

Naghti l-kunsens tieghi.

(L.S.)

GEORGE HYZLER
Agent President

24 ta' Novembru, 2000

ATT Nru. XXVIII ta' l-2000

ATT biex jemenda l-Att dwar il-Kompetizzjoni, Kap. 379.

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

1. (1) It-titolu ta' dan l-Att huwa l-Att ta' l-2000 li jemenda l-Att dwar il-Kompetizzjoni, u għandu jinqara u jiftiehem bħala haġa wahda ma' l-Att dwar il-Kompetizzjoni, hawnhekk iżjed 'il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli għall-kummerċ jista' jstabbilixxi b'avviż fil-Gazzetta u jistgħu jiġu hekk stabbiliti dati differenti għal provvedimenti differenti u għal finijiet differenti ta' l-Att.

2. L-artikolu 2 ta' l-Att prinċipali għandu jigi emendat kif ġej:

Emenda ta' l-artikolu 2 ta' l-Att prinċipali.

(a) fit-tifsira ta' "dhul min-negozju" il-kliem "jew xort'ohra" għandhom jithassru, u minflok il-kliem "subartikolu (4) ta' l-artikolu 7 u ta' l-artikolu 21" għandhom jidhlu l-kliem "subartikolu (2) ta' l-artikolu 6 u ta' l-artikolu 21";

(b) minflok it-tifsira ta' "intrapriża" għandha tidhol din li ġejja:

“intrapriża” tfisser kull persuna sew jekk tkun individwu, korp magħqud jew mhux magħqud jew kull enti oħra, bi skop ta’ xi attività ekonomika, u tinkludi grupp ta’ intrapriži;”;

(ċ) fit-tifsira fit-test Ingliż ta’ “Minister” minflok il-kelma “trade” għandha tidhol il-kelma “commerce”;

(d) minflok it-tifsira ta’ “pożizzjoni dominanti” għandu jidhol dan li ġej:

“pożizzjoni dominanti” tfisser pożizzjoni ta’ qawwa ekonomika li jkollha intrapriża waħda jew iktar li biha dawn l-impriži jkunu jistgħu jipprevjenu milli jkun hemm kompetizzjoni effettiva fis-suq rilevanti billi tagħtihom is-setgħa li jikkomportaw ruhhom, f’limiti sinjifikanti, independentement mill-kompetituri, provdituri jew xerrejja tagħhom;”;

(e) minnufih wara t-tifsira ta’ “pożizzjoni dominanti” għandha tidhol din it-tifsira ġdida li ġejja:

“prattika restrittiva” tfisser ftehim bejn intrapriži, deċiżjoni minn għaqda ta’ intrapriži, jew prattika miftiehma projbita taht l-artikolu 5 u, jew, abbuż minn intrapriża waħda jew iktar intrapriži minn pożizzjoni dominanti projbita taht l-artikolu 9 ta’ dan l-Att;”;

(f) fit-tifsira ta’ “suq rilevanti”, minnufih wara l-kliem “lokalità partikolari” għandhom jidhlu l-kliem “, u kemm jekk ikun jew ma jkunx ristrett għal xi perjodu partikolari ta’ żmien jew stagun tas-sena”.

Emenda ta’ l-artikolu 3 ta’ l-Att prinċipali.

3. L-artikolu 3 ta’ l-Att prinċipali għandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu:

(i) minflok il-kliem “skond dan l-Att” fil-paragrafu (ċ) tiegħu għandhom jidhlu l-kliem “u li jagħti bidu għal azzjonijiet skond dan l-Att biex jissopprimihom”; u

(ii) minflok il-kliem “mogħtija lilu” fil-paragrafu (d) tiegħu, għandhom jidhlu l-kliem “konferiti fuqu”; u

(b) il-kliem “tal-Kompetizzjoni Ġusta” kulfejn dawn jidhru fis-subartikolu (2) tiegħu għandhom jithassru.

4. L-artikolu 4 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 4 ta' l-Att prinċipali.

(a) is-subartikoli (2) sa (5) tiegħu għandhom jiġu enumerati mill-ġdid bħala s-subartikoli (3) sa (6) rispettivament;

(b) minnufih wara s-subartikolu (1) tiegħu għandu jidhol dan is-subartikolu (2) li ġej:

“(2) Il-Kummissjoni għandu jkollha l-funzjonijiet lilha mogħtija b’ dan l-Att u kif jistgħu jiġu lilha assenjati taħt kull liġi oħra.”; u

(ċ) fis-subartikolu (5) tiegħu kif enumerat mill-ġdid minflok il-kelma “Ministru” għandhom jidhlu l-kliem “Ministru responsabbli għall-gustizzja”.

5. Fis-subartikolu (1) ta' l-artikolu 5 ta' l-Att prinċipali minflok il-kliem “Dan li ġej mhuwiex legittimu” għandhom jidhlu l-kliem “Bla ħsara għall-provvedimenti ta’ dan l-Att, dan li ġej mhuwiex legittimu”, minflok il-kliem “kull deċiżjoni minn intrapriża jew” għandhom jidhlu l-kliem “kull deċiżjoni”, u minflok il-kliem “fis-suq rilevanti” għandhom jidhlu l-kliem “f’Malta jew f’xi parti minn Malta”, u l-kliem “jiewi sehem f’” għandhom jithassru.

Emenda ta' l-artikolu 5 ta' l-Att prinċipali.

6. Minflok l-artikolu 6 ta' l-Att prinċipali għandu jidhol dan l-artikolu ġdid li ġej:

Sostituzzjoni ta' l-artikolu 6 ta' l-Att prinċipali.

“Ftehim eċċ. meta l-impatt ikun wiehed minimali.

6. (1) Kull ftehim, deċiżjoni jew prattika miftiehma bejn intrapriži ma għandhomx ikunu suġġetti għall-projbizzjoni li hemm fis-subartikolu (1) ta' l-artikolu 5 jekk l-impatt tal-ftehim, deċiżjoni jew prattika fuq is-suq rilevanti jkun wiehed minimali.

(2) Sabiex jiġi stabbilit jekk dak l-impatt ikunx wiehed minimali jew le, għandhom jitqiesu ċ-ċirkostanzi rilevanti kollha inkluż is-sehem totali tal-intrapriži kollha involuti fis-suq rilevanti:

Iżda kemm-il darba ma tingiebx prova kuntrarja, dak l-impatt għandu jiġi prezunt li jkun wiehed minimali jekk l-intrapriži involuti ma jkunux bejnithom jeċċedu xi tnejn minn dawn il-kriterji li ġejjin, jiġifieri:

(a) medja ta' impieg ta' għoxrin persuna matul il-perjodu rilevanti; jew

(b) dhul min-negozju annwali ta' tliet mitt elf lira, jew dak l-ammont oghla li l-Ministru jista' jippreskrivi; jew

(c) valur ta' attiv nett ta' mija u hamsin elf lira, jew dak l-ammont oghla li l-Ministru jista' jippreskrivi.

(3) Id-dispożizzjonijiet ta' qabel ta' dan l-artikolu ma ghandhomx ikunu japplikaw meta fis-suq rilevanti l-kompetizzjoni tkun ristretta bl-effett kumulattiv ta' *networks* paralleli ta' ftehim simili stabbiliti minn diversi intrapriži.”.

Emenda ta' l-artikolu 7 ta' l-Att prinċipali.

