

Legislative Memorandum

A. Name of the Bill

Antitrust Bill (Amendment 11), 5768-2008

B. Main Provisions of the Bill

The bill is meant to cope with an important failure that recurs commonly in industries that exhibit a combination of few competitors and high entry barriers. The amendment creates a new toolbox with which competitive problems of this kind may be tackled effectively.

In contrast to the phrasing of the Antitrust Law, 5748-1988 (hereinafter: “**the Law**”), the proposed amendment separates the set of norms applying to monopolies from that applying to member of a concentration group due to the significant differences between the economic phenomena that underlie monopolies and oligopolies. Cumulative experience shows that the differences between these phenomena require different approaches toward solving the legal problems that arise under the Law.

C. Purpose and Necessity of the Bill

The bill is the second part of the work of a committee that the Minister of Industry, Trade, and Labor appointed in March 2005 to reexamine the Law. This part of the committee’s work focused on reviewing the provisions of the Law that concern concentration groups directly. The committee found a clear need to effect a material change in the regulation of concentration groups in the Law. The bill will make it easier to deal with the competitive failure that is created in markets in which only a few competitors participate.

The Crux of the Bill – General Remarks

The bill contends with the competitive failure known as “market power.” Market power is expressed in the ability of a business or a group of businesses to deviate from terms of supply (or purchase) that would be set in a market in which meaningful and effective competition exists by setting a higher price or a poorer quantity, variety, and quality of supply. This competitive failure inflicts onerous and diverse kinds of harm on the public and the state economy. The use of market power causes, *inter alia*, inefficient factor allocation at the macro level, harm to research, development, and adoption of new technologies, and distortion in resource allocation among the public, while boosting the wealth of a few at the expense of the public at large.

Businesses have market power in three main natural situations: monopoly, in which an individual firm has market power; cartel – in which market power is held by several firms that coordinate their actions and create a quasi-monopoly; and oligopoly – a market with a small number of players that is structured and that operates in ways that allow these players to avoid effective competition even if they do not collude explicitly.

Unlike monopolies and cartels, the Law has no specific chapter that regulates oligopolies; instead, it treats this phenomenon like quasi-monopolies. Furthermore, the current arrangements in the Law relating to oligopolies are far from complete and some are far-fetched and unsuitable for dealing with the unique characteristics of the

oligopoly. Due to this faulty regulation, the Law as currently phrased allows the public and the state economy to sustain ongoing and systematic harm due to oligopolies' use of market power.

The characteristics of the Israeli economy are such that many industries, relatively speaking, furnish convenient conditions for oligopolistic activity. Activity in the Israeli economy is typically small by the standards of other developed economies, for reasons including modest domestic demand and the existence of trade barriers such as geographic isolation, political barriers, and language barriers. These characteristics limit the number of players that can operate efficiently in many diverse industries. Thus, many domestic industries comprise a small number of competitors and are devoid of effective competition.

The proposed amendment creates a new toolbox with which the phenomenon of oligopoly may be tackled and corrects defects in the phrasing of the Law. The gist of the proposed phrasing includes two principal changes that balance each other.

First, the bill amends the definition of "concentration group." The current definition, in Section 26(d) of the Law, places all of its emphasis on the actual extent of competition that exists among the members of a concentration group and determines that a concentration group exists wherever its members do not compete at all or are "only in slight competition." In fact, however, it is impractical and often impossible to measure the level of competition empirically. Therefore, an enforceable test is needed to identify industries in which a significant problem of market power exists actually or potentially. The bill offers such a test.

Second, the bill repeals the arrangement in the Law that applies the same norms to members of a concentration group as to monopolies. Naturally, the provisions of the monopoly chapter of the Law were tailored specifically to the regulation of an individual firm that is presumed to be dominant in the market. However, the types of behavior that the Law disallows for a monopoly are not necessarily the same as those that create difficulties in the presence of a concentration group; the two are not necessarily the same and one should not expect them to be such. Therefore, the bill empowers the General Director of the Israel Antitrust Authority (hereinafter; "**the General Director**") to issue instructions to all or some members of a concentration group in order to preclude harm or concern about harm to the public or to competition, or to significantly enhance competition among the members of the group or in the relevant industry, or to create conditions for the enhancement of competition among the members of the concentration group or in the industry. These instructions replace the norms that apply to monopolies.

