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**COMPETITION COMMITTEE**

## Annual Report on Competition Policy Developments in Israel

-- 2021 --

This report is submitted by Israel to the Competition Committee FOR INFORMATION.

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## *Israel*

### 1. Introduction<sup>1</sup>

1. This report provides highlights of developments in Israel's competition law and policy for the period of January 2021 through December 2021. It also provides an overview of some of the enforcement activities of the Israel Competition Authority (also – the "ICA") pursuant to the Economic Competition Law-1988 (the "Competition Law" or the "Economic Competition Law") during that time period.

#### Box 1. The Israel Competition Authority

The ICA is an independent government agency, established in 1994. Its mandate includes enforcement against anticompetitive restrictive arrangements and monopolies abusing their dominant position, merger control, regulation of collectively dominant firms, as well as market research and competition advocacy roles. The ICA has the power to prosecute criminal cases and its Director General can impose administrative fines upon certain violations of the Competition Law. A Competition Tribunal, residing within the District Court of Jerusalem, has exclusive jurisdiction over non-criminal regulatory antitrust proceedings. The District Court of Jerusalem has exclusive jurisdiction over criminal antitrust matters<sup>2</sup>. Both criminal and civil antitrust rulings are subject to appeal before the Supreme Court of Israel. In addition, the ICA's mandate includes enforcement of the Law for Promotion of Competition and Reduction of Concentration 5774-2013 (the "Concentration Law"), the Law for the Promotion of Competition in the Food Sector, 5775-2014 (the "Food Law") and the Law for Fuel Industry Law (advancement of Competition) – 1994.

2. The ICA continues its' strive to assume a pivotal role in making Israel's markets more competitive. In recent years, there has been a shift and addition to the ICA's mission and purpose. From focusing almost solely on the enforcement of the Competition Law, to prevent and eliminate anticompetitive practices by businesses, the ICA has increasingly focused also on promoting pro-competitive policies and regulation.

3. During 2021, the ICA continued to vigorously act to enforce competition law – both in the criminal and the administrative routes, in a broad scope of sectors in the economy. It had conducted criminal proceedings in Courts, and administrative enforcement proceedings against monopolies. The ICA also continued to implement major advocacy efforts, and was involved in legislative processes and significant reforms in a broad array of sectors of the economy such as food, energy, transportation, finances and communications, as well as advised various state ministries on many matters including major reforms which took form this year. Some of the topics addressed which shall be

<sup>1</sup> The information included in this report is published for informational purposes only. It is not exhaustive, nor does it constitute legal advice. It also does not derogate in any way from any official document.

<sup>2</sup> According to a temporary order (currently extended until March 2023), excluding pending cases, criminal antitrust matters shall be deliberated before the Central District Court of Lod.

elaborated below, include advocacy in relation to the Israeli Standards Institute's official standards enforcement regime; the government import reform, concerning standardization, cosmetics and food; the reform in agriculture, and more. In parallel, the ICA received a record high number of 267 mergers for review during 2021, which included a significant amount of mergers requiring in depth review.

4. In 2021, Ms. Michal Halperin ended her term as Director General of the ICA. Ms. Michal Cohen, then served as acting Director General, and was appointed as Director General early 2022.

## 2. Main changes to competition laws and policies

### 2.1. Summary of new legal provisions of competition law and related legislation

5. *During 2021, eight Block Exemptions were renewed* (block exemptions, exempt the parties to an arrangement from the need to obtain a permit in advance in relation to certain types of arrangements and compliance with the conditions set forth in each block exemption): including the Block Exemption for Joint Ventures; the Block Exemption for Agreements with de-Minimis Harm to Competition; the Block Exemption for Franchise Agreements; the Block Exception for Non-horizontal Arrangements; the Block Exemption for Exclusive Distribution; the Block Exemption for Agreements between Related Companies; the Block Exemption for Exclusive Purchase Agreements; the Block Exemption for Joint Loan Arrangements and General Guidelines and Definitions.

6. Also during 2021, an amendment to the Restrictive Trade Practice Regulations (Tribunal and Appeal Procedures) (Amendment No. 2). The purpose of the amendment is to align the provisions of these regulations with the reform to the civil procedure regulations (Civil Procedure Regulations, 5779-2018, published in Regulations File 5779 No. 8085 dated 11 Oct 2018, p. 422), which entered into force on 1 January 2021.

### 2.2. Other relevant measures including policy and guidelines

7. *Guidelines 1/21 concerning competitors joining for the purpose of submitting a bid in a tender* - On 29 July 2021, the Director General issued Guidelines, clarifying that competitors joining together, for the purpose of submitting a joint bid in a tender, constitutes a restrictive arrangement and that in many cases such a joint action will require approval from the Director General prior to its execution. The phenomenon of players joining together to submit joint bids in tenders is a widespread and has many benefits. However, when two parties which compete with regard to a tender join together, the alliance may create significant harm to competition. In order to examine the level of competitive impact of such action few considerations will be taken into account, such as the number of potential competitors in the tender, the weight of the competitors seeking to join together out of all the competitors in the market, and the degree of proximity between the players. It will also be examined whether the arrangement affects competition between parties in other markets they compete in and whether, the arrangement, raises concern for an exchange of competitive information between the parties.

8. Review of Guidelines 2/17 concerning RPM arrangements and publishing Draft Guidelines 1/22 for public comments concerning RPM arrangements - on 28 July, 2017 the Director General published Guidelines 2/17 concerning RPM. On 22 September, 2021 a call for public comments was published concerning amending these Guidelines. After receipt of comments, on 10 January, 2021 the ICA published the Draft Guidelines amending Guidelines 2/17.

### 3. Enforcement of competition laws and policies.

#### 3.1. Actions against anticompetitive practices, including restrictive arrangements and abuses of dominant positions

9. Severe violations of the Competition Law may be subject to criminal prosecution that may result in fines and prison sentences. Liability may be imposed on a corporation and its executives. The administrative remedies for infringements of the Competition Law include administrative fines, consent decrees, injunctions and court orders granted by the Competition Tribunal. The Director General has the power to declare a certain conduct as *prima facie* illegal, to issue rules of conduct to monopolies and to concentration groups (collectively dominant groups).

10. Engagement in a restrictive arrangement without prior authorization of the Competition Tribunal is prohibited unless the arrangement was specifically exempted by the Director General or is covered by a block exemption. In addition, certain arrangements fall under statutory exemptions, e.g., restraints imposed under law, arrangements concerning agricultural produce (subject to certain conditions), and restraints that stem from intellectual property licensing (under certain conditions).

#### Box 2. Definitions

The Competition Law defines a “**restrictive arrangement**” broadly 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 the competition. The Competition Law also provides a list of arrangements which are deemed as restrictive arrangements, in particular, an arrangement involving a restraint relating to one of the following issues: the price to be demanded offered or paid; the profit to be obtained; division of all or part of the market; the quantity, quality or type of assets or services provided. According to the Supreme Court's decision in the Shufersal case (issued during 2015) the irrefutable presumption that arrangements in this list are indeed restrictive arrangements applies to horizontal arrangements.

The Competition Law stipulates that a “**monopolist**” is any of the following: 1) A person whose share of the total supply of assets or the total acquisition thereof, or the total provision of services or the total purchase thereof, is more than half; 2) A person who holds substantial market power with regard to supply of assets or purchase thereof or with regard to the total provision of services or purchase thereof.

The Competition Law defines firms as “**Concentration Group**” when a small group of firms collectively possesses 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, if the following two conditions are met: (1) there is little competition between firms, or there are conditions for little competition; and (2) provisions issued by the Director General may prevent harm or a probable substantial harm to the public or to competition, or may substantially enhance competition or create conditions for considerable enhancement of competition. Conditions for little competition can include, inter alia, barriers to entry, combined with two or more of the following conditions: switching costs, cross ownership or joint ownership among competitors, symmetric market shares, similarity of products or services, a large number of customers or suppliers and transparency of the main terms of trade among the group's members.

### *3.1.1. Anticompetitive Practices: Administrative Enforcement Cases*

11. The ICA devotes extensive efforts and resources to enforcement against anticompetitive practices in a wide range of industries. The following are a few examples of administrative-civil enforcement cases and activities handled in 2021:

#### *The Competition Tribunal dismissed the appeals in the Israel Electricity Company (the IEC) Case*

12. On 19 January, 2021, the Competition Tribunal dismissed the appeals filed by IEC and executives thereof against the Director General's decision of 6 March, 2017 (in this section – the Decision). According to the Decision, IEC abused its position as a monopolist in violation of the provisions of section 29A of the competition law, and from mid-2013 to the end of 2015 it discontinued the services of portfolio managers (PMs) for business customers that switched to purchasing electricity from private electricity producers. As part of the Decision, IEC was fined ILS 13 million, and financial penalties were individually imposed on senior executives ranging from ILS 110,000 to ILS 165,000. The Tribunal approved the amounts of the financial sanctions.

13. In the context of the Israeli government's attempts to introduce competition into the electricity sector, in 2013, private electricity producers began to supply electricity to business customers. However, alongside the competition which developed in electricity generation, IEC remained an exclusive monopoly in the electrical transmission and distribution network, so that both private electricity producers and customers that purchase electricity from them must use the transmission and distribution network owned by IEC.

14. As part of its services in the transmission and distribution segment, IEC made a PM available to its business customers, an available contact who accompanies the business customer and represents them vis-a-vis IEC. The highly critical nature of the PM is expressed, among other things, in the coordination of initiated power outages and in accompanying the business customer in real time in cases of faults in the electric grid, while providing information on the treatment of the fault and the expected duration. Since power outages can cause heavy financial losses to business customers due to downtime, the service provided by the PM is very important to them. In addition, in view of the fact that IEC is an exclusive monopoly in the transmission and distribution segments, the private electricity producers do not have the ability to provide a service similar to the service provided by the PM. The cessation of PM services could have deterred business customers from switching to private electricity producers, thereby harming the developing competition in the electricity sector.

15. The Decision has been appealed to the Supreme Court and was pending during 2021.

#### *The Competition Tribunal approved the consent decree with Booking*

16. On 21 April 2021, the Competition Tribunal approved, in full, the agreements reached by the Director General of Competition with Booking, and ruled that they were appropriate and that they promote competition. Under the provisions of this consent decree, Booking will not be able to prevent hotels from offering their customers better prices and terms than those offered on the Booking.com website, on competing online platforms. In addition, Booking cannot prevent hotels from offering better prices or conditions by offline means. For example, hotels will be able to offer customers a lower price by phone or at the hotel counter. Hotels will also be able to offer different room types from those featured in Booking on competing online platforms or on their home website.

17. The provisions of the order are similar to the commitments that Booking took upon itself in Europe in 2015, following a joint review by the competition authorities of Italy, France and Sweden.

18. An objection filed by the Hotels Association against the agreements reached by the Director General, was rejected by the Tribunal. The obligations that are the subject of the Decree will be valid for a period of four years.

*Facebook – letter of intent to impose an administrative fine*

19. On 11 May 2021, the Director General informed Facebook that it was considering to determine that the company performed mergers that required reporting under the Competition Law, and that she intended to impose financial penalties on it and its US parent company, Facebook Inc., in the amount of ILS 6 million, subject to a hearing. The hearing letter was sent to Facebook after it was found that it had acquired two Israeli companies in 2018 and 2019 (RedKix and Service Friend, respectively) and failed to report the transactions to the ICA and did not receive the Director General's approval before executing these transactions, as required pursuant to the Competition Law.

