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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Working Party No. 3 on Co-operation and Enforcement

Efficiencies in Merger Control – Note by Israel

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This document reproduces a written contribution from Israel submitted for Item 2 of the 141st meeting of Working Party 3 on 17 June 2025.

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1. In its contribution to the OECD's 2023 Roundtable on Out-of-Market Efficiencies, the Israel Competition Authority (ICA) presented a detailed history of the treatment of merger efficiencies under Israeli competition law.¹ As described there, Israeli case law has not produced a clear statement of whether an efficiencies defense can be recognized, nor has it produced a detailed statement of how – if at all – a claimed efficiencies defense should be evaluated. In no adjudicated case has an efficiencies defense actually been accepted. The ICA has indicated its willingness to consider an efficiencies defense in appropriate merger cases, but it has made clear its position that out-of-market efficiencies will not be considered in this context.

2. Since the ICA submitted its contribution to the OECD's 2023 Roundtable on Out-of-Market Efficiencies, it has issued two objections to mergers in which it rejected efficiencies defenses raised by the merging parties. These two merger objections will be summarized briefly.

3. In one merger, an insurance company enjoying a leading position in the private health insurance market sought to purchase Israel's largest issuer of credit cards. The ICA's review indicated that the proposed merger would place under the insurance company's control a unique data base of credit-card purchases made by a large segment of card holders. If the purchasing insurer would make use of that unique data base in order to price individually tailored private health insurance offers, it could seriously impair the ability of the remaining private health insurers to continue to compete in the private-health insurance market, inter alia by causing insurance agents to stop selling the private health insurance of competing insurers and to sell only the purchasing insurer's own private health insurance. The merging parties claimed that the proposed merger would bring about various efficiencies, primarily in the market for consumer credit. In rejecting the merging parties' efficiency claims, the ICA noted that the claimed efficiencies were out-of-market efficiencies (injury to competition in the private health insurance market and claimed efficiencies in the consumer credit market), which as a rule the ICA will not consider; the ICA therefore did not reach any decision on the merits regarding the claimed efficiencies.²

4. In a second merger, two poultry producers wished to merge. The ICA's review indicated that the proposed merger would reduce the number of competitors in the market and would increase significantly the risk of coordinated effects in the poultry market. The merging parties claimed that the proposed merger would reduce their costs of processing the poultry. In rejecting the merging parties' claims, the ICA found that the parties had not sufficiently demonstrated that the merger would lead to significant efficiencies and had not shown that any such efficiencies would be merger-specific; further, the parties had not shown that any such efficiencies would benefit the public.³

5. The ICA's contribution to the OECD's 2023 Roundtable on Out-of-Market Efficiencies referenced the ICA's 2011 Horizontal Merger Guidelines, the final chapter of

¹ The ICA's contribution to the OECD's 2023 Roundtable on Out-of-Market Efficiencies can be found at [https://one.oecd.org/document/DAF/COMP/WD\(2023\)105/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2023)105/en/pdf).

² Grounds for Objection to a Merger between *Harel Insurance Investments* and Financial Services Ltd. And *Isracard Ltd.* (2024), p. 13.

³ Grounds for Objection to a Merger between *Milouof Agricultural Cooperative Ltd.* and *Of Tov Shean Ltd.* (2024), p. 14.

which addresses the efficiencies defense.⁴ The ICA currently is preparing new Merger Guidelines, which will replace the 2011 Horizontal Merger Guidelines, and which also will discuss non-horizontal mergers, as to which the ICA has not previously published guidelines. Like the 2011 Horizontal Merger Guidelines, the planned new Merger Guidelines are expected to express willingness on the part of the ICA to consider efficiency defenses provided that the claimed efficiencies are proven, substantial, merger-specific, relate to the same market in which the merger is expected to cause competitive injury, are sufficient to overcome any competitive injury expected to flow from the merger – and will benefit consumers and not only the parties to the merger.

⁴ Position Paper 1/11 in the matter of Guidelines for the Competitive Analysis of Horizontal Mergers (2011).