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**ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL**

**-- January 2006 through April 2007 --**

*This annual report is submitted by the Delegation of Israel to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 6-7 June 2007.*

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## Executive Summary

1. This report summarises recent initiatives and developments in Israel's competition law and policy as well as main enforcement activities of the Restrictive Trade Practices Act, 5748-1988 (hereinafter – "Antitrust Law") for the period of January 2006 through April 2007.

The Israel Antitrust Authority (hereinafter – IAA) is an independent government enforcement agency established in 1994 under an amendment to the Antitrust Law. Its mandate includes preventing market power through merger control and anti-cartel enforcement, restraining abuse of dominant position by firms and enhancing competition in the various markets. An Antitrust Tribunal, sitting within the District Court of Jerusalem, has exclusive jurisdiction over non-criminal governmental antitrust proceedings. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters. Both criminal and civil antitrust rulings are subject to appeal before the Supreme Court.

2. In the period covered by this report, the IAA substantially enhanced competition in various aspects through proactive enforcement of the law, promotion of legislative amendments as well as advocacy efforts. This action led to significant improvements in several important markets, such as energy, banking, telecom, aviation as well as food and retail. Some of the main achievements include:

- Supreme Court endorses IAA's decision to block a merger between two main fuel companies (Sonol and Dor-Alon) due to competitive concerns;
- Enactment of legislation that opens the aviation sector to antitrust scrutiny;
- Antitrust Tribunal approved a consent decree between the IAA and main food suppliers, constituting a reform in the commercial relationships in the retail sector;
- Agreement with credit card companies on the gradual reduction of interchange fees.

3. In addition, amendments were made to the block exemptions regime and a new merger guidelines draft has been published.

4. The resources of the IAA have not significantly changed from previous years, with an annual budget of 20,694,000 NIS (approximately 4.85 million USD) and 67 employees. Nevertheless, the IAA is experiencing an overall increase in the intensity of its activities, whether in litigation, enforcement, advocacy and the volume of merger reviews in 2006.

## **1. Changes to competition laws and policies**

### ***1.1 Legislative amendment opens the aviation sector to antitrust scrutiny***

5. One of the major achievements accomplished by the IAA during 2006 is the enactment of a legislative amendment which allows the IAA to enforce the provisions of the Antitrust Law in the aviation sector. Thus far, Paragraph 3(7) to the Antitrust Law stipulated that all forms of international sea and air transportation were immune from antitrust scrutiny. The statutory exemption implied that airlines could engage in various types of agreements, regardless of their consequences on competition and without the need for any authorisation from the IAA. As stated by the Cabinet (decision # 441, 12.9.2006):

*"The section opens a very wide avenue to make restrictive agreement that harm competition and the public, by fixing prices and dividing the market between carriers among other things. The result of the matter is that even though such agreements may seriously harm competition, they are protected from examination and correction. The existence of such harmful agreements is likely to prevent the efforts to advance competition in the aviation sector for the good of consumers".*

Due to the negative consequences of the exemption on competition in the aviation sector, the IAA advanced a reform, which was finally approved by the cabinet as part of the Economic Arrangements Law for 2007. As part of its new powers, the IAA shall have the mandate to examine agreements which might be detrimental to competition, such as code sharing agreements.

### ***1.2 Renewal and amendment of block exemptions***

6. On March 29, 2006, the Minister of Trade and Industry and the General Director signed a renewed set of block exemptions.

7. Block exemptions were first enacted in Israel in 2001 with the intention to liberalise the authorisation and exemption system while enhancing its efficiency. The block exemptions that were enacted thus far relate to: Restrictive Arrangements Causing Immaterial Harm to Competition; Joint Ventures; Research and Development Agreements; Exclusive Dealing; Exclusive Distribution and Franchise.

8. Section 15A(e) of the Antitrust Law stipulates that block exemptions are to be enacted for a period of maximum 5 years. In March 2006, the block exemptions were expected to expire and thus during 2005 the IAA commenced a process of renewal and amendment. Both the IAA and the private sector gained significant practical experience over recent years that enabled the IAA to initiate important amendments. The Mergers and Exemptions Committee has approved the draft block exemptions which included comments from the public. It was then signed by the Minister of Trade and Industry came into force on May 11, 2006.

### ***1.3 New guidelines concerning loans between competitors***

In February 2006, the General Director published guidelines expressing the IAA's position regarding loans between competitors. Their purpose was to present the competitive concerns that may stem from such loans and to set a framework that will assist parties in assessing under which circumstances cross debtorship among competitors might be considered as a restrictive arrangement.

Debtorship links may influence the ordinary course of business among competitors. The existence of a debt might affect the independent discretion of the debtor, due to the creditor's ability to influence its

decisions and practices. The creditor often gains access to non-public commercial information which belongs to the debtor. Subsequently, there is concern over the possibility that some loan agreements might lead to spillovers that could impede competition in the relevant market. Clearly, not every loan agreement is necessarily considered a restrictive arrangement as each arrangement should be examined in light of its case-specific circumstances. The guidelines set a non-exhaustive list of factors that should be taken into account while reviewing cross debtorship arrangements between competitors.

