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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL

-- 2011 --

This report is submitted by Israel to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 13-14 June 2012.

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL¹

Executive Summary

1. This report summarises recent developments and changes in Israel's competition law and policy and overviews some of the main enforcement activities of the Israeli Antitrust Authority (hereinafter – IAA) according to the Restrictive Trade Practices Act, 5748-1988 (hereinafter – “Antitrust Law”) for the period of January 2011 through May 2012.

The IAA is an independent government enforcement agency established in 1994 under an amendment to the Antitrust Law. Its mandate includes preventing market power through merger control and enforcement of restrictive agreements, preventing the abuse of a dominant position, and enhancing competition in the various markets in Israel. An Antitrust Tribunal, residing within the District Court of Jerusalem, has exclusive jurisdiction over non-criminal regulatory antitrust proceedings. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters. Both criminal and civil antitrust rulings are subject to appeal before the Supreme Court.

2. In the period covered by this report, the IAA acted to protect and promote competition in various sectors of the economy through proactive enforcement of the Antitrust Law, merger control, promotion of legislative amendments, and advocacy efforts. The notable developments include:

- The publication of Horizontal Mergers Guidelines and Merger Remedies Guidelines;
- The approval of the following amendments to the Antitrust Law in the Israeli Parliament, the Knesset: the Collective Dominance amendment, the Financial Sanctions Amendment, and the Affiliated Companies Block Exemption;
- Participation in the Trachtenberg Committee for Economic and Social Change and the implementation of some of the Committee's key proposals;
- A reduction of the credit card interchange fee to 0.7 percent;
- Intervention against competitive obstacles in the natural gas market
- Intervention against anticompetitive pricing in the cement and concrete markets.

¹ Disclaimer: The information included in the Annual Report on Competition Policy Developments in Israel is published for informational purposes only. It does not constitute legal advice and does not derogate in any way from any official documents.

1. Changes to competition laws and policies

1.1 Summary of new legal provisions of competition law

1.1.1 Oligopolies Bill passes in the Knesset

3. In June 2011, the Knesset unanimously approved a legislative amendment submitted by the government that provides new tools for effective dealing with oligopolies.

4. The amendment is based on a legislative bill issued by the IAA on 19 June 2008, designed to amend the Antitrust Law with respect to dealing with oligopolies. The bill clarifies the need to respond to the competition problems resulting from the existence of oligopolies in the Israeli economy. An Experts Committee for Re-examination of the Law has concluded that there was a clear need to make a substantial change regarding the handling of oligopolies in the Law's framework.

5. The amendment provides the IAA with tools for dealing with oligopolies. These are established through two main amendments which remove the deficiencies in the current statutory language. The first being an amendment of the definition of oligopolies – the current definition refers to collective dominance, and is based on the degree of competition which exists between the members of the group. It provides that collective dominance will be found when there is no competition at all between the members of the group, or where the competition between them is slight. This definition is problematic, as the level of competition cannot be directly measured in an empirical quantitative manner. This deficiency has rendered relevant provisions ineffective. It has therefore been proposed to define an oligopoly, based on the existence of conditions for slight competition between the members of the group, and not on the actual quantity of competition between them.

6. The second tool is formed through the distinction between a monopoly and an oligopoly and the manner in which the Law regulates them – currently the Law imposes the same obligations on a monopoly as it does on a collectively dominant group of firms, in the context of the chapter dealing with monopolies. The Committee's conclusion was that these provisions are appropriate for the regulation of a single company, which is presumed to be the party controlling the market, but not for the regulation of the members of an oligopoly.

7. The motivation to amend the law is based on the recognition that the types of behaviors that are forbidden for a monopoly are different from the problematic behaviors of an oligopoly, since they are based on different economic phenomena. The proposed language will make it possible to give instructions to all or some of the members of an oligopoly in order to, inter alia, prevent damage to competition and to consumers, or to increase competition between the members of the oligopoly.

1.1.2 Law Amendment for Financial Sanctions

8. In May 2012, the Knesset passed an amendment to the Antitrust Law that adds enforcement options by allowing financial sanctions. The objective of the law is the creation of an administrative enforcement tool that enables a more effective, fast and efficient response to specific types of violations of the law. The amendment provides the Director General with the authority to impose financial sanctions on a company of up to 8% of the total sales of the company, with a maximum fine of 24 million NIS.

