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MALTA

KAMRA TAD-DEPUTATI

ABBOZZ ta' Ligi mressaq mill-Onorevoli John Dalli, M.P., Ministru tal-Finanzi, u moqri għall-Ewwel darba fis-Seduta tad-29 ta' Novembru, 1993.

ATT biex jirregola l-kompetizzjoni u jipprovdi għal kummerċ ġust f'Malta.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

HOUSE OF REPRESENTATIVES

A BILL introduced by the Honourable John Dalli, M.P., Minister of Finance, and read the First time at the Sitting of the 29th November, 1993.

AN ACT to regulate competition and provide for fair trading in Malta.

RICHARD J. CAUCHI
Clerk to the House of Representatives

ABBOZZ TA' LIĠI

msejjaħ

ATT biex jirregola l-kompetizzjoni u jipprovi għal kummerċ ġust f' Malta.

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

1. Dan l-Att jista' jissejjaħ l-Att ta' l-1993 dwar il-Kompetizzjoni u għandu jibda jseħħ f'dik id-data li l-Ministru responsabbli għall-kummerċ jista' jstabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti jew għanijiet differenti ta' l-Att.

Titolu fil-qosor u bidu fis-seħħ.

2. F'dan l-Att, kemm-il darba r-rabta tal-kliem ma teħtieġ xort'oħra:

Tifsir.

“*Chairman*” tfisser iċ-*Chairman* tal-Kummissjoni;

“*dhul min-negozju*” tfisser id-dhul totali min-negozju matul is-sena finanzjarja preċedenti fuq is-suq lokali jew xort'oħra; għall-fini tas-subartikolu (4) ta' l-artikolu 7 u ta' l-artikolu 21 id-dhul min-negozju ta' intrapriża jfisser is-somma tad-dhul min-negozju ta' l-intrapriži kollha fi grupp ta' intrapriži;

“*Direttur*” tfisser l-uffiċjal pubbliku li jmexxi l-Uffiċċju tal-Kompetizzjoni Ġusta stabbilit taht l-artikolu 3 ta' dan l-Att;

“*grupp ta' intrapriži*” tinkludi:

(a) l-intrapriża konċernata;

(b) dawk l-intrapriži li fihom l-intrapriża konċernata, direttament jew indirettament

— ikollha iżjed minn nofs il-kapital jew attiv tan-negozju; jew

— ikollha s-setgħa li teżerċita iżjed minn nofs id-drittijiet ta' votazzjoni; jew

— ikollha s-setgħa li tahtar iżjed minn nofs il-membri tal-bord tad-diretturi jew korp jew korpi oħra li legalment ikunu jirrapprezentaw lill-intrapriži; jew

— ikollha d-dritt li tiddirieġi l-affarijiet ta' l-intrapriži;

(ċ) dawk l-intrapriži li jkollhom fl-intrapriża konċernata d-drittijiet jew setgħat elenkati fil-paragrafu (b);

(d) dawk l-intrapriži li fihom intrapriża kif imsemmija fil-paragrafu (ċ) jkollha d-drittijiet jew setgħat elenkati fil-paragrafu (b);

(e) dawk l-intrapriži li fihom żewġ intrapriži jew iżjed kif imsemmija fil-paragrafi (a) sa (d) flimkien ikollhom id-drittijiet jew setgħat elenkati fil-paragrafu (b);

“għaqda ta' intrapriži” tfisser korp ta' persuni (sew jekk inkorporat jew le) li tkun kostitwita bil-ghan li tippromwovi l-interess kummerċjali tal-membri tagħha jew ta' persuni rappreżentati mill-membri tagħha;

“intrapriża” tfisser kull persuna naturali jew ġuridika bi skop ekonomiku fuq bażi kontinwa, u tinkludi grupp ta' intrapriži;

“Kummissjoni” tfisser il-Kummissjoni għall-Kummerċ Ġust stabbilita taħt l-artikolu 4 ta' dan l-Att;

“Ministru” tfisser il-Ministru responsabbli għall-kummerċ;

“pożizzjoni dominanti” tfisser pożizzjoni li fiha intrapriża jew intrapriži jistgħu jaġixxu indipendentement b'relazżjoni għall-kompetituri, klijenti jew provvedituri tagħhom bil-possibilità li jipprezentaw ostakolu għaž-żamma ta' kompetizzjoni effettiva;

“prodott” tinkludi oġġetti u l-provvista ta' servizzi;

“suq rilevanti” tfisser is-suq għall-prodott ġewwa Malta kemm jekk ikun jew ma jkunx limitat għal xi area jew lokalità partikolari;

“Uffiċċju” tfisser l-Uffiċċju tal-Kompetizzjoni Ġusta stabbilit bl-artikolu 3 ta' dan l-Att.

(a) li jaghti pariri lil intrapriži, ghaqdiet ta' intrapriži u lill-pubbliku dwar hwejjeġ li jkollhom x'jaqsmu ma' Prattiki u proċeduri ta' kummerċ gust taht dan l-Att;

(b) li jaghti pariri u jagħmel proposti u rakkomandazzjonijiet lill-Ministru dwar kull haġa li jkollha x'taqsam ma' l-eżerċizzju tal-funzjonijiet tiegħu taht dan l-Att;

(ċ) li jinvestiga Prattiki restrittivi fil-kompetizzjoni skond dan l-Att; u

(d) b'mod ġenerali li jeżerċita s-setgħat mogħtija lillu taht dan l-Att u li jistgħu jiġu assenjati lillu mill-Ministru.

(2) L-Uffiċċju tal-Kompetizzjoni Ġusta għandu jkun taht il-kontroll ta' Direttur. Fl-eżekuzzjoni tal-funzjonijiet ta' l-Uffiċċju tal-Kompetizzjoni Ġusta, id-Direttur jista' jiddelega kwalunkwe waħda mis-setgħat tiegħu taht dan l-Att lil kull uffiċjal pubbliku impjegat jew anness mad-dipartiment tiegħu.

4. (1) Għandu jkun hemm Kummissjoni li għandha tkun magħrufa bħala l-Kummissjoni għall-Kummerċ Ġust, u li għandha tkun magħmula minn *Chairman* u żewġ membri oħra mahtura mill-President fuq il-parir tal-Prim Ministru.

Twaqqif tal-Kummissjoni.

(2) (a) Iċ-*Chairman* għandu jkun Maġistrat u ż-żewġ membri l-oħra għandhom ikunu Ekonomista u *Accountant* Pubbliku Ċertifikat;

(b) Izjed minn Maġistrat wiehed, Ekonomista wiehed u *Accountant* Pubbliku Ċertifikat wiehed jistgħu jiġu mahtura biex joqogħdu fuq il-Kummissjoni, iżda Maġistrat wiehed, Ekonomista wiehed u *Accountant* Pubbliku Ċertifikat wiehed biss jistgħu joqogħdu f'kull każ għalih.

(3) (a) Il-membri tal-Kummissjoni minbarra ċ-*Chairman*, hawnhekk iżjed 'il quddiem imsejha "il-membri lajċi", għandhom jiġu mahtura għal perijodu ta' tliet snin u jkunu eliġibbli għall-hatra mill-ġdid.

(b) Il-membri lajċi tal-Kummissjoni jistgħu jirriżenjaw mill-kariga tagħhom permezz ta' ittra indirizzata lill-President iżda ma jistgħux jiġu mnehhija mill-kariga hliet mill-President li jaġixxi fuq ir-rakkomandazzjoni tal-Kummissjoni għall-Amministrazzjoni tal-Ġustizzja.

(ċ) Avviż ta' kull hatra fuq il-Kummissjoni u ta' kull tibdil fil-membri tagħha għandu jiġi pubblikat fil-Gazzetta.

(d) Il-membri lajċi tal-Kummissjoni għandhom jirċievu dik ir-rimunerazzjoni għas-servizzi tagħhom li tista' tiġi preskritta: iżda dik ir-rimunerazzjoni ma tistax tiġi mibdula matul iż-żmien li jkunu għadhom fil-kariga tagħhom.

(e) Persuna ma tikkwalifikax biex tinhatar jew tibqa' membru lajk tal-Kummissjoni jekk:

(i) tkun fallut mhux mehlus; jew

(ii) tkun inghatat sentenza ta' prigunerija għal sitt xhur jew iżjed minn xi qorti; jew

(iii) tkun instabet hatja ta' xi reat kontra dan l-att; jew

(iv) tkun Membru tal-Kamra tad-Deputati.

(4) Il-Ministru għandu jahtar uffiċjal pubbliku biex ikun segretarju tal-Kummissjoni. Is-Segretarju għandu *mutatis mutandis* ikollu l-istess setgħat u dmirijiet tar-Registatur tal-Qrati, u għandu jiehu struzzjonijiet minghand iċ-*Chairman* fiċ-ċirkostanzi kollha li l-imsemmi registatur skond il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandu jiehu struzzjonijiet minghand Maġistrat li jkun qed jippresjedi qorti partikolari.

(5) (a) Il-Kummissjoni għandu jkollha s-setgħat u għandha ssegwi l-proċeduri mniżżla fl-Iskeda li tinsab ma' dan l-Att;

(b) il-Kummissjoni tista' bl-approvazzjoni tal-Ministru tagħmel regoli mhux inkonsistenti ma' dan l-Att jew id-dispożizzjonijiet ta' l-Iskeda li tinsab miegħu, li jippreskrivu l-proċeduri u l-formoli li għandhom jiġu segwiti u użati quddiemha;

(ċ) fl-assenza ta' dispożizzjonijiet jew regoli kif imsemmi qabel il-Kummissjoni għandha tirregola l-proċeduri tagħha stess.

Akkordji u prattiki
projbti.

