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**Directorate for Financial and Enterprise Affairs  
COMPETITION COMMITTEE**

## **Annual Report on Competition Policy Developments in Israel**

**-- 2016 --**

**21-23 June 2017**

This report is submitted by Israel to the Competition Committee FOR INFORMATION at its meeting on 21-23 June 2017.

**JT03423731**

## 1. Executive Summary

1. This report summarises recent developments in Israel's competition law and policy for the period of January 2016 through December 2016. It also provides an overview of some of the main enforcement activities of the Israeli Antitrust Authority (hereinafter – "the IAA") regarding the Restrictive Trade Practices Act, 5748-1988 (hereinafter – "the Antitrust Act") for that time period.

### Box 1.

The IAA is an independent government agency, which was established in 1994. Its mandate includes enforcement against anticompetitive restrictive arrangements and monopolies abusing their dominant position, merger control, regulation of collectively dominant firms, as well as market research and competition advocacy roles. The IAA has the power to prosecute criminal cases and its Director General can impose administrative fines upon certain violations of the Antitrust Act. 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 of Israel. Its mandate also includes enforcement of The Law for Promotion of Competition and Reduction of Concentration and the Food Law.

2. The IAA is striving to assume a pivotal role in making Israel's markets more competitive. In recent years, there has been a shift in IAA's mission and purpose. From focusing almost solely on the enforcement of the Antitrust Act, to prevent and eliminate anticompetitive practices by businesses, the IAA has increasingly focused on taking proactive measures to improve competition in the markets and on promoting pro-competitive policies and regulation.

3. Thus, in 2016, the IAA continued to invest considerable efforts in advocacy work and indeed achieved substantial accomplishments. The IAA takes an active role in the work of government committees aimed at removing competitive barriers. Regulators and policy makers turn to the IAA for advice because of its expertise and professional reputation, and give serious weight to the IAA's opinions and recommendations. Some examples from 2016 include a market study on fresh meat, a market study on quarry licensing a study on market definition in dairy products and a cooking gas report which was published on January 2017.

4. During 2016, the IAA continued to vigorously perform its primary role as a law enforcement agency. The IAA constantly invests in updating the available enforcement tools – through cooperation with other law enforcement units and legislation. Substantial efforts were invested this year in laying the groundwork for enforcement actions against monopolistic anticompetitive practices- and so, three enforcement cases regarding the abuse of dominance were published (one in 2016 and two in the beginning of 2017) in which administrative sanctions were imposed (one is still subject to a hearing) and 14 consent decrees were reached on different violations of the Law that did not require criminal enforcement. The IAA continues investing its efforts in enforcement against anticompetitive monopolistic behaviors, efforts, which already gave fruit in 2017.

5. The IAA pursues greater stringency in criminal punishment; notably, in 2016, the courts approved a plea bargain, which imposes severe punishments- nine months in prison in the Textbook Cartel case.

6. The Law for Promotion of Competition and Reduction of Concentration (the "Concentration Law") enacted in December 2014, determined that regulators allocating economic rights (e.g. licences, permits, government franchises and privatisations) must take into account competition considerations. During the past year, the Director General published the first list of rights which oblige regulators to consult with the Director General regarding these concerns prior to allocation of these rights. In addition, the Concentration Law formed the Committee for Reduction of Economy-Wide Concentration (headed by the Director General), which advises the government on the ramifications of the allocation of essential facilities regarding overall economic concentration in the economy. The Committee developed and published an innovative draft policy paper for public hearing, regarding the methodology for examining economy-wide concentration. The paper specifies the conditions under which the Committee will advise a regulator to refrain from allocating rights in essential facilities and stipulates it will focus on concerns arising from the potential of a concentrated entity with significant bargaining power to exert this power towards policy makers, while undermining public interests.

7. Finally, The IAA continued to carry out the important task of merger control, reviewing a total of 192 mergers in 2016. Four out of the mergers reviewed for approval were blocked by the Director General due to anticompetitive considerations; a merger in the envelopes market, a merger between two companies which operate online indexes for restaurants, a merger between Cellcom Israel Ltd. and Golan Telecom Ltd, two competing mobile telephone operators and a merger between Electra-Bar, a company that produces water dispensers, and Mei Eden.

8. Of these four decisions, two were appealed to the antitrust tribunal. The tribunal upheld one decision, and the other appeal was withdrawn by the merging parties.

9. In addition, 3 of the mergers reviewed were approved subject to conditions and 2 were abandoned by the parties after deliberations.

10. Moreover, to facilitate and assist the private sector in 2016 the IAA promoted a "fast track" for mergers that clearly do not raise any competition concerns. It is worth noting that in 2016, there were 24 mergers examined in this "fast track" (about 13% of all mergers), which were cleared after 3.6 days!

## 2. Changes to competition laws and policies

### 2.1. Senior Leadership Update

11. In March 2016 Ms. Michal Halperin was appointed to the position of Director General of the Israel Antitrust Authority. In January 2017 Mr. Yair Eilat was appointed to the position of Chief Economist of *the Israel Antitrust Authority*.

### 2.2. Summary of new legal provisions of competition law and related legislation

12. There were no substantial amendments to the Antitrust Act in 2016.

13. However, notably, in 2016 the Israel Antitrust Authority was substantially involved and provided input in 13 legislation proceedings in Parliament. *Inter alia*, the IAA participated in legislation proceedings of the Credit Data Law, 5776-2016; The Supervision of Financial Services (Regulated Financial Services) Law, 5776-2016; and the legislation proceedings of the Economic Plan Law (Statutory Amendments for the Implementation of the Economic Policy for Budget Years 2017-2018) (the chapters concerning energy, telecom, obligatory standard setting and transportation sharing services).

