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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL

-- 2009 --

This report is submitted by Israel to the Competition Committee FOR DISCUSSION at its forthcoming meeting to be held on 16-17 June 2010.

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ANNUAL REPORT ON COMPETITION POLICY DEVELOPMENTS IN ISRAEL[1, 2]

(January 2009 - May 2010)

Executive Summary

1. This report summarises recent developments and changes in Israel's competition law and policy and overviews some of the main enforcement activities of the Restrictive Trade Practices Act, 5748-1988 (hereinafter – "Antitrust Law") for the period of January 2009 through May 2010.

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 considerably promoted competition in various sectors through proactive enforcement of the Antitrust Law, promotion of legislative amendments as well as advocacy efforts.

3. The notable developments include:

- IAA found that Israel's 5 largest banks were engaged in restrictive arrangements concerning exchange of information regarding fees;
- Supreme Court reaffirms IAA's decision to block the merger between Bezeq – YES (D.B.S.);
- IAA opened an investigation regarding an alleged cartel in the bread market;
- The Supreme Court grants the IAA's appeal in the Envelope Cartel case;
- IAA indicted Israel's largest food retailer in an alleged attempt to reach a restrictive arrangement and an alleged violation of merger conditions;
- IAA rejected six code share agreements between air-carriers based on their harm to competition;
- IAA opposes the introduction of legislation regarding RPM in the book sector.

1 Disclaimer: The information included in the Annual Report on Competition Policy Developments in Israel is published for informational purposes only. It does not constitute legal advice and does not derogate in any way from any official documents.

2 The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

1. Changes to competition laws and policies

1.1 Summary of new legal provisions of competition law and related legislation

1.1.1 Renewal and modification of block exemption for restraints ancillary to mergers

4. The Block Exemption for restraints ancillary to mergers, which was published in the official record on 11 March 2004 and expired in February of 2009, was designed to exempt parties to an approved merger from the need to submit a separate application for an exemption for restraints that are ancillary to the merger and do not appreciably restrict competition. The drafting of this Block Exemption stemmed from the acknowledgement that such restraints might be necessary to assure the economic value of the transaction.

5. Believing this Block Exemption to be imperative to the efficiency of merger transactions, the IAA successfully renewed the exemption on 1 March 2009, adding changes which broaden its application. The IAA believes that this Block Exemption also reduces the procedural burden on individual parties.

6. The Block Exemption applies to restraints which are (1) reasonable; (2) necessary for the realisation of the merger's objective; and (3) do not result in substantial harm to competition. The typical restraints of this kind are (1) covenants not to compete imposed on the seller; or (2) the seller's obligation to supply inputs to the acquiring company or the acquired company's obligation to supply such input to the seller (e.g. when it is also active downstream). Both these restraints were broadened by the renewal of the Block Exemption in 2009 by expanding the application to include not only the seller himself, but also any party who control or are controlled by the seller.

1.2 New Guidelines

1.2.1 Publication of Merger Guidelines Draft for Public Comments

7. On 22 December 2009 the IAA published a draft of the Horizontal Merger Guidelines for public comments. The draft Guidelines are based on the principles used by the IAA as reflected in its decisions and court rulings. They describe the methodology and the main types of evidence on which the IAA would typically rely on to predict whether a horizontal merger may substantially harm competition. They outline how the IAA evaluates the likely competitive impact of mergers and whether those mergers comply with the Antitrust Law. The draft Guidelines reflect the current state of merger analysis, and add to the overall transparency of the IAA's activity.

1.2.2 Failing Firm Defence Guidelines

8. The final version of the Guidelines of the FFD (Failing Firm Defence) was published on 25 January 2010 following public consultations and discussions with foreign competition agencies. The FFD supports the approval of a merger that involves a firm which is facing economic distress and which, for that reason, would inevitably exit the relevant market absent the proposed merger. The main principles of the doctrine emphasise that the rationale for approving mergers under FFD is rooted in the lack of causation between the merger and the competitive harm which would follow. The guidelines also deal with the relationship between insolvency law and antitrust law which highlight the independence of each set of laws.

9. The purpose of the FFD is to increase certainty with respect to approving firms which are under financial difficulties by competition. The guidelines presented conditions that must be met in order for the doctrine to apply to specific mergers. These conditions concern the financial hardship of the acquired company and the identity of potential buyers. The Guidelines underscore that financial difficulties and long term losses are not sufficient for the doctrine to be applied. The acquisition of the company by its competitor can only be carried out if the competitor is the only potential buyer.

10. The guidelines lay out three cumulative conditions of the FFD under Israeli law:

- Absent the merger, the failing firm is about to exit the relevant market due to economic failure. Moreover, it has no other alternative of remaining in the market other than the proposed merger;

- There are no other alternative buyers whose merger with failing would create a lesser competitive harm. In this respect, the need for an objective and professional examination of this condition is underscored;

- If the failing firm exits the market, its market share would be transferred to the acquiring company.

11. As noted above, the underlying rationale of the doctrine is that the failing firm is in any case expected to cease from being an independent competitive entity. Its certain exit from the market will inevitably bring to a significant harm to competition which is no less than the harm that would result from approving the merger. When such harm is unavoidable, a merger can no longer be regarded as the only possible cause of harm to competition and hence there would no longer be justification to block the merger. That is so because the harm to competition is generated by the exit of the failing firm from the market due to its unrecoverable economic distress. In the absence of an alternative buyer, the third condition requires to demonstrate that the competitive harm associated with the exit of the failing firm from the market is more significant than the harm associated with its acquisition by a competitor.

