Malta Competition and Consumer Affairs Authority Act, 2011

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I assent.

(L.S.) GEORGE ABELA
President

29th April, 2011

ACT No. VI of 2011

An Act to provide for the establishment of an Authority to promote, maintain and encourage competition, to safeguard the interests of consumers and enhance their welfare, to promote sound business practices, to adopt and co-ordinate standards in relation to products or services, to regulate such activities and to provide for such matters ancillary or incidental thereto or connected therewith, to provide for the establishment, jurisdiction and procedure of an appeals tribunal and to make amendments to other laws.

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

PART I
PRELIMINARY

Short title and commencement.

1. (1) The short title of this Act is the Malta Competition and Consumer Affairs Authority Act 2011.

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

2. In this Act, unless the context otherwise requires:- Interpretation.

"Appeals Tribunal" means the Competition and Consumer Appeals Tribunal established by article 31;

"approved university" shall have the same meaning as the term "competent authority" in terms of article 2 of the Mutual Recognition of Qualifications Act; Cap. 451.

"association of undertakings" shall have the same meaning assigned to it in article 2 of the Competition Act;

"Authority" means the Malta Competition and Consumer Affairs Authority established by article 3;

"Board" means the Board of Governors established by article 8;

"Chairman" means the Chairman of the Board who shall be the Chairman of the Authority appointed in terms of Article 9(1);

"concentration" shall have the same meaning assigned to it in regulation 2(d) of the Control of Concentrations Regulations; S.L. 379.08.

"conflict of interest" means that situation in which members of the Board, officers and employees of the Authority and advisors, consultants and other persons engaged with the Authority have private or personal interests sufficient to influence or appear to influence the objective exercise of their official duties;

"conformity mark" means a mark, issued in accordance with regulations made under article 24, showing compliance with an applicable standard;

"consumer association" or "registered consumer association" means an association registered in terms of Part IV of the Consumer Affairs Act; Cap. 378.

"Consumer Protection Co-operation Regulation" means Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws (text with EEA relevance);

"Co-ordination Committee" means the committee established by article 5;

"Council" means the Consumer Affairs Council as established under article 4 of the Consumer Affairs Act; Cap. 378.

"Director General (Competition)" means the person so appointed by virtue of article 13(2);

"Director General (Consumer Affairs)" means the person so appointed by virtue of article 16(2);

"Director General (Standards and Metrology)" means the person so appointed by virtue of article 21(2);

"Director General (Technical Regulations)" means the person so appointed by virtue of article 19(2);

"draft standard" means a document containing the text of the technical specifications concerning a given subject, which is being considered for adoption and as circulated for public comment or scrutiny;

"entities" means the Office for Competition, Office for Consumer Affairs, Technical Regulations Division and the Standards and Metrology Institute, and "entity" shall be construed accordingly as the context requires;

"European standardization body" means the following bodies:

- CEN - European Committee for Standardization;

- CENELEC - European Committee for Electrotechnical Standardization;

- ETSI - European Telecommunications Standards Institute;

"financial year" means any period of twelve months ending on the 31st December; provided that the first financial year shall start on the coming into force of this Act and shall end on the 31st December of the following year;

"Gazette" means the Government Gazette;

"Minister" means the Minister responsible for competition, consumer affairs, standardization, metrology and technical regulations;

"Ministry" means the Ministry responsible for competition, consumer affairs, standardization, metrology and technical regulations;

"national competent authority" for the purposes of article

17(1)(o) shall have the same meaning assigned to "competent authority" in article 3(c) of the Consumer Protection Co-operation Regulation;

"officer" and "employee" includes a public officer detailed for duty in any of the entities established under this Act;

"permanent secretary" means the person appointed to supervise the Authority in terms of the Public Administration Act; Cap. 497.

"permit" means an authorisation granted by the Standards and Metrology Institute under article 24 for the use of a conformity mark;

"person" includes individuals, any body corporate and any body of persons whether it has a distinct legal personality or not;

"prescribed" means prescribed under this Act unless otherwise stated;

"President" means the President of the Appeals Tribunal as established under article 31;

"principal permanent secretary" means the person appointed in terms of article 14 of the Public Administration Act; Cap. 497.

"product" means any industrially manufactured product and any agricultural product, including fish products;

"public authority" means:

(i) the Government, including any Ministry or Department thereof;

(ii) a government agency established in terms of the Public Administration Act; and

(iii) a government entity as defined in the Public Administration Act;

"public officer" shall have the same meaning as assigned to it in article 124 of the Constitution of Malta but does not include a judge of the superior courts or a magistrate of the inferior courts;

"restrictive practice" shall have the same meaning as assigned to it in article 2 of the Competition Act; Cap. 379.

"single liaison office" shall have the same meaning as assigned to "single liaison office" in article 3(d) of the Consumer Protection Co-operation Regulation;

"standard" means a technical specification approved by a recognised standardization body for repeated or continuous application, with which compliance is not compulsory, whether or not including other requirements, and which is one of the following:

- International Standard: a standard adopted by an international standardization organisation, other than a European standardization body, and made available to the public;

- European Standard: a standard adopted by a European standardization body and made available to the public;

- National Standard: a standard adopted by the Authority and made available to the public;

"standards programme" means a work programme listing the subjects on which standardization work is being carried out;

"technical specification" means a specification contained in a document which lays down the characteristics required of a product and, or, service such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product and, or, service as regards the name under which the product and, or, service is sold, terminology, symbols, testing and test methods, packaging, marking or labelling used and the conformity assessment procedures. This term also covers production methods and processes used in respect of agricultural products, products intended for human and animal consumption, and medicinal products, as well as production methods and processes relating to other products, where these have an effect on their characteristics.

For the purposes of this definition, "conformity assessment procedures" means any procedure used, directly and indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled, including, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity, registration, accreditation and approval as well as their combinations;

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

"trader" shall have the same meaning as assigned to it in article 2 of the Consumer Affairs Act; and

Cap. 378.

"undertaking" shall have the same meaning as assigned to it in

Cap. 379.

article 2 of the Competition Act.

PART II
ESTABLISHMENT, FUNCTIONS AND CONDUCT OF AFFAIRS OF THE AUTHORITY

Establishment of the Authority.

3. (1) There shall be a body to be known as the Malta Competition and Consumer Affairs Authority.

(2) The Authority shall be a body corporate having a separate and distinct legal personality and may, in pursuance of its functions enter into contracts, acquire, hold or dispose of real and personal property, sue and be sued and do all such things as are incidental or conducive to the fulfilment of its functions, including the lending and borrowing of money.

(3) (a) The legal and judicial representation of the Authority shall be vested in the Chairman:

Provided that the Board may appoint any one or more of the Authority's officers or employees to appear in the name and on behalf of the Authority in any proceedings and in any act, contract, instrument or other document whatsoever, or in the case of a vacancy in the post of Chairman:

Provided further that in matters relating exclusively to the responsibilities of an entity forming part of the Authority as established in Parts IV to VII of this Act, the legal and judicial representation of the Authority in those matters shall vest in the Director General heading the entity.

(b) Any document purporting to be an instrument made or issued by the Authority and signed by the Chairman or by the Directors General in relation to any matter delegated to them on behalf of the Authority shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Authority.

Organs of the Authority.

(4) The main organs of the Authority are the Board of Governors, the Co-ordination Committee and the four respective entities.

(5) Where in this Act anything is to be done by or against or with respect to the Authority, or any notice is to be or may be given to or by the Authority, any such thing or notice may also be done by or against or with respect to or be given to or by the entity under whose jurisdiction the matter falls; and for the purposes aforesaid any reference in this Act to the Authority includes a reference to the

appropriate entity.

(6) The Authority shall assume the persona previously vested in the Office for Fair Competition, Department of Consumer Affairs, the Malta Standards Authority and the Malta National Laboratory Company Limited and, from the entry into force of this Act, shall assume responsibility for all assets, liabilities and obligations previously entered into by the said Office, Department, Authority and Company or by other bodies on their behalf.

Functions of the Authority.

4. (1) The Authority shall have as its purpose the attainment and maintenance of well-functioning markets for the benefit of consumers and economic operators.

(2) The functions of the Authority shall be the following:

(a) to promote and enhance competition;

(b) to safeguard consumers' interests and enhance their welfare;

(c) to promote voluntary standards and provide standardization related services;

(d) to promote the national metrology strategy;

(e) to promote the smooth transposition and adoption of technical regulations; and

(f) to perform such other function that may be assigned to it under this or any other law or regulations.

Establishment of the Co-ordination Committee.

5. (1) There shall be established a Co-ordination Committee, composed of the Chairman and the Directors General of the four respective entities.

(2) The Co-ordination Committee shall be responsible for co-ordinating the implementation of the policies of the Authority established by the Board and shall act as the point of contact and the principal channel of communication and co-ordination between the Board of Governors and the entities. The Co-ordination Committee shall also have such other duties as may from time to time be delegated to it by the Board.

(3) The Chairman shall preside over the Co-ordination Committee.

(4) The Chairman shall be responsible for the corporate

services of the Authority, its administration and organization and the administrative control of its officers and employees.

Establishment of the Internal Audit function.

6. (1) The Board shall appoint one of the Authority's officers as the Internal Auditor, who shall:

(a) provide oversight of the systems of internal control and risk management of the Authority and to assist and support the Authority in discharging its responsibilities in relation thereto;

(b) provide the communication link with external auditors and evaluate and coordinate the audit and financial reporting progress of the Authority;

(c) scrutinize and evaluate any transaction to be entered into by the Authority with a value exceeding one thousand euro (€1,000); and

(d) review and assess the effectiveness of the financial management of the Authority in its compliance with policies and in the discharge of its regulatory and compliance functions in relation thereto.

(2) The Internal Auditor shall report directly and exclusively to the Board in accordance with the procedures established by the Authority.

Responsibilities of the entities. Cap. 379. Cap. 378. Cap. 427. Cap. 454.

7. (1) The four entities established in Parts IV to VII, shall have the responsibilities provided for under this Act, the Competition Act, the Consumer Affairs Act, the Product Safety Act, the Metrology Act respectively and any other law or regulations.

(2) The Authority shall achieve the functions set out in article 4 through the responsibilities vested in the respective entities, as provided under subarticle (1).

(3) The responsibilities vested in each entity shall be exercised by the Director General heading the respective entity and in doing so each Director General shall act independently and autonomously, free from the direction or control of any person or authority without prejudice to article 12:

Provided that in the exercise of the responsibilities vested in the entities, the Directors General shall ensure that they implement the policies set by the Board and give effect to government policy and for this purpose, they shall be subject to the overall supervision and control of the Board.

PART III
ESTABLISHMENT, DUTIES AND CONDUCT OF AFFAIRS OF THE BOARD OF GOVERNORS

Establishment of the Board of Governors.

8. There shall be established a Board of Governors within the Authority.

Composition of the Board.

9. (1) The Board shall be composed as follows:

(a) the Chairman, who shall be appointed by the Minister, on being satisfied that the person has the requisite qualifications and experience and who may also occupy any other post within the Authority;

(b) not less than seven and not more than ten other members, to be appointed by the Minister, at least seven of them being the following:-

(i) one member holding the warrant to practise as advocate with seven years experience and preferably with specialisation in competition law and, or in consumer law;

(ii) one member holding an economics degree from an approved university with seven years experience and qualifications, preferably in industrial organisation and, or behavioural economics;

Cap. 321.

(iii) one member holding a warrant, issued in accordance with the Engineering Profession Act, to practise the profession of engineer, with seven years experience;

(iv) one member holding a warrant to practise as pharmacist with seven years experience preferably in the regulation of medicinal products and pharmaceutical activities;

(v) one member, holding the warrant to practise as a certified public accountant with seven years experience;

(vi) one member, after consultation with the constituted bodies representing national employers' organisations sitting in the Malta Council for Economic and Social Development; and

(vii) one member, after consultation with

recognised national consumer associations:

Provided that in the eventuality that there should be no such association the Minister may appoint a temporary member from the workers' organisations until such time wherein a member representing a national consumer association is nominated; and

(c) one of the members as appointed in sub-paragraphs (b)(i) to (v) shall be appointed as Deputy Chairman by the Minister.

(2) The Deputy Chairman shall have all the powers and perform all the functions of the Chairman during the latter's absence or inability to act as Chairman or while the Chairman is on vacation or during any vacancy in the office of Chairman, or alternatively the Minister may also, in any circumstances aforesaid, appoint another person to act as Chairman.

(3) The members of the Board shall be appointed by the Minister for a term of one year or for such longer period as may be specified in the instrument of appointment, subject to a maximum of three years and shall be eligible for reappointment.

Duties of the Secretary.

(4) (a) The Board shall designate one of the officers of the Authority to act as secretary for such period as it shall deem appropriate.

(b) It shall be the duty of the secretary to make the necessary preparations for the meetings of the Board and to keep minutes of those meetings.

Persons not eligible to hold office.

(5) (a) A person shall not be eligible to be appointed or to continue to hold office as a member of the Board if that person:-

(i) is a Minister, Parliamentary Secretary, a member of the House of Representatives, a member of any Local Council or a member of the European Parliament; or

(ii) is a Judge or a Magistrate; or

(iii) is legally incapacitated or interdicted; or

(iv) has been declared bankrupt or has made a composition or arrangement with his creditors, so long as he has not been rehabilitated to trade in terms of the Commercial Code; or

Cap. 13.

(v) has been found guilty by any competent court of any offence involving fraud or other dishonesty, or has contravened any provision of law designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons involved in business activities or in carrying on a profession, or has engaged in any business practice appearing to the Minister to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflects discredit on his method of conducting business or his profession, or has been found guilty of any offence against this Act or any other Act that the Authority administers or any regulations made thereunder; or

(vi) has a financial or other interest in any enterprise or activity which is likely to affect the discharge of his functions:

Provided that the Minister may determine that the person's interest is not likely to affect the discharge of his functions and upon such determination that person shall be qualified to hold the office of member of the Authority provided that the declared interest and the Minister's determination are published in the Gazette; or

(vii) is otherwise not a fit and proper person to hold that office in accordance with paragraph (b).

(b) In determining whether a person is a fit and proper person, the Minister shall have regard to that person's probity, competence and soundness of judgment for fulfilling the responsibilities of that office, to the diligence with which he is fulfilling or is likely to fulfil those responsibilities and to whether the interests of any person are, or are likely to be in any way threatened, by his holding that office.

(c) Any person whom the Minister has appointed or proposes to appoint as a member of the Board shall, whenever requested by the Minister to do so, furnish to him such information as the Minister considers necessary for the performance of the Minister's duties under paragraphs (a) and (b).

(d) A member of the Board may be relieved from office by the Minister on the ground of inability to perform the functions of his office, whether due to infirmity of mind or of body or to any other cause, or of misbehaviour; and for the purposes of this paragraph, repeated and unjustified non-attendance at meetings may

be deemed to amount to misbehaviour.

(e) The names of all the members of the Board and any change in such membership shall be published in the Gazette.

(f) Any member of the Board may resign from office by a letter addressed to the Minister.

(6) The Chairman and the other members of the Board may be paid such *honoraria* as the Minister may determine.

(7) Any member of the Board who has any direct or indirect interest in any matter made or proposed to be made by the Board, not being an interest which disqualifies such member from remaining a member, shall, not later than the first meeting held after the relevant circumstances have come to his knowledge, disclose the nature of his interest to the Board, and the member having an interest as aforesaid shall withdraw from any meetings at which such matter is discussed. Any such disclosure shall be communicated to the Minister without delay. Where the interest of the member is such as to disqualify him from remaining a member, he shall report the fact immediately to the Minister and tender his resignation.

(8) If a member resigns or if the office of a member of the Board is otherwise vacant or if a member is for any reason unable to perform the functions of his office, the Minister may appoint a person who is qualified to be appointed to be a member, to be a temporary member of the Board; and any person so appointed shall, subject to the provisions of subarticle (3), cease to be such a member when a person has been appointed to fill the vacancy or, as the case may be, when the member who was unable to perform the functions of his office resumes those functions.

Conduct of the affairs of the Board.

10. (1) Subject to any other provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet as often as may be necessary but in no case less frequently than once every calendar month.

(3) The Board may exercise its functions notwithstanding any vacancy in its membership, as long as such vacancies do not exceed two in number and provided there is a quorum present at the meeting consisting of the Chairman or Deputy Chairman and not less than half the number of the other members constituting the Board at the time of the meeting.

(4) Meetings of the Board shall be convened by the Chairman, or by the Deputy Chairman, in the absence of the Chairman, either on

his own initiative or at the written request of any three of the other members of the Board.

(5) (a) Decisions shall be taken by a simple majority of votes of the members present and voting.

(b) The Chairman or, in his absence, the Deputy Chairman, or other person appointed to act as Chairman, shall have an initial vote and, in the event of an equality of votes, a casting vote.

(c) Without prejudice to the other requirements of this Act, no decision shall be valid unless it is supported by at least three members of the Board.

(6) All acts done by any person acting in good faith, as a member of the Board, shall be valid as if he were a member notwithstanding that some defect in his appointment or qualification be afterwards discovered.

(7) No act or proceeding of the Board shall be questioned on the ground of the contravention by a member of the provisions of article 10.

Duties of the Board.

11. (1) Without prejudice to any other duty assigned to it by this Act or any other law or regulations, the Board shall have the following duties:

(a) to determine the policies to be pursued by the Authority within the context of the policies established by Government and in line with the functions set out in article 4 and to ensure their proper and effective implementation by the entities;

(b) to ensure that the entities execute their responsibilities under this Act in line with related government policies;

(c) to ensure that the entities have the necessary resources to effectively carry out their responsibilities;

(d) to guarantee the functional independence of the entities;

(e) to publish the business plan after its approval by the Minister following consultation with the Minister responsible for Finance;

(f) to publish the annual report;

(g) to approve any Memorandum of Understanding, bilateral or multilateral agreements proposed;

(h) to advise, make proposals and recommendations to the Minister on any matter connected with its functions; and

(i) to monitor the National Accreditation body in order to ensure that it fulfils the requirements laid down in article 8 of Council Regulation (EC) No 765/2008 of the European Parliament and of the Council.

(2) The entities shall provide the Board with all such information as may be required for the proper performance of its duties:

Provided that the members of the Board shall not have access to confidential information pertaining to any individual person, household or undertaking obtained by the entities in the performance of their responsibilities.

(3) The Board may with the approval of the Minister appoint *ad hoc* advisory boards and committees to assist it in the performance of its functions.

Relations between the Minister and the Authority and supervision by Permanent Secretary.

12. (1) It shall be the Minister's function to ensure that the Authority is fully informed of Government policies relative to consumer and competition matters, standards, metrology and technical regulations and to monitor the proper execution of such policies.

Cap. 378.
Cap. 379.
Cap. 427.
Cap. 454.
Cap. 449.
Cap. 430.

(2) Save as otherwise provided in this Act, the Consumer Affairs Act, the Competition Act, the Product Safety Act, the Metrology Act, the Food Safety Act, the Pesticides Control Act and any other Act or regulations administered by the Authority, the Authority shall be under the general direction and control of the Minister and, subject to such direction and control, under the supervision of the Permanent Secretary responsible for the Ministry.

