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Minority Shareholding and coordinated effects – Note by Israel

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More documents related to this discussion can be found at oe.cd/msace

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Israel

1. In view of the Competition Committee's roundtable on Minority Shareholding and Coordinated Effects, expected to be held in December 2026, the following is the Israel Competition Authority's (hereinafter also: **the ICA**) contribution thereto.

1. Introduction: Two Main Pathways for Enforcing Competition Law on Minority Shareholdings in Israel

2. There are two primary ways to review minority shareholdings under Israeli competition law. The first, is through the merger control regime. The second, is through the examination of restrictive arrangements. In a broad sense, both ways are intended to enable control over the undesirable consequences of creating or strengthening market power.

1.1. Merger of Companies

3. Section 19 of the Economic Competition Law, 1988 (hereinafter: **the Competition Law**) prohibits companies that meet the criteria established under the law from merging, unless the Director General has granted her consent for them to merge.

4. The basic competitive concern regarding merger transactions manifests most distinctly in a transaction where one business receives full control over another business, which was independent and separate from it prior to the merger transaction. However, the competitive concern also extends to other situations that do not amount to a full takeover. For example, in a case in which a business acquired a right to participate in the internal management of another business, the right to materially influence its conduct, or the right to share in a portion of its profits, even when these do not amount to acquiring control, the resulting structural link may reduce the competition between the two businesses.[1]

5. "Merger of Companies" is defined under Section 1 of The Competition Law as follows:

> *"including acquisition of the main assets of a company by another company or acquisition of shares in a company by another company which give the acquiring company more than a quarter of the par value of the issued share capital or of the voting power or power to appoint more than a quarter of the directors or participation in more than a quarter of the company's profits. The acquisition may be direct or indirect or by means of rights granted by contract"*

6. This definition indicates two tiers of analysis for determining what will be considered a Merger of Companies:

A. A broad and open tier which is not detailed in the definition. The ICA interprets this broad tier to cover any transaction creating (or significantly strengthening) a material and ongoing influence link between the decision-making mechanisms of the involved businesses, directly or indirectly. These transactions will be

[1] Israel Director General Merger Guidelines, page 12.

considered as transactions to which the definition of "Merger of Companies" applies.

B. Specific statutory cases explicitly detailed in the definition, each constituting a "Merger of Companies".[2]

7. An examination of the detailed cases reveals that, in general, any minority holding exceeding one-quarter (25%) of a type of rights specified therein will bring the acquirer within the scope of the definition of a Merger of Companies.

8. Under certain circumstances, even an acquisition conferring upon the acquirer less than one-quarter of a specific type of rights may also be considered a Merger of Companies. For example, in a situation where dispersion of the remaining holdings in the target company leads to a situation where even an acquisition of less than one-quarter enables the acquirer to exert material influence in the company by being the largest shareholder in it, or when alongside the regular rights received by the acquirer, it is also entitled to other excess rights such as veto rights on certain matters, etc.[3]

9. A merger meeting on of the thresholds set forth in Section 17 of The Competition Law (a merger creating a "monopoly", a merger involving companies whose combined sales turnover exceeds approx. 424 million NIS, or a merger in which one of the participating companies is a "monopoly")[4] requires obtaining the prior approval of the Director General.

1.2. Restrictive Arrangement

10. Section 4 of The Economic Competition Law prohibits engaging in a restrictive arrangement that has not received approval from the Competition Tribunal, has not received an exemption from the Director General from the need to request the approval of the Tribunal, or is not entitled to an exemption under a block exemption granted under Section 15A of The Competition Law.

11. A "Restrictive Arrangement" is defined in Section 2 of The Competition Law as follows:

"(a) A restrictive arrangement is an arrangement made between persons conducting business, under which at least one of the parties restricts itself in a manner which may prevent or reduce business competition between it and the other parties to the arrangement, or some of them, or between it and a person who is not a party to the arrangement.

(b) Without derogating from the generality of the provisions of subsection (a), an arrangement in which the restriction concerns one of the following matters shall be deemed to be a restrictive arrangement:

(1) The price which will be demanded, offered or paid;

(2) The profit which will be derived;

(3) Division of all or part of the market, according to the place of business or according to the people or the type of people with whom they will deal;

[2] There, pages 13-16.

[3] There, pages 14, 16.

[4] For the purposes of Section 17, "Monopoly" - as defined in Section 26(a)(1).

(4) The quantity, quality or type of assets or services in the business"

12. In general, in order to establish the existence of a restrictive arrangement, it must be established that the examined business interaction satisfies the following cumulative elements: an arrangement; between persons managing businesses; a restraint on at least one of the parties; in a manner that may prevent or reduce competition – the likelihood of harming the competition element.

2. Case Study Examined by the Israeli Competition Authority in Recent Years – As an Introduction to a Fundamental Discussion

13. This section includes details of a a case study, handled by the ICA in recent years, elaborated upon as an introduction to the fundamental discussion on the issue of minority shareholding and coordinated effects:

14. During the years 2020-2021 a small Israeli fintech company raised money from two very large Israeli banks. The fintech company provided "a digital account" that enabled its customers to operate certain financial actions such as international money transfer, currency exchange, issuing of a payment card, money depositing and P2P money transfers. It also had intended to expand the scope of its financial services and that of the costumers that it was addressing, further on.

