

Unclassified

CCNM/GF/COMP/WD(2002)15



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

30-Jan-2002

English text only

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

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Unclassified

OECD Global Forum on Competition

CONTRIBUTION FROM ISRAEL

This note is submitted by Israel as a background material for the second meeting of the Global Forum on Competition to be held on 14 and 15 February 2002.

JT00120133

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ISRAEL ANTITRUST AUTHORITY

I. - EXPERIENCES IN CAPACITY BUILDING AND TECHNICAL ASSISTANCE

Israel Antitrust Authority (IAA) has limited experience in the fields of Capacity Building and Technical Assistance, most of which was gained from specific initiatives for short internship periods of its employees at foreign competition agencies and a private consulting firm.

In the fall of 2000, IAA sent 4 employees for a two-month internship with the U.S. Federal antitrust agencies. During this internship, these employees gained comprehensive acquaintance with the experience, jurisprudence and personnel of the U.S. agencies. Based on the internship experience, these employees drafted (and circulated to their peers) extensive documents summarizing what they learned about the views and experience of the U.S. agencies in specific industries and scenarios. These documents have proved extremely useful for IAA work because they provide case handlers with insights on various competition considerations that arise in the course of their work. Furthermore, the internships were helpful because they allowed the IAA to learn the detailed structure of these agencies (and create personal ties with some of its staff). These benefits facilitate future cooperation between the agencies.

IAA has found these exchanges a useful instrument for building up professional capacities.

IAA looks forward to participating in similar exchange activities in the future with other foreign antitrust agencies.

It should also be noted that this month the Authority has sent one of its economists for a 2-month internship with a U.S. private consulting firm. It expects this experience to be fruitful and beneficial specifically in strengthening the expertise of its economic staff.

II. - ACTUAL EXPERIENCE IN INTERNATIONAL COOPERATION IN CARTEL AND MERGER CASES

In general, Israel Antitrust Authority (IAA) has had a very good experience of cooperation with foreign competition agencies. It has found most of its counterpart agencies commendably inclined to assist it by providing input such as their past decisions, market and industry studies, court decisions, experience with remedies and other documents. Perhaps this record of success in bilateral cooperation can be attributed to the fact that the assistance sought was either on a broad policy level or referred to past decisions and public documents, hence confidentiality concerns have rarely been an obstacle.

ANNEX - A

Answers to Questionnaire to Invitees and Observers on International Co-Operation in Cartel and Merger Investigations

1. A copy of the U.S.-Israel competition cooperation agreement (signed March 1999) is enclosed herewith.
2. The capacity of the IAA to exchange information and cooperate with foreign competition agencies is derived from two sources:
 - (a) The broad 'derivative authority' administrative law principle (known in Latin as "*ubi aliquid conceditur, conceditur etiam id sine quo res ipsa non esse potest*"). Under the derivative authority principle, that is established in article 17 of the Interpretation Statute (5741-1981), an authorization to perform a certain task shall be interpreted as implied authorization to take reasonable measures necessary for carrying out the main task. Hence, the IAA's authority under the Israeli Trade Restrictions Law (5748-1988) encompasses a broad authority to exchange information and cooperate with foreign competition authorities to the extent deemed necessary for carrying out the IAA's statutory tasks.
 - (b) Specific antitrust co-operation agreements, such as the U.S.-Israel Antitrust Cooperation Agreement that was signed in 1999 (see above). The Israeli government has the capacity to sign similar bilateral cooperation agreements.

The International Legal Assistance Law (5758-1998) is also noteworthy in this context. The statute arranges for extensive legal assistance between the State of Israel and other States and organizations. Cooperation according to the statute extends over both civil and criminal matters, and does *not* require the State seeking cooperation to be a party to any specific cooperation treaty. Areas of cooperation regulated by the statute include service of documents, collection of evidence, search and seizure actions, investigative activities, transfer of information, verification of documents, confiscation of property and any other legal action. The statute designates the Minister of Justice in charge of evaluation of international legal assistance applications. Applications must be made on behalf of the designated authority for international legal assistance in the requesting State.

