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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL**

**-- January 2005 - April 2006 --**

*This report is submitted by the Delegation of Israel to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 8-9 June 2006.*

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## Introduction

This report summarises major recent initiatives and developments in Israel's competition law and policy and in the enforcement of the Restrictive Trade Practices Act, 5748-1988 (hereinafter: "Antitrust Law") for the period of January 2005 through April 2006.

The IAA is an independent government enforcement agency established in 1994 under an amendment to the Antitrust Law. The IAA is mandated to prevent market power through merger control and anti-cartel enforcement, to restrain abuse by dominant firms of their positions and to preserve competition in the various markets.

An Antitrust Tribunal, sitting with the District Court in Jerusalem, has exclusive jurisdiction over non-criminal governmental antitrust proceedings. Interim orders and final decisions of the tribunal are appealable to the Supreme Court, the highest judicial authority in Israel. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters. The Court's decisions are appealable to the Supreme Court as well.

While the IAA has an important enforcement function, the Antitrust Law also provides for any person to independently seek a remedy from the Court.

The IAA focused its efforts selectively in 2005 on a number of specific markets, in which serious antitrust complexities were identified

Some of the most important accomplishments of the IAA were reaching of an agreement with several **dominant food suppliers** to ask the approval of the Antitrust Tribunal for a **consent decree** regarding their commercial practices vis-à-vis the retail chains; the publication of a new **leniency program**; the renewal and amendment of the **block exemptions**; the General Director's **determination** regarding the **restrictive nature of a local salt company** arrangement with a foreign company in order to block import of salt; and the handing down of an **indictment against frozen vegetables companies**.

The resources of the IAA have not significantly changed from previous years, with an annual budget of 20,330,000 NIS (which is approximately 4.5 million USD) and 68 employees.

## 1. Changes in Competition Laws and Policies

### 1.1 *Memorandum of a Suggested Amendment to the Antitrust Law Was Published*

1. In March 2005, the Minister of Trade and Industry established a committee whose task is to review the Antitrust Law and suggest relevant amendments.

2. The Committee decided to first engage in the revision of the term “restrictive arrangement” which required clarification for the benefit of the legal and business communities.

3. The Committee thought the current definition of the term was too broad and as such might apply to transactions that were not necessarily harmful and were therefore unjustifiably deemed illegal. The Committee was also aware of various court decisions that expressed their criticism of the definition.

4. The current definition is comprised of two parts. According to the first, 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 is deemed a restrictive arrangement. The Court expressed its view according to which this definition may apply to any arrangement that might harm competition even if it does not have any effect on the market and the damage refers only to the competition among the parties to the arrangement.

5. The second part of the current definition provides for a number of specific restraints, the existence of which constitute an irrefutable presumption that damage to competition exists. According to the court, this part is problematic since it does not differentiate between horizontal arrangements and vertical or conglomerate arrangements.

6. A memorandum of the amendment was released to the public and is to be submitted to the Government’s approval soon. According to the suggestion, the general part of the definition will apply to all arrangements that may reduce or prevent competition **in the market** and will be based on an **economic examination of an arrangement’s effect on the market**. The specific part, which refers to certain arrangements and presupposes they harm competition, will apply only to arrangements between **competitors**.

### 1.2 *Renewal and Amendment of the Block Exemptions*

7. On March 29, 2006, the Minister of Trade and Industry and the General Director signed a renewed set of block exemptions.

8. The first time block exemptions were ever enacted in Israel was in 2001.<sup>1</sup> The block exemptions were intended to liberalise the authorisation and exemption system, and limit the requirement to apply to the authorities in transactions that entail genuine concern for significant impairment of competition. According to Section 15A(e) of the Law the block exemptions are to be enacted for a period of maximum 5 years.

9. In March, 2006, the block exemptions were expected to expire and thus during 2005 the IAA commenced a process of renewal and amendment of the block exemptions. During the 5 years that the

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<sup>1</sup> Seven block exemptions were enacted in 2001: Block Exemption for Restrictive Arrangements Causing Immaterial Harm to Competition; Block Exemption for Joint Ventures; Block Exemption for Research and Development Agreements; Block Exemption for Exclusive Dealing; Block Exemption for Exclusive Distribution and Block Exemption for Franchise.

block exemptions were employed, both the IAA and the private sector gained significant practical experience that enabled the IAA to make important amendments.

10. The IAA published a draft of the block exemptions and comments were received from the public. The draft was also presented to the Mergers and Exemptions Committee which approved it and furthermore it was approved and signed by the Minister of Trade and Industry.

11. The block exemptions will come into force shortly after their publication in the official registrar.

### ***1.3 A New Leniency Program Came Into Force***

12. One of the main goals of the IAA is the detection of cartels and the indictment of their members.

13. In order to promote these goals, the Authority announced, in May 2005, the adoption of a leniency program. According to the program every person, including a corporation, a director or an employee of a corporation, will be granted full immunity from criminal prosecution relating to a restrictive arrangement offence under the Antitrust Law, if he is the first to come forward to the Authority and provides all information known to him, in connection with the restrictive arrangement to which he was party.

14. The IAA hopes that the program will be an efficient tool that will enhance the number of cartels dealt with and prosecuted by it.

15. In the process of drafting the program, the IAA made use of the experience and knowledge of the American and European antitrust agencies.

16. The full text of the program is available at: <http://www.antitrust.gov.il/Antitrust/en-US/LeniencyProgram.htm>

### ***1.4 The IAA Published Guidelines Stating Its Position Regarding Loans between Competitors***

17. In February 2006, the General Director published guidelines expressing the IAA's position regarding loans that are given between competitors.

18. The purpose of the guidelines was to present the competitive concerns that might rise from loans that are given between competitors and to set the framework that will assist parties to assess under which circumstances cross debtorship among competitors will raise a competitive concern and be considered a forbidden restrictive arrangement by the IAA.

