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Global Forum on Competition

COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

Contribution from Malta

-- Session I --

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Contact: H el ene CHADZYNSKA, Project Manager of the Global Forum on Competition
Tel: 33 1 45 24 91 05; email: helene.chadzynska@oecd.org

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COMPETITION POLICY, INDUSTRIAL POLICY AND NATIONAL CHAMPIONS

--Malta--

1. History and Evaluation

1.1. To what extent does the industrial policy in your country target firms on the basis of their nationality (e.g., by granting state aids/subsidies to national firms only, or by controlling their ownership)? If so, how is nationality defined?

1. Malta's industrial policy does not target firms on the basis of their nationality nor does Malta's legislation or regulators interfere with or control the ownership of market operators in any sector. There are no nationality prerequisites for the registration of companies or for the approval of mergers and acquisitions by the competition authority and generally nationality requirements are not attached to the granting of trading or operating licences.

2. In recent years the government has embarked on a sustained privatisation programme for government controlled entities that had enjoyed a state monopoly for a number of years. However, in none of the privatisation projects was Maltese nationality a requirement; indeed in most cases the business was acquired by foreign interests or a consortium involving foreign interests as in the banking, telecommunications and energy sectors.

3. Furthermore, legislation empowering the State to provide financial assistance and other forms of aid and incentives to industry does not make this grant of state aid conditional on the Maltese nationality of the beneficiary nor allow discrimination on the basis of nationality.

4. The Malta Enterprise, a government agency set up by the Malta Enterprise Act¹ to replace the pre-existing Malta Development Corporation, the Malta External Trade Company Limited and the Institute for the Promotion of Small Enterprise Limited, is entrusted by the said Act to inter alia originate, lead and further initiatives relating to the economic and social development of Malta in line with Government objectives, policies and goals; to lead Malta's strategy as relates to all forms of enterprise; to promote, assist and develop the establishment, competitiveness and internationalisation of enterprise in Malta; to develop the technological, human resource, and skills bases, and to strengthen the capacity of undertakings, to undertake strategic assessment and formulation, to innovate, and to undertake research, development and design activities; and to administer schemes, grants and other financial facilities requiring the disbursement of funds, including funds originating from foreign sources². Neither this Act nor the Business Promotion Act³ (following amendments in 2001) which is also administered by the Malta Enterprise empowers this government agency to exclude non-Maltese beneficiaries or to discriminate against them in the incentive schemes devised and operated by it.

5. Indeed the role of the Malta Enterprise is to provide incentives for both foreign direct investors as well as local enterprises demonstrating commitment towards growth and increase in value added and employment. To date it has provided incentives that fall in the following six categories:

- **Investment Aid:** Companies engaged in specific activities can benefit from tax credits on capital investment and job creation.

¹ Chapter 463 of the Laws of Malta.

² Ibid, Article 8.

³ Chapter 325 of the Laws of Malta.

- **SME Development:** Grants targeting the creation and development of innovative start-ups, and the development of forward looking small and medium-sized enterprises.
- **Enterprise Support:** Assistance to businesses to support them in developing their international competitiveness, improving their processes and networking with other businesses.
- **Access to Finance:** Companies may be assisted through loan guarantees, soft loans, loan interest subsidies or royalty financing in the case of highly innovative projects.
- **Employment and Training:** Enterprises are supported in recruiting new employees and training their staff.
- **R&D and Innovation:** Various incentives to stimulate innovative enterprises to engage in research & development.

1.2. What economic conditions have been associated with government industrial policy and support for national champions in your nation and region? Has this changed over time as economic development advanced?

6. In the 1970s and early 1980s, as Malta was seeking to develop, strengthen and diversify its industrial and economic base. having recently (in 1964) obtained its independence from foreign rule when the economy was heavily based on military expenditure, government policy was largely based on an interventionist, protectionist approach through the use of price and import controls devised to protect the local industry and the creation of state monopolies or government-granted monopolies. After 1987 and especially following Malta's application for EU membership in 1990 (Malta joined the EU in 2004) more pro-market policies were adopted, leading to the dismantling of import barriers, liberalisation of markets and privatisation of state-owned enterprises and reduction of subventions. The extensive liberalisation and privatisation programme is still under way as temporary derogations won during the EU negotiation process expire. Today, the government is focusing its role in the economy on the regulatory aspect, facilitating rather than participating as an operator in economic activities while in certain sectors promoting the use of public-private partnerships and building strategic partnerships as part of its strategy to stimulate economic growth. Current industrial policy strategy, apart from maintaining and upgrading existing investment (most of which involves SMEs), is to attract new foreign direct investment (FDI) targeting primarily the sectors of pharmaceutical manufacturing and services; the ICT; biotechnology and bio-informatics; high-tech manufacturing; creative sectors; and the maritime and aviation industries.

