

**COMPETITION ACT
(CAP. 379)**

**Mutual Assistance between National Competition Authorities
Regulations**

IN exercise of the powers conferred by article 33(2)(a) of the Competition Act, the Minister for Tourism and Consumer Protection after consultation with the Board of Governors of the Malta Competition and Consumer Affairs Authority, has made the following regulations: -

Title

1. The title of these regulations is the Mutual Assistance between Competition Authorities Regulations.

Interpretation

2. In these regulations, unless the context otherwise requires:

“the Act” means the Competition Act;

“applicant authority” means a national competition authority of a Member State which makes a request for mutual assistance as referred to in Chapter VII of the Directive;

“Court” shall have the same meaning assigned to it in the Act;

“the Directive” means Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market;

“enforcement proceedings” means the proceedings before a national competition authority of one of the Member States for the application of Articles 101 and, or 102 TFEU, until that competition authority has closed such proceedings either by concluding that there are no grounds for further action on its part or by taking a decision referred to in Articles 10, 12 or 13 of the Directive;

“final decision” means a decision delivered by a national competition authority which includes any decision delivered by a national administrative competition authority or any judgment or decision delivered by a Court or Tribunal or other adjudicating body in a Member State imposing fines or periodic penalty payments adopted

in accordance with Articles 13 and 16 of the Directive that cannot be, or that can no longer be, appealed by ordinary means;

“national competition authority” shall have the same meaning assigned to it in the Act;

“Office” shall have the same meaning assigned to it in the Act;

“requested authority” means a national competition authority which receives a request for mutual assistance from a national competition authority of another Member State and, in the case of a request for assistance as referred to in Article 25, 26, 27 or 28 of the Directive, means the competent public body which has principal responsibility for the enforcement of such decisions under national laws, regulations and administrative practice of the Member State in question;

“request for assistance” means a request submitted by an applicant authority to a requested authority for the notification of preliminary objections and other documents in terms of Article 25 of the Directive or for the enforcement of a decision imposing a fine or periodic penalty payment in terms of Article 26 of the Directive;

“TFEU” means the Treaty on the Functioning of the European Union;

(2) Other terms used in these regulations shall have the same meaning as assigned to them in the Act.

Scope

3. These regulations implement the provisions on mutual assistance between competition authorities found in Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market.

Competent Authority

4. For the purposes of these regulations, the Office shall act as a requested authority or an applicant authority, as the case may be.

Cooperation with national competition authorities

5. (1) The Office, when acting as an applicant authority, may request a national competition authority of another Member State to carry out an inspection or interview on its behalf pursuant to Article 22 of Regulation (EC) No 1/2003, and the Director General may appoint officials and other accompanying persons to attend and actively assist the requested authority in the inspection or interview.

(2) The Office, when acting as a requested authority, may, at the request of a national competition authority of another Member State, exercise the powers referred to in article 12 of the Act on behalf of and for the account of that national competition authority in order to establish whether there has been a failure by undertakings or associations of undertakings

to comply with the investigative measures and decisions adopted by the applicant authority in the exercise of its powers under its respective national laws transposing Articles 6 and 8 to 12 of the Directive.

(3) The Office, when acting as an applicant authority, may request a national competition authority of another Member State to use its powers under its national law on behalf and for the account of the Office in order to establish whether there has been a failure by undertakings or associations of undertakings to comply with its investigative measures and decisions adopted by the Office or the Court as referred to in articles 12, 12C, 13, 13A, 15 and 17 of the Act.

(4) Where the Office, acting as the requested authority, carries out an inspection or interview on behalf of and for the account of other national competition authorities pursuant to Article 22 of Regulation (EC) No 1/2003, officials and other accompanying persons authorised or appointed by the applicant authority shall be permitted to attend and actively assist the Office, under the supervision of the officials of the Office, in the inspection or interview when the Office exercises the powers referred to in article 12 of the Act.

(5) The Office, where it acts as an applicant authority or as a requested authority pursuant to sub-regulations 2 and 3, shall have the power to exchange information with the national competition authority of any other Member State and to use such information in evidence for the purposes referred to in sub-regulations 2 and 3, subject to the safeguards set out in Article 12 of Regulation (EC) No 1/2003.