### 2.3. Summary of New Guidelines

14. In 2016, The IAA published Guidelines 1/16: The General Director's Considerations in Determining the Amount of Administrative Fines. These guidelines replace previous ones on the same subject from 2012. The current guidelines describe the methodology used in calculating the sum of administrative fines to be imposed in a given administrative enforcement proceeding. In essence, the Guidelines provide for the following four stages of analysis: 1. Determination of the potential maximum administrative fine; 2. Evaluation of the severity of the violation and determination of the base sum of the fine accordingly; 3. Adjustments to the base sum based on the violating party's behavior; 4. Adjustments to the base sum based on factors external to the violation. The guidelines also allow for the consideration of other relevant factors.

15. In addition, the IAA instituted a fast track for the review of "ultra-green" mergers – mergers that clearly do not pose a threat to competition. Mergers that are internally classified as "ultra-green" are reviewed in a reduced and expedited fashion. In order to increase the chance that the Authority would classify a merger as suitable for the fast track, parties to mergers are asked to supply the most detailed information possible in their merger notices and accompanying documents. During its first 6 months, the average time it took to clear a merger in the "ultra-green" track was 4.2 days, as compared to the average time of 20 days for clearing mergers that were reviewed in the regular manner and were not considered as raising significant competitive concerns.

16. During 2016, the IAA conducted a re-evaluation of Guidelines 1/14 on the Prohibition of Excessive Pricing by a Monopoly. These guidelines, which were published in 2014, reflected a significant change in the IAA's interpretation of the legislative prohibition on abuse of monopoly position through unfair prices. Until the 2014 guidelines, the IAA's policy regarding this prohibition was to focus on exclusionary unfair prices, such as predatory prices. The 2014 guidelines established that the IAA also views the charging of excessive prices by monopolies as a forbidden abuse of monopoly position, and provided a framework for enforcement. In April 2016 the General Director announced that the IAA would re-evaluate its policy on excessive pricing and submit the guidelines to a public consultation. The re-evaluation process included extensive public hearings, consultations with international experts and a seminar that the IAA organised, which presented speakers of various viewpoints. Following this process, in February 2017, the IAA published a new set of guidelines on the subject: Guidelines 1/17: The General Director's Considerations in Enforcing the Prohibition against Unfairly High Prices. The new guidelines state that, in principle, the charging of excessive, unfair prices may constitute an abuse of monopoly position; however, according to the enforcement principles in the 2017 guidelines, IAA's enforcement against excessive prices will take place only in exceptional circumstances, and as a last resort when competition cannot be restored.

## **2.4. Government proposals for new legislation**

17. The IAA published in 2016 Proposed Amendments to the Antitrust Law, in relation to Inspection of the IAA's Investigative File and Confidentiality of Information. The main goal of the proposed amendments is to clarify and improve the procedure for granting access to an appellant on IAA's decisions to confidential documents provided by third parties. The proposed amendments provide that the General Director may allow an appellant access to a third party's confidential information, under a default rule of access to outside counsel and experts only. The General Director may decide to divert from this default rule, and allow greater or lesser access to the information, in circumstances where such a diversion is justified. The proposed amendments clarify that the provider of information will be granted an opportunity to present its arguments to the Director General before a document is made available for inspection. In addition, both the appellant and the provider of the information have a right of appeal to the Antitrust Tribunal on the General Director's decision concerning access to the information.

## **3. Enforcement of competition laws and policies**

### **3.1. Actions against anticompetitive practices, including restrictive arrangements and abuses of dominant positions**

18. Severe antitrust violations of the Antitrust Act may be subject to criminal prosecution that may result in fines and prison sentences. Liability may be imposed on the corporation and its executives.

19. The civil-administrative remedies for infringements of the Antitrust Act include administrative fines, consent decrees, injunctions and court orders granted by the Antitrust Tribunal. The Director General has the power to declare a certain conduct as *prima facie* illegal, to issue rules of conduct to monopolies and to collectively dominant groups, and to impose administrative fines. In criminal cases, the antitrust authority can prosecute violators.

20. Engagement in a restrictive arrangement without prior authorisation of the Antitrust Tribunal is prohibited, unless the arrangement was specifically exempted by the Director General or is covered by a block exemption. In addition, certain arrangements enjoy statutory exemptions, *e.g.*, as restraints imposed by law, arrangements concerning agricultural produce (subject to certain conditions), and restraints that stem from intellectual property licensing (under certain conditions).

**Box 2.**

The Antitrust Act 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 considered a Monopoly.

The Act defines firms as “Concentration Group” when a small group of firms collectively possesses 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, if the following two conditions are met: (1) there is little competition between firms, or there are conditions for little competition; and (2) provisions issued by the Director General may prevent harm or a probable substantial harm to the public or to competition, or may substantially enhance competition or create conditions for considerable enhancement of competition. Conditions for little competition can include, inter alia, barriers to entry, combined with two or more of the following conditions: Switching costs, cross ownership or joint ownership among competitors, symmetric market shares, similarity of products or services, a large number of customers or suppliers and transparency of the main terms of trade among the group's members.

The Act defines a “restrictive arrangement” broadly 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 the competition. The Act also provides a list of arrangements which are deemed as restrictive arrangements, in particular, an arrangement involving a restraint relating to one of the following issues: the price to be demanded, offered or paid; the profit to be obtained; division of all or part of the market; the quantity, quality or type of assets or services provided. According to the Supreme Court's decision in the Shufersal case (handed during 2015) the irrefutable presumption that arrangements in this list are indeed restrictive arrangements applies only to horizontal arrangements, and not to vertical ones.

