

# **FEEDBACK BY THE MALTA CHAMBER**

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## **PUBLIC CONSULTATION ON THE** **AMENDMENTS TO THE CONTROL OF** **CONCENTRATIONS REGULATIONS** **S.L. 379.08**

**Presented to :** MCCA

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## General Observations

The Malta Chamber **appreciates the time MCAA dedicated to meeting with us to discuss the consultation provisions**, providing valuable context and engaging in a proactive, professional and collaborative dialogue.

The Malta Chamber **welcomes the long-awaited consultation** and acknowledges that the current merger notification framework has not been comprehensively updated for a considerable period. The regime remains largely modelled on legislation dating back to 2003, with limited amendments introduced in 2007. A revision was therefore overdue.

**The existing framework has resulted in a disproportionate administrative burden, with significant time and resources being expended on marginal transactions that have minimal or no substantive impact on the Maltese market.** Where transaction values are low and fall well below economically meaningful thresholds, the likelihood of material competitive harm is inherently limited, and the justification for regulatory intervention is correspondingly reduced.

**It is therefore essential that the amended framework prioritises legal certainty, proportionality of obligations and a clear focus on transactions with genuine local economic relevance, thereby avoiding unnecessary disruption to legitimate commercial activity.**

In this context, The Malta Chamber recognises the policy intent behind the proposed amendments, aimed to **modernise the regime and refocus regulatory scrutiny on transactions with genuine local economic relevance.**

In the context of the proposed amendments, particularly from a commercial perspective, The Malta Chamber underlines some important considerations explained below, for due account.

### 1. Notification Thresholds

The Office proposes increasing the combined turnover notification threshold from €2.3 million to €4.5 million, coupled with a requirement that at least two of the parties to the transaction each generate a minimum of €800,000 in turnover within Malta. The Malta Chamber **supports the rationale for increasing the threshold and supports the principle too.** The current threshold is abnormally low, even when benchmarked against other EU Member States. In practice, these notifications are often triggered by the size of the acquirer rather than by the economic relevance or competitive impact of the transaction within the Maltese market. That said, The Malta Chamber considers that, notwithstanding the proposed increase, **the revised thresholds remain comparatively very low**, particularly for a small open economy that has experienced substantial economic growth over the past two decades. The Malta Chamber therefore notes that the principle requires further calibration.

Historically, GDP has been used as a reference metric, even though it is not necessarily the most appropriate indicator in isolation. Under the current proposal, both GDP-linked and alternative metrics would still result in very low notification thresholds. To address this, the policy objective should be clearly focused on **avoiding the capture of micro and small enterprises, for whom notification obligations are inherently disproportionate.** According to the latest National Statistics Office data, Malta has over 138,000 micro-enterprises and more than 3,000 small enterprises,

compared to approximately 700 medium-sized and fewer than 200 large enterprises. In the absence of a clear exclusion for micro-enterprises, the notification thresholds risk being set so low that the underlying policy principle becomes untenable.

In this context, according to The Malta Chamber, the revised combined turnover threshold should be set well above €4.5 million. A transparent and objective benchmark would be Malta's GDP, which has increased by approximately fourfold since 2007, from around €5.76 billion to over €22.5 billion by 2024. **Applying a comparable multiplier to the original threshold would support a revised combined turnover threshold of at least €23 million.** Having said that, it is worth noting that the turnover levels of medium-sized enterprises would indicate the need for an even higher threshold than €23 million.

This adjustment would better reflect Malta's economic scale, reduce unnecessary filings and **allow the Office for Competition to focus its resources on transactions that warrant and merit scrutiny.**

With respect to the proposed €800,000 local turnover threshold, The Malta Chamber cautions that private-sector feedback indicates **a significant risk of a sharp increase in notifications and correspondingly, in the Authority's workload.** Business experience suggests that it is the cumulative effect of the two tests, rather than any single threshold, that currently discourages notifications. If certain elements, such as the 10% test, are removed without a holistic reassessment of the overall framework, the Authority may face a sudden influx of filings, including a high volume of international transactions with limited or no material competitive impact on the Maltese market.

**In view of this, The Malta Chamber is of the opinion that companies with turnover below €2 million should, as a matter of principle, fall outside the notification regime.** This level aligns with the lower end of the EU SME definition and effectively captures micro-enterprises, for whom merger notification requirements impose a disproportionate administrative burden. Alternatively, a hybrid approach could be considered, whereby notification is required only where the transaction value exceeds 10% of combined turnover, subject to a capped notification threshold of €23 million.

