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EUROPE, MIDDLE EAST AND AFRICA

ANTITRUST REVIEW 2020

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LAW BUSINESS RESEARCH

Israel: Overview

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The Economic Competition Law, 5748-1988 (the Law) is the primary law dealing with antitrust issues in Israel and its objective is to prevent harm to competition or the public. The Law contains the substantive rules that apply to the various restrictive trade practices (restrictive arrangements, mergers, monopolies, concerted groups and official importers).

In addition, the Law encompasses rules concerning the structure and the powers of the Israeli Competition Authority (ICA), the director general of the ICA (the Director General) and the Competition Tribunal (the Tribunal), as well as procedural rules that apply to cases brought before each of them.

Recent years have been characterised by trends for:

- strengthening the position of the ICA;
- increasing administrative enforcement, criminal enforcement as well as the focus of the ICA on its advisory capacity within the government; and
- increasing civil 'follow-on' class actions against international cartels.

On 1 January 2019, the Israeli parliament approved a significant amendment to the Law. The amendment created material and comprehensive revisions to the language of the Law, including to key provisions related to the Israeli monopoly control regime, the Israeli merger control regime, the enforcement mechanisms of the Law, and more as will be detailed below. Also, the amended Law encompasses an overall terminological change: the term 'restrictive trade practices' was changed to the term 'competition'. Thus, inter alia, the Law became known as the Economic Competition Law instead of the Restrictive Trade Practices Law as it was before.

Restrictive arrangements control regime

Definition

Section 2(a) of the Law defines a restrictive arrangement as an arrangement, between persons (including legal entities) conducting business, according to which at least one of the parties restricts itself in such manner that might prevent or reduce competition between the person and

the other parties to the arrangement, or any of them, or between the person and a third party. Section 2(b) of the Law also provides conclusive presumptions that an arrangement involving a restraint will be deemed to be a restrictive arrangement if it relates to:

- 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.

In general, a restrictive arrangement is prohibited according to the Law unless it is permitted in accordance with the Law. Section 4 of the Law establishes that parties to a restrictive arrangement can receive an approval from the Tribunal in the case where the Tribunal finds that the arrangement is in the public interest; or it can be exempted by the Director General upon the request of a party to a restrictive arrangement and following consultation of the Director General with the Exemptions and Mergers Committee. The Director General considers whether the restrictive arrangement considerably reduces competition or causes substantial harm to competition, whether the objective of the arrangement is to reduce or eliminate competition and whether the restraints in the arrangement are necessary to fulfil the objectives of the arrangement.

Section 14 of Law authorises the Director General to exempt the parties to a restrictive practice from the duty to obtain the approval of the Tribunal for such arrangement, when certain conditions are fulfilled: when 'the objective of the arrangement is not to reduce or eliminate competition, and that the restraints in the restrictive arrangement do not limit the competition in a considerable share of a market affected by the arrangement, or they are liable to limit the competition in a considerable share of such market but are not sufficient to substantially harm the competition in that market. A similar provision is set forth in section 15A(a)(2) as a condition to the authority of the Director General to determine a block exemption rule. In order to assist parties to restrictive arrangements in evaluating the effect of a certain arrangement, the ICA published a public statement on the interpretation of section 14 and Section 15a(a)(2) of the Law. The public statement clarifies that not only do the parties need to indicate that there is no significant harm to competition or that there is no harm to competition in a significant part of the market, it is also required to indicate that the arrangement between the parties has a legitimate purpose and that the restraints are necessary to fulfil the legitimate purpose of the arrangement. In essence, the ICA broadened the block exemptions and included a 'self-assessment' regime and accordingly, today, restrictive arrangements are rarely evaluated by force of section 14 of the Law.

With regard to the extraterritorial application of the restrictive arrangement control regime – the ICA applies the 'effects doctrine' in order to acquire extraterritorial jurisdiction over restrictive arrangements, including cartels executed outside of Israel which harm competition in Israel.

