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Merger Control

Fourth Edition

Contributing Editors: Nigel Parr & Catherine Hammon
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Israel

Dr. David E. Tadmor & Shai Bakal
Tadmor & Co. Yuval Levy & Co., Attorneys-at-Law

Overview of merger control activity during the last 12 months

2014 seems to have marked a slight decline in the number of mergers notified to the Israeli Antitrust Authority ("the IAA"), from 161 merger notifications filed in 2013 to 149 merger notifications in 2014. This figure is lower than the average number of merger notifications filed during the peak of the global economic crisis (in the years 2008-2010), and is only slightly higher than the record-low of merger notifications in 2012.

During this time, the relevant filing thresholds did not change, which indicates that the market has grasped the more conservative approach of the current Antitrust General Director ("the General Director"), and thus more complex antitrust transactions are abandoned before reaching the formal filing stage.

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The Israeli Restrictive Trade Practices Law ("the Antitrust Law") provides a general procedural framework which applies to all mergers. The investigatory process is not formally divided into phases, and all mergers must be reviewed by the General Director up to 30 days from the date the merger notifications were filed. The term may be extended by the Antitrust Tribunal or by consent of the merging parties. If the General Director does not render a decision within the prescribed time period, consent to the merger is deemed to have been given. The average review process in 2014 lasted 27 days upon submission of merger notifications. This is an improvement compared to 2013, when the average review process took 31.4 days, but it is still substantially longer than in previous years (e.g. 21.7 days in 2010 and 23.8 days in 2011).

While the Antitrust Law provides a general procedural framework which applies to all mergers, in practice, the IAA screens merger notifications upon filing and classifies them into one of the following three categories: "green" (clearly benign mergers); "yellow" (mergers that merit a more detailed analysis); and "red" (mergers that are seemingly anticompetitive).

The statistics regarding this classification for 2014 are yet to be published. However, there is a clear tendency of the IAA to seek more information for mergers labelled "yellow", and we expect an increase in the average review time of mergers labelled "green", as well.

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According to the Antitrust Law, the General Director has the power to either approve the transaction, block the transaction (if there is a reasonable likelihood that the merger will significantly harm competition in a relevant market), or approve the transaction subject to conditions (if such conditions can eliminate the harm to competition). Of the 149 mergers regarding which the IAA issued a decision in 2014:

- 96.6% of the mergers were cleared without conditions.
- 2.7% of the mergers were approved with conditions.
- 0.7% of the mergers were blocked by the General Director. It is currently unknown the number of transactions that were withdrawn by the parties before a decision was rendered.

An analysis of the IAA's track record during the last decade shows that the relative share of mergers that are blocked is stable, ranging from 0% to 2% at most, with another 1%-3% of the notifications withdrawn. These figures jumped sharply in 2012 with nearly 10% of the mergers blocked or withdrawn, dropping back to the average numbers in 2013 and 2014. This drop is mainly explained by the market's perception that complex mergers are unlikely to survive the General Director's scrutiny.

On the other hand, there is an evident decrease in the use of remedies by the IAA. While in the years 2000-2005 approximately 18% of merger decisions included remedies, the number decreased to only 6%-8% in recent years, with 2011 posting the lowest share ever for such decisions (2.6%). Although the number increased to 4.5% in 2012 and further slightly increased to 4.94% in 2013, it decreased back to 2.7% in 2014. The decline in use of remedies is in line with the IAA's new guidance on remedies – see "Key policy developments" below.

New developments in jurisdictional assessment and procedure

The main policy document regarding merger procedure has remained the "**Antitrust General Director's Pre-merger Filing Guidelines**" published in 2008 ("the Pre-merger Guidelines"). Citing these pre-merger guidelines, the General Director determined that any transaction that confers long-term (not necessarily indefinite) control over important competitive parameters of the services rendered by one firm (such as the quality of service) in the hands of another firm might be deemed a merger. Using the pre-merger guidelines, the IAA blocked in 2012 a transaction between Isrotel Ltd., a major hotels operator in Israel's southern city Eilat, and Laxan Israel Ltd., which owns a hotel in Eilat. The parties agreed that Isrotel would manage Laxan's hotel for a period of 10.5 years with an option to extend the period twice (for five years each time), in addition to granting Isrotel the option to purchase 25% of the hotel. The General Director blocked the transaction and rejected the parties' claims that the transaction was not subject to merger control supervision.

