

MALTA

ATT Nru XLV tal-2021

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

ATT sabiex jemenda l-Att dwar il-Kompetizzjoni, Kap. 379 u l-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur, Kap. 510 sabiex tiġi implimentata d-Direttiva (UE) 2019/1 tal-Parlament Ewropew u tal-Kunsill tal-11 ta' Diċembru 2018 sabiex l-awtoritajiet tal-kompetizzjoni tal-Istati Membri jingħataw setgħat biex ikunu infurzaturi aktar effettivi, u biex jiġi żgurat il-funzjonament tajjeb tas-suq intern u wkoll biex tipprovdi għall-hwejjeġ anċillari jew inċidentali ma' dawn jew marbuta magħhom.

ACT No. XLV of 2021

AN ACT enacted by the Parliament of Malta.

AN ACT to amend the Competition Act, Cap. 379 and the Malta Competition and Consumer Affairs Authority Act, Cap. 510 to implement Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market and also to provide for such matters ancillary or incidental thereto or connected therewith.

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE VELLA
President

23 ta' Lulju, 2021

ATT Nru XLV tal-2021

Att sabiex jemenda l-Att dwar il-Kompetizzjoni, Kap. 379 u l-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur, Kap. 510 sabiex tiġi implimentata d-Direttiva (UE) 2019/1 tal-Parlament Ewropew u tal-Kunsill tal-11 ta' Diċembru 2018 sabiex l-awtoritajiet tal-kompetizzjoni tal-Istati Membri jingħataw setgħat biex ikunu infurzaturi aktar effettivi, u biex jiġi żgurat il-funzjonament tajjeb tas-suq intern u wkoll biex jipprovdi għall-ħwejjeġ anċillari jew inċidentali ma' dawn jew marbuta magħhom.

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

1. (1) It-titolu fil-qosor ta' dan l-Att huwa l-Att tal-2021 li jemenda l-Att dwar il-Kompetizzjoni u l-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur.

Titolu fil-qosor
u bidu fis-sehh.

(2) Dan l-Att għandu jidhol fis-sehh f'dik id-data li l-Ministru responsabbli għat-turiżmu u l-protezzjoni tal-konsumatur jista' jistabbilixxi b'avviż fil-Gazzetta, u huwa jista' hekk jistabbilixxi dati differenti għal dispożizzjonijiet differenti ta' dan l-Att.

Taqsim I

Emendi għall-Att dwar il-Kompetizzjoni

Emendi għall-Att dwar il-Kompetizzjoni. Kap. 379.

2. Din it-Taqsim temenda l-Att dwar il-Kompetizzjoni u għandha tinqara u tinftiehem haġa waħda mal-Att dwar il-Kompetizzjoni, minn hawn iżjed 'il quddiem f'din it-taqsim msejjaħ "l-Att prinċipali".

Emenda tal-artikolu 2 tal-Att prinċipali.

3. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) minnufih wara t-tifsira "Awtorità" għandha tiżdied it-tifsira ġdida li ġejja:

" "awtorità tal-kompetizzjoni" tfisser l-awtorità nazzjonali tal-kompetizzjoni, il-Kummissjoni Ewropea jew it-tnejn li huma, kif jeħtieġ il-kuntest;"

(b) it-tifsira "Awtorità Nazzjonali dwar il-Kompetizzjoni" għandha tiġi sostitwita b'din li ġejja:

" "Awtorità Nazzjonali tal-Kompetizzjoni" tfisser awtorità nazzjonali tal-kompetizzjoni kif mahtura skont l-Artikolu 35(1) tar-Regolament tal-Kunsill (KE) 1/2003 li hija responsabbli għall-applikazzjoni tal-Artikoli 101 u 102 tat-TFUE;"

(c) minnufih wara t-tifsira "Awtorità Nazzjonali tal-Kompetizzjoni" għandha tiżdied it-tifsira ġdida li ġejja:

" "bejgħ totali dinji" tfisser il-fatturat annwali totali dinji ta' intrapriża u, jew ta' għaqda ta' intrapriži kkonċernati;"

(d) it-tifsira "dħul min-negozju" għandha tiġi mħassra;

(e) minnufih wara t-tifsira "Direttur Ġenerali" għandha tiżdied it-tifsira ġdida li ġejja:

" "dokument" tinkludi informazzjoni rrekordjata fi kwalunkwe forma;"

(f) it-tifsira "grupp ta' intrapriži" għandha tiġi mħassra;

(g) it-tifsira "intrapriża" għandha tiġi sostitwita b'din li ġejja:

" "intrapriża" tfisser kull persuna sew jekk individwu, korp magħqud jew xort oħra, jew kull entità

oħra involuta f'attività ekonomika, irrispettivament mill-istatus legali tagħha u mill-mod li bih tkun iffinanzjata;"

(h) minnufih wara t-tifsira "Ministru" għandha tiżdied it-tifsira ġdida li ġejja:

" "Netwerk Ewropew għall-Kompetizzjoni" tfisser in-netwerk ta' awtoritajiet pubbliċi ffurmat mill-awtoritajiet nazzjonali tal-kompetizzjoni u l-Kummissjoni Ewropea sabiex jipprovdi forum għad-diskussjoni u l-kooperazzjoni fir-rigward tal-applikazzjoni u l-infurzar tal-Artikoli 101 u 102 tat-TFUE;"

(i) minnufih wara t-tifsira "Qorti" għandha tiżdied it-tifsira ġdida li ġejja:

" "sottomissjonijiet riżoluttivi" tfisser preżentazzjoni volontarja minn, jew f'isem, intrapriża u, jew għaqda ta' intrapriži lill-Uffiċċju, li tiddekrivi r-rikonoxximent tal-intrapriża u, jew tal-għaqda ta' intrapriži jew ir-rinunzja tagħha li tikkontesta s-sehem tagħha fi ksur tal-artikoli 5 u, jew 9 tal-Att u, jew tal-Artikoli 101 jew 102 tat-TFUE u r-responsabbiltà tagħha għal dan il-ksur, li tkun tfasslet speċifikament sabiex tippermetti li l-Uffiċċju japplika proċedura simplifikata jew proċedura mhaffa skont l-artikolu 12B ta' dan l-Att;"

4. Il-proviso tal-artikolu 3 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Emenda tal-artikolu 3 tal-Att prinċipali.

"Iżda d-Direttur Ġenerali jista' jiddelega kwalunkwe mis-setgħat tiegħu lil xi uffiċjal fi hdan l-Uffiċċju."

5. L-artikolu 12 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 12 tal-Att prinċipali.

(a) fit-test Malti, fis-subartikolu (1) tiegħu, il-kliem "awtorità nazzjonali dwar il-kompetizzjoni" għandu jiġi sostitwit bil-kliem "awtorità nazzjonali tal-kompetizzjoni";

(b) is-subartikolu (2) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(2) (a) Fil-kors ta' kull investigazzjoni magħmula mill-Uffiċċju skont is-subartikolu (1), id-Direttur Ġenerali jista' jitlob lil kull intrapriża jew għaqda ta' intrapriži sabiex tipprovdi kull tagħrif jew dokument li jkunu aċċessibbli għal tali intrapriża jew għaqda ta' intrapriži, irrispettivament minn fejn ikunu maħżuna,

għall-applikazzjoni tal-artikoli 5 u, jew 9 ta' dan l-Att u, jew l-Artikoli 101 u, jew 102 tat-TFUE, li d-Direttur Ġenerali jkollu għalfejn jaħseb li jkunu meħtieġa għall-kwistjoni li tkun qed tiġi investigata f'dak iż-żmien li fiċ-ċirkustanzi tal-investigazzjoni d-Direttur Ġenerali jqis li jkun raġonevoli:

Iżda tali talbiet għal informazzjoni għandhom ikunu proporzjonati u d-Direttur Ġenerali jista' wkoll jitlob il-mod u l-forma li bihom l-informazzjoni jew id-dokument għandhom jiġu prodotti jew ipprovduti:

Iżda wkoll fil-kors ta' kull investigazzjoni magħmula mill-Uffiċċju skont is-subartikolu (1), id-Direttur Ġenerali jista' wkoll jitlob lil kwalunkwe persuna fiżika jew ġuridika oħra biex tipprovdilu kull informazzjoni jew dokument li jistgħu jkunu rilevanti għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att u, jew l-Artikoli 101 u, jew 102 tat-TFUE fi żmien speċifikat u raġonevoli.

(b) Fil-kors ta' kull investigazzjoni magħmula mill-Uffiċċju skont is-subartikolu (1), id-Direttur Ġenerali jista' wkoll isejjaħ kwalunkwe rappreżentant ta' intrapriża jew għaqda ta' intrapriži, kwalunkwe rappreżentant ta' persuni ġuridiċi oħrajn, u kwalunkwe persuna fiżika oħra, fejn tali rappreżentant jew persuna jistgħu jkollhom informazzjoni rilevanti għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att u, jew l-Artikoli 101 u, jew 102 tat-TFUE, biex jipprezentaw ruħhom għal intervista f'post u ħin kif speċifikat mid-Direttur Ġenerali sabiex iwieġbu għal mistoqsijiet fir-rigward ta' kwalunkwe materja rilevanti għall-investigazzjoni:

Iżda d-Direttur Ġenerali jista' jirrekordja l-intervista fi kwalunkwe mod u forma meqjusa xierqa minnu.

(ċ) L-ebda haġa f'dan is-subartikolu ma għandha tinftiehem illi qed tawtorizza lid-Direttur Ġenerali biex jordna l-produzzjoni ta' xi dokument jew jiġi żvelat xi tagħrif li jista' jkun suġġett għad-dmir tas-sigriet professjonali, salv fejn tali żvelar huwa permess skont il-liġi.

(d) Fil-kors ta' kull investigazzjoni, meta persuna, intrapriża jew għaqda ta' intrapriži jirrispondu għal

mistoqsijiet li jsiru mill-Uffiċċju, kemm jekk bil-miktub u kif ukoll bil-fomm, dik il-persuna, intrapriża jew għaqda ta' intrapriži konċernati ma għandhomx ikunu obbligati li jagħtu xi risposta li tista' tinvolvi ammissjoni dwar l-eżistenza ta' ksur min-naħa tagħhom tal-artikoli 5 u, jew 9 tal-Att u, jew l-Artikoli 101 u, jew 102 tat-TFUE, iżda huma f'kull każ obbligati li jirrispondu għal mistoqsijiet dwar fatti u jipprovdu d-dokumenti.";

(ċ) is-subartikolu (6) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(6) Waqt kull investigazzjoni, kemm matul intervista jew spezzjoni, id-Direttur Ġenerali jista' jiehu dikjarazzjonijiet minn kull persuna, kif ukoll jista' jagħmel kopji ta' kull dokument sottomess lilu, u r-rekord ta' dawk id-dikjarazzjonijiet u ta' dawk il-kopji debitament attestati mid-Direttur Ġenerali jkunu jistgħu jingiebu bhala prova quddiem il-Qorti u quddiem xi Qorti tal-ġustizzja oħra.";

(d) is-subartikolu (7) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(7) (a) Id-Direttur Ġenerali u, jew l-uffiċjali tiegħu awtorizzati minnu u, jew kull persuna oħra awtorizzata jew mahtura mid-Direttur Ġenerali, debitament awtorizzati b'mandat maħruġ minn Maġistrat, jistgħu għall-finijiet ta' kull investigazzjoni skont dan l-artikolu, iwettqu kull spezzjoni neċessarja għall-għarrieda u jidhlu u jagħmlu tfittxija f'kull bini, art jew mezz ta' trasport ta' intrapriži u, jew għaqda ta' intrapriži għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att u, jew l-Artikoli 101 u, jew 102 tat-TFUE. Cap. 379.

(b) Id-Direttur Ġenerali u, jew l-uffiċjali tiegħu awtorizzati minnu u, jew kull persuna oħra awtorizzata jew mahtura mid-Direttur Ġenerali, debitament awtorizzati b'mandat maħruġ minn Maġistrat, jistgħu, għall-finijiet ta' kull investigazzjoni skont dan l-artikolu, iwettqu kull spezzjoni neċessarja għall-għarrieda u jidhlu u jagħmlu tfittxija f'kull bini, art jew mezz ta' trasport, li ma humiex dawk imsemmija fil-paragrafu (a) ta' dan is-subartikolu, inkluż id-djar ta' diretturi, manigers, u membri oħra tal-persunal ta' intrapriži jew għaqdiet ta' intrapriži, meta d-Direttur Ġenerali jkollu suspett raġjonevoli li d-dokumenti li jirrelataw mal-intrapriża u, jew għaqda ta' intrapriži u mas-sugġett tal-ispezzjoni, li jistgħu jkunu rilevanti sabiex

jigi ppruvat ksur tal-artikoli 5 u, jew 9 ta' dan l-Att u, jew tal-Artikoli 101 u, jew 102 tat-TFUE qed jinżammu f'dak il-bini, art jew mezz ta' trasport:

Iżda l-Maġistrat sabiex jiddeċiedi jekk joħroġx mandat taħt is-subartikoli (7)(a) u (b) għandu jiżgura li l-miżuri koersivi maħsuba la jkunu arbitrarji u lanqas eċċessivi.