9. In addition to setting the sanctions and the violations for which it can be imposed, the law also establishes a defined procedure for imposing sanctions which includes a hearing process and a judicial review system both with respect to the imposition of the financial sanction itself, and with respect to the size of the sanction. Judicial oversight is granted through the submission of an appeal to the Antitrust Tribunal.

10. Antitrust enforcement in Israel has two basic elements: the criminal track and the civil-administrative track, which are both regulated through the Antitrust Law. The adoption of a mechanism in the Law for the imposition of a financial sanction provides a solution for difficulties that result from the lack of appropriate enforcement tools that are needed to deal with certain types of violations which do not qualify for criminal enforcement, and it is intended to constitute a supplementary tool for the existing civil-administrative enforcement mechanisms.

11. The need for adoption of a financial sanction mechanism within the Antitrust Law was acknowledged not only by the IAA but also by the OECD in the course of Israel's accession review and by other government bodies, including the State Comptroller, who expressed support for the legislation that the IAA is promoting.

1.1.3 Affiliated Companies Block Exemption

12. On March 17th 2011, a new Block Exemption concerning restrictive arrangements between affiliated companies was published. The main goal of this Block Exemption is to relieve subsidiaries of a parent company from the duty to file for specific exemptions with respect to agreements among themselves. The Block Exemption Concerning Affiliated Companies complements a statutory exemption for restrictive arrangements between a parent company and its subsidiaries. In addition, revisions have been made to the existing set of Block Exemptions, essentially aiming to expand their reach to additional practices that do not raise substantial competitive concerns.

1.1.4 The Committee for Economic and Social Change, "The Trachtenberg Committee"

13. Representatives from the IAA, including IAA Chief Economist Dr. Shlomi Parizat, participated in the work of The Committee for Economic and Social Change, which was commissioned in response to the social justice protests of this past summer. The committee examined policy issues, competition, and regulation in order to determine the cause of the rising cost of living in Israel. In September 2011, the Committee published a draft of recommendations, including legislative amendments to allow economic sanctions to be imposed for violations of antitrust law and the expansion of the power of regulators in order to take into account anticompetitive behaviors. In addition, a new sector of the Antitrust Authority will be established in order to conduct market studies, follow economic trends, and recognize potential failures of competition policy. In December 2011, the Knesset approved these measures suggested by the Committee.

1.2 Summary of New Guidelines

1.2.1 Horizontal Merger Guidelines

14. On 23 January 2011, the IAA published its Horizontal Merger Guidelines, after gathering and processing public comments. The Guidelines are based on the principles used by the IAA as reflected in its decisions and court rulings. They describe the methodology and the main types of evidence on which the IAA would typically rely to predict whether a horizontal merger may substantially harm competition. The Guidelines outline how the IAA evaluates the likely competitive impact of mergers and whether those mergers comply with the law, and more generally they reflect the current state of merger analysis, and add to the overall transparency of the IAA's activity.

1.2.2 Merger Remedies Guidelines

15. On July 18th, 2011, the IAA published its Guidelines for Remedies in Mergers That Raise a Reasonable Concern for Substantial Harm to Competition. The Guidelines outline the general considerations for using remedies when assessing mergers that create a reasonable concern of substantial

harm to competition. When appropriate, the Director General takes the following principles, among others into consideration:

- Remedies should address specific anticompetitive concerns;
- Remedies must be enforceable and should allow effective supervision over the merging parties' compliance.
- The design of remedies should seek to minimize monitoring costs.
- Remedies should be tailored to address the competitive concerns in a timely manner.
- Remedies must be feasible in the sense that parties should have the ability to comply.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices

16. The Antitrust Law provides for varied remedies in cases of infringements or violations of the Law, some of which qualify as a criminal offence as well as a civil tort as explained hereunder.

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

18. The civil and administrative remedies for infringements of the Antitrust Law include consent decrees, injunctions and court orders granted by the Antitrust Tribunal. The Director General has the power to declare an activity as prima facie illegal and the power to issue rules of conduct to monopolies.

