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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL

-- January 2007-April 2008 --

*This report is submitted by the Israeli Delegation to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 11-12 June 2008.*

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## Executive Summary

1. This report summarizes recent developments and changes in Israel's competition law and policy and overviews some of the main enforcement activities of the Restrictive Trade Practices Act, 5748-1988 (hereinafter – "Antitrust Law") for the period of January 2007 through April 2008.

The Israel Antitrust Authority (hereinafter – IAA) is an independent government enforcement agency established in 1994 under an amendment to the Antitrust Law. Its mandate includes preventing market power through merger control and anti-cartel enforcement, restraining abuse of dominant position by firms and enhancing competition in the various markets. An Antitrust Tribunal, sitting within the District Court of Jerusalem, has exclusive jurisdiction over non-criminal governmental antitrust proceedings. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters. Both criminal and civil antitrust rulings are subject to appeal before the Supreme Court.

2. In the period covered by this report, the IAA considerably promoted competition in various sectors through proactive enforcement of the law, promotion of legislative amendments as well as advocacy efforts. This action resulted in significant improvements in several important markets, such as energy, telecom, aviation, food and retail. Among the main achievements are:

- Legislative reform to enhance competition in the LPG Sector;
- Legislative reform that opens the aviation sector to antitrust scrutiny;
- IAA issues a decision regarding Telecom incumbent's abuse of dominant position;
- IAA issues a decision concerning restrictive arrangement within the association of private geriatric hospitals;
- Imposition of imprisonment sentences and heavy fines by Court in LPG cartel case;
- Ruling by the Supreme Court concerning a restrictive arrangement in the market for frozen kosher meat imports;
- Investigation of an alleged illegal merger and restrictive arrangements in the processed tomatoes industry.

3. The resources of the IAA have not significantly changed from previous years, with an annual budget of 19,330,000 NIS (approximately 5.5 million USD) and 73 employees. Nevertheless, the IAA is experiencing an overall rise in the intensity of its activities, whether in litigation, enforcement, advocacy and the volume of merger reviews in 2007. In addition, the IAA is currently undergoing a peer review by the OECD Competition Committee.

### 1. Changes to competition laws and policies

#### 1.1 *Legislative amendment opens the air transportation sector to antitrust scrutiny*

4. One of the major achievements accomplished by the IAA during 2007-2008 is the enactment of a legislative amendment which allows the IAA to enforce the provisions of the Antitrust Law in the aviation sector. Following the amendment, a comprehensive evaluation process was carried out which resulted in

publication of a draft block exemption concerning restrictive arrangements between airlines for public comments.

5. Thus far, Paragraph 3(7) to the Antitrust Law stipulated that all forms of international sea and air transportation were immune from antitrust scrutiny. The statutory exemption implied that airlines could engage in various types of agreements, regardless of their consequences on competition and without the need for any authorization from the IAA. Following the reform and as part of its new powers, the IAA will have the mandate to enforce the provisions of the Antitrust Law on agreements between airlines that concern air transportation to and from Israel and evaluate their effect on competition. The draft block exemption touches upon a broad variety of agreements, including technical agreements, interline, code-sharing, block-seat and leasing agreements.

6. The draft of the block exemption distinguishes between two categories of agreements: First, agreements that do not have a potential detrimental effect on competition and hence are not subject to approval. The second category is agreements that might harm competition and hence must be submitted to the IAA for approval. Among the anti-competitive agreements are certain code-share agreements and block seat agreements. The block exemption takes into account the need for efficient enforcement by the IAA that will focus on those agreements which raise competitive concerns alongside the need for legal certainty with regards to the new rules among airlines.

7. Given the characteristics of the Israeli market and its dependence on air transports for trade and tourism, there is great importance for opening agreements between airlines to antitrust scrutiny. Enhancement of competition between airlines is expected to reduce prices, facilitate international trade and contribute to economic growth.

8. The draft block exemption, published on 16.3.2008, is subject to public comments after which it must be authorized by a Committee of experts and signed by the Minister of Industry, Trade & Labor.

### ***1.2 Legislative reform to enhance competition in the LPG Sector***

9. In July 2007, the IAA submitted to the Knesset's Economic Affairs Committee a comprehensive analysis of the insufficient competition in the market for liquefied petroleum gas (LPG) for private consumption. In the report, the General Director called for legislative amendments that would enhance competition in this highly concentrated market which for many years has been dominated by four major companies, some of which have been convicted by Court for engagement in an illegal cartel.

10. The IAA's recommendations were to prohibit the LPG companies from inhibiting the consumers' ability to switch to a different LPG company, preclude them from unreasonably refusing to provide LPG, require an existing provider to sell all its LPG equipment to a new provider selected by residents of a specific building and impose equal safety requirements (and not harsher) on new entrants to the market.

11. The IAA worked together with the Ministries of Finance, Justice and National Infrastructure to enact the proposed reform into the law. In December 2007, this legislation was approved by the Committee of Economic Affairs and in March 2008 it took effect.

### ***1.3 Publication of guidelines for merger (final version)***

12. In recent years the IAA has gathered its accumulated experience in merger review, to produce coherent and comprehensive guidelines that would reflect its up to date policy and practices. After a comprehensive evaluation process and public consultations, a final version of the guidelines was introduced at the IAA annual conference in January 2008.

13. The guidelines clarify the various reporting requirements as well as other procedural requisites relating to mergers. The underlying objective is to enhance the level of transparency and facilitate the application process for potential users. In addition the guidelines are likely to yield efficiency gains due to an expected decrease in the number of individual inquiries from the private sector as well as a possible reduction in the number of unnecessary merger notifications (e.g. transactions which do not require notification).

