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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL

-- 2002 --

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL

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Executive Summary

1. This report summarizes major recent developments in Israel's competition law and policy and in the enforcement of the Restrictive Trade Practices Act, 5748-1988 (hereinafter: "Antitrust Law") in the year 2002.

2. Background: The IAA is an independent government enforcement agency established in 1994 under an amendment to the Antitrust Law. It is vested with powers to initiate civil and criminal proceedings and also has the power to order monopolies not to act in a manner which constitutes abuse of dominant position. While the IAA has an important enforcement function, the Antitrust Law also provides for any person to independently seek a remedy from the Court. This right of private action generally enables persons to approach the Court directly if they believe the Antitrust Law has been violated.

3. The most important initiatives the IAA carried out in 2002 were:

1. The drafting of a **leniency program**. This program is aimed at encouraging people who are involved in restrictive arrangements to approach the IAA and deliver information that will lead the IAA to detection of restrictive arrangements and to the prosecution of those involved. The policy is designed to provide certainty for leniency applicants so that the IAA can better detect and break up hard-core cartels operating in Israel. The IAA is currently requesting comments on the program's draft from the Ministry of Justice.

2. The completion of the preparation of two new **Block Exemptions**.

3. The completion of the drafting of a new **merger notification form**, designed to provide useful data in the preliminary stage of a merger review process.

4. An investigation relating to alleged restrictive arrangements between three large retail chains and seven dominant food suppliers was concluded at the end of 2002 and is currently under the consideration of the IAA's Legal Department, which is examining the evidence gathered throughout the investigation. The decision regarding appropriate measures to be taken by the IAA will be reached soon.

5. The IAA continued to work intensively on matters related to the credit card industry, particularly concerning interchange fee agreements and the determination of an interchange fee which does not substantially harm competition. In addition, an agreement between the IAA and one of the leading banks in Israel, constituting a reform in the Mastercard market, was reached. The agreement, if validated, imposes restrictions on the dominant firm in the Mastercard market (the bank's subsidiary), which, until recently, was the sole acquirer of Mastercard. The agreement is designed to enable fair competition for two new entrants to this market.

6. Telecommunication and broadcast was another field of intensive activity. The IAA approved, under conditions, a merger between the three sole cable television companies operating in Israel. The merger review process, which focused on potential competition among the companies and on foreclosure of content vis-à-vis the satellite company, consumed much effort and many resources due to the vast economic and legal examinations it required. The IAA was also involved in litigation raising the question whether mobile telephony services are an adequate substitute for fixed telephony services; the IAA claims they are not.

7. Additionally, the IAA pursued a range of civil and criminal cases. There was a substantial increase in the number of civil litigation cases in which the IAA was involved in the past year (26 cases) in comparison to 2001 (19 cases). As to the criminal litigation of the IAA, a series of court decisions continued the ongoing tendency to increase punishments for hard-core cartels. The record fines were 12

million NIS and 9.5 million NIS for insurance companies and record imprisonment terms of up to nine months in jail for floor tile cartel members – two big cases that came to their conclusion this year.

8. The resources of the IAA have not significantly changed from previous years, with an annual budget of 21,400,000 NIS (approximately 4.5 million USD) and 80 employees.

1. Proposed Changes in Competition Laws and Policies

1.1 Proposals to Change Competition Law and Related Legislation

Process of Adopting a Leniency Program

9. One of the main objectives of the IAA is the exposure of restrictive arrangements and the prosecution of the parties involved. Until 1994, the Antitrust Law was not widely enforced. Thus, people who engaged in restrictive arrangements relied on this lack of enforcement and felt free to carry out the arrangement even without taking precaution, e.g. hiding the relevant documents constituting the arrangement. In those circumstances, once an investigation was carried out, it was relatively easy to prove an infringement of the law.

10. Enforcing the Law in a more thorough and efficient manner led to a substantial rise in the level of sentencing courts decided upon. The harsh sentencing caused those involved in restrictive arrangements activity to be more sophisticated and cautious (e.g. to hide documents that constitute the arrangement or to decide upon the arrangement orally, without documentation). Therefore, it became harder to expose unlawful activity and to gather the relevant evidence for prosecution.

11. The IAA is increasingly compelled to rely upon people that are involved in restrictive arrangements to testify about the existence of that arrangement. But, unfortunately, spotting people who can deliver inside information is not an easy task at all. Whoever is considered a potential suspect is deterred from cooperating with the investigators.

12. Consequently, the IAA decided to draft a leniency program that will encourage those involved in restrictive arrangements to approach the IAA on their own initiative and deliver information that will lead the IAA to detection of restrictive arrangements and to the prosecution of those involved. In return the IAA will accord leniency, meaning that whoever meets certain terms and delivers information to the IAA will not be charged criminally for the activity reported.

13. The main features of the planned program are as following: leniency will be granted to the first one to come forward and deliver full information with respect to the illegal activity being reported; leniency will be granted to a corporation or an individual reporting illegal activity before an open investigation has begun; if a corporation qualifies for leniency, all directors, officers and employees of the corporation will receive leniency; if the corporation approaches the IAA in order to deliver information with respect to the illegal activity, the approach should follow a clear and binding decision of the corporation to deliver information to the IAA, as opposed to an individual's approach; in case the corporation does not approach the IAA, executives and employees can approach the IAA on their own initiative, deliver information and be granted individual leniency; leniency will be granted only to those who terminated their part in the illegal activity; leniency will be granted to those who provide full, on-going and complete cooperation to the IAA throughout the investigation; leniency will not be granted to whoever led the illegal activity.

14. During 2002, the IAA began a procedure of drafting a leniency program. Such a program requires coordination with the Ministry of Justice and the Attorney General. A positive reaction was

received to the draft, and the IAA believes that it will have a meaningful influence on cartel enforcement in Israel.

1.2 Other Relevant Measures

Recommended Change in the Merger Notification Form Format

15. The IAA made a recommendation to the Minister of Trade and Industry (who has the authority in this matter) to change the form of the merger notice submitted to the IAA, expanding upon the information submitted to the IAA at the initial notification of the transaction. The purpose of the proposed form is to include sufficient information in the initial submission in order to decide whether the merger appears to substantially harm competition. The existing form has many deficiencies, and in a very high percentage of the notified transactions it is necessary to ask the parties for further elementary data, just to assess whether an in-depth inquiry is needed. Information requests in non-problematic transactions unnecessarily cause delays in the handling of applications. Although the form is longer, more detailed and thus more burdensome, submission of satisfactory data in the initial stage will undoubtedly reduce the amount of information requests and shorten the period for decision-making.

16. Nevertheless, the IAA recognized completing such a comprehensive notice form is not necessary in all mergers. Thus, it followed the Canadian approach and decided to enable parties to transactions that meet certain terms and do not raise, prima facie, competition concerns, to file a short form.
The IAA announced its intention to revise the merger notice form and published the draft to the public in order to seek its comments in August, 2001. The IAA was interested in conferring and examining the implications of the anticipated change in the public's view. Comments and suggestions have been reviewed and the final version of the proposed form is soon to be released.