21. During 2016, the Director General decided requests for specific exemptions **for restrictive arrangements as follows:**<sup>1</sup>

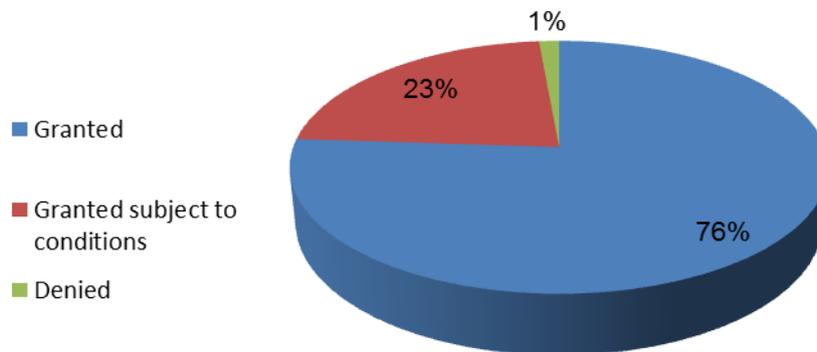
**Table 1.**

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Granted	Granted Subject to Conditions (Total)	Granted subject to both Behavioral and Structural Conditions	Granted subject to Structural Conditions	Granted subject to Behavioral conditions	Denied
54	16	0	0	16	1

<sup>1</sup> In addition to the data in the table and graph, which concerns decisions pursuant to the Antitrust Act, the Director General decided to grant 7 exemptions (one of which subject to behavioural conditions; no decisions that denied a request were given) pursuant to the Law for the Promotion of Competition in the Food Sector, 5775-2014.

Figure 1. Decisions in exemptions requests 2016



### 3.1.1. Summary of activities:

22. The IAA devotes extensive efforts and resources to enforcement against anticompetitive practices in a wide range of industries. The following illustrates some of the main enforcement activities which took place in 2016:

### 3.1.2. Description of Significant non-criminal cases (*Restrictive Arrangements, abuse of dominance and Compliance with Procedural Requirements*):

#### *Administrative fines on IEC:*

23. On February 2<sup>nd</sup>, 2016, the IAA issued the "Israel Electric Corporation" (hereinafter: "IEC") and three of its senior officeholders a notice of intent to impose administrative fines on them pursuant to section 50F of the Antitrust Act, and a notice of determination pursuant to section 43 of the act, for violating the act by abusing its monopoly position contrary to section 29A, and unreasonably refusing to supply, contrary to section 29 of the act. The penalties on the IEC, which are subject to a hearing, were 13 million NIS and the penalties on the office holders ranged between 65 thousand NIS to 165 thousand NIS.

24. The General Director found that the IEC denied certain services to large business customers who switched to purchasing electricity from private electricity producers. The service in question was assigning to large clients a Customer File Manager ("CFM") who provided them solutions regarding the transmission and distribution of electricity, in which the IEC is a monopoly and has exclusive control. The CFM co-ordinates with large clients, such as malls and factories, the times of power cuts and gives them accurate information as to how long repairs are going to last. These clients require the uninterrupted flow of electricity, and therefore this service is vital for them. Terminating this service may have a significant negative impact on competition, by discouraging the large customers from switching to private power producers.

25. In December of 2015, following a warning by the IAA, the IEC reinstated this service to customers who purchased electricity from private power producers. Following a hearing process, on March 6<sup>th</sup>, 2017, the General Director imposed the fine on the IEC

in the amount of 13 million NIS, and on 2 of the 3 senior officeholders, in the range of 110-165 thousand NIS. The IAA also issued a letter of intent to impose a fine on yet another senior officeholder.

*Approval of consent decree with Harel and Madanes:*

26. On March 7<sup>th</sup>, 2016, the **Antitrust Tribunal** gave the force of a judgement to a consent decree between the General Director and between Harel Insurance Company Ltd. (hereinafter: "**Harel**") and Madanes Insurance Agency Ltd. (hereinafter: "**Madanes**"). The consent decree included an obligation on the part of Harel and Madanes to cancel provisions in an agreement between them from 2009 which concerned non-competition in marketing of medical negligence insurance policies and provisions which gave Madanes exclusivity with Harel. In addition to cancelling those provisions, Harel made a commitment to pay the state treasury the sum of 4 million NIS and Madanes made a commitment to pay the state treasury the sum of 2.4 million NIS.

*Overall statistics regarding administrative fines:*

27. During 2016, the Antitrust Tribunal approved 9 consent decrees which were submitted to it (the consent decree between the General Director and Harel and Madanes, is one of them). The overall **fines** included in those decrees reached the sum of 7.4 million NIS.

28. In addition, the IAA imposed administrative fines in two cases. One was the IEC case described above, which totalled at 13.275 million NIS (as of March 6<sup>th</sup>, 2017; and a letter of intent was sent to another senior officeholder). The other case was an imposition of a 300,000 NIS fine on Shufersal Ltd. for allegedly violating the Law for the Promotion of Competition in the Food Sector, 5775-2014.

## 3.2. Mergers and acquisitions

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

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

#### **Box 3.**

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

- As a result of the merger, the share of the merging companies in the relevant market is in excess of fifty percent;
- 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 (in any market).

30. The Director General has the power to block a merger or approve it under conditions if the merger raises a reasonable concern of substantial harm to competition or reasonable concern of harm to consumers. The Director General's decision is subject to an appeal to the Antitrust Tribunal. The Antitrust Act 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 with the consent of the merging parties. If the IAA does not decide within the prescribed time period, the merger is deemed to be compatible with the Act.