Statutory exemptions

A statutory exemption may also apply to certain arrangements, detailed within section 3 of the Law in cases of, inter alia:

- arrangements involving restraints, all of which are established by law;
- arrangements relating to specific business sectors (eg, agricultural, international air or sea transformation); and
- arrangements involving restraints relating to intellectual property rights, among others.

Block exemptions

As noted, Section 15A of the Law grants the Director General the power to establish block exemptions. By publishing block exemptions, the Director General essentially exempts parties to a restrictive arrangement from seeking a specific exemption from the Director General or the approval of the Tribunal, subject to the fulfilment of the terms of the various block exemptions. In recent years the ICA has published various block exemptions, including for:

- syndicated loans and restrictive arrangements causing de minimis harm to competition;
- joint ventures;
- research and development agreements;
- exclusive dealing;
- exclusive distribution or franchise;
- non-horizontal arrangements without price restrictions; and
- joint ventures for the marketing and supply of security equipment in foreign countries, among others.

During November 2018, the ICA renewed and amended the block exemptions for joint ventures and for restraints that are ancillary to mergers. The purpose of the renewed block exemptions is to facilitate the conduct of business in Israel and to allow parties to transactions that do not significantly harm competition to execute their businesses promptly and without unnecessary regulatory burden. The renewed block exemptions also include a 'self-assessment' clause, according to which a restrictive arrangement will not require that approval of the Tribunal or the Director General if it does not raise significant concern of harm to competition in the relevant markets and if its purpose is not to reduce competition (regarding the block exemption for joint ventures, the self-assessment excludes joint ventures between competitors regarding marketing).

Recent developments in the restrictive arrangements control regime

A significant ruling of the Israeli Supreme Court regarding restrictive arrangement has been the *Shufersal* ruling. Israel's largest food chain (Shufersal) was convicted of breach of merger conditions and attempting to engage in a restrictive arrangement. The *Shufersal* ruling indicates a strict approach towards anticompetitive conduct and sets two important precedents:

- first, the imposition of stricter penalties for antitrust violations, as for the first time in Israel, imprisonment sentences (of the CEO and vice president for marketing) were imposed for violating merger conditions and for attempting to set a vertical restrictive arrangement; and

- second, that, as a rule, vertical arrangements would not be presumed (per se) to constitute a restrictive arrangement – however, such arrangements would be examined primarily on the basis of their likelihood to harm competition, under the Law's definition of a 'restrictive arrangement' (a rule of reason analysis).

Pursuant to the *Shufersal* ruling's implications on the analysis of vertical arrangements, the ICA published a guideline clarifying its policy regarding vertical resale price maintenance arrangements (RPM) – arrangements in which one link in the supply chain of goods dictates the price charged for the goods by the next link in the chain (ie, vertical arrangements between supplier and retailer or distributor). The ICA stated that, as a rule, retail price maintenance arrangements have no place in the retail sector, unless two cumulative conditions are met: that sufficient competition exists in the market; and that the arrangement is required for the purpose of gaining clear pro-competitive benefits.

Several criminal sentences were rendered recently in matters pertaining to restrictive arrangements:

- on 6 March 2019, the Jerusalem District Court issued a sentence of 11 months of imprisonment and a criminal fine on an officer in one of the members of the 'pruning cartel' (which involved restrictive arrangements, fraudulent receipt and money laundering); and
- on 11 March 2019, the Jerusalem District Court issued a sentence of two months of imprisonment and a criminal fine on an officer in one of the members of the 'water metre cartel' (which involved the fixing of tenders).

Elsewhere, the ICA informed the gas companies Amisragas and Pasgas, and senior officers in these companies, that it was considering filing an indictment regarding their alleged restrictive arrangement aimed at harming the activity of Kolbogas (an additional gas company). It is noted, that as part of their alleged arrangement, Amisragas and Pasgas agreed not to compete with each other on the basis of the information they exchanged regarding Kolbogas.