D. Notes to the Bill

At Section 1 – Repeal of Section 26(d) of the Law

Section 26(d) of the Law establishes the current definition of a concentration group and applies the provisions of the monopoly chapter of the Law to concentration groups. The bill deletes this section because other sections of the proposed amendment establish other arrangements in lieu of the section that shall be repealed. It deserves emphasis that the various chapters of the Law overlap each other, and in this case, too, the addition of Chapter D1 does not derogate from the set of obligations and prohibitions that apply to concentration groups by force of the other chapters of the Law, except for discontinuing the application of the monopoly chapter to

concentration groups. By way of illustration, behavior that qualified as cartelistic before the amendment will remain such even after the Law is amended.

At Section 2 – Amendment of Section 30

Section 30 of the Law authorizes the General Director to issue instructions to a monopoly if s/he “believes that business competition or the public is being prejudiced as a result of the existence of a monopoly or the behavior of a monopoly,” or if s/he “believes that a risk of substantial prejudice to business competition or to the public exists as a result of the behavior of a monopoly.”

Section 30(c) of the Law lists the types of harm to competition and the public: (1) the price of an asset or service; (2) the quality of an asset or a service; (3) the quantity of the assets or the scope of the service; (4) the supply of the asset or the service, and the constancy and conditions of such supply; and (5) fair business competition.

The bill replaces Section 30(c)(5) so that the harmed competition of concern in the Section shall be of the type of a barrier against entry to the industry, or a barrier against switching by customers in an industry if the monopoly is in the *supply* of assets or services, or a barrier against switching by suppliers among customers if the monopoly is in the *purchase* of assets or services.

The proposed amendment replaces the general catch-all expression in the original wording of Section 30(c)(5) of the Law – “fair business competition” – with recognized tests of harm to business competition in the form of entry and switching barriers. This creates greater clarity in regard to the General Director’s power to issue a monopoly with instructions clearer and internal uniformity among the provisions of Section 30(c), because henceforth all of its subsections will concern themselves with recognized and circumscribed kinds of harm to business competition that result from the use of market power.

The bill also amends Section 30(g) of the Law, which concerns itself with the date on which the General Director’s instructions to a monopoly go into effect and determines that the very fact of filing an appeal with the Antitrust Court (hereinafter: “**the Court**”) suspends the force of the General Director’s instructions.

Under Section 30(g) of the Law as currently phrased, the instructions go into effect within thirty days of the date on which they are duly published. The monopoly reserves the right to appeal at the General Director’s instructions within a thirty-day period (Section 30(e) of the Law). This Section also determines, “In the case that a monopoly files an objection to the instructions, they shall be suspended pending the decision, or any other date provided by the [Antitrust Court].” The practical cumulative result of these provisions is that the effect of the General Director’s instructions to a monopoly is immediately suspended the moment the instructions go into effect and even the Court cannot prevent the suspension of the instructions but only determine how long the suspension shall last. This structure obviates the antitrust system’s ability to prevent, in real time, monopolistic harm to competition and the public by issuing the monopoly with instructions.

Under the proposed amendment, the General Director may determine that the instructions shall go into effect at some later time as well, i.e., more than thirty days after they are duly published. The amendment also proposes that the effect of the instructions shall not be automatically suspended if the monopoly files an objection

with the Antitrust Court; instead, the Court may suspend the instructions at its discretion.

At Section 3 – Adding Chapter D1: Concentration Group

As stated above, the Law in its current phrasing applies the same norms to concentration groups as to monopolies, despite significant differences between the economic phenomena that underlie oligopolies and monopolies.

The mismatch between arrangements dealing with monopolies and those required in respect of oligopolies is resolved by adding a separate chapter to the Law in regard to oligopolies. The proposed Chapter D1, the provisions of which are spelled out below, creates a toolbox with which the phenomenon of oligopoly may be tackled, with emphasis on tailoring the solutions in the Law to the specific characteristics of oligopoly.

Addition of Section 31A

The bill empowers the General Director to determine that a concentration group exists if three cumulative conditions are satisfied:

- (1) A small number of persons supplies or purchases more than half of total assets or services in the industry;
- (2) The General Director believes that conditions exist for slight competition among said persons or in the industry in which they operate, or that competition among them is slight;
- (3) The General Director believes that there are measures that, if instructed to be taken, may prevent harm, or concern about harm, to the public or to business competition among members of the concentration group or in the industry, or that may enhance competition in the industry, or that may create conditions for the enhancement of said competition.

