Cartels

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CONTENTS

Malta

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Overview of cartel enforcement, appeals and damages actions in Malta during the last 12 months

The past 12 months have been an exciting period for cartel enforcement, appeals and damages actions in Malta, thanks to several pioneering court judgments.

The most important judgment, and the one with the most far-reaching consequences which extend well beyond cartels, is the Constitutional Court judgment in *Federation of Estate Agents vs Director General (Competition) et*, which was handed down on 3 May 2016 (Application number 87/2013/2) where, in a cartel-related case, the Constitutional Court held that the procedure for the imposition of fines on undertakings for competition law breaches infringes the fair hearing provisions contained in the Constitution.

Secondly, the first successful action for antitrust damages was decided by the Civil Court, First Hall on 23 November 2015 in the names *Hompesch Station Limited vs Enemalta Corporation et* (sworn application number 91/2011), for an infringement which involved *inter alia* a cartel of service station operators *qua* fuel retailers.

Finally, *Office for Competition vs Enemalta Corporation et* (case number 1/2013), decided on 4 October 2016 by the Competition and Consumer Appeals Tribunal (hereinafter referred to as "the Appeals Tribunal"), which concerned a cartel relating to the distribution of liquefied petroleum gas (LPG) in cylinders, was the first case where a breach of the competition provisions of the Treaty on the Functioning of the European Union (TFEU) was confirmed by the Appeals Tribunal.

Overview of the law and enforcement regime relating to cartels

Cartels are prohibited in Malta by virtue of Article 5(1) of the Competition Act (Cap. 379 of the laws of Malta), which prohibits agreements and concerted practices between undertakings and decisions by associations of undertakings, which have the object or effect of preventing, restricting or distorting competition within Malta or any part of Malta. The Maltese competition authorities are also authorised to apply Article 101 TFEU when cartels may affect trade between Malta and any one or more European Union (hereinafter referred to as "the EU") Member States. They are so empowered both in terms of the Competition Act itself (Article 5(5)), and in terms of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ([2003] OJ L1/1) (hereinafter referred to as "Regulation 1/2003").

Both public and private enforcement of cartel infringements is possible in Malta.

Public enforcement

Public enforcement is carried out by the OFC, which is established by virtue of Article 13 of the Malta Competition and Consumer Affairs Authority Act (Cap. 510 of the laws of Malta) (hereinafter referred to as the "MCCAA Act"). The OFC forms part of the Malta Competition and Consumer Affairs Authority (MCCAA), which is a body corporate established by the MCCAA Act. Part of the remit of the OFC is to investigate possible breaches of competition law (including therefore cartels), and to issue infringement decisions, together with cease and desist orders and compliance orders. The competence to apply the provisions of the Competition Act and therefore the exercise of the responsibilities conferred on the OFC, is vested in the Director General (Competition) (hereinafter referred to as "the DG"), in terms of Article 3 of the Competition Act. The DG may in turn delegate his powers to officers of the MCCAA.

The Competition Act also empowers the OFC to fine undertakings or associations of undertakings found to have breached the competition rules. The fine may be of up to 10% of the turnover of the relevant undertaking or association for the previous business year. The Act refers to these fines as 'administrative fines'. Failure by the undertaking or the association to pay the administrative fine would render a director, secretary, manager or similar officer of the undertaking liable to a criminal fine of between €1,000 and €20,000. However, the current fining procedure envisaged in the Competition Act has been declared by the Constitutional Court in *Federation of Estate Agents vs Director General (Competition) et* to be contrary to the Constitution (see below). As a result of this judgment, the OFC is not currently in a position to impose fines on undertakings or associations. It is expected that the legislature will rectify this situation through legislative amendments, either to the Competition Act or to the Constitution itself.

It is pertinent to point out that the fining system was amended in 2011. Prior to 2011, although the OFC could still carry out an investigation, breaches of the competition rules were deemed to be a criminal offence and a fine, again of a maximum of up to 10% of the turnover of the undertaking or association in the previous business year, could only be imposed by the Court of Magistrates sitting as a court of criminal judicature.

It is possible to appeal from decisions of the OFC, including from a decision on the fine imposed. Appeals from decisions of the OFC are heard by the Appeals Tribunal. As noted, at present the OFC cannot impose any fines or it would be in breach of the Constitution. Moreover, the Constitutional Court judgment indicates that the Appeals Tribunal is not to be considered a 'court' in terms of the Constitution, and therefore cannot impose fines which are criminal in nature either (see below). In fact, with respect to cases which are pending in front of the Appeals Tribunal, the OFC has declared and recorded in the record of the proceedings that it will not request the imposition of fines in the event that the case is decided in the OFC's favour.