20. The Authority's inquiry revealed that Facebook, which also holds the social network Instagram, allegedly has a monopoly in the social media market for private users in Israel, and therefore the transactions had to be reported pursuant to the "monopoly threshold" - whereby a monopolist, whether or not declared as such, is required to submit a notice of merger in any transaction it is a party to and the transaction must obtain the approval of the Director General prior to the merger.

*The Competition Tribunal approved the consent decree with Noble Energy Mediterranean Limited*

21. On 31 May 2021, the Competition Tribunal approved the agreements reached by the Director General with Noble Energy Mediterranean Limited (also – Nobel) within the framework of a consent decree dated 31 January 2021.

22. In accordance with the provisions of the consent decree approved by the Tribunal, Noble, which operates the Tamar gas reservoir, will allow each Tamar holder to sell its share of the gas contained therein, without the need for the consent of the other holders. Sale separately from the Tamar reservoir will significantly improve the structure of competition in the natural gas market in Israel going forward, as it will enable sustainable competition between the holders of the Tamar reservoir and the holders of the Leviathan reservoir. In addition as part of the consent decree, Noble reached a settlement agreement with IEC, which regulates the damages IEC sustained due to Noble's refusal to follow the agreement IEC entered into with some of the partners in the Tamar reservoir in October 2020. The total savings in the price of purchasing gas for IEC according to the settlement agreement is estimated at ILS 100 million.

23. In the background of the consent decree was a dispute between Tamar holders. The dispute began after most reservoir holders signed a new agreement with IEC on 4 October 2020, whereby they would sell its natural gas at a price significantly lower than the price agreed in IEC's previous agreements with the Tamar and Leviathan reservoirs. Noble, refused to supply gas under the new agreement. Following the complaints, the ICA initiated an inquiry and examined whether Noble's conduct amounted to an abuse of its monopolistic position in violation of the provisions of sections 29 and 29A of the law. The inquiry ended with agreements reached with Noble which were submitted for public comment. These agreements were ratified by the Tribunal in full and objections to it were dismissed.

*The Makita Case*

24. On 13 June, 2021, the Director General announced its intention to impose an ILS 7 million administrative fine on Argentools Ltd., the sole importer of the Makita power tool brand, and its intention to impose an administrative fine on three executives of Argentools in the amounts between ILS 360,000 and 450,000, subject to a hearing. This is after Argentools required retailers who purchased Makita products from it to raise the prices of Makita products listed online and especially on the “Zap” price comparison platform, and then also to stop advertising Makita products on the “Zap” price comparison platform. The violation in question is the (minimum price) RPM to the consumer, and its direct result is to restrict competition between retailers over Makita brand prices.

25. The inquiry revealed that the use of Zap led to a decrease in the prices of Makita products. Therefore, in 2017-2018, Argentools acted to raise the consumer prices of Makita products, by requiring its retail customers to quote online, mainly on Zap, prices that correspond to the pricelist that it dictated to them. This was in order to prevent a drop in the prices of Makita products due to the use of Zap. In addition, in accordance with agreements between Argentools and several major retailers, these retailers stopped advertising Makita products on the Zap website at a specific time in 2018.

26. The ICA's inquiry revealed that Makita is the strongest brand and has the largest market share in the country in the area of professional power tools, and that there is little competition in this field. The ICA's investigation also revealed that the parallel import of Makita products to Israel is small, partly in light of the actions taken by Argentools to block such imports. During the beginning of 2022 the Director General published her decision to impose an administrative fine, after examination of the arguments in the hearing.

*The Leadiant Case - letter of intent to impose administrative fines*

27. On 23 November 2021, the (then) Acting Director General notified MBI Pharma Ltd. and two executives thereof, of its intention to impose administrative fines of ILS 8 million on MBI and approximately ILS 614,000 on each of the executives, subject to a hearing (the Decision). This is because the MBI has allegedly set an excessive price for the drug “Leadiant” - a life-saving drug for patients with cerebrotendinous xanthomatosis (CTX).

28. This is the first time that the ICA will initiate (subject to a hearing) enforcement proceedings against a monopolist that abused its position and set an excessive price.

29. The ICA's inquiry revealed that MBI has a monopoly in Israel in supplying a cure for CTX, an incurable genetic disease that affects several hundred patients around the world, about 50 of whom are in Israel. Patients with the disease are required to take the life-saving drug on a daily basis. In the past, patients took a drug called Xenbilox, which was marketed in Israel mainly by MBI at a price of about ILS 8,000 per pack. In 2017, the global manufacturer stopped producing Xenbilox, and began marketing Leadiant, however it was ICA's position that there is no substantial difference between the two drugs. In 2018, “Leadiant” was registered in Israel as a drug designed to treat CTX, thus according to the Ministry of Health's regulations, aside from exceptions, it is prohibited to import another drug to treat the disease. From that period until the date of the Decision, the price of the drug increased by hundreds of percent up to about ILS 50,000 per pack. Even after the drug was put into the healthcare basket, the price remained high and stood at about ILS 32,000 per pack - hundreds of percent higher than Xenbilox. HMOs and the healthcare basket fund bear its high cost, and their budget has been hurt at the expense of the entire public.

### ***3.1.2. Overall statistics regarding administrative fines:***

30. During 2021, the Tribunal approved a consent decrees in a gun jumping case – in a total amount of ILS 1,210.554 which was imposed..

### ***3.1.3. Criminal Enforcement Cases***

31. The ICA devotes extensive efforts and resources into criminal enforcement in a wide range of industries.

32. The following are a few examples of such cases and activities which took place in 2021:

#### *The Servers Case*

33. On 13 September 2021, the District Court of Jerusalem, sentenced Mr. Sharon, a customer manager at Wei! Ltd., to five-and-a-half months actual imprisonment and imposed a fine of ILS 100,000. In addition, on 26 December 2021, the court sentenced Mr. Tzur, customer manager at Harel Information Technologies Ltd., to seven months actual imprisonment and imposed a fine of ILS 45,000.

34. The defendants pleaded guilty in a plea bargain to more than ten charges involving bid rigging for the purchase of computational products of Israel Aerospace Industries and other entities. The offenses were committed for approx. three years (2009-2012), and involved bid processes with a cumulative financial volume of about USD 3 million. They were also convicted of fraudulent receipts with reference to some of the charges.

35. In its ruling, the court reiterated the Supreme Court’s ruling, emphasizing that “the Supreme Court has repeatedly established a clear and consistent policy that antitrust offenders should be sentenced to time served in prison and not community service. This policy is not specific or limited just to offenses committed under severe circumstances. Once a penal policy has been established - to impose sentences of imprisonment - the courts must place it as a starting point and act to implement it.”

36. The court also considered commutation in light of the personal circumstances of the accused and their accountability.

#### *Bid-Rigging – "Shoham" Economic Company*

37. On 27 April 2021, in the framework of plea bargains, the Central District Court of Lod sentenced Mr. Olenik, owner and co-CEO of an earthworks and roads company, to two months’ imprisonment to be served in community service and payment of a fine of ILS 100,000.

38. On 20 July 2021, Mr. Barashi, CEO of Zalman Barashi and Brothers Ltd., was sentenced to five-and-a-half months imprisonment to be served in community service and a fine of ILS 80,000 and the company was fined ILS 370,000.

39. The defendants pleaded guilty as part of a plea bargain for being party to a restrictive arrangement. Barashi and his company also pleaded guilty to fraudulent receipts, following bid rigging in the tender for performing development and infrastructure published by the "Shoham" Municipality in 2011.

#### *Bid-Rigging - infrastructure projects in the city of Tayibe*

40. On 25 May 2021, in the framework of a plea bargain, the Central Lod District Court sentenced Mr. Yekuel, CEO of YAAZ Construction and Development Company, to six

months imprisonment to be served in community service and a fine of ILS 100,000 and also ordered the company to pay a fine of ILS 300,000.

41. The defendants pleaded guilty as part of a plea bargain for being party to a restrictive arrangement, following bid-rigging in a tender for water and sewerage work in the city of "Tayibe" published by the Palgey Sharon water corporation in 2015.

#### *The Wholesalers Association Case*

42. On 18 March 2021, the Central District Court adopted the plea bargain reached by the parties, convicted the chairperson of the Wholesalers Association of violating the duty of supervision imposed on the chairperson to prevent violations of the Competition Law and sentenced him to a six-month suspended sentence and a fine of ILS 40,000.

43. The district court also convicted the Association of being party to a restrictive arrangement and a determination of a course of action by a trade-association, and charged it with a fine of ILS 50,000 and an obligatory payment of ILS 150,000 for two years.

44. The defendants admitted, in the framework of a plea bargain, that during November 2019, the general meeting of the Association resolved to boycott the company Galil and not to purchase agricultural produce from it. The resolution was adopted in view of the fact that Galil began to market its products directly to retailers, including retailers that are customers of members of the association. To secure the resolution, it was determined that each member of the association will sign a security check in the amount of ILS 50,000 to the benefit of the Association, which will be cashed in the event of the resolution's violation. The general meeting also resolved to try and have other wholesale markets join the struggle against direct marketing to retailers.

45. Following information received by the ICA about the boycott, the ICA opened an investigation in December 2019. Following the probe, the boycott was stopped.

46. In the verdict, the court considered mitigating circumstances in light of the personal and medical condition of the Association's chairperson, the fact that the Association's resolution was revoked just two days after the ICA opened its investigation, and their acceptance of responsibility for their acts at the first opportunity in a plea bargain before indictment.

#### *The Text Books Cartel*

47. On 27 October 2020, the Jerusalem District Court convicted the textbook distribution companies Sefer Lakol, Mada and Yesh Hafatzot and their officers, in a series of bid-rigging of tenders of the Ministry of Education and local authorities for the Textbook Lending project, which took place between 2013-2008. The Textbook Lending project is designed to help lower the price of textbooks in Israel, make schooling accessible to those families that do not have the financial capacity to purchase textbooks, reduce disparities in society and promote equality of opportunity. This is done by reducing the private expenditure of households on education in weaker strata.

48. The bid-rigging included six cases over five years, in which the directors of the companies and their officers in some cases coordinated bids for tenders, and in other cases coordinated the boycotting of tenders. All this came in order to maximize their profits at the expense of the public. This is how they harmed competition and the lending project as a whole.

49. The scope of the coordinated tenders was many millions of shekels. Some of the officers were previously convicted under plea bargains and were sentenced to nine-, eight- and six-month imprisonment, respectively, and were imposed with fines as well.

50. Arguments for sentencing were heard in December 2020, and in March 2021 the defendants were sentenced to actual imprisonment for periods ranging from two to eight months and were imposed with fines as well. The most severe punishment was imposed on Ms. Habaz.

51. In its sentencing, the court again emphasized that “the value of free competition is a central value in the economic system and the starting point for antitrust punishment must be a clear strict approach, which is expressed in the imposition of actual prison sentences behind bars.”

52. The court further ruled that “this is an offense which, as a rule, has a small risk of being exposed. By the very nature of the matter, the parties to a restrictive arrangement are partners in secret. Exposing their involvement in the arrangement may harm them primarily. They have a strong and inherent incentive for the existence of the restrictive arrangement not to be discovered. For this reason, there is an inherent difficulty in detecting these offenses. This difficulty has also found concrete expression in the present case. These aspects reinforce the importance of setting an appropriate price tag, at the sentencing stage, so that potential perpetrators will not only see the expected benefit from the offense. Needless to say, for the perpetrators of such offenses, including economic offenses, which are usually law-abiding persons, appropriate punishment, which includes an element of actual confinement in a jail, is particularly effective, also due to the unique stigma attached to such punishment.”