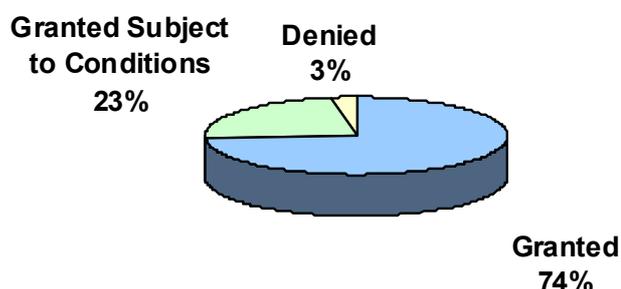
The Antitrust Law stipulates that the concentration of more than half of the total supply or acquisition of an asset, or more than half of the total provision or acquisition of a service, in the hands of one person is deemed to be a **Monopoly**.

The law defines a “**restrictive arrangement**” 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. The law also provides a list of per se prohibitions. 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 according to the location of the business or according to 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.

19. Engagement in a restrictive arrangement without prior authorisation of the Antitrust Tribunal or any other temporary authorisation is prohibited, unless the arrangement was specifically exempted by the Director General or in case it was covered by a block exemption. During 2011, the Director General handled exemption requests as follows:

Total number of Exemptions	Granted	Granted Subject to Conditions	Denied
73	54	17	2

Decisions in Exemption Requests 2011



2.1.1 Summary of main activities

20. The IAA devotes extensive efforts and resources to enforcement against anticompetitive practices and cartel arrangements in a wide range of industries. The following illustrates some of the main enforcement activities:

- Credit Card Interchange Fees Case

In 2006 the Antitrust Tribunal received a request for approval of interchange fees from the three Israeli credit card companies, Leumi Card, Isracard and CAL.

The interchange fee is the price the "acquiring" bank pays the "issuing" bank in a case where a vendor receives a card payment from a different operator than the one he has an agreement with. The interchange fee is agreed upon by the banks in order for them to cooperate and ease the use of credit cards. The cost of the service is born by the vendor as it is in its interest to be able to accept card payments from other banks than the one it has an agreement with, as a service to its customers.

In 2011, the credit card companies adopted the Tribunal's methodology for calculating the interchange fees and agreed on a reduction in the fees from 0.875% to 0.7% over the next few years. The rate of 0.7% will be reached by July 2014. This decrease is an improvement over the previous reduction of rates from 1.25% to 0.875% that occurred in 2010. The Authority has been dealing with problems of non-competitiveness in the credit card industry for over a decade. Therefore, this agreement represents progress for the Authority and offers advantages for consumers.

- IAA Approves Cooperation in the Effort to Act against Pirate Websites

On April 11th 2011, the IAA granted an exemption from the need to obtain approval for a restrictive arrangement between a group of entities that produce and distribute audio-visual content. The exemption deals with the joint establishment of a company which will engage in the enforcement of the intellectual property rights in the audio-visual content of the parties to the arrangement - pursuant to the Copyright Law, 2007 and the Performers' and Broadcasters' Rights Law, 1984 - against Internet websites that engage in large-scale infringement of these rights. The exemption has been granted for three years, and was issued subject to a number of conditions. The applicant entities include the cable and satellite companies, the Channel 2 and Channel 10 franchisees, as well as others. According to the approved outline, the company, when it is established, will engage in locating and monitoring pirate websites; exposing the operators of pirate websites through legal measures; collecting evidence and filing lawsuits against pirate

websites, etc. According to the outline, any Israeli corporation that has been engaged for at least two years in the production or distribution of content may join the company as a shareholder. The arrangement gave rise to several concerns with respect to spill-over effects and the possibility that new producers and broadcasters would be prevented from joining the company. Accordingly, the exemption was granted subject to a series of conditions, the objective of which was to restrict the contacts between the member companies to the necessary minimum, and to prevent the imposition of unreasonable restrictions with regard to allowing new producers and distributors to join the company.

- El-Al and Aerosvit CJSC Airlines

On the 24th of August, 2011, the IAA Director General decided to grant an exemption to a restrictive arrangement after an investigation revealed that the arrangement would not impede competition. As part of the understanding, Israel and the Ukraine can decide on three airlines each that can fly between Tel Aviv and Kiev. Each country can run 24 flights a week. As of now, the flights are not that frequent, so the regulatory situation enables a competitive response in case one of the airlines involved decides to capitalize on its market power and raise prices or reduce the number of seats available.

