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Competition in the Food Supply Chain – Contribution from Israel

- Session IV -

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More documentation related to this discussion can be found at: oe.cd/gfc24.

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Competition in the Food Supply Chain

- Contribution from Israel –

1. Background – food sector in Israel

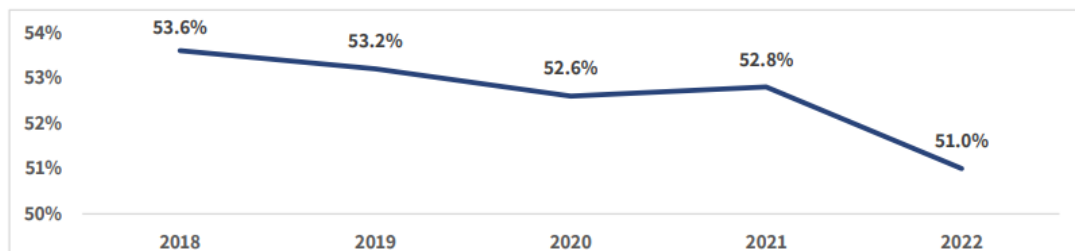
1. In recent years, the consumer price index of food, and especially the consumer price index of fruits and vegetables, rose substantially. From 2011 until 2024 the price index for fruits and vegetables rose by 37%. At the same time, the general consumer price index rose only by 17%.¹

2. The food sector in Israel constitutes a significant part of the expenditure of every household. In 2021, the expenditure on food products stood at 18.7% of the total expenditure of families on consumer goods.²

1.1. The Suppliers side

3. As illustrated in the chart below, between 2018-2022, the ten largest suppliers³ in Israel had 51-53% of the total sales in the food sector in Israel.

Figure 1.1. Ten largest suppliers in Israel



4. In addition, the big largest suppliers had 46.2% of the total sales of food products in 2014, and 37.5% in 2022.⁴

5. The net profit margin (as a percentage of total revenues) of the ten largest suppliers stood at 13.7% in 2020.⁵

¹ State Comptroller Office, the state's dealing with the concentration and monopolies in the food and consumer goods sector, November 2024, page 4:

<https://www.mevaker.gov.il/sites/DigitalLibrary/Documents/2024/2024.11-75A-PartB/2024.11-75A-PartB-101-Mazon.pdf> ("the Comptroller Office Report")

² the Comptroller Office Report, page 4.

³ Tnuva. Osem, the central company (coca cola), Diplomat, Uniliver, Sano, Hogla-Kimberly, Neto, Shastovitz.

⁴ the Comptroller Office Report, page 10.

⁵ The Comptroller Office Report, page 11.

6. The Israeli food supplier's sector is also characterized by large conglomerates. Many of the large suppliers sell a large number of products in different markets in the food sector. Due to the lack of nationwide distribution channels (especially refrigerated distribution channels), the large suppliers also distribute small and intermediate suppliers' products. Some of the large suppliers possess large market shares in a variety of product markets and charge relatively high prices to consumers for their products, indications of their market power in these product markets. The control of the large suppliers over a large number of products in different markets and over efficient distribution systems that reach any retail store raise both competition concerns as well as the prospect of efficiencies. This conglomerate market structure might increase the bargaining power of the supplier's vis a vis the retailers and harm the ability of small suppliers to enter into new markets or to expand their sales.

7. Due to the low level of competition in the supply side of the food sector, the ICA adopted a strict approach towards mergers between food suppliers. Below is a partial list of mergers to which the Competition Commissioner rejected in recent years:

- **A merger between Gad Dairy and Kfar Tabor Dairy** – at the end of 2021, the Authority began examining a merger between Gad and Kfar Tabor, the largest and most significant competitors in the supply of mozzarella, ricotta and mascarpone cheeses to the institutional market. The merger arose concerns that the prices of these cheeses would rise for the institutional market. In July 2022, the Competition Commissioner informed the parties that she was considering opposing the merger. After this announcement, the parties withdrew the merger notices.
- **Strauss – Weiler** – Strauss is a public company engaged in the production, marketing and distribution of a variety of chilled and dry food products of various types, including plant-based beverages (milk substitutes). Weiler is a private company engaged in the production of fresh tofu products, under its own brand and for the benefit of other brands, as well as in the development, production and marketing of plant-based beverages and food products. The Weiler Farm brand is distributed by Strauss. The examination of the merger raised a reasonable concern in the tofu and plant-based beverages industries, which could lead to an increase in prices and reduction in variety. Concerns also arose that the merger would prevent Weiler from operating independently in the field of plant-based beverages, a competition that Strauss is expected to enter in the future. In February 2022, the Competition Commissioner rejected the merger.
- **Carmel Winery – Arza winery** – Both companies engage in the production, marketing and distribution of wine and alcohol products. The examination of the merger revealed that the market share of both parties in the "Tirosh" wine and wine for "Kidush" exceeded 50%, So that after the merger, the merged firm will be the largest and most significant company in the field, and that there are indications that Carmel Winery has significant market power. Therefore, the Competition Commissioner rejected the merger on July 2022.
- **Of Tov - Milu-Of** – In April 2024, the Competition Commissioner announced her opposition to the merger between the "MiloUf" and "Ouf Tov" slaughterhouses. As part of the merger review, it emerged that the kosher production of chicken is a market that tends to coordination and that the merger between the aforementioned companies could have strengthened this tendency. This is due, among other things, to the increase in symmetry between the players that was expected if the merger had been approved, as well as due to the strengthening of the structural ties between

the merged company that the parties requested to establish and another competitor in the market.