#### **1.4 Publication of merger guidelines draft**

9. In recent years the IAA has gathered its accumulated experience in merger review, to produce coherent and comprehensive guidelines that would reflect its up to date policy and practices. The process led to the publication of a merger guidelines draft in December 2006. The purpose of the procedural merger guidelines is to clarify the various reporting requirements as well as other procedural requisites relating to mergers. The underlying objective is to enhance the level of transparency and facilitate the application process for potential users. In addition the guidelines are likely to yield efficiency gains due to an expected decrease in the number of individual inquiries from the private sector as well as a possible reduction in the number of unnecessary merger notifications (e.g. transactions which do not require notification).

10. The merger guidelines draft focuses on a number of issues including:

- classification of transactions for the purpose of merger notification with specific reference to cross border transactions in which at least one party is a foreign company and transactions involving private individuals;
- duties that lie on merging parties from the moment of the transaction until the IAA's decision;
- procedural and substantive aspects in the IAA's merger review process;
- reporting requirements with specific reference to stock options transactions.

11. Upon its publication, the IAA invited the public to comment on the draft merger guidelines. All comments have been reviewed and are currently being processed.

## **2. Enforcement of competition laws and policies**

### **2.1 Action against anticompetitive practices**

#### *2.1.1 Statutory framework and statistics*

12. The Antitrust Law provides for varied remedies in cases of infringements or violations of the Law, some of which qualify as a criminal offence as well as a civil tort as explained hereunder.

13. Severe antitrust violations may be subject to criminal prosecution and may result in fines and imprisonment sentences. Liability is imposed upon the corporation and its executives.

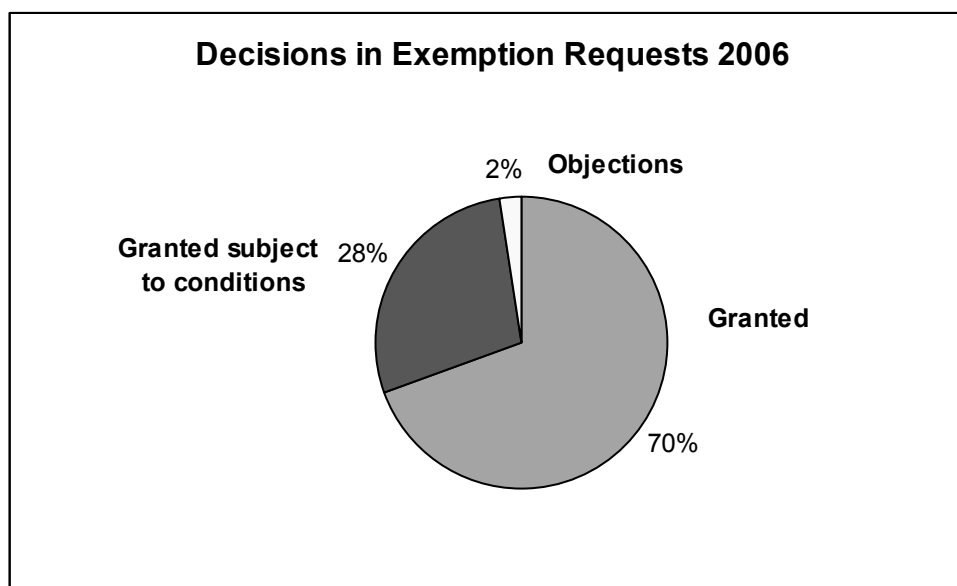
14. The civil and administrative remedies for infringements of the Antitrust Law include consent decrees, injunctions and court orders granted by the Antitrust Tribunal. The General Director has the power to declare an activity as prima facie illegal and the power to issue rules of conduct to monopolies.

The Antitrust Law stipulates that 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 is deemed to be a *Monopoly*.

The law defines a “*restrictive arrangement*” 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. The law provides examples for anti-competitive behaviors which fall under the above mentioned definition. 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.

15. Engagement in a restrictive arrangement without prior authorisation of the Antitrust Tribunal or any other temporary authorisation is prohibited, unless the arrangement was specifically exempted by the General Director or in case it was covered by a block exemption. During 2006, the General Director handled exemption requests as follows:

Total number of Exemptions	Granted	Granted subject to conditions	Objections
82	57	23	2



2.1.2 *Summary of significant cases*

16. The IAA devotes extensive efforts and resources in its action against anticompetitive practices and cartel arrangements in a wide range of industries. The following summarises some of the main developments which took place over the past year.

Antitrust Tribunal approves a consent decree between IAA and Strauss-Elite

17. In February 2006, the IAA reached an agreement with one of the largest food concerns in Israel and three of its executives, regarding the actions that came in response to Cadbury’s attempts to enter the Israeli chocolate market. In 2003, the IAA initiated proceedings against Strauss-Elite following complaints

that it was abusing its dominant position in the chocolate market. Strauss-Elite manufactures, markets and distributes a wide range of food products including chocolate, sweets, coffee, snacks and pastries. It possesses a dominant position in several of the markets in which it operates. Cadbury, one of the largest chocolate producers in the world, first entered the market through a local representative by the end of 2002. The chocolate tablets market is estimated at one billion NIS annually. Strauss-Elite holds over 70 percent of the market and thus was declared a monopoly in 1988. Subsequently, the General Director instructed Strauss-Elite to refrain from exclusivity arrangements with retailers and from conditioning the supply of its dominant products with other products.