On September 2018 the District Court convicted the Contractors' Association and officers in it, as well as 11 contracting companies and its managers, pursuant to an indictment filed by the ICA. It was established that the Contractors' Association unlawfully recommended contractors not to participate in tenders that do not offer compensation for an increase in prices of input, and also that the companies unlawfully agreed to ban a certain tender.

On 1 May 2019, the ICA published for public comments a revised draft of the guidelines of 2014 concerning trade associations and their activity. The draft includes updates regarding, inter alia:

- rules pertaining to the collection of information by trade associations;
- rules regarding competition for employees; and
- clarifications regarding the conduct of trade associations in the framework of legal proceedings and public processes.

Merger control regime

Definition

The Law defines the term 'merger of companies' broadly by providing a non-exhaustive list that includes:

> *the acquisition of a company's main assets by another company or the acquisition of shares in a company by another company by which the acquiring company is accorded more than a quarter of the nominal value of the issued share capital, or of the voting power, or the power to appoint more than a quarter of the directors, or participation in more than a quarter of the profits of such company; the acquisition may be direct or indirect or by way of rights accorded by contract.*

Nevertheless, due to the broad definition of 'merger' under the Law, even the acquisition of less than a quarter of any of the above-mentioned rights may constitute a merger, under certain circumstances.

Mergers involving foreign parties

The Law will apply to a merger involving a foreign party if at least two of the merging parties meet the conditions of the nexus test, set forth in the ICA's Merger Guidelines (the Guidelines):

- if a foreign company is registered in Israel – in such circumstances the Law applies explicitly;
- if a foreign company has a 'merger affiliation' with an Israeli company. According to the Guidelines, a merger transaction between a foreign company (affiliated with an Israeli company) and an Israeli company creates an indirect merger between the two Israeli companies. The Guidelines provide that when a foreign company holds more than a quarter of any of the above-mentioned rights (ie, the nominal value of the issued share capital, the voting power, the power to appoint more than a quarter of the directors or participation in more than a quarter of the profits) in an Israeli company, it will be viewed as a party to any merger transaction involving the foreign company; and
- if a foreign company maintains a place of business in Israel (ie, if it holds a significant influence over the conduct of a local representative).

Thresholds for filing

The Law requires all merging companies to file a merger notification with the ICA when at least one of the following thresholds set under the Law is met:

- with the amended Law, the aggregated sales turnover threshold that necessitates the submission of notices of merger to the ICA was updated, so that if the aggregated sales turnover of the parties to the merger is greater than 360 million Israeli new shekels in the fiscal year preceding the merger (and not 150 million Israeli new shekels – the aggregated sales turnover under the pre-amended Law) and each of the merging companies' sales turnover exceeds 10 million New Israeli shekels, then the parties will be required to receive the Director General's advance approval;

- as a result of the merger, the combined market share (in any market) of the merging companies in the total supply or acquisition of particular goods or similar goods, or the provision or acquisition of a particular service or a similar service, exceeds 50 per cent of the market; or
- one of the parties has a monopoly (ie, holds more than 50 per cent of the total supply or purchase in a certain market in Israel, which may be either a product or a service market, including markets not relevant to the transaction). It should also be noted, that according to the amended Law, while 'significant market power' is sufficient for establishing a monopoly, it will not be considered a trigger for the submission of notices of merger to the ICA (please see below for further updates regarding the monopoly regime in Israel in this context).

The market share and turnover calculations must take into consideration all of the entities controlling or controlled by each party.

The requirements set forth above, apply solely with respect to the company's turnover and market share in Israel.

