

MALTA

ATT Nru. XXXI ta' l-1994

ATT mahruġ b'liġi mill-Parlament ta' Malta.

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

ACT No. XXXI of 1994

AN ACT enacted by the Parliament of Malta.

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

Naghti l-kunsens tiegħi.

(L.S.)

UGO MIFSUD BONNICI
President

23 ta' Diċembru, 1994

ATT Nru. XXXI ta' l-1994

ATT biex jirregola l-kompetizzjoni u jipprovdi 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'ligi dan li ġej:—

1. Dan l-Att jista' jissejjah l-Att ta' l-1994 dwar il-Kompetizzjoni u għandu jibda jseħh 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-seħh.

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

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'ohra; 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 teżercita 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 tiddiriegħi 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 jkun kostitwit bil-ghan li jippromwovi l-interess kummerċjali tal-membri tiegħu jew ta' persuni rappreżentati mill-membri tiegħu;

“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'relazzjoni 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 jagħti pariri lil intrapriži, għaqdiet ta' intrapriži u lill-pubbliku dwar hwejjeg li jkollhom x'jaqsmu ma' prattiki u proceduri ta' kummerç ġust taħt dan l-Att;

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

(c) li jinvestiga prattiki restrittivi fil-kompetizzjoni skond dan l-Att; u

(d) b'mod ġenerali li jeżerċita s-setgħat mogħtija lilu taħt dan l-Att u li jistgħu jiġu assenjati lilu mill-Ministru, fil-kuntest ta' dan l-Att.

(2) L-Uffiċċju tal-Kompetizzjoni Ġusta għandu jkun taħt il-kontroll ta' Direttur. Fl-eżekuzzjoni tal-funzjonijiet ta' l-Uffiċċju tal-Kompetizzjoni Ġusta, id-Direttur jista' jiddelega kwalunkwe waħda mis-setgħat tiegħu taħt 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-Kummerç Ġust, u li għandha tkun magħmula minn *Chairman* u żewġ membri oħra maħtura 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) Iżjed minn Maġistrat wiehed, Ekonomista wiehed u *Accountant Pubbliku Ċertifikat* wiehed jistgħu jiġu maħtura 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 iċ-*Chairman*, hawnhekk iżjed 'il quddiem f'dan l-artikolu msejja "il-membri lajċi", għandhom jiġu maħtura għal perijodu ta' tliet snin u jkunu eligibbli 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.

(c) Avviż ta' kull hatra fuq il-Kummissjoni u ta' kull tibdil ieħor fil-membri tagħha għandu jiġi publikat 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 meħlus; jew

(ii) tkun ingħatat 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.

(f) Membru tal-Kummissjoni għandu qabel ma jibda jiġi trattat xi każ jiddikjara kull interess li huwa jista' jkollu fil-proċedimenti.

(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 jieħu struzzjonijiet mingħand iċ-*Chairman* fiċ-ċirkostanzi kollha li l-imsemmi registatur skond il-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili għandu jieħu struzzjonijiet mingħand 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) Dan li ġej mhuwix legittimu, jiġifieri kull akkordju bejn intrapriżi, kull deċiżjoni minn intrapriża jew minn għaqda 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, jieħu sehem f'xi akkordju, deċiżjoni jew prattika li:

(a) jiffissaw il-prezz ta' xiri jew bejgħ jew 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 ipoġġuhom fi żvantagġ kompetittiv; jew

(e) jagħmlu l-konklużjoni ta' kuntratti sugġetta għall-aċċettazzjoni mill-partijiet l-oħra ta' obligazzjonijiet

supplimentari li, mix-xorta taghhom jew skond l-użu kummerċjali, ma jkollhom ebda konnessjoni mas-sugġett ta' kuntratti b'hal 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 tfittex l-approvazzjoni negattiva tad-Direttur skond id-dispożizzjonijiet li ġejjin ta' dan l-artikolu iżda, darba li tkun fittxet li ġgib dik l-approvazzjoni, dik il-persuna ma tkunx prekluzi milli tagixxi skond dak l-akkordju, deċiżjoni jew Prattika sakemm tinghata dik l-approvazzjoni negattiva.

Approvazzjoni
negattiva.

(2) Fuq it-talba bil-miktub 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-htieġa 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 tbiċċu 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 b'hal 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 taħt dan l-artikolu.