Private enforcement

Private enforcement is regulated by Article 27A of the Competition Act, which applies to claims relating to infringements which occurred after 23 May 2011, the date that this provision came into force. An action for damages may be brought by a person who has suffered damage as a result of an infringement of the competition rules, including therefore cartels. Plaintiffs in actions for damages are entitled to compensation for actual loss and for loss of profits, together with interest from the time the damage occurred until the sum awarded is paid.

The defendant is not allowed to plead lack of intention, negligence or lack of fault as

a defence, but he can plead a genuinely excusable error. The pass-on defence is also allowed. The action for damages is barred by the lapse of two years from the day the injured party became aware or should reasonably have become aware of the damage, the infringement and the identity of the infringer.

The current damages regime is due to be overhauled in view of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union ([2014] OJ L349/1) (hereinafter referred to as "the Damages Directive"). The proposed changes are considered below.

In the case of infringements prior to 2011, actions for damages have to be based on general tort law, as contained in the Civil Code (Cap. 16 of the laws of Malta), in terms of which every person is liable for the damage which occurs through his fault.

Overview of investigative powers in Malta

Competition investigations, whether on cartels or other breaches of the competition rules, may commence either at the DG's own motion, at the request of the Minister responsible for competition matters, upon a complaint or at the request of a designated national competition authority of another EU Member State or the European Commission. The DG has various investigative powers conferred upon him by the Competition Act. The DG may:

- request any undertaking or association to furnish him with any information or document in its possession, unless such document or information is subject to the duty of professional secrecy;
- receive statements from any person and make copies of documents produced to him, which would be producible as evidence before any court including the Appeals Tribunal;
- enter into and search any premises, land and means of transport of the relevant undertakings and/or associations, and consequently seize any object or document or take extracts or copies of documents, or order non-removal of an object, including closing and sealing any part of the premises, land or means of transport; and
- order an inspection on other premises, land and means of transport in relation to which there is a reasonable suspicion that books or other records related to the business and the subject-matter of the inspection are being kept. Such inspection can only take place if a warrant is issued by a Magistrate.

Undertakings, associations or persons subject to an inspection may be assisted by legal counsel or other advisers of their choice.

The law specifies that searches on premises after 7pm and before 7am of the following day cannot be carried out unless there is reason to believe that delay could cause the loss of information, and the search is expressly authorised by the DG or the Magistrate, as applicable, to take place at such time. Therefore dawn raids can only take place if so expressly authorised and if there is a risk of loss of the information sought.

It does not appear that the OFC has ever carried out a dawn raid. The power most often used by the OFC is that of requesting information from undertakings and associations being investigated, as well as their competitors, suppliers, customers and complainants. In practice, investigations tend to be carried out on the basis of requests for information and

meetings with the relevant undertakings or associations, their competitors, their customers and their suppliers.

Overview of cartel enforcement activity during the last 12 months

No official reports or statistics are published by the OFC as to its enforcement activity. The imposition of fines by the OFC for breaches of the Competition Act has been stalled due to the Constitutional Court judgment in *Federation of Estate Agents vs Director General (Competition) et* which is considered in detail below. During the past 12 months the OFC has published some of its decisions online at http://www.mccaa.org.mt/en/decisions; however none of the cases published dealt with cartel activity. It is unclear whether the OFC has started publishing all its decisions, or whether these were published because they were cases of general public interest.

However, on 4 October 2016, the Appeals Tribunal decided a case which dealt with cartel activity. The OFC had carried out an investigation into the market for door-to-door distribution of LPG in cylinders, and subsequently submitted a report and referred the case to the Appeals Tribunal, in accordance with the law as it stood at the time. In its report, the OFC concluded that a standard agreement signed in 1992 ("the Standard Agreement") between the various gas distributors and Enemalta plc (then Enemalta Corporation), whereby each gas distributor was granted an exclusive area for distribution of LPG in cylinders was *ipso jure* null and unenforceable in terms of Article 101(2) TFEU and Article 5(2) of the Competition Act. It also found the various distributors to be in breach of Article 101 TFEU and Article 5 of the Act as they were part of one global agreement, namely the Standard Agreements, on the strength of which they had effectively agreed between themselves to respect the areas agreed upon for exclusive gas distribution. The Association of the General Retailers and Trader (GRTU), an association that represented the distributors, was found to have acted in a way as to maintain the *status quo* on the market. The OFC also found that Enemalta plc, the original signatory to the agreement and the supplier of LPG, and Liquigas Malta Limited, to whom the business was later sold, had acted in breach of the competition rules.