14. The guidelines refer to key issues including:

- Classification of transactions for the purpose of merger notification with specific reference to cross border transactions in which at least one party is a foreign company and transactions involving private individuals.
- Duties that lie on merging parties from the moment of the transaction until the IAA's decision;
- Procedural and substantive aspects in the IAA's merger review process;
- Reporting requirements with specific reference to stock options transactions.

#### ***1.4 Development of case law***

15. 2007 was a fruitful year in terms of case law development. Several important decisions were issued by the Supreme Court, each of which brings its own unique contribution to the evolution and enhancement of the existing case law.

16. In the frozen vegetables cartel case the Supreme Court rejected the defendants' claim that frozen vegetables are subject to the Antitrust Law's agricultural exemption while clarifying the boundaries of the agricultural exemption and its proper interpretation.

17. In a different case concerning bid-rigging in the traffic light market the Supreme Court ruled that as a general rule the proper punishment for antitrust offenses should be imprisonment in jail, which reflects a clear saying against those who wish to harm the public by pure pursuit for easy profits by bid rigging in public procurement.

18. Another significant decision was given by the Supreme Court in the Tnuva Meir Ezra case (concerning a restrictive arrangement in the market for frozen kosher meat imports) which has far reaching implications. In October 2007, Israel Supreme Court (Chief Justice Beinisch, Justice Levy and Justice Joubran) convicted foods and dairy cooperative Tnuva, and its former CEO, Yitzhak Landsman, and Meir Ezra Corporation and its CEO, David Ezra of engagement in a restrictive arrangement in the years 1993 and 1994.

19. Tnuva is a food and dairy cooperative, manufacturing and marketing dairy products, eggs, meat, fruit and vegetables. Meir Ezra corporation imports, manufactures and distributes meat products, canned goods and fish.

20. The case concerns the market for frozen kosher meat imports. Until 1993 the Ministry of Industry and Trade had the exclusive right to import Kosher meat. Once the Government allowed private undertakings to import, Tnuva and Meir Ezra engaged in a restrictive arrangement which included market division and price fixing.

21. The IAA carried out an investigation and later charged the parties for antitrust violations before the Jerusalem District Court. The District Court exonerated the parties despite ruling that they had formed a restrictive arrangement on the grounds of reliance on legal advice. Subsequently the IAA filed an appeal to the Supreme Court on January 2002.

22. The Supreme Court determined that in this case the legal advice the defendants received from their lawyers does not constitute a defense from criminal conviction. The Court also rejected the claim raised by the defendants that the arrangement was not restrictive .

23. The decision narrows the judicial precedent set previously (Horowitz case) with regards to reliance on legal advice. The Supreme Court noted that the restrictive arrangement in the case of Tnuva and Meir Ezra, constituted a hard core antitrust offence. According to its ruling, the defendants, who were experienced businessmen, had to be aware of the problematic antitrust features of the arrangement in which they engaged and should not have relied solely on the legal advice they received from their lawyers.

24. The Supreme Court's decision has a broader significance which goes beyond the immediate antitrust issues that were involved in the matter. That is because in many white collar crime cases, and particularly in complex economic crime cases, defendants often argue in their defense that they had relied on legal advice according to which their actions were lawful. Chief Justice Beinisch referred to the severity of the phenomenon by stating: "granting an exemption from criminal liability based on the defendant's reliance on an erroneous legal advice provided by his lawyer entails several dangers. The main dangers ... in this context are the concern over misuse of the defense that would bring about tailored opinions designed to give immunity and exemption from criminal liability."

25. The ruling stated that: "the fear from ordered legal opinions is especially relevant in complex "economic" offences (like restrictive arrangements and tax offences) ... with regard to these offences, a talented lawyer could, in cases where relevant statutes have yet been interpreted by Courts, provide a legal opinion that will best suit his clients' interests ."

26. The Supreme Court issued two additional rulings that complement the Tnuva – Meir Ezra decision. In the Tagar case (aircraft spare parts cartel) as well as the Balili case and it was emphasizes that a claim for reliance on legal advice is possible only if the defendant revealed all relevant information to his lawyer.

27. It should be noted that two comprehensive IAA decisions further contribute to the interpretation and implementation of the Israel Antitrust Law in the field of abuse of dominance and restrictive arrangements within a business association. One decision refers to abuse of dominant position by Telecom incumbent (Bezeq) in the telecom market and the other deals with a restrictive arrangement constituted within the association of private geriatric hospitals.

## **2. Enforcement of competition laws and policies**

### ***2.1 Action against anticompetitive practices***

#### ***2.1.1 Statutory framework and statistics***

28. The Antitrust Law provides for varied remedies in cases of infringements or violations of the Law, some of which qualify as a criminal offence as well as a civil tort as explained hereunder.

29. Severe antitrust violations may be subject to criminal prosecution and may result in fines and imprisonment sentences. Liability is imposed upon the corporation and its executives.