(3) The Minister may, in relation to matters that appear to him to affect the public interest, from time to time give to the Authority directions in writing of a general character not inconsistent with the provisions of this Act, the Consumer Affairs Act, the Competition Act, the Product Safety Act, the Metrology Act, the Food Safety Act, the Pesticides Control Act and any other Act or regulations administered by the Authority, on the policy to be followed by the Authority in the carrying out of its functions, by or under this Act, and the Authority shall, as soon as possible, give effect to all such directions.

(4) Subarticles (2) and (3) shall not apply in respect of the powers exercised by the Directors General of the Office for Competition and Office for Consumer Affairs under this Act, the Competition Act and the Consumer Affairs Act respectively or any other law or regulations with respect to the prioritisation, investigation and determination of cases and enforcement.

(5) The Authority shall afford to the Minister facilities for obtaining information with respect to its property and financial activities and furnish him with returns, accounts and other information with respect thereto, and shall afford to him facilities for the verification of information furnished, in such manner and at such times as he may reasonably require.

(6) If the Authority fails to comply with any directions issued under this article, the Prime Minister may make an order transferring to the Minister in whole or in part any its functions.

(7) The operations of the Authority shall follow an Authority performance agreement which is to be agreed to between the Permanent Secretary and the Authority and for this purpose Article 40 of the Public Administration Act shall *mutatis mutandis* apply.

Cap. 497.

(8) Article 38 of the Public Administration Act shall *mutatis mutandis* apply to the extent that its application does not conflict with the provisions of this Act, the Consumer Affairs Act, the Competition Act, the Product Safety Act, the Metrology Act, the Food Safety Act, the Pesticides Control Act and any other Act or regulations administered by the Authority.

PART IV
ESTABLISHMENT OF THE OFFICE FOR COMPETITION

Establishment of the Office for Competition.

13. (1) There shall be established an office to be designated as the Office for Competition which shall be headed by the Director General (Competition).

(2) The Director General (Competition) shall be a person with professional qualifications, recognised competence, experience and specialisation in the domain of competition law and, or industrial organisation economics and, preferably, with knowledge of consumer matters, and shall be appointed by the Board, following consultation with the Minister, for a period of three years and such period may be extended for further periods of three years each:

Provided that the first Director General (Competition) shall be appointed by the Minister.

14. (1) The responsibilities of the Office for Competition shall be the following:- Responsibilities of the Office.

(a) to investigate, determine and suppress restrictive practices;

(b) to examine and control concentrations between undertakings in terms of their effect on the structure of competition on the market;

(c) to act as the national competition authority in Malta as designated by virtue of article 35(1) of Council Regulation (EC) No 1/2003;

(d) to keep under review markets and commercial activities relating to the supply of goods and services and to collect information and evidence for the purpose of ascertaining whether such markets and activities may adversely affect the interests of consumers;

(e) to study markets and recommend action where required;

(f) to encourage undertakings and associations of undertakings to comply with competition law and promote sound trading practices;

(g) to provide advice to public authorities about the competition implications of proposals for legislation;

(h) to provide advice to public authorities on the competition issues which may arise in the performance of their functions;

(i) to provide advice on the competition constraints imposed either by legislation, policy or administrative practices;

(j) to assist in the drawing up of the Authority's business plan;

(k) to participate in meetings organised by international agencies and organisations;

(l) to provide advice to the Board on competition matters;

(m) to submit an annual report on its work to the Board; and

Cap.379.

(n) generally to exercise the powers conferred upon it under this Act and under the Competition Act and any regulations made thereunder.

(2) In the exercise of the responsibilities mentioned in subarticles (1)(d) and (e), the Director General (Competition) shall co-operate with the Director General (Consumer Affairs) if the latter is carrying out a review or study in respect of the same market.

(3) Nothing in this Act shall be construed as to give any person, consumer or undertaking a right to require the Director General (Competition) to act on his behalf and in his interest in any particular matter or dispute with any trader, supplier of services or undertaking before any court, tribunal or elsewhere.

Different degrees of priority.

15. (1) The Office for Competition may allocate different degrees of priority to the cases brought or pending before it and in doing so it shall take into consideration, *inter alia*, the following factors:

(a) the degree of consumer harm resulting from the alleged or suspected infringement;

(b) the extent of consumer benefit resulting from the intervention of the Office for Competition;

(c) the nature and gravity of the alleged or suspected infringement;

(d) the stage of investigation;

(e) whether the alleged practices are still ongoing or whether harmful effects persist; and

(f) whether the alleged unlawful conduct is being examined or can be better examined by another public authority under its regulatory regime.

(2) The Office for Competition shall from time to time issue guidelines under this article. These guidelines shall provide for the right to ask for information on the degree of priority allocated to a case or to a complaint by the undertaking or association of undertakings concerned or the complainant respectively and for the obligation of the Office to provide a reasoned reply within a specific time frame.

PART V
ESTABLISHMENT OF THE OFFICE FOR CONSUMER AFFAIRS

Establishment of the Office for Consumer Affairs.

16. (1) There shall be established an office to be designated as the Office for Consumer Affairs within the Authority which shall be headed by the Director General (Consumer Affairs).

(2) The Director General (Consumer Affairs) shall be a person with professional qualifications, recognised competence, experience and specialisation in the domain of consumer law, and, or behavioural economics and shall be appointed by the Board, following consultation with the Minister, for a period of three years and such period may be extended for further periods of three years each:

Provided that the first Director General (Consumer Affairs) shall be appointed by the Minister.

Responsibilities of the Office for Consumer Affairs.

17. (1) The responsibilities of the Office for Consumer Affairs shall be the following:

(a) to provide information, advice and guidelines to the public relating to consumer issues;

(b) to monitor trading practices relating to the provision of goods and services to consumers, and to take measures for the suppression and prevention of any practices which may be detrimental to the interests of consumers;

(c) to receive and investigate complaints from consumers relative to the supply of goods and services and to take such action as in its power to redress any justified grievance that may come to its notice;

(d) to provide consumers with ongoing advice concerning their rights;

(e) to direct consumers to the appropriate organisation which is best placed to assist them with specific complaints;

(f) to encourage traders to comply with consumer law and to promote good trading practices in the carrying out of activities which may affect the economic interests of consumers in Malta;

(g) to provide traders with advice on matters relating to consumer affairs;

(h) to provide mediation between consumers and traders;

(i) to keep under review markets and commercial activities relating to the supply of goods and services and to collect information and evidence for the purpose of ascertaining whether such markets and activities may adversely affect the interests of consumers;

(j) to study markets and recommend remedial action where required;

(k) to assist the Council in the performance of its functions and duties and to furnish such information as may be required by the Council in relation to the exercise of its duties;

(l) to advise public authorities about the implications for consumers arising from proposals for legislation;

(m) to provide advice to public authorities on the consumer issues which may arise in the performance of their functions;

(n) to advise on the impact on consumer interests that legislation, policy or administrative practices may have;

(o) to serve as and perform the functions of the national competent authority in terms of the Consumer Protection Co-operation Regulation;

(p) to serve as and perform the functions of the single liaison office in Malta responsible for co-ordinating the application of the Consumer Protection Co-operation Regulation;

(q) to develop the necessary strategies for the performance of its responsibilities;

(r) to assist in the drawing up of the Authority's business plan;

(s) to advise the Board on matters of consumer interest;

(t) to submit an annual report on its work to the Board; and

(u) generally to exercise the powers conferred upon it

under this Act, the Consumer Affairs Act or any other law or regulations in relation to consumer affairs.

(2) In exercise of the responsibilities mentioned in articles 17(1)(i) and (j), article 14(2) shall *mutatis mutandis* apply to the Director General (Consumer Affairs).

(3) Nothing in this Act or in any other law shall be construed to give any consumer a right to require the Director General (Consumer Affairs) to act on his behalf and in his interest in any particular matter or dispute with any trader or supplier of services before any court, tribunal or arbiter.

Obtaining information.

18. (1) For the purposes of article 17(1)(o), the Office for Consumer Affairs shall be the national competent authority in respect of the EU legislative acts listed in the Third Schedule.

(2) The Minister may by order amend the Third Schedule.

PART VI
ESTABLISHMENT OF THE TECHNICAL REGULATIONS DIVISION

Establishment of Technical Regulations Division.

19. (1) There shall be established a division within the Authority to be designated as Technical Regulations Division which shall be headed by the Director General (Technical Regulations).

(2) The Director General (Technical Regulations) shall be a person with professional qualifications, recognised competence, experience and specialisation in technical harmonization and matters relating to conformity assessment, and shall be appointed by the Board, following consultation with the Minister, for a period of three years and such period may be extended for further periods of three years each:

Provided that the first Director General (Technical Regulations) shall be appointed by the Minister.

Responsibilities of the Technical Regulations Division.

20. (1) The responsibilities of the Technical Regulations Division shall be the following:

(a) to draft legislation in relation to its areas of competence and issued by virtue of article 38 of the Product Safety Act, article 10 of the Food Safety Act and article 5 of the Pesticides Control Act and by any other law;

Cap. 427.
Cap. 449.
Cap. 430.

(b) to advise the Board and other Government agencies and the private sector;

(c) to assist all sectors of industry to understand and meet the essential requirements imposed by technical regulations, issued by virtue of the Product Safety Act, the Food Safety Act and the Pesticides Control Act and by any other law, and the technical, quality and safety requirements of harmonised European and international standards;

(d) to co-ordinate and implement its regulatory programme in the areas falling under its remit and, in particular, to exercise the advisory functions assigned to it by article 38 of the Product Safety Act, article 9(1) of the Food Safety Act and by any other law;

(e) to establish, with the consent of the Minister and of the Chairman of the Authority, technical committees for the areas falling under its competence and to chair and co-ordinate the work of such committees;

(f) to act as the Product Contact Point and provide support to the focal point for any Notification requirements for ensuring the free movement of goods as laid down in article 9 of Council Regulation (EC) No 764/2008;

(g) to formulate and give effect to programmes of technical assistance aimed at business operators for the purpose of facilitating their compliance with relevant technical regulations and standards;

(h) to communicate to the general public and to interested parties any information regarding the regulatory programmes in its areas of competence;

(i) to provide training and information on technical regulations in its areas of competence;

(j) to participate in relevant national and international activities;

(k) to perform risk assessment and to co-ordinate market surveillance activities as prescribed in article 27 of the Product Safety Act;

(l) to assist in the drawing up of the Authority's business plan;

(m) to submit an annual report on its work to the Board;

(n) to develop the necessary strategies for the

implementation of its responsibilities;

(o) to generally exercise the responsibilities conferred upon it under this Act, the Product Safety Act, the Food Safety Act, the Pesticides Control Act and any other Act and regulations made thereunder; and

(p) to monitor the implementation of legislation under the Services (Internal Market) Act and its subsequent application. Cap. 500.

(2) The Technical Regulations Division shall be the authority in Malta entrusted with the implementation of:

(a) Regulation (EC) No 764/2008 of the European Parliament and of the Council of 9 July 2008 laying down the procedures relating to the application of certain national technical rules to products lawfully marketed in another Member State;

(b) Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products; and

(c) related activities.

PART VII
ESTABLISHMENT OF THE STANDARDS AND METROLOGY INSTITUTE

Establishment of the Standards and Metrology Institute.

21. (1) There shall be established an institute within the Authority to be designated as the Standards and Metrology Institute, which shall be headed by the Director General (Standards and Metrology).

(2) The Director General (Standards and Metrology) shall be a person with professional qualifications, recognised competence, experience and specialisation in the domain of standards and in matters relating to metrology, calibration and testing, and shall be appointed by the Board, following consultation with the Minister, for a period of three years and such period may be extended for further periods of three years each:

Provided that the first Director General (Standards and Metrology) shall be appointed by the Minister.

Responsibilities of the Standards and Metrology and Metrology Institute.

22. (1) The responsibilities of the Standards and Metrology Institute shall be the following:-

(a) to make, adopt and publish standards, in relation to any class, category or type of products and, or services;

(b) to co-ordinate, monitor and promote standardization and related activities at the various corporate, national, regional and international levels, and to supply and, or ensure the existence of adequate supporting related services:

For the purpose of this paragraph, "supporting related services" include:

(i) the promotion of adoption and application of all aspects of metrology as a necessary adjunct to standardization;

(ii) the availability or assurance of availability of testing services;

(iii) the offer of certification services;

(c) to act as the competent body for the purposes of Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (Text with EEA relevance) and Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/ 681/EC and 2006/193/EC;

(d) to consider all applications for a permit to use a conformity mark and to grant permits for such purpose;

(e) to inform the public of new subjects included in its standards programme and of preparation or amendment of a standard, unless such standard is an identical or equivalent transposition of an International or European Standard. This information shall indicate, in particular, whether the standard concerned:

- will transpose an international standard without being the equivalent;

- will be a new national standard; or

- will amend a national standard;

(f) to co-operate with National, European, Regional or other international bodies in the field of standardization and to exchange information therewith generally, and in particular to such extent as may be provided for in any international obligation entered into by Malta or as may be prescribed;

(g) to be responsible for the execution, upkeep and conservation of National Measurement Standards and to maintain their accuracy by comparison with international measurement standards;

(h) to provide Working Measurement Standards of suitable accuracy for use in Malta, by comparison with the National Measurement Standards;

(i) to be responsible for the National Measurement Standards and their traceability;

(j) to provide calibration services;

(k) to carry out scientific and technical work in all fields of metrology and measuring methods;

(l) to take part in the work of other national organisations interested in metrology;

(m) to disseminate information relevant to metrology;

(n) to be responsible for the enforcement of all metrology regulations drawn up by virtue of the Metrology Act and other regulations; Cap. 454.

(o) to be responsible for the execution and calibration of Measurement Standards and verification equipment;

(p) to oversee, monitor and supervise the manufacture and repair of measuring instruments;

(q) to bring to the attention of the authorities any fraud in relation to measurements in the provision of goods and services;

(r) to provide for the holding of examinations for the purpose of ascertaining whether persons possess sufficient skill, knowledge and professional integrity for the proper performance of their functions to be performed by virtue of the

Metrology Act;

(s) to collaborate with the relevant inspection bodies in the fields of measuring instruments and pre-packaged products;

(t) to liaise with other foreign national institutions having similar aims and to represent Malta in international metrological institutions;

(u) to submit an annual report on its work to the Board;

(v) to develop the necessary strategies for the implementation of its responsibilities;

(w) to assist in the drawing up of the Authority's business plan; and

(x) to generally exercise the responsibilities conferred upon it under this Act, and under the Metrology Act and any other Act and regulations made thereunder.

(2) The Standards and Metrology Institute shall be the national body entrusted with the co-ordination of standardization and related activities and shall be responsible for matters related to metrology and legal metrology.

(3) The Standards and Metrology Institute shall also facilitate testing requirements.

Variation, Substitution or Revocation of Standards.

(4) The power conferred on the Standards and Metrology Institute to make, adopt and publish standards shall be construed as including the power, exercisable in like manner, to vary, substitute or revoke any such standard.

List of Standards to be published.

23. (1) The Standards and Metrology Institute shall publish in the Gazette a list of standards made, adopted or transposed by it together with their international equivalence, if applicable, and shall in such notices also indicate where a copy of such standards may be obtained.

(2) Notwithstanding the other provisions of this Act or of any other law, the list of standards afore-mentioned and any standard made, adopted or transposed by the Standards and Metrology Institute may be made, published, prescribed or made available to the public either in the Maltese or English language.

Conformity Mark.

24. (1) The Standards and Metrology Institute shall grant a

permit for the use of a conformity mark in relation to any product and, or, services which satisfy the standards, technical regulations and code of practices and fulfil the conditions prescribed therein, conformity to which is being declared.

(2) The Standards and Metrology Institute shall not grant a permit unless it is furnished with such proof and it is given such opportunities and facilities as may be reasonably necessary in order that it may satisfy itself that the product and, or, services in relation to which the application has been made qualify for such permit.

(3) In any permit granted in relation to any product and, or service, the Standards and Metrology Institute besides describing such product and, or service shall also:-

(a) name the person to whom the permit is granted; and

(b) specify the standards applicable to the said product and, or, services:

Provided that when there have been no changes in the other circumstances which justified the grant of a permit, the Standards and Metrology Institute shall in regard to any such permit authorize, on application, the substitution of the person named therein as will be proved to be necessary.

(4) For the purpose of this Part, the name of the person to whom the permit is granted as referred to in paragraph (a) of subarticle (3) shall be deemed to form part of the description of the product and, or, service to which it refers.

Powers of the Standards and Metrology Institute to inspect premises and obtain information.

25. Officers authorized in writing to that effect by the Standards and Metrology Institute shall at all reasonable times have access for the purposes of this Act to any place where goods and, or services in respect of which there is in force a permit are produced, manufactured or processed, and they shall be entitled to inspect such place, to examine such goods and to take samples thereof in the manner prescribed by the Minister.

PART VIII
ACQUISITION AND PROVISION OF INFORMATION

Provision of Information.

26. In this Part, unless otherwise specified, any reference to the "Offices" shall be construed as referring to both the "Office for Competition" and the "Office for Consumer Affairs" and the words "Director General" and "Directors General" shall refer to both the "Director General (Competition)" and "Director General (Consumer

Affairs)".

27. (1) The Offices may consult with public authorities in the application of this Act, the Competition Act, the Consumer Affairs Act and any other Act, or regulations made thereunder which they are empowered to enforce.

(2) The Offices may request information from public authorities as they consider necessary for the application of this Act, the Competition Act, the Consumer Affairs Act and any other Act, or regulations made thereunder which they are empowered to enforce.

(3) The Offices on the one hand and public authorities on the other hand shall provide each other with the information necessary for the application of the provisions of this Act, the Competition Act, the Consumer Affairs Act and any other Act, or regulations made under the said Acts and such information shall be provided within a reasonable time as dictated by the particular circumstances of the issues involved.

(4) The Offices may enter into agreements for the exchange of information and other forms of collaboration with public authorities.

(5) Any agreement entered into by the Office for Competition in terms of subarticle (4) shall not apply to investigations initiated by it concerning alleged breaches of Articles 101 and, or 102 of the TFEU.

(6) In submitting information under the provisions of this article, the Offices and the public authorities shall clearly identify the information, including documents, which they deem to be internal or which contains business secrets or other confidential information and a separate non-confidential version shall be supplied.

(7) Where information has been exchanged as provided in this article, the Offices or the public authority receiving the information shall ensure the same level of confidentiality as the provider of the information.

Disclosure of confidential information.

28. (1) Except where otherwise provided by law, the members of the Board, Directors General and other officers or employees of the Authority and advisors, consultants or other persons engaged with the Authority shall not communicate or make accessible any information, including documents, which they deem to be internal or which contains business secrets or other confidential information.

(2) Without prejudice to any disciplinary proceedings that may

be taken against public employees under applicable rules and procedures, any person who contravenes the provisions of subarticle (1) shall be guilty of an offence against this Act and shall, on conviction, be liable to a fine (*multa*) of not less than two thousand euro (€2,000) and not exceeding ten thousand euro (€10,000).

Identification and protection of confidential information.

29. (1) Any person, undertaking or association of undertakings or any other body which submits information or comments in one of the situations listed hereunder or subsequently submits further information to the Director General in the course of an investigation, shall clearly identify any material which it considers to be confidential, giving reasons therefor, and provide a separate non-confidential version, where applicable by the date set by the Director General for making its submissions known:

- a complainant lodging a complaint under the Competition Act or under the Consumer Affairs Act; Cap. 379. Cap. 378.

