

IN-DEPTH

# Public Competition Enforcement

MALTA



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# Public Competition Enforcement

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In-Depth: Public Competition Enforcement (formerly The Public Competition Enforcement Review) is an annual survey of the most important and relevant developments in public competition law enforcement in the most significant jurisdictions worldwide. Among other things, it examines the practical implications of recent enforcement activity regarding cartels, restrictive agreements, abuse of dominance, state aid and merger control.

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# Malta

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## Introduction

Competition enforcement in Malta is entrusted to Malta's national competition authority – the Office for Competition – within the Malta Competition and Consumer Affairs Authority (the Malta NCA) as established by the Malta Competition and Consumer Affairs Act, Chapter 510 of the Laws of Malta (the MCCA Act), and to the Civil Court (Commercial Section) (the Court).<sup>[1]</sup>

The Malta NCA conducts investigations and institutes proceedings against undertakings that are suspected to have infringed competition law. It is then the Court that would make a finding that undertakings have infringed competition law, issue interim measures and impose fines. Following the Court's decision, an appeal may be submitted to the Court of Appeal on grounds of law or fact.

### Prioritisation and resource allocation of enforcement authorities

The Competition Act<sup>[2]</sup> is the primary legislation concerned with competition matters. Since coming into force in 1995, it has undergone several amendments over the years, including extensive amendments following Malta's accession to the European Union. The most recent major amendment occurred in 2019.

The MCCA Act affords the Malta NCA the possibility of allocating different degrees of priority to the cases brought or pending before it. In so doing, it must take, inter alia, the following into account:

1. the degree of consumer harm resulting from the alleged or suspected infringement;
2. the extent of consumer benefit resulting from the intervention of the Malta NCA;
3. the nature and gravity of the alleged or suspected infringement;
4. the stage of investigation;
5. whether the alleged practices are still ongoing or whether harmful effects persist; and
6. whether the alleged unlawful conduct is being examined or can be better examined by another public authority under its regulatory regime.

The Director General (Competition) (the Director General) within the Malta NCA has the power to carry out investigations of their own motion or upon a reasonable allegation in writing of a breach of the provisions of the Competition Act. Likewise, where the Director General receives a complaint against an undertaking but considers that there are insufficient grounds for acting on such a complaint, they may decide not to open an investigation, informing the complainant accordingly.

The MCCA Act further provides that the Malta NCA shall issue guidelines on its prioritisation allocation which should provide for the possibility of the complainant to ask for information on the degree of priority allocated to a case, to which the Malta NCA must provide a reasoned reply within a specific time frame.

Currently, the Malta NCA has not issued any such guidelines. However, in its recently published its 'Methodology for Determining the Penalty Amount: Guidelines of the Office for Competition' (the Penalty Guidelines), the Malta NCA indicated that it considers cartel agreements and abuses of dominance that significantly impact on broader group of consumers as the 'most serious infringements of competition law'.<sup>[3]</sup> It can therefore be inferred that practices of this nature are matters that the Malta NCA prioritises in its enforcement.

The Malta NCA operates as a small authority within a multi-function regulator, with staffing and budgetary constraints typical of a small jurisdiction.

The Malta NCA has in recent years invested in capacity-building initiatives, including training on dawn raids and investigative techniques,<sup>[4]</sup> and has recently joined an EU-level project aimed at enhancing digital and data-driven enforcement capabilities,<sup>[5]</sup> reflecting a strategic focus on emerging challenges in digital markets.

## Enforcement agenda

Dr Melchior Vella was recently appointed as a Director General of the Malta NCA.

In January 2026, the Malta NCA launched a public consultation (the Consultation) on the proposed reforms to Malta's Control of Concentration Regulations (the Regulations).<sup>[6]</sup>

One of the proposed amendments concerns the introduction of a call-in power. If implemented, the Malta NCA will have the power to call in transactions that would not meet the turnover thresholds specified in the Regulations. The Malta NCA expressed how this tool will address issues brought about by concentrations that play a key role in the markets in which they operate, but that escape control due to the much lower turnover generated by the undertaking being acquired.