19. According to the IAA's position, debtorship links might influence the ordinary course of business and the business considerations of the parties. The existence of a debt might affect the independent discretion of the debtor, in light of the creditor's ability to influence his decisions and practices. Many times, the creditor receives access to commercial information of the debtor, which is not public information. The concern is that the identity of the parties and the links among them might expand the affect of the arrangement even further and harm the competition among them and in the relevant market.

20. Not every loan agreement will automatically be considered a restrictive arrangement. Each arrangement should be examined in light of the specific circumstances of the case.

21. The guidelines set a non-exhaustive list of factors that should be taken into account in the process of examining cross debtorship links among competitors. The factors that are mentioned are the following:

- a. the period of the loan, the frequency of interaction between the parties and the ability to exit the agreement;
- b. the financial status of the debtor, his ability to pay his debts, the amount of debt and its value in comparison to the entire scope of business of the debtor;
- c. the terms of the loan and the rights of the creditor according to the agreement;
- d. the existence of other arrangements among the parties;
- e. the circumstances that led to the loan agreement and the alternative sources of financing that are available for the debtor.

## **2. Enforcement of Competition Law and Policies**

### **2.1 *In General: Powers and Statistics***

22. The Antitrust Law provides for varied remedies in cases of infringement. Antitrust Law violations are a criminal offence as well as a civil tort.

#### *2.1.1 Criminal*

23. Severe antitrust violations may be subject to criminal prosecution and may result in fines and prison terms. Liability is imposed upon the corporation and its executives.

24. During the reviewed period, the IAA opened ten new criminal investigations, concluded 6 investigations and filed two indictments in the Jerusalem District Court. The IAA was involved in two criminal litigation proceedings before the Supreme Court and ten proceedings before the Jerusalem District Court.

#### *2.1.2 Civil Remedies*

25. 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.

26. In 2005 **10** new civil litigation proceedings were tried before the Antitrust Tribunal.

27. In addition, during 2005, the IAA opened **forty-nine** administrative inquiries, following public complaints. The IAA found these complaints worthy of further investigation, since they seemed to raise genuine competitive concerns. The complaints referred to a wide range of anti-competitive practices in the realms of restrictive arrangements and abuse of a dominant position.

## 2.2 *Restrictive Arrangements*

A “**restrictive arrangement**” is defined 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.

In addition, the Antitrust Law provides for a number of specific restraints, the existence of which constitute an irrefutable presumption that damage to competition exists.

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.

28. Entry into a restrictive arrangement without the authorisation of the Antitrust Tribunal (or without a temporary authorisation) is forbidden, unless the arrangement was exempted specifically by the General Director or is exempted according to one or more of the block exemptions. During 2005, the General Director handled exemption requests as following:

<b>Total number of decisions</b>	<b>Exemptions granted</b>	<b>Exemptions granted under conditions</b>	<b>Objections</b>
<b>90</b>	63	27	0

29. The following are examples of significant restrictive agreements cases, which demonstrate the wide range of issues addressed by the IAA involving both criminal and civil enforcement activities.

### 2.2.1 *Expected Consent Decree between the IAA and Dominant Food Suppliers*

30. On December 20, 2005, the IAA published a notice according to which it reached an agreement for a consent decree with several dominant food suppliers constituting a reform in commercial relationship between the latter and the large retail chains. After the proposed consent decree was published for public consideration and comment, the parties jointly filed for approval from the Antitrust Tribunal on March 30, 2006.

31. The proposed decree is aimed at solving substantial competitive problems in the trade relationship between dominant food suppliers (some of which had previously been declared monopolies by the General Director) and the large retail chains in Israel.

32. The decree followed an extensive investigation initiated in 2000 and concluded at the end of 2002. It entailed an extensive examination by the IAA’s Legal and Economic Departments, aimed at evaluating the competitive impact of the different practices that were revealed and the measures that should be taken.

33. In 2003, the IAA published its preliminary conclusions regarding the investigation's findings. The IAA's position was published for public comments.



34. On January 5, 2005, the General Director published his final position regarding commercial restrictive practices and guiding rules, prior to taking any legal actions, in order to prevent any continuance of the problematic practices exposed during the investigation, and in order to set the normative framework.

35. In his position, the General Director indicated that evidence of violation of the Antitrust Law was found, such as:

- a. In some of their commercial agreements, dominant suppliers demanded that retail chains refrain from admitting competing “private labels”. In addition, a dominant supplier agreed to pay one of the large retail chains for the removal of all but one of the competing products from their shelves.
- b. Dominant suppliers and large retail chains agreed that the shelf space allotted to their products would be significantly larger than half of the shelf space allotted to similar products sold by the chain. In addition, a dominant supplier made an arrangement with a retail chain that the latter would receive payment in return for its guarantee that it would strive to maintain or increase the market share of the supplier’s products in several categories where the supplier has a market share significantly above fifty percent.
- c. A large retail chain and a dominant supplier agreed to appoint the supplier to be a category manager, in order to enable him to increase the market share of its products in the relevant category.

36. In his final position, the General Director determined that these practices are illegal unless approved by the Antitrust Tribunal or exempted by the General Director.

37. As mentioned above, the proposed decree, which sets specific instructions for the companies, in order to avoid the problematic practices that were revealed, has already been filed to the Antitrust Tribunal and the parties await the agreement’s ratification as a decree.

### 2.2.2 *Exemptions in the Field of Retail Stores*

38. **In October, 2005**, the General Director conditionally exempted the joint operation of 450 small retailers of the need to obtain the approval of the Antitrust Tribunal.:

- The organisation, called “**Kamea**”, was established with the aim of improving its members’ trade terms with large suppliers, by creating a better negotiation position and lowering their transaction costs.
- Nowadays, the large retail chains enjoy superior trade terms in comparison with small retailers due to their large scope of purchase and a better negotiation position.
- The General Director found that due to the competition the organised retailers are facing, the expected reduction in their costs would probably be passed on to the consumers.
- It was also found that the organisation will concentrate a relatively small percentage of the total purchases from food suppliers and thus the arrangement would not provide them with any monopsony power.
- The General Director found it appropriate to impose certain conditions that would promise that the cooperation between the retailers would not include the coordination of selling terms to consumers and would only focus on their interaction with the suppliers.