New Block Exemptions

17. In 2002, the IAA commenced a process of drafting two new block exemptions for restrictive arrangements, exempting certain types of transactions from the requirement of authorization from the Antitrust Tribunal or of specific exemption from the General Director of the IAA. Section 2 of the Antitrust Law defines a "restrictive arrangement" in a very expansive manner, 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. A restrictive arrangement is subject to the authorization of the Antitrust Tribunal or the exemption of the General Director of the IAA. The first time block exemptions were ever enacted in Israel was in 2001.[1] The block exemptions were intended to liberalize the authorization and exemption system, and limit the requirement to apply to the authorities in transactions that entail genuine concern for significant impairment of competition.

18. The IAA decided to draft two more block exemptions after it had gained significant experience with respect to the employment of the block exemptions and following the IAA's recognition of the business and legal communities' need for the proposed exemptions.
The new block exemptions are: Block Exemption for Restraints Ancillary to Mergers and Block Exemption for Exclusivity Arrangements in Real Estate.

[1] 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.

19. The Block Exemption for Restraints Ancillary to Mergers is designed to exempt from obtaining authorization or specific exemption restraints that are ancillary to a merger transaction and which do not appreciably restrict competition. The acknowledgement that such restraints may be necessary to assure the economic value of the transaction and, consequently, to implement a merger promoted the drafting of this block exemption. An ancillary restraint is defined as one of the following: (a) a non-competition clause; (b) a non- solicitation clause; (c) a seller's commitment not to transfer any knowledge he acquired due to his holdings in the acquired business; (d) an agreement between the seller and the acquired business regarding the purchase or supply of goods under the same terms as prior to the merger or under beneficial terms, as long as the terms prior to the merger did not infringe upon the law; (e) any other restraint that is essential for the preservation of the economic value of the acquired business, as long as the restraint is limited for a reasonable period of time. The block exemption will apply on a restraint if certain terms which are well defined are met.

20. The Block Exemption for Exclusivity Arrangements in Real Estate exempts exclusivity clauses in lease agreements from obtaining authorization or specific exemption. Such exclusivity clauses provide that the lessor will not, for example, rent space in a shopping mall or trade area to a lessee's competitor. Procompetitive economic justifications exist for inclusion of such a clause. The restrictive covenant protects the lessee's investment in locating at a desirable site ahead of any competition. It encourages the lessee to invest as a pioneer at a specific location and protects the substantial on-going investment of the lessee from competitors who seek a free ride on his investment. Investments include marketing and advertising efforts as well as maintenance of the premises. The exclusivity affords such protection by preventing competitors from locating themselves nearby the lessee. Moreover, in some situations, it may be necessary to include such a clause in a shopping center lease in order to attract a certain type of store, which might be unwilling to commit itself to a lease with high rentals if it knows that a competing store will also be located in the center. The exemption will not apply to an exclusivity clause if certain parameters are met [e.g.: at least two other competitors do not exist in the lessee's vicinity (the relevant vicinity is defined in the rules); the agreement's period exceeds 10 years; the parties of the lease agreement are competitors; and so forth]

21. A draft of the block exemptions was published and comments were received from the public. The draft was presented to the Mergers and Exemptions Committee as well, and was approved by it. Currently, the exemptions are in their final drafting stages and their enactment is expected shortly.

Amendments to the Existing Block Exemptions

22. The IAA decided to amend the Block Exemptions that were enacted in 2001, after receiving public comments, in order to make them more efficient and applicable. The amendments were published for the public's comments and have already been approved by the Mergers and Exemptions Committee. The final version of the block exemptions will be introduced shortly.

2. International Cooperation

ICN

23. The IAA considers multinational competition dialogue essential for the promotion of harmonization. The IAA joined the newly formed International Competition Network (ICN) in the previous year (2001) and is a member of its interim steering group.

24. The IAA heads the Merger Investigation Techniques Subgroup, operating within the ICN Merger Working Group, which focuses on the development of the best practices for investigating mergers.

25. The subgroup held a workshop on Investigative Techniques in Washington in November 2002. The workshop provided a venue for staff members of competition agencies from various jurisdictions to meet and learn from each other's experience. The emphasis of the workshop was placed on investigative techniques used in the merger review process; methods for gathering reliable evidence and its interpretation; effective planning of a merger investigation; and the use of economists during the review process.

26. The subgroup is currently engaged in preparing three projects, built on the key lessons learned in the workshop and on the answers received from a comprehensive questionnaire focusing on investigative techniques that was circulated among ICN members in the previous year.

27. In addition, the IAA chairs the Model Advocacy subgroup, operating within the Advocacy Working Group. The ultimate aim of the subgroup is to create a model for advocacy provisions that may be presented to the legislators of member countries.

28. The subgroup is currently engaged in creating a compilation of existing statutory provisions in member countries that authorize general advocacy, creating a role for the agency in the privatization process, and controlling the relationship between the agency and sectoral regulators, with commentary by agencies on how the provisions have worked in practice.

3. Enforcement of Competition Law and Policies

3.1 Action Against Anticompetitive Practices, Including Restrictive Arrangements and Abuses of Dominant Positions

a) Summary of Activities of the IAA and the Courts

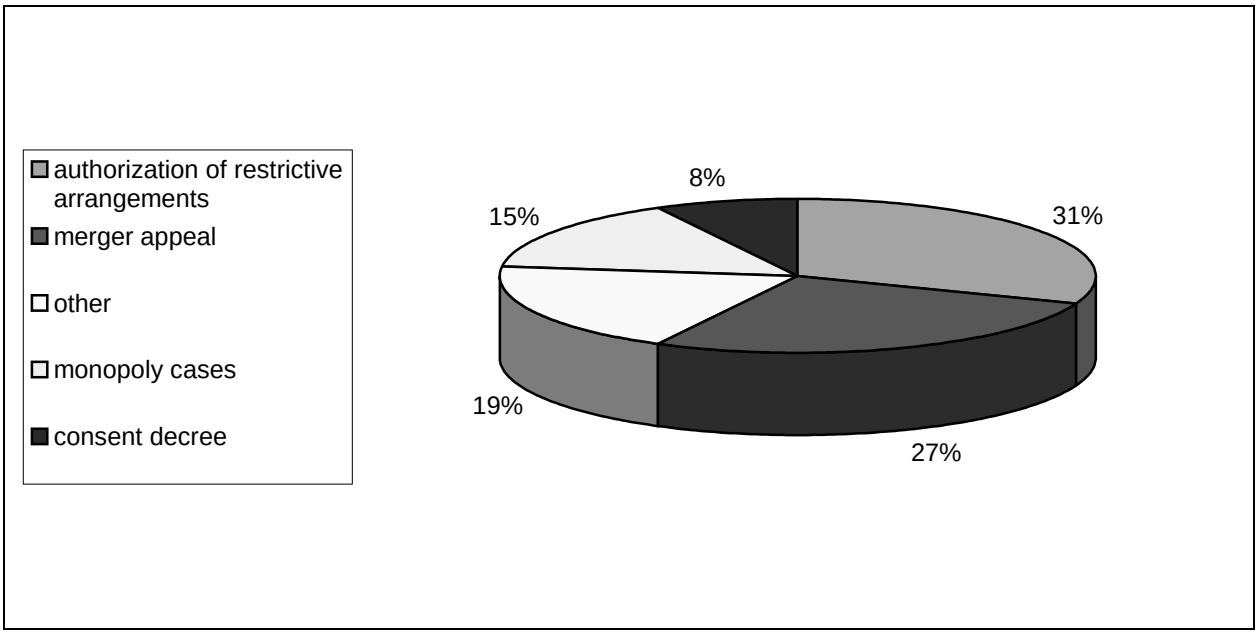
29. The Antitrust Law provides for varied remedies in cases of infringement. Antitrust Law violations are a criminal offence; severe violations may be subject to criminal prosecution and may result in fines and prison terms. Liability is imposed upon the corporation and its executives. The IAA holds investigational and prosecutorial powers.