(8) Meta approvazzjoni negattiva tkun ġiet rifjutata mid-Direttur taħt dan l-artikolu wiehed ma jkunx jista' jipproċedi bl-akkordju, deċiżjoni jew Prattika miftiehma li għalihom ma tkunx inghatat approvazzjoni mid-Direttur iżda meta dik l-approvazzjoni negattiva kienet ġiet imfittxa skond id-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu ir-rifjut hawn imsemmi ma jaffetwax il-validità ta' kwalunkwe haġa magħmula qabel dak ir-rifjut skond id-dispożizzjonijiet ta' l-istess subartikolu.

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-ghan 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 jintlahaq l-ghan li tittejjeb il-produzzjoni jew id-distribuzzjoni ta' oġġetti jew biex jingiebu 'il quddiem il-progress tekniku jew ekonomiku u li jhallu lill-konsumatur sehem gust mill-benefiċċju li jgibu 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 jintlahaq 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 tistabilixxi 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 jkun 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'regolamenti wara konsultazzjoni mal-Kummissjoni jippreskrivi li l-artikolu 5 ta' dan l-Att ma għandux ikun japplika għal xi kategorija ta' akkordji, deċiżjonijiet u prattiki kif speċifikati fir-regolamenti.

Eżenzjonijiet
ġenerali.

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

9. (1) Ebda intrapriża waħda jew iżjed minn waħda 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 waħda jew iżjed minn waħda 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 ohra bi hsara għall-konsumaturi jew provvedituri;

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

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

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

(e) japplikaw kondizzjonijiet differenti, inkluża diskriminazzjoni tal-prezzijiet għal transazzjonijiet ekwivalenti ma' partijiet kummerċjali differenti, u b'hekk iqieghdu 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 bħal 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, jew minn intrapriża jew persuna b'ilment permezz tad-Direttur.

(4) Biex jiġi determinat jekk intrapriża waħda jew iżjed minn waħda jkun 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:

Iżda intrapriża waħda jew iktar minn waħda li waħedhom jew bi ftehim ma' intrapriži oħrajn ikollhom sehem ta' inqas minn 40% tas-suq rilevanti jistgħu, minkejja dak imsemmi qabel, jiġu determinati li jkunu f'pożizzjoni dominanti.

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

- (a) il-prezz mitlub għall-prodott (f'termini assoluti);
- (b) iż-żieda jew żidiet perċentwali 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 mgharraf f'ċerti
ċirkostanzi.

10. (1) Kull persuna inkarigata minn intrapriża li jkollha għalfejn taħseb li l-intrapriża tkun f'pożizzjoni dominanti u li xi azzjoni, prattika jew haġa oħra magħmula jew imhollija barra milli ssir minnha jistgħu jikkostitwixxu abbuż minn pożizzjoni dominanti proġbit taħt l-artikolu 9 ta' dan l-Att ma għandhiex tiegħu dik l-azzjoni, jew tagħmel dik il-prattika jew haġa oħra, qabel ma ġgib l-approvazzjoni tad-Direttur 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 tkun ġiet rifjutata mid-Direttur taħt dan l-artikolu wieħed ma jkunx jista' jipproċedi bl-azzjoni, prattika jew materja li dwarhom ma tkunx inghatat l-approvazzjoni mid-Direttur.

Ordni jiet ta'
Prezzijiet.

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

jippreskrivi l-oghla prezz li bih prodotti, li huwa jista' jqis li jkunu oġġetti u servizzi essenzjali, jistghu jinbieghu jew jigu offruti għall-bejgh.

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

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

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

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

(6) Meta Ordni ta' Prezzijiet jieqaf milli jkollu effett, dan ikun minghajr 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 jigu 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-każijiet li ġejjin:

Investigazzjonijiet.

(a) fuq talba tal-Kummissjoni dwar xi talba bil-miktub 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 Kummissjoni; jew

(b) bl-inizjattiva tiegħu stess jew fuq talba tal-Ministru ta' persuna b'ilment bil-miktub 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 Ġusta 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' jingieb 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 u f'kull imkien iehor jew jagħmel tfittxija f'kull mezz ta' trasport 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 bħal dak, u in konnessjoni ma' kull ordni bħal dik jista' jagħlaq u jissigilla kwalunkwe parti jew il-partijiet kollha ta' kull fond u ta' kull imkien iehor, jew mezz ta' trasport, 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; b'dan illi, fil-każ ta' tfittxija li għandha ssir f'fond residenzjali, id-Direttur għandu dejjem ikun akkumpanjat b'uffiċjal tal-pulizija li ma jkollux kariga inqas minn dik ta' Spettur.

