

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19884, 13 ta' Ottubru, 2017

Taqsim A

MALTA

ATT Nru XXV tal-2017

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

ACT No. XXV of 2017

AN ACT enacted by the Parliament of Malta.

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

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

Nagħti l-kunsens tiegħi.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

13 ta' Ottubru, 2017

ATT Nru XXV tal-2017

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 tal-istess, ħarġet b'liġi dan li ġej:-

1. It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2017 li jemenda l-Att dwar il-Kompetizzjoni u għandu jinqara u jinftiehem haġa waħda mal-Att dwar il-Kompetizzjoni, hawnhekk iżjed 'il quddiem imsejjaħ "l-Att prinċipali".

Titolu fil-qosor.

Kap. 379.

2. L-artikolu 27A tal-Att prinċipali għandu jiġi sostitwit b' dan li ġej:

Sostituzzjoni tal-artikolu 27A tal-Att prinċipali.

"Azzjoni għad-danni dwar ksur tal-liġi tal-kompetizzjoni.

27A. (1) L-azzjoni għad-danni dwar ksur tal-liġi tal-kompetizzjoni li jkun twettaq fi jew wara s-27 ta' Diċembru 2014 għandha, minkejja d-dispożizzjonijiet ta' kull liġi oħra iżda soġġett għad-dispożizzjonijiet ta' dan l-artikolu, tkun regolata skont id-dispożizzjonijiet tal-Iskeda.

A 884

(2) Azzjonijiet għad-danni dwar ksur tal-liġi tal-kompetizzjoni li jkun twettaq qabel is-27 ta' Diċembru 2014 għandhom ikompli jkunu regolati skont id-dispożizzjonijiet ta' dan l-Att kif kienu fis-sehħ f'dak iż-żmien.

(3) Xejn f'dan l-Att ma għandu jkollu l-effett li jestendi xi perjodu ta' preskrizzjoni li jkun japplika dwar ksur tal-liġi tal-kompetizzjoni li jkun twettaq qabel is-27 ta' Diċembru 2016 skont id-dispożizzjonijiet ta' dan l-Att kif kienu fis-sehħ dak iż-żmien jew li jqajjem mill-ġdid xi perjodu ta' preskrizzjoni li jkun skada.

(4) Id-dispożizzjonijiet ta' dan l-artikolu huma bla hsara għal kull deċiżjoni li seghet saret *res judicata* u għal kull haġa magħmula f'kull azzjoni li tkun għadha pendent quddiem Qorti fiż-żmien tad-dhul fis-sehħ ta' dan l-artikolu."

Emenda tal-artikolu 33 tal-Att prinċipali.

3. Is-subartikolu (2) tal-artikolu 33 tal-Att prinċipali għandu jiġi emendat kif ġej:

(a) fil-paragrafu (ċ) tiegħu l-kliem "f'investigazzjonijiet dwar kartelli." għandhom jiġu sostitwiti bil-kliem "f'investigazzjonijiet dwar kartelli"; u

(b) minnufih wara l-paragrafu (ċ) tiegħu għandhom jiżdiedu l-paragrafi ġodda li ġejjin:

"(d) jippreskrivi kull haġa dwar il-liġi tal-kompetizzjoni bil-għan li jitwettqu l-obbligi internazzjonali ta' Malta jew l-obbligi ta' Malta bħala Stat Membru tal-Unjoni Ewropea;

(e) jemenda jew jissostitwixxi l-Iskeda ta' dan l-Att."

Żjieda ta' Skeda ġdida mal-Att prinċipali.

4. Minnufih wara l-artikolu 33 tal-Att prinċipali għandha tiżdied l-Iskeda ġdida li ġejja:

"SKEDA
(Artikolu 27A)

REGOLAMENTI DWAR KSUR TAL-LIĠI TAL-KOMPETIZZJONI
(AZZJONIJIET GĦAD-DANNI)

Titolu u bidu fis-sehħ.

1. (1) It-titolu ta' dawn ir-regolamenti hu r-Regolamenti dwar Ksur tal-Liġi tal-Kompetizzjoni (Azzjonijiet għad-Danni).

(2) Bla hsara għad-dispożizzjonijiet tal-artikolu 27A tal-Att, id-dispożizzjonijiet ta' dawn ir-regolamenti għandhom jitqiesu li daħlu fis-seħh fis-27 ta' Diċembru, 2014.

Ghan.

2. Dawn ir-regolamenti jimplimentaw id-dispożizzjonijiet tad-Direttiva 2014/104/EU tal-Parlament Ewropew u tal-Kunsill tas-26 ta' Novembru 2014 fuq ċerti regoli li jirregolaw l-azzjonijiet għad-danni taħt il-liġi nazzjonali għal ksur tad-dispożizzjonijiet tal-liġi tal-kompetizzjoni tal-Istati Membri tal-Unjoni Ewropea.

Tifsir.

3. F'dawn ir-regolamenti, sakemm il-kuntest ma jkunx jeħtieġ mod ieħor:

Kap. 379.

"Att" tfisser l-Att dwar il-Kompetizzjoni;

"awtorità nazzjonali tal-kompetizzjoni" tfisser awtorità nominata minn Stat Membru skont l-Artikolu 35 tar-Regolament (KE) Nru 1/2003, li tkun responsabbli għall-applikazzjoni tal-Artikoli 101 u 102 TFUE;

"awtorità tal-kompetizzjoni" tfisser il-Kummissjoni Ewropea jew xi awtorità nazzjonali tal-kompetizzjoni, skont kif jeħtieġ il-kuntest;

"awtur tal-ksur tal-liġi" tfisser l-intrapriża jew l-assoċjazzjoni ta' intrapriži li wettqet il-ksur tal-liġi tal-kompetizzjoni;

"azzjoni għad-danni" tfisser azzjoni skont dawn ir-regolamenti, li permezz tagħha pretensjoni għad-danni titressaq quddiem il-qorti nazzjonali minn parti li allegatament garrbet hsara, minn xi hadd li jaġixxi f'isem wahda jew aktar partijiet li allegatament garrbu hsara, jew minn persuna fiżika jew ġuridika li tkun is-suċċessur tad-dritt tal-parti li allegatament garrbet il-hsara, inkluża l-persuna li akkwistat il-pretensjoni;

"deċiżjoni dwar ksur" tfisser deċiżjoni ta' awtorità tal-kompetizzjoni jew qorti nazzjonali li ssib ksur tal-liġi tal-kompetizzjoni;

"deċiżjoni finali dwar ksur" tfisser deċiżjoni dwar ksur li ma tistax jew li ma għadhiex tista' tiġi appellata bil-mezzi ordinarji, u għaldaqstant saret *res judicata*;

"dikjarazzjoni ta' klemenza" tfisser preżentazzjoni verbali jew bil-miktub ipprovduta b'mod volontarju minn, jew f'isem, intrapriża jew persuna fiżika lil awtorità tal-kompetizzjoni jew rekord tagħha, li tiddekrivi l-għarfien ta' dik l-intrapriża jew tal-persuna fiżika dwar kartell u r-rwol tagħha fih, li tkun tfasslet speċifikament biex titressaq lill-awtorità tal-kompetizzjoni bil-għan li tinkiseb immunità jew tnaqqis tal-penalitajiet taht programm ta' klemenza, li ma tinkludix informazzjoni pre-eżistenti;

"evidenza" tfisser kull mezz ta' prova ammissibbli quddiem il-qorti, partikolarment dokumenti u l-oġġetti l-oħra kollha inkluża informazzjoni, irrISPettivament mill-mezz fejn l-informazzjoni hija maħżuna;

"ħlas għoli żejjed" tfisser id-differenza bejn il-prezz fil-fatt imħallas u l-prezz li kien jipprevali kieku ma kienx hemm il-ksur tal-liġi tal-kompetizzjoni;

"informazzjoni pre-eżistenti" tfisser evidenza li teżisti irrISPettivament mill-proċedimenti ta' awtorità kompetenti, kemm jekk tali informazzjoni tinsabx jew le fil-fajl ta' awtorità tal-kompetizzjoni;

"kartell" tfisser ftehim jew prattika miftiehma bejn żewġ kompetituri jew aktar li għandha l-għan li tikkoordina l-imġiba kompetittiva tagħhom fis-suq jew tinfluwenza l-parametri rilevanti tal-kompetizzjoni, permezz ta' prattiki bħal, imma mhux limitati għal, l-iffissar jew il-koordinazzjoni tal-prezzijiet tal-bejgħ jew tax-xiri jew ta' kondizzjonijiet kummerċjali oħrajn, inkluż fir-rigward tad-drittijiet ta' proprjetà intellettuali, l-allokazzjoni tal-kwoti tal-produzzjoni jew tal-bejgħ, il-kondiviżjoni tas-swieq u l-klijenti inklużi l-immanuvrar tal-offerti, ir-restrizzjonijiet tal-importazzjonijiet jew l-esportazzjonijiet jew l-azzjonijiet antikompetittivi kontra kompetituri oħra;