Requests for the service of preliminary objections and other documents

6.(1) The Office, when acting as the requested authority, shall at the request of the applicant authority cause the following documents to be served on the addressee on behalf of the applicant authority, by attaching the documents to be served to a judicial letter filed in the Registry of the Superior Courts:

- a) Any preliminary objections relating to an alleged infringement of Articles 101 and, or 102 TFEU and any decisions applying those articles;
- b) Any other procedural act adopted in the context of enforcement proceedings which should be notified in accordance with the national law of the applicant authority; and
- c) Any other relevant documents related to the application of Articles 101 and, or 102 TFEU, including documents which relate to the enforcement of decisions imposing fines or periodic penalty payments.

(2) The provisions of the Code of Organization and Civil Procedure shall apply *mutatis mutandis* to the mode of service referred to in the preceding sub-regulation.

(3) The Office shall keep a record and a copy of all requests and of all acts or documents to which this regulation applies, and shall promptly inform the applicant authority whenever a service is effected or whenever a difficulty is identified or encountered in connection with the service, and of any further action taken following the service.

(4) The provisions of sub-regulations (1) and (2) shall be without prejudice to any other form of notification made by an applicant authority of the applicant Member State in accordance with the rules in force in that Member State.

(5) The Office, where it acts as the applicant authority, may request the requested authority of another Member State to notify to the addressee on its behalf the following acts or documents:

- a) Any preliminary objections relating to an alleged infringement of Articles 101 and, or 102 TFEU and any decisions by the Office or Court applying those articles;
- b) Any procedural act adopted in the context of enforcement proceedings which should be notified in accordance with Maltese law; and
- c) Any other relevant documents related to the application of Articles 101 and, or 102 TFEU including documents which relate to the enforcement of decisions imposing penalties or periodic penalty payments adopted by the Court.

Requests for the enforcement of decisions imposing fines, penalties or periodic penalty payments

7. (1) At the request of the applicant authority, the Office where it acts as the requested authority shall file a sworn application requesting the Court to enforce any final decision imposing a fine or periodic penalty payment adopted in accordance with Articles 13 and 16 of the Directive by the applicant authority:

Provided that this sub-regulation shall apply only to the extent that, after having made reasonable efforts in its own territory, the applicant authority has ascertained that the undertaking or association of undertakings against which the fine or periodic penalty payment is enforceable does not have sufficient assets in the Member State of the applicant authority to enable recovery of such fine or periodic penalty payment.

(2) For cases not covered by the preceding sub-regulation, in particular cases where the undertaking or association of undertakings against which the fine or periodic penalty payment is enforceable is not established in the Member State of the applicant authority, the Office where it acts as the requested authority may, where the applicant authority so requests, file a sworn application requesting the Court to enforce a final decision imposing a fine or periodic penalty payment adopted in accordance with Articles 13 and 16 of the Directive by the applicant authority:

Provided that paragraph (d) of regulation 8(3) shall not apply for the purposes of this sub-regulation.

(3) Without prejudice to the provisions of regulation 8, a final decision delivered by a national competition authority of another Member State, as referred to in sub-regulations (1) or (2) of this regulation, shall be enforceable by the Court in the same manner as a judgement delivered by that Court imposing a penalty or a periodic penalty payment pursuant to article 21 of the Act, and the provisions of the Code of Organization and Civil Procedure shall *mutatis mutandis* apply to the said decision.

(4) The Office, where it acts as the applicant authority, may request a requested authority to enforce a final decision imposing a penalty or periodic penalty payment adopted pursuant to article 21 of the Act where, after having made reasonable efforts, it has ascertained that the undertaking or association of undertakings against which the penalty or periodic penalty

payment is enforceable does not have sufficient assets in the territory of Malta to enable the recovery of such penalty or periodic penalty payment.

(5) For cases not covered by the preceding sub-regulation, in particular cases where the undertaking or association of undertakings against which the penalty or periodic penalty payment is enforceable is not established in Malta, the Office, where it acts as the applicant authority, may, request the requested authority, to enforce a final decision imposing a penalty or periodic penalty payment adopted pursuant to article 21 of the Act:

Provided that point (d) of regulation 8(3) shall not apply for the purposes of this sub-regulation.

(6) Limitation periods for the enforcement of fines, penalties or periodic penalty payments according to this regulation shall be governed by the national law of the Member State of the applicant authority.