- a person, undertaking or association of undertakings or any other body complying with a request for the provision of information under the provisions of this Act, the Competition Act, the Consumer Affairs Act and any other Act, or regulations made thereunder;

- an addressee of the statement of objections made under article 12A(1) of the Competition Act making known his views on the objection;

- a complainant making known his views on the statement of objections under article 12A(2) of the Competition Act;

- the addressee of an invitation by the Director General to submit his views under article 12A(3)(b) of the Competition Act;

- a complainant making known his views on the letter of the Director General (Competition) informing him of the Office's intention to reject the complaint made under article 14(2) of the Competition Act;

- the addressee of an invitation by the Director General to engage in settlement discussions under article 12B of the Competition Act.

(2) Without prejudice to subarticle (1), the Directors General may require persons, undertakings and an association of undertakings or any other body that submit documents or statements pursuant to

this Act, the Competition Act, the Consumer Affairs Act and any other Act, or regulations made thereunder to identify the documents or parts of documents which they consider to contain business secrets or other confidential information belonging to them and to identify the undertakings with regard to which such documents are to be considered confidential.

(3) In the case of a statement of objections sent by the Director General (Competition) under the Competition Act, in the case of a case summary drawn up pursuant to article 12C(2)(a) and article 12D(2) of the Competition Act and in the case of a decision or an order adopted by the Directors General under the Competition Act or the Consumer Affairs Act or any other Act, or regulations made thereunder, persons, undertakings or association of undertakings may be required to identify any part of a statement of objections, a case summary, a decision or order which in their view contains business secrets or other confidential information.

(4) The Directors General may set a time-limit within which persons, undertakings or association of undertakings or any other body are to:

(a) substantiate their claim for confidentiality with regard to each individual document or part of such document, statement or part of such statement;

(b) provide the Director General with a non-confidential version of the documents or statements, in which the confidential passages are deleted; and

(c) provide a concise description of each part of the deleted information.

(5) In the event that persons, undertakings or an association of undertakings or any other body fail to comply with subarticles (1) to (3), the Director General may deem that the documents or statements concerned do not contain confidential information and may consequently assume that the persons, undertakings or association of undertakings or other body have no objections to the disclosure of the documents or statements concerned in their entirety.

(6) Where persons, undertakings or an association of undertakings or any other body meet the conditions set out in subarticles (1) to (3), the Director General shall:

(a) either provisionally accept the claims which appear justified; or

(b) inform the person or undertaking or association of undertakings or any other body that he does not agree with the confidentiality claim in whole or in part, where it is apparent that the claim is unjustified.

(7) The Director General may reverse his provisional acceptance of the confidentiality claim in whole or in part at a later stage.

(8) Where the Director General does not agree with the confidentiality claim from the outset or where he takes the view that the provisional acceptance of the confidentiality claim should be reversed, and thus intends to disclose information, the Director General will inform the person or undertaking or association of undertakings or any other body in writing of his intention to disclose information, give his reasons and set a time-limit within which such person or undertaking or association of undertakings or any other body may inform him in writing of its views. If, following submission of those views, a disagreement on the confidentiality claim persists, the Director General shall take a decision thereon.

(9) In those cases where the person or undertaking or association of undertakings or any other body does not agree with the decision of the Director General in subarticle (8) the person or undertaking or association of undertakings or any other body may appeal to the Appeals Tribunal within ten days from when the decision of the Director General is notified and the decision of the Appeals Tribunal shall be final.

(10) Complainants or undertakings or an association of undertakings or any other body or any person collaborating in an investigation carried out by the Offices shall, should they wish to remain anonymous, make a request to that effect to the Director General. The Director General shall accede to such request for anonymity if he considers the request to be justified. The Director General shall protect anonymity by providing access to a non-confidential version or summary of the documents submitted. Subarticles (6) and (7) shall apply to requests for anonymity. Where the Director General does not consider the request for anonymity to be justified, subarticles (8) and (9) shall apply.

Publication of Information.

30. (1) The Authority shall, subject to the protection of business secrets and other confidential information, publish from time to time such information as would contribute to an open and competitive market or be for the benefit of consumers.

(2) When publishing information as is referred to in subarticle

(1), the Authority shall adhere to the principles of fairness and objectivity.

(3) The members of the Board, the Directors General of all the entities and any officer acting on the instructions or authority of the said Directors General, shall be exempt from any liability for acts done in good faith in pursuance of this article. Such exemption shall extend to all persons publishing, printing, recording, broadcasting or communicating such information by any means whatsoever.

PART IX
ESTABLISHMENT OF THE COMPETITION AND CONSUMER APPEALS TRIBUNAL

Establishment of the Competition and Consumer Appeals Tribunal.

31. There shall be established a tribunal to be known as the Competition and Consumer Appeals Tribunal, to exercise and perform the functions assigned to it by this Act, the Competition Act and the Consumer Affairs Act and any regulations made thereunder.

Composition.

32. (1) The Appeals Tribunal shall be composed of the President who shall be a Judge, and two other members from a panel of ordinary members selected by the President.

(2) There shall be a panel of six ordinary members, all with at least ten years relevant experience, appointed by the President on the advice of the Prime Minister, consisting of two economists, preferably one specialised in industrial organisation economics and the other in behavioural economics, a certified public accountant and three other persons with recognised competence and knowledge in competition law matters, consumer protection, industry and commerce.

(3) In selecting the two ordinary members to sit on the Appeals Tribunal under subarticle (1), the President shall take due account of the nature of the case and the market concerned.

(4) The ordinary members of the Appeals Tribunal shall be appointed for a period of three years and shall be eligible for reappointment.

(5) The ordinary members of the Appeals Tribunal may resign their office by a letter addressed to the President of Malta. The resignation shall take effect when the writing signifying the resignation is received by the President of Malta or by any person authorised by him.

(6) An ordinary member of the Appeals Tribunal may not be removed from office except by the President of Malta acting on the

recommendation of the Prime Minister on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

(7) Notice of all appointments to the Appeals Tribunal and of all other changes in its membership shall be published in the Gazette.

(8) (a) The Appeals Tribunal shall be independent in the performance of its functions.

(b) The members thereof in the exercise of their functions shall act on their own individual judgement and shall not be subject to the direction or control of any person or authority.

(9) (a) The ordinary members of the Appeals Tribunal, shall not be precluded from the exercise of their respective profession, so however during the term of their appointment they shall be precluded from the exercise of their profession in cases before the Tribunal.

(b) The ordinary members of the Appeals Tribunal shall receive such remuneration as the Prime Minister may by notice in the Gazette determine:

Provided that such remuneration may not be altered during the tenure of their appointment to their disadvantage.

(c) The remuneration due to the ordinary members of the Appeals Tribunal shall be paid out of the Consolidated Fund without the necessity of any further appropriation.

(10) A person shall not be qualified to be appointed or remain an ordinary member of the Appeals Tribunal if:

(a) he is an undischarged bankrupt; or

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

(c) he has been found guilty of any offence against this Act, the Consumer Affairs Act or the Competition Act or any regulations made thereunder; or

(d) he is a Member of the House of Representatives or of the European Parliament or a Local Council.

(11) Any ordinary member of the Appeals Tribunal shall,

before the commencement of any case, declare any interest he may have in the proceedings and the President shall, where he considers that such interest may prejudice the independence of the member concerned or of the Appeals Tribunal, appoint another member from the panel.

(12) Where proceedings have commenced and no final decision has yet been delivered and one of the ordinary members has ceased to be a member or for any other reason is unable to perform the functions of his office, the President may elect to appoint another member from the panel in his stead and should it be strictly necessary for the proper determination of the case recommence proceedings, or continue to hear the case with only one ordinary member:

Provided that where the term of appointment has expired and the ordinary member has not been reappointed, the ordinary member shall continue to hear the case until its determination.

(13) The ordinary members of the Appeals Tribunal, shall, during and after the term of office, act with integrity and not engage in any activity which would harm the proper administration of justice or which, due to knowledge gained from business secrets or other confidential information during the tenure of their office, would give rise to conflict of interest and harm the interests of the undertakings concerned. Any person who acts in contravention of this subarticle shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) of not less than two thousand euro (€2,000) and the court may, in addition, award the punishment of temporary or perpetual general interdiction.

Registry of the Appeals Tribunal.

33. (1) The Registrar of Courts or any other person acting in his stead or on his behalf in accordance with the Code of Organization and Civil Procedure shall be the Registrar of the Appeals Tribunal.

(2) All acts of or brought before the Appeals Tribunal shall be kept in the Registry of the Superior Courts which shall be the registry of the Appeals Tribunal.

(3) The Minister responsible for justice may by regulations under this Act establish:

(a) the fees that may be due to the Registry of the Appeals Tribunal;

(b) the fees that may be due to advocates, legal procurators and other persons representing the parties appearing before the Appeals Tribunal; and

(c) the fees that may be due to experts appearing before the Appeals Tribunal:

Provided that until fees are prescribed by the Minister under paragraphs (a) to (c), the fees established in the Code of Organization and Civil Procedure shall apply.

(4) The Registry of the Appeals Tribunal shall keep both a confidential version and a non-confidential version of the records of the Appeals Tribunal as may be so authorised by the Appeals Tribunal.

(5) The records of the Appeals Tribunal shall be accessible to all persons, and copies shall be given on payment of the prescribed fee to any person on request:

Provided that due regard shall be had to the protection of any confidential information and business secrets.

(6) All acts shall be filed, issued and served in accordance with the provisions of the Code of Organization and Civil Procedure, subject to any rules made under this Act, the Competition Act, the Consumer Affairs Act and any other Act, or regulations made thereunder or unless the Minister shall by regulations otherwise prescribe.

Personnel and sittings of the Appeals Tribunal.

34. (1) The Registrar shall provide the necessary personnel for the holding of sittings of the Appeals Tribunal. The officials so designated shall, in execution of their duties, enjoy and exercise all such powers as are vested by the Code of Organization and Civil Procedure in officials performing similar duties.

Cap. 12.

(2) The sittings of the Appeals Tribunal shall be held on such days and at such times as shall be fixed by the President in the building of the Superior Courts.

Appointment of lawyer.

35. The President of Malta, on the advice of the Prime Minister, shall, under those terms and conditions that the Minister responsible for justice deems fit, appoint a lawyer, having a postgraduate degree covering competition and, or consumer law, on a full-time basis to assist the Appeals Tribunal as referendaire in the drafting of decisions, in undertaking research and in the performance of any other task related to the competence of the Appeals Tribunal as assigned to him by the President.

Competence of the Appeals Tribunal.

Cap. 379.

Cap. 378.

36. (1) Without prejudice to article 70(3) the Appeals Tribunal, presided by its President, shall have jurisdiction to hear and determine appeals from decisions, orders or measures of the Director

General (Competition) and the Director General (Consumer Affairs) as provided in the Competition Act, the Consumer Affairs Act and any regulations made under the said Acts.

(2) The determination of any case before the Appeals Tribunal shall be according to the unanimous opinion of the members deciding the case or by majority decision which majority must include the President.

Procedures of the Appeals Tribunal.

37. (1) The Appeals Tribunal shall have the powers and shall follow the procedures laid out in the provisions of this Act and in the Second Schedule, the Competition Act and the Consumer Affairs Act and regulations made thereunder.

(2) The Minister may make rules not inconsistent with this Act, the Competition Act and the Consumer Affairs Act and any regulations made thereunder, prescribing the procedures and the forms to be followed and used before the Appeals Tribunal.

(3) In the absence of provisions or rules as aforesaid, the Appeals Tribunal shall regulate its own procedures.

PART X
OFFICERS AND EMPLOYEES OF THE AUTHORITY

Staff appointments.

38. Subject to the provisions of the Constitution, any other enactment applicable thereto, and without prejudice to the other provisions of this Act, the employment and appointment of officials and other employees of the Authority shall be made by the Board and the terms and conditions of their employment and appointment shall be established by the Board with the concurrence of the Minister:

Provided that, notwithstanding article 12(8), for the purposes of subarticle (1), the Board shall follow any directives and guidelines issued under paragraphs (c), (d) and (e) of subarticle (1) of article 38 of the Public Administration Act.

Appointment of officers and employees of the Authority.

39. The Board shall appoint and employ, at such remuneration and upon such terms and conditions as it may, in accordance with article 38, determine, such officers and employees of the Authority as may from time to time be necessary for the due and efficient discharge of the functions of the Authority.

Detailing of public officers for duty. with the entities.

40. (1) The Principal Permanent Secretary, following the direction of the Prime Minister, may from time to time, direct that any public officer shall be detailed for duty with the Authority in such capacity and under such conditions and with effect from such date as he may prescribe.

(2) The period during which a direction as aforesaid shall apply to any officer specified therein, shall, unless the officer retires from the public service, or otherwise ceases to hold office at an earlier date, or unless a different period is specified in such direction, end on the happening of any of the following events:

(a) the acceptance by such officer of an offer of transfer to the service of, and permanent employment with, the Authority made in accordance with the provisions of article 42; or

(b) the revocation of such direction by the Principal Permanent Secretary following the direction of the Prime Minister.

(3) Where a direction as aforesaid is revoked by the Principal Permanent Secretary in relation to any officer, the Principal Permanent Secretary may, by further direction and following the direction of the Prime Minister, detail such officer for duty with the Authority in such capacity and with effect from such date as may be specified in the direction of the Principal Permanent Secretary, and the provisions of subarticle (2) shall thereupon apply to the period of duration of such detailing by any such further direction in relation to such officer.

Status of public officers detailed for duty.with the entities.

41. (1) Where any officer is detailed for duty with the Authority under any of the provisions of article 40, such officer shall, during the time in which such direction has effect in relation to him, be under the administrative authority and control of the Authority but he shall for all other intents and purposes remain and be considered and treated as a public officer.

(2) Without prejudice to the generality of the foregoing, an officer detailed for duty as aforesaid:-

(a) shall not, during the time in respect of which he is so detailed:-

(i) be precluded from applying for a transfer to a department of the Government in accordance with the terms and conditions of service attached to the Government appointment held by him at a date on which he is so detailed for duty; or

(ii) be so employed that his remuneration and conditions of service are less favourable than those which are attached to the Government appointment held by him at the date aforesaid or which would have become attached to

such appointment, during the said period, had such officer not been detailed for duty with the Authority:

Provided that such terms and conditions shall not be deemed to be less favourable because they are not in all respects identical or superior to those enjoyed by the officer concerned at the date of such detailing, if in the opinion of the Prime Minister, such terms and conditions, taken as a whole, offer substantially equivalent or greater benefits; and

(b) shall be entitled to have his service with the Authority considered as service with the Government for the purposes of any pension, gratuity or benefit under the Pensions Ordinance and the Widows' and Orphans' Pensions Act and for the purpose of any other right or privilege to which he would be entitled, and shall be liable to any liability to which he would be liable, but for the fact of his being detailed for duty with the Authority:

Cap. 93.
Cap. 58.

Provided that in assessing the pensionable emoluments of such officer for the purposes of any law relating to government service pensions, no account shall be taken of any allowances, bonuses or gratuities paid to such officer by the Authority in excess of what he is entitled to as a public officer.

(3) Where an application is made as provided in subarticle (2)(a)(i), the same consideration shall be given thereto as if the applicant had not been detailed for service with the Authority.

(4) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for Finance in respect of the cost of pensions and gratuities earned by an officer detailed for duty with the Authority as aforesaid during the period in which he is so detailed.

Offer of permanent employment with the Authority to public officers detailed for duty with the Authority.

42. (1) The Authority may, with the approval of the Prime Minister, offer to any officer detailed for duty with the Authority under any of the provisions of article 40, permanent employment with it at a remuneration and on terms and conditions not less favourable than those enjoyed by such officer at the date of such offer.

(2) The terms and conditions comprised in any offer made as aforesaid shall not be deemed to be less favourable merely because they are not in all respects identical with or superior to those enjoyed by the officer concerned at the date of such offer, if such terms and conditions, taken as a whole, in the opinion of the Prime Minister,

offer substantially equivalent or greater benefits.

(3) Every officer who accepts permanent employment with the Authority offered to him under the provisions of subarticle (1) shall, for all purposes other than those of the Pensions Ordinance and of the Widows' and Orphans' Pensions Act, and, saving the provisions of article 63, be deemed to have ceased to be in the service of the Government and to have entered into service with the Authority on the date of his acceptance, and for the purposes of the said Ordinance and of the said Act, so far as applicable to him, service with the Authority shall be deemed to be service with the Government within the meaning thereof respectively. Cap. 93. Cap. 58.

(4) Every such officer as aforesaid who, immediately before accepting permanent employment with the Authority, was entitled to benefit under the Widows' and Orphans' Pensions Act, shall continue to be so entitled to benefit thereunder to all intents as if his service with the Authority was service with the Government. Cap. 58.

(5) The Authority shall pay to the Government such contributions as may from time to time be determined by the Minister responsible for Finance in respect of the cost of pensions and gratuities earned by an officer who has accepted permanent employment with the Authority as aforesaid during the period commencing on the date of such officer's acceptance.

(6) For the purposes of the Pensions Ordinance, the pensionable emoluments of such public officer on retirement shall be deemed to be the pensionable emoluments payable to an officer in Government service in a grade and at an incremental level corresponding to the post occupied and incremental level on the date on which the officer retires from the Authority. Cap. 93.

(7) (a) For the purposes of this article, posts and salary grades with the Authority shall be classified in the most nearly corresponding grades and incremental levels in the service under the Government by reference to job description, skills, responsibilities and other analogous factors.

(b) The classification referred to in paragraph (a) shall be carried out by a board composed of a Chairman appointed by the Minister responsible for Finance and two other members, one appointed by the Minister responsible in general for personnel policies in the public service and one appointed by the Authority. The classification shall be subject to the final approval of the Minister responsible for Finance.

(c) Such classification shall take place within three months of any adjustment of salaries of employees in Government service and, or of employees of the Authority.

(d) No post shall be classified in a grade higher than that of a Grade 3 in the service of the Government or such other grade that the Minister responsible for Finance may from time to time by notice in the Gazette determine.

(e) Without prejudice to article 113 of the Constitution, no person may, following a classification as aforesaid, be entitled to rights under the Pensions Ordinance less favourable than those to which he would have been entitled prior to such classification.

Cap. 93.

Engagement of consultants and advisers.

43. The Authority may engage such consultants or advisers as it may consider necessary to assist it in the fulfilment of its functions.

Oath of secrecy.

44. Every person appointed as an officer of the Authority shall, before assuming such duties, take oath that he will faithfully and impartially perform the duties of his office or employment. The form of oath shall be that contained in the First Schedule and shall be administered by the President of the Appeals Tribunal.

Disclosure of interest.

45. (1) Where a public officer or an employee of the Authority, or a consultant, an advisor or any other person engaged by the Authority, has any interest in, or material to, any matter which falls to be considered by the Authority, he shall-

(a) disclose to the Board the nature of his interest at the first meeting of the Board after such interest is acquired or in advance of any consideration of the matter, whichever is the earlier;

(b) neither influence nor seek to influence a decision in relation to such matter; and

(c) take no part in any consideration of such matter.

(2) Where a question arises as to whether or not a course of conduct, if pursued by a person, would constitute failure by him to comply with the requirements of subarticle (1), the question shall be determined by the Board and the decision and its motivation shall be recorded in the minutes of the meeting during which the decision was taken.

(3) Where a disclosure is made to the Board pursuant to subarticle (1), particulars of the disclosure shall be recorded in the

minutes of the relative meeting.