15. First, Bank "D" acquired, through a subsidiary, 17.5% of the fintech's shares and voting rights, and received, alongside the investment, the right to appoint a director on behalf of the subsidiary as well as additional rights.

16. Approximately one year later, Bank "P" acquired 19.99% of the fintech's shares and about 5% of its voting rights, and received alongside the investment, the right to appoint a director on its behalf as well as additional rights.

17. For none of these transactions was a merger notification filed with the ICA, nor was any application submitted for the approval of a restrictive arrangement by the Competition Tribunal, or for to receive an exemption from such approval by the Competition Director General.

18. Following a significant investigation process, the ICA reached a preliminary conclusion that, allegedly, each of the mentioned transactions constitutes a restrictive arrangement violating the provisions of Section 4 of The Competition Law, which raises a concern of substantial harm to competition.

19. Notable details which were significant to the analysis of the case, include the following:

a. Horizontal competitive relationship: Horizontal competitive relationships existed between the banks and the fintech company, both in terms of the services the fintech company provided at the time of the transactions, and in terms of potential services and customers into which it intended to expand later. All or most of the fintech company's services, as mentioned above, where such that the banks provided as well, and the fintech company had plans to expand to other services that the banks provide.

b. Concentration of the banking sector in Israel: The banking sector in Israel is considered to be highly concentrated, displaying structural conditions conducive to a supra-competitive equilibrium.

c. The involved banks are central players in the sector: The two banks that entered into the investment transactions are among the most central players in the sector.

20. In 2025 The Director General reached consent decrees with the two involved banks. Considering that both banks sold all of their holdings in the fintech company, each agreed to pay an amount of 40,000,000 NIS for its part in the transactions. This is the largest amount that a single company had agreed to pay under a consent decree, and the amount that the ICA would have demanded to be paid as a fine without consent decrees would have been much larger.

3. Performing a Competitive Review of Minority Investments – General Consideration

3.1. Why might a review of minority investments in similar cases be confusing?

21. A central reason why reviewing minority investments in cases similar to the one described can be confusing is that it involves granting rights that may prove standard in transactions that do not raise competitive concerns, and may also include legitimate benefits.

22. First, investment by established companies in startup companies operating in their field, is common practice. Such practice, subject to the particular circumstances of each case, may have potential benefits such as the following:

a. **Capital availability:** Provides funding for companies that may be in shortage of capital.

b. **Access to expertise and network:** Backing by an incumbent company may grant the startup access to the expertise, operational knowledge, and connections of the established company.

c. **Positive reputational validation ('door opening'):** Backing by an incumbent company may bestow market credibility, opening doors for fundraising and navigating heavily regulated sectors.

23. Second, investments of the described type can include granting rights that, in cases where no competitive concerns arise, might be legitimate:

a. **Granting of shares:** Grants the minority share acquirer a primarily passive right to a share in the company's valuation or profits.

b. **Granting of voting rights:** Grants the minority share acquirer a right to influence what happens in the company through voting at the general meeting.

c. **Granting of a right to a director on behalf of the investor:** Grants the minority share acquirer increased influence and increased exposure to information of the type that membership on the board enables.

d. **Granting of various types of veto rights:** These rights may in some cases be justified out of the interest of the minority shareholder to protect itself against the possibility of oppression by the majority or controlling shareholder: **1. Veto rights regarding additional capital raises –** may be justified to protect against dilution; **2. Veto rights regarding areas of activity –** may be justified to ensure that the company does not radically change its core business, since a company's core business may be a major consideration in the decision to invest in it. **3. Veto rights regarding drastic structural changes –** may be justified to protect against

liquidation or asset stripping, etc. All, subject to the particular circumstances of each case.

e. **Granting of rights to receive information:** Grants the acquirer increased exposure to non-public information, and may be justified by the investor's interest in monitoring the performance of the company it invested in.

3.2. Rights granted as part of a minority investment may in certain cases lead to harm to competition

24. Rights granted as part of a minority investment, which in certain circumstances may be legitimate, might in certain cases lead to harm to competition through an effect on the behavior of the company whose shares were acquired and on the behavior of the minority share acquirer, in a manner that would not have been possible had the minority shares not been acquired.

25. There are three main types of aspects in which granting such rights raise a concern of harm to competition:

3.2.1. First type: Practical restriction of the company whose shares were acquired

26. The first concern is that the rights granted as part of the acquisition of minority shares will allow the acquirer to restrict the activity of the company whose shares were acquired, when an incentive will arise to do so.

27. Such restriction can be done through voting at the general meeting or on the board, which will align with the competitive interest of the minority shareholder even when it stands in contrast to the competitive interest of the company whose shares these are and in contrast to the public's competitive interest.