39. **In November 2005**, the General Director granted an exemption to a joint venture called “**The Fourth Chain**”:

- The Fourth Chain is a JV between 5 private retail chains that operate in distinct geographic areas whose aim is developing and marketing a joint private label and enabling the JV’s members also to jointly purchase products and services.
- The IAA’s examination showed that in areas where a private chain operates, often this fact leads to a substantial reduction in prices to the consumers.
- The joint purchase of chains that do not compete with each other (since they operate in distinct geographic areas) is expected to grant the private chains economies of scale, similar to those the large retail chains enjoy because of their large scope of purchases.
- Also, the development of a joint private label is expected to improve the private chains’ negotiation position with the suppliers and to enable them to offer products at suitable prices.
- In any case, the General Director decided to impose conditions according to which the chains are not allowed to coordinate selling prices or any other condition concerning the sale of products.

2.2.3 *The General Director Determined That a Salt Company Engaged in a Restrictive Arrangement in order to Block Import of Salt From Cyprus*

40. On April 4, 2006 the General Director determined that Israel Salt Industries Ltd., a declared monopoly in the edible salt market, reached an agreement in 1999 with a Cyprus company that exported salt to the Israeli market, according to which the company would become an agent of the Israeli company and stop exporting salt to Israel. Indeed, the export of salt to Israel stopped and has not been renewed since then.

41. For many years, Israel Salt Industries Ltd. enjoyed full control of the Israeli salt market, *inter alia*, thanks to agreements it reached with another Israeli salt company according to which the latter would not enter the retail marketing of salt. Those agreements were abolished by the Antitrust Tribunal in 2004 as part of a consent decree that was reached between the General Director and the company. In the relevant period (1999), the only threat of competition was from import.

42. Israel Salt Industries Ltd. exports 20% of its output to different countries and in 1999 it supplied half of the salt consumption of the Cyprus market.

43. In 1997, a Cyprus company competed with Israel Salt Industries Ltd. in Israel and in Cyprus. Although it exported only a small amount to the Israeli market, the managers of Israel Salt Industries Ltd. claimed that it had actually influenced the prices of salt in Israel.

44. According to the General Director’s determination, Israel Salt Industries Ltd. was determined to block the import of salt. It had pressured and threatened the Cyprus Company, *inter alia*, by threatening the company that if they would continue exporting salt to Israel, the Israeli company would flood the Cyprus market with salt at low prices. Not only did the Israeli company threaten the Cyprus company, but it also in fact carried out its threats when for a period of 10 days it supplied its agent in Cyprus with 1000 tons of salt, which constitute 1/7 of the yearly consumption of the Cyprus market. In 1999 the Cyprus company gave in, stopped exporting salt to Israel and became an agent of the Israeli company.

45. The General Director's determination can be used as prima facie evidence of its content in any legal proceeding.

#### *2.2.4 Exclusivity Arrangements of a Major Health Organisation with Private Pharmacies Were Abolished according to the General Director's Request*

46. In February 2006, the General Director instructed Clalit Health Services, a major health organisation in Israel, to abolish exclusivity arrangements it had reached with private pharmacies according to which the latter were forbidden to sell medication to patients that are not insured at Clalit Health Services.

47. Following complaints that were received at the IAA, it was found that Clalit Health Services reached arrangements with private pharmacies that include commitments of the pharmacies not to supply medication at all or supply medication at full price to patients that are insured by the Clalit Health Service's competitors.

48. Most of the agreements were reached in settlements in which only one pharmacy exists and the Clalit Health Services had a monopolistic position. The exclusivity agreements made it difficult for the Clalit Health Service's competitors to enter the relevant settlements because since, of the lack of an alternative pharmacy, the competitors could not issue prescribed medication and provide their patients with appropriate service.

49. The Clalit Health Services' practice had harmed the attractiveness of its competitors and strengthened its monopolistic position in the relevant settlements.

50. Following the intervention of the General Director, the exclusivity agreements were abolished.

### **2.3 Cartels**

51. The IAA devoted extensive efforts and sources to fighting cartel activity in a wide range of industries. The following are summaries of major cases that were tried during the past year.

#### *2.3.1 The Supreme Court Approved the IAA's Position in an Appeal in a Cartel Case*

52. On July 14, 2005, the Supreme Court reversed a verdict of the Jerusalem District Court and approved the IAA's position in its appeal in a cartel case concerning bid-rigging in the traffic lights market.

53. In September, 1998 the IAA filed an indictment to the District Court concerning an agreement of one company, Ariel, not to submit a bid in the city of Haifa, in return for which its competitor, Menorah, would transfer work in the city of Jerusalem to it.

54. The agreement created a de facto geographical market allocation and it was found that Menorah actually won the bid in Haifa at prices that were much higher than the price estimation of the Haifa municipality, the tender issuer.

55. The District Court decided to acquit the defendants based on the explanation that the customer, the local municipality, was not genuinely interested in competition and there was a clear preference of the municipality in Menorah's winning the bid, since it operated the traffic lights in Haifa at the time. The District Court was of the opinion that under these circumstances the arrangement should be considered, as one causing immaterial harm to competition and the defendants should enjoy the "*de minimis*" defence.