2.1.2 *Cartel investigations and Criminal Cases*

- Amplification Cartel Case

In March 2011, the Jerusalem District Court sentenced the three defendants in the sound system cartel to two months in prison, four months of community service and six months of community service, respectively, in addition to fines. In the context of this cartel, the parties agreed to divide several large sound system jobs amongst themselves. The cartel's existence was discovered after the IAA had taped meetings between the defendants. The defendants also admitted that they had entered into prohibited agreements pursuant to which Betty Bam, one of the cartel members, did not compete for the sound system and lighting work during the Pope's mass (in Israel) in the year 2000. The defendants further admitted that Betty Bam had agreed with Kilim Electronics not to compete for the provision of sound system and lighting services for the opening of the Bahai Gardens in Haifa in 2001, and that the companies had coordinated among themselves the prices to be offered for the execution of these jobs.

2.1.3 *Monopolies*

- Natural Gas Markets

The IAA General Director is considering declaring Delek Drilling Ltd. Partn together with Delek Invest. Properties, Avner oil Ltd. Partn, and Noble Energy Mediterranean Ltd, a monopoly in supplying natural gas in Israel. In addition, the General Director is considering declaring Delek Drilling Ltd. Partn together with, Avner oil Ltd. Partn, Noble Energy Mediterranean Ltd, Isramco Negev 2 Ltd. Partn and Dor Gas Exploration Ltd.Partn ("the drilling partnerships") a monopoly in supplying natural gas in Israel starting of 2013, pursuant to his authority according to section 26 of the Restrictive Trade Practices Law, 5748-1988. The drilling partnerships were invited to present their arguments before the General Director before a final declaration is made.

In addition, the general director is considering determining that Delek Drilling Ltd. Partn, Avner oil Ltd. Partn, Noble Energy Mediterranean Ltd, and Ratio Oil Exploration (1992) L.P, who are all partners in the 'Leviathan' oil permit, are parties to a restrictive arrangement which has not received any permit or exemption from the Antitrust Tribunal or the General Director. The

drilling partnerships were invited to present their arguments before the General Director before a final determination is made.

Also, recently, the General Director has informed the drilling partnerships who are the owners of the Tamar gas reservoir that long term agreements for the supply of natural gas from said reservoir, which have been concluded or are in the process of being negotiated, may be restrictive arrangements, which are subject to a permit from the Antitrust Tribunal or an exemption from the General Director.

- Cement Market Monopoly

On February 15th the General Director notified Neshor Israel Cement Enterprises Ltd. (hereinafter – Neshor), the declared cement monopoly, that he is considering giving instructions designed to discontinue Neshor's discriminatory pricing practices. The General Director is also considering instructing Neshor to publish cement prices and supply conditions.

According to the IAA's preliminary findings, Neshor's said policy disincentivizes the import of cement and therefore may harm competition in the market for the supply of cement; In addition, said policy may also harm competition in the ready-mix concrete sector as it may facilitate the stabilization of a non-competitive equilibrium in that sector.

Neshor was invited to present its arguments before a final decision is made, and the IAA is currently reviewing Neshor's opposition to the aforementioned instructions.

2.2 *Mergers and acquisitions*

2.2.1 *Statistics on number, size and type of mergers notified and/or controlled under competition laws*

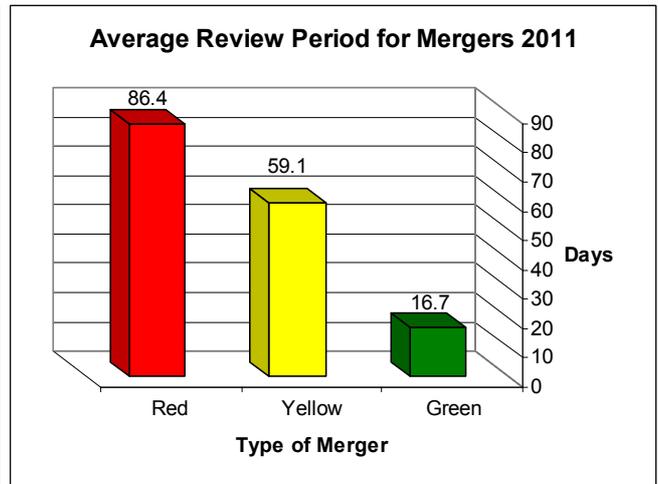
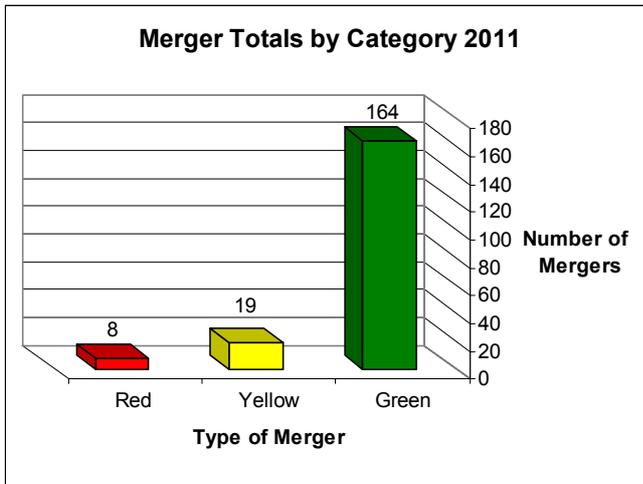
21. Merger control constitutes an important part of the IAA's mission to prevent the formation of market power that is detrimental to competition.