## Year in review

In June 2025, the Court of Appeal upheld the judgment of the the Court, which confirmed the findings of the Malta NCA that an undertaking providing aviation fuel infrastructure access was in a dominant position and acted abusively on the relevant market. The abusive conduct in question concerned margin squeeze.

As mentioned above, in February 2026 the Malta NCA has also published the Penalty Guidelines. The Penalty Guidelines outline and formalise the principles and methodology adopted by the Malta NCA in practice when proposing financial penalties for competition law infringements. The Malta NCA stated that the scope of these Penalty Guidelines is to enhance transparency and predictability in the enforcement of competition rules.

Following the launch of the Consultation in January 2026, the Malta NCA expressed its intention to modernise and simplify merger control in Malta, noting that only minor amendments were made to the Regulations since 2007. The proposed amendments seek to enhance legal certainty and to improve and provide clarifications on several key aspects of the local merger control regime. The Consultation encouraged stakeholders to submit their views on the consultation by February 2026.

## Cartels

In Malta, cartels are prohibited by Article 5 of the Competition Act as well as Article 101 of the Treaty on the Functioning of the European Union (TFEU). The scope of Article 5 of the Competition Act is limited to restrictions of competition within Malta or any part thereof, whereas Article 101 TFEU applies when trade between Malta and any one or more Member States is appreciably affected.

Article 5 of the Competition Act and Article 101 TFEU apply to any agreement between undertakings and also to the exchange of commercially sensitive information between undertakings.

Immunity in penalties may be granted to a participant in a secret cartel. This is possible on the basis of the Immunity from Penalties and Reduction of Penalties in Cartel Investigations Regulations.<sup>[7]</sup> Immunity may be granted where, among other things, the participant is the first to submit sufficient evidence of the existence of the cartel and the participant cooperates genuinely and fully with the Malta NCA.

A participant that does not qualify for immunity may nonetheless benefit from a reduction in the penalties when it discloses its participation in an alleged secret cartel and submits evidence that represents significant added value for the purpose of proving an of Article 5 of the Competition Act and/or Article 101 TFEU. Levels of reduction possible range between 20% and 50% of the penalty imposed.<sup>[8]</sup> Any participant undertakings that have taken steps to coerce other undertakings to join a secret cartel or to remain in it may only benefit from a reduction of penalties rather than full immunity.<sup>[9]</sup>

### Outlook

Cartel detection and enforcement are a main priority for the Malta NCA. As discussed above, the Malta NCA recently published its Penalty Guidelines and has emphasised on how cartel agreements are considered as one of the most serious infringements of competition law.

In terms of the Penalty Guidelines, the Malta NCA places an emphasis on proportionality when proposing what penalty the Court should impose on an undertaking found to have breached competition rules. However, the Malta NCA has also expressed how, in determining the amount of penalty, the general principle followed is to deter both the infringing undertaking as well as other undertakings from engaging in similar future conduct.

In assessing that the proposed penalty is proportionate, several factors will be taken into account. These include: the combined market share of the undertakings concerned; the actual or potential effect of the infringement on competitors or third parties; and how likely it is for the type of infringement under investigation, by its nature, to harm competition.

A step-by-step methodology is applied, starting off by establishing the basic amount of penalty, which is subsequently adjusted according to the duration of the infringement, any aggravating or mitigating factors and specific deterrence. A further adjustment takes place to ensure that the penalty is proportionate. The final step involves the application of any reductions for leniency and any settlement discounts. However, the Malta NCA has also

expressed how cartels will attract higher penalties than other less serious breaches of competition laws.

## Antitrust: restrictive agreements and dominance

Agreements between undertakings, decisions of associations of undertakings, and concerted practices with the object or effect of preventing or restricting competition within Malta or any part thereof, are prohibited by Article 5(1) of the Competition Act.