56. The Supreme Court rejected the District Court's approach and stressed that even under the circumstances that were found, an agreement among competitors to allocate tenders among them and divide the market is deemed to be a cartel and also, expressed the view that in cases of market allocation, the IAA is not required to prove substantial harm to competition since there is an irrefutable presumption that such arrangements indeed harm competition. According to the Supreme Court, even if the issuer of the tender was not interested in genuine competition, it has no right to eliminate competition and its approach does not necessarily reflect the public interest, especially in light of the fact that the municipality was required to pay the winner much higher prices.

### 2.3.2 *Conviction in the Spare Aircraft Parts Cartel*

57. In February, 2005, the District Court of Jerusalem convicted two companies which traded in spare aircraft parts, along with their owner/managers, of agreeing to refrain from competing in the purchase of spare aircraft parts from the Ministry of Defence during the 1990s, including, among other items, a large stock of spare parts for Mirage airplanes valued at several million dollars.

58. In April 2005, the Court sentenced the defendants: the companies were ordered to pay fines, and the owner/managers were ordered to pay fines and perform public works in lieu of jail sentences. The defendants' appeals currently are pending before the Supreme Court.

59. In September, 2005, the District Court of Jerusalem convicted a third party and its owner/manager for their part in the spare aircraft parts cartel. Their trial previously had been severed from that of the other two companies and their owner/managers. As part of the plea agreement, the third company and its owner/managers were convicted: the company was sentenced to pay a fine and the owner/manager was sentenced to pay a fine and to perform public works in lieu of a jail sentence.

### 2.3.3 *Cartel in the Frozen Vegetables Market*

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

61. According to the indictment, the companies conspired in a cartel, from 1992 and until 1998, to coordinate the price of products and the rates of the discounts given by them to their customers. In addition, the indictment claims that the companies divided customers among them.

62. The frozen vegetables market in the relevant period was estimated to be 160 million NIS.

63. The Legal Department's decision to file the indictment followed an investigation conducted by the Investigation Department of the IAA. The Legal Department, based on the evidence it had reviewed, concluded that there was prima facie evidence that the Law was violated and therefore decided to hand down the indictment.

64. In March, 2006, the Court rejected the defendants' claim that frozen vegetables are subject to the Antitrust Law's agricultural exemption.

65. The case is currently being tried at the District Court.

## 2.4 *Monopolies and Abuse of Dominant Position*

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 shall be deemed to be a <b>Monopoly</b> .
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66. During 2005 the IAA declared 4 firms monopolies. The declaration can constitute prima facie proof of its subject matter in any legal procedure.

*2.4.1 An Agreement to Ask the Court's Approval for a Consent Decree Reached with a Monopoly in the Chocolate Market*

67. In February, 2006, the IAA reached an agreement with Strauss-Elite Ltd., one of the largest food concerns in Israel, and 3 of its executives, regarding the company's behaviour during the penetration of Cadbury to the Israeli chocolate market. The agreement is planned to be filed at court shortly after reviewing the public comments in order to validate it as a consent decree.

68. In 2003, the IAA initiated proceedings against Strauss Elite after receiving complaints that it was abusing its dominant position in the chocolate market. The investigation focused on whether Strauss Elite made efforts to block the entrance of a new competitor – Cadbury - by engaging in restrictive practices with various distributors and retailers. Allegedly, the company's efforts to block Cadbury included granting discounts and benefits in return for excluding Cadbury from the market in order to preserve Elite's dominant position.

69. Strauss Elite produces, markets and distributes a wide range of food products: chocolate, sweets, coffee, snacks and pastries. Elite was declared a monopoly in several markets, among them in the chocolate market. Cadbury, one of the largest chocolate producers in the world, began to penetrate the market through a local representative at the end of 2002.

70. The chocolate tablets market is estimated at one billion NIS annually. Elite possesses more than 70 percent of the market and thus was declared a monopoly in 1988. Following his declaration, the General Director instructed Elite not to engage in exclusivity arrangements with retailers and not to condition the supply of its dominant products on the purchase of other products from it.

71. At the conclusion of the investigation and after a hearing process, the Legal Department reached an agreement with Strauss Elite, which will be filed to the Court in order to validate it as a consent decree.

72. According to the draft of the consent decree, the company will take upon itself to abstain from excluding competitors by imposing sanctions on retailers or wholesalers that sell or market the company's competitors' products. In addition, Strauss Elite will pay the state treasury 5 Million NIS, which is the largest sum a sole company has ever paid as part of consent decree. Also, 3 executives agreed to personally be liable for the fulfilment of the company's obligations.

*2.4.2 Consent Decree with a Large Beverages Company*

73. In November, 2005, the Antitrust Tribunal approved an agreement as a consent decree between the IAA and the Central Bottling Company LTD., the latter of which was declared a monopoly in Coca Cola drinks in 1998.

74. In 2000, the General Director approved a merger between the company and a mineral water producer called "Nevioth". According to the General Director's findings, two employees of the company violated the law in a number of instances, by tying the sale and terms of sale of its products, including the brand "Coca Cola", to the purchase of Nevioth's mineral water and to not buying competing water brands.

75. The IAA and the company reached an agreement that was recently validated by the court as a consent decree according to which the company agreed to undertake a commitment not to punish

customers that refuse to purchase any of its products or are interested in purchasing other producers' products. In addition, it was agreed that the company would pay 500,000 NIS to the government treasury.

#### *2.4.3 El Al, the "Designated Carrier" Was Declared a Monopoly in the Transport of Passengers to Specific Destinations*

76. On October 27, 2005, the General Director declared El Al, which is considered the "designated carrier", a monopoly in the transport of time and price sensitive passengers to 4 destinations: Johannesburg, Hong Kong, Bangkok and Mumbai.

77. Three local companies operate in the field of aviation: El Al, a scheduled carrier, and its subsidiary Sundor International Air Services Ltd., the latter of which focuses on international charter flights; Arkia Israeli Airlines Ltd. and Israir Airlines and Tourism Ltd. In addition to the local companies, foreign companies operate as well on a substantial part of the air routes from Israel to other destinations.