Mergers that cross certain **thresholds** must obtain the approval of the Director General before execution of the transaction. Merging parties must submit a merger notification in the event that one of the following conditions exists:

1. As a result of the merger, the share of the merging companies in the relevant market is in excess of fifty percent;
2. 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 NIS and the sales volume of at least two of the merging companies is in excess of 10 million NIS.

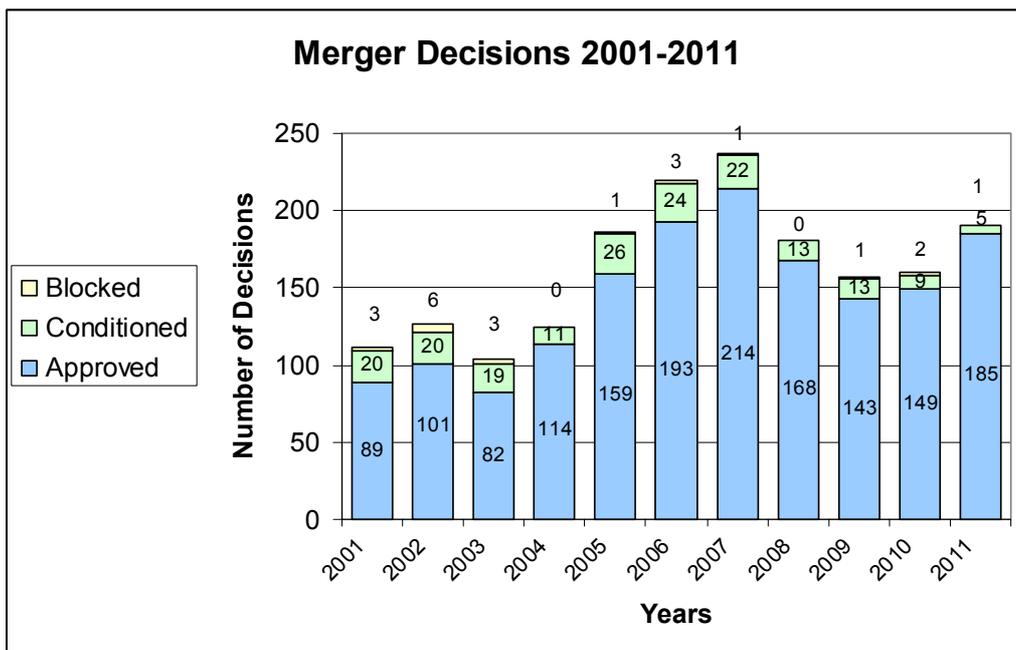
One of the companies is a monopoly.

