

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

DAF/COMP(2005)16  
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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL**

-- January 2004 - April 2005 --

*This report is submitted by the Delegation of Israel the Competition Committee FOR INFORMATION at its forthcoming meeting (1-2 June 2005).*

JT00182279

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## Introduction

This report summarizes major recent initiatives and developments in Israel's competition law and policy and in the enforcement of the Restrictive Trade Practices Act, 5748-1988 (hereinafter: "Antitrust Law") for the period of January 2004 through April 2005.

The IAA is an independent government enforcement agency established in 1994 under an amendment to the Antitrust Law. The IAA is mandated to prevent market power through merger control and anti-cartel enforcement, to restrain abuse by dominant firms of their positions and to preserve competition in the various markets.

An Antitrust Tribunal, sitting with the District Court in Jerusalem, has exclusive jurisdiction over non-criminal governmental antitrust proceedings. Interim orders and final decisions of the tribunal are appealable to the Supreme Court, the highest judicial authority in Israel. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters. The Court's decisions are appealable to the Supreme Court as well.

While the IAA has an important enforcement function, the Antitrust Law also provides for any person to independently seek a remedy from the Court.

The IAA focused its efforts selectively in 2004 on a number of specific markets, in which serious antitrust complexities were identified

Some of the most important accomplishments of the IAA were the publication of the General Director's final position regarding **commercial practices between retail chains and dominant suppliers**; the publication of new **merger regulations and notification forms**; the publication of pre-notification rules of procedure; the General Director's determination regarding the restrictive nature of a **copyright collective society's** activity and regarding its dominant position in the market of administration of copyrights and the granting of licenses to users; and the handing down of an **indictment against the four largest gas companies** in Israel.

The resources of the IAA have not significantly changed from previous years, with an annual budget of 18,666,000 NIS (approximately 3 million Euros) and 68 employees.

## **1. Changes in Competition Laws and Policies**

### ***1.1 New Merger Regulations and Notification Forms Came Into Force***

1. In July 2004, the IAA introduced new merger regulations, which constitute two new notification forms. The first is a long form, which expands significantly upon the information submitted to the IAA at the initial notification of the transaction.
2. The purpose of the form is to include sufficient information in the initial submission in order to decide whether the merger appears “green” or “red” (the latter substantially harming competition).
3. The IAA believes that the form will substantially reduce the number of information requests, narrow very significantly their scope, and shorten the period for decision-making.
4. Since the IAA recognised that the long form is not necessary in all mergers, it drafted a short form to be used by parties to transactions that meet certain terms that are specified in the regulations.
5. To accommodate this rather significant change, the IAA held two workshops open to the public in which it provided guidance for the completion of the forms.

### ***1.2 Pre-Ruling Procedure Was Issued***

6. On August 5th, 2004, the IAA established detailed Pre - Ruling procedure.
7. The new rules define three major types of pre – rulings the IAA will hand down: (a) a pre - ruling concerning the probability of approval by the General Director of certain transactions (mergers or joint ventures); (b) a pre - ruling about the legality of certain actions or activities; and (c) a pre - ruling about the IAA’s position in complex economic issues (such as market definition).
8. The new rules establish a clear and equally open route to all those that seek guidance and wish to comply with the Antitrust Law.
9. The pre-ruling rules of procedure are built on the experience the IAA has gained to date in the application of the 2000 amendment. Aiming at making the dialogue between the IAA and the private sector more efficient and timely, in accordance to the ICN’s recommended practice V(C), the IAA decided to enable parties to approach it and receive the IAA’s position within 30 days.

## **2. Enforcement of Competition Law and Policies**

### ***2.1 In General: Powers and Statistics***

10. The Antitrust Law provides for varied remedies in cases of infringement. Antitrust Law violations are a criminal offence as well as a civil tort.

#### *Criminal*

11. Severe antitrust violations may be subject to criminal prosecution and may result in fines and prison terms. Liability is imposed upon the corporation and its executives.
12. During the reviewed period, the IAA opened seven new criminal investigations, concluded three investigations and filed three indictments in the Jerusalem District Court. The IAA was involved in two

criminal litigation proceedings before the Supreme Court and seven proceedings before the Jerusalem District Court.

*Civil Remedies*

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

14. During the reviewed period the IAA was involved in 21 civil litigation proceedings before the Antitrust Tribunal.

15. In addition, during 2004, the IAA opened forty-three administrative inquiries, following public complaints. The IAA found these complaints worthy of further investigation, since they seemed to raise sincere competitive concerns. The complaints referred to a wide range of anti-competitive practices in the realms of restrictive arrangements and abuse of a dominant position.

**2.2 Restrictive Arrangements**

A “**restrictive arrangement**” is defined 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.