78. El Al, the largest and the dominant aviation company in Israel, operates in the field of transport of passengers and cargo from and to Israel. El Al's power is based on two reasons: first, in each air route in which it possess a high market share, it has power vis-à-vis the consumer; second, it has accumulated power vis-à-vis the travel agents and passengers due to its holding a wide range of air routes.

79. The Economic Department of the IAA found that El Al is the only aviation company that provides direct and scheduled flights to the abovementioned destinations and also that the indirect flights are either negligible or are not a suitable substitute to direct and scheduled flights due to the length of the flight. Based on these findings, the General Director decided to declare it a monopoly in those routes for time and price sensitive passengers (a distinction that is common in the field of aviation).

#### *2.4.4 IsraCard Was Declared a Monopoly in the Acquiring of IsraCard and MasterCard Debit Cards*

80. On May 22, 2005, the General Director declared IsraCard Ltd. a monopoly in the acquiring of IsraCard and MasterCard debit cards. As part of the declaration, the General Director mentioned his intention of pursuing the opening of the IsraCard and MasterCard debit cards market to competition and imposing instructions on IsraCard that would enable the opening of these markets.

81. The General Director stated that there is clear evidence that IsraCard enjoys market power against businesses as the sole acquirer of IsraCard and MasterCard debit cards. According to the findings, most of the businesses feel that they are obligated to accept IsraCard and MasterCard debit cards since these cards represent almost fifty percent of all transactions that are done in Israel through debit cards.

82. Also, according to the IAA's examination, one can learn of IsraCards monopolistic power from the prices it charges which are higher than the prices charged by the 2 Visa companies which do compete with each other.

83. The General Director published a draft of the instructions he intends to impose on IsraCard for public comments. Hopefully, following this, all credit companies in Israel will be able to acquire all the common debit cards in Israel: Visa, IsraCard and MasterCard, and competition, which will reduce the commissions charged from businesses, will be stimulated.

84. After concluding the hearing of the public comments, the instructions are expected to be implemented.

## 2.5 *Mergers and Acquisitions*

### 2.5.1 *In General: Statutory Framework and Statistics*

85. Analysis of merger and acquisitions constitutes an important part of the IAA's work.

Mergers that cross certain **thresholds** must obtain the approval of the General Director before consummation of the transaction. Merging parties must submit a merger notification if 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.

86. The Antitrust Law sets a review period of thirty days, during which the General Director has to reach a decision. This period can be extended by the Antitrust Tribunal or by the consent of the merging parties. If the IAA fails to reach a decision within the prescribed time period, the merger is deemed compatible with the Law.

The Antitrust Law defines a “**merger**” as including one or more of the following:

- a) the acquisition of the essential assets of a company by another company;
- b) the 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) the right to appoint more than one quarter of the board of directors;
- d) the 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 broadly 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 bodies.

87. The General Director is authorised to block a merger if the merger raises a reasonable suspicion of material injury to competition or the public. He can clear the transaction or approve it under conditions. The General Director's decision is open to an appeal to the Antitrust Tribunal.

88. During 2005, the IAA considered **two hundred and seven** merger notifications (including transactions that were notified in 2004). Of these, **one hundred and ninety-four were, in fact, mergers.**<sup>2</sup>

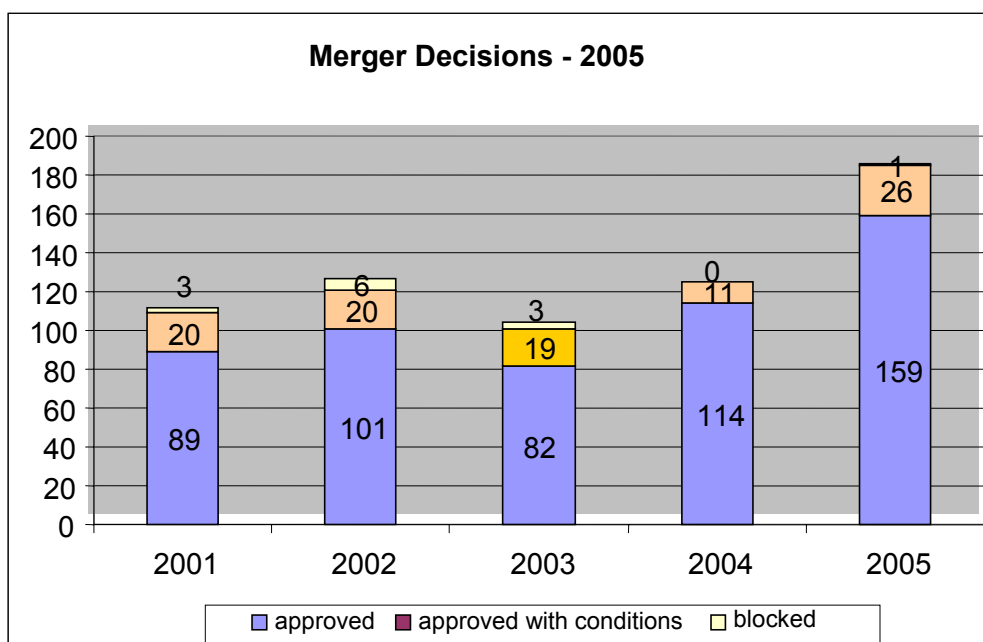
89. Only **one** of the IAA's decisions resulted in the blocking of a merger; **fourteen percent** resulted in the approval of a merger with conditions; and **eighty-five percent** resulted in the unconditional approval of the merger.

<sup>2</sup> Eight notifications concerned transactions that were not in fact mergers and five notifications were withdrawn prior to reaching a decision or prior to the blockage of the merger.

90. In addition, the IAA reached **six** decisions concerning the amendment of conditions that were imposed in the past and **two** decisions concerning the cancellation of conditions that were imposed in the past.