(4) Where a person to whom subarticle (1) applies fails to make the required disclosure, the Board shall decide the appropriate action to be taken which may include the removal from office or termination of the contract of the person concerned.

Code of Ethics.

46. (1) Officers and employees of the Authority shall abide by any Code of Ethics applicable to public employees and shall, subject to any law to the contrary, have the same obligations thereunder:

Provided that the Directors General shall, with the approval of the Co-ordination Committee, draw up service values and Codes of Ethics in respect of their respective entities to supplement any public service Code of Ethics.

Obligation to act with integrity following termination of office.

(2) (a) The members of the Board, officers and employees of the Authority and advisors, consultants and other persons engaged with the Authority shall, following the termination of their office, act with integrity and not engage in any activity which, due to knowledge gained from business secrets or other confidential information during the tenure of their office would give rise to conflict of interest and harm the interests of any person; and

(b) any person who acts in contravention of this article shall be guilty of an offence against this Act and shall on conviction be liable to a fine (*multa*) of not less than two thousand euro (€2,000) and the court may, in addition, award the punishment of temporary or perpetual general interdiction.

Exemption from liability.

(3) No action shall lie against the Authority, the organs of the Authority, the members of the Board, officers and employees of the Authority and advisors, consultants and other persons engaged with the Authority for any act or omission in connection with this Act or any regulations made thereunder unless the act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

PART XI
FINANCIAL PROVISIONS

Provisions of the Financial Administration and Audit Act. Cap. 174.

47. The Authority shall be governed by the provisions of the Financial Administration and Audit Act, unless otherwise stated in the Authority performance agreement entered into by the Permanent Secretary and the Authority in terms of article 12(7) in which case the provisions of the latter will prevail.

Authority to meet expenditure out of revenue.

48. (1) Without prejudice to the following provisions of this article, the Authority shall so conduct its affairs that so much of the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.

(2) For the purposes of subarticle (1), the Authority, shall levy all fees, charges and other payments prescribed or deemed to be prescribed by or under this Act or any other law providing for matters falling under its respective powers and functions:

Provided that where the entities are specifically entrusted by law to charge fees or impose administrative fines, those fees and fines shall be levied by the entities concerned.

(3) The Authority shall also be paid by the Government out of the Consolidated Fund such sums as the House of Representatives, hereinafter referred to as the "House", may from time to time authorise to be appropriated to meet any of its expenditure that cannot be met out of its revenue and the costs of specified works to be continued or otherwise carried out by it, being works of infrastructure or of a similar capital nature.

(4) Any excess of revenue over expenditure shall, subject to such directives as the Minister, after consultation with the Minister responsible for Finance, may from time to time give, be applied by the Authority to the formation of reserve funds to be used for its purposes and without prejudice to the generality of the powers given to the Minister by this subarticle, any directive given by the Minister as aforesaid may order the transfer to the Government, or the application in such manner as may be specified in the direction, of any part of the fees, charges and other payments levied in accordance with subarticle (2).

(5) Any funds of the Authority not immediately required to meet expenditure may be invested in such manner as may from time to time be approved by the Minister.

Power to borrow or raise capital.

49. (1) For the purpose of carrying out any of its functions under this Act, the Authority may, with the approval in writing of the Minister, given after consultation with the Minister responsible for Finance, borrow or raise money in such manner, from such person, body or authority, and under such terms and conditions as the Minister, after consultation as aforesaid, may in writing approve.

(2) The Authority may also, from time to time, borrow, by way of overdraft or otherwise, such sums as it may require for carrying out its functions under this Act:

Provided that for any amount in excess of one hundred and twenty thousand euro (€120,000), there shall be required the written approval of the Minister.

Advances from Government.

50. The Minister responsible for Finance may, after consultation with the Minister, make advances to the Authority of such sums as he may agree to be required by the Authority for carrying out any of its functions under this Act, and may make such advances on such terms and conditions as he may, after consultation as aforesaid, deem appropriate. Any such advance may be made by the Minister responsible for Finance out of the Consolidated Fund, and without further appropriation other than this Act, by warrant under his hand authorising the Accountant General to make such advance.

Borrowing from Government.

51. (1) The Minister responsible for Finance may, for any requirements of the Authority of a capital nature, contract or raise loans, or incur liabilities, for such periods and on such terms and conditions as he may deem appropriate and any sums due in respect of or in connection with any such loan or liability shall be a charge on the Consolidated Fund.

(2) Notice in writing of any loans, liabilities or advances made or incurred under the foregoing provisions of this article shall be laid on the Table of the House as soon as practicable.

(3) Pending the raising of any such loan as is mentioned in subarticle (1), or for the purpose of providing the Authority with working capital, the Minister responsible for Finance may, by warrant under his hand, and without further appropriation other than this Act, authorise the Accountant General to make advances to it out of the Treasury Clearance Fund under such terms as may be specified by the Minister upon the making thereof.

(4) The proceeds of any loan raised for the purposes of making advances to the Authority and any other monies to be advanced to the Authority under this article, shall be paid into a fund specially established for the purpose and which shall be known as the "Malta Competition and Consumer Affairs Authority Loan Fund".

(5) Sums received by the Accountant General from the Authority by way of repayment of advances made to the Authority under subarticle (3) shall be paid into the Treasury Clearance Fund and sums received by the Accountant General by way of interest on such advances shall be paid into the Consolidated Fund.

Estimates of the Authority.

52. (1) The Authority shall cause to be prepared in every financial year, and shall not later than four weeks before the end of

such year adopt, estimates of the income and expenditure of the Authority for the following financial year distinguishing, in particular, between each of such entities as may be established under the provisions of this Act:

Provided that the estimates for the first financial year of the Authority shall be prepared and adopted within such time as the Minister may by notice in writing to the Authority specify.

(2) In the preparation of such estimates, the Authority shall take account of any funds and other monies that may be due to be paid to it out of the Consolidated Fund during the relevant financial year, whether by virtue of this Act or of an appropriation Act or of any other law and it shall so prepare the said estimates as to ensure that its total revenues are at least sufficient to meet all sums properly chargeable to its revenue account including, but without prejudice to the generality of that expression, depreciation.

(3) The estimates shall be made out in such form and shall contain such information and such comparison with previous estimates as the Minister responsible for Finance may direct.

(4) A copy of the estimates shall, upon their adoption by the Authority, be sent forthwith to the Minister and to the Minister responsible for Finance.

(5) The Minister shall, at the earliest opportunity and not later than six weeks after he has received a copy of the estimates from the Authority, approve the same with or without amendment after consultation with the Minister responsible for Finance.

Expenditure to be according to approved estimates.

53. (1) No expenditure shall be made or incurred by the Authority unless provision therefor has been made in the estimates approved as provided in article 52.

(2) Notwithstanding the provisions of subarticle (1):-

(a) until the expiration of six months from the beginning of a financial year, or until the approval of the estimates for that year, whichever is the earlier date, the Authority may make or incur expenditure for carrying on its functions under this Act not exceeding in the aggregate one half of the amount approved for the preceding financial year;

(b) expenditure approved in respect of a head or sub-head of the estimates may, with the approval of the Minister, given after consultation with the Minister responsible for Finance, be made or incurred in respect of another head or sub-

head of the estimates;

(c) in respect of the first financial year, the Authority may make or incur expenditure until the approval of the estimates for that year not exceeding in the aggregate such amounts as the Minister responsible for Finance may, after consultation with the Minister allow; and

(d) if in respect of any financial year it is found that the amount approved in the estimates is not sufficient or a need has arisen for expenditure for a purpose not provided for in the estimates, the Authority may adopt supplementary estimates for approval by the Minister, and in any such case the provisions of this Act applicable to the estimates shall as near as practicable apply to the supplementary estimates.

Publication of approved estimates.

54. The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of the estimates and supplementary estimates of the Authority, or if at any time during that period the House is not in session, within eight weeks from the beginning of the next following session, cause such estimates to be laid on the Table of the House.

Accounts and audit.

55. (1) The Authority shall cause to be kept proper accounts and other records in respect of its operations, and shall cause to be prepared a statement of accounts in respect of each financial year.

(2) The accounts of the Authority shall be audited by an auditor or auditors to be appointed by the Authority with the concurrence of the Minister responsible for finance and shall moreover be subject to scrutiny by the Financial Management Monitoring Unit, and audit by the Internal Audit and Investigations Directorate and the Auditor General as the case may be.

(3) The Authority shall not later than six weeks after the end of each financial year present to the Minister through the Permanent Secretary an audited statement of accounts together with a copy of any report made by the auditors on that statement or on the accounts of the Authority.

(4) The Minister shall cause a copy of such statement and report to be laid before the House not later than six weeks after its receipt or, where the House is not in session, not later than the second week after the House resumes its sittings.

Deposit of revenues and payments by the Authority.

56. (1) All monies accruing to the Authority shall be paid into a bank or banks appointed as bankers of the Authority by resolution of the Authority. Such monies shall, as far as practicable, be paid into any such bank from day to day, except such sum as the Authority may authorise to be retained to meet petty disbursements and immediate cash payments.

(2) All payments out of the funds of the Authority, other than petty disbursements not exceeding a sum fixed by the Authority, shall be made by such officer or officers of the Authority as shall be appointed or designated for that purpose.

(3) Cheques against and withdrawals from any bank account of the Authority shall be signed by such officer of the Authority as may be appointed or designated by the Authority for that purpose and shall be countersigned by the Chairman or such other member or officer as may be authorised by the Authority for that purpose.

(4) The Authority shall also make provision with respect to:-

(a) the manner in which and the officer or officers by whom payments are to be authorised or approved;

(b) the title of any account held with the bank or banks into which its monies are to be paid, and the transfer of funds from one account to the other; and

(c) the method to be adopted in making payments out of its funds, and generally with respect to any matter which is relevant to the proper keeping and control of the accounts and books and the control of its finances.

Contracts of supply or works.

57. The Authority shall not award or enter into any contract for the supply of goods or materials or for the execution of works, or for the rendering of services, to or for the benefit of the Authority, except in accordance with regulations in force regulating the procurement of all goods and services in the public sector.

Annual Report.

58. The Authority shall, not later than six weeks after the end of each financial year, present to the Minister through the Permanent Secretary a report dealing generally with the activities of the Authority during that financial year, distinguishing, in particular, between each of such entities as may be established under the provisions of this Act and containing such information relating to the proceedings and policy of the Authority as the Minister may from time to time require.

Laying of Annual Report before the House.

59. The Minister shall cause a copy of the report presented to him in terms of article 58 to be laid before the House not later than six weeks after its receipt or, where the House is not in session, not later than the second week after the House resumes its sittings.

PART XII
TRANSFER OF CERTAIN ASSETS TO THE AUTHORITY

Transfer of assets to the Authority.

60. (1) (a) The property and undertakings owned by the Consumer and Competition Department, Malta Standards Authority and Malta National Laboratory Company Limited and used by any one of them, immediately before the date of the coming into force of this Part of this Act, or owned by the Government, and used by any of the said Department, Authority or Company for the operation of any of the functions which by this Act are being transferred to or vested in the Authority shall, on the date aforesaid, by virtue of this Act and without further assurance, be transferred to and be vested in the Authority under the same title by which they were used or held by the said Department, Authority or Company immediately before the said date.

(b) The immovable assets from time to time specified in an order made by the President of Malta and published in the Gazette, hereinafter referred to as "the immovable assets", being immovable assets which, immediately before the coming into force of this Part, were owned by the Government and used by it for the exercise of any of the functions which by this Act are being transferred to or vested in the Authority shall, with effect from such day as may be specified in any such order, and by virtue of this Act and without any further assurance, be transferred to and vested in the Authority under the same title by which they were held by the Government before such day.

(2) The transfer and vesting aforesaid shall extend to the whole of such property and undertakings and, without prejudice to the generality of the aforesaid, shall include all plant, equipment, apparatus, instruments, vehicles, crafts, buildings, structures, installations, land, works, stocks and other property, movable or immovable, assets, powers, rights and privileges and all things necessary or ancillary thereto which are held or enjoyed in connection therewith or appertaining thereto, as well as all obligations affecting or relating to any of the aforesaid property or undertakings or other thing included therein as aforesaid.

Construction of laws and related matters.

61. (1) Subject to the provisions of this Act, all laws, rules, regulations, orders, judgments, decrees, awards, deeds, bonds, contracts, agreements, instruments, documents, warrants and other

arrangements, subsisting immediately before the date of the coming into force of this Part, affecting or relating to any of the properties or undertakings transferred to the Authority by or under this Act, and in which the Government or a Government authority is a party thereto or is named therein, shall have full force and effect against or in favour of the Authority, and shall be enforceable freely and effectually, as if instead of the Government or governmental authority the Authority had been named therein or had been a party thereto, and otherwise in substitution of the Government or governmental authority.

(2) Any reference in any law to the Office for Fair Competition, Department of Consumer Affairs, Consumer and Competition Department, Malta Standards Authority and the Malta National Laboratory Company Limited shall be read and construed as a reference to the Authority and, or to any of the entities as may be established under this Act, as the case may require.

Transitory provisions.

62. (1) When anything has been commenced by or under the authority of the Government, the Consumer and Competition Department, the Malta Standards Authority and the Malta National Laboratory Company Limited prior to the date of the coming into force of this Part, and such thing relates to any of the properties or undertakings or any right or liability transferred to the Authority by or under this Act, such thing may be carried on and completed by or as authorised by the Authority.

(2) Where, immediately before the coming into force of this Part of the Act, any legal proceedings are pending to which the Government, the Consumer and Competition Department, the Malta Standards Authority and the Malta National Laboratory Company Limited is or is entitled to be a party, and such proceedings are related to any of the properties or undertakings, or any right or liability transferred by or under this Act, the Authority shall, as from the date aforesaid, be substituted in such proceedings for the Government or for the aforesaid Department, Authority or Company, as the case may be, or shall be made a part thereto in like manner as the Government, any such Department, Authority or Company could have become a party as aforesaid, and such proceedings shall not abate by reason of the substitution.

(3) The Minister may, by order, make such incidental, consequential and supplemental provisions as he may deem necessary or expedient for the purpose of determining, as appropriate, the assets transferred to the Authority by this Act and securing and giving full effect to the transfer of any property or undertaking or any right or liability to the Authority by this Act and make such orders as may be necessary to make any powers and duties exercisable by the

Government, the Consumer and Competition Department, the Malta Standards Authority and the Malta National Laboratory Company Limited in relation to any of the transferred property or undertakings exercisable by or on behalf of the Authority.

PART XIII
MISCELLANEOUS

Persons deemed public officers. Cap. 9.

63. For the purposes of the Criminal Code and of any provision of a penal nature in any other law, the members of the Board, officers and employees of the Authority, shall be deemed to be public officers.

Service of acts of the Authority.

64. (1) For the purposes of this article "acts" means any request for information, measure, order, direction, statement, decision or other forms of communication issued by the Authority.

Cap. 378. Cap. 379.

(2) Where the Authority is required to, or decides to, notify its acts under this Act, the Competition Act, the Consumer Affairs Act or under any other Act, or regulations made thereunder, it shall do so in any of the following ways:

(a) by delivering it to the person or by leaving it at the address at which the person ordinarily resides or carries on business or place of work or postal address of such person with a member of his family or household or with a person in his service or his attorney or person authorised to receive his mail:

Provided that it shall not be lawful to leave such copy with any person under the age of fourteen years, or with any person who, on account of infirmity of mind, is unable to give evidence of such service. A person shall be presumed to be able to give such evidence unless the contrary is proved; and no objection may be raised on the ground of irregularity of the service for any of those reasons, if it is shown that the copy has actually reached the person to be served therewith:

Provided further that where a person to whom a notice is addressed refuses to receive it personally from an officer of the Authority, the Appeals Tribunal may upon an application by the Authority and after hearing the officer of the Authority and considering all the circumstances of the incident, declare that such service shall have been effected on the day and time of the refusal and such declaration shall be considered as a proof of service for all purposes of law;

(b) by sending it by registered post to the person at the address at which the person ordinarily resides or carries on

business; or

(c) if an address for the service of notices has been provided by the person, by leaving it at, or sending it by registered post addressed to the person to that address; or

(d) in any case where the Authority considers that the immediate delivery of the act is required, by sending it, by means of a facsimile machine or by electronic mail, to a device or facility for the reception of facsimiles or electronic mail located at the address at which the person ordinarily resides or carries on business or, if an address for the service of acts has been furnished by the person, that address, provided that the facsimile machine of the Authority generates a message confirming successful transmission of the total number of pages of the notice or the facility of the Authority for the reception of electronic mail generates a message confirming receipt of the electronic mail:

Provided that the provisions of paragraph (d) shall not apply to the notification of documents filed before the Appeals Tribunal or any court.

(3) If it appears from the employee charged with the service of an act that, although it does not result that the person upon whom such an act is to be served is abroad and access to his place of residence cannot be obtained, or his place of residence is not known, the Appeals Tribunal, upon an application by the Authority, may direct service to be effected by the posting of a copy of the act at the place, in the town or district in which official acts are usually posted up, and by publishing a summary of such act in the Gazette and in one or more daily newspapers as the Appeals Tribunal may direct, and where possible, when the residence is known, by posting up a copy of the act on the door leading to such residence. The Appeals Tribunal may also adopt such other measures as it may deem fit to bring the act to the attention of the person upon whom the same is to be served. In such cases, service shall be deemed to have been made on the third working day after the date of last publication or after the date of such posting, whichever is the later. In cases where service has been ordered with urgency, service shall be deemed to have been made at such time, after posting or publication as the Appeals Tribunal may determine, which time is to be stated in the publication or posting.

(4) In the case of a body having distinct legal personality, service on such body shall be effected by leaving a copy of the act:

(a) at its registered office, principal office, or place of

business or postal address of the person or persons vested with the legal or judicial representation thereof or by any company secretary or with an employee of such body; or

(b) with the person or persons vested with the legal or judicial representation thereof or by any company secretary in the manner provided for in subarticle (2).

(5) The provisions of this article shall also apply with respect to the notification of acts issued by the entities of the Authority under this Act or any other law enforced by them.

Power of Minister to make regulations.

65. (1) The Minister, after consultation with the Board, as the case may be, may from time to time make regulations:

(a) prescribing fees or charges that may be charged by the Authority under this Act or any other Act, or regulations made thereunder which it administers;

(b) providing for additional methods of effecting service of acts of the Authority or altering or removing any of the methods prescribed under article 64;

(c) generally for the better carrying out of the objects and purposes of this Act, or any other Act , or regulations made thereunder administered by the Authority;

(d) prescribing the mark or symbol that is to be used to indicate conformity with any standard, technical regulations and code of practice as indicated in article 24;

(e) prescribing the manner and form in which any application for a conformity mark shall be made, the information which such application is to contain, and the fees payable in respect thereof;

(f) prescribing the manner and form in which permits shall be issued by the Authority and the fees payable in respect thereof;

(g) providing for the publication of draft standards and the manner in which the public can make representations thereon to the Authority; and

(h) prescribing for other matters that are or may be prescribed under this Act or any other Act, or regulations made thereunder applied by the Authority.

(2) Notwithstanding any provision in any other Act or regulations, where the Minister under such Act or regulations is empowered to make regulations on matters falling within the competence of the Authority, the Minister shall, without prejudice to any other consultation required under such Act or regulations, consult the Board.

Establishment of Directorates.

