

Israel

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MERGER CONTROL

1. Are mergers and acquisitions subject to merger control in your jurisdiction? If so, please describe briefly the regulatory framework and authorities.

Mergers and acquisitions are regarded as restrictive practices and are regulated by the Restrictive Trade Practices Law 1988 (RTP) (mainly in chapter three).

All mergers are notified to, and reviewed by, the Israel Antitrust Authority (Authority), the decisions of which can be appealed before the Restrictive Trade Practices Tribunal (Tribunal) (see box, *The regulatory authorities*).

2. What are the relevant jurisdictional thresholds/triggering events?

Mergers are defined as either (RTP):

- The acquisition of most of the assets of one entity by another entity.
- The acquisition by one entity, of shares in another entity, that gives the acquiring entity:
 - more than 25% of the nominal value of the issued capital or the voting power;
 - the right to appoint more than 25% of the directors; or
 - the right to participate in more than 25% of the entity's profits.

An acquisition that falls within this definition must be notified if any of the following conditions are met:

- As a result of the merger, the merged entity would be regarded as a monopoly (see *Question 26*).
- In the fiscal year preceding the merger, the aggregate sales turnover in Israel of the merging entities exceeded NIS150 million (about US\$33.3 million) and the sales turnover in Israel of at least two of the merging entities exceeded NIS10 million each (about US\$2.2 million).

- One of the merging entities is already a monopoly in any relevant (product and geographic) market (see *Question 16*).

A merger between non-Israeli entities falls within the scope of the RTP if these entities conduct business in Israel and meet the necessary thresholds (in relation to their activities in Israel only).

3. Please give a broad overview of notification requirements. In particular:

- **Is notification mandatory or voluntary?**
 - **When should a transaction be notified?**
 - **Is it possible to obtain formal or informal guidance before notification?**
 - **Who should notify?**
 - **To which authority should notification be made?**
 - **What form of notification is used?**
 - **Is there a filing fee? If so, how much?**
 - **Is there an obligation to suspend the transaction pending the outcome of an investigation?**
- **Mandatory or voluntary.** Once the threshold requirements are met (see *Question 2*), notification is mandatory.
 - **Timing.** There is no specific timing requirement. However, the parties must obtain approval from the Authority before implementing any action that might be regarded as constituting performance of the merger. Therefore, notification should be filed as soon as possible.
 - **Formal/informal guidance.** A pre-ruling procedure is available (RTP). However, the Authority is not obliged to provide informal guidance and any guidance given does not replace the duty to file formal notices and obtain formal approvals. In August 2004, the Authority published rules detailing the procedure for obtaining a pre-ruling decision.
 - **Responsibility for notification.** Each of the merging entities must file its own merger notice. Usually, all of the parties

file their respective notices simultaneously and co-operate on the preparation and filing of the notices.

- **Relevant authority.** Notification is made to the Authority.
- **Form of notification.** Notification must be submitted in writing on either a short simplified or long detailed form (*Restrictive Trade Practices Regulations (Registration, Publication and Reporting of Transactions) 2004 (Regulations)*).

The short form notification can be filed if certain conditions are met (for example, the parties' aggregate market share in the relevant product market must not exceed 30%). The notification must include details of, among other things, the:

- transaction;
- relevant product markets;
- market share of each party to the merger;
- customers and suppliers;
- major competitors in the market.

In addition to the short form information, the long form requires, among other things, details of:

- horizontal competing, and vertically related, products;
- arrangements with third party competitors in the relevant market;
- if the market share of either one of the parties to the merger, or the parties' joined market share post-merger, in a market which is relevant to the merger transaction, exceeds 25%:
 - barriers to entry in the relevant market;
 - quantitative and turnover market share in the two years before the merger.

Both forms allow the notifying party to apply for an exemption from the Authority for ancillary restraints contained in the merger transaction (see *Question 11*).

- **Filing fee.** There is no filing fee at present, but this might change, following an amendment to the RTP which has not yet been implemented (see *Question 34*).
- **Obligation to suspend.** The parties are globally barred from closing or implementing the merger until approved by the Authority.

4. Please set out the procedure and timetable.

Parties to a transaction must establish whether there is a merger within the meaning of the RTP and whether any of the thresholds apply and, if so, notify the Authority (see *Question 2 and 3*).

Procedure

The Economic Division of the Authority primarily conducts the review process. It considers the information included in the merger notice and any accompanying letter, as well as any other relevant public information. It can also ask the views of interested third parties, such as competitors, suppliers, customers and government ministries.

