

## CHAPTER 379

### COMPETITION ACT

*To regulate competition, enable the application of Council Regulation (EC) 1/2003 and provide for fair trading in Malta.* *Amended by:  
III. 2004.125.*

1st February, 1995

*ACT XXXI of 1994, as amended by Acts XXVIII of 2000, IV of 2003 and III of 2004; Legal Notice 425 of 2007; and Act VI of 2011.*

1. The short title of this Act is the Competition Act. Short title.
2. In this Act unless the context otherwise requires - Interpretation.  
*Amended by:  
XXVIII. 2000.2;  
III. 2004.126;  
VI. 2011.121.  
Cap. 510.*

"Appeals Tribunal" means the Competition and Consumer Appeals Tribunal as established by article 31 of the [Malta Competition and Consumer Affairs Authority Act](#);

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

"the Board" means the Board of Governors as established by article 8 of the [Malta Competition and Consumer Affairs Authority Act](#); Cap. 510.

"Director General" means the Director General (Competition) as appointed by article 13 of the Malta Competition and Consumer Affairs Authority Act; Cap. 510.

"dominant position" means a position of economic strength held by one or more undertakings which enables it or them to prevent effective competition being maintained on the relevant market by affording it or them the power to behave, to an appreciable extent, independently of its or their competitors, suppliers or customers;

"European Commission" means the European Commission as established by article 13 of the Treaty on European Union;

"group of undertakings" includes:

  - (a) the undertaking concerned;
  - (b) those undertakings in which the undertaking concerned, directly or indirectly:
    - owns more than half the capital or business assets; or
    - has the power to exercise more than half the voting rights; or
    - has the power to appoint more than half the members of the board of directors or other body or bodies legally representing the undertakings; or
    - has the right to manage the undertakings' affairs;
  - (c) those undertakings which have in the undertaking

concerned the rights or powers listed in paragraph (b);

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

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

"Member States" means all Member States of the European Union;

"Minister" means the Minister responsible for competition matters;

"National Competition Authority" means a national competition authority as designated in terms of Article 35(1) of [Council Regulation \(EC\) 1/2003](#);

Cap. 510. "Office" means the Office for Competition as established by article 13 of the [Malta Competition and Consumer Affairs Authority Act](#);

"President" means the President of the Appeals Tribunal;

"product" includes goods and the supply of services;

Cap. 378. "qualified entity" shall have the same meaning assigned to it under article 2 of the [Consumer Affairs Act](#);

"relevant market" means the market for the product whether within Malta or limited to any particular area or locality within Malta, or outside Malta, and whether or not restricted to a particular period of time or season of the year;

"restrictive practice" means an agreement between undertakings, a decision by an association of undertakings or a concerted practice prohibited under article 5 of this Act or Article 101 of the TFEU and, or an abuse by one or more undertakings of a dominant position prohibited under article 9 of this Act or Article 102 of the TFEU;

"TFEU" means the Treaty on the Functioning of the European Union;

"turnover" means the total turnover of an undertaking realised during the preceding financial year on the affected market;

"undertaking" means any person whether an individual, a body corporate or unincorporate or any other entity, pursuing an economic activity, and includes a group of undertakings.

Responsibility of  
the Director  
General.  
*Amended by:*  
*XXVIII. 2000.3;*  
*III. 2004.127.*  
*Substituted by:*  
*VI. 2011.122.*  
Cap. 510.

3. The Director General shall have the exclusive competence to apply the provisions of this Act and for this purpose he shall exercise the responsibilities vested in the Office for Competition under article 14 of the [Malta Competition and Consumer Affairs Authority Act](#) and under this Act:

Provided that the Director General may delegate any of his powers to any officer or employee of the Authority.

4. (Deleted by Act VI. 2011.123.).

Establishment of  
Commission.  
*Amended by:*  
*XXVIII. 2000.4;*  
*III. 2004.128.*

5. (1) Subject to the provisions of this Act, the following is prohibited, that is to say any agreement between undertakings, any decision by an association of undertakings and any concerted practice between undertakings having the object or effect of preventing, restricting or distorting competition within Malta or any part of Malta and in particular, but without prejudice to the generality of this subarticle, any agreement, decision or practice which:

Prohibited  
agreements and  
practices.  
*Amended by:*  
*XXVIII. 2000.5;*  
*III. 2004.129;*  
*VI. 2011.124.*

- (a) directly or indirectly fixes the purchase or selling price or other trading conditions; or
- (b) limits or controls production, markets, technical development or investment; or
- (c) shares markets or sources of supply; or
- (d) imposes the application of dissimilar conditions to equivalent transactions with other parties outside such agreement, thereby placing them at a competitive disadvantage; or
- (e) makes the conclusion of contracts subject to the acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

(2) Agreements or decisions prohibited in accordance with subarticle (1) shall be *ipso jure* null and unenforceable.

(3) The provisions of subarticle (1) shall not apply in the case of -

- (a) any agreement between undertakings; or
- (b) any decision by an association of undertakings; or
- (c) any concerted practice,

which contributes towards the objective of improving production or distribution of goods or services or promoting technical or economic progress and which allows consumers a fair share of the resultant benefit and which does not:

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

(4) The undertaking or association of undertakings claiming the benefit of subarticle (3) shall bear the burden of proving that the conditions of that subarticle are fulfilled.

(5) Article 101 of the TFEU shall also apply where any agreements between undertakings, any decision by an association of undertakings or any concerted practice may appreciably affect trade between Malta and any one or more Member States.

(6) The application of subarticles (1), (2) and (3) shall not be deemed to include the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States but which do not restrict competition within the meaning of Article 101(1) of the TFEU or which fulfil the conditions of Article 101(3) of the TFEU, or which are covered by a Regulation for the application of Article 101(3) of the TFEU.

Agreements, etc., where impact is minimal.  
Substituted by: XXVIII. 2000.6.  
Amended by: III. 2004.130.

6. (1) Agreements, decisions or concerted practices between undertakings shall not be subject to the prohibition in article 5(1) if the impact of the agreement, decision or practice on the relevant market is minimal.

(2) In determining whether such impact is or is not minimal, consideration shall be given to all relevant circumstances including the aggregate share of all the undertakings concerned of the relevant market.

(3) The foregoing provisions of this article shall not apply where in a relevant market competition is restricted by the cumulative effect of parallel networks of similar agreements established by several undertakings.

Certain agreements, etc., may be declared exempted.  
Amended by: XXVIII. 2000.7.

7. (*Deleted by Act III. 2004.131*).

General exemptions.  
Substituted by: XXVIII. 2000.8.  
Amended by: III. 2004.132;  
VI. 2011.125.