5. (1) Hadd ma jista' jiehu sehem f'xi prattika restrittiva f'kompetizzjoni, jiġifieri kull akkordju bejn intrapriżi, kull deċiżjoni minn intrapriża jew minn ghaqda ta' intrapriżi u kull prattika miftiehma bejn intrapriżi li jsiru bil-hsieb jew li jkollhom l-effett li jimpedixxu, irażżnu jew ixekklu l-kompetizzjoni fis-suq rilevanti u partikolarment, iżda mingħajr preġudizzju għall-ġeneralità ta' dan is-subartikolu, jiehu sehem f'xi akkordju, deċiżjoni jew prattika li:

(a) jiffissaw il-prezz ta' xiri jew bejgħ jew ta' kundizzjonijiet kummerċjali oħra, kemm b'mod dirett jew indirett; jew

(b) jillimitaw jew jikkontrollaw il-produzzjoni, is-swieq, l-iżvilupp tekniku jew l-investment; jew

(ċ) iqassmu s-swieq jew sorsi ta' provvista; jew

(d) jimponu l-applikazzjoni ta' kondizzjonijiet differenti għal transazzjonijiet ekwivalenti ma' partijiet oħra mhux imdahhla f'dak l-akkordju, u b'hekk ipogġuhom fi żvantaġġ kompetittiv; jew

(e) jagħmlu l-konklużjoni ta' kuntratti ma' partijiet mhux imdahhla f'dak l-akkordju sugġetta għall-aċċettazzjoni minnhom

ta' obligazzjonijiet supplimentari li, mix-xorta tagħhom jew skond l-użu kummerċjali, ma jkollhom ebda konnessjoni mas-sugġett ta' kuntratti bħal dawn.

(2) Akkordji jew deċiżjonijiet projbiti skond is-subartikolu (1) ta' dan l-artikolu jkunu *ipso iure* nulli u mhux esegwibbli.

6. (1) Kull persuna inkarigata minn intrapriża li jkollha għalfejn taħseb li xi akkordju bejn intrapriži, xi deċiżjoni minn għaqda ta' intrapriži jew xi Prattika miftiehma bejn intrapriži jistgħu jkunu akkordju jew Prattika projbiti skond l-artikolu 5 ta' dan l-Att għandha, qabel ma taġixxi skond dak l-akkordju, deċiżjoni jew Prattika, tfittex l-approvazzjoni negattiva tad-Direttur skond id-dispożizzjonijiet li ġejjin ta' dan l-artikolu.

Approvazzjoni
negattiva.

(2) Fuq it-talba ta' xi intrapriża jew għaqda ta' intrapriži interessata, id-Direttur jista' jagħti approvazzjoni negattiva lil akkordju, deċiżjoni jew Prattika miftiehma billi jiddikjara li, skond il-fatti li huwa jkun jaf bihom jew fuq il-bażi ta' l-informazzjoni provduta mill-intrapriża jew għaqda ta' intrapriži lid-Direttur, ma jkunx hemm il-htieġ li jintervjeni dwarhom skond dan l-Att.

(3) Deċiżjonijiet li jagħtu approvazzjoni negattiva jistgħu jkunu limitati f'dak li hu effett għal dak iż-żmien li jista' jiġi dikjarat fl-istess deċiżjoni.

(4) Mingħajr preġudizzju għas-subartikolu (5) ta' dan l-artikolu approvazzjoni negattiva mogħtija skond dan l-artikolu tista' tiġi revokata mid-Direttur meta:

(a) jirriżulta li l-informazzjoni mogħtija ma' dik it-talba kienet falza, qarrieqa jew nieqsa; jew

(b) il-kondizzjonijiet tas-suq ikunu tbiddu b'mod sinjifikanti.

(5) Hadd ma jista' in konnessjoni ma' talba għal approvazzjoni negattiva jagħti lid-Direttur xi informazzjoni li tkun falza, qarrieqa jew nieqsa, u kull approvazzjoni negattiva mogħtija fuq il-bażi ta' dik l-informazzjoni tkun nulla u mingħajr effett.

(6) Approvazzjoni negattiva mogħtija mid-Direttur għandu jkollha l-istess effett bħal eżenzjoni mogħtija mill-Kummissjoni skond l-artikolu 7 ta' dan l-Att.

(7) Id-Direttur għandu minn żmien għal żmien jiddetermina l-proċedura għall-għemil ta' talbiet għal approvazzjonijiet negattivi taht dan l-artikolu.

(8) Meta approvazzjoni negattiva tkun giet rifjutata mid-Direttur taht dan l-artikolu wiehed ma jkunx jista' jipproċedi bl-akkordju, deċiżjoni jew Prattika miftiehma li għalihom ma tkunx ingħatat approvazzjoni mid-Direttur.

Certi akkordji
eċċ. jistgħu jiġu
dikjarati eżenti.

7. (1) Minkejja d-dispożizzjonijiet ta' l-artikolu 5 ta' dan l-Att, il-Kummissjoni tista', fuq applikazzjoni għal dak il-għan magħmula minn intrapriża jew minn għaqda ta' intrapriži permezz tad-Direttur, tiddikjara li:

(a) kull akkordju jew kategorija ta' akkordji bejn intrapriži;
jew

(b) kull deċiżjoni jew kategorija ta' deċiżjonijiet minn għaqdiet ta' intrapriži; jew

(ċ) kull Prattika miftiehma jew kategorija ta' Prattiki miftiehma,

li f'kull każ ikunu jikkontribwixxu biex jintlaħaq l-għan li tittiejeb il-produzzjoni jew id-distribuzzjoni ta' oġġetti jew biex jingiebu 'il quddiem il-progress tekniku jew ekonomiku u li jhallu lill-konsumatur sehem ġust mill-benefiċċju li jgħibu magħhom, ma jkunux Prattiki restrittivi fil-kompetizzjoni, u fuq hekk id-dispożizzjonijiet ta' l-artikolu 5 ta' dan l-Att ma għandhomx japplikaw;

Iżda l-Kummissjoni ma għandhiex hekk tiddikjara lil xi akkordju, deċiżjoni jew Prattika bħal dawk jekk l-imsemmija akkordju, deċiżjoni jew Prattika jkunu jew:

(i) jimponu fuq intrapriži konċernati xi restrizzjoni li ma tkunx indispensabbli għal biex jintlaħaq l-imsemmi għan; jew

(ii) jagħtu lill-intrapriži konċernati l-possibilità li jeliminaw jew b'mod sinjifikanti jnaqqsu l-kompetizzjoni għar-rigward ta' parti sostanzjali tal-prodotti li għalihom ikunu jirreferu l-akkordju, deċiżjoni jew Prattika.

(2) Il-Kummissjoni tista' tagħmel kull dikjarazzjoni li għaliha japplika s-subartikolu (1) ta' dan l-artikolu sugġetta għal dawk il-kondizzjonijiet u limitazzjonijiet li hija tara li jkunu xierqa.

(3) Il-Kummissjoni tista' wkoll teżenta mid-dispożizzjonijiet tas-subartikolu (1) ta' l-artikolu 5 ta' dan l-Att kull akkordju, deċiżjoni jew Prattika msemmija fih jekk hija tqis li l-impatt ta' l-akkordju, deċiżjoni jew Prattika fuq is-suq rilevanti jkunu minimali.

(4) Meta tkun qed tistabbilixxi jekk l-impatt ta' akkordju, deċiżjoni jew Prattika jkunx iżjed minn minimali fuq is-suq rilevanti, il-Kummissjoni għandha tikkonsidra ċ-ċirkostanzi rilevanti kollha inkluż, iżda mhux limitament, is-sehem ta' l-intrapriži konċernati mis-suq rilevanti:

Iżda kemm-il darba ma tingiebx prova għall-kuntrarju l-impatt fuq is-suq għandu jitqies li jkunu minimali jekk l-intrapriži konċernati bejniethom ma jeċċedux xi tnejn minn dawn il-kriterji li ġejjin:

(a) impieg medju ta' 20 persuna matul il-perijodu rilevanti;
jew

(b) dhul annwali min-negozju ta' tliet mitt elf lira Maltija, jew dik is-somma oghla li l-Ministru jista' jippreskrivi; jew

(c) valur ta' attiv nett ta' mija u hamsin elf lira Maltija, jew dik is-somma oghla li l-Ministru jista' jippreskrivi.

8. (1) Il-Ministru jista' b'Ordni jippreskrivi li l-artikolu 5 ta' dan l-Att ma ghandux ikun japplika ghal xi kategorija ta' akkordji, decizjonijiet u prattiki kif specifickati fl-Ordni. Eżenzjonijiet generali.

(2) Il-Ministru jista' wkoll f'kull Ordni bhal dak jagħmel kull eżenzjoni bhal dik kif imsemmi qabel sugġetta ghal dawk il-kondizzjonijiet u limitazzjonijiet li jkunu jidhrulu xierqa.

9. (1) Ebda intrapriża wahda jew iżjed minn wahda ma jistgħu jabbużaw minn pożizzjoni dominanti fis-suq rilevanti. Abbuż minn pożizzjoni dominanti.

(2) Mingħajr preġudizzju għall-ġeneralità tad-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, intrapriża wahda jew iżjed minn wahda jitqiesu li jkunu qed jabbużaw minn pożizzjoni dominanti fis-suq rilevanti, fejn hija jew huma:

(a) direttament jew indirettament jimponu prezz eċċessiv jew ingust ta' xiri jew bejgħ jew kondizzjonijiet kummerċjali ingusti oħra bi ħsara għall-konsumaturi jew provvedituri;

(b) jitolbu prezzijiet li jkunu taħt il-prezz marginali tal-kost ta' prodott sabiex jaqilgħu mis-suq lil kompetituri rivali;

(c) jillimitaw il-produzzjoni, is-swieq jew l-iżvilupp tekniku bi ħsara għall-konsumaturi;

(d) jirrifjutaw li jissupplixxu oġġetti jew servizzi indiskriminatament sabiex jeliminaw lil parti kummerċjali mis-suq rilevanti bi ħsara għall-konsumaturi;

(e) japplikaw kondizzjonijiet differenti, inkluża diskriminazzjoni tal-prezzijiet għal transazzjonijiet ekwivalenti ma' partijiet kummerċjali differenti, u b'hekk iqiegħdu lil xi parti kummerċjali jew uħud mill-partijiet kummerċjali fi żvantagġ kompetittiv;

(f) jikkondizzjonaw il-konklużjoni ta' kuntratti għall-aċċettazzjoni mill-parti l-oħra ta' obligazzjonijiet supplimentari li, mix-xorta tagħhom jew skond l-użu kummerċjali, ma jkollhom ebda konnessjoni mas-sugġett ta' kuntratti bhal dawk.