1.3 Government Proposals for new legislation

1.3.1 Oligopolies Bill

12. On 19 June 2008, the IAA distributed a Bill to amend the Antitrust Law which is intended to address oligopolies, a problematic phenomenon in the Israeli economy. The Bill is an important breakthrough for the consumer public and for competition in Israel, with extensive significance for the Israeli economy.

13. The Bill relies on recommendations of the Experts Committee for a re-examination of the Law, which concluded there was a clear need to make a substantial change in the handling of the oligopolies in the current Law's framework in order to respond to the competition problems resulting from the existence of oligopolies in the Israeli economy.

14. During the period covered by this report, the IAA held a series of ongoing discussions with government regulators and ministries regarding the Bill in order to advance its approval.

2. Enforcement of competition laws and policies

2.1 Action against anticompetitive practices

15. 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.

16. 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.

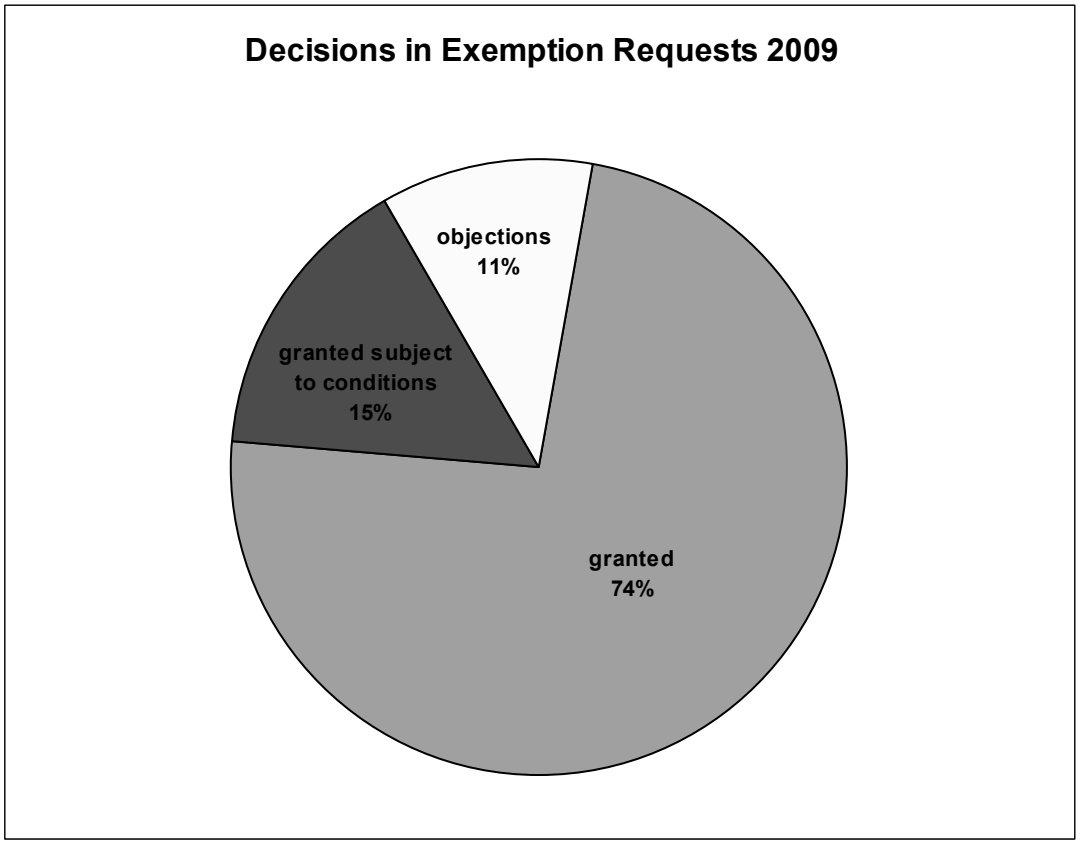
17. The civil and administrative remedies for infringements of the Antitrust Law include consent decrees, injunctions and court orders granted by the Antitrust Tribunal. The Director General has the power to declare an activity as prima facie illegal and the power to issue rules of conduct to monopolies.

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 behaviours 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.

18. 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 Director General or in case it was covered by a block exemption. During 2009, the Director General handled exemption requests as follows:

Total number of Exemptions	Granted	Granted subject to conditions	Objections
72	53	11	8



2.1.1 Summary of main activities

19. 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 the main developments in this area:

- **IAA issues decision stating that Israel's 5 largest banks were engaged in restrictive arrangements concerning an exchange of information regarding fees**

20. IAA Director General, exercising her authority pursuant to § 43(a)(1) of the Antitrust Law, decided on 26 April 2009 that there have been restrictive arrangements between Bank Hapoalim, Bank Leumi, Israel Discount Bank, Bank Mizrachi, and the First International Bank of Israel (hereinafter: "the Banks") regarding exchange of information concerning fees.

21. The decision was issued following an investigation by the IAA and a hearing process during which the banks were given the opportunity to present their arguments. According to the decision, beginning in the early 1990s until the commencement of the IAA's investigation in November 2004, executives of the banks involved in the field of fees exchanged information with respect to presently collected fees as well as future conducts concerning fees.