8. (1) The Minister may, after consultation with the Board General, by regulations prescribe that there shall be exempted from the provisions of article 5(1) such categories of agreements, decisions and concerted practices as may be specified in the regulations.

(2) The regulations referred to in subarticle (1) shall only be made where the agreement, decisions or concerted practice satisfy the requirements mentioned in article 5(3).

(3) Without prejudice to the provisions of subarticle (2) the Minister may in such regulations make an exemption subject to such conditions and limitations as he may deem appropriate.

Abuse of dominant position.  
Amended by: XXVIII. 2000.9;  
III. 2004.133;  
VI. 2011.126.

9. (1) Any abuse by one or more undertakings of a dominant position within Malta or any part of Malta is prohibited.

(2) Without prejudice to the generality of the provisions of subarticle (1), one or more undertakings shall be deemed to abuse of a dominant position, where it or they -

- (a) directly or indirectly impose an excessive or unfair purchase or selling price or other unfair trading conditions;

- (b) limit production, markets or technical development to the prejudice of consumers;
  - (c) apply dissimilar conditions, including price discrimination to equivalent transactions with different trading parties, thereby placing any or some of the trading parties at a competitive disadvantage;
  - (d) make the conclusion of contracts subject to the acceptance by the other party of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- (3) For the purpose of determining whether the purchase or selling price is excessive or unfair, all relevant factors shall be considered and in particular:
- (a) the price charged for the product (in absolute terms);
  - (b) the percentage increase or increases in the price over the long and short term;
  - (c) the relationship between the price and the cost of the product;
  - (d) the period of time for which the price has been charged;
  - (e) the economic value of the product;
  - (f) the importance of the product to consumers;
  - (g) the economic or other risks associated with bringing the product to the market;
  - (h) the investment of capital and other resources necessary to bring the product to the market;
  - (i) the expected, probable or possible changes in the market for the product; and
  - (j) the price charged for the product by other undertakings in Malta and by the same or other undertakings in other analogous markets.
- (4) Article 102 of the TFEU shall also apply where any abuse by an undertaking may affect trade between Malta and any one or more Member States.

**10.** *(Deleted by Act III. 2004.134).*

Negative clearance.  
Substituted by:  
XXVIII. 2000.10.

**11.** *(Deleted by Act XXVIII.2000.11).*

Price orders.

**11A.** (1) Where the trend of trade, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the Maltese market, the Director General may conduct an inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. In the course of that inquiry, the Director General may request the undertakings or association of undertakings concerned to supply the information

Inquiries into sectors of the economy and into types of agreements.  
Added by:  
VI. 2011.127.

necessary for the application of articles 5 and 9 of the Act and Articles 101 and 102 of the TFEU and may carry out any inspections necessary for that purpose.

(2) For the purposes of subarticle (1), article 12 shall *mutatis mutandis* apply.

(3) The Director General may in particular request the undertakings or association of undertakings concerned to communicate to him all agreements, decisions and concerted practices.

(4) The Director General may publish a preliminary report on the results of the inquiry into particular sectors of the economy or particular types of agreements across various sectors and invite comments from interested parties before publishing the final report.

(5) Any person, undertaking or association of undertakings that does not comply with the request of the Director General in terms of subarticles (1) and (3), within the time-limits imposed by the Director General shall, without prejudice to any other liability under this Act or any other law, commit an infringement of this Act.

Investigations.  
Amended by:  
XXVIII. 2000.12;  
III. 2004.135;  
VI. 2011.121, 128.

**12.** (1) It shall be the duty of the Director General to ensure that the provisions of this Act are observed by all, and to gather information that may be necessary for him to carry out his functions; and for such purpose he shall have power to carry out investigations of his own motion or at the request of the Minister or upon a reasonable allegation in writing of a breach of the provisions of this Act, by a complainant or at the request of any designated national competition authority of any other Member State or the European Commission.

(2) During the course of any investigation carried out by the Office in accordance with subarticle (1), the Director General may request any undertaking or association of undertakings to furnish him with any information or document in its possession which the Director General has reason to believe is relevant to the matter under investigation, within such time as in the circumstances of the investigation the Director General may consider reasonable:

Provided that nothing in this subarticle 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.

(3) When sending a request for information to an undertaking or association of undertakings, the Director General shall state the legal basis and the purpose of the request, specify what information is required and fix a time-limit within which the information is to be provided and indicate the administrative fines provided for in articles 21(4), (5) and (6).

(4) Where undertakings and associations of undertakings submit information which contains business secrets or other confidential information, article 29 of the [Malta Competition and Consumer Affairs Authority Act](#) shall apply.

(5) Any undertaking that shows that its operations are directly affected by the investigation being carried out by the Director General, any association of undertakings, any person or any registered consumers' association claiming that it or its members are being adversely affected by, any breach of the provisions of this Act constituting the subject-matter of those investigations, may request in writing to make submissions before the Director General at any stage thereof and the Director General shall accede to the request if he considers it justified and determine the manner in which such submissions shall be made.

(6) In the course of any investigation the Director General may receive written or verbal 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 Appeals Tribunal and before any court of law:

Provided that, and without prejudice to subarticle (7)(a), in the case of a natural person, not being an undertaking or a director, manager, secretary or other similar officer of an undertaking or association of undertakings, statements may be taken only with his prior consent.

- (7) (a) The Director General may, for the purpose of any investigation under this article, enter into and search any premises, land and means of transport of undertakings and associations of undertakings, where he has reason to believe that information relevant to the investigation may be found, and in the course of any such search may seize any object or document, or take extracts or copies of documents, or order the non-removal of any object from any such premises, land and means of transport, and in connection with any such order may close and seal any or all parts of such premises, land or means of transport, or put any object under seal and, or ask any representative or member of staff of the undertaking or association of undertakings concerned for an explanation of facts or documents relating to the subject matter and purpose of the inspection and record the answers.
- (b) The officials carrying out an inspection under paragraph (a) shall exercise their powers upon production of a written authorisation signed by the Director General specifying the subject-matter and purpose of the inspection and the penalties provided in article 21(4) and (5).
- (8) (a) If a reasonable suspicion exists that books or other records related to the business and to the subject-matter of the inspection, which may be relevant to prove a breach of articles 5 and, or 9, and, or Articles 101 and, or 102 of the TFEU, are being kept in any other premises, land or means of transport, including the homes of directors, managers and other members of

staff of the undertakings and associations of undertakings concerned, the Director General may, duly authorised by a warrant issued by a Magistrate, order an inspection to be conducted in any such other premises, land and means of transport.