Merger evaluation process

The Law provides that the Director General is required to notify the merging companies of her or his decision with respect to the merger within 30 days from the date in which the completed notification forms were received from all the merging parties. According to the amended Law, an extension of time is given to the Director General for the review of mergers without the need to request the consent of the parties to the merger or without the need to approach the Tribunal. The Director General will be permitted to extend the period of time for the evaluation of a merger transaction (30 days) by two additional 30 day periods and also to extend the evaluation period by an additional 60 day period after consulting with the Exemptions and Mergers Advisory Committee. Thus, cumulatively, the Director General has up to 150 days to review a merger transaction.

As a practical matter, when cross-border merger transactions require approval in multiple jurisdictions, the ICA will sometimes take into account the decisions made by other authorities in different jurisdictions (primarily the US Federal Trade Commission, Department of Justice and the EU Commission), where there are no unique circumstances concerning the Israeli market. It is also possible that parties in such circumstances waive their right to confidentiality with respect to information provided to competition authorities, in order to enable the ICA to seek information from those authorities with respect to the merger. The Director General is mandated to object to a merger of companies, or to stipulate conditions for the merger, if she finds that there is reasonable likelihood that, as a result of the merger, competition in the relevant sector would be significantly harmed or that the public would be harmed by:

- the high price level of an asset or of a service;
- the low quality of an asset or of a service; or
- the available quantity of the asset, of the scope of the service supplied, or the constancy and conditions of supply.

Recent developments in the merger control regime

In February 2017, the ICA published a notice regarding a fast track for the approval of mergers that do not harm competition (the ultra-green mergers procedure). Decisions regarding ultra-green mergers are rendered in a significantly shorter time period than provided under the Law. According to the ICA, since the procedure's application, the average ultra-green merger review period has been less than five days. The review of an ultra-green merger by the ICA is limited in scope and based, principally, on the submitted merger notices. Accordingly, to be classified as an ultra-green merger the parties are required to submit, inter alia, full merger notices that are signed by the CEO and internal legal adviser of the submitting party; to provide each party's holding structure; and to expand on relevant information.

The Director General approved the merger between Reshet Media Inc (Reshet) and the New Channel 10 Inc. The merger approval is subject to a condition requiring Reshet to sell its shares in the Israeli News Company Inc, which it owns jointly with Keshet Broadcasting Inc. The holdings in the news company must be sold before the parties may merge. The Director General's decision was reached according to the 'failing firm' doctrine (extremely rare in Israel). The Director General's decision to approve the merger is based on her findings that, absent the merger, Channel 10 was likely to exit the market, raising serious concerns of harm to competition and the public.

In September 2018, the Director General approved the merger between IMI systems Ltd and Elbit Systems Ltd, inter alia, after the concern that the merger would increase the dependency of the Israeli Ministry of Defence on Elbit was alleviated, and after considering the minor overlapping activities of the parties.

On 11 July 2018, the Director General objected to a merger between the media acquisition companies Union Media and TMF. Such media acquisition companies acquire advertising space in various media and sell it to publishers. The Director General indicated that the merger may increase the power of media acquisition companies, which may decrease the prices they pay to television channels and, in turn, will harm the channels incentives to invest in broadcasted content. In addition, the merger may raise prices the media acquisition companies charge the publishers.

Monopoly control regime

Definition

According to section 26(a) of the Law, the concentration of more than half of the total supply or acquisition of an asset, or more than half of the total provision or acquisition of a service, in the hands of one person (or entity) shall be deemed a monopoly. The amended Law expands the definition of the term 'monopolist' under Israeli law, in a way that from now on a monopolist is not only those who have a market share of more than 50 per cent in the supply or purchase of a product or service, but will include also anyone who has a 'significant market power' in relation to the supply or purchase of an asset or service (even if it does not hold a market share above 50 per cent).

Under the current regime, the declaration of a monopoly by the Director General is of declaratory validity only, meaning that a monopoly is a matter of 'status'. Therefore, the obligations and limitations applied to a monopoly owner exist regardless of the Director General's declaration or lack thereof.