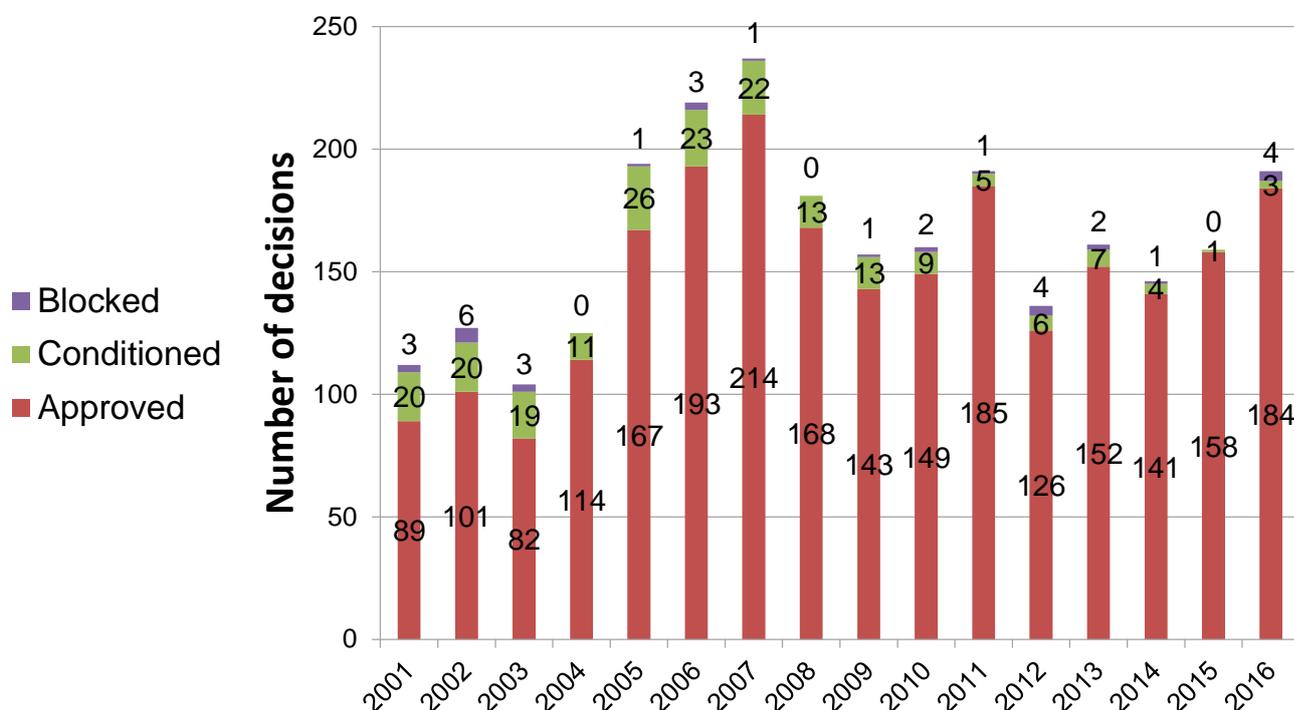
31. In 2016, the IAA had reached a decision in 192 mergers. Of the mergers reviewed, 4 mergers were blocked, 3 mergers were subject to conditions and 2 were abandoned by the parties.

32. The following table describes the type of decisions in merger filings since 2001:

**Table 2.**

	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%	10.5%	1.5%
2007	237	90.3%	9.3%	0.4%
2008	181	93%	7%	0%
2009	157	91%	8.3%	0.6%
2010	160	93%	6%	1%
2011	191	97%	2.6%	0.5%
2012	136	92.4%	4.6%	3%
2013	161	94.4%	4.4%	1.2%
2014	146	96.6%	2.7%	0.7%
2015	159	99.4%	0.6%	0%
2016	191	95.3%	1.6%	2.1%

Figure 2.



### 3.2.2. Summary of significant merger cases

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

#### *Bitan Ba'ir Retail Ltd. and Mega Retail Ltd*

34. In June 2016, a merger transaction was approved between Bitan Ba'ir Retail Ltd. and Mega Retail Ltd. Mega and Bitan are both supermarket chains which, prior to the merger, held close to 200 supermarket branches in Israel combined. In light of Mega's financial situation and due to the competitive effects of the merger, the IAA accelerated its efforts and concluded the merger examination in only a month and a half.

35. The merger review included a wide examination of the competitive concerns at the national level, primarily vis-à-vis food suppliers, as well as at the geographical level due to the local nature of consumer demand with regard to supermarkets.

36. The economic examination revealed that the merger raised competitive concerns in a number of geographic areas, in which it was found that the merged parties would be able to exercise market power. In these areas, the IAA ordered the parties to divest stores to other retailers in order to remedy the competitive concerns raised.

37. Aside with the geographic concerns, the examination revealed that the merger raised competition concerns with regard to fruit and vegetable suppliers. Prior to the merger, Bitan purchased fruits and vegetables through a company owned jointly by Bitan

and by a dominant Israeli fruit and vegetable wholesaler, while Mega purchased fruits and vegetables for its stores independently. In light of this, the merger raised the concern that it would make Bitan extremely dominant in purchasing fruits and vegetables thus allowing Bitan to exercise market power towards farmers. Therefore, the IAA ordered Bitan to dissolve its ties to fruit and vegetable prior to completing the merger.