53. Appeals have been submitted against the ruling to the Supreme Court and are pending during the relevant period of this report.

#### *The Taxis Case*

54. On 27 June 2021, the Jerusalem District Court sentenced Mr. Bar-Or, chairman of the Israel Taxi Drivers Association and the association, after convicting them of a determination of a court of action by a trade association.

55. The court sentenced Bar-Or to three months of community service and charged him with a fine of ILS 25,000, and the association was imposed with a fine of ILS 60,000.

56. The ruling handed down on 24 September 2020 deals with a tender published by the Airports Authority for a concession to operate taxis from Ben Gurion Airport. This tender was won by Gett and the Hadar-Lod taxi station, which offered a 31% discount on trips from Ben Gurion Airport. According to the ruling, after publication of the results of the Airports Authority tender, Bar-Or called on taxi drivers not to cooperate with the results of the tender and not to give a 31% discount. Bar-Or did so through a series of media interviews, messages sent to association members by phone and an ad sent to taxi ranks.

57. According to the ruling, Bar-Or acted to incite taxi drivers not to give the discount set in the tender, due to concerns that the discount in the tender would harm his fight to reduce the supervised price throughout the country.

58. In sentencing, the court emphasized the values inherent in free competition and ruled that the appropriate punishment should include a high-rate fine and actual imprisonment not through community service.

59. Bar-Or’s sentence was commuted in light of his personal circumstances.

#### *The Elevators Case*

60. In March 2019, an open investigation of the elevator cartel was commenced, and at the end of January 2020, the ICA informed the suspects that it was considering prosecuting

them subject to a hearing. In March 2021, the ICA filed an indictment against the companies Electra, Cfir, Kone (Israelift), Schindler and Alred and against senior executives in the companies.

61. According to the indictment, non-compete arrangements for existing customers (customers for whom one of the companies had already provided a service) were in place between Schindler and Alred, between Kone and Alred, between Electra and Zaum and Alred, between Cfir and Alred and between Cfir and Schindler. The arrangements dealt with elevator maintenance services. Under these arrangements, the companies did not compete with each other in providing maintenance services for elevators in apartment buildings. Further according to the indictment, the prohibited arrangements between the companies continued for years. Thus, for example, the arrangement between Kone and Alred has been ongoing since the end of 2014, and the arrangement between Alred and Electra has lasted at least since 2016. These arrangements were not discontinued at least until the opening of an investigation in 2019.

62. Also according to the indictment, company representatives used codes between themselves to disguise the collusion. For example, in correspondence and conversations between the parties, the term “part” has often been used as a code name for elevator service, so the term “part price” is meant to say, “elevator service price.” The indictment also attributes to Electra, Cfir and Alred specific collusions with respect to tenders and bids.

63. On 29 April 2021, as part of a plea bargain, the Jerusalem District Court sentenced Mr. Cabili, CEO of Kone Ltd., to two-and-a-half months of actual imprisonment and payment of a fine of ILS 50,000 for violating the duty of supervision he bears to prevent violations of the Competition Law.

64. The court also considered commutation in light of the personal circumstances of the defendant and the accountability for his acts of first opportunity as part of a plea bargain before filing an indictment. His retirement from the company was also taken into account. On 24 November 2021, a hearing was held on the preliminary arguments filed by the defendants and on 11 January 2022, a ruling was issued to reject most of the defendants’ arguments.

### *The Gaming Cartel*

65. On 12 April 2021, the Central District Court convicted the defendants of the gaming cartel of fixing the prices of consoles and games on the Zap website.

66. According to the verdict, the defendants fixed the prices of consoles and games in two frameworks: one arrangement that lasted eight months in 2015-2016 in which the prices of dozens of games and consoles were fixed; and the second, an arrangement in which the prices of the FIFA17 game were fixed prior to its launch, as were the prices of game consoles.

67. The court rejected the defendants’ arguments of selective enforcement and ruled that there was no wrongdoing in the ICA's decision to prosecute only the most dominant parties in the cartel.

68. On 18 November 2021, the court sentenced the gaming cartel defendants. The defendants Pur, Zionitz and Avivi were sentenced to extended periods of community service (9, 8 and 6 months of community service, respectively), and were imposed fines of hundreds of thousands of shekels each (Pur and the company he owns: ILS 300,000; Zionitz and the company he owns: ILS 280,000; Avivi and the company he owns: ILS 180,000).

69. In its sentence, the court ruled that the defendants initiated the price fixing. The court ruled that “the damage caused as a result of the offense is harm to competition in the

gaming products of small shops” and that “direct damage was inflicted on consumers whose ability to purchase the products at cheaper prices was harmed.” It was determined that the colluded products were popular - exacerbating the cartel’s damage.

70. However, the court took into account that this is a rather small case, dealing with coordination between small shops, that big chains were not a party to. The court also took into account that this is not a case concerning large-scale tenders, public funds or essential consumer goods.

71. In January 2022 some of the defendants filed an appeal to the Supreme Court on the severity of the sentence, which is pending during the time relevant for this report.

*The "Mechir Lamishtaken" Case (Home Buyer's Price Program – BPP)*

72. On 22 August 2021, the ICA subpoenaed Yigal Dimri, Omri Cohen and the company YH Dimri, as well as Gad Burstein and the company Y. Dvir, to a pre-indictment hearing on suspicion of coordinating a BPP (a government housing project) tender, in a housing project in the city of Netivot in August 2019. Y. Dvir’s CEO, Dvir Yitzhaki, was also summoned to a hearing for violating the supervisor duty to prevent violations of the Law. According to the statement of suspicions, after a representative of Dimri photographed the contents of the tender box and realized that Dimri and Dvir were the only companies filing bids, Yigal Dimri, Omri Cohen, YH Dimri, Gad Burstein and Y. Dvir coordinated to not compete on the same housing projects. Dimri’s proposal, which was formulated after coordination, was based on the maximum price set in the tender (ILS 6,600 per square meter) - referring to the price the winners of the BPP project will pay for each square meter. The parties are suspected of concealing the collusion between them from the tenders committee, and as a result fraudulently obtained their tender winning. At the end of a hearing, a final decision was to be rendered as to whether to file indictments against the suspects. In July 2022, an indictment was filed.

*Taboola and Ynet*

73. On 10 October 2019, the companies Taboola and Outbrain, both of which are engaged in online advertising, submitted a merger notice for approval by the ICA. During the inquiry, the ICA held conversations with websites that are Taboola and Outbrain’s main customers in Israel. Among others, the ICA held conversations with Ynet (major news at general content website) representatives. In these conversations, Ynet voiced opposition to the merger on two different occasions.

74. In August 2020, the ICA received a letter from Ynet supporting the merger.

75. Following an investigation conducted by the ICA, it became clear that Taboola was involved in initiating and drafting the letter and that Ynet sent the letter to the ICA in coordination with Taboola and after it approved its wording. This involvement was not brought to the attention of the ICA.

76. Against this background, the ICA opened a criminal investigation against Taboola and against Ynet, which concluded with a consent decree. On 22 June 2021, the Central District Court approved the consent decree with Taboola, whereby it will pay a sum of ILS 5 million to the State Treasury. On 27 December 2021, the Central District Court approved the consent decree with Ynet, whereby it will pay a total of ILS 1 million to the State Treasury.

77. During the period relevant for this report, ICA opened six overt criminal investigations, as follows:

- *Investigation in the field of disposal of infectious waste* - In March 2021, an investigation was opened on suspicion of restrictive arrangement offenses committed with respect to removal and transportation of medical and infectious waste and with respect to transport of waste originating at sea.
- *Investigation in the field of professional clothing and textile rental* - In May 2021, an investigation was opened on suspicion of a restrictive arrangement and abuse of dominant position against a company in the area of professional clothing and textile rental. The case has been transferred to the ICA's Administrative Enforcement Department.
- *Investigation into the Restaurateurs Association* - In June 2021, an investigation was opened into the activities of the “Restaurateurs Stronger Together” association. The investigation looked into the suspicion of a prohibited recommendation of a course of action by a trade association.
- *Investigation in the field of vehicle glass* - In September 2021, an investigation was opened on suspicion of coordination between companies in the vehicle glass market.
- *Investigations in the field of marketing networks* - In November 2021, investigations were opened regarding suspicions of restrictive arrangements between marketing networks. The investigations examined suspicions of restrictive arrangements in the operations of five marketing chains.
- *Investigations in the field of food suppliers* - In November 2021, investigations were opened regarding suspicions of restrictive arrangements between food/groceries suppliers. The investigations examined suspicions of restrictive arrangements in the operations of five such suppliers.

78. In addition to the investigations that were opened during the year, ICA's Investigations Department took investigative actions in the ongoing cases during the year. Among others, investigative actions were taken relating to suspicions of restrictive arrangements between transportation companies.

#### **3.1.4. Overall statistics – criminal enforcement:**

79. In 2021, the Courts issued 8 criminal verdicts; of these, two were granted concerning a determination of a course of action by a trade association. Of the total number, verdicts in 5 cases were granted in plea-bargains; 2 appeals are pending at the Supreme Court. Notably, some of these verdicts concern only part of the defendants in the case, and are not verdicts in the entire relevant case

80. The total number of cartel fines imposed in these 8 cases during 2021, was NIS 3,840,000 cartel.

81. In addition, a fine of ILS 6,000,000 was imposed for failure to provide information in a merger, and suspicion of attempt to secure fraudulent clearance for a merger.

## **3.2. Mergers and Exemptions of Restrictive Arrangements**

### **3.2.1. Statistics Concerning mergers notified and/or controlled under competition laws**

82. Merger review constitutes an important part of the ICA's mission to prevent the formation of market power that is detrimental to competition.

### Box 3. Merger review

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

- a) As a result of the merger, the merging parties will constitute a monopoly, according to Section 26(a)(1) of the Law.
- b) The joint sales volume of the merging companies according to their balance sheets for the year preceding the merger exceeds ~ILS 360 million and the turnover of at least two of the merging parties was not lower, in the same period, than ILS 10 million.<sup>3</sup>
- c) One of the merging companies is a monopoly according to Section 26(a)(1) of the Law.

83. The Director General is authorized to block a merger or approve it subject to conditions, if the merger raises a reasonable concern of substantial harm to competition or reasonable concern of harm to consumers. The Director General's decision is subject to an appeal to the Competition Tribunal. The Competition Law, sets forth a review period of 30 days, during which the Director General is required to reach a decision on the merger; the Director General, may extend the 30 days period by up to an 60 additional days (as set forth under the Competition Law), and an additional 60 days (consultation with the Exemptions and Mergers Committee); If the ICA does not provide its decision within the prescribed time period, the merger is deemed to be compatible with the Competition Law.

84. In 2021, a record number of 267 mergers were submitted for review; The ICA objected to two mergers during 2021; two mergers were approved subject to remedies; and three merger were withdrawn by the parties in view of concerns raised by the ICA to the parties; The following table describes the type of decisions in merger filings since 2001:

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<sup>3</sup> In February 2019, the ICA published draft merger regulations, for public comments, seeking to raise the reporting threshold for mergers, so that the Director General's consent to a merger will only be required if the minimum annual turnover of each of the two merging companies exceeds ILS 20 million. Following this draft, in November 2019, the General Director also notified that in mergers where the obligation to report derives from the sales turnover of the parties involved, the Director General of the Competition Authority will consider exempting the parties to the merger if their sales turnover does not exceed 20 million shekels – based on individual applications by the parties. In January 2022, the New Merger Guidelines were approved – raising the said turnover to 20 million, and replacing the merger notifications forms (full and abbreviated, to a unified form).

