

All about competition

On Friday, October, 18, 2002, Malta closed negotiations on another sensitive area – competition. Discussions covered, among others, subsidies paid by Malta to the shipyards.

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Why an EU Competition Policy?

EU rules on competition, both at national and at European level, stop anti-competitive behaviour. This ensures that enterprises in the EU market can compete on a fair and level playing field. Commercial practices that distort competition in trade between EU countries are prohibited. Competition law also prevents large dominant companies from abusing of their position in the market. Excessive amounts of subsidies paid by governments to companies are also prohibited. Competition plays in the interests of enterprises that compete fairly because it removes the threat posed to them by enterprises that compete unfairly. But it also favours the interest of consumers who normally benefit from a wider choice of goods and services, better quality and cheaper prices.

NEGOTIATIONS ON COMPETITION POLICY – CHRONOLOGY

Screening	October 1999
Negotiations opened	November 2000
Negotiations closed	October 2002

HOW COMPETITION AFFECTS YOU

If you are a consumer	Competition normally leads to a wider choice, better quality and cheaper prices.
If you are in business	Competition rules remove the threat posed by enterprises that compete unfairly or illegally.

Agreements between enterprises

Agreements between companies that distort competition are illegal, unless they are specifically exempted from competition rules. For example, an agreement to fix prices between competing companies is illegal. However, certain agreements containing anti-competitive clauses may be exempt if they have an overall positive balance on competition. For example, exclusive distribution agreements, exclusive purchasing agreements and franchise agreements are permissible and can continue to be enforced.

➤ **Position in Malta**

A competition law, modelled on EU law, was first introduced in 1994. Following amendments in 2000, Maltese law is now in line with EU law. The Office of Fair Competition, which has now become the Division for Competition and Consumer Affairs, was strengthened. Exemption regulations were adopted on Vertical Agreements and Concerted Practices (LN271/01), Horizontal Agreements (LN175/02) and Technology Transfer Agreements. This means that these types of agreements are exempt without having to first get clearance from the competition office.

Abuse of dominant position

A company has a dominant position if it is very strong in the market. Being dominant is not illegal. Every company rightly strives to do well and grow stronger in its market share. However, dominant companies cannot abuse of their position. It is abuse that is illegal. For example, dominant companies that set prices below cost in order to drive out competition abuse their position. This is illegal. Control over dominant companies plays in favour of consumers but also in favour of small enterprises that are protected from unfair competition by large companies.

➤ **Position in Malta**

Malta is in line with EU law on the control of abuse by dominant companies.

Merger Control

Companies may join with others or merge to gain a stronger presence in the market. Again, there is nothing wrong in this. However, since mergers of very large companies may have a direct impact on competition in the market, they are monitored. If they have a negative effect on competitive forces, they are subjected to conditions or even prohibited.

➤ **Position in Malta**

A merger control regulation, based on EU law, was adopted in 2002.

State-owned companies

State-owned companies should be subject to competition just like those in the private sector. The EU has successfully pushed liberalisation in areas such as telephony, the airline industry and most recently electricity and postal services. However, restrictions to competition are still allowed in cases where state-owned companies provide a public universal service that is essential for the public, such as water supply. This is known as a “service of general economic interest”.

➤ **Position in Malta**

Initially, our competition law only applied to the private sector and this created an unfair advantage for state-owned companies. By 2003, state-owned companies would have been gradually subjected to the rules of competition. Restrictions will only be retained with respect to services of a general economic interest, in line with EU rules.

State Aid

State aid is financial support that is granted by governments to certain companies. We usually refer to them as “subsidies” which are direct grants. But there are other forms of state aid, such as tax incentives, subsidised interest rates on loans or loan guarantees. EU law prohibits state aid because it gives an unfair competitive advantage to assisted companies over companies that are not assisted. However, not all types of state aid are prohibited. State aid is allowed if it is granted for justifiable reasons such as, to help small businesses, for restructuring, training, job creation or to help regional development. State aid which is limited in amount is also exempted from EU rules.