1.2. The retailers side

8. Regarding the retail sector, The ICA calculated the CR3 index that examines the aggregate market share of the three largest retailers in the food industry and the HHI index regarding the large retailers (as defined in the Food Law). The results will be presented below:

Table 1.1. CR3

| 2023 | 2022 | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 |
|------|------|------|------|------|------|------|------|------|------|
| 48% | 49% | 49% | 50% | 52% | 56% | 56% | 57% | 56% | 57% |

Table 1.2. HHI

| 2023 | 2022 | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 |
|------|------|------|------|------|------|------|------|------|------|
| 1141 | 1190 | 1238 | 1238 | 1279 | 1335 | 1312 | 1355 | 1462 | 1501 |

9. It can be seen from the charts above, that the CR3 in the retail sector in Israel decreased by 9% between 2014-2023 and that the HHI index is relatively low. However, it should be noted that the Competition Commissioner rejected in recent years mergers also in the retail sector, when specific competition concerns arose.

1.3. Importation Barriers

10. Israel is an "Island Economy", and therefore competition from imports plays a significant role in creating a competitive market in the Israeli market. However, Israel has import barriers that hinder the development of effective import competition. These barriers include, inter alia, tariffs on agricultural products, burdensome requirements of "Kashrut" in the production and import processes and requirements of compliance with Israeli standards.

11. In light of all of the above, the food sector in Israel is subject to non-stop scrutiny of parliament and the government, leading to several regulatory attempts to improve the competitive situation.

12. Despite the significant regulatory amendments in the food sector in Israel which aimed at preventing harm and increasing competition (as detailed below), prices in the food sector in Israel remain high.

2. The Food Law

13. On March 27, 2014 the Knesset (the Israeli parliament) passed the "Law for Enhancement of Competition in the Food Sector" (**the Food Law**). Most parts of the food law entered into force on January 15, 2015.

14. The Law's main objective was to enhance competition in the food sector in order to reduce product prices for consumers by implementing:

- Specific prohibitions for large suppliers (sales that exceeded 333 million NIS (approx. 83.5€) or suppliers which have been declared as a monopoly);
- Specific prohibitions for retailers and large retailers (retailers which hold at least 3 stores in which more than half of the sales are food related, and whose sales exceeded 277 million NIS (approx. 69.5€));
- Requirement for approval of store opening in concentrated geographic areas.

2.1. General prohibitions on suppliers and retailers

- A supplier would not dictate, recommend or otherwise intervene with regards to the price or the terms in which the retailer sells a product of a different supplier.
- A retailer would not dictate or recommend or otherwise intervene with a supplier regarding the price or terms in which a different retailer sells to consumers.

2.2. Specific prohibitions on large suppliers

The Law prohibits large suppliers from:

- Physically arranging or otherwise intervening in any way in the arrangement of its products on the shelves of a large retailer;
- Dictating, recommending or intervening in certain matters with regards to a retailer, including:
 - The price of the supplier's goods that the retailer sets for consumers;
 - The allocation of any amount of available shelf space to products of the supplier;
 - Purchasing the supplier's goods to some extent of the total purchase of retail goods of the product and of substitutes products;
 - Purchase or sale of supplies that another supplier provides to the retailer, including quantities and purchase targets, the sales space assigned to them in the store and any other commercial conditions;

2.3. Specific prohibitions on the relations between large suppliers and retailers

- A large supplier and a large retailer may not engage in a transaction where a certain portion or bundle of goods is sold to the retailer below the large supplier's marginal cost of supplying the goods.
- A large supplier and a large retailer may not engage in an arrangement where the price of goods or the price of a bundle of goods offered by the supplier is lower or equal to the price offered by the supplier for the purchase of a smaller amount of the same product or for a narrower bundle of products.
- A large supplier may not condition the sale (or the discount) of one of its products with the purchase of another of its products.
- A supplier will not transfer payments to a large retailer, in money or in money equivalent, and a large retailer would not receive such payments; notwithstanding

the above, the supplier is not prohibited from reducing the price, subject to the provisions of this Law, of a single product it supplies to the large retailer.

- In terms of enforcement, the Law imposes criminal, administrative and civil liability (up to fines of 40 million NIS per violation) on corporations and its officers.

3. Legislative amendments in recent years

3.1. Parallel and personal import

15. On June 21st 2023, an amendment to the Economic Competition Law regarding parallel and personal import was enacted.⁶ The amendment imposes various prohibitions on direct importers.