In its judgment in the names *Office for Competition vs Enemalta Corporation et* the Appeals Tribunal agreed with most of the findings of the OFC. It found that the various gas distributors, the GRTU and Enemalta plc, had breached the competition rules by dividing Malta and Gozo into various 'territories' for the purpose of distributing LPG in cylinders. These various undertakings and association were therefore found to have breached Article 5(1) of the Competition Act and Article 101(1) TFEU. However, the Appeals Tribunal found that Liquigas Malta Limited, which acquired the business of LPG supply and distribution from Enemalta plc, had never participated or formed part of this agreement.

Key issues in relation to enforcement policy

Since Malta is a small jurisdiction, public enforcement tends to suffer from lack of resources, both financial and human. The OFC therefore will prioritise cases and complaints, although this does not mean that there are complaints which are not considered. On the contrary, the law requires that all complaints be looked into, even if to conclude that there are insufficient grounds for acting on the complaint.

The major issue currently affecting public enforcement of cartel offences is the Constitutional Court decision in *Federation of Estate Agents vs Director General (Competition) et*. In

this case, the applicant argued that the procedure whereby the OFC investigated the alleged breach of competition rules, decided whether an alleged breach occurred and imposed fines on the undertakings, was in violation of Article 39(1) of the Constitution and Article 6(1) of the European Convention on Human Rights ("ECHR"). The Civil Court, First Hall in its constitutional jurisdiction, had agreed with the arguments brought forward by the applicant (21 April 2015; application number 87/2013). Consequently the DG and the Attorney General appealed to the Constitutional Court.

The Constitutional Court agreed with the appellants that there was no breach of Article 6(1) ECHR, noting that the jurisprudence of the European Court of Human Rights in relation to tax penalties was equally applicable to competition fines, and therefore, the fact that a fine was imposed in the first instance by an administrative authority which is not an independent and impartial tribunal is not incompatible with Article 6 ECHR, as long as that decision can be reviewed by a tribunal with the necessary qualities and which has full jurisdiction in all matters.

The Constitutional Court however confirmed the judgment of the Civil Court, First Hall in so far as it found that the competition procedure infringes Article 39(1) of the Constitution. It held that notwithstanding that the Competition Act classified the penalties for competition law breaches as 'administrative fines', competition proceedings involved a 'criminal charge'. As a result, competition proceedings have to comply with Article 39(1), which states that:

'Whenever any person is charged with a criminal offence he shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.'

The Court then considered the notion of 'court' found in Article 39(1). It confirmed that 'court' could only refer to the superior and inferior courts mentioned in the Code of Organisation and Civil Procedure (Cap. 12 of the laws of Malta) – neither the DG nor the Appeals Tribunal were considered to be a court. Moreover, the Constitutional Court held that the entire procedure determining a criminal charge should be held in front of a court, and at no stage should a judgment or a hearing on a criminal charge be heard by an entity which is not a court.

The Constitutional Court therefore found that the provisions of the Competition Act, in so far as they give the DG the authority to issue a decision regarding a breach of the competition rules and impose fines or other measures, and in so far as they give the Appeals Tribunal the authority to hear appeals from such decisions, are void and without effect in relation to the Federation, and the proceedings against the Federation under those provisions of law were found to be in breach of the Federation's right to a fair hearing under Article 39(1) of the Constitution in so far as those proceedings are intended to lead to a decision finding a breach of the competition rules.

Although technically speaking, this decision only applies to the proceedings instituted against the Federation of Estate Agents, it effectively means that any investigations by the OFC, where a fine is envisaged, would be in breach of the Constitution. As a result, the current fining procedure for competition proceedings is in effect stalled. As noted, the OFC itself has declared that it will not be requesting the imposition of a fine by the Appeals Tribunal in cases currently pending before that tribunal. Legislative amendments are required in order for there to be an effective penalty system for breaches of the Competition Act.