The Authority commonly requests the notifying parties to provide additional information. Once completed by the Economic Division, its internal report is brought before an Advisory Committee for Exemptions and Mergers (Advisory Committee), which is authorised to review the Authority's recommendation and give advice.

The Controller of Restrictive Trade Practices (Controller) (the head of the Authority) must consult the Advisory Committee before clearing (or blocking) a merger, although its advice is not binding.

If the Authority intends to object to the merger, it usually holds an administrative hearing with the notifying parties. The Authority presents its views and allows the notifying parties to comment and/or provide further information.

If the Authority is of the opinion that the merger should be conditionally approved, it usually approaches the parties concerned with a draft of its proposed conditions. The parties can then comment on the proposed conditions to reach agreement.

Timetable

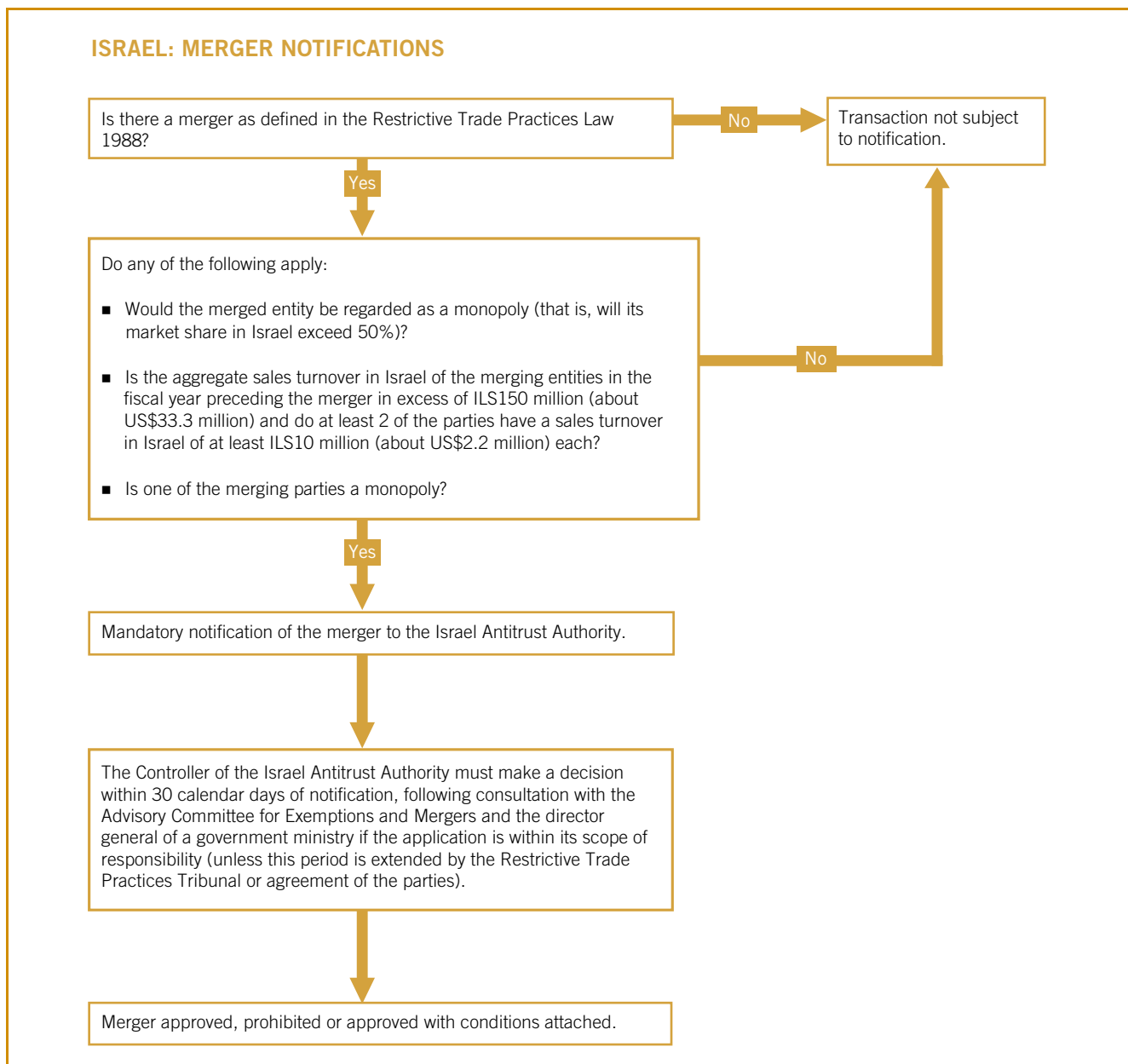
The Authority must review merger notifications within 30 calendar days from the date that the notifications of all parties to the transaction are received by the Authority (*RTP*). The Authority can request that the Tribunal extend this period, but usually seeks consent from the parties which, if given, avoids the need for Tribunal permission. If no response is issued by the end of the 30-day or extended period, the transaction is deemed approved.

