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More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

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Israel

1. Regulators in Israel – Background

1. The regulatory ecosystem in Israel is comprised of a wide range of regulators differing from one another in their authorities, autonomy, goals and methods of regulation. This ecosystem also shifts periodically, with the creation of a new regulator, the passing of a law granting new powers to an existing regulator or the transfer of authorities from one regulator to another.
2. As will be elaborated below, there are two primary types of regulators in Israel: government ministries and independent regulators of varying types.
3. Government ministries, as in other jurisdictions, are generally responsible for implementing the policy formulated by the government chosen by the parliament (Knesset). Accordingly, they are sector-specific executive bodies, subject to the minister, responsible for that defined area of activity. Government ministries have a broad array of authorities, powers and functions, including the responsibility for its own budget.
4. Alongside the government ministries, Israel has different types of independent regulators. These are public units in charge of regulating a specific area and/or with providing a specific public service. Like government ministries, independent regulators are responsible for regulating a certain area of public life, however they tend to be more independent, at various degrees, in terms of setting and implementing policy.
5. Independent regulators in Israel can be divided into two types: statutory corporations and auxiliary units. A **statutory corporation** is a semi-autonomous legal entity that its establishment, as well as its authorities and objectives, are defined by a specific law.¹ Israel has dozens of statutory corporations. Notably, a statutory corporation is a part of the public service sector, however it constitutes a separate legal entity than that of the state, hence allowing it managerial flexibility and a relatively high level of independence, subject to the specific law under which it was established². A statutory corporation may hold quasi legislative, executive and judicial powers. Its independence may be administrative, budgetary or both. The purpose of statutory corporations, is to act to fulfill the purpose of the specific law under which they were established. Such bodies include the Bank of Israel; the Securities Authority; statutory corporations responsible of the public and private media broadcasting; Israel Broadcasting Authority; Israel Innovation Authority; Israel Airports Authority; National Insurance Institute; the Council for Higher Education; the Israeli Employment Service; and more.
6. The second type of independent regulator in Israel is an **auxiliary unit**. An auxiliary unit is defined as a unit within a Ministry which endowed with administrative authorities of the Ministry, specific to them.³ The level of independence of an auxiliary unit

¹ See in this regard, *inter alia*, the [Draft Public Corporations Law, 2013](#) (Hebrew).

² Ibid.

³ See for instance, the [Civil Service Law \(Discipline\), 1963](#), Section 1. Despite the differences between the two definitions, the establishment of some auxiliary units, as well as their authorities, are defined by a specific law, just like statutory corporations.

differs from case to case. The ICA is an auxiliary unit. Other auxiliary units include the public hospitals in Israel; the Government Companies Authority; the Capital Market, Insurance and Savings Authority; the Civil Aviation Authority of Israel; Israel Tax Authority; and more.

7. An example of a recently established independent regulator is the Capital Markets, Insurance and Savings Authority, which was transformed from a division of the Ministry of Finance into an auxiliary unit, responsible for regulating pensions, insurances and providers of regulated financial services.⁴

2. The Interfaces Between the ICA and the Regulators

2.1. Background: the ICA's Advocacy Work – Sectoral Expertise

8. The ICA invests significant resources and thought in active pro-competitive advocacy vis-à-vis other regulators and acts to realize this via a variety of channels. Notably, after years during which this area was handled by different departments in the ICA, the Markets Department of the ICA ("**the Markets Department**") was established *inter alia* for this purpose at the end of 2018. The Markets Department is responsible, in addition to merger review, to advise government offices and parliamentary committees on competitive issues and to promote pro-competitive advocacy. This includes formulating steps needed to protect or advance competition in each area of responsibility, whether by using the General Director's authorities or by counseling other governmental bodies or by participating in intra-governmental parliamentary committees. The Markets Department is comprised of five teams of economists and lawyers, each specializing in a specific sector: Communications and IP; Transportation; Energy and Environment; Finances; and Food and Retail. Members of the department take part in intragovernmental committees, participate in legislative processes, represent the ICA before the Ministerial Committee for Legislative Matters and in parliamentary committees and provide sectoral-specific advice to the various government agencies.

9. Indeed, entrusting the ICA's advocacy mission with specialized teams, lies with the notion that advancing competition principles and reform, as well as formatting successful counsel to the government, including vis-à-vis sectoral regulators, requires both expertise and knowledge specific to those sectors.

2.2. Interface with Regulators – the Legal Framework

10. As regard the legal framework of interface between the ICA and the regulators, the ICA has been granted a broad array of advisory and decisive roles by law in a variety of sectors. Generally, the ICA has two primary types of authorities: broad authorities that do not relate to any specific sectoral field of responsibility and authorities that relate to competition in a particular sector.

11. The ICA's broad authority to advice upon competitive issues, which is not linked to a specific field of responsibility, is based in two main laws: the Economic Competition

⁴ [Financial Services Supervision \(Insurance\) Law, 1981.](#)

Law, 5748-1988 ("**the Competition Law**")⁵ and the Law for Promotion of Competition and Reduction of Concentration 5774-2013 ("**the Concentration Law**")⁶.

12. According to Section 44A of the Competition Law, which was passed as part of the 15th amendment of the law in 2014, the General Director may conduct examinations of the level of competition in various sectors of the economy, including examination of the existence of failures in competition and barriers to competition.⁷ Additionally, the General Director may forward the reasoned conclusions to the relevant authorities and shall publish the conclusions of the ICA examinations on the website and in any other manner he sees fit.