18. Once the investigation and the hearing process have been completed, a consent decree was reached and authorised by The Antitrust Tribunal on 10 January 2007. According to the decree, Strauss-Elite is committed to abstain from excluding competitors by imposing sanctions on retailers or wholesalers that sell or market the company's competitors' products. In addition, Strauss-Elite will pay the State Treasury a total fine of 5 Million NIS (over one million US dollar), which is the largest sum ever paid by a sole company as part of consent decree. In addition, three executives agreed to be personally liable for the fulfilment of the company's behavioural obligations.

#### Abolishment of restrictive arrangements in the health services sector

19. In February 2006, the General Director instructed Clalit Health Services (hereinafter – Clalit), a major health services provider in Israel, to abolish exclusivity arrangements it had reached with private pharmacies to refrain from selling prescribed medication products to patients who are not insured by Clalit. Following complaints that reached the IAA, it was found that the agreements Clalit had with private pharmacies included discriminative provisions against patients who were insured by Clalit's competitors.

20. Most of the agreements were reached in places where only one pharmacy operates and where Clalit had a monopolistic position. The exclusivity agreements made it difficult for other Health Services Providers to enter relevant markets. Subsequently, competitors were kept out while Clalit strengthened its monopolistic position in those markets. Following the intervention of the General Director, the exclusivity agreements were abolished.

#### Court rejects defendants' claim in the frozen vegetables cartel trial

21. In June 2005, the IAA filed an indictment against five frozen vegetables companies and their managers in the District Court of Jerusalem.

22. According to the indictment, the companies conspired in a cartel, from 1992 until 1998, to coordinate product prices and discount rates. In addition, the indictment suggests that the companies divided customers among them. The frozen vegetables market in the relevant period was estimated at 160 million NIS. In March 2006, the Court rejected the defendants' claim that frozen vegetables are subject to the Antitrust Law's agricultural exemption. The case continues to be tried at the Jerusalem District Court.

#### Determination concerning a restrictive arrangement in the salt market

23. In April 2006, the General Director determined that Israel Salt Industries Ltd., a declared monopoly in the edible salt market, reached a restrictive agreement in 1999 with a Cyprus based salt company (hereinafter – Cyprus company) that exported salt to the Israeli market. According to the agreement, the foreign company would become an agent of the Israeli company and refrain from exporting salt to Israel. Indeed, the export of salt to Israel stopped and has not been renewed since. For many years, Israel Salt Industries Ltd. enjoyed full control of the Israeli salt market, inter alia, thanks to agreements it reached with another Israeli salt company according to which the latter would not enter the retail marketing of salt. Those agreements were abolished by the Antitrust Tribunal in 2004 as part of a consent decree that

was reached by the General Director. In the relevant period (1999), import was the only viable competitive threat.

24. Israel Salt Industries Ltd. exports 20% of its output and in 1999 it supplied half of the salt consumption of the Cyprus market. In 1997, the Cyprus company competed with Israel Salt Industries Ltd. both in Israel and in Cyprus. Although it exported only a small amount to the Israeli market, the managers of Israel Salt Industries Ltd. claimed that it had actually influenced the local prices of salt. According to the General Director's determination, Israel Salt Industries Ltd. took action to block the import of salt. It had exerted pressure on the Cyprus company, inter alia, by threatening with dumping the Cyprus market with under-priced salt. In addition it realised its threats by when for a period of 10 days it exported to Cyprus with 1000 tons of salt, which constitute 1/7 of the yearly consumption of the Cyprus market. Consequently, the Cyprus company gave in as it stopped exporting salt to Israel and became an agent of the Israeli company.

25. The General Director's determination can be used as prima facie evidence of its content in any legal proceeding.

Antitrust Tribunal approves a consent decree between IAA and food suppliers

26. In August 2006 the Antitrust Tribunal approved a consent decree between the IAA and several dominant food suppliers constituting a reform in the commercial relationship between the latter and the large retail chains. The decree aims at solving substantial competitive problems in the trade relationship between dominant food suppliers (some of which had previously been declared monopolies by the General Director) and large retail chains in Israel.

27. The decree followed an extensive investigation which took place from 2000 till the end of 2002. It entailed an extensive examination which evaluated the competitive impact of the different practices that were revealed and the measures that should be taken to enhance competition.

Plea bargain between IAA and members of LPG cartel was submitted to Court

28. In March 2007 the IAA reached a plea bargain with Pazgas and three of its managers who were charged with cartel offences in the liquefied petroleum gas (LPG) market during 1994-1996. The trial of the remaining defendants, namely three LPG companies and 12 executives, carries on in Jerusalem District Court. In this case four dominant gas companies with an aggregate market share of over 90% and 15 of their senior management are charged with engagement in a cartel activity on a national scale during the abovementioned period. The process involves 215 prosecution witnesses and over 30,000 documents containing relevant evidence.