➤ **Position in Malta**

A State Aid Monitoring Board was set up under the Business Promotion Act to oversee the compatibility of all state aid measures. All state aid must be notified to this board in advance. However, since Malta’s level of economic development stands at just around 55% of the EU average, Malta may continue to grant aid to support certain objectives, such as investment. For example, Malta may grant state aid of up to fifty per cent (50%) of the costs of investments in the case of large companies. In the case of small enterprises, state aid can go up to sixty five per cent (65%).

Outcome of negotiations

During negotiations, Malta confirmed its willingness to apply EU competition policy. However, a number of practices persisted that defied competition. For instance, until recently, most state-owned companies in Malta were protected from competition rules. In sectors

AT A GLANCE: OUTCOME OF NEGOTIATIONS ON COMPETITION POLICY

	MALTA’S REQUEST	OUTCOME
Subsidies / Shipyards	Transitional period to phase out state aid paid to the state-owned shipyards over seven years.	YES. Request accepted. Shipyards will continue receiving assistance until the end of 2008 to restructure and return to commercial viability.
Subsidies / Enterprises	State aid already awarded to certain enterprises under the old Industrial Development Act and the Malta Freeport Act should be retained.	YES. Request accepted, with changes. Small enterprises will continue to remain eligible for assistance. Larger companies will also keep on benefiting, but with some modifications.
	Agreement on the compatibility of incentives under the new Business Promotion Act.	YES. Request accepted. With the exception of operating aid that must be phased out by 2008.
Subsidies / British tourists	Transitional period until June 2004 to phase out the Tour Operator Support Scheme (TOSS).	NO. Request withdrawn as from November 2002, British tourists will pay less departure tax to come to Malta as our country will now be treated like other EU countries. As a result, the scheme is no longer necessary because the difference in treatment no longer exists.
Liberalisation / fuel imports.	Transitional period until the end of 2005 to allow Enemalta to adjust to liberalisation of the importation, stocking and sales of petroleum products.	YES. Request accepted.

such as telephony, Malta preserved monopoly status both for the state-owned telecoms company and for private-owned companies in the mobile telephony and cable television services. Telecommunications have now been liberalised and this resulted in a huge surge in the use of mobile telephones.

On subsidies, Malta continues to pay significant amounts of public money to certain sectors, such as the ship-building and ship-repair sector. In the industrial sector, Malta also offered export-related incentives that do not just breach EU rules on state aid, but also Malta's commitments as a member of the World Trade Organisation (WTO). In tourism, Malta paid subsidies to attract tourists from Britain, which is its main market.

In its preparations for membership, Malta therefore took several steps to address these issues. For instance, a new law providing for investment incentives was passed, whereas a task force was set up to agree on a restructuring plan for the shipyards. Some of these measures could not be finalised by membership. This is why, during negotiations, Malta requested to adapt to some of the obligations of membership over a longer period of time after membership.

Shipyards: Lm420 million in subsidies until 2008

In Malta, subsidies paid to the state-owned ship-building and ship-repair companies have been the subject of much debate. Once a leading industry, the sector has been in decline for several years and has only survived thanks to generous hand-outs of public funds. In the main, subsidies took the form of operating aid, that is, payments that cover recurrent costs, such as wages. In 2000 alone the sector received around Lm19 million in grants. In addition, the state also provided loans and other advances that, over the years, accumulated to several millions in debt.

EU law regulates state aids paid to this sector. Operating aid is prohibited because it does not support the improvements, such as investments, that need to be made to return the industry to competitiveness. But EU law allows certain type of assistance and puts conditions under which this may be paid. This includes aid for restructuring purposes, provided it is given on a "one-time-last-time" basis. It also includes regional investment aid, aid for innovation, research and development, training aid and aid for environmental protection. Aid is also possible in cases where a company operating in this sector is to be closed down, in order to facilitate the necessary adjustments, espe-

cially the social consequences that need to be taken into account.

Although Malta agrees with the principle that the sector should be returned to viability without the need of state assistance, it wanted to achieve this in a gradual manner. For this reason, Malta set up a task force to prepare a restructuring plan for the yards. On the basis of this plan, during negotiations, Malta requested a transitional period of seven years "in order to ensure an orderly adjustment process in the light of the significant socio-economic implications." In other words, Malta wanted the sector to have sufficient time to implement a restructuring plan before subsidies are phased out.

