or association of undertakings concerned:

Provided that, if after hearing the evidence tendered by the complainant and the Director General, the Court is satisfied that the complaint is justified and, or that the Director General has no lawful reasons for failing to act on a complaint or to investigate a complaint, the Court shall deliver a judgement ordering the Director General who shall thereupon commence the investigation or issue any other order which the Court considers appropriate in that case.

(4) Any party to the proceedings before the Court who feels aggrieved by the judgment of the Court delivered in terms of sub-article (3), may appeal on points of law and, or of fact before the Court of Appeal, by means of an application filed in the registry of that court within twenty days from the date of the judgment 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 an official party to the proceedings and enjoy the same rights which pertain to his counterparty.

14A. (1) Without prejudice to article 12, a qualified entity may also make a complaint to the Director General that with respect to particular goods or services -

Complaints of
general interest.
Added by:
VI. 2011.133.

- (a) the structure of the market concerned or any aspect of that structure;
- (b) any conduct, whether or not in the market concerned, of one or more than one person who supplies or acquires goods or services in the market concerned; or
- (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services,

is or appears to be significantly harming the interests of consumers.

(2) The Director General must, within ninety days after the day on which he receives the complaint, publish a response stating how he proposes to deal with the complaint, and in particular:

- (a) whether he has decided to take any action, or to take no action, in response to the complaint; and
- (b) if he has decided to take action, what action he proposes to take.

(3) The response must state the reasons of the Director General for his proposals.

(4) The Director General:

- (a) shall issue guidance as to the presentation by the qualified entity of a reasoned case for the complaint; and
- (b) may issue such other guidance as appears appropriate for the purposes of this article.

14B. (1) The Director General may suspend proceedings or reject a complaint in terms of Article 13 of [Council Regulation \(EC\) No 1/2003](#).

Suspension or
termination of
proceedings.
Added by:
VI. 2011.133.

(2) Where the Director General rejects or suspends a complaint

pursuant to sub-article (1), he shall inform the complainant without delay of the competition authority which is dealing or has already dealt with the case.

Guidance letters.
Added by:
VI. 2011.133.

14C. Deleted by Act [XVI.2019.43](#).

Interim measures.
Amended by:
XXVIII. 2000.16.
Substituted by:
VI. 2011.134;
XVI.2019.44.
Amended by:
XLV.2021.13.

15. (1) The Court shall, upon an application filed by the Director General, in cases of urgency due to the risk of serious and irreparable harm to competition on the basis of a *prima facie* finding of an infringement of articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU, issue interim measures on any undertaking and, or association of undertakings concerned as it may deem appropriate in the circumstances:

Provided that any decree imposing interim measures issued according to this provision shall be enforceable upon its delivery and any interim measure 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 the Court:

Provided further that the interim measures may be renewed by the Court in so far as it is necessary and appropriate upon an application filed by the Director General before the Court.

(2) The application filed by the Director General pursuant to sub-article (1) shall state all the facts known by him and the reasons why he deems that the imposition of interim measures is in this case required. Such application shall also contain all submissions to be made together with all documents in support of the demand that is being filed:

Provided that together with the application, the Director General may also include a report in the English language with any findings in order to sustain his demand.

(3) 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 service of the application, containing all the submissions together with all the documents in support of the reply that is filed:

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

(4) The court shall decide the application with urgency either *in camera* or after hearing the parties, if it deems fit, provided that not more than one sitting may be fixed for such purpose.

(5) An appeal from the interim measures imposed by the Court pursuant to sub-article (1) may be lodged by the aggrieved

party by means of an application filed before the Court of Appeal, within six days from the date of such decree on the legality, including the proportionality of the interim measures and the party against whom such an application is filed shall reply thereto within six days from the date of service of such an application:

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.

(6) The Court of Appeal shall decide on the application pursuant to sub-article (5) in an expedited manner.

(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 of the TFEU, referred to in sub-article (1).

15A. (*Deleted by Act III. 2004.138*).

Interim orders.
Added by:
XXVIII. 2000.17.

15B. (*Deleted by Act III. 2004.138*).

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

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 of the TFEU and where the existence of such an 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*.

Immunity or
reduction of
penalties for
infringements of
article 5 of the Act
and, or Article 101
of the TFEU.
Substituted by:
XLV.2021.14.
S.L. 379.10.

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, decide to issue a commitments decision to make commitments binding on the undertaking or association of undertakings.

Commitments
decision by the
Director General.
Substituted by:
XLV.2021.15.

(2) For the purposes of sub-article (1), 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 of the TFEU be brought to an end, the Director General may, after formally or informally seeking 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, or 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 set 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 contest any commitments decision adopted by the Director General by filing an application before the Court within twenty days from the date of publication of the decision on the Authority's website:

Provided that the application shall be served on the Director General and the said Director General shall file his reply thereto within twenty days from the date of service of the application.

(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 the proceedings before the Court who feels aggrieved by a judgement of the Court in terms of 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 counter-party.

(7) Upon publication of the decision of the Director General pursuant to article 19 such decision shall, without prejudice to the rights stipulated 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 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 and that decision has not been contested.

(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: Cap. 510.