(ċ) Waqt kull tfittxija skont il-paragrafi (a) u (b) ta' dan is-subartikolu, id-Direttur Ġenerali u, jew kull uffiċjal awtorizzat u, jew kull persuna oħra awtorizzata jew mahtura mid-Direttur Ġenerali għandu jkollhom is-setgħa li:

(i) jispezzjonaw u jeżaminaw kull oġġett jew dokument, inkluż il-kotba u rekords oħrajn marbuta man-negozju, irrispettivament mill-mezz li fuqu jkunu maħżuna, u jaċċessaw kwalunkwe informazzjoni jew dokument li huma aċċessibbli għall-entità soġġetta għall-ispezzjoni:

Iżda dan jinkludi s-setgħa li jiġu mfittxija dokumenti, fajls jew data fuq apparat li ma jkunx identifikat b'mod preċiż minn qabel:

Iżda wkoll is-setgħa li jiġu eżaminati kotba jew rekords tkopri l-forom kollha ta' korrispondenza, inkluż messaġġi elettronici, irrispettivament minn jekk jidherx li dawn għadhom ma nqrawx jew tħassru;

(ii) jaqbd u jikkonfiskaw kull oġġett jew dokument, jew jieħdu jew jiksbu, fi kwalunkwe forma kopji ta', jew estratti minn tali kotba jew rekords jew kull dokument ieħor, u meta jikkunsidrawh xieraq, li jkomplu jwettqu tali tfittxijiet għall-informazzjoni u s-selezzjoni ta' kopji jew estratti fil-bini tal-Uffiċċju jew fi kwalunkwe bini dezinjat ieħor;

(iii) jirrikjedu li kull informazzjoni li hija maħżuna f'kompjuter jew f'kull oġġett jew apparat ieħor inklużi servers esterni u servizzi ta' cloud li huwa aċċessibbli mill-bini, art jew mezz ta' trasport, u li d-Direttur Ġenerali u, jew l-uffiċjali tiegħu jqisu rilevanti għall-investigazzjoni, jigi mogħti lilhom

f'għamla li tista' tingarr u li tkun viżibbli u legibbli;

(iv) jordnaw li l-oġġetti jew id-dokumenti ma jiġux imneħħija minn dak il-bini, art jew mezz ta' trasport;

(v) jagħlqu u jissigillaw xi parti jew il-partijiet kollha ta' dak il-bini, art jew mezz ta' trasport, jew jissigillaw kwalunkwe kotba jew rekords jew kull oġġett jew dokument ieħor għall-perjodu tal-ispezzjoni u sa fejn huwa meħtieġ għall-ispezzjoni;

(vi) jistaqsu lil kwalunkwe rappreżentant jew membru jew persunal tal-intrapriża jew għaqda ta' intrapriži konċernati għal spjegazzjoni ta' kwalunkwe fatt jew dokument relatat mas-sugġett u l-għan tal-ispezzjoni, jew jiddikjaraw skont l-aħjar għarfien tagħhom fejn jinstabu dawk id-dokumenti u jzommu rekord tat-twegibiet;

(vii) jieħdu kull pass li jidhrilhom neċessarju sabiex jikkonservaw kull oġġett jew dokument jew sabiex jipprevjenu kwalunkwe interferenza ma' dak l-oġġett jew dokument.

(d) Minkejja kwalunkwe dispożizzjoni li tinstab fil-Kodiċi Kriminali, id-Direttur Ġenerali għandu jkollu d-dritt ta' appell minn deċiżjoni tal-Qorti tal-Maġistrati li tirrifjuta milli toħroġ mandat taħt dan is-subartikolu, quddiem il-Qorti ta' Appell Kriminali fi żmien hamest ijiem mid-data ta' dik id-deċiżjoni u l-Qorti ta' Appell Kriminali għandha tara li tiddeċiedi fl-iqsar żmien possibbli.";

Kap. 9.

(e) is-subartikolu (8) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(8) (a) Il-mandat imsemmi fis-subartikoli (7)(a) u (b) għandu jispeċifika s-sugġett, l-għan tal-ispezzjoni, id-data li fiha l-ispezzjoni għandha tibda u l-penalitajiet rilevanti pprovduti fl-artikolu 21.

(b) Is-setgħat mogħtija bl-artikolu 12(7) għandhom jiġu eżerċitati mid-Direttur Ġenerali u, jew l-uffiċjali tiegħu u, jew xi persuna oħra awtorizzata jew maħtura mid-Direttur Ġenerali, wara l-produzzjoni ta' mandat maħruġ skont l-imsemmi artikolu.

(ċ) Id-Direttur Ġenerali u, jew kull wieħed mill-uffiċjali tiegħu u, jew xi persuna awtorizzata jew mahtura mid-Direttur Ġenerali sabiex jidhlu fil-bini, art jew mezz ta' trasport bis-saħħa ta' mandat mahruġ skont is-subartikoli (7)(a) u (b), jistgħu jieħdu magħhom dak l-apparat li jidhrilhom li jkun neċessarju."

Emenda tal-
artikolu 12A tal-
Att prinċipali.

6. L-artikolu 12A tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Meta, wara investigazzjoni, id-Direttur Ġenerali jikkunsidra li seta' seħħ ksur tal-artikoli 5 u, jew 9 ta' dan l-Att u, jew ksur tal-Artikolu 101 u, jew 102 tat-TFUE, huwa għandu jipprezenta fil-Qorti rikors guramentat:

Izda għall-għanijiet ta' dan is-subartikolu, id-Direttur Ġenerali jista' jikkunsidra wkoll illi l-ksur tal-artikolu 5 u, jew 9 tal-Att u, jew il-ksur tal-Artikolu 101 u, jew 102 tat-TFUE ikun twettaq f'xi żmien fil-pasat:

Izda wkoll għall-għanijiet tal-proviso preċedenti, huwa irrilevanti jekk il-ftehim, id-deċiżjoni, il-prattika mifthiema jew l-imġiba inkwistjoni tkomplex teżisti:

Izda wkoll meta d-Direttur Ġenerali jikkunsidra li ftehim jew il-prattika miftiehma jkser l-artikolu 5(1) ta' dan l-Att u, jew l-Artikolu 101(1) tat-TFUE, id-Direttur Ġenerali jista' jiftaħ proċeduri kontra numru ta' intrapriżi li jkun inqas minn dak li effettivament huma parti, jew kienu parti minn dak il-ftehim jew Prattika miftiehma, jew li huma jew li kienu qed jipparteċipaw f'dak l-aġir.";

(b) fil-paragrafu (ċ) tas-subartikolu (2) tiegħu l-kliem "Jinkludi talba" għandu jiġi sostitwit bil-kliem "Fejn hu xieraq, jinkludi talba";

(ċ) fis-subartikolu (3) tiegħu l-kliem "tal-investigazzjoni mwettqa minnu." għandu jiġi sostitwit bil-kliem "tal-investigazzjoni mwettqa minnu:" u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Izda meta d-Direttur Ġenerali jiftaħ proċeduri li fir-rigward tagħhom kien irċieva lment, huwa jista'

jipprovdi lil min għamel l-ilment kopja tal-verżjoni mhux kunfidenzjali tar-rapport.";

(d) is-subartikolu (6) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(6) Waqt il-proċeduri tal-Qorti, l-intrapriża u, jew l-għaqda ta' intrapriži konċernati li jkunu ġew notifikati bir-rikors ġuramentat, għandhom, fuq talba magħmula għal dan il-għan, ikunu intitolati li jkollhom aċċess għall-fajl dwar l-investigazzjoni tal-każ tagħhom, bla ħsara għannuqqas ta' żvelar ta' informazzjoni jew dokumenti identifikati mid-Direttur Ġenerali li jkun fihom sigrieti tannegozju jew informazzjoni kunfidenzjali oħra, jew dokumenti interni tad-Direttur Ġenerali jew tal-Awtoritajiet dwar il-Kompetizzjoni ta' Stati Membri oħra. Id-Direttur Ġenerali għandu jipprovdi aċċess għall-fajl tal-investigazzjoni f'kull żmien:

Iżda kwalunkwe dokument li jifforma parti mill-aċċess għall-fajl jista' jiġi pprovdut mid-Direttur Ġenerali lill-konvenut f'seduti differenti.";

(e) is-subartikolu (7) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(7) Fl-interpretazzjoni ta' dan l-Att u ta' kull regolament magħmul tahtu u fl-eżerċizzju tar-responsabbiltajiet tiegħu taht dan l-Att u taht kull regolament magħmul tahtu, id-Direttur Ġenerali għandu jirrikorri għas-sentenzi tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea, għad-deċiżjonijiet u stqarrijiet relevanti tal-Kummissjoni Ewropea inkluż avviżi interpretattivi dwar id-dispożizzjonijiet relevanti tat-TFUE u tal-legiżlazzjoni sekondarja relattiva għall-kompetizzjoni u jista' jirrikorri għad-deċiżjonijiet tiegħu u għal dawk tal-Qorti, u għal dawk tat-Tribunal tal-Appell għall-Kompetizzjoni u għall-Konsumatur u tal-Kummissjoni għall-Kummerċ Ġust:

Iżda d-Direttur Ġenerali jista' jirrikorri għal sorsi oħra sakemm ikunu konsistenti mas-sentenzi rigward il-liġi dwar il-kompetizzjoni tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea u d-deċiżjonijiet u l-istqarrijiet tal-Kummissjoni Ewropea."; u

(f) minnufih wara s-subartikolu (7) tiegħu għandu jiżdied is-subartikolu (8) ġdid li ġej:

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"(8) Minkejja kull dispożizzjoni oħra li tinstab fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, l-evidenza ammissibbli quddiem il-Qorti u fil-każ ta' investigazzjoni, quddiem l-Uffiċċju, għandha tinkludi dokumenti, stqarrijiet orali, messagġi elettronici, reġistrazzjonijiet u l-oġġetti kollha l-oħra li jkun fihom l-informazzjoni, irrispettivament mill-forma tagħha u l-mezz li fuqu l-informazzjoni hija maħżuna."

Emenda tal-artikolu 12B tal-Att prinċipali.

7. L-artikolu 12B tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Id-Direttur Ġenerali flimkien ma' kwalunkwe intrapriża u, jew għaqda ta' intrapriži għandhom id-dritt jitolbu, kemm fil-kors tal-investigazzjoni quddiem l-Uffiċċju jew fi kwalunkwe stadju wara l-għeluq tal-imsemmija investigazzjoni, li l-investigazzjoni jew il-proċeduri quddiem il-Qorti, skont il-każ, jiġu terminati b'kunsens reċiproku bejn id-Direttur Ġenerali u l-intrapriża u, jew l-għaqda ta' intrapriži konċernati permezz ta' proċedura ta' riżoluzzjoni li tkun tinkludi s-sejba ta' ksur skont l-artikolu 13(1) u l-impożizzjoni ta' penali mill-Qorti skont l-artikolu 21(1) kif provdut fid-dispożizzjonijiet ta' dan l-artikolu.";

(b) fis-subartikolu (2) tiegħu l-kliem "li tinkludi l-impożizzjoni ta' penali minn din l-imsemmija Qorti:" għandhom jiġu sostitwiti bil-kliem "li tinkludi s-sejba ta' ksur skont l-artikolu 13(1) u l-impożizzjoni ta' penali skont l-artikolu 21(1) minn din l-imsemmija Qorti.";

(ċ) "fis-subartikolu (5) tiegħu l-kliem, "permezz ta' rikors kongunt li għandu jiġi pprezentat quddiem il-Qorti" għandhom jiġu sostitwiti bil-kliem "quddiem l-Uffiċċju";

(d) is-subartikolu (6) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(6) (i) Id-dokumenti u l-informazzjoni skambjati bejn id-Direttur Ġenerali u l-intrapriża u, jew l-għaqda ta' intrapriži konċernati waqt il-proċedura ta' riżoluzzjoni huma kunfidenzjali:

Iżda l-informazzjoni mogħtija skont is-subartikolu (5) għandha tkun kunfidenzjali fir-rigward ta' partijiet oħra soġġetti għall-investigazzjoni rilevanti

quddiem l-Uffiċċju, hliet meta d-Direttur Ġenerali jkun ta awtorizzazzjoni espliċita minn qabel għall-iżvelar.

(ii) Sottomissjonijiet riżoluttivi għandhom ikunu aċċessibbli biss lill-intrapriżi u, jew lill-għaqda ta' intrapriżi li jkunu soġġetti għall-investigazzjoni rilevanti quddiem l-Uffiċċju jew huma soġġetti għall-proċeduri rilevanti quddiem il-Qorti istitwiti skont l-Att jew huma soġġetti għal kwalunkwe proċeduri rilevanti quddiem il-Qorti tal-Appell u unikament għall-għanijiet li jeżerċitaw id-drittijiet tagħhom ta' difiża.

(iii) Il-parti li tkun kisbet aċċess għall-fajl waqt l-investigazzjonijiet quddiem l-Uffiċċju jew il-proċeduri quddiem il-Qorti jew il-Qorti tal-Appell tista' tuża biss l-informazzjoni meħuda minn sottomissjonijiet riżoluttivi pprezentati taht dan l-Att fejn ikun neċessarju, sabiex teżerċita d-dritt tad-difiża tagħha fi proċeduri quddiem il-Qorti ta' Malta f'każijiet li jkunu direttament relatati mal-każ fejn ikun inġhata l-aċċess, u unikament fejn dawn il-proċeduri jikkonċernaw:

(a) l-allokkazzjoni bejn il-partecipanti f'kartell ta' penali imposta *in solidum* fuqhom mill-Qorti; jew

(b) l-appell quddiem il-Qorti tal-Appell minn sentenza tal-Qorti li tkun sabet ksur tal-artikoli 5 u, jew 9 tal-Att jew tal-Artikoli 101 u, jew 102 tat-TFUE.

