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Directorate for Financial and Enterprise Affairs  
**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Malta

-- 2022 --

This report is submitted by Malta to the Competition Committee FOR INFORMATION.

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## *Malta*

### Executive Summary

1. The Office for Competition (hereinafter ‘OC’) is the national competition authority responsible for ensuring effective competition in terms of the Malta Competition and Consumer Affairs Authority Act and the Competition Act.
2. The OC is one of the four entities within the Malta Competition and Consumer Affairs Authority. The OC aims to promote competition by promoting sound competitive practices for the benefit of consumers, businesses and the economy at large.
3. This aim has been thoroughly pursued by the OC primarily by its enforcement directed towards the curtailment of anti-competitive agreements and abusive practices in terms of the Competition Act and the Treaty on the Functioning of the European Union and the appraisal and assessment of concentrations according to the Control of Concentrations Regulations.
4. The OC is also active in enforcement, advocacy, and control of concentrations.
5. During the year, the OC examined and investigated alleged infringements of the Competition Act in various sectors, mainly in the telecommunications, entertainment and recreational, maritime and transport, energy, financial and insurance sectors.
6. 2022 was an important year for the OC. For the first time the OC approved a complex Phase II concentration subject to commitments, including the appointment of a monitoring trustee who has the duty to monitor the compliance of the notifying parties with the conditions and obligations contained in the commitments.
7. Another first for the OC was to engage in active advocacy activities seeking to promote competition by intervening before the Public Contracts Review Board and the Court of Appeal to address competition distortions caused by public authorities.
8. The OC also started issuing warning letters to undertakings that were suspected to have potentially infringed competition rules.

## 1. Changes to competition laws and policies, proposed or adopted

### 1.1. Introduction of Warning letters

9. To enhance the OC’s toolbox in encouraging compliance with competition law and to step-up its enforcement activity, the OC, in 2022, started issuing warning letters to undertakings that were suspected to have potentially infringed competition law.
10. Warning letters aim to foster compliance with competition law. The OC sends warning letters either when no formal investigation has been initiated or during a formal investigation.
11. Failure to comply with competition law following the receipt of a warning letter is considered a serious aggravating factor, which could result in an increase of at least 25% in the penalty to be requested by the OC, should the OC institute Court proceedings after concluding its investigations.
12. In 2022, the OC issued two warning letters in two of its pending investigations.

## 2. Enforcement of competition laws and policies

### 2.1. Action against anticompetitive practices, including agreements and abuses of dominant positions

13. In 2022, the OC assessed various investigations of alleged anti-competitive practices which go against the Competition Act mainly in the telecommunications, entertainment and recreational, maritime and transport, energy, financial and insurance sectors.

14. The OC is currently investigating an alleged anti-competitive practice in the telecommunications sector. A request was received from the Minister responsible for Competition to investigate an alleged tariff increase announced by the three leading telecommunications companies in Malta. Following discussions and various communications between the OC and the three telecom operators, the latter decided to reduce and roll the prices back of their subscription services to what they were before the price announcements for customers who do not use direct debit to pay for their services until the OC completes its investigation. This investigation is ongoing.

15. The OC received a request for the issuance of interim measures in the energy sector. In its assessment, the OC concluded that, in view of the considerations and developments that took place following the lodging of the request for interim measures with the OC, the legal conditions for requesting the Court to impose interim measures had not been met. There was no proven urgency to act to prevent significant and irreparable harm to competition and, thus, there was no requirement for the OC to establish whether a *prima facie* indication of an infringement of competition rules exists.

### 2.2. Mergers and acquisitions

#### 2.2.1. Statistics on number of mergers notified and/or controlled under the competition laws

16. To safeguard competition and to ultimately maximise consumer welfare, one of the main roles of the OC is to determine whether any proposed concentration will bring about substantial lessening of competition (hereinafter referred to as ‘SLC’) in the domestic market.

17. In 2022, the OC adopted nine concentration decisions on proposed concentrations that impacted both the local and foreign markets as there was no harm to competition. Concentrations between foreign companies are referred to the OC as their turnover in Malta exceeds the threshold established in the Control of Concentrations Regulations and thus must be assessed on whether these concentrations lead to a SLC in the local market.

18. The decisions covered several diverse sectors and mainly related to the stationery and office supplies, pharmaceuticals, and shipping industries among others.

19. During its assessment of one of the nine concentration decisions, the OC concluded that *prima facie* the proposed concentration may lead to SLC in the markets concerned at national level and conducted a deeper assessment. Following its assessment, the OC cleared the in-depth acquisition subject to commitments which included the appointment of a monitoring trustee- a first for the OC.

20. Apart from these nine decisions, the OC conducted an in-depth assessment of a case which was also deemed to bring a SLC in the markets concerned at a national level. The concentration was in the end abandoned by the notifying parties in the proposed

concentration. Specifically, on 30 September 2021, a notification of a proposed concentration between Lidl Immobiliare Malta Limited, Scotts Limited and Said Investments Limited was deemed complete by the OC. On 10 November 2021, the OC decided to initiate proceedings for an in-depth investigation. On 8 February 2022, based on statements by the parties to the proposed concentration and evidence in the file, the concentration, as notified, was considered to have been abandoned for the purposes of the application of the regulations.

21. All concentrations were assessed within the time limits stipulated by the Control of Concentrations Regulations.

### 2.2.2. Summary of significant cases

#### *Assessment of Full-Function Joint Venture between Bianchi and Sons Limited, Merrill Invest Limited and Ziti Technologies Limited.*

22. On the 5<sup>th</sup> of September 2022, the OC adopted a decision in relation to the proposed full-function joint venture between Bianchi and Sons Limited, Merrill Invest Limited and Ziti Technologies Limited (hereinafter jointly referred to as ‘the Notifying Parties’) and approved the concentration subject to commitments.