- (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 Regulation 1/2003 to adopt commitments decisions.

18. Deleted by Act [XVI.2019.45](#).

Non-compliance with an interim measure.
Amended by:
III. 2004.141.
Substituted by:
VI. 2011.135.

19. (1) When publishing judgements and decrees, the Court shall have regard to the legitimate interest of the undertakings concerned in the protection of their business secrets or other confidential information. The Court may give the parties concerned the opportunity to specify the confidential parts of the judgement or decree which they want to be excluded from publication:

Publication of judgements and decrees.
Amended by:
XXVIII. 2000.20;
III. 2004.142.
Substituted by:
VI. 2011.135.
XVI.2019.46.
Amended by:
XLV.2021.16.
Cap. 510.

Provided that the Court shall ultimately decide about which version shall be published.

(2) 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](#). Cap. 510.

(3) Notwithstanding the provisions of sub-article (1) or of any other law, judgements of the Courts of Malta shall not publish 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: S.L. 379.10.

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.

20. (Deleted by Act III.2004.143).

Offences against interim orders.
Amended by:
XXVIII. 2000.21.

Penalties.
 Amended by:
 XXVIII. 2000.22;
 III. 2004.144;
 L.N. 425 of 2007.
 Substituted by:
 VI. 2011.121;
 XVI.2019.47.
 Amended by:
 XLV.2021.17.

21. (1) The Court shall impose a penalty of not more than ten percent of the total worldwide turnover of an undertaking and, or association of undertakings concerned in the business year preceding the judgement imposing the penalty under this sub-article, for each infringement where the undertaking and, or association of undertakings intentionally or negligently:

- (a) infringes the provisions of articles 5 and, or 9 of the Act; and, or
- (b) infringes Article 101 and, or 102 of the TFEU:

Provided that where the infringement of an association of undertakings relates to the activities of its members, the penalty shall not exceed ten per centum of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association of undertakings.

(2) (a) Where, upon delivering a judgement finding an infringement of articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU, a penalty is imposed by the Court upon an association of undertakings, taking account of the turnover of its members, and the association of undertakings is not solvent, the Court shall order the association of undertakings to call for contributions from its members to cover the amount of the penalty due within a time limit fixed by the Court:

Provided that the Court may also specify in its judgement that where the contributions referred to in paragraph (a) are not made to the association of undertakings within the time limit fixed by the Court, payment of the penalty shall be made directly by any of the undertakings whose representatives were members of the decision-making bodies of the association of undertakings:

Provided further that the Court may also specify in its judgement that where the application of the foregoing proviso is not sufficient to ensure the full payment of the penalty, payment of the balance shall be made by any of the members of the association of undertakings which were active on the market on which the infringement occurred.

(b) The foregoing provisos of this sub-article shall not apply to those undertakings which show that they have not implemented the unlawful decision of the association of undertakings and they were not aware of its existence or had actively distanced themselves from it, before the Director General started investigating the case.

(c) The financial liability of each undertaking in respect to the payment of the penalty shall not exceed the maximum amount in accordance with sub-article (1).

(3) (a) Sub-article (1) shall, *mutatis mutandis*, apply when

an undertaking and, or an association of undertakings intentionally or negligently:

(i) fails to comply with a cease and desist order and, or a compliance order pursuant to article 13A;

(ii) fails to comply with an interim measure pursuant to article 15;

(iii) fails to comply with a commitment made binding pursuant to articles 12C or 17;

(b) In the application of this sub-article to an association of undertakings, sub-article (2) shall, *mutatis mutandis*, apply.

(4) (a) In determining the amount of the penalty, the Court shall give due regard to the gravity and the duration of the infringement and to any aggravating or attenuating circumstances.

(b) Aggravating circumstances include:

(i) the Court having already imposed a penalty on the same undertaking or association of undertakings for the same or a similar infringement;

(ii) the undertaking or association of undertakings concerned having already committed an infringement under articles 5 and, or 9 of this Act and, or under Articles 101 and, or 102 of the TFEU according to a decision or judgement which has become *res judicata*;

(iii) the undertaking or association of undertakings having a leading role, as perpetrator or instigator;

(iv) retaliatory or other coercive measures taken against other undertakings aimed at ensuring the continuation of the infringement;

(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) Attenuating circumstances include:

(i) the involvement of the undertaking or association of undertakings in the infringement being substantially limited;

(ii) the undertaking or association of undertakings ending the infringement on its own accord;

(iii) the undertaking or association of undertakings significantly contributing to uncover the infringement;

(iv) the undertaking acting under severe duress or pressure.

(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 worldwide turnover of the undertaking or association of undertakings in the business year preceding the judgement imposing the penalty under this sub-article, whichever is the highest, where any person, undertaking and, or association of undertakings in the course of any investigation pursuant to article 12 or in the course of a sector inquiry pursuant to article 11A, intentionally or negligently:

- (a) give any false, misleading, incomplete or incorrect information in response to a request for information or question referred to in article 12, or they do not supply the information within the specified time limit;
- (b) produce or furnish, or cause or knowingly allow to be produced or furnished any document or information which they know to be false in any particular material;
- (c) fail to comply with an inspection and, or obstruct 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) break the seals affixed by officers of the Office or other accompanying persons authorised or appointed by the Director General during an inspection;
- (e) in response to a question referred to in article 12(7)(c)(vi), give an incorrect, misleading answer, fail or refuse to provide a complete answer;
- (f) disclose information to any third party not party of the relevant proceedings under this Act or make copies of any documents contrary to the provisions of article 12B(6);
- (g) fail to appear at an interview referred to in article 12; or
- (h) prevent or hinder any investigation or sector inquiry.