Article 5(3) provides the exception to this prohibition where the agreement, decision, or concerted practice:

1. contributes towards improving production or distribution of goods or services, or towards the promotion of technical or economic progress; and
2. allows consumers a fair share of the resultant benefit without imposing restrictions which are not indispensable on the undertakings involved or eliminating or significantly reducing competition in respect of a substantial part of the products to which the agreement refers.

The abuse of a dominant position within Malta or any part thereof is prohibited by Article 9 of the Competition Act.

Articles 5 and 9 reflect Articles 101 and 102 TFEU, respectively, but are limited to the anticompetitive behaviour that takes place within Malta. When the anticompetitive behaviour affects trade between Malta and any one or more Member States, the TFEU applies.

### Significant cases

As mentioned above, in June 2025 the Court of Appeal upheld the 2020 judgment of the Court which confirmed the Malta NCA's finding of an abuse of dominant position in the form of margin squeeze in the provision of aviation fuel infrastructure access.<sup>[10]</sup>

The case arose from a complaint filed by an operator for aircraft refuelling services with the Malta NCA. The complainant alleged that the operator of the aviation fuel infrastructure at Malta's airport imposed excessive access fees, with the result that the complainant's operations were no longer commercially viable.

The Court of Appeal upheld such a finding of margin squeeze. The providence dealt with issues of essential facility, dominance, margin squeeze and the as-efficient-competitor test.

This judgment is notable for its substantive guidance on abuse of dominance in infrastructure markets. In its analysis, the Court made reference to EU case law including *Bronner* on the issue of indispensability,<sup>[11]</sup> and *Deutsche Telekom*<sup>[12]</sup> in connection with the equally efficient competitor test. No penalties were imposed on the dominant undertaking, however, given that the judgment of the Court was declaratory in nature.

## Outlook

The MCCA's 2024 Annual Report (the Annual Report), which was published in July 2025, the Malta NCA noted that it pursued several instances where anticompetitive practices were alleged. The Annual Report further referenced two provisional findings reports issued in connection with ongoing investigations within the entertainment sector.

These provisional findings reports are interim documents issued by the Malta NCA during its investigation into alleged breaches of competition laws. They detail preliminary evidence of findings, or otherwise, of anticompetitive behaviour. Provisional findings reports are made available to the complainant and to the undertaking whose conduct is being complained of once finalised. The parties will be invited to provide their views thereon. Following this, the Malta NCA will either file a sworn application in Court requesting the Court to issue a judgment finding an infringement.

The Malta NCA also reported that it conducted several informal investigations in 2024. The investigations were carried out in diverse economic sectors, including food, retail and transport. No further information was published in connection with these investigations.

## Sectoral competition: market investigations and regulated industries

Article 11A of the Competition Act grants the Malta NCA the power to conduct an inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. Such inquiries are carried out where the trend of trade, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the Maltese market.

### Significant cases

Based on publicly accessible sources, it does not appear that the Malta NCA launched any industry-wide investigations in 2024 and 2025.

The latest market investigations carried out and reported on by the Malta NCA date back to 2021 and pertains to the wholesale and retail trade and manufacturing economic sectors.<sup>[13]</sup>

The first investigation was initiated *ex officio* by the Malta NCA following announcements by Malta Dairy Products that it would be increasing the prices of its milk products. The Malta NCA concluded that such an increase in prices did not constitute an abuse of dominant position according to Article 9 of the Competition Act.

The second was a sector inquiry on the supply of infant milk formula in the public health sector and its impact on the private retail market. The sector inquiry was initiated by the Malta NCA, but a supplier had complained that public contract for the supply of infant formula to Mater Dei Hospital is distorting competition in the private retail market. In conclusion, the Malta NCA had recommended to the relevant contracting authority to better its procurement process for the well-functioning of the secondary markets.