In addition, the IAA published several years ago a detailed Q&A document relating to merger control procedure. In 2014, the IAA published an additional Q&A document, which contains detailed examples taken from pre-rulings made to the IAA regarding merger control procedure.

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An important development in the area of merger enforcement was the July 2012 publication of the IAA's Guidelines Regarding the Use of Enforcement Procedures of Monetary Payments, which stated that the illegal execution of non-horizontal mergers would normally result in a monetary sanction (an administrative tool), rather than criminal penalties, which could also be applied under the law. Illegal horizontal mergers are still subject to criminal enforcement.

In 2011, the IAA entered a consent decree with parties that allegedly breached the mandatory filing regime. While the IAA found no competitive issues with the merger, the parties were nonetheless required to pay 400,000 NIS (around US$120,000).

In 2013, the IAA announced that it would allow electronic filing of merger notifications, in order to make the filing process more efficient. Moreover, public companies would no longer be required to submit financial reports and prospectuses as part of their merger notifications.

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The General Director's decisions in merger cases are subject to judicial review by the Antitrust Tribunal.

Granted that the General Director consents to a merger application, whether conditionally or unconditionally, any person who may be harmed by the merger, a trade association, as well as any consumers' association, may appeal to the Antitrust Tribunal against the General Director's decision. In the event that the General Director blocks a merger or stipulates conditions to his consent, each of the merging companies may appeal to the Antitrust Tribunal.

Section 22(c) of the Antitrust Law grants the Antitrust Tribunal the power to approve, revoke or amend the General Director's decisions. This section was traditionally interpreted by courts starting from the Tnuva case (CA 2247/95 **General Director v. Tnuva Central Cooperative for the Marketing of Agricultural Produce in Israel Ltd. (1995)**) as giving the Antitrust Tribunal a right to hold a *de novo* judicial review, unbound by the analysis, factual findings or legal interpretations of the General Director. This interpretation was later narrowed in a line of decisions rendered by the Antitrust Tribunal and Supreme Court.

In **Antitrust Authority v. Dor Alon Energy Israel (1998) Ltd,** the Supreme Court disagreed with the Antitrust Tribunal's stand that since the Tribunal's review was *de novo* there was no significant weight to the conclusions reached by the General Director at the administrative level. While the Supreme Court did recognise the *de novo* review of the Tribunal, it decided that the General Director's decision should form the basis and starting point for the Tribunal's review, which should also take into account the knowledge, expertise and experience of the Antitrust Authority's personnel, who are highly professional specialists in various fields including law and economics. Therefore, the Antitrust Tribunal should attribute special importance to the General Director's professional opinion. The Antitrust Tribunal can indeed deviate from the General Director's decision but it should not review the case as if it were a new proceeding, absent a General Director's opinion.

In AT 36014-12-10 **Caniel Packaging Industries Ltd. v. The General Director (2011)**, the Antitrust Tribunal mentioned the Supreme Court decision in Dor Alon and clarified that it was not the Supreme Court's intention to narrow the scope of the Tribunal's judicial review over the decisions of the General Director to a purely administrative standard of review (which is more focused on the decision-making process rather than the merits). However, the Tribunal explained that the Dor Alon decision prevents an appeal process which is not directly linked to the original decision. Moreover, the Antitrust Tribunal stated that the Dor Alon decision may have influence over which party carries the burden of proof, although the issue was left undecided and for that specific case (Caniel) the burden of proof was placed on the General Director.

In addition to raising the bar for successful challenges of the General Director's merger decisions, the judicial review is fairly limited in its applicability for practical reasons. Normally such appeal proceedings span between two to four years. Merger transactions are normally carried out relatively swiftly and parties are usually unwilling to freeze their business development plans for years, waiting in uncertainty for a court decision. Therefore, merging parties who are informed by the General Director that he intends to block their transaction, often withdraw their application before the General Director grants his final and public decision.

