

THE HANDBOOK OF COMPETITION ENFORCEMENT AGENCIES

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Overview

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The Israeli Restrictive Trade Practices Law 5748-1988 defines and regulates three types of restrictive trade practices: restrictive arrangement, companies' merger and monopoly.

Restrictive arrangement

A restrictive arrangement is an arrangement between at least two persons conducting business, which limits at least one party thereof in a manner that might prevent or reduce competition. The Law also provides a number of specific restraints, the existence of which would constitute a presumption of harm to competition. An arrangement involving a restraint relating to one of the following issues is deemed a restrictive arrangement:

- the price to be demanded, offered or paid;
- the profit to be obtained;
- market allocation; and
- the quantity, quality or type of assets or services in the business.

Being a party to a restrictive arrangement without the prior authorisation of the Antitrust Tribunal is forbidden unless the arrangement is specifically exempted by the antitrust commissioner or by the provisions of a statutory exemption as set out in the Antitrust Law or in terms of the Block Exemption Regulations issued by the commissioner.

Companies' merger

A companies' merger is widely defined and includes:

- the acquisition of most of the assets of a company by another company;
- an acquisition of shares in a company by another company that would provide the acquiring company a holding of more than 25 per cent of the nominal value of the issued share capital;
- the right to appoint more than 25 per cent of the directors; or
- the right to participate in more than 25 per cent of the company's profits.

The acquisition may be direct or indirect, or by contractual rights. Subject to turnover and market share thresholds pre and post-merger (calculated with

reference to the domestic market), a merger between local and foreign entities that conduct business in Israel is subject to the Law and requires pre-merger notification and approval thereunder.

Pre-merger notification must be submitted to the commissioner if one of the following applies:

- the aggregate market share of the merging parties exceeds 50 per cent post-merger (ie, the merger creates a monopoly);
- one of the parties to the merger is a monopoly pre-merger; or
- the total domestic turnover of the merging entities, in the preceding fiscal year, exceeds 150 million new Israeli shekels and at least two of the merging entities have a domestic turnover of 10 million new Israeli shekels each.

The commissioner shall block a merger, or approve it subject to conditions after he had consulted with the Advisory Committee appointed under the Law, if, in his opinion, as a result of the merger, either competition in a market, or the public interest, might be significantly harmed. The Antitrust Tribunal may, upon application submitted by the commissioner, order the separation of an entity merged in violation of the Law.

Monopoly

An entity shall be deemed a monopoly if it controls more than 50 per cent of the total supply, or purchase, of goods or services in a certain market. The criterion, therefore, is one of market share, rather than of market power. A monopolist may not unreasonably refuse to supply (or to purchase) the goods or services in which it holds a monopoly (or a monopsony). Additionally, a monopolist may not act in a manner that constitutes an abuse of its dominant position in the market in a manner likely to reduce competition in business or harm the public. Examples of such conduct are unfair pricing and discrimination (the application of dissimilar conditions to similar transactions that might grant some customers or suppliers unfair advantage over their competitors). Abuse of a dominant position is also considered a criminal offence if accompanied by intent to harm competition or the public.

The commissioner has the authority to declare two or more persons conducting business as a 'concentration group' if between the members of the group or in the market they are acting in there is low competitiveness in business or if there are conditions for low competitiveness in business, and if taking measures by the commissioner might avoid harm or fear from significant harm to the public or to competition in business between the members of the group or in the market they are acting in, or significantly enhance competition in the market or create conditions for the significant enhancement of the competition in the market.

The commissioner may order a monopolist to apply certain legal restrictions on terms appearing in its common contracts and to apply official Israeli industrial standards. In addition, if the commissioner is of the opinion that competition or the public is being prejudiced as a result of a monopoly or the behaviour of a monopolist, he may instruct the monopolist as to measures to be taken by it to prevent such prejudice.

The Antitrust Tribunal may, on the application of the commissioner, order the separation of a monopoly into a few separate legal entities.

Criminal and civil implications

Violation of the Law by an entity or any of its officers and employees constitutes a criminal offence as well as a civil tort. Further, a person (individual or corporation) with an interest in the lawsuit, a consumers' association and, since 2006, even the Antitrust Authority may file a class action upon a breach of the Law.

An administrative declaration issued by the commissioner (eg, declaring certain conduct to be a restrictive arrangement; or that a merger was carried out without prior approval; or declaring the existence of a monopoly) constitutes a prima facie evidence in any civil procedure.