(6) Where during the course of any investigation or inquiry conducted under the 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, incorrect or misleading information;
- (b) supplies incomplete information;

- (c) prevents or hinders any investigation;
- (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 a penalty of not less than one thousand and 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.

(7) The Court shall impose on an undertaking and, or association of undertakings, periodic penalty payments determined in proportion to the average daily total worldwide turnover of the undertaking and, or association of undertakings concerned 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 11A and 12;
- (vi) to supply correct information and, or to produce the requested documents in response to a request for information referred to in articles 11A and 12;
- (vii) to appear at an interview as referred to in article 12; and
- (viii) to stop from pursuing any other conduct which is hindering the investigation or sector inquiry and, or to rectify any acts or omissions.

(8) When determining the penalties pursuant to this article, the Court shall in exercising its discretion ensure that the penalties imposed are effective, proportionate and dissuasive.

(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.

(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 shall apply.

(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.

(12) Notwithstanding the provisions of any other law, at any time prior to the delivery of a judgement imposing a penalty under this article, the Court may request the total worldwide turnover from any undertaking and, or association of undertakings.

Failure to pay
fines.

Added by:
VI. 2011.137.

Offences against
article 10(5).

Amended by:
XXVIII. 2000.24.

Penalty for
offences against
article 17.

Added by:
XXVIII. 2000.23.
Amended by:
L.N. 425 of 2007.

Offences in
connection with
investigations, etc.

Amended by:
XXVIII. 2000.25;
L.N. 425 of 2007;
VI. 2011.121, 139.

Director General
may assist
prosecution.

Amended by:
VI. 2011.121

Right of appeal.
Cap. 9.

Prescription.
Cap. 9.

Prescription for
the imposition of
penalties.

Added by:
XXVIII. 2000.26.
Amended by:
L.N. 425 of 2007.
Substituted by:
VI. 2011.140.
Amended by:
XVI.2019.49.
XLV.2021.18.

21A. Deleted by Act [XVI.2019.48](#).

22. (Deleted by Act *III.2004.145*).

22A. (Deleted by Act *VI. 2011.138*).

23. Deleted by Act [XVI.2019.48](#).

24. Deleted by Act [XVI.2019.48](#).

25. Deleted by Act [XVI.2019.48](#).

26. Deleted by Act [XVI.2019.48](#).

26A. (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.

(2) Deleted by Act [XVI.2019.49](#).

(3) (a) The prescription period for the imposition of penalties

or periodic penalty payments by the Court pursuant to article 21 of the Act 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 of the Act shall be interrupted for the duration of the investigation or proceedings before the 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 of the 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 alleged infringement.

(4) Formal investigative measures which interrupt the running of the prescription period shall include in particular the following:

- (i) written requests for information by the Director General, the European Commission or by a national competition authority;
- (ii) a warrant issued by a Magistrate under article 12 to conduct an inspection, or a written authorisation by the European Commission in terms of Article 20 of [Council Regulation \(EC\) No 1/2003](#), or an equivalent document issued by a national competition authority;
- (iii) the commencement of proceedings by the Director General, the European Commission or by a national competition authority;
- (iv) the communication of a statement of objections by a competition authority of a Member State;
- (v) the notification of the invitation by the Director General to engage in settlement discussions under article 12B.

(5) The interruption of the prescription period shall apply to all undertakings and associations of undertakings which have participated in the alleged infringement.

(6) The prescription period shall start to run again from each interruption.

(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 of this Act or when the Director General or the Court conclude that there are no grounds for further action on their part.

(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.

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

26B. (*Deleted by Act VI. 2011.141*).

Proceedings before of a civil court.
Amended by:
III. 2004.146.
Substituted by:
VI. 2011.142.
Amended by:
XVI.2019.50;
XLV.2021.19.

27. (1) Without prejudice to the provisions of articles 3 and 12A(1), where before any other court of civil jurisdiction which is not the Civil Court (Commercial Section) it is alleged that any agreement or decision is null and unenforceable in accordance with article 5 of this Act and, or Article 101 of the TFEU, or where it is alleged that there is an abuse of a dominant position in accordance with article 9 of this Act and, or Article 102 of the TFEU, that court shall stay the proceedings and request the Director General to submit a report on the competition questions raised before it and the court shall take into consideration such report, and any submissions thereon made by the parties and the Director General, before deciding the case:

Provided that where the competition question raised before the court has already been decided upon under the provisions of this Act and the decision thereon has become *res judicata*, the court shall abide by such decision:

Provided further that where the competition issue raised before any court of civil jurisdiction is subject to pending proceedings instituted by the Director General before the Court, or may be the subject of proceedings before the Court at any point in time as contemplated in this Act, any other court of civil jurisdiction where the competition issue mentioned in sub-article (1) has been raised shall refer the proceedings to the competent court.