- (b) The Magistrate, in deciding whether to issue a warrant under paragraph (a) shall ensure that the coercive measures envisaged are neither arbitrary nor excessive, having regard, in particular, to the gravity of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking or association of undertakings concerned and to the reasonable likelihood that business books and records relating to the subject-matter of the inspection are kept in the premises for which the warrant is requested.
  - (c) The warrant mentioned in paragraph (a) shall specify the subject-matter, purpose of the inspection, the date on which the inspection is to begin and the penalties provided in article 21(4) and (5).
  - (d) The officials carrying out an inspection under this subarticle shall exercise their powers upon production of the warrant mentioned in paragraph (a) and shall for the purposes of this subarticle be empowered to enter into and search any such premises, land and means of transport and in the course of any such search, may seize any object or document, or take extracts or copies of documents, or order the non-removal of any object from any such premises, land and means of transport.
- (9) (a) In the course of any search as is referred to in subarticles (7) and (8), the Director General may request the assistance of the Police and in such case the Police shall require a warrant from a Magistrate to assist the Director General in the search.
- (b) Where police assistance is sought by the European Commission in terms of Article 20(6) of [Council Regulation \(EC\) No 1/2003](#), a warrant from a Magistrate shall be required.

(10) In issuing a warrant enabling the European Commission to carry out an inspection in terms of Article 21 of Council Regulation (EC) No 1/2003 the Magistrate shall follow the provisions of paragraph (3) thereof.

(11) In the course of an inspection under this article, the undertakings or association of undertakings or persons subject to the inspection may be assisted by legal counsel or other advisers of their choice:

Provided that the right to such assistance shall not have the effect of suspending or delaying the inspection.

(12) The Director General shall always issue a receipt to the person on the premises or in control of any object that has been



seized. Anything which has been lawfully seized by the Director General and any order given by the Director General in accordance with subarticle (7) may be retained or shall remain in force as long as it is considered necessary by the Director General.

(13) No search may be commenced on any premises after seven o'clock in the evening and before seven o'clock on the next following morning, unless there is reason to believe that delay could cause the loss of information and the search is expressly authorized by the Director General or the Magistrate, as the case may be, to take place between the said times.

(14) Nothing in this article shall be deemed to detract from the powers of the Police under the [Criminal Code](#) or under any other law.

Cap. 9.

**12A.** (1) Where 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 notify each of the parties concerned in writing of the objections raised against them in accordance with the provisions of article 64 of the [Malta Competition and Consumer Affairs Authority Act](#), and shall set a time-limit within which they may inform him in writing of their submissions, and the parties concerned may in their written submissions set out all facts known to them which are relevant to their defence against the objections raised by the Director General and shall attach any relevant documents as evidence thereof.

Finding of an infringement by Director General.  
*Added by: XXVIII. 2000.13.*  
*Substituted by: III. 2004.136; VI. 2011.129.*  
Cap. 510.

- (2) (a) Where the Director General issues a statement of objections relating to a matter in respect of which he has received a complaint, he shall provide the complainant with a copy of the non-confidential version of the statement of objections.
- (b) Paragraph (a) shall not apply where the settlement procedure under article 12B is underway, so however that the Director General shall inform the complainant in writing of the nature and subject-matter of the procedure.
- (c) Under paragraphs (a) and (b), the Director General shall set a time-limit within which the complainant may make known his views in writing.
- (3) (a) The Director General shall give the parties to which he has issued a statement of objections as referred to in subarticle (1) and the complainant the opportunity to develop their arguments verbally, if they so request in their written submissions.
- (b) The Director General may, where appropriate, invite any other person to express his views in writing within the time-limit set by the Director General, and may give any such other person the opportunity to submit his views verbally if he so requests in his written submissions.

(4) Without prejudice to the right of the persons mentioned in subarticle (3) to request a separate and individual meeting, the Director General may also, on his own initiative, and, as he considers appropriate, invite some or all of the parties who have submitted written observations in terms of subarticle (3), to a meeting whereby they may develop their arguments and make counter-submissions in each other's presence and reply to questions posed by the Director General:

Provided that during such meeting, the Director General shall ensure that due regard is given to the protection of business secrets and other confidential information.

(5) The parties notified with a statement of objections as referred to in subarticle (1) shall be entitled to have access to the file concerning their case following such notification, without prejudice to the non-disclosure of information or documents identified by the Director General as containing business secrets or other confidential information, or of internal documents of the Director General or of the Competition Authorities of other Member States.

(6) Where, upon the conclusion of an investigation, it results to the Director General that the agreement, decision, concerted practice or conduct investigated is in breach of the provisions of articles 5 and, or 9 of this Act and, or in breach of Articles 101 and, or 102 of the TFEU, he shall issue a decision finding an infringement, giving his reasons therefor:

Provided that the Director General shall base his decisions under this subarticle only on objections contained in the statement of objections referred to in subarticle (1).

(7) In the interpretation of this Act and in the exercise of his responsibilities, in particular in the formulation of his decisions, orders and reports, the Director General shall have recourse to the judgements of the Court of Justice of the European Union, and 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 refer to his decisions and those of the Appeals Tribunal.

(8) Upon notification of a decision of the Director General as referred to in subarticle (6) such decision shall, without prejudice to the right of appeal under article 13A, 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 so however that, notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in this subarticle shall not be enforceable before the lapse of twenty days from notification of the decision to the undertaking or association of undertakings concerned in accordance with article 19(1).

Cap. 12.

(9) Any decision of the Director General may be revised or altered by the Director General where it results that:

(a) the information upon which it was based had been

- false, misleading or incomplete; or
- (b) market conditions have changed significantly.

**12B.** (1) In the course of an investigation concerning an agreement or a concerted practice between undertakings operating on the same level of the market and within the same relevant market or a decision of an association of undertakings having the object of preventing, restricting or distorting competition in terms of article 5 and, or Article 101 of the TFEU, the Director General may, prior to issuing a statement of objections, invite all or some of the undertakings concerned or the association of undertakings concerned to indicate in writing, within the time-limit set by him, whether they are prepared to engage in settlement discussions with a view to possibly introducing settlement submissions:

Settlement  
procedure in cartel  
cases.

*Added by:  
VI. 2011.130.*

Provided that the Director General shall not be obliged to take into account replies received after the expiry of that time-limit.

(2) Where two or more undertakings within the same economic entity indicate their willingness to engage in settlement discussions pursuant to subarticle (1), they shall, by the end of the time-limit set by the Director General appoint a joint representative to engage in discussions with the Director General on their behalf:

Provided that when setting the time-limit pursuant to subarticle (1), the Director General shall indicate to the relevant undertakings forming part of the same economic entity that the appointment of a joint representative shall be made for the sole purpose of fulfilling the requirement prescribed by this subarticle and that it shall have no bearing on the allocation of liability for the infringement amongst the different undertakings within the said economic entity.

