

Israel Antitrust Authority
Rules for Pre-ruling by the General Director

In accordance with my powers under Section 43a of the Antitrust Law, 5748-1988, I hereby established a Procedure for the issue of pre-rulings.

Definitions	1.	<p>In this Procedure:</p> <p>The Law – the Antitrust Law, 5748-1988;</p> <p>The General Director – the General Director of the Antitrust Authority), as in Section 41 of the Law;</p> <p>The Authority – the Antitrust Authority, as in Section 41A of the Law</p>
Frame of authority	2.	<p>(a) The General Director shall discuss a pre-ruling application if convinced that h/her ruling on a question relating to antitrust law is a matter of public interest, even before applying other powers invested in h/her by law;</p> <p>(b) When deciding on whether to issue a pre-ruling, the General Director shall take into account the importance of the matter in regard to which said pre-ruling is requested, the interest that exists in imparting certainty to the parties and the public, and the interest in allocating Authority resources for effective enforcement of the Law.</p>
Issues for referral to pre-ruling	3.	<p>A pre-ruling application shall be submitted in regard to one of the following:</p> <p>(a) A decision by the General Director about a merger or the issue of immunity for a restrictive arrangement, if the General Director is convinced that there is a crucial need to discuss the transaction before the merger announcement is made or the application for immunity is presented. Said crucial need shall be deemed to exist in one of the following cases:</p> <ul style="list-style-type: none"> (1) issue of an announcement or presentation of an application as required by the Law, or the holding of an ordinary discussion, in which the consummation of the transaction may be thwarted; (2) the transaction may create a prima facie substantial competitive difficulty and the parties need to know where the General Director stands in order to decide whether to progress toward its consummation; (3) the transaction needs to be approved by a court of law or entails a decision by another authority, and the Authority’s stance is needed urgently so that said court or other authority may make its decision on the matter; <p>(b) The legality of the transaction or action that the applicants are about to carry out, if the General Director is convinced that the Law, case law, or previous decisions offer no way to clear up a doubt that the question has raised;</p> <p>(c) A question of economic nature, in which the applicants have reasonable grounds to assume that the Authority has already taken a stance in previous decisions and has made a</p>

		<p>decision on a question that is material in estimating the likelihood of obtaining approval for the transaction, or in a matter related to the applicability of class-immunity rules to a transaction or action; a question relating to market definition shall be viewed as falling within the bounds of this Subsection;</p> <p>(d) An question of interpretation related to the application of provisions of the Law or secondary legislation to a transaction or action that the applicants are about to carry out, if the General Director is convinced that the matter at hand deserves an authorized response in consideration of its nature as a precedent, the extent of its incidence to other transactions in the economy, the importance of its ramifications, and its current effect on business life.</p>
Cases in which pre-ruling shall not be given	4.	<p>(a) The General Director shall not tender a pre-ruling in response to applications that are theoretical, academic, general, vague, or tentative in nature, or if it appears under the circumstances that the parties' actions are tainted by non-performance of requirements set forth in the Law;</p> <p>(b) The General Director shall not tender a pre-ruling in response to applications that entail investigation or detailed factual examination and shall not tender a pre-ruling if it transpires that the parties withheld material facts from h/her;</p> <p>(c) The General Director shall not discuss inquiries pertaining to investigations or legal proceedings that are or may be underway, in accordance with the Law.</p>
Priorities in pre-ruling applications	5.	<p>(a) The General Director shall give priority to the tendering of the pre-rulings on applications relating to a specific and defined difficulty that entails a rapid decision that may be handed down on the basis of plain facts that the applicants explain in their application;</p> <p>(b) Applications that entail factual inquiry by the Authority shall not be accorded priority.</p>
Referral and expanded compulsory disclosure in pre-ruling application	6.	<p>(a) Pre-ruling applications shall be submitted in writing to the General Director at the following address: 22 Kanfei Nesharim St., POB 34281, 91341 Jerusalem, Israel;</p> <p>(b) A pre-ruling application shall include of the details of the action or transaction at issue in the application, the reason for the submission of the application as in Section 3 of this Procedure, and a breakdown of all markets affected by the matter at issue in the application and the market segments of the applicants and their competitors;</p> <p>(c) Applicants shall present the General Director with all relevant information about the matter at issue in the application, including agreements and all documents related thereto, verbal agreements and understandings, and any information in their possession that may indicate a competitive difficulty that the issue of concern in the application may present;</p> <p>(d) In their application, applicants shall define and spell out</p>