(2) Where the Director General, on his own initiative, becomes cognizant of allegations as mentioned in sub-article (1), in a civil lawsuit, he shall, by means of an application, request the court to apply the procedure referred to in sub-article (1).

(3) For the purposes of drawing up reports under this article the Director General may have resort to the investigatory powers conferred upon him under this Act.

Actions for damages in respect of infringements of competition law.
Added by:
VI. 2011.143.
Amended by:
VI. 2012.25.
Substituted by:
XXV. 2017.2.

27A. (1) The action for damages in respect of infringements of competition law committed on or after the 27th December 2014 shall, notwithstanding the provisions of any other law but subject to the provisions of this article, be regulated in accordance with the provisions of the Schedule.

(2) Actions for damages in respect of infringements of competition law, committed before the 27th December 2014 shall continue to be regulated by the provisions of this Act as then in force.

(3) Nothing in this Act shall have the effect of extending any period of prescription applicable in respect of infringements of competition law committed before the 27th December 2016

according to the provisions of this Act as then in force or of reviving any period of prescription which has expired.

(4) The provisions of this article shall be without prejudice to any decision which may have become *res judicata* or to anything done in any action which is still pending before a court at the time of the coming into force of this article

28. It shall not be lawful to issue any precautionary warrant referred to in the [Code of Organization and Civil Procedure](#) against the Director General in respect of the exercise of his functions under this Act.

It shall not be lawful to issue any precautionary warrant.
Substituted by:
III. 2004.147.
Amended by:
VI. 2011.121, 145.
XVI.2019.51.
Cap. 12.

29. Notwithstanding anything contained in this Act the Director General 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 having responsibility in competition matters in countries which are not Member States provided that they are restricted in divulging such information in an analogous manner and purpose to that of the Director General under this Act.

Reciprocity agreements.
Amended by:
VI. 2011.121, 144.

29A. The Director General shall cooperate with the European Commission and National Competition Authorities in terms of [Council Regulation \(EC\) No. 1/2003](#).

Co-operation under Regulation 1/2003.
Added by:
VI. 2011.146.

30. (1) Subject to the provisions of sub-article (2), the provisions of this Act shall also apply to any Government department 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:

Applicability of Act to government departments.
Substituted by:
XXVIII. 2000.27.
Amended by:
IV. 2003.24;
XLV.2021.20.

Provided that article 460(1) of the [Code of Organization 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 said Government department, authority, agency or any other Government body performs the function of an undertaking as defined under this Act.

Cap. 12.

(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.
Substituted by:
VI. 2011.147.
Amended by:
XVI.2019.52.

Causes.

Added by:
XVI.2019.53.
Cap. 12.

Power to make regulations.

Substituted by:
XXVIII. 2000.29.
Amended by:
VI. 2011.148.

Power to make regulations.

Added by:
XXVIII. 2000.30.
Amended by:
III. 2004.148;
VI. 2011.121, 149.
XXV. 2017.3;
XVI.2019.54.

31. No action shall lie against the Director General, or any of his officers or any authorised person acting under his direction or control for any act or omission in connection with this Act, or any regulations made thereunder, done or omitted by him unless such act or omission were done in bad faith.

31A. The tariffs referred to in the [Code of Organization and Civil Procedure](#) in Schedule A shall apply to the causes instituted pursuant to the provisions of this Act.

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 full function joint ventures which may prevent, restrict or distort competition within the relevant market.

33. (1) The Minister may by regulations:

- (a) prescribe the fees payable to the Director General in connection with any request made to him under this Act;
- (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.

(2) The Minister, after consultation with the Board, may make regulations:

- (a) prescribing the procedure to be followed by the office in joint investigations, co-operation and exchange of information with other national competition authorities;
 - (b) prescribing the procedure for co-operation between the Court, the European Commission, the national courts and national competition authorities; and
 - (c) providing for the power to waive or reduce the applicable fine in cartel investigations;
 - (d) prescribe any matter on competition law for the purpose of fulfilling Malta's international obligations or Malta's obligations as a Member State of the European Union;
 - (e) amend or substitute the Schedule to this Act.
-

SCHEDULE
(Article 27A)

*Added by:
XXV. 2017.4.*

COMPETITION LAW INFRINGEMENTS
(ACTIONS FOR DAMAGES)
REGULATIONS

1. (1) The title of these regulations is the Competition Law Infringements (Actions for Damages) Regulations. Citation and commencement.

(2) Subject to the provisions of article 27A of the Act, the provisions of these regulations shall be deemed to have come into force on the 27th December 2014.

2. These regulations implement the provisions of [Directive 2014/104/EU](#) of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. Purpose.

3. In these regulations, unless the context otherwise requires - Interpretation.
"Act" means the [Competition Act](#); Cap. 379.