## Outlook

Pursuant to the launch of the Consultation in January 2026, one of the proposed introductions to the Regulations concerns the possibility of the Malta NCA to consult with sectoral regulatory authorities where a proposed concentration concerns a market that is also regulated by a sectoral regulatory authority. Should the proposed introduction be implemented, the Director General within the Malta NCA can seek the views of the sectoral authorities regarding any potential competition concerns that a proposed concentration may bring about in the market.

## State aid

As a Member State of the European Union, the applicable law on state aid in Malta is found in Articles 107 and 108 TFEU. Article 107 TFEU is mirrored in Article 3 of the State Aid Monitoring Regulations.<sup>[14]</sup> The State Aid Monitoring Board, established under the Business Promotion Act (Chapter 325 of the Laws of Malta), is tasked with overseeing state aid matters in Malta, including providing assistance to ministries and governmental departments and agencies in structuring state aid programmes and undertaking necessary assessments to understand whether it amounts to aid.

## Significant cases

On 27 February 2024, the Court of Appeal, Malta's court of last instance, rejected a private enforcement claim based on illegal state aid granted to a competitor. A producer responsibility organisation for packaging waste challenged a government payment made to its sole competitor, alleging unlawful state aid under Article 107 TFEU. The claimant became aware of the payments through witness testimony in separate proceedings in January and February 2014 but only instituted judicial review proceedings in September 2014. The First Hall Civil Court, and later the Court of Appeal, classified the claimant's lawsuit as one for judicial review and held that it exceeded the six-month limitation period. Both the first instance court and the Court of Appeal confirmed the action was time-barred, rejecting arguments that alternative procedural routes could circumvent the applicable limitation period.

## Merger review

In terms of the Regulations, a transaction is notifiable to the Malta NCA in the context of a merger or an acquisition where in the preceding financial year the aggregate turnover in Malta of the undertakings concerned exceeded €2,329,373.40 and each of the undertakings concerned had a turnover in Malta equivalent to at least 10 per cent of the combined aggregate turnover in Malta of the undertakings concerned. The creation of a full-function joint venture that performs on a lasting basis all the functions of an autonomous economic entity is also notifiable. The Malta NCA has taken the position that

all such joint ventures are notifiable to it, even if the above-mentioned turnover test is not satisfied.

Malta's merger control regime has remained largely unchanged for the past 20 years. However, as discussed above, the Malta NCA has recently launched a public consultation with the aim of amending and modernising these Regulations.

### Significant cases

The majority of merger control decisions taken by the Malta NCA qualify for the simplified procedure under the Regulations. However, in a first for the Malta NCA, a transaction was recently blocked on the basis that the acquisition would give rise to a substantial lessening of competition on the market, in particular in the southern region of Malta. The prohibition of this concentration followed an in-depth Phase II investigation.

The transaction concerned an international discount retailer chain, with a presence in Malta, seeking to acquire real estate from its competitor through which it was going to operate a supermarket. The discount retailer appealed from the Malta NCA's decision to the Court, both on the procedural front and on the merits, and for several reasons. One reason was that at the time the Malta NCA adopted its decision prohibiting the transaction, the post of Director General within the Malta NCA was vacant.<sup>[15]</sup>

The discount retailer argued that, as a result, this decision was not validly issued, and, therefore, the acquisition should be deemed automatically lawful in terms of the Regulations. The Court rejected the discount retailer's line of arguments, on the basis that although the Regulations do not specifically allow the appointment of an acting Director General, such an appointment is still valid. This case is still being heard before the Court on the merits.

### Trends, developments and strategies

In its Annual Report, the Malta NCA published a total of eight decisions on proposed concentrations in 2024, which concern a variety of sectors such as medical, IT, cryptocurrencies, gaming, insurance and aviation. The majority of these decisions qualified for the simplified procedure in terms of the Regulations. 2024 also saw the first prohibition decision issued by the Malta NCA.