28. Another way in which such restriction can be done is through the use of veto rights. The minority share acquirer can veto investments or certain changes even when they are truly necessary (whether it concerns a need to raise capital or a need for a drastic organizational change), in order to create difficulties for the activity of the company in question when this aligns with the competitive interest of the minority shareholder. Even in cases where the use of the veto right can be overcome through legal proceedings, this may at the very least cause a delay in executing actions that may be necessary for the success of the company in question, and as a result harm the company's competitive capability.

3.2.2. Second type: Effect on the behavior of the company whose shares were acquired as a result of the acquisition of minority shares

29. The second concern is a concern that the rights granted as part of the acquisition of minority shares will cause the company whose shares were acquired to restrict itself from competing with the acquirer in certain circumstances (or from competing as fiercely as it would have had the acquisition not taken place).

30. For example, it is possible that the mere fact that the minority shareholder is entitled to all or part of the rights mentioned above will lead to a chilling effect, which will chill the company whose shares were acquired, from competing with the acquiring company, out of fear that the minority shareholder will exercise its aforementioned rights. The concern is that the company whose shares were acquired will refrain from 'upsetting' the

minority shareholder out of fear of retaliation that will affect the internal affairs of the company whose shares were acquired.

31. In addition, acquisitions of this type normalize dialogue between executives in the involved companies, both during negotiations for the acquisition of shares and thereafter. This might allow an exchange of messages that would not have been possible, and would not have been perceived by the parties themselves as legitimate, were it not for the acquisition of shares. In such situations, one can signal to the other what one intends to do under the guise of professional dialogue about the investment.

32. This concern can have subtler forms, but still unwanted ones, in which persons from the acquirer of the minority shares would influence mangers in a company whose shares are acquired through conversation and persuasion, allegedly professional, but such that will serve the competitive interest of the acquirer of the minority shares and not those of the company whose shares are acquired.

33. The right to comprehensive information about the state of the company whose shares were acquired and about its future plans may have dramatic and undesirable effects on the behavior of the target company. This is especially true, in cases in which the minority shareholder is an established company in a concentrated market, and the target company is a relatively small company which aims to grow: the right to comprehensive information creates a situation that resembles a competitive game of cards, where one of the leading players at the table holding a massive stack of chips is able to constantly see the cards of his weaker rival, while his rival does not see the leading player cards.

34. This dynamic may generate a substantial chilling effect on the weaker rival, discouraging it from competing in product or service lines where it anticipates opposition from the established incumbent.

35. This is a significant concern: In a situation where a large competitor in a concentrated market makes a minority investment in its small competitor, conferring upon it a comprehensive right to receive information about the small competitor, the small competitor may be stripped of its core and most meaningful advantages. This is the case, since the competitive dynamic is tilted from the get-go in favor of the large competitor. Almost everything is in its favor: it has the capital, the expertise, the reputation, the network, vast experience and very often barriers to entry and switching costs working in its favor.

36. Against these advantages, the smaller competitor's primary assets are its ingenuity (technology ingenuity or business ingenuity) and its agility and fast-moving pace. In contrast to cumbersomeness that can sometimes characterize large corporations.

37. Exposing non-public operational metrics (product roadmaps, pricing, customer acquisition rates, constraints, future launch plans, financial runway and burn rate, etc.) denies many of the smaller competitor's competitive advantages.

38. The large competitor could detect emerging threats early and execute preemptive countermeasures to extinguish them. These are measures that could not have been executed that early if the large competitor would have not been exposed to the comprehensive information about its small competitor. Such reactions by the large competitor could be seen to an outside observer as healthy competition, while it is meant to extinguish an emerging competitive focal point, in order to preserve a supra-competitive equilibrium. Knowing that this possibility exists can cause the small competitor to refrain from entering in the first-place to services or products that it estimates the minority shareholder will not view favorably his entrance to.

3.2.3. Third type: Effect on the behavior of the company acquiring the minority shares

39. As mentioned, access to ongoing information can allow the minority shareholder to react particularly quickly to competitive actions carried out by the small competitor, in order to preserve the supra-competitive equilibrium.

40. Another option is that holding a substantial equity stake creates a passive financial interest in the target's profits, dampening the acquirer's incentive to compete fiercely against the target in overlapping segments. Such kind of effect seems less likely in the setting described in the case study above, because of the very small market share of the small competitor and the large market share of the large competitor.

4. Principle Recommendation Regarding the Manner of Analyzing Transactions of This Type

41. As mentioned above, a significant factor leading the ICA to conclude that the conduct violated the Competition Law was the presence of the following cumulative conditions: **A. Horizontal competitive relationships between the minority investor and the recipient of the investment; B. Activity within a concentrated market; C. The minority investor was a significant player in the concentrated market.**

42. Generally, and without entering into a comprehensive discussion, in cases where investments involve vertical relationships, are made in competitive markets, or involve investors with a relatively small market share, most of the competitive concerns would likely not arise, subject to the particular circumstances of each case.

43. Finally, the rights that are granted as part of the investment effect the intensity of the competitive concern. Whereas each case should be examined individually since there are many possible combinations of rights to grant, in general - fewer rights granted entail fewer competitive concerns.