22. This information, which included non-public data, was taken into account by the banks while they were in the process of setting their fees policy and allowed them to align themselves with respect to fees, thus hindering the competitive process. The Director General declared that given the findings of the investigation, and in light of the ongoing competitive shortcomings in the Israeli banking system which is characterised by high concentration, substantial entry barriers for competitors, and considerable switching barriers for consumers, the exchange of information by the banks is an illicit restrictive arrangement according to Antitrust Law.

23. This is a civil decision which constitutes prima facie evidence in all legal proceedings. The implication of which is that the public may have the possibility to collect damages while relying on the decision as evidence to prove the mere existence of the restrictive arrangements in court. The banks have appealed this decision and the case is scheduled to be heard in 2010 before the Antitrust Tribunal.

- **IAA indicted largest Israeli food retailer**

24. In February 2010, the IAA indicted the largest Israeli food retailer Shufersal and several of its executives with an alleged attempt to reach a restrictive arrangement and an alleged violation of merger conditions. The indictment followed an extensive investigation by the IAA's investigation department which began six months earlier.

25. The background of this case involved the Shufersal -Clubmarket merger in 2005, where Shufersal acquired the failed Clubmarket chain of supermarkets. The merger was approved with conditions by the Director General of the IAA, who mentioned in his decision that the merger included two out of the three largest supermarket chains in Israel. Concerns over harming competition arose in the context of the potential effect on suppliers and on consumers.The approval of the merger was linked to the financial downfall of Clubmarket and was based on the failing firm doctrine. Conditions were imposed to address the competitive concerns and to assist market competition to recover from the collapse of Clubmarket and the structural changes which followed its acquisition by Shufersal.

26. The investigation found that in response to discount promotion campaign of a competing supermarket chain (Blue Square), Shufersal contacted a number of suppliers whose products were discounted and ordered them to take action to end those discounts by Blue Square. Allegedly, Shufersal

decided to stop purchasing from suppliers who would not comply with its instructions. According to the indictment, in taking these actions, Shufersal and its senior managers violated the Shufersal - Clubmarket merger conditions, and in addition were attempting a restrictive arrangement in order to reduce competition between Shufersal and its rivals. The case will be heard in 2010 before the Jerusalem District Court**.**

- **Cartel investigations**

27. In October 2009 the IAA conducted searches and arrested a number of executives for questioning in the course of a criminal investigation regarding alleged cartel activities between suppliers of water meters.

28. In May 2010 the IAA conducted searches and arrested a number of executives for questioning in the course of a criminal investigation in the bread industry which is estimated at over NIS 2 billion annually (approx. USD 0.5 billion). The IAA suspects that Israel's three largest producers of bread colluded in an alleged cartel which included price fixing, bid rigging and market division.

29. In both cases, the Tel Aviv Magistrate's Court has extended the arrests of the executives by up to 48 hours.

- **Competition in the UHT Milk Sector - Dissolution of Strauss', Tara's and Tnuva's Joint Ownership of the Ramat Hagolan Dairies**

30. In August 2009 the IAA signed an agreement with Tnuva, Strauss and Tara regarding the Ramat HaGolan Dairies. The agreement was submitted to the Antitrust Tribunal and was given force as a consent decree. Pursuant to the agreement, Tnuva divested itself of all its holdings in the Ramat HaGolan Dairies within a fixed period of time, and the joint ownership of the Ramat HaGolan Dairies ended.

31. The agreement followed an investigation with respect to the Ramat HaGolan Dairies, which was one of two manufacturers of UHT milk in Israel (the other one being Tnuva), and which was jointly owned by Tnuva, Strauss and Tara. Each of these parties owned one third of the Dairies.

32. By the end of 2009 a merger between Ramat HaGolan and a consortium of local producers was approved by the IAA. The entrance of a new producer of UHT milk is expected to enhance competition in the production sector for the benefit of Israeli households.

- **IAA reviewed commercial agreements between EL AL and foreign airlines**

33. In the course of 2009, the IAA reviewed eighteen commercial code-share agreements between EL AL and foreign airlines. The review followed a legislative reform that eliminated the statutory sector immunity that applied to air-transport and the enactment of a statutory block exemption for restrictive arrangement between air carriers. Six agreements were rejected after the competition analysis that was carried out by the IAA indicated that these agreements resulted in harm to both competition and consumers. A large share of the routes in those agreements were characterised by high profitability rates and high prices in comparison to other similar routes which had no co-operation arrangements such as agreements for marketing the capacity on the flights. The IAA identified a few cases where the sole purpose of the agreement was to reduce competition. Seven agreements were exempted for three years and five agreements were withdrawn by EL AL before the IAA issued a decision. The outcome of the review process of the eighteen code-share agreements is presented below.

Withdrawn	Rejected	Exempted for three years
South African Airways	Austrian Airlines	American Airlines
Tarom	Tandem-Aero	Czech Airlines
Brussels Airlines	LOT	Iberia
Korean Airlines	Air India	Swiss
Belarusian Airlines	AeroSvit	Thai
	Bulgaria Air	Air China
		Atlasjet Airlines

- **IAA instructed private kindergarten association to revise its standard agreement form and amend certain provisions**

34. In December 2009 the IAA instructed the Private Kindergarten Association of Israel (Association) to revise some of the provisions in its standard agreement forms. The concern was that the commercial aspects of the Association's membership agreement had restricted individual schools' ability to decide charges and which days to hold classes. These provisions were found to be anti-competitive, since they could potentially give rise to uniform conduct among members of the Association. The Association removed clauses from its membership agreement that involved commercial issues such as fees, holidays and class schedules.