A relatively recent Supreme Court ruling, CA 6426/13 **Azrieli Group v. Antitrust Authority (2013)**, halts a gradual erosion in the scope of judicial review of General Director's merger decisions. In this case, a party to the merger (the seller) notified the Israeli Stock Exchange that the merger agreement expired since the General Director did not approve the merger. Furthermore, the seller did not join the appeal filed by the buyer to the Antitrust Tribunal. The Antitrust Tribunal decided that given that the merger agreement had expired, the appeal was theoretical and was therefore dismissed. Azrieli (the purchaser) appealed against the Antitrust Tribunal's decision, and the Supreme Court sustained the appeal, overturning the Tribunal's decision and reinstating Azrieli's challenge against the General Director's decision. The Court held that despite the seller's cancellation of the merger transaction, the challenge had not become theoretical; and that the tribunal had erred in concluding that it had no practical significance, given that the seller stated it was reasonably probable that he would re-enter the transaction, should the General Director's decision be overturned. The Court further accepted Azrieli's argument that the parties will not be required to re-file the transaction, should they enter a new merger agreement following the Tribunal's approval. Not less importantly, the court ruled that the Tribunal can consider the competitive landscape at the time of the litigation, indicating a broad *de-novo* assessment by the Tribunal is expected.

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Section 30(a) of the Administrative Courts Law, 5752-1992 (the "Administrative Courts Law"), establishes the basic principle regarding a potential petitioner's right to review and copy documents used by a public authority in the process of rendering a decision. This principle constitutes the source of an appellant's right to view those documents held by the General Director relating to the decision under appeal. A party wishing to deviate from this rule bears the burden of proving that there is a valid ground for claiming that it is privileged. Once such a ground has been proven, the appellant's review regarding these materials may be restricted, but only to the most minimal degree that is required.

Section 30(b) of the Administrative Courts Law specifies several types of privileges. This is the case, for example, when the documents have no relevance to the appealed decision; when the documents contain trade secrets; when the documents contain internal information such as minutes of meetings or decision drafts; or when disclosing the documents might infringe a right or a personal matter of a third party. Nevertheless, in accordance with the general principle that the file should be accessible to the appellant, the Section provides that reserving the right to review is allowed "provided that review is not prevented for the reasons listed in this sub-section more than is required due to that reason".

In general, the Supreme Court held in CA 4524/01 **Ma'ariv Hotza'at Modi'in Ltd. v. the Antitrust General Director** [2003] IsrSC 57(4) 521 that an appellant's interest in viewing the public authority's documents on which the decision in his case is based, and the public interest in the "conduct of an exhaustive, just and complete process", will prevail over the interest of those seeking to claim privilege in the preservation of their trade secrets. This is particularly true when it is possible to reduce potential harm regarding trade secrets by having privileged documents be disclosed only to counsel (see also the decision of the Antitrust Tribunal regarding the same matter in AT (Jerusalem) 1/99 **Yediot Ahronot Ltd. v. Antitrust General Director** (decision dated 23 April 2001)).

However, it seems that in recent years this balance has shifted towards protecting the interests of third parties who seek to prevent the exposure of sensitive information, at the expense of appellants' ability to process and analyse the information contained in the IAA's documents. On several occasions, review of certain documents was completely denied. Other documents were accessed by a restricted number of counsels and experts and only in a location allocated for this purpose in the IAA's offices, subject to severe confidentiality undertakings ("data room"). This trend further diminishes the ability of parties to contest the General Director's decisions.

Key industry sectors reviewed, and approach adopted, to market definition, barriers to entry, nature of international competition, etc.

In recent years, the IAA has faced several challenges with respect to the pharmaceutical sector. Since merger transactions in this sector are often made between foreign entities, involve R&D issues and require an in-depth understanding of the industry, the IAA may be ill equipped to investigate these mergers. Therefore, on these occasions, the IAA may prefer to wait with its decision until the EU or US authorities have concluded their investigations and pending their decision. This was the case in the *Schering Plough-Merck* merger, where the IAA rendered its decision immediately after FTC approval. In the past year, the IAA reviewed a number of large and complex international mergers in the pharmaceutical sector, such as the *Novartis-GlaxoSmithKline* three-part merger and the *AbbVie-Shire* merger (which was eventually abandoned for other reasons by the parties). Despite being quite complex in terms of the size and number of markets concerned, the IAA reviewed these merger requests swiftly and approved them unconditionally.