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

(8) Ebda tfittxija ma tista' tinbeda f'xi fond wara s-7.00 ta' fil-ghaxija u qabel is-7.00 ta' l-ghada filghodu, kemm-il darba ma jkunx hemm għalfejn wiehed jaħseb li d-dewmien ikun jista' jwassal għat-telfien ta' informazzjoni meħtieġa u kemm-il darba t-tfittxija ma tkunx giet 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 liġi oħra.

(10) Kull informazzjoni li tiġi żvelata lid-Direttur jew kull dokument li jinġieb lilu waqt investigazzjoni għandhom ikunu sigrieti u kunfidenzjali u jistgħu jiġu żvelati biss quddiem il-Kummissjoni f'xi kwestjoni quddiemha, jew quddiem qorti kompetenti b'relazzjoni 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 jinġiebu quddiemha.

Rapport ta' l-investigazzjonijiet lill-Kummissjoni.

14. (1) Meta l-Uffiċċju tal-Kompetizzjoni Ġusta jirċievi ilment kif imsemmi fil-paragrafu (b) ta' 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' xi intrapriża jew ta' persuna b'ilment, permezz tad-Direttur, tiegħu miżuri *interim* maħsuba biex jissospendu kull Prattika restrittiva li tkun qed tiġi investigata jekk dan ikun urgentement meħtieġ biex tiġi evitata sitwazzjoni li x'aktarx tista' tikkawna 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 diġà 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-aħħar data li fiha għandhom jaslulha 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 bis-saħħa ta' dan l-artikolu għandu jkollu effett immedjat u għandu jibqa' jseħh għal perijodu ta' tlett xhur kemm-il darba ma jiġix qabel revokat mill-Kummissjoni jew kemm-il darba l-kwestjoni li tkun qed tiġi investigata tkun giet determinata mill-Kummissjoni qabel l-imsemmi perijodu ta' tlett xhur. Ebda haġa f'dan is-subartikolu ma għandha żżomm lill-Kummissjoni milli toħroġ l-istess Ordni għal perijodu ieħor jew perijodi oħra ta' tlett xhur:

Iżda dak l-Ordni ma jista' f'ebda każ jestendi aktar minn perijodu massimu ta' sena.

Reat ta' prattika ristretta.

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) Kull persuna inkarigata minn intrapriża li jkollha għalfejn taħseb li xi akkordju, deċiżjoni jew xi prattika ikun jew tkun bi ksur tas-subartikolu (1) ta' l-artikolu 5 ta' dan l-Att u taġixxi skond dak l-akkordju jew dik id-deċiżjoni jew prattika mingħajr ma qabel tfittex l-approvazzjoni negattiva tad-Direttur kif meħtieġ taħt is-subartikolu (1) ta' l-artikolu 6 ta' dan l-Att, tkun hatja ta' reat taħt dan l-artikolu:

Iżda persuna ma għandhiex tingħata piena għal reat taħt dan is-subartikolu jekk l-akkordju, deċiżjoni jew prattika imsemmija ma tiġix dikjarata li tikser l-imsemmi subartikolu (1) ta' l-artikolu 5 b'deċiżjoni tal-Kummissjoni pubblikata skond id-dispożizzjonijiet ta' dan l-Att.

(3) Meta tkun ingħatat 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 giet publikat 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:

Iżda fejn l-intrapriża jew il-persuna li kontra tagħha sar l-ilment tkun giet notifikata bil-proċedimenti quddiem il-Kummissjoni, fil-konfront ta' dik l-intrapriża jew persuna d-deċiżjoni jew ordni tal-Kummissjoni dwar dak l-ilment titqies li giet pubblikata fid-data li giet pronunzjata.

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

Reati kontra Ordnijiet ta' Prezzijiet.