16. A direct importer is any party that imports or distributes goods in Israel through an arrangement with a foreign manufacturer or that manufactures goods in Israel through an arrangement with a party abroad.

17. The amendment includes a list of acts,⁷ which are prohibited, if it meets one of the below:

- As a result of it, parallel imports or individual imports in the industry may be affected, and due to this, competition in the industry may be harmed.
- Its main purpose is to prevent or reduce competition from parallel imports.
- An act that might prevent or reduce competition from parallel importers unless the act is necessary to the importation of goods by the direct importer.

18. This prohibition is subject to the general sanctions in the Economic Competition Law - criminal, administrative and civil liability (up to fines of 100 million NIS per violation) on corporations and its officers.

3.2. Amendments to the Food Law:

19. On June 6th 2023, a few amendments to the Food Law were enacted.

20. First, the amendment includes a general prohibition on mergers between food suppliers with sales in 2021 that exceeded 307 million NIS (approx. 76.9€) and suppliers with sales in 2021 that exceeded 30 million NIS (approx. 7.5€). The amendment is due to expire on January 1 2025, and could be extended for one more year, until January 1 2026.

21. Second, the amendment included a prohibition on conditional discounts. A large supplier is prohibited from conditioning a discount to a large retailer, regarding one of its goods, in the purchase of another good of that large supplier.

22. Third, as part of the amendment the maximum amount of fines was raised from 25 million NIS (approx. 6.3€) to 40 million NIS (approx. 8.35€).

23. On July 4 2024 another amendment to the food law was enacted. The aim of the amendment was to include the pharmaceutical industry within the framework of the Food Law. The amendment defines the terms "Pharm Store" and "Pharm Goods" and "Pharm

⁶ The amendment entered into force three months later.

⁷ The list includes acts like engaging in an arrangement, changing commercial terms, etc.

Retailer" and "Large Pharm Retailer" and applied to them most of the prohibitions in the Food Law. In addition, the amendment created a new restriction on the opening of new Pharm Stores. A Large Pharm Retailer is restricted from opening new pharm stores in commercial centers (under 35 km² of commercial area), if it holds another pharm store in the same area⁸ and there is a reasonable concern that the opening of the store will harm competition.

3.2.1. An amendment to the exemption of products' shelf arrangement –

24. According to the exemption, until January 1st 2025, a large supplier was allowed to arrange its products on the shelves of a big retailer if the arrangement is made according to a planogram which is created by the large retailer, and provided that the retailer supervises that the supplier arrange the product according to the planogram.

25. On January 1st, the exemptions will be changed. All the existing conditions will still remain but it will apply only to the arrangement of products on the shelves of retailers in which more than 55% of their sales are of small suppliers.⁹

3.2.2. Importation reform

26. A new reform in the importation of goods to Israel was enacted in 2024. The reform is called "What is good for Europe is good for Israel," in which a new track was created, allowing product import, production, and marketing based on their compliance with European directives or regulations. The changes in importation of food were made through changes to the Public Health Protection (Food) Law. In general, an importer that meets the conditions of a "proper importer" will be able to import food to Israel which meets the European regulation on the basis of a declaration of legal marketing in Europe (excluding agricultural products). In addition, the amendment includes acts that a proper importer will have to take in order to import goods according to the European track, such as maintaining quality control and safety processes, maintaining a digital product portfolio for each shipment of food, etc.

27. The reform aims to remove barriers to importation of food into Israel and will enter into force on January 1st 2025.

4. Research of the Food and Toiletries Markets

28. In order to develop a deeper understanding of the underlying sources for the high cost of food and toiletries in Israel, the Israel Competition Authority is currently conducting research of food and toiletries that are purchased by Israeli consumers on an unprecedented scale. In September 2023, the Competition Authority issued requests for data from 16 large suppliers and importers of food and toiletries as well as requests for data from five large supermarket chains. Monthly revenue, quantity, and cost data were requested of every barcode sold by these five supermarket chains from both the supermarket as well as the

⁸ One square kilometer in a large local authority (above 200,000 citizens), and 2 square kilometers in a small local authority (below 200,000 citizens).

⁹ Suppliers who are not large suppliers under the Food Law.

relevant supplier or importer of that barcode. The period of the data request spanned four and a half years, beginning in January 2019 and continuing through June 2023.

29. Ultimately, the Competition Authority will seek to apply the findings from this research in order to issue recommendations in order to alleviate the high cost of food and toiletries faced by consumers in Israel.

5. Conclusion

30. The structure of the food supply chain in Israel, together with import barriers such as kosher, tariffs etc. and the general characteristics of the Israeli market as an island economy, leads to a market with insufficient level of competition and high prices.

31. As detailed above, several law amendments were enacted in recent years, each of them is dealing with a different possible cause of the insufficient level of competition, including a big importation reform which has not yet entered into force. However, the food sector in Israel is still not competitive enough and it is difficult to isolate the contribution of each of the possible factors to the low level of competition. The Israel Competition Authority is constantly scrutinizing that the high prices in the food sector are not a result of violations of the Competition Law or the Food Law.