29. According to the plea bargain, which waits Court approval, the four defendants fully admit committing the antitrust offences with which they were charged, including engagement in cartel activities and division of the relevant market. The agreement includes imprisonment sentences and imposition of unprecedented monetary fines on all three individual defendants. It further imposes a significant corporate fine exceeding 4 million NIS on Pazgas which was part of the cartel.

## **2.2 Mergers**

### *2.2.1 Statutory framework and statistics*

30. Merger control constitutes an important part of the IAA's mission to prevent the formation of market power that would be detrimental to competition.

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

- a) Acquisition of the essential assets of a company by another company;
- b) 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) Right to appoint more than one quarter of the board of directors;
- d) 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 in a broad manner 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 entities.

31. The Antitrust Law sets a review period of thirty days, during which the General Director is required reach a decision. The period can be extended by the Antitrust Tribunal or when the consent of the merging parties is granted. If the IAA does not decide within the prescribed time period, the merger is deemed to be compatible with the law.

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

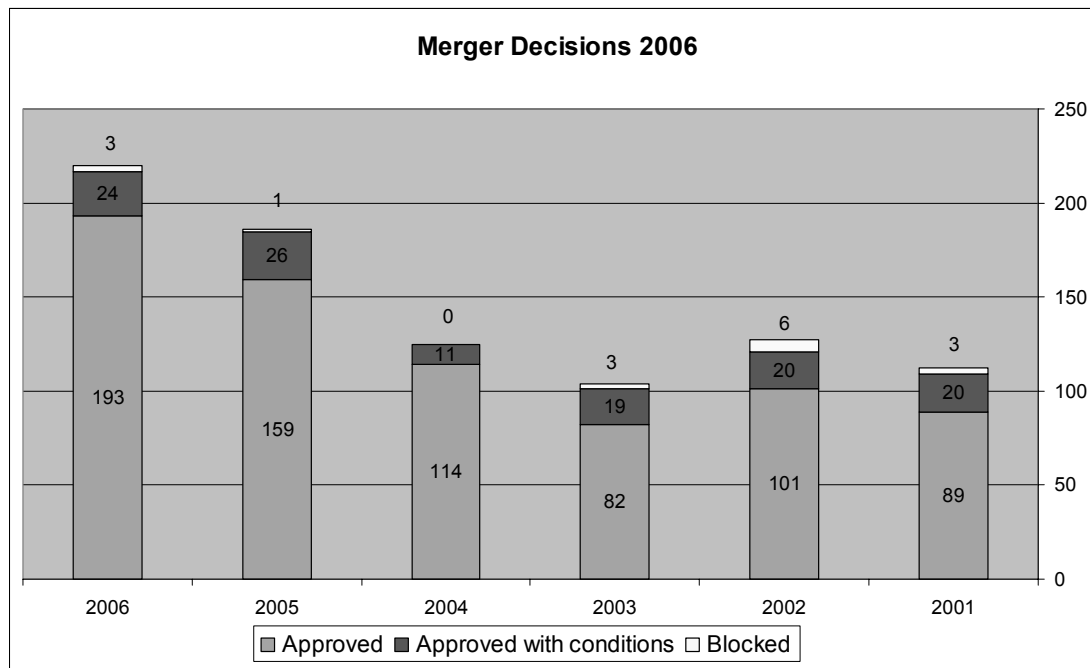
- (a) As a result of the merger, the share of the merging companies in the overall manufacture, sales, marketing or acquisition of a particular asset and a similar asset or provision of a particular service or a similar service is in excess of fifty percent;
- (b) The joint sales volume of the merging 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.

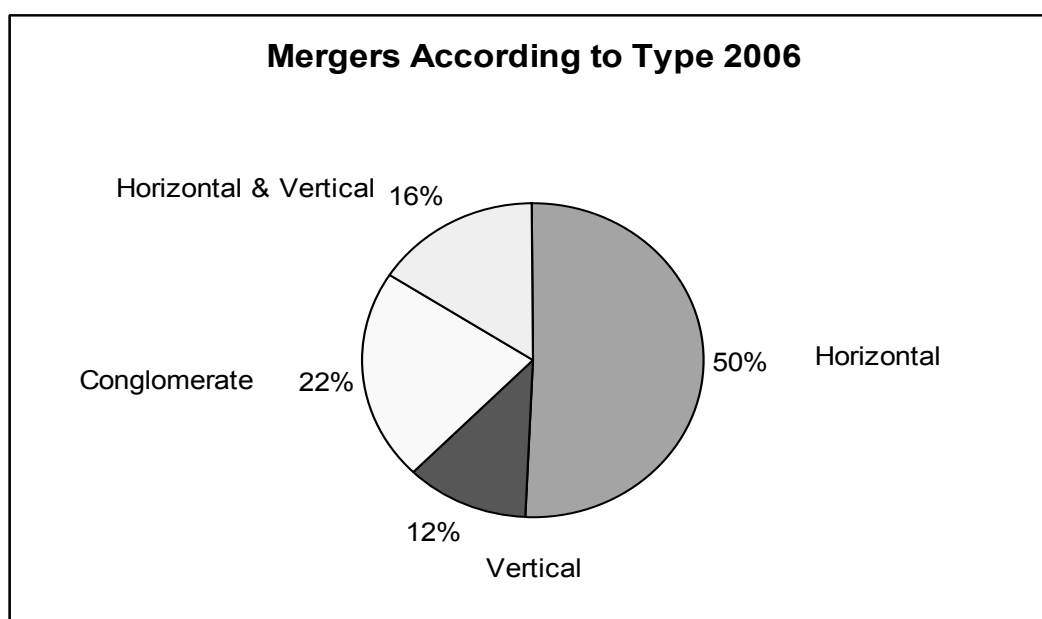
32. The General Director has the power to block a merger if the merger raises a reasonable concern of material damage to competition or the public. She can clear the transaction or approve it under conditions. The General Director’s decision is subject to an appeal to the Antitrust Tribunal.