66. (1) There shall be established the Directorates as listed in the Fourth Schedule, which shall have the responsibilities as described therein. The Minister may, after consulting the Board, by Order in the Gazette, abolish any one or more of the said Directorates, vary their responsibilities and establish such other Directorate as he may from time to time deem appropriate:

Provided that the Board may, temporarily or for a specific purpose, authorise the Director General heading the entity concerned, to allow that a particular function of one Directorate be performed by another Directorate within the same entity, should this be expedient for the proper exercise of that function or for that specific purpose.

(2) Each Directorate, so established, shall be headed by a person who shall be in possession of recognised professional qualifications and experience in relation to the area of operation of such Directorate and who shall be appointed by the Board, following consultation with the Minister, for a period of three years and such period may be extended for further periods of three years each:

Provided that the first head of each Directorate shall be appointed by the Minister.

(3) The Director General of each respective entity shall-

(a) without prejudice to article 5(4), assume full responsibility for the overall supervision and control of the Directorates within that entity;

(b) assign to each Directorate within that entity such duties which are by, or in accordance with, the provisions of this Act vested in each Directorate; and

(c) co-ordinate the workings of the Directorates within that entity.

Responsibilities of Directorates.

67. In carrying out their responsibilities, the Directorates shall assist the Director General of the entity concerned to discharge effectively and efficiently the responsibilities of that entity in their respective area of operation.

Language of regulations.

68. (1) Regulations which are required to be made under the provisions of this Act, may be made in the English language only where the use of the Maltese language would be difficult due to the technical terminology adopted.

(2) In the event of conflict or incompatibility between the Maltese and English texts of any regulations made under this Act, the English language version shall prevail.

Administrative fines.

69. Any administrative fine payable to the Authority shall be recoverable as a civil debt by it and shall constitute an executive title for all effects and purposes of Title VII of Part I of Book II of the Code of Organization and Civil Procedure.

Cap. 12.

Transitory Provisions in relation to the Competition Act and the Consumer Affairs Act. Cap. 379. Cap. 378.

70. (1) The provisions of the Competition Act and of the Consumer Affairs Act existing prior to the coming into force of this Act shall continue to apply, as the case may be, to all:

(a) investigations pending at the time of coming into force of this Act before the Director of the Office for Fair Competition and the Director of Consumer Affairs, both as substituted by the Director General (Competition) and Director General (Consumer Affairs) by this Act;

(b) proceedings pending at the time of coming into force of this Act before the Commission for Fair Trading and the Consumer Affairs Appeals Board, both as substituted by the Appeals Tribunal, the Consumer Claims Tribunal and the courts; and

(c) decisions and judgments which are not yet *res judicata*, at the time of coming into force of this Act.

(2) Without prejudice to article 27A(10)(c) of the Competition Act, in the case of an infringement of the Competition Act, of Articles 101 and, or 102 of the TFEU or of the Consumer Affairs Act, which took place before the coming into force of this Act but in respect of which no investigation by the Director of the Office for Fair Competition, the European Commission, national competition authority and the Director for Consumer Affairs was initiated and no proceedings were instituted before the ordinary courts or the Consumer Claims Tribunal, the provisions of this Act and the provisions of the Competition Act and the Consumer Affairs Act as amended by this Act, shall apply:

Provided that in respect of the application of measures of a punitive nature under the Competition Act, the undertaking concerned shall have the option of choosing whether the measures in

force prior to the coming into force of this Act or the measures provided for in this Act shall apply.

Provided further that once the undertaking concerned has communicated its choice, its decision shall be final.

(3) For the purposes of subarticle (1)(b) the Appeals Tribunal shall be vested with the powers of:

(a) the Commission for Fair Trading as provided in the Competition Act prior to the coming into force of this Act; and

(b) the Consumer Affairs Appeals Board as provided under the Consumer Affairs Act prior to the coming into force of this Act.

(4) For the purposes of subarticle (1)(a) the Director General (Competition) shall be vested with the powers of the Director of the Office for Fair Competition as provided in the Competition Act prior to the coming into force of this Act.

(5) For the purposes of subarticle (1)(a) the Director General (Consumer Affairs) shall be vested with the powers of the Director of Consumer Affairs as provided in the Consumer Affairs Act prior to the coming into force of this Act.

Regulations. Cap. 419.

71. Regulations made under the Malta Standards Authority Act shall continue to be in force as if made under the provisions of this Act and may be amended and revoked accordingly.

National standards.

72. National standards shall be designated as SM XXX:YYYY, where XXX is an integer number and YYYY the year of adoption.

PART XIV
AMENDMENTS TO THE CONSUMER AFFAIRS ACT (CAP. 378)

Amendment to the Consumer Affairs Act. Cap. 378.

73. (1) This Part amends the Consumer Affairs Act, and it shall be read and construed as one with the Consumer Affairs Act, hereinafter in this Part referred to as "the principal Act".

Amendment of the long title of the principal Act.

(2) The long title of the principal Act shall be substituted by the following:-

"To provide for the powers of the Director General (Consumer Affairs), for the establishment and functions of a Consumer Affairs Council and for the establishment and jurisdiction of the Consumer Claims Tribunal and for other

matters ancillary or consequent thereto.".

Amendment of Parts II and XII of the Arrangement of the principal Act.

74. The arrangement of the principal Act shall be amended as follows:

(a) for the words "PART II. Director of Consumer Affairs and the Consumer Affairs Council 3-15" there shall be substituted the words "PART II. Director General (Consumer Affairs) and the Consumer Affairs Council 3-15";

(b) the words "PART XII. Consumer Affairs Appeals Board 110A-110G" shall be deleted; and

(c) for the words "PART XI. Miscellaneous 111" there shall be substituted the words "PART XII. Miscellaneous 111".

Amendment of article 2 of the principal Act.

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

(a) the definition "Appeals Board" shall be deleted;

(b) immediately after the definition "advertisement" there shall be inserted the following new definition:

" "Appeals Tribunal" means the Competition and Consumer Appeals Tribunal as established by article 31 of the Malta Competition and Consumer Affairs Authority Act, 2011;";

(c) immediately after the new definition "Appeals Tribunal" there shall be inserted the following new definition:

" "the Authority" means the Malta Competition and Consumer Affairs Authority as established by article 3 of the Malta Competition and Consumer Affairs Authority Act 2011;";

(d) immediately after the new definition "the Authority" there shall be inserted the following new definition:

" "the Board" means the Board of Governors as established by article 8 of the Malta Competition and Consumer Affairs Authority Act, 2011;";

(e) the definition "Department" shall be deleted;

(f) the definition "Director" shall be substituted by the following:

" "the Director General" means the Director

General (Consumer Affairs) as appointed by article 16 of the Malta Competition and Consumer Affairs Authority Act, 2011;";

and wherever the word "Director" occurs in the principal Act it shall be substituted by the word "Director General";

(g) immediately after the definition "Minister" there shall be inserted the following new definition:

" "the Office" means the Office for Consumer Affairs as established under article 16(1) of the Malta Competition and Consumer Affairs Authority Act, 2011;"; and

(h) immediately after the definition "premises" there shall be inserted the following new definition:

" "public authority" shall have the same meaning assigned to it in article 2 of the Malta Competition and Consumer Affairs Authority Act 2011;".

Amendment of the Title of Part II of the principal Act.

76. The title to Part II of the principal Act shall be substituted by the following:-

"Director General (Consumer Affairs) and the Consumer Affairs Council"

Substitution of article 3 of the principal Act.

77. For article 3 of the principal Act there shall be substituted the following:

"Responsibility of the Director General.

3. The Director General shall be responsible for the administration and enforcement of this Act and for this purpose he shall exercise the responsibilities vested in the Office for Consumer Affairs by article 17 of the Malta Competition and Consumer Affairs Authority Act, 2011 and of this Act:

Provided that the Director General may delegate any of his powers to any officer or employee of the Authority.".

Amendment of article 4 of the principal Act.

78. Article 4 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, the words "The Council shall consist of a chairman, deputy chairman and five other members." shall be substituted by the words "The Council shall consist of a chairman and five other members, one of whom

shall be appointed as deputy chairman.";

(b) in subarticle (2) thereof, paragraph (b) shall be deleted and paragraph (c) shall be renumbered as paragraph (b); and

(c) in subarticle (3) thereof, the words "paragraph (c)" shall be substituted by the words "paragraph (b)".

Substitution of article 5 of the principal Act.

79. Article 5 of the principal Act shall be substituted by the following:

"5. It shall be the function of the Council:

(a) to advise the Minister on measures for the promotion and protection of consumer interests;

(b) at the request of the Minister, to undertake or commission any study or research which may be necessary to promote consumer protection;

(c) to monitor the working and enforcement of laws that directly or indirectly affect the consumer in Malta;

(d) to act as a forum for bringing together those public authorities which in the exercise of their functions deal with situations of conflict between traders' and consumers' interests or have the responsibility to safeguard the interests of consumers, with a view to establishing a closer relationship of co-operation among the said public authorities in furthering the welfare of consumers;

(e) to monitor the development of consumer associations in Malta, and to draw up and review rules of practice for registered consumer associations for submission to the Minister;

(f) to examine and determine whether a consumer association has the requirements to be a registered consumer association in accordance with this Act; and

(g) to perform any other function or duty that may be assigned to it by the Minister or that may be assigned to the Council under this or any other law.".

Amendment of article 7 of the principal Act.

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

(a) in subarticle (2) thereof, the words "and to the Council, or to any of them," shall be deleted; and

(b) in subarticle (3) thereof, the words "forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (€46,587.47)" wherever they appear shall be substituted by the words "forty-seven thousand euro (€47,000)".

Amendment of article 8 of the principal Act.

81. In subarticle (1) of article 8 of the principal Act, the words "with the concurrence of the Chairman in case of urgency, or of the Council," shall be deleted.

Amendment of article 9 of the principal Act.

82. Article 9 of the principal Act shall be amended as follows:

(a) the word "Department" in the marginal note thereof shall be substituted by the word "Office.";

(b) subarticle (1) thereof shall be substituted by the following:

"(1) Without prejudice to any arrangements made in terms of article 9A, a trader shall not, without the written consent of the Director General, make or cause to be made any representation in any visual or aural form, either specifically or by implication, to the effect that:

(a) any goods or services supplied by any trader have the approval of the Authority, Office or Council; or

(b) any activity carried out by any trader has the approval, or is conducted with the co-operation or assistance of the Authority, Office or Council."; and

(c) subarticle (3) thereof shall be amended as follows:

"(3) A trader convicted under this article shall be liable to a fine (*multa)* of not less than one hundred and twenty euro (€120) and not more than two thousand three hundred and fifty euro (€2,350)."

Addition of article 9A of the principal Act.

83. Immediately after article 9 of the principal Act, there shall

be inserted the following new article:

"Approval of codes of conduct by the Director General and use of official symbol.

9A. (1) In promoting good trading practices, the Director General shall, with the approval of the Board, make arrangements for approving codes of conduct and may, in accordance with these arrangements, give his approval to or withdraw his approval from any code of conduct.

(2) Any such arrangements must specify the criteria to be applied by the Director General in determining whether to give approval to or withdraw approval from a code of conduct.

(3) Any such arrangements may in particular:-

(a) specify the type of code of conduct that may be the subject of an application to the Director General for approval indicating the requisite features of the code of conduct, including the persons who are, or are to be subject to the code of conduct, the manner in which it is, or is to be operated and the persons responsible for its operation; and

(b) provide for the use in accordance with the arrangements of an official symbol intended to signify that a code of conduct is approved by the Director General.

(4) The Director General shall publish any arrangements under subarticle (1) in such manner as he considers appropriate.

(5) For the purposes of this article "code of conduct" shall have the same meaning assigned to it in article 51A.".

Amendment of article 11 of the principal Act.

84. Article 11 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, the words "or of any advisory commission established under this Act, the Director, or a public officer with the Department" shall be deleted;

(b) subarticle (2) thereof shall be deleted;

(c) in subarticle (3) thereof, the words "a fine (*multa*)

of not less than one hundred and sixteen euro and forty-seven cents (€116.47) and not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37)" shall be substituted by the words "a fine (*multa)* of not less than one hundred and twenty euro (€120) and not more than two thousand and three hundred fifty euro (€2,350)."; and

(d) subarticle (3) thereof shall be renumbered as subarticle (2).

Amendment of article 12 of the principal Act.

85. In subarticle (3) of article 12 of the principal Act, the word "Department" shall be substituted by the word "Office".

Addition of article 12B of the principal Act.

86. Immediately after article 12A of the principal Act, there shall be inserted the following new article:

"Complaints of general interest.

12B. (1) Without prejudice to article 12A, a qualified entity may also make a complaint to the Director General that with respect to goods and services:

(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 forty-five 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.

Amendment of article 13 of the principal Act.

87. In subarticle (2) of article 13 of the principal Act, the word "Department" shall be substituted by the word "Office".

Amendment of article 14 of the principal Act.

88. Subarticle (1) of article 14 of the principal Act shall be amended as follows:

(a) paragraph (a) thereof shall be substituted by the words "a sum not in excess of six hundred euro (€600) for any pecuniary loss, and"; and

(b) paragraph (b) thereof shall be substituted by the words "a sum of not less than thirty five euro (€35) and not more than seven hundred and fifty euro (€750) as moral damages for any pain, distress, anxiety and inconvenience.".

Amendment of article 14B of the principal Act.

89. In article 14B of the principal Act, the words "Appeals Board" wherever they appear and the word "Board" in subarticle (7) thereof shall be substituted by the words "Appeals Tribunal".

Amendment of article 20 of the principal Act.

90. In article 20 of the principal Act, the words "three thousand and four hundred and ninety-four euro and six cents (3,494.06)", wherever they appear, shall be substituted by the words "three thousand five hundred euro (€3,500)".

Amendment of article 21 of the principal Act.

91. In article 21 of the principal Act, the words "a sum of not less than thirty-four euro and ninety-four cents (34.94) and not more than two hundred and thirty-two euro and ninety-four cents (232.94)" shall be substituted by the words "a sum of not less than thirty-five euro (€35) and not more than five hundred euro (€500)".

Amendment of article 22 of the principal Act.

92. Article 22 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof, immediately before the words "shall lie from a decision of a Tribunal" there shall be inserted the words "made under subarticles (2) and (3)"; and

(b) in subarticle (2) thereof, the words "Independently of the amount of the claim, an appeal shall always lie in the following cases" shall be substituted by the words "An appeal shall lie in the following cases".

Amendment of article 25 of the principal Act.

93. (1) In the proviso to subarticle (1) of article 25 of the principal Act, the words "one hundred and sixteen euro and forty-seven cents (€116.47)" shall be substituted by the words "one hundred and twenty euro (€120)".

(2) Subarticle (3) of article 25 of the principal Act, shall be substituted by the following:

"(3) A decision of the Tribunal which has become *res judicata* may be enforced, depending on the residence of the person against whom enforcement is sought, by the Court of Magistrates (Malta) or by the Court of Magistrates (Gozo), as an executive title under the Code of Organization and Civil Procedure:

Provided that the Court fees payable in respect of any warrant issued for the purpose of enforcing a decision of the Tribunal shall amount to one-half of the court fees applicable in respect of warrants issued for the purpose of enforcement of judgments of the Court of Magistrates referred to herein.".

Amendment of article 25A of the principal Act.

94. Article 25A of the principal Act shall be substituted by the following:

"25A. The Director General shall monitor closely the decisions of the Tribunal to identify traders whose conduct on the market may be in breach of the Act or regulations made thereunder or who may not be honouring the decisions of the Tribunal or of the Court of Appeal to the detriment of consumers and may take any action under this Act or regulations made thereunder against such traders to address any consumer harm that could be ensuing from the traders' behaviour:

Provided that any action by the Director General under this article shall be without prejudice to the obligation of the trader to comply with the decision of the Tribunal or of the Court of Appeal.".

Amendment of article 26 of the principal Act.

95. In subarticles (4) and (6) of article 26 of the principal Act, the words "from among public officers serving with the Department", shall be deleted.

Amendment of article 34 of the principal Act.

96. In article 34 of the principal Act, the words "two thousand and three hundred and twenty-nine euro and thirty seven cents (€2,329.37)" shall be substituted by the words "two thousand three hundred and fifty euro (€2,350)".

97. In article 61 of the principal Act, the words "four hundred and sixty-five euro and eighty-seven cents (€465.87)" shall be substituted by the words "five hundred euro (€500)". Amendment of article 61 of the principal Act.

98. In article 67 of the principal Act, the words "Limitation of action" in the marginal note shall be substituted by the words "Prescription". Amendment of article 67 of the principal Act.

99. Article 78 of the principal Act shall be amended as follows: Amendment of article 78 of the principal Act.

(a) the word "prescription" in the marginal note thereof shall be substituted by the words "limitation of action"; and

(b) the words "of prescription" shall be deleted.

100. In article 91 of the principal Act, the words "one hundred and sixteen euro and forty-seven cents (€116.47)" shall be substituted by the words "one hundred and twenty euro (€120)". Amendment of article 91 of the principal Act.

101. In paragraph (b) of subarticle (5) of article 94 of the principal Act, the words "Appeals Board" shall be substituted by the words "Appeals Tribunal". Amendment of article 94 of the principal Act.

102. In subarticle (3) of article 95 of the principal Act, the words "Appeals Board" shall be substituted by the words "Appeals Tribunal". Amendment of article 95 of the principal Act.

103. Article 97 of the principal Act shall be amended as follows: Amendment of article 97 of the principal Act.

(a) the words "the Appeals Board" and "the Board", wherever they appear, shall be substituted by the words "the Appeals Tribunal";

(b) subarticle (3) thereof shall be repealed; and

(c) subarticle (4) thereof shall be renumbered as subarticle (3).

104. In article 98 of the principal Act, the words "the Appeals Board" shall be substituted by the words "the Appeals Tribunal". Amendment of article 98 of the principal Act.

105. In article 106 of the principal Act, the words "not less than four hundred and sixty-five euro and eighty-seven cents (€465.87) and not more than forty-six thousand five hundred and eighty-seven euro and forty-seven cents (€46,587.47)" shall be substituted by the words "not less than four hundred and seventy euro (€470) and not more than forty-seven thousand euro (€47,000).". Amendment of article 106 of the principal Act.

Amendment of article 106A of the principal Act.

106. Article 106A of the principal Act shall be amended as follows:

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

"(2) An administrative fine imposed for an infringement under subarticle (1) shall not be less than four hundred and seventy euro (€470) and not more than forty-seven thousand euro (€47,000)."; and

(b) in the proviso to subarticle (2) thereof the words "not more than two hundred and thirty-two euro and ninety-four cents (€232.94)" shall be substituted by the words "not more than two hundred and thirty euro (€230).".

Substitution of article 109 of the principal Act.

107. Article 109 of the principal Act shall be substituted by the following:

"109. No action shall lie against the Director General, or any of his officers or any authorised person acting under his direction or control, or against any member of the Council, for any act or omission in connection with this Act, or any regulations made thereunder, unless such act or omission was done in bad faith.".

Deletion of article 110 of the principal Act.

108. Article 110 of the principal Act shall be deleted.

Deletion of heading and title of the principal Act.

109. The heading "Part XII" and title thereto of the principal Act, immediately after the deleted article 110 of the principal Act, shall be deleted.

Deletion of article 110A of the principal Act.

110. Article 110A of the principal Act shall be deleted.

Amendment of article 110B of the principal Act.