## 2. Call-In Powers

The Malta Chamber recognises the policy rationale underpinning the introduction of call-in powers and acknowledges the broader European trend in this area, which **gained momentum following the European Commission's inability to review certain so-called "killer acquisitions" that fell below both EU and national notification thresholds.** This has since led to increased encouragement for EEA Member States to adopt similar mechanisms.

That said, The Malta Chamber is concerned that, as currently proposed, the introduction of call-in powers in Malta **risks undermining legal certainty and may have a chilling effect on legitimate commercial activity.**

Merger and acquisition transactions entail significant upfront legal, financial and advisory costs, often amounting to several thousands of euros. The notification process itself is inherently complex and resource-intensive, requiring extensive data gathering, market definition and completion of detailed notification forms. **Introducing the possibility of in-process call-in, even where parties are fully confident that notification thresholds are not met, creates material uncertainty.** This uncertainty may lead businesses to delay, restructure or abandon transactions altogether, particularly as all

transition and costly compliance expenses, including legal and administrative fees, are borne by the undertakings concerned, even where a transaction is ultimately found to raise no competition concerns.

The Malta Chamber further notes that other Member States that have introduced call-in powers have done so subject to clear limitations, safeguards and qualifying conditions. By way of example, **Denmark** applies a defined monetary threshold (circa €6.7 million) coupled with a requirement to demonstrate potential competitive harm, while **Italy** imposes a strict temporal limit of six months, alongside multiple qualifying criteria, ensuring that call-ins are neither arbitrary nor frequent. **Iceland** applies an objective test of €10.3 million. Such an approach provides materially greater legal certainty than what is currently proposed for Malta.

By contrast, the **broad discretion afforded to the Director General** under the proposal raises concerns regarding predictability, proportionality and due process.

In addition, it remains **unclear whether a Malta-specific market study has been conducted to substantiate the need for such powers locally**, or whether the proposal is primarily driven by regulatory trends at EU level. Given the intrusive nature of call-in powers, The Malta Chamber considers that the rationale for urgency requires clearer and more robust justification.

The application of a **blanket call-in regime across all sectors further exacerbates uncertainty**. This uncertainty extends well beyond notifiable mergers. From the execution of a Share Purchase Agreement through to completion, transactions often involve lengthy conditions-precedent periods, during which time, under the proposed framework, transactions could remain exposed to call-in risk, potentially even post-closing. As a result, parties may feel compelled to adopt artificially compressed timelines to mitigate regulatory risk.

Further feedback received from legal and transactional practitioners indicates that professional assurances that the Office is unlikely to intervene are insufficient on their own. **The risk of late-stage intervention, as said, could disrupt carefully structured transactions and, in some cases, lead to the abandonment of investments at particularly sensitive stages**. This concern is especially acute where transactions are not notifiable under the statutory thresholds but may later be rendered notifiable through the exercise of call-in powers.

In The Malta Chamber's view, this reflects the **practical realities faced by market participants**, which have not been sufficiently accounted for in the proposed framework. The main point here is to **curb unnecessary Call-Ins as much as possible** because such could lead to abandonment of most mergers-in-process due to (uncalled for) uncertainties at sensitive stages and increase in (useless) compliance costs.

In light of the above, The Malta Chamber strongly recommends that:

- a. **Call-in powers be clearly justified, narrowly framed and tightly bounded**, with explicit thresholds, defined time limits and clear evidentiary standards.
- b. **Robust safeguards** be introduced to prevent call-ins in cases where it is demonstrably clear that no competition concerns arise.

- c. **Regulatory resources be more strategically deployed towards antitrust enforcement**, an area which, in The Malta Chamber's view, remains insufficiently addressed in Malta. A more effective antitrust enforcement would deliver greater public-interest benefits than expanding merger control into low-risk transactions.