Limitations

In general, a status of monopoly is not prohibited. Nonetheless, monopolists must abide by several strict standards of conduct:

- a monopoly owner may not unreasonably refuse to deal (supply or purchase) goods or services in a market in which it holds a monopolistic market share; and
- a monopoly owner may not act in a manner that constitutes abuse of its dominant position in the market, in a manner likely to reduce competition in business or to harm the public. An abuse of a dominant position by a monopoly owner includes, inter alia:
    - charging unfair prices for products or services;
    - reducing or increasing quantity of products or services that the monopoly owner offers, not in the framework of a fair competitive action;
    - applying dissimilar contractual conditions to similar transactions, which might grant certain customers and suppliers an unfair advantage over their competitors; and
    - subjecting a transaction with regard to an asset or service of the monopoly to conditions which are unrelated to the subject matter of the transaction (tying).

In this regard, the Director General has the authority to supervise and instruct the monopolist in its business activities, to ensure that its behaviour, or that the mere existence of a monopoly, does not harm competition in the market or the public.

The Tribunal may, upon application by the Director General, instruct the monopolist to sell an asset in its possession if it has found that this may prevent harm or the risk of significant harm to competition or to the public.

Recent developments in the monopoly control regime

Following the amended Law, the ICA published for a public hearing a draft guideline on how to determine the existence of significant market power. As the guideline explains, significant market power is the power to charge a price that is significantly higher than the price that would be charged in a competitive market. The guideline provides a list of characteristics relevant to examining significant market power, including market share, the number and standing of competitors in the same sector, volatility of market share, the degree of differentiation between products in the sector, the importance of the product for retailers and the existence of barriers to transfer for customers. The statement also deals with barriers to entry into the specific market, barriers to expansion in the market and movement of customers from supplier to supplier.

In this context, it should be noted that at a conference held on 4 March 2019, the Director General noted that 'sectors that were immune to monopoly enforcement to date, because they did not hold a market share of more than 50 per cent, may find themselves exposed to enforcement procedures' under the new definition of 'monopolist', and added that examples for this include 'banking, retail, fuel and gas sectors'.

In March 2017, the ICA announced its intention to impose financial sanctions of 62 million Israeli new shekels on the Central Bottling Company (Coca Cola's bottler in Israel) for, inter alia:

- abusing its monopolistic status in the cola soft-drink market;
- breaching a consent decree; and
- breaching merger conditions.

After a hearing for the Central Bottling Company was held before the ICA, the ICA announced on 16 April 2019, that it intends to impose a reduced financial sanction of 51 million Israeli new shekels on the Central Bottling Company. The ICA also decided not to impose personal financial sanctions on an officer in the Company.

In January 2019, the ICA reached a consent decree with Huliot (Agricultural Cooperation Association) Ltd, in which Huliot admitted the abuse of its monopoly position and will pay 2.5 million Israeli new shekels and the company deputy CEO will pay 95,000 Israeli new shekels to the state treasury.

Concerted group control regime

Definition

According to the Law, the Director General may determine that a limited group of persons conducting business and possessing a concentration of more than half of the total supply or acquisition of an asset or provision or acquisition of a service, constitutes a concerted group, if the Director General determines that all of the following conditions are met:

- there is limited competition or there are conditions for limited competition between the group's members or within the market in which they operate; and
- instructions imposed by the Director General are expected to prevent a significant harm or concern for harm to competition in the market or to the public, or may significantly strengthen competition or may create conditions for significant improvement of market competition.

In addition, the Law lists several barriers to entry to a market; a combination of two or more of such barriers shall be regarded as conditions for limited competition.

The determination of a concerted group by the Director General has a constitutional validity.

Implications

The Director General may order a concerted group to take steps that would prevent harm or concern for harm to competition or to the public or steps that are expected to significantly increase the competition between the members of the concerted group, or to create conditions for such increase.