In addition, the Antitrust Law provides for a number of specific restraints, the existence of which constitute an irrefutable presumption that damage to competition exists.

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, in accordance with the location of the business or in accordance with 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.

16. Entry into a restrictive arrangement without the authorisation of the Antitrust Tribunal (or without a temporary authorisation) is forbidden, unless the arrangement was exempted specifically by the General Director or is exempted according to one or more of the block exemptions. During 2004, the General Director handled exemption requests as following:

<b>Total number of decisions</b>	<b>Exemptions granted</b>	<b>Exemptions granted under conditions</b>	<b>Objections</b>
<b>104</b>	74	27	3

17. The following are examples of significant restrictive agreements cases, which demonstrate the wide range of issues addressed by the IAA involving both criminal and civil enforcement activities.

*2.2.1 The General Director Determined that the Activity of ACUM (A Copyright Collective Society) Involves Restrictive Arrangements and Declared ACUM a Monopoly*

18. In March 2004, the General Director determined that the establishment and activity of ACUM, a copyright collective society, involved restrictive arrangements for which neither an approval of the Antitrust Tribunal nor a specific exemption from the General Director were sought. The restrictive

arrangements provided ACUM with a dominant position in the markets of administration of copyrights and the granting of licenses for users.

19. ACUM, which was established in 1936, is a collective society encompassing approximately 4600 creators, authors, composers, lyricists, poets and music publishers. In addition, ACUM is engaged in arrangements with 160 overseas associations and companies, which pursue goals similar to those of ACUM (hereinafter: foreign associations). These arrangements enable ACUM to administer in Israel, mostly exclusively, the copyrights that are held by the foreign associations. Consequently, ACUM, de facto, possesses the rights to almost every work that was ever written.

20. In practice, ACUM's members assign their rights for all of their existing and future work to ACUM exclusively, and ACUM exploits those rights by granting licenses, including blanket licenses, to users, collecting royalties, distributing the royalties among the members and enforcing their rights in case of infringement.

21. Since the copyright owners of most of the work in Israel are members of ACUM, the influence of the restrictive arrangement is substantial; ACUM's activity leaves no competitive alternative for the users. ACUM's activity involves the establishment and maintenance of uniform rates of royalty and other conditions in relation to the exploitation of the copyrights, thereby eliminating price competition. ACUM reduces competition between the various copyright owners, between the owners and ACUM, between ACUM and potential competitors in Israel and between ACUM and the foreign associations. In addition, it was found that ACUM's control of such a vast repertoire of work granted it a dominant position in the administration of copyrights and the granting of licenses.

22. The General Director's decision can serve as a prima facie evidence, in all legal proceedings, to ACUM's dominant position and involvement in restrictive arrangements.

#### 2.2.2 *Publication of the General Director's Position Regarding Restrictive Practices between Dominant Suppliers in the Food Industry and Three Large Retail Chains*

23. On January 5, 2005, the General Director published his final position regarding commercial restrictive practices between fourteen dominant food suppliers (some of which had previously been declared monopolies by the General Director) and the three large retail chains.

24. The publication of this position followed an extensive investigation initiated in 2000 and concluded at the end of 2002. It entailed an extensive examination by the IAA's Legal and Economic Departments aimed at evaluating the competitive impact of the different practices that were revealed and the measures that should be taken.

25. In May 2003, the General Director presented his preliminary conclusions and guiding rules, prior to taking any legal actions, in order to prevent any continuance of the problematic practices exposed during the investigation, and in order to set the normative framework.

26. In his position, the General Director indicated that evidence of violation of the Antitrust Law were found, such as:

27. In some of their commercial agreements, dominant suppliers demanded that retail chains refrain from admitting competing "private labels". In addition, a dominant supplier agreed to pay one of the large retail chains for the removal of all but one of the competing products from their shelves.

- Dominant suppliers and large retail chains agreed that the shelf space allotted to their products would be significantly larger than half of the shelf space allotted to similar products sold by the

chain. In addition, a dominant supplier made an arrangement with a retail chain that the latter would receive payment in return for its guarantee that it would strive to maintain or increase the market share of the supplier's products in several categories where the supplier has a market share significantly above fifty percent.

- A large retail chain and a dominant supplier agreed to appoint the supplier to be a category manager, in order to enable him to increase the market share of its products in the relevant category.

28. The General Director's position was published for the public's comments. Following the review of the comments, the General Director published his final decision reaffirming his preliminary position according to which the suppliers and the retail chains engaged in restrictive practices. The General Director determined that these practices are illegal unless approved by the Antitrust Tribunal or exempted by the General Director.