33. During 2006, the IAA handled 230 merger notifications and issued 219 decisions. It is worth noting that the IAA’s policy in recent years, with regards to imposition of conditions on notified mergers, was to favour structural conditions over behavioural ones. One of the underlying reasons is the growing recognition (in Israel and elsewhere) that structural conditions are often more effective than behavioural conditions, mainly in terms of enforcement. Most merger notifications were approved without conditions and only three mergers were blocked, as illustrated by the table below:

**Table 1. Decisions in Merger Filings**

	<b>Notified</b>	<b>Decisions</b>	<b>Approved</b>	<b>Conditioned</b>	<b>Blocked</b>
<b>2001</b>	160	112	79%	18%	3%
<b>2002</b>	158	127	80%	16%	4%
<b>2003</b>	122	104	79%	18%	3%
<b>2004</b>	145	125	91%	9%	0%
<b>2005</b>	207	194	85%	14%	1%
<b>2006</b>	<b>230</b>	<b>219</b>	<b>88%</b>	<b>10.5%</b>	<b>1.5%</b>





### 2.2.2 Summary of significant cases

34. The following is a summary of several significant merger cases that were reviewed by the IAA or brought before Court over the period covered by this report:

The Supreme Court upholds IAA's decision to block a merger in the fuel market

35. In November 2005, the IAA blocked a merger between two major competitors in the import, marketing and distribution of oil distillates. The parties, Sonol Israel Ltd. (hereinafter – Sonol) and Dor-Alon Energy in Israel (1988) Ltd. (hereinafter – Dor-Alon) are two of the four major competitors in the sale of benzene and diesel oil through gas stations.

36. The Israeli fuel market is characterised by an oligopolistic structure, high entry barriers, substantial governmental involvement and cross ownerships among competitors. Until recently, three fuel companies have dominated the market and, at a certain point, the government decided to open the market to competition. During this process, a number of small companies entered the market, the largest of which is one of the parties to the requested merger. The economic assessment carried out by the IAA demonstrated that the merger would eliminate a substantial competitor (reducing the number of the large competitors from 4 to 3) and would increase the risk of coordinated effects in an oligopolistic market. The merger raised concerns in the geographic dimension and the parties did not present any efficiency gains that could justify the transaction. In light of the above, the merger was blocked

37. The merging parties have filed an appeal, which was approved by the Antitrust Tribunal on 9 April 2006, however, the ruling was reversed by the Supreme Court on 15 June 2006. The Supreme Court's ruling issued by Chief Justice Barak, Justice Procaccia and Justice Arbel upholds the IAA decision to block the merger, due to the importance of preserving competition among four players in the national fuel market. The detailed decision is based on reasoning that the merger in question should not be approved because of its adverse effect on competition, particularly in a small economy such as Israel.

38. The Supreme Court further acknowledged the unique and professional role played by the IAA in enhancing competition<sup>1</sup>:

*"A decision of an authorised entity that is brought before the antitrust tribunal should be examined based on the assumption that it was made with the best professional judgment and that it falls under presumption of regularity. This is especially true when it comes to the General Director of the IAA who is a professional entity per excellence, appointed by the government, and who is in charge of highly professional staff with expertise in different areas, including law and economics. The IAA has vast and thorough theoretical knowledge in various fields of antitrust, as well as considerable experience accumulated in years of intensive enforcement activity. The powers of the General Director of the IAA are very broad, and the knowledge and expertise which are in her possession are of unique importance".*

IAA approved with conditions a merger between Paz Oil Company Ltd. and Ashdod Refinery Ltd.

39. On 25 September 2005 the Israeli Government approved the splitting and privatisation of Oil Refineries, Ltd. (ORL) to two separate refineries that would compete with one another in import and supply of petroleum distillates and hence increase competition in the market.

40. One year later, in September 2006, IAA approved with conditions a merger between Paz Oil Company Ltd. (hereinafter – Paz) and Ashdod Refinery Ltd. (hereinafter – Ashdod Refinery). The economic assessment of the transaction focused on two major competitive concerns in the vertical aspect. The first concern relates to the gas stations marketing segment in which Paz is one of the four largest companies. In this respect the concern stemmed from possibility that Paz would use its vertical integration with Ashdod Refineries to expand in the gas station segment, by pushing out the competitors in this segment, both nationally and locally. In order to mitigate this potential effect, Paz is obliged to ask the IAA approval in case it wishes to expand in the gas stations segment.