2.1.2 Summary of activities of the courts

- **The Supreme Court granted the IAA's appeal in the Envelope Cartel case**

35. In July 2007, the District Court convicted the three envelope manufacturers and their executives of violations of the Antitrust Law based on their participation in a cartel during the years of 1995-2002. The Court ruled that the cartel activity led to a division of market amongst the manufacturers, the co-ordination of tender submissions and the bribery of an envelope importer in order to protect the market from other imports. In December 2007, the defendants were sentenced to periods of compulsory public work ranging from 6 months to 60 days; the companies were fined between 180,000 NIS to 250,000 NIS while the executives paid tens of thousands of NIS in fines.

36. In March 2008 the IAA appealed to the Supreme Court against the District Court's ruling. The IAA appealed the light sentence for the defendants as well as their acquittals with respect to the charges that they had violated the RTPL under aggravated circumstances.

37. The IAA further argued in its appeal to the Supreme Court that the penalties and fines imposed on the cartel are significantly more lenient than those that should have been imposed. The IAA asked the Supreme Court to impose actual prison sentences and substantially larger fines.

38. In July 2009, the Supreme Court only partially accepted the IAA's appeal: the fines were raised to 375,000 NIS and compulsory public work time was prolonged. The Supreme Court's main argument against imprisonment of the defendants was that too much time, namely seven years, had passed between the discovery and cessation of the cartel (2002), and the Supreme Court's verdict (2009).

- **The Antitrust Tribunal rejected Bezeq's appeal and confirms its abuse of power**

39. Following an abuse of dominance investigation the IAA determined in December 2007 that Israel's Telecom incumbent Bezeq abused its monopoly position, in violation of the Antitrust Law. In May 2006, the interconnection between HOT-Telecom and Bezeq's telephony network was cut off and as a

result, HOT-Telecom's subscribers were unable to call or receive calls from Bezeq subscribers. Bezeq employees refused to fix the problem since they were on a strike, which caused the disconnection to last for approximately 34 hours. The determination states that by the end of April and beginning of May 2006, Bezeq management received substantial indications showing that Bezeq employees slowed down or failed to perform projects necessary to establish interconnection with new competing fixed-telephony operators (Cellcom, Globecall and Golden Lines) or to expand the capacity of existing interconnection with a presently-competing fixed-telephony operator (HOT-Telecom).

40. Bezeq appealed against the IAA's decision however its appeal was dismissed in December 2009 by the Antitrust Tribunal.

- **The Gas Cartel: Court convicted and sentenced former Chairman of Dorgaz**

41. On 7 March 2010, the Jerusalem District Court sentenced former Chairman of Dorgaz to pay 800,000 NIS in fines and to a conditioned imprisonment of 12 months. In addition, the Court decided to disqualify him from serving as a board member in any public company for two years due to his grave misconduct as Chairman of Dorgaz.

42. The defendant was convicted in January 2010 after an indictment was filed in 2004, against the four large LPG companies – Pazgaz, Amisragaz, Supergaz, and Dorgaz – and against corporate officers in those companies. According to the indictment, the parties to the cartel violated the Antitrust Law and damaged competition in that they divided the market among themselves, according to customers in the residential sector and the industrial-commercial sector. The offenses which took place between 1994-1996 include the division of the market by dividing the customers among the companies in the cartel, while these companies held more than 90% of the gas market.

- **Court sentenced the past CEO of Tambour**

43. In April 2009 the Jerusalem District Court convicted the past CEO of Tambour and sentenced him to four month of public work and he was ordered to pay a fine of NIS 155,000 for cartel violations.

44. The Court also ruled that the defendant may not serve as a director in a public company for five years and explained that the defendant was negligent when the company that he managed committed cartel violations over a long period of time, and it therefore would inappropriate for him to serve as the director of a public company – an appointment which would involve, as a fundamental condition, that the public be able to put its trust in him. The defendant's conviction makes it doubtful that he is worthy of such trust, and it therefore justifies his disqualification as a director for a substantial amount of time.

45. The defendant was convicted by the Court on 2 November 2008 on the basis of managers' liability for price co-ordination arrangements between Tambour and the Ace Knei U'Bnei and Home Centre marketing chains – arrangements that were in place during the years 1994-1998. The Tambour Company was also indicted in the case, and the proceeding against it ended with a plea bargain in the context of which Tambour paid a fine of NIS 2,250,000.

- **The Supreme Court Issued a Threshold Dismissal of ACUM's Appeal of the Antitrust Tribunal's Ruling**

46. In May 2009, the Supreme Court dismissed an appeal filed by ACUM Ltd. (the Society of Israeli Music Composers, Authors and Publishers) against the ruling of the Antitrust Tribunal. The IAA's Director General determined that ACUM constituted a restrictive arrangement, a decision that was upheld by the Antitrust Tribunal.

47. ACUM is engaged in the sale of licenses which allow the purchasing entities to publicly play and broadcast any of the protected pieces in ACUM's repertoire. ACUM is also engaged in the collection of royalties for these licenses and in enforcing its members' rights vis-à-vis entities making use of pieces in its repertoire without obtaining appropriate licenses.