7. L-artikolu 7 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

(a) minflok is-subartikolu (1) tiegħu ghandu jidhol dan li ġej:

“(1) Minkejja d-dispożizzjonijiet ta' l-artikolu 5 ta' dan l-Att, id-Direttur jista', meta ssirlu applikazzjoni minn intrapriża jew minn ghaqda ta' intrapriži, jeżenta mid-dispożizzjonijiet ta' l-artikolu 5 -

(a) kull ftehim bejn intrapriži; jew

(b) kull deċiżjoni minn ghaqda ta' intrapriži; jew

(c) kull prattika miftiehma,

li f'kull każ jikkontribbwixxu għall-iskop ta' titjib fil-produzzjoni jew id-distribuzzjoni ta' oġġetti jew servizzi jew fil-promozzjoni ta' progress tekniku jew ekonomiku u li jkunu jippermettu li l-konsumatur igawdi sehem ġust fil-benefiċċju li jirriżulta:

Iżda d-Direttur ma ghandux jeżenta xi ftehim, deċiżjoni jew prattika miftiehma bhal dawk jekk dak il-ftehim, deċiżjoni jew prattika miftiehma jew:

(i) ikunu jimponu fuq intrapriži involuti xi restrizzjoni li ma tkunx indispensabbli għall-ksib ta' dak l-iskop; jew

(ii) ikunu jagħtu lill-intrapriži involuti l-possibilità li jeliminaw jew inaqqsu b'mod sinjifikattiv il-kompetizzjoni għar-rigward ta' parti sostanzjali tal-prodotti li għalihom jirreferu l-ftehim, id-deċiżjoni jew il-prattika miftiehma.”;

(b) minflok il-kliem “Il-Kummissjoni tista’ taghmel” u “hija tara” ghandhom jidhlu l-kliem “Id-Direttur jista’ jaghmel” u “jara” rispettivament; u

(ċ) minflok is-subartikoli (3) u (4) tieghu ghandhom jidhlu dawn li ġejjin:

“(3) Dikjarazzjoni li japplika ghalha dan l-artikolu ghandha tkun bil-miktub u ghandha tispeċifika d-data, li tista’ tkun data li tiġi qabel id-data tad-dikjarazzjoni, li minnha ghandha tkun effettiva, kif ukoll id-data sa meta ghandha tkun effettiva.

(4) Id-Direttur jista’, meta ssirlu applikazzjoni ghal dak l-iskop, jekk ikun sodisfatt li l-htigiet li jkunu jinsabu fis-subartikolu (1) ghall-ghemil ta’ dikjarazzjoni jkunu ghadhom jissussistu, jestendi l-perjodu li matulu dik id-dikjarazzjoni ghandha tibqa’ ssehh.

(5) Id-Direttur jista’ jirrevoka jew jemenda xi dikjarazzjoni li tkun tippermetti eżenzjoni taht dan l-artikolu meta:

(a) kien hemm bidla f’xi fatti li kienu materjali ghall-konċessjoni ta’ l-eżenzjoni; jew

(b) l-intraprizi jaghmlu kontravvenzjoni ta’ xi kondizzjoni jew limitazzjoni mehmuża mad-dikjarazzjoni; jew

(ċ) d-deċiżjoni ghall-konċessjoni ta’ l-eżenzjoni kienet wahda msejsa fuq informazzjoni, moghtija mill-intrapriża, li aktar ’il quddiem giet ippruvata bhala falza, qarrieqa jew mhux kompleta; jew

(d) l-intraprizi jabbużaw mill-eżenzjoni konċessa:

u fil-każijiet imsemmija fil-paragrafi (b) sa (d) hawn aktar qabel, dik ir-revoka tista’ tkun b’effett retroattiv.

(6) Meta d-Direttur jiċhad milli jaghti eżenzjoni jew jehmeż xi kondizzjonijiet jew limitazzjonijiet ma’ l-eżenzjoni moghtija jew jirrevoka jew jemenda xi dikjarazzjoni li ghalha jirreferi dan l-artikolu, l-intrapriża jew ghaqda ta’ intraprizi involuta tista’ fi żmien hmistax il-jum mill-avviż tad-deċiżjoni tad-Direttur titolbu li jissottomettiha ghal stharrig mill-Kummissjoni u d-Direttur ghandu minnufih jimxi skond dik it-talba:

Iżda s-sottomissjoni ta' deċiżjoni għal stharrig mill-Kummissjoni ma ghandhiex tissospendi d-deċiżjoni tad-Direttur kemm-il darba l-Kummissjoni f'ċirkostanzi eċċezzjonali ma tordnax xort'ohra.”.

Sostituzzjoni ta' l-artikolu 8 ta' l-Att prinċipali.

8. Minflok l-artikolu 8 ta' l-Att prinċipali għandu jidhol l-artikolu li ġej:

“Eżenzjonijiet generali.

8. (1) Il-Ministru jista' wara konsultazzjoni mad-Direttur b'regolamenti jippreskrivi illi għandhom ikunu eżentati mid-dispożizzjonijiet ta' l-artikolu 5 ta' dan l-Att dawk il-kategoriji ta' ftehim, deċiżjonijiet jew Prattiki miftiehma kif jista' jiġi speċifikat fir-regolamenti.

(2) Ir-regolamenti msemmija fis-subartikolu (1) ta' dan l-artikolu għandhom isiru biss meta l-ftehim, deċiżjonijiet jew Prattiki miftiehma jkunu jissodisfaw ir-rekwiziti msemmija fis-subartikolu (1) ta' l-artikolu 7.

(3) Bla ħsara għad-dispożizzjonijiet tas-subartikolu (2) il-Ministru jista' f'dawk ir-regolamenti jagħmel eżenzjoni sugġetta għal dawk il-kundizzjonijiet u limitazzjonijiet li jidhirlu xierqa.”.

Emenda ta' l-artikolu 9 ta' l-Att prinċipali.

9. L-artikolu 9 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok is-subartikolu (1) għandu jidhol dan li ġej:

“(1) Kull abbuż minn intrapriża waħda jew iżjed minn pożizzjoni dominanti fis-suq relevanti mhux legittimu.”;

(b) fis-subartikolu (2) tiegħu:

(i) fil-paragrafu (a) tiegħu l-kliem “bi ħsara għall-konsumaturi jew provvedituri” għandhom jithassru; u

(ii) minflok il-kliem “il-prezz marginali tal-kost” fil-paragrafu (b) tiegħu għandhom jidhlu l-kliem “*l-average variable cost*”;

(ċ) fis-subartikolu (4) tiegħu minflok il-kliem “jew bi ftehim” għandhom jidhlu l-kliem “jew flimkien” kull fejn jinsabu u l-kliem “għandha dejjem titqies” għandhom jidhlu l-kliem “għandha, fin-nuqqas ta' prova kuntrarja, titqies”; u

(d) fis-subartikolu (5) tiegħu minflok il-kliem “il-prezz mitlub” għandhom jidhlu l-kliem “il-prezz tax-xiri jew il-prezz tal-bejgħ”.

10. Minflok l-artikolu 10 ta' l-Att prinċipali għandu jidhol dan li
gej:

Sostituzzjoni ta' l-
artikolu 10 ta' l-Att
prinċipali.

“Approvazzjoni
negattiva.