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:

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

Iżda meta l-persuna misjuba hatja ta' reat kontra l-artikolu 20 ta' dan l-Att tkun persuna li tbiegħ bl-imnut li d-dhul minn negozju tagħha ma jkunx jeċċedi Lm100,000 dik il-persuna tehel multa ta' mhux inqas minn Lm500 iżda mhux iżjed minn Lm3,000;

Iżda wkoll fejn il-persuna hekk misjuba hatja tkun id-direttur, *manager*, segretarju jew uffiċjal iehor simili ta' l-intrapriża fuq imsemmija dik il-persuna titqies għall-finijiet ta' dan l-artikolu bhala li għandha r-rappreżentanza legali ta' l-istess intrapriża li għalhekk tkun responsabbli *in solidum* mal-persuna hatja għall-hlas ta' l-imsemmija multa.

(2) Il-multa msemmija fis-subartikolu (1) ta' dan l-artikolu tingabar bhala 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.

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

Kap. 152.
Kap. 9.

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.

(2) Id-dispożizzjonijiet tal-provisos tas-subartikolu (1) u 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 u ta' l-artikolu 21 tal-Kodiċi Kriminali ma għandhomx japplikaw għar-rigward tar-reati msemmija fis-subartikolu (1) ta' dan l-artikolu.

Kap. 152.
Kap. 9.

(4) Ma tista tittiehed ebda azzjoni dwar reat li jsir taħt dan l-artikolu kemm-il darba l-Kummissjoni ma taqbilx ma' dan.

Reati in konnessjoni ma' investigazzjonijiet eċċ.

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:

- (a) taghti 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 moghti; jew
- (d) timpedixxi jew tfixkel xi investigazzjoni; jew
- (e) tipproduċi jew taghti, jew iġġieghel jew xjentement tħalli li jiġi prodott jew moghti, xi dokument jew informazzjoni li hija tkun taf li jkun falz jew tkun falza 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.

Id-Direttur jista' jassisti l-prosekuzzjoni.

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.

(2) Id-Direttur jew kull uffiċċjal delegat minnu għall-finijiet tas-subartikolu (1) jista' madankollu jingiebb bħala xhud iżda jekk ix-xieghda tiegħu tkun mehtieġa bħala parti tal-każ tal-prosekuzzjoni, ix-xieghda tiegħu għandha tinstama' qabel dik ta' kull xhud ieħor għall-prosekuzzjoni u kemm-il darba ma tinqalax il-htieġa tax-xieghda 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 moghtija 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 taht dan l-Att hija preskritta bl-egħluq ta' hames snin.

Ċerti 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, tordna s-soprasessjoni tal-proċedimenti u tirreferi l-kwestjoni lill-Kummissjoni li jkollha d-dritt li tiddetermina l-kwestjoni u l-Qorti għandha tiddeċiedi l-kwestjoni skond id-deċiżjoni tal-Kummissjoni.

- 28.** (1) Id-deċiżjonijiet tal-Kummissjoni jkunu finali. Id-deċiżjonijiet tal-Kummissjoni ikunu finali.
- (2) Ma jista' jinhareġ ebda mandat kawtelatorju msemmi fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili kontra l-Kummissjoni.
- 29.** Minkejja kull haġa li tinsab f'dan l-Att id-Direttur jista', fil-kuntest ta' ftehim ta' reċiproċità f'materji ta' għajnuna 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 analogu għal dak tad-Direttur taht dan l-Att. Ftehim ta' reċiproċità.
- 30.** (1) Id-dispożizzjonijiet ta' dan l-Att ma għandhomx japplikaw għal dipartiment tal-Gvern jew għal xi korp ġuridiku imwaqqaf b'ligi jew għal xi kumpannija jew soċjetà oħra li fihom il-Gvern, direttament jew indirettament ikollu xi sehem biżżejjed biex jikkontrolla sa dak iż-żmien meta l-Ministru b'Ordni fil-Gazzetta jiddikjara lil dak id-dipartiment, korporazzjoni, kumpannija jew soċjetà bħala li jkunu hekk suġġetti. Applikabbiltà ta' l-Att għal-dipartimenti tal-Gvern, eċċ.
- (2) Ordni magħmul bis-saħħa tas-subartikolu (1) ta' dan l-artikolu għandu jispeċifika l-attivitajiet ta' kull dipartiment tal-Gvern, korporazzjoni, kumpannija jew soċjetà li jkunu suġġetti għal-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.
- 31.** Ma tista' tittiehed ebda azzjoni kontra membru tal-Kummissjoni, id-Direttur, jew xi persuna oħra dwar xi att jew omissjoni magħmulin jew li jonqsu milli jsiru, sakemm dak l-att jew omissjoni ġew magħmula minnhom b'*mala fede*. Azzjoni *bona fide*.
- 32.** 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-għeluq ta' tmintax-il xahar mill-bidu fis-seħh ta' l-imsemmi artikolu. Dispożizzjoni transitorja.