(3) Undertakings or association of undertakings taking part in settlement discussions may be informed by the Director General of:

- (a) the objections he envisages to raise against them;
- (b) the evidence used to determine the envisaged objections;
- (c) non-confidential versions of any specified accessible document listed in the case file at that point in time; and
- (d) the range of potential fines:

Provided that in the case of paragraph (c) access may only be granted upon request by the undertaking or association of undertakings concerned and where such request is necessary to enable the party to ascertain its position regarding a time period or any other particular aspect of the cartel.

(4) When introducing their settlement submissions the undertakings or associations of undertakings taking part in settlement discussions shall confirm to the Director General that they will only request access to the file and leave to submit their views verbally after the receipt of the statement of objections, if the statement of objections does not reflect the contents of their

settlement submissions.

(5) The information given pursuant to subarticle (3) shall be confidential vis-à-vis third parties, save where the Director General has given a prior explicit authorization for disclosure.

(6) Should settlement discussions progress, the Director General may set a time-limit within which the parties may commit to follow the settlement procedure by introducing settlement submissions reflecting the results of the settlement discussions and acknowledging their participation in an infringement of article 5, and, or Article 101 of the TFEU as well as their liability:

Provided that, before the Director General sets a time-limit to introduce their settlement submissions, the parties concerned shall be entitled to have the information specified in subarticle (3) disclosed to them, upon request, in a timely manner:

Provided further that the Director General shall not be obliged to take into account settlement submissions received after the expiry of that time-limit.

(7) When the statement of objections notified to the parties reflects the contents of their settlement submissions, the written reply to the statement of objections by the undertakings or association of undertakings concerned shall, within a time-limit set by the Director General, confirm that the statement of objections addressed to them reflects the contents of their settlement submissions.

(8) Subject to the provisions of subarticle (7), the Director General may then proceed to the adoption of a decision pursuant to article 12A:

Provided that the Director General may reward the undertakings or association of undertakings concerned for the settlement by reducing by ten per centum the amount of the fine to be imposed.

(9) The fact that an undertaking co-operated with the Director General under this settlement procedure shall be indicated in the final decision, so as to explain the reason for the level of the fine.

(10) The Director General may decide at any time during the procedure to discontinue settlement discussions altogether in a specific case or with respect to one or more of the parties involved, if he considers that procedural efficiencies are not likely to be achieved.

Commitments.  
Added by:  
VI. 2011.130.

**12C.** (1) Where the Director General intends to adopt a decision requiring that an infringement be brought to an end and the undertaking or association of undertakings concerned offers commitments to meet the concerns expressed to it by the Director General in a preliminary assessment of the case, the Director General may by decision make those commitments binding on the undertaking or association of undertakings. Such decision may be 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:

- (a) there has been a material change in any of the facts on which the decision was based; or
  - (b) the undertaking or association of undertakings concerned acted contrary to its commitments; or
  - (c) the decision was based on incomplete, incorrect or misleading information provided by the parties
- (2) (a) Where the Director General intends to adopt a decision under subarticle (1), he shall 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 fixed 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.

(3) Where any undertaking or association of undertakings fails to comply with or acts contrary to a commitment made binding by a decision pursuant to subarticle (1), it shall without prejudice to any other liability under this Act or any other law, commit an infringement of this Act and the provisions of article 12A shall *mutatis mutandis* apply.

**12D.** (1) Where it results to the Director General following an investigation that the examined conduct does not constitute a breach of the provisions of articles 5 and, or 9 of this Act, and, or Articles 101 and, or 102 of the TFEU, he may issue a decision to that effect.

Finding of a non-infringement by the Director General.  
Added by:  
VI. 2011.130.

(2) Where the Director General intends to adopt a decision under subarticle (1), the provisions of article 12C(2) shall apply *mutatis mutandis*.

**13.** (1) On issuing a decision finding an infringement under article 12A, the Director General may together with such decision issue a cease and desist order whereby he orders the undertaking or association of undertakings concerned, as the case may be, to cease and desist from participating in such agreement, decision, practice, or conduct, and, or a compliance order setting behavioural or structural remedies addressed to the undertaking or association of undertakings concerned for the purpose of bringing the infringement to an immediate and effective end.

Cease and desist order and compliance order.  
Amended by:  
XXVIII. 2000.14.  
Substituted by:  
III. 2004.136.  
Amended by:  
VI. 2011.121, 131.

(2) Any behavioural or structural remedies set out in a compliance order shall be proportionate to the infringement committed and necessary to bring the infringement effectively to an end.

(3) Structural remedies set out in a compliance order may be imposed only where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy.

Appeals before the  
Appeals Tribunal.  
*Added by:*  
*III. 2004.136.*  
*Substituted by:*  
*VI. 2011.132.*

**13A.** (1) The undertaking or association of undertakings concerned may appeal by application filed before the Appeals Tribunal from any infringement decision, cease and desist or compliance order, administrative fine and, or daily penalty payment adopted or imposed by the Director General in accordance with the provisions of this Act within twenty days of notification thereof in accordance with article 19(1).

(2) The appeal shall be notified to the Director General and the Director General shall file his reply thereto within twenty days from the date of notification of the appeal.

(3) An appeal filed in accordance with subarticle (1) shall not have the effect of suspending the order, administrative fine and, or daily penalty payment appealed from unless the Appeals Tribunal, upon a reasoned request by a party to the appeal, and after considering the submissions of the Director General, suspends the order, administrative fine and, or daily penalty payment under such conditions as it may deem fit, stating its reasons therefor, pending the final determination of the appeal.

(4) The Appeals Tribunal may either confirm in whole or in part or quash the decision and, or order of the Director General and may confirm, revoke or vary the administrative fine and, or daily penalty payment imposed by the Director General within the limits set in article 21, taking into account the gravity and duration of the infringement as well as any aggravating or attenuating circumstances.

(5) The Director General and any party to an appeal before the Appeals Tribunal who feels aggrieved by a decision of the Appeals Tribunal may appeal on a question of law to the Court of Appeal by means of an application filed in the registry of that court within twenty days from the date of the decision of the Appeals Tribunal.

Handling of  
complaints and the  
right of appeal.  
*Amended by:*  
*XXVIII. 2000.15;*  
*III. 2004.137.*  
*Substituted by:*  
*VI. 2011.132.*

**14.** (1) Complaints are to be received by the Director General in writing, who shall set out the general requirements for information to be provided by the complainant.

Provided that the complainant shall request in his complaint that an investigation be carried out on the alleged restricted practices.

(2) Where the Director General considers that on the basis of the information in his possession there are insufficient grounds for acting on a complaint, he shall inform the complainant of his reasons and set a time-limit within which the complainant may make known his views in writing. The Director General shall not be obliged to take into account any further written submission received after the expiry of that time-limit.