10. (1) Kull persuna inkarigata minn intrapriża li jkollha għalfejn taħseb jew tissuspetta jew raġonevolment għandu jkollha għalfejn taħseb jew għandha għaliex tissuspetta li xi ftehim bejn intrapriži, xi deċiżjoni minn ghaqda ta' intrapriži, xi prattika miftiehma bejn intrapriži jew xi mgieba jistgħu jkunu ftehim, deċiżjoni, prattika jew imġieba projbiti skond l-artikoli 5 jew 9 ta' dan l-Att, għandha tfittex l-approvazzjoni negattiva tad-Direttur skond id-dispożizzjonijiet li ġejjin ta' dan l-artikolu u dik il-persuna għandha tkun prekluzi milli taġixxi skond dak il-ftehim, jew dik id-deċiżjoni jew prattika, jew li timxi b'dik l-imġieba sakemm tiġi konċessa dik l-approvazzjoni negattiva.

(2) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu, meta ssir talba bil-miktub minn intrapriża jew ghaqda ta' intrapriži, id-Direttur jista' jiddikjara li, skond il-fatti li huwa jkun jaf bihom, jew fuq il-bażi ta' l-informazzjoni provduta mill-intrapriża jew ghaqda ta' intrapriži, il-ftehim, id-deċiżjoni, l-prattika jew l-imġieba ma jkunux jinkwadraw fil-projbizzjonijiet li jinsabu fl-artikoli 5 u 9 ta' dan l-Att u li ma jkun hemm ebda htieġa li tittiehed xi azzjoni dwarhom taht dan l-Att.

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

(4) Mingħajr preġudizzju għad-dispożizzjonijiet tas-subartikolu (5) ta' dan l-artikolu, approvazzjoni negattiva konċessa skond dan l-artikolu tista' tiġi revokata jew emendata mid-Direttur meta:

(a) l-approvazzjoni negattiva tkun imsejsa fuq informazzjoni falza, qarrieqa jew mhux kompleta; jew

(b) kien hemm bidla fil-fatti li kienu materjal għall-konċessjoni ta' approvazzjoni negattiva; jew

(ċ) il-kondizzjonijiet tas-suq ikunu inbidlu b'tali mod li jikkawunaw li l-ftehim, id-deċiżjoni, l-prattika jew l-imġieba jinkwadraw fil-projbizzjoni ta' l-artikoli 5 u, jew, 9 ta' dan l-Att.

(5) Hadd ma jista' in konnessjoni ma' talba għal eżenzjoni taht l-artikolu 7 jew għal approvazzjoni negattiva jagħti lid-Direttur xi informazzjoni li tkun falza, qarrieqa jew mhux kompleta, u kull eżenzjoni taht l-artikolu 7 u kull approvazzjoni negattiva konċessa fuq il-bażi ta' dik l-informazzjoni tkun nulla u bla ebda effett.

(6) Approvazzjoni negattiva konċessa mid-Direttur għandu jkollha l-effett li tiddikjara l-ftehim, id-deċiżjoni, l-prattika jew l-imġieba li tkun tirreferi għalihom bħala li ma jkunux jiksru d-dispożizzjonijiet ta' l-artikoli 5 u 9 ta' dan l-Att.

(7) Id-Direttur għandu jistabbilixxi minn żmien għal żmien il-proċedura għall-ghemil ta' talbiet għal approvazzjoni negattiva taht dan l-artikolu.

(8) Id-dispożizzjonijiet tas-subartikolu (6) ta' l-artikolu 7 ta' dan l-Att għandhom *mutatis mutandis* japplikaw għad-deċiżjonijiet tad-Direttur taht dan l-artikolu.

(9) Meta tkun giet rifjutata jew tkun giet revokata xi approvazzjoni negattiva, hadd ma jista' jibqa' għaddej bil-ftehim, deċiżjoni, Prattika jew imġieba li dwarhom ma tkunx giet konċessa, jew tkun giet revokata, xi approvazzjoni.”.

Thassir ta' l-artikolu 11 ta' l-Att prinċipali.

Emenda ta' l-artikolu 12 ta' l-Att prinċipali.

11. L-artikolu 11 ta' l-Att prinċipali qiegħed b'dan jiġi mhassar.

12. L-artikolu 12 ta' l-Att prinċipali għandu jiġi emendat kif ġej:

(a) minflok is-subartikolu (1) tiegħu għandu jidhol dan li ġej:

“(1) Ikun id-dmir tad-Direttur li jiżgura li d-dispożizzjonijiet ta' dan l-Att jiġu osservati minn kulhadd, u li jiġbor informazzjoni li tista' tkun mehtieġa biex sew hu sew il-kummissjoni jkunu jistgħu jaqdu l-funzjonijiet tagħhom; u għal dak l-ghan għandu jkollu s-setgħa li jagħmel investigazzjonijiet minn jeddu jew fuq talba tal-Ministru jew ghax xi hadd jagħmel ilment bil-miktub dwar allegazzjoni ragonevoli ta' ksur tad-dispożizzjonijiet ta' dan l-Att.”; u

(b) fis-subartikolu (2) tiegħu minflok il-kliem “mill-Uffiċċju tal-Kompetizzjoni Gusta” għandhom jidhlu l-kliem “mill-Uffiċċju”.

13. Minnufih wara l-artikolu 12 ta' l-Att prinċipali għandu jiżdedied dan l-artikolu għdid li ġej:

Żieda ta' l-artikolu 12A ma' l-Att prinċipali.

“Ordnijiet ta' Waqfien u Ebda Tkompilja.

12A. (1) Meta wara li tkun konkluzja investigazzjoni taht l-artikolu 12 ta' dan l-Att id-Direttur jirriżultalu li l-ftehim, id-deċiżjoni, l-prattika jew l-imġieba investigati jkunu bi ksur tad-dispożizzjonijiet ta' l-artikoli 5 u, jew, 9 ta' dan l-Att, id-Direttur jista' jagħmel rapport dwar il-konkluzjonijiet tiegħu, fejn jagħti r-raġunijiet tiegħu u għandu jinnotifika kopja tar-rapport lill-intrapriża jew għaqda ta' intrapriži involuti permezz ta' posta registrata jew tali konsenja dokumentata oħra hekk kif id-Direttur jista' jqis li jkun xieraq, flimkien ma' Ordni ta' Waqfien u Ebda Tkompilja li bih jordnalha jew jordnalhom l-waqfien u nuqqas ta' tkompilja ta' parteċipazzjoni minnha jew minnhom f'dak il-ftehim, jew f'dik id-deċiżjoni, Prattika jew imġieba.

(2) Id-dispożizzjonijiet tas-subartikolu (6) ta' l-artikolu 7 għandhom japplikaw *mutatis mutandis* għal Ordni ta' Waqfien u Ebda Tkompilja taht is-subartikolu (1) ta' dan l-artikolu.”.

14. Fl-artikolu 13 ta' l-Att prinċipali minflok il-kliem “għandu jagħmel rapport” u minflok il-kliem “b'sostenn ta' dawk il-konkluzjonijiet” għandhom jidhlu l-kliem “għandu jagħmel rapport lill-Kummissjoni” u l-kliem “b'sostenn għalihom” rispettivament; u minnufih wara l-kliem “ta' dan l-Att” għandhom jidhlu l-kliem “, meta d-Direttur jirriżultalu li jkun sar ksur gravi minhabba fis-serjetà u t-tul ta' żmien tal-ftehim, deċiżjoni jew Prattika miftiehma li ġew investigati,”.

Emenda ta' l-artikolu 13 ta' l-Att prinċipali.