30. In January 2002, a ruling of the Jerusalem District Court reaffirmed the IAA's authority to hand down indictments and prosecute Antitrust offenders. The question of whether authorities other than the State Attorney are authorized to hand down indictments has been a matter of dispute between different courts over the past year. Consequently, the matter is expected to be resolved at the Supreme Court in the near future.

31. Over the past year, the IAA has opened five new criminal investigations, fifteen investigations have been concluded and one indictment has been filed in the Jerusalem District Court. There were convictions in eight cases that were tried in recent years.

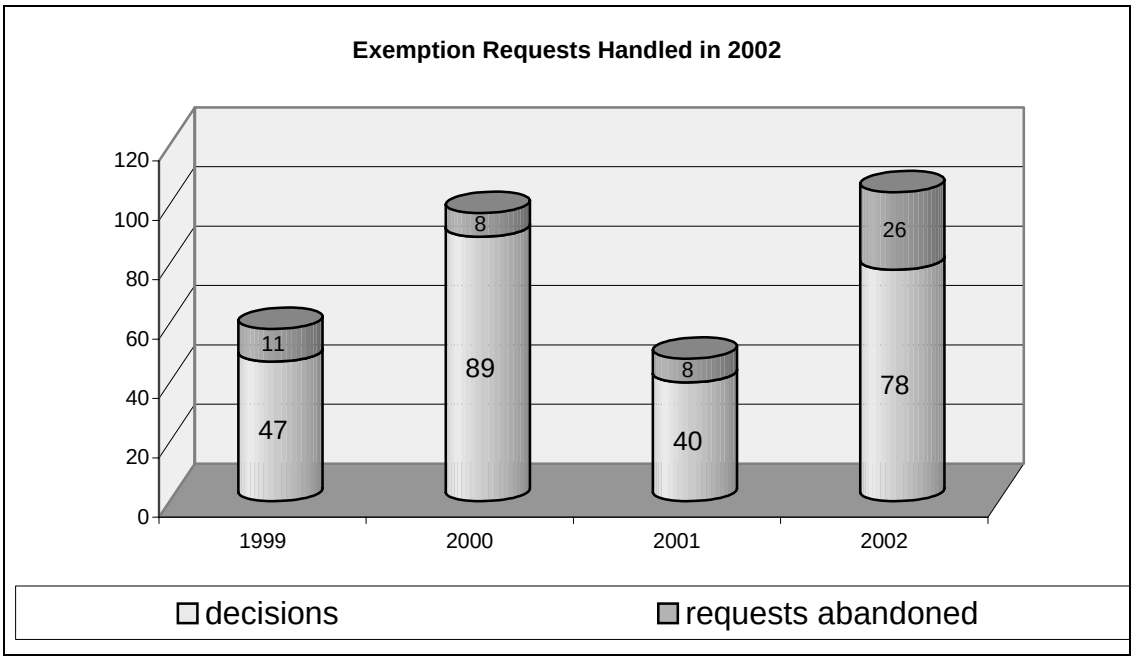
32. The civil and administrative remedies for infringements of the Antitrust Law include consent decrees, injunctions and court orders granted by the Antitrust Tribunal. The General Director has the power to declare activity as prima facie illegal and the power to issue rules of conduct to monopolies. In 2002 the IAA was involved in 26 civil litigation procedures before the Antitrust Tribunal.

33. ***Table: Civil Litigation Proceedings 2002***



34. In addition, the IAA has opened eighty administrative inquiries, following public complaints. The IAA has found those complaints worthy of further investigation, since they seemed to raise sincere competitive concerns. The complaints referred to a wide range of anti-competitive practices in the realms of restrictive arrangements and abuse of dominant position.

35 ***Table: Requests and Decisions Regarding Exemptions for Restrictive Arrangements***



b) Description of Significant Cases

36. The following examples of significant cases in the areas of restrictive agreements and monopolies demonstrate the range of issues addressed by the IAA involving both criminal and civil enforcement activities.

Restrictive Agreements

Interchange Fee Agreements Among Credit Card Issuers

37. The IAA found that interchange fee agreements among credit card issuers and acquirers are a restrictive arrangement under the Antitrust Law. An interchange fee can serve as a coordinating mechanism concerning merchant commissions: as interchange fees are a substantial component in establishing the merchant commission, they generate a minimal price threshold beneath which processors will not be willing to go. After previous exemptions granted to the interchange fee agreements between VISA companies in Israel expired, they applied to the Antitrust Tribunal for authorization of their interchange fee agreement; the court approved a temporary arrangement for the term of one year, which was supported by the IAA, setting up provisions for gradual reduction of merchant commissions, reduction of the magnitude of the discrimination in interchange fees in processing different categories of businesses, and a prohibition tying banking services to the clearance or issuance of the banks' credit cards. Both businesses which use the VISA companies processing services and VISA International applied to the Antitrust Tribunal with a request to join the proceedings and present their perspectives on the requested interchange arrangement.

38. Since the Visa companies in Israel were reluctant to expose their cost data, it was agreed to bifurcate the proceeding: in the first stage to decide upon the methodology for setting the interchange fee and in the second stage to apply the methodology upon the cost data and to set the interchange fee.

39. During 2002, expert testimonies were given and affidavits were submitted to the Antitrust Tribunal. The first stage of the proceeding is to be completed shortly.

Investigation of Agreements Between Retail Chains and Food Suppliers

40. An extensive investigation relating to alleged restrictive arrangements between three large retail chains and seven dominant food suppliers was concluded at the end of 2002 and is currently under the consideration of the IAA's Legal Department.

41. Due to the vast evidence gathered during the investigation and the complexity of the findings, the IAA decided to dedicate a special working team to study and examination of the unique relationships between the retail chains and the biggest food suppliers in Israel. The team engages in gathering and studying different materials such as legal and economic literature, reports of foreign agencies (e.g. the British report) and of world organizations (e.g. the OECD report). The team's aim is to analyze and evaluate the competitive impact of the different practices and to decide what measures should be taken.

Public Transportation

42. The IAA granted an exemption subject to conditions, on February 2002, to a restrictive arrangement between ten leading transportation companies, which constituted a joint company for transportation services.