(iv) Il-partijiet li jingħataw aċċess għas-sottomissjonijiet riżoluttivi flimkien mar-rappreżentanti legali tagħhom li jingħataw aċċess f'isimhom, ma jistgħux jagħmlu xi kopja b'mezzi mekkaniċi jew elettronici ta' xi informazzjoni fis-sottomissjonijiet riżoluttivi li għalihom gie mogħti l-aċċess.";

(e) is-subartikolu (7) tiegħu għandu jiġi emendat kif ġej:

(i) fil-parti introduttiva li tippreċedi l-paragrafu (a) tiegħu, il-kliem "Is-sottomissjonijiet riżoluttivi li jridu jiġu inklużi fir-rikors kongunt għandhom ikollhom dikjarazzjoni volontarja mill-intrapriża u, jew mill-għaqda ta' intrapriżi konċernati, li jkollha l-informazzjoni li ġejja:" għandhom jiġu sostitwiti bil-kliem "Is-sottomissjonijiet riżoluttivi sottomessi quddiem l-Uffiċċju skont is-

subartikolu (5) għandhom jiġu preżentati flimkien mar-rikors kongunt u għandu jkun fihom dikjarazzjoni volontarja mill-intrapriża u, jew mill-għaqda ta' intrapriži konċernati, li jkun fiha l-informazzjoni li ġejja:";

(ii) fil-paragrafu (ċ) tiegħu l-kelma "massimu" għandha tiġi mhassra;

(iii) fil-paragrafu (f) tiegħu l-kliem "kontestazzjoni fi kwalunkwe mod tal-proċedura ta' riżoluzzjoni jew is-sentenza tal-Qorti, inkluż il-penali; u" għandhom jiġu sostitwiti bil-kliem "kontestazzjoni fi kwalunkwe mod tal-proċedura ta' riżoluzzjoni, l-investigazzjoni marbuta mal-proċedura ta' riżoluzzjoni, jew is-sentenza tal-Qorti, inkluż il-penali; u kif ukoll rinunzja għal kwalsiasi azzjoni jew pretensjoni derivanti mill-istess proċedura ta' riżoluzzjoni u, jew relatata mal-investigazzjoni marbuta mal-proċedura ta' riżoluzzjoni, u jew relatata mas-sentenza tal-Qorti, u jew mal-penali;";

(iv) il-paragrafu (g) tiegħu għandu jiġi sostitwit b'dan li ġejj:

"(g) dikjarazzjoni tal-intrapriża u, jew tal-għaqda tal-intrapriži konċernati li qiegħda taqbel mal-kontenut tas-sottomissjonijiet riżoluttivi u li qiegħda taqbel mal-fatti u l-evalwazzjoni ġuridika tal-fatti tal-ksur kif stabbilit mid-Direttur Ġenerali fir-rikors kongunt; u ";

(v) minnufih wara l-paragrafu (g) tiegħu għandu jiżdied dan il-paragrafu (h) ġdid li ġejj:

"(h) dikjarazzjoni tal-intrapriża u, jew tal-għaqda tal-intrapriži konċernati li qiegħda taqbel illi rikors kongunt jiġi ppreżentat fil-Qorti flimkien mad-Direttur Ġenerali sabiex jitermina l-investigazzjoni jew il-proċeduri, skont il-każ, permezz tal-proċedura ta' riżoluzzjoni, u sabiex titlob lill-Qorti sabiex tagħti sentenza abbażi tar-rikors kongunt:

Iżda r-rikors kongunt għandu jinkludi wkoll l-informazzjoni li ġejja mid-Direttur Ġenerali:

(i) deskrizzjoni qasira tal-fatti tal-ksur u l-evalwazzjoni ġuridika tal-fatti tal-ksur; u

(ii) l-ammont speċifiku tal-penali li jkun

qiegħed jitlob id-Direttur Ġenerali sabiex tiġi imposta fuq l-intrapriża u, jew l-għaqda ta' intrapriži konċernati;" u

(f) fis-subartikolu (9) tiegħu l-kliem "billi jnaqqas l-ammont tal-penali mitluba lill-Qorti kontra l-intrapriża u, jew l-għaqda ta' intrapriži bil-perċentwali ta' bejn għaxra fil-mija u ħamsa u tletin fil-mija" għandhom jiġu sostitwiti bil-kliem "billi jnaqqas l-ammont tal-penali li kieku kienet tiġi mitluba mid-Direttur Ġenerali sabiex tiġi imposta mill-Qorti skont l-artikolu 21(1) tal-Att b'għaxra sa ħamsa u tletin fil-mija (10-35%)".

8. L-artikolu 12Ċ tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 12Ċ tal-Att prinċipali.

(a) fis-subartikolu (4) tiegħu l-kliem "sigrieti tan-negozju u informazzjoni kunfidenzjali oħra." għandu jiġi sostitwit bil-kliem "sigrieti tan-negozju jew informazzjoni kunfidenzjali oħra:" u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Izda d-Direttur Ġenerali jista' jitlob l-awtorizzazzjoni tal-Qorti sabiex ifittex il-fehmiet tal-partecipanti tas-suq jew ta' xi terzi persuni oħra billi jinfurmahom direttament rigward ir-rabtiet proposti, liema talba għandha tinkludi wkoll l-awtorizzazzjoni tal-Qorti dwar il-mezz li permezz tiegħu l-imsemmija rabtiet proposti għandhom jiġu ppubblikati u ż-żmien li fih għandhom jiġu riċevuti l-fehmiet kollha tal-partecipanti tas-suq jew ta' xi terzi persuni oħra fir-reġistru tal-Qorti.";

(b) minnufih wara s-subartikolu (6) tiegħu għandu jiżdied is-subartikolu (7) ġdid li ġej:

"(7) L-Uffiċċju għandu jkollu s-setgħat sabiex jissorvelja l-implimentazzjoni effettiva tar-rabtiet imsemmija fis-subartikolu (1) jew fl-artikolu 17 u għal dan il-għan, l-artikolu 12 għandu japplika *mutatis mutandis*."

9. L-artikolu 12D tal-Att prinċipali għandu jiġi sostitwit b'dan li

Sostituzzjoni tal-artikolu 12D tal-Att prinċipali.

gej:

"Aċċess għall-fajl mill-partijiet u limitazzjonijiet fuq l-użu ta' informazzjoni.

12D. Il-kategoriji ta' informazzjoni li ġejjin miksuba minn parti waqt investigazzjoni tal-Uffiċċju jew waqt proċeduri quddiem il-Qorti ma għandhomx jintużaw minn dik il-parti fi proċeduri quddiem il-Qrati Maltin, sakemm il-Qorti ma tkunx itterminat il-proċeduri tagħha fir-rigward tal-partijiet kollha taht investigazzjoni billi tagħti sentenza msemmija fl-artikoli 12Ċ, 13 jew 13A, jew sakemm ma tkunx itterminat il-proċeduri tagħha b'xi mod ieħor, jew sakemm l-Uffiċċju ma jkunx temm l-investigazzjoni tiegħu fir-rigward tal-partijiet kollha taht investigazzjoni billi jagħti deċiżjoni skont l-artikolu 17, jew sakemm ma jkunx temm l-investigazzjoni tiegħu b'xi mod ieħor:

(a) informazzjoni li tkun giet ippreparata minn persuni fiżiċi jew ġuridiċi oħra speċifikament għall-investigazzjoni mwettqa mill-Uffiċċju jew għall-proċeduri quddiem il-Qorti;

(b) informazzjoni li l-Uffiċċju hejja u baġat lill-partijiet matul l-investigazzjoni tiegħu; u

(ċ) sottomissjonijiet riżoluttivi li ġew irtirati."

Emenda tal-artikolu 13 tal-Att prinċipali.

10. Minnufih wara s-subartikolu (2) tal-artikolu 13 tal-Att prinċipali għandu jiżdied is-subartikolu (3) ġdid li ġej:

"(3) Meta l-Uffiċċju jkun informa lill-Kummissjoni Ewropea skont l-artikolu 11(3) tar-Regolament (KE) Nru 1/2003 u l-Qorti tiddeċiedi li ma hemmx bażi sabiex tkompli l-proċeduri quddiemha u bħala riżultat tagħlaq dawk il-proċeduri, l-Uffiċċju għandu jinforma lill-Kummissjoni Ewropea b'dan."

Emenda tal-artikolu 13B tal-Att prinċipali.

11. L-artikolu 13B tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fl-ewwel proviso tas-subartikolu (2) tiegħu l-kliem "skont l-artikoli 12Ċ jew 13 tal-Att" għandhom jiġu sostitwiti bil-kliem "skont l-artikoli 12Ċ, 13, 13A jew 21 tal-Att";

(b) fis-subartikolu (6) tiegħu l-kliem "għall-infurzar tas-sentenzi" għandhom jiġu sostitwiti bil-kliem "għall-infurzar tas-sentenzi u d-digriet";

(ċ) fis-subartikolu (7) tiegħu l-kliem "tista' tirrikorri" għandu jiġi sostitwit bil-kliem "għandha tirrikorri"; u

(d) minnufih wara s-subartikolu (7) tiegħu għandu jiżdied is-subartikolu (8) ġdid li ġej:

"(8) Il-proċeduri quddiem il-Qorti dwar l-allegat ksur tal-artikoli 5 u, jew 9 tal-Att u, jew tal-Artikolu 101 jew 102 tat-TFUE, inkluż l-eżerċizzju tas-setgħat mid-Direttur Ġenerali u l-Uffiċċju taht dan l-Att u, jew kull regolament magħmul tahtu li japplikaw dawk l-artikoli, għandhom jikkonformaw mal-prinċipji ġenerali tad-dritt tal-Unjoni u l-Karta tad-Drittijiet Fundamentali tal-Unjoni Ewropea.".

12. L-artikolu 14 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 14 tal-Att prinċipali.

(a) fis-subartikolu (2) tiegħu l-kliem "huwa għandu jinforma b'dan lil min għamel l-ilment." għandu jiġi sostitwit bil-kliem "huwa għandu jinforma b'dan lil min għamel l-ilment:" u minnufih wara għandu jiżdied dan il-proviso ġdid li ġej:

"Iżda fejn, wara li giet infurmata l-Kummissjoni Ewropea skont l-Artikolu 11(3) tar-Regolament (KE) Nru 1/2003, l-Uffiċċju jiddeciedi li ma hemmx raġunijiet sabiex ikompli l-investigazzjoni u bħala riżultat jagħlaq l-investigazzjoni, l-Uffiċċju għandu jinforma b'dan lill-Kummissjoni Ewropea.";

(b) fis-subartikolu (4) tiegħu l-kliem "fi żmien għoxrin jum mid-data tas-sentenza tal-Qorti." għandu jiġi sostitwit bil-kliem "fi żmien għoxrin jum mid-data tas-sentenza tal-Qorti:" u minnufih wara għandu jiżdied dan il-proviso ġdid li ġej:

"Iżda fil-każ ta' proċeduri istitwiti taht dan l-artikolu quddiem il-Qorti jew quddiem il-Qorti tal-Appell, id-Direttur Ġenerali għandu jaġixxi bħala parti ufficjali fil-proċeduri u għandu jgawdi mill-istess drittijiet li jappartjenu lill-kontroparti tiegħu.".

13. L-artikolu 15 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 15 tal-Att prinċipali.

(a) l-ewwel proviso tas-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"Iżda kull digriet li jimponi miżuri *interim* maħruġ skont din id-dispożizzjoni għandu jkun eżegwibbli mid-data ta' meta jingħata u kull miżura interim għandha tkun proporzjonata u għandha tapplika għal perjodu ta' żmien speċifiku li jiġi ddeterminat mill-Qorti, jew sakemm tingħata sentenza finali mill-Qorti fuq il-mertu:";

(b) fis-subartikolu (2) tiegħu l-kliem "flimkien mad-dokumenti kollha li jsostnu t-talba li giet ipprezentata."

għandhom jiġu sostitwiti bil-kliem "flimkien mad-dokumenti kollha li jsostnu t-talba li giet ipprezentata:" u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda flimkien mar-rikors, id-Direttur Ġenerali jista' wkoll jinkludi rapport fil-lingwa Ingliża bi kwalunkwe riżultanzi in sostenn tat-talba tiegħu.";

(ċ) is-subartikolu (3) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(3) Ir-rikors għandu jiġi notifikat lill-intrapriżi u, jew lill-għaqdiet ta' intrapriżi konċernati li għandhom jipprezentaw risposta fi żmien tmint ijiem mid-data tan-notifika tar-rikors, li għandha tinkludi s-sottomissjonijiet kollha li għandhom isiru flimkien mad-dokumenti kollha li jsostnu r-risposta li qed tiġi pprezentata:

Iżda l-Qorti tista' tnaqqas l-imsemmi perjodu f'dan is-subartikolu, kif hija tħoss xieraq fiċ-ċirkostanzi.";

(d) fis-subartikolu (5) tiegħu l-kliem "mid-data tan-notifika tar-rikors." għandu jiġi sostitwit bil-kliem "mid-data tan-notifika tar-rikors:" u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda appell ipprezentat skont dan is-subartikolu ma għandux ikollu l-effett li jissospendi kwalunkwe miżuri interim imposti mill-Qorti.";

(e) minnufih wara s-subartikolu (6) tiegħu għandu jiżdied is-subartikolu (7) ġdid li ġej:

"(7) L-Uffiċċju għandu jinforma lin-Netzwerk Ewropew għall-Kompetizzjoni dwar il-miżuri interim imposti fil-każ ta' sejba ta' ksur *prima facie* tal-Artikolu 101 u, jew l-Artikolu 102 tat-TFUE, imsemmi fis-subartikolu (1)."

għej:

"Immunità jew riduzzjoni tal-penali għal ksur tal-artikolu 5 tal-Att u, jew l-Artikolu 101 tat-TFUE.

16. Meta intrapriża u jew, għaqda ta' intrapriži tikkoopera mal-Uffiċċju biex tikxef ftehim bejn intrapriži u, jew deċiżjoni minn għaqda ta' intrapriži u, jew xi prattika miftiehma li tikser l-artikolu 5 ta' dan l-Att u, jew l-Artikolu 101 tat-TFUE u fejn l-eżistenza ta' tali ftehim, deċiżjoni jew prattika miftiehma tkun parzjalment jew kompletament moħbija, id-dispożizzjonijiet misjuba fir-regolamenti dwar l-Immunità mill-Penali u t-Tnaqqis tal-Penali f'Investigazzjonijiet dwar Kartelli għandhom *mutatis mutandis* japplikaw."

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15. L-artikolu 17 tal-Att prinċipali għandu jiġi sostitwit b'dan li għej:

Sostituzzjoni tal-artikolu 17 tal-Att prinċipali.

"Deċiżjoni ta' rabtiet mid-Direttur Ġenerali.

17. (1) Minkejja kull haġa li tinstab f'dan l-Att, id-Direttur Ġenerali jista' fid-diskrezzjoni tiegħu, minflok jibda proċeduri ġudizzjari skont l-artikolu 12A ta' dan l-Att sabiex jitlob lill-Qorti biex tagħti sentenza fejn tiddikjara rabtiet ikunu vinkolanti fuq intrapriži jew għaqdiet ta' intrapriži skont l-artikolu 12Ċ ta' dan l-Att, jiddeċiedi li johroġ deċiżjoni ta' rabtiet fejn jagħmel l-irbit vinkolanti fuq l-intrapriża jew l-għaqda ta' intrapriži.

(2) Għall-għanjiet tas-subartikolu (1), f'investigazzjoni mibdija bil-ħsieb li tiġi adottata deċiżjoni li tesigi li l-ksur tal-artikoli 5 u, jew 9 ta' dan l-Att u, jew l-Artikoli 101 u, jew 102 tat-TFUE għandu jiġi fi tmiemu, id-Direttur Ġenerali jista', wara li b'mod formali jew informali jitlob l-opinjoni tal-parteciċipanti fis-suq, permezz ta' deċiżjoni jrendi vinkolanti r-rabtiet offruti minn intrapriži jew l-għaqdiet ta' intrapriži, fejn dawn ir-rabtiet jindirizzaw it-tħassib espress mid-Direttur Ġenerali. Deċiżjoni bħal din tista' tiġi adottata għal perjodu speċifikat, u għandha tikkonkludi li ma jkunx għad hemm raġunijiet għal azzjoni mid-Direttur Ġenerali:

Iżda d-Direttur Ġenerali jista' jerga' jiftaħ il-proċeduri mill-ġdid meta jirriżultalu illi jkun hemm bidla materjali fi kwalunkwe wieħed mill-fatti li fuqhom tkun ibbażata d-deċiżjoni, jew fejn l-intrapriża jew l-għaqda tal-intrapriži konċernati jkunu aġixxew b'mod li jmur kontra l-irbit tagħhom, jew fejn id-deċiżjoni msemmija f'dan is-subartikolu giet ibbażata fuq tagħrif provdut mill-partijiet li kienet mhux kompluta, inkorretta jew qarrieqa.