29. The publication of the General Director's position received widespread attention in the Israeli food industry. Many of the suppliers already expressed their agreement to comply with the rules recommended in the General Director's position.

#### 2.2.3 *The General Director's Notification Regarding the Underwriting Companies' Collaborations*

30. In February 2004, the General Director notified the leading underwriting companies in Israel that certain collaborations among them are considered restrictive arrangements according to the Antitrust Law. At the same time, the General Director announced the IAA would not intervene in specific cases of collaborations that do not have any significant anticompetitive effect. The IAA made clear that collaborations up to 40% of the aggregate market share would not be regarded as illegal. .

31. The cases in which the General Director will not intervene are especially when these collaborations are made between small and medium companies.

32. The General Director clarified that in other cases parties can approach the Antitrust Tribunal for approval or the IAA for an exemption.

#### 2.2.4 *The Antitrust Tribunal Denied an Application to Approve a Settlement to Drive One of the Two Competitors out of the Water Meter Market*

33. In January 2005, the Antitrust Tribunal denied an application to approve a restrictive arrangement between the two leading companies in the water management systems market: Arad Ltd., a monopoly in the water meter market and Madei Vered, its most significant competitor for many years.

34. The restrictive arrangement was part of a settlement of a litigation held between the parties revolving around Arad's claim that Madei Vered violated its IP rights.

35. The District Court accepted the claim, but the defendant, Madei Vered, appealed to the Supreme Court and later on, the parties reached a settlement according to which Madei Vered would cease its activity in the relevant market in return for a substantial sum of money.

36. Since this settlement seemed to be a restrictive arrangement, it was brought before the Antitrust Tribunal for approval. The IAA opposed the approval since the arrangement had a clear anti-competitive effect; it would leave one competitor in the market.

37. The Antitrust Tribunal affirmed this position, stressing that this kind of restraint is naked and lacks any commercial justification, and that the sole motive for the arrangement was the elimination of the existing competition.

### 2.3 *Cartels*

38. The IAA devoted extensive efforts and resources to fighting cartel activity in a wide range of industries. The following are summaries of major cases that were tried during the past year.

#### 2.3.1 *The District Court Convicted Bid-Riggers*

39. On February 10, 2005 the Jerusalem District Court convicted two companies that trade in spare aircraft parts -and their owners/managers of being parties to restrictive arrangements. The court found that during the 1990's the companies coordinated purchases of spare aircraft parts from Israel's Ministry of Defence (MOD) instead of competing for the purchases.

40. The court rejected the defendants' claim that the MOD had encouraged them to cooperate in this manner, and found that the defendants in fact had concealed their cooperation from the MOD. The court also rejected the defendants' claim that they had relied on advice of legal counsel who planned the arrangement, finding that they had not disclosed important facts to their attorneys. Sentencing has yet to take place.

#### 2.3.2 *Consent Decree in the Digital Telephone Switchboard Case*

41. On November 16, 2004, The District court validated a consent decree between the IAA and two affiliated companies according to which the companies will pay 8 million NIS due to their involvement in the digital telephone switchboard cartel. The companies also undertook to submit all future arrangements they might engage in together - to the approval of the General Director or the Antitrust Tribunal regardless of whether security issues might be involved.

42. The IAA investigated suspicions according to which Bezeq committed itself not to purchase digital operators from a third supplier but rather to allocate the purchases between local switchboard suppliers. At the time, Bezeq was the main purchaser of digital operators.

43. The IAA decided not to file an indictment due to secrecy of some of the investigation aspects and due to the fact that both local suppliers are affiliated and held by the same concern.

#### 2.3.3 *Gas Suppliers Cartel: An Indictment Was Filed in Court*

44. In April 2004, the IAA filed an indictment against the four largest gas companies in Israel and their executives. According to the indictment, the four gas companies conspired to cartelise the gas market by agreeing not to compete with each other for their existing customers. The impetus for this arrangement was the entrance of a new competitor into the market.

45. In addition to non-competition for existing consumers, the companies agreed to divide the new customers among themselves according to an agreed quantitative key and to avoid granting benefits to customers. In order to incorporate the new entrant and a number of small domestic companies in the cartel, the companies promised them a larger share of the new customers than their pre-agreement shares warranted.

46. The investigation, conducted by the Investigation Department of the IAA, was extensive. In the course of the investigation, the investigators questioned more than 170 suspects and witnesses and seized tens of thousands of documents.

47. The Legal Department's decision, based on the evidence it had reviewed, concluded that there was prima facie evidence that the Law was violated. It therefore decided to hand down the indictment to the Jerusalem District Court.