Table 1. Merger reviews

	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%	10.5%	1.5%
2007	237	90.3%	9.3%	0.4%
2008	181	93%	7%	0%
2009	157	91%	8.3%	0.6%
2010	160	93%	6%	1%
2011	191	97%	2.6%	0.5%
2012	136	92.4%	4.6%	3%
2013	161	94.4%	4.4%	1.2%
2014	146	96.6%	2.7%	0.7%
2015	159	99.4%	0.6%	0%
2016	191	95.3%	1.6%	2.1%
2017	159	97.5%	2.5%	0%
2018	187	97.3%	0.5%	2.2%
2019	204	98.5%	1.5%	0%
2020	180	98.4%	1.6%	0%
2021	245	97.4%	1.3%	1.3%

### 3.2.2. Significant Merger Cases

85. The following is a summary of a few significant merger cases that were reviewed by the ICA during the period covered by this report:

#### *Big-Ishpro (Einav Center) merger*

86. On 1 July 2021, the Director General conditionally approved the merger between Big and Ishpro, wherein Big sought to purchase from Ishpro the shopping center “Einav Center” in the city of Modiin.

87. The ICA's inquiry led to the conclusion that the merger would afford Big significant market shares in Modiin and could harm competition and consumers. The competitive impact of the transaction has also been examined against the background of the many partnerships between Big and Mega Or in many real estate properties across the country, which may affect their incentive to compete with each other. Following an in-depth examination of the merger, the Director General decided to approve the merger subject to conditions that would obligate Big to divest all of its own rights and Mega Or's rights to the shopping center owned by it and by Mega Or to a new competitor to be approved by the Director General. The shopping center that Big is obligated to divest will be sold before Big buys Ishpro's property in Modiin (fix it first). The Director General set several additional conditions designed to ensure that the shopping center in Modiin will be sold to an entity that will compete with Big, Mega Or and the other shopping centers in the area.

#### *Objecting to the Shamir-Sagam merger*

88. On 24 June 2021, the Director General opposed the merger between Shamir and Sagam. The merging parties are two of the three spectacle lens manufacturers operating in Israel, along with imports performed mainly by the major optical chains. The merger probe

revealed that the merged company was expected to hold a market share of more than 50% in the spectacle lens manufacturing market in general and particularly in relation to manufactured lenses - lenses that are manufactured according to a unique prescription for each customer.

89. In view of the above, the Director General determined that the merger could create market power for the merged company that would allow it to raise the prices of lenses for optical stores, with an emphasis on small stores that are not part of a large chain. The merger probe also revealed that imports are not expected to curb the market power of the merged company. The Director General therefore opposed the merger. The Director General's decision was not appealed.

#### *Objecting to the Ifat-Bazila merger*

90. On 22 November 2021, the (then) Acting Director General opposed the merger between Ifat and Bazila. The parties to the merger are both involved in, among other things, online content monitoring and research. A similar merger transaction was submitted to the ICA in 2012, but in light of the Director General's intention to oppose the merger, the parties withdrew the merger notice. In this merger, the ICA's examination revealed that there was no change that now justifies the merger's approval, but rather the opposite - concerns about the merger have only become more pronounced over the years. The ICA's review revealed that the merged company would have a market share in excess of 50%, both in the online monitoring and research markets. The (then) Acting Director General found that the merger may raise concerns about the exercise of unilateral market power in the areas the parties are active in.

91. The investigation has meanwhile revealed that one of the members of the Ifat Group, which collects media information from traditional media outlets in Israel (such as newspapers and radio and television programs), has high market shares in the collection of "traditional" information, even before the merger. In view of this, approving the merger would have allowed the Ifat Group to further strengthen its position vis-à-vis customers seeking information of both types - traditional and online - and make it difficult for competitors to develop in the industry. In light of the foregoing, the (then) Acting Director General opposed the merger. An appeal on the Director General's decision was filed, which was withdrawn during 2022 after the Director General filed her response.

#### *The HOT-IBC merger*

92. On 20 January 2021, the Director General approved a merger between Hot Communications Systems Ltd., Hot Telecom, IBC (Unlimited) Limited Partnership Holdings, IBC Holdings S.K. Ltd. and IBC Israel Broadband Company (2013) Ltd.

93. Prior to the merger Hot held and operated a stationary communications infrastructure nationwide. Based on this infrastructure it provides a variety of communication services to retail customers as well as infrastructure services to wholesale customers. As part of the merger, Hot entered as a partner in IBC, which prior to the merger was owned by Cellcom, Israel Electric Corporation and the Israel Infrastructure Fund. IBC is engaged in providing communications infrastructure services on fiber optics to wholesale customers. An examination of the merger revealed that the merger would give IBC the incentive and ability to significantly expand the scope and pace of its fiber infrastructure deployment, beyond the layout that each company would perform individually. This is how IBC's fiber network will compete after the merger with competitors Bezeq's and Partner's fiber infrastructure. That is, the merger reduces Bezeq's dependence on end customers interested in ultra-broadband infrastructure.

*Altshuler Shaham-Psagot merger*

94. On 9 May 2021, the Director General approved a merger between Altshuler Shaham and Psagot, two investment houses operating in the markets of pension, provident and advanced study funds, among others.

95. The ICA's probes have revealed that the merger is not likely to harm competition in these areas. An examination of the competitive dynamics that take place in the field revealed that these are markets in which a variety of players operate and the barriers to transitioning between them are relatively low. Various reforms taken by the Israeli Capital Market Authority in recent years have facilitated customer transitions between competitors in the field and encouraged the growth of small competitors. In view of this and even though Altshuler Shaham is a leading player in certain products, the merger is not expected to give it market power that could harm competition or the public.

96. The ICA's investigation revealed that in the area of pensions, the parties are working alongside several other players, most of them insurance companies. The insurance companies manage the majority of assets in the field. Investment houses, including Altshuler and Psagot, have recently begun to enter into the field thanks to the process of determining default funds selected by the Capital Market Authority, but some in the field are relatively small (particularly Psagot's share). In general, in recent years a real reduction in management fees, has been witnessed, even for customers who are not active in choosing a pension product.

97. As for the areas of provident and advanced study funds, it was found that these are generally volatile and dynamic markets. A variety of players operate in the market, including insurance companies, investment houses of various sizes and sectoral funds (intended for defined populations). Barriers to transitioning in the field are low. In relation to some of the products, about 10-15% of the assets in the market are moved from one company to another, every year. These moves are usually made in response to the returns of the various companies - the companies that lead in returns will often also lead in recruiting customers. The barriers to expansion in the field are relatively low and a company that shows good returns succeeds in recruiting customers as a result. In these areas, too, management fees have been on a steady downward trend over the past decade. In view of the aforesaid, the Director General approved the merger.

*The Competition Tribunal dismissed the appeal filed against the approval of the merger between Nevo – "Hamitmahe" merger*

98. On 28 April 2021, the Competition Tribunal rejected the appeal filed by Trendline Information and Communication Services Ltd. regarding the Director General's decision to approve the merger between the "Hamitmahe" brand, which provides study and preparation solutions for the Israel Bar Association's certification exams, and Nevo Publishing Ltd., which operates the "Nevo" database for searching legal information. The appeal was dismissed following a decision by Trendline to withdraw the appeal following a preliminary hearing held at the Competition Tribunal.

99. The ICA's investigation in this regard revealed that the merger is not expected to harm competition and even has advantages that promote competition since it severs the link between the Israel Bar Association (through the Economic Company) and "Hamitmahe"'s bar exam preparation course.

*The Supreme Court dismissed the appeal against the approval of the merger between Discount Bank and Municipal Bank*

100. On 29 August 2021, the Supreme Court denied an appeal filed by the Bank of Jerusalem against the Competition Tribunal's decision to summarily dismiss an appeal filed against the Director General's decision approving the merger between Discount Group and Municipal Bank (formerly Dexia Israel Bank).

101. In the background was the Director General's decision to approve the merger subject to conditions that required the sale of part of the credit portfolio to local authorities, to a third party. The Bank of Jerusalem filed an appeal against this decision, and the Competition Tribunal summarily dismissed the appeal due to lack of anticompetitive harm to the Bank of Jerusalem. After the appeal was summarily dismissed, the Bank of Jerusalem filed an appeal on the ruling of the Competition Tribunal.

102. The Competition Law allows a party other than a consumer organization or business association to appeal the Director General's decision to approve a merger only if it is a "person harmed by the merger." Over the years, this statement has been interpreted by the Competition Tribunal in a series of decisions as a "anticompetitive harm," as opposed to a business or other harm. It is also required that the anticompetitive harm be sustained by the appellant itself.

103. In its ruling (Civil Appeal 2531/20) the Supreme Court ruled that the appeal should be dismissed due to the fact that the merger between Municipal Bank and Discount is a "fait accompli" and that an annulment of the merger transaction is no longer possible given the consequent harm to the parties to the transaction and third parties. The Supreme Court also acknowledged the concern from abuse of process by filing frivolous appeals contrary to the public interest.

### **3.2.3. Exemptions of Restrictive Arrangements**

104. During 2021, 21 requests for specific exemptions from the obligations to receive the approval of the Competition Tribunal for restrictive arrangements were filed to the Director General. ICA's examination of 14 requests for exemption ended during 2021: In terms of decisions 80% were granted (without conditions); 10% were granted (with conditions); 10% were rejected. The following are highlights of a few cases reviewed by the ICA:

*Objection to grant an exemption from the approval of a restrictive arrangement for the coordination of the price of the deposit of a 1.5-liters bottles*

105. The Director General denied an application for exemption from approval of a restrictive arrangement submitted by the Association of Food Industries of the Israel Manufacturers Association, in which they sought to coordinate the amount of the deposit that will be imposed on beverage containers in accordance with the Deposit Law, 5759-1999, and in particular large beverage containers of 1.5 liters and up. Due to non-compliance with the collection targets set forth in the Deposit Law, the Environmental Protection Minister decided with the approval of the Knesset Economics Committee that a minimum deposit of ILS .30 per bottle will also apply to large beverage containers. The Association of Food Industries was concerned that a deposit of ILS .30 would not be sufficient to meet the collection targets set under law. The association therefore requested the ICA to allow it to determine and recommend the appropriate deposit to be imposed on large beverage containers.

106. The Director General denied the request and determined that granting the exemption would allow the association to set a deposit while considering the profit considerations of the association members, which could place a greater burden on and harm consumers, leading to an increase in prices and in beverage collection costs. It was also found that there is a concern that coordinating high deposit fees may serve large manufacturers and increase the collection costs that will be imposed on small manufacturers as well. The decision stated that if an ILS .30 deposit is not a sufficient incentive to meet collection targets, there are other ways to encourage the public to return large containers as is the case today with small containers, such as incentive fees for retailers and collectors and more.