In addition, the Tribunal, upon the request of the Director General, may order the sale of holdings (entirely or partly) of members of the concerted group under certain circumstances.

Import

On 18 July 2018, the Israeli parliament approved a revision to the Law with the purpose of removing barriers to entry in import activities and to prevent harm to competition caused by official importers. The Law grants the Director General the authority to impose orders on an official importer regarding actions it must take to prevent significant harm to competition. Violation of such order imposed by the Director General may invoke criminal or administrative sanctions.

Recent developments in the import control regime include the ICA publishing on 13 February 2019 that according to its examination, the S Schestowitz Company (Schestowitz), which is Colgate-Palmolive's (Colgate) official importer in Israel, reports to Colgate regarding products that were imported into Israel via parallel import, including toothpaste sold in Israel under the Colgate brand. The ICA mentioned that this conduct allegedly raises a concern of harming the parallel import and accordingly harming the competition in the toothpaste sector. The ICA thus considered imposing orders on Schestowitz according to which Schestowitz would be prevented from providing such reports to Colgate. On 17 March 2019, the ICA imposed such orders on Schestowitz. This is the first time that the ICA exhausted its authority under the Law.

Enforcement

Any violation of the Law has criminal, administrative and civil consequences.

Criminal enforcement

In general, all of the provisions of the Law are criminal offences, however, criminal sanctions are not often used and are reserved, mostly, for significant violations of the Law (eg, cartels, bid-rigging). This said, in the upcoming years, we expect to see increased criminal enforcement alongside greater sanctions owing to developments of the Law as well as an increase in the ICA's influence. With respect to criminal enforcement we note the following.

Responsibility of a corporation

According to the amended Law, an independent duty was imposed on officers in a corporation to supervise and do everything possible to prevent any violation of the Law by the corporation or its employees (the Supervision Duty). The violation of the Supervision Duty may result in the imposition of a criminal sanction of up to one year imprisonment and a fine. It was also established that if the corporation or a corporation's employee carried out an offence, then there will be a presumption that the officer breached the Supervision Duty, except if the officer proved that he or she did everything in his or her power to fulfil the Supervision Duty.

Maximum fine

The maximum fine against a person in a criminal procedure is 2.26 million Israeli new shekels for every violation of the Law and an additional fine of up to 14,000 Israeli new shekels (for each day the offence continues). In the case of a company, the fine or the additional fine is doubled.

Maximum punishment

The maximum punishment for an individual is three years imprisonment and, if the offence has been committed in aggravated circumstances, up to five years. Aggravating circumstances include factors that will likely harm competition. It should be noted, that according to the amended Law, the maximum criminal penalty for the offence of a restrictive arrangement was increased from three years of imprisonment to five years of imprisonment, without the need to establish aggravating circumstances.

Leniency programme

The ICA's leniency programme provides that every person, including a corporation, a director or an employee of a corporation, will be granted full immunity from criminal prosecution relating to a restrictive arrangement offence, if it is the first to come forward to the ICA and provide all information known to it, in connection with the restrictive arrangement to which it was party. The ICA has repeatedly stated that it ascribes great importance to the programme and that it constitutes a major component of the Israeli enforcement regime for cartels. However, the leniency programme is not considered to be successful in Israel, with only a few applications since its initiation.

Administrative enforcement

Administrative determination (decision)

The Director General may issue an administrative determination declaring that a certain violation has occurred. The Director General's determination serves as prima facie evidence in court.

Administrative fines

For every violation of the Law, the Director General may impose administrative fines of up to 8 per cent of the sales turnover of a corporation's revenue in the year preceding the violation. Under the amended Law, the maximum amount that can be imposed shall not be greater than 100 million Israeli new shekels (for each violation). Before the amendment, the maximum amount was set at approximately 24.5 million Israeli new shekels. For individuals or corporations that, in the year preceding the violation, had sales turnover of less than 10 million Israeli new shekels, the Law sets a maximum fine of approximately 1.03 million Israeli new shekels.