The IAA uses the same methodology in reviewing mergers in the pharmaceutical industry as it does in other industries. However, sector-specific characteristics are taken into consideration by the General Director, such as the potential barriers to entry (which may be more substantial in the pharmaceutical sector due to the strict regulatory requirements, the vast investments needed and the difficulties facing potential entrants, due to intellectual property rights of incumbent firms).

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The high-tech sector has also been gaining increasing attention from the IAA. In recent years, numerous Israeli startup companies have been acquired by foreign companies. For reasons related to the fact that most acquisitions were made by foreign firms that lack sufficient Israeli nexus, as well as the fact that most startup companies do not meet the filing thresholds, normally no filings were made in these cases. Notwithstanding, the General Director is not blind to these acquisitions of Israeli companies and their potential effect on local competition. In the past years, the IAA reviewed several start-up acquisitions that were not reported, such as the acquisition of the navigation startup Waze by Google.

Key economic appraisal techniques applied

The substantive test under section 21(a) of the Antitrust Law is "reasonable likelihood that, as a result of the proposed merger, competition in the relevant market may be significantly harmed or that the public would be injured".

In assessing the possible competitive outcome of a merger, the IAA usually applies the same methodology that the relevant US and EC authorities use. The IAA would normally define the relevant market and then, if necessary, assess the relevant market shares of the parties, the existence of barriers to entry and expansion in the market, as well as other economic factors which may indicate how likely it is that the merger would result in either unilateral or coordinated effects.

The definition of the relevant market is mostly based on qualitative evidence, usually obtained by conversations with the merging parties and other market participants, internal documents, surveys, public records, information from other governmental agencies, and much more. In cases where the qualitative analysis is not sufficiently informative, the IAA may seek to strengthen it with quantitative analysis (critical loss analysis, price correlations, etc.).

The IAA has increased the use of econometric analysis in recent years, but the analysis is still fundamentally qualitative. The IAA attributes special importance in merger investigations to direct evidence, such as natural experiments, internal documents, and market surveys.

In 2011, the IAA published the "**Guidelines for Competitive Analysis of Horizontal Mergers**", which describe the theoretical economic and legal foundations upon which the IAA's merger review is based.

According to these guidelines, the core purpose of merger review is to prevent the creation or enhancement of market power. The guidelines further explain that such market power can be exercised either unilaterally ("merger to monopoly") or collectively. Moreover, the guidelines explain that, in order to assess the competitive effects of a contemplated merger, the following steps will be carried out:

First, the IAA will identify the relevant product and geographical markets in which the merging companies operate. The definition of the relevant market is based on the hypothetical monopolist test, which is implemented using practical indices such as differences in the functional use of the products, price differences, price correlation, the perspectives of market participants, differences in quality, etc.

Second, the IAA will identify the players in the market, their market shares, and the level of concentration before and after the merger.

The guidelines stress that the merger investigation does not rest solely on static analysis. Therefore, when the initial assessment yields that the merger raises significant concerns, the IAA will enter a more detailed analysis of the "dynamic aspects", i.e. the possibility that the new entry or expansion of existing players in the market will mitigate the immediate and potentially harmful effects of the merger.

The analysis of entry and expansion will focus on a variety of entry and switching barriers, including regulatory barriers, scale economics, network effects, strategic behaviour by incumbent firms, branding, access to essential inputs, and much more.

If the analysis results in a conclusion that the merger is anticompetitive, the IAA will examine whether there are available remedies that can eliminate the potential harm to competition.