15. Minflok is-subartikolu (1) ta' l-artikolu 14 ta' l-Att prinċipali għandu jidhlo dan li ġej:

Emenda ta' l-artikolu 14 ta' l-Att prinċipali.

“(1) (a) Meta d-Direttur jirċievi xi ilment bil-miktub bħalma hemm imsemmi fis-subartikolu (1) ta' l-artikolu 12 ta' dan l-Att, huwa għandu l-ewwel jeżamina jekk dak l-ilment ikunx wiehed ammissibbli jew xort'oħra, u meta jkun tal-fehma li l-ilment ikun *prima facie* wiehed mhux ammissibbli, huwa ma għandux jagħmel jew jissokta bl-investigazzjoni relattiva u d-Direttur ma jkunx meħtieġ li f'każijiet bħal dawk jgħarraf lill-Kummissjoni bl-ilment li jkun irċieva.

(b) Meta min jagħmel l-ilment ma jkunx jaqbel mad-deċiżjoni tad-Direttur li *prima facie* l-ilment ma jkunx wiehed ammissibbli jew mid-deċiżjoni tad-Direttur wara investigazzjoni

li l-ilment ma jkunx wiehed ġustifikat, id-dispożizzjonijiet tas-subartikolu (6) ta' l-artikolu 7 ghandhom *mutatis mutandis* japplikaw.”.

Emenda ta' l-artikolu 15 ta' l-Att prinċipali.

16. L-artikolu 15 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

(a) fis-subartikolu (1) tiegħu l-kliem “ghall-Kummerċ Ġust” ghandhom jithassru; u

(b) fis-subartikolu (4) tiegħu minflok il-kliem “Id-Direttur ghandu” ghandhom jidhlu l-kliem “Meta d-Direttur iqis li jkun mehtieg li jittiehdu miżuri interim, huwa ghandu”, u minflok il-kelma “ghaqda” ghandhom jidhlu l-kliem “ghaqda ta' intrapriża”.

Żieda ta' l-artikoli 15A u 15B godda ma' l-Att prinċipali.

17. Minnufih wara l-artikolu 15 ta' l-Att prinċipali ghandu jżiedied dan l-artikolu ġdid li ġej:

“Ordnijiet interim.

15A. Minghajr preġudizzju ghad-dispożizzjonijiet ta' l-artikolu 15 ta' dan l-Att meta d-Direttur jkun sodisfatt filwaqt ta' xi investigazzjoni li jkunu qeghdin jiġru xi Prattiki restrittivi u huwa jqis li jkun hekk mehtieg li jagħmel sabieħ jikkumpensa sitwazzjoni li titnissel minn dawk il-prattiki li x'aktarx ikunu se jikkagunaw hsara lill-interess ekonomiku generali, huwa jista' johroġ ordni, hawnhekk iżjed 'il quddiem imsejha ordni interim, li tkun tippreskrivi bhala miżura interim l-oghla prezz li bih dawk l-oġġetti li jistgħu jiġu msemmija fl-ordni interim jistgħu jinbiegħu jew jiġu offruti għall-bejgħ jew l-oghla prezz li jista' jithallas għal dawk is-servizzi skond kif jista' jissemma fl-ordni interim jew li bih jistgħu jiġu offruti dawk is-servizzi.

(2) Ordnijiet interim ghandhom jibdeu isehħu fid-data tal-pubblikazzjoni tagħhom fil-Gazzetta jew f' dik id-data li tiġi wara li tista' tiġi speċifikata fl-ordni interim jew f' ordni interim li tiġi wara.

(3) Fi żmien sitt xhur mill-pubblikazzjoni fil-Gazzetta, kull ordni interim ghandha tiġi mistharrġa mill-Kummissjoni, u l-Kummissjoni ghandha filwaqt li tagħmel dak l-istharrig tisma' lid-Direttur u lil kull intrapriża jew ghaqda ta' intrapriża li jkollha interess hekk kif tista' tqis li jkun mehtieg.

(4) Meta l-Kummissjoni wara l-istharrig hawn aktar qabel imsemmi tiddikjara li l-ordni interim tkun adattata u mehtieġa, dik l-ordni interim ghandha tibqa' ssehħ, kemm-

il darba ma tkunx giet qabel revokata mid-Direttur ghal perjodu ta' sena mid-data tad-deċiżjoni tal-Kummissjoni.

(5) Meta l-Kummissjoni wara l-istharrig kif hawn aktar qabel imsemmi jirrizultalha li l-ordni interim ma tkunx adattata jew mehtieġa, jew meta ma' l-iskadenza ta' sitt xhur mill-pubblikazzjoni ta' l-ordni interim fil-Gazzetta l-Kummissjoni ma tkunx temmet l-istharrig, l-ordni interim ghandha ttejjem milli tibqa' ssehh:

Izda meta l-Kummissjoni jirrizultalha li ordni interim tkun adattata u mehtieġa fiċ-ċirkostanzi iżda ma tkunx taqbel li dik l-ordni interim kif mahruġa mid-Direttur kienet waħda adattata, hija tista' timmodifika l-ordni interim u dik l-ordni interim kif tkun giet hekk modifikata ghandha tibda ssehh malli tiġi ppubblikata fil-Gazzetta u ghandha tibqa' ssehh bhallikieku kienet ordni interim bhal dik imsemmija fis-subartikolu (4) ta' dan l-artikolu.

(6) Meta ordni interim ttejjem milli jkollha iktar sehh, dan ghandu jiġri minghajr ebda preġudizzju ghal:

(a) kull responsabbiltà li persuna tidhol fiha matul il-perjodu li l-ordni kienet fis-sehh;

(b) kull haġa maghmula jew imhollija milli ssir skond il-liġi matul il-perjodu li l-ordni kienet fis-sehh;

(ċ) kull obligazzjoni li ssir favur xi persuna jew kull dritt miksub kontra xi persuna matul il-perjodu li l-ordni kienet fis-sehh;

(d) id-dritt li jkollu d-Direttur li jagħmel l-istess ordni interim jew waħda bhalha skond is-subartikolu (1) ta' dan l-artikolu.

Id-Direttur
ghandu
jinxji skond
id-
deċiżjonijiet
tal-
Kummissjoni.

15B. Meta xi deċiżjoni tad-Direttur tkun skond dan l-Att mistharrġa mill-Kummissjoni, id-Direttur ghandu jaġixxi skond id-deċiżjoni tal-Kummissjoni u jagħmel dawk it-tibdiliet fid-deċiżjonijiet tiegħu skond hekk.”.

18. L-artikolu 16 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

(a) fin-nota marginali relattiva minflok il-kliem “Reat ta' Prattika ristretta.” ghandu jidhol il-kliem “Reat ta' Prattika restrittiva u ta' abbuz ta' pożizzjoni dominanti.”;

Emenda ta' l-
artikolu 16 ta' l-Att
prinċipali.

