

Antitrust Authority

Model Internal Compliance Program

Binding Version

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The Antitrust Authority reserves the right to change, update and interpret this guide for an internal compliance program from time to time

From the Antitrust Director-General

During the first months of 1998, the Israel Antitrust Authority turned to the leading corporations in the Israeli economy – those which outline the directions taken by the Israeli's economy's business activity – and proposed to them that they carry out internal compliance programs with respect to the antitrust laws.

The effort to have internal compliance programs carried out in Israel's largest business corporations was given top priority by the Antitrust Authority in its work plan for 1998-1999. We believe strongly that such a program, if carried out at the central business entities in Israel, will fundamentally change the way in which antitrust laws are implemented in Israel and will lead to the absorption of these laws within the business community. This will bring about a real change in Israel's business culture.

Internal compliance programs are not, of course, an Israeli invention. Such programs are operated in many European and American corporations, and are carried out in most multinational corporations, in areas such as antitrust, environmental law, securities law, and more. Such programs can be voluntary or obligatory, as part of a company's conviction in a lawsuit or through the implementation of a consent decree. Much effort has been invested in adjusting the various compliance programs to the special needs of the Israeli economy and of the corporations that operate within its framework.

The compliance program guide that the Antitrust Authority sets out here is a first step in the Authority's efforts to imprint within the corporations the desire and determination required in order to carry out an effective internal compliance program which conforms to the individual needs of each corporation.

At a one-day seminar held on this subject, the Antitrust Authority distributed a draft of the guide, for comments from the public. Various comments were submitted to us and I am truly grateful for these; most of the comments have been integrated into the guide which is set out before you here.

On the basis of the draft guide that was distributed several months ago, many of the leading corporations in the economy have already notified the Antitrust Authority that they intend to operate and implement an antitrust internal compliance program. I am happy with this broad and sweeping response, which demonstrates well that it is expected that the guide proposed here will, in a short time, be transformed into the standard that a responsible management of a large corporation will apply, in its efforts to ensure that the corporation that it directs complies with the legal provisions, for the welfare of the corporation, its managers and its shareholders.

Very respectfully,

Dr. David Tadmor

Director-General of the Israel Antitrust Authority

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1. Preamble

The antitrust laws were enacted in order to realize the value of free competition. Free competition has a far-reaching effect with respect to the character of Israeli society and it is not limited to the business-economic sphere. This value has social, economic and constitutional significance:

Freedom of competition is a fundamental value of every democratic legal system there is. Competition has become a protected freedom, first of all because of political science reasons, out of concern for the existence of democratic regimes. Freedom of competition is a necessary condition for a democratic regime for three central reasons: the first, because competition leads to a decentralization of the centers in which decisions relating to social issues are made; the second reason, which is connected at its core to the first reason, is that competition makes it possible to make [such] social decisions so that they reflect the taste of the public as a whole and not those of one or another particular person; and the third reason is that freedom of competition is an essential condition for freedom of occupation, for protection of property and for ensuring the existence of additional rights and freedoms.

Etz Lavud Ltd. – Saipan Industries and Investments (Determination by Director-General), Antitrust Volume C, 104, at 109).

First, Israel enacted the Restrictive Trade Practices Law -1959. This law served the purposes mentioned above, which, as the then Justice Barak wrote, were worded as follows:

‘The Law’s direction is to clear the road towards free economic activity, by removing obstacles that prevent such activity’. . . The legislature’s approach is that free competition works for the good of the country, and it can intensify the legal and economic freedom of the individual.

HCJ 47/83, *Tour Air v. Chairman of the Antitrust Council* ISRSC, 39(1) 169, 178.

Later, the Restrictive Trade Practices Law -1988 (hereinafter: “the Restrictive Trade Practices Law” or “the Law”) was enacted, which strengthened the purposes mentioned above and provided the authorities charged with enforcing the law with the appropriate tools with which to do so.