*Granting an exemption from the approval of a restrictive arrangement for the RGE Keshet venture*

107. On 2 September 2021, the (then) Acting Director General approved an arrangement between Keshet, Naftali SS Investments and RGE Group to establish a joint multichannel broadcasting platform. The ICA's inquiry revealed that the content held by the parties is considered anchor content essential to the activity of all the platforms. However, the examination revealed that in the short time after the new platform's establishment, no significant change in the revenue structure of the parties to the venture is expected and there is no significant concern of harm to the content that Keshet and RGE will provide to other platforms, in a manner that will harm competition between them. In view of the aforesaid, the exemption period was granted for a limited period of four years, and towards its end the effect of the arrangement on competition will be re-examined, in accordance with market conditions at that time.

*Granting an exemption from the approval of a restrictive arrangement between the banks and non-banking credit card companies*

108. On 25 July 2021, the Director General granted an exemption to Bank Hapoalim and MLRN, a non-bank credit company, and on 28 October 2021, the Director General granted an exemption to Bank Leumi, Leumi Partners and Orshay, another non-bank credit company.

109. As part of the Bank Hapoalim-MLRN arrangement, the latter will work to locate and refer business customers from the Arab sector to Bank Hapoalim for the purpose of procuring credit from the bank. The Bank Leumi-Orshay arrangement included among others Leumi Partners acquiring 20% of Orshay's share capital and the referral of Bank Leumi customers to Orshay for credit.

110. Despite the horizontal overlap, the exemptions were granted in view of the differences between the banks' products and the products of the nonbanking credit companies. Moreover, the arrangements did not include any exclusivity obligation so that nonbank financial companies could grant credit to their customers themselves or engage with other banks in similar agreements. In addition, Orshay is small compared to other competitors in the field of providing nonbank credit. The Director General also found that the Bank Hapoalim-MLRN arrangement may potentially contribute to competition since the arrangement may make it easier for businesses without a current account at Bank Hapoalim to consider another alternative for obtaining credit.

111. The Director General determined that the arrangements do not restrict competition in a substantial part of a market affected by it and are therefore exempt. The first exemption was granted for a period of one-and-a-half years and the second for a period of three years, and the arrangements will be re-examined if they are submitted for further approval.

*Granting an exemption from the approval of a restrictive arrangement for the Nilus Venture*

112. On 13 January 2021, the Director General conditionally granted an exemption for a restrictive arrangement, following which several importers (including Diplomat, Guri and Leiman Schluskel) joined forces to establish a venture (“wheeling”) aimed at logistically distributing their products to customers who are difficult to currently reach. The Director General found that in parallel to the many benefits that arise from the arrangement, competitive concerns may arise, and therefore several conditions have been set forth. Including, *inter alia*, conditions which will allow open access to small players that are not part of the project or new players to the venture, as well as conditions designed to ensure the ability of small suppliers to enjoy the efficiency of the project.

*The Competition Tribunal granted a temporary permit for cooperation between Automated Bank Services and Masav subject to the conditions recommended by the Director General*

113. On 10 May 2020, Automatic Bank Services Ltd. (Shva) and Banking Clearance Center Ltd. (Masav) submitted a request to approve the existing cooperation between them as a restrictive arrangement. The position of the Director General as submitted to the Competition Tribunal was that the arrangement should not be approved as requested since the cooperation between Shva and Masav is a restrictive arrangement that may harm competition and is not in the public interest. However, the Director General clarified that the cessation of cooperation between Shva and Masav should be done in a controlled and gradual manner.

114. On 7 April 2021, Shva and Masav submitted to the Competition Tribunal an application for a temporary permit subject to the conditions recommended by the Director General. These terms focused on the separation of the two companies’ management and the separation of a significant portion of the contractual engagements with third parties during the first half of 2022. The conditions also stipulate that by the end of December 2021 the two companies will submit to the Director General an outline relating to the other collaborations between them. As part of their application for a temporary permit, Shva and Masav warranted that until the end of the proceeding, they would act only in accordance with the temporary permit or another Director General decision.

115. Accordingly, on 11 April 2021, the Tribunal granted the request and issued the companies a temporary permit.

116. After the companies submitted the outline and after negotiations with the Director General, on 27 February 2022 a request by mutual consent was submitted on behalf of the Director General, Shva and Masav to the Competition Tribunal to approve a framework for a separation between the companies so that the restrictive arrangement is approved under agreed conditions. The terms, formulated in collaboration with the Payments Division at the Bank of Israel, include a complete separation of the companies from the level of management, application development and immediate payment services down to the infrastructure the companies rely on. All, over the next few years.

117. The Competition Tribunal approved the agreed outline between Shva and Masav and the Director General and granted it the force of a judgment.

#### 4. The role of competition authorities in the formulation and implementation of other policies, e.g. regulatory reforms, trade and industrial policies

118. In addition to its mandate to enforce the provisions of the Competition Law, the ICA serves as an expert advisory body to the Israeli government and parliament in competition issues. Subsequently, one of the key capacities of the ICA involves offering its professional know-how and expertise to various government bodies and disseminating competition principles among them. The ICA’s advocacy efforts are also directed towards the business and legal communities, as well as the public. In recent years, the ICA has been deeply involved, through advocacy work, in numerous initiatives to open markets to competition and to reduce barriers to entry.

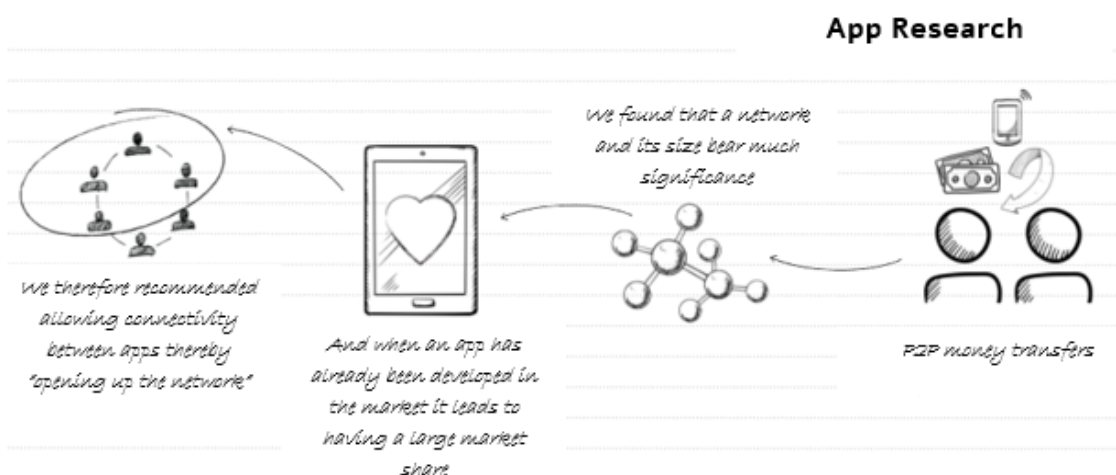
119. The ICA works closely together with government ministries and other government agencies to enhance competition and cope with competition problems in various sectors of the economy. The ICA also engages in discussions at the Parliament's Finance Committee and Economic Affairs Committee where its representatives present the competitive aspects relevant to various regulatory, legal and economic issues.

#### 4.1. Market Studies and Reports

120. The Competition Law provides the Director General with the authority to conduct market studies, including examinations of the existence of competition failures and barriers to competition. The Director General may hand her reasoned conclusions and recommendations to the minister in charge of the examined sector and to the Minister of Treasury, and in a sector that is regulated by another agency – also to the head of that agency. The Director General executes her authority concerning market studies through the Research Division of the ICA's Economics Department. Some examples of studies published in 2021, can be found below:

##### 4.1.1. Market research: P2P transfer apps

Figure 1. App research



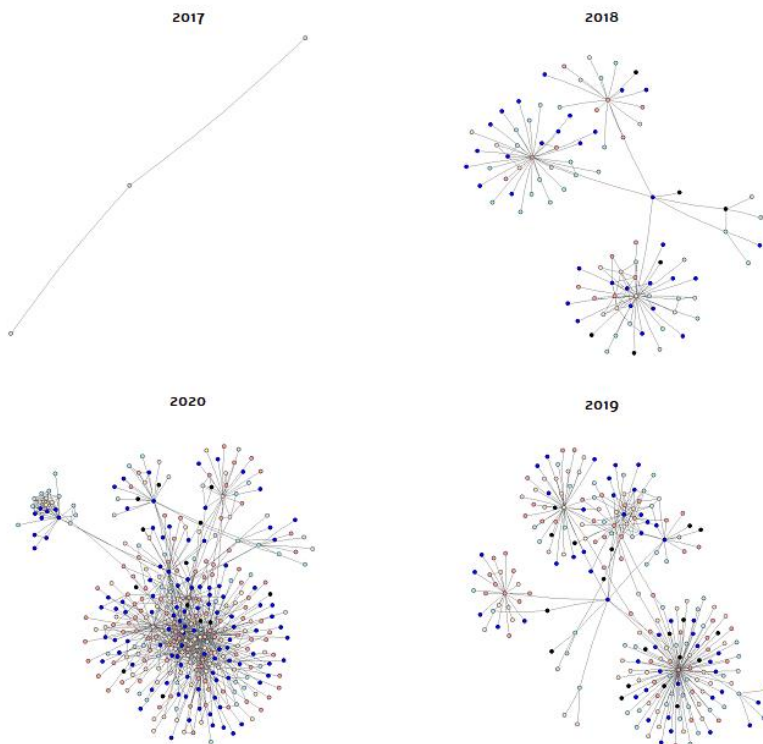
121. The vast majority of app money transfers between individuals are performed through Bank Hapoalim's "Bit" application. The study points to a network effect in providing payment transfer services between individuals, which makes it very difficult for other apps to compete in this field and increases the potential risk of harm to consumers.

122. The research in the field of payment apps focused on peer-to-peer payment services (P2P). The research did not address the area of digital wallets.

123. The area of P2P payment apps has undergone significant developments in recent years, and as typical for digital platforms, competition in it is expected to converge into a winner-takes-all market structure - the Bit app. The results of the study indicated that Bit took over almost all ordinary P2P app transfers (transfers that do not include group transfers and business transfers).

124. A network effect occurs when network expansion increases the value of the service for each user (phone service, social media and more). A network effect in the provision of services is in many cases the main reason for the creation of a winner-takes-all market structure. In such a situation, the network effect creates barriers to entry for competitors and weakens the competitive incentives of the "winner" in the long run. On the other hand, if consumers are willing to consume a product or service that exceeds one supplier (multihoming), this restrains the power of the "winner." The results of the study indicate a significant network effect in the provision of P2P transfer services.

**Figure 2. Study results**



Source: Bank Hapoalim; processing by the Research Division of the Competition Authority

125. The diagram depicts the development of the network of transaction partners in the years 2017-2020 of a randomly selected Bit user. Each vertex on the network describes a user, and each arc indicates that the two connected users have made one or more payment operations between them. The network described is level 2. That is, the network displays

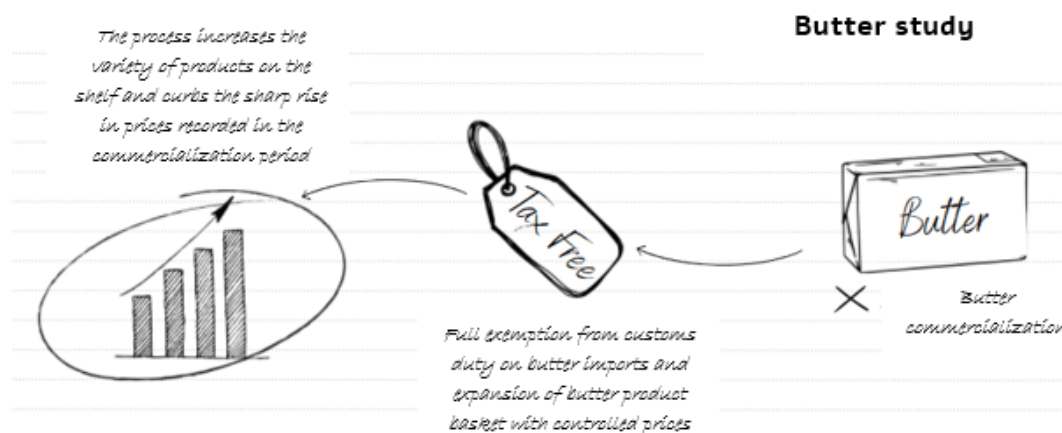
the randomly selected user, its transaction partners and the transaction partners of its transaction partners. Different colors of the vertices indicate different levels of activity.