(3) (a) Meta d-Direttur Ġenerali jkun bihsiebu jadotta deċiżjoni taħt dan l-artikolu, hu għandu minbarra metodi oħra li d-Direttur Ġenerali jista' jadotta biex jitlob l-opinjoni tal-partecipanti fis-suq, jippubblika taqsira konċiża tal-każ u l-kontenut ewlieni tal-irbiet jew tal-kors t'azzjoni proposta.

(b) Terzi persuni interessati jistgħu jissottomettu l-osservazzjonijiet tagħhom fit-terminu ta' żmien iffissat mid-Direttur Ġenerali fil-pubblikazzjoni.

(c) It-terminu ta' żmien imsemmi fil-paragrafu (b) ma jistax ikun inqas minn xahar.

(d) Fil-pubblikazzjoni msemmija fil-paragrafu (a) id-Direttur Ġenerali għandu jieħu kont tal-interess legittimu tal-intrapriżi fil-protezzjoni tas-sigriet tan-negozju jew informazzjoni kunfidenzjali oħra.

(4) Kull persuna, intrapriża jew għaqda ta' intrapriżi kkonċernati jistgħu jikkontestaw, permezz ta' rikors ppreżentat quddiem il-Qorti, kull deċiżjoni ta' rabtiet adottata mid-Direttur Ġenerali fi żmien għoxrin jum mid-data tal-pubblikazzjoni tad-deċiżjoni fuq il-websajt tal-Awtorità:

Iżda r-rikors għandu jiġi notifikat lill-imsemmi Direttur Ġenerali u l-istess Direttur Ġenerali għandu jippreżenta r-risposta tiegħu fi żmien għoxrin ġurnata mid-data tan-notifika tar-rikors.

(5) Il-Qorti tista' tikkonferma fl-intier jew in parti, jew timmodifika jew tħassar id-deċiżjoni tad-Direttur Ġenerali.

(6) Id-Direttur Ġenerali u kull parti fil-proċeduri quddiem il-Qorti li jhossuhom aggravati b'sentenza tal-Qorti skont dan l-artikolu jistgħu jappellaw fuq punt ta' liġi u, jew ta' fatt quddiem il-Qorti tal-Appell permezz ta' rikors ippreżentat fir-reġistru ta' dik il-Qorti, fi żmien għoxrin ġurnata mid-data ta' dik is-sentenza:

Iżda fil-każ ta' proċeduri istitwiti taħt dan l-artikolu quddiem il-Qorti jew quddiem il-Qorti tal-Appell, id-Direttur Ġenerali għandu jaġixxi bħala parti mill-proċeduri u għandu jgawdi mill-istess drittijiet li jappartjenu lill-kontroparti tiegħu.

Kap. 12. (7) Mal-pubblikazzjoni tad-deċiżjoni tad-Direttur Ġenerali fit-termini tal-artikolu 19 dik id-deċiżjoni għandha, bla ħsara għad-drittijiet stipulati taht dan l-artikolu, tikkostitwixxi titolu eżekuttiv għall-finijiet u l-effetti kollha tat-Titolu VII tat-Taqsima I tat-Tieni Ktieb tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili:

Kap. 12. Izda, minkejja id-dispożizzjonijiet tal-artikolu 256(2) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, it-titolu eżekuttiv imsemmi f'dan is-subartikolu ma jkunx infurzabbli qabel ma jgħaddu għoxrin ġurnata mid-data ta' meta d-deċiżjoni tkun ippubblikata fuq il-websajt tal-Awtorità u dik id-deċiżjoni ma tkunx ġiet ikkontestata.

Kap. 510. (8) Mingħajr preġudizzju għall-paragrafu (ċ) tas-subartikolu (1) tal-artikolu 14 tal-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur, għall-għanjet ta' dan l-artikolu l-Uffiċċju:

(a) għandu jkollu wkoll ir-responsabbiltà li jiddetermina u jrażżan prattiċi restrittivi permezz tal-ħruġ ta' deċiżjoni ta' rabtiet; u

(b) fir-rigward tal-applikazzjoni tal-Artikoli 101 u 102 tat-TFUE, flimkien mal-Qorti għandu jaġixxi bħala l-awtorità tal-kompetizzjoni kompetenti skont ir-Regolament tal-Kunsill (KE) Nru 1/2003 fuq l-implimentazzjoni tar-regoli dwar il-kompetizzjoni mniżżla fl-Artikoli 81 u 82 tat-Trattat tar-Regolament 1/2003 sabiex jadotta deċiżjonijiet ta' rabtiet."

16. L-artikolu 19 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 19 tal-Att prinċipali.

(a) is-subartikolu (2) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(2) Id-Direttur Ġenerali għandu jkollu s-setgħa, soġġett għall-protezzjoni tas-sigrieti tan-negozju u kwalunkwe informazzjoni kunfidenzjali oħra, li jippubblika kull informazzjoni jew materjal ieħor b'konnessjoni ma' dan l-Att jew kwalunkwe regolamenti magħmula tahtu jew b'konnessjoni mar-responsabbiltajiet tal-Uffiċċju taht l-artikolu 14 tal-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur.";

Kap. 510.

(b) minnufih wara s-subartikolu (2) tiegħu għandu jiżdied is-subartikolu (3) ġdid li ġej:

"(3) Minkejja d-dispożizzjonijiet tas-subartikolu (1) jew ta' kull liġi oħra, kull sentenza tal-Qrati ta' Malta ma għandhiex tippublika evidenza minn dikjarazzjonijiet ta' klemenza ppreżentati skont ir-Regolamenti dwar l-Immunità mill-Penali u t-Tnaqqis tal-Penali f'Investigazzjonijiet dwar Kartelli u evidenza minn sottomissjonijiet riżoluttivi:

Iżda l-identità tal-intrapriża jew tal-għaqda ta' intrapriži li ppreżentat is-sottomissjonijiet riżoluttivi jew id-dikjarazzjoni ta' klemenza għandha tkun magħrufa fis-sentenza."

17. L-artikolu 21 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(1) Il-Qorti għandha timponi penali ta' mhux aktar minn għaxra fil-mija tal-bejgħ totali dinji tal-intrapriża u, jew għaqda ta' intrapriži konċernati fis-sena ta' negozju preċedenti għas-sentenza li timponi penali taħt dan is-subartikolu, għal kull wieħed mill-ksur li fih l-intrapriża u, jew għaqda ta' intrapriži, b'intenzjoni jew b'negligenza:

(a) tikser id-dispożizzjonijiet tal-artikoli 5 u, jew 9 tal-Att; u, jew

(b) tikser l-Artikoli 101 u, jew 102 tat-TFUE:

Iżda meta l-ksur magħmul minn għaqda ta' intrapriži jkun jirrigwarda l-attivitajiet tal-membri tagħha, il-penali ma għandhiex tkun aktar minn għaxra fil-mija tas-somma tal-bejgħ totali dinji ta' kull membru attiv fis-suq affettwat mill-ksur magħmul mill-għaqda ta' intrapriži.";

(b) is-subartikolu (2) tiegħu għandu jiġi emendat kif ġej:

(a) fil-paragrafu (a) tiegħu l-kliem "id-dħul tan-negozju annwali tal-membri tagħha" għandu jiġi sostitwit bil-kliem "il-bejgħ tal-membri tagħha";

(b) il-paragrafu (ċ) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(ċ) Ir-responsabbiltà finanzjarja ta' kull intrapriża fir-rigward tal-ħlas tal-penali ma għandiex taqbeż l-

ammont massimu stabbilit fis-subartikolu (1).";

(ċ) fis-subparagrafu (iii) tal-paragrafu (a) tas-subartikolu (3) tiegħu l-kliem "skont l-artikolu 12Ċ;" għandu jiġi sostitwit bil-kliem "skont l-artikolu 12Ċ jew 17;"

(d) minnufih wara s-subparagrafu (iv) tas-subartikolu (4)(b) tiegħu għandu jiżdied is-subparagrafu (v) ġdid li ġej:

"(v) l-iżvelar ta' informazzjoni lil xi terza persuna li ma hijiex parti mill-proċeduri rilevanti taht dan l-Att jew l-ikkuppjar ta' xi dokumenti li jsir kontra d-dispożizzjonijiet tal-artikolu 12B(6).";

(e) is-subartikolu (5) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(5) Il-Qorti għandha timponi penali fuq kull persuna, intrapriża u, jew għaqda ta' intrapriži li ma tkunx iktar minn ħamsin elf euro (€50,000) jew penali li ma tkunx iżjed minn wieħed fil-mija (1%) tal-bejgħ totali dinji tal-intrapriża jew għaqda ta' intrapriži fis-sena tan-negozju preċedenti għas-sentenza li timponi penali taht dan is-subartikolu, liema minnhom tkun l-ogħla, meta kwalunkwe persuna, intrapriża u, jew għaqda ta' intrapriži waqt li għaddejja xi investigazzjoni skont l-artikolu 12 tal-Att jew waqt li għaddejja inkjesta settorjali skont l-artikolu 11A tal-Att, b'intenzjoni jew b'negligenza:

(a) jagħtu xi informazzjoni falza, qarrieqa, mhux kompluta jew mhix korretta b'risposta għal talba għal informazzjoni jew mistoqsija msemmija fl-artikolu 12 jew ma jipprovdwx l-informazzjoni fil-limitu ta' żmien speċifikat;

(b) jipproduċu jew jagħtu, jew jikkawżaw u, jew xjentement, iħallu li jiġi prodott jew mogħti, xi dokument jew informazzjoni li huma jafu li jkunu foloz f'xi dettall sostanzjali;

(ċ) jonqsu milli joqogħdu għal spezzjoni jew, ifixklu lid-Direttur Ġenerali u, jew l-uffiċjali tiegħu u, kwalunkwe persuna oħra awtorizzata jew maħtura mid-Direttur Ġenerali fl-eżerċizzju tas-setgħat tagħhom b'mandat maħruġ skont l-artikolu 12(7)(a) u (b);

(d) jiksru s-sigilli affissi minn uffiċjali tal-Uffiċċju jew persuni oħra li jakkumpanjawhom awtorizzati jew maħtura mid-Direttur Ġenerali waqt spezzjoni;

(e) b'risposta għal mistoqsija msemmija fl-artikolu 12(7)(ċ)(vi), jagħtu risposta mhux korretta, qarrieqa, jonqsu jew jirrifjutaw milli jipprovdu risposta kompluta;

(f) jiżvelaw informazzjoni lil xi terza persuna li mhix parti mill-proċeduri rilevanti taħt dan l-Att jew jagħmlu kopji ta' xi dokumenti li jmorru kontra d-dispożizzjonijiet tal-artikolu 12B(6);

(g) jonqsu milli jidhru għal intervista msemmija fl-artikolu 12; jew

(h) jipprevjenu jew ixxecklu milli ssir xi investigazzjoni jew inkjesta settorjali.";

(f) is-subartikolu (6) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(6) Meta waqt investigazzjoni jew inkjesta magħmula taħt dan l-Att persuna li tkun direttur, maniġer, segretarju, jew xi uffiċjal simili ieħor ta' intrapriża jew għaqda ta' intrapriži jew kull persuna oħra li trid twieġeb għal talba għall-informazzjoni jew mistoqsija skont l-artikolu 12 xjentement jew bi traskuraġni:

(a) tagħti informazzjoni falza, mhux korretta jew qarrieqa;

(b) tipprovdi informazzjoni mhux kompluta;

(ċ) tipprevjeni jew ixxeckel kwalunkwe investigazzjoni;

(d) tipproduci jew tagħti, jew tikkawża jew xjentement tħalli li jiġi prodott jew mogħti xi dokument jew informazzjoni li hija taf li tkun falza f'xi dettall materjali; jew

(e) tonqos mingħajr raġuni valida milli tipproduci l-informazzjoni mitluba,

tista' teħel penali ta' mhux inqas minn elf u

ħames mitt euro (€1,500) u mhux iktar minn għaxart elef ewro (€10,000) u tista' tehel ukoll penali sa elfejn u erba' mitt ewro (€2,400) għal kull ġurnata ta' nuqqas.";

(g) is-subartikolu (7) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(7) Il-Qorti għandha timponi fuq intrapriża u, jew għaqda ta' intrapriži, pagamenti perjodiċi ta' penali ddeterminati b'mod proporzjonali għall-bejgħ dinji totali medju ta' kuljum fis-sena tan-negozju preċedenti tal-intrapriża u, jew l-għaqda ta' intrapriži konċernati, għal kull jum ta' nuqqas, ikkalkulat mid-data stabbilita fis-sentenza jew fid-deċiżjoni meħuda mid-Direttur Ġenerali, skont il-każ, sabiex tordnalha jew tordnalhom:

(i) sabiex josservaw ordni ta' waqfien u tal-ebda tkompliġa u, jew ordni ta' konformità skont l-artikolu 13A;

(ii) sabiex jimxu ma' miżuri interim skont l-artikolu 15;

(iii) sabiex jimxu ma' rabta magħmula vinkolanti skont l-artikoli 12Ċ jew 17;

(iv) sabiex joqogħdu għal spezzjoni u jipproduċu l-oġġetti mitluba, id-dokumenti jew ir-rekords oħra kif imsemmija fl-artikolu 12;

(v) sabiex jipprovdu informazzjoni kompluta b'risposta għal talba għal informazzjoni kif imsemmi fl-artikoli 11A u 12;

(vi) sabiex jipproduċu informazzjoni korretta u, jew sabiex jipproduċu d-dokumenti mitluba b'risposta għal talba għal informazzjoni msemmija fl-artikoli 11A u 12;

(vii) sabiex jidhru għal intervista kif imsemmija fl-artikolu 12; u

(viii) sabiex jieqfu milli jsegwu kwalunkwe mġiba oħra li tfixkel l-investigazzjoni jew l-inkjesta settorjali u, jew li jirrimedjaw għal kull att jew ommissjoni.";

(h) is-subartikolu (9) tiegħu għandu jiġi sostitwit b'dan li

ġejj:

"(9) Il-Qorti tista' tikkunsidra kumpens imħallas bħala riżultat ta' riżoluzzjoni konsenswali meta tiddetermina l-ammont tal-penali li għandu jiġi impost għal ksur tal-artikolu 5 u, jew 9 ta' dan l-Att u, jew l-Artikoli 101 u, jew 102 tat-TFUE skont ir-regolament 17(3) tar-Regolamenti dwar Ksur tal-Liġi tal-Kompetizzjoni (Azzjonijiet għad-Danni) li jinsabu fl-Iskeda tal-Att"; u

(i) minnufih wara s-subartikolu (9) tiegħu għandhom jiżdedu s-subartikoli ġodda (10), (11) u (12) li ġejjin:

"(10) Għall-għanijiet ta' impożizzjoni ta' penali fuq kumpaniji prinċipali u suċċessuri legali u ekonomiċi ta' intrapriżi, il-kunċett ta' intrapriża skont il-ġurisprudenza tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea għandu japplika.