General principles of co-operation

8. (1) After ascertaining that a request for assistance made to the Office by an applicant authority of another Member State, as referred to in regulations 6(1) and 7(1) or (2) contains all the information referred to in sub-regulations (2) and (3) of this regulation, as the case may be, and that such request is accompanied by a copy of the act, document or decision to be served or enforced, the Office shall take all necessary measures to enable such requests to be executed without undue delay:

2) Any request referred to in the preceding sub-regulation shall indicate:

- a) the name, known address of the addressee, and any other relevant information for the identification of the addressee;
- b) a summary of the relevant facts and circumstances;
- c) a summary of the attached copy of the act to be notified or enforced;
- d) the name, address and other contact details of the requested authority; and
- e) the period within which notification or enforcement should be effected, such as statutory deadlines or limitation periods.

(3) Requests referred to in regulation 7(1) or (2) shall, in addition to the requirements set out in the preceding sub-regulation, provide the following:

- a) information about the decision permitting enforcement in the Member State of the applicant authority;
- b) the date when the decision became final;
- c) the amount of the fine or periodic penalty payment; and
- d) information showing the reasonable efforts made by the applicant authority to enforce the decision in its own territory.

(4) A request for assistance made by an applicant authority of another Member State in accordance with the preceding sub-regulation shall constitute the sole basis for the

enforcement measures taken by the Court pursuant to regulation 7(3), and the decision to be enforced shall not be subject to any act of recognition, supplementing or replacement by the Court. The Office shall request the Court to adopt all measures deemed necessary for the execution of the decision, unless it invokes sub-regulation (5) of this regulation.

(5) The Office, where it acts as the requested authority, may refuse to seek execution of a request as referred to in regulation 6(1) or in regulation 7(1) or (2) if:

(a) the request does not comply with the requirements of this regulation; or

(b) the Office is able to demonstrate reasonable grounds showing how the execution of the request would be manifestly contrary to public policy in Malta:

Provided that if the Office intends to refuse a request for assistance as referred to in this sub-regulation, or requires additional information, it shall contact the applicant authority.

(6) (a) The information referred to in sub-regulations (2) and (3) of this regulation shall be sent in the Maltese or English language, unless the Office and the applicant authority bilaterally agree on a case-by-case basis that such information may be sent in another language.

(b) Where so requested by the Office, the applicant authority shall provide a translation of the act to be notified or the decision permitting enforcement of the fine or periodic penalty payment in the Maltese or English language, without prejudice to the right of the Office and the applicant authority to bilaterally agree, on a case-by-case basis, that such translation may be provided in a different language.

(7) Where the Office, acting as the requested authority, so requests, the applicant authority shall bear all reasonable additional costs in full, including translation, labour and administrative costs, in relation to actions taken by the Office on behalf of the applicant authority as referred to in sub-regulations (3), (4) and (5) of regulation 5 or in regulation 6(1).

(8) Where the Office acts as the requested authority it shall endeavor to recover:

(a) the full costs incurred in relation to actions filed by the Office pursuant to regulation 7(1) or (2) from the fines or periodic penalty payments it has collected on behalf of the applicant authority, including translation, labour and administrative costs:

Provided that where the Office is unsuccessful in collecting such fines or periodic penalty payments, it may request the applicant authority to bear the costs incurred; and

(b) the costs incurred in relation to the enforcement of a decision imposing a fine or periodic penalty payment, pursuant to regulation 7(3) from the undertaking or association of undertakings against which the decision is enforceable.

(9) Where it acts pursuant to the preceding sub-regulation, the Office shall recover the amounts due in Euro, in accordance with the laws, regulations and administrative procedures or practices in force in Malta:

Provided that the Office shall, if necessary, in accordance with Maltese law and practice, convert the fines or periodic penalty payments into Euro at the rate of exchange applying on the date on which such fines or periodic penalty payments were imposed.

Requests made by the Office where it acts as the applicant authority

9. (1) A request made by the Office, where it acts as the applicant authority pursuant to regulation 6(5) or regulation 7(4) or (5), shall be drawn up in the Form prescribed in the Schedule to these Regulations and shall be accompanied by a copy of the document, act or decision to be notified or enforced.

(2) The Form referred to in the preceding sub-regulation shall be sent to the requested authority in the official language, or in one of the official languages, of its Member State, unless the Office and the requested authority bilaterally agree on a case-by-case basis that the Form may be sent in another language.