*Gvaram Quality Envelopes Ltd. and Emka 1994 envelopes Ltd.*

38. In October 2016, the IAA blocked a merger between Gvaram Quality Envelopes Ltd. ("Gvaram") and Emka 1994 envelopes Ltd. ("Emka"). The two companies manufacture, market and sell printed envelopes and envelopes without printing. Gvaram wanted to purchase all of Emka's production and printing equipment, as well as the agreements that apply to Emka's activities in the envelopes market.

39. The IAA examination revealed that the two companies have significant advantages over competitors, in the scope and quality of their production and printing equipment, which enables them to produce a wide variety of types of envelopes at a significantly lower cost than the competitors. For customers, who purchase a large number of envelopes of different types, these advantages turn the merging into units that can provide the service required for them. The examination revealed that import of printed envelopes is not a viably competitive alternative.

*Zap Group Ltd. and Click 2Eat Ltd.*

In April 2016, the IAA objected to a merger between Zap Group Ltd. and Click 2Eat Ltd.

40. The two companies operate online indexes, which provide services to two main audiences: one, advertising services and the other, restaurant search services for Internet users. It was found that apart from the parties to the merger, there is only one other close competitor in the market, with a small market share. In addition, it was found that the value of advertising in an online index for restaurants increases as there are more surfers entering it, and vice versa - the more indexed restaurants on the online site, the greater the value for surfers. This feature creates an expansion barrier for new and small sites because they need to attract customers from both sides of the market - restaurants and surfers, simultaneously.

41. In addition, the two companies that sought to merge provide additional services to restaurants and diners, such as restaurants hosting software and online food ordering services. The Authority's examination indicated that the market shares of the parties in these fields are significant and that there are substantial entry and expansion barriers to the relevant markets.

42. The Authority's examination indicated that the parties to the merger are prominent players in markets with significant barriers to entry and expansion, so it is likely that as a result of the merger competition would be harmed. Therefore, the merger was blocked.

*Keter and Modan*

43. In May 2016, The IAA approved a merger between two companies that publish books, Keter and Modan, after the Authority's examination found that the merger does not raise competitive concerns.

44. The Economic Department carried out a broad examination and analysis of the financial data of all companies related to the industry. The examination focused on two

main sectors: the retail sector and the publishing sector. The IAA's main conclusion is that there is fierce competition between the bookstores that is beneficial to the consumer. The big publishers' holdings in the chain stores are one of the tools that helps them distribute large quantities of books at relatively low prices, which helps competition in the field.

45. There are many active publishers in Israel, including a number of relatively large publishers - Kinneret, Yediot, Modan, Keter, Hakibbutz Hameuchad and Am Oved - as well as a long list of smaller publishers. The competition between publishers is mainly expressed in an attempt to attract quality source writers or acquire translation rights in wanted books.

46. There are two main book retailers Steimatzky and Tzomet Sefarim that are both held by publishers. The Steimatzky chain has about 130 stores and the Tzomet Sefarim chain has about 95 stores. There are a small number of smaller book chains, the most prominent of which are the Academon chain of 11 bookstores and the Tamir Books chain of four stores in Jerusalem. The rest of the bookshops include between one shop and two stores.

47. In recent years, there has been a decline in the market share of the two large chains, and the trend of direct distribution channels is growing.

48. One of the questions that the IAA examined in the framework of the merger examination was whether the addition of the Keter Publishing House to the existing ownership structure (as mentioned above, Kinneret and Modan already hold about 2-3 of Tzomet Sefarim) will harm competition and the public. The Authority's conclusion is that the addition of Keter is not significant and does not harm competition.

49. Despite the fact that there are only two chains in which the public buys most of the books, there is fierce competition between them. The competition can be explained by the existence of vertical ownership (publishers holding Tzomet Sefarim) so that it is in the publisher's interest - after investing in publishing the book - to distribute its books in more significant quantities, leading to a reduction in book prices relative to prices Those retailers without the ownership of publishers would want to sell.

#### *Cellcom Israel Ltd. and Golan Telecom Ltd*

50. On April 2016, the IAA opposed a merger between Cellcom Israel Ltd. and Golan Telecom Ltd, two competing mobile telephone operators.

51. Golan Telecom entered the market as part of a major regulatory reform in the mobile telephone market that included a tender for new operators in 2012. The reform resulted in fierce competition between the new mobile operators and the established large operators (including Cellcom), causing a sharp decline in consumer prices. The analysis conducted by the IAA revealed that Golan was perceived by the established cellular operators as a maverick, who had caused the fierce competition in the mobile market and forced them to react competitively. As such, Golan had consistently offered lower prices to end users in comparison to other companies. As a result, Golan managed to rapidly gain a large market share.

52. The main concern raised by the IAA was that as a result of the merger between a maverick and a large, well-established operator, the market would revert to the conditions that existed prior to the entry of Golan. The concern was that in the absence of the maverick, the other mobile operators would have a weaker incentive to compete against

each other. Moreover, a concern was raised that following the merger, Hot, another new entrant to the mobile cellular market at the time, would face lower competitive restraint and thus have a weaker incentive to compete. Accordingly, the IAA's examination indicated that the merger was likely to cause significant harm to competition and therefore decided to oppose it.

53. The companies appealed to the antitrust tribunal and withdrawn its appeal after reaching agreements in another transaction.

54. The investigation included analysis of quantitative data and internal documents received from the cellular players as well as interviews with relevant parties.