(3) Il-Kummissjoni għandha tiddetermina jekk intrapriża tkunx wahedha jew ma' oħrajn f'pożizzjoni dominanti, u jekk xi att ikunx jikkostitwixxi abbuż ta' pożizzjoni dominanti fuq talba għal dak il-ghan mid-Direttur, mill-intrapriża jew minn persuna b'ilment.

(4) Biex jiġi determinat jekk intrapriża waħda jew iżjed minn waħda jkunux f'pożizzjoni dominanti, intrapriża li waħedha jew bi ftehim ma' oħrajn ikollha sehem ta' mill-anqas 40% tas-suq rilevanti għandha dejjem titqies li tkun f'pożizzjoni dominanti.

(5) Biex tiddetermina jekk il-prezz mitlub ikunx eċċessiv jew ingust, il-Kummissjoni għandha tikkonsidra l-fatturi rilevanti kollha u għandha fejn xieraq tiehu qies ta':

- (a) il-prezz mitlub għall-prodott (f'termini assoluti);
- (b) iż-żieda jew żidiet percentwali fil-prezz mifruxa fuq perijodu twil u perijodu qasir;
- (ċ) ir-relazzjoni bejn il-prezz u l-kost tal-prodott;
- (d) il-perijodu ta' żmien li fih ikun intalab il-prezz;
- (e) il-valur ekonomiku tal-prodott;
- (f) l-importanza tal-prodott għall-konsumaturi;
- (g) ir-riskji ekonomiċi jew oħrajn biex il-prodott jingieb fis-suq;
- (h) l-investiment ta' kapital u riżorsi oħra meħtieġa biex il-prodott jingieb fis-suq;
- (i) il-bidliet mistennija, probabbli jew possibbli fis-suq għall-prodott; u
- (j) il-prezz mitlub għall-prodott minn intrapriži oħra f'Malta u mill-istess intrapriži jew intrapriži oħra fi swieq analogi oħra.

Dmir li
d-Direttur
jiġi mgħarraf f'ċerti
ċirkostanzi.

10. (1) Kull persuna inkarigata minn intrapriża li jkollha għalfejn taħseb li l-intrapriża tkun f'pożizzjoni dominanti u li kull azzjoni, Prattika jew haġa oħra magħmula jew imħollija barra milli ssir minnha jistgħu jikkostitwixxu abbuż minn pożizzjoni dominanti projbit taħt l-artikolu 9 ta' dan l-Att għandha, qabel tiehu dik il-pożizzjoni, jew qabel tagħmel dik il-prattika jew haġa oħra, tgharraf lid-Direttur minnufih, u fittex l-approvazzjoni negattiva tiegħu għaliha.

(2) Id-dispożizzjonijiet tas-subartikoli (3), (4), (5) u (7) ta' l-artikolu 6 għandhom, *mutatis mutandis*, japplikaw għal talba taħt dan l-artikolu bħalma japplikaw għal talba għal approvazzjoni negattiva taħt l-imsemmi artikolu 6.

(3) Meta approvazzjoni negattiva tkun ġiet rifjutata mid-Direttur taħt dan l-artikolu wiehed ma jkunx jista' jipproċedi bl-azzjoni, Prattika jew materja li dwarhom ma tkunx inghatat l-approvazzjoni mid-Direttur.

Ordnijiet ta'
prezzijiet.

11. (1) Id-Direttur jista' minn żmien għal żmien b'Ordni (hawnhekk iżjed 'il quddiem imsejjah "Ordni ta' Kontroll ta'

Prezzijiet”) jippreskrivi l-oghla prezz li bih prodotti, li huwa jista' jqis li jkunu oġġetti u servizzi essenzjali, jistgħu jinbieghu jew jiġu offruti għall-bejgħ.

(2) Ordnijiet ta' Kontroll ta' Prezzijiet għandhom jibdeu isehħu fid-data tal-pubblikazzjoni tagħhom fil-Gazzetta jew f'dik id-data wara skond li tista' tiġi speċifikata fl-Ordni ta' Kontroll ta' Prezzijiet stess jew f'Ordni sussegwenti.

(3) Ordnijiet ta' Kontroll ta' Prezzijiet għandhom fi żmien sitt xhur mill-pubblikazzjoni tagħhom fil-Gazzetta jiġu riveduti mill-Kummissjoni, li għandha fil-kors ta' dik ir-reviżjoni tisma' lid-Direttur u lir-rappreżentanti ta' kull intrapriża jew għaqda interessata skond kif ikun jidhrilha xieraq.

(4) Meta l-Kummissjoni wara r-reviżjoni kif intqal qabel tiddikjara li Ordni ta' Kontroll ta' Prezzijiet ikun xieraq u meħtieġ, dak l-Ordni ta' Kontroll ta' Prezzijiet għandu jibqa' fis-seħħ, kemm-il darba ma jiġix qabel revokat mid-Direttur, għal perijodu ta' sentejn mid-deċiżjoni tal-Kummissjoni.

(5) Meta l-Kummissjoni wara r-reviżjoni kif intqal qabel issib li l-Ordni ta' Kontroll ta' Prezzijiet ma jkunx xieraq u meħtieġ, jew meta wara li jkunu għaddew is-sitt xhur mill-pubblikazzjoni ta' l-Ordni ta' Kontroll ta' Prezzijiet fil-Gazzetta l-Kummissjoni ma tkunx iffinalizzat ir-reviżjoni, l-Ordni ta' Kontroll ta' Prezzijiet jieqaf milli jkollu effett.

(6) Meta Ordni ta' Kontroll ta' Prezzijiet jieqaf milli jkollu effett, dan ikun mingħajr preġudizzju għal:

(a) kull dhul f'responsabbiltà magħmul matul il-perijodu tal-validità ta' l-Ordni;

(b) kull haġa legittimament magħmula jew imħollija barra milli ssir matul il-perijodu tal-validità ta' l-Ordni;

(c) kull dhul f'obbligu magħmul favur xi persuna jew kull dritt akkwistat kontra xi persuna matul il-perijodu tal-validità ta' l-Ordni; u

(d) id-dritt tad-Direttur li jagħmel l-istess Ordni jew Ordni simili skond is-subartikolu (1) ta' dan l-artikolu.

(7) Għall-finijiet ta' dan l-artikolu oġġetti u servizzi essenzjali għandhom jinkludu, iżda ma għandhomx ikunu limitati għal, ikel, xorb, farmaċewtiċi u lbies.

12. (1) Ikun id-dmir ta' l-Uffiċċju tal-Kompetizzjoni Ġusta li jiżgura li d-dispożizzjonijiet ta' dan l-Att jiġu osservati minn kulhadd, u li jiġbor it-tagħrif li jista' jkun meħtieġ biex il-Kummissjoni tkun tista' taqdi l-funzjonijiet tagħha; u għal dan il-ghan għandu jkollu s-setgħa li jagħmel investigazzjonijiet f'kull wiehed minn dawn il-kazijiet li ġejjin:

Investigazzjonijiet

(a) fuq talba tal-Kummissjoni dwar xi talba lill-Kummissjoni minn intrapriża jew għaqda ta' intrapriži taht l-artikolu 7 jew is-subartikolu (3) ta' l-artikolu 9; jew bl-inizjattiva tiegħu stess dwar kull talba bħal dik komunikata lil mill-Kummissjoni; jew

(b) bl-inizjattiva tiegħu stess jew fuq talba tal-Ministru, jew ta' persuna b'ilment fuq allegazzjoni raġonevoli ta' ksur tad-dispożizzjonijiet ta' l-artikoli 5, 9 jew 11 ta' dan l-Att.

(2) Fil-kors ta' kull investigazzjoni magħmula mill-Uffiċċju tal-Kompetizzjoni Gusta skond is-subartikolu (1) ta' dan l-artikolu, id-Direttur jista' jitlob lil kull persuna biex tipprovdi b'kull tagħrif jew dokument fil-pussess tagħha li d-Direttur ikollu għalfejn jaħseb li jkun rilevanti għall-kwistjoni li tkun qed tiġi investigata, fi żmien li fiċ-ċirkostanzi ta' l-investigazzjoni d-Direttur iqis li jkun raġonevoli.

(3) Ebda haġa fis-subartikolu (2) ta' dan l-artikolu ma tista' tiftiehem li tawtorizza lid-Direttur li jordna l-produzzjoni ta' xi dokument jew l-iżvelar ta' xi informazzjoni li jistgħu jkunu suġġetti għad-dmir ta' segretezza professjonali.

(4) Fil-kors ta' kull investigazzjoni bħal dik id-Direttur jista' jirċievi dikjarazzjonijiet bil-miktub jew verbali minn xhieda kif ukoll jagħmel kopji ta' kull dokument miġjub lilu, u r-*record* ta' dawk id-dikjarazzjonijiet u ta' dawk il-kopji debitament attestat mid-Direttur ikun jista' jinġieb bħala prova quddiem il-Kummissjoni.