"ksur tal-liġi tal-kompetizzjoni" tfisser ksur tal-Artikolu 101 jew 102 TFUE u, jew tal-artikoli 5 jew 9 tal-Att jew dispożizzjoni ekwivalenti tal-liġi nazzjonali ta' Stat Membru ieħor;

"liġi tal-kompetizzjoni" tfisser l-Artikoli 101 u 102 tat-TFUE u, jew l-artikoli 5 u 9 tal-Att jew id-dispożizzjonijiet tal-liġi nazzjonali li b'mod predominanti jsegwu l-istess għanijiet bħal dawk tal-Artikoli 101 u 102 TFUE u li huma applikati għall-istess każ u b'mod parallel mal-liġi tal-Unjoni dwar il-kompetizzjoni skont l-Artikolu 3(1) tar-Regolament (KE) Nru 1/2003, minbarra dispożizzjonijiet tal-liġi nazzjonali li jimponu pieni kriminali fuq persuni fiżiċi, hliet sa fejn tali pieni kriminali huma l-mezz li bih jiġu infurzati regoli tal-kompetizzjoni li japplikaw għal kumpaniji, kif jista' jkun applikabbli f'każ partikolari;

"parti li garrbet ħsara" tfisser persuna li tkun sofriet danni kkawżati minn ksur tal-liġi tal-kompetizzjoni;

"pretensjoni għad-danni" tfisser pretensjoni għal kumpens għal ħsara kkawżata minn ksur tal-liġi tal-kompetizzjoni;

"programm ta' klemenza" tfisser programm li jikkoncerna l-applikazzjoni tal-Artikolu 101 TFUE jew l-artikolu 5 tal-Att jew dispożizzjonijiet ekwivalenti ta' Stat Membru ieħor, li abbażi tiegħu parteċipant f'kartell sigriet, b'mod indipendenti mill-intrapriżi l-oħra involuti fil-kartell, jikkoopera ma' investigazzjoni tal-awtorità tal-kompetizzjoni, billi jipprovdni b'mod volontarju preżentazzjonijiet rigward l-għarfien ta' dak il-parteeċipant tal-kartell u r-rwol tiegħu fih, u bħala skambju għal dan il-parteeċipant jirċievi, permezz ta' deċiżjoni jew permezz ta' twaqqif tal-proċedimenti, l-immunità mill-penalitajiet li għandhom jiġu imposti għall-involviment tiegħu fil-kartell jew tnaqqis tat-tali penalitajiet;

"qorti" tfisser qorti ta' ġurisdizzjoni ċivili f'Malta kif stabbilita taħt il-Kodiċi tal-Organizzazzjoni u Proċedura Ċivili jew kull tribunal li jkollu ġurisdizzjoni fuq materji li jirrigwardaw il-kompetizzjoni stabbilit taħt xi liġi speċjali;

"qorti nazzjonali" tfisser qorti jew tribunal ta' Stat Membru fis-sens tal-Artikolu 267 TFUE;

"qorti tal-appell" tfisser qorti nazzjonali li għandha s-setgħa bil-mezzi ta' appell ordinarji li teżamina mill-ġdid id-deċiżjonijiet ta' awtorità nazzjonali tal-kompetizzjoni jew li teżamina mill-ġdid is-sentenzi li jagħmlu dikjarazzjonijiet dwar dawk id-deċiżjonijiet, irrispettivament minn jekk dik il-qorti għandhiex hija stess is-setgħa li ssib ksur tal-liġi tal-kompetizzjoni;

"riċevitur tal-immunità" tfisser intrapriża, jew persuna fiżika, li għet mogħtija l-immunità minn penalitajiet mahruġa minn awtorità tal-kompetizzjoni taht programm ta' klemenza;

"rizoluzzjoni konsenswali" tfisser qbil milhuq permezz ta' risoluzzjoni konsenswali tat-tilwim;

"rizoluzzjoni konsenswali tat-tilwim" tfisser kwalunkwe mekkaniżmu li jippermetti lill-partijiet jirrizolvu tilwim barra mill-qorti dwar talba għad-danni;

"sottomissjoni għal risoluzzjoni" tfisser prezentazzjoni volontarja minn, jew f'isem, intrapriża lil awtorità tal-kompetizzjoni li tiddekrivi r-rikonoxximent ta' intrapriża jew ir-rinunzja tagħha għal tilwima dwar is-sehem tagħha fi ksur tal-liġi tal-kompetizzjoni u r-responsabbiltà tagħha għal dak il-ksur tal-liġi tal-kompetizzjoni, li tkun tfasslet speċifikament sabiex tippermetti lill-awtorità tal-kompetizzjoni tapplika proċedura simplifikata jew proċedura mħaffa;

"TFUE" tfisser it-Trattat dwar il-Funzjonament tal-Unjoni Ewropea;

"xerrej dirett" tfisser persuna fiżika jew ġuridika li xtrat, direttament mingħand l-awtur tal-ksur tal-liġi, prodotti jew servizzi li kienu l-oġġett ta' ksur tal-liġi tal-kompetizzjoni;

"xerrej indirett" tfisser persuna fiżika jew ġuridika li xtrat, mhux direttament mingħand l-awtur tal-ksur tal-liġi, imma mingħand xerrej dirett jew xerrej sussegwenti, prodotti jew servizzi li kienu l-oġġett ta' ksur tal-liġi tal-kompetizzjoni, jew prodotti jew servizzi li jkun fihom it-tali oġġetti jew imnisslin minnhom.

Dritt għal kumpens
shih.

4. (1) Kwalunkwe persuna fiżika jew legali li sofriet dannu kkawżat minn ksur tal-liġi tal-kompetizzjoni tkun tista' titlob u tikseb kumpens shih għal dak id-dannu, liema azzjoni għandha titressaq skont id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jew kif jista' jkun previst f'xi leġiżlazzjoni speċjali oħra.

Kap. 12.

(2) Għall-iskopijiet ta' dawn ir-regolamenti, persuna għandha titqies li sofriet dannu wkoll meta dik il-persuna mhijiex il-klijent immedjat jew fornitur tal-konvenut.

(3) Kumpens shih għandu jqiegħed persuna li sofriet dannu fil-pożizzjoni li fiha kienet tkun dik il-persuna li kieku ma jkunx seħħ il-ksur tal-liġi tal-kompetizzjoni. Għaldaqstant għandu jkopri d-dritt għal kumpens għat-telf attwali u għat-telf tal-qligh flimkien mal-hlas ta' mgħax miż-żmien li fih gie kkawżat id-dannu sakemm is-somma kapitali mogħtija tiġi attwalment imħallsa:

Izda l-kumpens shih taht dawn ir-regolamenti m'għandux iwassal għal kumpens żejjed, kemm permezz ta' danni punittivi, multipli jew ta' tipi oħra.

Divulgazzjoni ta'
evidenza.

5. (1) Fi proċeduri li għandhom x'jaqsmu ma' azzjoni għar-rizarċiment tad-danni skont ir-regolament 4, l-attur għandu jippreżenta ġustifikazzjoni raġunata li jkun fiha fatti raġonevolment disponibbli u evidenza suffiċjenti biex isostnu l-plawżibbiltà tat-talba għar-rizarċiment tad-danni.

Kap. 12.

(2) Il-qorti għandha s-setgħa, fuq talba tal-attur, li tordna d-divulgazzjoni ta' evidenza rilevanti mill-konvenut jew terzi fejn tali evidenza tkun fil-kontroll tagħhom, skont id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jew kif jista' jkun previst f'xi leġiżlazzjoni speċjali oħra, taht il-kundizzjonijiet stabbiliti f'dawn ir-regolamenti. Il-qorti għandha wkoll is-setgħa, fuq talba tal-konvenut, li tordna lill-attur jew terzi jiddivulgaw evidenza rilevanti. Dan is-subregolament hu mingħajr preġudizzju għad-drittijiet u l-obbligi tal-qorti taht ir-Regolament tal-Kunsill (KE) Nru 1206/2001:

Iżda l-qorti tista', fejn tqis xieraq fiċ-ċirkostanzi, tordna d-divulgazzjoni ta' elementi speċifiċi ta' evidenza jew kategoriji rilevanti ta' evidenza ċirkoskritta bl-aktar mod preċiż u bl-aktar mod ristrett possibbli abbażi ta' fatti raġonevolment disponibbli fil-ġustifikazzjoni raġunata ppreżentata mill-attur.