(3) If the complainant makes known his views within the time-

limit set by the Director General and the written submissions made by the complainant do not lead to a different assessment of the complaint, the Director General shall reject the complaint by decision.

(4) If the complainant fails to make known his views within the time-limit set by the Director General, the complaint shall be deemed to have been withdrawn.

(5) Where the complainant does not agree with the decision of the Director General according to subarticle (3) or with the Director General's finding of a non-infringement according to article 12D, he may appeal by application filed before the Appeals Tribunal within twenty days of notification thereof in accordance with article 19(1).

(6) Where, upon appeal by the complainant, the Appeals Tribunal does not uphold the decision of the Director General rejecting a complaint according to subarticle (3), it shall inform the Director General accordingly who shall thereupon commence the investigation.

(7) Where, upon an appeal by the complainant, the Appeals Tribunal does not agree with the finding of the Director General of a non-infringement according to article 12D, and finds that there is an infringement, it shall issue a decision accordingly and remit the decision to the Director General who shall take any measure he may deem fit in accordance with the provisions of this Act in respect of the said infringement.

(8) Any party to an appeal before the Appeals Tribunal, including the Director General, who feels aggrieved by a decision of the Appeals Tribunal issued in terms of subarticle (7) may appeal on a question of law to the Court of Appeal, by means of an application filed in the registry of that court within twenty days from the date of the decision of the Appeals Tribunal, and the provisions of subarticle (7) shall *mutatis mutandis* apply to the Court of Appeal.

(9) Any decision of the Appeals Tribunal concerning an appeal from a decision of the Director General under subarticle (3) shall be final.

(10) An appeal made under this article shall not have the effect of suspending any decision on which an appeal is sought.

**14A.** (1) Without prejudice to article 12, a qualified entity may also make a complaint to the Director General that with respect to particular goods or services -

- (a) the structure of the market concerned or any aspect of that structure;
- (b) any conduct, whether or not in the market concerned, of one or more than one person who supplies or acquires goods or services in the market concerned; or
- (c) any conduct relating to the market concerned of customers of any person who supplies or acquires

Complaints of  
general interest.  
Added by:  
VI. 2011.133.

goods or services,

is or appears to be significantly harming the interests of consumers.

(2) The Director General must, within ninety days after the day on which he receives the complaint, publish a response stating how he proposes to deal with the complaint, and in particular:

- (a) whether he has decided to take any action, or to take no action, in response to the complaint; and
- (b) if he has decided to take action, what action he proposes to take.

(3) The response must state the reasons of the Director General for his proposals.

(4) The Director General:

- (a) shall issue guidance as to the presentation by the qualified entity of a reasoned case for the complaint; and
- (b) may issue such other guidance as appears appropriate for the purposes of this article.

Suspension or  
termination of  
proceedings.  
Added by:  
VI. 2011.133.

**14B.** (1) The Director General may suspend proceedings or reject a complaint in terms of Article 13 of [Council Regulation \(EC\) No 1/2003](#).

(2) Where the Director General rejects or suspends a complaint pursuant to subarticle (1), he shall inform the complainant without delay of the competition authority which is dealing or has already dealt with the case.

Guidance letters.  
Added by:  
VI. 2011.133.

**14C.** (1) Where the Director General considers it appropriate, he may, following a request by an undertaking, provide guidance on novel questions concerning the interpretation of articles 5 and, or 9 and Articles 101 and, or 102 of the TFEU in a written statement known as a "guidance letter".

(2) The Director General shall consider it appropriate to issue a guidance letter under subarticle (1) only if the following cumulative conditions are fulfilled:

- (a) the informal guidance requested is compatible with the enforcement priorities of the Office;
- (b) the substantive assessment of an agreement or practice with regard to articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU, poses a question of application of the law for which there is no clarification in the existing Maltese and EU legal framework, in publicly available general guidance, in judgments or decisions or in previous guidance letters;
- (c) a *prima facie* evaluation of the facts of the case suggests that clarification of the novel question through a guidance letter will be useful, taking into account the following elements:
  - the economic importance of the goods and



- 
- services concerned by the agreement or practice from the point of view of the consumer, and, or;
  - the extent to which the agreement or practice shall be or is likely to be resorted to in the relevant market or in other markets, and, or;
  - the importance of the investments linked to the transaction in relation to the size of the companies concerned and the extent to which the transaction relates to a structural operation such as the creation of a non-full function joint venture; and
- (d) it is possible to issue a guidance letter on the basis of the information provided and no further fact-finding measures by the Director General need be undertaken.
- (3) The Director General shall not consider a request for a guidance letter where:
- (a) he is aware that the questions raised in the request are identical to or similar to issues raised in a case pending before a Maltese Court or the Court of Justice of the European Union; or
  - (b) the agreement or practice to which the request refers is subject to proceedings pending before the Director General, the Appeals Tribunal, the European Commission, and to the extent that he may be aware, pending before a Maltese Court, the Court of Justice of the European Union or another Member State court or a national competition authority.
- (4) The Director General shall not consider hypothetical questions or issue guidance letters on agreements or practices that are no longer being implemented by the applicants:
- Provided that undertakings may present a request for a guidance letter to the Director General in relation to questions raised by an agreement or practice before its implementation but following the conclusion of the agreement or practice or where the undertakings are able to show to the satisfaction of the Director General that negotiations have reached a sufficiently advanced stage for a request to be considered.
- (5) A request for a guidance letter shall not have the effect of preventing the Director General, where he deems necessary, from initiating an investigation under this Act with regard to the facts presented in the request.
- (6) The request shall clearly state:
- the identity of all undertakings concerned or of the association of undertakings, as well as a single address for receipt of the guidance letter;
  - the specific questions on which the guidance is sought;
  - full and exhaustive information on all points relevant for an informed evaluation of the questions raised, including pertinent documentation;

- detailed reasoning why the request presents a novel question;
- all other information that permits an evaluation of the request in the light of the conditions mentioned in subarticles (2) to (4), including in particular, a declaration that the agreement or practice to which the request refers is not subject to proceedings pending before the Court of Justice of the European Union, a Maltese or other member state court or before the European Commission or a national competition authority;
- a clear identification of any business secret or other confidential information; and
- any other information or documentation relevant to the individual case.

(7) The Director General shall evaluate the request on the basis of the information provided and, where available, may use additional information at his disposal from public sources, former investigations or any other source and may ask the applicants to provide supplementary information:

Provided that in using the information provided by the applicants or such other additional information, the Director General shall pay due regard to the protection of business secrets or other confidential information.

(8) Where the Director General considers that it is not appropriate to issue a guidance letter or that a guidance letter cannot be issued under this article, the Director General shall inform the applicant accordingly stating the reasons therefor.