For an overview of the notification process, see flowchart, *Israel: merger notifications*.

5. How much publicity is given about merger enquiries? Can the parties request that certain information is kept confidential?

Usually, the Authority does not publicise merger filings during the review process. Merger notices are registered in the Authority's registry, which is open for public inspection but does not contain information gathered or received by the Authority.

The notifying parties (and third parties) usually request that the information they supply to the Authority is kept confidential (which the Authority respects). However, information is subject to the Freedom of Information Act 1998 and to a specific right of review (*Administrative Tribunals Law 2000*). These laws enable third parties to review certain types of information under certain conditions and also enable the notifying parties to review information received from third parties during the merger review period.



6. Can third parties make representations and, if so, how?

Usually, third parties are not involved in the review process of the merger notice. However, the Authority can ask certain questions of, or request further information from, any third party (see Question 4).

A third party can give its opinion on the merger (in writing or orally) to the Authority or provide any information it wishes to bring to the Authority's attention. The Authority can, but does not have to, consider these representations.

7. What is the substantive test?

A merger is approved unless the Controller believes there is a reasonable danger that, as a result of the merger (RTP), either:

- Competition will be substantially lessened (for example, if the merged entity will have a market share of more than 50%).
- The public will be harmed by the price level, quality, quantity or regularity, and terms of supply of a particular asset or service.

8. What remedies can be imposed as conditions of clearance to address competition concerns?

The Authority can impose various conditions on the merging parties, such as:

- The divestiture of certain assets or areas of activities.
- Behavioural undertakings.

9. Is there a right of appeal against a decision?

The Controller's decision can be appealed to the Tribunal within 30 calendar days of publication of the decision in two daily newspapers. The right of appeal is granted to:

- Any of the merging entities.
- All persons liable to be injured (an anti-trust injury) by the merger.
- Business associations.
- Consumer organisations.

The Tribunal can affirm the Controller's decision, amend it (or any of its conditions) or cancel it. The Tribunal's judgment can be appealed to the Supreme Court.

10. What are the penalties for:

- Failure to notify or a delay in notifying?
- Implementation before approval?
- Failure to observe a decision of the regulator?

Failure to notify, a delay in notifying, implementation before approval or failure to observe a condition prescribed by the Controller constitutes a criminal offence, the punishment for which is either:

- Three years' imprisonment for an individual (or five years' imprisonment if the offence was committed under aggravating circumstances).
- A fine of up to NIS2.02 million (about US\$447,735) plus an additional fine of up to NIS13,000 (about US\$2,881) for every day the offence continues for an individual, or double of both for a corporate entity.

Fines are only imposed by a court order following criminal conviction, which sets a period of imprisonment for failure to pay. If no order is made, non-payment is subject to general enforcement proceedings.

There is no criminal sanction invalidating the transaction, which remains valid under civil law unless the Authority applies to the Tribunal to invalidate it (*section 25, RTP*).

11. If a merger is cleared, are any restrictive provisions in the agreements (such as non-compete covenants) automatically cleared?

In certain circumstances, a non-compete covenant by a party selling an entire entity will not be deemed restrictive (*RTP*) (see *Question 15*).

In addition, certain types of ancillary restrictions in merger agreements are automatically cleared if they meet specific conditions, such as (*Block Exemption for Restraints Ancillary to Mergers, 2004*):

- Non-compete clauses for a period of no more than four years.
- Supply assurance restrictions for no more than three years.

Restrictions that do not fall within the scope of the block exemption are not automatically cleared and must be approved by the Authority or the Tribunal (see *Questions 13 to 24*).

12. Are any industries specifically regulated?

At present, mergers in all industries are regulated by the RTP. However, if a merger falls within the scope of responsibility of any government ministry, then the director general of that ministry is sent a copy of the merger notice and the Authority usually considers any opinion put forward by the ministry as a relevant (albeit non-binding) consideration.