111. Article 110B of the principal Act shall be amended as follows:

(a) the words "Appeals Board", wherever they appear, shall be substituted by the words "Appeals Tribunal"; and

(b) in subarticle (3) thereof, the word "secretary" wherever it appears shall be substituted by the word "Registrar".

Amendment of article 110C of the principal Act.

112. In article 110C of the principal Act, the words "Appeals Board", wherever they appear, shall be substituted by the words "Appeals Tribunal".

113. In article 110D of the principal Act, the words "Appeals Board" in the marginal note thereof and wherever they appear shall be substituted by the words "Appeals Tribunal". Amendment of article 110D of the principal Act.

114. Article 110E of the principal Act shall be amended as follows: Amendment of article 110E of the principal Act.

(a) subarticles (1), (3), (4), (5) and (6) thereof shall be deleted;

(b) subarticles (2) and (7) thereof shall be renumbered as subarticles (1) and (2) respectively;

(c) the words "Appeals Board" in the marginal note thereof and in subarticle (1) as renumbered shall be substituted by the words "Appeals Tribunal"; and

(d) in subarticle (2) as renumbered, for the words "in subarticle (2)" there shall be substituted the words "in subarticle (1)".

115. Subarticle (1) of article 110F of the principal Act shall be substituted by the following: Amendment of article 110F of the principal Act.

"(1) Any party to an appeal to the Appeals Tribunal including the Director General, who feels aggrieved by a decision of the Appeals Tribunal may, on points of law or on grounds of natural justice, appeal to the Court of Appeal by means of an application filed in the registry of that court within fifteen days from the date of the decision of the Appeals Tribunal.".

116. Article 110G of the principal Act shall be amended as follows: Amendment of article 110G of the principal Act.

(a) the words "Appeals Board" in the marginal note thereof and wherever they appear shall be substituted by the words "Appeals Tribunal"; and

(b) in subarticle (1) thereof, the words "without prejudice to article 97(3)" shall be deleted; and

(c) immediately after subarticle (2) thereof, the following proviso shall be inserted:

"Provided that in the case of a compliance order, the Appeals Tribunal or the Court of Appeal may, pending the outcome of the case, modify the compliance order as it deems necessary instead of suspending it.".

Addition of new article 110H to the principal Act.

117. Immediately after article 110G of the principal Act, there shall be inserted the following new article:

"Notification and publication of decisions.

"110H.(1) Any decision or order of the Director General delivered in accordance with the provisions of this Act shall be notified to the parties concerned and to the complainant in accordance with article 64 of the Malta Competition and Consumer Affairs Authority Act, 2011 due regard being had to business secrets or other confidential information.

(2) The Appeals Tribunal and the Director General shall publish without undue delay the decisions or orders taken under this Act and in doing so the Appeals Tribunal and the Director General shall have regard to the legitimate interest of the parties concerned in the protection of their business secrets or other confidential information.

(3) Any decision delivered by the Appeals Tribunal in proceedings held before it shall be deemed to be notified to the parties on the date on which it is pronounced.

(4) The Appeals Tribunal shall provide:

(a) both a complete version and a non-confidential version of its decision on paper or on any other durable medium to the Director General; and

(b) a copy of its decision, upon request, to the parties to the case, ensuring in so doing the protection of business secrets or other confidential information.".

Renumbering of Part.

118. The heading "PART XIII", immediately following the new article 110H, shall be renumbered as "PART XII".

Amendment of the Second Schedule to the principal Act.

119. The Second Schedule to the principal Act shall be amended as follows:

(a) in paragraph (2) thereof, the words "the fine shall be two thousand, three hundred and twenty-nine euro and thirty-seven cents (€2,329.37)" shall be substituted by the words "the fine shall be two thousand three hundred and fifty euro (€2,350)";

(b) paragraph (4) thereof shall be substituted by the following:

"4. Without prejudice to the generality of rule 3, the following shall in all cases be deemed as aggravating circumstances:

- where the infringement is an unfair commercial practice listed in the First Schedule, the basic amount shall be increased by a sum not less than one thousand, seven hundred and fifty euro (€1,750) and not more than four thousand, six hundred and fifty euro (€4,650);

- in the case of a second or subsequent infringement, the basic amount shall be increased by two thousand, three hundred and fifty euro (€2,350) for each and every subsequent infringement;

- where the practice or scheme constituting the infringement is the principal means by which the trader runs or operates his business, the basic amount shall be increased by a sum not less than one thousand, seven hundred and fifty euro (€1,750) and not more than four thousand, six hundred and fifty euro (€4,650);

- where the practice or scheme constituting the infringement is specifically targeting vulnerable consumers, the basic amount shall be increased by two thousand, three hundred and fifty euro (€2,350);

- where the unfair commercial practice is accompanied by any of the factors listed in article 51E(2) of the Act, the basic amount shall be increased by a sum not less than one thousand, seven hundred and fifty euro (€1,750) and not more than four thousand, six hundred and fifty euro (€4,650).";

(c) paragraph (6) thereof shall be substituted by the following:

"6. The final amount of the administrative fine shall not, in any event, exceed forty-seven thousand euro (€47,000) or be lower than four hundred and seventy euro (€470).";

(d) paragraph (8) thereof shall be substituted by the following:

"8. For the infringement referred to in article 12, the amount of the fine shall not be less than four thousand six hundred and fifty euro (€4,650) and not more than eleven thousand six hundred and fifty euro (€11,650).";

(e) paragraph (9) thereof shall be substituted by the following:

"9. For the infringement referred to in article 14B, the amount of the fine shall not be less than four thousand six hundred and fifty euro (€4,650) and not more than eleven thousand six hundred and fifty euro (€11,650).";

(f) paragraph (10) thereof shall be substituted by the following:

"10. For the infringement referred to in article 94, the amount of the fine shall not be less than four thousand six hundred and fifty euro (€4,650) and not more than twenty-three thousand three hundred euro (€23,300):

Provided that in the case of non-compliance, the Director General may also impose a daily fine of not less than one hundred and twenty euro (€120) and not more than two hundred and thirty euro (€230) for each day of non-compliance.".

PART XV
AMENDMENTS TO THE COMPETITION ACT (CAP. 379.)

Amendment to the Competition Act. Cap. 379.

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

Amendment of article 2 of the principal Act.

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

(a) immediately before the definition "association of undertakings" there shall be inserted the following new definition:

" "Appeals Tribunal" means the Competition and Consumer Appeals Tribunal as established by article 31 of the Malta Competition and Consumer Affairs Authority

Act, 2011;";

(b) immediately after the definition "association of undertakings", there shall be added the following new definition:

" "the Board" means the Board of Governors as established by article 8 of the Malta Competition and Consumer Affairs Authority Act, 2011;";

(c) the definition "chairman" shall be deleted;

(d) the definition "Commission" shall be deleted;

(e) the definition "Director" shall be substituted by the following:

" "Director General" means the Director General (Competition) as appointed by article 13 of the Malta Competition and Consumer Affairs Authority Act, 2011;";

and wherever the word "Director" appears in the principal Act, it shall be substituted by the word "Director General";

(f) the definition "European Commission" shall be substituted by the following:

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

(g) the definition "Minister" shall be substituted by the following:

" "Minister" means the Minister responsible for competition matters;";

(h) the definition "office" shall be substituted by the following:

" "Office" means the Office for Competition as established by article 13 of the Malta Competition and Consumer Affairs Authority Act, 2011;";

(i) immediately after the definition "office" there shall be inserted the following new definition:

" "President" means the President of the Appeals

Tribunal;";

(j) immediately after the definition "product" there shall be inserted the following new definition:

" "qualified entity" shall have the same meaning assigned to it under article 2 of the Consumer Affairs Act;";

(k) in the definition "restrictive practice" the words "Article 81 of the EC Treaty" and "Article 82 of the EC Treaty" shall be substituted by the words "Article 101 of the TFEU" and "Article 102 of the TFEU" respectively; and

(l) the definition "EC Treaty" shall be deleted and, immediately after the definition "restrictive practice", there shall be added the following new definition:

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

Amendment of article 3 of the principal Act.

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

(a) the marginal note thereof shall be substituted by the words "Responsibility of the Director General"; and

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

"3. The Director General shall have the exclusive competence to apply the provisions of this Act and for this purpose he shall exercise the responsibilities vested in the Office for Competition under article 14 of the Malta Competition and Consumer Affairs Authority Act, 2011 and under this Act:

Provided that the Director General may delegate any of his powers to any officer or employee of the Authority.".

Deletion of article 4 of the principal Act.

123. Article 4 of the principal Act shall be deleted.

Amendment of article 5 of the principal Act.

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

(a) in subarticle (1) thereof in the Maltese text only, for the words "li jsiru bil-ħsieb jew li jkollhom l-effett li jimpedixxu, irażżnu jew ixekklu l-kompetizzjoni" there shall be

substituted the words "li jkollhom bħala għan jew riżultat tagħhom il-prevenzjoni, ir-restrizzjoni jew id-distorsjoni tal-kompetizzjoni";

(b) in subarticle (5) thereof, the words "Article 81 of the EC Treaty" shall be substituted by the words "Article 101 of the TFEU"; and

(c) in subarticle (6) thereof, the words "Article 81(1) of the EC Treaty" and "Article 81(3) of the EC Treaty" shall be substituted by the words "Article 101(1) of the TFEU" and "Article 101(3) of the TFEU" respectively.

Amendment of article 8 of the principal Act.

125. In subarticle (1) of article 8 of the principal Act, for the words "consultation with the Director", there shall be substituted the words "consultation with the Board".

Amendment of article 9 of the principal Act.

126. Article 9 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof, paragraphs (b) and (d) shall be deleted and paragraphs (c), (e) and (f) shall be renumbered as (b), (c) and (d) respectively;

(b) subarticle (3) thereof shall be deleted; and subarticles (4) and (5) shall be renumbered as subarticles (3) and (4) respectively; and

(c) in subarticle (4) thereof as renumbered, the words "Article 82 of the EC Treaty" shall be substituted by the words "Article 102 of the TFEU".

Substitution of article 11 of the principal Act.

127. Immediately after article 11 of the principal Act, there

shall be inserted the following new article:

"Inquiries into sectors of the economy and into types of agreements.

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 inspections necessary for that purpose.

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

(3) The Director General may in particular request the undertakings or association of undertakings concerned to communicate to him all agreements, decisions and concerted practices.

(4) 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.

(5) Any person, undertaking or association of undertakings that does not comply with the request of the Director General in terms of subarticles (1) and (3), within the time-limits imposed by the Director General shall, without prejudice to any other liability under this Act or any other law, commit an infringement of this Act.".

Amendment of article 12 of the principal Act.

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

(a) the words "or the Commission to carry out their functions" in subarticle (1) thereof shall be substituted by the words "to carry out his functions"; and

(b) subarticles (2) to (10) thereof shall be substituted

by the following subarticles (2) to (14):-

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

Provided that nothing in this subarticle may be construed as authorising the Director General to order the production of any document or the disclosure of any information which may be subject to the duty of professional secrecy.

(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 and indicate the administrative fines provided for in articles 21(4), (5) and (6).

(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, 2011 shall apply.

(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 the Director General may receive written or verbal 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 Appeals Tribunal and before any court of law:

Provided that, and without prejudice to subarticle (7) (a), in the case of a natural person, not being an undertaking or a director, manager, secretary or other similar officer of an undertaking or association of undertakings, statements may be taken only with his prior consent.

(7) (a) The Director General may, for the purpose of any investigation under this article, enter into and search any premises, land and means of transport of undertakings and associations of undertakings, where he has reason to believe that information relevant to the investigation may be found, and in the course of any such search may seize any object or document, or take extracts or copies of documents, or order the non-removal of any object from any such premises, land and means of transport, and in connection with any such order may close and seal any or all parts of such premises, land or means of transport, or put any object under seal and, or ask any representative or member of staff of the undertaking or association of undertakings concerned for an explanation of facts or documents relating to the subject matter and purpose of the inspection and record the answers.

(b) The officials carrying out an inspection under paragraph (a) shall exercise their powers upon production of a written authorisation signed by the Director General specifying the subject-matter and purpose of the inspection and the penalties provided in article 21(4) and (5).

(8) (a) If a reasonable suspicion exists that books or other records related to the business and to the subject-matter of the inspection, which may be relevant to prove a breach of articles 5 and, or 9, and, or Articles 101 and, or 102 of the TFEU, are being kept in any other premises, land or means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, the Director General may, duly authorised by a warrant issued by a Magistrate, order an inspection to be conducted in any such other premises, land and means of transport.

(b) The Magistrate, in deciding whether to issue a warrant under paragraph (a) shall ensure that the coercive measures envisaged are neither arbitrary nor excessive, having regard, in particular, to the gravity of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking or association of undertakings concerned and to the reasonable likelihood that business books and records relating to the subject-matter of the inspection are kept in the premises for which the warrant is requested.

(c) The warrant mentioned in paragraph (a) shall specify the subject-matter, purpose of the inspection, the date on which the inspection is to begin and the penalties provided in article 21(4) and (5).

(d) The officials carrying out an inspection under this subarticle shall exercise their powers upon production of the warrant mentioned in paragraph (a) and shall for the purposes of this subarticle be empowered to enter into and search any such premises, land and means of transport and in the course of any such search, may seize any object or document, or take extracts or copies of documents, or order the non-removal of any object from any such premises, land and means of transport.

(9) (a) In the course of any search as is referred to in subarticles (7) and (8), the Director General may request the assistance of the Police and in such case the Police shall require a warrant from a 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 or other advisers of their choice:

Provided that the right to such assistance shall not have the effect of suspending or delaying 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 subarticle (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 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 authorized by the Director General or the Magistrate, as the case may be, to take place between the said times.

(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.".

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129. Article 12A of the principal Act shall be substituted by the following:

Substitution of article 12A of the principal Act.

"Finding of an infringement by the Director General.

12A. (1) Where 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 notify each of the parties concerned in writing of the objections raised against them in accordance with the provisions of article 64 of the Malta Competition and Consumer Affairs Authority Act, 2011 and shall set a time-limit within which they may inform him in writing of their submissions, and the parties concerned may in their written submissions set out all facts known to them which are relevant to their defence against the objections raised by the Director General and shall attach any relevant documents as evidence thereof.

(2) (a) Where the Director General issues a statement of objections relating to a matter in respect of which he has received a complaint, he shall provide the complainant with a copy of the non-confidential version of the statement of objections.

(b) Paragraph (a) shall not apply where the settlement procedure under article 12B is underway, so however that the Director General shall inform the complainant in writing of the nature and subject-matter of the procedure.

(c) Under paragraphs (a) and (b), the Director General shall set a time-limit within which the complainant may make known his views in writing.

(3) (a) The Director General shall give the parties to which he has issued a statement of objections as referred to in subarticle (1) and the complainant the opportunity to develop their arguments verbally, if they so request in their written submissions.

(b) The Director General may, where appropriate, invite any other person to express his views in writing within the time-limit set by the Director General, and may give any such other person the opportunity to submit his views verbally if he so requests in his written submissions.

(4) Without prejudice to the right of the persons mentioned in subarticle (3) to request a separate and individual meeting, the Director General may also, on his own initiative, and, as he considers appropriate, invite some or all of the parties who have submitted written observations in terms of subarticle (3), to a meeting whereby they may develop their arguments and make counter-submissions in each other's presence and reply to questions posed by the Director General:

Provided that during such meeting, the Director General shall ensure that due regard is given to the protection of business secrets and other confidential information.

(5) The parties notified with a statement of objections as referred to in subarticle (1) shall be entitled to have access to the file concerning their case following such notification, without prejudice to the non-disclosure of information or documents identified by the Director General as containing business secrets or other confidential information, or of internal documents of the Director General or of the Competition Authorities of other Member States.

(6) Where, upon the conclusion of an investigation, it results to the Director General that the agreement, decision, concerted practice or conduct investigated is in breach of the provisions of articles 5 and, or 9 of this Act and, or in breach of Articles 101 and, or 102 of the TFEU, he shall issue a decision finding an infringement, giving his reasons therefor:

Provided that the Director General shall base his decisions under this subarticle only on objections contained in the statement of objections referred to in subarticle (1).

(7) In the interpretation of this Act and in the exercise of his responsibilities, in particular in the formulation of his decisions, orders and reports, the Director General shall have recourse to the judgements 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 refer to his decisions and those of the Appeals Tribunal.

(8) Upon notification of a decision of the Director General as referred to in subarticle (6) such decision shall, without prejudice to the right of appeal under article 13A, 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:

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Provided so however that, notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in this subarticle shall not be enforceable before the lapse of twenty days from notification of the decision to the undertaking or association of undertakings concerned in accordance with article 19(1).

(9) Any decision of the Director General may be revised or altered by the Director General where it results that:

(a) the information upon which it was based had been false, misleading or incomplete; or

(b) market conditions have changed significantly.".

Addition of new articles 12B, 12C and 12D to the principal Act.

130. Immediately after article 12A of the principal Act there shall be inserted the following new articles:-

"Settlement procedure in cartel cases.

12B. (1) In the course of an investigation concerning an agreement or a concerted practice between undertakings operating on the same level of the market and within the same relevant market or a decision of an association of undertakings having the object of preventing, restricting or distorting competition in terms of article 5 and, or Article 101 of the TFEU, the Director General may, prior to issuing a statement of objections, invite all or some of the undertakings concerned 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 replies received after the expiry of that time-limit.

(2) Where two or more undertakings within the same economic entity indicate their willingness to engage in settlement discussions pursuant to subarticle (1), they shall, by the end of the time-limit set by the Director General appoint a joint representative to engage in discussions with the Director General on their behalf:

Provided that when setting the time-limit pursuant to subarticle (1), the Director General shall indicate to the relevant undertakings forming part of the same economic entity that the appointment of a joint representative shall be made for the sole purpose of fulfilling the requirement prescribed by this subarticle and that it shall have no bearing on the allocation of liability for the infringement amongst the different undertakings within the said economic entity.

(3) Undertakings or association of undertakings taking part in settlement discussions may be informed by the Director General of:

(a) the objections he envisages to raise against them;

(b) the evidence used to determine the envisaged objections;

(c) non-confidential versions of any specified accessible document listed in the case file at that point in time; and

(d) the range of potential fines:

Provided that in the case of paragraph (c) access may only be granted upon request by the undertaking or association of undertakings concerned and where such request is necessary to enable the party to ascertain its position regarding a time period or any other particular aspect of the cartel.

(4) When introducing their settlement submissions the undertakings or associations of undertakings taking part in settlement discussions shall confirm to the Director General that they will only request access to the file and leave to submit their views verbally after the receipt of the statement of objections, if the statement of objections does not reflect the contents of their settlement submissions.

(5) The information given pursuant to subarticle (3) shall be confidential vis-à-vis third parties, save where the Director General has given a prior explicit authorization for disclosure.

(6) Should settlement discussions progress, the Director General may set a time-limit within which the parties may commit to follow the settlement procedure by introducing settlement submissions reflecting the results of the settlement discussions and acknowledging their participation in an infringement of article 5, and, or Article 101 of the TFEU as well as their liability:

Provided that, before the Director General sets a time-limit to introduce their settlement submissions, the parties concerned shall be entitled to have the information specified in subarticle (3) disclosed to them, upon request, in a timely manner:

Provided further that the Director General shall not be obliged to take into account settlement submissions received after the expiry of that time-limit.

(7) When the statement of objections notified to the parties reflects the contents of their settlement submissions, the written reply to the statement of objections by the undertakings or association of undertakings concerned shall, within a time-limit set by the Director General, confirm that the statement of objections addressed to them reflects the contents of their settlement submissions.