(5) Id-Direttur, awtorizzat kif imiss b'*Warrant* maħruġ miċ-*Chairman* tal-Kummissjoni, jista', għall-iskop ta' kull investigazzjoni taht dan l-artikolu, jidhol u jagħmel tfittxija f'kull fond, jew jagħmel tfittxija f'kull vettura fejn huwa jkollu għalfejn jaħseb li tkun tista' tinstab informazzjoni rilevanti għall-investigazzjoni, u fil-kors ta' kull tfittxija bħal dik jista' jikkonfiska kull oġġett jew dokument jew jordna li ma jitnehha ebda oġġett minn xi fond bla dak, u in konnessjoni ma' kull ordni bħal dik jista' jagħlaq u jissigilla kwalunkwe parti jew il-partijiet kollha ta' kull fond jew vettura, jew iqieghed kull oġġett taht sigill.

(6) Fil-kors ta' kull tfittxija kif imsemmi fis-subartikolu (5) ta' dan l-artikolu d-Direttur jista' jitlob l-għajnuna tal-Pulizija.

(7) Kull ordni mogħtija mid-Direttur skond is-subartikolu (5) ta' dan l-artikolu għandha tibqa' fis-sehh sakemm tiġi mħassra mid-Direttur jew mill-Kummissjoni.

(8) Ebda tfittxija ma tista' tinbeda wara s-7.00 ta' fil-ghaxija u qabel is-7.00 ta' l-ghada filghodu, kemm-il darba ma jkunx hemm għalfejn wieheġ jaħseb li d-dewmien ikun jista' jwassal għat-telfien ta' informazzjoni meħtieġa u kemm-il darba t-tfittxija ma tkunx għet espressament awtorizzata biex issir bejn l-imsemmija hinijiet fil-*Warrant* rilevanti.

(9) Ebda haġa f'dan l-artikolu ma għandha titqies li tnaqqas is-setgħat tal-Pulizija taht il-Kodiċi Kriminali jew taht xi ligi oħra.

(10) Kull informazzjoni li tiġi żvelata lid-Direttur jew kull dokument li jingieb lilu waqt investigazzjoni għandhom ikunu sigrieti u kunfidenzjali u jistgħu jiġu żvelati biss lill-Kummissjoni f'xi kwestjoni quddiemha, jew quddiem qorti kompetenti b'relazżjoni għall-prosekuzzjoni ta' xi reat kontra dan l-Att.

13. Mat-tlestija ta' investigazzjoni taht l-artikolu 12 ta' dan l-Att id-Direttur għandu jagħmel rapport tal-konklużjonijiet li jkun wasal għalihom fl-imsemmija investigazzjonijiet, li fih jagħti r-raġunijiet għal dawk il-konklużjonijiet u jagħmel riferenza għall-provi b'sostenn ta' dawk il-konklużjonijiet, liema provi għandhom fuq it-talba tal-Kummissjoni jingiebu quddiemha.

Rapport ta' l-investigazzjonijiet lill-Kummissjoni.

14. (1) Meta l-Uffiċċju tal-Kompetizzjoni Ġusta jirċievi ilment kif imsemmi fil-paragrafu (b) tas-subartikolu (1) ta' l-artikolu 12 huwa għandu l-ewwel jeżamina jekk dak l-ilment ikunx ammissibbli jew xort'oħra, u fejn ikun tal-fehma li l-ilment ikun inammissibbli huwa ma għandux jagħmel l-investigazzjoni relattiva u għandu jgħarraf lill-Kummissjoni f'dak is-sens.

Ammissibilità ta' ilmenti.

(2) Meta l-Kummissjoni ma taqbilx li l-ilment ikun inammissibbli hija għandha tgharraf lid-Direttur f'dak is-sens, u d-Direttur għandu fuq dan jibda jew jirreżumi l-investigazzjonijiet.

15. (1) Il-Kummissjoni għall-Kummerċ Ġust tista', fuq it-talba tad-Direttur jew ta' persuna b'ilment, permezz tad-Direttur, tiehu miżuri *interim* maħsuba biex jissospendu kull Prattika restrittiva li tkun qed tiġi investigata jekk dan ikun urġentement meħtieġ biex tiġi evitata sitwazzjoni li x'aktarx tista' tikkaguna preġudizzju serju, immedjat u irreparabbli għall-interessi ta' xi intrapriża, jew li tagħmel ħsara lill-interess ekonomiku ġenerali.

Miżuri *interim*.

(2) Meta t-talba issir mid-Direttur dik it-talba għandu jkollha magħha rapport bir-raġunijiet li fih id-Direttur jgħid il-miżuri li jqis meħtieġa sabiex jiġu sospiżi l-prattiki li jkunu qed jiġu investigati.

(3) Meta t-talba ssir minn persuna b'ilment, il-Kummissjoni għandha, kemm-il darba d-Direttur ma jkunx għamel hekk digà meta jirreferi l-ilment, tghaddi t-talba għat-tehid ta' miżuri *interim* lid-Direttur li għandu jagħmel rapport bir-raġunijiet li fih isemmi l-miżuri li jqis meħtieġa sabiex jiġu sospiżi l-prattiki li jkunu qed jiġu investigati.

(4) Id-Direttur għandu jissottometti r-rapport lill-Kummissjoni fi żmien hmistax-il jum u għandu jinnotifika kopja tar-rapport bil-posta registrata lill-intrapriża jew għaqda li tkun qed tiġi investigata li tista' tagħmel sottomissjonijiet bil-miktub lill-Kummissjoni dwar ir-rapport fi żmien hmistax-il jum minn meta tirċievih: iżda l-imsemmija perijodi jistgħu jiġu mqassra mill-Kummissjoni skond kif ikun jidhrilha xieraq fiċ-ċirkostanzi.

(5) Il-Kummissjoni għandha, fi żmien għaxart ijiem mill-aħhar data li fiha għandhom jasluha s-sottomissjonijiet ta' l-intrapriża jew għaqda konċernata, b'deċiżjoni bir-raġunijiet tordna kull miżura *interim* li hija tqis li tkun xierqa fiċ-ċirkostanzi.

(6) id-deċiżjoni għandha tiġi notifikata mis-Segretarju tal-Kummissjoni lid-Direttur u lil dawk l-intrapriżi jew għaqdiet li l-attività tagħhom tkun qed tiġi investigata.

(7) Ordni mogħti taht dan l-artikolu għandu jkollu effett immedjat u għandu jibqa' fis-seħħ sakemm jiġi revokat mill-Kummissjoni jew sakemm il-kwestjoni li tkun qed tiġi investigata tiġi determinata mill-Kummissjoni.

Reat ta' prattika restritta.

16. (1) Meta l-Kummissjoni tiddikjara li xi akkordju, deċiżjoni jew prattika jkunu bi ksur tad-dispożizzjonijiet ta' l-artikolu 5 ta' dan l-Att, kull persuna li wara li tkun giet ippubblikata dik id-deċiżjoni tagħmel xi att f'konformità ma' dak l-akkordju, deċiżjoni jew prattika tkun hatja ta' reat kontra dan l-artikolu.

(2) Meta tkun inghatat xi eżenzjoni mid-dispożizzjonijiet ta' l-artikolu 5 ta' dan l-Att kull persuna li taġixxi barra mid-dispożizzjonijiet ta' dik l-eżenzjoni jew li ma timxix skond kull kondizzjoni li jkun hemm fiha tkun hatja ta' reat kontra dan l-artikolu.

Reati ta' abbuż minn pożizzjoni dominanti.

17. Meta xi azzjoni tkun giet dikjarata mill-Kummissjoni bħala li tkun abbuż minn pożizzjoni dominanti skond l-artikolu 9 ta' dan l-Att, kull persuna li wara li tkun giet ippubblikata dik id-deċiżjoni tiegħu sehem f'dik l-azzjoni tkun hatja ta' reat kontra dan l-artikolu.

Reati kontra l-artikolu 15.

18. Kull persuna li tagħmel xi att kuntrarju għal ordni mahruġ mill-Kummissjoni skond l-artikolu 15 wara li dak l-ordni jkun gie pubblikat tkun hatja ta' reat kontra dan l-artikolu.

Pubblikazzjoni ta' deċiżjonijiet eċċ. tal-Kummissjoni.

19. Għall-finijiet ta' l-artikoli 16, 17 u 18 deċiżjoni jew ordni tal-Kummissjoni għandhom jitqiesu li jkunu ġew ippubblikati meta jkunu ġew ippubblikati b'avviż fil-Gazzetta, jew meta b'relazzjoni għal xi individwu partikolari jkunu ġew notifikati lilu jew b'att ġudizzjarju jew bil-konsenja ta' kopja tagħhom mid-Direttur jew meta d-deċiżjoni jew ordni jkunu ġew konsenjati fil-preżenza ta' dik il-persuna mill-Kummissjoni u dik il-konsenja tirriżulta fir-records tal-Kummissjoni.

Reati kontra Ordnijiet ta' Prezzijiet.

20. Kull persuna li tikser id-dispożizzjonijiet ta' Ordni ta' Prezzijiet mahruġ taht l-artikolu 11 ta' dan l-Att tkun hatja ta' reat kontra dan l-artikolu.

Penali għal reati taht l-artikoli 16, 17, 18 u 20.

21. (1) Kull persuna hatja ta' reat kontra l-artikoli 16, 17, 18 jew 20 ta' dan l-Att tehel meta tinsab hatja multa ta' Lm3,000 jew 10 fil-mija tad-dhul min-negozju ta' l-intrapriża li fl-interessi ekonomiċi tagħha l-persuna hekk hatja kienet qed taġixxi, skond liema minnhom tkun l-oghla multa.