#### *2.3.4 Paper Envelopes Bid-rigging Cartel: An Indictment was Filed*

48. In April 2004, the IAA filed an indictment against four envelope producers and their managers.

49. According to the indictment, the companies conspired in a cartel, from 1995 and until the opening of the investigation in October 2002. The cartel members conspired to divide the customers and the tenders utilising a quantitative key. The companies' managers met occasionally and had frequent phone calls in order to coordinate and ensure the continuance of the cartel. In addition, the parties to the cartel paid an importer to stop importing envelopes into Israel.

50. The envelopes market is evaluated at 100 million NIS a year and the major consumers are government authorities and agencies, large businesses and printing houses.

51. It was found that as a result of the investigation, envelope prices in tenders for public organisations decreased by tens of percents.

52. The case is currently being tried before Jerusalem District Court.

#### *2.3.5 Frozen Vegetables Cartel: The Conclusion of the Investigation and a Draft Indictment*

53. In February, 2005, the IAA notified five frozen vegetables companies and their managers of its intent to hand down an indictment against them.

54. According to the draft of the indictment, the companies conspired in a cartel, from 1992 and until 1998. The cartel members conspired to coordinate the price of the products and the rates of the discounts given by them to their customers. In addition, the draft claims that the companies divided the customers among them.

55. With the conclusion of the hearing proceedings the Legal Department will decide whether to file the indictment in the Jerusalem District Court.

### **2.4 Monopolies and Abuse of Dominant Position**

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 shall be deemed to be a <b>Monopoly</b> .
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#### *2.4.1 The IAA Completed an Investigation of Elite for Driving an Entrant – Cadbury - Out of the Chocolate Market*

56. The Legal Department of the IAA is currently considering whether to hand down an indictment against Elite Industries Ltd. for abusing its dominant position in the chocolate market. The investigation,

concluded a few months ago by the Investigation Department, focused on Elite's efforts to block the entrance of a new competitor – Cadbury - by engaging in restrictive practices with various retailers.

57. As mentioned before, Elite produces, markets and distributes a wide range of food products: chocolate, sweets, coffee, snacks and pastries. Elite possesses a dominant position in several of the markets in which it is active. Cadbury, one of the largest chocolate producers in the world, began to penetrate the market through a local representative at the end of 2002.

58. The chocolate tablets market is estimated at one billion NIS annually. Elite possesses more than 70 percent of the market and thus was declared a monopoly in 1988. Following his declaration, the General Director instructed Elite not to engage in exclusivity arrangements with retailers and not to condition the supply of its dominant products on the purchase of other products from it.

59. Allegedly, Elite's efforts to block Cadbury included granting discounts and benefits to retailers in return for excluding Cadbury from the market in order to preserve Elite's dominant position.

## 2.5 *Mergers and Acquisitions*

### 2.5.1 *In General: Statutory Framework and Statistics*

60. Analysis of merger and acquisitions constitutes an important part of the IAA's work.

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

- (a) As a result of the merger, the share of the merging companies in the overall manufacture, sales, marketing or acquisition of a particular asset and a similar asset or provision of a particular service or a similar service is in excess of fifty percent;
- (b) 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 New Shekels; the sales volume of at least two of the merging companies is in excess of 10 million new Shekels each and the combined sales volume of all the merging parties is in excess of 150 million new Shekels.]
- (c) One of the companies is a monopoly.

61. The Antitrust Law sets a review period of thirty days, during which the General Director has to reach a decision. This period can be extended by the Antitrust Tribunal or by the consent of the merging parties. If the IAA fails to reach a decision within the prescribed time period, the merger is deemed compatible with the Law.

The Antitrust Law defines a “**merger**” as including one or more of the following:

- a) the acquisition of the essential assets of a company by another company;
- b) the acquisition of shares in a company by another company that confers on the purchasing company more than one quarter of the nominal value of the share capital issued at that time, or of the voting rights;
- c) the right to appoint more than one quarter of the board of directors;
- d) the right to participate in more than one quarter of the profits of the company.

The above applies whether the acquisition is direct or indirect or by means of contractual rights and applies on transactions with similar results.

The IAA interprets the definition broadly as to include all transactions that are likely to establish an affinity or to significantly reinforce an affinity between the mechanisms for taking business decisions of two or more bodies.

62. The General Director is authorised to block a merger if the merger raises a reasonable suspicion of material injury to competition or the public. He can clear the transaction or approve it under conditions. The General Director's decision is open to an appeal to the Antitrust Tribunal.

63. During 2004, the IAA considered a hundred and forty-six merger notifications (including transactions that were notified in 2003). Of these, one hundred and twenty-nine were, in fact, mergers. None of the IAA's decisions resulted in the blocking of a merger; nine percent resulted in the approval of a merger with conditions; and ninety-one percent resulted in the unconditional approval of the merger. In addition, the IAA reached four decisions concerning the amendment of conditions that were imposed in the past.