The Malta NCA launched its consultation on proposed reforms to the Regulations in January 2026. Malta's economy has changed significantly over the span of two decades, and, hence, the aim of the proposed amendments is to modernise and simplify Maltese merger control and enhance legal certainty.

Among the proposed amendments is the increase in turnover thresholds from €2.3 million to €4.5 million. Additionally, at least two parties must generate €800,000 in Malta turnover.

### Outlook

This revised turnover test aims to ensure that only the transactions that can materially affect competition and the economy will be under scrutiny.

In line with the push across Europe to tackle killer acquisitions, the Malta NCA is also proposing the introduction of a 'call-in' power. As currently drafted, this call-in power may present significant issues to predictability and legal certainty, particularly due to the impossibility of merging parties to self-assess whether their proposed concentration is reportable or otherwise.

A further proposed amendment seeks to introduce new concentration notification forms, one for transactions that qualify for the simplified procedure and another for those concentrations that do not qualify for the simplified procedure. The introduction of a short-form concentration notification form will clearly indicate what information notifying parties must furnish the Malta NCA with when notifying a transaction benefitting from the simplified procedure.

A welcome clarification is that only those full-function joint ventures that meet the turnover thresholds are notifiable to the Malta NCA.

As discussed above, stakeholders were invited to submit their feedback on the proposed amendments to the Regulations by February 2026. As at the time of publication, the Malta NCA has not published the results of the consultation

## Outlook and conclusions

The proposed amendments to the Control of Concentrations Regulations take centre stage as the most significant current issue. Practitioners and investors are closely following these developments, particularly the proposed introduction of a 'call-in' power being given to the Malta NCA for below-threshold concentrations.

The Court's decision on the merits of the challenge to the Malta NCA's first prohibition decision following a Phase II investigation is also likely to attract considerable attention.

With the recent appointment of a new Director General, it is yet to be seen whether the Malta NCA will adopt a more active enforcement policy with respect to cartels and dominance cases and whether it will identify any areas of priority.

## Endnotes

- 1 Chapter 510 of the Laws of Malta. [^ Back to section](#)
- 2 Chapter 379 of the Laws of Malta. [^ Back to section](#)
- 3 Penalty Guidelines, paragraph 35. [^ Back to section](#)
- 4 <https://www.mcaa.org.mt/Section/Content?contentId=10943>. [^ Back to section](#)
- 5 <https://mcaa.org.mt/Section/Content?contentId=13838>. [^ Back to section](#)
- 6 Subsidiary Legislation 379.08 of the laws of Malta. [^ Back to section](#)

- 7 Subsidiary Legislation 370.10. [^ Back to section](#)
- 8 *ibid.*, Regulation 9. [^ Back to section](#)
- 9 *ibid.*, Regulation 4. [^ Back to section](#)
- 10 1/2011/1 MCH Uffiġju għall-Kompetizzjoni vs Korporazzjoni Enemalta wara l-ilment ta' Attard Services Limited u Shell Aviation Limited, Court of Appeal (Superior Jurisdiction) 23 June 2025. [^ Back to section](#)
- 11 C-7/97 *Oscar Bronner*, 26 November 1998. [^ Back to section](#)
- 12 C-280/08P *Deutsche Telekom v. European Commission*, 14 October 2010. [^ Back to section](#)
- 13 COMP/MCCAA/12/2019 29 January 2021: <https://mccaa.org.mt/media/5724/ex-officio-milk-investigation-01022021.pdf>; COMP/MCCAA/7/2020 13 September 2021: <https://mccaa.org.mt/media/6851/oc-final-report-sector-inquiry-infant-formula-130921.pdf>. [^ Back to section](#)
- 14 Subsidiary Legislation 325.07: <https://legislation.mt/eli/sl/325.7/eng>. [^ Back to section](#)
- 15 By way of a brief background, the post of Director General was vacant between late 2023 until September 2025. [^ Back to section](#)



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