(2) Il-multa msemmija fis-subartikolu (1) ta' dan l-artikolu tkun tista' tingabar bħala dejn ċivili favur il-Gvern mid-Direttur, u l-intrapriża li fl-interessi ekonomiċi tagħha l-persuna misjuba hatja kienet qed taġixxi tkun responsabbli *in solidum* mal-persuna misjuba hatja għall-hlas ta' l-imsemmija multa.

22. (1) Kull persuna li tikser id-dispożizzjonijiet tas-subartikoli (1), (5) jew (8) ta' l-artikolu 6 jew id-dispożizzjonijiet tas-subartikoli (1) u (3) ta' l-artikolu 10 jew id-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 10 b'riferenza għas-subartikolu (5) ta' l-artikolu 6 tkun hatja ta' reat u tehel meta tinsab hatja il-multa stabbilita fis-subartikolu (1) ta' l-artikolu 21.

Reati kontra l-artikoli 6 u 10.

Id-dispożizzjonijiet tas-subartikolu (2) ta' l-artikolu 21 għandhom japplikaw għall-multa msemmija fis-subartikolu (1) ta' dan l-artikolu.

(3) Id-dispożizzjonijiet ta' l-Att dwar il-*Probation* ta' Hatjin (Kap. 152) u ta' l-artikoli 21A u 28A sa 28I tal-Kodiċi Kriminali (Kap. 9) ma għandhomx japplikaw għar-rigward tar-reati msemmija fis-subartikolu (1) ta' dan l-artikolu.

23. Kull persuna li fil-kors ta' xi investigazzjoni taht dan l-Att jew fil-kors ta' xi proċeduri quddiem il-Kummissjoni xjentement jew bi traskuraġni:

Reati in konnessjoni ma' investigazzjonijiet eċċ.

(a) tagħti xi informazzjoni falza, mhux eżatta jew qarrieqa; jew

(b) tissupplixxi informazzjoni nieqsa; jew

(c) meta din tkun sid, direttur, uffiċċjal, amministratur jew *manager* ta' intrapriża tonqos, mingħajr raġuni xierqa, li tissupplixxi l-informazzjoni mitluba fiż-żmien mogħti; jew

(d) timpedixxi jew tfixkel xi investigazzjoni; jew

(e) tipproduċi jew tagħti, jew iġġieghel jew xjentement thalli li jiġi prodott jew mogħti, xi dokument jew informazzjoni li hija tkun taf li jkun falz f'xi dettall sostanzjali,

tkun hatja ta' reat kontra dan l-artikolu u tehel, meta tinsab hatja, multa ta' mhux inqas minn Lm50 u mhux iżjed minn Lm1,000 jew prigunerija għal żmien ta' minn tliet xhur sa sitt xhur, jew dik il-multa u prigunerija flimkien.

24. (1) Fi proċedimenti kriminali li jsiru mill-Pulizija quddiem il-Qorti tal-Maġistrati għal reat kontra d-dispożizzjonijiet ta' dan l-Att, id-Direttur jista' jassisti lill-Pulizija fit-tmexxija tal-prosekuzzjoni u fil-produzzjoni tal-provi.

Id-Direttur jista' jassisti l-prosekuzzjoni.

(2) Id-Direttur jew kull uffiċċjal delegat minnu għall-finijiet tas-subartikolu (1) jista' madankollu jingiebb bħala xhud iżda jekk ix-xiehda tiegħu tkun meħtieġa bħala parti tal-każ tal-prosekuzzjoni, ix-xiehda tiegħu għandha tinstama' qabel dik ta' kull xhud ieħor għall-prosekuzzjoni u kemm-il darba ma tinqalax il-htieġa tax-xiehda tiegħu sussegwentement.

- Jedd għal appell. **25.** Minkejja d-dispożizzjonijiet tal-Kodiċi Kriminali, l-Avukat Ġenerali jkollu l-jedd li jappella lill-Qorti ta' l-Appell Kriminali minn kull deċiżjoni mogħtija mill-Qorti tal-Maġistrati dwar proċedimenti kriminali li jinqalghu mid-dispożizzjonijiet ta' dan l-Att.
- Preskrizzjoni. **26.** Minkejja d-dispożizzjonijiet tal-Kodiċi Kriminali jew ta' kull liġi oħra, azzjoni kriminali għal reati taħt dan l-Att hija preskritta bl-egħluq ta' hames snin.
- Certi kwestjonijiet għandhom jiġu riferiti lill-Kummissjoni. **27.** Meta quddiem xi qorti ta' ġurisdizzjoni ċivili jiġi allegat li xi akkordju jew deċiżjoni jkunu nulli u mhux esegwibbli skond is-subartikolu (2) ta' l-artikolu 5 ta' dan l-Att, dik il-qorti għandha, kemm-il darba l-allegazzjoni ma tiġix ammessa mill-partijiet kollha fil-każ, tagħti struzzjonijiet lill-partijiet biex jirreferu l-kwestjoni lill-Kummissjoni, u għandha tiddeċiedi l-allegazzjoni skond id-deċiżjoni tal-Kummissjoni.
- Id-deċiżjonijiet tal-Kummissjoni ikunu finali. **28.** (1) Id-deċiżjonijiet tal-Kummissjoni jkunu finali.
(2) Ma jista' jinharag ebda mandat kawtelatorju msemmi fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili kontra l-Kummissjoni.
- Ftehim ta' reċiproċità. **29.** Minkejja kull haġa li tinsab f'dan l-Att id-Direttur jista', fil-kuntest ta' ftehim ta' reċiproċità f'materji ta' għajjuna reċiproka dwar Prattiki ta' kompetizzjoni, jgħaddi dokumenti u jiżvela informazzjoni fil-pussess tiegħu lil awtoritajiet barra minn Malta b'responsabbiltà f'materji ta' kompetizzjoni u ristretti fl-iżvelar ta' informazzjoni bħal dik b'mod u skop analoġu għal dak tad-Direttur taħt dan l-Att.
- Applikabbiltà ta' l-Att għad-dipartimenti tal-Gvern, eċċ. **30.** (1) Id-dispożizzjonijiet ta' dan l-Att ma għandhomx japplikaw għal dipartiment tal-Gvern jew għal xi korp ġuridiku stabbilit bil-liġi kemm-il darba l-Ministru b'ordni fil-Gazzetta ma jiddikjarax lil dipartiment jew korp bħal dak bħala li jkun hekk sugġett għal dan l-Att.
(2) Ordni magħmul bis-saħħa tas-subartikolu (1) ta' dan l-artikolu għandu jispeċifika l-attivitajiet ta' kull dipartiment jew korp li jkunu sugġetti għad-dispożizzjonijiet ta' dan l-Att u għandu għall-finijiet tas-subartikolu (4) ta' l-artikolu 7 u ta' l-artikolu 21 jindika l-bażi li fuqha għandu jiġi kkalkulat id-dhul min-negozju rilevanti.
- Dispożizzjoni transitorja. **31.** Is-subartikolu (2) ta' l-artikolu 5 ma għandux japplika għal xi akkordju, deċiżjoni jew Prattika legalment fis-seħh minnufih qabel il-bidu fis-seħh ta' l-artikolu 5 ta' dan l-Att, sa l-egħluq ta' sitt xhur mill-bidu fis-seħh ta' l-imsemmi artikolu.

SKEDA

(Artikolu 4)

**Regoli ta' Proċedura li għandhom x'jaqsmu
mal-Kummissjoni għall-Kummerċ Ġust**

1. Il-Kummissjoni għandha tiddeċiedi kull kwestjoni quddiemha b'gustizzja u imparzjalità u skond id-dispożizzjonijiet ta' dan l-Att.

2. Qabel jassumu l-funzjonijiet tagħhom, il-membri lajċi għandhom jieħdu quddiem iċ-*Chairman* ġurament li jaqdu l-funzjonijiet tagħhom b'gustizzja u imparzjalità u skond id-dispożizzjonijiet ta' dan l-Att.

3. Membru tal-Kummissjoni għandu jastjeni u jista' jiġi rikuzat fl-istess ċirkostanzi *mutatis mutandis*, bħalma imhallet tal-qrati superjuri għandu jastjeni jew jista' jiġi rikuzat skond il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

4. Kull rikuz għandha tiġi determinata miċ-*Chairman*. Id-deċiżjoni tal-Kummissjoni għandhom jagħtu r-raġunijiet għalihom u jindikaw b'mod ċar l-intrapriži jew kategorija ta' intrapriži li jkunu japplikaw għalihom.

5. Dawk id-deċiżjonijiet jistgħu jintagħmlu biex ikunu japplikaw b'mod limitat għal area, żmien jew staġun partikolari.

6. Kull deċiżjoni tal-Kummissjoni tista' tiġi imhassra jew mibdula mill-Kummissjoni fejn ikun jirriżulta illi:

(a) l-informazzjoni li fuqha kienet ibbażata d-deċiżjoni kienet falza, qarrieqa jew nieqsa; jew

(b) il-kondizzjonijiet tas-suq ikunu tbiddu b'mod sinjifikanti.

7. (a) Proċeduri quddiem il-Kummissjoni għandhom jinbdew b'talba magħmula mid-Direttur, jew mill-intrapriża rilevanti jew minn persuna b'ilment permezz tad-Direttur.

(b) Persuna b'ilment tista' tkun kull intrapriża li turi li l-attivitajiet tagħha jkunu milquta direttament mill-proċedimenti quddiem il-Kummissjoni, u kull persuna li tallega li tkun il-vittima ta', jew li tkun avversament milquta minn, xi ksur tad-dispożizzjonijiet ta' dan l-Att, inkluż konsumatur li jallega li huwa hekk ikun jew Ghaqda ta' Konsumaturi Registrata li tagixxi f'isem konsumaturi b'mod generali.

(c) Għall-finijiet tal-paragrafu (b) ta' din ir-regola, Ghaqda ta' Konsumaturi Registrata tfisser Ghaqda ta' Konsumaturi registrata skond l-Att ta' l-1994 dwar l-Affarijiet tal-Konsumatur.