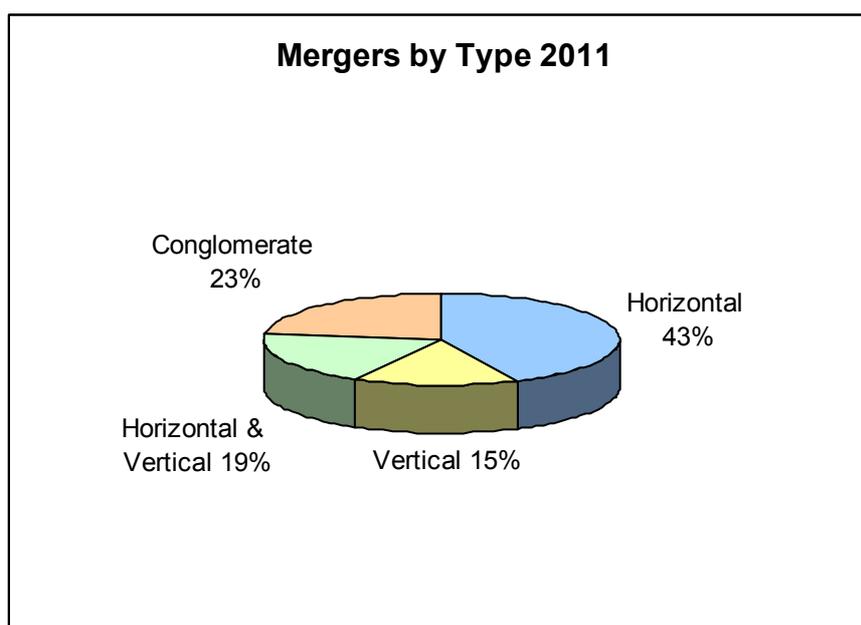
22. The Director General has the power to block a merger if the merger raises a reasonable concern of substantial harm to competition or the public. He can clear the transaction or approve it under conditions. The Director General's decision is subject to an appeal to the Antitrust Tribunal. The Antitrust Law sets a review period of thirty days, during which the Director General is required to reach a decision. The period can be extended by the Antitrust Tribunal or when the consent of the merging parties is granted. If the IAA does not decide within the prescribed time period, the merger is deemed to be compatible with the law. The moment the IAA receives a merger notification, it is classified by the Chief Economist corresponding to the degree of preliminary concern regarding the competitive issues that are raised ("green," "yellow" and "red," respectively).



Type of Decisions in Merger Filings since 2001

	Decisions	Approved	Conditioned	Blocked
2001	112	79%	18%	3%
2002	127	80%	16%	4%
2003	104	79%	18%	3%
2004	125	91%	9%	0%
2005	194	85%	14%	1%
2006	219	88%	10.50%	1.50%
2007	237	90.30%	9.30%	0.40%
2008	181	93%	7%	0%
2009	157	91%	8.30%	0.60%
2010	160	93%	6%	1%
2011	191	97%	2.6%	0.52%





2.2.2 Summary of significant cases

23. The following is a summary of several significant merger cases that were reviewed by the IAA or brought before Court during the period covered by this report:

- Lageen and Caniel Merger

On December 12th, 2010, the IAA decided to object to a merger between Lageen and Caniel, the two leading producers of tin cans for the local food industry. The IAA denied the merger as it would result in a monopoly with a 90% market share.

In March 2011, the parties appealed the decision before the antitrust tribunal claiming imports in the market pushed them to lower their prices, a claim the IAA dismissed due to the instable nature of the imports. The case has been heard by the Antitrust Tribunal and is awaiting a final decision from the court.

- Kav Manche Merger

On February 25, 2011, the IAA decided to block a horizontal merger between the software companies Kav Manche and Ionline. The two companies are the only developers and sellers of real time data software for professional use, specifically used by traders in the Tel Aviv stock exchange. The decision was based on the fact that the two companies have, for several years, been the only players in the market for real time data software, and the low probability of new entry into the market in the near future. A merger between the companies would have resulted in a 100% market share and a further reinforcement of the entry barriers.

- Delek Motors and Kamor

On October 11, 2011, the IAA Director approved the merger between the companies of Delek Motors and Kamor, which allows Delek Motors to purchase the activities of BMW in Israel. The merger was approved with the condition that Delek cannot hold the rights to importing cars and

spare parts from Chery, a Chinese company that is 50% owned by Kamor. Thus, the rights to Chery were sold to a third party. The merger with its conditions was agreed upon by all sides.

In addition to the 191 merger applications that were reviewed by the IAA, there were four more merger applications that were withdrawal before being investigated and one which the IAA opposed too.

3. Key Advocacy Activities

24. On top of its mandate to enforce the provisions of the Antitrust Law, the IAA serves as an expert advisory body to the Government and Knesset in matters which concern competition. Subsequently, one of the key capacities of the IAA involves offering its professional know-how and expertise to various Government bodies and disseminating competition principles among them. The IAA's advocacy efforts are also directed towards the business and legal communities as well as the public. In recent years, the IAA has been deeply involved, through advocacy work, in numerous initiatives to open markets to competition and to dissolve barriers to entry.