**Table: Decisions in Merger Applications<sup>3</sup>**

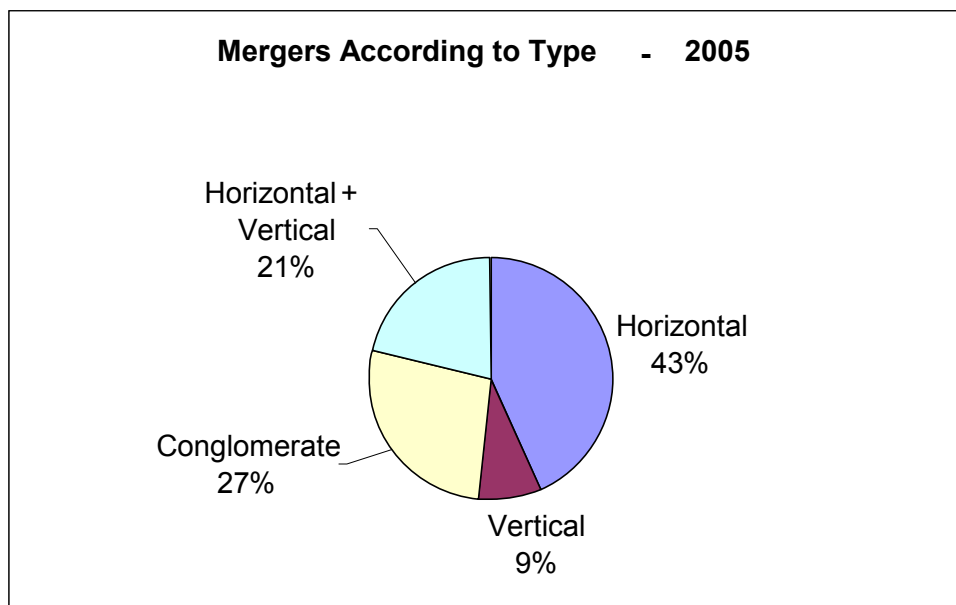
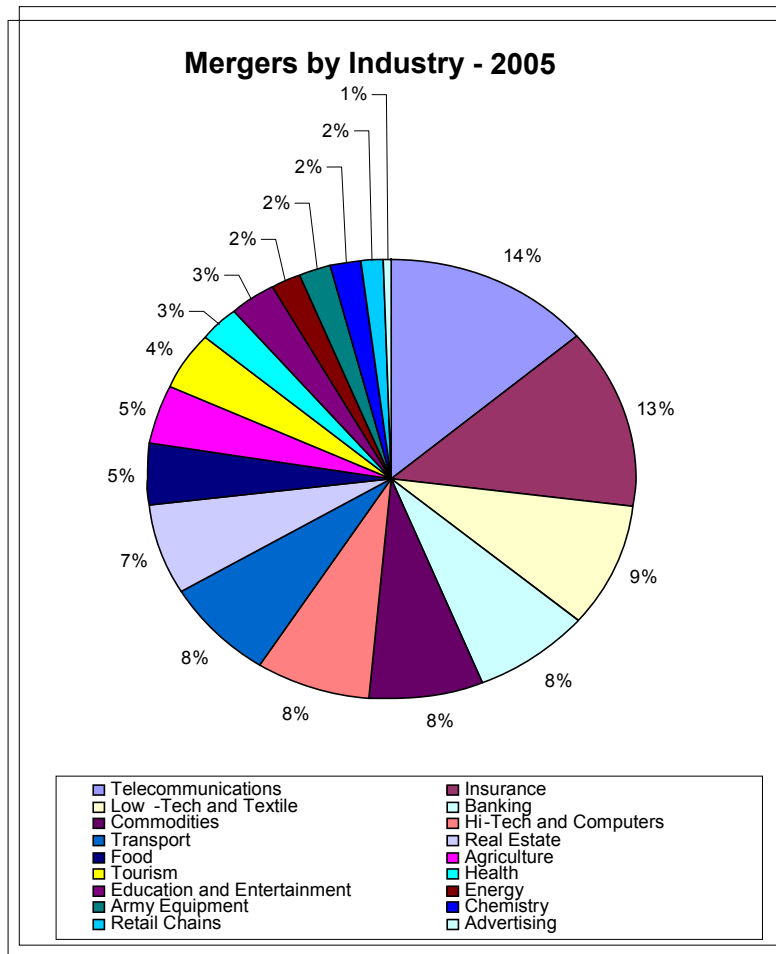
	Notified	Decisions	Approved	Conditioned	Blocked
2001	160	112	79%	18%	3%
2002	158	127	80%	16%	4%
2003	122	104	79%	18%	3%
2004	145	125	91%	9%	0%
<b>2005</b>	<b>207</b>	<b>194 (of these 8 decisions to amend or cancel conditions)</b>	<b>85%</b>	<b>14%</b>	<b>1%</b>



<sup>3</sup> “Notified Transactions” refers to the number of applications that were submitted during the calendar year, and “Merger Decisions” refers to the number of decisions made in the calendar year. All other numbers relate to the number of decisions.

The recession experienced in Israel since 2000 has resulted in a structural change in merger applications. While the number of applications has fallen drastically since 1999, the number of troublesome applications is on the rise, as firms attempt mergers that would not have been contemplated in better times.





## 2.5.2 *Summary of Significant Cases*

### 2.5.2.1 The IAA Blocked a Merger in the Fuel Market

91. In November 2005, the IAA blocked a merger between two competitors in the import, marketing and distribution of oil distillates, which are two of the four major competitors in the sale of benzene and diesel oil in their gas stations.

92. The fuel market in Israel is characterised by an oligopolistic structure, high barriers to entry, massive involvement of the government and cross ownerships of the competitors.

93. For many years, three fuel companies have dominated the market and, since 1988, the government has made efforts to open the market to competition. During this process, a number of small companies entered the market, the largest of which is a result of a merger between two of the entrants, and is one of the parties to the requested merger. This company is a maverick in the relevant market.