Key issues in relation to investigation and decision-making procedures

Compliance with Article 39(1) of the Constitution

The Constitutional right to a 'fair hearing' during competition investigations was central in *Federation of Estate Agents vs Director General (Competition) et* (see above).

Fair hearing by the OFC

It has been confirmed by the Appeals Tribunal that the principles of natural justice, including therefore the right to a fair hearing, have to be respected by the OFC during its investigations. In *Liquigas Malta Limited vs Ufficcju ghall-Kompetizzjoni* (Application number 1/2011; 14 April 2015) the Appeals Tribunal annulled a decision and an order to cease and desist issued by the OFC against Liquigas Malta Limited because, in the proceedings that led to the decision and order, the OFC did not comply with the principles of natural justice. In its decision, the Appeals Tribunal noted that during competition investigations the relative undertaking has to be given adequate opportunity to understand the complaint against it and to give its replies. This judgment also confirmed that, even in cases falling under the Competition Act prior to its amendment by virtue of Act VI of 2011, the principles contained in EU Regulations and in judgments of the Court of Justice apply when Maltese law is silent. As a result, the principles laid down by the Court of Justice of the EU and in relevant EU Regulations on the right to a fair hearing had to be applied by the OFC during its investigations, including: clearly informing the undertaking being investigated, in good time, of the essence of the complaint and hearing the undertaking on the matter; giving the undertaking a copy in writing of the complaint; giving the undertaking time to regulate its position; and giving the undertaking access to the file.

Legal privilege, business secrets and confidential information

Although there has never been a competition case relating to legal privilege, business secrets and confidential information, the law regulates the disclosure of such sensitive information.

First of all, the Competition Act specifies that the DG cannot order the production of any document or the disclosure of any information which may be subject to the duty of professional secrecy.

Secondly, in terms of the MCCAA Act, any parties submitting information to the DG in the course of an investigation should identify any material which they consider to be confidential, giving reasons therefor, and providing a separate non-confidential version. The DG may also require persons, undertakings and associations to identify documents or parts of documents which they consider to contain business secrets or other confidential information, and to identify the undertakings with regard to whom such documents are to be deemed to be confidential. Similarly, the DG may, when issuing a statement of objections, drawing up a case summary or issuing a decision or order, require persons, undertakings or associations to identify any business secrets or confidential information. Ultimately, however, the decision as to whether the information identified is a business secret or otherwise confidential rests with the DG, although persons, undertakings and associations may appeal to the Appeals Tribunal within 10 days.

Information which is accepted to be confidential or to amount to a business secret is protected both in the MCCAA Act and in the Competition Act. Once it is accepted that the information contains business secrets or other confidential information, the OFC has to ensure such information is not disclosed, including in the statement of objections, decisions and when granting access to the file.

Leniency/amnesty regime

There is currently no leniency procedure in Malta. A consultation on draft Leniency Regulations was carried out in 2013. However, the draft regulations have not yet been enacted into law.

The draft regulations are intended to apply in relation to 'secret cartels' only, meaning they would apply where the cartel conduct is not known to the public, customers or suppliers. In order to qualify for immunity from fines, it is envisaged that an applicant submit a formal full application in the form provided in the draft regulations. The draft regulations lay out various conditions which have to be satisfied in order for immunity from fines to be granted. Applicants that would not qualify for immunity may benefit from a reduction in fines.

The draft regulations may be accessed here: http://mccaa.org.mt/en/consultations-publications.

Administrative settlement of cases

The Competition Act envisages two types of 'settlement' for cases: one a settlement procedure for cartel cases, and the other a commitments procedure.

Settlement

Settlement of cartel cases may occur in the course of an investigation. It is the DG who may invite all or some of the undertakings and/or the relevant association of undertakings to indicate in writing whether they are prepared to engage in settlement discussions. Undertakings or associations willing to take part in the settlement discussion may be informed by the DG of: (i) the objections he envisages to raise against them; (ii) the evidence used to determine such objections; (iii) non-confidential versions of any specified accessible document listed in the case file, although access is only granted upon request by the undertaking or association where necessary to enable that party to ascertain its position regarding a time period or any other particular aspect of the cartel; and (iv) the range of potential fines. If settlement discussions progress, the DG would then set a time-limit within which the parties may commit to follow the settlement procedure by introducing settlement submissions reflecting the result of the discussions and acknowledging their participation in a breach of Article 5 of the Act and/or Article 101 TFEU, and their liability.