If such remedies are unavailable, the IAA will block the merger, unless one of the following rare situations is proven by the parties:

- **Efficiency defence** – If the IAA is convinced that there are efficiencies directly resulting from the merger that outweigh the potential harm to competition, the merger will be approved. In order to enjoy the efficiency defence, one must meet certain conditions: (a) the efficiency must be merger-specific, in the sense that the parties cannot obtain similar efficiencies in any other way; and (b) the efficiency must be significant, timely and such that the benefits will mostly be passed on to the consumers and outweigh the harm inflicted on them by the loss of competition.
- **The failing firm doctrine** – This doctrine refers to situations by which the acquired entity is financially unsustainable and will likely exit the market, even absent the merger. In such cases there is no causal link between the merger and the injury to competition. In 2010, the IAA published guidelines detailing the legal basis and the practical requirements to meet the defence (see "Key policy developments").

Approach to remedies (i) to avoid second stage investigation and (ii) following second stage investigation

As aforementioned, the merger control procedure in Israel does not have a formal classification method. However, it is not uncommon for parties seeking swift approval for complicated mergers to offer upfront remedies, attempting to expedite the review process. An excellent example for such an approach is the Bezeq-012smile merger.

In that case, the parties identified several overlapping areas which were seemingly meaningful and would possibly have required a lengthy review. In order to avoid such lengthy proceedings, the parties suggested divestment of the overlapping activities at the outset.

However, it is more common that remedies are discussed only if the IAA reaches a tentative conclusion that the proposed merger may significantly lessen competition in the market. In such cases, the parties may propose remedies that will eliminate the harm to competition or, alternatively, the IAA may stipulate the conditions that are required in order to have the merger approved, and these can then be discussed with the parties.

In 2011, the IAA issued guidelines for merger remedies detailing key principles of its remedies policy – see "Key policy developments" below. In a nutshell, the new guidelines express a preference for structural remedies over behavioural remedies. Interestingly, the clear majority of remedies imposed until 2011 were behavioural, while in 2011 most cases involved structural remedies. In 2013, however, the majority of remedies used by the IAA were behavioural remedies.

Key policy developments

In 2011, the IAA published the "**Guidelines on Remedies for Mergers that Raise a Reasonable Concern for Significant Harm to Competition**".

The document outlines the governing legal principles of merger remedies, two of which stand out: (a) the IAA is authorised to request remedies only if the merger, as it was originally proposed, presents a concrete danger that competition will be significantly harmed. In other words, the IAA may impose conditions only for mergers that it can otherwise block; and (b) remedies are preferable whenever they are capable of mitigating the harm to competition.

The guidelines explain that the decision if and what sort of remedies are suitable in a particular case is based on the specific circumstances. Among the considerations that serve an important role in such analysis are the theory of harm to competition; how effective is the remedy; the ability to enforce the remedy and to monitor deviations of the parties from such remedy; the remedy duration; and the ability of the merging parties to comply with the remedy.

The guidelines explain that the IAA will generally prefer structural remedies over behavioural remedies. The IAA alleges that structural remedies are generally more effective as they deal with the proverbial disease rather than the symptoms. Moreover, they do not require complex and constant monitoring, demand fewer public resources and are executed within a defined and often brief time period. However, the IAA acknowledges that in certain instances behavioural remedies, or a mix of behavioural and structural remedies, would be more appropriate.

2012 seems to have marked a change in the direction of the IAA's approach towards applying stricter criteria to proposed mergers. This impression was supported by the unprecedented number of blocked mergers and withdrawals of merger notifications in that year. Further insights can be gathered based on explicit remarks made by the General Director, Prof. Gilo, such as those made in the 2012 to 2014 annual IAA conferences. These statements demonstrate that the IAA does not only intend to block mergers that significantly harm competition, but also mergers in markets leaning towards higher concentration, as well as mergers which raise less concrete concerns for diminished competition, whether actual or potential. The notion that the policy has changed seems to explain the lower number of transactions blocked in 2013 and 2014, as complex transactions are terminated at the drawing board.

In 2014, the IAA published the "**Guidelines Regarding Information Exchange in the Course of Due Diligence Prior to a Transaction Between Competitors**". The guidelines provide theoretical principles and a procedural framework for conducting due diligence in transactions that require the transfer of sensitive information. While the guidelines characterise certain types of competitively sensitive information and suggest ways to transfer such data legally, they confer the ultimate discretion regarding the due diligence process and the potential liability that comes with it to the merging parties.