1.3. Are there major success stories of industrial policy or national champions that are prominent in policy discussions? Are there any perceived major failures of industrial or national champion policies? How do you define "success" and "failure" in this context? Are successful national champion stories supported by best practice competition policy standards?

7. In the 1990s Malta managed to successfully diversify its economy from one initially based on tourism and light and heavy manufacturing such as textiles and shipbuilding to an economy thriving on 'new' economy products and services such as in the Information and Communication Technology (ICT) and financial services sectors and on high value-added manufacturing industries by for instance attracting foreign direct investment in the pharmaceutical industry.

8. The country's ICT vision has registered considerable success in the attraction of ICT companies operating from Malta. Government's commitment to establish Malta as an ICT centre of excellence has led to vertical strategic alliances with the leading international ICT firms, while a number of other foreign ICT companies are locating their operations in Malta. A major deliverable of this strategy was the development and implementation of a Technology Centre of Excellence in the region. SmartCity Malta is the vehicle for the realisation of this deliverable as it will create a state-of-the-art ICT and Media Park on the models of

Dubai Internet City and Dubai Media City and is the largest foreign direct investment in the ICT and media sectors ever made in Malta.

9. However, industrial policy and competition policy have always been considered as complementary rather than conflicting policies. The small size of the domestic market tends to limit the scope for competition in a number of markets. In the presence of imperfect market structures, one of the tenets of Malta's industrial policy, as reiterated in several policy documents, has been that ever more aggressive regulation and supervision of market players should be adopted. The strengthening of competition policy and competition authorities has thus always been a key priority, with further liberalisation of economic sectors deemed necessary to enhance the degree of competition in the domestic markets.

1.4. Does your competition agency use benchmarks to assess the economic costs and benefits of government interventions that promote industrial policy or national champions? Have you communicated benchmarks to other economic policy makers? Is there any dependable analytical approach that allows you to distinguish industrial policy from competition policy? Do you engage in competition advocacy in this policy area?

10. The Office for Fair Competition does not use benchmarks to assess the economic costs and benefits of government interventions that promote industrial policy or national champions but it uses competition advocacy to ensure that industrial policy does not damage competition: it comments on and recommends changes to proposed or adopted legislation, government measures or government policy that it considers not to be in line with competition principles or that raise competition concerns. Moreover, since 2004, no undertaking, including public undertakings or state controlled entities with special or exclusive rights, and no economic sector is excluded from the scope of the competition rules; so national champions are subject to the full rigours of competition law as any other undertaking. The only exception is where the undertaking is entrusted with the operation of services of a general economic interest or has the character of a revenue producing monopoly where the Office would refrain from subjecting such activities to the full rigour of the competition rules if their application would obstruct the performance, in law or in fact, of the particular tasks assigned to the undertaking; yet even here this exemption is applied very restrictively⁴. As for state aid, there is a specific agency, the State Aid Monitoring Board that reviews and assesses existing and new state aid and provides advice about their compatibility with EU State Aid law and acts as an interlocutor with the European Commission on State aid matters⁵.

1.5. Have merger review laws ever been suspended in your country? If so, why? Were concerns expressed either explicitly or implicitly about the way in which merger efficiencies are typically examined or in the way in which failing firms are analysed?

1.6. Have any of your decisions ever been overridden on grounds of industrial policy? Are there any recent examples? What reasons were given? To what extent had the competition agency already considered the market characteristics or considerations that were the basis for the override? What have been the consequences of the override for consumers and competition policy?

11. The Control of Concentrations Regulations⁶, Malta's first merger review law, entered into force on 1st January 2003 and has never been suspended. Industrial policy considerations have never featured in the assessment of concentrations, the test being solely whether the concentration might lead to a substantial

⁴ Competition Act, Chapter 379 of the Laws of Malta, Article 30.

⁵ Business Promotion Act, Chapter 325 of the Laws of Malta, Articles 57-58.

⁶ LN 294 of 2002 as subsequently amended.

lessening of competition in the Maltese market or a part of it. No concerns have ever been expressed about the way that the Office for Fair Competition that is responsible for its implementation assesses efficiencies or failing firms under these provisions, though to date there has been no concentration that though raising competition concerns was cleared on the basis of efficiencies or the failing firm defence. The Regulations and the Competition Act do not empower the government to override any decision of the Office for Fair Competition on grounds of industrial policy or any other ground. The decisions are reviewable only by the Commission for Fair Trading, an independent administrative tribunal, which may overturn these decisions only on competition grounds.