48. Pursuant to the IAA General Director's determination of 30 March 2004, ACUM's activity constituted a restrictive arrangement. In addition, the General Director declared that these arrangements have made ACUM into a monopoly in the markets for the management of broadcast rights, public performance rights, copying rights, recording rights and rights to synchronise musical pieces, including the provision of licenses for the use of these rights. The General Director's determination constituted prima facie evidence of what was established therein, in any legal proceeding.

49. In July 2004, ACUM filed an appeal to the Antitrust Tribunal against the determination of the IAA's Director General which claimed that ACUM's activity constituted a restrictive arrangement, and on 7 July 2004, ACUM filed an alternative petition for approval of the restrictive arrangement.

50. In October 2008, the Tribunal announced that it had reached the conclusion that the IAA Director General's determination that ACUM's activities constituted a restrictive arrangement was based on law and that ACUM's appeal should be denied. The Tribunal also ruled that the appeal proceeding should be joined with the proceeding regarding ACUM's petition for the approval of a restrictive arrangement.

51. ACUM appealed this ruling to the Supreme Court. The IAA's General Director argued that the Tribunal's decision could not be appealed at this stage of the deliberations and that such an appeal could be brought only after the deliberations regarding the joint proceeding were completed. The Supreme Court accepted the Director General's arguments and determined that the Tribunal's ruling was an interim ruling and that ACUM therefore had no right of appeal against it at this stage.

52. This decision paved the way for the continuation of the regulation of ACUM's activity as a restrictive arrangement and monopoly, within the framework of the proceeding currently being maintained before the Antitrust Tribunal.

2.2 Mergers and acquisitions

2.2.1 Statistics on number, size and type of mergers notified and/or controlled under competition laws

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

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

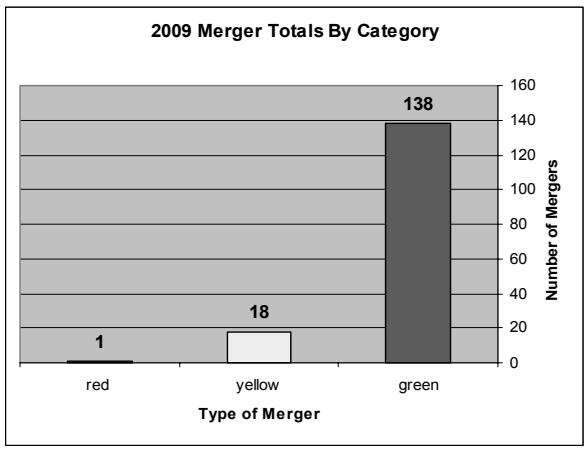
a) As a result of the merger, the share of the merging companies in the overall manufacture, sales, marketing or acquisition of a particular asset and a similar asset or provision of a particular service or a similar service is in excess of fifty percent;

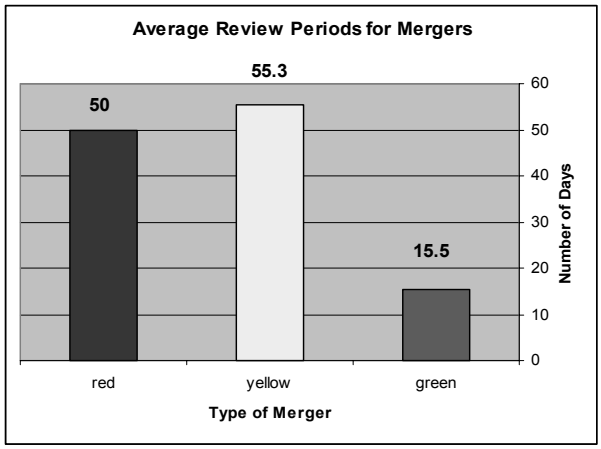
b) The joint sales volume of the merging companies according to their balance sheets for the year preceding the merger, is in excess of 150 million NIS; the sales volume of at least two of the merging companies is in excess of 10 million NIS each and the combined sales volume of all the merging parties is in excess of 150 million NIS.

c) One of the companies is a monopoly.

54. The Director General 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 Director General's decision is subject to an appeal to the Antitrust Tribunal. The Antitrust Law sets a review period of thirty days, during which the Director General is required to 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. The moment the IAA receives a merger notification, it is classified by the Chief Economist corresponding to the degree of preliminary concern regarding the competitive issues that are raised ("green," "yellow" and "red," respectively).