43. Prior to filing an exemption request and granting the exemption, the General Director declared the companies' joint activity as prima facie illegal since the parties collaborated although they neither filed for an individual exemption from the IAA, nor did they turn to the Antitrust Tribunal for its approval. Explaining his decision, the General Director stated that such co-operation could contribute to a

competitive market if the joint venture competed with "Egged Israel Transport Cooperative Society LTD." (the largest public transportation company in Israel, which had been declared a monopoly in 1999) in transportation tenders that require a large fleet of vehicles - a condition each company individually cannot fulfill. The IAA found the joint activity problematic since it provided a solid ground for the companies to coordinate their other activities, which should have remained separate and independent. Such coordination was found to harm competition and the public.

44. Following this declaration, the companies filed a request for an exemption, which was limited solely to legitimate joint activity, i.e., when the joint activity is essential for economies of scale and country-wide distribution. The main concern that the co-operation raised was of spillover effects, that is, whether the setting up of the joint venture would lead either to tacit collusion by the parent companies or to independent behavior having equivalent effects. Therefore, the exemption was granted subject to conditions that would ensure that the co-operation between the joint venture's parents would not spill over to realms in which they competed prior to the granting of the exemption.

A Consent Decree in the Field of Automotive After-Sale Services

45. Following complaints to the IAA regarding vertical agreements and related restrictive practices employed by vehicle importers (primary distributors) and after-sale service providers, which allegedly led to a rise in the price level of services and spare parts in Israel, the IAA initiated an examination of the system of arrangements between the parties involved. It was found that some of the arrangements decrease competition and raise entry barriers in the field of automotive services and spare parts. The IAA reached an agreement for a consent decree with all motor vehicle importers constituting a reform in the field of after sale services. After the proposed consent decree was published for public consideration and comment, the parties jointly filed for approval from the Antitrust Tribunal in August 2001. The Antitrust Tribunal approved the agreement in 2002 and validated it as a decree.

46. The main features of the consent decree are that vehicle importers will not be able to prohibit their authorized service providers from using spare parts and oils from any supplier, if the said parts and oils meet quality and vehicle compatibility requirements; the importer will not be able to dictate any restrictions concerning the pricing of vehicle servicing provided thereby (other than statutorily imposed restrictions); the importer will not be allowed to void vehicle warranty terms due to the vehicle owner's having undertaken servicing by a service provider unauthorized by the importer. In addition, other terms aimed at increasing the number of authorized service providers were imposed.

Proceedings For a Consent Decree in the Field of Credit Cards

47. The IAA reached an agreement for consent decree with Bank Hapoalim B.M. regarding its credit card activity, constituting a reform in the Mastercard market. After the proposed consent decree was published for public comments, the parties jointly filed for approval from the Antitrust Tribunal in August, 2002.

48. The decree's goal was to open the Mastercard market to competition and to impose restraining limitations on the dominant firm in the Mastercard market, Isracard LTD, a subsidiary of Bank Hapoalim, which was until recently the sole acquirer of Mastercard. The IAA attached importance to the decree since two other credit card firms, Israel Credit Cards LTD. and Leumi Card LTD., were licensed to acquire Mastercard credit cards and the General Director wanted to set terms that would promise fair competition in Mastercard acquisiton. The consent decree is comprised of instructions to ensure that Isracard will not abuse its dominant position in the Mastercard market in a way that will impair competition among the players (Isracard, ICC and Leumi Card) with respect to supplying credit cards to merchants. The main features of the decree are that Isracard will not tie the acquisition of Mastercard credit cards to that of Isracard credit cards; Isracard is required to reduce the maximum commission rates which are collected from merchants; Isracard will promote a joint interface that will enable cross acquisition of Visa credit

cards and Mastercard credit cards; and other terms aimed at increasing the competition in the Mastercard credit card market. It should be noted that following the consent decree, Isracard reduced merchant commissions by a total of 12%.

Proceedings Towards a Consent Decree in the Field of Salt Production

49. The IAA reached an agreement for consent decree with the two exclusive salt producers in Israel in August and September 2002. The agreement followed non-competition and market allocation arrangements that were carried out over many years by the companies. The parties will jointly submit the agreement to the Antitrust Tribunal shortly in order to validate it as a decree.

Proceedings For a Consent Decree Concerning Lease Contracts of Gas Stations

50. The IAA reached an agreement for consent decree with "Delek The Israel Fuel Corp. LTD." The Israeli market for retail marketing of fuel is highly concentrated, controlled by three longstanding fuel companies, which hold approximately 80% market share. The market is also characterized by high barriers to entry, which originate mainly from regulatory barriers to the opening of new gas stations and from long-term contracts signed between the fuel companies and the gas stations for the supply of fuel.

51. In 1995, the General Director and the three leading fuel companies reached a settlement, which was designed to put an end to exclusive supply agreements that were signed between the fuel companies and the owners of gas stations. This settlement was aimed at opening the market to competition and enabling two newly established fuel companies to compete.

52. Unfortunately, the companies managed to circumvent the settlement and, rather than pursue exclusivity, they leased the gas stations and operated them by themselves, thus finding a way to prevent the purchase of fuel from other competitors. Since the settlement reached in 1995 did not fulfill the IAA's expectations for opening the market to competition, it initiated discussions with the fuel companies in order to reach a resolution.

53. The IAA and "Delek" agreed that every lease agreement, according to which "Delek" would lease a gas station for a period exceeding seven years, would be considered a merger that has to obtain the General Director's approval before consummation. After the agreement was published for public consideration and comment, the parties jointly filed for approval from the Antitrust Tribunal in January 2003.

Criminal Enforcement

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.

Floor Tiles Cartel: Precedent Regarding Liability of a Cartel's Coordinator

54. In April, 2003, the Supreme Court accepted an appeal of the IAA, concerning a conviction and sentencing of a Cartel's "coordinator" which, in the eyes of the IAA, was too lenient. According to the findings of the Court the accused coordinated the activity of a floor tile cartel that operated in Israel for 14 years and encompassed virtually all manufacturers in the market (the prison sentences in this case of up to 9 months of imprisonment are the harshest prison sentences hitherto given). It was found that as the cartel's coordinator, he broadened the cartel's activity after being appointed, took part in reaching the decisions according to which the cartel performed, and established a compliance mechanism and an inquiry and punishment system to deal with whom did not obey the cartel's decisions

55. The Court concluded that the coordinator **is liable as a principal and not as an aider and abettor.** The Supreme Court sentenced him to imprisonment of eight months, in addition to the fine of 250,000 NIS that was imposed by the District Court.

56. In addition, during 2002, three of the cartel members appealed the District Court's decisions to the Supreme; one of the appellants appealed the nine months imprisonment term on the basis of the severity of the penalty. The Supreme Court denied the appeal, establishing that, in principal, the proper sentence in economic felonies is imprisonment. The rationale of this approach is that the people carrying out these felonies are normative people that are known in their communities as honorable people who do not get involved in the illegal activity due to economic or social distress, but pursue "easy" profits at the expense of the public. An imprisonment penalty has a deterrent effect on this type of offender. Another appeal was denied, and one appeal concerning the severity of the penalty was accepted due to special personal circumstances of the accused.