(9) Where the Director General has not yet issued a guidance letter, the applicant may withdraw its request at any stage:

Provided that where the request for a guidance letter is withdrawn in terms of this subarticle, the information supplied in the context of the request for guidance shall remain with the Director General and may be used in subsequent proceedings under this Act.

(10) A guidance letter shall set out:

- a summary description of the facts on which it is based; and
- the principal legal reasoning underlying the understanding and assessment of the Director General on the novel question relating to articles 5 and, or 9 of this Act, and, or Articles 101 and, or 102 of the TFEU raised in the request:

Provided that a guidance letter may be limited to part of the questions raised in the request and may also include aspects additional to those set out in the request.

(11) Guidance letters shall be posted on the website of the Malta Competition and Consumer Affairs Authority as established by the [Malta Competition and Consumer Affairs Authority Act](#), having regard to the legitimate interest of undertakings in the protection of business secrets or other confidential information: Cap. 510.

Provided that, before issuing a guidance letter, the Director General shall agree with the applicants on a public version.

(12) Where an agreement or practice has formed the factual basis for a guidance letter, the Director General shall not be precluded from subsequently examining that same agreement or practice in a procedure under this Act, and in so doing, the Director General shall take the guidance letter into account, subject in particular to changes in the underlying facts, to any new aspects raised by a complaint, to developments in decisions and judgments on the application of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU and to changes in the policies of the Malta Competition and Consumer Affairs Authority.

(13) Guidance letters are not binding on the courts or on the Appeals Tribunal, although they may take them into account should they deem fit.

**15.** (1) In cases of urgency due to the risk of serious and irreparable damage to competition, the Director General, acting on his own initiative, may by decision, on the basis of a prima facie finding of an infringement of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU, order interim measures. Interim measures.  
Amended by:  
XXVIII. 2000.16.  
Substituted by:  
VI. 2011.134.

(2) A copy of the decision ordering interim measures in accordance with subarticle (1) shall be notified to the undertaking or association of undertakings under investigation in accordance with article 19(1), and such decision shall apply for a specified period of time and may be renewed in so far as this is necessary and appropriate.

(3) The undertaking or association of undertakings concerned may appeal from a decision of the Director General as described in subarticle (1) by application filed before the Appeals Tribunal within twenty days from the date upon which the decision was notified in accordance with article 19(1), and such appeal shall not have the effect of suspending the interim measure unless the Appeals Tribunal, after hearing the submissions of the undertaking or association of undertakings concerned and the Director General, otherwise directs.

(4) Any decision of the Appeals Tribunal under this article shall be final.

**15A.** (*Deleted by Act III. 2004.138*).

Interim orders.  
Added by:  
XXVIII. 2000.17.

**15B.** (*Deleted by Act III. 2004.138*).

Director to abide  
by decisions of  
Commission.  
Added by:  
XXVIII. 2000.17.

Offences.

*Amended by:*  
XXVIII. 2000.18.  
*Substituted by:*  
III. 2004.139.

Non-compliance with a cease and desist order and a compliance order.  
*Substituted by:*  
XXVIII. 2000.19.  
*Amended by:*  
III. 2004.140.  
*Substituted by:*  
VI. 2011.135.

Non-compliance with an interim measure.  
*Amended by:*  
III. 2004.141.  
*Substituted by:*  
VI. 2011.135.

Notification and publication.  
*Amended by:*  
XXVIII. 2000.20;  
III. 2004.142.  
*Substituted by:*  
VI. 2011.135.  
Cap. 510.

Offences against interim orders.  
*Amended by:*  
XXVIII. 2000.21.

Administrative fines.  
*Amended by:*  
XXVIII. 2000.22;  
III. 2004.144;  
L.N. 425 of 2007.  
*Substituted by:*  
VI. 2011.121.

**16.** Deleted by Act VI. 2011.135.

**17.** Any undertaking or association of undertakings which acts contrary to a cease and desist order or a compliance order issued by the Director General in accordance with article 13 shall, without prejudice to any other liability under this Act or any other law, commit an infringement of this Act.

**18.** Any undertaking or association of undertakings which acts contrary to an interim measure issued by the Director General in accordance with article 15 shall, without prejudice to any other liability under this Act or any other law, commit an infringement of this Act..

**19.** (1) Any decision or order of the Director General delivered in accordance with the provisions of this Act shall be notified to the parties concerned and to the complainant in accordance with article 64 of the [Malta Competition and Consumer Affairs Authority Act](#), due regard being had to the protection of business secrets or other confidential information.

(2) The Appeals Tribunal and the Director General shall publish without undue delay the decisions or orders taken under this Act and in doing so the Appeals Tribunal and the Director General shall have regard to the legitimate interest of the undertakings in the protection of their business secrets or other confidential information.

(3) Any decision delivered by the Appeals Tribunal in proceedings held before it shall be deemed to be notified to the undertaking or association of undertakings concerned on the date on which it is pronounced.

(4) The Appeals Tribunal shall provide:

- (a) both a complete version and a non-confidential version of its decision on paper or on any other durable medium to the Director General; and
- (b) a copy of its decision, upon request, to the parties to the case, ensuring in doing so the protection of business secrets or other confidential information.

**20.** (*Deleted by Act III.2004.143*).

**21.** (1) Any undertaking or association of undertakings which commits an infringement in terms of articles 12A(6), 12C(3), 17 or 18 may, by decision of the Director General, be held liable to pay an administrative fine of up to ten *per centum* of the total turnover of the undertaking or association of undertakings concerned in the preceding business year:

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

- (2) (a) Where an administrative fine is imposed upon an association of undertakings, taking account of the annual turnover of its members, and the association is not solvent, the association shall be obliged to call for contributions from its members to cover the amount of the administrative fine due.
  - (b) Where the contributions referred to in paragraph (a) have not been made to the association within a time-limit fixed by the Director General, the Director General may require payment of the administrative fine directly by any of the undertakings whose representatives were members of the decision-making bodies of the association.
  - (c) Where the application of paragraph (b) is not sufficient to ensure the full payment of the fine, the Director General may require payment of the balance by any of the members of the association which were active on the market on which the infringement occurred.
  - (d) The Director General shall not require payment under paragraphs (b) and (c) from undertakings which show that they have not implemented the unlawful decision of the association and they were not aware of its existence or had actively distanced themselves from it before the Director General started investigating the case.
  - (e) The financial liability of each undertaking in respect to the payment of the fine shall not exceed ten *per centum* of its total turnover in the preceding business year.
- (3) In fixing the amount of the fine, the Director General shall have regard to the gravity and duration of the infringement and to any aggravating or attenuating circumstances:

Provided that the Director General may from time to time issue guidelines detailing the manner in which such fines are set.