(11) Ir-responsabbiltà għall-pagament ta' kull tip ta' penali taht dan l-artikolu għandu jkun mingħajr preġudizzju għal kull responsabbiltà oħra li persuna, intrapriża u, jew għaqda ta' intrapriżi jistgħu jkunu soġġetti għalihom taht xi liġi oħra.

(12) Minkejja d-dispożizzjonijiet ta' kull liġi oħra, fi kwalunkwe hin qabel ma tingħata sentenza li timponi penali taht dan l-artikolu, il-Qorti tista' titlob il-bejgħ dinji totali minn kwalunkwe intrapriża u, jew għaqda ta' intrapriżi."

Emenda tal-artikolu 26A tal-Att prinċipali.

18. L-artikolu 26A tal-Att prinċipali għandu jiġi emendat kif ġejj:

(a) is-subartikolu (1) tiegħu għandu jiġi sostitwit b'dan li ġejj:

"(1) Penali jew pagamenti perjodiċi ta' penali skont l-artikolu 21 tal-Att għandhom ikunu imposti biss jekk proċeduri ġudizzjarji dwar ksur ikkontemplat fl-Att ġew istitwiti fi żmien ħames snin wara li jispicċa l-ksur:

Iżda f'każ ta' ksur ta' dan l-Att li jirrigwarda talbiet għall-informazzjoni, il-produzzjoni ta' dokumenti u t-twettiq ta' spezzjonijiet, penali jew pagamenti perjodiċi ta' penali skont l-artikolu 21 tal-Att għandhom ikunu imposti biss jekk ġew istitwiti proċeduri ġudizzjarji fi żmien tliet snin wara l-waqfien tal-ksur.";

(b) is-subartikolu (3) tiegħu, għandu jiġi sostitwit b'dan li ġej:

"(3) (a) Il-perjodu ta' preskrizzjoni għall-impożizzjoni ta' penali jew pagamenti perjodiċi ta' penali mill-Qorti skont l-artikolu 21 tal-Att għandu jiġi interrott b'kull miżura ta' investigazzjoni formali tad-Direttur Ġenerali jew, f'każ tal-applikazzjoni tal-Artikoli 101 u 102 tat-TFUE, ukoll b'kull miżura ta' investigazzjoni formali ta' awtorità tal-kompetizzjoni bil-għan li jinvestigaw jew jistitwixxu proċeduri għall-ksur.

(b) Il-perjodu ta' preskrizzjoni għall-impożizzjoni ta' penali jew pagamenti perjodiċi ta' penali mill-Qorti skont l-artikolu 21 tal-Att għandu jiġi interrott matul il-perjodu tal-investigazzjoni jew il-proċeduri quddiem l-awtoritajiet nazzjonali tal-kompetizzjoni ta' Stati Membri oħra jew il-Kummissjoni Ewropea fir-rigward ta' ksur li jirrigwarda l-istess ftehim, deċiżjoni ta' għaqda ta' intraprizi, prattika miftiehma jew aġir ieħor ipprojbit mill-Artikolu 101 jew 102 tat-TFUE.

(ċ) Il-perjodu ta' preskrizzjoni msemmi f'dan is-subartikolu għandu jiġi interrott b'effett mid-data tan-notifika tal-ewwel miżura ta' investigazzjoni formali lil tal-anqas intrapriża waħda jew għaqda ta' intraprizi li tkun ipparteċipat fil-ksur allegat.";

(ċ) fis-subartikolu (4) tiegħu l-kliem "Ghemil li jinterrompi" għandhom jiġu sostitwiti bil-kliem "Miżuri ta' investigazzjoni formali li jinterrompu";

(d) fis-subartikolu (5) tiegħu l-kliem "li jkunu pparteċipaw fil-ksur." għandu jiġi sostitwit bil-kliem "li jkunu pparteċipaw fl-allegat ksur.";

(e) is-subartikolu (7) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(7) L-interruzzjoni tal-perjodu ta' preskrizzjoni għandu jiġi tterminat fil-jum li l-Qorti tagħlaq il-proċeduri quddiemha billi tagħti sentenza skont l-artikoli 12Ċ, 13, 13A jew 21 ta' dan l-Att jew meta d-Direttur Ġenerali johroġ deċiżjoni skont l-

artikolu 17 ta' dan l-Att jew meta d-Direttur Ġenerali jew il-Qorti jkunu kkonkludew li ma jkunx hemm raġunijiet għal aktar azzjoni min-naha tagħhom.";

(f) minnufih wara s-subartikolu (7) tiegħu għandu jiżdied dan is-subartikolu (8) ġdid li ġej:

"(8) Il-perjodu ta' preskrizzjoni għall-impożizzjoni ta' penali jew pagamenti perjodiċi ta' penali għandu jiġi sospiż sakemm il-proċeduri li ġew istitwiti taħt id-dispożizzjonijiet ta' dan l-Att għadhom pendenti quddiem il-Qorti jew quddiem il-Qorti tal-Appell."

Emenda tal-artikolu 27 tal-Att prinċipali.

19. It-tieni proviso tas-subartikolu (1) tal-artikolu 27 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"Iżda wkoll meta l-kwistjoni ta' kompetizzjoni mressqa quddiem xi qorti ta' ġuriżdizzjoni ċivili hija soġġetta għal proċeduri pendenti istitwiti mid-Direttur Ġenerali quddiem il-Qorti, jew tista' tkun soġġetta għal proċeduri quddiem il-Qorti f'xi mument kif kontemplat fl-Att, kull qorti oħra ta' ġuriżdizzjoni ċivili fejn tqajmet il-kwistjoni ta' kompetizzjoni msemija fis-subartikolu (1) għandha tirreferi l-proċeduri lill-qorti kompetenti."

Emenda tal-artikolu 30 tal-Att prinċipali.

20. Is-subartikolu (1) tal-artikolu 30 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

"30. (1) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (2), id-dispożizzjonijiet ta' dan l-Att għandhom japplikaw ukoll għal kull dipartiment tal-Gvern jew għal kull korp magħqud imwaqqaf b'liġi jew għal kull kumpanija jew soċjetà oħra li fihom il-Gvern, direttament jew indirettament, ikollu l-kontroll jew li lilhom il-Gvern ikun ikkonċeda drittijiet speċjali jew esklużivi f'xi qasam:

Kap. 12.

Iżda l-artikolu 460(1) tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili ma għandux japplika għad-dispożizzjonijiet ta' dan is-subartikolu u għall-kawżi istitwiti mid-Direttur Ġenerali skont id-dispożizzjonijiet ta' dan l-Att kontra xi dipartiment tal-Gvern, awtorità, aġenzija jew kwalunkwe korp tal-Gvern ieħor, fejn fl-opinjoni tad-Direttur Ġenerali, l-istess dipartiment tal-Gvern, awtorità, aġenzija jew kwalunkwe korp tal-Gvern ieħor iwettaq il-funzjoni ta' intrapriża kif imfissra taħt dan l-Att."

Taqsimha II

Emendi għall-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur

21. Din il-parti temenda l-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur u għandha tinqara u tinftiehem haġa waħda mal-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur, minn hawn 'il quddiem f'din it-Taqsima msejjaħ "l-Att prinċipali".

Emendi għall-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur. Kap. 510.

22. Minnufih wara s-subartikolu (2) tal-artikolu 13 tal-Att prinċipali għandhom jiżdiedu s-subartikoli (3) u (4) ġodda li ġejjin:

Emenda tal-artikolu 13 tal-Att prinċipali.

Kap. 379. "(3) L-Uffiċċju għall-Kompetizzjoni għandu jkollu għadd suffiċjenti ta' membri tal-persunal ikkwalifikati u biżżejjed riżorsi finanzjarji, tekniċi u teknoloġiċi li huma meħtieġa għat-tweqqif effettiv ta' dmirijiethom, u għall-eżerċizzju effettiv tas-setgħat tagħhom għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att dwar il-Kompetizzjoni u, jew l-Artikoli 101 u, jew 102 tat-TFUE.

Kap. 379. (4) Mingħajr preġudizzju għar-regoli u l-proċeduri baġitarji nazzjonali, l-Uffiċċju għall-Kompetizzjoni għandu jingħata indipendenza fl-infiq tal-baġit allokat għall-fini li jwettaq dmirijietu kif stipulat fl-artikolu 14 ta' dan l-Att, l-Att dwar il-Kompetizzjoni u kwalunkwe regolamenti magħmulin tahtu."

23. Minnufih wara l-artikolu 13 tal-Att prinċipali għandu jiżdied l-artikolu 13A ġdid li ġej:

Żieda tal-artikolu 13A fl-Att prinċipali.

"Indipendenza. 13A. (a) Id-Direttur Ġenerali, l-uffiċjali tiegħu li jaħdmu fl-Uffiċċju għall-Kompetizzjoni u kull persuna oħra li jassistu lill-Uffiċċju għall-Kompetizzjoni għandhom:

Kap. 379. (i) iwettqu d-dmirijiet tagħhom u jeżerċitaw is-setgħat tagħhom għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att dwar il-Kompetizzjoni u, jew l-Artikoli 101 u, jew 102 tat-TFUE, u kull responsabbiltà oħra vestita fl-Uffiċċju għall-Kompetizzjoni kif toħroġ minn dan l-Att, l-Att dwar il-Kompetizzjoni jew kwalunkwe regolament ieħor magħmul taħthom, b'mod imparzjali fl-interessi tal-applikazzjoni effettiva u uniformi tal-Artikoli 101 u, jew 102 tat-TFUE u b'mod indipendenti minn influwenza politika u kwalunkwe influwenza esterna oħra;

Kap. 379. (ii) lanqas jitolbu jew jiehdu istruzzjonijiet mill-Gvern jew minn kwalunkwe entità pubblika jew privata oħra meta jkunu qegħdin iwettqu d-dmirijiet tagħhom u jeżerċitaw is-setgħat tagħhom għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att dwar il-Kompetizzjoni u, jew tal-Artikoli 101 u 102 tat-TFUE, mingħajr preġudizzju għad-dritt tal-Gvern, fejn applikabbli, li johroġ regoli ġenerali ta' politika li mhumiex relatati ma' inkjesti settorjali jew investigazzjonijiet speċifiċi tal-Uffiċċju għall-Kompetizzjoni;

Kap. 379. (iii) jastjenu milli jiehdu kwalunkwe azzjoni li ma tkunx kompatibbli mat-twettiq ta' dmirijiethom u, jew mal-eżerċizzju tas-setgħat tagħhom għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att dwar il-Kompetizzjoni u, jew l-Artikoli 101 u, jew 102 tat-TFUE u jkunu soġġetti għal proċeduri li jiżguraw li, għal perjodu raġonevoli wara li jitolbu mill-kariga, jastjenu milli jitttrattaw kawżi li jkollu jew kellu quddiemu l-Uffiċċju għall-Kompetizzjoni, li jistgħu jagħtu lok għal kunflitti ta' interess, kif ipprovdut fl-artikolu 46 ta' dan l-Att.

Kap. 379. (b) Kull persuna li tista' tieħu deċiżjonijiet fl-Uffiċċju għall-Kompetizzjoni fl-eżerċizzju tas-setgħat taħt l-Att dwar il-Kompetizzjoni jew f'kull regolament magħmul taħt ma għandhiex titneħħa mill-Uffiċċju għall-Kompetizzjoni għal raġunijiet marbuta mat-twettiq tajjeb ta' dmirijietha, jew mal-eżerċizzju tajjeb tas-setgħat tagħha għall-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att dwar il-Kompetizzjoni u, jew l-Artikoli 101 u, jew 102 tat-TFUE:

Iżda l-persuna tista' titneħħa biss jekk hija ma tibqax tissodisfa l-kundizzjonijiet meħtieġa għall-qadi ta' dmirijietha jew jekk hija tkun instabet haġta ta' mgħiba hażina serja taħt il-liġi nazzjonali, li tinkludi dan li ġej:

Kap. 379.

(i) jekk il-persuna tonqos milli taqdi dmirietha b'mod imparzjali u indipendenti, fir-rigward tal-applikazzjoni tal-artikoli 5 u, jew 9 tal-Att dwar il-Kompetizzjoni u, jew l-Artikoli 101 u, jew 102 tat-TFUE jew xi dmirijiet fir-rigward tal-impjieg tagħha li jemanu minn dan l-Att, mill-Att dwar il-Kompetizzjoni u minn kwalunkwe regolament magħmul taħthom;

(ii) jekk il-persuna għet misjuba haġta minn qorti kompetenti ta' reat kriminali taħt l-artikolu 28 ta' dan l-Att;

(iii) jekk il-persuna nstabet haġta ta' reat kriminali li jaffettwa l-fiduċja tal-pubbliku, jew ta' serq jew frodi."

24. Is-subartikolu (1) tal-artikolu 14 tal-Att prinċipali għandu jiġi emendat kif ġej:

Emenda tal-artikolu 14 tal-Att prinċipali.

(a) il-paragrafu (a) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(a) li jinvestiga prattiċi restrittivi li allegatament ixekklu jew jirrestringu l-kompetizzjoni u li jaġixxi bħala parti uffiċjali fi proċeduri istitwiti mid-Direttur Ġenerali u b'dan il-mod għandu jgawdi mill-istess drittijiet li jappartjenu lill-kontroparti tiegħu fil-proċeduri tal-Qorti, quddiem il-Qorti Ċivili taħt l-Att dwar il-Kompetizzjoni u fil-każ fejn hemm appell minn sentenzi tal-Qorti Ċivili mogħtija taħt l-Att dwar il-Kompetizzjoni, quddiem il-Qorti tal-Appell;"

Kap. 379.