8. Il-laqgħat tal-Kummissjoni għandhom isiru *in camera*:

Iżda:

(a) Id-Direttur għandu jkollu l-jedd li jkun preżenti waqt il-laqgħat kollha;

(b) L-intrapriża rilevanti u kull persuna li tkun ressqet l-ilment ghandu jkollhom il-jedd li jagħmlu sottomissjonijiet dwar kull kwestjoni li tkun quddiem il-Kummissjoni, kif ukoll li jipprezentaw kull dokument jew prova ohra li jistgħu ikunu rilevanti għal dik il-kwestjoni.

9. Qabel ma tipproċedi b'xi ilment, il-Kummissjoni għandha l-ewwel tiddeċiedi jekk l-ilment ikunx ammissibbli, u għandha tgharraf lill-persuna li tkun ressqet l-ilment b'kull deċiżjoni bhal dik.

10. Il-Kummissjoni għandha wkoll tgharraf lid-Direttur, lill-intrapriża rilevanti u lill-persuna li tkun ressqet l-ilment b'kull deċiżjoni fuq il-kwestjoni li jkollha quddiemha.

Meta jintbagħat rapport lill-persuna li tkun ressqet l-ilment, iċ-*Chairman* tal-Kummissjoni għandu jiżgura li ebda informazzjoni kummerċjali konfidenzjali fuq l-intrapriża li dwarha jsiru l-proċedimenti ma tkun imdahħla fir-rapport.

11. Il-Kummissjoni għandu jkollha, eżerċitabbli permezz taċ-*Chairman* tagħha, is-setgħat vestiti fil-Prim' Awla tal-Qorti Ċivili, u b'mod partikolari s-setgħa li tħarrek xhieda, is-setgħa li taħtar xhieda-periti u periti u setgħa li tamministra l-gurament.

Meta xhud, imharrek regolament, ma jidhirx fil-jum li fih jiġi msejjaħ, iċ-*Chairman* jista' jordna lill-Pulizija biex tarresta lil dak ix-xhud u għgħibu quddiem il-Kummissjoni biex jixhed.

12. Il-Kummissjoni tista' f'kull stadju ta' kull proċedimenti quddiemha tehtieg lill-Uffiċċju tal-Kompetizzjoni Ġusta biex jagħmel investigazzjonijiet dwar kull haġa li hija tqis mehtieġa.

13. Mingħajr preġudizzju għall-artikolu 19 ta' dan l-Att, id-deċiżjonijiet tal-Kummissjoni għandhom jiġu ppubblikati b'dak il-mod li iċ-*Chairman* tal-Kummissjoni bi ftehim mad-Direttur jista' jiddeċiedi:

Iżda iċ-*Chairman* għandu jiżgura illi ebda sigriet kummerċjali ta' xi intrapriża ma jiġi żvelat.

14. Fl-interpretazzjoni ta' dan l-Att il-Kummissjoni għandha tirrikorri għad-deċiżjonijiet tagħha ta' qabel u għall-interpretazzjoni mill-organi ta' l-Unjoni Ewropea dwar il-provvedimenti tad-dispożizzjonijiet rilevanti tat-trattati u d-direttivi ta' l-Unjoni Ewropea relattivi għall-kompetizzjoni.

Għanijiet u Raġunijiet

L-għan prinċipali ta' dan l-Abbozz huwa biex jipprovdi kontra Prattiki Restrittivi fil-kompetizzjoni u għal hwejjeġ ohra anċillari u konnessi ma' hekk kif imħabbar fil-*White Paper* imsemmija Kummerċ Ġust — pass iehor 'il quddiem, ippubblikata f'Novembru, 1993.

A BILL
entitled

*AN ACT to regulate competition and provide for fair trading
in Malta*

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:—

1. This Act may be cited as the Competition Act, 1993 and shall come into force on such date as the Minister responsible for trade may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of the Act.

Short title and commencement.

2. In this Act unless the context otherwise requires:

Interpretation.

“association of undertakings” means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interest of its members or of persons represented by its members;

“Chairman” means the Chairman of the Commission;

“Commission” means the Commission for Fair Trading established under section 4 of this Act;

“Director” means the public officer heading the Office for Fair Competition established under section 3 of this Act;

“dominant position” means a position in which an undertaking or undertakings can act independently in relation to their competitors, customers or suppliers with the possibility of presenting an obstacle to the maintenance of effective competition;

“group of undertakings” includes:

(a) the undertaking concerned;

(b) those undertakings in which the undertaking concerned, directly or indirectly:

— owns more than half the capital or business assets; or

— has the power to exercise more than half the voting rights; or

— has the power to appoint more than half the members of the board of directors or other body or bodies legally representing the undertakings; or

— has the right to manage the undertakings' affairs;

(c) those undertakings which have in the undertaking concerned the rights or powers listed in paragraph (b);

(d) those undertakings in which an undertaking as referred to in paragraph (c) has the rights or powers listed in paragraph (b);

(e) those undertakings in which two or more undertakings as referred to in paragraphs (a) to (d) jointly have the rights or powers listed in paragraph (b);

“Minister” means the Minister responsible for trade;

“Office” means the Office for Fair Competition established by section 3 of this Act;

“product” includes goods and the supply of services;

“relevant market” means the market for the product within Malta whether or not limited to any particular area or locality;

“turnover” means the total turnover realised during the preceding financial year on the local market or otherwise; for the purpose of subsection (4) of section 7 and of section 21 the turnover of an undertaking means the sum of the turnovers of all undertakings in a group of undertakings;

“undertaking” means any natural or legal person pursuing an economic purpose on a continuing basis, and includes a group of undertakings.

3. (1) There shall be an Office for Fair Competition, which shall be a Government department having the following functions, that is to say:

Establishment of Office for Fair Competition.

(a) to advise undertakings, associations of undertakings and the public in relation to matters concerned with fair trading practices and procedures under this Act;

(b) to advise and make proposals and recommendations to the Minister in relation to any matter concerning the exercise of his functions under this Act;

(c) to investigate restrictive practices in competition in terms of this Act; and

(d) generally to exercise the powers conferred to it under this Act, and as may be assigned to it by the Minister.

(2) The Office for Fair Competition shall be under the control of a Director. In carrying out the functions of the Office for Fair Competition, the Director may delegate any of his powers under this Act to any public officer employed with or attached to his department.

4. (1) There shall be a Commission to be known as the Commission for Fair Trading, and which shall be composed of a Chairman and two other members appointed by the President on the advice of the Prime Minister.

Establishment of Commission.

(2) (a) The Chairman shall be a Magistrate and the two other members shall be an Economist and a Certified Public Accountant;

(b) More than one Magistrate, one Economist and one Certified Public Accountant may be appointed to sit on the Commission, but only one Magistrate, one Economist and one Certified Public Accountant shall sit in any one case.

(3) (a) The members of the Commission, other than the Chairman, hereinafter in this section referred to as "the lay members", shall be appointed for a period of three years and shall be eligible for reappointment.

(b) The lay members of the Commission may resign their office by letter addressed to the President but may not be removed except by the President acting on the recommendation of the Commission for the Administration of Justice.

(c) Notice of all appointments to the Commission and of all other changes in its membership shall be published in the Gazette.

(d) The lay members of the Commission shall receive such remuneration for their services as may be prescribed provided that such remuneration may not be altered during the tenure of their appointment.

(c) A person shall not be qualified to be appointed or remain a lay member of the Commission if:

(i) he is an undischarged bankrupt; or

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

(iii) he has been found guilty for any offence against this Act; or

(iv) if he is a Member of the House of Representatives.

(4) The Minister shall appoint a public officer to be secretary to the Commission. The Secretary shall *mutatis mutandis* have the same powers and duties of the Registrar of Courts, and shall take instructions from the chairman in all circumstances that the said registrar in accordance with the Code of Organisation and Civil Procedure is to take instructions from a Magistrate presiding a particular court.

(5) (a) The Commission shall have the powers and shall follow the procedures laid out in the Schedule to this Act;

(b) the Commission may with the approval of the Minister make rules not inconsistent with this Act or the provisions of the Schedule thereto, prescribing the procedures and the forms to be followed and used before it.

(c) In the absence of provisions or rules as aforesaid the Commission shall regulate its own procedures.

Prohibited
agreements and
practices.

5. (1) It shall not be lawful to partake in any restrictive practice in competition, that is to say any agreement between undertakings, any decision by an undertaking or by an association of undertakings and any concerted practice between undertakings having the object or effect of preventing, restricting or distorting competition within the relevant market and in particular, but without prejudice to the generality of this subsection, to partake in any agreement, decision or practice which:

(a) directly or indirectly fixes the purchase or selling price or other trading conditions; or

(b) limits or controls production, markets, technical development or investment; or

(c) shares markets or sources of supply; or

(d) imposes the application of dissimilar conditions to equivalent transactions with other parties outside such agreement, thereby placing them at a competitive disadvantage; or

(e) makes the conclusion of contracts with parties outside such agreement subject to the acceptance by them of

supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Agreements or decisions prohibited in accordance with subsection (1) of this section shall be *ipso iure* null and unenforceable.

6. (1) Any person in charge of an undertaking who has reason to believe that any agreement between undertakings, any decision by an association of undertakings or any concerted practice between undertakings may be a prohibited agreement or practice in terms of section 5 of this Act, shall before acting in accordance with such agreement, decision or practice seek the negative clearance of the Director in accordance with the following provisions of this section.

Negative
clearance.

(2) At the request of any interested undertaking or association of undertakings, the Director may give negative clearance to an agreement, decision or concerted practice by declaring that according to the facts of which he is aware, or on the basis of the information provided by the undertaking or association of undertakings to the Director, there is no need to intervene in respect thereof in accordance with this Act.