RESTRICTIVE AGREEMENTS AND PRACTICES

13. Are restrictive agreements and practices regulated? If so, please give a broad overview of the substantive provisions and regulatory authority.

Restrictive agreements are prohibited (unless approved in advance, or exempt as described (see *Question 15*)) and are regulated by the RTP (mainly in chapter two). It is a criminal offence to be a party to an unlawful restrictive agreement. Therefore, the creation of an arrangement may give rise to criminal liability even if the arrangement itself is not put into practice or if the arrangement is unenforceable (see *Question 14*).

A restrictive agreement is an agreement made between persons who manage businesses, according to which at least one of the parties imposes a restriction on himself that is liable to prevent or reduce competition between himself and all or some of the other parties to the agreement, or between himself and a person who is not a party to the agreement (*RTP*). A restrictive agreement automatically exists where there is a restriction on the:

- Price being requested, offered or paid.
- Profits to be earned.
- Allocation of all or part of a market, by the location of the business or by the people, or categories of people, with whom business is to be transacted.
- Quantity, quality or category of assets or services in a business.

These presumptions apply to both vertical and horizontal restrictions.

The Authority and the Tribunal are the main regulatory bodies that deal with all matters relating to restrictive agreements.

14. Do the regulations only apply to formal agreements or can they apply to informal practices?

A restrictive agreement includes all types of agreements and understandings, whether formal or informal, oral or written, and irrespective of whether they are legally binding and enforceable (*RTP*).

The *RTP* also applies to concerted practices and policies set by trade associations which impact on their members, as well as to the conscious behaviour of a person who, knowing of the existence of a restrictive agreement, adjusts his activities to conform with all or part of the agreement.

15. Please summarise any exclusions or exemptions.

Exclusions

A restrictive agreement is excluded if any of the following apply (*section 3, RTP*):

- It is determined in accordance with the law.
- It concerns the right to use certain intellectual property rights (IPRs) and both:
 - the agreement is made between the proprietor of the IPR and the recipient of the right to use it;
 - the IPR is registered, if required by law.
- It relates to the type of activities that the acquirer of a right to land is allowed to perform on that land.
- It relates to the cultivation and marketing of certain categories of domestically produced agricultural produce, provided that all of the parties are either growers or wholesale marketers.
- It is between an entity and its subsidiary.

- It is between a person who acquires an asset or a service and the supplier, where all the restrictions constitute an undertaking by the supplier to only supply those assets or services to the purchaser for marketing, and a reciprocal undertaking by the purchaser to acquire those assets or services only from the supplier, provided that the supplier and the purchaser are not competitors.
- It relates to international sea or air transport, or to a combination of international sea, air and land transport, and notice of the agreement was given to the Minister of Transportation. The parties to the agreement must be either:
 - air or sea transportation entities;
 - an air or sea transportation entity and an international organisation of aviation or maritime entities, approved by the Minister of Transportation.
- It relates to an undertaking, given by a seller of the whole of its business to a purchaser, not to engage in the same line of business. The undertaking must not conflict with reasonable and established practices.
- It relates to the employment of employees and the conditions of employment, and an employer or an employee organisation is a party to the agreement.

Exemptions

There are two types of exemptions (*RTP*):

- **Individual exemptions.** These can be obtained from the Authority, provided that:
 - the restrictions do not restrict competition in a substantial portion of the market affected by the agreement (that is, the parties' aggregate market share is not substantial), or in the event that the restrictions are likely to affect a substantial portion of the relevant market, they do not have a material effect on competition in that market;
 - the object (or essence) of the agreement is not to reduce or prevent competition and all the restrictions are necessary for implementing this object.
- **Block exemptions.** The Authority has issued several block exemptions, including a block exemption for (*RTP*):
 - agreements that have only a minor effect on competition (if the parties' aggregate market share in Israel does not exceed 10%, it is presumed that the agreement has only a minor effect, and if the parties' aggregate market share exceeds 20%, it is presumed that the agreement does not have a minor effect);
 - joint ventures;
 - agreements relating to the performance of joint research and development activities;

- exclusive purchase agreements;
- exclusive distribution agreements;
- franchise agreements;
- restraints ancillary to merger agreements (see *Question 11*).

Restrictive agreements that are not excluded or individually exempted by the Authority, or which do not fall within the framework of a relevant block exemption, must be approved by the Tribunal.