Cartels

3. One formal request was made to a foreign competition agency; it was directed to the United States Department of Justice. The request was for information regarding a case that was simultaneously investigated in the United States and in Israel, of a non-competition and market allocation agreement involving Israeli companies. The IAA asked mainly for information about the status of the investigation and other proceedings conducted by the U.S. Authority, the nature of the activities under investigation, the legal provisions concerned as well as the remedies considered against the anti-competitive activities. The request was granted, and the US advised the IAA as to developments in the proceedings against the involved companies. On the basis of the communication with the US Department of Justice, the IAA has taken the view that if the enforcement activity undertaken by the U.S. Authority results in the termination of the agreements, such result is likely to limit the need for further

action on its own behalf, and that the outcome of the proceedings in the United States may well affect the enforcement measures it chooses. The IAA has suspended accordingly the proceedings against the companies in Israel.

4. None.
5. Other Forms of Cooperation: IAA staff regularly contacts foreign antitrust agencies informally where it is aware that the foreign agency has dealt with similar cases in similar industries. The information gathered in this manner is invaluable for the development of Israel's competition law. The advice sought is usually on a general or public level, namely policy considerations in specific industries, copies of final decisions, public reports published on the issue, guidelines etc. Therefore it is rare that confidentiality becomes an obstacle to these consultations. The following case highlights specific instance of such co-operation:

Request regarding practices employed by major food retail chains. The request for assistance was addressed to 31 foreign competition agencies as follows: Argentina, Australia, Belgium, Brazil, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, India, Ireland, Italy, Japan, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Portugal, Russia, Slovakia, South Africa, Spain, Sweden, Switzerland, United Kingdom, United States, Venezuela. The request sought to benefit from the experience of different competition agencies in dealing with practices similar to the investigated practices. It asked for copies of any decisions in similar cases, as well as any form of memoranda, market analysis, guidelines, or legal documents that may have been drafted by the agencies in similar contexts. It also inquired whether the type of conduct investigated was prohibited under the competition legislation applied by the different agencies.

The IAA received 21 responses from the 31 foreign agencies it contacted. The replies included valuable information that proved extremely useful for the IAA's investigation and its understanding of the relevant market. Helpful input included: reference to similar decisions already taken by the foreign agency or courts; information of similar investigations that ended in a finding of no antitrust violation; reference to market research reports conducted on the subject; indication on the legal status of the investigated conduct under the competition statute of the agencies and legislative solutions that were passed to solve similar issues. Two of the 21 responses were unable to provide full information at that time for reasons of confidentiality of a similar ongoing investigation (noting that the confidentiality obstacle shall be resolved upon conclusion of their respective investigations).

6. None.

Mergers

7. Within the relevant time period IAA reviewed the following 19 mergers that were also reviewed, to the best of knowledge, by foreign competition agencies
 - Nestle S.A. / Ralston Purina Corp.
 - Sanmina Corp. / SCI Systems (Israel)
 - True North Communications / Interpublic Inc.
 - The Dow Chemical Company / Rohm & Haas
 - De Beers / LVMS Moet - Hennessy Louis Vuitton S.A.

- General Electric / Honeywell
 - Swissair Ltd. / N.S. Sabena S.A.
 - Polycom Inc. / Accod Networks Ltd.
 - Attecs Mannesmann / Siemens / Robert Bosch
 - Bombardier Inc. / Daimler Chrysler Rail Systems
 - The Dow Chemical Company / Gurit Essex
 - Daimler Chrysler / Mitsubishi Motors Corp.
 - El Fi SA / Moulinex
 - Tyco International / Mallinckrodt Inc.
 - American Airlines/TWA
 - Glaxo Wellcome / Smith Kline Beecham
 - Unilever N.V. / Ben & Jerry's
 - The Dow Chemical Company / Union Carbide Corp.
 - Aerospatiale Matra / Daimler Chrysler / Aerospace
 - Tyco International / Siemens Electromechanical Components
8. In the merger case between The Dow Chemical Company and Union Carbide, IAA sought assistance from the U.S. and E.U. competition agencies that were reviewing the same merger at the time. The request was made by way of correspondence addressed to staff level employees at the agencies' international affairs unit. The inquiry was of a general nature. It focused on the foreign agencies' policy considerations in the case, and their views as to potential anti-competitive effects of the proposed merger. Responses to the request were made by e-mail, and provided useful market information and materials that were all prepared from public sources.
9. None.
10. None.