Today, it sometimes seems as if the value of competition is something mentioned so frequently by Israeli companies that there is no longer any need to stress its importance and its necessity to the corporations and to their managers. However this is not the case. Until now, what has been done is only a small part of the work of imprinting the behavioral norms that are appropriate for the rules of fair competition as they are outlined in the Restrictive Trade Practices Law. There is much more left to do.

For this reason, the Director-General of the Israel Antitrust Authority is now appealing to the economy's large corporations with the proposal that they carry out "internal compliance programs" regarding the Restrictive Trade Practices Law.

This program, along with the commitment that the corporation is required to make, has many advantages which will give them tools and help the corporations to promote their businesses: the Antitrust Authority believes that the absorption of the antitrust laws among the decision-makers in the economy's large corporations will not only lead to a solution regarding most of the existing restrictive trade practices, it will also lead to improved management of the corporation itself and to its increased efficiency. We will discuss these advantages in the coming chapter.

2. Advantages involved in implementing an internal compliance program

The many advantages involved in the implementation of an internal compliance program regarding the Restrictive Trade Practices Law can be summed up as follows:

The full implementation of an internal compliance program will ensure that, *inter alia*:

- The corporation's employees, managers and directors will be aware of the requirements of the Restrictive Trade Practices Law and of the IAA's enforcement policy. This awareness will significantly reduce the lack of clarity and uncertainty regarding the boundaries of what is permitted and what is forbidden pursuant to the law.
- The corporation's management will be given advance warning regarding activity which the corporation, its employees or any other person acting on its behalf are carrying out, and which could constitute a violation of the Restrictive Trade Practices Law, and could cause damage to the corporation.
- The corporation's, its managers' and its employees' exposure to the following types of legal claims will be reduced:
 - Claims relating to a violation of the Restrictive Trade Practices Law, both civil and criminal, including class action lawsuits.
 - Claims relating to a breach of the fiduciary duty and the duty of care which are imposed on corporate officers by the Companies Ordinance and by additional statutes, in connection with the breach of the antitrust laws.

- Because of the corporation's exercise of caution with regard to committing violations of the law, fees for legal advice and consultation - as well as fines which can be imposed on a corporation or damage which can be caused to its image resulting from negative publicity and interference with the corporation's proper management - will be reduced or even eliminated.
- The development of competitive markets will be encouraged, to the benefit of all competing parties.
- The corporation's managers will have the ability to identify activity carried out by competitors, suppliers or consumers which is in violation of the provisions of the Restrictive Trade Practices Law.
- Better channels of communication with the IAA will be opened for the corporation.

The proper implementation of an internal compliance program by the corporation allows it to take advantage of its competitive advantages in its field of operations, carefully and in a manner which is consistent with the legal situation, all without affecting the corporation's level of initiative and innovation, and without affecting its ability to be an earnest and forceful competitor.

1. Development of a channel of communications with the IAA

The Restrictive Trade Practices Law creates several types of liability. There is liability in tort towards the company due to a violation of the law's provisions [and] criminal liability, and it influences the bodies within the corporation which are likely to be sued in connection with a breach of those provisions. Communication between the IAA and the business sector is therefore a guiding principle in our work. The Authority works to maintain a comprehensive dialogue with business entities with regard to the three areas in which the Authority operates – regulation of mergers, regulation of restrictive arrangements and the prevention of the abuse of monopoly power. We believe that the deep entrenchment of antitrust laws in the State of Israel can take place through cooperation between the government authority and the business world in general, and with the economy's leading corporations in particular.

An internal compliance program regarding the provisions of the Restrictive Trade Practices Law will improve this situation. Through its implementation, an internal compliance program will make possible **compliance with the law's provisions as well**

as a framework for fruitful cooperation between the corporation and the IAA. An internal compliance program will strengthen the awareness of the law's provisions within the corporation and will create for it a channel of communication with the IAA in order to allow it resolve problems in advance, in real time. The implementation of an internal compliance program regarding the Restrictive Trade Practices Law is good business. This has been the view in the United States, for some time now, and this is the view that is being developed in many additional companies – and we have adopted it as well.