16. Is there any formal guidance on product and geographic market definition?

In August 2001, the Authority published a consultation document containing draft guidelines defining the relevant market. These guidelines are still in draft form and have not been conferred with any official title.

Product market

The product market includes all products that constitute substitutes for a product manufactured by a hypothetical monopolist. The relevant product market therefore includes the smallest group of products of which a hypothetical monopolist would be able to raise the price, at a small but significant and non-transitory rate (usually 5%), and still gain profits as a result.

Geographic market

The relevant geographic market is usually confined to Israel, or any part or region of Israel. However, in appropriate cases, the geographic market may be regarded as wider than the local market.

17. Please give a broad overview of formal notification requirements. In particular:

- **Is it possible/advisable to notify?**
 - **Is it possible to obtain informal guidance before, or instead of, formal notification? If there is no formal notification procedure, can any type of informal guidance or opinion be obtained?**
 - **Who should/can notify?**
 - **To which authority should notification be made?**
 - **What form of notification is used?**
 - **Is there a filing fee? If so, how much?**
-
- **Notification.** Any restrictive agreement is illegal and unenforceable, unless exempt or approved (see *Question 15*). Therefore, notification for exemption or approval is required in the relevant circumstances.

- **Informal guidance/opinion.** In certain cases, it is possible to obtain informal guidance from the Authority before filing a formal notification (see *Question 3, Informal guidance*), particularly for those entities implementing a compliance programme of the RTP.
- **Responsibility for notification.** Each party to the restrictive agreement can initiate the notification procedure by filing an application for approval, or exemption, of the restrictive agreement. Failure or refusal by any party to notify does not prevent the Tribunal or Authority from considering an application filed by another party to the agreement.
- **Relevant authority.** An application for approval must be made to the Tribunal and an application for exemption from the need to seek approval must be made to the Authority.
- **Form of notification.** A written application for exemption is filed with the Authority and is based on a form prescribed in the Regulations. The application must include copies of all written documents, details of the agreement and reasons justifying an exemption.

An application for approval by the Tribunal is also based on a form prescribed in the Regulations, and the details and documentation required are essentially identical to those required for an application for exemption. However, in practice, the applications are far more elaborate.
- **Filing fee.** The Authority does not currently charge a fee, but this might change. Applications before the Tribunal are subject to court fees.

18. Please set out the procedure and timetable.

Procedure

Exemption applications submitted to the Authority are primarily reviewed by its Legal Department. The Authority examines the application and any other information submitted. It also reviews other public information and usually requests further information from the applicants or third parties.

If an application relates to subject matter falling within the scope of responsibility of a government ministry, the Controller informs the director general of that ministry of the application, then waits at least 14 calendar days before reaching a decision. Similarly to merger notifications, the Controller consults the Advisory Committee before reaching his decision (see *Question 4, Procedure*).

The Tribunal, sitting as a court of first instance, considers applications for the approval of a restrictive agreement. In addition, it hears appeals on the Controller's decision to grant an exemption from the need to obtain Tribunal approval.

All proceedings before the Tribunal involve the filing of statements of claim and the cross-examination of witnesses and experts. The parties must file affidavits to support their arguments, or present oral testimony. They also commonly file

expert opinions to support their claims and the Tribunal can appoint an expert on its own behalf. The Controller must be present at the proceedings and state his position and arguments (RTP). The Tribunal then issues a detailed judgment on the application. These proceedings are time-consuming and costly. Interested third parties can apply to join as parties to the proceedings. The Tribunal can grant a temporary permission to act in accordance with the agreement, until it is approved.

Timetable

The Controller must give his decision on an application for exemption within 90 calendar days of receiving the application. He can extend this period by an additional 60 calendar days. If he requests additional information, this time period is suspended from the date of request until the information is received.

There is no time limit within which the Tribunal must approve a restrictive agreement. In practice, Tribunal procedures take about one year, but can sometimes last for several years. In urgent matters, the Tribunal can expedite proceedings or issue a temporary permit, limited to a maximum of one year.

19. Are details of any potentially restrictive agreement or practice made public during an investigation? If so, can the parties request that any information is kept confidential?

Investigations initiated by the Authority are not usually made public. If the Authority requests information from third parties, they are not entitled to review the information relating to the investigation.

Applications submitted either to the Tribunal to approve, or the Authority to exempt, a restrictive agreement are made public at the date of their submission, by registration in the Authority's register and by advertisements published in two daily newspapers and in the official gazette (*Rashumot*). A third party can ask to review the application and, under certain conditions, apply to become a party to the proceedings as a respondent. In addition, Tribunal cases are held in an open court (unless ordered otherwise) and third parties can, under certain conditions, view the materials filed with the court.