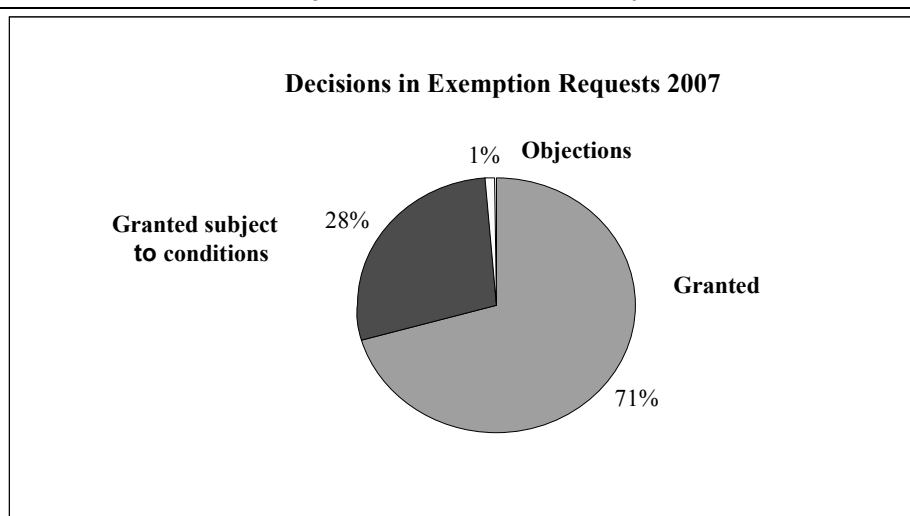
30. The civil and administrative remedies for infringements of the Antitrust Law include consent decrees, injunctions and court orders granted by the Antitrust Tribunal. The General Director has the power to declare an activity as prima facie illegal and the power to issue rules of conduct to monopolies.

The Antitrust Law stipulates that 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 is deemed to be a **Monopoly**.

The law defines a “**restrictive arrangement**” as an arrangement made between two or more persons conducting business that limits at least one party to the arrangement in a manner that may prevent or reduce competition. The law provides examples for anti-competitive behaviors which fall under the above mentioned definition. Accordingly, an arrangement involving a restraint relating to one of the following issues shall be deemed to be a restrictive arrangement: the price to be demanded, offered or paid; the profit to be obtained; division of all or part of the market, in accordance with the location of the business or in accordance with the persons or type of persons with whom business is to be conducted; the quantity, quality or type of assets or services in the business.

31. Engagement in a restrictive arrangement without prior authorization of the Antitrust Tribunal or any other temporary authorization is prohibited, unless the arrangement was specifically exempted by the General Director or in case it was covered by a block exemption. During 2007, the General Director handled exemption requests as follows:

Total number of Exemptions	Granted	Granted subject to conditions	Objections
68	48	19	1



### 2.1.2 Summary of significant cases

32. The IAA devotes extensive efforts and resources in its action against anticompetitive practices and cartel arrangements in a wide range of industries. The following summarizes few of the main developments which took place over the past year.

- Court imposes imprisonment sentences and heavy fines on LPG cartel members

33. During the period covered by this report, imprisonment sentences and heavy fines were imposed by Court on members of LPG cartel following plea bargains with the IAA. The defendants were convicted

in cartel offences in the liquefied petroleum gas (LPG) market during 1994-1996. In this case four dominant gas companies (Pazgaz, Amisragas, Supergas and Dorgas) with an aggregate market share of over 90% and 15 of their senior management were indicted with engagement in a cartel activity on a national scale during the abovementioned period. The process involves 215 prosecution witnesses and over 30,000 documents containing relevant evidence.

34. Three of the four companies that were indicted and their executives have reached plea bargains with the IAA. The fines for the companies ranged between 1.25- 4.04 million NIS per company. Most executives were sentenced to up to 6 months' imprisonment to be served in community services and payment of individual monetary fines of up to 1.25 million NIS. An important achievement of one of the plea bargains is the fact one of the companies' CEO was sentenced to serve 100 days in prison with no option to serve the term in community services.

- Supreme Court rejects defendants' claim in the frozen vegetables cartel trial

35. In June 2005, the IAA filed an indictment against five frozen vegetables companies and their managers in the District Court of Jerusalem.

36. According to the indictment, the companies conspired in a cartel, from 1992 until 1998, to coordinate product prices and discount rates. In addition, the indictment specified that the companies divided customers among them. The frozen vegetables market in the relevant period was estimated at 160 million NIS. In March 2006, the Court rejected the defendants' claim that frozen vegetables are subject to the Antitrust Law's agricultural exemption. The companies and their executives were convicted following a plea bargain with the IAA. The companies received fines of up to 900,000 NIS and the executives received fines of up to 180,000 NIS (that fine was reduced by the Supreme Court from 250,000 NIS) and 6 months imprisonment to be served in community services. One executive was sentenced to 30 days imprisonment in jail.

- Supreme Court accepted IAA's appeal regarding a restrictive arrangement in the frozen kosher meat imports market (Tnuva – Meir Ezra case)

37. In January 2002 the IAA filed an appeal to the Supreme Court following the District Court's exoneration of two companies charged with market division and price fixing in the market for frozen kosher meat imports in the years 1993 and 1994, on the grounds of reliance on legal advice. The Supreme Court, in its ruling noted that the restrictive arrangement in this case constituted a hard core antitrust offense and the defendants, who were experienced businessmen, had to be aware of the problematic antitrust features of the arrangement and should not have relied solely on the legal advice they received from their lawyers.

- Supreme Court confirmed conviction in the Aviation Spare Parts Cartel

38. In 2005 Tagar and SRS were convicted by the District Court in Jerusalem in bid rigging the Ministry of Defense tenders of aviation spare parts of the Miraj airplane in the scope of 4 million NIS which took place in 1990. Following their conviction the parties appealed to the Supreme Court. In October 2007, the Supreme Court confirmed their conviction in being party to restrictive arrangements and stated that the conduct was methodical, deliberate and repetitive in the different charges brought against the parties.