(3) Where required under the national law of the Member State of the requested authority, the Office, where it acts as the applicant authority pursuant to regulation 6(5) or regulation 7(4) or (5) shall provide a translation of the act, document or decision to be notified or enforced into the official language, or into one of the official languages, of the Member State of the requested authority, without prejudice to the right of the Office and the requested authority to bilaterally agree, on a case-by-case basis, that such translation may be provided in a different language.

(4) Where the Office acts as an applicant authority, and if so requested by the requested authority, it shall bear all reasonable additional costs in full, including translation, labour and administrative costs, in relation to actions taken on its behalf by the requested authority as referred to in sub-regulations (1), (2) and (5) of regulation 5 or in regulation 6(5).

Disputes concerning requests for notification or enforcement imposing penalties or periodic penalty payments

10. (1) Any dispute concerning a request for assistance made pursuant to these Regulations shall fall within the competence of the Maltese Courts and shall be governed by the laws of Malta where the Office acts as the applicant authority and insofar as the dispute concerns:

(a) the lawfulness of an act to be notified in accordance with regulation 6(5) or of a decision to be enforced in accordance with regulation 7(4) or (5); or

(b) the lawfulness of the Form drawn up by the Office as provided in the Schedule to these Regulations permitting enforcement in the Member State of the requested authority.

(2) Without prejudice to the preceding sub-regulation, where the Office acts as the requested authority any dispute concerning the enforcement measures taken by the Court pursuant to regulation 7(3) or regulation 8(4), or concerning the validity of a service made by the Office pursuant to regulation 6(1), shall also fall within the competence of the Maltese Courts and shall be governed by the laws of Malta.

SCHEDULE

Form for requests by the Office where it acts as the Applicant Authority (regulation 9)

- Request for the notification of preliminary objections and other documents according to regulation 6 (5)
- Request for the enforcement of decisions imposing penalties or periodic penalty payments according to regulation 7(4) or (5)

A. Applicant authority

1. Name: **Office for Competition**
2. Street and number:
3. Postcode and town:
4. Country:
5. Contact person(s):
6. Tel. (country code) (area code):
7. Fax (country code) (area code):
8. E-Mail:

B. Requested authority

1. Name:
2. Street and number/PO box:
3. Postcode and town:
4. Country:

5. Contact person (s):
6. Tel. (country code) (area code):
7. Fax (country code) (area code):
8. E-Mail:

C. Addressee

Natural person

1. Surname:
2. First name(s):
3. Date of birth:
4. Place of birth:
5. Street and number:
6. Postcode and town:
7. Country:
8. Fax (country code) (area code):
9. E-Mail:

Legal entity

1. Name:
2. Legal form:

3. Registration number (where applicable/known):

4. Street and number:

5. Postcode and town:

6. Country:

7. Fax (country code) (area code):

8. E-Mail:

D. In case of a request for the notification of preliminary objections and other documents

Nature of the document

- Preliminary objections to the alleged infringement of Article 101 or 102 TFEU
- Decision that applies Article 101 or 102 TFEU
- Other procedural act adopted in the context of enforcement proceedings
- Other relevant documents related to the application of Article 101 or 102 TFEU, including documents which relate to the enforcement of decisions imposing penalties or periodic penalty payments

E. In case of a request for the enforcement of decisions imposing penalties or periodic penalty payments

1. Type of claim

Penalty

Periodic penalty payment

2. Information about the decision permitting enforcement in the Member State of the applicant authority:

3. Date on which the penalty or periodic penalty payments were imposed:

4. Date of notification of the decision:

5. Date when the decision became final:

6. Amount of the penalty or periodic penalty payment:

7. Amount and calculation of the amount to be enforced by the requested authority:

8. Where applicable: Information about where the penalty or periodic penalty payment should be paid (details about entity receiving the payment and bank account number):

9. Information showing the reasonable efforts made by the applicant authority to enforce the decision in its own territory:

10. Where applicable: Reasons of the applicant authority for not enforcing the decision in its own territory:

F. Summary of the relevant facts and circumstances

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G. Summary of the attached copy of the act to be notified or enforced

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H. Period within which notification or enforcement should be effected (such as statutory deadlines or limitation periods)

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I. List of Annexes

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To be filled in by the requested authority:

J. Completion of notification

Date and address of notification

- On behalf of the requested authority, I hereby confirm by checking the box that the notification was completed in accordance with the national law and practice of the Member State of the requested authority
- Confirmation of notification enclosed

Date:

Signature and/or stamp:

DRAFT