Parties can request that certain information (mainly trade or commercial secrets) be kept confidential and the Tribunal can issue orders to ensure confidentiality.

20. Can third parties initiate an investigation by making a complaint or make representations during the course of an investigation? If so, how?

Any person can make a written complaint to the Authority (there is no specified procedure for this). However, the Authority then has discretion as to whether it initiates criminal investigations and files criminal proceedings or pursues any other means of enforcement (see *Question 21*).

21. What are the regulator's enforcement powers and what are the other consequences of implementing a prohibited restrictive agreement or engaging in a prohibited practice? In particular:

- What orders can be made and fines imposed?
- Is it possible to obtain immunity/leniency from any fines?
- Can an entire agreement be declared void (that is, not only any restrictive provisions)?
- Can personal liability (civil or criminal) attach to individual directors or managers?
- Can third parties bring claims for damages?

- **Orders and fines.** The Authority has extensive means of enforcement, including:
 - an administrative determination, declaring that an existing or planned agreement between parties, or an existing or planned action by a trade association, is restrictive;
 - applying to the Tribunal for an order to any person to refrain from any act that breaches the RTP and to order any action necessary to prevent the breach;
 - criminal proceedings before a competent court, which can lead to a fine or imprisonment (see *Question 10*) (the Authority cannot issue fines in administrative proceedings, unless in the framework of a consent decree);
 - a consent decree between the Controller and any other person. This can include, without admission of liability, an obligation for the person to pay money to the State Treasury and an obligation to perform, or abstain from, a certain act.
- **Immunity/leniency.** In May 2005, the Authority published a leniency programme to encourage persons involved in restrictive practices to provide information to the Authority that could assist it in exposing restrictive agreements. In return, subject to the fulfillment of several conditions (such as being the first member of the cartel to come forward before an investigation has been initiated by the Authority), these persons obtain immunity from any fines or imprisonment resulting from their participation in the cartel.
- **Impact on agreements.** Where restrictive provisions are not severable from the entire agreement, or where the nature of the agreement is to reduce or prevent competition, the agreement is void in its entirety.
- **Personal liability.** Directors, managers or officers of an entity in breach of the RTP can be personally liable, unless they prove that both:
 - the offence was committed without their knowledge;

THE REGULATORY AUTHORITIES

The Israel Antitrust Authority (Authority)

Head. Mr Dror Shtrum (Controller of Restrictive Trade Practices) (the Controller or the Director General of the Authority). A new Controller is expected to be appointed during the last quarter of 2005.

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Outline structure. The Authority is the administrative authority that oversees competition in Israel. It is headed by the Controller, who is appointed by the government, on the recommendation of the Minister of Trade and Industry.

The Authority mainly comprises a Legal Department, Economic Department and Criminal Investigations Department.

Responsibilities. The Authority is responsible for the administrative and criminal enforcement of the Restrictive Trade Practices Law 1988 (RTP). It has broad powers to initiate and conduct criminal investigations of alleged violations of the RTP, and to initiate administrative inquiries.

The Authority can:

- File indictments and institute administrative actions against violators of the RTP with the Tribunal.
- Review and decide on merger notifications.
- Grant individual exemptions from the obligation to have a restrictive agreement approved by the Tribunal.

The Controller can:

- Issue administrative determinations stating that certain activities are illegal or that a specific transaction should be regarded as a merger of entities within the meaning of the RTP.
- Declare that a certain agreement is restrictive.
- Issue block exemptions for restrictive agreements.
- Issue a declaration on the existence of a monopoly and establish rules of conduct for monopolies.
- Recommend the signing of a consent decree between himself and any other person, rather than initiating criminal, administrative or judicial proceedings. A consent decree must be submitted for the approval of either the competent court dealing with offences under the RTP or the Tribunal.

Procedure for obtaining documents. The Controller can obtain information by conducting search and seizure activities or interrogations, or by requesting that certain information be delivered to him. Third parties can request to view applications filed with the Authority using, among other things, the provisions of the Freedom of Information Act 1998.

- they took all reasonable steps to ensure compliance with the RTP.

Also, an employee accused of an offence under the RTP is not liable if he can prove that both:

- he acted on behalf of his employer under his employer's instructions;
- he believed, in good faith, that his act did not constitute an offence under the RTP.