(b) il-paragrafu (f) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(f) li jinkoraġġixxi l-intraprizi u l-għaqdiet ta' intraprizi biex iħarsu l-liġi tal-kompetizzjoni u jippromwovu prattiċi ta' negozju tajba u jippromwovi s-sensibilizzazzjoni tal-pubbliku dwar l-artikoli 5 u 9 tal-Att dwar il-Kompetizzjoni u l-Artikoli 101 u 102 tat-TFUE;"

Kap. 379.

(ċ) il-paragrafu (k) tiegħu għandu jiġi sostitwit b'dan li ġej:

"(k) li jikkoopera mill-qrib fin-Netwerk Ewropew għall-Kompetizzjoni bil-għan li tiġi żgurata l-applikazzjoni effettiva u uniformi tal-Artikoli 101 u 102 tat-TFUE u li jipparteċipa f'laqgħat organizzati minn aġenziji u

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organizzazzjonijiet internazzjonali;"

Emenda tal-artikolu 15 tal-Att prinċipali

25. Fil-paragrafu (f) tas-subartikolu (1) tal-artikolu 15 tal-Att prinċipali l-kliem "taħt ir-reġim regolatorju tagħha." għandu jiġi sostitwit bil-kliem "taħt ir-reġim regolatorju tagħha:" u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda l-Uffiċċju għall-Kompetizzjoni jista' jirrifjuta lmenti għar-raġuni li tali lmenti ma jitqisux bħala priorità għall-infurzar."

Emenda tal-artikolu 29 tal-Att Prinċipali.

26. Is-subartikolu (3) tal-artikolu 29 tal-Att prinċipali għandu jiġi sostitwit b'dan li ġej:

Kap. 379.

L.S. 379.08.

"(3) Fil-każ ta' deċiżjoni meħuda mid-Direttur Ġenerali (Kompetizzjoni) skont l-artikolu 17 tal-Att dwar il-Kompetizzjoni jew fil-każ ta' kull informazzjoni jew materjal ippubblikat skont l-artikolu 19 tal-istess Att dwar il-Kompetizzjoni, jew fil-każ ta' oġġezzjonijiet jew deċiżjoni skont ir-Regolamenti dwar il-Kontroll ta' Konċentrazzjonijiet, jew fi kwalunkwe każ ieħor fejn id-Direttur Ġenerali jikkunsidra neċessarju, il-persuni, l-intrapriżi jew l-għaqda ta' intrapriżi konċernati jistgħu jiġu mitluba sabiex jidentifikaw xi parti minn kwalunkwe deċiżjoni, oġġezzjonijiet, publikazzjoni jew dokumenti li, fil-fehma tagħhom, ikun fihom sigrieti tan-negozju jew informazzjoni kunfidenzjali oħra."

Emenda tal-artikolu 58 tal-Att prinċipali.

27. Fl-artikolu 58 tal-Att prinċipali l-kliem "minn żmien għal żmien jeħtieġ." għandu jiġi sostitwit bil-kliem "minn żmien għal żmien jeħtieġ:" u minnufih wara għandu jiżdied il-proviso ġdid li ġej:

"Iżda b'referenza għal tali rapport, is-sezzjonijiet li jirrelataw mal-Uffiċċju għall-Kompetizzjoni għandhom jinkludu informazzjoni dwar il-ħatriet u s-sensji tad-Direttur Ġenerali u d-diretturi, l-ammont ta' riżorsi li jkunu ġew allokati fis-sena rilevanti u kwalunkwe tibdil f'dak l-ammont meta mqabbel mas-snin preċedenti. Tali rapport għandu jkun disponibbli għall-pubbliku."

Emenda tal-artikolu 70 tal-Att prinċipali.

28. Minnufih wara s-subartikolu (7) tal-artikolu 70 tal-Att

prinċipali għandu jiżdied is-subartikolu (8) ġdid li ġej:

Kap. 379.

Att Nru XLV
tal-2021.

"(8) Id-dispożizzjonijiet tal-Att dwar il-Kompetizzjoni kif emendati permezz tal-Att tal-2021 li jemenda l-Att dwar il-Kompetizzjoni u l-Att dwar l-Awtorità ta' Malta għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur ma għandhomx japplikaw għall-investigazzjonijiet istitwiti mid-Direttur Ġenerali (Kompetizzjoni) u għall-kwalunkwe proċeduri ġudizzjarji ppreżentati mid-Direttur Ġenerali (Kompetizzjoni) skont l-Att dwar il-Kompetizzjoni qabel id-dhul fis-seħħ tal-imsemmi Att tal-2021 li jemenda l-Att dwar il-Kompetizzjoni u l-Att dwar l-Awtorità għall-Kompetizzjoni u għall-Affarijiet tal-Konsumatur."

Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru 489 tal-14 ta' Lulju, 2021.

CLAUDETTE BUTTIGIEG

Deputy Speaker

RAYMOND SCICLUNA

Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE VELLA
President

23rd July, 2021

ACT No. XLV of 2021

An ACT to amend the Competition Act, Cap. 379 and the Malta Competition and Consumer Affairs Authority Act, Cap. 510 to implement Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market and also to provide for such matters ancillary or incidental thereto or connected therewith.

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:

Short title and commencement.

1. (1) The short title of this Act is the Competition Act and the Malta Competition and Consumer Affairs Authority (Amendment) Act, 2021.

(2) This Act shall come into force on such date as the Minister responsible for tourism and consumer protection may by notice in the Gazette establish, and different dates may be so established for different provisions of this Act.

Part I
Amendments to the Competition Act

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

Amendments to the Competition Act.
Cap. 379.

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

Amendment of article 2 of the principal Act.

(a) immediately after the definition "the Board" there shall be added the following new definition:

" "competition authority" means a national competition authority, the European Commission or both, as the context may require;"

(b) immediately after the definition "Director General" there shall be added the following new definition:

" "document" includes information recorded in any form;"

(c) immediately after the definition "European Commission" there shall be added the following new definition:

" "European Competition Network" means the network of public authorities formed by the national competition authorities and the European Commission to provide a forum for discussion and co-operation as regards the application and enforcement of Articles 101 and 102 of the TFEU;"

(d) the definition "group of undertakings" shall be deleted;

(e) the definition "National Competition Authority" shall be substituted by the following:

" "National Competition Authority" means a national competition authority as designated in terms of Article 35(1) of Council Regulation (EC) 1/2003 as being responsible for the application of Articles 101 and 102 of the TFEU;"

(f) immediately after the definition "restrictive practice" there shall be added the following new definition:

" "settlement submissions" means a voluntary presentation by, or on behalf of, an undertaking and, or an

association of undertakings to the Office, describing the undertaking's and, or association of undertakings' acknowledgement of, or its renunciation to dispute, its participation in an infringement of articles 5 and, or 9 of the Act and, or Articles 101 or 102 of the TFEU and its responsibility for that infringement, which was drawn up specifically to enable the Office to apply a simplified or expedited procedure in terms of article 12B of the Act";

(g) the definition "turnover" shall be deleted;

(h) immediately after the definition "TFEU", there shall be added the following new definition:

" "total worldwide turnover" means the annual total worldwide turnover of an undertaking and, or association of undertakings concerned;"

(i) the definition "undertaking" shall be substituted by the following:

" "undertaking" means any person whether an individual, a body corporate or otherwise, or any other entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.".

Amendment of article 3 of the principal Act.

4. The proviso to article 3 of the principal Act shall be substituted by the following:

"Provided that the Director General may delegate any of his powers to any officer within the Office.".

Amendment of article 12 of the principal Act.

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

(a) sub-article (2) thereof shall be substituted by the following:

"(2) (a) During the course of any investigation carried out by the Office in accordance with sub-article (1), the Director General may request any undertaking or association of undertakings to furnish him with any information or document which are accessible to such undertaking and, or association of undertakings, irrespective of where it is stored for the application of articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU, which the Director General has reason to believe are necessary to the matter under investigation within such time that in the circumstances of the

investigation the Director General may consider reasonable:

Provided that such requests for information shall be proportionate and the Director General may also request the manner and form in which the information or document are to be produced or provided:

Provided further that during the course of any investigation carried out by the Office in accordance with sub-article (1), the Director General may request any other natural or legal persons to provide any information or document that may be relevant for the application of articles 5 and, or 9 of this Act and, or Articles 101 and 102 of the TFEU within a specified and reasonable time limit.

(b) During the course of any investigation carried out by the Office in accordance with sub-article (1), the Director General may also summon any representative of an undertaking or association of undertakings, any representative of other legal persons, and any other person, where such representative or person may possess information relevant for the application of articles 5, and or 9 of the Act and, or Articles 101 and, or 102 of the TFEU, to appear for an interview at a place and time as specified by the Director General to answer questions with respect to any matter relevant to the investigation:

Provided that the Director General may record the interview in any manner and form deemed appropriate by him.

(c) Nothing in this sub-article may be construed as authorising the Director General to order the production of any document or the disclosure of any information which may be subject to the duty of professional secrecy, except where such disclosure is allowed under the law.

(d) During the course of any investigation, when a person, undertaking or association of undertakings answers to questions raised by the Office both in writing and verbally, the person, undertaking or association of undertakings concerned shall not be obliged to provide any answer which might involve an admission on its part of the existence of an infringement of articles 5, and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU, but it is in any event obliged to answer factual questions and to

provide documents.";

(b) sub-article (6) thereof shall be substituted by the following:

"(6) In the course of any investigation, whether during an interview or inspection, the Director General may take statements from any person, as well as make copies of any document produced to him, and the record of such statements and such copies duly attested by the Director General shall be producible as evidence before the Court and before any other court of law.";

(c) sub-article (7) thereof shall be substituted by the following:

"(7) (a) The Director General and, or his officers authorised by him and, or any other person authorised or appointed by the Director General duly authorised by a warrant issued by a Magistrate may, for the purpose of any investigation under this article conduct all necessary unannounced inspections and enter into and search premises, land or means of transport of undertakings and, or association of undertakings for the application of articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU.

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(b) The Director General and, or his officers authorised by him and, or any other person authorised or appointed by the Director General, duly authorised by a warrant issued by a Magistrate, may, for the purpose of any investigation under this article, conduct all necessary unannounced inspections and enter into and search any premises, land or means of transport, other than those referred to in paragraph (a) of this sub-article, including the homes of directors, managers, and other members of staff of undertakings or associations of undertakings, where the Director General has a reasonable suspicion that documents related to the undertaking and, or association of undertakings and to the subject matter of the inspection, which may be relevant to prove an infringement of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU are being kept in those premises, land or means of transport:

Provided that the Magistrate in deciding

whether to issue a warrant under sub-articles (7)(a) and (b) shall ensure that the coercive measures envisaged are neither arbitrary nor excessive.

(c) In the course of any search pursuant to paragraphs (a) and (b) of this sub-article, the Director General and, or any authorised officer and, or any other person authorised or appointed by the Director General shall be empowered to:

(i) inspect and examine any object or document, including books and other records related to the business, irrespective of the medium on which they are stored and access any information or document which are accessible to the entity subject to the inspection:

Provided that this includes the power to search for documents, files or data on devices which are not precisely identified in advance:

Provided further that the power to examine books or records covers all forms of correspondence, including electronic messages irrespective of whether they appear to be unread or have been deleted;

(ii) seize and confiscate any object or document, or take or obtain in any form, copies of or extracts from such books or records or any other document and where they consider it appropriate, to continue making such searches for information and the selection of copies or extracts at the premises of the office or at any other designated premises;

(iii) require any information which is stored in a computer or any other object or device including external servers and cloud services which are accessible from the premises, land or means of transport, and which the Director General and, or his officers consider relevant to the investigation, to be delivered in a form in which it can be taken away and in which it is visible and legible;

(iv) order the non-removal of objects or documents from any such premises, land or means of transport;

(v) close and seal any or all parts of such premises, land or means of transport, or put any books or records or any other object or document under seal for the period and to the extent necessary for the inspection;

(vi) ask any representative or member or staff of the undertaking or association of undertakings concerned for an explanation of any fact or document relating to the subject-matter and purpose of the inspection, or to state to the best of their knowledge and belief where the documents may be found and record the answers;

(vii) take any steps which appear to be necessary to preserve any object or document or to prevent any interference with such object or document.

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(d) Notwithstanding any provisions contained in the Criminal Code, the Director General shall have the right to appeal against a decision of the Court of Magistrates to refuse to issue a warrant under this sub-article, before the Court of Criminal Appeal within five days from the date of such a decision and the Court of Criminal Appeal shall endeavour to decide in the shortest time possible.";

(d) sub-article (8) thereof shall be substituted by the following:

"(8) (a) The warrant mentioned in sub-articles (7)(a) and (b) shall specify the subject-matter, purpose of the inspection, the date on which the inspection shall begin and the relevant penalties provided for in article 21.

(b) The powers conferred by article 12(7) are to be exercised by the Director General and, or his officers and, or any person authorised or appointed by the Director General on production of a warrant issued under the said article.

(c) The Director General and, or any of his

officers and, or any person authorised or appointed by the Director General entering premises, land or means of transport by virtue of a warrant issued under sub-articles (7)(a) and (b) may take with them such equipment as appears to them to be necessary."