(3) Decisions granting negative clearance may be limited in effect for such time as may be stated in the same decision.

(4) Without prejudice to subsection (5) hereof a negative clearance given in accordance with this section may be revoked by the Director where:

(a) it results that the information supplied with such request had been false, misleading or incomplete; or

(b) market conditions have changed significantly.

(5) It shall not be lawful in connection with a request for negative clearance to supply to the Director any information which is false, misleading or incomplete, and any negative clearance given on the basis of such information shall be null and without effect.

(6) A negative clearance given by the Director shall have the same effect as an exemption given by the Commission in terms of section 7 of this Act.

(7) The Director shall from time to time determine the procedure for making requests for negative clearances under this section.

(8) Where negative clearance has been refused by the Director under this section it shall not be lawful to proceed with the agreement, decision or concerted practice for which clearance has not been granted by the Director.

Certain agreements etc. may be declared exempted.

7. (1) Notwithstanding the provisions of section 5 of this Act, the Commission may, upon an application for the purpose made by an undertaking or by an association of undertakings through the Director, declare that:

- (a) any agreement or category of agreements between undertakings; or
- (b) any decision or category of decisions by associations of undertakings; or
- (c) any concerted practice or category of concerted practices,

which in each case contribute towards the objective of improving production or distribution of goods or promoting technical or economic progress and which allows consumers a fair share of the resultant benefit, not to be restrictive practices in competition, and thereupon the provisions of section 5 of this Act shall not apply:

Provided that the Commission shall not so declare any such agreement, decision or practice if the said agreement, decision or practice either:

- (i) imposes on undertakings concerned any restriction which is not indispensable to the attainment of the said objective; or
- (ii) gives the undertakings concerned the possibility of eliminating or significantly reducing competition in respect of a substantial part of the products to which the agreement, decision or practice refers.

(2) The Commission may make any declaration to which subsection (1) of this section applies, subject to such conditions and limitations as it may deem opportune.

(3) The Commission may also exempt from the provisions of subsection (1) of section 5 of this Act any agreement, decision or practice therein referred to if it considers that the impact of the agreement, decision or practice on the relevant market is minimal.

(4) In determining whether the impact of an agreement, decision or practice is more than minimal on the relevant market, the Commission shall consider all relevant circumstances including but not limitedly the share of the undertakings concerned of the relevant market:

Provided that unless proof is adduced to the contrary the impact on the market shall be presumed to be minimal if the undertakings concerned do not between them exceed any two of the following criteria:

- (a) an average employment of 20 persons during the relevant period; or

(b) an annual turnover of three hundred thousand Maltese liri, or such other higher sum as the Minister may prescribe; or

(c) a net asset value of one hundred and fifty thousand Maltese liri, or such other higher sum as the Minister may prescribe.

8. (1) The Minister may by Order prescribe that section 5 of this Act shall not apply to any category of agreements, decisions and practices as may be specified in the Order. Block exemptions.

(2) The Minister may in any such Order make any such exemption as aforesaid subject to such conditions and limitations as he may deem appropriate.

9. (1) It shall not be lawful for any one or more undertakings to abuse of a dominant position in the relevant market. Abuse of dominant position.

(2) Without prejudice to the generality of the provisions of subsection (1) hereof, one or more undertakings shall be deemed to abuse of a dominant position in the relevant market, where it or they:

(a) directly or indirectly impose an excessive or unfair purchase or selling price or other unfair trading conditions to the prejudice of consumers or suppliers;

(b) charge prices which are below the marginal cost price of a product in order to drive rival competitors out of the market;

(c) limit production, markets or technical development to the prejudice of consumers;

(d) refuse to supply goods or services indiscriminately in order to eliminate a trading party from the relevant market to the prejudice of consumers;

(e) apply dissimilar conditions, including price discrimination to equivalent transactions with different trading parties, thereby placing any or some of the trading parties at a competitive disadvantage;

(f) make the conclusion of contracts subject to the acceptance by the other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(3) Whether an undertaking is alone or with others in a dominant position, and whether any act constitutes an abuse of a dominant position shall be determined by the Commission on an application for the purpose by the Director, the undertaking or a complainant.

(4) For the purpose of determining whether one or more undertakings are in a dominant position, an undertaking which alone or in concert with others has a share of at least 40% of the relevant market shall always be deemed to be in a dominant position.

(5) In determining whether the price charged is excessive or unfair, the Commission shall consider all relevant factors and shall where appropriate have regard to:

- (a) the price charged for the product [in absolute terms];
- (b) the percentage increase or increases in the price over the long and short term;
- (c) the relationship between the price and the cost of the product;
- (d) the period of time for which the price has been charged;
- (e) the economic value of the product;
- (f) the importance of the product to consumers;
- (g) the economic or other risks associated with bringing the product to the market;
- (h) the investment of capital and other resources necessary to bring the product to the market;
- (i) the expected, probable or possible changes in the market for the product; and
- (j) the price charged for the product by other undertakings in Malta and by the same or other undertakings in other analogous markets.

Duty to inform Director in certain circumstances.

10. (1) Any person in charge of an undertaking who has reason to believe that the undertaking is in a dominant position and that any action, practice or other matter done or omitted to be done by them may constitute an abuse of a dominant position prohibited under section 9 of this Act, shall before taking such action, or making such practice or other matter, inform the Director therewith, and seek his negative clearance for it.

(2) The provisions of subsections (3), (4), (5) and (7) of section 6 shall, *mutatis mutandis*, apply to a request under this section as they apply to a request for negative clearance under the said section 6.

(3) Where negative clearance has been refused by the Director under this section it shall not be lawful to proceed with the action, practice or matter in connection with which the clearance was not granted by the Director.

Price Orders.

11. (1) The Director may from time to time by Order (hereinafter referred to as a "Price Control Order") prescribe the maximum price at which products, which he may consider to be essential goods and services, may be sold or offered for sale.

(2) Price Control Orders shall come into force on the date of their publication in the Gazette or such later date as may be specified in the Price Control Order itself or in a subsequent Order.

(3) Price Control Orders shall within six months of their publication in the Gazette be reviewed by the Commission, which shall during the course of such review hear the Director, and the representatives of any interested undertaking or association as it may deem proper.

(4) Where the Commission after the review as aforesaid declares that a Price Control Order is appropriate and necessary, such Price Control Order shall remain in force, unless previously revoked by the Director, for a period of two years from the decision of the Commission.

(5) Where the Commission after the review as aforesaid finds that the Price Control Order is not appropriate and necessary, or where on the lapse of the six months from the publication of the price control Order in the Gazette the Commission has not finalised the review, the Price Control Order shall cease to have effect.

(6) When a Price Control Order ceases to have effect, this shall be without prejudice to:—

- (a) any liability incurred during the period of its validity;
- (b) anything lawfully done or omitted to be done during the period of its validity;
- (c) any obligation incurred in favour of any person or any right acquired against any person during the period of its validity; and
- (d) the right of the Director to make the same or a similar Order in accordance with subsection (1) of this section.

(7) For the purposes of this section essential goods and services shall include, but shall not be limited to, food, drink, pharmaceuticals and clothing.

12. (1) It shall be the duty of the Office for Fair Competition to ensure that the provisions of this Act are observed by all, and to gather information that may be necessary for the Commission to carry out its functions; and for such purpose it shall have power to carry out investigations in any of the following cases:

Investigations.

- (a) upon a request of the Commission in relation to any request to the Commission by an undertaking or an association of undertakings under section 7 of subsection (3) of section 9; or of its own motion in relation to any such request communicated to it by the Commission; or

(b) of its own motion or at the request of the Minister, or complainant, on a reasonable allegation of a breach of the provisions of sections 5, 9 or 11 of this Act.

(2) During the course of any investigation carried out by the Office for Fair Competition in accordance with subsection (1) of this section, the Director may request any person to furnish him with any information or document in his possession which the Director has reason to believe is relevant to the matter under investigation, within such time as in the circumstances of the investigation the Director may consider reasonable.

(3) Nothing in subsection (2) of this section may be construed as authorising the Director to order the production of any document or the disclosure of any information which may be subject to the duty of professional secrecy.

(4) In the course of any such investigation the Director may receive written or verbal statements from witnesses 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 shall be producible as evidence before the Commission.

(5) The Director, duly authorised by a Warrant issued by the Chairman of the Commission, may, for the purpose of any investigation under this section enter into and search any premises, or search any vehicle 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 order the non-removal of any object from any such premises, and in connection with any such order may close and seal any or all parts of any premises or vehicle, or put any object under seal.

(6) In the course of any search as is referred to in subsection (5) of this section the Director may request the assistance of the Police.

(7) Any order given by the Director in accordance with subsection (5) of this section shall remain in force until it is cancelled by the Director or by the Commission.

(8) No search may be commenced on any premises after 7 o'clock in the evening and before 7 o'clock on the following morning, unless there is reason to believe that delay could cause the loss of necessary information and the search is expressly authorised to take place between the said times in the relevant Warrant.

(9) Nothing in this section shall be deemed to detract from the powers of the Police under the Criminal Code or under any other law.

(10) Any information disclosed to the Director or any document produced to him during an investigation shall be secret and confidential and may only be disclosed before the Commission in any matter before it, or before a competent court in relation to the prosecution of any offence against this Act.

13. Upon the completion of an investigation under section 12 of this Act the Director shall make a report of the conclusions arrived at by him in the said investigations, giving his reasons therefor and making references to the evidence in support thereto, which evidence shall at the request of the Commission be produced before it.

Report of investigations to Commission.

14. (1) Where the Office for Fair Competition receives a complaint as is referred to in paragraph (b) of subsection (1) of section 12 it shall in the first place examine whether such complaint is admissible or otherwise, and where it is of the opinion that the complaint is inadmissible it shall not carry out the relative investigation and inform the Commission accordingly.