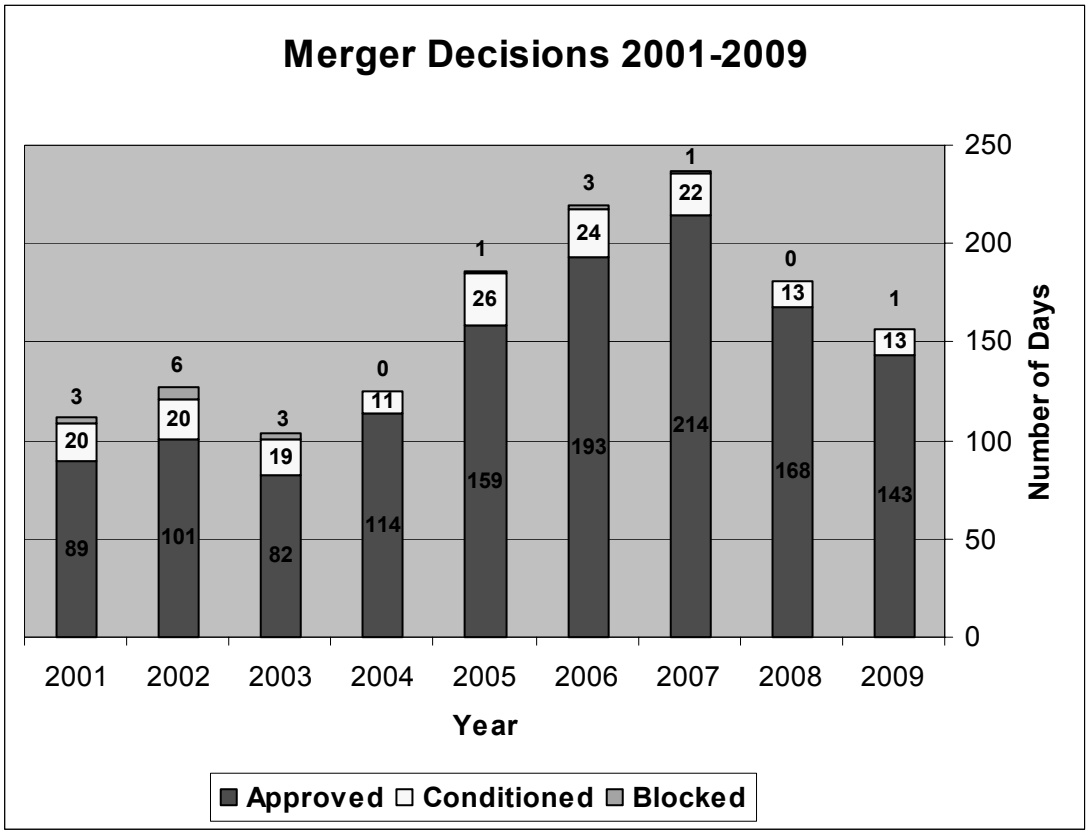
55. During 2009, the IAA issued 157 merger decisions. The IAA puts great emphasis on shortening the review period for all merger notifications. To this end, the average review period of "green" mergers has dropped significantly to 15.5 days, down from 20 days in 2007. While efficiency is a priority, the IAA does not compromise on the thoroughness and quality of the merger review process in order to make sure that every competitive concern is adequately addressed and researched.



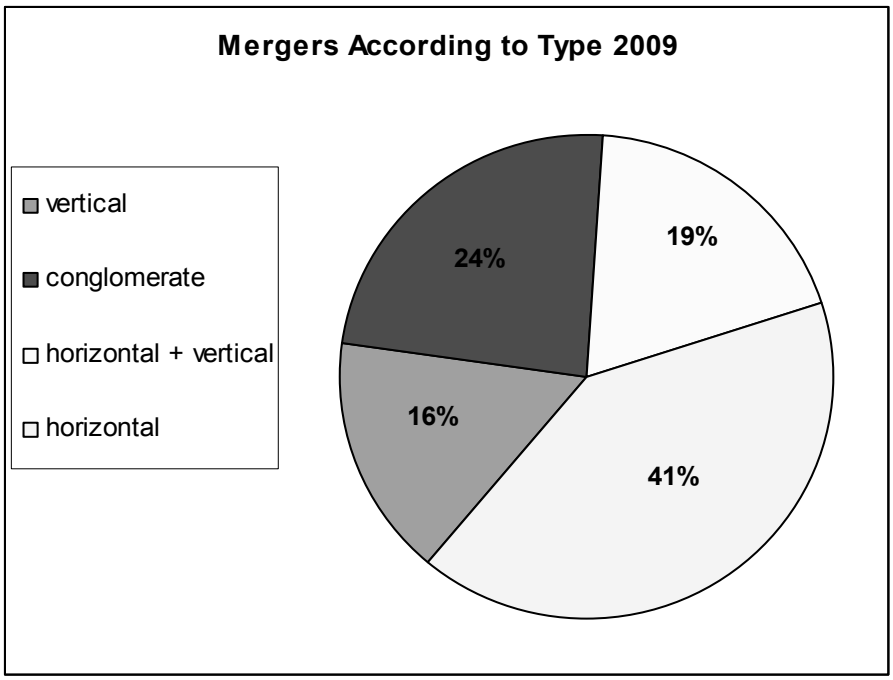


56. The following table describes the type of decisions in merger filings since 2001:

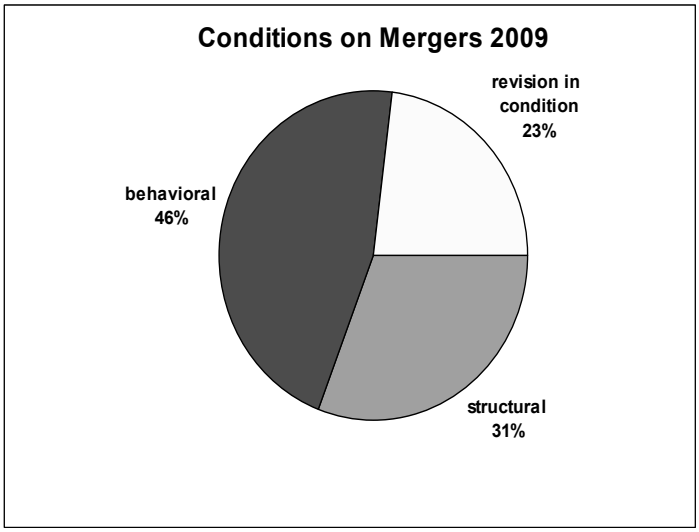
	Decisions	Approved	Conditioned	Blocked
2001	112	79%	18%	3%
2002	127	80%	16%	4%
2003	104	79%	18%	3%
2004	125	91%	9%	0%
2005	194	85%	14%	1%
2006	219	88%	10.50%	1.50%
2007	237	90.30%	9.30%	0.40%
2008	181	93%	7%	0%
2009	157	91%	8.3%	0.6%