41. The other concern is associated with the liquefied petroleum gas (LPG) marketing segment, in which Paz operates through its subsidiary, Pazgas Ltd. In this case, the competitive concern is that Pazgas would take advantage of the vertical integration between Paz and Ashdod Refineries to eliminate competition in this segment. The fact that LPG is scarcity in many months of the year was taken into consideration. Subsequently, the IAA imposed a corporate separation condition on Pazgas and Ashdod Refineries and instructed the latter not to discriminate other companies that market LPG. In addition, the IAA does not allow Ashdod Refineries to increase the quantity of LPG allocated to Pazgas, in order to assure that the competition in the LPG market is not distorted. Under these conditions, the merger was approved by the IAA.

First International Bank of Israel - Bank Otsar Ha-Hayal

42. In March 2006, the IAA approved a merger between the First International Bank of Israel Ltd. (hereinafter - FIBI) and Bank Otsar Ha-Hayal Ltd. (hereinafter - BOH). The merger is an outcome of a government decision to oblige Bank Hapoalim (Israel's largest bank) to sell its holdings in BOH. Economic assessment of the merger demonstrated that the merger will lead to a decrease in the overall level of concentration in the Israeli banking system. Following the merger, FIBI (fifth largest bank in Israel) would be in a better position to compete with larger banks in the market. The decrease in the size of Bank Hapoalim would likewise have a positive effect on the overall level of competition in the banking sector.

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<sup>1</sup> Justice Procaccia, Israel Supreme Court, 3398/06 IAA v. Dor-Alon - Translation of paragraph 26.

### Antitrust Tribunal upholds IAA decision to block a merger in the steel industry

43. In April 2007, The Antitrust Tribunal rejected an appeal by Yehuda Pladot Ltd. (hereinafter -YP) over the IAA's decision to block a merger with another steel manufacturer, Mifalei Plada Meuchadim Ltd. (hereinafter - MPM). The Tribunal ruled that the merger would have significantly hindered competition and that the IAA may take into consideration, within its merger review process, the expected effects on potential competition associated with the merger.

44. By the end of 2001, MPM became insolvent and YP subsequently remained the sole scrap-melting firm in the local market. Melted scrap is an input in the production process of steel for construction. YP exploited its position as a single firm in the market by drastically reducing the quantity of scrap it collected. In addition, it tried to maintain its status as the sole scrap-melting firm by acquiring MPM meltshop facility in order to shut down its melting operations. The IAA's decision to block the merger was founded on the fact that the merging parties were the only two scrap-melting firms in the local market. Furthermore, the merger would have fortified YP's monopsony in scrap acquisition. Following the IAA's decision, a third party entered the market and began operating on a commercial scale, leading to a significant increase in the quantity of scrap collected. In its ruling, the Tribunal underlined the fact that had the merger been approved it would have impeded any chance for acquisition of MPM by a third party and would have subsequently ruled out any potential competition to YP. The Tribunal based its ruling on data submitted by the IAA which demonstrated that YP abused its market power during the period it dominated the market.

### IAA calls for issuance of a divestiture injunction and appointment of an independent manager following an illegal merger

45. In April 2007, IAA asked the Antitrust Tribunal to block a merger between Prinir (Hadas 1987) Ltd., and Milos (1989) Ltd., two companies that operate in the processed tomatoes market. Prinir and Milos are two out of three main competitors who control together more than half of several markets within the processed tomatoes industry. According to information obtained by the IAA, Prinir acquired Milos through a private company that is owned by Prinir and two Swiss citizens without the approval of the IAA and in violation of the Antitrust Law. Following the transaction, in which all Milos shares were acquired, Prinir's CEO became the dominant figure in Milos as well as in Prinir. The unauthorised merger severely impedes competition in a number of sectors and might eliminate the overall capacity of Milos to compete. Prinir and Milos are two principal competitors in production and marketing of tomato paste as well as other processed tomatoes products. Even prior to the merger, there were sectors in which one of the parties was the largest competitor. The relevant sectors feature few competitors and high level of concentration and are characterised by high entry and import barriers. According to the data obtained by the IAA, the remaining competitors in those markets are not able to effectively restrain the aggregated market power of Milos and Prinir. The request followed an ongoing criminal investigation initiated by the IAA, which revealed substantial involvement of Prinir in the management of its former competitor Milos. This involvement transformed the latter from an independent competitor into a subsidiary *de facto*. The criminal investigation has yet been concluded. In addition, the IAA asked the Tribunal to appoint, as a temporary injunction, an independent manager for Milos, and to prohibit any form of relationship between the two companies. The request is currently pending before the Antitrust Tribunal.

46. The following is a summary of mergers that were blocked:

#### Shafit - Biovac (Veterinary vaccines)

47. In September 2006, the IAA blocked a merger between Shafit Biological Laboratories Ltd. and Biovac Ltd. that produce and distribute veterinary vaccines and medicines for household animals. In this

case, the economic assessment demonstrated that the merged entity would control approximately 50% of the total distribution in the relevant market. In addition, the merger would lead to the creation of a duopoly and hence increase the entry barriers for potential entrants. Consequently, the IAA decided to block the merger.