The Malta Chamber also cautions that an expanded and broadly framed call-in regime is likely to generate disproportionate legal costs and procedural activity, benefiting process rather than competition outcomes. While fully recognising the professionalism and diligence of legal practitioners, **regulatory design should prioritise public interest, economic efficiency, investment certainty and national competitiveness over procedural expansion.**

Finally, The Malta Chamber reiterates its longstanding position in favour of consolidation over fragmentation, particularly in sectors where scale is essential to productivity, resilience and international competitiveness. **Overly expansive call-in powers, therefore, risk running counter to this objective and may inadvertently deter precisely the type of investment that Malta seeks to attract.**

### 3. Authority Fees

The Malta Chamber recognises the legitimacy of cost-recovery mechanisms, and their review, in merger control; however, any **fees imposed should be modest, transparent and proportionate to the Office's actual administrative costs.**

Fees should, in our view, **reflect the level of regulatory complexity** involved and the fact that the substantive analytical and evidentiary work associated with merger notifications is, in practice, largely undertaken by legal and economic advisers appointed by the notifying parties. Let's keep in mind that businesses are already bearing significant compliance and professional costs and the Office should not be perceived as 'selling its time' through fee structures. Importantly, fee levels must not act as a deterrent to legitimate restructuring, consolidation or efficiency-enhancing transactions.

The Malta Chamber is further of the view that the **proposed introduction of call-in powers risks amplifying overall transaction costs**, especially when combined with higher or less predictable fees. Against a backdrop of already substantial operational and compliance pressures, any perception that regulatory fees could evolve into a revenue-generating mechanism would risk undermining business confidence and investment sentiment. Some members have expressed concern that the framework could inadvertently create incentives to prolong proceedings or escalate cases from Phase I to Phase II, particularly where additional tools such as consumer surveys or market studies are deployed. The Malta Chamber underscores the Office's own stated principle that it should never operate as a revenue-generating entity, given its role as a public service rather than a commercial operation. While increased notification volumes may benefit advisory professions, they impose disproportionate financial and administrative burdens on businesses, particularly in cases where transactions pose no material competition concerns.

### 4. Simplification

Joint ventures were historically considered a non-issue until around three years ago, when a shift in interpretation effectively required notification for every Joint Venture. This rigid reading of the law

created practical pressure to withhold notifications for transactions that had previously been regarded as unproblematic. **The Malta Chamber therefore welcomes the proposed amendments, noting that their core objective is to simplify the regime by correcting this overly strict interpretation and restoring proportionality.** Concurrently, however, we observe that the threshold under Joint Ventures section 12, that is, €800,000 for a simplified procedure, is set too low.

Additionally, the notification framework has become increasingly complex in practice. We note that while certain members remarked that the statutory 15-day notification obligation is no longer enforced, the lack of clarity around calendar days versus working days persisted. Therefore, the **amendment from calendar to working days is welcome.**

**The reviewed time windows should, in our view, have more in-depth considerations.** For instance, suspension periods should not effectively cover entire months such as August or December. The Malta Chamber underscores the sensitivity of decisions following complex processes and therefore suggests a more limited timespan suspension. For instance, it would probably be more proportionate that, **December**, would not restrict prior to the 20th, as this creates material difficulties for companies seeking to close transactions. Similarly, **August** should be treated as a working month, except for one designated week during which operations may be paused. The overall principle here is that **shorter and clearer timelines would materially reduce uncertainty for the private sector.**

## Conclusion

**The Malta Chamber supports the overarching objective of the proposed amendments**, namely, to modernise merger control, reduce unnecessary administrative burdens and align national practice more closely with EU merger guidelines. The proposed changes represent a positive step towards removing ambiguity and improving legal certainty; however, further refinement is required to ensure that the framework remains **proportionate, economically grounded and predictable.**

In particular, as explained above, **The Malta Chamber calls for:**

- Higher and more economically relevant notification thresholds.
- Clearly bounded and justified call-in powers.
- A fee structure that is fair, proportionate, and sensitive to current business realities.

The feedback provided is not exhaustive and represents the principal issues and key flags that we believe require attention. Having said that, such refinements would help ensure that **regulatory resources are focused where they matter most**, thereby supporting productivity, competitiveness and sustainable economic growth in Malta.

The Malta Chamber finally recommends that thresholds should keep pace with evolving economic circumstances and, accordingly, **be reviewed and revised at least every five years.**



# THE MALTA CHAMBER

[www.maltachamber.org.mt](http://www.maltachamber.org.mt)

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+356 2203 2304

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The Malta Chamber of Commerce,  
Enterprise and Industry 64, Republic  
Street Valletta, VLT 1117