6. Article 12A of the principal Act shall be amended as follows: Amendment of article 12A of the principal Act.
- (a) sub-article (1) thereof shall be substituted by the following:

"(1) Where, following an investigation, the Director General considers that an infringement of articles 5 and, or 9 of this Act and, or an infringement of Articles 101 and, or 102 of the TFEU may have occurred, he shall file in Court a sworn application:

Provided that for the purposes of this sub-article the Director General may also consider that an infringement of articles 5 and, or 9 of this Act and, or an infringement of Articles 101 and, or 102 of the TFEU may have occurred at some time in the past:

Provided further that for the purposes of the previous proviso, it is immaterial whether the agreement, decision, concerted practice or conduct in question remains in existence:

Provided further that where the Director General considers that an agreement or concerted practice infringes article 5(1) of this Act and, or Article 101(1) of the TFEU, the Director General may institute proceedings against a number of undertakings which are less than those undertakings who actually are a party or were a party to that agreement or concerted practice, or are, or were engaged in that conduct.";

(b) in paragraph (c) of sub-article (2) thereof the words "Contain a request" shall be substituted by the words "Where appropriate, contain a request";

(c) in sub-article (3) thereof the words "investigation carried out by him." shall be substituted by the words "investigation carried out by him:" and immediately thereafter there shall be added the following new proviso:

"Provided that where the Director General institutes proceedings relating to a matter in respect of

which he has received a complaint, he may provide the complainant with a copy of the non-confidential version of the report.";

(d) sub-article (6) thereof shall be substituted by the following:

"(6) During court proceedings, the undertaking and, or association of undertakings concerned in receipt of a sworn application, shall, upon a request to this effect, be entitled to have access to the file of the investigation concerning their case, without prejudice to the non-disclosure of information or documents identified by the Director General deemed to contain business secrets, or other confidential information, or internal documents of the Director General or of the Competition Authorities of other Member States. The Director General shall provide access to the file of the investigation at any time:

Provided that any document forming part of the access to the file may be provided by the Director General to the defendant in different sittings.";

(e) sub-article (7) thereof shall be substituted by the following:

"(7) In the interpretation of this Act and of any regulations made thereunder and in the exercise of his responsibilities under this Act and any regulations made thereunder, the Director General shall have recourse to the judgements of the Court of Justice of the European Union, to relevant decisions and statements of the European Commission including interpretative notices on the relevant provisions of the TFEU and secondary legislation relative to competition and may have recourse to his decisions, and those of the Court and to those of the Competition and Consumer Appeals Tribunal and the Commission for Fair Trading:

Provided that the Director General may have recourse to other sources as long as they are consistent with the competition law judgements of the Court of Justice of the European Union and to decisions and statements of the European Commission."; and

(f) immediately after sub-article (7) thereof there shall be added the following new sub-article (8):

"(8) Notwithstanding any other provision in the Code of Organisation and Civil Procedure, the evidence admissible before the Court and in case of an investigation, before the Office, shall include documents, oral statements, electronic messages, recordings and all other objects containing information, irrespective of the form it takes and the medium on which the information is stored." Cap. 12.

7. Article 12B of the principal Act shall be amended as follows: Amendment of article 12B of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The Director General together with any undertaking and, or association of undertakings shall have the right to demand, either during the course of the investigation before the Office or at any stage after the closure of the said investigation, that the investigation or the proceedings before the Court, as the case may be, are terminated by mutual consent between the Director General and the undertaking and, or the association of undertakings concerned by means of the settlement procedure, which includes the finding of an infringement in terms of article 13(1) and the imposition of a penalty by the Court in terms of article 21(1) as provided for in this article.";

(b) in sub-article (2) thereof the words "which includes the imposition of a penalty by the said Court:" shall be substituted by the words "which includes the finding of an infringement in terms of article 13(1) and the imposition of a penalty in terms of article 21(1) by the said Court.";

(c) in sub-article (5) thereof the words "by a joint application to be filed before the Court" shall be substituted by the words "before the Office";

(d) sub-article (6) thereof shall be substituted by the following:

"(6) (i) The documents and the information exchanged between the Director General and the undertaking and, or association of undertakings concerned during the settlement procedure are confidential:

Provided that the information given pursuant to sub-article (5) shall be confidential in regard to other parties subject to the relevant investigation before the

Office, save where the Director General has given a prior explicit authorization for disclosure.

(ii) Settlement submissions shall only be accessible to the undertakings and, or the association of undertakings which are subject to the relevant investigation before the Office or are subject to relevant proceedings before the Court instituted in terms of the Act or are subject to any relevant proceedings before the Court of Appeal and only for the purposes of exercising their rights of defence.

(iii) The party who has obtained access to the file during investigations before the Office or proceedings before the Court or the Court of Appeal may only use information taken from settlement submissions submitted in terms of the Act where necessary, to exercise its rights of defence in proceedings before the courts of Malta in cases that are directly related to the case for which access has been granted, and only where such proceedings concern:

(a) the allocation between cartel participants of a penalty imposed jointly and severally on them by the Court; or

(b) the appeal before the Court of Appeal of a judgement by the Court finding an infringement of articles 5 and, or 9 of the Act or Articles 101 and, or 102 of the TFEU.

(iv) The parties granted access to settlement submissions together with their legal counsels who are granted access on their behalf, cannot make any copy by mechanical or electronic means of any information in the settlement submissions to which access is being granted.";

(e) sub-article (7) thereof shall be amended as follows:

(i) in the introductory part preceding paragraph (a) thereof, the words "The settlement submissions which are to be included in the joint application shall contain a voluntary statement by the undertaking and, or association of undertakings concerned containing the following information:" shall be substituted by the words "The

settlement submissions submitted before the Office pursuant to sub-article (5) shall be produced together with the joint application and shall contain a voluntary statement by the undertaking and, or association of undertakings concerned containing the following information:";

(ii) in paragraph (c) thereof the word "maximum" shall be deleted;

(iii) in paragraph (f) thereof the words "challenge in any way the settlement procedure or the judgement of the Court including the penalty: and" shall be substituted by the words "challenge in any way the settlement procedure, the investigation related to the settlement procedure, or the judgement of the Court including the penalty; and also waiver of any action or claim deriving from the same settlement procedure and, or related to the investigation related to the settlement procedure and, or related to the judgement of the Court and, or the penalty;";

(iv) paragraph (g) thereof shall be substituted by the following:

"(g) a statement of the undertaking and, or association of undertakings concerned that it agrees with the contents of the settlement submissions and that it agrees with the facts together with the legal assessment of the facts of the infringement as established by the Director General in the joint application; and";

(v) immediately after paragraph (g) thereof there shall be added the following new paragraph (h):

"(h) a statement by the undertaking and, or association of undertakings concerned that it agrees that a joint application is filed in Court together with the Director General to terminate the investigation or the proceedings, as the case may be, by means of the settlement procedure, and to request the Court to deliver a judgement on the basis of the joint application:

Provided that the joint application shall also include the following information by the Director General:

(i) a short description of the facts of the infringement and the legal assessment of the

infringement; and

(ii) the specific amount of the penalty that the Director General is requesting to be imposed on the undertaking and, or association of undertakings concerned;"; and

(f) in sub-article (9) thereof, the words "by reducing between ten to thirty-five percent the amount of the penalty requested to be imposed by the Court on the undertaking, and, or association of undertakings concerned" shall be substituted by the words "by reducing the penalty which would otherwise have been requested by the Director General to be imposed by the Court in terms of article 21(1) of the Act by ten to thirty-five per centum (10-35%)".

Amendment of article 12C of the principal Act.

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

(a) in sub-article (4) thereof the words "business secrets or other confidential information." shall be substituted by the words "business secrets or other confidential information:" and immediately thereafter there shall be added the following new proviso:

"Provided that the Director General may request the authorisation of the Court to seek the views of market participants or of any other third parties by informing them directly regarding the proposed commitments, which request shall also include the authorization of the Court on the manner in which the said proposed commitments are to be published and the time within which all views of market participants or of any other third parties should be received in the registry of the Court.";

(b) immediately after sub-article (6) thereof there shall be added the following new sub-article (7):

"(7) The Office shall have the powers to monitor the effective implementation of the commitments referred to in sub-article (1) or in article 17 and for this purpose, article 12 shall apply *mutatis mutandis*."

Substitution of article 12D of the principal Act.

9. Article 12D of the principal Act shall be substituted by the

following:

"Access to file by parties and limitations on the use of information.

12D. The following categories of information obtained by a party during an investigation of the Office or during proceedings before the Court shall not be used by that party in proceedings before the Courts of Malta, unless the Court has closed its proceedings before it with respect to all parties under investigation by delivering a judgement referred to in articles 12C, 13 or 13A, or otherwise has terminated its proceedings, or unless the Office has closed its investigation before it with respect to all parties under investigation by delivering a decision in accordance to article 17, or otherwise has terminated its investigation:

- (a) information that was prepared by other natural or legal persons specifically for the investigation carried out by the Office or the proceedings before the Court;
- (b) information that the Office has drawn up and sent to the parties in the course of its investigation; and
- (c) settlement submissions that have been withdrawn."

10. In article 13 of the principal Act, immediately after sub-article (2) thereof, there shall be added the following new sub-article (3):

Amendment of article 13 of the principal Act.

"(3) Where the Office had informed the European Commission in accordance with Article 11(3) of Regulation (EC) No. 1/2003 and the Court decides that there are no grounds to continue proceedings before it and as a result closes those proceedings, the Office shall inform the European Commission accordingly."

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

Amendment of article 13B of the principal Act.

(a) in the first proviso to sub-article (2) thereof the words "in terms of articles 12C or 13 of the Act" shall be substituted by the words " in terms of articles 12C, 13, 13A or 21 of the Act";

(b) in sub-article (6) thereof the words "enforcement of judgements." shall be substituted by the words "enforcement of judgements and decrees.";

(c) in sub-article (7) thereof the words "may have recourse" shall be substituted by the words "shall have recourse"; and

(d) immediately after sub-article (7) thereof there shall

be added the following new sub-article (8):

"(8) Proceedings before the Court concerning alleged infringements of articles 5 and, or 9 of the Act and, or Articles 101 or 102 of the TFEU, including the exercise of the powers by the Director General and the Office under this Act and, or any regulation made thereunder applying those articles, shall comply with general principles of Union law and the Charter of Fundamental Rights of the European Union."

Amendment of article 14 of the principal Act.

12. Article 14 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof the words "he shall inform the complainant." shall be substituted by the words "he shall inform the complainant:" and immediately thereafter there shall be added the following new proviso:

"Provided that where, having informed the European Commission in accordance with Article 11(3) of Regulation (EC) No. 1/2003, the Office decides that there are no grounds to continue the investigation and as a result closes the investigation, the Office shall inform the European Commission accordingly.";

(b) in sub-article (4) thereof the words "twenty days from the date of the judgment of the Court." shall be substituted by the words "twenty days from the date of the judgment of the Court:" and immediately thereafter there shall be added the following new proviso:

"Provided that in case of any proceedings instituted under this article before the Court or the Court of Appeal, the Director General shall act as an official party to the proceedings and enjoy the same rights which pertain to his counterparty."

Amendment of article 15 of the principal Act.

13. Article 15 of the principal Act shall be amended as follows:

(a) the first proviso to sub-article (1) thereof shall be substituted by the following:

"Provided that any decree imposing interim measures issued according to this provision shall be enforceable upon its delivery and any interim measure shall be proportionate and shall apply either for a specified period of time to be determined by the Court or until the final judgement on the merits of the case is delivered by

the Court:";

(b) in sub-article (2) thereof the words "in support of the demand that is being filed." shall be substituted by the words "in support of the demand that is being filed:" and immediately thereafter there shall be added the following proviso:

"Provided that together with the application, the Director General may also include a report in the English language with any findings in order to sustain his demand.";

(c) sub-article (3) thereof shall be substituted by the following:

"(3) The application shall be served on the undertakings and, or associations of undertakings concerned which shall file a reply thereto within eight days from the date of service of the application, containing all the submissions together with all the documents in support of the reply that is filed:

Provided that the Court may reduce the said period indicated in this sub-article, as it deems fit in the circumstances.";

(d) in sub-article (5) thereof the words "service of such an application." shall be substituted by the words "service of such an application:" and immediately thereafter there shall be added the following proviso:

"Provided that an appeal filed in accordance with this sub-article shall not have the effect of suspending any interim measures imposed by the Court.";

(e) immediately after sub-article (6) thereof there shall be added the following new sub-article (7):

"(7) The Office shall inform the European Competition Network of the interim measures imposed in case of a *prima facie* finding of an infringement of Article 101 and, or Article 102 of the TFEU, referred to in sub-article (1)."

14. Article 16 of the principal Act shall be substituted by the

Substitution of
article 16 of the
principal Act.

following:

"Immunity or reduction of penalties for infringements of article 5 of the Act and, or Article 101 of the TFEU.

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Substitution of article 17 of the principal Act.

15. Article 17 of the principal Act shall be substituted by the following:

"Commitments decision by the Director General.

16. When an undertaking and, or an association of undertakings cooperates with the Office to uncover agreements between undertakings and, or decisions of an association of undertakings and, or a concerted practice that infringes article 5 of this Act and, or Article 101 of the TFEU and where the existence of such an agreement, decision or concerted practice is partially or wholly concealed, the provisions contained in the Immunity from Penalties and Reduction of Penalties in Cartel Investigations Regulations shall apply *mutatis mutandis*."

17. (1) Notwithstanding anything contained in this Act, the Director General may at his own discretion, instead of instituting judicial proceedings according to article 12A of this Act requesting the Court to issue a judgement declaring commitments to be binding on undertakings and, or association of undertakings pursuant to article 12C of this Act, decide to issue a commitments decision to make commitments binding on the undertaking or association of undertakings.

(2) For the purposes of sub-article (1), in an investigation initiated with a view to adopt a decision requiring that an infringement of article 5 and, or 9 of this Act and, or Article 101 and, or 102 of the TFEU be brought to an end, the Director General may, after formally or informally seeking the views of market participants, by decision make commitments offered by undertakings or associations of undertakings binding, where those commitments meet the concerns expressed by the Director General. Such a decision may be adopted for a specified period, and shall conclude that there are no longer grounds for action by the Director General:

Provided that the Director General may re-open the proceedings where it results to him that there has been a material change in any of the facts on which the decision was based, or where the undertakings or association of undertakings act contrary to their commitments, or where a decision referred to in this sub-article was based on incomplete, incorrect or misleading information provided by the parties.

(3) (a) Where the Director General intends to adopt a decision under this article, he shall, besides other methods that the Director General may adopt to seek the views of market participants, publish a concise summary of the case and the main contents of the commitments or of the proposed course of action.

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

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

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

(4) Any person, undertaking or association of undertakings concerned may contest any commitments decision adopted by the Director General by filing an application before the Court within twenty days from the date of publication of the decision on the Authority's website:

Provided that the application shall be served on the Director General and the said Director General shall file his reply thereto within twenty days from the date of service of the application.

(5) The Court may either confirm in whole or in part, or modify or quash the decision of the Director General.

(6) The Director General and any party to the proceedings before the Court who feels aggrieved by a judgement of the Court in terms of this article may appeal on points of law and, or fact to the Court of Appeal by means of an application filed in the registry of that Court, within twenty days from the date of the judgement of the Court:

Provided that in case of any proceedings instituted under this article before the Court or the Court of Appeal, the Director General shall act as one of the parties to the proceedings and shall enjoy the same rights which pertain to his counter-party.

Cap. 12. (7) Upon publication of the decision of the Director General pursuant to article 19 such decision shall, without prejudice to the rights stipulated under this article, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure:

Cap. 12. Provided however that, notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in this sub-article shall not be enforceable before the lapse of twenty days from the publication of the decision on the Authority's website and that decision has not been contested.