(b) fis-subartikolu (1) tieghu minflok il-kliem “l-Kummissjoni” ghandhom jidhlu l-kliem “l-Kummissjoni jew id-Direttur”, u minnufih wara l-kliem “ta’ l-artikolu 5 ta’ dan l-Att” ghandhom jidhlu l-kliem “u meta xi azzjoni tkun giet dikjarata mill-Kummissjoni jew mid-Direttur li tkun abbuż ta’ pozzizzjoni dominanti skond l-artikolu 9 ta’ dan l-Att”, u minflok il-kliem “jew prattika tkun hatja” ghandhom jidhlu l-kliem “jew prattika, jew abbuži ta’ pozzizzjoni dominanti, tkun hatja”;

(c) fis-subartikolu (2) tieghu minflok il-kliem minn “jkollha ghalfejn tahseb” sa “l-artikolu 5 ta’ dan l-Att u” ghandhom jidhlu l-kliem “ghaliha japplika s-subartikolu (1) ta’ l-artikolu 10 ta’ dan l-Att, li”, u minflok il-kliem “kif mehtieg taht is-subartikolu (1) ta’ l-artikolu 6” ghandhom jidhlu l-kliem “kif mehtieg taht is-subartikolu (1) ta’ l-artikolu 10”; u

(d) minnufih wara s-subartikolu (3) tieghu ghandu jizzied dan is-subartikolu li ġej:

“(4) Meta persuna taġixxi bi ksur tad-dispożizzjonijiet tas-subartikolu (9) ta’ l-artikolu 10 ta’ dan l-Att hija tkun hatja ta’ reat kontra dan l-artikolu.”.

Sostituzzjoni ta’ l-artikolu 17 ta’ l-Att prinċipali.

19. Minflok l-artikolu 17 ta’ l-Att prinċipali ghandu jidhol dan li ġej:

Disubbidjenza ta’ Ordni ta’ Waqfien u Ebda Tkomplija.

17. Kull persuna li tmur kontra Ordni ta’ Waqfien u Ebda Tkomplija mahruġa mid-Direttur skond l-artikolu 12A ta’ dan l-Att tkun hatja, mingħajr preġudizzju għal kull responsabbiltà taht dan l-Att jew taht kull liġi oħra, ta’ reat kontra dan l-artikolu.”.

Emenda ta’ l-artikolu 19 ta’ l-Att prinċipali.

20. Fl-artikolu 19 ta’ l-Att prinċipali minflok il-kliem “l-artikoli 16, 17 u 18” ghandhom jidhlu l-kliem “l-artikoli 16 u 18”, u minnufih wara l-kliem “tal-Kummissjoni” ghandhom jidhlu l-kliem “jew tad-Direttur”.

Emenda ta’ l-artikolu 20 ta’ l-Att prinċipali.

21. L-artikolu 20 ta’ l-Att prinċipali ghandu jiġi emendat kif ġej:

(a) minflok il-kliem “ordnijiet ta’ prezzijiet” fin-nota marginali li tinsab ma’ l-artikolu, ghandhom jidhlu l-kliem “ordnijiet interim”; u

(b) minflok il-kliem “ordni ta’ prezzijiet mahruġ taht l-artikolu 11” ghandhom jidhlu l-kliem “ordni interim mahruġ taht l-artikolu 15A”.

22. Fis-subartikolu (1) ta' l-artikolu 21 ta' l-Att prinċipali minflok il-kliem "l-artikoli 16, 17, 18 jew 20" ghandhom jidhlu l-kliem "l-artikoli 16, 18 jew 20", minflok il-kliem "ta' tlett elef lira jew ghaxra fil-mija" ghandhom jidhlu l-kliem "ta' bejn wiehed u ghaxra fil-mija" u minflok il-kliem "skond liema minnhom tkun l-oghla multa" ghandhom jidhlu l-kliem "b' dana illi l-multa ma ghandhiex tkun ta' anqas minn tlett elef lira".

Emenda ta' l-artikolu 21 ta' l-Att prinċipali.

23. Minnufih wara l-artikolu 22 ta' l-Att prinċipali ghandu jizjed dan l-artikolu ġdid li ġej:-

Żieda ta' l-artikolu 22A ġdid ma' l-Att prinċipali.

22A. (1) Kull persuna hatja ta' reat kontra l-artikolu 17 ta' dan l-Att tista', meta tinsab hatja, tehel multa ta' mhux anqas minn Lm 100 u mhux iktar minn Lm 1,000 ghal kull ġurnata li matulha jibqa' ghaddej ir-reat.

"Piena ghal reati kontra l-artikolu 17.

(2) Id-dispożizzjonijiet tas-subartikoli (2) u (3) ta' l-artikolu 21 ghandhom ukoll japplikaw."

24. L-artikolu 22 ta' l-Att prinċipali ghandu jiġi emendat kif ġej:

Emenda ta' l-artikolu 22 ta' l-Att prinċipali.

(a) fin-nota marginali relattiva minflok il-kliem "l-artikoli 6 u 10" ghandhom jidhlu l-kliem "s-subartikolu (5) ta' l-artikolu 10"; u

(b) fis-subartikolu (1) tiegħu minflok il-kliem minn "tas-subartikoli (1), (5) jew (8)" sal-kliem "ghas-subartikolu (5) ta' l-artikolu 6" ghandhom jidhlu l-kliem "tas-subartikolu (5) ta' l-artikolu 10".

25. Fl-artikolu 23 ta' l-Att prinċipali minflok il-kliem "Lm 50" ghandhom jidhlu l-kliem "Lm 100".

Emenda ta' l-artikolu 23 ta' l-Att prinċipali.

26. Minnufih wara l-artikolu 26 ta' l-Att prinċipali ghandhom jizjed dawn l-artikoli ġodda li ġejjin:

Żieda ta' l-artikoli 26A u 26B ġodda ma' l-Att prinċipali.

26A. Minkejja d-dispożizzjonijiet ta' hawn aktar qabel ta' dan l-Att, fil-każ ta' reat kontra l-artikolu 17, fejn id-Direttur, wara li ghamel l-investigazzjoni li wasslet għal hrug ta' l-Ordni ta' Waqfien u Ebda Tkomplija skond l-artikolu 12A ma jkunx ghamel kull rapport lill-Kummissjoni skond l-artikolu 13, id-Direttur jista' jimponi piena ta' mhux inqas minn mitt lira u mhux iżjed minn elfejn lira bħala alternattiva għal proċeduri fil-Qorti.

"Pieni b'kompromess.

Estinzjoni ta' responsabbiltà kriminali f'ċerti każijiet.

26B. Minkejja kull dispożizzjoni oħra ta' dan l-Att, id-Direttur jista', biss sakemm għandhom x'jaqsmu d-dispożizzjonijiet ta' dan l-Att, jagħmel ftehim bil-miktub mal-hati li bih dak il-hati jhallas jew jagħti sigurtà għas-sodisfazzjon tad-Direttur għall-hlas ta' somma li ma tkunx inqas minn hamsin fil-mija ta' l-inqas piena applikabbli għar-reat u mhux iżjed minn sebghin fil-mija ta' l-oghla piena applikabbli għar-reat hekk kif id-Direttur jista' bi ftehim mal-Kummissjoni jistabilixxi u malli jiġi ffirmat il-ftehim mid-Direttur u mill-hati kull responsabbiltà kriminali tal-hati taht dan l-Att għar-rigward tar-reat li dwaru jkun sar il-ftehim għandha tiġi estinta:

Iżda meta l-piena għar-reat tkun ammont stabbilit mingħajr ebda limitu baxx jew għoli, għaldaqstant is-somma li tithallas taht dak il-ftehim għandha tiġi stabbilita kif hawn aktar qabel imsemmi f'ammont mhux inqas minn għoxrin u mhux iżjed minn sebghin fil-mija ta' dik il-piena.”.

Sostituzzjoni ta' l-artikolu 30 ta' l-Att prinċipali.