As part of the settlement process, the undertakings or associations have to confirm that they will only request access to the file and leave to submit verbal views after receipt of the statement of objections if the latter does not reflect the contents of their settlement submissions. If the statement of objections does reflect the content of the settlement submissions, the undertaking or association's reply should simply confirm this. In that case, the DG would proceed to adopt a decision, which decision would indicate that the undertaking co-operated under the settlement procedure in order to explain the reason for the level of fine. In fact, the DG is empowered to reward the undertakings or associations who have settled by reducing the fine by 10% of the amount which would have been imposed. As already noted, however, the fining system envisaged in the Competition Act is currently under review, and the OFC cannot impose any fines, due to the judgment in *Federation of Estate Agents vs Director General (Competition) et.* The idea behind adopting the settlement procedure is clearly procedural efficiency, as the DG may discontinue the discussions if he considers such efficiencies are unlikely to be gained.

It does not appear that this procedure has ever been used since its introduction into the Act in 2011.

Commitments

The Competition Act also provides for commitments. In this scenario, the DG would make, by decision, commitments offered by undertakings or associations in order to meet the concerns expressed by the DG in a preliminary assessment of the case, binding on those undertakings or associations. The decision may be for a specified period. Where a decision is to be adopted, the DG has to publish a summary of the case and the main content of the decision or proposed course of action, so that interested third parties may submit their observations.

The commitments procedure is not limited to any one type of infringement, and therefore can be used in cartel cases as well as other cases involving other infringements of the competition rules. Proceedings may be reopened by the DG where there is a material change in the facts, where the undertaking or association acts contrary to its commitments or where the decision was based on incomplete, incorrect or misleading information provided by the parties. In the case that undertakings or associations fail to comply with or act contrary to a commitment, they will be deemed to have committed an infringement of the Competition Act.

On 16 December 2016, the OFC indicated that it would be utilising this procedure in relation to a vertical agreement, and invited comments from interested parties. The invitation for comment may be accessed here: http://mccaa.org.mt/en/mccaa-news.

Third party complaints

Complaints are regulated by the Competition Act. Article 14 of the Act provides that complaints may be made to the DG in writing, and must include a request that an investigation be carried out on the alleged restrictive practices. The DG has two courses of action open to him:

1. If he considers that there are insufficient grounds for acting, the DG is to inform the complainant of his reasons, whilst setting out a time-limit within which the complainant may reply.

   If the complainant does reply and his written submissions do not lead to a different assessment of the complaint, the DG is to reject the complaint by decision. If the complainant does not agree with this decision, he may appeal to the Appeals Tribunal within 20 days of being notified with the decision; if the Appeals Tribunal finds for the complainant, the Appeals Tribunal will inform the DG who has to commence an investigation. The Appeals Tribunal's decision on this matter is final.

   When the complainant does not reply, the complaint is deemed to have been withdrawn.

2. If he considers that there are sufficient grounds for acting, the DG commences an investigation in terms of Article 12 of the Act.

Complainants may request to remain anonymous. If the DG accedes to this request, he will provide access to a non-confidential version or summary of submitted documents.

Although there are no official statistics, it appears that most of the antitrust investigations carried out by the OFC in fact start off as complaints.

In *Mizzi vs Enemalta Corporation et* (application number 1/2011), handed down on 27 February 2013, the Appeals Tribunal confirmed that the relevant EU sources apply as guidance for the correct interpretation of competition law, particularly when Maltese law is silent, and that this includes EU legislation and guidance notes on access to the file by a complainant. In the aforementioned case, the Appeals Tribunal referred to and applied:

(i) Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ [2004] L 123/18); (ii) Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ [2005] C325/7); and (iii) Commission Notice on the handling of complaints by the Commission under Articles 81 and 82 of the EC Treaty (OJ [2004] C101/65). The Appeals Tribunal did this on the strength of Rule 13 of the First Schedule to the Competition Act, prior to amendment by Act VI of 2011 (which applied to the case), which provided that in the interpretation of the Competition Act, the Commission for Fair Trading (now the Appeals Tribunal) is to have recourse to, *inter alia*, judgments of the Court of Justice of the EU, and relevant decisions and statements of the Commission including interpretative notices. A similar provision in now contained in Rule 9 of the Second Schedule of the MCCAA Act, therefore this judgment is still relevant.