(8) Subject to the provisions of subarticle (7), the Director General may then proceed to the adoption of a decision pursuant to article 12A:

Provided that the Director General may reward the undertakings or association of undertakings concerned for the settlement by reducing by ten *per centum* the amount of the fine to be imposed.

(9) The fact that an undertaking co-operated with the Director General under this settlement procedure shall be indicated in the final decision, so as to explain the reason for the level of the fine.

(10) The Director General may decide at any time during the procedure to discontinue settlement discussions altogether in a specific case or with respect to one or more of the parties involved, if he considers that procedural efficiencies are not likely to be achieved.

Commitments.

12C. (1) Where the Director General intends to adopt a decision requiring that an infringement be brought to an end and the undertaking or association of undertakings concerned offers commitments to meet the concerns expressed to it by the Director General in a preliminary assessment of the case, the Director General may by decision make those commitments binding on the undertaking or association of undertakings. Such decision may be for a specified period and shall conclude that there are no longer grounds for action by the Director General:

Provided that the Director General may re-open the proceedings where it results to him that:

(a) there has been a material change in any of the facts on which the decision was based; or

(b) the undertaking or association of undertakings concerned acted contrary to its commitments; or

(c) the decision was based on incomplete, incorrect or misleading information provided by the parties.

(2) (a) Where the Director General intends to adopt a decision under subarticle (1), he shall publish a concise summary of the case and the main contents of the commitments or of the proposed course of action.

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

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

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

(3) Where any undertaking or association of undertakings fails to comply with or acts contrary to a commitment made binding by a decision pursuant to subarticle (1), it shall without prejudice to any other liability under this Act or any other law, commit an infringement of this Act and the provisions of article 12A *shall mutatis mutandis* apply.

Finding of a non-infringement by the Director General.

12D.(1) Where it results to the Director General following an investigation that the examined conduct does not constitute a breach of the provisions of articles 5 and, or 9 of this Act, and, or Articles 101 and, or 102 of the TFEU, he may issue a decision to that effect.

(2) Where the Director General intends to adopt a decision under subarticle (1), the provisions of article 12C(2) shall apply *mutatis mutandis*.".

Amendment of article 13 of the principal Act.

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

(a) subarticle (1) thereof shall be substituted by the following:

"On issuing a decision finding an infringement under article 12A, the Director General may together with such decision issue a cease and desist order whereby he orders the undertaking or association of undertakings concerned, as the case may be, to cease and desist from participating in such agreement, decision, practice, or conduct, and, or a compliance order setting behavioural or structural remedies addressed to the undertaking or association of undertakings concerned for the purpose of bringing the infringement to an immediate and effective end."; and

(b) subarticle (2) thereof shall be deleted and subarticles (3) and (4) thereof shall be renumbered as subarticles (2) and (3) respectively.

Substitution of articles 13A and 14 of the principal Act.

132. Articles 13A and 14 of the principal Act shall be substituted by the following articles:

"Appeals before the Appeals Tribunal.

13A. (1) The undertaking or association of undertakings concerned may appeal by application filed before the Appeals Tribunal from any infringement decision, cease and desist or compliance order, administrative fine and, or daily penalty payment adopted or imposed by the Director General in accordance with the provisions of this Act within twenty days of notification thereof in accordance with article 19(1).

(2) The appeal shall be notified to the Director General and the Director General shall file his reply thereto within twenty days from the date of notification of the appeal.

(3) An appeal filed in accordance with subarticle (1) shall not have the effect of suspending the order, administrative fine and, or daily penalty payment appealed from unless the Appeals Tribunal, upon a reasoned request by a party to the appeal, and after considering the submissions of the Director General, suspends the order, administrative fine and, or daily penalty payment under such conditions as it may deem fit, stating its reasons therefor, pending the final determination of the appeal.

(4) The Appeals Tribunal may either confirm in whole or in part or quash the decision and, or order of the Director General and may confirm, revoke or vary the administrative fine and, or daily penalty payment imposed by the Director General within the limits set in article 21, taking into account the gravity and duration of the infringement as well as any aggravating or attenuating circumstances.

(5) The Director General and any party to an appeal before the Appeals Tribunal who feels aggrieved by a decision of the Appeals Tribunal may appeal on a question of law 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 decision of the Appeals Tribunal.

Handling of complaints and the right of appeal.

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, he shall inform the complainant of his reasons and set a time-limit within which the complainant may make known his views in writing. The Director General shall not be obliged to take into account any further written submission received after the expiry of that time-limit.

(3) If the complainant makes known his views within the time-limit set by the Director General and the written submissions made by the complainant do not lead to a different assessment of the complaint, the Director General shall reject the complaint by decision.

(4) If the complainant fails to make known his views within the time-limit set by the Director General, the complaint shall be deemed to have been withdrawn.

(5) Where the complainant does not agree with the decision of the Director General according to subarticle (3) or with the Director General's finding of a non-infringement according to article 12D, he may appeal by application filed before the Appeals Tribunal within twenty days of notification thereof in accordance with article 19(1).

(6) Where, upon appeal by the complainant, the Appeals Tribunal does not uphold the decision of the Director General rejecting a complaint according to subarticle (3), it shall inform the Director General accordingly who shall thereupon commence the investigation.

(7) Where, upon an appeal by the complainant, the Appeals Tribunal does not agree with the finding of the Director General of a non-infringement according to article 12D, and finds that there is an infringement, it shall issue a decision accordingly and remit the decision to the Director General who shall take any measure he may deem fit in accordance with the provisions of this Act in respect of the said infringement.

(8) Any party to an appeal before the Appeals Tribunal, including the Director General, who feels aggrieved by a decision of the Appeals Tribunal issued in terms of subarticle (7) may appeal on a question of law 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 decision of the Appeals Tribunal, and the provisions of subarticle (7) shall *mutatis mutandis* apply to the Court of Appeal.

(9) Any decision of the Appeals Tribunal concerning an appeal from a decision of the Director General under subarticle (3) shall be final.

(10) An appeal made under this article shall not have the effect of suspending any decision on which an appeal is sought.".

Addition of new articles 14A,14B and 14C of the principal Act.

133. Immediately after article 14 of the principal Act there shall be inserted the following new articles:-

"Complaints of general interest.

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:

(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.

Suspension or termination of proceedings.

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

(2) Where the Director General rejects or suspends a complaint pursuant to subarticle (1), he shall inform the complainant without delay of the competition authority which is dealing or has already dealt with the case.

Guidance Letters.

14C. (1) Where the Director General considers it appropriate, he may, following a request by an undertaking, provide guidance on novel questions concerning the interpretation of articles 5 and, or 9 and Articles 101 and, or 102 of the TFEU in a written statement known as a "guidance letter".

(2) The Director General shall consider it appropriate to issue a guidance letter under subarticle (1) only if the following cumulative conditions are fulfilled:

(a) the informal guidance requested is compatible with the enforcement priorities of the Office;

(b) the substantive assessment of an agreement or practice with regard to articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU, poses a question of application of the law for which there is no clarification in the existing Maltese and EU legal framework, in publicly available general guidance, in judgments or decisions or in previous guidance letters;

(c) a prima-facie evaluation of the facts of the case suggests that clarification of the novel question through a guidance letter will be useful, taking into account the following elements:

- the economic importance of the goods and services concerned by the agreement or practice from the point of view of the consumer, and/or;
- the extent to which the agreement or practice shall be or is likely to be resorted to in the relevant market or in other markets, and/or;
- the importance of the investments linked to the transaction in relation to the size of the companies concerned and the extent to which the transaction relates to a structural operation such as the creation of a non-full function joint venture; and

(d) it is possible to issue a guidance letter on the basis of the information provided and no further fact-finding measures by the Director General need be undertaken.

(3) The Director General shall not consider a request for a guidance letter where:

(a) he is aware that the questions raised in the request are identical to or similar to issues raised in a case pending before a Maltese Court or the Court of Justice of the European Union; or

(b) the agreement or practice to which the request refers is subject to proceedings pending before the Director General, the Appeals Tribunal, the European Commission, and to the extent that he may be aware, pending before a Maltese Court, the Court of Justice of the European Union or another Member State court or a national competition authority.

(4) The Director General shall not consider hypothetical questions or issue guidance letters on agreements or practices that are no longer being implemented by the applicants:

Provided that undertakings may present a request for a guidance letter to the Director General in relation to questions raised by an agreement or practice before its implementation but following the conclusion of the agreement or practice or where the undertakings are able to show to the satisfaction of the Director General that negotiations have reached a sufficiently advanced stage for a request to be considered.

(5) A request for a guidance letter shall not have the effect of preventing the Director General, where he deems necessary, from initiating an investigation under this Act with regard to the facts presented in the request.

(6) The request shall clearly state:

- the identity of all undertakings concerned or of the association of undertakings, as well as a single address for receipt of the guidance letter;
- the specific questions on which the guidance is sought;
- full and exhaustive information on all points relevant for an informed evaluation of the questions raised, including pertinent documentation;
- detailed reasoning why the request presents a novel question;

- all other information that permits an evaluation of the request in the light of the conditions mentioned in subarticles (2) to (4), including in particular, a declaration that the agreement or practice to which the request refers is not subject to proceedings pending before the Court of Justice of the European Union, a Maltese or other member state court or before the European Commission or a national competition authority;

- a clear identification of any business secret or other confidential information; and

- any other information or documentation relevant to the individual case.

(7) The Director General shall evaluate the request on the basis of the information provided and, where available, may use additional information at his disposal from public sources, former investigations or any other source and may ask the applicants to provide supplementary information:

Provided that in using the information provided by the applicants or such other additional information, the Director General shall pay due regard to the protection of business secrets or other confidential information.

(8) Where the Director General considers that it is not appropriate to issue a guidance letter or that a guidance letter cannot be issued under this article, the Director General shall inform the applicant accordingly stating the reasons therefor.

(9) Where the Director General has not yet issued a guidance letter, the applicant may withdraw its request at any stage:

Provided that where the request for a guidance letter is withdrawn in terms of this subarticle, the information supplied in the context of the request for guidance shall remain with the Director General and may be used in subsequent proceedings under this Act.

(10) A guidance letter shall set out:

- a summary description of the facts on which it is based; and

- the principal legal reasoning underlying the understanding and assessment of the Director General on the novel question relating to articles 5 and, or 9 of this Act, and, or Articles 101 and, or 102 of the TFEU raised in the request:

Provided that a guidance letter may be limited to part of the questions raised in the request and may also include aspects additional to those set out in the request.

(11) Guidance letters shall be posted on the website of the Malta Competition and Consumer Affairs Authority as established by the Malta Competition and Consumer Affairs Authority Act, 2011, having regard to the legitimate interest of undertakings in the protection of business secrets or other confidential information:

Provided that, before issuing a guidance letter, the Director General shall agree with the applicants on a public version.

(12) Where an agreement or practice has formed the factual basis for a guidance letter, the Director General shall not be precluded from subsequently examining that same agreement or practice in a procedure under this Act, and in so doing, the Director General shall take the guidance letter into account, subject in particular to changes in the underlying facts, to any new aspects raised by a complaint, to developments in decisions and judgments on the application of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU and to changes in the policies of the Malta Competition and Consumer Affairs Authority.

(13) Guidance letters are not binding on the courts or on the Appeals Tribunal, although they may take them into account should they deem fit.

Substitution of article 15 of the principal Act.

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

"Interim measures.

15. (1) In cases of urgency due to the risk of serious and irreparable damage to competition, the Director General, acting on his own initiative, may by decision, on the basis of a *prima facie* finding of an infringement of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU, order interim measures.

(2) A copy of the decision ordering interim measures in accordance with subarticle (1) shall be notified to the undertaking or association of undertakings under investigation in accordance with article 19(1), and such decision shall apply for a specified period of time and may be renewed in so far as this is necessary and appropriate.

(3) The undertaking or association of undertakings concerned may appeal from a decision of the Director General as described in subarticle (1) by application filed before the Appeals Tribunal within twenty days from the date upon which the decision was notified in accordance with article 19(1), and such appeal shall not have the effect of suspending the interim measure unless the Appeals Tribunal, after hearing the submissions of the undertaking or association of undertakings concerned and the Director General, otherwise directs.

(4) Any decision of the Appeals Tribunal under this article shall be final.

Deletion of article 16 of the principal Act.

135. (1) Article 16 of the principal Act shall be deleted.

Substitution of articles 17, 18 and 19 of the principal Act.

(2) Articles 17, 18 and 19 of the principal Act shall be substituted by the following articles:

Non-compliance with a cease and desist order and a compliance order.

17. Any undertaking or association of undertakings which acts contrary to a cease and desist order or a compliance order issued by the Director General in accordance with article 13 shall, without prejudice to any other liability under this Act or any other law, commit an infringement of this Act.

Non-compliance with an interim measure.

18. Any undertaking or association of undertakings which acts contrary to an interim measure issued by the Director General in accordance with article 15 shall, without prejudice to any other liability under this Act or any other law, commit an infringement of this Act.

Notification and Publication.

19. (1) Any decision or order of the Director General delivered in accordance with the provisions of this Act shall be notified to the parties concerned and to the complainant in accordance with article 64 of the Malta Competition and Consumer Affairs Authority Act, 2011 due regard being had to the protection of business secrets or other confidential information.

(2) The Appeals Tribunal and the Director General shall publish without undue delay the decisions or orders taken under this Act and in doing so the Appeals Tribunal and the Director General shall have regard to the legitimate interest of the undertakings in the protection of their business secrets or other confidential information.

(3) Any decision delivered by the Appeals Tribunal in proceedings held before it shall be deemed to be notified to the undertaking or association of undertakings concerned on the date on which it is pronounced.

(4) The Appeals Tribunal shall provide:

(a) both a complete version and a non-confidential version of its decision on paper or on any other durable medium to the Director General; and

(b) a copy of its decision, upon request, to the parties to the case, ensuring in doing so the protection of business secrets or other confidential information.".

Substitution of article 21 of the principal Act.

136. Article 21 of the principal Act shall be substituted by the following:

"Administrative Fines.

21. (1) Any undertaking or association of undertakings which commits an infringement in terms of articles 12A(6),12C(3), 17 or 18 may, by decision of the Director General, be held liable to pay an administrative fine of up to ten *per centum* of the total turnover of the undertaking or association of undertakings concerned in the preceding business year:

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

(2) (a) Where an administrative fine is imposed upon an association of undertakings, taking account of the annual turnover of its members, and the association is not solvent, the association shall be obliged to call for contributions from its members to cover the amount of the administrative fine due.

(b) Where the contributions referred to in paragraph (a) have not been made to the association within a time-limit fixed by the Director General, the Director General may require payment of the administrative fine directly by any of the undertakings whose representatives were members of the decision-making bodies of the association.

(c) Where the application of paragraph (b) is not sufficient to ensure the full payment of the fine, the Director General may require payment of the balance by any of the members of the association which were active on the market on which the infringement occurred.

(d) The Director General shall not require payment under paragraphs (b) and (c) of this subarticle from undertakings which show that they have not implemented the unlawful decision of the association and they were not aware of its existence or had actively distanced themselves from it before the Director General started investigating the case.

(e) The financial liability of each undertaking in respect to the payment of the fine shall not exceed ten *per centum* of its total turnover in the preceding business year.

(3) In fixing the amount of the fine, the Director General shall have regard to the gravity and duration of the infringement and to any aggravating or attenuating circumstances:

Provided that the Director General may from time to time issue guidelines detailing the manner in which such fines are set.

(4) (a) Any undertaking or association of undertakings which fails to comply with a cease and desist order or a compliance order pursuant to article 13, or fails to comply with an interim measure pursuant to article 15, or fails to comply with a commitment made binding pursuant to article 12C, or which fails to supply complete and correct information pursuant to a request for information under articles 11A and 12 or fails to submit to an inspection under article 12 may, at the discretion of the Director General, be liable to a daily penalty payment not exceeding five *per centum* of the average daily turnover of the undertaking or association of undertakings concerned in the preceding business year for each day during which the undertaking fails to comply with its obligations.

(b) The daily penalty payment referred to in paragraph (a) shall be calculated from the day determined in the decision of the Director General.

(c) Where the undertaking or association of undertakings concerned complies with the obligations mentioned in paragraph (a), the Director General may fix the definitive amount of the daily penalty payment at a figure lower than that which would have arisen in terms of the original decision of the Director General.

(d) In the application of this subarticle to an association of undertakings, subarticle (2) shall apply *mutatis mutandis*.

(5) Any person who in the course of any investigation or inquiry conducted under this Act, or in the course of any proceedings before the Appeals Tribunal knowingly or recklessly:

(a) gives any false, inaccurate or misleading information; or

(b) supplies incomplete information; or

(c) prevents or hinders any investigation; or

(d) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in any particular material, shall be liable to the payment of an administrative fine of not less than one thousand euro (€1,000) and not more than ten thousand euro (€10,000), as imposed by the Director General.

(6) Where a person, being a director, manager, secretary or other similar officer of an undertaking or association of undertakings fails, without reasonable cause, to supply information requested within the time given, such person shall be liable to the payment of an administrative fine of up to two thousand and four hundred euro (€2,400) for each day in default.".

Addition of new article 21A of the principal Act.

137. Immediately after article 21 of the principal Act, there shall be inserted the following new article:

"Failure to pay fines.

21A. Without prejudice to article 13A(1), failure to pay any administrative fine and, or daily penalty payment imposed by the Director General, or by the Appeals Tribunal upon appeal from an administrative fine and, or daily penalty payment imposed by the Director General, within the time limit set shall constitute an offence against this Act, and any person being a director, secretary, manager or other similar officer of the undertaking or association of undertakings concerned shall, without prejudice to the liability of the said undertaking or association of undertakings to pay the administrative fine and, or penalty payment due, be liable on conviction to a fine (*multa*) of not less than one thousand euro (€1,000) and not more than twenty thousand euro (€20,000).".

Deletion of article 22A of the principal Act.

138. Article 22A of the principal Act shall be deleted.

Amendment of article 23 of the principal Act.

139. Article 23 of the principal Act shall be substituted by the following:

"23. (1) Any fine (*multa*) payable in respect of the commission of a criminal offence under this Act shall be recoverable as a civil debt in favour of the Government by the Director General, and the undertaking in the economic interests of which the person so found guilty was acting shall be liable *in solidum* with the person found guilty for the payment of the said fine.

Cap. 446.
Cap. 9.

(2) The provisions of the Probation Act and of article 21 of the Criminal Code shall not apply with respect to criminal offences committed under this Act.

(3) Any administrative fine payable to the Director General under this Act shall be recoverable as a civil debt by the Director General and shall constitute an executive title for all effects and purposes of Title VII of Part I of Book II of the Code of Organization and Civil Procedure.".

Cap. 12.

Substitution of article 26A of the principal Act.

140. Article 26A of the principal Act shall be substituted by the following:

"Prescription concerning the imposition of administrative fines.

26A**.** (1) The prescription period for the imposition of administrative fines under article 21 shall be:

(a) three years in the case of infringements of the Act concerning requests for information or the conduct of inspections; and

(b) five years in the case of all other infringements.

(2) The prescription period begins to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, this period shall begin to run from the day on which the infringement ceases.

(3) The prescription period for the imposition of fines shall be interrupted by any action of the Director General or, in the case of the application of Articles 101 and 102 of the TFEU, of the European Commission or of a competition authority of a Member State with a view to investigating or instituting proceedings for the infringement. The prescription period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement.