Paints: Price Fixing through Vertical Agreements

57. A cartel in the paints market, wherein Tambur Ltd., a monopoly in the paints market, and a number of DIY retails chains coordinated the prices at which Tambur's leading products would be sold to consumers between 1994 and 1998; by this means they promised that Tambur's products would be sold at uniform prices. The trigger for initiating the cartel's activity was the retail chains' activity, which gave rise to price competition that led to a price reduction. Throughout 1996-1998, Tambur's sales manger coordinated the prices on behalf of Tambur.

58. The court proceedings began in 2001; Tambur was convicted in the beginning of 2002 and was sentenced to pay a fine of 2,250,000 NIS. The Court established that the monopolistic position of Tambur was to be regarded as an aggravating circumstance. Tambur's sales manager was convicted and sentenced to an imprisonment of two months, to be served in public service, and a fine of 20,000 NIS. The sales manager appealed the District Court's sentencing. The Supreme Court, ascertaining that the penalty imposed on the accused was rather lenient in respect to the felonies he was convicted of, rejected the appeal. Another appeal, in which an accused retracted his guilty plea given under a plea bargain, was returned to the District Court for decision on the merits.

Fittings (installation accessories)

59. One of the largest cartel cases prosecuted to date by the IAA, involving 15 companies and 11 individuals. According to the allegations, the respondents had engaged in a series of restrictive arrangements in the years 1993-1996, affecting the fittings (installation accessories) market in Israel, which is worth about 100,000,000 NIS. The IAA laid charges against the involved in 2000. The indictment encompasses six charges. Three charges concern arrangements between Modgal Ltd., the sole fittings producer in Israel, and three of its distributors between the years 1993 - 1994, according to which the distributors would not engage in import of fittings, would not increase maximum rebates accorded to customers and would commit to a certain monthly purchase quota. The three other charges concern arrangements between Modgal and all its distributors, according to which maximum rebates were set, a decision that distributors would not engage in import of fittings was accepted, and an elaborated enforcement and punishment mechanism was created for the purpose of keeping the cartel members in line with the quota agreement. In implementing the agreement, the conspirators participated in several secret meetings over the period, which the companies' officials attended.

During 2001-2002, the IAA focused on dealing with preliminary pleas that the respondents raised. In January 2003, the case for the prosecution began and is still in process.

International Diamond Dispatching

60. Conviction and sentencing under a plea bargain for taking part in a cartel in the field of international diamond dispatching. Brink's Israel Ltd. and Malka Amit Ltd., coordinated diamond dispatch prices for export from Israel and allocated the market for three years. Malka Amit and its owner, who served as its director as well, were convicted and sentenced under a plea bargain in 2001. Brink's and its director were sentenced in July 2002: the director was sentenced to 5 months imprisonment to be served in public service and a fine of 100, 000 NIS; the company was sentenced to pay a fine of 1,000,000 NIS. In his verdict, the judge stressed the importance of ensuring that the fine would have a deterrent effect, especially by reflecting the profits gained from the involvement in the illegal cartel activity in the imposed fine.

Army Equipment

61. Bid-Rigging conspiracy in an army equipment tender: an indictment against the Director of Rabintex Industries LTD. was filed in the Jerusalem District Court in September, 2002. He was convicted and sentenced, under a plea bargain, to imprisonment to be served in public service and to a fine of 75, 000 NIS. Since the aforesaid tender did not concern a high turnover and the bid -rigging did not succeed in practice, one can relate the relatively harsh sentence to both his being the company's, as well as a shareholder of the company.

Electric Piping

62. Conviction and sentencing in the field of electric pipes: three electric pipes companies and seven executives were convicted and sentenced after the court was persuaded that the defendants had decided to reduce competition in the electric pipes field and to raise prices, after identifying a price decline in the market. Most of the parties agreed to market their products through a newly established joint company. The other parties, preferring not to market their products through the joint company, chose to coordinate their prices with it. The court found that the cartel actually caused a rise of 120% in electric pipes pricing. In his conviction, the judge stressed the potential of a joint marketing company to harm competition between producers and to serve as an instrument for price fixing and allocation of production. The companies' executives were sentenced to imprisonment to be served in public service and the companies were sentenced to fines up to 600,000 NIS.

Pesticides

63. Conviction of two directors of pesticides distribution companies that were found liable according to the Antitrust Law of the "Managers Liability" provision. The companies were convicted for price fixing and market allocation under a plea bargain. The directors refused to take part in the plea bargain and therefore decided to proceed with the court litigation. The District Court established that the accused did not prove any of the two elements of the defense available under "Managers Liability" Provision: they did not prove that they had not known of the felonies that were carried out by the companies they were managing nor did they prove that they had taken reasonable measures in order to ensure obedience to the Antitrust Law provisions. For the first time, the Court determined that in order to convict an official, under the said provision, there is no need for the prosecution to prove the existence of Mens Rea. In fact, the court stated, the prosecution does not have to prove that the official was aware of all of the felony's elements, and it is sufficient to demonstrate that the company committed the felony and, at the same time, the accused served as its official.

Monopolies and Abuse of Dominant Position

Proceeding for a Monopoly Declaration in the Field of Collective Society Associations

64. The IAA is considering declaring ACUM, a collective-licensing body for composers, as a monopolist (a monopolist is defined in the Israeli law, in general, as an entity having a market share in excess of 50%.). Hence, the IAA conducted a thorough examination of ACUM's position in the management of copyrights and in granting licenses for use of musical and literary compositions.

Market Definition in the Telecommunication Industry

65. IAA denied an application from Bezeq Israel Telecommunication Company Ltd. to terminate its declaration as a monopolist in basic telephony services. Bezeq stated that the market definition has changed since it was declared in 1995, and currently comprises not only fixed telephone service (Bezeq is the incumbent telephony company and the only entity in Israel providing this service) but also mobile telephony service. After examining Bezeq's arguments and market data, the IAA found that it could not be established that mobile telephony services were an alternative for consumers to fixed telephone services to the extent that they could be assigned to the same market. Bezeq has appealed the IAA's decision. During 2002 the IAA submitted its reply to the appeal and an expert opinion was submitted on behalf of Bezeq. The proceedings are still pending before the Antitrust Tribunal.

Cement Transportation

66. IAA declared Taavura Tifzoret Ltd a monopoly in the field of bulk cement transportation in September, 2002. Although a new player entered the market in 2002, until recently Taavura was the sole bulk cement transporter in Israel. Tavvura owners hold a third company together with Mashav Initiation and Development Ltd. This joint holding creates a linkage between Taavura, as aforesaid, a monopoly in bulk cement transportation and Mashav, which controls Nesher Israel Cement Enterprises Ltd., a declared monopoly, which is the supplier of the decisive quota of cement in Israel. Under these circumstances, the IAA held that in order to enable the new entrant to compete effectively in a market which is apparently dominated by one leading firm, a declaration which clarifies Tavura's status and its subordination to the prohibitions imposed on monopolies, is essential.

