



Malta is located in the centre of the Mediterranean Sea, south of Sicily (Italy). The United Kingdom formally acquired possession of Malta in 1814. The island staunchly supported the United Kingdom through both World Wars and remained in the Commonwealth when it became independent in 1964. A decade later Malta became a republic.

Since the mid-1980s, the island has transformed itself into a freight transshipment point, a financial centre, and a tourist destination. Malta became an EU member in May, 2004.

Economy

Since the time Malta gained its independence from Great Britain in 1964, its economy has depended on tourism, foreign trade, and manufacturing. Malta's proximity to the EU market, with well-trained workers, has attracted foreign companies.

During negotiations to enter the EU, the Government took several measures to liberalise and deregulate the economy. Import levies were phased out between 2000 and 2004 and state aid for loss-making companies was reduced, in line with the EU *acquis*². All barriers to the movement of goods and capital between Malta and the rest of the EU have been removed in May 2004 after Malta's accession to the EU. A number of state-owned corporations have been privatised and further privatisation is planned.

Competition Evolution and Environment

The Maltese economy depended heavily on British military expenditure until the 1950s. During the sixties, a process of industrialisation was initiated, so that by the 1980s, manufacturing contributed about 30 percent of GDP. Between the early 70's and the mid 80's, with the Labour Party in Government, Malta experienced an expansion of government activity in economic and social fields. There was massive state contribution to the growth in GNP, due to large-scale government involvement. The extent of

| PROFILE | |
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| Population: | 399 thousand *** |
| GDP (Current US\$): | 4.9 billion*** |
| Per Capita Income: (Current US\$) | 10,780 (Atlas method)*** 17,640 (at PPP)** |
| Surface Area: | 320 sq. km |
| Life Expectancy: | 78.3 years** |
| Literacy (%): | 92.6 (of ages 15 and above) |
| HDI Rank: | 31*** |
| Sources: | |
| - World Development Indicators Database, World Bank, 2004 | |
| - Human Development Report Statistics, UNDP, 2004 | |
| (**) For the year 2002 | |
| (***) For the year 2003 | |

government intervention, nevertheless, reached startling proportions in the early 80's and altered the landscape of the Maltese economy.

With the Government in favour of public ownership, SoEs mushroomed in the 70's and 80's. The policy served a wide range of goals, i.e. economic, social, nationalistic and political. Private monopolies and oligopolies, such as telecommunications, airline services and commercial banks were nationalised and changed into public ones, in a bid to take clear control of the key areas of economic activity.

It was believed that the private sector did not have the means to embark on infrastructural projects. Accordingly, the private sector took a subordinate role in the economy, and investment in the private sector occurred mainly in light manufacturing, tourism and distribution trade.

These policies were saddled upon a developing nation where economy, efficiency and effectiveness were by and large nonexistent in SoEs, which were heavily over-manned

* Original paper submitted by Nupur Anchlia in November 2004. Revised in August 2005 & April 2006

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2 The French term *acquis* is used to refer to the total body of EU law accumulated so far.

and protected by import restrictions. Undeniably, public ownership in banking, telecommunications, ship repair, and energy procurement made an important contribution to the economy. But this resulted in a large proportion of the labour force being engaged in inefficient production. The performance of government-owned firms was generally poor. Firms catering to overseas markets faced stiff competition and were dependent on financial contributions from the Government.

In 1987, the new Government initiated a process of liberalisation and privatisation and in some cases, loss-making corporations were put into liquidation. A special agency was set up for this purpose in 1988. The Malta Investment Management Company Limited (MIMCOL) was assigned with the sensitive task of managing, monitoring and rationalising government assets. The basic objective of this policy was to increase efficiency and improve the quality of service, restructure and rationalise the public sector, and to accommodate greater scope for the involvement of the people in the ownership and management of companies, in which the government was a shareholder.

The focus of the privatisation programme was chiefly on two planks:

- boosting private shareholding in the state-owned commercial banks; and
- reconstructing many key departments into agencies or corporations, alongside reform drives in the public sector.

Competition Law and Institutions

The Competition Act of 1994 provides for fair trade, along with regulating competition, in Malta. It came into force on February 01, 1995, after being enacted on December 23, 1994, and was amended in 2000, so as to make the Act and the competition authorities more effective.

On October 01, 2001 the Competition Amendment Act came into force introducing some very important provisions including giving the Office for Fair Competition (9a Maltese competition authority) more powers to intervene in the market to stop any anticompetitive practice taking place. Merger Regulations under the Competition Act came into force in January 2003.

