

Competition & Antitrust - Israel

New competition regulations enter initial implementation stage

Contributed by **Tadmor & Co**

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Introduction

In recent months a series of new laws focusing on the competitiveness of the Israeli economy have been implemented. While the merits of these laws have been hotly debated, little is known about how they will affect consumers, corporations and the economy in general.

In response to heightened interest in the cost of living, and the competitiveness of the food sector in particular, Parliament passed the Advancement of Competition in the Food Sector Law 2014. The law's stated objective is to increase competitiveness in the food sector in order to reduce product prices for consumers (for further details please see "[Food sector on target: new competition regulations become effective](#)"). Now that the law is being implemented, its implications for corporations and its overall efficacy will be put to the test.

Several months before that, Parliament passed the Advancement of Competition and Reduction of Concentration Law 2013, following the policy recommendations of a government-appointed committee charged with examining the structure of the economy and its effect on the level of competition. The law received extensive media coverage and prompted widespread public discourse - partly due to the highly publicised economic hardships of the IDB Group, whose multi-tiered holding structure would be prohibited under the new law.

Both laws introduce drastic and far-reaching regulations that will significantly affect the activities of many corporations in Israel. Despite this uncertainty, the antitrust commissioner – the key regulator charged with implementing many aspects of the laws – has taken the initial steps to lay the groundwork for enforcement of these laws.

Food sector regulations published

The Advancement of Competition in the Food Sector Regulations (Reporting of Large Suppliers and Large Retailers) 2014, published earlier this year, set out the filing schedule and format according to which 'large suppliers' and 'large retailers' -, as defined by the Food Sector Law – must report to the Antitrust Authority. These reports will be used to construct a comprehensive database of large retailers and suppliers in order to apply the new regulations and restrictions, some of which apply exclusively to such players. The database will enable the commissioner to define geographical markets for the food retail sector – a necessary first step in the exercise of his or her new powers to regulate and, where appropriate, prohibit the natural growth of retailers in concentrated markets.

Establishing list of concentrated entities

The Advancement of Competition and Reduction of Concentration Law includes three key features:

- Government agencies should take competitive concerns into consideration when allocating to concentrated entities rights such as licences, contracts and significant holdings relating to essential infrastructure (eg, natural gas, electricity, mail services) and, in certain circumstances, infrastructure in general.
- The possibility to control companies using multi-tiered (or 'pyramid') corporate holding structures is restricted. Under the law, no group may hold more than two or three tiers of reporting corporations, depending on the circumstances.
- The law prohibits cross-ownership of both significant financial entities and significant non-financial entities. The law defines 'significant non-financial entities' according to a turnover threshold (which may be lower for declared monopolies) or based on the amount of debt incurred by such corporations.

Authors

Shai Bakal



Itai Cohen



Irit Brodsky



In order to determine which entities fall under the definition of a 'significant financial entity' or 'significant non-financial entity', and compile a list of concentrated corporations pursuant to the law's definition, the antitrust commissioner is gathering, by way of mandatory data requests, information relating to the turnover and corporate structure of many significant corporations, as well as declared monopolies in various areas of the economy. In addition to significant financial and non-financial corporations, the commissioner will include in the list of concentrated entities those entities that have influence over the media and print news sectors, as well as entities which operate in multiple areas of essential infrastructure via a certain number of licences and franchises.

Comment

The implementation of these two new laws is still in its infancy, yet questions regarding the proper interpretation of the laws and regulations have already begun to arise - specifically, regarding the scope and degree of the reporting required under the Advancement of Competition and Reduction of Concentration Law and the practical implications of the Advancement of Competition in the Food Sector Law. Corporations dealing with the new regulations are advised to seek legal counsel in order to avoid the harsh penalties for violations of the laws and their reporting requirements.

While both laws have been criticised for their methods of regulatory intervention, their underlying objectives are sound. Thus, it is hoped that any shortcomings will be identified quickly, preferably in the early stages of implementation, allowing the legislature and the Antitrust Authority to re-evaluate the tools and methods that they provide.

For further information on this topic please contact [Shai Bakal](#), [Itai Cohen](#) or [Irit Brodsky](#) at Tadmor & Co by telephone (+972 3 684 6000), fax (+972 3 684 6001) or email (shai@tadmor.com, itaic@tadmor.com or irit@tadmor.com). The Tadmor & Co website can be accessed at www.tadmor.com.

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