3.2 Mergers and Acquisitions

a) Statistics on Number and Type of Mergers Notified and processed Under the Antitrust Law

67. Analysis of merger and acquisitions constitutes an important part of the IAA's work. Mergers that cross certain thresholds should obtain the approval of the General Director before consummating the transaction. The Law sets a review period of thirty days, in which the General Director has to reach a decision, unless the period was extended by the Antitrust Tribunal (or by consent of the merging parties). Where the IAA fails to reach a decision within the prescribed time scale, the merger will be deemed compatible with the Law.

68. A merger is defined in the Antitrust Law as including the acquisition of the essential assets of a company by another company or 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 or, the right to appoint more than one quarter of the Board of Directors or, the right to participate in more than one quarter of the profits of the company; the acquisition may be direct or indirect or by means of contractual rights.

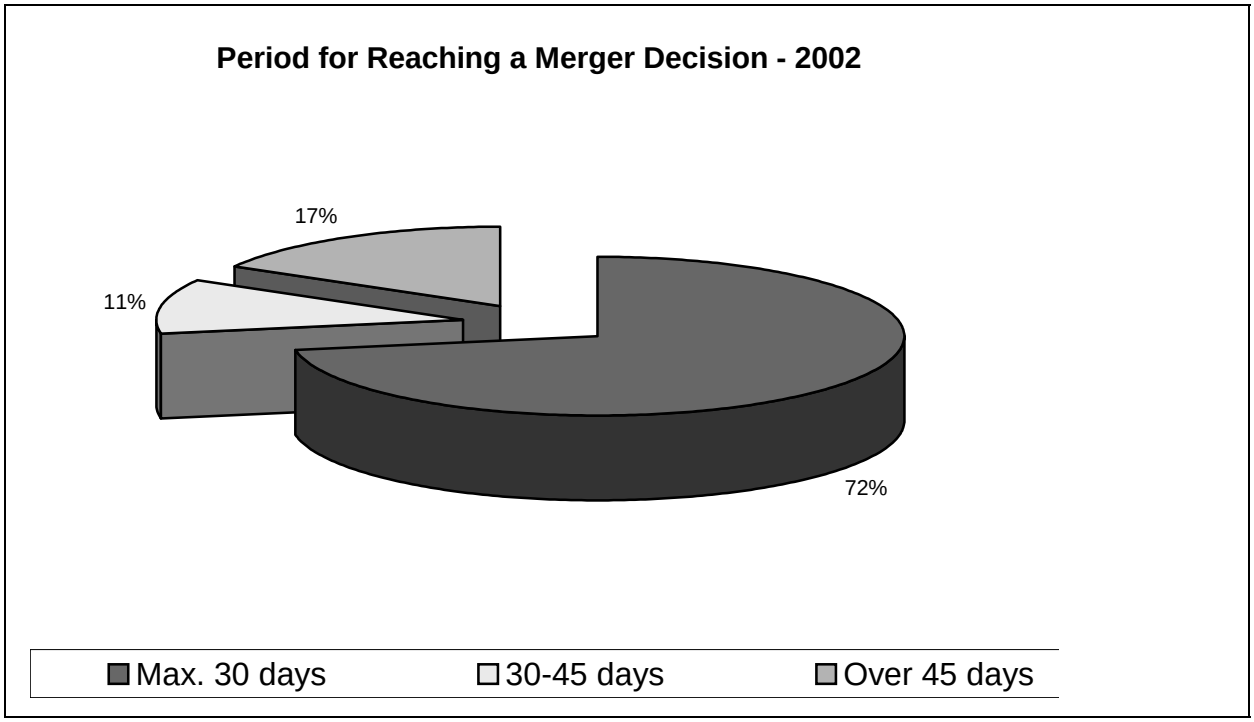
69. The General Director is authorized to block a merger if the merger raises a reasonable suspicion of material injury to competition or the public.

70. During the year 2002, the IAA considered a hundred and eighty-seven merger notifications (including also transactions that were notified in 2001). Of these a hundred and twenty-seven were in fact mergers. To the best of our knowledge, six of these mergers were also reviewed by foreign competition

agencies and had international implications. 4% of the IAA's decisions resulted in the blocking of a merger; 16% resulted in the approval of a merger, under conditions; and 80% resulted in the approval of a merger. In addition, the IAA reached six decisions concerning the amendment or cancellation of conditions that were imposed in the past.

71. The IAA completed the review of 72% of the mergers within the 30 days time period determined in the law; 28% of the mergers required extensions by court order or the parties' consent.

72. ***Table: Period for Reaching a Merger Decision – 2002***

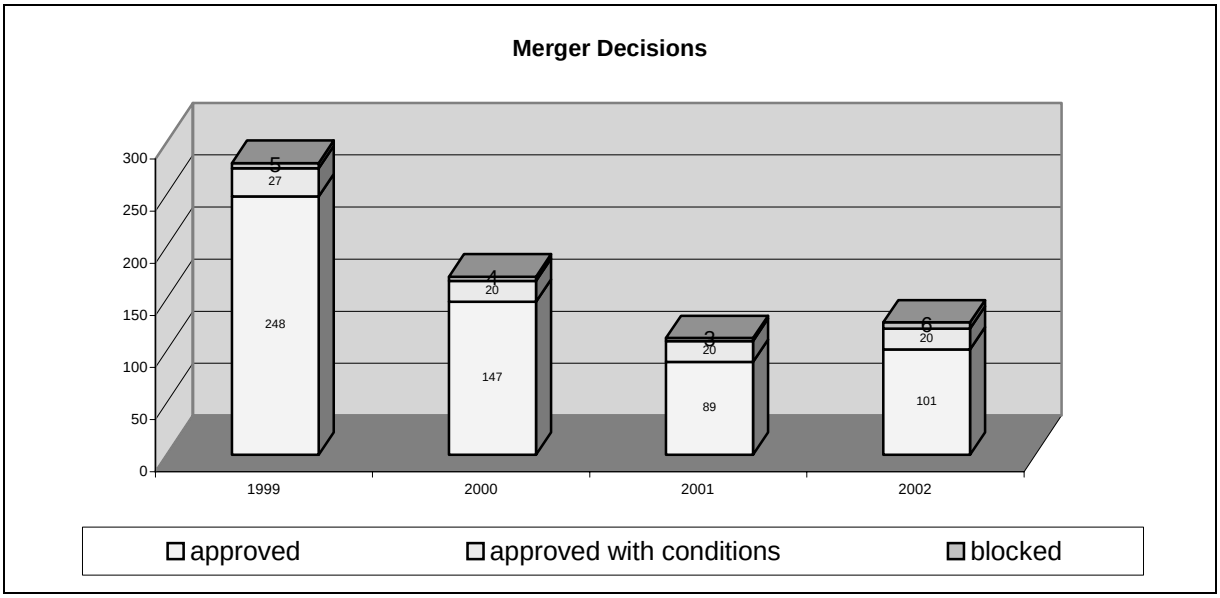


73. ***Table: Decisions in Merger Applications***

	Notified Transactions	Merger Decisions	Approved	Approved with conditions	Blocked
1999	316	280	88%	10%	2%
2000	230	171	86%	12%	2%
2001 updated	160	112	79%	18%	3%
2002	158	127	80%	16%	4%