The first and second tests are umbilically related to the oligopoly phenomenon. The first test establishes that a concentration group exists only in a market that is typified by severe concentration. Many academic and empirical studies show a strong positive correlation between the extent of concentration in a market and the ability to apply market power.

However, severe concentration in itself is not a sufficient condition for the existence of ineffective competition. Therefore, the second condition establishes that *conditions* for slight competition among members of the concentration group or the industry must exist. The requirement of the existence of *conditions* for slight competition marks a significant departure from the current phrasing of the law, according to which a concentration group exists if *in practice* there is slight competition or none whatsoever. As stated above, the science of economics does not offer tools for the measurement of level of competition. Thus, the Law as currently phrased largely voids the concentration group provisions of the Law of their content.

In contrast to the current phrasing, the presence of *conditions* for slight competition is routinely tested in the practical application of the antitrust laws. The mergers chapter of the Law instructs the General Director to oppose a merger that evokes reasonable concern about significant harm to competition or to the public. As the effect of a merger on competition and the public is tested, the possibility of the existence of

conditions for slight competition in the industry or among its main players is examined. The courts, too, in Israel and abroad, often ask whether conditions for slight competition exist in their decisions for or against mergers. Accordingly, the proposed phrasing is based on tools that are accepted in antitrust law, both practically and doctrinally.

The third test for determining the existence of a concentration group states that the existence of a concentration group shall be determined only if the General Director believes that the modes of competition in the industry or among members of the concentration group can actually be changed. This test acknowledges the existence of commercial/economic situations in which the modes of competition in the industry cannot be changed or conditions for such change cannot be created.

Section 31A(d) is worded identically to the original phrasing of Section 26(f) of the Law. After the provision defining a concentration group is transferred from Section 26(d) to Section 31(a), the complementary provision in Section 26(f) is transferred along with it.

Section 31A(c) supplements Section 31A(a) as to the existence of an industry in which conditions for slight competition are present. The proposed section lists three conditions, each of which may do much to keep competition in a concentrated industry slight: (1) an entry barrier in the industry; (2) a switching barrier in the industry; (3) ownership of one player in the industry by another or co-ownership of a third player in the industry by two or more players.

Addition of Section 31B

Section 31B(a) of the bill empowers the General Director to issue instructions to all or some members of a concentration group. The instructions are prescriptive or proscriptive.

According to the current phrasing of the law, the General Director's authority to issue instructions in respect of a concentration group is derived from the power to issue instructions to a monopoly and is identical thereto. It is a circumscribed and limited power: prevention of present harm to competition or to the public by a monopoly or a monopoly's behavior, or abating concern about significant harm to competition or to the public as the result of a monopoly's behavior.

The instructions allowed under the law as currently phrased reflect some of the problems that arise when concentration groups and monopolies are regulated under the same set of norms. The monopoly chapter concerns control of an industry by one firm, whereas a concentration group contends with a different phenomenon that concerns the absence of effective competition among several important players in an industry. This happens because the economic conditions in the industry, or actions taken by all or some members of the concentration group, allow the group to sustain an equilibrium in which they refrain from competing with each other with full force or on all competitive fronts (price, quality, innovation, variety, etc.).

The proposed amendment adjusts the type of instructions that the General Director may issue to the oligopoly phenomenon and the unique characteristics of the relevant concentration group. The amendment proposes several types of instructions that are meant to change the non-competitive equilibrium among the members of the concentration group or the industry and to generate competition. The first type concerns instructions that aim to preclude harm or concern about harm to the public or

to business competition as a result of an act of commission or omission by one or more members of the concentration group. The second type concerns instructions that have the probable outcome of significant enhancement of competition among the members of the concentration group or in the industry. The third type of instruction aims to create conditions for the enhancement of competition among the members of the concentration group or in the industry. The General Director's instructions may be appealed to the Court (below).

The subsections of Section 31B(a) provide a non-exhaustive list of instructions that the Commission may issue to members of the concentration group. They include:

- (1) Eliminating or limiting switching barriers among concentration groups or between them and other persons conducting business in the industry;
- (2) Eliminating or limiting entry barriers to the industry;
- (3) Terminating an activity by any member of the concentration group that has the effect of facilitating the coordination of the concentration group's behavior;
- (4) Enjoining against the transfer or publication of information among members of the concentration group, or between any of them and any other person, if said transfer or publishing has the effect of facilitating the coordination of the concentration group's behavior.