The Law contains a non-exhaustive list of circumstances and considerations for the Director General to weigh when determining the amount of the administrative fines to be imposed. Inter alia:

- the duration of the offence;
- the harm that the offence was liable to cause to competition or to the public;
- the offender's share in the offence and its level of influence over its commission;
- the existence or absence of prior offences and the date of their commission; and
- actions taken by the offender to prevent repetition of the offence or to terminate the offence, including reporting the offence on its own initiative, or actions taken to repair the effects of the offence.

On 20 February 2019, the ICA published for public comments a revised guideline regarding the imposition of administrative fines, including revisions to the benchmark for setting the value of the administrative fines and the possibility to exclude turnover from certain activities when calculating the company's turnover for the purpose of setting the value of the administrative fines.

- Regarding an offender who is an individual – his or her financial capacity, including income derived or accrued from the corporation related to the offence, and personal circumstances owing to which the offence was committed, including severe personal circumstances that justify not applying the full extent of the law against the offender.
- Regarding an offender who is a corporation – the existence of a significant risk that as a result of imposing the penalty, the offender will not be able to pay its debts and its activities will be terminated.

Also, the ICA published guidelines in order to clarify when it will impose administrative fines as the primary enforcement measure (instead of seeking criminal sanctions). The guidelines list numerous offences which will typically be enforced through administrative fines, including non-horizontal restrictive arrangements, gun-jumping violations, information exchange of non-secret information, abuse of dominant position and failure to comply with data requests.

Consent decree

The Law authorises the Director General and third parties to agree to a consent decree that provides, inter alia, for an amount of money to be paid to the state treasury in lieu of other enforcement measures. In recent years, the ICA increased its use of consent decrees, reaching consent decrees with, inter alia:

- Tnuva (Israel's largest dairy company) in which Tnuva admitted to be a party of three restrictive arrangements and will pay 25 million Israeli new shekels;
- Huliot (Agricultural Cooperation Association) Ltd (Huliot), in which Huliot admitted abuse of its monopoly position and will pay 2.5 million Israeli new shekels and the company deputy CEO will pay 95,000 Israeli new shekels; and
- E Schnapp & Co Works Ltd and the International JCI Group, according to which the cooperation between the parties will be significantly minimised and the parties will pay 1.1 million Israeli new shekels and 250,000 Israeli new shekels, respectively.

Private enforcement

Class actions

Any violation of the Law is deemed a tort under the Torts Ordinance (New Version), 5728-1968. The Israeli Class Action Law enables the submission of motion to certify class actions in antitrust cases. In recent years, an increasing number of motions to certify class actions based on alleged global cartels are being filed with the Israeli district courts. The typical petitioners in these cases are Israeli private consumers or private consumer organisations while the respondents are global companies that allegedly were parties to (alleged) global cartels.

Often, the trigger for private enforcement in the past was based on criminal or an administrative enforcement action taken by the ICA. However, the new trend expands the said trigger to be enforcement actions taken by foreign competition authorities worldwide. Other motions to certify class actions are based on claims against monopolists regarding excessive pricing.

Pro-competitive developments

As noted, the past couple of years has seen many significant and influential developments in Israeli competition law and in the enforcement authorities of the Director General, inter alia, against the backdrop of unprecedented social protest against the increase in the cost of living.

For example, the ICA has published a call for comments on competition in the internet and digital economy. The aim of the call for comments is to receive input from the public, including start-up companies and leading and established companies in the high-tech sector, regarding contemporary issues in competition as they relate to the online world and the Israeli economy. Also, the ICA has published a call for comments on competition failures that stem from regulation as a part of the ICA's markets department's remapping of regulatory failures in various sectors.