		<p>the question on which the pre-ruling is requested and the nature of the doubts that arise in their understanding of the issue of concern in the application; an application that does not spell out the problem for which the pre-ruling is requested shall not be discussed.</p> <p>(e) A pre-ruling application shall not refer to the legality of any action or transaction carried out by a third party.</p>
Further details	7.	<p>(a) If the General Director finds that the information presented to h/her in the application does not suffice for the tendering of a pre-ruling, s/he may instruct the parties to present such further information, including processed information, as s/he needs in order to issue the pre-ruling;</p> <p>(b) If the parties fail to present the General Director with requested information as in Subsection (a) <i>supra</i>, or if they present the General Director with inadequate information, the General Director may refuse to respond to the application for this reason only;</p> <p>(c) The foregoing shall not derogate from the General Director's power to undertake, for special reasons, any examination and to solicit information even from a party that is not a party to the pre-ruling application. However, the General Director shall not approach a third party if the applicants ask h/her to keep the pre-ruling application confidential, as set forth in Section 13 of this Procedure.</p>
General Director's discretion	8.	<p>(a) As a rule, the General Director shall answer the applicants within 15 business days about whether s/he intends to respond to a pre-ruling application; in said answer, the General Director shall take into account, <i>inter alia</i>, the complexity of the matter, the extent of information provided by the applicants, and the resources that must be expended in order to issue the pre-ruling;</p> <p>(b) The General Director may inform the applicants at any time that s/he has decided not to issue a pre-ruling if s/he finds, <i>inter alia</i>, that:</p> <ol style="list-style-type: none"> (1) a change of circumstances has occurred that affects the resources that are available to deal with the application; (2) the information furnished by the applicants does not provide an adequate basis for a pre-ruling; (3) the application cannot be decided upon without hearing other parties that are active in the market.
Deadline for General Director's response	9.	<p>(a) A pre-ruling application shall be answered within 30 working days of the day on which the full application is received at the offices of the Antitrust Authority, or of the date on which further details as requested by the General Director under Section 7 are received, whichever is later;</p> <p>(b) The count of days shall not include the time that elapses from the date on which the General Director requests further details in order to examine the application to the date on which they are provided in full, and the time that elapses</p>

		while the parties fail to address the General Director's request.
Certified pre-ruling	10.	The pre-ruling shall be in effect only if issued in writing and signed by the General Director or by a person authorized by h/her for this purpose; no person may rely on a response that is not tendered in writing as aforesaid.
Different or supplemental agreements	11.	If the parties that apply for a pre-ruling subsequently conclude different or supplemental agreements in the matter that may affect the General Director's ruling, the General Director's response shall be of no consequence.
Consequence of pre-ruling	12.	<p>(a) A pre-ruling is not a substitute for a decision by the General Director under h/her other powers as set forth in the Law; this, however, does not deny any person the right to rely, within the framework of a request for a final decision in h/her case, on a pre-ruling that s/he has received;</p> <p>(b) As a rule, the General Director shall attribute material weight to h/her pre-ruling unless it is found that s/he was not presented with all relevant facts or that the circumstances under which the pre-ruling was given have changed;</p> <p>(c) If the General Director, in a pre-ruling issued under Section 3(b) of these Rules, undertakes not to invoke an enforcement measure in regard to an action or a transaction, s/he shall not invoke enforcement proceedings against the recipients of the pre-ruling unless it is found that s/he was not presented with all relevant facts or that the circumstances under which the pre-ruling was given have changed;</p> <p>(d) A pre-ruling under Section 3(a) of these Rules relating to a future decision of the General Director on an application for approval of a merger or immunity for restrictive arrangements reflects the General Director's stance at the time it is given, on the basis of the facts that the applicants presented to the General Director, and is not binding on the General Director in h/her decision within the framework of h/her powers under the Law;</p> <p>(e) The General Director may modify or rescind a previously issued pre-ruling if s/he believes that s/he is justified in so doing.</p>
Confidentiality and publication of pre-ruling	13.	<p>(a) Applicants for a pre-ruling may ask the General Director to keep confidential the fact of the submission of the application, the contents of the application, or any portion of its details; if the parties make such a request, the General Director shall not publish the details for which confidentiality is requested unless the relevant parties express their consent to said publication;</p> <p>(b) The provisions of Subsection (a) shall not preclude the General Director from refusing to discuss an application in which confidentiality is requested if s/he is convinced that it is essential to examine of the contents of the application with other parties in order to form the pre-ruling;</p>

		<p>(c) The General Director may publish a pre-ruling if s/he finds that said publication is of principled importance for the public, but shall not publish a pre-ruling unless s/he solicits the applicants' view in advance; in publishing the pre-ruling, identifying particulars may be omitted.</p> <p>(d) Pre-ruling applications shall be recorded in a separate register with the Registrar of Antitrust and their details and contents shall not be made available for the public's perusal.</p>
Retraction of application	14.	<p>(a) Any party to a pre-ruling application, or all parties thereto collectively, may retract the application at any time before the General Director responds thereto.</p> <p>(b) Notice of retraction shall be tendered in writing only;</p> <p>(c) Once an application is retracted as aforesaid, the General Director shall cease to deal with it, shall advise the parties in writing that the treatment has been halted, and shall return to the parties all information that s/he received from them.</p>
A pre-ruling does not absolve the parties from proceedings under law	15.	A pre-ruling application shall not derogate from the parties' duty to serve notice of merger as set forth in Section 19 of the Law, or from the need to obtain immunity or approval as set forth in Section 4 of the Law.
Frequency of pre-ruling applications on account of same transaction	16.	<p>(a) The General Director shall not examine a supplemental inquiry relating to the same transaction during the year following h/her response to the parties;</p> <p>(b) The parties may approach the General Director before a year has passed from the time of the response if they show that the circumstances have changed in a material way that justifies reconsideration of the application and the decision thereon.</p>
Effect of this Procedure	17.	This Procedure shall be re-examined after the passage of two years from the time it is gazetted.

Dror Strum
General Director, Israel Antitrust Authority
Thursday, August 5, 2004