

L.N. 49 of 2007

**COMPETITION ACT
(CAP. 379)**

Control of Concentrations (Amendment) Regulations, 2007

IN exercise of the powers conferred by article 32 of the Competition Act, the Minister for Competitiveness and Communications has made the following regulations:-

1. (1) The title of these regulations is the Control of Concentrations (Amendment) Regulations, 2007 and they shall be read and construed as one with the Control of Concentrations Regulations, 2002, hereinafter referred to as “the principal regulations”. Title and commencement.
L.N. 294 of 2002.

(2) These regulations shall come into force on the 13th March, 2007.

2. Regulation 2 of the principal regulations shall be amended as follows:- Amends regulation 2 of the principal regulations.

(a) in paragraph (d) thereof, in the definition “Concentration”, for the paragraph containing the words from “whether within Malta” to the words “exceeded Lm 750,000:” there shall be substituted the following:

“whether occurring in Malta or outside Malta when in the preceding financial year the aggregate turnover in Malta of the undertakings concerned exceeded Lm1,000,000 and each of the undertakings concerned had a turnover in Malta equivalent to at least 10 percent of the combined aggregate turnover of the undertakings concerned.

3. Regulation 3 of the principal regulations shall be amended as follows:- Amends regulation 3 of the principal regulations.

(a) in the proviso to sub-regulation (1) thereof, immediately after the words “derived by” there shall be added the words “each of” and immediately after the words “provision of services” there shall be added the words “in Malta”; and

(b) in sub-regulation (2) thereof, for the words “Where the concentration” there shall be substituted the words “By way of derogation from sub-regulation (1) hereof, where the concentration”.

Amends regulation
4 of the principal
regulations.

4. Regulation 4 of the principal regulations shall be amended as follows: -

For sub-regulation (3) thereof there shall be substituted the following:

“(3) To the extent that the creation of a joint venture constituting a concentration has as its object or effect the coordination of the competitive behaviour of undertakings that remain independent, such coordination shall be appraised in accordance with the criteria of Article 5 of the Act with a view to establishing the lawfulness of the operation under these Regulations:”

Amends regulation
5 of the principal
regulations.

5. Regulation 5 of the principal regulations shall be amended as follows:-

(a) for sub-regulation (1) thereof there shall be substituted the following:

“(1) Concentrations shall be notified to the Director prior to their implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest, within 15 working days”;

(b) for sub-regulation (3) thereof there shall be substituted the following:

“(3) A concentration shall not be deemed to have been notified if the notification is not carried out in accordance with the rules set out in the Schedule to these Regulations and if the notification fee specified in the Schedule is not paid on notification and in such a case the Director shall declare the notification to be incomplete and hence invalid.”;

(c) sub-regulation (5) shall be renumbered as sub-regulation (6) thereof; and

(d) immediately after sub-regulation (4) there shall be added the following new sub-regulation:

“(5) The Director shall in any publication of the fact of the notification state that third party objectors would have the right to submit their objections in writing within seven days from the publication of the fact of notification in the Gazette and a daily newspaper, whichever is the earliest.”

6. In paragraph (i) of sub-regulation (1) of regulation 13 of the principal regulations, immediately after the words “Regulation 5” there shall be added the words “before implementation”.

Amends regulation 13 of the principal regulations.

7. Immediately after regulation 19 of the principal regulations there shall be added the following new regulation:-

Adds new regulation 20 to the principal regulations.

“Interpretation. **20.** In the interpretation of Regulation 4(4) and of Regulation 4(2)(b) hereof, the Director shall have recourse to -

(a) the Commission’s and his own previous decisions;

(b) judgments of the Court of First Instance and the Court of Justice of the European Community;

(c) relevant decisions of the European Commission;

(d) interpretative Commission notices and guidelines on the relevant provisions of the EC Treaty and secondary legislation relative to competition; and

(e) other pertinent foreign jurisprudence.”

8. The Schedule to the principal regulations shall be amended as follows:-

Amends the Schedule to the principal regulations.

(a) in Section B thereof, in paragraph (d), immediately after the words “received by the Director” there shall be added the words “and the notification fee has been duly paid”;

(b) in Section E thereof, for the words “One original and five copies of the Form CN” there shall be substituted the words “One original and two copies of the Form CN”;

(c) immediately after Section H thereof there shall be added the following new Section:

“I. Administrative Fee

A notification fee of Lm70.00 must be paid by the notifying party or parties on submission of the duly completed notification form.”;

(d) in Section 10 of the Schedule, the whole paragraph “c” shall be deleted;

(e) in Section 11 of the Schedule, the words “11.1” and the whole paragraph 11.2 shall be deleted; and

(f) immediately after Section 12, the full text and titles in the Guidelines on Efficiencies, as relating to Regulation 4(4), and in the Guidelines on Assessment of Failing Firms and Exiting Assets, as relating to Regulation 4(2)(b), are hereby being repealed.