Under certain conditions, managers, officers or directors of an entity who have elected to implement an internal compliance programme of the RTP, are not liable.

- **Third party claims.** Civil proceedings can be instituted (for example, for damages) either by an individual tort action or a class action (*RTP*).

22. Is there a right of appeal against a decision of the regulator? If so, please give details.

A Controller's decision can be appealed to the Tribunal, both by the applicants and by third parties who might be harmed by these decisions, within 30 calendar days from the date a decision is published.

However, it is presumed that the Controller's decision not to individually exempt a restrictive agreement must be appealed to the High Court of Justice rather than the Tribunal.

The Tribunal's judgments can be appealed to the Supreme Court within 45 calendar days from the date the decision is received.

Any appeal can result in the affirmation, cancellation or modification of the decision or judgment under review.

The Restrictive Trade Practices Tribunal (Tribunal)

Head. Michaela Shidlovski-Or (District Court Judge) (currently acting for Jonathan Adiel, who has been appointed a Supreme Court Justice for a temporary tenure).

Contact details. The District Court of Jerusalem
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Jerusalem
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W www.court.gov.il (main website for the Judicial Authority)

Outline structure. The Tribunal is formed from district court judges and public representatives.

Two district court judges are appointed to the Tribunal (in addition to their usual district court responsibilities), for a single term of three years (which can be renewed for additional terms), by the Minister of Justice in consultation with the President of the Supreme Court.

The public representatives are appointed by the Minister of Justice on the recommendation of the Minister of Trade and Commerce, for three-year terms (which can be renewed for up to three consecutive terms). A total of up to 17 Tribunal members can be appointed at any one time.

A Tribunal panel is formed from this pool of professional and non-professional members in each individual case. Most proceedings are presided over by one of the judges (who acts as chairman of the panel) and two public representatives. However, the professional judge can decide that the hearing be presided over by a single judge (which would be the head of the Tribunal or his deputy).

Responsibilities. The Tribunal serves as a court of appeal to decisions given by the Authority. It can affirm the Controller's decision, amend it (or any of its conditions) or cancel it. The Tribunal's judgment can be appealed to the Supreme Court.

The Tribunal also acts as a court of first instance:

- By application, to approve restrictive agreements that are not excluded or exempted by the Controller (*section 7, RTP*).
- To split up entities that have merged in contravention of the provisions of the RTP (*section 25, RTP*).
- To order, on the application of the Controller, the dissolution of a monopoly into two or more separate entities (*section 31, RTP*).

The District Court Judge or, in his absence, another judge of the Jerusalem District Court can, at the request of the Controller, order any person to refrain from performing any act that violates the RTP (*section 50A, RTP*).

The Tribunal or competent court dealing with offences under the RTP can approve a consent decree submitted to it by the Controller (*section 50B, RTP*).

Competition matters can also be brought before the regular courts within the framework of civil proceedings and class actions that involve causes of action in tort under the RTP. Criminal charges are filed with the Jerusalem District Court.

23. Please summarise any powers that the relevant regulator has to investigate potentially restrictive agreements or practices.

The Authority can initiate a criminal investigation or an administrative inquiry. It has broad investigative powers, which are aimed at ensuring due and proper enforcement of the RTP, including:

- Search and seizure.
- Interrogation and delivery of information.
- Arrest and release on bail.

24. How is Article 81 of the EC Treaty enforced by your jurisdiction's national competition authority and courts in accordance with Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Modernisation Regulation)? Are there any differences between the enforcement of Article

81 and the enforcement of your jurisdiction's national competition laws? (EU member states only.)

Not applicable.

MONOPOLIES AND ABUSE OF MARKET POWER

25. Are monopolies and abuses of market power regulated? If so, please give a broad overview of the substantive provisions and regulatory authority.

The RTP regulates (mainly in chapter four) monopolies and abuse of market power. The Authority and Tribunal are the main relevant regulators.

Declaration of a monopoly

The Controller can declare a certain person or entity to be a monopoly (*RTP*). However, the RTP monopoly provisions still apply to a monopoly even without a previous formal declaration. The main significance of

the declaration is that it can be used in any legal proceedings as prima facie evidence of the existence of a monopoly.

Limitations imposed on monopolies

The Controller can demand in writing that a monopolist (*RTP*):

- Files an application with the Standard Contracts' Tribunal for approval of an existing, or proposed, agreement with customers or suppliers. If the monopolist fails to comply with the demand within a specified period, it is prohibited from using, or referring to, the agreement.
- Complies with the Standards Law 1953 for any asset or service manufactured, sold, imported or provided by the monopolist, if its activity is subject to the standards specified in that law.