The administration of the internal compliance program will assist in establishing a continuous connection with the IAA, in three ways:

First, the IAA will give **priority** to answering questions regarding its areas of expertise which are asked by corporations that carry out an internal compliance program. This priority will take the form of a relatively shortened schedule for providing ongoing assistance to these corporations as compared to the schedule for other corporations.

Second, the IAA, through its enforcement division will regularly **update** the internal compliance officers regarding the latest developments in the area of antitrust law, both in Israel and throughout the world, and will, to the extent possible, provide assistance in structuring these developments into the internal compliance programs carried out at the various corporations. The Authority intends to distribute written material, to organize conferences for internal compliance officers and to provide additional methods to accomplish this [updating].

Third, a practical relationship will be established between the IAA staff, according to their areas of expertise, and the corporations carrying out internal compliance programs. We hope that this relationship, which will be expressed through an ongoing dialogue, will strengthen the atmosphere of cooperation that exists between the Authority and the business sector and will assist significantly with respect to the contacts between the corporations and the Authority and its staff.

2. Marking the law's boundaries

It often appears that the Restrictive Trade Practices Law, its interpretation by the Antitrust Director-General and the decisions handed down by the Antitrust Tribunal and by other judiciary bodies are not sufficiently available and are not implemented in full. The provisions of the law are not easily interpreted and they involve many economic considerations; the legal tradition required for absorbing the law's provisions does not go back long enough in time; and the legal community has only recently begun to act in earnest in filling its ranks with experts in the field of antitrust law. These factors and others lead to an undesirable result, which is that corporations and their managers miss out on business opportunities because of a concern that they will be violating the

Restrictive Trade Practices Law, in the best case scenario, or that they unknowingly violate its provisions, in the worst case scenario.

From the perspective of the corporation and of its managers, an over-estimation of the risk of violating the Restrictive Trade Practices Law has economic and business significance, as does an under-estimation of such risk. On the one hand, an over-estimation of the risk can develop into a situation in which the corporation, because of its concerns that it will be violating the Restrictive Trade Practices Law, gives up an opportunity to engage in activity which it would carry out were it not for the concern regarding possible violations. That is, the over-estimation of the risk causes the loss of business opportunities. On the other hand, an under-estimation of the risk leads to a situation in which the corporation engages in activity which, had it known that it was prohibited by the Restrictive Trade Practices Law, it would not have carried out such activity. In this case, beyond the risk that the corporation and its managers face regarding a criminal or legal suit, the corporation will also have engaged in activity which is not optimal in terms of the relevant risk. The marking of the boundaries of what is and is not permitted therefore carries with it economic-business significance, in that it allows the corporation to estimate the risk involved in its activities under conditions of greater certainty.

3. Protection from conviction, on a personal basis, of corporate officers

Competition within the economy was placed at the center of the economic forum when the IAA was amended by, *inter alia*, the strengthening of its punitive section. As the law's explanatory material indicates with regard to this punitive section:

Penalties involving imprisonment were increased as compared with the current situation, from eight months to two years for the most serious offenses and from four months to one year for less serious offenses, **which conforms to the nature of these offenses and to the importance for the Israeli economy that they be prevented.**

Increasingly, the legislature has established special provisions regarding personal criminal liability for senior officers of a corporation (see S. Peller, **Criminal Law**, Part A (1984), p. 709). Offenses of this type have been called "officer offenses" by then Justice Barak (CrimA 3027/90, *Modi'im Construction and Development Ltd. v. State of Israel*, ISRSC 35(4) 364, 385). Judge Barak found that ". . . officer offenses are an independent source of criminal liability for the officer . . ." (id., p. 386). This means that even if no liability is imposed on the corporate officer from any other source, and even if there is no factual element or mental element present regarding a particular criminal offense, if such liability is in the section's definition, then criminal liability will be imposed. When does

the legislature establish such special provisions? As Judge Witkon noted in the *Meor-Mizrachi* case:

. . . Here, the legislature is generally dealing with the public's new needs, the source of which is the continuing development of life in a dynamic society. Here, the legislature needs a punitive sanction, not only to impose punishment on an individual who offended, but also, primarily, to entrench new forms of behavior within the public's consciousness, and it does so by using the criminal law . . . in order to use this law to achieve certain social objectives.