*Mei Eden Bar Ltd. and Electra Consumer Products (1951) Ltd.*

55. In March 2016, the Director General of the Israeli Antitrust Authority objected to a merger between Mei Eden Bar - First Class Service Ltd. and Electra Consumer Products (1951) Ltd. The merger concerned the sale of Electra's activity in the water purification bar sector to Mei Eden. An economic examination of the market revealed that consumers and market players see a distinction between companies marketing branded water bars with a full-service model and companies selling generic water bars, which are usually sold separately from spare parts and repairs. The examination revealed that the parties to the merger belong to the former category, along with Strauss Water, which is the leading company in the field and which markets its products under the "Tami 4" brand. The examination also revealed, inter alia, that Electra's entry into the market years before the merger had significantly increased the level of competition Strauss Water faced. In light of the above, the merger would in effect have reduced the number of competitors from three to two, thus raising a competitive concern of tacit collusion. It should also be noted that throughout the merger examination, Electra claimed that the merger should be approved based on the "failing firm doctrine" in light of the significant losses of its water division. These claims, along with similar claims raised by Mei Eden, were not accepted and the merger was not approved. At the end of May 2016, the parties filed an appeal to the Antitrust Tribunal. In October, the Tribunal rejected the appeal and affirmed the Director General's decision.

### **3.3. Criminal Investigations and Cases:**

#### *3.3.1. Cartel of Organizers of Youth Delegations to Poland*

56. The Israeli Ministry of Education (MOE) organizes youth delegations to memorial sites and concentrations camps in Poland as a very important part of the Holocaust memorial studies. During 2015 the IAA gathered evidence which indicated the existence of a cartel between the travel agencies handling these delegations. The covert intelligence gathering stage was followed by dawn raids, arrests and interrogations, which were conducted at the very beginning of 2016. The investigation continued all through 2016 and is still ongoing. The police also took part in this investigation, thus enabling enhanced enforcement, as it seized monies, which were part of money laundering crimes, and investigated corruption crimes that were exposed during the investigation, such as fraud and breach of trust by public officials.

#### *3.3.2. Bid Rigging Cartel of Infrastructure Tenders*

57. The IAA conducted this investigation together with the Israeli National Fraud Investigation Unit (INFI) of the Israeli Police: The INFI held a covert investigation

relating to corruption suspicions regarding illegal relations between a large-scale contractor and several heads of local municipalities. During the covert stage of the investigation, the INFI found evidence that the contractor was part of a bid-rigging cartel upon which they asked the IAA to join the investigation. Dawn raids, arrests and seizing monies that were part of money laundering crimes, were all held on December 2015, marking the beginning of IAA and INFI's overt investigation that continued through 2016 and is still ongoing. The investigation included interrogations of suspects and witnesses and additional dawn raids.

### *3.3.3. The Cooking Gas cartel*

58. During September 2016 the IAA carried out dawn raids, investigations and arrests of officials in Israel's largest cooking gas companies. The companies were suspected of colluding in order to eliminate smaller and new competitors from the market. The investigation is still ongoing.

### *3.3.4. The Gaming Shops Cartel*

59. During September 2016 the IAA launched an investigation regarding a price fixing cartel between several gaming shops which sell game-consoles and the games for consoles. The investigation stage concluded at the beginning of 2017, and the case is now under review of the IAA's legal department.

### *3.3.5. Computer Servers Cartel*

60. The IAA revealed a suspected extensive cartel among suppliers of computer servers, data storage servers and network servers. The suspicions included 5 of the Major computer suppliers in Israel, and dozens of other smaller companies. The investigation began on May 2012 and covered suspicions of price fixing of over 150 bids offered to potential clients ranging from smaller businesses to governmental large scale bids. The case was transferred to the IAA's legal department on 2014, and during 2016 investigative actions were carried out. Indictments were issued during 2017.

### *3.3.6. Bid rigging in bids for the maintenance of meteorological stations – verdict*

61. In 2012 the IAA Indicted suppliers of services for meteorological stations and two executives for bid rigging in bids for the maintenance of meteorological stations in the Southern and Northern parts of Israel. In 2016 the Jerusalem District Court found all three companies and their executives guilty of the offences they were charged with, sentencing one CEO to 3 months of community service and a fine of 150,000 NIS (approx. 40,000 USD). Another CEO was sentenced to two months of community service and a fine of 100,000 NIS (approx. 27,000 USD), the companies were each fined 250,000 NIS (approx. 70,000 USD). In 2017 The Supreme Court rejected an appeal made by the defendants.

### *3.3.7. co-ordinating fees in the Veterinarian Association – verdict*

62. In February 2016, Jerusalem District Court sentenced the Association of Veterinarians to a fine of 80,000 NIS (approx. 22,000 USD) after it was convicted of co-ordinating fees. The court found that in 2009 and 2010, the Association had published a detailed recommended price list for the treatment of pets.

### ***3.3.8. Book Distributors Cartel – verdict***

63. In 2015 the IAA indicted three book distribution companies and their executives for bid rigging in bids for the Ministry of Education.

64. In 2016, the Jerusalem District Court approved a plea bargain, convicted and sentenced the three book distribution companies and their executives. One CEO was sentenced to 9 months in prison, a fine of NIS 100,000 (approx. 27,000 USD) and a bar from being a company director for one year. His company was fined a fine of 500,000 NIS (approx. 138,000 USD). Another CEO was sentenced to 8 months in prison, a fine of NIS 75,000 (approx. 20,000 USD) and a bar from being a company director for three years. His company was fined a sum of 375,000 NIS (approx. 104,000 USD). The third CEO was sentenced to 6 months in prison, a fine of NIS 65,000 (approx. 18,000 USD) and a bar from being a company director for one year.