1.7. Does your government implement some policies directly dedicated to innovation? If so, could you specify the sectors that benefit from these policies as well as the instruments used to foster innovation?

12. Malta, with the exception of the ICT sector, has been lagging behind in R&D expenditure and has been regressing in terms of its competitiveness and the supporting role played by research and innovation in this regard. The figures for business research and innovation for 2003 show that expenditure on R&I from the private sector constituted only 0.069% of GDP while the public R&I expenditure stood at a mere 0.19% of GDP. However, the government has now embarked on a strategy of actively promoting research and development and innovation and the European Innovation Scoreboard (EIS) for 2008 places Malta in the category of countries that are 'catching up'. It certifies that Malta's innovation performance is below the EU27 average but the rate of improvement is above that of the EU27. The report confirms that Malta's relative strengths are in the availability of finance for innovation projects and the support by the government for innovation activities; however, the number of firms that have introduced innovations onto the market or within their organisations, covering technological and non-technological innovations, remains low⁷.

13. R&D activity in the business sector is largely concentrated in 30-40 firms and is clustered around a number of specific sectors, mainly related to high-value-added manufacturing in ICT, manufacture of machinery, manufacture of chemicals and medical instruments, financial intermediation, food and beverage, and printing, among others. The precise level of sectoral R&D activity is difficult to determine, since official statistics are not readily available, and are often not reliable since firms do not always report their R&D activity or give incomplete information. This makes it difficult to determine the level of intensity of private R&D investments as a percentage of sectoral GDP.

14. Malta's industrial sector is characterised by a dual structure. On the one hand, industry predominantly consists of domestically-owned micro enterprises primarily local market oriented and engaged at the lower end of the technological ladder generally lacking the critical mass to engage in research, technological development and innovation. On the other hand, Malta's industry comprises a number of foreign owned affiliates of multinational conglomerates which undertake research, technological development and innovation activities in home economies and merely transfer technology to Malta in accordance with corporate strategies to serve the needs of the local manufacturing arms. This state of affairs has so far resulted in limited inter-linkages between the domestic and foreign sector, primarily as a result of lack of economies of scale and scope.

15. Government initiatives to boost research and development and innovation have taken mostly the form of aid schemes administered by the Malta Enterprise. As stated above, some of the financial and fiscal incentives provided by the Malta Enterprise are directly devised to facilitate R&D expenditure and encourage innovation and to attract to Malta foreign enterprises that are innovation driven such as the package of aid schemes specifically designed to stimulate innovative enterprises to engage in research &

⁷ http://www.proinno-europe.eu/EIS2008/website/docs/EIS_2008_Final_report.pdf

development. Malta's National Reform Programme 2008-2010 envisages that further aid in this category will be granted via incentives such as the EUREKA and the EUROSTARS initiative together with the R&D grant schemes funded under the European Regional Development Fund (ERDF). Encouraging innovation will take place through the implementation of a grant scheme funded under the ERDF promoting product and process innovation together with eco-innovations.

16. Moreover, in the National Reform Programme the government undertakes to raise its R&D expenditure in relation to GDP from its current 0.3% to 0.75% by 2010, to support innovation through public procurement, to participate in joint programming activities and to target research strategies for identified priority areas. For the next two years government has identified two priority areas: (i) increased efforts towards more and better research in the manufacturing sector and (ii) formulation of a health research strategy and action plan.

17. Furthermore, in the Industry Strategy for Malta: 2007-2010 the Government advocates clustering and networking for industry as it considers that inter alia the mix of competition and co-operation would act as underlying drivers of learning and innovation.

18. Malta's accession to the European Patent Convention in March 2007 as well as Malta's strong patent laws have also served to encourage innovation.

1.8. *Did measures adopted in your country to deal with the recent economic crisis raise competition concerns? If so, could you describe the measures and the concerns? Have these competition concerns been taken into account, and, if so, how? In particular, have initial proposals been amended in order to comply with competition law? Have some of these measures been exempted from competition policy scrutiny?*

19. None of the measures taken so far to deal with the current economic crisis have raised competition concerns.

2. Means and Goals

2.1. *Please specify whether any of the following are instruments of industrial policy in your country:*

- ***Government procurement***
- ***Exemptions from antitrust laws***
- ***Regulatory barriers to competition***
- ***Access to credit***
- ***Arranged mergers and acquisitions***
- ***Control of acquisitions of national companies by foreign investors***
- ***Other?***

20. The Public Contracts Regulations ensure that there is no discrimination between economic operators and that all economic operators are treated equally and transparently in all calls for tenders whatever their estimated value⁸. There are some contracts that are exempted from this rule but this exception is not there for industrial policy purposes as it applies to public contracts awarded in pursuance of an international agreement concluded by Malta in accordance with EC rules, public contracts linked to the protection of Malta's security, public contracts relating to public telecommunications networks and various public service contracts.