64. The IAA dramatically decreased the amount of time from the filing until a final decision is made - in 2004, in 50% of the mergers we rendered a decision within 20 days, and in over 90% within 30 days (as opposed to 79% in 2003).

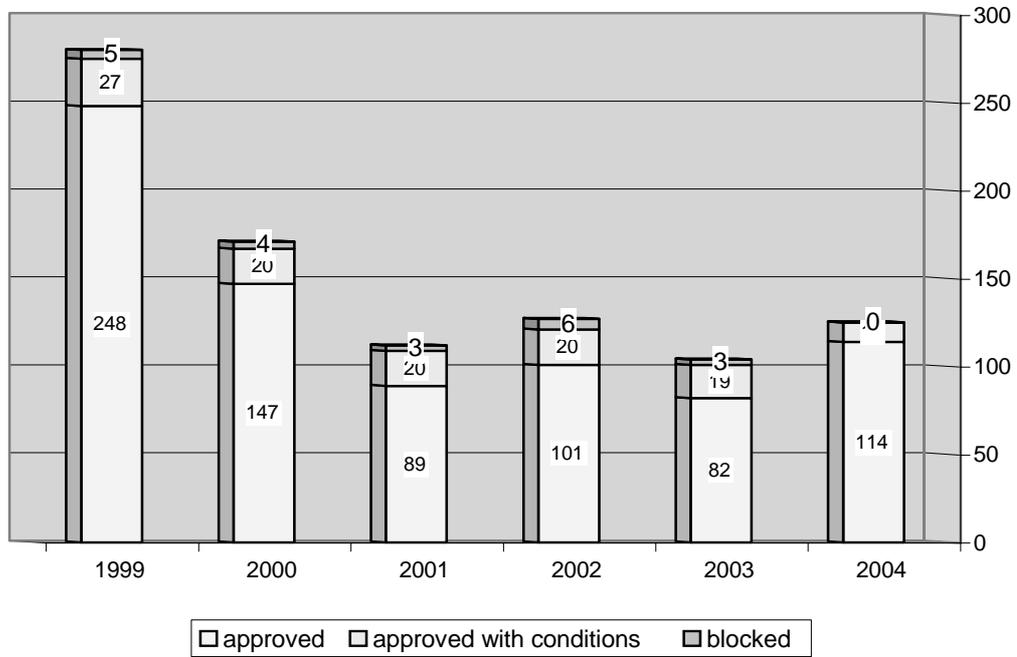
**Table: Decisions in Merger Applications<sup>1</sup>**

	Notified	Decisions	Approved	Conditioned	Blocked
1999	316	280	88%	10%	2%
2000	230	171	86%	12%	2%
2001 updated	160	112	79%	18%	3%
2002	158	127	80%	16%	4%
2003	122	104	79%	18%	3%
<b>2004</b>	<b>145</b>	<b>125</b>	<b>91%</b>	<b>9%</b>	<b>0%</b>

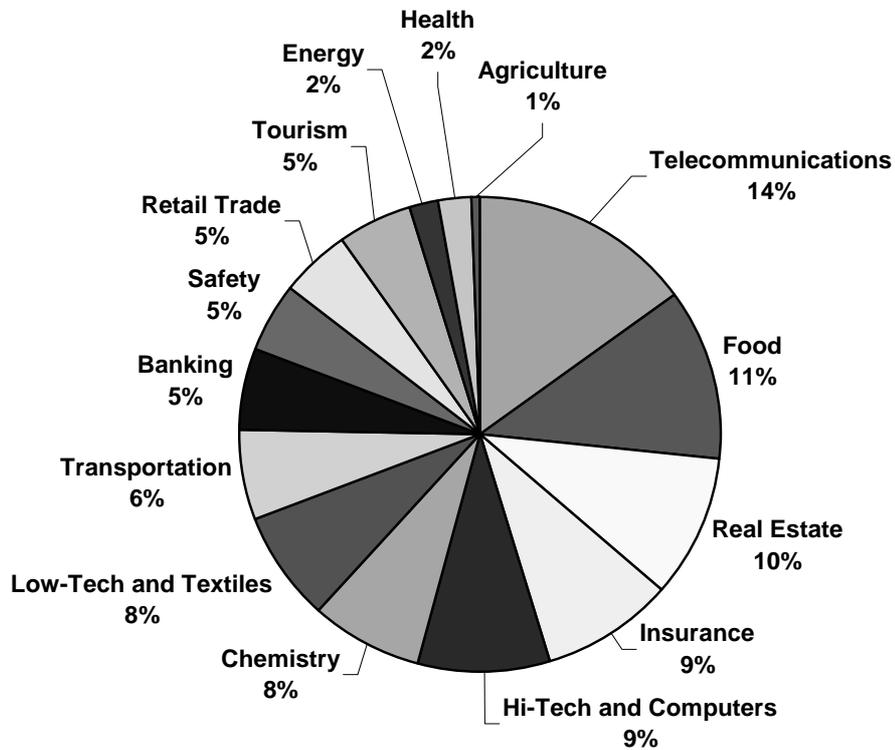
<sup>1</sup> "Notified Transactions" refers to the number of applications that were submitted during the calendar year, and "Merger Decisions" refers to the number of decisions made in the calendar year. All other numbers relate to the number of decisions.