### ***3.3.9. Launderettes cartel - verdict***

65. In 2013 the IAA indicted the managers and owners of two launderettes, engaged, in bid rigging. In 2016 the Jerusalem District Court found the two companies and their executives guilty of bid rigging. One CEO was sentenced to 4 months of community service and a fine of 100,000 NIS (approx. 27,000 USD) and a bar from being a company director for three years. His company was fined a sum of 150,000 NIS (approx. 40,000 USD). Another CEO was sentenced to one month of community service and a fine of 50,000 NIS (approx. 14,000 USD) and a bar from being a company director for three years.

66. The court acquitted the two CEO's of the offense of attempting to fix a bid after determining that their actions did not meet the necessary level for that offence.

### ***3.3.10. Bid-rigging over the purchase of real estate owned by the Jewish Agency- verdict***

67. In 2015, The IAA indicted four companies engaged, in bid rigging regarding an asset belonging to the Jewish Agency. In 2016, the Tel Aviv District Court convicted a lawyer on charges of assisting a cartel, and acquitted a defendant from being part of a cartel.

68. The District Court sentenced the lawyer to three months in prison and a fine of NIS 50,000 (approx. 14,000 USD). Another defendant was found guilty in a plea bargain and was sentenced to four months of community service and a fine of NIS 50,000 (approx. 14,000 USD). The case is still pending against two more defendants.

### ***3.3.11. Industrial bakeries cartel – verdict and appeal***

69. In 2012 the IAA pressed charges against the leading bakeries in Israel and their executives in bread cartel case.

70. In 2016 the Jerusalem District Court found two of the companies and their executives guilty of the cartel.

71. The Jerusalem District Court sentenced the defendants as following: The two executives were each sentenced to 12 months in prison and a fine of 700,000 and 200,000 NIS (approx. 195,000 USD and 56,000 USD) and were barred from being a company director for five years. The companies were fined a sum of 1,400,000 NIS, 700,000 NIS

and 400,000 NIS (approx. 390,000 USD, 195,000 USD and 112,000 USD). The case is still pending against additional defendants.

72. The defendants appealed the verdict, and during 2017 The High Court reduced the prison sentence to 6 months, 3 behind bars and 3 months of community service. The fines were not changed.

### **3.4. Monopolies and collective dominance**

#### ***3.4.1. The Port of Ashdod:***

73. In December 2015 the Director General declared Ashdod Port a monopoly under Section 26(a) of the Antitrust Act in each of the three shipping lines used to import motor vehicles to Israel from Europe and the United States. The Director General further determined that Ashdod Port had illegally abused its dominant position by extending illegal retroactive discounts. The Director General imposed a 9 million NIS (approx. USD 2.3 million) financial sanction on Ashdod Port (the highest financial sanction imposed to date) and additional financial sanctions on the port's chief executive officer and vice-president of customer service.

#### ***3.4.2. Antitrust Tribunal upheld the declaration of El Al as a monopoly:***

74. In June 2016, the Antitrust Tribunal upheld the Director General's decision of September 2012 to declare El Al Israel Airlines Ltd. ("El Al") a monopoly in the provision of airline security services abroad.

75. Israel's General Security Service ("GSS") requires all Israeli airlines operating international flights to acquire security services provided exclusively by El Al. In 2010, El Al announced it would no longer provide these services to its competitors, namely Arkia Israeli Airlines and Israir Airlines. Concerns El Al might abuse its power to harm competition led the Director General to declare it a monopoly, albeit El Al's decision to continue providing security services to Arkia and Israir following an agreement reached between El Al and the State.

76. El Al's main argument in its appeal to the Antitrust Tribunal was that the services are de facto provided by the State, and that it has essentially no control over the security department, which operates according to GSS guidelines. However, in its decision to uphold the Director General's decision, the Tribunal held that "the evidence shows that El Al has the ability to make use of its monopoly power in the provision of security services abroad in order to harm its competitors. An outstanding example is El Al's ability to refrain from the provision of services". The Tribunal pointed out that "the State's involvement in the provision of the services does not preclude all concerns regarding the abuse of monopolistic power. This is an essential service for Israeli airlines' commercial activity, an infrastructure without which they would be able to operate flights only within Israel."

## 4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reforms, trade and industrial policies

### 4.1. Key Advocacy Activities

77. In addition to its mandate to enforce the provisions of the Antitrust Act, the IAA serves as an expert advisory body to the Israeli government and parliament in matters that 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 reduce barriers to entry.

78. The IAA works together with government ministries and other government agencies to enhance competition and cope with competition problems in various sectors of the economy. The IAA 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 as an advocate to competition to the general public, through guest lectures at Israeli universities, holding forums including the IAA's senior management within conferences, organising specialised seminars.

### 4.2. Market Studies

79. The Antitrust Law provides the Director General with the authority to conduct market studies in sectors of the economy, including examination of the existence of competition failures and barriers to competition. The Director General may hand his reasoned conclusions and recommendations to the minister in charge of the examined sector and to the Minister of Treasury, and in a sector that is regulated by another agency – also to the head of that agency. The General Director executes his authority concerning market studies through a specialised division of the economics department.