- (4) (a) Any undertaking or association of undertakings which fails to comply with a cease and desist order or a compliance order pursuant to article 13, or fails to comply with an interim measure pursuant to article 15, or fails to comply with a commitment made binding pursuant to article 12C, or which fails to supply complete and correct information pursuant to a request for information under articles 11A and 12 or fails to submit to an inspection under article 12 may, at the discretion of the Director General, be liable to a daily penalty payment not exceeding five *per centum* of the average daily turnover of the undertaking or

association of undertakings concerned in the preceding business year for each day during which the undertaking fails to comply with its obligations.

- (b) The daily penalty payment referred to in paragraph (a) shall be calculated from the day determined in the decision of the Director General.
- (c) Where the undertaking or association of undertakings concerned complies with the obligations mentioned in paragraph (a), the Director General may fix the definitive amount of the daily penalty payment at a figure lower than that which would have arisen in terms of the original decision of the Director General.
- (d) In the application of this subarticle to an association of undertakings, subarticle (2) shall apply *mutatis mutandis*.

(5) Any person who in the course of any investigation or inquiry conducted under this Act, or in the course of any proceedings before the Appeals Tribunal knowingly or recklessly -

- (a) gives any false, inaccurate or misleading information; or
- (b) supplies incomplete information; or
- (c) prevents or hinders any investigation; or
- (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,

shall be liable to the payment of an administrative fine of not less than one thousand euro (€1,000) and not more than ten thousand euro (€10,000), as imposed by the Director General.

(6) Where a person, being a director, manager, secretary or other similar officer of an undertaking or association of undertakings fails, without reasonable cause, to supply information requested within the time given, such person shall be liable to the payment of an administrative fine of up to two thousand and four hundred euro (€2,400) for each day in default.

Failure to pay  
fines.  
Added by:  
VI. 2011.137.

**21A.** Without prejudice to article 13A(1), failure to pay any administrative fine and, or daily penalty payment imposed by the Director General, or by the Appeals Tribunal upon appeal from an administrative fine and, or daily penalty payment imposed by the Director General, within the time limit set shall constitute an offence against this Act, and any person being a director, secretary, manager or other similar officer of the undertaking or association of undertakings concerned shall, without prejudice to the liability of the said undertaking or association of undertakings to pay the administrative fine and, or penalty payment due, be liable on conviction to a fine (*multa*) of not less than one thousand euro (€1,000) and not more than twenty thousand euro (€20,000).

22. *(Deleted by Act III.2004.145).* Offences against article 10(5).  
*Amended by: XXVIII. 2000.24.*
- 22A. *(Deleted by Act VI. 2011.138).* Penalty for offences against article 17.  
*Added by: XXVIII. 2000.23.*  
*Amended by: L.N. 425 of 2007.*
23. (1) Any fine (*multa*) payable in respect of the commission of a criminal offence under this Act shall be recoverable as a civil debt in favour of the Government by the Director General, and the undertaking in the economic interests of which the person so found guilty was acting shall be liable *in solidum* with the person found guilty for the payment of the said fine. Offences in connection with investigations, etc.  
*Amended by: XXVIII. 2000.25;*  
*L.N. 425 of 2007;*  
*VI. 2011.121, 139.*
- (2) The provisions of the [Probation Act](#) and of article 21 of the [Criminal Code](#) shall not apply with respect to criminal offences committed under this Act. Cap. 446.  
Cap. 9.
- (3) Any administrative fine payable to the Director General under this Act shall be recoverable as a civil debt by the Director General and shall constitute an executive title for all effects and purposes of Title VII of Part I of Book II of the [Code of Organization and Civil Procedure](#). Cap. 12.
24. (1) In criminal proceedings instituted by the Police before the Court of Magistrates for an offence against the provisions of this Act, the Director General may assist the Police in the conduct of the prosecution and in the production of the evidence. Director General may assist prosecution.  
*Amended by: VI. 2011.121*
- (2) The Director General or any officer deputed by him for the purposes of subarticle (1) may nevertheless be produced as a witness but should his evidence be required as part of the case for the prosecution, his evidence shall be heard before that of any other witness for the prosecution unless the necessity of his evidence arises subsequently.
25. Notwithstanding the provisions of the [Criminal Code](#), the Attorney General shall have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings arising out of the provisions of this Act. Right of appeal.  
Cap. 9.
26. Notwithstanding the provisions of the [Criminal Code](#) or of any other law, criminal action for offences under this Act is prescribed by the lapse of five years. Prescription.  
Cap. 9.
- 26A. (1) The prescription period for the imposition of administrative fines under article 21 shall be: Prescription concerning the imposition of administrative fines.  
*Added by: XXVIII. 2000.26.*  
*Amended by: L.N. 425 of 2007.*  
*Substituted by: VI. 2011.140.*
- (a) three years in the case of infringements of the Act concerning requests for information or the conduct of inspections; and
- (b) five years in the case of all other infringements.
- (2) The prescription period begins to run on the day on which

the infringement is committed. However, in the case of continuing or repeated infringements, this period shall begin to run from the day on which the infringement ceases.

(3) The prescription period for the imposition of fines shall be interrupted by any action of the Director General or, in the case of the application of Articles 101 and 102 of the TFEU, of the European Commission or of a competition authority of a Member State with a view to investigating or instituting proceedings for the infringement. The prescription period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement.

(4) Actions which interrupt the running of the prescription period shall include in particular the following:

- (i) written requests for information by the Director General, the European Commission or by a national competition authority;
- (ii) the issue of a written authorisation signed by the Director General or a warrant issued by a Magistrate under article 12 to conduct an inspection, or a written authorisation by the European Commission in terms of Article 20 of [Council Regulation \(EC\) No 1/2003](#), or an equivalent document issued by a national competition authority;
- (iii) the commencement of proceedings by the Director General, the European Commission or by a national competition authority;
- (iv) the notification of a statement of objections in accordance with article 12A or the communication of a statement of objections by a competition authority of a Member State;
- (v) the notification of the invitation by the Director General to engage in settlement discussions under article 12B.

(5) The interruption of the prescription period shall apply to all undertakings and associations of undertakings which have participated in the infringement.

(6) The prescription period shall start to run again from each interruption.

(7) The prescription period for the imposition of fines shall be suspended for as long as the decision of the Director General is the subject of proceedings pending before the Appeals Tribunal or the Court of Appeal.



27. (1) Where before any court of civil jurisdiction it is alleged that any agreement or decision is null and unenforceable in accordance with article 5 of this Act and, or Article 101 of the TFEU, or where it is alleged that there is an abuse of a dominant position in accordance with article 9 of this Act and, or Article 102 of the TFEU, that court shall stay the proceedings and request the Director General to submit a report on the competition questions raised before it and the court shall take into consideration such report, and any submissions thereon made by the parties and the Director General, before deciding the case:

Proceedings before of a civil court.  
Amended by:  
III. 2004.146.  
Substituted by:  
VI. 2011.142.