⁸ LN 177 of 2005 as subsequently amended, Reg 4.

21. No economic sectors or undertakings are exempt from antitrust laws. Any remaining regulatory barriers to competition post EU accession are being progressively dismantled and markets fully liberalised to competition. Though certain state monopolies remain (e.g. in respect of transmission of electricity where Malta obtained a derogation from certain provisions of the Electricity Directive because it is a 'small isolated system') and some licensing systems have been retained to limit the number of operators in the markets concerned, these are justified and necessitated by the constraints and market imperfections inherent in small market economies (like Malta) and not driven by any industrial policy considerations.

22. There are no government restrictions on access to credit but, as shown above, Government through the Malta Enterprise facilitates access to credit through various schemes. As for mergers and acquisitions there is no government or regulator interference except for oversight by the Office for Fair Competition that, as explained above, may block or force changes to mergers or acquisition only on purely competition grounds.

2.2. *To what extent are industrial policies in your country motivated or rationalised as regional or national economic development initiatives? Has this explanation been used more sparingly over time as your economy expanded?*

23. As reiterated by various policy documents, Malta's industrial policies are essentially geared at promoting a competitive and high value adding economy and achieving sustainable socio-economic development for a better quality of life and a more sustainable use of the environment.

2.3. *To what extent are industrial policies motivated or rationalised as an effort to help domestic firms withstand the exercise of market power by foreign firms? How does this rationale square with rules against market distortions caused by state aids? How has your competition agency analysed these circumstances?*

24. Malta's industrial policy is not devised as a means of protecting local industry against the exercise of market power by foreign firms but, operating within the confines of EU State Aid law and Maltese and EC antitrust rules, as explained above, it is intended to increase the competitiveness of local industry (largely composed of SMEs) particularly in so far as their R&D and innovation efforts are concerned or where they are expanding into new international markets.

2.4. *Are industrial policies motivated or rationalised as a means to correct market failures in your country? If so, what types of market failures have been involved? How do you compare industrial policy or national champions with other policy approaches for correcting these market failures (such as taxes or subsidies on consumption of the product)?*

25. None of the industrial policy measures are intended as a means of correcting market failures.

2.5. *Do you think that one nation engaging in industrial policy or supporting national champions attracts retaliation from other nations? To what extent are projected gains from industrial policy and national champions dependent on other nations not pursuing these policies, too? Do industrial policy and national champions constitute a "prisoners' dilemma" situation?*

26. Supporting national champions by exempting them from the full rigour of the competition and state aid rules or by shielding them from competition on the home market through regulatory barriers is counter-productive as it invites retaliation from other States and actually weakens the firm's competitiveness in the international markets as the challenge of facing competition at home would drive the firm to lower its costs and boost its efficiency and sharpen its innovative drive. If all States were to adopt a pro-national champion approach the result would be less efficient firms in the market to the detriment of consumer welfare and consumer interests. Thus, even for a small nation it is not in its interests

to promote champions by following a lax competition policy. On the other hand, one should distinguish industrial policy from a national champion policy as an industrial policy that seeks to sharpen the competitiveness of local industry and instil or heighten the innovative drive and make industry more high-tech and knowledge intensive has the same goal as competition policy – that of consumer welfare.

REFERENCES:

Industry Strategy for Malta: 2007-2010 Ministry for Investments, Industry and Information Technology

Budget 2009 Ministry for Finance, the Economy and Investment

Operational Programme 1: Investing in Competitiveness for a Better Quality of Life Ministry for Finance, the Economy and Investment, May 2007

Malta National Reform Programme 2005-2008 Ministry for Competitiveness and Communications and Management Efficiency Unit, OPM, October 2005

Malta National Reform Programme 2008-2010 Consultation Document, Ministry for Finance, the Economy and Investment and Management Efficiency Unit, OPM, August 2008

National Strategic Plan for Research and Innovation: 2007-2010 Malta Council for Science & Technology, 2006

National Strategic Reference Framework Malta 2007-2013 Ministry for Finance, the Economy and Investment, December 2006

European Innovation Scoreboard 2008: Comparative Analysis of Innovation Performance Maastricht Economic and social Research and training centre on Innovation and Technology (UNU-MERIT), January 2009