39. The parties claimed for reliance on legal advice. The Supreme Court accepted SRS and its owner's claims regarding such reliance with connection to one of the charges. The Court emphasized that a

claim for reliance on legal advice is possible only if the defendant revealed all relevant information to his lawyer.

- Supreme Court accepted IAA's appeal regarding bid-rigging in the traffic light market

40. In 2006 the IAA appealed the sentence that was given to the parties of a bid-rigging arrangement in Haifa's tender relating to the maintenance of traffic lights in the city. In May 2007, the Supreme Court worsen all the parties' sentences stating that there is a greater severity in that the arrangement was for coordinating a public tender executed by a public authority which sets the burden of the financial damage on the tax payers.

41. Furthermore, the Supreme Court ruled that as a general rule the proper punishment for antitrust offenses should be imprisonment in jail, which reflects a clear saying against those who wish to harm the public from pure pursuit of easy profits on the expense of the public. The fine for the company was set at 1 million NIS and the executives fines came up to 100,000 NIS. In its sentencing the Court took into consideration that the case was conducted for over ten years and the parties were first exonerated by the District Court.

- IAA issues a decision regarding Telecom incumbent's abuse of dominant position

42. Following an abuse of dominance investigation the IAA determined in December 2007 that Israel's Telecom incumbent Bezeq abused its monopoly position, in violation of the Restrictive Trade Practices Law, following the disconnection of HOT-Telecom subscribers from Bezeq's telephony network last year. In May 2006, the interconnection between HOT-Telecom and Bezeq's telephony network was cut off and as a result, HOT-Telecom's subscribers were unable to call or receive calls from Bezeq subscribers. Bezeq employees refused to fix the problem since they were on a strike, which caused the disconnection to last for approximately 34 hours. Following this event, an investigation was initiated by the IAA investigations department.

43. Based on the findings of the investigation, and after a hearing was conducted, the IAA issued a determination based on Article 43 (a)(5).

44. The determination states that by the end of April and beginning of May 2006, Bezeq management received substantial indications showing that Bezeq employees slowed down or failed to perform projects necessary to establish interconnection with new competing fixed-telephony operators (Cellcom, Globecall and Golden Lines) or to expand the capacity of existing interconnection with a presently-competing fixed-telephony operator (HOT-Telecom). The management did not take the required measures in light of these indications: It did not verify the actual situation and nature of the problem; it did prepare in advance a motion to The Labour Tribunal for an injunction against the striking employees, and it did not file such a motion until a late stage. The IAA further determined that in the afternoon hours of 17.5.06 the existing interconnection between HOT-Telecom and Bezeq was disconnected and was not re-established until the night of 18.5.07 due to a strike by Bezeq employees and Bezeq did not take the required action to prevent or minimize these failures and the injury which they caused to the other fixed telephony operators as well as to competition and the public at large; consequently, that by acting in this way Bezeq abused its dominant position in violation of the Restrictive Trade Practices Law. The determination constitutes prima facie proof of its subject matter in any legal procedure and could hence facilitate private enforcement.

- IAA issues a decision concerning restrictive arrangement within the association of private geriatric hospitals

45. In December 2007 the IAA determined that the conduct and actions taken by the Association of Private Hospitals in Israel (hereinafter – "Association") constituted a course of action which is an unlawful restrictive arrangement. According to the decision, the Association guided its member geriatric institutions in the District of Petah- Tikva, to collectively and coordinately refrain from bidding in the tender for hospital services that was published by the Ministry of Finance and Ministry of Health.

46. In January 2006, the Ministry of Finance and Ministry of Health published a pilot tender for purchasing of hospitalization and nursing services from geriatric hospitals that operate in Petah – Tikva.

47. The pilot tender was a first step in a reform which aimed at improving the former contracting system used by the Government to purchase services from hospitals and upgrade to a more efficient tender system.

48. By the beginning of February 2006, a few days after the tender was published, the Association called a meeting with representatives of geriatric hospitals that operate in Petah – Tikva. The IAA carried out an extensive investigation which revealed that in the meeting, where all members of the Association's management and legal counsellors were present, the Association guided the representatives of its members not to buy the documents of the tender and to collectively refrain from submitting bids in the tender process.

49. During the meeting, the Association's Chairman delivered a presentation which attempted to demonstrate that the price level specified by the tender would result in losses for all the hospitals that would participate. The Chairman further emphasized the importance of taking joint action by the member hospitals. The IAA determined that this action, *per se*, is an unlawful line of action which constitutes a restrictive arrangement.

## 2.2 Mergers

### 2.2.1 Statutory framework and statistics

50. Merger control constitutes an important part of the IAA's mission to prevent the formation of market power that would be detrimental to competition.

The Antitrust Law broadly defines a "**merger**" as including one or more of the following transactions:

- a) Acquisition of the essential assets of a company by another company;
- b) Acquisition of shares in a company by another company that confers on the purchasing company more than one quarter of the nominal value of the share capital issued at that time, or of the voting rights;
- c) Right to appoint more than one quarter of the board of directors;
- d) Right to participate in more than one quarter of the profits of the company.

The above applies whether the acquisition is direct or indirect or by means of contractual rights and applies on transactions with similar results.

The IAA interprets the definition in a broad manner as to include all transactions that are likely to establish an affinity or to significantly reinforce an affinity between the mechanisms for taking business decisions of two or more entities.