Inbar - Orlite (Fiberglass cabinets)

48. In October 2006 the IAA blocked a merger between Inbar Reinforced Polyester Ltd. and Orlite Industries (1959) Ltd. that produce and distribute large enforced fiberglass enclosures and bases for outdoor cabinets. The IAA's economic department assessment was that the merger would be detrimental to competition in both vertical and horizontal aspects since the merging parties are the only two companies that operate in the Israeli market. The proposed merger raised further concerns since the product characteristics make it extremely difficult to import competing products from abroad. In light of the above the merger has been blocked.

Bezeq – D.B.S. (Telecom / Multi channel broadcasting)

49. In December 2006, the IAA blocked a merger between Bezeq - The Israel Telecommunication Corporation Ltd. (Telecom Company which is a declared monopoly in certain markets) and D.B.S. Satellite Services (1998) Ltd. (multi channel satellite broadcasting company) on the basis of its analysis of competition in the multi-channel television market and because of the pending entry of a new Internet Protocol broadcasting technology (IPTV). The IAA's economic department assessment concluded that the merger would be detrimental to competition in both vertical and horizontal aspects of the multi-channel broadcasting market. One of the main concerns was that the merger will prevent competition in the market between a third platform and D.B.S. Under current market conditions, elimination of potential competition would have lead to negative effects on consumers. The merging parties did not manage to present any efficiency gains that would justify the merger. In light of the above the IAA decided to block the merger.

BezeqCall - Tadiran Telecom (Private branch exchange)

50. In March 2007 the IAA blocked a merger between BezeqCall Communications Ltd. (hereinafter – BezeqCall) and Tadiran Telecom Communication Services in Israel - Limited Partnership (hereinafter - Tadiran Telecom). The merger involved the full acquisition of Tadiran Telecom by BezeqCall whose business focuses on selling, installation and maintenance of various types of private branch exchange (PBX). According to the economic analysis carried out by the IAA, there is an overlap between the activities of the merging parties in two relevant markets: The market for maintenance of Tadiran Production PBX (named Coral) and the market for vending new PBX. The fact that BezeqCall is entirely controlled by Bezeq Telecommunication Ltd. (a declared monopoly in certain markets) has raised competitive concerns also in the vertical aspect. It was found that substantial expansion barriers exist within the market alongside high entry barriers to the market, particularly in the form of technology and expertise which are difficult to obtain by other market players. Under such circumstances, the merger would have resulted in a monopoly in the market. The vertical aspect of the merger stems from relationship between Bezeq Ltd., that dominates almost completely the market for business telephony services, and Tadiran Telecom, which is a key player in the PBX market. The IAA found that the merger might be detrimental to competition in the market for business telephony services which has just recently intensified following the entrance of new players into the market. Bezeq's holdings in the merged entity might hold back competition in the telephony market, especially in light of the fact that merging parties will have over half of the telephony extensions in the business sector. In light of the above the IAA decided to block the merger.

### **3. IAA's role in the formulation and implementation of other policies**

51. On top of its mandate in enforcing the provisions of the Antitrust Law, the IAA serves as an expert advisory body to the Government and Parliament in matters which concern competition. Subsequently, one of the key capacities of the IAA involves offering its professional know-how and expertise to various Government bodies and disseminating competition principles among them. The IAA's advocacy efforts are also directed towards the business and legal communities as well as the public at large.

#### **3.1 Cooperation with the Government**

52. The IAA is extensively involved with several Ministries and other government agencies in trying to open markets to competition and solving competition issues that significantly affect the local economy.

53. For instance, the activity in the telecom market includes participation in governmental committees and cooperation with other governmental entities, including the Ministry of Finance and the Ministry of Telecommunications. The IAA accompanies the Ministries in competition related issues and presents its recommendation on various regulatory questions, such as phone numbers mobility, licensing of Voice over Broadband (VOB) services, tender for terrestrial infrastructure for digital radio and governmental tenders for transmission services.

54. Another example is the role played by the IAA in the energy market. To this end, the IAA advised governmental offices and agencies dealing with the divestiture and privatisation process of oil refineries and the energy market at large.

55. Similarly, as part of its effort to enhance competition in financial markets, the IAA has been part of the inter-ministerial committee chaired by Dr. Bachar and continues to overview the implementation of its recommendations.

56. The Israeli capital market is characterised by high concentration of the banking industry; poor secondary market; dominance by the banks in commercial banking and financial intermediation; high switching costs; information asymmetries and no credit scoring institutions. In July 2005, the Israeli Parliament adopted a set of bills that anchored the capital market reform suggested by the committee. The committee was mandated to review the capital and money markets and recommend changes that would enhance a competitive structure in those markets. The IAA was represented in the committee by its former General Director. The IAA closely monitors the implementation of the committee's recommendations and subsequent legislation as it strives to promote fiercer competition in the banking sector. In addition, the IAA had several discussions at the Ministry of Justice concerning a legislative amendment in relation to the definition of restrictive arrangements by the Antitrust Law. The initiative came in response to the conclusion of an assessment committee, chaired by Prof. Zohar Goshen, which was appointed by the Minister of Industry and Trade. The IAA is represented at the committee whose mandate is to re-examine various aspects of the Antitrust Law including the definition of restrictive arrangements by the Antitrust Law. In order to increase legal certainty among the business community, the definition of restrictive arrangements might be narrowed down. The amendment is likely to yield greater transparency and stability and create more certainty in the legal interpretation. Furthermore, the suggested amendment is expected to reduce the amount of transactions that require notification to the IAA in order to attain an individual exemption.