In 2004, the Competition Act was amended again in order to enable the application of the Modernisation Regulation 1/2003 and empower the Maltese competition authorities to enforce Articles 81 and 82 of the EC Treaty and to cooperate with other national competition authorities and the EC, in the network set up by this Regulation.

Exemption regulations were adopted on Vertical Agreements and Concerted Practices (LN271/01), Research and Development Agreements and Specialisation Agreements as 'horizontal agreements' (LN175/02) and Technology Transfer Agreements.

Malta's Competition Act endeavours to develop competition in trade through a process that encourages technological progress and quality, that best guarantees positive economic results, and contributes towards price fairness. The aim of the Act was to create a modern system, compatible with the EU rules, establishing an effective competition framework in Malta. It provided a degree of legal certainty to undertakings, in Malta, by defining the parameters within which they could lawfully conduct their business in the Maltese market and would guarantee business and consumers the advantages of competition.

The Competition Act initially only applied to the private sector in Malta. There were a few exceptions and this created an unjust advantage for public sector companies, but the law was recently modified, so as to submit all undertakings to the legislation, except for particular operations entrusted to undertakings, considered to be services pertaining to general economic interest.

The establishment of the Office for Competition, and the Commission for Fair Trading (CFT) is provided for in the Act. The Office for Fair Competition (OFC) inherently plays an investigative role. It can commence its own investigations at liberty, or at the petition in writing of a complainant, or the Minister responsible for commerce. It generally monitors the market and offers advice to the Minister, undertakings and the public, in relation to matters relating to fair trading practices. The OFC also decides where the infringement is deemed not serious and can issue cease and desist orders. The OFC only carries out the investigations in Article 81 and 82 cases.

The CFT decides whether there has been a breach of the Act, or not, in the cases presented before it. Its judgments are final, but are still subject to judicial review by the courts. It has the authority to direct provisional measures to immediately cease inhibitive practices or abuses of a dominant position, which are being examined, if it is critically necessary to avoid a situation that is going to cause grave, immediate and vital harm to the interests of any undertaking or the general economic interest.

Cases are brought before the CFT either for review where decision has been taken by OFC or where the infringement is serious in which case the CFT decides in the first instance. Cases where it is alleged that Articles 81 and 82 of the Treaty have been breached may only be decided by the CFT or in private enforcement cases by the ordinary courts.

Provision is made for offences against the Act and the related, consequential penalties. The Commission can declare contraventions of the legislative provisions, but only the Courts can impose fines. The Director of the Commission, however, is empowered to impose administrative fines. For example, he could issue compromise penalties for non-compliance to a cease and

desist order; and in the case of serious infringements, criminal liability fines may be imposed, with the concurrence of the Commission, which are less than the maximum applicable under the Act.

Since the Act was implemented, the OFC has laboured to rouse awareness, on a national scale with specific emphasis on the commercial sector, of the existing competition law. Initially, few were familiar with the principles embedded in a competition law, within a free market. At present, however, there is greater understanding of the law. This is apparent in the rising numbers of complaints lodged at the Office.

An evaluation is being carried out of those operations processed by public undertakings, or those granted special or exclusive rights, considered as being in general economic interest. This review has been set in place to determine whether these operations fall under the Article 86 criteria of the EC Treaty.

Anticompetitive Business Practices

Agreements

Agreements between companies that distort competition are illegal in terms of Article 5 of the Maltese Competition

Act, unless they satisfy the legal exception under Article 5(3). For example, an agreement to fix prices between competing companies is illegal. However, certain agreements containing anticompetitive 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.

Abuse of Dominant Position

Article 9 of the Act stipulates that for the purpose of determining whether one or more undertakings are in a dominant position, an undertaking which alone or in conjunction with others has a share of at least 40 percent of the relevant market shall, in the absence of proof to the contrary, be deemed to be in a dominant position. Being dominant is not illegal. Every company rightly strives to do well and grow stronger in its market share. It is abuse of dominance that is illegal. For example, dominant companies that set prices below cost in order to drive out competition abuse their position. 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. Malta is in line with EU law on the control of abuse by dominant companies.

Box 85.1: Eight Supermarkets Ordered to Stop Joint Offers

The OFC has directed eight supermarkets to terminate the distribution of a joint promotional leaflet, advertising reduced price items in local newspapers. The supermarkets may independently continue with their special offers.

Retail Marketing Ltd Chairman, Jonathan Shaw, behind the distribution of the leaflets, vigorously refuted allegations by the OFC of ‘price fixing agreements’, explaining that ‘there is no agreement on the buying of stock items, which would also be directly related to cost and supply of goods sold in these supermarkets’. Price fixing is an attempt, by suppliers, to control the market, Shaw explained. It is usually associated with higher prices, whereas the leaflet offers benefits and reduced prices to the consumer. In providing special offers to consumers, the eight supermarkets felt they had acted in accordance with the competition law.