(3) Il-qorti għandha tillimita d-divulgazzjoni ta' evidenza għal dak li hu proporzjonat. Fid-determinazzjoni ta' jekk xi divulgazzjoni mitluba minn parti hijiex proporzjonata, il-qorti għandha tikkunsidra l-interessi leġittimi tal-partijiet kollha u t-terzi kollha konċernati u għandha, b'mod partikolari, tikkunsidra:

(a) sa fejn it-talba jew id-difiża hija appoġġjata mill-fatti u evidenza disponibbli li jiġġustifikaw it-talba għad-divulgazzjoni tal-evidenza;

(b) l-ambitu u l-ispiza biex issir id-divulgazzjoni, speċjalment għal terzi kkonċernati, inkluż li jiġi evitat tiftix mhux speċifiku għal informazzjoni li x'aktarx ma jkunx ta' rilevanza għall-partijiet fil-proċedura;

(ċ) jekk l-evidenza li qed tintalab id-divulgazzjoni tagħha fihix informazzjoni kunfidenzjali, speċjalment li jikkonċerna lil terzi, u liema arrangamenti huma fis-sehħ biex jipproteġu tali tagħrif kunfidenzjali.

(4) Il-qorti għandha s-setgħa li tordna d-divulgazzjoni ta' evidenza li jkun fiha informazzjoni kunfidenzjali fejn tikkunsidra li dan huwa rilevanti għall-azzjoni għar-rizarċiment tad-danni. Meta tordna d-divulgazzjoni ta' tali tagħrif, il-qorti għandha tadotta kwalunkwe miżuri effettivi, skont id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jew skont id-dispożizzjonijiet ta' xi leġiżlazzjoni speċjali oħra, li tqis neċessarji u xierqa fiċ-ċirkostanzi sabiex tippoteġi tali informazzjoni skont il-liġijiet applikabbli:

Kap. 377.
Kap. 440.

Kap. 50.

Izda dan is-subregolament huwa mingħajr preġudizzju għall-applikabbiltà tad-dmir tas-segretezza professjonali skont id-dispożizzjonijiet tal-Att dwar Segretezza Professjonali, l-Att dwar il-Protezzjoni u l-Privatezza tad-*Data*, l-Att dwar is-Sigrieti Uffiċjali u kwalunkwe sigriet professjonali ieħor kif klassifikat skont il-liġi ta' kwalunkwe Stat Membru jew tal-Unjoni Ewropea.

(5) L-interess ta' intrapriži li jevitaw azzjonijiet għal riżarċiment tad-danni wara ksur tal-liġi tal-kompetizzjoni ma jikkostitwixxix interess li jitlob il-protezzjoni.

(6) Qabel ma tordna d-divulgazzjoni ta' kwalunkwe evidenza l-qorti għandha tagħti lil dik il-persuna l-opportunità li tippreżenta kwalunkwe sottomissjonijiet jew oġġezzjonijiet li jikkonċernaw tali divulgazzjoni.

Kap. 12.

(7) Mingħajr preġudizzju għal subregolamenti (4) u (6) u għar-regolament 6, dan ir-regolament m'għandux jippreġudika l-applikabbiltà ta' kwalunkwe dispożizzjoni tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jew ta' xi legiżlazzjoni applikabbli oħra, li jista' jwassal għal żvelar iżjed wiesa' ta' evidenza.

Divulgazzjoni ta' evidenza inkluża fil-fajl ta' awtorità tal-kompetizzjoni.

6. (1) Għall-fini ta' azzjonijiet għad-danni skont dawn ir-regolamenti, il-qorti għandha s-setgħa li tordna d-divulgazzjoni ta' evidenza inkluża fil-fajl ta' awtorità tal-kompetizzjoni skont il-każ, taħt il-kundizzjonijiet ta' hawn taħt. F'tali każijiet, id-dispożizzjonijiet tar-regolament 5 japplikaw flimkien ma' dan ir-regolament.

(2) Dan ir-regolament hu mingħajr preġudizzju għar-regoli u l-prattiki fuq l-aċċess pubbliku għal dokumenti skont ir-Regolament (KE) Nru 1049/2001, u għar-regoli u l-prattiki skont il-liġijiet ta' Malta jew tal-Unjoni Ewropea dwar il-protezzjoni ta' dokumenti interni tal-awtoritajiet tal-kompetizzjoni u tal-korrispondenza bejn l-awtoritajiet tal-kompetizzjoni.

(3) Meta tevalwa, skont ir-regolament 5(3), il-proporzjonalità ta' ordni għad-divulgazzjoni ta' tagħrif, il-qorti għandha wkoll tikkunsidra dan li ġej:

(a) jekk it-talba ġietx ifformulata speċifikament fir-rigward tan-natura, is-sugġett jew il-kontenuti tad-dokumenti pprezentati lil awtorità tal-kompetizzjoni jew miżmuma fil-fajl tagħha, aktar milli b'applikazzjoni mhux speċifika li tikkonċerna d-dokumenti pprezentati lil awtorità tal-kompetizzjoni;

(b) jekk il-parti li qiegħda titlob id-divulgazzjoni tkunx qiegħda tagħmel dan fir-rigward ta' azzjoni għad-danni pendenti quddiemha; u

(ċ) fir-rigward tas-subregolamenti (4) u (9), jew fuq talba ta' awtorità tal-kompetizzjoni skont is-subregolament (10), il-htieġa li tissalvagwardja l-effettività tal-infurzar pubbliku tal-liġi tal-kompetizzjoni.

(4) Il-qorti tista' tordna d-divulgazzjoni tal-kategoriji ta' evidenza li ġejjin biss wara li awtorità tal-kompetizzjoni, billi tadotta deċiżjoni jew b'mod ieħor, tkun temmet il-proċeduri tagħha:

(a) informazzjoni li tnejn minn persuna fiżika jew ġuridika speċifikament għall-proċeduri ta' dik l-awtorità tal-kompetizzjoni;

(b) informazzjoni li l-awtorità tal-kompetizzjoni tkun hejjiet u bagħtet lill-partijiet waqt il-proċeduri tagħha; u

(ċ) sottomissjonijiet għal rizzoluzzjoni li ġew irtirati.

(5) Il-kategoriji ta' evidenza li ġejjin ma jistgħux, f'kawża għad-danni, fi kwalunkwe hin, ikunu s-sugġett ta' talba għad-divulgazzjoni:

(a) dikjarazzjonijiet ta' klemenza; u

(b) sottomissjonijiet ta' rizzoluzzjoni.

(6) L-attur jista' jipprezenta talba ġustifikata biex il-qorti jkollha aċċess għall-evidenza msemmija fil-paragrafi (a) jew (b) tas-subregolament (5) għall-uniku għan li tassigura li l-kontenut tagħhom jikkorrispondi mat-tifsiriet ta' "dikjarazzjoni ta' klemenza" jew "sottomissjonijiet għal rizzoluzzjoni", skont il-każ, fir-regolament 3. Fl-evalwazzjoni tagħha, il-qorti tista' titlob għajnuna biss mill-awtorità tal-kompetizzjoni kompetenti:

Iżda fil-kazijiet li għalihom hemm referenza f'dan is-subregolament, l-awturi tal-evidenza inkwistjoni wkoll għandhom il-possibilità li jinstemgħu:

Iżda wkoll, fl-ebda każ il-qorti ma tista' tippermetti lil partijiet oħrajn jew lil terzi jkollhom aċċess għal dik l-evidenza.

(7) Jekk huma biss partijiet mill-evidenza mitluba li huma koperti mis-subregolament (5), il-partijiet li jifdal minnha għandhom, skont il-kategorija li jaqgħu taħtha, jiġu rilaxxati skont id-dispożizzjonijiet rilevanti ta' dan ir-regolament.

(8) Id-divulgazzjoni ta' evidenza fil-fajl ta' awtorità tal-kompetizzjoni li ma taqax taħt l-ebda mill-kategoriji mnizzlin f'dan ir-regolament, tista' tiġi ordnata f'azzjonijiet għar-rizarciment ta' danni fi kwalunkwe mument, mingħajr preġudizzju għad-dispożizzjonijiet ta' dan ir-regolament.

(9) Il-qorti għandha titlob id-divulgazzjoni ta' evidenza minn awtorità tal-kompetizzjoni ta' evidenza inkluża fil-fajl tagħha biss meta l-ebda parti jew terzi ma jkunux f'pożizzjoni jew ma jkunux jistgħu b'mod raġonevoli jipprovdu dik l-evidenza.

(10) Sa fejn awtorità tal-kompetizzjoni hija lesta li tiddikjara l-fehmiet tagħha dwar il-proporzjonalità ta' talbiet għal divulgazzjoni, hija tista', fuq inizjattiva tagħha stess, tippreżenta osservazzjonijiet lill-qorti li quddiemha jintalab ordni ta' divulgazzjoni.

Limiti għall-użu ta' evidenza miksuba biss permezz tal-aċċess għall-fajl ta' awtorità tal-kompetizzjoni.

7. (1) Kwalunkwe evidenza fil-kategoriji elenkati fir-regolament 6(5), li tinkiseb minn persuna fiżika jew ġuridika unikament permezz tal-aċċess għall-fajl ta' awtorità tal-kompetizzjoni għandha titqies inammissibbli fl-azzjonijiet għad-danni skont dawn ir-regolamenti.

(2) Sakemm l-awtorità kompetenti tal-kompetizzjoni tagħlaq il-proċeduri tagħha billi tadotta deċiżjoni jew b'mod ieħor, l-evidenza fil-kategoriji elenkati fir-regolament 6(4), li tinkiseb minn persuna fiżika jew ġuridika unikament permezz tal-aċċess għall-fajl ta' dik l-awtorità tal-kompetizzjoni għandha wkoll titqies inammissibbli fl-azzjonijiet għad-danni skont dawn ir-regolamenti.

(3) Kwalunkwe evidenza li hi miksuba minn persuna fiżika jew legali biss permezz ta' aċċess għall-fajl ta' awtorità tal-kompetizzjoni, u li ma taqax taht is-subregolament (1) jew (2), tkun tista' tintuża f'azzjoni għad-danni biss minn dik il-persuna fiżika jew legali tkun is-suċċessur ta' dik il-persuna, inkluż persuna li tkun akkwistat id-dritt litigjuż relatat mal-pretensjoni ta' dik il-persuna.

Penalitajiet.

8. (1) Qorti li qed tisma' kawża għar-rizarċiment tad-danni skont dawn ir-regolamenti għandha s-setgħa li timponi penalitajiet fuq kwalunkwe parti, terzi, jew ir-rappreżentanti legali tagħhom fi kwalunkwe każ minn dawn li ġejjin:

(a) in-nuqqas jew ir-rifjut tagħhom li jikkonformaw ma' ordni ta' divulgazzjoni tal-qorti;

(b) id-distruzzjoni tagħhom ta' evidenza rilevanti;

(ċ) in-nuqqas jew ir-rifjut tagħhom li jikkonformaw mal-obbligi imposti minn ordni tal-qorti biex tiproteġi informazzjoni kunfidenzjali;

(d) il-ksur tagħhom tal-limiti rigward l-użu ta' evidenza kif previst f'dawn ir-regolamenti:

Kap. 12.

Izda għall-finijiet ta' dan is-subregolament, il-qorti tista' timponi kwalunkwe miżura prevista fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jew f'xi legiżlazzjoni speċjali oħra, li hija tqis xierqa fiċ-ċirkostanzi. Il-qorti għandha tassigura li kwalunkwe penali imposta hija effettiva, proporzjonata u dissważiva.

(2) Il-penalitajiet imposti skont dan ir-regolament jistgħu wkoll, fid-diskrezzjoni tal-qorti, jinkludu dan li ġej fir-rigward tal-komportament ta' parti għal dawn il-proċeduri:

(a) il-possibilità li jaslu għal inferenzi negattivi, bħal preżunzjoni li l-kwistjoni rilevanti kienet ippruvata jew ma jilqgħux talbiet u difiżi kollha jew parzjalment; u

(b) il-possibilità li jkun ordnat il-ħlas tal-ispejjeż.

(3) Il-penali imposti minn qorti skont il-poteri mogħtija b'dan ir-regolament, bla ħsara għal kull responsabbiltà oħra taħt dan l-Att jew taħt xi liġi oħra, m'għandhomx jeċċedu l-mitt elf euro (€100,000) għal kull ksur jew nuqqas li għalih hemm provdut f'dan ir-regolament u penali ta' kull jum ta' għaxart elef euro (€10,000) dwar kull ġurnata li matulha l-ksur jew nuqqas jibqa' jseħh.

Effett tad-deċiżjonijiet.

9. (1) Ksur tal-liġi tal-kompetizzjoni misjub b'deċiżjoni finali tal-awtorità nazzjonali tal-kompetizzjoni, it-Tribunal dwar l-Appelli jew kull Qorti tal-Appell skont id-dispożizzjonijiet tal-Att u, jew tal-Kummissjoni Ewropea, jiġi meqjus li hu stabbilit b'mod inkontestabbli għall-finijiet ta' azzjoni għad-danni mressqa skont dawn ir-regolamenti.

(2) Fejn deċiżjoni finali tittiehed minn awtorità nazzjonali tal-kompetizzjoni ta' Stat Membru ieħor, dik id-deċiżjoni finali tista' tiġi pprezentata quddiem qorti li qiegħda tisma' azzjoni għad-danni skont dawn ir-regolamenti bħala tal-inqas evidenza *prima facie* tal-fatt li seħh ksur tal-liġi tal-kompetizzjoni, u, kif xieraq, tista' tiġi valutata flimkien ma' kwalunkwe evidenza oħra pprezentata mill-partijiet.

(3) Dan ir-regolament hu mingħajr preġudizzju għad-drittijiet u l-obbligi tal-qorti taħt l-Artikolu 267 tat-TFUE.

Preskrizzjoni.
Kap. 16.

10. (1) Minkejja d-dispożizzjonijiet tal-Kodiċi Ċivili jew ta' kwalunkwe liġi oħra, azzjoni għad-danni skont dawn ir-regolamenti hija preskritta bl-għeluq ta' ħames snin.

(2) Il-perjodu ta' preskrizzjoni msemmi fis-subregolament (1) jibda jiddekorri mid-data li fih ikun waqaf il-ksur tal-liġi tal-kompetizzjoni u l-attur ikun jaf bih, jew jista' jkun raġonevolment mistenni li jkun jaf:

- (a) l-imġiba u l-fatt li din tikkostitwixxi ksur tal-liġi tal-kompetizzjoni;
- (b) il-fatt li l-ksur tal-liġi tal-kompetizzjoni kkawżalu d-danni; u
- (ċ) l-identità tal-awtur tal-ksur tal-liġi.

(3) Il-perjodu ta' preskrizzjoni msemmi fis-subregolament (1) jiġi sospiż fejn awtorità tal-kompetizzjoni tiegħu azzjoni għall-fini tal-investigazzjoni jew il-proċeduri tagħha fir-rigward ta' ksur tal-liġi tal-kompetizzjoni relatata mal-azzjoni għar-rizarċiment tad-danni. Is-sospensjoni tintemm sena wara li d-deċiżjoni dwar il-ksur tkun saret *res judicata* jew wara li l-proċeduri jintemmu.

Responsabbiltà *in solidum*.

11. (1) Intrapriżi li jinstabu li kisru l-liġi tal-kompetizzjoni permezz ta' mġiba kongunta jinżammu responsabbli b'mod *in solidum* għad-dannu kkawżat bil-ksur tal-liġi tal-kompetizzjoni bl-effett li kull waħda minn dawk l-intrapriżi hi obbligata li tagħti kumpens shiħ għad-dannu, u l-parti li tkun garrbet il-ħsara għandha d-dritt titlob kumpens shiħ minn kwalunkwe waħda minnhom sakemm tkun ġiet ikkumpensata bis-shiħ.

(2) Minkejja d-dispożizzjonijiet tas-subregolament (1) iżda mingħajr preġudizzju għad-dritt ta' kumpens shiħ kif stipulat fir-regolament 4, fejn l-awtur tal-ksur tal-liġi jkun intrapriża żgħira jew ta' daqs medju (SME) kif imfisser fir-Rakkomandazzjoni tal-Kummissjoni 2003/361/KE, l-awtur tal-ksur tal-liġi huwa responsabbli biss għax-xerrejja jew fornituri proprji diretti jew indiretti fejn:

(a) is-sehem tagħha tas-suq fis-suq rilevanti kien taħt il-5% f'xi żmien matul il-ksur tal-liġi tal-kompetizzjoni; u

(b) l-applikazzjoni tar-regoli normali għar-responsabbiltà *in solidum* tkun b'mod irrimedjabbli tikkomprometti l-vijabbiltà ekonomika tagħha u twassal biex l-assi tagħha jitilfu l-valur kollu tagħhom.

(3) L-eċċezzjoni stabbilita fis-subregolament (2) mhijiex applikabbli fejn:

(a) l-SME tkun mexxiet il-ksur tal-liġi tal-kompetizzjoni jew gieghlet lil intrapriżi oħrajn jipparteċipaw fil-ksur; jew

(b) l-SME instabet preċedentement li kisret il-liġi tal-kompetizzjoni.

(4) Minkejja d-dispożizzjonijiet tas-subregolament (1), benefiċjarju tal-immunità jkun responsabbli *in solidum* kif ġej:

(a) lejn ix-xerrejja u l-fornituri diretti jew indiretti tiegħu; u

(b) lejn partijiet oħrajn li garrbu ħsara biss meta l-kumpens shiħ ma jistax jinkiseb mill-intrapriżi l-oħrajn li kienu involuti fl-istess ksur tal-liġi tal-kompetizzjoni.

(5) Il-perjodu ta' preskrizzjoni msemmi fir-regolament 10 jgħodd ukoll għal azzjonijiet taħt dan ir-regolament.

(6) Awtur tal-ksur tal-liġi skont dawn ir-regolamenti jista', permezz ta' azzjoni separata, jirkupra kontribuzzjoni minn kwalunkwe awtur tal-ksur tal-liġi ieħor, u l-ammont għandu jiġi determinat fid-dawl tar-responsabbiltà relattiva tagħhom għall-ħsara kkawżata mill-ksur tal-liġi tal-kompetizzjoni. L-ammont tal-kontribuzzjoni ta' awtur tal-ksur tal-liġi li jkun ingħata immunità mill-penalitajiet taħt programm ta' klemenza ma għandux jaqbeż l-ammont tal-ħsara li l-ksur kien ikkawża lix-xerrejja jew lill-fornituri proprji diretti jew indiretti tiegħu.

(7) Sa fejn jinstab li l-ksur tal-liġi tal-kompetizzjoni kkawża ħsara lill-partijiet li garrbu ħsara għajr ix-xerrejja jew il-fornituri diretti jew indiretti tal-awturi tal-ksur tal-liġi, l-ammont ta' kwalunkwe kontribuzzjoni minn benefiċjarju tal-immunità lil awturi oħra tal-ksur tal-liġi għandu jiġi determinat fid-dawl tar-responsabbiltà relattiva tiegħu għal dik il-ħsara.

Trasferiment ta' hlas għoli żejjed u d-dritt għal kumpens shiħ.

12. (1) Skont id-dispożizzjonijiet ta' dawn ir-regolamenti, il-kumpens għal ħsara jista' jintalab minn kwalunkwe persuna li tkun garrbet il-ħsara, irrispettivament jekk huwiex xerrej dirett jew indirett mill-awtur tal-ksur tal-liġi:

Iżda, madankollu, il-kumpens għat-telf reali kkawżat mill-ksur tal-liġi tal-kompetizzjoni lill-attur li jista' jiġi rkuprat skont dawn ir-regolamenti m'għandux jeċċedi l-hlas għoli żejjed ta' danni sofferti fuq il-livell tal-katina ta' provvisti li fiha jopera l-attur.

(2) Dawn ir-regolamenti huma mingħajr preġudizzju għad-dritt tal-parti li tkun garrbet il-ħsara li titlob u tikseb kumpens għat-telf ta' profitti minhabba fit-trasferiment shiħ jew parzjali ta' hlas għoli żejjed.

Kap. 12. (3) Fl-istima tal-ammont ta' danni sofferti mill-attur jew is-sehem ta' kwalunkwe hlas għoli żejjed li gie mghoddi fuq l-attur, il-qorti tista', minghajr preġudizzju għad-drittijiet tal-partijiet li jipproduċu xhieda esperti *ex parte*, tappunta espert wiehed jew aktar biex jgħinuha skont id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili, jew kif jista' jkun previst f'xi leġislazzjoni speċjali oħra. Il-qorti għandha tqis kwalunkwe linji gwida maħruġa mill-Kummissjoni Ewropea f'dan ir-rigward.

(4) Dawn ir-regolamenti japplikaw *mutatis mutandis* fejn il-ksur tal-liġi tal-kompetizzjoni jirrelata ma' provvista lill-awtur tal-ksur tal-liġi.

Trasferiment tad-difiza.

13. (1) Il-konvenut f'azzjoni għad-danni skont dawn ir-regolamenti jista' jinvoqa, bħala difiza kontra pretensjoni għad-danni, il-fatt li l-attur ittrasferixxa l-hlas għoli żejjed kollu jew parti minnu li rrizulta mill-ksur tal-liġi tal-kompetizzjoni.

(2) Il-piż li tingħata prova li l-hlas għoli żejjed gie trasferit għandu jkun tal-konvenut li b'mod raġonevoli jista' jkun jeħtieġ divulgazzjoni mill-attur jew minn terzi.

Xerrejja indiretti.

14. (1) Meta f'azzjoni għad-danni l-eżistenza ta' talba għad-danni jew l-ammont tal-kumpens li għandu jingħata jiddependu fuq jekk - jew sa liema punt - hlas għoli żejjed gie ttrasferit lill-attur, meta tiġi kkunsidrata l-prattika kummerċjali li ż-żieda fil-prezzijiet tiġi ttrasferita 'l isfel fil-katina tal-provvista, il-piż tal-prova tal-eżistenza u tal-ambitu ta' tali trasferiment jaqa' fuq l-attur li b'mod raġonevoli jista' jkun jeħtieġ divulgazzjoni mill-konvenut jew minn terzi.

(2) Fis-sitwazzjoni msemmija fis-subregolament (1), ix-xerrej indiretti għandu jitqies li jkun ta prova li sar trasferiment fuqu meta dak ix-xerrej indiretti jkun wera li:

(a) il-konvenut wettaq ksur tal-liġi tal-kompetizzjoni;

(b) il-ksur tal-liġi tal-kompetizzjoni rrizulta fi hlas għoli żejjed għax-xerrej dirett tal-konvenut; u

(ċ) huwa jkun xtara l-oġġetti jew is-servizzi li kienu l-oġġett tal-ksur tal-liġi tal-kompetizzjoni, jew xtara oġġetti jew servizzi mnisslin minnhom jew inkorporati fihom.

(3) Id-dispożizzjonijiet tas-subregolament (2) ma jgħoddux meta l-konvenut jista' b'mod kredibbli juri għas-sodisfazzjon tal-qorti li l-hlas għoli żejjed ma kienx gie trasferit, jew mhux kollu, lix-xerrej indirett.

Azzjonijiet għad-danni mill-atturi f'livelli differenti tal-katina tal-provvista.

15. (1) Biex jiġi evitat li azzjonijiet għad-danni minn atturi f'livelli differenti tal-katina tal-provvista jwasslu għal responsabbiltà multipla jew nuqqas ta' responsabbiltà tal-awtur tal-ksur tal-liġi, fl-evalwazzjoni ta' jekk huwiex sodisfatt il-piż tal-prova, li jirriżulta mill-applikazzjoni tar-regolamenti 13 u 14, il-qorti tista' tqis kwalunkwe waħda minn dawn li ġejjin:

(a) azzjonijiet għad-danni li huma relatati mal-istess ksur tal-liġi tal-kompetizzjoni, iżda li jitressqu mill-atturi minn livelli oħra fil-katina tal-provvista;

(b) sentenzi li jirriżultaw minn azzjonijiet għal danni kif imsemmija fil-paragrafu (a);

(c) informazzjoni rilevanti fid-dominju pubbliku li tirriżulta mill-infurzar pubbliku tal-liġi tal-kompetizzjoni.

(2) Dan ir-regolament huwa mingħajr preġudizzju għad-drittijiet u l-obbligi tal-qorti skont l-Artikolu 30 tar-Regolament (UE) Nru 1215/2012.

Kwantifikazzjoni tad-danni.

16. (1) Il-piż tal-prova ta' talbiet rigward l-ammont ta' dannu mgarrab għandu jkun fuq l-attur:

Iżda fejn jiġi stabbilit li l-attur soffra dannu, iżda jkun impossibbli jew diffiċli hafna biex id-dannu soffrut jiġi kkwantifikat b'mod preċiż abbażi tal-evidenza disponibbli, il-qorti tista' tistima l-ammont ta' danni inkluż, b'mod partikolari, fuq bażi ta' *arbitrio boni viri*.

(2) Fi kwalunkwe każ għandu jiġi preżunt li ksur minn kartelli jikkawża d-danni:

Iżda dak l-awtur tal-ksur tal-liġi jkollu d-dritt li jressaq evidenza biex jirribatti dik il-preżunzjoni.

(3) Awtorità tal-kompetizzjoni tista' fuq talba tal-qorti li qed tisma' azzjoni għad-danni skont dawn ir-regolamenti, tassisti lil dik il-qorti fir-rigward tad-determinazzjoni tal-*quantum* tad-danni fejn dik l-awtorità tal-kompetizzjoni tqis li tali assistenza hija xierqa.

(4) Biex tistabilixxi l-ammont ta' danni l-qorti għandha tqis ix-xenarju fattwali li kien jipprevali li kieku ma seħħx il-ksur.

Effett sospensiv u effetti oħra tar-riżoluzzjoni konsenswali tat-tilwim.

17. (1) Il-perjodu ta' preskrizzjoni msemmi fir-regolament 10 jiġi sospiż għat-tul ta' żmien ta' kwalunkwe proċess ta' riżoluzzjoni konsenswali tat-tilwim. Is-sospensjoni tal-perjodu ta' preskrizzjoni japplika biss fir-rigward ta' dawk il-partijiet li huma jew li kienu involuti jew rappreżentati fir-riżoluzzjoni konsenswali tat-tilwim.

Kap. 387.

(2) Mingħajr preġudizzju għad-dispożizzjonijiet tal-Att dwar l-Arbitraġġ, il-qorti li tkun qiegħda tisma' azzjoni għad-danni skont dawn ir-regolamenti tista', kif tqis xieraq fiċ-ċirkostanzi, tissospendi l-proċeduri quddiemha għal perjodu ta' mhux iżjed minn sentejn fejn il-partijiet huma involuti f'riżoluzzjoni konsenswali tat-tilwim rigward il-pretensjoni koperta minn dik l-azzjoni għad-danni.