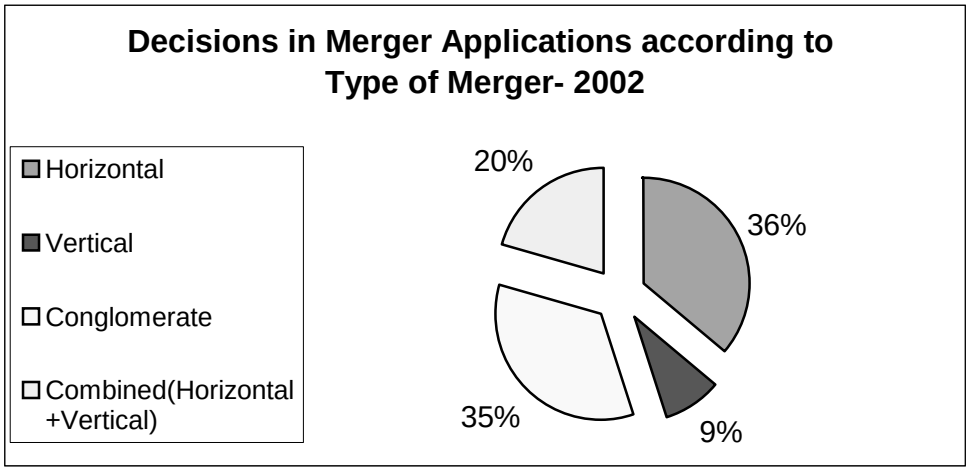
Notes to Table 73:

- "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 the year 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.

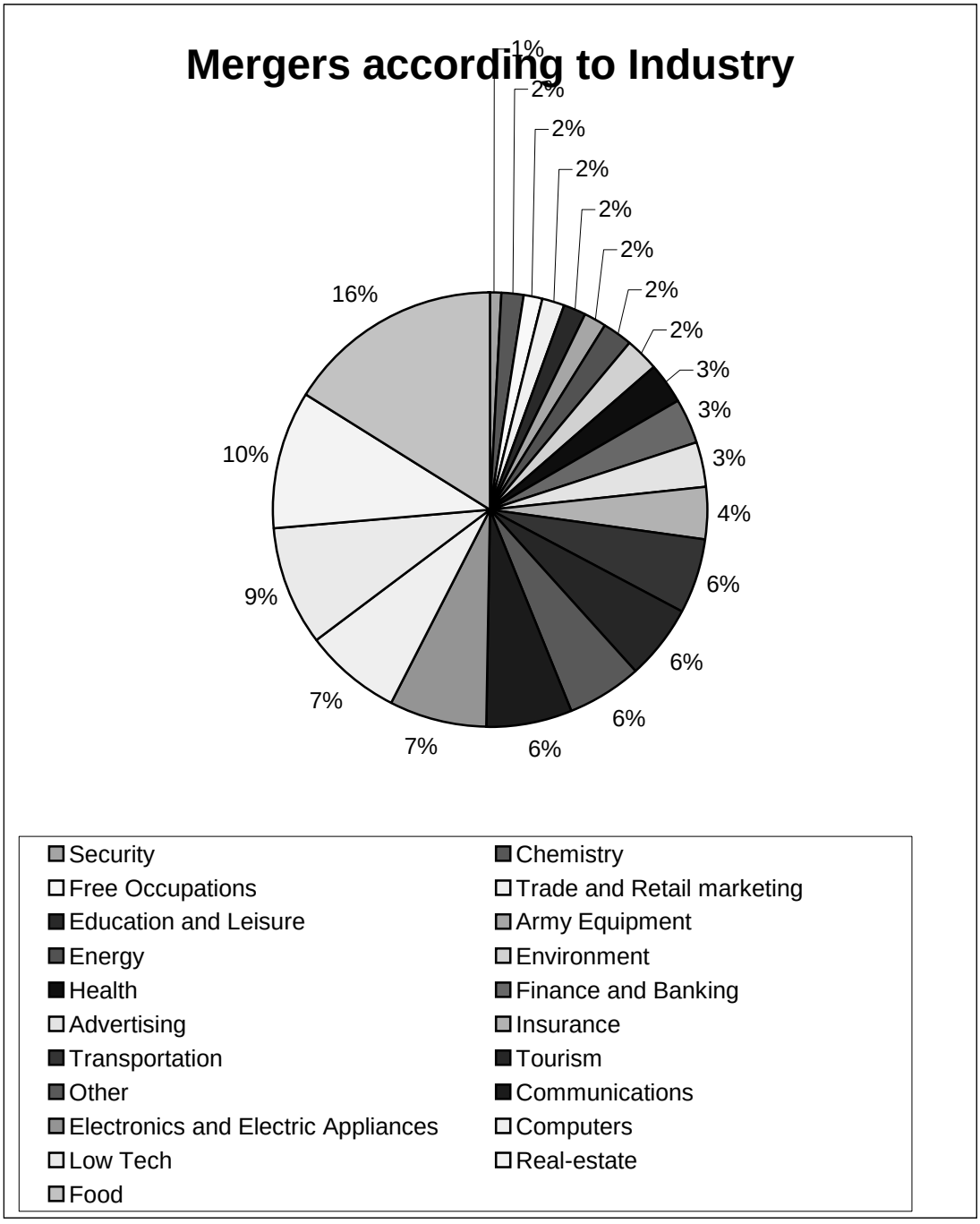


74. ***Table: Decisions in Merger Applications according to Type of Merger – 2002***

Horizontal mergers	36%
Conglomerate mergers	35%
Horizontal + Vertical Mergers rs	20%
Vertical mergers	9%



75. ***Table: Mergers According to Industry - 2002***



b) Summary of Significant Cases

Cable Television

76. In March 2002, the General Director approved, with conditions, a merger between the three cable television companies in Israel. The companies have not fully merged their activities yet. Prior to the merger approval, each company operated independently on cable television in different geographic regions. Each of the companies competed with the satellite multi-channel television company, which commenced national broadcasting in 2001 and is owned by Bezeq The Israel Telecommunication Corp., Ltd., a declared monopoly in basic telephony services. In July 2001, the Communication Law (Telecommunications and Broadcast) (1982) was amended so as to abolish the exclusivity theretofore provided for cable television operation in each region, and to provide for the supply of other communication services via the cable network, such as telephony and broad-band Internet. IAA's examination of the effect of the merger on competition was focused on potential competition among the companies by means of overbuilding on an open access regime whereby each could transmit over the other companies' infrastructures. Moreover, it focused on the effects of the merger in foreclosing content vis-à-vis the satellite company. Conversely, the expected efficiencies of the merger, including the ability to act on the national telephone and Internet infrastructure market, were examined. After concluding the examination, the General Director decided to approve the merger under certain conditions, after concluding that the efficiencies the merger generated would be greater than the anticompetitive effects. The conditions imposed include, inter alia, an open access provision, limitation of the merged company's involvement in the commercial activity of the channel suppliers, limitation on the number of channels that the merged company can own, entrance to the national telephony market, by that meaning to prevent mutual forbearance effects. In May 2002, the satellite multi-channel television company appealed the General Director's decision to the Antitrust Tribunal and the appeal is awaiting decision.