Sanctions and penalties

Undertakings or associations that are found to have infringed the competition law rules are subject to an administrative fine of up to 10% of the total turnover of that undertaking or association in the preceding business year. When fines are imposed on associations, the annual turnover of the members will be considered. The amount of the fine is fixed by the DG, who is to consider the gravity and duration of the infringement as well as any aggravating or attenuating circumstances. No fining guidelines have been issued by the OFC as yet.

Any decision taken by the DG, including therefore the level of the fine, is subject to an appeal in front of the Appeals Tribunal. The appeal does not suspend the fine unless a request to this effect is made to the Appeals Tribunal and, after considering the submissions of the parties, the Appeals Tribunal suspends the said fine pending the determination of the appeal. There is an appeal on a question of law to the Court of Appeal from decisions of the Appeals Tribunal.

It has already been noted, however, that the current procedure whereby fines are imposed by the OFC, and reviewed by the Appeals Tribunal, has been deemed to be contrary to the Constitution. Amendments to the way in which sanctions and penalties are imposed are therefore expected.

Cross-border issues

The DG is obliged to co-operate with the European Commission and the National Competition Authorities in terms of Regulation 1/2003. This obligation arises from Article 29A of the Competition Act. Moreover, in terms of Article 14(1)(c) of the MCCAA Act, the OFC is responsible for acting as the designated national competition authority in terms of Article 35(1) of the said Regulation 1/2003.

Developments in private enforcement of antitrust laws

Recent actions for damages

In Malta there has so far only been one successful action for damages, *Hompesch Station Limited vs Enemalta Corporation et*, although there is currently another action for damages which is ongoing in the names *Spiteri et vs Transport Malta* (sworn application number 369/2009/1). Both these actions are follow-on actions, in that they were instituted following

the conclusion of an investigation by the OFC and appeals to the Commission for Fair Trading (now called the Appeals Tribunal).

Hompesch Station Limited vs Enemalta Corporation et involved an action for damages for an infringement which occurred prior to the introduction of Article 27A in the Competition Act, which regulates actions of damages for infringements which have occurred after 23 May 2011. Plaintiff commenced the action after the Appeals Tribunal (then the Commission for Fair Trading) concluded that the GRTU, which represented service station operators, and Enemalta Corporation had reached an anti-competitive agreement whereby the mark-up for retailers on petrol and diesel would increase as long as the service stations installed automated pumps and operated only during the times indicated in the agreement. The agreement was subsequently entrenched in a legal notice. Plaintiff had complained to the OFC on this matter and, following the conclusion of the case by the decision of the Appeals Tribunal, it commenced an action for damages based on the provisions on tort law contained in the Civil Code. In its decision, the First Hall, Civil Court held that:

- There was no need for the plaintiff to first request that the civil court hold the defendants responsible; mainly because in terms of the law as it then stood, in the event that the question of anti-competitive conduct arose in the civil courts, the civil courts were to refer the matter to the Commission for Fair Trading (now the Appeals Tribunal). As a result when the matter has already been considered by that tribunal, the civil courts should follow that decision. In any case, the plaintiffs had brought forward enough evidence to prove the defendants' anti-competitive conduct.
- The prescriptive period for actions which relate to infringements before 2011 was of five (5) years.

The Civil Court awarded damages to the tune of nearly €250,000. This judgment has been appealed; the appeal is currently pending.

Proposed amendments

On 20 September 2016, the OFC issued a public consultation on antitrust damages together with draft legislation which will enable Malta to transpose the Damages Directive. The amendments consist of: (i) a bill to amend the Competition Act, in order to replace the current provision on antitrust damages, with a reference to subsidiary legislation on antitrust damages which will be issued by the relevant Minister; and (ii) draft regulations entitled 'Competition Law Infringements (Actions for Damages) Regulations'. It is envisaged that these changes will apply to actions instituted after the date of entry into force of the Regulations.

The transposition of the Damages Directive will bring about some changes to the current landscape for actions for damages. The most obvious is perhaps the prescriptive period (time-bar), which will become five years. Moreover, the Damages Directive requires the inclusion of various provisions relating to disclosure of evidence, quantification of harm and joint and several liability which are not dealt with in Article 27A of the Competition Act. It remains to be seen whether these changes will result in more actions for damages in Malta.

Reform proposals

Aside from the amendments necessary in order to implement the Damages Directive, the other expected reforms, as at the date of writing, are amendments to the system for breaches of the competition rules and the introduction of the leniency regime, both of which have been dealt with above.

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