Mergers that cross certain **thresholds** must obtain the approval of the General Director before execution of the transaction. Merging parties must submit a merger notification in the event that one of the following conditions exists:

- (a) As a result of the merger, the share of the merging companies in the overall manufacture, sales, marketing or acquisition of a particular asset and a similar asset or provision of a particular service or a similar service is in excess of fifty percent;
- (b) The joint sales volume of the merging companies according to their balance sheets for the year preceding the merger, is in excess of 150 million New Shekels; the sales volume of at least two of the merging companies is in excess of 10 million new Shekels each and the combined sales volume of all the merging parties is in excess of 150 million new Shekels.
- (c) One of the companies is a monopoly.

51. The Director General has the power to block a merger if the merger raises a reasonable concern of material damage to competition or the public. She can clear the transaction or approve it under conditions. The General Director's decision is subject to an appeal to the Antitrust Tribunal.

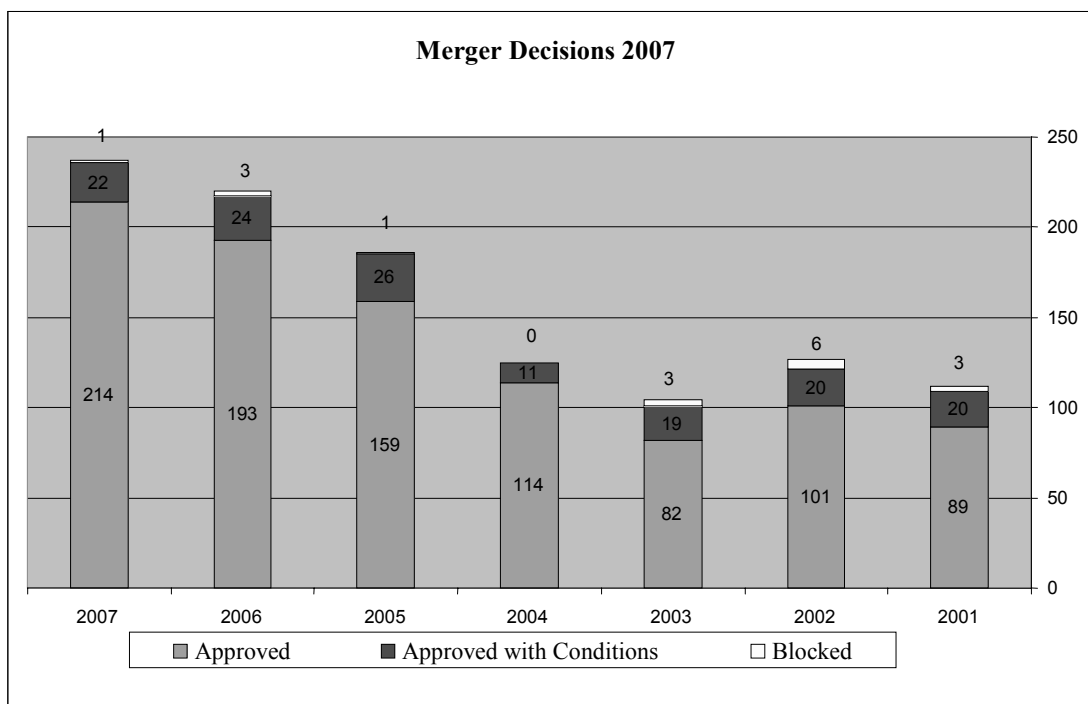
52. The Antitrust Law sets a review period of thirty days, during which the General Director is required to reach a decision. The period can be extended by the Antitrust Tribunal or when the consent of the merging parties is granted. If the IAA does not decide within the prescribed time period, the merger is deemed to be compatible with the law. The moment the IAA receives a merger notification, it is classified by the Chief Economist corresponding to the degree of preliminary concern regarding the competitive issues that are raised ("green," "yellow" and "red," respectively).

53. During 2007, the IAA issued 237 merger decisions. It is worth noting that the average review period of all merger notifications stands on 23 days, two days less than in 2006. The average review period of "green" mergers stands only on 20 days in average.

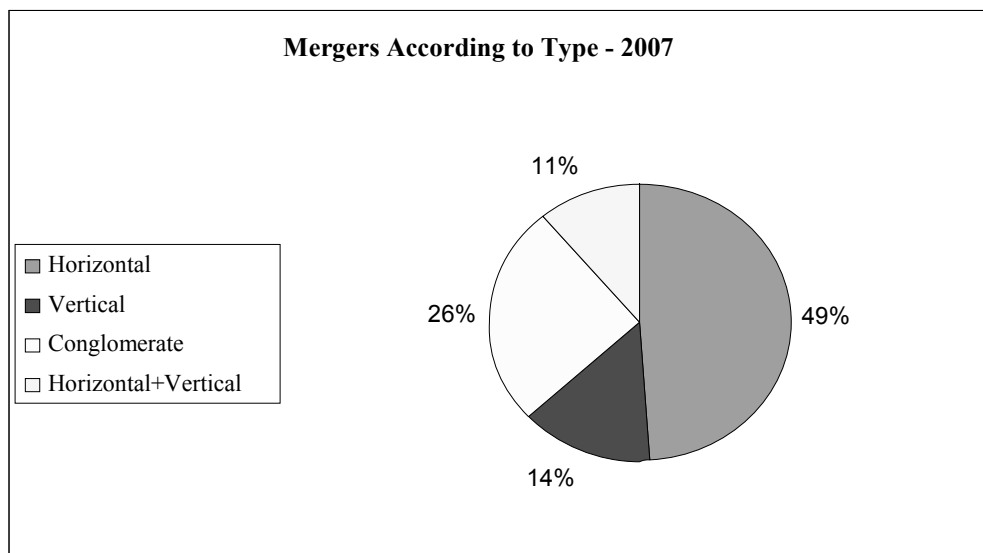
54. In 2007 most merger notifications were approved without conditions and only one merger was blocked, as illustrated by the table below:

**Table 1. Decisions in Merger Filings**

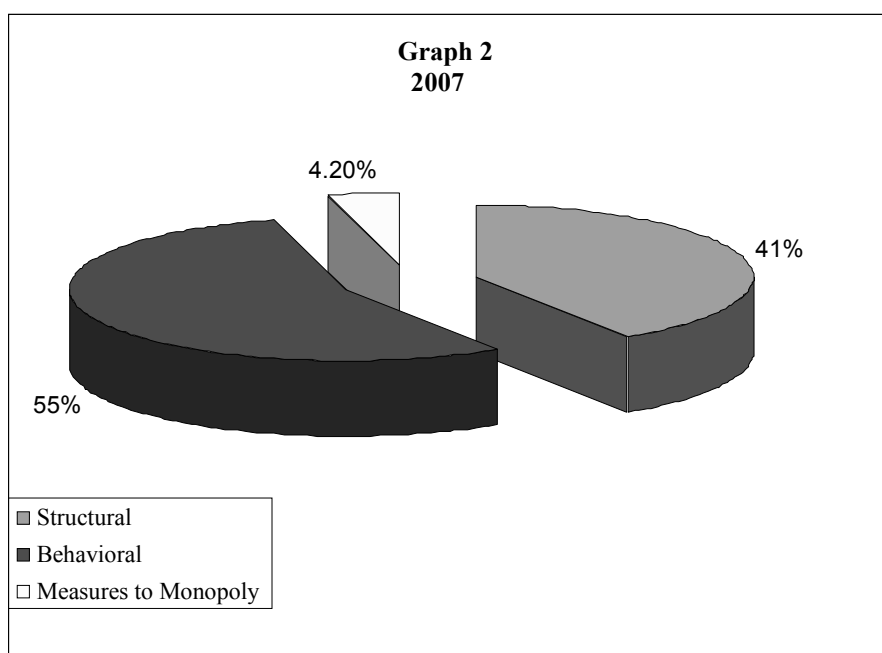
	<b>Decisions</b>	<b>Approved</b>	<b>Conditioned</b>	<b>Blocked</b>
<b>2001</b>	112	79%	18%	3%
<b>2002</b>	127	80%	16%	4%
<b>2003</b>	104	79%	18%	3%
<b>2004</b>	125	91%	9%	0%
<b>2005</b>	194	85%	14%	1%
<b>2006</b>	219	88%	10.5%	1.5%
<b>2007</b>	237	90.3%	9.3%	0.4%



55. About half of the mergers in 2007 were classified as horizontal mergers, 14% percent were classified as vertical, and the rest were classified as either conglomerate or both vertical and horizontal, as illustrated hereunder:



56. Conditions that were imposed on mergers break down to three main categories, namely behavioral, structural and measures to monopoly, as depicted below:



### 2.2.2 Summary of significant cases

57. The following is a summary of several significant merger cases that were reviewed by the IAA or brought before Court over the period covered by this report:

- Antitrust Tribunal upholds IAA decision to block a merger in the steel industry

58. In April 2007, The Antitrust Tribunal dismissed an appeal by Yehuda Pladot Ltd. (hereinafter - YP) over the IAA's decision to block a merger with another steel manufacturer, Mifalei Plada Meuchadim Ltd. (hereinafter - MPM). The Tribunal ruled that the merger would have significantly hindered competition and that the IAA may take into consideration, within its merger review process, the expected effects on potential competition associated with the merger.

59. By the end of 2001, MPM became insolvent and YP subsequently remained the sole scrap-melting firm in the local market. Melted scrap is an input in the production process of steel for construction. YP exploited its position as a single firm in the market by drastically reducing the quantity of scrap it collected. In addition, it tried to maintain its status as the sole scrap-melting firm by acquiring MPM meltshop facility in order to shut down its melting operations. The IAA's decision to block the merger was founded on the fact that the merging parties were the only two scrap-melting firms in the local market. Furthermore, the merger would have fortified YP's monopsony in scrap acquisition. Following the IAA's decision, a third party entered the market and began operating on a commercial scale, leading to a significant increase in the quantity of scrap collected. In its ruling, the Tribunal underlined the fact that had the merger been approved it would have impeded any chance for acquisition of MPM by a third party and would have subsequently ruled out any potential competition to YP. The Tribunal based its ruling on data submitted by the IAA which demonstrated that YP abused its market power during the period it dominated the market.