57. Another issue which is currently being examined by the committee concerns the possibility to draft a legislative amendment in relation to the definition of collective dominance groups and the powers of the IAA to enforce provisions of the Antitrust Law on such entities.

### **3.2 Cooperation with the Parliament (Knesset)**

58. The IAA takes an active part in discussions at the Economic Committee of the Parliament. Its representatives are often invited to participate in the discussions in order to present the competitive aspects relevant to various economic issues related to energy, banking, transportation, intellectual property and telecommunication. In 2006 the IAA participated in numerous discussions on a range of issues involving competition.

59. For instance, on 21 February 2007, The General Director presented the IAA's insights on the status of competition in the local retail banking sector to the parliamentary investigative committee on bank fees headed by the Knesset Economics Committee.

60. The General Director overviewed the characteristics of the retail banking system and counted the structural and behavioural causes for the absence of significant competition between local banks. It then stressed the need for an integrated strategy that addresses both behavioural and structural issues, which implies tackling the underlying structural problem in the banking system rather than focusing solely on statutory supervision on fees.

### **3.3 The IAA and the private sector**

61. In addition to the close cooperation which the IAA maintains with Government and Parliament, an ongoing effort is made to keep up the constructive relationship with the private sector and the public at large.

#### *3.3.1 IAA annual conference on merger control*

62. The IAA's annual conference, which took place on 4 December 2006, was dedicated to the competition aspects in merger control. Among the 250 participating guests were lawyers, economists, academics, CEOs, prominent businessmen and government officials. Guest of honour - Commissioner W.E. Kovacic (FTC) – presented the US perspective on merger policy with emphasis on institutional innovation. The IAA General Director provided her insights on merger control in Israel, while highlighting some of the main cases handled by the IAA during 2006. IAA Chief Economist chaired a panel on roundtables among competitors in which prominent figures from the private and public sector exchanged views. IAA Chief Legal Counsel offered a talk on the use of conditions in merger control. The symposium included a discussion on market definition in the context of a specific case that was brought before the IAA.

#### *3.3.2 Block exemption workshop*

63. On March 29, 2006, the Minister of Trade and Industry and the General Director signed a renewed set of block exemptions. Following their launch, the IAA organised a workshop for its stakeholders in which changes in the relevant legal framework were overviewed by the Legal Department. The discussions during the workshop focused, among other things, also on the application of the amended block exemptions in light of the IAA policy on the matter.

#### *3.3.3 Public consultations concerning new merger guidelines draft*

64. The IAA published the new merger guidelines draft in December 2006. Upon publication, the IAA invited the public to comment on the draft. All comments have been reviewed and are currently being processed into a final version. Once finalised, the guidelines shall be published and distributed to all relevant stakeholders who will be invited to participate in a workshop.

### 3.4 *International Cooperation*

65. In addition to its activity within the OECD framework, the IAA maintains close working relationships with competition authorities from all over the world. Members of the IAA are engaged in a variety of international activities and regularly contribute to discussions in which they take part.

66. The IAA joined the International Competition Network (ICN) in 2001 and since then had served as a member of its Steering Group.

67. During the reviewed period, the IAA took part in 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 IAA was represented at the ICN Annual Conference in Capetown, and its Chief Economist presented the progress made in the merger investigation and analysis subgroup. On top of its activity within the Merger Working Group, the IAA is member in the Cartel and Unilateral Conduct Working Groups.

68. Apart from its activity in the OECD and ICN framework, the IAA regularly contributes to Euromed activities and its delegates play a role in the various workshops and seminars.

## 4. **Resources of the IAA<sup>2</sup>**

### 4.1 *Annual Budget*

69. Funding of 20,694,000 NIS (approximately 4.85 million USD) was provided to the IAA in the 2006 budget. The annual budget had not changed significantly in comparison to the previous year's budget. A major portion of the budget, 69%, was allocated to salaries.

**Table. Annual Budget - 2006 (thousands)**

	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
<b>NIS</b>	<b>20,694</b>	20,330	18,666	21,324	21,412	20,689
<b>USD<sup>3</sup></b>	<b>4,850</b>	4,530	4,165	4,688	4,520	4,922

### 4.2 *Number of Employees – 2006*

Economic Department	12 economists
Legal Department	20 lawyers and 7 legal interns
Criminal Investigations Department	14 investigators
Administrative Staff	9
The General Director's Office	5
<b>All staff combined</b>	<b>67 employees</b>

<sup>2</sup> Figures concerning staff and budget correspond to 31.12.2006 data unless mentioned otherwise.

<sup>3</sup> Figures in USD are an approximate value which depends on currency exchange rate fluctuations.