57. In 2009, 41% of all mergers were classified as horizontal. Less than 20% of mergers were vertical and close to 25 % were conglomerate mergers. 19% of all mergers were both horizontal and vertical as illustrated below:



58. Conditions that were imposed on mergers break down into three main categories, namely behavioural, structural and revision in conditions, as illustrated below:



2.2.2 Summary of significant cases

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

- **The Supreme Court granted IAA's appeal and invalidated the merger between Bezeq and YES**

60. The IAA Director General appealed the Antitrust Tribunal's ruling in the matter of the merger between Bezeq, the largest Israeli telecom company, and YES, Israel's only provider of multi-channel television broadcasts via satellite.

61. In August 2009 the Supreme Court ruled on the appeal filed by the Director General. The Antitrust Tribunal had approved the merger conditionally, while the Supreme Court ruled that the Director General was correct in deciding to block the merger unconditionally.

62. The Supreme Court held that the expected entry of Bezeq into the multi-channel television infrastructure market meant that it must not be allowed to control YES, in light of the advantages that were involved in having three independent infrastructures competing for the consumer public.

63. The Court approved the analysis presented by the Director General, which was based on the actual potential competition doctrine, according to which it is highly likely that Bezeq would configure its multi-channel television transmission infrastructure with IPTV technology, and it would therefore own the third Israeli multi-channel television transmission infrastructure.

64. Under these circumstances, the Court held that Bezeq's control over YES would deprive the public of the competitive benefits involved in the Bezeq's independent entry into the market, and consequently, Bezeq's merger with YES raised a reasonable risk of significant damage to competition.

65. The Supreme Court concluded that the conditions imposed by the Tribunal did not remove the competition risks created by the merger and thus stated that under the given circumstances, there was no choice but to block the merger.

- **The Antitrust Tribunal determined that the merger between Prinir and Milos was harmful to competition**

66. In April 2009 the Antitrust Tribunal ruled that a merger between Prinir and Milos would cause substantial harm to competition and thus ordered a divestment of the two companies, which according to the Director General of the IAA had merged illegally.

67. The Tribunal accepted the IAA's position that the merger between Prinir and Milos created a monopoly in six different markets; prior to the merger either Prinir or Milos already had held monopoly power in some of these markets.

68. The Tribunal also accepted the IAA's position regarding the existence of significant obstacles to entry into the relevant markets, such as the merged surplus of the manufacturing capacity, the difficulty in successfully entering into the marketing chains or overcoming obstacles like branding and computerisation costs. Against this background, the Tribunal stated that the chances for a new company to enter the market were very limited; and imports would not have enough influence to balance out the Prinir-Milos monopoly.

69. Given these additional considerations, the Tribunal reached the conclusion that there was no reasonable possibility that any third party – either a new or existing actor from within – would have enough influence to create any real competition against the Prinir-Milos merger. The Tribunal thus concluded that the merger gave rise to a substantial risk to competition.

70. The deliberations regarding the IAA Director General's petition for the divestment of the merger are currently expected to enter the second stage, in which the Tribunal will decide if an illegal merger took place. The Tribunal noted that this was the first time it was asked to determine whether a merger took place in violation of the Restrictive Trade Practices Law.

71. In addition to the Tribunal proceedings, both companies and their officials are facing a criminal investigation by the IAA. The IAA suspects both companies and their officials to have violated the Antitrust Law.

- **The IAA blocked the merger between Ackerstein Industries and Netivei Noy**

72. In December 2009 the IAA blocked a merger between Ackerstein Ind. and Netivei Noy Ltd., two competitors in the manufacture of surface-infrastructure products including interlocking paving stones.

73. Ackerstein asked to merge with its competitor Netivey Noy by buying off all of its technical equipment which would have removed a central competitor from a market that had four main competitors and would have severely aggravated the fear of co-ordinated effects in an industry that was typified by an oligopolistic equilibrium to begin with.

74. An examination by the Economic Department of the IAA indicated that competition in the interlocking paving-stone market was faulty, that the merger raised reasonable concern about significant anti-competitive effect via co-ordinated effects in said market, and that said concern was not dissipated in view of the existing entry barriers to the market.

75. Before the merger, Ackerstein's share verged on monopoly. After the merger, its share would have stood at 65 percent—some two-thirds of the market and twice as much as the other competitors combined. In terms of production capacity, too, the merged firm would have a market share exceeding 50 percent.

76. The Authority's examination of the Ackerstein–Netivei Noy merger demonstrated that the merger was a clear case of reasonable fear of significant anti-competitive effects. It raised concern about the strengthening of co-ordinated effects in the interlocking paving-stone market in a way that would have dealt a severe blow to competition in this market. The merger was thus blocked after the IAA concluded that it would significantly harm competition and create an even more concentrated market.

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

77. 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.