After detailed negotiations, an agreement was finally reached on a transitional period until the end of 2008. By this time, the restructuring plan is expected to be implemented and the Maltese yards should be in a position to compete effectively. To achieve this, the plan also envisages a reduction in the workforce and in capacity during the transitional period. The subsidy covered by the agreement until 2008 runs into four hundred and twenty million Maltese liri (Lm420m). This includes a write-off of the yards' accumulated debt of some three hundred million liri (Lm300m). The remaining aid will be paid in the form of subsidies for the purposes of investment, training, compensation for social costs and working capital.

Understandably, the agreement was very difficult to achieve and in its position the EU stated that "this unique case can in no way be regarded as a precedent."

Old incentives for business

EU rules on state aid also cover state assistance that is paid to other enterprises. Until some time ago, Malta granted investment incentives to new enterprises under a law known as the Industrial Development Act (IDA) and under the Malta Freeport Act (MFA). During negotiations, Malta requested an agreement to ensure that the enterprises that were already awarded assistance under these laws would continue to receive it until the stipulated date of expiry. This was necessary because these companies had legitimate expectations that entitled them to this assistance.

Following negotiations on this issue, an agreement was reached to continue to allow state aid that had already been committed since most of it was already justifiable under EU rules in any case. Existing benefits granted to SMEs, which make up most of the beneficiary companies, will remain in force unchanged until they expire in 2011.





In some limited cases that involve large companies, the aid has to be converted so that it could be considered as justifiable under EU rules. This would allow the aid to be quantified and capped. In practice, however, the amount of aid involved from which the companies involved benefit will not change.

It is important to note that besides giving continued legal certainty to existing state aid, this arrangement allows these companies to benefit from other incentives in future, such as support for new investment or for training.

New incentives for business

The Industrial Development Act was superseded by the new Business Promotion Act (BPA). This new law introduces new incentive schemes to support Malta's economic development taking into account the country's specific handicaps, such as its island status and its geographic location away from mainland Europe. The law also extends incentives to enterprises engaged in business that was not previously eligible for assistance. However, it removes incentives, in particular export-related incentives, that are black-listed under EU and WTO rules.

During negotiations Malta sought assurance that the new incentives under this new law are compatible with EU rules on state aid. It was agreed that support schemes under the BPA that assist investment through incentives such as soft loans, interest subsidies and investment tax credits are in line with EU rules. On the other hand, operating aid in the form of reduced income tax and the value added scheme posed a problem. Malta argued that operating aid was necessary to offset the disadvantages that arise from Malta's island status and the additional transport costs incurred by compa-

nies investing in Malta. The EU accepted this point in principle and it was agreed that this operating aid can continue to be available until 2008.

British tourist support scheme

British tourists still make up a sizeable part of our tourist arrivals. Until recently, Malta suffered different treatment than EU countries for the purposes of departure tax imposed by the UK authorities. British tourists coming to Malta had to pay more UK departure tax than if they went to Spain, Greece, Italy or any other EU country. To support the tourist industry and also to compensate for this disadvantage, Malta operated a Tour Operator Support Scheme (TOSS) with respect to the United Kingdom. However, since this scheme fell foul of EU rules on state aid, during negotiations Malta requested a transitional period of eighteen months to phase it out. This request was subsequently withdrawn when the British authorities announced that, for the purposes of departure tax, it would start to treat EU candidate countries, including Malta, in the same way as EU countries.

Importation of fuel

EU law requires the liberalisation of the importation, stocking and wholesale marketing of petroleum products. Enemalta, the state-owned electricity company, currently enjoys a monopoly in this field. But this monopoly will have to end, giving other enterprises the right to import these products. It will also give consumers a choice. However, in order to give Enemalta sufficient time to adapt to liberalisation, Malta requested a transitional period until the end of 2005 before applying full liberalisation. The request was accepted by the EU.



An e-copy of this edition and Malta's official negotiating position paper on this area are available from MIC or from:

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