Cap. 510. (8) Without prejudice to paragraph (c) of sub-article (1) of article 14 of the Malta Competition and Consumer Affairs Authority Act, for the purposes of this article the Office:

(a) shall also have the responsibility to determine and suppress restrictive practices through the issuing of a commitments decision; and

(b) with regard to the application of Articles 101 and 102 of the TFEU, shall also be designated as the competent competition authority together with the Court pursuant to Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of Regulation 1/2003 to adopt commitments decisions."

Amendment of article 19 of the principal Act.

16. Article 19 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be substituted by the following:

"(2) The Director General shall have the power, subject to the protection of business secrets and other confidential information, to publish any information and any other material in connection with this Act or any regulations made thereunder or in connection with the responsibilities of the Office under article 14 of the Malta Competition and Consumer Affairs Authority Act."; and

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(b) immediately after sub-article (2) thereof there shall be added the following new sub-article (3):

"(3) Notwithstanding the provisions of sub-article (1) or of any other law, judgements of the Courts of Malta shall not publish evidence taken from leniency statements submitted pursuant to the Immunity from Penalties and Reduction of Penalties in Cartel Investigations Regulations and evidence from settlement submissions:

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Provided that the identity of the undertaking and, or association of undertakings which submitted the settlement submissions or the leniency statement shall be published in the judgement."

17. Article 21 of the principal Act shall be amended as follows:

Amendment of article 21 of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) The Court shall impose a penalty of not more than ten percent of the total worldwide turnover of an undertaking and, or association of undertakings concerned in the business year preceding the judgement imposing the penalty under this sub-article, for each infringement where the undertaking and, or association of undertakings intentionally or negligently:

(a) infringes the provisions of articles 5 and, or 9 of the Act; and, or

(b) infringes Article 101 and, or 102 of the TFEU:

Provided that where the infringement of an association of undertakings relates to the activities of its members, the penalty shall not exceed ten per centum of the sum of the total worldwide turnover of each member active on the market affected by the infringement of the association of undertakings.";

(b) sub-article (2) thereof shall be amended as follows:

(a) in paragraph (a) thereof the words "annual turnover of its members" shall be substituted by the words "turnover of its members";

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

"(c) The financial liability of each undertaking in

respect to the payment of the penalty shall not exceed the maximum amount in accordance with sub-article (1).";

(c) in sub-paragraph (iii) of paragraph (a) of sub-article (3) thereof the words, "pursuant to article 12C" shall be substituted by the words "pursuant to articles 12C or 17";

(d) immediately after sub-paragraph (iv) of sub-article (4)(b) thereof there shall be added the following new sub-paragraph (v):

"(v) the disclosure of information to any third party not part of the relevant proceedings under this Act or the copying of any documents made contrary to the provisions of article 12B(6).".

(e) sub-article (5) thereof shall be substituted by the following:

"(5) The Court shall impose a penalty on any person, undertaking and, or association of undertakings not exceeding fifty thousand euro (€50,000) or a penalty not exceeding one per centum (1%) of the total worldwide turnover of the undertaking or association of undertakings in the business year preceding the judgement imposing the penalty under this sub-article, whichever is the highest, where any person, undertaking and, or association of undertakings in the course of any investigation pursuant to article 12 or in the course of a sector inquiry pursuant to article 11A, intentionally or negligently:

(a) give any false, misleading, incomplete or incorrect information in response to a request for information or question referred to in article 12, or they do not supply the information within the specified time limit;

(b) produce or furnish, or cause or knowingly allow to be produced or furnished any document or information which they know to be false in any particular material;

(c) fail to comply with an inspection and, or obstruct the Director General and, or his officers and, or any other person authorised or appointed by the Director General in the exercise of their powers under a warrant issued under article 12(7)(a) and (b);

(d) break the seals affixed by officers of the Office or other accompanying persons authorised or appointed by the Director General during an inspection;

(e) in response to a question referred to in article 12(7)(c)(vi), give an incorrect, misleading answer, fail or refuse to provide a complete answer;

(f) disclose information to any third party not party of the relevant proceedings under this Act or make copies of any documents contrary to the provisions of article 12B(6);

(g) fail to appear at an interview referred to in article 12; or

(h) prevent or hinder any investigation or sector inquiry.";

(f) sub-article (6) thereof shall be substituted by the following:

"(6) Where during the course of any investigation or inquiry conducted under the Act, a person, being a director, manager, secretary or any other similar officer of an undertaking or association of undertakings or any other person who has to reply to a request for information or a question pursuant to article 12 knowingly or recklessly:

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

(b) supplies incomplete information;

(c) prevents or hinders any investigation;

(d) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in any particular material; or

(e) fails without reasonable cause to supply the information requested,

may be liable to a penalty of not less than one thousand and five hundred euro (€1,500) and not more than ten thousand euro (€10,000), and may also

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be liable to a penalty of up to two thousand and four hundred euro (€2,400) for each day in default.";

(g) sub-article (7) thereof shall be substituted by the following:

"(7) The Court shall impose on an undertaking and, or association of undertakings, periodic penalty payments determined in proportion to the average daily total worldwide turnover of the undertaking and, or association of undertakings concerned in the preceeding business year, for each day of delay, calculated from the date set in the judgement or decision issued by the Director General, as the case may be, in order to compel it or them:

(i) to comply with a cease and desist order and, or a compliance order pursuant to article 13A;

(ii) to comply with interim measures pursuant to article 15;

(iii) to comply with a commitment made binding pursuant to articles 12C or 17;

(iv) to submit to an inspection and to produce the required objects, documents or other records as referred to in article 12;

(v) to supply complete information in response to a request for information referred to in articles 11A and 12;

(vi) to supply correct information and, or to produce the requested documents in response to a request for information referred to in articles 11A and 12;

(vii) to appear at an interview as referred to in article 12; and

(viii) to stop from pursuing any other conduct which is hindering the investigation or sector inquiry and, or to rectify any acts or omissions.";

(h) sub-article (9) thereof shall be substituted by the following:

"(9) The Court may consider compensation paid as a result of a consensual settlement when determining the amount of a penalty to be imposed for an infringement of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 TFEU in accordance with regulation 17(3) of the Competition Law Infringements (Action for Damages) Regulations as contained in the Schedule to the Act."; and

(i) immediately after sub-article (9) thereof there shall be added the following new sub-articles (10), (11) and (12):

"(10) For the purposes of the imposition of penalties on parent companies and legal and economic successors of undertakings, the notion of undertaking in accordance with the case law of the Court of Justice of the European Union shall apply.

(11) The liability for the payment of any type of penalty arising under this article shall be without prejudice to any other liability that a person, undertaking and, or association of undertakings may be subject to under any other law.

(12) Notwithstanding the provisions of any other law, at any time prior to the delivery of a judgement imposing a penalty under this article, the Court may request the total worldwide turnover from any undertaking and, or association of undertakings."

18. Article 26A of the principal Act shall be amended as follows: Amendment of article 26A of the principal Act.

(a) sub-article (1) thereof shall be substituted by the following:

"(1) Penalties or periodic penalty payments shall only be imposed under article 21 of the Act when judicial proceedings concerning infringements contemplated in the Act are instituted within five years after the termination of the infringement:

Provided that in the case of infringements of the Act concerning requests for information, production of documents and the conduct of inspections, penalties or periodic penalty payments shall only be imposed under article 21 of the Act when judicial proceedings are instituted within three years after the termination of the infringement.";

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

"(3) (a) The prescription period for the imposition of penalties or periodic penalty payments by the Court pursuant to article 21 of the Act shall be interrupted by any formal investigative measure of the Director General or, in the case of the application of Articles 101 and 102 of the TFEU also, by any formal investigative measure of a competition authority with a view to investigating or instituting proceedings for the infringement.

(b) The prescription period for the imposition of penalties or periodic penalty payments by the Court pursuant to article 21 of the Act shall be interrupted for the duration of the investigation or proceedings before the national competition authorities of other Member States or the European Commission in respect of an infringement concerning the same agreement, decision of an association of undertakings, concerted practice or other conduct prohibited by Article 101 or 102 of the TFEU.

(c) The prescription period referred to in this sub-article shall be interrupted with effect from the date of notification of the first formal investigative measure to at least one undertaking or association of undertakings which has participated in the alleged infringement.";

(c) in sub-article (4) thereof the words "Actions which interrupt" shall be substituted by the words "Formal investigative measures which interrupt";

(d) in sub-article (5) thereof the words "in the infringement." shall be substituted by the words "in the alleged infringement.";

(e) sub-article (7) thereof shall be substituted by the following:

"(7) The interruption of the prescription period shall end on the day the Court closes the proceedings before it by delivering a judgement pursuant to articles 12C, 13, 13A or 21 of this Act or when the Director General issues a decision in terms of article 17 of this Act or when the Director General or the Court conclude that there are no grounds for further action on their part.";

(f) immediately after sub-article (7) thereof there shall

be added the following new sub-article (8):

"(8) The prescription period for the imposition of penalties and periodic penalty payments shall be suspended for as long as proceedings instituted pursuant to the provisions under this Act are pending before the Court or the Court of Appeal."

19. The second proviso to sub-article (1) of article 27 of the principal Act shall be substituted as follows: Amendment of article 27 of the principal Act.

"Provided further that where the competition issue raised before any court of civil jurisdiction is subject to pending proceedings instituted by the Director General before the Court, or may be the subject of proceedings before the Court at any point in time as contemplated in this Act, any other court of civil jurisdiction where the competition issue mentioned in sub-article (1) has been raised shall refer the proceedings to the competent court."

20. Sub-article (1) of article 30 of the principal Act shall be substituted by the following: Amendment of article 30 of the principal Act.

"30. (1) Subject to the provisions of sub-article (2), the provisions of this Act shall also apply to any Government department or to any body corporate established by law or to any company or other partnership in which the Government, directly or indirectly, holds a controlling interest or to which the Government has granted special or exclusive rights in any field:

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Provided that article 460(1) of the Code of Organisation and Civil Procedure shall not apply to the provisions of this sub-article and to causes instituted by the Director General pursuant to the provisions of this Act against any Government department, authority, agency or any other Government body, where in the opinion of the Director General, the said Government department, authority, agency or any other Government body performs the function of an undertaking as defined under this Act."

Cap. 379. (ii) neither seek nor take any instructions from Government or any other public or private entity when carrying out their duties and exercising their powers for the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 of the TFEU, without prejudice to the right of the Government, where applicable, to issue general policy rules that are not related to sector inquiries or specific investigations of the Office for Competition;

Cap. 379. (iii) refrain from taking any action which is incompatible with the performance of their duties and, or with the exercise of their powers for the application of article 5 and, or article 9 of the Competition Act and, or Articles 101 and, or 102 of the TFEU and are subject to procedures that ensure that, for a reasonable period of time after leaving office, they refrain from dealing with cases which are, or were before the Office for Competition, that could give rise to conflicts of interest as provided in article 46 of this Act.

Cap. 379. (b) Any person who takes decisions at the Office for Competition exercising the powers contemplated in the Competition Act or under any regulations made thereunder shall not be dismissed from the Office for Competition for reasons relating to the proper performance of their duties, or to the proper exercise of their powers for the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 of the TFEU:

Provided that the person may be dismissed only if he no longer fulfills the conditions required for the performance of his duties, or if he has been found guilty of serious misconduct under national law, which includes the following:

Cap. 379. (i) if the person fails to perform his duties impartially and independently, in relation to the application of articles 5 and, or 9 of the Competition Act and, or Articles 101 and, or 102 of the TFEU, or of any duties in relation to his Office emanating under this Act, the Competition Act and any regulation made thereunder;

(ii) if the person has been found guilty by a competent court of a criminal offence under article 28 of this Act;

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(iii) if the person has been convicted of a criminal offence affecting public trust, or of theft or fraud."

Amendment of article 14 of the principal Act.

24. Sub-article (1) of article 14 of the principal Act shall be amended as follows:

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

Cap. 379.

"(a) to investigate restrictive practices which allegedly distort or restrict competition and to act as an official party in proceedings instituted by the Director General and in such manner he shall enjoy the same rights which pertain to his counter-party in court proceedings, before the Civil Court under the Competition Act and in case when there is an appeal from judgements of the Civil Court delivered under the Competition Act, before the Court of Appeal;"

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

Cap. 379.

"(f) to encourage undertakings and associations of undertakings to comply with competition law and to promote sound trading practices and to promote public awareness of articles 5 and 9 of the Competition Act and Articles 101 and 102 of the TFEU;"

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

"(k) to co-operate closely in the European Competition Network with a view to ensuring the effective and uniform application of Articles 101 and 102 of the TFEU and to participate in meetings organised by international agencies and organisations;"

Amendment of article 15 of the principal Act.

25. In paragraph (f) of sub-article (1) of article 15 of the principal Act the words "under its regulatory regime." shall be substituted by the words "under its regulatory regime:" and immediately thereafter there shall be added the following new proviso:

"Provided that the Office for Competition may reject complaints on the grounds that it does not consider such complaints to be an enforcement priority."

Amendment of article 29 of the principal Act.

26. Sub-article (3) of article 29 of the principal Act shall be

substituted by the following:

Cap. 379. S.L. 379.08. "(3) In the case of a decision adopted by the Director General (Competition) under article 17 of the Competition Act, or in the case of any information or material published in terms of article 19 of the said Competition Act, or in the case of objections or a decision under the Control of Concentrations Regulations, or in any other case where the Director General considers it necessary, the persons, undertakings and associations of undertakings concerned may be required to identify any part of any decision, objections, publications or documents which in their view, contains business secrets or other confidential information."

27. In article 58 of the principal Act the words "from time to time require." shall be substituted by the words "from time to time require:" and immediately thereafter there shall be added the following new proviso:

Amendment of article 58 of the principal Act.

"Provided that with reference to such report, the sections relating to the Office for Competition shall include information about the appointments and dismissals of the Director General and the Directors, the amount of resources that were allocated in the relevant year, and any changes in that amount compared to previous years. Such report shall be made available to the public."

28. Immediately after sub-article (7) of article 70 of the principal Act there shall be added the following new sub-article (8):

Amendment of article 70 of the principal Act.

Cap. 379. Act No. XLV of 2021. "(8) The provisions of the Competition Act as amended by virtue of the Competition Act and the Malta Competition and Consumer Affairs Authority (Amendment) Act, 2021 shall not apply to investigations instituted by the Director General (Competition) and to any judicial proceedings filed by the Director General (Competition) in accordance with the Competition Act before the entry into force of the Competition Act and the Malta Competition and Consumer Affairs Authority (Amendment) Act, 2021.

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Passed by the House of Representatives at Sitting No. 489 of the
14th July, 2021.

CLAUDETTE BUTTIGIEG
Deputy Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives