

**A BILL
entitled**

An ACT to amend the Competition Act, Cap. 379 and the Consumer Affairs Act Cap. 378 and other Laws, to extend the competence of the Civil Court (Commercial Section) and to make ancillary and consequential provisions thereto.

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.	<p>1. (1) The short title of this Act is the Competition Act and Consumer Affairs Act and other Laws (Amendment) Act, 2018.</p> <p>(2) This Act shall come into force on such date as the Minister for Justice, Culture and Local Government, may by notice in the Gazette establish, and different dates may be so established for different provisions of this Act.</p>
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<p>Amendments to the Code of Organization and Civil Procedure. Cap. 12.</p> <p>Amendment of article 36 of the Code.</p>	<p style="text-align: center;">Part I</p> <p style="text-align: center;">Amendments to the Code of Organization and Civil Procedure</p> <p>2. This Part amends the Code of Organization and Civil Procedure and it shall be read and construed as one with the Code of Organization and Civil Procedure, hereinafter in this Part referred to as "the Code".</p> <p>3. Sub-article (7) of Article 36 of the Code shall be amended as follows:</p> <p>“(7) The Civil Court (Commercial Section) shall take cognizance of all claims against persons, whether natural or legal, residing or having their ordinary abode or registered office in the Island of Malta and the Islands of Gozo and Comino expressly assigned by law to such section of the Civil Court:</p> <p>Provided that where the Civil Court (Commercial Section) is to hear causes concerning claims against persons, whether natural or legal, residing or having their ordinary abode or registered office in the Islands of Gozo and Comino, it shall hold its sittings in the building of the Courts of Gozo:</p> <p>Provided further that the Civil Court (Commercial Section) when hearing cases regulated by the Competition Act, and any regulations made thereunder or by the Consumer Affairs Act and any regulations made thereunder, shall be assisted by a panel of technical experts who shall prepare their opinion, which opinion shall be public, and this opinion shall be examined by the Civil Court (Commercial Section) before deciding the claims assigned to it:</p> <p>Provided further that the Minister shall by order in the Gazette publish the list of the technical experts constituting the panel in accordance with this sub-article.”</p> <p>4. In paragraph (a) of article 37 of the Code for the words “before the Court of Magistrates (Gozo) and the Civil Court, First Hall” there shall be substituted the words “before the</p>
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<p>Amendments to the Malta Competition and Consumer Affairs Authority Act. Cap. 510.</p> <p>Amendment of article 2 of the principal Act.</p>	<p style="text-align: center;">Part II</p> <p style="text-align: center;">Amendments to the Malta Competition and Consumer Affairs Authority Act</p> <p>7. This Part amends the Malta Competition and Consumer Affairs Authority Act, and it shall be read and construed as one with the Malta Competition and Consumer Affairs Authority Act, hereinafter in this Part referred to as "the principal Act".</p> <p>8. Article 2 of the principal Act shall be amended as follows:</p> <p style="padding-left: 40px;">(a) the definition "Appeals Tribunal" shall be deleted;</p> <p style="padding-left: 40px;">(b) immediately after the definition "Chairman" there shall be added the following new definition:</p> <p style="padding-left: 80px;">"S.L. 12.19.</p> <p style="padding-left: 80px;">"Civil Court" means the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order."; and</p> <p style="padding-left: 40px;">(c) the definition "President" shall be deleted.</p>
<p>Amendment of article 29 of the principal Act.</p>	<p>9. Subarticle (9) of article 29 of the principal Act, shall be substituted by the following:</p> <p>"In those cases where the person or undertaking or association of undertakings or any other body does not agree with the decision of the Director General in sub-article (8) the person or undertaking or association of undertakings or any other body may request a review thereof by sworn application to the Civil Court within ten days from when the decision of the Director General is notified:</p> <p>Provided that any party to the request for review who feels aggrieved by the decision of the Civil Court may appeal to the Court of Appeal, on any points of law and, or of fact, within twenty days from the decision of the Civil Court.</p>

	<p>Provided further that appeals filed according to this subarticle shall be heard by the Court of Appeal with urgency and shall be determined within three months from the date of the filing of the appeal.</p>
<p>Deletion of Part IX of the principal Act.</p>	<p>10. Part IX of the principal Act entitled “Establishment of the Competition and Consumer Appeals Tribunal” shall be deleted.</p>
<p>Amendment of article 44 of the principal Act.</p>	<p>11. In article 44 of the principal Act, the words “administered by the President of the Appeals Tribunal.” shall be substituted by the words “taken before the Court of Appeal, in a public hearing of the same court.”.</p>
<p>Amendment of article 64 of the principal Act.</p>	<p>12. Article 64 of the principal Act shall be amended as follows:</p> <ul style="list-style-type: none"> (a) in the second proviso to paragraph (a) of subarticle (2) thereof, the words “the Appeals Tribunal may upon an application by the Authority” shall be substituted by the words “the Civil Court may upon an application by the Authority”; (b) in the proviso to paragraph (d) of subarticle (2) thereof, the words “Appeals Tribunal” shall be substituted by the words “Civil Court”; and (c) in subarticle (3) thereof, the words “Appeals Tribunal”, wherever they so appear, shall be substituted by the words “Civil Court”.

<p>Substitution of article 70 of the principal Act.</p>	<p>“Transitory Provisions in relation to the Competition Act and the Consumer Affairs Act.</p> <p>Cap. 379.</p> <p>Cap. 378.</p> <p>Act VI of 2011.”</p>	<p>13. Article 70 of the principal Act shall be substituted by the following:</p> <p>“70. (1) The provisions of the Competition Act and of the Consumer Affairs Act existing prior to the coming into force of the Malta Competition and Consumer Affairs Authority Act 2011, hereinafter, in this section, referred to as the “Act VI of 2011” shall continue to apply, as the case may be, to all:</p> <p>(a) investigations pending at the time of the coming into force of Act VI of 2011 before the Director of the Office for Competition and the Director of Consumer Affairs, as substituted by the Director General (Competition) and the Director General (Consumer Affairs);</p> <p>(b) proceedings pending at the time of the coming into force of Act VI of 2011 before the Commission for Fair Trading and the Consumer Affairs Appeals Board, as substituted by the Competition and Consumer Appeals Tribunal and further substituted by the Civil Court, the Consumer Claims Tribunal and the courts; and</p> <p>(c) decisions and judgments which are not yet <i>res judicata</i>, at the time of coming into force of Act VI of 2011.</p> <p>(2) The provisions of the Competition Act and of the Consumer Affairs Act existing after the coming into force of Act VI of 2011 shall continue to apply, as the case may be, to all:</p> <p>(a) investigations which started after the coming into force of Act VI of 2011 and which are still pending at the time of coming into force of this Act before the Director General (Competition) and before the Director General (Consumer Affairs);</p> <p>(b) proceedings which started after the coming into force of Act VI of 2011 and which are still pending at the time of the coming into force of this Act before the Competition and Consumer Appeals Tribunal substituted by the Civil Court, the Consumer Claims Tribunal and the courts; and</p> <p>(c) decisions and judgments which have been delivered after the coming into force of Act VI of 2011 and which were</p>
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		<p>not yet <i>res judicata</i> at the time of the coming into force of this Act:</p> <p>Provided articles 13A and 27 of the Competition Act and articles 14B, 95, 97, 112, 113, 114, 115 and 116 of the Consumer Affairs Act as amended by this Act shall apply in the foregoing provisions of this subarticle:</p> <p>Provided further that articles 12(7), 12(8), 12(9), 12(11) and 12(13) as amended by this Act shall apply to the above mentioned subarticle (2)(a) of this article.</p> <p>(3) With regard to appeals pending before the Court of Appeal at the time of coming into force of this Act, the appellant shall have twenty days from the coming into force of this Act, or twenty days from the first hearing of such appeals, whichever is later, to file any further grounds of appeal on points of fact.</p> <p>(4) In the case of an infringement of the Competition Act, of Articles 101 and, or 102 of the TFEU or of the Consumer Affairs Act, which took place before the coming into force of this Act but in respect of which no investigation by the Director General (Competition), the European Commission, a national competition authority of another Member State and the Director General (Consumer Affairs) was initiated and no proceedings were instituted before the ordinary courts or the Competition and Consumer Appeals Tribunal, the provisions of this Act and the provisions of the Competition Act and of the Consumer Affairs Act as amended by this Act, shall apply.</p> <p>(5) For the purposes of subarticle (1)(b) of this article, the Civil Court shall be vested with the powers of:</p> <p>(a) the Commission for Fair Trading as provided for in the Competition Act prior to the coming into force of Act VI of 2011; and</p> <p>(b) the Consumer Affairs Appeals Board as provided for in the the Consumer Affairs Act prior to the coming into force of Act VI of 2011.</p>
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<p>Deletion of the Second Schedule to the principal Act.</p>		<p>14. The Second Schedule to the principal Act shall be deleted.</p>
<p>Substitution of the Third Schedule to the principal Act.</p>		<p>15. The Third Schedule to the principal Act shall be substituted by the following:</p> <p style="text-align: center;">“THIRD SCHEDULE (ARTICLE 18)</p>

LIST OF EU LEGISLATIVE ACTS FOR THE PURPOSES
OF WHICH THE
OFFICE FOR CONSUMER AFFAIRS IS THE NATIONAL
COMPETENT
AUTHORITY

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.
2. Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.
3. Council Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.
4. Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91.
5. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.
6. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.
7. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and

	<p>of th Council and repealing Council Directive 85/577/EC and Directive 97/7/EC of the European Parliament and of the Council.</p> <p>8. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (only with regard to Articles 1, 2c, 4 to 8 thereof).</p> <p>9. Regulaton (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004.</p> <p>10.Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) 2006/2004.”</p>
<p>Repeal of S.L. 510.01.</p>	<p>16. The Appointment of the President of the Competition and Consumer Appeals Tribunal Regulations, shall be repealed.</p>
<p>Amendments to the Consumer Affairs Act. Cap. 378.</p>	<p style="text-align: center;">Part III Amendments to the Consumer Affairs Act</p> <p>17. This Part amends the Consumer Affairs Act and it shall be read and construed as one with the Consumer Affairs Act, hereinafter in this Part referred to as "the principal Act".</p>
<p>Amendment of article 2 of the principal Act.</p>	<p>18. Article 2 of the principal Act shall be amended as follows:</p> <p>(a) the definition of “Appeals Tribunal” shall be deleted; and</p> <p>(b) immediately after the definition “the Board”, there shall be added the following new definition:</p>

	<p>“S.L. 12.19.</p> <p>“Civil Court” means the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order;”;</p>
<p>Amendment of article 12 of the principal Act.</p>	<p>19. Subarticle (1) of article 12 of the principal Act shall be amended as follows:</p> <p>(a) the figures and word “51 to 53” shall be substituted by the figures, letters and word “51A to 51E”;</p> <p>(b) the words “the conduct or practice specified in the undertaking” shall be substituted by the words “the conduct or practice specified in the undertaking.”; and</p> <p>(c) the words “as may be specified by the Director General.” shall be substituted by the words “or any other longer period that the Director General may establish.”.</p>
<p>Amendment of article 14A of the principal Act.</p>	<p>20. Article 14A of the principal Act shall be amended as follows:</p> <p>(a) in subarticle (1) thereof:</p> <p>(i) the words “Upon commencing investigations” shall be substituted by the words “Concurrently with the commencement of investigations”; and</p> <p>(ii) the words “the Director General shall write to the person investigated” shall be substituted by the words “the Director General shall notify the person investigated, about the investigation and the concurrent institution of administrative proceedings, by issuing a notice of administrative proceedings”;</p>

	<p>(b) in the proviso to subarticle (2) thereof, the words “instead of a decision” shall be substituted by the words “instead of issuing a decision”; and</p> <p>(c) in subarticle (3) thereof, the words “shall be served upon the person against whom the decision is taken.” shall be substituted by the words “shall, according to article 106B(1), be notified to the person against whom the decision is taken and the decision shall be published by the Director General in accordance with article 106B(2).”</p>
<p>Amendment of article 14B of the principal Act.</p>	<p>21. Article 14B of the principal Act shall be amended as follows:</p> <p>(a) in subarticle (3) thereof, the words “shall be served upon the person under investigation.” shall be substituted by the words “shall, according to article 106B(1) be notified to the person under investigation.”;</p> <p>(b) in subarticle (5) thereof:</p> <p>(i) the words “may within fifteen days of the notification of the measure, appeal from the said measure by application before the Appeals Tribunal.” shall be substituted by the words “may, within twenty days from the notification of the measure, request a review of the said measure by means of a sworn application before the Civil Court” on any point of law and, or of fact; and</p> <p>(ii) for the proviso thereof there shall be substituted the following proviso:</p> <p>“Provided that such a request for review shall not have the effect of suspending the interim measure unless upon a reasoned claim contained in the sworn application filed by a party to the proceedings, and after considering the submissions of all the parties to the proceedings, the Court suspends or modifies</p>

	<p>the interim measure under such conditions as it may consider appropriate stating its reasons therefor, pending the final determination of the review:</p> <p>Provided further that if the sworn application contains a claim as mentioned in the first proviso to this subarticle, the Court shall consider and give judgment on such claim at the preliminary stage of the cause before addressing all other issues.”;</p> <p>(c) subarticle (6) thereof shall be substituted by the following:</p> <p>“(6) The sworn application for review shall be notified to the Director General, and the Director General shall not later than twenty days from such notification, file his sworn reply thereto.”; and</p> <p>(d) subarticle (7) thereof shall be substituted by the following:</p> <p>“(7) In these proceedings, the provisions of articles 112, 114 and 116 shall also apply.”.</p>	
<p>Substitution of article 15 of the principal Act.</p>	<p>“The Prime Minister may extend operation of articles 10, 12, 12A, 13, 14, 14A and 14B and Parts XI, XII and XIV to other laws.”</p>	<p>22. Article 15 of the principal Act shall be substituted by the following:</p> <p>“15. The Prime Minister may by order in the Gazette direct that the provisions of articles 10, 12, 12A, 13, 14, 14A and 14B and Parts XI, XII and XIV shall apply to offences and, or infringements under any other law administered by the Director General, or under any law whereby maximum prices for goods or services are fixed, or whereby minimum standards are fixed for goods or services.”</p>
<p>Substitution of article 43F of the principal Act.</p>	<p>“Application of Part XIV.”</p>	<p>23. Article 43F of the principal Act shall be substituted by the following:</p> <p>“43F. A regulatory decision taken by the Council under this Part may be contested in the same manner as if it is a</p>

		<p>decision taken by the Director General under this Act, and the provisions of Part XIV in so far as they relate to any aspect concerning the request for review by the Civil Court of any such decision issued by the Council or the appeal from a decision of the Civil Court before the Court of Appeal, as the case may be, shall apply accordingly.”</p>
<p>Amendment of article 94 of the principal Act.</p>		<p>24. In paragraph (b) of subarticle (5) of article 94 of the principal Act, for the words “to file an application before the Appeals Tribunal” there shall be substituted by the words “to file a sworn application for review before the Civil Court”.</p>
<p>Amendment of article 95 of the principal Act.</p>		<p>25. Article 95 of the principal Act shall be amended as follows:</p> <p>(a) subarticle (2) thereof shall be substituted by the following:</p> <p>“(2) In exercising his functions and powers under this Part the Director General shall in all cases act as expeditiously as possible. In the case of an application by a qualified entity, the Director General shall give his decision within twenty days from receipt of the application.”;</p> <p>(b) subarticle (3) thereof shall be substituted by the following:</p> <p>“(3) If the Director General decides not to issue a compliance order after an application has been made to him by a qualified entity, he shall, within fifteen days from the date of his decision, notify in writing the qualified entity and the persons against whom the compliance order is requested with his decision stating his reasons therefor.”;</p> <p>(c) subarticle (4) thereof shall be substituted by the following:</p> <p>“(4) A qualified entity may within twenty days from the date of notification upon it of the decision of the Director General not to issue a compliance order, file</p>

	<p>a sworn application for review before the Civil Court that shall be notified to the Director General, and the Director General shall file his sworn reply thereto by not later than twenty days from such notification.”</p> <p>(d) immediately after subarticle (4) thereof, there shall be added the following two new subarticles:</p> <p>“(5) The persons against whom the compliance order is requested to be made shall be parties to the suit, it shall be the duty of the qualified entity to notify such persons accordingly, and these persons shall file their sworn replies within twenty days from such notification.</p> <p>(6) In these proceedings, the provisions of articles 112, 114 and 116 shall also apply.”</p>
<p>Amendment of article 97 of the principal Act.</p>	<p>26. Article 97 of the principal Act shall be amended as follows:</p> <p>(a) subarticle (1) thereof shall be substituted by the following:</p> <p>“(1) A person against whom a compliance order has been made may, within twenty days from notification of the compliance order, request a review of the said order by sworn application before the Civil Court for the revocation or amendment of the compliance order, that shall be notified to the Director General, and the Director General shall file his sworn reply thereto by not later than twenty days from such notification.”;</p> <p>(b) subarticle (2) thereof shall be substituted by the following:</p> <p>“(2) In these proceedings, the provisions of articles 112, 114, 115 and 116 shall also apply.”</p> <p>(c) In subarticle (3) thereof, the words “appeal before the Appeals Tribunal”, shall be substituted by the words “request a review before the Civil Court”.</p>

<p>Deletion of article 98 of the principal Act.</p>	<p>27. Article 98 of the principal Act shall be deleted.</p>
<p>Amendment of article 105 of the principal Act.</p>	<p>28. In sub-paragraph (c) of article 105 of the principal Act the words “refuses or fails to furnish information as required under this Part or else” shall be deleted.</p>
<p>Amendment of article 106A of the principal Act.</p>	<p>29. Article 106A of the principal Act shall be amended as follows:</p> <p>(a) in the proviso to subarticle (2) thereof immediately after the words “a daily fine” there shall be added the words “of not less than one hundred and twenty euro (€120) and”;</p> <p>(b) subarticle (3) thereof shall be substituted by the following:</p> <p>“(3) Without prejudice to the rules that the Director General shall follow when determining the fines in respect of infringements of the articles referred to in the Second Schedule, in determining the amount of an administrative fine in respect of infringements of any other provision of this Act, of infringements of regulations made under this Act and of infringements of provisions of other laws administered by the Director General, the Director General shall in exercising his discretion ensure that the fines imposed are effective, proportionate and dissuasive.”;</p> <p>(c) subarticle (4) thereof shall be substituted by the following:</p> <p>“(4) The Director General may recommend to the Minister the amendment or substitution of the Second Schedule.”</p> <p>(d) in subarticle (8) thereof, the words “to the right of appeal under article 110C” shall be substituted by the words “to the right to request a review established in article 113”;</p>

	<p>(e) in subarticle (9) thereof, the words “fifteen days” shall be substituted by the words “twenty days”; and</p> <p>(f) in the proviso to subarticle (9) thereof, the words “article 110C” shall be substituted by the words “article 113”.</p>
<p>Addition of new article to the principal Act.</p>	<p>30. Immediately after article 106A of the principal Act there shall be added the following new article:</p> <p>“Notification and publication of decisions and orders.</p> <p>106B. (1) Any decision or order of the Director General delivered in accordance with the provisions of this Act shall be notified to the parties concerned and to the complainant in accordance with article 64 of the Malta Competition and Consumer Affairs Authority Act, due regard being had to business secrets or other confidential information.</p> <p>(2) The Director General shall publish, on the website of the Malta Competition and Consumer Affairs Authority and, or in any daily newspaper, without undue delay the decisions or orders issued under this Act and in so doing, the Director General shall have regard to the legitimate interest of the undertakings in the protection of their business secrets or other confidential information.”</p>
<p>Deleted articles 110B, 110C, 110D, 110E, 110F, 110G and 110H of the principal Act.</p>	<p>31. Articles 110B, 110C, 110D, 110E, 110F, 110G and 110H of the principal Act shall be deleted.</p>
<p>Addition of new Part XIII title to the principal Act.</p>	<p>32. Immediately after article 111 of the principal Act there shall be added the new Part XIV:</p> <p style="text-align: center;">“PART XIV Requests for Review before the Civil Court and Appeals to the Court of Appeal</p>

Request for review of decisions or orders of the Director General other than the imposition of an administrative fine.

112. (1) A request for review of any decision or order of the Director General made under this Act may be made to the Civil Court on any point of law and, or of fact:

Provided that with regard to a request for review of an administrative fine imposed by the Director General the provisions of articles 113, 114, 115 and 116 shall apply.

(2) The right to request a review to the Civil Court shall be competent to any person aggrieved by the decision or order:

Provided that in any case, a person making a request for review to the Civil Court, shall explain his juridical interest in impugning the decision, order or measure with regard to which a request for review has been made.

(3) Without prejudice to the provisions of article 113

(a) a request for review regarding a decision, order or measure of the Director General shall be made by a sworn application within twenty days from the date on which the said decision, order or measure has been notified to the party making the request for review; and

(b) the sworn application for review shall be notified to the Director General, and the Director General shall file his sworn reply thereto by not later than twenty days from such notification:

Provided that, in these proceedings, the provisions of articles 114, 115 and 116 shall apply.

Request for review of an administrative fine imposed by the Director General.

113. (1) Without prejudice to the provisions of this Part, the procedure to be followed in relation to requests for review of administrative fines imposed by the Director General shall be regulated by this article:

Provided that, in these proceedings, the provisions of articles 114, 115 and 116 shall also apply.

(2) A person who is notified with a judicial act referred to in article 106A(8), may within twenty days from the date of such notification request a review by the Civil Court of the administrative fine imposed by the Director General.

(3) The sworn application for review shall be notified to the Director General, and the Director General shall file his sworn reply thereto by not later than twenty days from the notification of the sworn application.

Procedure and judgments of the Civil Court.

114. (1) Proceedings before the Civil Court shall be held in public with due regard to the protection of confidential information or of business secrets:

Provided that the person concerned, or the Director General, or the complainant may request the Civil Court to be heard *in camera* where the submissions to be made or the evidence to be produced is of a confidential nature or contains business secrets.

Provided further that for the purposes of this provision a confidential and a non-confidential version of any written observations and documentary evidence shall be produced and the Civil Court shall verify the

confidentiality or otherwise of the information submitted.

(2) In determining a request for review the Civil Court shall have the power to substitute its discretion for that of the Director General and this includes the power to either confirm or modify in whole or in part or to annul a decision and, or an order including a compliance order, or a measure including an interim measure of the Director General and may either confirm, revoke or vary the administrative fine including any daily administrative fine imposed by the Director General within the limits set in the Second Schedule, taking into account the gravity and duration of the infringement as well as any aggravating or attenuating circumstances.

(3) In the interpretation of this Act, the Civil Court shall have recourse to the judgments of the Court of Justice of the European Union, to the relevant decisions and, or statements of the European Commission, including interpretations of the European Regulations and Directives relative to consumer protection and may also refer to its decisions and to the decisions of the Competition and Consumer Appeals Tribunal.

(4) Subject to the right of appeal established in article 116, the decisions of the Civil Court shall be final and binding.

(5) Where the Civil Court considers that, having regard to its determination of the request for review and all other relevant matters, there are sufficient reasons rendering it equitable to do so, it may, either of its own motion or on application by a consumer being a party to the appeal, order that the whole or part of the costs of any such party appearing before the Civil Court relating to the engagement of a lawyer and, or of a technical adviser shall be paid to the consumer concerned by any other party to the appeal named in the order.

(6) Subject to the provisions of this Act, the provisions of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to the proceedings before the Civil Court.

Status of decisions, order and administrative fines during the review proceedings before the Civil Court.

115. Sworn applications filed in accordance with articles 112 and 113 shall have the effect of suspending any administrative fine, including an administrative daily fine imposed by the Director General, pending the final determination of the review:

Provided that sworn applications filed according to the aforesaid articles 112 and 113 shall not have the effect of suspending any order, including a compliance order imposed by the Director General unless upon a reasoned claim contained in the sworn application filed by a party to the proceedings, and after considering the submissions of all the parties to the proceedings, the Court suspends or modifies any order, including a compliance order under such conditions as it may deem fit, stating its reasons therefor, pending the final determination of the review:

Provided further that if the sworn application contains a claim as mentioned in the first proviso to this article, the Court shall consider and give judgement on such claim at the preliminary stage of the cause before addressing all other issues.”

Appeals to the Court of Appeal.

116. The Director General and any party to the proceedings before the Court, who feels aggrieved by the judgment of the Court, may appeal before the Court of Appeal, on any point of law and, or of fact, by means of an application filed in the registry of that

	court within twenty days from the date of the judgment of the Court.”
Amendment of the Second Schedule to the principal Act.	<p>33. The Second Schedule to the principal Act shall be amended as follows:</p> <p>(a) the title to paragraph 1 thereof shall be deleted;</p> <p>(b) paragraph 1 thereof shall be substituted by the following:</p> <p>“1. In determining the amount of the administrative fine specified in article 106A in respect of infringements of the articles referred to in this Schedule, the Director General shall also be guided by the following considerations.”; and</p> <p>(c) in paragraph 5 thereof, the word “/she” wherever it so appear, shall be deleted.</p>

<p>S.L. 378.11.</p> <p>S.L. 378.12.</p>	<p>(iii) sub-regulation (6) of regulation 23 thereof shall be substituted by the following:</p> <p>“ S.L. 12.19.</p> <p>(6) Any person who feels aggrieved by a decision, order, administrative fine or measure issued by the Director General, may file a request for review before the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order, and articles 112 to 116 of the Act shall <i>mutatis mutandis</i> apply.”;</p> <p>(d) the Order for the purposes of Articles 94, 100 and 101 of the Consumer Affairs Act, shall be repealed;</p> <p>(e) the Consumer Credit Regulations, hereinafter, in this subarticle, referred to as “the principal Regulations” shall be amended as follows:</p> <p>(i) in regulation 3 thereof, the definition “the Director” shall be substituted by the following:</p> <p>“ “the Director General” means the Director General (Consumer Affairs) as defined in the Act;”;</p> <p>(iii) wherever the word “Director” occurs in the principal Regulations, it shall be substituted by the words “Director General”;</p> <p>(iv) the marginal note to regulation 23 thereof shall be substituted by the following:</p> <p>“Administrative fines, orders, decisions and measures and the right to request a review.”; and</p> <p>(v) sub-regulation (6) of regulation 23 thereof, shall be substituted by the following:</p> <p>“ S.L. 12.19.</p>
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S.L. 378.13.

(6) Any person who feels aggrieved by a decision, order, administrative fine or measure issued by the Director General, may file a request for review before the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order, and articles 112 to 116 of the Act shall *mutatis mutandis* apply.”;

(f) the Pricing of Air Services Regulations, hereinafter, in this subarticle, referred to as “the principal Regulations” shall be amended as follows:

(i) in regulation (2) thereof, the definition “the Director”, shall be substituted by the following:

“ “the Director General” means the Director General (Consumer Affairs) as defined in the Act;”;

(ii) wherever the word “Director” occurs in the principal Regulations, it shall be substituted by the words “Director General”; and

(iii) regulation 5 thereof shall be substituted by the following:

“Right to request a review.

S.L. 12.19.

5. Any person who feels aggrieved by a decision, order, administrative fine or measure taken by the Director General, may file a request for review before the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order, and articles 112 to 116 of the Act shall *mutatis mutandis* apply.”;

S.L. 378.14.

(g) regulation 7 the Denied Boarding (Compensation and Assistance to Air Passengers) Regulations, shall be substituted by the following:

“Right to request a review.

S.L. 12.19.

7. Any person who feels aggrieved by a decision, order, administrative fine or measure taken by the Director General, may file a request for review before the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order, and articles 112 to 116 of the Act shall *mutatis mutandis* apply.”;

(h) the Rights of Passengers in Bus and Coach Transport Regulations, shall be amended as follows:

(i) the definition of “the Competition and Consumer Appeals Tribunal” in sub-regulation (1) of regulation 2 thereof shall be deleted;

(ii) regulation 6 thereof shall be substituted by the following:

“Right to request a review before the Civil Court (Commercial Section) and to appeal to the Court of Appeal.

S.L. 12.19.

6. Any person who feels aggrieved by a decision, order, administrative fine or measure taken by the Director General, may file a request for review before the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order, and articles 112 to 116 of the Act shall *mutatis mutandis* apply.”; and

(iii) regulation 7 thereof shall be deleted;

(i) the Rights of Passengers when travelling by travelling by Sea and Inland Waterway Regulations, shall be amended as follows:

S.L. 378.15.

S.L. 378.16.

<p>S.L. 378.17.</p>	<ul style="list-style-type: none"> (i) the definition of “the Competition and Consumer Appeals Tribunal” in sub-regulation (1) of regulation 2 thereof shall be deleted; (ii) regulation 6 thereof, shall be substituted by the following: <ul style="list-style-type: none"> “Right to request a review before the Civil Court (Commercial Section) and to appeal to the Court of Appeal. S.L. 12.19. 6. Any person who feels aggrieved by a decision, order, administrative fine or measure taken by the Director General, may file a request for review before the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order, and articles 112 to 116 of the Act shall <i>mutatis mutandis</i> apply.”; and (iii) regulation 7 thereof shall be deleted; (j) the Consumer Rights Regulations, shall be amended as follows: <ul style="list-style-type: none"> (i) the definition of “the Competition and Consumer Appeals Tribunal” in sub-regulation (1) of regulation 2 thereof shall be deleted; (ii) regulation 27 thereof shall be substituted by the following: <ul style="list-style-type: none"> “Administrative fines, orders, decisions and measures and the right to request a review. S.L. 12.19. 27. (1) The Director General may impose administrative fines of not less than five hundred euro (€500) and not more than forty-seven thousand euro (€47,000), and may issue such order, or decision or take such measure as may he may deem appropriate in terms of the Act, upon any person who
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S.L. 378.18.

contravenes or fails to comply with any of the provisions of these regulations.

(2) Any person who feels aggrieved by a decision, order, administrative fine or measure taken by the Director General, may file a request for review before the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order, and articles 112 to 116 of the Act shall *mutatis mutandis* apply.”;

(k) the Consumer Alternative Dispute Resolution (General) Regulations, shall be amended as follows:

(i) in sub-regulation (2) of regulation 2 thereof, immediately after the definition “ADR procedure”, the following new definition shall be added:

“S.L. 12.19.

“Civil Court” means the Civil Court (Commercial Section) as designated by order 3 of the Civil Court (Establishment of Sections) Order;”;

(ii) in sub-regulation (4) of regulation 21 thereof the word “appeal” shall be substituted by the words “the request for review”

provided that in the proviso to sub-regulation (4) regulation 21 thereof:

- for the words “files an appeal before the Appeals Tribunal” shall be substituted by the words “files a request for review before the Civil Court”; and
- for the words “before the filing of his appeals requests the Appeals Tribunal” shall be substituted by the words “before

<p>Amendments to the Competition Act. Cap. 379.</p>	<p style="text-align: center;">Part IV Amendments to the Competition Act</p> <p>35. This Part amends the Competition Act and it shall be read and construed as one with the Competition Act, hereinafter in this Part referred to as "the principal Act."</p>
<p>Amendment of Article 2 of the Principal Act.</p>	<p>36. Article 2 of the principal Act shall be amended as follows:</p> <p>(a) the definition "Appeals Tribunal" shall be deleted;</p> <p>(b) immediately after the definition "association of undertakings" there shall be added the following new definition:</p> <p>"Cap. 510.</p> <p>"Authority" means the Malta Competition and Consumer Affairs Authority as established by article 3 of the Malta Competition and Consumer Affairs Authority Act;,"</p> <p>(c) immediately after the definition of "the Board," there shall be added the following new definition:</p> <p>"S.L. 12.19.</p> <p>"Court" means the Civil Court (Commercial Section) as established by order 3 of the Civil Courts (Establishment of Sections) Order;"; and</p> <p>(d) the definition "the President" shall be deleted;</p>
<p>Amendment of Article 8 of the principal Act.</p>	<p>37. Article 8 of the principal Act shall be amended as follows:</p> <p>in subarticle (1) thereof, in the English text only, the words "general" after the word "Board" shall be deleted and the word "form" shall be substituted by the word "from".</p>
<p>Amendment of Article 12 of the principal Act.</p>	<p>38. Article 12 of the principal Act shall be amended as follows:</p>

(a) immediately after the proviso to subarticle (2) thereof, the following additional proviso shall be inserted:

Provided further that during the course of any investigation, when a person, undertaking or association of undertakings answers to questions raised by the Office both in writing and verbally, the person, undertaking or association of undertakings concerned shall not be obliged to provide any answer which might involve an admission on its part of the existence of an infringement of articles 5, and or 9 of the Act, and, or Articles 101 and, or 102 of the TFEU.

b) subarticle (3) thereof shall be substituted by the following:

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

(c) in subarticle (6) thereof for the words “the Appeals Tribunal and before any court of law:” there shall be substituted the words “the Court and before any other court of law:”;

(d) subarticle (7)(a) thereof shall be substituted by the following:

“(7)(a) The Director General and, or his officers and, or any other expert duly authorised by a warrant issued by the Magistrate may, for the purpose of any investigation under this article, enter into and search any premises, land or means of transport where the Director General has reason to believe that information relevant to the investigation may be found, and in the course of any such search the Director General and, or his officers, shall be empowered to;

(i) inspect and examine any object or document and, or;

(ii) seize any object or document, or take extracts or copies of documents and, or;

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

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

(v) close and seal any or all parts of such premises, land or means of transport, or put any object under seal and, or;

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

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

e) subarticle (7)(b) thereof shall be substituted by the following:

“(7)(b) The Magistrate, in deciding whether to issue a warrant under subarticle (7)(a) shall ensure that the coercive measures envisaged are neither arbitrary nor excessive, having regard, in particular, to the gravity of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking or association of undertakings concerned and to the reasonable likelihood that any object, document or record relating to the subject-matter of the inspection are kept in the premises, land or means of transport for which the warrant is requested:

Provided that the Magistrate, in deciding whether to issue a warrant under subarticle (7)(a), may also take into account the possibility that in the case where it is the Director

General who would request these objects, documents or records, these would not be produced, but would instead be concealed, removed, tampered with or destroyed.”;

(f) subarticle (8)(a) thereof shall be substituted by the following:

“(8)(a) The warrant mentioned in subarticle (7)(a) shall specify the subject-matter, purpose of the inspection, the date on which the inspection is to begin and the nature of the offence and penalties provided for in articles 21(5) and (6) of the Act.”;

(g) subarticle (8)(b) thereof shall be substituted by the following:

“(8)(b) The powers conferred by article 12(7)(a) are to be exercised by the Director General and, or his officers and, or any other expert on production of a warrant issued under that article.”,

(h) subarticle (8)(c) thereof shall be substituted by the following:

“(8)(c) The Director General and, or any of his officers entering premises, land or means of transport by virtue of a warrant issued under subarticle (7)(a) may take with them such equipment as appears to them to be necessary.”;

(i) subarticle (8)(d) thereof shall be deleted;

(j) subarticle (9)(a) thereof shall be substituted by the following:

“(9)(a) In the course of any search as is referred to in subarticle (7), the Director General may request the assistance of the Police and in such case the Police shall require a warrant issued by the Magistrate to assist the Director General in the search.”;

(k) subarticle (11) thereof shall be substituted by the following:

	<p>“(11) In the course of an inspection under this article, the undertakings or association of undertakings or persons subject to the inspection may be assisted by legal counsel of their choice:</p> <p>Provided that officers shall wait a reasonable time for the legal counsel to arrive and during this time, officers may take any reasonable measures to prevent any potential tampering with evidence or to prevent any potential communication by which other undertakings will be informed that an investigation is taking place:</p> <p>Provided further that the right of such assistance may delay but shall not have the effect of suspending the inspection. ”;</p> <p>and</p> <p>(l) subarticle (13) thereof shall be substituted by the following:</p> <p>“(13) No search may be commenced on any premises, land or means of transport after seven o'clock in the evening and before seven o'clock on the next following morning, unless there is reason to believe that delay could cause the loss of information and the search is expressly authorised by the Magistrate, to take place between the said times”.</p>
<p>Amendment of article 12A of the principal Act.</p>	<p>39. Article 12A of the principal Act shall be amended as follows:</p> <p>(a) in subarticle (7) thereof for the words “of the Appeals Tribunal.” there shall be substituted the words “of the Competition and Consumer Appeals Tribunal and the Court.”;</p> <p>(b) subarticle (8) thereof shall be substituted by the following:</p> <p>“(8) Upon notification of a decision of the Director General as is referred to in subarticle (6), such decision shall, without prejudice to the right of review and the right of appeal as contemplated under article 13A of this Act, constitute an executive title for all effects and purposes of Title VII of Part</p>

	<p>I of Book Second of the Code of Organisation and Civil Procedure:</p> <p>Provided so however that, notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in this subarticle shall not be enforceable before the lapse of twenty days from notification of the decision to the undertaking or association of undertakings concerned in accordance with article 19(1).”;</p>
<p>Substitution of article 12B of the principal Act.</p>	<p>40. Article 12B of the principal Act shall be substituted by the following:</p> <p>"Settlement procedure</p> <p>12B. (1) In the course of an investigation concerning an alleged infringement of articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU, the Director General may prior to issuing a statement of objections, if he deems it appropriate for the expeditious and efficient conclusion of the proceedings before the Office, invite all, some or one of the undertakings concerned or the association of undertakings concerned to indicate in writing, within the time-limit set by him, whether they are prepared to engage in settlement discussions with a view to possibly introducing settlement submissions:</p> <p>Provided that the Director General may even after the issuing of the statement of objections invite all, some or one of the undertakings or the association of undertakings concerned to indicate in writing, within the time-limit set by him, whether they are prepared to engage in settlement discussions with a view to possibly introducing settlement submissions:</p> <p>Provided further that the Director General shall not be obliged to take into account replies received after the expiry of that time-limit.</p> <p>(2) At any time during the course of an investigation, even after the issuing of a statement of objections, any undertaking and, or association of undertakings concerned may also request to engage in settlement discussions with</p>

the Director General. In the case where a statement of objections has already been issued, the undertaking and, or association of undertakings concerned may express in writing their interest to hold settlement discussions within two weeks from the notification of the statement of objections.

(3) The decision regarding the initiation of the settlement discussions falls within the exclusive competence of the Director General.

(4) During the course of the settlement discussions, the Director General may inform the undertaking and, or association of undertakings concerned of:

i) the objections he envisages to raise against them;

ii) the main supporting evidence used to determine the envisaged objections;

iii) the range of the potential fines; and

iv) non-confidential versions of any specified accessible document listed in the case file at that point in time;

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

Provided that the information given pursuant to subarticle (4) shall be confidential vis-à-vis third parties, save where the Director General has given a prior explicit authorization for disclosure:

Provided further that the exchanged documents will only be accessible to other undertakings and, or association of undertakings which have been notified with a statement of objections if the lack of access to these documents would hinder the rights of defence of the undertaking and, or association of undertakings concerned.

(6) Should the Director General ascertain that sufficient progress in the settlement discussions have taken place, the Director General shall invite the undertaking and, or association of undertakings concerned to introduce their settlement submissions within a time-limit as set by the Director General with a view to conclude the settlement procedure:

Provided, that before the Director General sets a time limit to introduce their settlement submissions, the undertaking and, or association of undertakings concerned shall be entitled to have the information specified in subarticle (4)(i) to (iii) disclosed to them, upon request, in a timely manner:

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

Provided further that before the Director General sets a time limit for the undertaking and, or association of undertakings to introduce their settlement submissions, the undertaking and, or association of undertakings concerned shall have limited access to the case file which is granted only to the extent that the Director General deems reasonable in view of the objectives of the settlement procedure. In view of this, the Director General shall provide partial access to the case file by providing non-confidential versions of any specified accessible document listed in the case file at that point in time:

Provided further that before the Director General sets a time limit for the undertaking and, or association of undertakings to introduce their settlement submissions, the undertaking and, or association of undertakings concerned shall be given the opportunity to present their views on the alleged infringement and make observations on points of law and fact:

Provided further, that if the undertaking and, or association of undertakings fails to submit the settlement submissions within the time-limit set by the Director General, it shall be considered that the undertaking, and, or association of

undertakings concerned has withdrawn from the settlement procedure.

(7) The settlement submissions shall contain the following information:

(a) a voluntary statement by the undertaking and, or association of undertakings concerned, clearly and unequivocally admitting their participation in the infringement as well as their liability regarding articles 5 and, or 9 of the Act and, or Articles 101 and, or 102 of the TFEU;

(b) a factual and brief description of the conduct of the undertaking and, or the association of undertakings concerned, the objective of the conduct and the way in which it was carried out, its duration and the extent in which the undertaking and, or association of undertakings were involved;

(c) a statement of the undertaking and, or association of undertakings concerned declaring that they accept the maximum amount of the fine that may be imposed by the Director General;

(d) a statement of the undertaking and, or association of undertakings concerned to the effect that they were sufficiently informed by the Director General regarding information contained in subarticle (4) and a declaration of the undertaking and, or association of undertakings that they were given sufficient opportunity to be heard and to make their views known to the Director General;

(e) a statement of the undertaking and, or association of undertakings concerned that they will waive their right to obtain further or full access to the case file and to be heard in an oral hearing before the Director General as provided for in article 12A of the Act unless the Director General does not intend to reflect the settlement submissions of the undertaking and, or association of undertakings concerned in the statement of objections; and

(f) a statement of the undertaking and, or association of undertakings concerned containing their waiver of their right

to seek any legal remedy before any courts of law against the settlement procedure adopted by the Director General pursuant to article 12B or against the final decision of the Director General pursuant to article 12A including the fine.

8) If the undertaking and, or association of undertakings concerned submit their settlement submissions in accordance with subarticle (7), the Director General shall proceed to issue a statement of objections which reflects the settlement submissions.

(9) When the statement of objections notified to the undertaking and, or association of undertakings concerned reflects the contents of their settlement submissions, the written reply to the statement of objections of the undertaking or association of undertakings concerned shall be submitted within twenty days from the notification of the said statement of objections. Moreover, the reply shall confirm that the statement of objections addressed to them reflects the contents of their settlement submissions, a declaration to the effect that they accept the maximum amount of the fine mentioned in the statement of objections and a statement that they commit to be subjected to the settlement procedure:

Provided that in the absence of such a reply within the set twenty days the Director General shall take note of the breach of commitment by the undertaking and, or association of undertakings and shall consider that the undertaking, and, or association of undertakings concerned have withdrawn from the settlement procedure. In such case, the statement of objections drawn for the settlement procedure shall be null and void:

Provided further that should the undertaking and, or association of undertakings concerned withdraw their settlement submissions after providing it, or fail to confirm the statement of objections which has been issued by the Director General in terms of subarticle (8), the Director General shall take note of the breach of commitment by the undertaking and, or association of undertakings and shall consider such behaviour as an aggravating circumstance in

the calculation of the fine should the Director General proceed to issue a statement of objections.

(10) If the settlement procedure is discontinued either by the Director General or by the undertaking and, or association of undertakings concerned, any settlement submission which would have been submitted is deemed to have been automatically revoked and is not binding upon the undertaking and, or association of undertakings which submitted it. Moreover if the settlement procedure is discontinued, any information, document and any settlement submission provided by the undertaking, and, or association of undertakings during the settlement procedure concerned cannot be used as evidence to establish an infringement of articles 5, and or 9 of the Act, and, articles 101 and, or 102 TFEU against the undertaking and, or association of undertakings concerned or other parties to the investigation neither before the Director General nor before any court of law:

Provided further that documents and, or information which were already in the possession of the Office prior to be presented by the undertaking and, or association of undertakings concerned and any information which can be requested by the Office pursuant to article 12, can be used as evidence by the Office and before any court of law to establish an infringement of articles 5, and, or 9 of the Act, and, or articles 101 and, or 102 TFEU against the undertaking, and, or association of undertakings concerned or against other parties to the investigation.

(11) Subject to the provisions of subarticle (9), the Director General may then proceed to adopt a decision pursuant to article 12A and he shall reward the undertaking and, or association of undertakings for the settlement by reducing between ten to thirty-five percent the amount of the fine to be imposed.

(12) The undertaking, and, or association of undertakings involved in the settlement procedure and their legal representatives or other advisors shall keep all the settlement discussions as well as the settlement procedure strictly confidential. The same applies to any information

	<p>obtained during the settlement procedure until the conclusion of the said settlement procedure.</p> <p>(13) The Director General may decide at any time during the procedure to discontinue settlement discussions altogether in a specific case or with respect to one or more of the parties involved, in particular if he considers that:</p> <p>(a) procedural efficiencies are not likely to be achieved or;</p> <p>(b) if the settlement submission does not contain all the requirements mentioned in subarticle (7) or;</p> <p>(c) if the undertaking and, or association of undertakings do not have a sincere intention of settling the case or do not cooperate accordingly or have breached the confidentiality obligation by revealing to any third party the content of the settlement meetings held with the Director General or the contents of the documents to which access has been granted:</p> <p>Provided that in case where the Director General discontinues the settlement discussions for any reason as provided for in the foregoing provisions of this subarticle, or in case where the undertaking and, or association of undertakings withdraw from the settlement procedure as provided for in subarticles (6), or (9), the Director General shall continue the investigation as contemplated under articles 12 or 12A, as the case may be, according to the stage where the investigation has arrived.</p>
<p>Substitution of article 12D of the principal Act.</p>	<p>41. Article 12D of the principal Act shall be substituted by the following:</p> <p>12D. Where it results to the Director General following an investigation that the examined conduct does not constitute a breach of the provisions of articles 5 and, or 9 of this Act, he may issue a decision to that effect:</p> <p>Provided that in any case where it results to the Director General following an investigation that the examined conduct does not constitute a breach of the provisions of</p>

	<p>Articles 101 and, or 102 of the TFEU, he shall state in his decision that there are no grounds for action.</p>
<p>Substitution of Article 13A of the principal Act.</p>	<p>42. Article 13A of the principal Act shall be substituted by the following:</p> <p>"Review before the Court and Appeal to the Court of Appeal.</p> <p>13A. (1) The undertaking and, or association of undertakings concerned may file a sworn application for review before the Court on points of law and, or of fact, regarding any infringement decision, cease and desist order, compliance order, interim measures, administrative fine and daily penalty payment issued by the Director General in accordance with the provisions of this Act within twenty days of notification thereof in accordance with article 19(1).</p> <p>(2) The sworn application shall be notified to the Director General and the Director General shall file a sworn reply thereto within twenty days from the date of notification of the sworn application.</p> <p>(3) The Court shall have the power to substitute its discretion for that of the Director General and this includes the power to either confirm or modify in whole or in part or annul the decision and, or order, or interim measures of the Director General and may either confirm, revoke or vary the administrative fine and, or daily penalty payment imposed by the Director General within the limits set in article 21, taking into account the gravity and duration of the infringement as well as any aggravating or attenuating circumstances.</p> <p>(4) A sworn application filed in accordance with subarticle (1) shall not have the effect of suspending any interim measures, compliance order and, or cease and desist order imposed by the Director General unless upon a reasoned claim contained in the sworn application filed by the undertaking and, or association of undertakings concerned in the proceedings, and after considering the submissions of all the parties to the proceedings, the Court suspends or modifies the interim measures, compliance order, and, or</p>

cease and desist order under such conditions as it may deem fit, stating its reasons therefor, pending the final determination of the review:

Provided that if the sworn application contains a claim as mentioned in this subarticle, the Court shall consider and give judgement on such claim at the preliminary stage of the cause before addressing all other issues:

Provided further that a sworn application filed in accordance with subarticle (1) shall have the effect of suspending any administrative fine and, or daily penalty payment adopted by the Director General pending the final determination of the review.

(5) The undertaking or association of undertakings concerned, the Director General or the complainant may request the Court to be heard *in camera* where the submissions to be made or evidence to be produced is of a confidential nature or contains business secrets.

(6) In all cases involving the application of Article 101 and, or 102 of the TFEU, the European Commission shall have a right to make submissions on any matter before the Court.

(7) (a) A confidential and a non-confidential version shall be produced of any written observations and documentary evidence submitted before the Court; and

(b) The Court shall verify the confidentiality or otherwise of the information submitted.

(8) In the interpretation of this Act the Court shall have recourse to the judgments of the Court of Justice of the European Union, and to relevant decisions and statements of the European Commission including interpretative notices on the relevant provisions of the TFEU and secondary legislation relative to competition and may also refer to its decisions and those of the Competition and Competition and Consumer Appeals Tribunal.

	<p>(9) Subject to the provisions under this Act, the provisions of the Code of Organization and Civil Procedure shall, <i>mutatis mutandis</i>, apply to proceedings before the Court.</p> <p>(10) The Director General and any party to the proceedings before the Court, who feels aggrieved by the judgment of the Court, may appeal on points of law and, or of fact before the Court of Appeal by means of an application filed in the registry of that court within twenty days from the date of the judgment of the Court. ”.</p>
<p>Amendment of Article 14 of the principal Act.</p>	<p>43. Article 14 of the principal Act shall be amended as follows:</p> <p>a) the marginal note thereof shall be substituted by the words “Handling of complaints and the right for review”.</p> <p>b) subarticle (5) thereof shall be substituted by the following:</p> <p>“(5) Where the complainant does not agree with the decision of the Director General according to subarticle (3), or with the Director General’s finding according to article 12D, the complainant may file a request for review before the Court within twenty days of notification thereof in accordance with article 19(1) and the provisions of article 13A shall <i>mutatis mutandis</i> apply.”;</p> <p>c) subarticle (6) thereof shall be substituted by the following:</p> <p>“(6) In addition to the powers conferred on the Court in article 13A(3), where upon an action brought by the complainant before the Court in terms of subarticle (5), the Court does not uphold the decision of the Director General rejecting a complaint according to subarticle (3), the Court shall have the power to inform the Director General accordingly who shall thereupon commence the investigation”;</p> <p>d) subarticle (7) thereof shall be substituted by the following:</p>

	<p>“(7) In addition to the powers conferred on the Court in article 13A(3), where upon an action brought by the complainant before the Court in terms of subarticle (5), the Court does not agree with the finding of the Director General according to article 12D, and finds that there is an infringement, it shall issue a judgement accordingly and the Court shall issue any measure it may deem fit as found in the Competition Act against the undertaking, and or association of undertakings concerned in respect of the said infringement”; and</p> <p>e) subarticles (8) to (10) thereof shall be deleted.</p>
<p>Amendment of Article 14C of the principal Act.</p>	<p>44. Article 14C of the principal Act shall be amended as follows:</p> <p>a) subarticle (3)(b) thereof shall be substituted by the following:</p> <p>“(3)(b) the agreement or practice to which the request refers is subject to an investigation pending before the Director General, proceedings pending before the European Commission, and to the extent that he may be aware, proceedings pending before a Maltese Court, the Court of Justice of European Union or any other court of another Member State or a national competition authority.”; and</p> <p>b) the words “or on the Appeals Tribunal” in subarticle (13) thereof shall be deleted.</p>
<p>Amendment of Article 15 of the principal Act.</p>	<p>45. Article 15 of the principal Act shall be amended as follows:</p> <p>subarticles (3) and (4) thereof shall be deleted.</p>
<p>Amendment of Article 19 of the principal Act.</p>	<p>46. Article 19 of the principal Act shall be amended as follows:</p> <p>(a) in subarticle (1) thereof immediately after the words, “the Act” there shall be added the words “and any regulations made thereunder”;</p>

	<p>(b) subarticle (2) thereof shall be substituted by the following:</p> <p>“(2) The Court and the Director General shall publish without undue delay the judgements, decisions or orders taken under this Act and in so doing, the Court and the Director General shall have regard to the legitimate interest of the undertakings in the protection of their business secrets or other confidential information:</p> <p>Provided that the Director General shall also publish a notice on the Authority’s website or on any daily newspaper that he has issued a statement of objections, due regard being given to the protection of business secrets and confidential information. The publication may contain the names of the involved undertakings and the nature of the suspected infringement and the concerned economic sector in summary form. ”; and</p> <p>(c) subarticles (3) and (4) thereof shall be deleted.</p>
<p>Amendment to Article 21 of the principal Act.</p>	<p>47. Article 21 of the principal Act shall be amended as follows:</p> <p>(a) subarticle (3) thereof shall be substituted by the following:</p> <p>“(3)(a) In fixing the amount of the fine, the Director General shall have regard to the gravity and duration of the infringement and to any aggravating or attenuating circumstances.</p> <p>(3)(b) Aggravating circumstances include <i>inter alia</i> the following:</p> <ul style="list-style-type: none"> i. the Court having already imposed a fine on the same undertaking or association of undertakings for the same or similar infringement; or ii. the undertaking or association of undertakings concerned having already committed an infringement under articles 5 and, or 9 of this Act and, or under Articles 101 and, or 102

TFEU according to a decision or judgment which have become *res judicata*; or

- iii. the undertaking or association of undertakings having a leading role, as perpetrator or instigator; or
- iv. retaliatory or other coercive measures taken against other undertakings aimed at ensuring the continuation of the infringement; or
- v. disclosing to third parties the content of the settlement discussions or the documents which have been given access to under the settlement procedure.

(3)(c) Attenuating circumstances include *inter alia* the following:

- i. the involvement of the undertaking or association of undertakings in the infringement being substantially limited; or
- ii. the undertaking or association of undertakings ending the infringement on their own accord; or
- iii. the undertaking or association of undertakings significantly contributing to uncover the infringement; or
- iv. the undertaking acted under duress or pressure:

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

(b) subarticle (4) thereof shall be substituted by the following:

“(4) Any undertaking or association of undertakings which fails to comply with a cease and desist order or a compliance order pursuant to article 13, or fails to comply with an interim measure pursuant to article 15, or fails to comply with a commitment made binding pursuant to article 12C, may, at the discretion of the Director General, be liable to a daily penalty payment not exceeding five per centum of the average daily turnover of the undertaking or association of

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

(c) subarticle (5) thereof shall be substituted by the following:

“(5) Any person who in the course of any investigation pursuant to article 12 of the Act or in the course of a sector inquiry pursuant to article 11A of the Act, knowingly or recklessly –

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

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

(c) prevents or hinders any investigation or sector inquiry; or

(d) fails to submit to an inspection and, or obstructs an officer in the exercise of his powers under a warrant issued under article 12(7)(a) of the Act; or

(e) breaks the seals fixed by officers or other accompanying persons authorised by the Director General during an inspection,

shall be guilty of an offence against this Act and shall be liable, on conviction, to a fine (*multa*) of not less than one thousand five hundred euro (€1500) and not exceeding thirty thousand euro (€30,000) and in respect of an offence under paragraphs (d) and, or (e) to a fine (*multa*) of not less than ten thousand euro (€10,000) and not exceeding fifty thousand euro (€50,000).”;

(d) subarticle (6) thereof shall be substituted by the following:

“(6) The Court of Magistrates shall, in addition to the punishment referred to in subarticle (5), also order the person so found guilty to remove the causes of the offence by complying with the orders issued by the Court of Magistrates, within the shortest time possible to be decided by the Court of Magistrates but in any case by not later than 7 days from the date of the judgment. If the person so found guilty fails to comply with any such order within such time as fixed by the Court of Magistrates, he shall be liable to a fine

	<p>(<i>multa</i>) to be determined by the Court of Magistrates, which fine should not exceed five per centum of the average daily turnover in the preceding business year of the undertaking or association of undertakings in the economic interests of whom the person so guilty was acting, for every day during which the default continues after the expiration of the said time:</p> <p>Provided that where the person so found guilty is the director, manager, secretary or other similar officer of the undertaking or association of undertakings, the said person shall, for the purposes of subarticles (5) and (6), be deemed to be vested with the legal representation of the same undertaking or association of undertakings which accordingly shall be liable <i>in solidum</i> with the person found guilty for the payment of the said fine.</p>
<p>Deletion of article 21A of the principal Act.</p>	<p>48. Article 21A of the principal Act shall be deleted.</p>
<p>Amendment to article 23 of the principal Act.</p>	<p>49. Article 23 of the principal Act shall be amended as follows:</p> <p>in subarticle (3) thereof, immediately after the words "under this Act" there shall be inserted the words "and any regulations made thereunder".</p>
<p>Substitution of Article 24 of the principal Act.</p>	<p>50. Article 24 of the principal Act shall be substituted as follows:</p> <p>"Criminal proceedings.</p> <p>"24. (1) The Court of Magistrates, in its criminal jurisdiction, shall be the competent court to take cognizance of offences against this Act.</p> <p>(2) No criminal proceedings under this Act shall be taken except at the instance or with the sanction of the Director General, and proceedings that have been so taken may, at any time before final judgment, be withdrawn at the request of the Director General.</p> <p>(3) In criminal proceedings instituted by the Police before the Court of Magistrates for an offence against the provisions of</p>

	<p>this Act, the Director General may assist the Police in the conduct of the prosecution and in the production of the evidence.</p> <p>(4) The Director General or any officer deputed by him for the purposes of subarticle (3) may nevertheless be produced as a witness but should his evidence be required as part of the case for the prosecution, his evidence shall be heard before that of any other witness for the prosecution unless the necessity of his evidence arises subsequently.”.</p>
<p>Amendment of Article 26A of the principal Act.</p>	<p>51. Article 26A of the principal Act shall be amended as follows:</p> <p>subarticle (7) thereof shall be substituted by the following:</p> <p>“(7) The prescription period for the imposition of fines shall be suspended for as long as the proceedings are pending before the Court or before the Court of Appeal”.</p>
<p>Amendment of Article 27 of the principal Act</p>	<p>52. Article 27 of the principal Act shall be amended as follows:</p> <p>in subarticle (1) thereof, the words “Where before any court of civil jurisdiction” shall be substituted by the words “Without prejudice to the provisions in articles 13A and 14(5), where before any court of civil jurisdiction”.</p>
<p>Amendment of Article 28 of the principal Act.</p>	<p>53. Article 28 of the principal Act shall be amended as follows:</p> <p>the marginal note thereof in the English text only shall be substituted by the words "It shall not be lawful to issue any precautionary warrant.”</p>
<p>Amendment of Article 31 of the principal Act.</p>	<p>54. Article 31 of the principal Act shall be amended as follows:</p> <p>the words "any member of the Appeals Tribunal," shall be deleted.</p>

<p>Amendment of Article 33 of the principal Act.</p>	<p>55. Article 33 of the principal Act shall be amended as follows:</p> <p>a) the word “Commission” shall be substituted with the word “Court” in subarticle (1)(a) thereof; and</p> <p>b) the word “Appeals Tribunal” shall be substituted with the word “Court” in subarticle 2(b) thereof.</p>
<p>Consequential amendments</p>	<p>56. The following consequential amendments shall be made to the following law:</p> <p>The Control of Concentrations Regulations, SL 379.08 hereinafter, referred to as “the principal regulations”, shall be amended as follows:</p> <p>a) regulation 2 of the principal regulations shall be amended as follows:</p> <p>(i) the definition “Appeals Tribunal” shall be deleted;</p> <p>(ii) the definition "concentration" shall be amended as follows:</p> <p>Immediately after the words "combined aggregate turnover" there shall be inserted the words "in Malta";</p> <p>(iii) immediately after the definition "control" there shall be added the following new definition:</p> <p>“S.L. 12.19</p> <p>““Court” means the Civil Court (Commercial Section) as established by order 3 of the Civil Courts (Establishment of Sections) Order;”;</p> <p>b) sub-regulation (6) of regulation 9 of the principal regulations shall be amended as follows:</p> <p>“(6) Where the Court in a judgment annuls the whole or part of a decision adopted under these regulations by the</p>

Director General, the periods laid down in these regulations shall start again from the date of the judgment of the Court, or if an appeal from the judgment of the Court has been filed, from the date of the judgment of the Court of Appeal.”;

c) sub-regulation (1) of regulation 13 of the principal regulations shall be amended as follows:

“(1) Any person, undertaking or association of undertakings that intentionally or negligently:

- a) fails to notify a concentration in accordance with regulation 5 before implementation;
- b) supplies incorrect or misleading information in a notification pursuant to regulation 5;
- c) supplies incorrect information in response to a request made pursuant to regulation 10 or fails to supply information within the period fixed by a decision taken pursuant to regulation 10;
- d) produce the required books or other business records in incomplete form during the investigations under regulation 11 or refuse to submit to an investigation ordered by decision pursuant to regulation 11;

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

d) regulation 14 of the principal regulations shall be substituted by the following:

“**14.** (1) Any person, undertaking or association of undertakings which fails:

- a) to supply complete and correct information requested by decision pursuant to regulation 10;
- b) to submit to an investigation ordered by decision pursuant to regulation 11;

- c) to comply with an obligation imposed by decision pursuant to the provisos to regulations 7(3) or 8(2);
- d) to apply the measures ordered by decision pursuant to regulation 8(4),

may at the discretion of the Director General be liable to a daily penalty payment not exceeding five percentum of the average daily turnover of the undertaking or association of undertakings concerned in the preceding business year for each day during which the undertaking fails to comply with its obligation.

(2) The daily penalty payment referred to in sub-regulation (1) shall be calculated from the day determined in the decision of the Director General.

(3) Where the person, undertaking or association of undertakings concerned complies with the obligation mentioned in sub-regulation (1), the Director General may fix the definite amount of the daily penalty payment at a figure lower than that which would have arisen in terms of the original decision of the Director General.

(4) In the application of this regulation to an association of undertakings, article 21(2) of the Act shall apply *mutatis mutandis*.

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

e) Regulation 14A shall be deleted;

f) Regulation 16 shall be amended as follows:

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

“(8) Upon notification of a decision of the Director General as is referred to in regulations 6, 7, 8, 13 and 14, such decision shall, without prejudice to the right of review and the right of appeal as contemplated under regulation 18, constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organisation and Civil Procedure:

Provided so however that, notwithstanding the provisions of article 256(2) of the Code of Organization and Civil Procedure, the executive title referred to in this regulation shall not be enforceable before the lapse of twenty days from notification of the decision to the undertaking or association of undertakings concerned in accordance with article 19(1) of the Act.”;

g) Regulation 17 of the principal Regulations shall be amended as follows:

in sub-regulation (1) thereof the words, “regulation 8(2) to (5) and regulation 12” shall be substituted by the words “regulation 8(2) to (5) and regulation 12 to 14.”;

h) Regulation 18 of the principal regulations shall be substituted by the following:

" Right to request a review before the Civil Court (Commercial Section) and to appeal to the Court of Appeal

S.L. 12.19.

18. (1) The persons, undertakings or association of undertakings concerned and any third party entitled to a hearing under regulation 16(5) may, within twenty days of the notification of the final decision of the Director General, pursuant to regulations 6, 7, 8, 13 and 14 or in the case of third parties within twenty days of its publication, file a sworn application before the Court on points of law and, or of fact, requesting a review of the decision of the Director General.

(2) The sworn application shall be notified to the Director General and the Director General shall file his sworn reply

thereto within twenty days from the date of notification of the sworn application.

(3) A sworn application filed before the Court in accordance with sub-regulation (1) shall not have the effect of suspending the decision unless the Court, upon a reasoned claim raised by the party concerned in the proceedings, and after considering the submissions of all parties to the proceedings, suspends the decision under such conditions as it may deem fit, stating its reasons therefore, pending the final determination of the review:

Provided that a sworn application filed in accordance with sub-regulation (1) shall have the effect of suspending the administrative fine and, or daily penalty payment imposed by the Director General pending the final determination of the review.

(4) The Court shall have the power to substitute its discretion for that of the Director General including the power to either confirm or modify in whole or in part or quash the decision of the Director General and may confirm, revoke or vary the administrative fine and, or daily penalty payment imposed by the Director General within the limits set in article 21 of the Act and, or regulations 13 and 14 as the case may be, taking into account the gravity and duration of the infringement as well as any aggravating or attenuating circumstances:

Provided that where the Court quashes the whole or part of the decision of the Director General, it may refer the matter back to the Director General to reconsider and take a new decision in accordance with the ruling of the Court.

5) The Director General and any party to the proceedings before the Court who feels aggrieved by the judgment delivered by the said Court may appeal on points of law and, or of fact before the Court of Appeal, by means of an application filed in the registry of that court within twenty days from the date of the judgment of the Court.

(6) The undertakings concerned, the Director General and any third parties may request the Court to be heard *in*

camera where the submissions to be made or evidence to be produced is of a confidential nature or contains business secrets.

(7) (a) A confidential and a non-confidential version shall be produced of any written observations and documentary evidence submitted before the Court; and

(b) The Court shall verify the confidentiality or otherwise of the information submitted.

(8) In the interpretation of these regulations the Court shall have recourse to the judgments of the Court of Justice of the European Union, and to relevant decisions and statements of the European Commission including interpretative notices on the relevant provisions of the TFEU and secondary legislation relative to competition and may also refer to its decisions and those of the Competition and Consumer Appeals Tribunal.

(9) Subject to the provisions under these regulations, the provisions of the Code of Organization and Civil Procedure shall, *mutatis mutandis*, apply to proceedings before the Court.”;

i) Regulation 20 of the principal regulations shall be amended as follows:

In the interpretation of regulation 4(4) and of regulation 4(2)(b), the Director General shall have recourse to –

(a) the Court’s judgements and his own previous decisions;

(b) judgements of the Court of Justice of the European Union;

(c) relevant decisions of the European Commission;

(d) interpretative European Commission Notices and Guidelines on the relevant provisions of the TFEU and secondary legislation relative to competition; and

	<p>(e) other pertinent foreign jurisprudence; u</p> <p>j) The Schedule to the principal regulations shall be amended as follows:</p> <p>in section E thereof, for the words:</p> <p>“Malta Competition and Consumer Affairs Authority Office for Fair Trading Cannon Road Sta. Venera SVR 1411 Malta”;</p> <p>there shall be substituted the following:</p> <p>“Malta Competition and Consumer Affairs Authority Office for Competition Mizzi House National Road Blata I-Bajda HMR 9010 Malta”;</p>
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Objects and Reasons

The main objects and reasons of this Bill are to amend the Competition Act in order to address the concerns raised by the Constitutional Court in the judgement delivered on the 3rd May 2016, in the names Federation of Estates Agents v Direttur Ġenerali (Kompetizzjoni) et and to make amendments to other laws.