126. In addition, examining the scope of multihoming paints a complex picture. On the one hand, customers are highly prepared to install several payment apps on their phone, such that the scope of multihoming is not negligible. On the other hand, most of the actual use is concentrated in a single app. Switching to the other apps happens when they are required for niche service (the group transfers offered by Facebook) or without choice (due to the artificial limitation in relation to the ceiling for the receipt of payments in each app). This picture reinforces the understanding that consumers will tend not to experiment with a new app as an alternative to their “regular” app.

127. In light of these findings, the ICA recommends weakening the network effect in P2P payment transfers by creating connectivity between P2P transfer apps. In this way, every consumer will be able to use the app that best suits her needs, without her choice being affected by the number of users registered on it. On the other hand, the ICA recommends not preventing apps from using the information that customers will accumulate in connection with P2P transfers in order to offer additional financial products. This is to maximize value for the customer by offering the products that are most tailored to his needs.

#### ***4.1.2. Examining the effect of government handling of butter shortages on availability, diversity, prices and industry concentration***

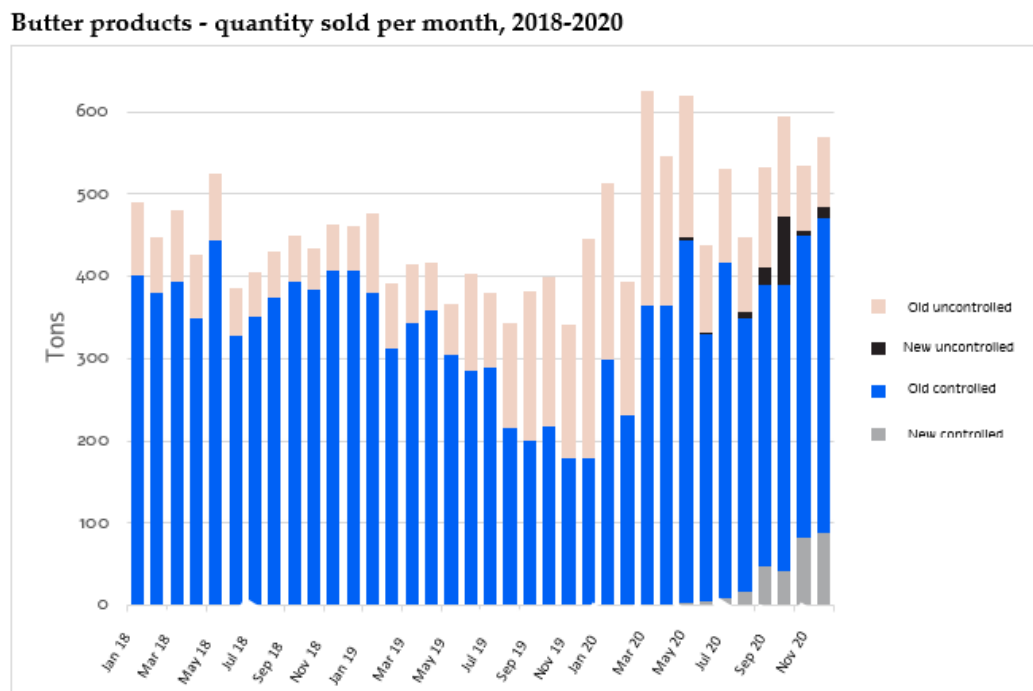
**Figure 3. Butter study**



128. At the beginning of 2019, a shortage of butter was felt in the food marketing chains in Israel, and for long periods of time during that year, the butter shelves in refrigerators were completely empty. The severe shortage and the subsequent rise in prices led the government to take several steps: first, duty-free import quotas were expanded; afterwards, a full exemption from customs-duty on butter imports was introduced; and the basket of butter products under price-control was expanded. The ICA examined the effect of the measures taken by the government in response to the shortage of butter on the prices, the variety and quantity of table butter consumed, as well as the market shares of the companies active in the field. The study's results show that following the measures taken, **there was a significant increase in the amount of butter sold, in a way indicative of a closing of the gap between demand and supply**. Many of the consumers who reluctantly went through the shortage purchasing expensive butter products returned to purchasing the

regulated products. In addition, the imported products whose marketing began in the country after implementation of the import reliefs were sold in some cases below the controlled price. Not only has the amount of butter available for purchase increased, **the range of products on the shelf has also increased and at the same time the sharp upward price trend recorded during the shortage period has been halted.** It was also found that the measures taken by the government in response to the shortage of butter led to an increase in the share of small players at the expense of Tnuva and Willi Food and a decrease in the level of concentration in the field. The study's report was released to the public in July 2021.

Figure 4. Butter products – quantity sold per month, 2018-2020



Source: StoreNext data; processing by the Research Division

## 4.2. Consultation to Government

### 4.2.1. General

129. During 2021, the ICA was involved in legislation proceedings, including concerning: the Supervision of the Financial Services, legislation concerning Advanced Payments Methods, API and more. In addition, in 2021, the ICA opened over 120 consultations to the government. Below are some examples:

#### *The Standards Institute's official standards enforcement regime*

130. In July 2020, the ICA recommended, following an inquiry, that the manner in which official standards are enforced be changed from pre-enforcement to retrospective enforcement, by allowing importers to import products based on an importer's declaration that the products meet the standard. Under the latest Arrangements Law, a comprehensive

reform was formulated to facilitate the import of products to Israel. This reform in part addressed easing the standards enforcement regime by shifting to risk management and relying on importer declarations to comply, in a manner consistent with the ICA's recommendation. During 2021 the ICA participated in internal government discussions and in Economics Committee discussions for the purpose of promoting the reform and passage thereof in the Arrangements Law, and also recommended how the reform should be implemented so that competition in a variety of relevant segments and products is maintained. In this context, the ICA worked to reduce the list of standards excluded from the reform, to encourage competition in the enforcement segment, to apply the reform to mandatory standards alongside official standards and to increase the enforcement capabilities of the standards commissioner, which are necessary to create deterrence and effective risk management.

#### *Import reform - standardization, cosmetics and food*

131. As part of the Arrangements Law which enacted in November 2021, a very significant reform in imports to Israel was approved. The reform of food and cosmetics imports sought to move to a method of declaring compliance with European standards instead of obtaining the need for an import license. The ICA has been active in promoting the reform from the initial stage of the inter-ministerial team regarding the import of products to Israel, whose recommendations formed the basis for the imports reform; it submitted its comments on the draft economic plan, which included in part the imports reform, and then participated in all discussions of Knesset's Economics Committee - until the end of deliberations and the reform's ratification.

#### *The reform in agriculture*

132. The ICA was part of the inter-ministerial team responsible for the implementation and execution of the reform in agriculture. The reform is mainly reflected in the reduction of tariffs on vegetables and fruits in agriculture and the removal of additional barriers, such as plant protection, imports face. In doing so, the Authority participated in the discussions of the teams deliberating on how to implement the reform. Among others things, the Authority collected data and conducted a research to study the marketing gaps in fresh fruits and vegetables, and presented its conclusions to the team for examining the marketing asymmetries in agriculture. In particular, the study examined the contribution to the consumer price of the various segments in the chain of supply of fruits and vegetables to consumers (the agricultural segment, the wholesale segment, the retail segment).

#### *Metro Motor-Gogoro Import License Consultation*

133. As part of advising the Ministry of Transportation on considerations of promoting industry competitiveness for the purpose of granting an import license to Metro Motor for an electric scooter manufactured by Gogoro, the Director General recommended to the Ministry of Transportation to prevent Metro Motor from simultaneously importing electric scooters made by Yamaha and Gogoro until it conducts an additional competition examination.

#### *Consulting in the tender for the blue line of the Jerusalem light rail*

134. As part of advising the inter-ministerial tenders committee on the blue line project of the light rail in Jerusalem regarding considerations of promoting industry competitiveness, the Director General recommended distinguishing between winning the tender and operating the blue line of the Jerusalem light rail for a 7-to-15-year period and operating certain bus lines in Jerusalem.

135. During the start of blue line operations, three bus line cluster operators are expected to operate in Jerusalem: "Egged", "Superbus" and "Extra". The previous industry consultation regarding the light rail in Jerusalem found a replacement correlation between the light rail system and some of the bus lines in the city. It was also found that the sets of incentives of the tender winner and the operators of the bus line clusters may adversely affect competition between the various means of transport when they are held by one entity. These findings are also valid for the consultation in question, and therefore, as stated in the previous consultation, it was determined that the holding by one operator of both a cluster of bus lines in Jerusalem and the blue line of the light rail, is inferior in terms of competition to a situation where the means of transport are operated by different operators.

136. However, since the picture of the bus lines operating in Jerusalem during the period of blue line operations is not clear enough at this stage, the Director General recommended that as long as the winner of the tender operates one of the bus line clusters in Jerusalem, the winner's license will be revoked before the blue line begins operating.

*Consulting in the process of allocating rights to operate "the work platform" in Ashdod*

137. Israel Ports Development and Properties Ltd. approached the Director General for sector consultation in a competitive process for allocating rights to operate what is referenced as "the work platform" in Ashdod. The winner of the process will receive permission to operate the platform for the provision of port services to the natural gas exploration industry and its production at sea for 15 years. In the consultation, two main questions were examined: the competitive impact of the participation in the tender of entities in additional segments in the natural gas production and distribution chain; and the competitive impact of the allocation of the work platform within the limits on the permitted uses of the platform.

138. The Director General's inquiry revealed that no competition problem is expected to arise if parties related to the natural gas production and distribution chain, such as Hemo Aharon Ltd. and Shafir Industries Ltd., win the tender. This is due to the existence of additional platforms that provide the aforesaid services to the natural gas industry, and because natural gas divisions do not deal with the commercial side of purchasing gas from suppliers in a way that nullifies an incentive to prefer providing port services to one natural gas company or another. However, the Director General recommended clarifying to the candidates that any prospective customer wishing to use the platform should be provided with access to the services provided on similar terms.

139. The Director General's examination of the second question further revealed that there is no justification for allocating the services to be provided at the work platform solely to the port activities of the natural gas company for 15 years. Natural gas companies already receive port services from the ports, and in any case it is preferable to receive these services in the north of the country in view of the location of most of the natural gas reservoirs. Either way, the intended activity will apparently not require the allocation of an entire platform just for that purpose and for an extended period of time, in a way that also adversely affects the intra-tender level by reducing tender bidders and receiving suboptimal bids. In view of the above, the Director General recommended that the matter be reconsidered.