"action for damages" means an action pursuant to these regulations by which a claim for damages is brought before a national court by an alleged injured party, or by someone acting on behalf of one or more alleged injured parties, or by a natural or legal person that succeeded in the right of the alleged injured party, including the person that acquired the claim;

"cartel" means an agreement or concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including, in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors;

"claim for damages" means a claim for compensation for harm caused by an infringement of competition law;

"competition authority" means the European Commission or any national competition authority, as the context may require;

"competition law" means Articles 101 and 102 TFEU and, or articles 5 and 9 of the Act or the provisions of national law that predominantly pursue the same objectives as Articles 101 and 102 TFEU and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of [Council Regulation No. 1/2003](#), excluding provisions of national law which impose criminal penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced, as may be applicable in a particular case;

"consensual dispute resolution" means any mechanism enabling parties to reach the out-of-court resolution of a dispute concerning

a claim for damages;

"consensual settlement" means an agreement reached through consensual dispute resolution;

Cap. 12.

"court" means a court of civil jurisdiction in Malta as established under the [Code of Organization and Civil Procedure](#) or any tribunal having jurisdiction in competition matters established under any special law;

"direct purchaser" means a natural or legal person who acquired, directly from an infringer, products or services that were the object of an infringement of competition law;

"evidence" means all types of means of proof admissible before the court, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored;

"final infringement decision" means an infringement decision that cannot be, or that can no longer be, appealed and which has accordingly become a *res judicata*;

"infringement decision" means a decision of a competition authority or a national court that finds an infringement of competition law;

"infringement of competition law" means an infringement of Article 101 or 102 TFEU and, or of article 5 or 9 of the Act or any equivalent provision of the national law of another Member State;

"infringer" means an undertaking or association of undertakings which has committed an infringement of competition law;

"immunity recipient" means an undertaking which, or a natural person who, has been granted immunity from penalties by a competition authority under a leniency programme;

"indirect purchaser" means a natural or legal person who acquired, not directly from an infringer, but from a direct purchaser or a subsequent purchaser, products or services that were the object of an infringement of competition law, or products or services containing them or derived therefrom;

"injured party" means a person that has suffered harm caused by an infringement of competition law;

"leniency programme" means a programme concerning the application of Article 101 TFEU or article 5 of the Act, or equivalent provisions of another Member State, on the basis of which a participant in a secret cartel, independently of the other undertakings involved in the cartel, cooperates with an investigation of the competition authority, by voluntarily providing presentations regarding that participant's knowledge of, and role in, the cartel in return for which that participant receives, by decision or by a discontinuation of proceedings, immunity from, or a reduction in, penalties for its involvement in the cartel;

"leniency statement" means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a natural person to a competition authority or a record thereof, describing the

knowledge of that undertaking or natural person of a cartel and describing its role therein, which presentation was drawn up specifically for submission to the competition authority with a view to obtaining immunity or a reduction of penalties under a leniency programme, not including pre-existing information;

"national competition authority" means an authority designated by a Member State pursuant to Article 35 of [Regulation \(EC\) No. 1/2003](#), as being responsible for the application of Articles 101 and 102 TFEU;

"national court" means a court or tribunal of a Member State within the meaning of Article 267 TFEU;

"overcharge" means the difference between the price actually paid and the price that would otherwise have prevailed in the absence of an infringement of competition law;

"pre-existing information" means evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority;

"review court" means a national court that is empowered by ordinary means of appeal to review decisions of a national competition authority or to review judgements pronouncing on those decisions, irrespective of whether that court itself has the power to find an infringement of competition law;

"settlement submission" means a voluntary presentation by, or on behalf of, an undertaking to a competition authority describing the undertaking's acknowledgement of, or its renunciation to a dispute, its participation in an infringement of competition law and its responsibility for that infringement of competition law, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure;

"TFEU" means the Treaty on the Functioning of the European Union.

4. (1) Any natural or legal person who has suffered damage caused by an infringement of competition law shall be entitled to claim and to obtain full compensation for that damage, which action shall be instituted in accordance with the provisions of the [Code of Organization and Civil Procedure](#), or as may be provided in any other special legislation.

Right to full compensation.

Cap. 12.

(2) For the purposes of these regulations, a person shall be deemed to have suffered damage even where that person is not the immediate customer or provider of the defendant.

(3) Full compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed. It shall therefore cover the right to compensation for actual loss and for loss of profit as well as the payment of interest from the time the damage occurred until the capital sum awarded is actually paid:

Provided that full compensation under these regulations shall not lead to over-compensation, whether by means of punitive, multiple or other types of damages.

Disclosure of
evidence.

5. (1) In proceedings relating to an action for damages pursuant to regulation 4, the claimant shall present a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of the claim for damages.

Cap. 12.

(2) The court shall have the power, upon request of the claimant, to order the disclosure of relevant evidence by the defendant or a third party, where such evidence lies in their control, in accordance with the provisions of the [Code of Organization and Civil Procedure](#), or as may be provided in any other special legislation, subject to the conditions set out in these regulations. It shall also have the power, upon request of the defendant, to order the claimant or a third party to disclose relevant evidence. This sub-regulation is without prejudice to the rights and obligations of the court under [Council Regulation \(EC\) No. 1206/2001](#):

Provided that the court may, where it so deems appropriate in the circumstances, order the disclosure of specified items of evidence or relevant categories of evidence circumscribed as precisely and as narrowly as possible on the basis of reasonably available facts in the reasoned justification presented by the claimant.