CrimA 17/59, *Meor-Mizrachi v. Attorney General*, ISRSC 14 1882, 1890

Section 48 of the Restrictive Trade Practices Law imposes personal-criminal liability on corporate officers. The law provides as follows:

In the event that an offense pursuant to this Law is committed by a corporation, each person serving in such corporation, at the time of the commission of the offense, as an active director, a partner – other than a limited partner - or a senior administrative employee with responsibilities in the relevant field, shall be indicted with such offense, unless he can show that the offense was committed without his knowledge and that he took all reasonable steps to ensure compliance with this Law.

The imposition of independent criminal liability on corporate officers insures that senior corporate officers “. . . regarding whom there is a high probability that they were involved in the commission of the corporation's offenses, but [whose involvement] cannot be proven . . .” (*Modi'im*, supra at 387) do bear responsibility. But this is not all, as Justice Barak goes on to state:

What is the reason for the imposition of quasi-vicarious criminal liability on the corporate officers? Is there justification for imposing criminal liability on them, despite the fact that no elements of any criminal offense (other than an offense which defines the liability of corporate officers) are present in their behavior? It appears that the legislature's position is that in imposing quasi-vicarious liability for an officer's offense, **it has promoted the social objectives which the statute that includes the officer's offense seeks to achieve. The imposition of quasi-vicarious liability on corporate officers is intended to give them an incentive to take appropriate measures and to ensure that precautionary steps will be taken in order to prevent the commission of any offenses by the corporation.**

(Id.)

Section 48 of the Restrictive Trade Practices Law imposes the burden of proof on the corporate officer with respect to establishing “that the offense was committed **without his knowledge and that he took all reasonable steps** to ensure compliance with this Law.” Only then is the corporate officer released from criminal liability. This built-in principle regarding officer liability was discussed by Justice Barak in the *Modi'im* case:

. . . A corporate officer, who proves that he did not commit the offense (with regard to both the factual element and mental elements) for which the corporation is found to be liable, is not free of liability. The fact that the offense was committed is sufficient to establish an officer’s liability unless it has been proven that the officer was not aware of the commission of the offense and was not negligent in allowing it to be committed.

(Id.)

The implementation of an effective internal compliance program will allow a corporate officer to remove the burden of proof. This removal is not automatic, and its source is in the will of the legislature. As Justice Goldberg wrote in the *Dan* case, while discussing a similar section in the Regulation of Goods and Services Law, 1957:

. . . To the extent that the legislature therefore sought . . . to give the employer a protection of “due diligence” (or “no-negligence”), and thus to “present a fair solution to the problem of absolute liability . . .”

CrimA 880/85, *State of Israel v. “Dan” Transportation Cooperative*, ISRSC 41(2) 533, at 534).

Nevertheless, it should be recalled that the implementation of an internal compliance program regarding the Restrictive Trade Practices Law will not protect a corporation if it develops that its senior management (“the minds that direct the corporation”) was a partner to or was aware of a violation of the Restrictive Trade Practices Law, and will not protect any other corporate officer if it develops that such officer was aware of the violation of the Restrictive Trade Practices Law. This rule was summarized thusly by the Supreme Court in a recently-rendered decision in the *Nechushtan* case:

As an aside, I wish to add that § 48 of the Law – to which Ne’eman’s counsel refers – does not relate to this matter: Ne’eman’s responsibility turns directly on his own behavior; unlike § 48 of the Law, which deals with indirect responsibility for violations committed by another (the corporation).