(4) Actions 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) the issue of a written authorisation signed by the Director General or 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 notification of a statement of objections in accordance with article 12A or 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 infringement.

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

(7) The prescription period for the imposition of fines shall be suspended for as long as the decision of the Director General is the subject of proceedings pending before the Appeals Tribunal or the Court of Appeal.".

Deletion of article 26B of the principal Act.

141. Article 26B of the principal Act shall be deleted.

Substitution of article 27 of the principal Act.

142. Article 27 of the principal Act shall be substituted by the following:

"Proceedings in front of a civil court.

27. (1) Where before any court of civil jurisdiction 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.

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

Addition of new article 27A to the principal act.

143. Immediately after article 27 of the principal Act, there shall be inserted the following new article:

"Right to damages.

27A. (1) Any person who has suffered damage as a result of an infringement of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU may institute an action for damages before a court of civil jurisdiction.

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

(3) The plaintiff shall be entitled to compensation for actual loss and for loss of profit, together with interest from the time the damage occurred until the capital sum awarded is actually paid.

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

(5) An action under this article may be instituted in the absence of any investigation or proceedings under this Act or under Council Regulation (EC) No 1/2003.

Provided that an action under this article may also be instituted:

(a) where there is a decision under this Act establishing an infringement of articles 5 and, or 9 of this Act and, or of Articles 101 and, or 102 of the TFEU which has become *res judicata*;

(b) where there is a decision of the European Commission establishing an infringement of Articles 101 and, or 102 of the TFEU which has become *res judicata*;

(c) pending an investigation or proceedings under this Act or under Council Regulation (EC) No 1/2003;

(d) pending separate proceedings before a court of civil jurisdiction or following a decision of such court which has become *res judicata* involving the application of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU.

(6) In the circumstances mentioned in paragraphs (a) and (b) of the proviso to subarticle (5), the court shall be bound by the finding of an infringement in the decision.

(7) The defendant may not plead lack of intention, negligence or lack of fault on his part as a defence in a claim for damages under subarticle (1):

Provided that the defendant may demonstrate that the infringement was the result of a genuinely excusable error. For the purposes of this proviso, an error would be excusable if a reasonable person applying a high standard of care could not have been aware that the conduct restricted competition.

(8) The defendant may raise as a defence the fact that the plaintiff passed on the damage initially suffered by him on to his customers.

(9) (a) The action under this article shall be barred by the lapse of two years commencing from the day the injured party became aware or should reasonably have become aware of the damage, the infringement and the identity of the undertaking or association of undertakings responsible for the infringement.

(b) The period mentioned in paragraph (a) shall be suspended if infringement proceedings are initiated by the Director General under this Act or by the European Commission under Council Regulation (EC) No 1/2003 or where separate proceedings have been instituted before a court of civil jurisdiction as referred to in paragraph (d) of the proviso to subarticle (5) until any such proceedings are terminated by a decision which has become *res judicata*.

(10) (a) The provisions of this article shall prevail over anything to the contrary contained in the Civil Code. Cap. 16.

(b) The right to file an action under subarticle (1) shall not affect the right to bring any other proceedings in respect of the same infringement under this Act, or any regulations made thereunder or any other law.

(c) Subarticle (1) shall only apply to claims relating to infringements occurring after the coming into force of this article.".

Amendment of article 29 of the principal Act.

144. In article 29 of the principal Act, for the words "disclose information in his possession to authorities outside Malta having responsibility in competition matters and who are restricted in divulging such information in an analogous manner and purpose to that of the Director under this Act." there shall be substituted the words "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 under this Act.".

Amendment of article 28 of the principal Act.

145. In article 28 of the principal Act, for the words "or the Commission in respect of the exercise of their functions under this Act" shall be substituted by the words "in respect of the exercise of his functions under this Act".

Addition of new article 29A to the principal Act.

146. Immediately after article 29 of the principal Act, there shall be inserted the following new article:

"Co-operation under Regulation 1/2003.

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

Amendment of article 31 of the principal Act.

147. Article 31 of the principal Act shall be substituted by the following:

"No action shall lie against any member of the Appeals Tribunal, 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.".

Amendment of article 32 of the principal Act.

148. The words "concentrative joint ventures" in article 32 of the principal Act, shall be substituted by the words "full function joint ventures".

Amendment of article 33 of the principal Act.

149. (1) Subarticle (2) of article 33 of the principal Act shall be amended as follows:

"(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 Appeals Tribunal, 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.".

Deletion of the Schedule of the principal Act.

150. The Schedule of the principal Act shall be deleted.

PART XVI
AMENDMENT TO THE PUBLIC ADMINISTRATION ACT (CAP. 497.)

Amendment to the Public Administration Act. Cap. 497

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

Amendment of Part 1 of the Second Schedule of the principal Act.

152. The reference to "Consumer and Competition Division" in Part 1 of the Second Schedule of the principal Act shall be deleted.

PART XVII
REPEAL OF THE MALTA STANDARDS AUTHORITY ACT (CAP. 419.)

Repeal of Malta Standards Authority Act. Cap. 419.

153. (1) This Part repeals the Malta Standards Authority Act, hereinafter in this Part referred to as "the principal Act".

(2) The principal Act is hereby repealed, without prejudice to anything lawfully done or omitted to be done thereunder.

Saving subsidiary legislation under the Malta Standards Authority Act.

154. Subsidiary legislation 419.01, 419.02, 419.05, 419.06, 419.07, and 419.08 made under the Malta Standards Authority Act are to remain in force as if made under the Malta Competition and Consumer Affairs Authority Act, 2011.

References to the Malta Standards Authority.

155. Wherever in any law there is a reference to the Malta Standards Authority, it shall be construed as a reference, as the case may be, to the Technical Regulations Division and, or the Standards and Metrology Institute, as established under the provisions of this Act.

PART XVIII
AMENDMENTS TO THE PRODUCT SAFETY ACT (CAP. 427.)

Amendment to the Product Safety Act. Cap. 427.

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

Amendment of article 2 of the principal Act.

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

(a) the definition "Director" shall be substituted by the following:

" "Director General" means Director General (Technical Regulations) as appointed by article 19 of the Malta Competition and Consumer Affairs Authority Act, 2011;"

and wherever the word "Director" occurs in the principal Act it shall be substituted by the word "Director General";

(b) the definition "standard" shall be substituted by the following:

" "standard" shall have the same meaning as assigned to it in the Malta Competition and Consumer Affairs Authority Act, 2011;"; and

(c) immediately after the definition "standard" there shall be inserted the following new definition:

" "Technical Regulations Division" means the Technical Regulations Division, as established by article 19 of the Malta Competition and Consumer Affairs Authority, 2011;".

Amendment of article 9 of the principal Act.

158. The words "Malta Standards Authority Act" in article 9(2) of the principal Act shall be substituted by the words "Malta Competition and Consumer Affairs Authority Act, 2011".

Amendment of article 27 of the principal Act.

159. Article 27 of the principal Act shall be amended as follows:

(a) the words "Functions of the Malta Standards Authority" in the marginal note thereof shall be substituted by the words "Responsibilities of the Technical Regulations Division"; and

(b) the words "Malta Standards Authority" in article 27 thereof shall be substituted by the word "Technical Regulations Division".

Amendment of article 28 of the principal Act.

160. Article 28 of the principal Act shall be amended as follows:

(a) the words "with the concurrence of the head of the Regulatory Affairs Directorate established under the Malta Standards Authority Act or such other head of any Directorate as the Minister may by Order designate in his stead" in subarticle (1) of article 28 thereof shall be deleted; and

(b) the words "and the exemption from liability under the said subsection (3) shall extend to the Director of Market Surveillance" in subarticle (3) of article 28 thereof shall be deleted.

Amendment of article 38 of the principal Act.

161. The words "Malta Standards Authority" in article 38 of the principal Act shall be substituted by the words "Director General (Technical Regulations)".

PART XIX
AMENDMENTS TO THE METROLOGY ACT (CAP. 454.)

Amendment to the Metrology Act. Cap. 454.

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

Amendment of article 2 of the principal Act.

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

(a) the definition "Authority" shall be substituted by the following:

" "Authority" means the Malta Competition and Consumer Affairs Authority as established by the Malta Competition and Consumer Affairs Authority Act, 2011;";

(b) the definition "Directorate" shall be deleted and wherever the word "Directorate" occurs in the principal Act it shall be substituted by the word "Institute";

(c) the definition "Head" shall be substituted by the following:

" "Director General" means the person appointed as Director General (Standards and Metrology) by article 21 of the Malta Competition and Consumer Affairs Authority Act, 2011;" and wherever the word "Head" occurs in the principal Act it shall be substituted by the word "Director General";

(d) immediately after the definition "inspector" there shall be inserted the following new definition:

" "Institute" means the Standards and Metrology Institute as established by article 21 of the Malta Competition and Consumer Affairs Authority Act, 2011;" and

(e) the definition "Minister" shall be substituted as follows:

" "Minister" means the Minister responsible for standards and metrology and includes, to the extent of the

authority given, any person authorised by the Minister to act in that behalf for any purpose of this Act;".

Substitution of article 3 of the principal Act.

164. (1) The marginal note to subarticle (1) of article 3 of the principal Act, "The Metrology Directorate. Cap. 419." shall be deleted.

(2) Subarticle (1) of article 3 of the principal Act shall be substituted as follows:

"The Director General (Standards and Metrology), as appointed by the Malta Competition and Consumer Affairs Authority Act, 2011, shall have the responsibilities as may be assigned to him by this Act, by the Malta Competition and Consumer Affairs Authority Act, 2011 and by any other law.".

Amendment of article 20 of the principal Act.

165. Article 20 of the principal Act shall be amended as follows:

(a) the words "article 5 of the Malta Standards Authority Act" shall be substituted by the words "article 48 of the Malta Competition and Consumer Affairs Authority Act, 2011"; and

(b) the words "Cap. 419." in the marginal note thereof shall be deleted.

PART XX
AMENDMENT TO THE ADMINISTRATIVE JUSTICE ACT (CAP. 490.)

Amendment to the Administrative Justice Act. Cap. 490.

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

Deletion of items in the First Schedule of the principal Act.

167. The words "379 Competition Act 4 Commission for Fair Trading" in Part A of the First Schedule of the principal Act shall be deleted.

PART XXI
AMENDMENTS TO THE DOORSTEP CONTRACTS ACT (CAP. 317.)

Amendment to the Doorstep Contracts Act. Cap. 317.

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

Amendment of article 2 of the principal Act.

169. In article 2 of the principal Act the definition "Director" shall be substituted by the following:

" "Director General (Consumer Affairs)" means the Director General as appointed by article 16 of the Malta Competition and Consumer Affairs Authority Act, 2011;" and wherever the word "Director" appears it shall be substituted by the word "Director General (Consumer Affairs)".

PART XXII
AMENDMENTS TO THE TRADE DESCRIPTIONS ACT (CAP. 313.)

Amendment to the Trade Descriptions Act. Cap. 313.

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

Amendment of article 2 of the principal Act.

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

(a) the definition "conformity mark" shall be substituted by the following:

" "conformity mark" shall have the same meaning assigned to it in article 2 of the Malta Competition and Consumer Affairs Authority Act, 2011;"; and

(b) immediately after the definition "Minister" there shall be inserted the following new definition;

""Office" means the Office for Consumer Affairs as established by article 16 of the Malta Competition and Consumer Affairs Authority Act, 2011;".

Amendment of article 22 of the principal Act.

172. The words "Department of Consumer Affairs" in subarticle (1) of article 22 of the principal Act shall be substituted by the word "Office".

PART XXIII
AMENDMENTS TO THE FOOD SAFETY ACT (CAP. 449.)

Amendment to the Food Safety Act. Cap. 449.

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

Amendment of article 5 of the principal Act.

174. Article 5(1) of the principal Act shall be amended as follows:

(a) paragraph (d) thereof shall be substituted by the

following:

"(d) the senior officer operationally responsible for foodstuffs within the Malta Competition and Consumer Affairs Authority, designated by the Director General (Technical Regulations);" and

(b) paragraph (e) thereof shall be substituted by the following:

"(e) the senior officer operationally responsible for consumer affairs within the Malta Competition and Consumer Affairs Authority, designated by the Director General (Consumer Affairs);".

Amendment of article 7A of the principal Act.

175. Article 7A of the principal Act shall be amended as follows:

(a) the words "Authority" in the marginal note thereof shall be substituted by the words "Director General (Technical Regulations)";

(b) the words "Malta Standards Authority as established by article 3 of the Malta Standards Authority Act" in subarticle (1) thereof shall be substituted by the words "Director General (Technical Regulations)"; and

(c) the words "Malta Standards Authority" in subarticles (2), (3) and (4) thereof shall be substituted by the words "Director General (Technical Regulations)".

Amendment of article 9 of the principal Act.

176. In subarticle (1) of article 9 of the principal Act, for the words "the head of the Market Surveillance Directorate of the Malta Standards Authority established under the Malta Standards Authority Act or such other head of any Directorate as the Minister may by Order designate in his stead" there shall be substituted the words "Director General (Technical Regulations) as appointed by article 19 of the Malta Competition and Consumer Affairs Authority Act, 2011".

PART XXIV
AMENDMENTS TO THE PESTICIDES CONTROL ACT (CAP. 430.)

Amendment to the Pesticides Control Act. Cap. 430.

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

Amendment of article 2 of the principal Act.

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

(a) the definition "the Authority" shall be substituted by the following:

" "the Authority" means the Malta Competition and Consumer Affairs Authority as established by article 3 of the Malta Competition and Consumer Affairs Authority Act, 2011;" and

(b) in the definition "Director" the words "head of the Regulatory Affairs Directorate established under the Malta Standards Authority Act or such other head of any Directorate as the Minister may by Order designate in his stead" shall be substituted by the words "Director General (Technical Regulations) as appointed by article 19 of the Malta Competition and Consumer Affairs Authority Act, 2011".

PART XXV
AMENDMENT TO THE CODE OF ORGANIZATION AND CIVIL PROCEDURE (CAP. 12.)

Amendment to the Code of Organization and Civil Procedure. Cap. 12.

179. This Part amends the Code of Organization and Civil Procedure, and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code".

Amendment of article 253 of the Code.

180. In article 253 of the Code, there shall be inserted the following new paragraph:

"(f) decisions of the Consumer Claims Tribunal.".

FIRST SCHEDULE
(ARTICLE 44)
FORM OF OATH

I, ... swear/solemnly affirm that I will fully and honestly fulfil my duties as an officer of the Authority in conformity with the requirements of the Malta Competition and Consumer Affairs Authority Act 2011, and any other laws that the Authority administers and of all orders made thereunder, and that I will not, except in the performance of my duties under that Act and such other laws and orders, disclose or make known during my service as an officer within such Authority or at any time thereafter, any matter which comes to my knowledge relating to any person, household or undertaking by reason of my service as an officer within such Authority.

So help me God.

SECOND SCHEDULE
(ARTICLE 37)
RULES OF PROCEDURE RELATIVE TO THE COMPETITION AND CONSUMER APPEALS TRIBUNAL

1. The Appeals Tribunal shall determine any matter before it with fairness and impartiality and in accordance with the provisions of this Act, the Competition Act, the Consumer Affairs Act and any regulations made thereunder.

2. Before entering upon their functions, the ordinary members of the Appeals Tribunal shall take before the President an oath to perform their functions with fairness and impartiality and in accordance with the provisions of this Act, the Competition Act, the Consumer Affairs Act and any regulations made thereunder.

3. An ordinary member of the Appeals Tribunal shall abstain and may be challenged in the same circumstances, *mutatis mutandis*, as a judge of the superior courts shall abstain or may be challenged in accordance with the Code of Organization and Civil Procedure. Any challenge shall be determined by the President.

4. Decisions of the Appeals Tribunal shall state the reasons therefor and clearly indicate the undertakings or associations of undertakings to which they are addressed.

5. Proceedings before the Appeals Tribunal shall be held in public with due regard being paid to the protection of confidential information or business secrets:

Provided that the undertaking or association of undertakings concerned, or the Director General (Competition) and the Director General (Consumer Affairs), or the complainant may request the President to be heard *in camera* where the submissions to be made or evidence to be produced is of a confidential nature or contains business secrets.

Provided further that the Director General (Competition) and the Director General (Consumer Affairs) and any other officer from the Office for Competition and the Office for Consumer Affairs duly authorised by the said Directors General, shall have the right to be present in all proceedings.

6. 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 Appeals Tribunal;

7. (a) A confidential and a non-confidential version shall be produced of any written observations and documentary evidence submitted before the Appeals Tribunal; and

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

8. The Appeals Tribunal shall have, exercisable through its President, the powers vested in the Civil Court, First Hall, and in particular the power to determine the costs that any of the parties is to bear, the power to summon witnesses, the power to appoint experts and the power to administer the oath.

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

9. In the interpretation of this Act, the Appeals Tribunal shall have recourse to the judgements 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 previous decisions.

THIRD SCHEDULE
(ARTICLE 18)
LIST OF EU LEGISLATIVE ACTS FOR THE PURPOSES OF WHICH THE OFFICE FOR CONSUMER AFFAIRS IS THE NATIONAL COMPETENT AUTHORITY

1. Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising.

2. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.

3. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

4. Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on the Protection of Consumers in respect of Distance Contracts.

5. Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997 amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising.

6. Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.

7. Council Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

8. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.

9. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

10. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

FOURTH SCHEDULE
(ARTICLE 66)
DIRECTORATES

Subject to the powers of the Minister under article 66, the Office for Competition, the Office for Consumer Affairs, the Technical Regulations Division and the Standards and Metrology Institute, shall have the following Directorates:

Office for Competition

1. Inspectorate and Cartel Investigations Directorate with the responsibility to carry out inspections in terms of the Competition Act and to detect and curtail cartels.

2. Communications, Energy, Transport and Financial Services Markets Directorate focusing on competition concerns, infringements, and concentrations in regulated markets.

3. Primary, Manufacturing and Retail Markets Directorate focusing on restrictive practices and concentrations in other sectors of the economy.

Office for Consumer Affairs

1. Information, Education and Research Directorate with the responsibility to create awareness of consumer rights, stimulate good trading practices, educate consumers on making well-informed choices in the market and to undertake market studies with a view to identifying and rectifying market failures.

2. Complaints and Conciliation Directorate with the responsibility to offer assistance to consumers and provide mediation between consumers and traders.

3. Enforcement Directorate focusing on public enforcement by investigating unfair trading practices and unfair contract terms, ensuring price transparency and compliance with other information requirements and ensuring observance of consumer related legislation falling within the jurisdiction of the Office for Consumer Affairs.

Technical Regulations Division

1. Regulatory Affairs Directorate with the responsibility of the transposition and implementation of legislation in the field of free movement of goods.

2. Market Surveillance Directorate with the responsibility to ensure that only goods conforming to regulations are available on the market.

Standards and Metrology Institute

1. Standardization Directorate with the responsibility of the preparation of an annual standards programme, the co-ordination of standardization and related activities.

2. Metrology Directorate with the responsibilities of legal, industrial and scientific metrology.

3. Laboratory Services Directorate with the responsibility of providing advice and testing services.

Passed by the House of Representatives at Sitting No. 339 of the 13th April, 2011.

MICHAEL FRENDO

Speaker

PAULINE ABELA
Clerk to the House of Representatives