(3) L-awtorità nazzjonali tal-kompetizzjoni tista' tikkunsidra li l-kumpens li jithallas b'riżultat ta' riżoluzzjoni konsenswali, u qabel id-deċiżjoni tagħha li timponi penali, ikun fattur mitiganti.

Effett ta' riżoluzzjoni konsenswali fuq azzjonijiet sussegwenti għad-danni.

18. (1) Wara riżoluzzjoni konsenswali, mill-pretensjoni tal-parti f'riżoluzzjoni li garrbet id-dannu, jitnaqqas is-sehem tad-dannu tal-ko-awturi tal-ksur tal-liġi li jkun ikkaġuna l-ksur tal-liġi tal-kompetizzjoni fuq il-parti li garrbet id-dannu.

(2) Kwalunkwe pretensjoni li jifdal mill-parti f'riżoluzzjoni li garrbet id-dannu għandha tiġi eżerċitata biss kontra ko-awturi tal-ksur tal-liġi li mhumiex partijiet fir-riżoluzzjoni, li mhumiex permessi jirkupraw kontribuzzjoni għall-bqija tat-talba mill-ko-awturi tal-ksur tal-liġi l-oħra fir-riżoluzzjoni:

Iżda fejn il-ko-awturi tal-ksur tal-liġi li mhumiex parti fir-riżoluzzjoni ma jistgħux iħallsu d-danni li jikkorrispondu għall-bqija tal-pretensjoni tal-parti f'riżoluzzjoni li garrbet id-dannu, il-parti f'riżoluzzjoni li garrbet id-dannu tista' teżerċita l-bqija tal-pretensjoni kontra l-ko-awturi tal-ksur tal-liġi li huma parti fir-riżoluzzjoni, sakemm tali għażla ma tkunx giet espressament eskluża taħt il-pattijiet tar-riżoluzzjoni konsenswali.

(3) Meta jkun qed jiġi ddeterminat l-ammont tal-kontribuzzjoni li ko-awtur tal-ksur tal-liġi jista' jirkupra minn kwalunkwe awturi tal-ksur tal-liġi ieħor skont ir-responsabbiltà relattiva tagħhom għad-dannu kkawżat mill-ksur tal-liġi tal-kompetizzjoni, il-qorti għandha tqis id-danni mhallsin skont riżoluzzjoni konsenswali li tkun saret qabel, li tinvolvi l-ko-awtur tal-ksur tal-liġi rilevanti."

5. Ir-Regolamenti dwar Ksur tal-Liġi tal-Kompetizzjoni (Azzjonijiet għad-Danni), implimentati bl-Avviż Legali 117 tal-2017, qegħdin b'dawn jiġu revokati. Revoka.
L.S. 379.09.

Mghoddi mill-Kamra tad-Deputati fis-Seduta Nru 22 tat-3 ta' Ottubru, 2017.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Skrivan tal-Kamra tad-Deputati

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I assent.

(L.S.)

**MARIE-LOUISE
COLEIRO PRECA
President**

13 th October, 2017

ACT No. XXV of 2017

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.

1. The short title of this Act is the Competition (Amendment) Act 2017, and this Act shall be read and construed as one with the Competition Act, hereinafter referred to as "the principal Act".

Cap. 379.

Substitution of article 27A of the principal Act.

2. Article 27A of the principal Act shall be substituted by the following:

"Actions for damages in respect of infringements of competition law.

27A. (1) The action for damages in respect of infringements of competition law committed on or after the 27th December 2014 shall, notwithstanding the provisions of any other law but subject to the provisions of this article, be regulated in accordance with the provisions of the Schedule.

(2) Actions for damages in respect of infringements of competition law, committed before the 27th December 2014 shall continue to be regulated by the provisions of this Act as then in force.

(3) Nothing in this Act shall have the effect of extending any period of prescription applicable in respect of infringements of competition law committed before the 27th December 2016 according to the provisions of this Act as then in force or of reviving any period of prescription which has expired.

(4) The provisions of this article shall be without prejudice to any decision which may have become *res judicata* or to anything done in any action which is still pending before a court at the time of the coming into force of this article."

3. Sub-article (2) of article 33 of the principal Act shall be amended as follows: Amendment of article 33 of the principal Act.

(a) in paragraph (c) thereof the words "fine in cartel investigations." shall be substituted by the words "fine in cartel investigations;"; and

(b) immediately after paragraph (c) thereof there shall be added the following new paragraphs:

"(d) prescribe any matter on competition law for the purpose of fulfilling Malta's international obligations or Malta's obligations as a Member State of the European Union;

(e) amend or substitute the Schedule to this Act."

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

"SCHEDULE
(Article 27A)

COMPETITION LAW INFRINGEMENTS
(ACTIONS FOR DAMAGES)
REGULATIONS

Citation and commencement.

1. (1) The title of these regulations is the Competition Law Infringements (Actions for Damages) Regulations.

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(2) Subject to the provisions of article 27A of the Act, the provisions of these regulations shall be deemed to have come into force on the 27th December 2014.

Purpose.

2. These regulations implement the provisions of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

Interpretation.

3. In these regulations, unless the context otherwise requires -

Cap. 379.

"Act" means the Competition Act;

"action for damages" means an action pursuant to these regulations by which a claim for damages is brought before a national court by an alleged injured party, or by someone acting on behalf of one or more alleged injured parties, or by a natural or legal person that succeeded in the right of the alleged injured party, including the person that acquired the claim;

"cartel" means an agreement or concerted practice between two or more competitors aimed at coordinating their competitive behaviour on the market or influencing the relevant parameters of competition through practices such as, but not limited to, the fixing or coordination of purchase or selling prices or other trading conditions, including, in relation to intellectual property rights, the allocation of production or sales quotas, the sharing of markets and customers, including bid-rigging, restrictions of imports or exports or anti-competitive actions against other competitors;

"claim for damages" means a claim for compensation for harm caused by an infringement of competition law;

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

"competition law" means Articles 101 and 102 TFEU and, or articles 5 and 9 of the Act or the provisions of national law that predominantly pursue the same objectives as Articles 101 and 102 TFEU and that are applied to the same case and in parallel to Union competition law pursuant to Article 3(1) of Council Regulation No. 1/2003, excluding provisions of national law which impose criminal penalties on natural persons, except to the extent that such criminal penalties are the means whereby competition rules applying to undertakings are enforced, as may be applicable in a particular case;

"consensual dispute resolution" means any mechanism enabling parties to reach the out-of-court resolution of a dispute concerning a claim for damages;

"consensual settlement" means an agreement reached through consensual dispute resolution;

"court" means a court of civil jurisdiction in Malta as established under the Code of Organization and Civil Procedure or any tribunal having jurisdiction in competition matters established under any special law;

"direct purchaser" means a natural or legal person who acquired, directly from an infringer, products or services that were the object of an infringement of competition law;

"evidence" means all types of means of proof admissible before the court, in particular documents and all other objects containing information, irrespective of the medium on which the information is stored;

"final infringement decision" means an infringement decision that cannot be, or that can no longer be, appealed and which has accordingly become a *res judicata*;

"infringement decision" means a decision of a competition authority or a national court that finds an infringement of competition law;

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"infringement of competition law" means an infringement of Article 101 or 102 TFEU and, or of article 5 or 9 of the Act or any equivalent provision of the national law of another Member State;

"infringer" means an undertaking or association of undertakings which has committed an infringement of competition law;

"immunity recipient" means an undertaking which, or a natural person who, has been granted immunity from penalties by a competition authority under a leniency programme;

"indirect purchaser" means a natural or legal person who acquired, not directly from an infringer, but from a direct purchaser or a subsequent purchaser, products or services that were the object of an infringement of competition law, or products or services containing them or derived therefrom;

"injured party" means a person that has suffered harm caused by an infringement of competition law;

"leniency programme" means a programme concerning the application of Article 101 TFEU or article 5 of the Act, or equivalent provisions of another Member State, on the basis of which a participant in a secret cartel, independently of the other undertakings involved in the cartel, cooperates with an investigation of the competition authority, by voluntarily providing presentations regarding that participant's knowledge of, and role in, the cartel in return for which that participant receives, by decision or by a discontinuation of proceedings, immunity from, or a reduction in, penalties for its involvement in the cartel;

"leniency statement" means an oral or written presentation voluntarily provided by, or on behalf of, an undertaking or a natural person to a competition authority or a record thereof, describing the knowledge of that undertaking or natural person of a cartel and describing its role therein, which presentation was drawn up specifically for submission to the competition authority with a view to obtaining immunity or a reduction of penalties under a leniency programme, not including pre-existing information;

"national competition authority" means an authority designated by a Member State pursuant to Article 35 of Regulation (EC) No. 1/2003, as being responsible for the application of Articles 101 and 102 TFEU;

"national court" means a court or tribunal of a Member State within the meaning of Article 267 TFEU;

"overcharge" means the difference between the price actually paid and the price that would otherwise have prevailed in the absence of an infringement of competition law;

"pre-existing information" means evidence that exists irrespective of the proceedings of a competition authority, whether or not such information is in the file of a competition authority;

"review court" means a national court that is empowered by ordinary means of appeal to review decisions of a national competition authority or to review judgements pronouncing on those decisions, irrespective of whether that court itself has the power to find an infringement of competition law;

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"settlement submission" means a voluntary presentation by, or on behalf of, an undertaking to a competition authority describing the undertaking's acknowledgement of, or its renunciation to a dispute, its participation in an infringement of competition law and its responsibility for that infringement of competition law, which was drawn up specifically to enable the competition authority to apply a simplified or expedited procedure;

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

Right to full compensation.

