

L.N. 349 of 2011

**COMPETITION ACT (CAP. 379)****Control of Concentrations (Amendment) Regulations, 2011**

IN exercise of the powers conferred by article 32 of the Competition Act, the Prime Minister, after consultation with the Board of Governors of the Malta Competition and Consumer Affairs Authority, has made the following regulations:-

1. (1) The title of these regulations is the Control of Concentrations (Amendment) Regulations, 2011, and these regulations shall be read and construed as one with the Control of Concentrations Regulations, hereinafter referred to as “the principal regulations”.

Citation and commencement.

S.L. 379.08

(2) These regulations shall be deemed to have come into force on 23rd May, 2011.

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

Amends regulation 2 of the principal regulations.

(a) immediately after the definition “Act” there shall be added 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;”;

and wherever the word “Commission” appears in the principal regulations, it shall be substituted by the words “Appeals Tribunal”;

(b) the definition “Commission” shall be deleted;

(c) 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;”;

and wherever the word “Director” appears in the principal regulations, it shall be substituted by the words “Director General”;

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

“ “Office” means the Office for Competition as established by article 13 of the Malta Competition and Consumer Affairs Authority Act;”;

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

“ “TFEU” means the Treaty on the Functioning of the European Union;”.

Amends regulation 8 of the principal regulations.

**3.** In sub-regulations (2) and (3) of regulation 8 of the principal regulations, for the words “article 7” there shall be substituted the words “article 5(3)”.

Amends regulation 9 of the principal regulations.

**4.** In sub-regulation (6) of regulation 9 of the principal regulations, for the words “from the date of the Commission decision.” there shall be substituted the words “from the date of the decision of the Appeals Tribunal or if an appeal from the decision of the Appeals Tribunal has been filed, from the date of the judgment of the Court of Appeal.”

Amends regulation 13 of the principal regulations.

**5.** Regulation 13 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words “article 23” there shall be substituted the words “article 21(5)”;

(b) in sub-regulation (2) thereof, for the words “article 21” there shall be substituted the words “article 21(1)”;

and for the words “to persons, undertakings or associations of undertakings” there shall be substituted the words “to persons or undertakings”.

Amends regulation 14 of the principal regulations.

**6.** Regulation 14 of the principal regulations shall be amended as follows:

(a) the figure (1) shall be deleted; and

(b) for the words “article 22A” there shall be substituted the words “article 21(4) and (6)”.

7. Immediately after regulation 14 of the principal regulations, there shall be added the following new regulation:

Adds new regulation to the principal regulations.

“Transitory provision.

14A. In the application of regulations 13 and 14, where the infringement has occurred prior to the coming into force of the Malta Competition and Consumer Affairs Authority Act, the provisions of regulations 13 and 14 as existing prior to the coming into force of the said Act shall apply.”.

8. In sub-regulation (2) of regulation 15 of the principal regulations, for the words “public officers employed with or attached to his department and consultants contracted by the department” there shall be substituted the words “public officers employed with or attached to the Office and consultants contracted therewith”.

Amends regulation 15 of the principal regulations.

9. Regulation 16 of the principal regulations shall be amended as follows:

Amends regulation 16 of the principal regulations.

(a) sub-regulation (1) thereof shall be renumbered as sub-regulation (1)(a) and for the words “Before taking any decision provided for in regulation 7(3) and the proviso to regulation 8(2) and regulation 8(3), (4) and (5)” there shall be substituted the words “Before taking any decision provided for in regulation 6(3), regulation 7(3), the proviso to regulation 8(2), regulation 8(3) to (5), regulation 13 and regulation 14”;

(b) immediately after paragraph (a) of sub-regulation (1) thereof as renumbered, there shall be added the following new paragraphs:

“(b) Where the Director General intends to take a decision pursuant to regulation 6(3), the proviso to regulation 8(2), regulation 8(3) to (5), regulation 13 and regulation 14, he shall notify the persons, undertakings or associations of undertakings 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, and shall set a time-limit within which they may inform him in writing

of their submissions, and the persons, undertakings or associations of undertakings concerned may, within the time-limit set, 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. They may also propose that the Director General hears persons who may corroborate those facts.