- Investigation of an alleged illegal merger and restrictive arrangements in the processed tomatoes industry

60. In April 2007, IAA asked the Antitrust Tribunal to block a merger between Prinir (Hadas 1987) Ltd., and Milos (1989) Ltd., two companies that operate in the processed tomatoes market. Prinir and Milos are two out of three main competitors who control together more than half of several markets within the processed tomatoes industry. According to information obtained by the IAA, Prinir acquired Milos through a private company that is owned by Prinir and two Swiss citizens without the approval of the IAA and in violation of the Antitrust Law. Following the transaction, in which all Milos shares were acquired, Prinir's CEO became the dominant figure in Milos as well as in Prinir. According to the IAA, the unauthorized merger severely impedes competition in a number of sectors and might eliminate the overall capacity of Milos to compete. Prinir and Milos are two principal competitors in production and marketing of tomato paste as well as other processed tomatoes products. Even prior to the merger, there were sectors in which one of the parties was the largest competitor. The relevant sectors feature few competitors and high level of concentration and are characterized by high entry and import barriers. According to the data obtained by the IAA, the remaining competitors in those markets are not able to effectively restrain the aggregated market power of Milos and Prinir. The request followed an ongoing criminal investigation initiated by the IAA, which revealed substantial involvement of Prinir in the management of its former competitor Milos. This involvement transformed the latter from an independent competitor into a subsidiary *de facto*. In addition, the IAA asked the Tribunal to appoint, as a temporary injunction, an independent manager for Milos, and to prohibit any form of relationship between the two companies.

- IAA blocked a merger between BezeqCall and Tadiran Telecom

61. In March 2007 the IAA blocked a merger between BezeqCall Communications Ltd. (hereinafter – BezeqCall) and Tadiran Telecom Communication Services in Israel - Limited Partnership (hereinafter - Tadiran Telecom). The merger involved the full acquisition of Tadiran Telecom by BezeqCall whose business focuses on selling, installation and maintenance of various types of private branch exchange (PBX). According to the economic analysis carried out by the IAA, there is an overlap between the activities of the merging parties in two relevant markets: The market for maintenance of Tadiran Production PBX (named Coral) and the market for vending new PBX. It was found that substantial expansion barriers exist within the market alongside high entry barriers to the market, particularly in the form of technology and expertise which are difficult to obtain by other market players. Under such circumstances, the merger would have resulted in a monopoly in the market. The fact that BezeqCall is entirely controlled by Bezeq Telecommunication Ltd. (a declared monopoly in certain markets) has raised competitive concerns also in the vertical aspect. This aspect stems from relationship between Bezeq Ltd., that dominates almost completely the market for business telephony services, and Tadiran Telecom, which is a key player in the PBX market. The IAA found that the merger might be detrimental to competition in the market for business telephony services which has just recently intensified following the entrance of new players into the market. Bezeq's holdings in the merged entity might hold back competition in the telephony market, especially in light of the fact that merging parties will have over half of the telephony extensions in the business sector. In light of the above the IAA decided to block the merger.

### **3. IAA's role in the formulation and implementation of other policies**

62. On top of its mandate in enforcing the provisions of the Antitrust Law, the IAA serves as an expert advisory body to the Government and Parliament in matters which concern competition. Subsequently, one of the key capacities of the IAA involves offering its professional know-how and expertise to various Government bodies and disseminating competition principles among them. The IAA's advocacy efforts are also directed towards the business and legal communities as well as the public at large.

### **3.1 Cooperation with the Government**

63. The IAA is extensively involved with several Ministries and other government agencies in trying to open markets to competition and solving competition issues that significantly affect the local economy. Some examples are illustrated hereunder:

64. The IAA's General Director is a member of the Ariav Committee for the development and enhancement of competition in the banking system and the financial markets. The Ariav Committee's mandate is to propose a reform that will achieve a more competitive, efficient and modern capital market that will better attract global investments. The IAA's General Director participates in several subcommittees contemplating, among other things, the harmonization of regulation of financial markets and lowering of barriers to entry to the market for small and medium enterprises.

65. The IAA's Deputy General Director and Chief Economist was a member of the Public Committee for the Examination of Competition in the Telecommunication Markets chaired by Professor Reuben Gronau, appointed in February 2007 by the Minister of Communication to advise the ministry on the appropriate policy and rules for a pro-competitive regulation of the advanced telecommunication industries. The Committee concluded its work and submitted a comprehensive report and recommendations to the Minister of Communication in March 2008.

66. The IAA has been active in promoting phone number portability. Number portability lowers the customers' barriers to switch between carriers and, in turn, facilitates the entry of new providers because it allows them to recruit sufficient customers to achieve profitability. In March 2005, the IAA submitted a position paper stating this position to the Finance Committee of the Knesset, and by 2007 the reform was carried out *de facto*. In 2007, the IAA has also provided counsel and advice and participated in deliberations with the Ministry of Telecommunications on a variety of proposed structural changes involving, among other things, licensing of voice over broadband (VOB) services, preparing a solicitation of bids for an operator of infrastructure for terrestrial digital radio that will preclude Israel Telecom incumbent (Bezeq) from participation, and licensing a new cellular phone operator that will provide its services as a mobile virtual network operator (MVNO). In addition, the IAA has maintained discussions with the Second Authority for Television and Radio and the Council for Cable and Satellite Broadcast on topics such as excessive fees charged by media acquisition companies and advertising agencies to their customers.

67. Another example is the role played by the IAA in the energy market. To this end, the IAA advised governmental offices and agencies dealing with the divestiture and privatization process of oil refineries and the energy market at large. The reform in the LPG sector is an excellent example for effective cooperation between the IAA and other Government Ministries (Ministry of Justice, Ministry of National Infrastructures and Ministry of Finance) *vis a vis* the Parliament in promoting a pro-competitive legislative amendment.

68. In addition, the IAA had several discussions at the Ministry of Justice concerning a legislative amendment in relation to the definition of restrictive arrangements by the Antitrust Law that would increase legal certainty among the business community with respect to the legal interpretation of the term. Furthermore, the suggested amendment is expected to reduce the amount of transactions that require notification to the IAA in order to attain an individual exemption.