78. The IAA works together with government Ministries and other agencies to enhance market competition and cope with competition problems in various sectors of the economy The IAA is involved through advocacy work in numerous initiatives to open markets to competition and to reduce barriers to entry. It also engages in discussions at the Parliament's Finance Committee and Economic Affairs Committee where its representatives present the competitive aspects relevant to various regulatory, legal and economic issues.

79. In the area of public procurement, for example, the IAA has embarked on a targeted awareness and advocacy campaign. In the first stage of the campaign in 2009 the IAA's Director General and the Government's General Accountant which oversees and supervises the government procurement process, jointly issued a letter to all government procurers sending a strong message to enhance and strengthen competition. In addition to the letter, the OECD Anti-Bid-Rigging Guidelines were summarised in Hebrew and distributed to all the government procurers. The second stage of the campaign which began in March 2010 aims to raise awareness about bid rigging and collusion. The IAA schedules workshops with public officials that deal with public procurement on different levels. The workshops are designed to inform those who are involved in the public procurement process of the potential risks involved with bid rigging and their legal implications. In addition, these seminars will provide the public officials with the necessary tools to detect bid rigging attempts and instruct them how to respond to these situations.

80. Another illustrative example is the IAA's advocacy in the energy sector. IAA staff participate in several inter ministerial committees that deal with competition in energy infrastructures and are part of regulation teams that deal with the vertical integration of NPG (Natural Petroleum Gas) and the private electricity suppliers. Another regulatory team deals with the charging stations and other infrastructures of electric cars. In addition, the IAA advocated for more competition in the field of gas explorations in the Mediterranean.

81. A recent intervention by the IAA was with regards to the book sector. In 2009 legislative proposals by Ministers and members of Parliament had been launched to introduce RPM into the book sector and thus limit competition. The IAA vigorously advocated for competition in the book sector and warned against the negative effects of introducing RPM into the Israeli book sector. Subsequently, the proposal to introduce RPM was rejected by the Ministerial Committee in March 2010 and another proposal has been suspended until further deliberations are made. In addition to a series of discussions held with members of Government and Parliament, the Director General presented her views publicly, in a panel debate at IAA's annual conference and in other public forums.

- **IAA conferences and seminars**

82. The IAA's annual conference in May 2009 focused on the pressing subject of competition in times of economic crisis. It included a key note speech by Director General Philip Lowe (DG COMP) who shared his views on global markets in crisis and the challenges they pose for competition policy. In December 2009 the IAA held a special conference to mark its 15th anniversary. In addition to a number of breakout sessions, a panel debate was organised in which the current Director General and the three former Director Generals discussed different aspects of competition policy in Israel and the challenges that lie ahead. IAA conferences attract hundreds of practitioners, industry representatives, academic experts, policy makers, members of Parliament and senior government officials. They serve as an excellent platform for the IAA to publicly present its activities and policy guidelines and engage in a dialogue with multiple stakeholders. In addition to these large scale conferences, the Director General and senior management are invited regularly to lecture at different academic institutions as well as other governmental and non-governmental forums.

- **IAA's publications**

83. The IAA issues a yearly annual report in Hebrew summarising its activity in the past year. All IAA's official decisions are published in the IAA's website alongside the Antitrust Tribunal and Court decisions. The Director General also administers several statutory public registries which includes decisions regarding restrictive arrangements, mergers and monopolies.

84. In addition, the IAA has established a detailed online database in Hebrew and English that includes archives ranging from decisions of the Director General, court decisions, legislation and press releases. This database serves as a comprehensive central reference point for all those who seek information on IAA activities.

- **International activity**

85. During the reviewed period, the IAA continued to contribute to the various ICN working groups on specific themes such as mergers, unilateral conduct and cartels. IAA's senior management and professional staff gave lectures and held presentations at numerous workshops and conferences in various international events.

86. In 2009 the IAA co-chaired together with the Swiss Competition Authority a special project on the application of competition law in small economies. The project included gathering primary information from ICN members regarding their views and experiences with respect to various competition issues raised by small economies. The collected data was analysed which was composed into a report. The report facilitated a lively discussion during the 2009 ICN Annual Conference in Zurich and it is available on the ICN's website.

87. In addition, the IAA organised two study visits in the reviewed period. In April 2009 the IAA in co-operation with the EU Commission and the UK competition agencies organised a study visit to the UK that focused on competition in the British telecommunication sector. In February 2010, a delegation made up of the IAA's investigation department attended seminars and held discussions with experts at the European Commission (DG COMP), Belgian Competition Authority, Bundeskartellamt and NMa. The scope of the visit was to strengthen professional co-operation and exchange information on cartel investigation methods, including intelligence gathering, investigation techniques and experience regarding leniency.

88. The IAA regularly holds internal seminars for its staff. In May 2009, FTC Commissioner William Kovacic and Commissioner Pamela Jones Harbour lectured in two such seminars during their visit to Israel. As noted above, Director General Philip Lowe (DG COMP) visited the IAA in May 2009 and delivered a keynote speech at the annual conference.

4. Resources of the IAA

4.1 Annual budget

89. Funding of 22 million NIS (approximately 5.9 million USD) was provided to the IAA in the 2009 budget. The annual budget did not change significantly in comparison to last year's budget. A major portion of the budget (67.4 %) was allocated to salaries.

4.2 Number of Employees – 2010

Economic Department	14 economists
Legal Department	29 lawyers (including 7 legal interns)
Criminal Investigations Department	21 investigators
Administrative Staff	12
The Director General's Office	3
All staff combined	79 employees