CrimA 7399/95, *Nechushtan Elevators Ltd. et.al. v. State of Israel*, ISRSC (not yet published).

This matter is demonstrated in the ruling handed down recently by the court in the *Dan* case. The Dan Transportation Cooperative Ltd. was convicted of inappropriate behavior on a bus, pursuant to quasi-vicarious liability established in § 39b of the Regulation of Goods and Services Law. “Dan” argued against the applicability of the section, as it had, it argued, proven that the offense was committed without its knowledge and that it had taken reasonable measures to ensure compliance with the law. The honorable Judge Kedmi found that “Dan” had carried out “training sessions, one-day seminars and internal auditing so that the drivers working for it would provide proper service to passengers,” but this was not sufficient, as:

As stated, these were not sufficient to present “all reasonable measures” that the appellant could have taken in order to release itself from liability pursuant to the above-mentioned § 39b; and their purpose is to demonstrate the significance of the requirement regarding the taking of “all measures.”

So long as “all reasonable measures” have not been taken, the appellant is deemed to be liable for the violation of the provisions of § 4 of the Regulation Law by its drivers.

CrimA3511/96, “*Dan*” *Transportation Cooperative v. State of Israel*, (not yet published) at page 8 of the printed version.

This ruling expresses well both the spirit of the program which is proposed for adoption by the corporations, and the need for its adoption. The IAA believes that the taking of “all reasonable measures,” as required by § 48 of the Restrictive Trade Practices Law, requires that the corporations engage in an integrated effort, taking all the measures that are available to them, to eliminate the violations of the provisions of the Restrictive Trade Practices Law. Only when such an integrated effort is made can the corporate officers of the corporations benefit from the existence of the qualification and the release from criminal liability which it signifies. On the other hand, the Authority is well aware of the need to specify in advance, to the extent possible, what is included within the phrase “all reasonable measures.” The program proposed here is intended to provide a response to this need.

4. Protection from claims based on a violation of fiduciary duty or the duty of care by a corporate officer

The internal compliance program regarding the Restrictive Trade Practices Law is important for the corporation’s officers, primarily because of the program’s importance for the corporation. Nevertheless, there are additional considerations that lead to the internal compliance program being necessary for each corporate officer. Each officer is

bound by a fiduciary duty and a duty of care to the company. The duty of care is anchored in §§ 96:25-26 of the Companies Ordinance [New Version], 1983 (hereinafter: “the Companies Ordinance”).

96:25 Duty of care

- (a) A corporate officer owes a duty of care to the company as stated in §§ 35 and 36 of the Torts Ordinance.
- (b) Nothing in sub-section (a) will prevent the existence of a corporate officer’s duty of care vis-a-vis another person.

96:26 Precautionary measures and levels of skill

A corporate officer will exercise a degree of skill that a reasonable corporate officer would exercise in the same position and under the same circumstances, and this will include the taking of reasonable measures – taking into consideration the circumstances of the matter – to obtain information regarding the economic prospects of the action for which approval is being sought or of an action which the officer is carrying out by virtue of his position, and to obtain all other information which is important with regard to such actions.

The fiduciary duty is anchored in section 96:27 of the Companies Ordinance, in the following language:

- (a) A corporate officer owes a fiduciary duty to the company and will act in good faith and for its benefit, including:
 - (1) Refraining from any act which involves a conflict of interest between the fulfillment of his role in the company and the fulfillment of another function of his or between his personal interests.
 - (2) Refraining from any act which involves competition with the company’s business;
 - (3) Refraining from taking advantage of a business opportunity of the company’s with the purpose of obtaining a benefit for himself or for another;
 - (4) Disclosing to the company any information and transmitting to the company any document relating to its affairs, which he obtains by virtue of his position in the company.
- (b) Nothing in sub-section (a) will prevent the existence of a corporate officer’s fiduciary duty to another person.