*Advising the Ministry of Education regarding the tender for digital content for schools*

140. The Ministry of Education approached the Director General to examine the tender for digital content for schools published each year and to offer options for increasing competition between the content providers within the framework of the tender. The Authority's investigation found that the company Center for Educational Technology (CET) is the main digital content provider in terms of the volume of content and revenues received from the tender. The tender was also found to entail structural incentives that favor content providers offering a wide basket of products. This was also the schools' preference because in this way they would be able to receive as much content as possible within the fixed budget given to them. In light of the above, it was found that there are barriers to entry and expansion for small content providers. The Authority's team has worked in collaboration with the Ministry of Education to come up with a series of proposals to improve and make competition more efficient in the digital content tender.

*Law memorandum regulating the practice of payment services and initiation of payments*

141. As part of the implementation of the recommendations of the Committee for Increasing Competitiveness in Common Banking and Financial Services, a subcommittee was established, of which the ICA is a member. The subcommittee is intended to formulate a lateral, uniform regulation of all payment services (issuance of means of payment, clearing of means of payment and management of payment accounts), which will enable competition between payment service providers, while adapting to technological development in payment services and providing an umbrella of consumer protection (to this end the Payment Services Law was enacted in 2019).

142. Initiating payment operations is a service designed to enable a third party to initiate a bank transfer order directly from the customer's account to the payee, in a manner that is expected to be a convenient, efficient and inexpensive means of payment. The ICA is a member of an inter-ministerial team that formulates the principles for regulating the activities of payment initiators and the duties accountants owe them.

143. In January 2022, following lengthy work by the inter-ministerial team and the subcommittee of which the Authority is a member, an up-to-date memorandum of legislation was published which includes both the regulation of the provision of payment services and the initiation of payment operations. One of the purposes of the regulation is to expand the use of advanced payment services while regulating the possibility of their access to payment systems. The regulation is another step in dismantling the banking product basket and will allow nonbanking entities to enter and develop in the field alongside the existing banking players in the market, thus encouraging competition in the field.

*Open banking*

144. On 4 November 2021, the Financial Information Service Providers Law, 5781-2021 was enacted. The ICA was a member of an inter-ministerial team that led the formation of the regulation. The main purpose of the regulation is that financial information service providers will be able to combine the information about the customer from various financial entities and provide him with various services, including information centralization, cost comparison and financial management advice. This activity will help address one of the key barriers to the development of competition in the field of banking services: the

complexity of information and the difficulty of many customers in estimating the price that they will pay for the banking services they consume.

### *Clickthrough*

145. On 22 September 2021, the implementation of the "clickthrough" method began. The method began following amendments to the Banking (Customer Service) Law, which requires banks to allow the transfer of financial activity from bank to bank online, conveniently, reliably, securely and without charging a fee, within seven business days. The ICA was a member of an inter-ministerial team that advanced this issue.

146. Simplifying the transition process will make it easier for customers to switch between banks and will reduce customers' transit barriers. It should be noted that the banks have chosen to implement the clickthrough method by establishing a dedicated system by Masav (an electronic system that settles inter-bank movements), which is controlled by the banks, and the Competition Authority allowed this activity with an exemption granted on 14 February 2019. This is subject to the conditions that apply to Masav by virtue of previous decisions, including a duty to provide access to its services to all Masav members and their customers.

### *Consulting for the Water Authority - promoting competition in the development of the water sector*

147. Following a request from the Water Authority, the ICA conducted an analysis designed to find ways to promote competition in the development of the water sector, particularly with respect to initiating infrastructure projects in the field. The analysis showed that, as a rule, Mekorot (the national water company, which provides Israel with the vast majority of its drinking water), carries out projects at a higher cost and at a slower pace than the water associations. The Authority therefore recommended significantly increasing the competition that Mekorot faces in carrying out projects in the water sector.

148. According to the Authority's consultation, the preferred way to promote competition by the Water Authority is to use competitive processes that are expected to create competitive pressure on bidders and allow direct comparison of different bids based on price parameters, execution times and execution standard. It was noted, however, that to the extent that such competitive processes cannot be promoted, another way to increase competition is to increase the range and scope of activity of private entities that can carry out projects of the same magnitude that Mekorot carries out, and to create yardstick competition.

### *Consulting for the Ministry of Environmental Protection - competition in the area of treating car batteries*

149. The Ministry of Environmental Protection approached the Director General of Competition for sector consultation in a competitive process for the treatment of used car batteries. The ICA conducted a study into the matter; the Authority's findings indicated that Hakurnas Lead Works Ltd. is the only plant in Israel that processes and recycles waste of used lead batteries in Israel. Hakurnas is the only available option for battery dealers operating in the industry and there is no other legal alternative in the industry for the treatment of battery waste. The review indicated Hakurnas' dominant position in the domestic market by comparing the prices at which Hakurnas purchases batteries in the domestic market compared to the prices at which it buys batteries from around the world (battery imports). The data show that Hakurnas purchases a significant portion of its

batteries from imports, and it pays a significantly higher price for them than batteries purchased in the domestic market.

150. It was found that the low purchase price of batteries in the domestic market compared to world prices harms the entities operating in the domestic industry and their incentive to treat waste through the only regulated channel in Israel. Therefore, the ICA's position was that the industry should be opened up to competition, particularly for exports, in a way that would put competitive pressure on Hakurnas, lead to a more competitive price in the domestic market and reduce the incentive to pirated care of used batteries. This position was accepted by the Ministry of Environmental Protection and the market opened up to competition.

#### *Consulting for the Water Authority - Western Galilee Desalination Plant*

151. The Water Authority approached the Director General for industry consulting in a competitive process for allocating the right to establish a water desalination facility. After an in-depth examination of the water desalination market, the ICA together with the inter-ministerial tenders committee for seawater desalination and the Water Authority reached an agreement that in exchange for the sale of the desalination plant in Ashkelon, IDE will be given the opportunity to bid on desalination facilities in Ashdod and the Western Galilee.

152. Unlike other markets, in the field of desalination most of the commercial conditions (quantities and prices of water) are determined in advance in the tenders for the construction of desalination plants, and the entire quantity of water produced is sold to the state. Therefore, the number of competitors in the tenders is very important - where the price to be paid by the state for purchasing water from the facility is set for many years. At the same time, the state sometimes asks existing plants to expand the amounts of water they produce (permanently or temporarily). In such cases, the existing facilities compete with each other even after the date of the tender, and therefore the number of competitors that can expand the quantities of desalinated water is important. The agreed outline is therefore expected to lead to an optimal competitive situation, taking into account both the future tenders and the future expansions that the state may require. In other words, the sale of the facility in the city of Ashkelon in exchange for the right to participate in tenders for the facilities in the city of Ashdod and the Western Galilee (northern israel), allows for both increased competition in tenders and a reduction in competitive concerns when performing expansions. On the one hand, IDE's participation in tenders for desalination facilities in Ashdod and the Western Galilee is expected to increase competition in these tenders. On the other hand, the sale of the facility in Ashkelon is expected to alleviate the competitive concern that might arise in relation to the field of expansions, in the event that IDE wins both the facility in the Western Galilee and the facility in Ashdod.

#### *Consulting with respect to quarries*

153. In 2021, the ICA was a member of the inter-ministerial committee for examining policy measures in the field of mining and quarrying in Israel, headed by the Director General of the Ministry of Housing. In this context, the ICA assisted the committee in drawing up recommendations regarding aspects of competition in the quarry industry.

154. The Authority's inspection findings indicate that the quarries market is less competitive and suffers from competitive difficulties. The study revealed that many

concrete plants for which aggregates are a major input do not enjoy competition in the area of aggregate supply. In order to solve these competitive difficulties, the committee recommended, based on the work of the Authority, to actively promote separation between pairs of adjacent quarries under active cross-ownership even before the expiration date of the authorization of one of the quarries. It was also recommended to examine active government intervention in operating a quarry that is disabled due to legal proceedings, through an entity that does not operate another quarry in the same geographical area.

#### ***4.2.2. Consultations under the Concentration Law***

155. The Law for Promotion of Competition and Reduction of Concentration (also – the Concentration Law) is a unique law, aimed to enhance competitiveness in the economy and to reduce the excessive economy-wide concentration in the Israeli Market (i.e. a small number of business entities control a significant proportion of the economy’s financial and non-financial assets). The law deals with the obligation of a government ministry seeking to allocate public assets (licenses or contracts in essential infrastructures or privatization of government companies) to take into consideration the promotion of market competitiveness as well as the level of economy-wide concentration. The Director General advises Ministries with regard to competition considerations and serves as the Chairman of the Committee to Reduce Concentration (also – the Committee) which advises Ministries with regard to market wide concentration considerations when allocating rights. Economy wide concentration consideration are considered only when dealing with "Concentrated Entities", which are business groups that meet certain criteria, such as a high turnover, substantial activity in essential infrastructures or activity in the communication and broadcast field and the entity is listed in the "Concentrated Entities List".

156. In 2021, the Director General consulted regarding the allocation of 15 rights. In addition, the Reduction of Concentration Committee, received 24 requests for consultations, and provided its advice regarding 6 different cases in 2021, including in the following cases:

##### *The Committee’s opinion regarding the allocation of the “Block 72” gas and oil exploration license to the Tshuva Group*

157. The Committee recommended to the Director General of Petroleum Affairs to reject Delek and Chevron’s proposal in a competitive process for the “Block 72” gas and oil exploration license, for reasons of economy-wide concentration. Chevron is an American multinational energy corporation and Delek is an Israeli based gas producer. Block 72 is a gas and oil exploration license in an area of about 400 square kilometers, located at the northern end of Israel’s exclusive economic zone.

158. As part of the competitive process, two proposals were submitted: by Delek and Noble and by Energean. Delek is part of the Tshuva group, which is a concentrated entity, due to the group’s effective credit, which is among the highest in the economy, and because at the time of consultation it controlled more than half of the natural gas production sector. Tshuva Group owns rights in the Leviathan reservoir, which is the largest natural gas reservoir in Israel.

159. Allocating the Block 72 license to the Tshuva Group may increase its bargaining power and ability to influence the government. In light of this, the concentration committee recommended preventing Delek from winning for reasons of economy-wide concentration.

*The committee's opinion regarding participation of concentrated entities in the privatization of the Port of Haifa*

160. The ICA approached the committee for consultation regarding considerations of economy-wide concentration in relation to the proposed decision to privatize the state's holdings in Haifa Port Ltd. Among the parties that sought to participate in the sale process were four concentrated entities:

161. Clal Industries of the Blavatnik Group, which operates in the areas of vital infrastructure, owns the Nesher Cement Plant (the only manufacturer in Israel), Channel 13 and the news edition it broadcasts (which is one of the two leading broadcasters and news companies in Israel). Clal is a leading insurance company in Israel. However, Blavatnik's centralization as well as its sales turnover have decreased considerably in recent years. Nesher's status and market power have also weakened since most of the Israeli cement is imported. In the Committee's view, the holding of a television channel, central as it may be, without further significant activity in other vital infrastructure areas and without high sales and credit cycles, does not cross the threshold leading to the disqualification of an entity wishing to bid in a tender.

162. Taavura Holdings controls the air cargo terminal at Ben Gurion Airport. Taavura has activity in the field of bus lines, which is an area of vital infrastructure, but the scope of its activity is not significant. The group's sales turnover is also not very high, and most sales are attributed to activities that are not in the areas of essential infrastructure.

163. Allied is a concentrated entity only due to its effective sales turnover; however, most of its revenue is not attributed to activity in the area of vital infrastructure.