The recession experienced in Israel since 2000 has resulted in a structural change in merger applications. While the number of applications has fallen drastically since 1999, the number of troublesome applications is on the rise, as firms attempt mergers that would not have been contemplated in better times.

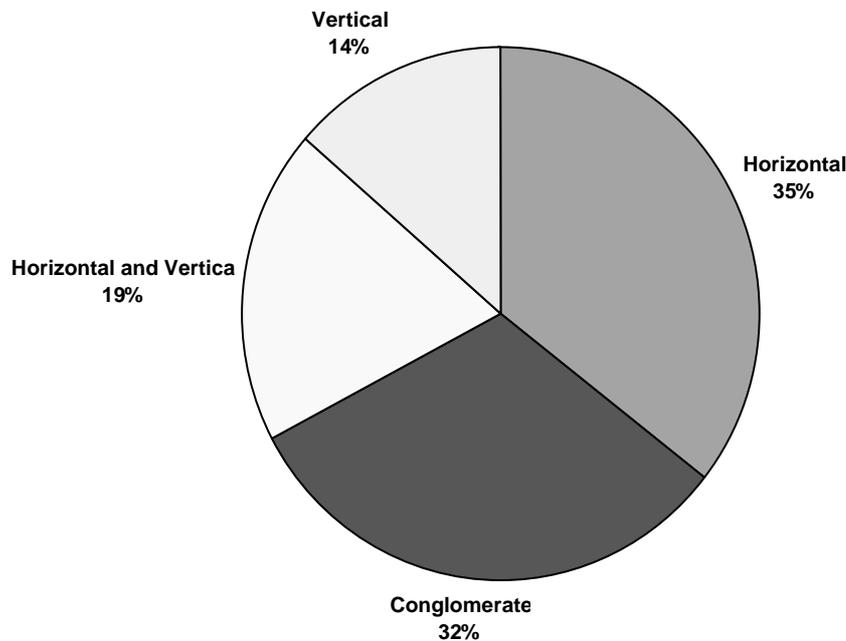
**Merger Decisions - 2004**



**Mergers by Industry - Israel 2004**



### Mergers by Type- Israel 2004



#### 2.5.2 Summary of Significant Cases

##### 2.5.2.1 The General Director Approved a Merger Between Two Airline Companies Under a Divestiture Condition

65. On August 4, 2004, the General Director approved a purchase of Israel's national carrier – El Al, by its major Israeli competitor – Arkia, under a divestiture condition.

66. El-Al Israel Airlines, the Israeli national carrier, was privatised in 2004. Knafaim, the owner of Arkia, an additional Israeli carrier, purchased most of the shares, and as such became controlling owners of El-Al. Arkia operates both scheduled and charter flights to many nations (there is one additional airline company in Israel, Isra-air).

67. The merger raised competitive questions, including the level of competition between scheduled and charter flights, the degree of substitutability between direct and connecting flights, the importance of local vs. foreign charter flights, demand and supply side substitutability, and the effects of the proposed merger on different types of travellers.

68. Finally, the IAA concluded that the merger raised substantial competition issues, and ordered divestiture of the Arkia group (and some other business lines) as a going concern.

69. This divestiture was agreed upon by Arkia's owners, but after the purchase was completed El-Al challenged the conditions.

70. The case was recently settled, with all sides agreeing to the divestiture, while temporarily suspending for 1-2 years some minor conditions pertaining to El-Al's operations pursuant to future developments in the market.

#### 2.5.2.2 The General Director Approved a Full Merger Between the Fix-Telephony Monopoly and one of the Three Mobile Phone Companies Existing In Israel

71. On August 26, 2004, the General Director Approved under conditions a merger between Bezeq The Israel Telecommunication Corp. Ltd., the sole provider of fix telephony in Israel and Pelephone, one of three cellular phone companies.

72. The main question that arose during the merger investigation was of market definition - whether fix telephony and cellular telephony are in the same market.

73. The IAA's Economic Department's conclusion, in this merger analysis (as well as in other proceedings), was that at present the two are not part of the same product market, and thus the merger raises no genuine horizontal concerns.