Section 31B(b) of the bill concerns structural relations among members of a concentration group. When one business has rights in another business, the former has an economic interest in the commercial performance of the latter. If both businesses are in the same industry, the economic interest may influence the scope of competition between them, because a person contemplates the aggregate earnings of all h/her activities and does not encourage internal competition among different businesses that s/he holds. In an industry that is concentrated and exhibiting a concentration group to begin with, the holding of a right in a competitor may have an especially dampening effect on competition because the structural relationship gives the businesses an intrinsic incentive to limit competition between them and, given the circumstances of the industry, may stabilize the noncompetitive equilibrium and help to restrain business competition. Another type of structural relationship that may also dampen competition among members of a concentration group is a co-holding by two or more members of the concentration group in another person who operates outside the industry. The existence of a shared economic interest chills the incentives of the members of a concentration group to compete with each other and gives them a basis for explicit or implicit collusion in their activities.

The bill empowers the General Director to instruct a concentration group to sell a right that it holds in another member of the group and to instruct the former to sell its stake in another person if an additional member of the group has a stake in said person. In this case, too, the General Director's instructions may be appealed to the Court (below).

Section 31B(c) of the proposed amendment regulates the General Director's requirement of advising and consulting with government offices. Under the law as currently phrased, the General Director is not required in any way to advise or consult with another government office before issuing instructions to a member of a concentration group.

In accordance with the provisions of the proposed section, the General Director shall advise a government office or other government authority within the purview of which the concentration group operates of h/her intention of issuing instructions by force of Section 31B(a) – behavioral instructions – and shall wait fourteen days before issuing the instructions. The “advise” provision of the bill is parallel to the advising provision of the Law that precedes the granting of immunity for a cartel arrangement (Section 14(d) of the Law). The Law also regularizes the advising of a government office in the case of a corporate merger but does not require the General Director to suspend h/decision about the merger (Section 20(c) of the Law). The proposed section further establishes that the General Director shall consult with a government ministry or authority in the purview of which the concentration group operates before issuing a divestment instruction by force of Section 31B(b). According to the Law as currently phrased, the General Director need not consult with any other government ministry in any matter whatsoever.

Section 31B(d) of the bill applies the arrangements that apply to the issuing of instructions to a monopoly, in Sections 30(c)–(h) of the Law, to the issue of instructions to a concentration group or to a member of a concentration group, *mutatis mutandis*. These arrangements include Section 30(c) of the Law – a list of types of harm that shall be considered harm to business competition and the public; Section 30(d) of the Law – compulsory advertising of instructions in the daily press; Section 30(e) of the Law – forwarding of instructions to recipients and recording of the phrasing of the instructions in a registry (below); Section 30(f) of the Law – entitling the party to whom the instructions apply, a consumer organization, and any other person who is harmed by the instructions to appeal to the Court at the General Director’s instructions, and authorizing the Court to approve, annul, or amend the General Director’s instructions; Section 30(g) – suspension of General Director’s instructions due to the filing of an appeal (*supra*); Section 30(h) – a clarification indicating that the General Director’s authority to issue instructions is supplemental to the Court’s authority to invoke provisional remedies in proceedings before it.

At Section 4 – Amendment of Section 42

The General Director keeps a register of applications for cartels and of cartels approved, a register of provisional permits issued, a register of immunities issued under Section 14, a register of corporate mergers to which s/he has given consent or that the Court has approved, and a register of monopolies declared. This register is maintained under Section 42(a) of the Law. The proposed amendment adds to Section 42(a) a provision to the effect that a register of concentration groups shall also be kept.

Section 42(c) instructs the General Director to publish in the government gazette notice about decisions of the Court and the Supreme Court in regard to approvals of cartels, appeals in respect of corporate mergers, and instructions to monopolies. The amendment also proposes that decisions of the Court and the Supreme Court in respect of instructions to a concentration group be published in the government gazette.