94. The investigation of the merger showed that it would eliminate a substantial competitor (reducing the number of the large competitors from 4 to 3) and would strengthen the concern of coordinated effects in an oligopolistic market with high barriers to entry.

95. It was also found that the requested merger would change the competitive incentives of the maverick company in the market, in light of its becoming the largest company in the market, as a result of the merger.

96. The merger also raised concerns in the geographic dimension. The parties did not manage to present any efficiencies that would justify the merger. In light of the above, the General Director decided to block the merger.

97. The companies have filed an appeal which is currently being examined at the Antitrust Tribunal.

### 2.5.2.2 A Merger between Two of the Three Largest Food Retail Chains under the Failing Firm Doctrine

98. In August 31, 2005, the IAA approved a merger between two of the largest food retail chains in Israel, Super-Sol Ltd. and Clubmarket Ltd. under the “failing firm doctrine”, after the General Director was convinced that Clubmarket indeed qualifies as a failing firm

99. The General Director found that the merger was expected to reduce competition in the retail chains market both in the nationwide and local markets. In some of the geographic areas, Supersol was to remain a sole player and in others only few competitors would compete with Super-Sol. The General Director stated that this reduction would have serious competitive effect especially in light of the barriers to entry and expansion in the market.

100. Nevertheless, the merger was approved since except for Super Sol’s offer, there was no viable offer and it was understood that a conditional approval is better than the dissolution of the chain.

101. Thus, the merger was approved under a divestiture condition, aiming at:

- a. preserving competition in certain geographic markets, since the merger was expected to reduce the number of competitors from 3 to 2 in certain areas and in others from 2 to 1 where no local private retail chains are available;
- b. protecting the small retail chains from predatory pricing that is aimed at harming their sales and excluding them from the market, and-

- c. restraining the merging firm from abusing its buying power with the aim of excluding its competitors from the market.

102. Since the approval of the merger, the General Director approved the sale of 16 branches that are located in geographic areas in which a competitive problem as result of the merger was identified. These branches were bought by third parties that, according to the merger conditions, are obliged to continue to operate them as retail chains that will compete with Super-Sol and will provide the consumers in those specific geographic areas with an alternative.

*2.5.2.3 The General Director Approved a Series of Mergers between Large Insurance Companies and Independent Insurance Agencies*

103. On May 10, 2005, the General Director decided to approve a series of mergers between Migdal Insurance Company Ltd. and five independent insurance agencies and between Clal and two independent agencies.

104. In the course of examining the competitive impact of the requested mergers, the IAA conducted a thorough examination of the competitive consequences of purchases of independent insurance agencies by large insurance companies. This examination followed a tendency the IAA has identified according to which large insurance companies purchase independent agencies and the concern was, that large companies would take control of agencies and thereby lead to the loss of the agents' objective and independent counselling to their customers.

105. The IAA's examination has revealed the following findings:

- a. Independent insurance agencies that were purchased and now controlled by large insurance companies, have the tendency to shift their insurance policies to the controlling company.
- b. The existence of independent agents as mavericks is important.
- c. Nevertheless, it was found that, in most of the insurance segments, the market share of the insurance agencies controlled by insurance companies is not too significant yet. In this connection, it was found that if the tendency of mergers were to continue, the probability of harm to competition and the public would be enhanced and the IAA would be obliged to object to such mergers in the future.
- d. At present, the IAA can approve the requested mergers as long as the companies clarify to the public the difference between an agency that is owned by an insurance company and an independent agency.

106. The mergers were therefore approved under a condition according to which each publication of a non-independent agency would clearly state that it is controlled by an insurance company or is a subsidiary of such, so the customers would know the nature of the agents' objectivity.

2.5.2.4 The General Director Approved a Merger between the Fix Telephony Monopoly and the Satellite company

107. On January 2, 2005, the General Director approved a merger between Bezeq The Israel Telecommunication Corp. Ltd., the fix telephony monopoly, and the satellite multi-channel television company, which commenced national broadcasting in 2001.

108. Bezeq had holdings in the satellite company since the latter commenced its activity, and in 2005 Bezeq decided to realise its options vis-à-vis the money it had channeled to the company.

109. Subsequent to the realisation of the options, Bezeq was to hold 60% of the satellite company.

110. The General Director decided to approve the merger, given that Bezeq was the largest shareholder in the company, even prior to the merger.

111. Nevertheless, in light of the cable company's intention to enter the fix telephony market and compete with Bezeq, the General Director approved the merger under a condition that would prevent Bezeq from exploiting its holdings in the satellite company in order to harm competition in the fix telephony market.

### **3. International Cooperation**

#### ***ICN***

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

113. During the reviewed period, the IAA continued to head the Merger Investigation Techniques Subgroup, operating within the ICN's Merger Working Group, which focuses on the development of the best practices for the investigation of mergers.

114. In preparation for the upcoming Annual Conference in Capetown, the subgroup is planning to publish a merger hypothetical, including a guide manual, that will enable agencies to independently run training workshops for their staff in connection to investigative techniques used in the merger review analysis.

115. In addition to its activity within the Merger Working Group, the IAA is also highly active in the Cartel Working Group of the ICN.

### **4. Competition Advocacy**

116. The IAA acts as a competition advocate to disseminate competition principles in government agencies and Parliament so that all government bodies acknowledge competition as a crucial factor in policy decision-making. The IAA's advocacy efforts were also directed to the general public as well as to the business and legal communities.

#### ***4.1 IAA and the Government***

117. The IAA was extensively involved with other ministries and government agencies in trying to open markets to competition and solving competition issues that significantly affect the local economy. Here are a few examples:

#### 4.1.1 *Legislation Anchoring a Reform in the Capital Market Has Been Adopted*

118. In July 2005, the Israeli Parliament adopted a set of bills that anchored the capital market reform suggested by an inter-ministerial committee that was mandated to review the capital and money markets and recommend changes that would cement the competitive structure of those markets. The General Director was a member of the committee.