The premise of the guidelines which is economically and empirically controversial is that, in general, parties' uncertainty as to market conditions and their competitors' capabilities and plans contributes to competition; hence, any reduction in uncertainty can harm competition. Accordingly, the guidelines define "competitively sensitive information" very broadly.

The General Director does not establish a sweeping categorical rule regarding the exchange of such information, and presumably there are certain circumstances in which the exchange of such information would not pose a real competitive hazard.

The guidelines present a number of rules for due diligence that are aimed at minimising harm to competition in a manner that is consistent with the Antitrust Law, such as the identification of competitively sensitive information, the evaluation of the necessity of information disclosure, the disclosure of information subject to a confidentiality undertaking, and the external review or review by employees who are not involved in pricing, marketing, and sales in the field, in which there is a competitive overlap and documentation requirements. Furthermore, a preference should be displayed for aggregate, outdated and non-concrete information.

Reform proposals

In 2015 the IAA published a memorandum of legislation calling for an amendment of the Antitrust Law. The memorandum proposes significant reform of the merger control regime.

It reflects the IAA's attempt to expand the application of merger control in some respects, while decreasing the number of mergers that are subject to compulsory filing. This reform proposal consists of five key aspects:

The first aspect is an extension in the application of Israeli Antitrust Law to mergers between foreign corporations. Currently, the literal definition of a "*Merger*" in the Israeli Antitrust Law applies to mergers between corporations incorporated in Israel and to foreign corporations that are *registered* in Israel. Until now, the General Director applied his authority to regulate mergers involving foreign corporations that are not registered in Israel by interpretive means, in cases where nexus could be determined to exist between the foreign corporation and Israel.

The current proposal wishes to cancel the need to prove nexus to Israel by broadening the definition of "*Company*" to any foreign corporation. In this respect, the proposed reform reflects a considerable expansion in the application of Israeli antitrust law to mergers between foreign corporations, as well as mergers involving Israeli and foreign corporations.

The second aspect relates to mergers involving individuals and other forms of corporations. The General Director proposes to amend the definition of "*Company*" so that Israeli merger control would not be affected by the form of incorporation, and would include mergers where one of the parties is an individual, an unregistered partnership (including a foreign partnership) or an association. Presently, the definition of merger applies only to *some* of the abovementioned forms of incorporation and to *some* transactions involving individuals (by way of interpretation).

The third aspect introduces a proposal to set a general prohibition of anti-competitive mergers, which will also apply to mergers that fail to meet the existing thresholds for pre-merger notification. Presently, a merger that fails to meet the minimum threshold for pre-merger notification is immune from intervention, and the parties to such a merger may consummate the transaction even if it entails significant competitive harm.

The General Director proposes to effect a substantive prohibition on any merger that raises reasonable concerns of significant competitive harm or harm to the public. If accepted, this amendment could subject parties to a merger to criminal liability and administrative sanctions, and enable the General Director to order the dissolution of the merger even if the parties thereto did not have a duty to notify the General Director of the merger, if it is determined that such merger raised reasonable concerns of significant competitive harm. Naturally, this provision creates a great deal of uncertainty, especially due to the fact that in many cases the information required for a full competitive analysis of the merger is not available to the parties prior to the entering into the merger agreement or the consummation of the transaction (for example, information acquired by the General Director from third parties). The costs of such analysis in themselves may deter parties from executing merger transactions.

Mergers that give rise to competitive concerns are sometimes approved subject to certain conditions; however, where there is no requirement to file a merger notification, the merging parties are in fact denied the opportunity to receive a conditional merger approval. To resolve this issue, under the proposed regime, parties could voluntarily file a merger notification, and the General Director would have 15 days to notify them whether or not he intends to review the merger. A negative response or no response will be deemed as an unconditional approval of the merger.

The fourth aspect includes a proposed amendment of the minimum thresholds requiring pre-merger notifications. The General Director proposes to update the minimum thresholds requiring pre-merger notifications. The current minimal joint turnover threshold in Israel of both parties is ILS 150m (around US$ 38m), and is proposed to be raised to ILS 250m (around US$ 63m). The other minimal turnover threshold relates to at least two separate merging parties, and it will remain ILS 10m. The General Director proposes that even if this threshold is not met, if one of the parties to the merger has a *worldwide* turnover exceeding ILS 1bn, a filing of pre-merger notification will be required.