74. However, from a dynamic perspective the markets are in the process of convergence, and so a possible concern was the elimination of a significant competitor from the developing market. However, even in this perspective the merger was found to be unproblematic, since other changes in the market promise to make the market more competitive in the future.

75. The entry of the cable companies (since November 2004) into the fix telephony market, together with the introduction of Voice-over-IP and other technological advancements make the elimination of this particular competitor in that future market unproblematic.

76. Bearing in mind that the services are complementary, tying concerns were considered important, particularly given Bezeq's monopolistic position in the industry. Thus, the merger was approved with behavioural conditions to that effect.

#### 2.5.2.3 The General Director Opposed a Merger Between #1 and #3 ranked companies in the Mineral Water Market

77. In 2004, the General Director blocked a merger between two of the three leading mineral water producers in Israel.

78. Mei Eden is a company that produces and distributes mineral water. At the time of the merger request they were the largest company in the Israeli mineral water market.

79. Yafora is a company that produces and distributes a wide range of soft drinks, including carbonated beverages, fruit drinks and mineral water - the Ein Gedi brand, #3 in the market. Yafora is also known for its aggressive behaviour in the mineral water market, having significantly undercut prices, thus decreasing prices in the whole market.

80. Mei Eden, however, found itself with a serious distribution problem - it was the only company distributing only water and not "all beverages". This meant that each drop was significantly smaller, making the average distribution count significantly higher than for the other companies. Thus, the impetus for the merger was to consolidate the distribution functions of the two companies.

81. Given the "maverick" type behaviour of Ein Gedi, the IAA found that the merger posed a significant competitive concern. Yet before it disallowed the merger, the parties withdrew their application.

However, a joint distribution agreement was suggested and adopted by the parties and was approved by the General Director for a period of 2 years. .

### **3. International Cooperation**

#### *ICN*

82. The IAA joined the International Competition Network (ICN) in 2001 and was appointed as a member of its interim Steering Group. Lately, the IAA was chosen to serve as a member of the Steering Group for an additional tenure.

83. During the reviewed period, the IAA continued to head the Merger Investigation Techniques Subgroup, operating within the ICN's Merger Working Group, which focuses on the development of the best practices for the investigation of mergers. The subgroup is in the process of finalising a comprehensive handbook discussing various aspects of investigative techniques.

84. In the ICN's Annual Conference that took place in Korea, Seoul, the subgroup presented 3 new papers: (1) Planning the Investigation; (2) Developing Reliable Evidence; (3) The Private Sector's Perspective. All three papers are available on the ICN's website and are planned to be incorporated in the subgroup's handbook that will be published in June, 2005 at the Bonn Annual Conference.

85. In addition, the subgroup held a second Investigative Techniques workshop in cooperation with the European Commission, in October 2004.

86. 130 staff lawyers and economists from 49 antitrust jurisdictions came together in Brussels to work through a hypothetical merger case. The private sector was represented by 16 non-governmental advisors (NGA's) from international law firms with extensive experience in cross-border merger control proceedings.

87. The Investigative Techniques Subgroup planned this workshop with the aim of widening the familiarity of agency staff with the tools and techniques relevant to merger control investigations. Another objective was to hear the private sector's input and perspective on the process and to create a fruitful dialogue between agency officials and the private sector.

88. The discussions were mainly held in small breakout groups of 10-15 participants, which provided for a very open and interactive working atmosphere. The results of these working groups were reported and discussed in plenary sessions. The event simulated as much as possible the key steps of a real merger control investigation.

89. In addition to its activity within the Merger Working Group, the IAA is also highly active in the Cartel Working Group of the ICN.

### **4. Competition Advocacy**

90. The IAA acts as a competition advocate to disseminate competition principles in government agencies and Parliament so that all government bodies acknowledge competition as a crucial factor in policy decision-making. The IAA's advocacy efforts were also directed to the general public as well as to the business and legal communities.

#### **4.1 IAA and the Government**

91. The IAA was extensively involved with other ministries and government agencies in trying to open markets to competition and solving competition issues that significantly affect the local economy. Here are a few examples:

##### *4.1.1 Completion of a Capital Market Reform*

92. The General Director was a member of the inter-ministerial committee mandated to make recommendations with respect to the actions required for establish an efficient and competitive capital market.

93. The Israeli capital market is characterised by high concentration of the banking industry; poor secondary market; the commercial banking and the financial intermediation are completely dominated by the banks; high switching costs; poor information; no credit scoring institutions.

94. The main achievements of the committee's report are the promotion of increased competition in the supply of financial resources; the lowering of switching costs between banks (e.g.; providing credit scoring information to each client every six months); and the decrease of conflict of interests within the capital market; and the increased ease of clients switching between banks.