At Section 5 – Amendment of Section 43

Section 43(a)(4) of the Law empowers the General Director to determine that “a concentration group is a monopoly.” Pursuant to the passage of Section D1 of this amendment and the detaching of concentration group regulation from the monopoly

chapter to a chapter of its own, the current phrasing of Section 43(a)(4) shall be replaced by the following: “those conducting business are members of a concentration group;”

Section 43(b) instructs the General Director to advise those directly related to the General Director’s determination of said determination. This Section shall be supplemented with a provision to the effect that notice about the determination shall also be forwarded to those whom the General Director has found to be members of a concentration group.

At Section 6 – Amendment of Section 47(a)(5)

Section 47(a)(5) states that a party that violates an instruction from the General Director to a monopoly shall be liable to three years in prison or a fine in sums that shall vary commensurate with the circumstances of the case.

As aforesaid, the Law as currently phrased regulates concentration groups via the monopoly chapter. Section 26(d) of the Law determines that a concentration group “shall be deemed to be a monopoly, if the General Director so determines in accordance with Section 43(a)(4).” The General Director is empowered to impose instructions on a member of a concentration group by dint of his/her authority under Section 30 of the Law to issue instructions to a monopoly.

The amendment proposes that the existing situation as to the penalty that shall apply if a member of a concentration group violates an instruction from the General Director be preserved and that the provisions of Section 47(a)(5) should be adjusted so that an instruction to a member of a concentration group shall no longer be made by force of Section 30 of the Law but by force of Section 31B.

At Section 7 – Amendment to Section 50

Section 50 of the Law states, “An act or omission contrary to the provisions of this Law shall constitute a tort in accordance with the Torts Ordinance [New Version].” The Law has no provision relating to the possibility of a claim for damages by a party who is harmed by the violation of instructions or conditions that the Court or the General Director has imposed. Therefore, the proposed amendment establishes that the current phrasing of Section 50 shall become Section 50(a) and that it shall be supplemented by Section 50(b), stating that an act of commission or omission in contravention of conditions or instructions handed down by the Court, or by the General Director, shall be deemed tort in accordance with the Torts Ordinance (New Version).

The proposed amendment is all the more important after the addition of Chapter D1 to the Law. After the amendment is passed into law, as noted above, the general norms in the monopoly chapter, such as abuse of position, shall not apply to members of a concentration group and restrictions on a member of a concentration group shall be set forth in the instructions that the General Director shall apply. Absent the right under law to sue on account of violation of the General Director’s instruction, a party that is damaged by said violation would have no way of demanding compensation for said violation.

It is proposed that several years after the amendment passes and after practical experience in its application is amassed, a section should be added to the Law

outlining a general norm for restrictions on members of a concentration group, resembling the prohibition of abuse of position that applies to monopolies.

E. Effect of the Bill on the Current Law

Sections 30(c)(5), 30(g), 42(a), 42(c), 43(b), 47(a)(5), and 50 of the Law shall be amended. Chapter D1, containing sections 31A and 31A, shall be added to the Law.

F. Effect of the Bill on the State Budget

The bill has no effect on the state budget.

Phrasing of the Bill

Antitrust Bill (Amendment 11), 5766-2007

Repeal of Section 26(d) 1. In the Antitrust Law, 5748-1988¹ (hereinafter – the Main Law) Subsection (d) in Section 26 shall be deleted.

Amendment of Section 30 2. In Section 30 of the Main Law –

(1) The following shall replace Subsection (c)(5):
“a barrier against entry to the industry, or a barrier against switching by customers in an industry if the monopoly is in the *supply* of assets or services, or a barrier against switching by suppliers among customers if the monopoly is in the *purchase* of assets or services.”

(2) In Subsection (g), after the expression “following the date of publication as provided by sub-section (e),” the following shall appear: “or at a later date as the General Director shall establish.”

(3) In Subsection (g), instead of “they shall be suspended pending the decision, or any other date provided by the Tribunal,” the following shall appear: “the Tribunal may suspend them until the date on which the objection is resolved or until some other date as it shall establish.”

3. After Section 31 of the Main Law, the following shall appear:

Addition of Chapter D1 **“Chapter D1: Concentration Group**

“31A. (a) The General Director may establish under Section 43(a)(4) that a small number of persons who command a concentration of more than half of the total supply of goods or services, or of the total purchase thereof, is a concentration group, if s/he believes that conditions for slight business

¹ *Sefer huqim*, 5748, p. 128; 5764, p. 147.

competition among them or in the industry in which they operate exist, or that business competition among them or in said industry is slight, and if s/he sees that measures may be taken in regard to which an instruction under Section 31B may preclude harm, or concern about harm, to the public or to business competition among members of the concentration group or in the industry, or to enhance competition in the industry, or to create conditions for the enhancement of said competition.