27. Minflok l-artikolu 30 ta' l-Att prinċipali għandu jidhol dan li ġej:

“Applikabilità ta' l-Att għal dipartimenti tal-Gvern.

30. (1) Bla hsara għad-dispożizzjonijiet tas-subartikolu (2) ta' dan l-artikolu, 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 kumpannija 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.

(2) Il-Ministru jista' b'ordni fil-Gazzetta jeżenta xi hidma jew kull hidma ta' xi intrapriża, li għaliha s-subartikolu (1) ta' dan l-artikolu japplika, mid-dispożizzjonijiet ta' dan l-Att.”.

Emenda ta' l-artikolu 31 ta' l-Att prinċipali.

28. Fl-artikolu 31 ta' l-Att prinċipali minflok il-kliem “jew xi persuna oħra” għandhom jidhlu l-kliem “jew xi uffiċjal jew kuntrattur tiegħu” u minnufih wara l-kliem “xi att jew ommissjoni” għandhom jidhlu l-kliem “in konnessjoni ma' dan l-Att”.

Sostituzzjoni ta' l-artikolu 32 ta' l-Att prinċipali.

29. Minflok l-artikolu 32 ta' l-Att prinċipali għandu jidhol dan li ġej:

“Setgħa ta' għemil ta' regolamenti.

32. Il-Ministru jista' minn żmien għal żmien jagħmel regolamenti għat-tweqqif kif dovut tad-dispożizzjonijiet ta' dan l-Att u jista' b'mod partikolari b'dawk ir-regolamenti

jippreskrivi regoli għall-kontroll ta' konċentrazzjonijiet inklużi *joint ventures* konċentrativi li jistgħu jipprevjenu, jirrestringu jew jiddeformaw il-kompetizzjoni fis-suq rilevanti.”.

30. Minnfufih wara l-artikolu 32 ta' l-Att prinċipali għandu jżied l-artikolu ġdid li ġej: Żieda ta' l-artikolu 33 ġdid ma' l-Att prinċipali.

“Setgħa ta' għemil ta' regolamenti.

33. Il-Ministru jista' b'regolamenti:

(a) jistabbilixxi d-drittijiet li għandhom jithallsu lid-Direttur in konnessjoni ma' xi talba lid-Direttur taht dan l-Att u in konnessjoni ma' proċeduri quddiem il-Kummissjoni;

(b) jeżenta xi ftehim, deċiżjoni jew Prattika in konnessjoni ma' l-agrikoltura u sajd mid-dispożizzjonijiet ta' l-artikolu 5 ta' dan l-Att taht daww il-kundizzjonijiet li jista' jippreskrivi.”.

31. Fil-paragrafu 14 ta' l-Iskeda li tinsab ma' l-Att prinċipali minflok il-kliem “mill-organi” għandhom jidhlu l-kliem “mogħtija mill-istituzzjonijiet” u minflok il-kliem “tat-trattati u d-direttivi” għandhom jidhlu l-kliem “tat-trattati, direttivi, regolamenti u deċiżjonijiet”. Emenda ta' l-Iskeda li tinsab ma' l-Att prinċipali.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru. 424 ta' l-14 ta' Novembru, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Skrivan tal-Kamra tad-Deputati

I assent.

(L.S.)

GEORGE HYZLER
Acting President

24th November, 2000

ACT NO. XXVIII of 2000

AN ACT to amend the Competition Act, Cap. 379.

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 title of this Act is the Competition (Amendment) Act, 2000, and shall be read and construed as one with the Competition Act, hereinafter referred to as “the principal Act”.

(2) This Act shall come into force on such date as the Minister responsible for commerce may by notice in the Gazette establish and different dates may be so established for different provisions and different purposes thereof.

Amendment of article 2 of the principal Act.

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

(a) for the definition of “dominant position” there shall be substituted the following:

“ “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;”;

(b) in the definition of “Minister” for the word “trade” there shall be substituted the word “commerce”;

(c) in the definition of “relevant market”, immediately after the words “area or locality”, there shall be inserted the words “, and whether or not restricted to a particular period of time or season of the year”;

(d) immediately after the definition of “relevant market” there shall be inserted the following new definition:

“ “restrictive practice” means an agreement between undertakings, a decision by an association of undertakings or a concerted practice prohibited under article 5 and, or, an abuse by one or more undertakings of a dominant position prohibited under article 9 of this Act;”;

(e) in the definition of “turnover” the words “or otherwise” shall be deleted, and for the words “subarticle (4) of article 7 and of article 21” there shall be substituted the words “subarticle (2) of article 6 and of article 21”;

(f) for the definition of “undertaking” there shall be substituted the following:

“ “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;”.

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

Amendment of article 3 of the principal Act.

(a) in subarticle (1) thereof:

(i) for the words “in terms of this Act” in paragraph (c) thereof there shall be substituted the words “and to institute action in terms of this Act to suppress the same”; and

(ii) for the words “conferred to it” in paragraph (d) thereof, there shall be substituted the words “conferred upon it”; and

(b) the words “for Fair Competition”, wherever they appear in subarticle (2) thereof, shall be deleted.

4. Article 4 of the principal Act shall be amended as follows:

Amendment of article 4 of the principal Act.

(a) subarticles (2) to (5) thereof shall be renumbered as subarticles (3) to (6) respectively;

(b) immediately after subarticle (1) thereof there shall be inserted the following new subarticle (2):

“(2) The Commission shall have the functions assigned to it by this Act and as may be assigned to it under any other law.”; and

(c) in subarticle (5) thereof as renumbered for the word “Minister” there shall be substituted the words “Minister responsible for justice”.

Amendment of article 5 of the principal Act.

5. In subarticle (1) of article 5 of the principal Act, for the words “The following shall be unlawful” there shall be substituted the words “Subject to the provisions of this Act, the following is prohibited”, for the words “any decision by an undertaking or” there shall be substituted the words “any decision”, and for the words “within the relevant market” there shall be substituted the words “within Malta or any part of Malta”, and the words “to partake in” shall be deleted.

Substitution of article 6 of the principal Act.

6. For article 6 of the principal Act there shall be substituted the following new article:

“Agreements etc, where impact is minimal.

6. (1) Agreements, decisions or concerted practices between undertakings shall not be subject to the prohibition in subarticle (1) of article 5 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:

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

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

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

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

(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.”.

7. Article 7 of the principal Act shall be amended as follows:

Amendment of
article 7 of the
principal Act.

(a) for subarticle (1) thereof there shall be substituted the following:

“(1) Notwithstanding the provisions of article 5 of this Act, the Director may upon an application made by an undertaking or an association of undertakings exempt from the provisions of article 5 –

(a) any agreement between undertakings; or

(b) any decisions by an association of undertakings;
or

(c) any concerted practice or concerted practices,

which in each case contribute 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:

Provided that the Director shall not so exempt any such agreement, decision or concerted practice if the said agreement, decision or concerted practice either:

(i) imposes on undertakings concerned any restriction which is not indispensable to the attainment of the said objective; or

(ii) gives the undertakings concerned the possibility of eliminating or significantly reducing competition in respect of a substantial part of the products to which the agreement, decision or concerted practice refers.”;

(b) for the word “Commission” wherever it appears in subarticles (1) and (2) thereof there shall be substituted the word “Director”; and

(c) for subarticles (3) and (4) thereof there shall be substituted the following:

“(3) A declaration to which this article applies shall be in writing and shall specify the date, which may be a date previous to the date of the declaration, from which it shall be effective, as well as the date up to which it shall be effective.