##### *4.1.2 Privatisation and Divestiture of Oil Refineries Ltd.*

95. Oil Refineries Ltd. is the sole oil refiner in Israel and is a declared monopoly in the refining segment of the oil industry.

96. A number of government ministries and agencies - the Ministry of Treasury, the Ministry of National Infrastructures, the Ministry of Justice, the Government's Company Authority and the IAA - have been working jointly to divest and privatise the company.

97. The joint team reached an agreement as to the optimal path towards implementation according to the IAA's recommendations. The IAA recommended imposing restrictions regarding the identity of the potential purchasers in order to promise competition in the marketing segment. The IAA, in this restriction, tried to overcome the existing competitive problems in the marketing segment of gas and to promote the entry of a new and independent player. In addition, the joint team adopted rules, drafted by the IAA, concerning the gradual removal of regulation on the refineries after their divestiture. Currently, the divestiture and privatisation outline is awaiting the approval of the new Infrastructures Minister.

#### **4.2 The IAA and the Parliament**

98. The IAA is highly active in the discussions of the Economic Committee of the Parliament. The IAA representatives are usually invited to the discussions in order to present the competitive aspects relevant to the matter discussed. In the past year the IAA took part in numerous discussions. For example:

##### *4.2.1 Price marking in the retail segment*

99. The IAA is of the position that price marking is an essential element in ensuring competition in the retail segment. The matter is currently under the consideration of the Ministry of Trade.

#### *4.2.2 Pirate gas stations*

100. The IAA was involved in the legislative proceedings of a law designed to fight pirate gas stations that endanger the public's safety and the environment.

#### *4.2.3 Liquefied Petroleum Gas*

101. The IAA was involved in the legislative proceedings of safety regulations concerning liquefied petroleum gas. The IAA successfully promoted a reduction in the insurance premium gas companies are required to pay in order to reduce barriers to entry.

### *4.3 The IAA and the Business and Legal Communities*

#### *4.3.1 Accompanying the Assimilation of the Adoption of the New Notification Forms*

102. As mentioned before, the IAA held two workshops open to the public in which it provided guidance for the completion of the new merger notification forms. In the course of the workshop, three merger cases and the proper way of filling in their notification forms were presented. The presentations were posted on the IAA's website for the benefit of the legal and business sectors.

#### *4.3.2 Ten-Year Celebration*

103. The IAA celebrated ten years of its establishment. The IAA held a conference to which lawyers, economists, public officials and the wide public were invited.

104. In this event, the honourable judge Yehonatan Adiel, Supreme Court, spoke on the role of the judiciary in the modelling of the Antitrust Law and policy in Israel; the General Director moderated a panel concerning competition and regulation in the capital market; the Chief Economist moderated a panel concerning dealing with monopolies; and the Chief Legal Counsel moderated a panel discussing the imposition of responsibility on senior managers for their firms' violations of the Law.

#### *4.3.3 Market Definition Database*

105. The Economics Department of the IAA recently compiled a list of market definitions that stemmed from previous merger analyses, and published this list on its website.

106. The purpose of the list is to help the public understand how will the IAA likely view merger requests, and to analyse possible competitive effects before submitting these requests.

107. Aside from the list itself, the database also contains an explanation in each case of the context in which the definition was determined.

108. Parties using the database are warned that different circumstances could lead to different definitions, that the definitions should be taken as a non-binding indication of how the IAA will likely view the market, and that the definitions in the database cannot obviate a proper economic analysis.

### *4.4 The IAA and the public*

109. The IAA attaches meaningful importance to the publication of its activities over the internet media. Thus, in 2004, it established a new, modern and user friendly internet website for the benefit of the public. The website includes an advance search engine.

## 5. Resources of the IAA

### 5.1 Annual Budget

110. Funding of 18,666,000 NIS (which is approximately 4.1 million USD) was provided to the IAA in the 2004 budget. The annual budget had not changed significantly in comparison to the previous year's budget. A major portion of the budget, 68%, was allocated to salaries.

**Table: Annual Budgets- 2003 (thousands)**

	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>
<b>NIS</b>	<b>18,666</b>	21, 324	21,412	20,689	20,250
<b>USD</b>	<b>4,165</b>	4,688	4,520	4,922	4,965

### 5.2 Number of Employees - 2003

Economic Department	12 economists
Legal Department	21 lawyers and 7 legal interns
Criminal Investigations Department	17 investigators (lawyers, economists and other professionals)
Support Staff and Administrative Services	16
The General Director's Office	2 lawyers
<b>All staff combined</b>	<b>68 employees</b>