Provided that where the competition question raised before the court has already been decided upon under the provisions of this Act and the decision thereon has become *res judicata*, the court shall abide by such decision.

(2) Where the Director General, on his own initiative, becomes cognizant of allegations as mentioned in subarticle (1), in a civil lawsuit, he shall, by means of an application, request the court to apply the procedure referred to in subarticle (1).

(3) For the purposes of drawing up reports under this article the Director General may have resort to the investigatory powers conferred upon him under this Act.

27A. (1) Any person who has suffered damage as a result of an infringement of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU may institute an action for damages before a court of civil jurisdiction.

Right to damages.  
Added by:  
VI. 2011.143.

(2) For the purposes of this article, a person shall be deemed to have suffered damage even where that person is not the immediate customer of the defendant.

(3) The plaintiff shall be entitled to compensation for actual loss and for loss of profit, together with interest from the time the damage occurred until the capital sum awarded is actually paid.

(4) In establishing the quantum of damages, the Court shall take into account the counterfactual scenario that would have prevailed had the infringement not taken place.

(5) An action under this article may be instituted in the absence of any investigation or proceedings under this Act or under [Council Regulation \(EC\) No 1/2003](#).

Provided that an action under this article may also be instituted:

- (a) where there is a decision under this Act establishing an infringement of articles 5 and, or 9 of this Act and, or of Articles 101 and, or 102 of the TFEU which has become *res judicata*;
- (b) where there is a decision of the European Commission establishing an infringement of Articles 101 and, or 102 of the TFEU which has become *res judicata*;
- (c) pending an investigation or proceedings under this Act or under [Council Regulation \(EC\) No 1/2003](#);

(d) pending separate proceedings before a court of civil jurisdiction or following a decision of such court which has become *res judicata* involving the application of articles 5 and, or 9 of this Act and, or Articles 101 and, or 102 of the TFEU.

(6) In the circumstances mentioned in paragraphs (a) and (b) of the proviso to subarticle (5), the court shall be bound by the finding of an infringement in the decision.

(7) The defendant may not plead lack of intention, negligence or lack of fault on his part as a defence in a claim for damages under subarticle (1):

Provided that the defendant may demonstrate that the infringement was the result of a genuinely excusable error. For the purposes of this proviso, an error would be excusable if a reasonable person applying a high standard of care could not have been aware that the conduct restricted competition.

(8) The defendant may raise as a defence the fact that the plaintiff passed on the damage initially suffered by him on to his customers.

(9) (a) The action under this article shall be barred by the lapse of two years commencing from the day the injured party became aware or should reasonably have become aware of the damage, the infringement and the identity of the undertaking or association of undertakings responsible for the infringement.

(b) The period mentioned in paragraph (a) shall be suspended if infringement proceedings are initiated by the Director General under this Act or by the European Commission under [Council Regulation \(EC\) No 1/2003](#) or where separate proceedings have been instituted before a court of civil jurisdiction as referred to in paragraph (d) of the proviso to subarticle (5) until any such proceedings are terminated by a decision which has become *res judicata*.

(10) (a) The provisions of this article shall prevail over anything to the contrary contained in the [Civil Code](#).

(b) The right to file an action under subarticle (1) shall not affect the right to bring any other proceedings in respect of the same infringement under this Act, or any regulations made thereunder or any other law.

(c) Subarticle (1) shall only apply to claims relating to infringements occurring after the coming into force of this article.

**28.** It shall not be lawful to issue any precautionary warrant referred to in the [Code of Organization and Civil Procedure](#) against the Director General in respect of the exercise of his functions under this Act.

It shall be lawful to issue any precautionary warrant.  
*Substituted by:*  
*III. 2004.147.*  
*Amended by:*  
*VI. 2011.121, 145.*  
*Cap. 12.*

**29.** Notwithstanding anything contained in this Act the Director General may, within the context of a reciprocity agreement in matters of mutual assistance relating to competition practices, pass documents and disclose information in his possession to authorities having responsibility in competition matters in countries which are not Member States provided that they are restricted in divulging such information in an analogous manner and purpose to that of the Director General under this Act.

Reciprocity agreements.  
*Amended by:*  
*VI. 2011.121, 144.*

**29A.** The Director General shall cooperate with the European Commission and National Competition Authorities in terms of [Council Regulation \(EC\) No. 1/2003](#).

Co-operation under Regulation 1/2003.  
*Added by:*  
*VI. 2011.146.*

**30.** (1) Subject to the provisions of subarticle (2), the provisions of this Act shall also apply to any Government departments 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.

Applicability of Act to government departments.  
*Substituted by:*  
*XXVIII. 2000.27.*  
*Amended by:*  
*IV. 2003.24.*

(2) Undertakings entrusted with the operation of services of a general economic interest or having the character of a revenue producing monopoly shall be subject to the provisions of this Act insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them.

(3) The Minister may by order in the Gazette declare a specific service entrusted to a particular undertaking to be a service in the general economic interest.

**31.** No action shall lie against any member of the Appeals Tribunal, the Director General, or any of his officers or any authorised person acting under his direction or control for any act or omission in connection with this Act, or any regulations made thereunder, done or omitted by him unless such act or omission were done in bad faith.

Action in good faith.  
*Amended by:*  
*XXVIII. 2000.28.*  
*Substituted by:*  
*VI. 2011.147.*

**32.** The Minister may from time to time make regulations for the better carrying out of the provisions of this Act and may in particular by such regulations prescribe rules for the control of concentrations including full function joint ventures which may prevent, restrict or distort competition within the relevant market.

Power to make regulations.  
*Substituted by:*  
*XXVIII. 2000.29.*  
*Amended by:*  
*VI. 2011.148.*

**33.** (1) The Minister may by regulations:

- (a) prescribe the fees payable to the Director General in connection with any request made to him under this Act and in connection with procedures before the Commission;

Power to make regulations.  
*Added by:*  
*XXVIII. 2000.30.*  
*Amended by:*  
*III. 2004.148;*  
*VI. 2011.121, 149.*

- (b) exempting any agreement, decision or practice in connection with agriculture and fisheries from the provisions of article 5 under such conditions as he may prescribe.
  - (2) The Minister, after consultation with the Board, may make regulations:
    - (a) prescribing the procedure to be followed by the office in joint investigations, co-operation and exchange of information with other national competition authorities;
    - (b) prescribing the procedure for co-operation between the Appeals Tribunal, the European Commission, the national courts and national competition authorities; and
    - (c) providing for the power to waive or reduce the applicable fine in cartel investigations.
-