80. In 2016, The Antitrust Authority conducted the following market studies:

- In August 2016 the Competition Division published the final version of the market study on fresh beef products. The Israeli Antitrust Authority (IAA) recommended expanding tariff-free quotas for import of fresh beef products and it also recommended that the Ministry of Economy and Industry refrain, at this stage, from allocating the quotas to dominant players in local production of fresh beef products. In addition, the IAA recommended that an allocation of financial support grants to small and medium-sized slaughterhouses be considered, with the goal of reducing the gap in capability and infrastructure between these producers and the dominant players in the industry. Those recommendations were examined and assimilated in the work of the relevant units under the Ministry of Economy during 2016.<sup>2</sup>

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<sup>2</sup> The full report is available, in Hebrew, at <http://www.antitrust.gov.il/subject/195/item/34172.aspx>

- In August 2016 the IAA published a draft report for public hearing regarding a methodology for defining geographical concentration in the aggregate quarrying sector. The draft presents a methodology developed to evaluate the geographical concentration within this market from the perspective of the concrete plants. The draft offers several recommendations. The main recommendations stress the need to increase aggregate supply and to consider the implications of allocating a quarry in a tender (and more specifically the royalties offered by the participants) on the competition in that area. In addition, the draft suggests that in areas where concrete plants face high concentration levels, splitting cross ownerships of quarries should be considered. Since the publication of the draft the IAA has been in touch with relevant bodies in the government in order to promote the implementation of the recommendations. The IAA also conducted public hearings, where various stakeholders presented their comments. A final version of the methodology is expected to be published in the second half of 2017.
- In January 2017, the Israel Antitrust Authority published a final report on cooking gas market. The report includes the steps to be taken to promote competition in the Cooking gas market, as part of the government's efforts.
- The report revealed that there are competition failures in the cooking gas supply market to the customers who consume through a central gas system; in particular it was found that there are high barriers to entry and expansion limited local production capacity and difficulties of small suppliers to import cooking gas.
- In the framework of the report, the IAA focused its conclusions on two main issues: first, building a storage infrastructure for domestic gas in a way that will allow small suppliers of domestic gas to store the imported gas, and the other is easing the restrictions on small suppliers.<sup>3</sup>

### 4.3. Consultation to Government

81. The IAA was an active member in a number of government committees and inter-ministerial teams aimed at increasing competition in common financial services, with a focus on the consumer credit market (households and small businesses) and electronic payment services, including payment cards. As part of the process, the IAA advocated and initiated, together with other government bodies, the legislative amendments detailed in sections 1.2 above.

82. Members of the IAA participated in a team responsible for distributing tariff-free quotas for dairy and beef products. The IAA provided the team with an expert opinion that led to the exclusion of the dominant local incumbents from participating in the allocation in order to prevent potential harm to competition and encourage the entrance of potent competitors. Furthermore, in dairy products, the team designed an auction that was targeted directly at reducing the price to end consumers.

83. In order to promote competition through procurement auctions held by the government, the IAA initiated in 2016 a new collaboration with the Accountant General Division in the Ministry of Treasury (AGD). The pilot project focused on auction for office supplies, a category of products that the IAA had prior acquaintance with due to a merger analysis that took place the previous year. The IAA's recommendations included, inter alia, a recommendation that allows small suppliers to become potential bidders. The

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<sup>3</sup> The full report is available, in Hebrew, at <http://www.antitrust.gov.il/subject/195/item/34472.aspx>

recommendations will be adopted by the AGD in future auction, which is expected to be concluded at the end of July 2017.

84. In addition, a team of employees of the IAA assists the Director General in carrying out responsibilities under the Law for the Promotion of Competition and Reduction of Economic-Wide Concentration, 5774-2013 ("The Concentration Law"). Under the Concentration Law, the Director General is the chairperson of the Committee for Reduction of Economic-Wide Concentration, which is to advise the government on ramifications of the allocation economic rights in essential facilities (through licenses, permits, government franchises and privatisations) on overall economic concentration in the economy.

85. During the past year, the Director General published the first list of rights, which oblige regulators to consult with the Director General regarding these concerns prior to allocation of these rights.

86. In 2016, the Committee for Reduction of Concentration (headed by the IAA's Director General) developed and published a draft policy paper for public hearing, regarding the methodology for examining economy-wide concentration in the Israeli economy. The paper specifies the conditions in which it will advise a regulator to refrain from allocating rights in an essential infrastructure to a corporation considered a "concentrated entity". The document specifies that the committee will focus on concerns arising from the potential of a concentrated entity with significant bargaining power to exert this power towards policy makers, in order to gain advantages that are not derived from its economic efficiency, while undermining public interests. The methodology presented offers an original conceptual framework for this phenomenon with no similar work existing around the world.

87. During 2016, the Committee for Reduction of Concentration published 4 opinions in various cases, inter alia; an opinion opposing the allocation of an exploration license for oil shale in the Rotem Area to Israel Corp. Israel Corp is one of Israel's largest and most influential business groups, a dominant player in various areas of natural resources and energy industries.

88. Other advocacy efforts the IAA took in 2016 included seminars to procurement officials in order to raise awareness about bid rigging and assist them in identifying potential violations of the Antitrust Act.

## 5. Resources of the IAA

### 5.1. Resources overall (current numbers and change over previous year):

89. Annual budget (NIS and \$) 61,000,000 NIS, about \$15,000,000

**Table 3. Number of employees**

Economists	35
Lawyers	43
Other professionals - investigators	30
Support staff – administrative staff and Director General's office (including IT)	27
All staff combined	135

90. Human resources applied to:
- Enforcement against anticompetitive practices
  - Merger review and enforcement
  - Advocacy efforts
91. Periods covered by the above information: 2016

#### 6. Summaries of or references to new reports and studies on competition policy issues:

- Market study on fresh beef products (in Hebrew) **Error! Hyperlink reference not valid.**
- Methodology for defining geographical concentration in the aggregate quarrying sector (in Hebrew) <http://www.antitrust.gov.il/subject/166/item/34176.aspx>
- Market study on cooking gas <http://www.antitrust.gov.il/subject/195/item/34472.aspx>