“(b) In this Section, a ‘person’ includes a corporation and the subsidiaries thereof, subsidiaries of one corporation, and a person and a corporation that s/he controls.

“(c) For the purposes of Subsection (a) *supra*, the existence of an industry in which conditions for slight competition exist shall be determined in consideration, *inter alia*, of the existence in the industry of one or more of the following:

“(1) a barrier to entry;

“(2) a barrier against switching of customers among suppliers in the industry if the concentration group is in the supply of assets or services, or a barrier to switching of suppliers among customers in the industry if the concentration group is in the purchase of assets or services, or limited ability to switch as aforesaid;

“(3) possession by one person of a right in another person in the industry, joint possession by persons in the industry of rights in another person, or the possession by one person of rights in two or more persons in the industry.

Regulation of
concentration
group actions

“31B. (a) Once the General Director has determined under Section 31A *supra* that a concentration group exists, s/he may instruct all or some members of the concentration group to take measures to preclude harm or concern about harm to the public or to business competition among members of the concentration group or in the industry, or to significantly enhance competition among members of the concentration group or in the industry, or to create conditions for the enhancement of competition among members of the concentration group or in the industry. The General Director is entitled, *inter alia*:

“(1) to order the elimination or the mitigation of barriers to switching among members of the concentration group or between them and others involved in the conduct of business in the industry;

“(2) to order the elimination or the mitigation of barriers to entry in the industry;

“(3) to order the cessation of an activity by any member of the concentration group that may facilitate the coordination of behavior among members of the concentration group;

“(4) to prohibit the transfer or publication of information among members of the concentration group, or between any of them and any other person, if said transfer or publishing has the effect of facilitating the coordination of the behavior of the concentration group's members;

“(5) to take any other action that is needed to regulate the concentration group's actions as set forth in Section (a) *supra*.

“(b) Without derogating from the generality of the provisions in Section (a) *supra*, if the General Director believes that a member of a concentration group possesses a right in another person in the same industry or that members of a concentration group possess rights in another person, whether said person is active in the industry in which the concentration group operates or not, s/he may order the sale of all or some of said holdings and may set a deadline for said sale if s/he has found that this will preclude harm or concern about harm to the public or to business competition among members of the concentration group or in the industry, or to enhance competition among members of the concentration group or in the industry, or to create conditions for the enhancement of competition among members of the concentration group or in the industry.

“(c) If the concentration group operates in an area that falls within the purview of any government ministry or other government authority, the General Director shall advise the director-general of said ministry or authority of h/her intent to issue instructions and shall not forward the instructions to the members of the concentration group until the passage of fourteen days from the day on which said notice is sent; however, before an instruction is issued under Section (b) *supra*, the General Director shall consult with the government ministry or government authority within the purview of which the concentration group operates.

“(d) The provisions of Section 30(c)–(h) shall apply to the issue of instructions under this Section, *mutatis mutandis*.”

Amendment to
Section 42

4. In Section 42 of the Main Law, the following shall appear:

(1) In Subsection (a), instead of “and a register of monopolies,” the expression “a register of monopolies and a register of concentration groups” shall appear.

(2) At the end of Subsection (d), the expression “(4) Instructions to concentration group under Section 31d” shall appear.

Amendment to
Section 43

5. In Section 43 of the Main Law:

Subsection (a)(4) shall be deleted and replaced by the following:
“Persons conducting business are members of a concentration group.”

(2) In Subsection (b), instead of “and to monopolies,” the expression “and to monopolies and concentration groups” shall appear.

Amendment to
Section 47(a)(5)

6. In Section 47(a)(5) of the Main Law, after the expression “Section 30,” the expression “or 31B” shall appear.

Replacement of
Section 50

7. In Section 50 of the Main Law, the following shall appear:

“50. A tort.

“(a) an act or omission contrary to the provisions of this Law shall constitute a tort in accordance with the Torts Ordinance [New Version].

“(b) an act or omission contrary to instructions issued by the General Director or contrary to conditions that the General Director set forth by force of this Law, or contrary to instructions or conditions imposed by the Tribunal by force of this Law shall constitute a tort in accordance with the Torts Ordinance [New Version].”