4. (1) Any natural or legal person who has suffered damage caused by an infringement of competition law shall be entitled to claim and to obtain full compensation for that damage, which action shall be instituted in accordance with the provisions of the Code of Organization and Civil Procedure, or as may be provided in any other special legislation.

Cap. 12.

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

(3) Full compensation shall place a person who has suffered harm in the position in which that person would have been had the infringement of competition law not been committed. It shall therefore cover the right to compensation for actual loss and for loss of profit as well as the payment of interest from the time the damage occurred until the capital sum awarded is actually paid:

Provided that full compensation under these regulations shall not lead to over-compensation, whether by means of punitive, multiple or other types of damages.

Disclosure of evidence.

5. (1) In proceedings relating to an action for damages pursuant to regulation 4, the claimant shall present a reasoned justification containing reasonably available facts and evidence sufficient to support the plausibility of the claim for damages.

Cap. 12.

(2) The court shall have the power, upon request of the claimant, to order the disclosure of relevant evidence by the defendant or a third party, where such evidence lies in their control, in accordance with the provisions of the Code of Organization and Civil Procedure, or as may be provided in any other special legislation, subject to the conditions set out in these regulations. It shall also have the power, upon request of the defendant, to order the claimant or a third party to disclose relevant evidence. This sub-regulation is without prejudice to the rights and obligations of the court under Council Regulation (EC) No. 1206/2001:

Provided that the court may, where it so deems appropriate in the circumstances, order the disclosure of specified items of evidence or relevant categories of evidence circumscribed as precisely and as narrowly as possible on the basis of reasonably available facts in the reasoned justification presented by the claimant.

(3) The court shall limit the disclosure of evidence to that which is proportionate. In determining whether any disclosure requested by a party is proportionate, the court shall consider the legitimate interests of all parties and third parties concerned and it shall, in particular, consider:

(a) the extent to which the claim or defence is supported by available facts and evidence justifying the request to disclose evidence;

(b) the scope and cost of disclosure, especially for any third parties concerned, including preventing non-specific searches for information which is unlikely to be of relevance for the parties in the procedure;

(c) whether the evidence the disclosure of which is sought contains confidential information, especially concerning any third parties, and what arrangements are in place for protecting such confidential information.

A 910

Cap. 12. (4) The court shall have the power to order the disclosure of evidence containing confidential information where it considers it relevant to the action for damages. When ordering the disclosure of such information the court shall adopt any effective measures, pursuant to the provisions of the Code of Organization and Civil Procedure, or to the provisions of any other special legislation, which it deems necessary or appropriate in the circumstances to protect such information in accordance with the applicable legislation:

Cap. 377.
Cap. 440.
Cap. 50. Provided that this sub-regulation shall be without prejudice to the applicability of the duty of professional secrecy pursuant to the provisions of the Professional Secrecy Act, the Data Protection Act, the Official Secrets Act and any other professional secret as classified under the law of any Member State or of the European Union.

(5) The interest of undertakings to avoid actions for damages following an infringement of competition law shall not constitute an interest capable of protection.

(6) Prior to ordering the disclosure of any evidence the court shall give that person the opportunity to present any submissions or objections concerning such disclosure.

Cap. 12. (7) Without prejudice to sub-regulations (4) and (6) and to regulation 6, this regulation shall not prejudice the applicability of any provision of the Code of Organization and Civil Procedure, or of any other applicable legislation, which would lead to wider disclosure of evidence.

Disclosure of evidence included in the file of a competition authority. 6. (1) For the purpose of actions for damages pursuant to these regulations, the court shall have the power to order the disclosure of evidence included in the file of a competition authority, as the case may be, subject to the conditions set forth hereunder. In such cases, the provisions of regulation 5 shall apply in addition to this regulation.

(2) This regulation is without prejudice to the rules and practices on public access to documents pursuant to Regulation (EC) No. 1049/2001, and to the rules and practices under the laws of Malta or the European Union on the protection of internal documents of national competition authorities and of correspondence between competition authorities.

(3) When assessing, in accordance with regulation 5(3), the proportionality of an order to disclose information, the court shall, in addition, consider the following:

(a) whether the request has been formulated specifically with regard to the nature, subject matter or contents of documents submitted to a competition authority or held in the file thereof, rather than by a non-specific application concerning documents submitted to a competition authority;

(b) whether the party requesting disclosure is doing so in relation to an action for damages pending before it; and

(c) in relation to sub-regulations (4) and (9), or upon request of a competition authority pursuant to sub-regulation (10), the need to safeguard the effectiveness of the public enforcement of competition law.

(4) The court may order the disclosure of the following categories of evidence only after a competition authority, by adopting a decision or otherwise, has closed its proceedings:

(a) information that was prepared by a natural or legal person specifically for the proceedings of that competition authority;

(b) information that the competition authority has drawn up and sent to the parties in the course of its proceedings; and

(c) settlement submissions that have been withdrawn.

(5) The following categories of evidence cannot, in an action for damages, at any time, be the subject of an order for disclosure:

(a) leniency statements; and

(b) settlement submissions.

(6) A claimant may present a reasoned request that the court access the evidence referred to in paragraphs (a) or (b) of sub-regulation (5) for the sole purpose of ensuring that their contents correspond to the definitions of "leniency statement" or "settlement submission", as the case may be, in regulation 3. In making that assessment, the court may request assistance exclusively from the competent competition authority:

Provided that, in cases referred to in this sub-regulation, the authors of the evidence in question shall also have the possibility to be heard:

Provided further that in no case shall the court permit other parties or third parties to access the evidence in question.

(7) If only parts of the evidence requested are covered by sub-regulation (5), the remaining parts thereof shall, depending on the category under which they fall, be released in accordance with the relevant provisions of this regulation.

(8) The disclosure of evidence in the file of a competition authority that does not fall into any of the categories listed in this regulation may be ordered in actions for damages at any time, without prejudice to the provisions of this regulation.

(9) The court shall only request the disclosure of evidence included in the file of a competition authority where no party or third party is reasonably able to provide that evidence.

(10) To the extent that a competition authority is willing to state its views on the proportionality of a request for disclosure, it may, acting on its own initiative, submit observations to the court before which that disclosure order is sought.

Limits on the use of evidence obtained solely through access to the file of a competition authority.

7. (1) Any evidence in the categories listed in regulation 6(5), which is obtained by a natural or legal person solely through access to the file of a competition authority, shall be deemed inadmissible in actions for damages pursuant to these regulations.

(2) Until the competent competition authority has closed its proceedings by adopting a decision or otherwise, evidence in the categories listed in regulation 6(4), which is obtained by a natural or legal person solely through access to the file of that competition authority, shall also be deemed inadmissible in actions for damages pursuant to these regulations.

(3) Any evidence which is obtained by a natural or legal person solely through access to the file of a competition authority, and which does not fall under sub-regulation (1) or (2), can be used in an action for damages only by that person or by a natural or legal person that succeeded to that person's rights, including a person that acquired that person's litigious right arising from the claim.

Penalties.

8. (1) A court seized of an action for damages pursuant to these regulations shall have the power to impose penalties on any party, third party and, or their legal representatives in the event of any of the following:

- (a) their failure or refusal to comply with a disclosure order of the court;
- (b) their destruction of relevant evidence;
- (c) their failure or refusal to comply with the obligations imposed by an order of the court protecting confidential information;
- (d) their breach of the limits on the use of evidence provided for in these regulations:

Provided that for the purposes of this sub-regulation, the court may impose any measure envisaged in the Code of Organization and Civil Procedure, or in any other special legislation, which it deems appropriate in the circumstances. The court shall ensure that any penalty so imposed is effective, proportionate and dissuasive, having regard to the seriousness of the offence.

Cap. 12.

(2) The penalties imposed pursuant to this regulation may also, at the discretion of the court, include the following with regard to the behaviour of a party to the proceedings:

- (a) the possibility to draw adverse inferences, such as presuming the relevant issue to be proven or dismissing claims and defences in whole or in part; and

(b) the possibility to order the payment of costs.

(3) Penalties imposed by a Court in pursuance of the powers conferred by this regulation shall, without prejudice to any other liability under the Act or any other law, not exceed one hundred thousand euro (€100,000) for every breach or default provided in this regulation and a daily fine of ten thousand euro (€10,000) in respect of each day during which the breach or default continues.