The American law expands the connection between the fiduciary duty and the duty of care of corporate directors, and the maintenance of an internal compliance program at the company. In 1996, the Chancery court in the State of Delaware in the United States, which is that State's court dealing with corporate matters, held in *In re: Caremark International Inc. Derivative Litigation*, that the company's duty to the company includes:

a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists.

This duty came into existence against the background of the United States Sentencing Guidelines, which, on the one hand, establish heavy penalties for a corporation's violation of the law, but which, on the other hand, give corporations the opportunity to significantly reduce the risk of a penalty by maintaining an internal compliance program within the corporation.

In the *Caremark* case, various medium level employees had violated statutory provisions which prohibited various types of payments to doctors (physician kickback payments), and their activity led to the company being found guilty by law and for damages caused to the company. Neither the company's senior management nor its directors took part in the legal violation. The suit against the directors was made on the basis of an argument that although they and the company's senior management were not personally involved in the violation of the law, the directors were responsible for the damage that was caused, since they had failed in their duty to maintain internal systems within the company, the purpose of which would be to allow the senior management and the board of directors to properly supervise the company and its employees regarding compliance with the statutory provisions. As stated, against the background of an opportunity for significantly easing the penalty if the company had maintained an internal compliance program prior to the violation, the court held that in certain circumstances a director is liable for losses caused to the company because of statutory violations committed by its employees, if he or she did not make certain that the company maintained a corporate information and reporting system which would make it possible for the company's management and board of directors to review, with reasonable warning, whether the company's employees are complying with the statutory provisions which create the liability to the company itself.

A derivative action was recently filed in federal court in Tennessee, in *McCall et.al. v. Scott et.al.*, in the context of a similar background.

The maintenance of an internal compliance program is thus clearly in the interest of every corporate officer. Israeli corporate law has followed foreign law, especially American law, for many years. While the legal systems are not identical, the statutory provisions or judiciary interpretations which imposes liability on directors and the company's corporate

officers tend to very quickly find their way into the local law. Since the principles of a fiduciary duty and a duty of care have already been adopted in the local law, the interpretation of these duties and the content which has been given to them is expected to find its expression in the local law.

* * *

i. Summary - practical points to emphasize

Appointment of a Compliance Officer

“A person with a high position within the organization will be appointed – such person will be directly subject to the CEO and will report to the CEO directly.

The appointee will be someone who is completely familiar with the corporation and with its operations.

Recommendation – the appointment of an internal compliance committee which supports the work of the Compliance Officer.”

Participation by and support from the corporation’s management

“The program shall be launched through a declaration of the management’s intentions, which will emphasize its commitment to the full implementation of the program.

The management will be present at training sessions and explanation sessions given to the various employees.

The board of directors or a directors’ committee –

Will appoint the Compliance Officer, and will decide to remove him when necessary.

Will attach a declaration to the appointment of the Compliance Officer, the text of which will deal with the following: the fact of the Compliance Officer’s appointment, his name, the method for communicating with him, his authority to view documents related to the corporation’s activity and encouragement [directed at employees] regarding the importance of contacting the Compliance Officer in appropriate circumstances.”

Establishment of an internal compliance procedure:

“The Compliance Officer will prepare an internal compliance procedure in accordance with the corporation’s various operation segments.

The Compliance Officer will distribute the procedure to employees of all rankings within the corporation.

The Compliance Officer will be responsible for updating the procedure from time to time, according to developments in the corporation's business activity; changes in its structure; new legislation or case law; and changes in the Israel Antitrust Authority's policy.

Employee training

"The quantity and quality of training for employees will be in accordance with the level of each employee's exposure to actual violations of the provisions of the Restrictive Trade Practices Law. Therefore, the training program will be coordinated for different employees according to their needs.

New employees will receive training when they begin their employment.

The Compliance Officer will update the training programs in accordance with developments in the corporation's business activity; changes in its structure; new legislation or case law; and changes in the Israel Antitrust Authority's policy.