(3) The court shall limit the disclosure of evidence to that which is proportionate. In determining whether any disclosure requested by a party is proportionate, the court shall consider the legitimate interests of all parties and third parties concerned and it shall, in particular, consider:

- (a) the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence;
- (b) the scope and cost of disclosure, especially for any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure;
- (c) whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.

Cap. 12.

(4) The court shall have the power to order the disclosure of evidence containing confidential information where it considers it relevant to the action for damages. When ordering the disclosure of such information the court shall adopt any effective measures, pursuant to the provisions of the [Code of Organization and Civil Procedure](#), or to the provisions of any other special legislation, which it deems necessary or appropriate in the circumstances to protect such information in accordance with the applicable legislation:

Cap. 377.
Cap. 586.
Cap. 50.

Provided that this sub-regulation shall be without prejudice to the applicability of the duty of professional secrecy pursuant to the provisions of the [Professional Secrecy Act](#), the [Data Protection Act](#), the [Official Secrets Act](#) and any other professional secret as classified under the law of any Member State or of the European

Union.

(5) The interest of undertakings to avoid actions for damages following an infringement of competition law shall not constitute an interest capable of protection.

(6) Prior to ordering the disclosure of any evidence the court shall give that person the opportunity to present any submissions or objections concerning such disclosure.

(7) Without prejudice to sub-regulations (4) and (6) and to regulation 6, this regulation shall not prejudice the applicability of any provision of the [Code of Organization and Civil Procedure](#), or of any other applicable legislation, which would lead to wider disclosure of evidence.

Cap. 12.

6. (1) For the purpose of actions for damages pursuant to these regulations, the court shall have the power to order the disclosure of evidence included in the file of a competition authority, as the case may be, subject to the conditions set forth hereunder. In such cases, the provisions of regulation 5 shall apply in addition to this regulation.

Disclosure of evidence included in the file of a competition authority.

(2) This regulation is without prejudice to the rules and practices on public access to documents pursuant to [Regulation \(EC\) No. 1049/2001](#), and to the rules and practices under the laws of Malta or the European Union on the protection of internal documents of national competition authorities and of correspondence between competition authorities.

(3) When assessing, in accordance with regulation 5(3), the proportionality of an order to disclose information, the court shall, in addition, consider the following:

- (a) whether the request has been formulated specifically with regard to the nature, subject matter or contents of documents submitted to a competition authority or held in the file thereof, rather than by a non-specific application concerning documents submitted to a competition authority;
- (b) whether the party requesting disclosure is doing so in relation to an action for damages pending before it; and
- (c) in relation to sub-regulations (4) and (9), or upon request of a competition authority pursuant to sub-regulation (10), the need to safeguard the effectiveness of the public enforcement of competition law.

(4) The court may order the disclosure of the following categories of evidence only after a competition authority, by adopting a decision or otherwise, has closed its proceedings:

- (a) information that was prepared by a natural or legal person specifically for the proceedings of that competition authority;
- (b) information that the competition authority has drawn up and sent to the parties in the course of its proceedings; and

(c) settlement submissions that have been withdrawn.

(5) The following categories of evidence cannot, in an action for damages, at any time, be the subject of an order for disclosure:

(a) leniency statements; and

(b) settlement submissions.

(6) A claimant may present a reasoned request that the court access the evidence referred to in paragraphs (a) or (b) of sub-regulation (5) for the sole purpose of ensuring that their contents correspond to the definitions of "leniency statement" or "settlement submission", as the case may be, in regulation 3. In making that assessment, the court may request assistance exclusively from the competent competition authority:

Provided that, in cases referred to in this sub-regulation, the authors of the evidence in question shall also have the possibility to be heard:

Provided further that in no case shall the court permit other parties or third parties to access the evidence in question.

(7) If only parts of the evidence requested are covered by sub-regulation (5), the remaining parts thereof shall, depending on the category under which they fall, be released in accordance with the relevant provisions of this regulation.

(8) The disclosure of evidence in the file of a competition authority that does not fall into any of the categories listed in this regulation may be ordered in actions for damages at any time, without prejudice to the provisions of this regulation.

(9) The court shall only request the disclosure of evidence included in the file of a competition authority where no party or third party is reasonably able to provide that evidence.

(10) To the extent that a competition authority is willing to state its views on the proportionality of a request for disclosure, it may, acting on its own initiative, submit observations to the court before which that disclosure order is sought.

7. (1) Any evidence in the categories listed in regulation 6(5), which is obtained by a natural or legal person solely through access to the file of a competition authority, shall be deemed inadmissible in actions for damages pursuant to these regulations.

(2) Until the competent competition authority has closed its proceedings by adopting a decision or otherwise, evidence in the categories listed in regulation 6(4), which is obtained by a natural or legal person solely through access to the file of that competition authority, shall also be deemed inadmissible in actions for damages pursuant to these regulations.