Effect of decisions.

9. (1) An infringement of competition law found by a final decision of the national competition authority, the Appeals Tribunal or any Court of Appeal in terms of the Act and, or of the European Commission, shall be deemed to be irrefutably established for the purposes of an action for damages brought pursuant to these regulations.

(2) Where a final decision is taken by a national competition authority of another Member State, that final decision may be presented before the court seized of an action for damages pursuant to these regulations as *prima facie* evidence that an infringement of competition law has occurred, and may, at the discretion of the court, be assessed along with any other evidence adduced by the parties.

(3) This regulation is without prejudice to the rights and obligations of the court under Article 267 TFEU.

Prescription.
Cap. 16.

10. (1) Notwithstanding the provisions of the Civil Code or of any other law, an action for damages pursuant to these regulations is prescribed by the lapse of five years.

(2) The period of prescription referred to in sub-regulation (1) shall begin to run from the date when the infringement of competition law has ceased and the claimant became aware, or can reasonably be expected to have become aware:

(a) of the behaviour and the fact that it constitutes an infringement of competition law;

(b) of the fact that the infringement of competition law caused harm to it; and

(c) the identity of the infringer.

(3) The period of prescription referred to in sub-regulation (1) shall be suspended where a competition authority takes action for the purpose of the investigation or its proceedings in respect of an infringement of competition law to which the action for damages relates. The suspension shall end one year after the infringement decision has become *res judicata* or after the proceedings are otherwise terminated.

Joint and several liability.

11. (1) Undertakings which are found to have infringed competition law through joint behaviour shall be jointly and severally liable for the harm caused by the infringement, with the effect that each of those undertakings is bound to compensate for the harm caused in full, and the injured party has the right to require full compensation from any of them until he has been fully compensated.

(2) Notwithstanding the provisions of sub-regulation (1) but without prejudice to the right of full compensation as laid down in regulation 4, where the infringer is a small or medium-sized enterprise (SME) as defined in Commission Recommendation 2003/361/EC, the infringer is liable only to its own direct and indirect purchasers or providers where:

(a) its market share in the relevant market was below 5% at any time during the infringement of competition law; and

(b) the application of the normal rules of joint and several liability would irretrievably jeopardise its economic viability and cause its assets to lose all their value.

(3) The exception laid down in sub-regulation (2) shall not apply where:

(a) the SME has led the infringement of competition law or has coerced other undertakings to participate therein; or

(b) the SME has previously been found to have infringed competition law.

(4) Notwithstanding the provisions of sub-regulation (1), an immunity recipient shall be jointly and severally liable as follows:

(a) to its direct or indirect purchasers or providers; and

(b) to other injured parties only where full compensation cannot be obtained from the other undertakings that were involved in the same infringement of competition law.

(5) Actions under this regulation shall be prescribed by the same period as in regulation 10.

(6) An infringer in terms of these regulations may, by a separate action, recover a contribution from any other infringer, the amount of which shall be determined in the light of their relative responsibility for the harm caused by the infringement of competition law. The amount of contribution of an infringer which has been granted immunity from penalties under a leniency programme shall not exceed the amount of the harm it caused to its own direct or indirect purchasers or providers.

(7) To the extent that an infringement of competition law is found to have caused harm to injured parties other than the direct or indirect purchasers or providers of the infringers, the amount of any contribution from an immunity recipient to other infringers shall be determined in the light of its relative responsibility for that harm.

Passing-on of overcharges and the right to full compensation.

12. (1) In accordance with the provisions of these regulations, any person who has suffered harm caused by an infringement of competition law may claim compensation therefor, irrespective of whether such claimant is a direct or indirect purchaser from the infringer:

Provided, however, that the compensation for actual loss caused by the infringement of competition law to the claimant which may be recovered in accordance with these regulations shall not in any case exceed the overcharge harm suffered at the level of the supply chain in which the claimant operates.

(2) These regulations shall be without prejudice to the right of an injured party to claim and obtain compensation for loss of profits due to a full or partial passing-on of the overcharge.

Cap. 12. (3) In estimating the amount of harm suffered by the claimant or the share of any overcharge that was passed on to the claimant, the court may, without prejudice to the right of the parties to produce *ex parte* expert witnesses, appoint one or more referees to assist it in accordance with the provisions of the Code of Organization and Civil Procedure, or as may be provided in any other special legislation. It shall take due account of any guidelines issued by the European Commission in this regard.

(4) These regulations shall apply *mutatis mutandis* where the infringement of competition law relates to a supply to the infringer.

Passing-on defence. 13. (1) The defendant in an action for damages pursuant to these regulations may raise as a defence the fact that the claimant passed on the whole or part of the overcharge resulting from the infringement of competition law.

(2) The burden of proving that the overcharge was passed on shall be on the defendant, who may reasonably require disclosure from the claimant or from third parties.

Indirect purchasers. 14. (1) Where in an action for damages the existence of a claim for damages or the amount of compensation to be awarded depends on whether, or to what degree, an overcharge was passed on to the claimant, taking into account the commercial practice that price increases are passed on down the supply chain, the burden of proving the existence and scope of such a passing-on shall rest with the claimant, who may reasonably require disclosure from the defendant or from third parties.

(2) In the situation referred to in sub-regulation (1), the indirect purchaser shall be deemed to have proven that a passing-on to that indirect purchaser occurred where that indirect purchaser has shown that:

(a) the defendant has committed an infringement of competition law;

(b) the infringement of competition law has resulted in an overcharge for the direct purchaser of the defendant; and

(c) the indirect purchaser has purchased the goods or services that were the object of the infringement of competition law, or has purchased goods or services derived from or containing them.

(3) The provisions of sub-regulation (2) shall not apply where the defendant can demonstrate credibly to the satisfaction of the court that the overcharge was not, or was not entirely, passed on to the indirect purchaser.

Actions for damages by claimants from different levels in the supply chain.

15. (1) With a view to avoiding that actions for damages by claimants from different levels in the supply chain lead to a multiple liability or to an absence of liability of the infringer, in assessing whether the burden of proof resulting from the application of regulations 13 and 14 is satisfied, the court may take due account of any of the following:

(a) actions for damages that are related to the same infringement of competition law, but that are brought by claimants from other levels in the supply chain;

(b) judgements resulting from actions for damages as referred to in paragraph (a);

(c) relevant information in the public domain resulting from the public enforcement of competition law.

(2) This regulation shall be without prejudice to the rights and obligations of the court pursuant to Article 30 of Regulation (EU) No. 1215/2012.

Quantification of harm.

16. (1) The burden of proving claims regarding the extent of the harm suffered shall rest on the claimant:

Provided that where it is established that the claimant suffered harm, but it is impossible or excessively difficult to quantify precisely the harm suffered on the basis of the evidence available, the court may estimate the amount of harm including, in particular, on the basis of *arbitrio boni viri*.

(2) It shall in any case be presumed that cartel infringements cause harm:

Provided that the infringer shall have the right to bring forward evidence to rebut that presumption.

(3) A competition authority may, at the request of a court seized of an action for damages pursuant to these regulations, assist that court with respect to the determination of the quantum of damages where the competition authority considers such assistance to be appropriate.

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

Suspensive and other effects of consensual dispute resolution.

17. (1) The prescriptive period referred to in regulation 10 shall be suspended for the duration of any consensual dispute resolution process, exclusively with regard to those parties that are or that were involved or represented in the consensual dispute resolution.

Cap. 387.

(2) Without prejudice to the provisions of the Arbitration Act, the court seized of an action for damages pursuant to these regulations may, as it deems fit in the circumstances, suspend its proceedings for a period of no longer than two years where the parties thereto are involved in consensual dispute resolution concerning the claim covered by that action for damages.

(3) The national competition authority may consider compensation paid as a result of a consensual settlement, and prior to its decision imposing a penalty, to be a mitigating factor.

Effect of consensual settlements on subsequent actions for damages.

18. (1) Following a consensual settlement, the claim of the settling injured party shall be reduced by the settling co-infringer's share of the harm that the infringement inflicted upon the injured party.

(2) Any remaining claim of the settling injured party shall be exercised only against non-settling co-infringers, who shall not be permitted to recover contribution for the remaining claim from the settling co-infringer:

Provided, however, that where the non-settling co-infringers cannot pay the damages that correspond to the remaining claim of the settling injured party, the settling injured party may exercise the remaining claim against the settling co-infringer, unless such an option has been expressly excluded under the terms of the consensual settlement.

A 920

(3) When determining the amount of contribution that a co-infringer may recover from any other co-infringer in accordance with their relative responsibility for the harm caused by the infringement of competition law, the court shall take due account of any damages paid pursuant to a prior consensual settlement involving the relevant co-infringer."

Repeal.
S.L. 379.09.

5. The Competition Law Infringements (Action for Damages) Regulations, implemented by Legal Notice 117 of 2017, are hereby repealed.

Passed by the House of Representatives at Sitting No. 22 of the 3rd October, 2017.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