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 tal-Kummissjoni għandhom jieħdu quddiem iċ-*Chairman* għurament 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 imħallef 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-deċiżjonijiet tal-Kummissjoni għandhom jagħtu r-raġunijiet għalihom u jindikaw b'mod ċar l-intrapriża jew kategoriji 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 imħassra 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 tbiddlu b'mod sinjifikanti.

7. (a) Proċeduri quddiem il-Kummissjoni għandhom jinbdew b'talba bil-miktub magħmula mid-Direttur, jew minn intrapriża jew persuna b'ilment permezz tad-Direttur skond id-dispożizzjonijiet ta' dan l-Att.

(b) Kull intrapriża li turi li l-attivitajiet tagħha jkunu milquta direttament mill-proċedimenti quddiem il-Kummissjoni u kull persuna li tallega li tkun il-vittma ta', jew li tkun avversament milquta minn, xi ksur tad-dispożizzjonijiet ta' dan l-Att li jkun il-mertu ta' dawk il-proċedimenti, inkluż konsumatur li hekk jallega jew Għaqda ta' Konsumaturi Reġistrata li taġixxi f'isem konsumaturi b'mod ġenerali, tista' bil-miktub titlob li tiġi ammessa tintervjeni fil-proċedimenti quddiem il-Kummissjoni fi kwalunkwe stadju tagħhom.

(ċ) Għall-finijiet tal-paragrafu (b) ta' din ir-regola, Għaqda ta' Konsumaturi Registrata tfisser Għaqda 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 għandu jkollhom il-jedd li jagħmlu sottomissjonijiet dwar kull kwestjoni li tkun quddiem il-Kummissjoni, kif ukoll li jipprezentaw kull dokument jew prova oħra li jistgħu ikunu rilevanti għal dik il-kwestjoni.

9. Qabel ma tiproċedi 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 bħal 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 imdahhla 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-ġurament.

Meta xhud, imħarrek regolament, ma jidhirx fil-jum li fih jiġi msejjaħ, iċ-*Chairman* jista' jordna lill-Pulizija biex tarresta lil dak ix-xhud u ġġibu 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 ghandha tirrikorri ghad-decizjonijiet taghha ta' qabel u ghall-interpretazzjoni mill-organi ta' l-Unjoni Ewropea dwar il-provvedimenti tad-dispozizzjonijiet rilevanti tat-trattati u d-direttivi ta' l-Unjoni Ewropea relattivi ghall-kompetizzjoni.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 367 ta' l-10 ta' Dicembru, 1994.

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

LAWRENCE GONZI
Speaker

I assent.

(L.S.)

UGO MIFSUD BONNICI
President

23rd December, 1994

ACT No. XXXI of 1994

*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, 1994 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, within the context of this Act.

(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.

(e) 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.

(f) Any member of the Commission shall before the commencement of any case declare any interest he may have in the proceedings.

(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) The following shall be unlawful, 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 subject to the acceptance by the other parties 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 seek the negative clearance of the Director in accordance with the following provisions of this section but, having sought such clearance, such person shall not be precluded from acting in accordance with the said agreement, decision or practice until such negative clearance is granted.

Negative
clearance.

(2) At the request in writing 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 provided that where such negative clearance had been sought in accordance with the provisions of subsection (1) of this section the refusal herein mentioned shall not affect the validity of anything done in accordance with the provisions of the same subsection before that refusal.

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 regulations after consultation with the Commission prescribe that section 5 of this Act shall not apply to any category of agreements, decisions and practices as may be specified in the regulations.

Block
exemptions.

(2) The Minister may in any such regulations 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, or by an undertaking or a complainant through the Director.