A pre-merger notification is also required where the merger would create a monopoly or if a party to the merger is already a monopoly. The General Director proposes adding a condition to this requirement, requiring that the merging parties have a joint turnover of at least ILS 100m (around US$ 25m). This new condition would decrease the number of transactions requiring merger notification but, as explained above, such mergers will still be subject to the substantive test.

The fifth aspect relates to an amendment in the mandatory timetable for a merger review. Currently, the Israeli Antitrust Law allows the General Director 30 days to decide whether to approve a merger. In order to extend the 30-day period, the General Director must receive the approval of the parties to the merger or the Antitrust Tribunal. The General Director's view is that such 30-day period is not sufficient in order to review complex mergers. Therefore, it is proposed to grant the General Director unilateral authority to extend such period to up to a total of 120 days (excluding the initial 30-day period, i.e. a grand total of 150 days).

Other proposals in the memorandum include enhancing the transparency of the merger review process by requiring the publication of an abstract of the records and minutes of meetings of the mergers and exemptions committee.

Dr. David E. Tadmor
Tel: +972 3 684 6000 / Email: david@tadmor-levy.com

Dr. Tadmor is the co-chairman and co-managing partner of Tadmor & Co. Yuval Levy & Co. Dr. Tadmor's practice includes the representation of many leading multinational clients in a large variety of industries, as well as many of Israel's largest industrial companies, holding companies, and financial institutions.

Dr. Tadmor served as the Director General of the Israel Antitrust Authority (IAA) between 1997 and 2001. As Antitrust Commissioner David introduced the IAA to the competition committee of the OECD, and was also the driving force behind the cooperation agreement between the United States and Israel in the area of competition.

As a leading lawyer in the area of government regulations, David has represented major clients before governmental bodies and legislative committees in many of Israel's major regulatory and legislative reforms.

David has more than 20 years of experience in the area of mergers and acquisitions. He was a senior partner at Caspi & Co., a leading mergers and acquisition firm in Tel Aviv, and a corporate attorney with the New York law firm of Wachtell, Lipton, Rosen & Katz from 1988 to 1993.

David was an adjunct professor at the Hebrew University of Jerusalem, the Interdisciplinary Center, and Tel Aviv University School of Law. He now co-teaches a course in competition and intellectual property law at the Tel Aviv University School of Law.

Shai Bakal
Tel: +972 3 684 6000 / Email: shai@tadmor-levy.com

Shai Bakal is the head of the firm's antitrust/competition group.

Shai regularly advises and represents leading corporations in Israel and abroad with respect to complicated antitrust matters, including complex mergers, joint ventures, restrictive trade practices and abuse of dominant position proceedings. He is well acquainted with the different sectors of the Israeli economy, particularly the pharmaceutical, food, energy, retail, and banking sectors. Shai has created and implemented antitrust compliance programs for large Israeli companies and multinational corporations.

Shai represents clients in complex antitrust litigation before the Antitrust Tribunal and in civil litigation, including class actions and appeals before the Supreme Court. Shai also represented clients before various Israeli regulators, as well as in administrative petitions to the Israeli Supreme Court.

In the past, Shai practised law in the legal department of the IAA (2002-2007), where he was in charge, among others, of the food sector, retailing, and intellectual property. He was later appointed as the head of the IAA's mergers team. During his term at the IAA, Shai drafted several key policy documents, including the "Antitrust General Director's Premerger Filing Guidelines" and the "Antitrust General Director's Position on Commercial Arrangements among Suppliers and Retail Chains".

Shai is a lecturer at Tel Aviv University in the area of antitrust law, and particularly the interface between IP, innovation, and antitrust.

Tadmor & Co. Yuval Levy & Co., Attorneys-at-Law

5 Azrieli Center, The Square Tower 34th floor, 132 Begin Road, Tel Aviv 6701101, Israel
Tel: +972 3 684 6000 / Fax: +972 3 684 6001 / URL: http://www.tadmor.com

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