

• Malta: The Office for Competition becomes part of a wider Authority and significant Changes are made to the Competition Act

On 23 May 2011, the Malta Competition and Consumer Affairs Authority Act 2011 (the Act) entered into force. The Act provides for the establishment of the Malta Competition and Consumer Affairs Authority and introduces significant amendments to the Competition Act aimed at making it more effective in achieving its objective of regulating competition and providing for better functioning markets.

The Malta Competition and Consumer Affairs Authority (the Authority) has a Board of Governors and encompasses within it four different and functionally independent entities, i.e. the Office for Competition, the Office for Consumer Affairs, the Standards and Metrology Institute and the Technical Regulations Division.

Each entity is headed by a Director General and is organised in separate Directorates for their better functioning. The Board is primarily concerned with setting the policies to be pursued by the Authority, and must ensure that the entities, when carrying out their responsibilities, properly implement that policy. On the other hand, decision-making continues to be vested in the four separate entities, which remain entirely responsible for the application and enforcement of the special laws they apply.

The areas of responsibility of the four entities were previously in the hands of the Consumer and Competition Department and the Malta Standards Authority.

The Act provides in a general manner for the responsibilities of the Office for Competition (the Office). Apart from taking over the former responsibilities of the Office for Fair Competition within the Consumer and Competition Department, the Office also has specifically the obligation to monitor and study markets and recommend action where required and to act as the 'advocate of competition' by providing advice on the competition implications arising from legislative proposals, policies and administrative practices in the public sector.

The Office shall include the following three Directorates:

- 1) Inspectorate and Cartel Investigations Directorate with the responsibility to detect and curtail cartels and to carry out inspections in terms of the Competition Act
- 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

The Act also provides for the establishment of the Competition and Consumer Appeals Tribunal, which replaces the Commission for Fair Trading and the Consumer Affairs Appeals Board. The Tribunal is presided by a judge and each case must be heard by two members selected from a panel of six. The Tribunal hears appeals from the decisions of the Director General (Competition) and the Director General (Consumer Affairs).

As regards the amendments to the Competition Act, the substantive provisions of the Act, which are already modeled on Articles 101 and 102 TFEU, are left intact, apart from the removal of a rebuttable presumption of dominance based on a market share threshold and a reference to two forms of abusive conduct which are not found in the non-exhaustive list provided in Article 102 TFEU. These modifications were brought in to allow the Office to base itself entirely on national and EU case law when considering forms of abuse that are not specifically listed in the Treaty on the Functioning of the European Union.

The amendments are mainly of a procedural nature and pursue several objectives. First, they are intended to strengthen procedural safeguards by entitling the undertaking concerned to a statement of objections prior to the issue of a final decision, providing for rights for complainants and providing for access to the file. The provisions providing for these safeguards are largely aligned with those existing under EU procedural rules. The amendments also provide for a full right of appeal from the decisions of the Director General of the Office for Competition to the Competition and Consumer Appeals Tribunal and a right to appeal decisions of the Competition and Consumer Appeals Tribunal to the Court of Appeal on points of law.

Secondly, the amendments strengthen the deterrent effect of the law by widening the decision-making

powers of the Director General (Competition) which are now backed by administrative fines. The amendments also provide for damages actions resulting from an infringement of the competition rules. It is also possible for a qualified entity to make a complaint of general interest with respect to particular goods or services with the obligation on the Director General to give his position thereon within a particular time-frame. A new provision also provides specifically for inquiries into sectors of the economy and into types of agreements.

Thirdly, the amendments should serve to accelerate the procedure before the Office by enabling the undertaking concerned to offer commitments and by providing for a settlement procedure in cartel cases where an undertaking can benefit from a reduction in the fine if it admits to its participation in the cartel.

See further:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11657&l=1>

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8846&l=1>