The Food Law

The Food Law, enacted in 2014, deals primarily with vertical relations between food suppliers and retailers and regulates the commercial relations between them. The Food Law imposes criminal, administrative and civil liability on corporations and their officers. The law also empowers the Director General to instruct a large retailer that is selling the products of a large supplier regarding sale spaces, and to give instructions to a retailer that is selling private label products.

The Concentration Law

The purpose of the Concentration Law, enacted in 2013, is to reduce economy-wide market concentration, and to promote competition in various sectors of the Israeli economy. The Concentration Law poses limitations on, inter alia, cross-holdings in a significant non-financial entity with a significant financial entity and the control of public corporations through a pyramidal ownership structure. The Concentration Law also requires consulting with the Director General, inter alia, regarding the advancement of competition in a specific sector.

The ICA's advisory capacity

In addition to its role as a regulator and enforcer, the ICA performs competitive market analysis of various sectors and advises other regulators. Inter alia, in recent years, the ICA published:

- a report concerning the sector of baby formula, outlining competitive issues and recommendations of regulatory steps;
- a joint report published by the ICA and the Israel Securities Authority examining the competition in the retail brokerage market in Israel and formulating a number of recommendations to encourage competition in the brokerage sector and strengthen the resilience of parties operating in the sector; and

- a draft report on personal import as a measure to promote competition, which its conclusion states that Israel has significant regulatory and bureaucratic barriers to the expansion and growth of personal import.

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Ms Eyal-Boger, head of FBC's competition and antitrust department, is one of Israel's leading antitrust practitioners. She specialises in all aspects of competition and antitrust matters and represents clients in complex litigation and class actions, including following international cartels.

Ms Eyal-Boger is consistently featured in the international rankings of *Who's Who Legal*. She was also the only non-academic Israeli lawyer to have been selected by the international journal *Global Competition Review*, in its survey of the best worldwide antitrust practitioners under 40 years of age.

Ms Eyal-Boger regularly assists multinational and domestic companies in obtaining the approval of the Israel Antitrust Authority for M&A transactions, investments and agreements containing restrictive provisions, and provides counsel with respect to matters involving potential restrictive trade practices and abusive behaviour. Ms Eyal-Boger also works closely with companies to create and implement antitrust compliance programmes.

Ms Eyal-Boger was invited by the ICA to act as a non-governmental advisor to the European Commission at the International Competition Network. Ms Eyal-Boger served as the deputy chair of the Israel Bar Association's antitrust committee and is frequently called upon to lecture on antitrust matters before various legal and business forums.

Ms Eyal-Boger was also a lecturer at the Law School of the College of Management-Academic Studies, Israel's largest and oldest college, in the area of antitrust law.

Ziv Schwartz
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Mr Schwartz is a partner in the competition and antitrust department, where he specialises in competition and antitrust, litigation, and commercial disputes. Mr Schwartz provides legal counsel to individuals and private companies with respect to antitrust matters relating to complex merger transactions, restrictive arrangements, and cases involving monopolies and abusive business practices. Mr Schwartz also represents companies in civil lawsuits and arbitration, including class actions and proceedings before the Antitrust Tribunal.

Mr Schwartz received his LLM degree from Columbia University School of Law, where he was named a Harlan Fiske Stone Scholar. During his studies, Mr Schwartz served as a research assistant and was a member of the editorial board of the *Columbia Business Law Review*. During his undergraduate studies, Mr Schwartz served as a research assistant at Tel Aviv University, Faculty of Law, and also served as a member of the editorial board of the Tel Aviv University Law Review.

Mr Schwartz appears in the 2018 edition of *Who's Who Legal Competition: Future Leaders* and is also ranked as a 'leading individual' by The Legal 500.

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Ms Brown is an associate in the competition and antitrust department, where she specialises in competition and antitrust law, litigation and regulation.

Ms Brown provides legal counsel to domestic and foreign companies in diverse competition and antitrust matters, including mergers and acquisitions, proceedings before the ICA, class actions, commercial disputes and other potentially restrictive trade practices.

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