(3) Any evidence which is obtained by a natural or legal person solely through access to the file of a competition authority, and which does not fall under sub-regulation (1) or (2), can be used in an action for damages only by that person or by a natural or legal person that succeeded to that person's rights, including a person that acquired that person's litigious right arising from the claim.

Limits on the use of evidence obtained solely through access to the file of a competition authority.

8. (1) A court seized of an action for damages pursuant to these regulations shall have the power to impose penalties on any party, third party and, or their legal representatives in the event of any of the following:

Penalties.

- (a) their failure or refusal to comply with a disclosure order of the court;
- (b) their destruction of relevant evidence;
- (c) their failure or refusal to comply with the obligations imposed by an order of the court protecting confidential information;
- (d) their breach of the limits on the use of evidence provided for in these regulations:

Provided that for the purposes of this sub-regulation, the court may impose any measure envisaged in the [Code of Organization and Civil Procedure](#), or in any other special legislation, which it deems appropriate in the circumstances. The court shall ensure that any penalty so imposed is effective, proportionate and dissuasive, having regard to the seriousness of the offence.

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(2) The penalties imposed pursuant to this regulation may also, at the discretion of the court, include the following with regard to the behaviour of a party to the proceedings:

- (a) the possibility to draw adverse inferences, such as presuming the relevant issue to be proven or dismissing claims and defences in whole or in part; and
- (b) the possibility to order the payment of costs.

(3) Penalties imposed by a Court in pursuance of the powers conferred by this regulation shall, without prejudice to any other liability under the Act or any other law, not exceed one hundred thousand euro (€100,000) for every breach or default provided in this regulation and a daily fine of ten thousand euro (€10,000) in respect of each day during which the breach or default continues.

9. (1) An infringement of competition law found by a final decision of the national competition authority, the Appeals Tribunal or any Court of Appeal in terms of the Act and, or of the European Commission, shall be deemed to be irrefutably established for the purposes of an action for damages brought pursuant to these regulations.

Effect of decisions.

(2) Where a final decision is taken by a national competition authority of another Member State, that final decision may be presented before the court seized of an action for damages pursuant to these regulations as *prima facie* evidence that an infringement of competition law has occurred, and may, at the discretion of the court, be assessed along with any other evidence adduced by the parties.

(3) This regulation is without prejudice to the rights and obligations of the court under [Article 267 TFEU](#).

10. (1) Notwithstanding the provisions of the [Civil Code](#) or of

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any other law, an action for damages pursuant to these regulations is prescribed by the lapse of five years.

(2) The period of prescription referred to in sub-regulation (1) shall begin to run from the date when the infringement of competition law has ceased and the claimant became aware, or can reasonably be expected to have become aware:

- (a) of the behaviour and the fact that it constitutes an infringement of competition law;
- (b) of the fact that the infringement of competition law caused harm to it; and
- (c) the identity of the infringer.

(3) The period of prescription referred to in sub-regulation (1) shall be suspended where a competition authority takes action for the purpose of the investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension shall end one year after the infringement decision has become *res judicata* or after the proceedings are otherwise terminated.

Joint and several liability.

11. (1) Undertakings which are found to have infringed competition law through joint behaviour shall be jointly and severally liable for the harm caused by the infringement, with the effect that each of those undertakings is bound to compensate for the harm caused in full, and the injured party has the right to require full compensation from any of them until he has been fully compensated.

(2) Notwithstanding the provisions of sub-regulation (1) but without prejudice to the right of full compensation as laid down in regulation 4, where the infringer is a small or medium-sized enterprise (SME) as defined in [Commission Recommendation 2003/361/EC](#), the infringer is liable only to its own direct and indirect purchasers or providers where:

- (a) its market share in the relevant market was below 5% at any time during the infringement of competition law; and
- (b) the application of the normal rules of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value.

(3) The exception laid down in sub-regulation (2) shall not apply where:

- (a) the SME has led the infringement of competition law or has coerced other undertakings to participate therein; or
- (b) the SME has previously been found to have infringed competition law.

(4) Notwithstanding the provisions of sub-regulation (1), an immunity recipient shall be jointly and severally liable as follows:

- (a) to its direct or indirect purchasers or providers; and
- (b) to other injured parties only where full compensation cannot be obtained from the other undertakings that were involved in the same infringement of competition law.

(5) Actions under this regulation shall be prescribed by the same period as in regulation 10.

(6) An infringer in terms of these regulations may, by a separate action, recover a contribution from any other infringer, the amount of which shall be determined in the light of their relative responsibility for the harm caused by the infringement of competition law. The amount of contribution of an infringer which has been granted immunity from penalties under a leniency programme shall not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers.

(7) To the extent that an infringement of competition law is found to have caused harm to injured parties other than the direct or indirect purchasers or providers of the infringers, the amount of any contribution from an immunity recipient to other infringers shall be determined in the light of its relative responsibility for that harm.

12. (1) In accordance with the provisions of these regulations, any person who has suffered harm caused by an infringement of competition law may claim compensation therefor, irrespective of whether such claimant is a direct or indirect purchaser from the infringer:

Passing-on of overcharges and the right to full compensation.