(4) The Director may upon an application for the purpose, if he is satisfied that the requirements contained in the subarticle (1) for the making of a declaration still subsist, extend the period during which such declaration shall remain in effect.

(5) The Director may revoke or amend any declaration allowing an exemption under this article where:

(a) there has been a change in any facts which were material to the grant of the exemption; or

(b) the undertakings commit a breach of any condition or limitation attached to the declaration; or

(c) the decision to grant the exemption was based on information, supplied by the undertaking, which later proved to be false, misleading or incomplete; or

(d) the undertakings abuse the exemption granted:

and in the cases referred to in paragraphs (b) to (d) above, such revocation may be with retroactive effect.

(6) Where the Director refuses to grant an exemption or attaches conditions or limitations to the exemption granted or revokes or amends any declaration to which this article refers, the undertaking or association of undertakings concerned may within fifteen days of the notification of the Director’s decision request him to submit the same for review by the Commission and the Director shall forthwith comply with such request:

Provided that the submission of a decision for review by the Commission shall not suspend the decision of the Director unless the Commission in exceptional circumstances otherwise directs.”.

Substitution of
article 8 of the
principal Act.

8. For article 8 of the principal Act there shall be substituted the following article:

“General
exemptions.

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

(2) The regulations referred to in subarticle (1) of this article shall only be made where the agreement, decisions or concerted practice satisfy the requirements mentioned in subarticle (1) of article 7.

(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.”.

9. Article 9 of the principal Act shall be amended as follows:

Amendment of
article 9 of the
principal Act.

(a) for subarticle (1) thereof there shall be substituted the following:

“(1) Any abuse by one or more undertakings of a dominant position in the relevant market is prohibited.”;

(b) in subarticle (2) thereof:

(i) in paragraph (a) thereof the words “to the prejudice of consumers and suppliers” shall be deleted; and

(ii) for the word “marginal cost price” in paragraph (b) thereof there shall be substituted the words “the average variable cost price”;

(c) in subarticle (4) thereof for the words “in concert with” there shall be substituted the words “in conjunction with” wherever they occur and for the words “shall always be” there shall be substituted the words “shall, in the absence of proof to the contrary, be”; and

(d) in subarticle (5) thereof for the words “the price charged” there shall be substituted the words “the purchase or selling price”.

10. For article 10 of the principal Act there shall be substituted the following:

Substitution of
article 10 of the
principal Act.

“Negative
clearance.

10. (1) Any person in charge of an undertaking who believes or suspects or reasonably ought to believe or suspect that any agreement between undertakings, any decision by an association of undertakings, any concerted practice between undertakings or any conduct may be a prohibited agreement, decision, practice or conduct in terms of articles 5 or 9 of this Act, shall seek the negative clearance of the Director in accordance with the following provisions of this article and such person shall be precluded from acting in accordance with the said agreement, decision or practice or to undertake such conduct until negative clearance is granted.

(2) Without prejudice to the provisions of subarticle (1) of this article, upon a request in writing by an undertaking or an association of undertakings, the Director may declare that, according to the facts of which he is aware, or on the basis of the information provided by the undertaking or association of undertakings, the agreement, decision, practice or conduct does not fall within the prohibitions contained in articles 5 and 9 of this Act and that there is no need to take any action in respect thereof under this Act.

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

(4) Without prejudice to the provisions of subarticle (5) of this article a negative clearance given in accordance with this article may be revoked or amended by the Director where:

(a) the negative clearance is based on information which is false, misleading or incomplete; or

(b) there has been a change in facts which were material to the grant of negative clearance; or

(c) market conditions have changed in such manner that causes the agreement, decision, practice or conduct to fall within the prohibition of articles 5 and, or, 9 of this Act.

(5) It shall not be lawful in connection with a request for an exemption under article 7 or for negative clearance to supply to the Director any information which is false, misleading or incomplete, and any exemption under article 7

and any negative clearance given on the basis of such information shall be null and without effect.

(6) A negative clearance given by the Director shall have the effect of declaring the agreement, decision, practice or conduct to which it refers not to be one which infringes the provisions of articles 5 and 9 of this Act.

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

(8) The provisions of subarticle (6) of article 7 of this Act shall *mutatis mutandis* apply to decisions of the Director under this article.

(9) Where negative clearance has been refused or has been revoked it shall not be lawful to proceed with the agreement, decision, practice or conduct for which clearance has not been granted or has been revoked.”.

11. Article 11 of the principal Act is hereby repealed.

Repeal of article 11 of the principal Act.

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

Amendment of article 12 of the principal Act.

(a) for subarticle (1) thereof there shall be substituted the following:

“(1) It shall be the duty of the Director to ensure that the provisions of this Act are observed by all, and to gather information that may be necessary for him or the commission to carry out their 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.”; and

(b) in subarticle (2) thereof for the words “Office for Fair Competition” there shall be substituted the word “Office”.

13. Immediately after article 12 of the principal Act, there shall be added the following new article:

Addition of new article 12A to the principal Act.

“Cease and Desist Orders.

12A. (1) Where upon the conclusion of an investigation under article 12 of this Act it results to the Director that the agreement, decision, practice or conduct investigated is in breach of the provisions of articles 5 and,

or, 9 of this Act, the director may make a report of his conclusions, giving therein his reasons and shall serve a copy of the report to be delivered on the undertaking or association of undertakings concerned by registered post or such other documented delivery as the Director may deem fit, together with a Cease and Desist Order whereby he orders it or them to cease and desist immediately from participating in such agreement, decision, practice or conduct.

(2) The provisions of subarticle (6) of article 7 shall *mutatis mutandis* apply to a Cease and Desist Order under subarticle (1) hereof.”.

Amendment of article 13 of the principal Act.

14. In article 13 of the principal Act for the words “shall make a report” and for the words “in support thereto” there shall be substituted respectively the words “shall make a report to the Commission” and the words “in support thereof”; and immediately after the words “of this Act” there shall be inserted the words “, where it results to the Director that a serious infringement has taken place due to the gravity and duration of the agreement, decision or concerted practice which have been investigated ,”.

Amendment of article 14 of the principal Act.

15. For subarticle (1) of article 14 of the principal Act there shall be substituted the following:

“(1) (a) Where the Director receives a complaint in writing as is referred to in subarticle (1) of article 12 of this Act, he shall in the first place examine whether such complaint is admissible or otherwise, and where he is of the opinion that the complaint is *prima facie* inadmissible, he shall not carry out or proceed with the relative investigation and the Director need not in such cases inform the Commission of the complaint in question.

(b) Where the complainant does not agree with the decision of the Director that the complaint is *prima facie* inadmissible or the decision of the Director after an investigation that the complaint is not justified, the provisions of subarticle (6) of article 7 shall *mutatis mutandis* apply.”.

Amendment of article 15 of the principal Act.

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

(a) in subarticle (1) thereof the words “for Fair Trading” shall be deleted; and

(b) in subarticle (4) thereof for the words “The Director shall” there shall be substituted the words “Where the Director deems that the adoption of interim measures is required, he shall”, and for the word “association” there shall be substituted the words “association of undertakings”.

17. Immediately after article 15 of the principal Act there shall be added the following new article:

Addition of new articles 15A and 15B to the principal Act.

“Interim Orders.