Establishment of audit systems: audit, supervision and reporting:

Audit system:

Preliminary audit

A preliminary audit will be carried out in accordance with the elements listed in the model program document.

The audit findings and auditor's recommendations will be submitted to the corporation's management.

Ongoing, special or occasional audit:

The independence of the party carrying out the audit will be guaranteed.

A procedure for handling problems that are discovered during the audit will be established and absorbed.

Supervision system:

The necessary documents will be submitted to the corporation's (internal or external) legal counsel for evaluation in light of the antitrust laws.

An audit will be carried out regarding the proper implementation of the internal compliance program.

Reporting system:

A reporting procedure for apparent breaches of the Restrictive Trade Practices Law by corporation employees will be [established and] absorbed.

Reporting of "hot documents" will be submitted to the CEO, and at his discretion, to the board of directors or to one of its committees as well.

The board of directors will approve the annual audit program.

Substantive measures:

- The corporation's management will take appropriate substantive measures against those who violate the Restrictive Trade Practices Law.
- The internal compliance program will be updated so as to implement lessons learned from experience.
- The substantive proceedings against employees, as described in the model program document, will be documented.

Document management

- Documents establishing the implementation of the internal compliance program will be preserved and documented, in accordance with the provisions of the model program document.

Notices to the Authority:

- **The corporation** will submit notices that confirm the implementation of the internal compliance program at the corporation to the Israel Antitrust Authority, in accordance with the provisions of the model program document.

4. Conclusion

Because of the structural complexity of a corporation and of its activity which is carried out through numerous organizations, it is difficult for those various arms of the corporation to internalize the prohibitions included in the Restrictive Trade Practices Law. This difficulty results, *inter alia*, from the business environment in which the corporation is active, which directs its activities - some of which may rise to the level of breaches of the Restrictive Trade Practices Law.

The internal compliance program is the most efficient method available to the board of directors and the management for ensuring that all organizations within the corporation have internalized the provisions of the Restrictive Trade Practices Law. This program is not only a written document; within the corporation for which it was prepared and in the business environment in which the corporation operates, the internal compliance program has a real presence and dynamism. The Restrictive Trade Practices Law compliance program is not static. Whenever a problem is discovered, the corporation will improve the program so that the same problem or one similar to it does not arise again. The continual improvement of the audit, supervision, reporting and disciplinary systems that the corporation maintains in the context of the internal compliance program are the consequence of such changes.

There are two main elements of the internal compliance program: the first is that the program allows the corporation to have a direct channel of communications with the

Israel Antitrust Authority, giving it preference over entities that do not have such programs. The second is the absorption of the prohibitions included in the Restrictive Trade Practices Law among all ranks of employment within the corporation, while maintaining dynamic audit and supervision mechanisms. A true integration of the two said elements will significantly improve the corporation's and its officers' certainty regarding compliance with the provisions of the Restrictive Trade Practices Law. The advantage derived from such for the corporation and for its management are good and proper business decisions – it's good business. Over time, in a regulatory environment that enforces the provisions of the Restrictive Trade Practices Law, the corporation will be protected from economic, image and business injury if it acts in accordance with the provisions of that Law. In this sense, the internal compliance program can constitute a "safe harbor" both for the corporation and for its corporate officers.

As stated above, in light of the interest that the Israel Antitrust Authority has in preventing violations of the Restrictive Trade Practices Law, the Authority offers to those companies that adopt internal compliance programs – in the framework of the Authority's resources, which are always limited – an "open line" regarding the Authority's position concerning relevant issues, including the formulation of an internal compliance program. This is a channel of communications with the Authority, the main purpose of which is to promote the enforcement of the Restrictive Trade Practices Law through advance internalization of its prohibitions, instead of through warnings and after-the-fact penalties. This result is good for everyone involved – the public, the corporation, and its shareholders, managers, directors, employees, suppliers and customers.