The following restrictions also apply (*RTP*):

- A monopolist cannot unreasonably refuse to supply the asset or service for which it holds the monopoly. This duty also applies to a monopsony's refusal to purchase an asset or a service for which it holds the monopsony.
- A monopolist may not abuse his position in the market in any manner liable to reduce business competition or injure the public.
- If the Controller concludes that a monopoly injures competition or the public (or that significant public injury may be caused), he can instruct the monopolist to take certain measures to prevent the injury. The monopolist can file an appeal with the Tribunal and, while an appeal is pending, the instructions are suspended.
- If the Controller cannot prevent injury to competition or the public by directing the monopoly's operations, he can apply to the Tribunal to dissolve the monopoly into two or more separate entities. This sanction has not yet been used by the Controller.

26. How is dominance/market power determined?

A monopoly is defined as a concentration of a market share in Israel that exceeds 50% (no proof of market power is necessary) (*RTP*). The Minister of Trade and Industry can lower this threshold for a particular market.

For the definition of relevant product and geographic market, see *Question 16*.

27. Are there any broad categories of behaviour that may constitute abusive conduct?

Several categories of behaviour are deemed abusive, including (*RTP*):

- Unfair (that is, predatory and, presumably, excessive) pricing of the product under a monopoly.

- Reducing or increasing the quantity of assets or scope of services offered by the monopolist, outside the framework of fair competitive behaviour.
- Discriminatory practices that involve setting different terms for similar transactions, which are likely to give certain customers or suppliers of the monopolist an unfair advantage over their competitors.
- Tying agreements.

The Authority will issue orders to eliminate damage (including instructions on how to achieve this) caused by monopolistic behaviour if it adversely affects any of the following:

- Price, quality, quantity, regularity and conditions of supply of a product under a monopoly.
- Fair competition in businesses.

28. Are there any exclusions or exemptions?

There are no explicit exclusions or exemptions for monopolies or abuse of market power. However, the Tribunal has ruled that, in appropriate cases, a specific exclusion can arise if it is proven that a certain monopolistic behaviour is the result of a law that overrides the *RTP*.

29. Is it possible to notify the conduct to obtain guidance or clearance from the regulator? If so, please set out briefly the procedure.

There is no notification duty with respect to monopoly issues. However, the Authority can provide, in appropriate cases, informal guidance on a specific query as to whether certain conduct may be considered abusive (*see Question 3, Informal guidance*).

30. Please summarise the regulator's powers of investigation.

The Authority's powers of investigation for monopolies and abuse of market power are identical to those for restrictive agreements (*see Question 23*).

31. What are the penalties for abuse of market power?

An abuse of market power is a criminal offence, punishable by three years' imprisonment for an individual (or five years if committed under aggravating circumstances) and a fine (*see Question 10*).

32. How is Article 82 of the EC Treaty enforced by your jurisdiction's national competition authority and courts in accordance with the Modernisation Regulation? Are there any differences between the enforcement of Article 82 and the enforcement of your jurisdiction's national competition laws? (EU member states only.)

Not applicable.

JOINT VENTURES

33. Please explain how joint ventures are analysed under competition law.

Joint ventures are usually regarded by the Authority and Tribunal as restrictive agreements, especially if held between competitors, and are dealt with in the same manner. However, the Authority can treat a joint venture as a merger, if it appears to be a merger rather than an agreement to co-operate.

The Authority has issued a block exemption for joint venture agreements, to apply under certain circumstances.

PROPOSALS FOR REFORM

34. Please summarise any proposals for reform.

The Authority has drafted a block exemption for exclusivity arrangements in real estate, which was due to be enacted in 2003, but has been delayed (it is not known when this will come into force). This would exempt certain types of transactions from requiring Tribunal authorisation or an application for a specific exemption.

Recently, a draft bill was published by a special committee. This recommends that:

- The definition of a "restrictive arrangement" under section 2 of the RTP be amended to clarify the fact that a restrictive arrangement exists only when it might impair competition in the relevant market as a whole and not merely between the parties to the arrangement.
- The conclusive presumptions in section 2(b) of the RTP be limited to horizontal arrangements only (that is, agreements between competitors).

This bill is the first stage in the committee's work, which is intended to review all of the RTP and suggest proper amendments.