119. The Israeli capital market is characterised by high concentration of the banking industry; poor secondary market; dominance by the banks in commercial banking and financial intermediation; high switching costs; poor information; no credit scoring institutions.

120. A more competitive capital market will yield higher returns on the public's savings and lower the cost of credit to the public and to small and medium enterprises.

121. The capital-market reform rests on the following pillars:

- a. **Separating provident and mutual funds from banks.** The purpose of this measure is to decentralise money management, which today is carried out largely by the banking system, and to create infrastructures for the entry of new non-banking players in order to make the capital market more competitive.
- b. **Establishing an infrastructure for professional consulting services for the public in regard to financial savings (short and medium-term savings) and pension saving (for retirement age).** Consulting services that are not tainted by conflict of interests should be administered by banks among others. Banks shall be allowed to start providing insurance consulting services after the conflict-of-interest problems are solved. In this context, a new profession has been established: pension consulting. Its practitioners will be obliged to pass comprehensive professional training and licensing from the Ministry of Finance. The legislation allows workers to choose the institution that will manage their pension savings, in contrast to the current situation, in which employers are dominant in making this choice.
- c. **Creating a standard regulatory infrastructure for all financial institutions in Israel that manage the public's money.** In this context, insurance companies, pension funds, and provident funds shall be subject to standard licensing rules, directives concerning the management of savings money shall be handed down, and various enforcement mechanisms to deal with violations of the directives shall be created.

#### 4.1.2 *Privatisation and Divestiture of Oil Refineries Ltd.*

122. Oil Refineries Ltd. is the sole oil refiner in Israel and is a declared monopoly in the refining segment of the oil industry.

123. A number of government ministries and agencies - the Ministry of Treasury, the Ministry of National Infrastructures, the Ministry of Justice, the Government's Company Authority and the IAA - have been working jointly to divest and privatise the company.

124. The joint team reached an agreement as to the optimal path towards implementation according to the IAA's recommendations. The IAA recommended imposing restrictions on the identity of the potential purchasers in order to promise competition in the marketing segment. The IAA, with these restrictions,

tried to overcome the existing competitive problems in the gas retail segment, by ensuring the conditions to promote the entry of a new and independent player. In addition, the joint team adopted rules, drafted by the IAA, concerning the gradual removal of regulation on the refineries after their divestiture.

125. In 2005 the government approved the settlement that was achieved between the State and the Israel Corporation for the sale of the Israel Corporation's shares in the Oil Refineries to the State.

126. According to the agreement, the Israel Corporation will transfer its shares to the State in return for a certain sum, thereby enabling the State to implement its policy for splitting up and privatising the Oil Refineries.

127. The procedure has already begun and to date 4 companies have declared interest in the purchase.

#### **4.2 *The IAA and the Parliament***

128. The IAA is highly active in the discussions of the Economic Committee of the Parliament. The IAA representatives are usually invited to the discussions in order to present the competitive aspects relevant to the matter discussed. In the past year the IAA took part in numerous discussions. For example:

##### *4.2.1 A New Class Action Law*

129. On March 1, 2006, a new Class Action Act was approved by the Parliament and came into force.

130. Until the enactment of the Act, filing a class action based on an Antitrust cause was regulated by the Antitrust Law which dedicated a separate chapter to dealing with this kind of litigation (as was done in other laws, such as the Companies Act and the Consumer Protection Act)

131. The new Class Action Act replaces the class action chapter in the Antitrust Law and in other laws and in fact concentrated the handling of class actions under "one roof".

132. During the legislation proceedings, the IAA was active in promising that antitrust plaintiffs would not be injured by the change, that the terms for filing a class action would not be stiffened and that their incentives would not be impaired.

#### **4.3 *The IAA and the Business and Legal Communities***

##### *4.3.1 Publication of Q&A Concerning the New Notification Forms*

133. As is known, in July 2004, the IAA introduced new merger regulations, which constituted two new notification forms; a long form and a short form. These forms were intended to improve the initial notification stage and constituted a significant change in the information requested.

134. To accommodate this rather significant change, the IAA held two workshops in 2004 open to the public in which it provided guidance for the completion of the forms.

135. Pursuant to the workshops and in light of the questions raised there in, in 2005 the IAA published a detailed Q & A paper aimed at clarifying the IAA's position on issues that are relevant to the completion of the forms.

#### 4.3.2 *Block Exemption Workshop*

136. As mentioned above, in March 2006, the IAA renewed the block exemptions under some amendments following public comments and the IAA's experience.

137. In order to assist the private sector adapt to the changes as quickly as possible, on March 29, 2006, the IAA held a workshop in which it highlighted and explained the changes that were made and the IAA's policy regarding the implementation of the block exemptions to specific transactions.

### 5. Resources of the IAA

#### 5.1 *Annual Budget*

138. Funding of **20,330,000 NIS** (which is approximately **4.5 million USD**) was provided to the IAA in the 2005 budget. The annual budget had not changed significantly in comparison to the previous year's budget. A major portion of the budget, **68%**, was allocated to salaries.

**Table: Annual Budget - 2005 (thousands)**

	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>
<b>NIS</b>	<b>20,330</b>	18,666	21,324	21,412	20,689	20,250
<b>USD</b>	<b>4,530</b>	4,165	4,688	4,520	4,922	4,965

#### 5.2 *Number of Employees - 2005*

Economic Department	12 economists
Legal Department	18 lawyers and 7 legal interns
Criminal Investigations Department	16 investigators (lawyers, economists and other professionals)
Support Staff and Administrative Services	10
The General Director's Office	5
<b>All staff combined</b>	<b>68 employees</b>