Provided, however, that the compensation for actual loss caused by the infringement of competition law to the claimant which may be recovered in accordance with these regulations shall not in any case exceed the overcharge harm suffered at the level of the supply chain in which the claimant operates.

(2) These regulations shall be without prejudice to the right of an injured party to claim and obtain compensation for loss of profits due to a full or partial passing-on of the overcharge.

(3) In estimating the amount of harm suffered by the claimant or the share of any overcharge that was passed on to the claimant, the court may, without prejudice to the right of the parties to produce *ex parte* expert witnesses, appoint one or more referees to assist it in accordance with the provisions of the [Code of Organization and Civil Procedure](#), or as may be provided in any other special legislation. It shall take due account of any guidelines issued by the European Commission in this regard.

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(4) These regulations shall apply *mutatis mutandis* where the infringement of competition law relates to a supply to the infringer.

13. (1) The defendant in an action for damages pursuant to these regulations may raise as a defence the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law.

Passing-on defence.

(2) The burden of proving that the overcharge was passed on

shall be on the defendant, who may reasonably require disclosure from the claimant or from third parties.

Indirect
purchasers.

14. (1) Where in an action for damages the existence of a claim for damages or the amount of compensation to be awarded depends on whether, or to what degree, an overcharge was passed on to the claimant, taking into account the commercial practice that price increases are passed on down the supply chain, the burden of proving the existence and scope of such a passing-on shall rest with the claimant, who may reasonably require disclosure from the defendant or from third parties.

(2) In the situation referred to in sub-regulation (1), the indirect purchaser shall be deemed to have proven that a passing-on to that indirect purchaser occurred where that indirect purchaser has shown that:

- (a) the defendant has committed an infringement of competition law;
- (b) the infringement of competition law has resulted in an overcharge for the direct purchaser of the defendant; and
- (c) the indirect purchaser has purchased the goods or services that were the object of the infringement of competition law, or has purchased goods or services derived from or containing them.

(3) The provisions of sub-regulation (2) shall not apply where the defendant can demonstrate credibly to the satisfaction of the court that the overcharge was not, or was not entirely, passed on to the indirect purchaser.

Actions for
damages by
claimants from
different levels in
the supply chain.

15. (1) With a view to avoiding that actions for damages by claimants from different levels in the supply chain lead to a multiple liability or to an absence of liability of the infringer, in assessing whether the burden of proof resulting from the application of regulations 13 and 14 is satisfied, the court may take due account of any of the following:

- (a) actions for damages that are related to the same infringement of competition law, but that are brought by claimants from other levels in the supply chain;
- (b) judgements resulting from actions for damages as referred to in paragraph (a);
- (c) relevant information in the public domain resulting from the public enforcement of competition law.

(2) This regulation shall be without prejudice to the rights and obligations of the court pursuant to Article 30 of [Regulation \(EU\) No. 1215/2012](#).

Quantification of
harm.

16. (1) The burden of proving claims regarding the extent of the harm suffered shall rest on the claimant:

Provided that where it is established that the claimant suffered harm, but it is impossible or excessively difficult to quantify precisely the harm suffered on the basis of the evidence available, the court may estimate the amount of harm including, in particular, on the basis of *arbitrio boni viri*.

(2) It shall in any case be presumed that cartel infringements cause harm:

Provided that the infringer shall have the right to bring forward evidence to rebut that presumption.

(3) A competition authority may, at the request of a court seized of an action for damages pursuant to these regulations, assist that court with respect to the determination of the quantum of damages where the competition authority considers such assistance to be appropriate.

(4) In establishing the quantum of damages the court shall take into account the factual scenario that would have prevailed had the infringement not taken place.

17. (1) The prescriptive period referred to in regulation 10 shall be suspended for the duration of any consensual dispute resolution process, exclusively with regard to those parties that are or that were involved or represented in the consensual dispute resolution.

Suspensive and other effects of consensual dispute resolution.

(2) Without prejudice to the provisions of the [Arbitration Act](#), the court seized of an action for damages pursuant to these regulations may, as it deems fit in the circumstances, suspend its proceedings for a period of no longer than two years where the parties thereto are involved in consensual dispute resolution concerning the claim covered by that action for damages.

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(3) The national competition authority may consider compensation paid as a result of a consensual settlement, and prior to its decision imposing a penalty, to be a mitigating factor.

18. (1) Following a consensual settlement, the claim of the settling injured party shall be reduced by the settling co-infringer's share of the harm that the infringement inflicted upon the injured party.

Effect of consensual settlements on subsequent actions for damages.

(2) Any remaining claim of the settling injured party shall be exercised only against non-settling co-infringers, who shall not be permitted to recover contribution for the remaining claim from the settling co-infringer:

Provided, however, that where the non-settling co-infringers cannot pay the damages that correspond to the remaining claim of the settling injured party, the settling injured party may exercise the remaining claim against the settling co-infringer, unless such an option has been expressly excluded under the terms of the consensual settlement.

(3) When determining the amount of contribution that a co-infringer may recover from any other co-infringer in accordance with their relative responsibility for the harm caused by the infringement of competition law, the court shall take due account of any damages paid pursuant to a prior consensual settlement involving the relevant co-infringer.