164. Bank Leumi is the largest and first banking corporation in Israel and the largest lender of credit. As such, it is a vital juncture of financial life and the economy and its impact on the economy is noticeable. However, the committee considered that the bank's financial activity, where it did not have significant real activity or dominant and extensive holdings in vital infrastructure, was not sufficient to prevent it from bidding in the tender as a financing agent.

165. In view of the above, and in order to maintain sufficient competition in the tender for the welfare of consumers, the Committee recommended not to prevent the participation of any entity for reasons of economy-wide concentrations.

*The Committee's opinion regarding the participation of Neopharm of the Bezeq Group in the privatization of the Israel Postal Company*

166. The committee recommended to the Government Companies Authority not to prevent Neopharm Ltd., which is controlled by David and Michal Fuhrer holders of Bezeq (Israel's largest internet and phone infrastructure corporation) from participating in the race to purchase 20% of the shares of the Israel Postal Company.

167. David and Michal Fuhrer have business activities in a variety of areas, but most of them are not in essential infrastructure areas, and most of their effective sales turnover is attributed to Bezeq's revenues. Bezeq's economy-wide concentration is very high, but David and Michal Fuhrer's control of Bezeq is limited, because effectively they hold only 19% of the voting rights in B Communications Ltd. (which controls Bezeq) and have no veto rights or ability to block a resolutions adopted through majority vote by the controlling interests of Searchlight (which holds about 60% in B Communications). Also, the state will hold at least 60% of the voting rights of the Israeli Postal Company, so the winner of the allocation will not control Israel Postal Company alone.

168. Due to this, the Committee recommended to allow Neopharm to participate in the tender for the sale of Israel Postal Company's shares for reasons of economy-wide concentration.

*The Committee's opinion regarding Shafir's bid in tenders for the privatization of Haifa Port Company Ltd.; Photovoltaic solar facility in Dimona; and the Hagit power station*

169. The Committee recommended that Shafir, which holds numerous licences in different essential infrastructure fields was included on the list of concentration entities close to the opinion's issuance, be able to participate in the following tenders: a tender for the acquisition of state holdings in the Port of Haifa; design, construction and operation of a photovoltaic solar facility in the city of Dimona; and the purchase of the Hagit power station. Hagit was one of the electricity plants which the state-owned electricity company sold as part of a reform aimed to promote competition in the electricity generation field.

170. Shafir is a concentrated entity due to the many rights it holds in the areas of vital infrastructure and also due to its holding of more than half of the activity in the field of domestic railways in Israel. Due to its many significant activities in the areas of vital infrastructure, Shafir is an entity with exceptional economy-wide concentration, and the expansion of its activities in the areas of vital infrastructure must be carefully examined.

171. On the other hand, Shafir's sales turnover does not exceed the threshold for its determination as a Significant Real Corporation (6 billion NIS). In most areas in which Shafir operates, it is not a leading player, and its activities usually do not give it a hand on the "switch" vis-a-vis policymakers. In addition, Shafir does not hold any rights with respect to seaports that are related to the port's activities. Another consideration of the committee is that the number of bidders in the tender has greatly decreased since the beginning of the process and the professionals responsible for the tender fear that the tender results will be harmed due to a lack of competitors if Shafir is disqualified.

172. Thus, the Concentration Committee believed that Shafir's participation in the competition for the port may be allowed. However, the Committee recommended that if Shafir wins the tender it competed in for the use and operation of the platform at the Port of Ashdod, the Companies Authority will again consult regarding Shafir's participation in the tender for the privatization of the Port of Haifa.

173. The Concentration Committee also recommended that Shafir not be prevented from participating in the tender for the construction of a photovoltaic facility to be built in Dimona due to its limited scope, and also recommended allowing Shafir to participate in the IEC tender for the sale of power units at the Hagit power plant which may promote competition due to the lack of any activity by Shafir in the area of electricity generation and due to the small number of participants in the tender.

174. The Committee noted that Shafir winning these tenders, and especially the tender for the Port of Haifa, is expected to increase its overall economic concentration and place it among the most concentrated groups in the economy. Such a win would require a careful examination of economy-wide concentration considerations regarding future allocations to the group.

*The Committee's opinion regarding participation of concentrated entities in the tender for the blue line of the light rail in Jerusalem*

175. The Committee recommended to the inter-ministerial committee for the light rail in Jerusalem to allow Shafir, Electra, Phoenix and Allied to bid in a tender for the planning,

financing, construction, operation and maintenance of the blue line of the light rail in Jerusalem.

176. The Committee noted that Shafir has specialized experience with respect to the light rail in Jerusalem as it won a few years before the tender to build and operate the green and red railway lines in Jerusalem, and its participation in the tender is expected to add competitive pressure and improve competition in the tender. With regard to the Electra Group, the committee noted that its limited participation rate in the competing group (only about 20%) reduces the fear of an increase in its economy-wide concentration. Indeed, the Committee noted that the increase in Allied's concentration does not raise any real concern, as it is not a group with high economy-wide concentration, and regarding Phoenix (an insurance company), it noted that it does not operate in vital infrastructure and is not a significant real corporation.

177. The Committee emphasized that the winning of each of the groups in the tender is likely to increase its concentration to the extent that it places it among the concentrated groups in the economy, and that such a win may require careful consideration of economy-wide concentration considerations regarding future allocations to these groups.

#### *Updating the list of rights in the concentration law*

178. The list of rights published by the Director General under section 13 of the Law for the Promotion of Competition and the Reduction of Centralization, 5774-2013, includes rights granted by the state in various sectors of the economy, which the Director General believes may have a significant effect on competition. As mentioned a regulator seeking to allocate a right that appears on the list of rights is required to consult with the Director General regarding the allocation of the right prior to its allocation.

179. The list of rights requiring consultation includes a license for the import of commercial vehicles under section 41 of the Licensing of Services and Professions in the Vehicle Industry Law. In order for the list of rights to include only the allocation of licenses that may have a significant effect on competition, the Director General has reduced the list of rights so that no consultation is required regarding the allocation of an importer license granted to an applicant who does not have an additional direct importer's license or manufacturing activity in the requested category. This is in light of the Authority's experience, which shows that no negative competitive effect is expected in the allocation of these licenses. This reduction is a continuation of a previous reduction of the list of rights, such that the obligation to consult in relation to an indirect or minor importer's license will not apply.

## 5. Resources of the ICA

### 5.1. Resources overall (current numbers and change over previous year):

#### *5.1.1. Annual budget (NIS)*

180. Approximately ILS 73.2 million in 2021; approximately ILS 68.5 million in 2020.

#### *5.1.2. Number of employees*

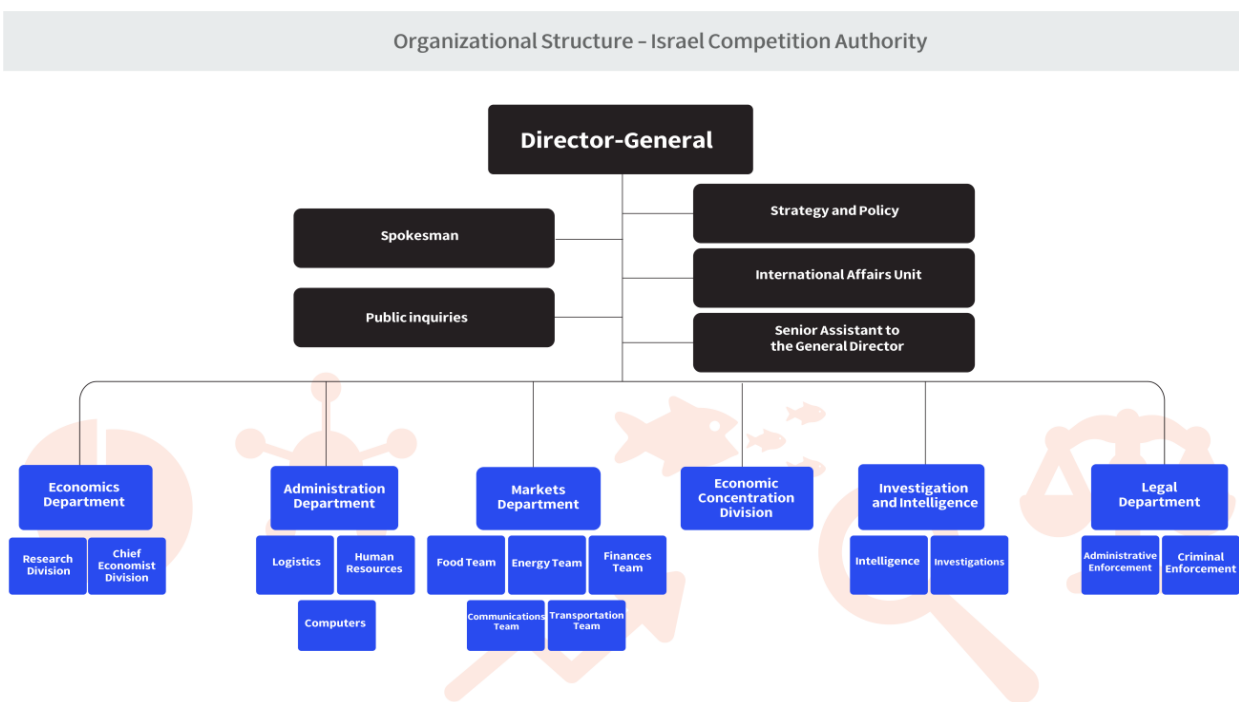
- Economists 26
- Jurists 44

- Other professionals - investigators 26; of these, 18 are certified lawyers which are not included in the 44 lawyers mentioned above
- Support staff - administrative staff and Director General's office (including IT) – 27
- All staff combined - 123

### 5.1.3. Human resources applied to:

- Enforcement (criminal and administrative) against anticompetitive practices – Legal Department 31 lawyers,
- Intelligence and Investigations Department 26.
- Merger review and enforcement and Advocacy – 23 (including economists and lawyers)
- Economic Department – 16
- Enforcement of the economic Concentration Law – 3

Figure 5. Organizational Structure



## 6. References to new guidelines, reports and studies on competition policy issues (2021)

- A report by the ICA, the Consumer Protection and the Privacy Protection authorities recommending the adoption of a general right to personal data portability under Israeli law, following a list of worldwide-accepted principles.

- <https://www.gov.il/en/departments/news/dataportability-position> (January 2021; English)
- Guidelines 1/21 concerning competitors joining for the purpose of submitting a bid in a tender <https://www.gov.il/he/departments/legalInfo/draftopinion-1-21> (January 2021; Hebrew)
  - The Israeli mortgage market:  
<https://www.gov.il/he/departments/publications/reports/mortgagemarket-final> (July, 2021; Hebrew)
  - P2P Payment App:  
<https://www.gov.il/en/departments/publications/reports/p2pmarketresearch> (July, 2021; English)
  - Car spare parts <https://www.gov.il/he/departments/publications/reports/spareparts-marketresearch> (July 2021; Hebrew)
  - Study on the Private Health Insurance sector: Then influence of economic incentives on agent sales:  
<https://www.gov.il/he/departments/publications/reports/healthinsurancereport> (July 2021, Hebrew)
  - Review of Guidelines 2/17 concerning RPM arrangements <https://www.gov.il/he/departments/legalInfo/opinionprm2021> (October 2021; Hebrew)
  - The effects of a gradual tariff reduction on canned tuna, implemented between 2013 and 2016 - <https://www.gov.il/he/departments/publications/reports/tunamarket> (October, 2021; Hebrew)