(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:

Provided that one or more undertakings which alone or in concert with others have a share below 40% of the relevant market may, notwithstanding the above, be determined 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 not take such action, or make such practice or other matter, before obtaining the approval of the Director therefor.

(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 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 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 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 Order itself or in a subsequent Order.

(3) Price 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 Order is appropriate and necessary, such Price Order shall remain in force, unless previously revoked by the Director, for a period of one year from the decision of the Commission.

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

(6) When a Price 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 in writing to the Commission by an undertaking or an association of undertakings under section 7 or 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 in writing 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 and any other place, or search any means of transport 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 and any other place, or means of transport, 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; however, in the case of a search which is to be carried out in a residential premises, the Director shall always be accompanied by a police officer not below the rank of Inspector.

(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 next 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 reference 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 for Fair Trading may, at the request of the Director or of an undertaking 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 for a period of three months unless it is previously revoked by the Commission or unless the matter under investigation has been determined by the Commission before the said period of three months. Nothing in this subsection shall preclude the Commission from issuing the same Order for a further period or periods of three months:

Provided that such Order may in no case extend beyond a maximum period of one year.

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 has been published makes any act pursuant to such agreement, decision or practice shall be guilty of an offence against this section.

(2) Any person in charge of an undertaking who has reason to believe that an agreement, decision or practice is in breach of subsection (1) of section 5 of this Act and acts in accordance with that agreement, decision or practice without first seeking the negative clearance of the Director as required under subsection (1) of section 6 of this Act, shall be guilty of an offence under this section:

Provided that a person shall not be punished for an offence under this section unless the agreement, decision or practice aforesaid has been declared to be in breach of the said subsection (1) of section 5 by a decision of the Commission published in accordance with the provisions of this Act.

(3) 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:

Provided that where the undertaking or the person against whom the complaint has been made had been given notice of the proceedings before the Commission, in relation to that undertaking or person the decision or order of the Commission in respect of that complaint shall be deemed to have been published on the date on which it was pronounced.

Offences against Price Orders.

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

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:

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

Provided that where the person found guilty of an offence against section 20 of this Act is a retailer with a turnover not exceeding Lm100,000 that person shall be liable to a fine (*multa*) of not less than Lm500 but not more than Lm3,000;

Provided further that where the person so found guilty is the director, manager, secretary or other similar officer of the aforesaid undertaking the said person shall, for the purposes of this section, be deemed to be vested with the legal representation of the same undertaking which accordingly shall be liable *in solidum* with the person found guilty for the payment of the said fine.

(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.

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

Cap. 152.
Cap. 9.

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.

Offences against sections 6 and 10.

(2) The provisions of the provisos of subsection (1) and 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 and of section 21 of the Criminal Code shall not apply with respect to offences referred to in subsection (1) of this section.

Cap. 152.
Cap. 9.

(4) No action for an offence under this section may be instituted without the concurrence of the Commission.

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.

Director may assist prosecution.

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.

(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.

Right of appeal.

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.

Prescription.

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.

Certain matters to be referred to Commission.

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, stay the proceedings and refer the matter to the Commission which shall have the right to determine the question and the Court shall decide the matter in accordance with the decision of the 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.

30. (1) The provisions of this Act shall not apply to any Government department or to any body corporate established by law or to any company or other partnership in which Government, directly or indirectly, holds a controlling interest until such time as the Minister shall by Order in the Gazette declare such department, corporation, company or partnership to be so subject.

Applicability of Act to Government departments, etc.

(2) Any Order made in virtue of subsection (1) of this section shall specify the operations of any department, corporation, company or partnership 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.

31. No action shall lie against any member of the Commission, the Director, or any other person for any act or omission done or omitted by him unless such act or omission were done in bad faith.

Action in good faith.

32. 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 eighteen months from the coming into force of the said section.

Transitory provision.

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 a request in writing made by the Director, or by an undertaking or a complainant through the Director according to the provisions of this Act.

(b) 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 the provisions of this Act constituting the merits of those proceedings, including a consumer who so claims or a Registered Consumers Association acting on behalf of consumers generally, may request in writing to be admitted to intervene in the proceedings before the Commission at any stage thereof.

(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.

Passed by the House of Representatives at Sitting No. 367 of the 10th December, 1994.

RICHARD J. CAUCHI
Clerk to the House of Representatives

LAWRENCE GONZI
Speaker