25. The IAA works together with government Ministries and other agencies to enhance market competition and cope with competition problems in various sectors of the economy. It also engages in discussions at the Parliament's Finance Committee and Economic Affairs Committee where its representatives present the competitive aspects relevant to various regulatory, legal and economic issues. The IAA has also been expanding its role in the general public, through conducting guest lectures at universities throughout Israel, holding forums with the senior management within conferences, and organizing specialized seminars. The following summarizes the main activities during the period covered by the report:

3.1 Public Procurement

26. In the area of public procurement, the IAA works with the Government's General Accountant, who oversees the government procurement process, to promote competition in public procurement. Following this cooperation, the General Accountant agreed in 2011 to instruct government procurement officers to request from all suppliers who take part in public tenders to submit (together with the tender documents) an affidavit in which they declare that there was no collusion, coordination or illicit information exchange between the bidders.

27. In addition, the IAA has organized workshops with public officials that deal with public procurement. The workshops are designed to inform those who are involved in the public procurement process about the potential risks involved with bid rigging and the legal implications.

3.2 IAA's conferences

28. The IAA held its annual conference in January 2012 (summarizing the activities of 2011) with the participation of Minister of Industry Trade and Labor, MK Shalom Simchon. The conference included multiple breakout sessions in which representatives from the IAA, the business sector and academia, discussed various issues and developments in antitrust policy and enforcement. IAA annual conferences are attended by lawyers, economists, academics, CEOs, prominent businessmen and government officials. The IAA introduced in its most recent conference final versions of the horizontal merger guidelines and merger remedies guidelines.

29. In addition to the Annual Conference, IAA Director General and senior management are invited regularly to lecture at different academic conferences as well as other forums, such as the Israel Bar Association, Manufacturers Association of Israel and The Israel Export Institute. The Authority has also been involved in developing conferences and workshops for the private sector, in order to educate businesses about changing issues in antitrust law and the economy.

3.3 *IAA's publications*

30. The IAA issues a yearly public report in Hebrew summarizing its activity in the past year, in which the IAA's management elaborates on its activity in the previous year. Most of the IAA's decisions are published on the IAA's website alongside the Antitrust Tribunal and Court decisions. The Director General also administers several statutory public registries which includes decisions regarding restrictive arrangements, mergers and monopolies.

31. The IAA published two key policy guidelines, namely, final versions of horizontal merger guidelines and merger remedies guidelines.

32. In addition, the IAA offers a detailed online database in both Hebrew (<http://archive.antitrust.gov.il/>) and English (<http://eng-archive.antitrust.gov.il/>). The database includes archives ranging from decisions of the Director General, court decisions, legislation and press releases. This database serves as a comprehensive central reference point for all employees as well as the Israeli and the world community regarding information on IAA activities.

4. **International cooperation**

33. During the reviewed period, the IAA continued to contribute to the various OECD working groups on specific themes such as horizontal mergers, the sharing of information among competitors, excessive pricing, and fairness of criminal and administrative enforcement. As a participating member of ICN working groups, the IAA has contributing to discussions about mergers, cartels, and monopolies. The IAA adds professional experience gained from Israel's antitrust proceedings to these working groups and continues to update policies in Israel based on international cooperation.

34. In addition, since 1999, the IAA has had an agreement of bilateral cooperation with the Department of Justice and Federal Trade Commission in the United States. As part of this agreement, the IAA sends representatives to the United States to participate in training sessions, and both parties are in contact regarding consultations. The IAA also works closely with the European Union and the competition authorities in its member states.

35. The IAA's professional staff has given lectures and held presentations at numerous workshops and conferences throughout the year and invites experts in competition law from around the world to give presentations to employees of the Antitrust Authority.

5. **Resources of the IAA**

36. The IAA budget for 2011 is 24.21 million NIS, or US \$6.93 million. As of 31.12.2011 the total number of employees was 83 staff (including 4 administrative employees who are not civil servants):

Economic Department	13 economists
Legal Department	29 lawyers (including 7 legal interns)
Criminal Investigations Department	21 investigators
Administrative Staff	14 (including IT and HR)
The Director General's Office	6
All staff combined	83 employees

37. It should be stated that 2012 is an exceptional year in terms of IAA's growth and organizational change, which includes most notably the establishment of a new economic research unit.

38. Since January 2012 the IAA has recruited over 25 new staff, most of which are economists and lawyers.