(c) Where the Director General intends to take a decision pursuant to regulation 6(3), the proviso to regulation 8(2), regulation 8(3) to (5), regulation 13 and regulation 14, the Director General shall give the persons, undertakings or associations of undertakings concerned the opportunity to develop their arguments verbally, if they so request in their written submissions.”;

(c) sub-regulation (2) thereof shall be renumbered as sub-regulation (2)(a) and immediately thereafter there shall be added the following new paragraphs:

“(b) The Director General shall without delay send the persons, undertakings or associations of undertakings concerned the text of the provisional decision and shall set a time-limit within which they may make known their views in writing.

(c) Once the persons, undertakings or associations of undertakings concerned have made known their views, the Director General shall take a final decision annulling, amending or confirming the provisional decision. Where they have not made known their views in writing within the time limit set, the provisional decision of the Director General shall become final with the expiry of that period.”;

(d) sub-regulation (4) thereof shall be renumbered as sub-regulation (4)(a) and immediately thereafter there shall be added the following new paragraphs:

“(b) The right of access to the file shall not extend to confidential information, or to internal documents of the Director General, the European Commission or of the competition authorities of other Member

States. The right of access to the file shall equally not extend to correspondence between or amongst the Director General, the European Commission and the competition authorities of other Member States.

(c) Documents obtained through access to the file pursuant to this sub-regulation may only be used for the purposes of the relevant proceeding pursuant to these regulations.”;

(e) sub-regulation (5) thereof shall be renumbered as sub-regulation (5)(a) and immediately thereafter there shall be added the following new paragraphs:

“(b) Where third parties apply in writing to be heard pursuant to paragraph (a), the Director General shall inform them in writing of the nature and subject matter of the procedure and shall set a time limit within which they may make known their views and the said third parties shall make known their views in writing within the time limit set.

(c) The Director General may give third parties the opportunity to develop their arguments verbally, if they so request in their written submissions.”; and

(f) immediately after sub-regulation (5) thereof, there shall be added the following new sub-regulations:

“(6) 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.

(7) Without prejudice to the right of the persons, undertakings or associations of undertakings concerned, third parties and other persons to request a separate and individual meeting under this regulation, the Director General may also, on his own initiative, and as he considers appropriate, invite some or all of the said persons, undertakings or associations of undertakings concerned, third parties and other persons who have submitted written observations in terms of this regulation

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.”.

Substitutes regulation  
18 of the principal  
regulations.

**10.** Regulation 18 of the principal regulations shall be substituted by the following:

“Appeal.

18. (1) The persons, undertakings or association of undertakings concerned and any third party entitled to a hearing under regulation 16(5) may, within twenty days of the notification of the final decision of the Director General pursuant to regulations 6, 7, 8, 13 and 14 or in the case of third parties within twenty days of its publication, appeal by application filed before the Appeals Tribunal, from the decision of the Director General.

(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 sub-regulation (1) shall not have the effect of suspending the decision, 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 decision, 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 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 of the Act, taking into account the gravity and duration of the infringement as well as any aggravating or attenuating circumstances:

Provided that where the Appeals Tribunal quashes the whole or part of the decision of the Director General, it shall refer the matter back to the Director General with a direction to reconsider and take a new decision in accordance with the ruling of the Appeals Tribunal.

(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.”.

**11.** Regulation 20 of the principal regulations shall be amended as follows: Amends regulation 20 of the principal regulations.

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

“(b) judgements of the Court of Justice of the European Union;” and

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

“(d) interpretative European Commission notices and guidelines on the relevant provisions of the “TFEU” and secondary legislation relative to competition; and”.

**12.** The Schedule to the principal regulations shall be amended as follows: Amends the Schedule to the principal regulations.

(a) in paragraph (e) of section B thereof, for the words “fines of up to two thousand and three hundred and twenty-nine euro and thirty seven cents or to imprisonment for a term of up to six months or to both such fine and imprisonment” there shall be substituted the words “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.”;

(b) in paragraph (d) of section C thereof, the words “of the joint venture” shall be deleted;

(c) in section E thereof, for the words:

“Consumer and Competition Division  
Office for Fair Trading  
Cannon Road  
Sta. Venera CMR 02  
Malta”

there shall be substituted the following:

“Malta Competition and Consumer Affairs  
Authority  
Office for Fair Trading  
Cannon Road  
Sta. Venera SVR 1411  
Malta”; and

(d) in the first paragraph of section F thereof, for the words “public officers employed with or attached to his department and consultants contracted by the department” there shall be substituted the words “public officers employed with or attached to the Office and consultants contracted therewith”.