The commissioner may impose on a person who violates the law an administrative fine up to 1 million new Israeli shekels, and if the violator is an entity with a turnover higher than 10 million new Israeli shekels, an administrative fine of up to 8 per cent of its turnover, but no more than 24 million new Israeli shekels. The commissioner shall consider in his decision about the amount of the administrative fine, inter alia:

- the term of the violation;
- the level of harm that the violation might cause competition or the public;
- the part of the violator in the violation and its influence on its execution; and
- the existence or the absence of previous violations and when they were made.

The Antitrust Authority's structure and powers

The Israeli Antitrust Authority (the IAA) was established in 1994. It is mandated to prevent the creation of market power through merger control and anti-cartel enforcement, restrain abuse of such power by dominant firms and preserve competition in various markets. It has extensive investigative authority and the power to initiate civil, administrative and criminal proceedings.

The commissioner can:

- exempt parties to a restrictive agreement from the duty to apply to the Tribunal for approval of a restrictive agreement;
- regulate block exemption regulations;
- approve or block a merger of companies;
- declare the existence of a monopoly; and
- take measures to prevent abuse of monopolistic powers, including by imposing orders on monopolists.

The IAA currently employs about 110 employees and is divided into three professional departments: legal, economic and investigations.

Jurisdiction

Criminal proceedings for violations of the Law may be launched by the commissioner and are conducted exclusively before the District Court in Jerusalem. The court's judgments may be appealed to the Supreme Court. The commissioner's administrative actions and decisions are subject to judicial review by the Antitrust Tribunal (which sits also within the district court in Jerusalem). The Tribunal's judgments may be also appealed to the Supreme Court.

Civil proceedings under the Law, including contractual claims, tort claims and class actions, may be brought before any competent court in Israel.



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D Ziv Abramovich is a partner at Lapidot, Melchior, Abramovich & Co and heads its competition practice. Before turning to private practice, he worked from 1997 to 2002 at the Israeli Antitrust Authority (IAA), where he was head of the enforcement and compliance department and a member of the authority's senior management.

Ziv has extensive experience in the domestic and international implications of civil and criminal antitrust issues, both from a regulator's and private practitioner's perspective. He regularly advises leading Israeli and foreign clients on various antitrust matters, and represents them in front of the Antitrust Authority, the Antitrust Tribunal and other competent courts. Ziv also frequently advises and represents multinational clients regarding the Israeli aspects of international

mergers and acquisitions, and is highly recommended by leading international law firms.

Ziv holds LLB (1996) and LLM (1999) degrees from the Hebrew University in Jerusalem, and serves as a visiting lecturer on antitrust law at several academic institutions in Israel.

Ziv was vice chairman of the Israeli Bar Association's antitrust committee from 2003 to 2007 and is an active member of the IBA antitrust committee. He regularly publishes articles and reports, in Israel and worldwide, on antitrust developments, and is the Israeli correspondent for *Global Competition Review* and the IBA's antitrust committee newsletter.

Ziv was invited by the IAA as a non-governmental adviser to the ICN annual conference in Kyoto, Japan, in 2008.



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Lapidot, Melchior, Abramovich & Co, established in 2004, is one of Israel's leading antitrust law firms and highly recommended by its domestic and international clients and peers, including some of the leading multinational law firms. The firm employs 15 professionals and has taken part in some of the major antitrust cases in recent years, including the interchange fee case; the retail chains and their major suppliers' consent decree; the constructors and the meteorological cartel criminal cases; major and complex mergers and acquisitions; some behavioural matters; and most of the criminal investigations and legal proceedings initiated and handled recently by the Israeli Antitrust Authority and is active in relation to the new legislation intended to enhance competition in the food and retail sector.

The firm's antitrust practice is led by advocate D Ziv Abramovich, a Who's Who Legal nominee since 2008, who was the former director of the compliance and enforcement department at the Israeli Antitrust Authority and a member of its senior management (1997–2002), and the former vice chairman of the Israeli Bar Association's antitrust committee (2003–2007). The firm has extensive experience in the domestic and international implications of civil and criminal antitrust issues, regularly advises leading Israeli and foreign clients on various antitrust matters, and represents them before the Antitrust Authority, the Antitrust Tribunal and other competent courts. The firm also frequently advises and represents multinational clients regarding the Israeli aspects of international mergers and acquisitions.

Lapidot, Melchior, Abramovich & Co has been elected as one of Israel's leading antitrust law firms by *GCR 100* since 2008.