In view of the OFC’s ‘unfair’ stand, Retail Marketing Ltd, and the eight supermarkets affected by the decision have formally submitted a complaint, in writing, through the legal adviser, Aaron Mifsud Bonnici. The aggrieved parties have requested the OFC’s Director General to immediately refer his decision to the Commission of Fair Trading, for review.

Shaw said that the directors of Retail Marketing Ltd and the supermarkets had attended meetings with the OFC, clarifying its *modus operandi*, and asking for guidelines.

The group was, therefore, ‘surprised and concerned’ that the OFC had accused it of ‘price fixing’ and issued its orders.

In written correspondence, the OFC deemed that the investigation into the legality of the special offer leaflet, was initiated as a result of complaints from another company, involved in supermarket enterprises. The letter further said that the printing and distribution of the four leaflets violated articles of the Competition Act.

The OFC also demanded that the supermarkets withdraw offers, which were advertised on September 26 and were valid until the following Saturday, by putting up a notice in a prominent place. The eight supermarkets would have to comply with the OFC’s orders and would not be circulating their next leaflet, issued monthly, with the Sunday newspapers, and would not be allowed to advertise special offers that are valid for two-week periods.

Source: Times of Malta, 05.10.2004

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. 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'.

Initially, the Competition Law in Malta 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.

Other Market Regulatory Laws

Malta's regulatory structure is transparent and similar to those of its European neighbours. Companies need to submit a business proposal to the Malta Development Corporation, before they can establish operations. The US State Department reports that the Government "has adopted transparent and effective policies and regulations to foster competition. It is striving to eliminate unnecessary, bureaucratic procedures and has taken steps to revise labour, safety, health and other laws in general to conform to EU standards". Price Waterhouse Coopers maintains that the, "Formation procedure is straightforward, and expenses are nominal" when establishing a business. It is a prerequisite for companies to obtain a licence from the Police, if they wish to commence operations and, as a result, corruption is rare.

Telecommunications Sector

The Malta Communications Authority (MCA) is the National Agency in charge of regulating telecommunications. The MCA, established on January 01, 2001, has general powers under the Malta Communications Authority Act, and specific powers under the jurisdiction of other laws, such as the Telecommunications (Regulation) Act. The Authority is the appointed institution for the supervision of signature certification service providers, in Malta, as defined in the

Electronic Commerce Act. With the introduction of the Postal Services Act, the Authority also became the competent agency to regulate postal services in Malta.

Financial Services

Malta Financial Services Authority is the financial service regulator, responsible for the supervision and regulation of:

- Financial services;
- Banks, credit & financial institutions;
- Investment services;
- Setting up, licensing, marketing of collective investment schemes;
- Insurance business;
- Securities & the stock exchange; and
- Stock brokers.

Consumer Protection

Consumer protection is not new in Malta. The most recent consumer law was enacted in 1994. Malta already has laws that are in line with those of the EU. The principal objectives of the various Maltese consumer laws are:

- to educate consumers and traders about their rights and obligations;
- to safeguard the rights of consumers and honest traders; and
- to help recompense consumers aggrieved by disputes, which involve the hiring or purchasing of goods or services.

The main laws enforced under the purview of consumer protection are:

- Consumer Affairs Act;
- Trade Descriptions Act;
- Doorstep Contracts Act; and
- Product Safety Act.

Regulations on Price Indications were issued under the Consumer Affairs Act in October 2002. Provisions under the Consumer Affairs Act dealing with unfair contract terms, sale of goods to consumers, commercial guarantees and product liability came into force in 2002.

Concluding Observations and Future Scenario

Malta's anti-trust legislation is broadly in line with the EU *acquis*. Further alignment is still necessary, particularly bearing in mind potential developments of the *acquis* on vertical restraints. The foremost challenge, now, is to effectively apply and implement the provisions of the Competition Act.

With regard to the institutional set up, it is crucial to give the independent authorities, the necessary powers to perform the task of securing free competition in every sector of the economy. The division of tasks between the various authorities should be made explicit. That is, the

tasks and duties allotted to the CFT and the OFC should be clarified.

Other aspects should also be improved. For example, the independence of the OFC, which is a Division of a Government Department, needs to be reviewed.

Suggested Readings

1. OECD paper on 'Competition Policy in Small Economies', 2003
2. Privatisation in Malta, Opting for the middle road, Philip von Brockdorff
3. Briguglio, L. and E Buttigieg 'Competition Constraints in Small Jurisdictions,' *Bank of Valletta Review*, No. 30, 2004.