Admissibility of complaints.

(2) Where the Commission does not agree that the complaint is inadmissible it shall inform the Director accordingly, and the Director shall thereupon commence or resume the investigations.

15. (1) The Commission of Fair Trading may, at the request of the Director or of a complainant, through the Director, take interim measures intended to suspend any restrictive practice under investigation if it is urgently necessary to avoid a situation likely to cause serious, immediate and irreparable prejudice to the interests of any undertaking, or to harm the general economic interest.

Interim measures.

(2) Where the request is made by the Director such request shall be accompanied by a reasoned report stating the measures he deems necessary in order to suspend the practices under investigation.

(3) Where the request is made by a complainant the Commission shall, unless the Director has already done so when he refers the complaint, transmit the request to take interim measures to the Director who shall draw up a reasoned report stating the measures which he deems necessary in order to suspend the practices under investigation.

(4) The Director shall submit the report to the Commission within 15 days and shall serve a copy of the report by registered post to the undertaking or association under investigation which may make written submissions to the Commission on the report within 15 days of its receipt: provided that the said periods may be abridged by the Commission as it deems fit in the circumstances.

(5) The Commission shall, within 10 days from the last date on which the submissions of the undertaking or association concerned are due to be received, by reasoned decision order any interim measure it may deem appropriate in the circumstances.

(6) The decision shall be notified by the Secretary to the Commission to the Director and to those undertakings or associations whose activity is being investigated.

(7) An order given under this section shall have immediate effect and shall remain in force until revoked by the Commission or until the matter under investigation has been determined by the Commission.

Offences of restricted practice.

16. (1) Where the Commission declares that any agreement, decision or practice is in breach of the provisions of section 5 of this Act, any person who after such decision or practice shall be guilty of an offence against this section.

(2) Where any exemption has been given from the provisions of section 5 of this Act any person who acts beyond the provisions of such exemption or does not abide by any condition therein shall be guilty of an offence against this section.

Offences of Abuse of dominant position.

17. Where any action has been declared by the Commission to be an abuse of a dominant position in accordance with section 9 of this Act, any person who after such decision has been published takes part in such action shall be guilty of an offence against this section.

Offences against section 15.

18. Any person who makes any act contrary to an order issued by the Commission in accordance with section 15, after such order has been published, shall be guilty of an offence against this section.

Publication of decisions etc. of Commission.

19. For the purposes of sections 16, 17 and 18 a decision or order of the Commission shall be deemed to have been published where it has been published by notice in the Gazette, or where in relation to any particular individual it has been notified to him either by judicial act or by delivery of a copy thereof by the Director or where the decision or order has been delivered in the presence of such person by the Commission and such delivery results in the records of the Commission.

Offences against Price Orders.

20. Any person who contravenes the provisions of a Price Control Order issued under section 11 of this Act shall be guilty of an offence against this section.

Penalty for offences under sections 16, 17, 18 and 20.

21. (1) Any person guilty of an offence against sections 16, 17, 18 or 20 of this Act, shall on conviction be liable to a fine (*multa*) of Lm3000 or 10 per centum of the turnover of the undertaking in the economic interests of whom the person so guilty was acting, whichever is the higher.

(2) The fine referred to in subsection (1) of this section shall be recoverable as a civil debt in favour of the Government by the Director, and the undertaking in the economic interests of whom the person found guilty was acting shall be liable in solidum with the person found guilty for the payment of the said fine.

Offences against sections 6 and 10.

22. (1) Any person who contravenes the provisions of subsections (1), (5) or (8) of section 6 or the provisions of subsections (1) and (3) of section 10 or the provisions of subsection (2) of section 10 with reference to subsection (5) of section 6 shall be guilty of an offence and shall on conviction be liable to the fine established in subsection (1) of section 21.

(2) The provisions of subsection (2) of section 21 shall apply to the fine referred to in subsection (1) hereof.

(3) The provisions of the Probation of Offenders Act (Cap. 152) and of sections 21A and 28A to 28I of the Criminal Code (Cap. 9) shall not apply with respect to offences referred to in subsection (1) of this section.

23. Any person who in the course of any investigation under this Act or in the course of any proceedings before the Commission knowingly or recklessly:

Offences in connection with investigations etc.

(a) gives any false, inaccurate or misleading information; or

(b) supplies incomplete information; or

(c) being an owner, director, officer, administrator or manager of an undertaking fails, without reasonable cause, to supply information requested within the time given; or

(d) prevents or hinders any investigation; or

(e) 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 material particular,

shall be guilty of an offence against this section and shall, on conviction, be liable to a fine (*multa*) of not less than Lm50 and not more than Lm1,000 or to imprisonment for a term from three to six months, or to both such fine and imprisonment.

24. (1) In criminal proceedings instituted by the Police before the Court of Magistrates for an offence against the provisions of this Act, the Director may assist the Police in the conduct of the prosecution and in the production of the evidence.

Director may assist prosecution.

(2) The Director or any officer deputed by him for the purposes of subsection (1) may nevertheless be produced as a witness but should his evidence be required as part of the case for the prosecution, his evidence shall be heard before that of any other witness for the prosecution and unless the necessity of his evidence arises subsequently.

25. Notwithstanding the provisions of the Criminal Code, the Attorney General shall have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings arising out of the provisions of this Act.

Right of Appeal.

26. Notwithstanding the provisions of the Criminal Code or of any other law, criminal action for offences under this Act is prescribed by the lapse of five years.

Prescription.

27. Where before any court of civil jurisdiction it is alleged that any agreement or decision is null and unenforceable in accordance with subsection (2) of section 5 of this Act, that court shall, unless the allegation is admitted by all the parties to the case, direct the parties to refer the matter to the Commission, and shall decide the allegation in accordance with the decision of the Commission.

Certain matters to be referred to Commission.

Decisions of
Commission final.

28. (1) The decisions of the Commission shall be final.

(2) It shall not be lawful to issue any precautionary warrant referred to in the Code of Organisation and Civil Procedure against the Commission.

Reciprocity
Agreements.

29. Notwithstanding anything contained in this Act the Director may, within the context of a reciprocity agreement in matters of mutual assistance relating to competition practices, pass documents and disclose information in his possession to authorities 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.

Applicability of
Act to
Government
Departments, etc.

30. (1) The provisions of this Act shall not apply to a department of Government or to any body corporate established by law unless the Minister shall by Order in the Gazette declare such department or body to be so subject to this Act.

(2) Any Order made in virtue of subsection (1) of this section shall specify the operations of any department or body which shall be subject to the provisions of this Act and shall for the purposes of subsection (4) of section 7 and of section 21 indicate the basis on which the relevant turnover is to be calculated.

Transitory
provision.

31. Subsection (2) of section 5 shall not apply to any agreement, decision or practice legally in force immediately before the coming into force of section 5 of this Act, until the lapse of six months from the coming into force of the said section.

SCHEDULE

(Section 4)

Rules of Procedures relative to the Commission for Fair Trading

1. The Commission shall determine any matter before it with fairness and impartiality and in accordance with the provisions of this Act.

2. Before entering upon their functions, the lay members of the Commission shall take before the Chairman an oath to perform their functions with fairness and impartiality and in accordance with the provisions of this Act.

3. A member of the Commission 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 Organisation and Civil Procedure.

4. Any challenge shall be determined by the Chairman. Decisions of the Commission shall state the reasons therefor and clearly indicate the undertakings or categories of undertakings to which they apply.

5. Such decisions may be made to apply limitedly to a particular area, time or season.

6. Any decision of the Commission may be overturned or altered by the Commission 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.

7. (a) Procedures before the Commission shall be commenced by application made by the Director, or by the relevant undertaking or by a complainant through the Director.

(b) A complainant may be any undertaking which shows that its operations are directly affected by the proceedings before the Commission, and any person claiming to be the victim of, or to be adversely affected by any breach of, any of the provisions of this Act, including a consumer who alleges so to be or a registered Consumers Association acting on behalf of consumers generally.

(c) For the purposes of paragraph (b) hereof, a Registered Consumers Association means a Consumers Association registered in accordance with the Consumer Affairs Act, 1994.

8. Meetings of the Commission shall be held *in camera*:

Provided that:

- (a) the Director shall have a right to be present during all meetings;

(b) the relevant undertaking and any complainant shall have a right to make submissions on any matter before the Commission, as well as to present any documents or other evidence that may be relevant to the matter.

9. Before proceeding with any complaint, the Commission shall first determine whether the complaint is admissible, and shall inform the complainant of any such determination.

10. The Commission shall also inform the Director, the relevant undertaking and the complainant of any decision on the matter before it.

Where a report is sent to the complainant, the Chairman of the Commission shall ensure that any confidential business information on the undertaking subject of the proceedings is not included in the report.

11. The Commission shall have, exercisable through its Chairman, the powers vested in the Civil Court, First Hall, and in particular the power to summon witnesses, the power to appoint expert witnesses and referees and the power to administer the oath.

Where a witness duly summoned fails to appear on the day on which he is summoned, the Chairman may order the Police to arrest such witness and produce him before the Commission to give evidence.

12. The Commission may at any stage in any proceedings before it require the Office for Fair Competition to carry out investigations on any matter which it deems necessary.

13. Without prejudice to section 19 of this Act, decisions of the Commission shall be published in such manner as the Chairman of the Commission with the concurrence of the Director may determine:

Provided that the Chairman shall ensure that no business secret of any undertaking shall be disclosed.

14. In the interpretation of this Act, the Commission shall have recourse to its previous decisions and to the interpretation by the organs of the European Union on the provisions of the relevant provisions of the treaties and directives of the European Union relative to competition.

Objects and Reasons

The main object of the Bill is to make provision against restrictive practices in competition and other matters ancillary and connected therewith as announced in the White Paper entitled *Fair Trading — the next step forward*, published in November 1993.