Newspapers

77. In March 2002, the IAA blocked a merger between "Baron Fishman Communications Ltd." which controls "Globes" an economic oriented daily newspaper and "Yedioth Ahronot Ltd.", the largest daily newspaper published in the Hebrew language, which was declared a monopoly by the General Director in 1995.

78. Prior to the decision, Baron Fishman, which already held shares in Yedioth, was interested in exercising its right of first refusal. This would have created a merger between Baron Fishman and Yedioth, which necessitated the approval of the General Director according to Israeli Law. Since it was clear that the General Director would object to the merger due to the competitive concerns such a merger would raise (as will be detailed henceforth), Baron Fishman adopted a legal solution that would be agreeable to the IAA: transfer of part of the shares it held to a trustee for a limited duration until they were sold to a neutral third party. The shares sale would have prevented creation of a merger between Baron Fishman and Yedioth.

79. Nevertheless, after exercising the right of first refusal, Baron Fishman wanted to repossess the shares that were transferred to the trustee. This intention was the trigger for the aforesaid decision.

80. The IAA based its decision to block the merger on the fact that the merger would have increased the market power of "Yedioth"as well as concentration in an already highly concentrated market and harm competition. Since "Yedioth" has the highest distribution rate of all daily newspapers published in Israel, the economic section incorporated in it, which has expanded significantly in the past years, is exposed to the greatest number of readers who read economic sections in newspapers. The IAA found that both newspapers are active in the supply of economic data in the Hebrew language. This market was found to be highly concentrated, consisting of only 4 players, and characterized by high barriers to entry. It was also

found that the merger would of course also influence the employment of economic reporters, who represent an important input in the newspapers industry. The merger would have created a substantial structural linkage between a small daily newspaper, which specializes in the supply of economic news, and a monopoly. This linkage would have established that both would have the same interests - strengthening Yedioth as a monopoly, i.e Globes would have a strong financial interest in Yedioth's welfare and consequently competition would have been harmed.

81. The parties announced their intention to appeal the decision to the Antitrust Tribunal. Since Baron Fishman neither filed an appeal nor did they sell the excess shares, the General Director decided to approach the Antitrust Tribunal and request that it order Baron-Fishman to sell its excess holdings in Yedioth. Subsequently, the parties began to negotiate a resolution to the dispute. Finally, the parties agreed on an arrangement, which was submitted in February, 2003 to the Antitrust Tribunal, to be validated as a court decision. With regard to the procedural aspect, the arrangement establishes, on the one hand, that Baron Fishman will waive its right to appeal the General Director's decision, and, on the other hand, the General Director will put aside his request to instruct Baron-Fishman to sell the excess shares. It was agreed by the parties that the excess shares would be sold to a neutral third party within a specified confidential schedule.

International Telecommunication Services

82. "Golden Lines 012 LTD." and "Barak 013 LTD" are two of the three companies licensed by the Israeli Ministry of Communications to provide international telecommunication services.

83. In September, 2002, the IAA approved a merger between Monitin Press LTD. and Golden Lines with conditions. As a result of the merger, Monitin would become the controlling shareholder of Golden Lines. At the same time, the owner of Monitin held debentures of Barak. The IAA found that the possession of Barak's debentures created a concrete interest on the part of the owners of Monitin in ensuring the profitability of Barak and its capability to pay back the principal and the interest on the debentures. Consequently, the IAA was concerned about concerted practices in the international telecommunication services market. Therefore, the merger was approved subject to a "must sale" obligation according to which the owner of Monitin had to sell the bonds of "Barak 013 LTD." he possessed according to a certain timetable set in the decision and subject to other terms aimed at reducing the incentive to engage in concerted practices.

84. In March, 2003, the IAA conditionally approved the acquisition of control of one of the leading concerns in Israel- I D B Holdings Corp. Ltd. by three groups. The merger required the examination of numerous markets in which the parties are active. The IAA's review of the merger focused on its probable implications for three markets: capital, cement and tourism, in which both the acquirers and I D B are active. The conditions imposed by the IAA were designated to ensure that the acquisition would not impair competition in those markets.

4. Competition Advocacy

85. 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.

Commercial Television

86. The IAA was involved in discussions of a legislative proposal to allow the merger of all three franchisees of the commercial television channel in Israel (the days of the week are divided among them). The proposal was raised after a new commercial television channel was launched. The General Director

opposed this proposal in a debate in the Israeli Parliament. His position was accepted and the Israeli Parliament did not legislate a law allowing the merger of all three commercial television franchisees.

Newspapers Industry

87. The IAA was involved in a private members' bill initiative aimed at dealing with the highly concentrated newspapers industry in Israel. The main purpose of the bill was to restrain the monopolistic power of the largest daily newspaper in Israel, Yedioth Ahronot Ltd., which has been a declared monopoly since 1995. Despite the IAA's desire to endorse competitiveness in the newspapers industry, it found that several of the measures proposed in the bill had a potential negative impact. For example: one of the measures proposed in the bill was the mandatory divestiture of any newspaper that reaches a certain threshold of distribution. The General Director thought that there could be justification for tighter competitive supervision of the newspaper industry because of its importance to democracy, but objected to imposing drastic and draconian means, which would not assist in developing competition and increasing the public welfare. The General Director's position, which was presented during the discussions of the Economics Committee of the Parliament, was taken into consideration by the initiators of the bill. The discussions regarding the bill have not reached completion yet.

Gas Stations

88. The IAA was involved in the legislative proceedings of a law designed to fight pirate gas stations that endanger the public's safety and the environment. The IAA's opinion was that the weakness of the proposal was that it did not make a distinction between pirate stations and stations that deviated from the terms of their licenses to a certain extent. The possible outcome of such a lack of distinction was that the law would eventually harm the activity of gas stations that are not considered to be "pirate stations" and thus reduce competition in the market. This position was presented before the Economics Committee of the Parliament and was accepted by it. Following the Committee's discussions, the General Director was asked to draft the law according to the principles presented by him.

5. Resources of the IAA

5.1 Annual Budget

89. Funding of 21,400,000 NIS (which is approximately 4.5 million USD) was provided to the IAA in the 2002 budget. The annual budget had not changed significantly in comparison to the previous year's budget. A major portion of the budget, 63%, was allocated to salaries.

Table: Annual Budgets- 2002 (thousands)

	2002	**2001**	**2000**
NIS	21,412	20,689	20,250
USD	4,520	4,922	4,965

5.2 Number of Employees

Economic Department	13 economists
Legal Department	18 lawyers and 7 legal interns
Criminal Investigations Department	17 investigators (lawyers, economists and other professionals)
Support staff and administrative services	23
The General Director's Office	2 lawyers
All staff combined	**80 employees**

5.3 Application of Human Resources to IAA Activities (rough assessment)

- Enforcement against anti-competitive practices: 64 employees;
- Merger review and enforcement: 14 employees;
- Advocacy: 2 employees.