23. Following a preliminary market investigation of the concentration, the OC concluded in its Phase I decision that the proposed concentration could *prima facie* limit competition in the market for passenger fast ferry services between Valletta, Malta, and Mgarr, Gozo. The Office expressed concerns that the proposed concentration could lead to adverse non-horizontal competition effects arising through input foreclosure, harming competition and consumer welfare in the process.

24. For these reasons, the OC concluded that *prima facie* the proposed concentration may lead to a SLC in the market for passenger fast ferry services at the national level.

25. In this regard, the OC undertook a more in-depth quantitative and qualitative assessment to determine the effects this joint venture would have on competition.

26. The OC considered whether the proposed concentration could engage in input foreclosure in relation to the provision of ticketing technology services to the downstream competitor by applying the ability-incentive-effect analytical framework. The OC assessed whether the proposed joint venture would have the ability and incentive to engage in any total or partial foreclosure strategies.

27. On 13 April 2021, the OC issued a Statement of Objections (hereinafter referred to as ‘SO’) to the Notifying Parties.

28. The OC was of the provisional view that the proposed joint venture may lead to a SLC because of vertical effects arising from input foreclosure, and other non-co-ordinated effects in the passenger fast ferry market between Valletta, Malta, and Mgarr, Gozo.

29. The Notifying Parties provided their written submissions on 5 May 2021 in response to the SO issued by the OC. Subsequently, a meeting was held with the Notifying Parties on 6 May 2021, whereby the Notifying Parties put forward their oral submissions.

30. To render the proposed full-function joint venture compatible with the Regulations, the Notifying Parties submitted a set of commitments which were market tested and reviewed by the OC. Following a period of discussion with the Notifying Parties, the amended commitments were submitted to the OC on 14 June 2022.

31. The OC considered the commitments to be sufficient in scope and suitable to eliminate the serious doubts on the compatibility of the transaction with the Control of

Concentrations Regulations in relation to the market for fast-ferry service between Valletta, Malta, and Mgarr, Gozo.

32. A Monitoring Trustee was appointed by Ziti Technologies Limited and approved by the OC, to monitor the compliance of the Notifying Parties with the conditions and obligations contained in the Final Commitments.

33. The monitoring trustee is required to provide an update to the OC on a quarterly basis.

### *Phase 1 Decisions*

34. In the acquisition of sole control over Toshiba Carrier Corporation by Carrier Corporation, related to HVAC systems for buildings, the OC concluded that, the parties would not be liable to impede effective competition given that post-transaction the market shares would not exceed 25%. Moreover, in the assessment it emerged that the parties do not feature among the main market players in the supply of HVAC systems in Malta and, thus, the parties will continue to face strong competition from well established brands in the local market.

35. In the assessment of the proposed acquisition of Rimorchiatori Mediterranei S.p.A. by SAS Shipping Agencies Services S.a.r.l., part of the MSC Group, the OC in its conclusion stated that, albeit a vertical relationship is present between the parties' operations in the upstream market for harbour towage services and (i) the container liner shipping services and (ii) the oceanic cruise services, the concentration would not lead to an SLC and that the involved parties would continue to face strong competition in the relevant markets concerned as the merged entity would have neither the ability nor the incentive to engage in an input or customer foreclosure strategy.

## **3. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reform, trade and industrial policies**

36. The Malta Competition and Consumer Affairs Authority Act (Chapter 510 of the Laws of Malta) empowers the OC to provide advocacy on competition law.

37. In 2022, the OC main advocacy efforts were focused on ensuring a level playing field for businesses operating in the private retail market of infant milk formula mainly aimed at addressing the practice of the Central Procurement and Supplies Unit ("CPSU") of awarding the tender for the procurement of infant formula in the public health service to one supplier. This practice was and continues to heavily distort the development of fair and healthy competition in the private retail market for infant milk formula.

38. To this effect, the OC intervened for the first time as a party before the Public Contracts Review Board ("PCRB") in terms of the Public Procurement Regulations and presented its arguments.

39. The OC made it clear that the policy of having a single supplier servicing the public health sector is restricting consumer choice for parents and is creating significant barriers to entry and expansion for suppliers in the private retail market for infant formula.

40. In addition, the OC submitted its written reply and provided its oral submissions before the Court of Appeal in a case instituted by one of the suppliers of infant formula.

41. Both before the PCRB and the Court, the OC argued that the sector inquiry conducted in terms of the Competition Act clearly demonstrated that the tendering process at Mater Dei Hospital is distorting competition in the private retail market of infant formula

and that the CPSU should change its current procurement practices and adopt one of the recommendations of the OC as detailed in the sector inquiry to avoid harming competition.

## 4. Resources of Competition Authorities

### 4.1. Resources overall (current numbers and change over previous year)

#### 4.1.1. Annual budget

42. The OC is one of the four entities forming part of the Malta Competition and Consumer Affairs Authority. The Office for Consumer Affairs, Standards and Metrology Institute and Technical Regulation Division are the other entities. The OC, though acting independent and autonomous in respect to the prioritisation, investigation and determination of cases and enforcement, does not have a specific budget, but a global budget is allocated to the whole Authority.

#### 4.1.2. Number of employees

43. As at the end of year, there were 11 employees with the OC:

Table 1.

	2022	2021
Economists	5	4
Lawyers	4	3
Other Professionals	1	1
Support staff	1	1
Total Number of Employees	11	9