### **3.2 Cooperation with the Parliament (Knesset)**

69. The IAA takes an active part in discussions at the Economic Affairs Committee of the Parliament. Its representatives are often invited to participate in the discussions in order to present the

competitive aspects relevant to various economic issues related to energy, banking, transportation, intellectual property and telecommunication. In 2007 the IAA participated in numerous discussions on a range of issues involving competition. For instance, on 21 February 2007, The Director General presented the IAA's insights on the status of competition in the local retail banking sector to the parliamentary investigative committee on bank fees headed by the Knesset Economic Affairs Committee.

70. The Director General overviewed the characteristics of the retail banking system and counted the structural and behavioral causes for the absence of significant competition between local banks. It then stressed the need for an integrated strategy that addresses both behavioural and structural issues, which implies tackling the underlying structural problem in the banking system rather than focusing solely on statutory supervision on fees.

### **3.3 IAA and the private sector**

71. In addition to the close cooperation which the IAA maintains with Government and Parliament, an ongoing effort is made to keep up the constructive relationship with the private sector and the public at large.

#### *3.3.1 IAA annual conference on Oligopolies*

72. The IAA's annual conference, which took place on 9 January 2008, was dedicated to the topic of competition in oligopolistic markets. Among the 250 participating guests were lawyers, economists, academics, CEOs, prominent businessmen and government officials. The keynote speaker – Prof. Dennis Carlton (FTC) – presented the US experience with respect to oligopolies with emphasis on merger in the electricity sector. The IAA General Director and senior management provided their insights on oligopolies in Israel, while highlighting some of the main cases handled by the IAA during 2007. IAA Chief Economist, Merav Beer, chaired a panel on the legislative pro competitive reform in the LPG sector with the participation of representatives from the Knesset Committee for Economic Affairs (MK Prof. Avishai Braverman) Ministry of National Infrastructures (Director General Hezi Kugler), the IAA (Director General Ronit Kan) and the private sector (Mr. Menachem Perlman).

73. In addition to the Annual Conference, IAA Director General and senior management are invited regularly to lecture at different academic as well as other forums, such as the Israel Bar Association, Manufacturers Association of Israel and The Israel Export Institute.

#### *3.3.2 IAA's publications*

74. The IAA issues a yearly public report in Hebrew summarizing its activity in the past year, in which the IAA's management elaborates on its activity on the passing year. Most of the IAA's decisions are published in the IAA's website alongside the Antitrust Tribunal and Court decisions. The General Director also administers several statutory public registries which includes decisions regarding restrictive arrangements, mergers and monopolies.

#### *3.3.3 Public consultations concerning new block exemption in the aviation sector.*

75. The IAA published a draft of a new block exemption regarding the aviation sector in March 2008. Upon publication, the IAA invited the public to comment on the draft. All comments shall be reviewed and addressed in the final version. Once finalized, the block exemption shall be authorized by a Committee of experts and signed by the Minister of Industry, Trade & Labor.

### 3.4 *International Cooperation*

76. In 2007 the IAA strengthened its commitment to the OECD, by undertaking the peer review process which is scheduled to be concluded by March 2009.

77. In addition to its activity within the OECD competition committee and working parties, the IAA maintains close working relationships with competition authorities from all over the world. Members of the IAA are engaged in a variety of international activities and regularly contribute to discussions in which they take part.

78. The IAA joined the International Competition Network (ICN) in 2001 and since then had served as a member of its Steering Group.

79. During the reviewed period, the IAA took part in the various working groups within the ICN framework on specific themes such as Mergers, Unilateral Conduct and Cartels. The IAA was represented at the ICN Annual Conferences in Moscow and Kyoto, where its representatives took an active part in the discussions as well as in the different panels and discussion groups. In Addition, the IAA was selected to co-chair together with the Swiss Competition Authority a working group dealing with competition enforcement in small economies.

80. Apart from its activity in the OECD and ICN framework, the IAA regularly contributes to Euromed activities and its delegates play a role in the various workshops and seminars.

81. In April 2008 the IAA co-organized together with the EU Commission a TAIEX workshop on Abuse of Dominance with the participation of prominent experts from Israel and abroad including Judge Prof. Frederic Jenny, President of the OECD Competition Committee, Director Alberto Heimler from Italy's Competition Authority, Prof. Zohar Goshen and Prof. David Gilo.

## 4. **Resources of the IAA<sup>1</sup>**

### 4.1 *Annual Budget*

82. Funding of 19,330,000 NIS (approximately 5.5 million USD) was provided to the IAA in the 2007 budget. The annual budget had not changed significantly in comparison to the previous year's budget. A major portion of the budget, 73%, was allocated to salaries.

**Table 2. Annual Budget - 2007 (thousands)**

	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>
<b>NIS</b>	19,330	20,694	20,330	18,666	21,324	21,412
<b>USD<sup>2</sup></b>	5,500	4,850	4,530	4,165	4,688	4,520

<sup>1</sup> Figures concerning staff and budget correspond to 31.12.2007 data unless mentioned otherwise.

<sup>2</sup> Figures in USD are an approximate value which depends on currency exchange rate fluctuations.

**4.2**      *Number of Employees – 2007*

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<b>Economic Department</b>	13 economists
<b>Legal Department</b>	21 lawyers and 7 legal interns
<b>Criminal Investigations Department</b>	16 investigators
<b>Administrative Staff</b>	10
<b>The General Director's Office</b>	6
<b>All staff combined</b>	73 employees

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