13. The Concentration Law was passed in 2013 to implement the recommendations of the Government Committee to Encourage Competitiveness in the Economy. The law deals with the duty of every government ministry or sectoral regulator to weigh considerations of competition in their sector when considering privatization or allocation of rights relating to fields with a limited number of players, due to their nature, economic value or legal status. The law sets out a number of rights that require consultation with the General Director of the ICA prior to allocation, including rights that the state allocates in sectors such as energy and infrastructure, communications, transport, banking and more. In addition, the General Director has the authority to add additional rights to the list, if their allocation may significantly affect competition. All this is irrespective of the regulator's own mandate to oversee its sector.⁸

14. Alongside the ICA's broad authorities, the ICA also has semi-regulatory authorities, which are to some degree parallel to those of the sectoral regulator. In addition to the ICA's "traditional" authorities under the Competition Law, including review of mergers and restrictive arrangements brought before the General Director for approval, the ICA has been granted various authorities in specific sector. For example, the Law for Fuel Industry Law (advancement of Competition) – 1994 ("**the Gasoline Law**") was passed to limit the contracts between gasoline companies and gas stations. Under this law, if a gasoline company wants to build a gas station or sign an exclusive agreement with an existing station within a certain distance of an existing station selling that company's gasoline, it must receive specific approval from the General Director. If the General Director is convinced that the agreement will not significantly harm competition in that area, she may approve the agreement.

15. Another example of semi-regulatory sectoral authorities is **the Law for the Promotion of Competition in the Food Sector, 5775-2014**, passed in 2014 ("**the Food Law**"). The purpose of this act was to promote competition in the food and consumer goods sector, in order to decrease consumer prices. In order to enforce the various prohibitions and requirements of the law, it grants the General Director criminal and administrative tools to enforce the sections of the law under her authority. The ICA's work under the Food Law includes approving the opening new supermarkets by large chains, providing a specific exemption from the application of the law, publishing rules and guidance on implementation of the law and granting fines to companies which violated the law. Notably,

⁵ [The Competition Law, 1988](#).

⁶ [The Concentration Law, 2013](#).

⁷ [The Competition Law, 1988](#), Section 44A(a).

⁸ [The Concentration Law, 2013](#), Sections 10-14.

while under the Gasoline Law the ICA acts in parallel to an independent sectoral regulator responsible for overseeing the market, its role under the Food Law takes place in a "regulatory vacuum", since there is no specific regulator for this sector.⁹

16. Alongside the ICA's semi-regulatory authorities, some regulators are obligated to consult the General Director under a specific law. Such obligations, for instance, appear in the Credit Data Law, 2016¹⁰, the Banking Law (Licensing), 1981¹¹, the Natural Gas Law, 2002¹² and others.

17. Finally, sectorial regulators also voluntarily consult the General Director based on the experience of the ICA in competitive analysis, in areas where there is no legal obligation for them to do so. Such consultation may appear during a process of formulation a reform, a law, a tender for bids or any other regulative decision. This is based on cooperation and participation in intragovernmental committees and focuses on areas where our recommendations may have particular competitive impact.

3. Competition Advocacy and the Various Types of Regulators

18. As also specified above, the ICA is intensively active in advocacy, vis-à-vis the various types of regulators, including independent sector regulators. *Inter alia*, the ICA takes an active role in the work of government committees aimed at removing competitive barriers. Some recent examples of advocacy work include advancing reform and consulting in the electricity sector in Israel – *inter alia* vis-à-vis the Electricity Authority (a statutory corporation) and the Energy and Water Resources Ministry; consulting on the issue of advanced payments methods - *inter alia* vis-à-vis the Ministry of Finance and the Capital Market, Insurance and Savings Authority (an auxiliary unit); consulting on matters arising from the separation of the Israel credit card companies from Israeli banks - *inter alia* vis-à-vis Bank of Israel (a statutory corporation); consulting the Ministry of Finance and Ministry of Economy on the imposition of an antidumping levy on cement, and on many additional matters.

19. Notably, the ICA's practical experience with advocacy has taught that the ability to advance competition largely depends on how important that goal is to the regulator itself, *inter alia*, in view of the goals and sector under its responsibility, and how much the regulator itself identifies with the positive outcomes of competition in its sector – rather than whether the regulator is independent or not. A regulator's identification with competitive considerations may arise from competition being set as one of its goals by law, from the professional views of its professionals or from the views of the person heading the body at any point in time. In the end, this is often the key element for regulatory reforms increasing competition or removing anti-competitive regulatory barriers in a certain sector.

20. In parallel, the ICA's experience has taught that regulation may lead to competitive barriers that would not have existed without regulation, regardless of whether the regulator

⁹ The relevant regulation established by the Agriculture Ministry, the Treasury Ministry and the Ministry of Economy focuses on the manufacture and import of food products, while the Food Law focuses on the retail segment.

¹⁰ [Credit Data Law, 2016](#).

¹¹ [Banking Law \(Licensing\), 1981](#).

¹² [Natural Gas Law, 2002](#).

is independent or a government ministry. In some cases, regulation is what increases barriers to entry into the market, increases barriers to transfer for consumers or allows coordination between competitors. Hence, the ICA's advocacy work may focus on advancing regulation or on removing or preventing it.

4. Conclusion

21. The regulatory ecosystem in Israel is comprised of a wide range of regulators, which differ one from the other in its degree of independence. The importance of competitive advocacy to the regulator and the belief in the positive outcomes of competition is often the key element for regulatory reforms increasing competition or removing anti-competitive regulatory barriers in a certain sector. The ICA had positive experiences with regulators in promoting competition reforms and initiatives and also less positive experience in co-operating with regulators on the promotion of competition. But these different experiences are not correlated to the amount of independence that the specific regulator has.