15A. (1) Without prejudice to the provisions of article 15 of this Act where the Director is satisfied in the course of an investigation that restrictive practices are taking place and he deems it necessary so to do in order to offset a situation arising out of such practices likely to cause harm to the general economic interest he may issue an order, hereinafter referred to as an Interim Order, prescribing as an interim measure the maximum price at which such goods as may be referred to in the Interim Order may be sold or offered for sale or the maximum price which may be charged for such services as may be referred to in the Interim Order or at which such services may be offered.

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

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

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

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

Provided that where the Commission finds that an Interim Order is appropriate and necessary in the circumstances but does not agree that the Interim Order as issued by the Director was appropriate, it may modify the Interim Order and the Interim Order as so modified shall come into force upon its publication in the Gazette and shall continue in force as if it were an Interim Order referred to in subarticle (4) of this article.

(6) Where an Interim Order ceases to have effect, this shall be without prejudice to:

(a) any liability incurred during the period of its validity;

(b) anything lawfully done or omitted to be done during its period of validity;

(c) any obligation incurred in favour of any person or any right acquired against any person during its period of validity;

(d) the right of the Director to make the same or a similar Interim Order in accordance with subarticle (1) of this article.

Director to
abide by
decisions
of
Commission.

15B. Where any decision of the Director is in accordance with this Act reviewed by the Commission, the Director shall act in accordance with the decision of the Commission and make such changes to his decisions accordingly.”.

Amendment of
article 16 of the
principal Act.

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

(a) in the marginal note thereto immediately after the words “restricted practice” there shall be added the words “and of abuse of dominant position”;

(b) in subarticle (1) thereof for the words “the Commission” there shall be substituted the words “the Commission or the Director”, and immediately after the words “of article 5 of this Act” there shall be inserted the words “and where any action has been declared by the Commission or the Director to be an abuse of a dominant position in accordance with article 9 of this Act”, and for the words “or practice shall be guilty” there shall be substituted the words “or practice, or abuses of a dominant position, shall be guilty”;

(c) in subarticle (2) thereof for the words from “who has reason to believe” to the words “article 5 of this Act and” there shall be substituted the words “to whom subarticle (1) of article 10 of this Act applies, who”, and for the words “as required under subarticle (1) of article 6” there shall be substituted the words “as required under subarticle (1) of article 10”; and

(d) immediately after subarticle (3) thereof there shall be added the following subarticle:

“(4) Where any person acts in contravention of the provisions of subarticle (9) of article 10 of this Act he shall be guilty of an offence against this article.”.

19. For article 17 of the principal Act, there shall be substituted the following:

Substitution of article 17 of the principal Act.

17. Any person who acts contrary to a Cease and Desist Order issued by the Director in accordance with article 12A of this Act shall, without prejudice to any other liability under this Act or any other law, be guilty of an offence against this article.”.

“Disobedience of a Cease and Desist Order.

20. In article 19 of the principal Act for the words “articles 16, 17 and 18” there shall be substituted the words “articles 16 and 18”, and immediately after the words “of the Commission” there shall be inserted the words “or the Director”.

Amendment of article 19 of the principal Act.

21. Article 20 of the principal Act shall be amended as follows:

Amendment of article 20 of the principal Act.

(a) for the words “price orders” in the marginal note thereto, there shall be substituted the words “interim orders”; and

(b) for the words “a price order issued under article 11” there shall be substituted the words “an interim order issued under article 15A”.

22. In subarticle (1) of article 21 of the principal Act, for the words “articles 16, 17, 18 or 20” there shall be substituted the words “articles 16, 18 or 20”, for the words “of three thousand liri or ten *per centum*” there shall be substituted the words “from one to ten *per centum*” and for the words “whichever is the higher” there shall be substituted the words “so however the fine shall not be less than three thousand liri”.

Amendment of article 21 of the principal Act.

23. Immediately after article 22 of the principal Act there shall be added the following new article:—

Addition of new article 22A to the principal Act.

"Penalty for offences against article 17.

22A. (1) Any person guilty of an offence against article 17 of this Act shall on conviction be liable to pay a fine (multa) of not less than Lm 100 and not more than Lm 1,000 for each day during which the offence persists.

(2) The provisions of subarticles (2) and (3) of article 21 shall also apply."

Amendment of article 22 of the principal Act.

24. Article 22 of the principal Act shall be amended as follows:

(a) in the marginal note thereto for the words "articles 6 and 10" there shall be substituted the words "subarticle (5) of article 10"; and

(b) in subarticle (1) thereof for the words from "subarticles (1), (5) or (8)" to the words "subarticle (5) of article 6" there shall be substituted the words "subarticle (5) of article 10".

Amendment of article 23 of the principal Act.

25. In article 23 of the principal Act for the words "Lm 50" there shall be substituted the words "Lm 100".

Addition of new articles 26A and 26B to the principal Act.

26. Immediately after article 26 of the principal Act there shall be added the following new articles:

"Compromise penalties.

26A. Notwithstanding the foregoing provisions of this Act, in the case of an offence against article 17, where the Director after making the investigation that led to the Cease and Desist Order in accordance with article 12A, had not made a report to the Commission in accordance with article 13, the Director may impose a penalty of not less than one hundred liri and not more than two thousand liri as an alternative to proceedings in Court.

Extinction of criminal liability in certain cases.

26B. Notwithstanding any other provision of this Act, the Director may, only as far as the provisions of this Act are concerned, enter into an agreement in writing with the offender whereby the said offender pays or gives security to the satisfaction of the Director for the payment of a sum being not less than fifty per centum of the minimum penalty applicable for the offence and not more than seventy per centum of the maximum penalty applicable for the offence as the Director may with the concurrence of the Commission establish and upon the signing of the agreement by the Director and the offender all criminal liability of the offender under this Act with regard to the offence in relation to which the agreement has been entered shall be extinguished:

Provided that where the penalty for the offence is a sum fixed with no minimum or maximum then the sum payable under such agreement shall be fixed as aforesaid in an amount being not less than twenty and not more than seventy per centum of such penalty.”.

27. For article 30 of the principal Act there shall be substituted the following: Substitution of article 30 of the principal Act.

“Applicability of Act to Government departments etc. **30.** (1) Subject to the provisions of subarticle (2) of this article, 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.

(2) The Minister may by order in the Gazette exempt any or all the operations of any undertaking to which subarticle (1) of this article applies from the provisions of this Act.”.

28. In article 31 of the principal Act for the words “or any other person” there shall be substituted the words “or any of his officers or contractors” and immediately after the words “any act or omission” there shall be inserted the words “in connection with this Act”. Amendment of article 31 of the principal Act.

29. For article 32 of the principal Act, there shall be substituted the following: Substitution of article 32 of the principal Act.

“Power to make regulations. **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 concentrative joint ventures which may prevent, restrict or distort competition within the relevant market.”.

30. Immediately after article 32 of the principal Act there shall be added the following new article: Addition of new article 33 to the principal Act.

“Power to make regulations. **33.** The Minister may by regulations:

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

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(b) exempting any agreement, decision or practice in connection with agriculture and fisheries from the provisions of article 5 of the Act under such conditions as he may prescribe.”.

Amendment of the
Schedule to the
principal Act.

31. In paragraph 14 of the Schedule to the principal Act, for the words “by the organs” there shall be substituted the words “given by the institutions” and for the words “of the treaties and directives” there shall be substituted the words “of the treaties, directives, regulations and decisions”.

Passed by the House of Representatives at Sitting No. 424 of the 14th November, 2000.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives