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This report is submitted by Israel to the Competition Committee FOR INFORMATION at its forthcoming meeting to be held on 5-7 June 2019.

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Israel[*]

Executive Summary

1. This report summarizes recent developments in Israel's competition law and policy for the period of January 2018 through December 2018. It also provides an overview of some of the main enforcement activities of the Israel Competition Authority (hereinafter, also – the "ICA") regarding the Economic Competition Law -1988 (previously titled the Restrictive Trade Practices Act, 1988) (hereinafter – the "Competition Law") for that time period.

Box 1. The ICA

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 . 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 (hereinafter – the "Concentration Law"), the Law for the Promotion of Competition in the Food Sector, 5775-2014 (hereinafter – the "Food Law") and the Law for Fuel Industry Law (advancement of Competition) – 1994.

2. The ICA is striving to assume a pivotal role in making Israel's markets more competitive. In recent years, there has been a shift in 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 on promoting pro-competitive policies and regulation.

3. The passing year of 2018, has marked substantial developments for competition regime in Israel. A substantive reform to the Restrictive Trade Practices Law – 1988, now titled the Competition Law, was enacted on 1 January 2019. The reform reflects amendments to fundamental chapters of the Competition Law, and its declared goal is to decrease the regulatory burden that currently applies to legitimate and efficient practices, while strengthening the enforcement against anticompetitive conduct. During 2018, prior to the enactment of the reform, additional amendments to regulations concerning Block Exemptions, integral to the reform, were also completed and enacted.

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

4. The reform includes amendments presenting a more lenient approach to notifying mergers such as increasing the turnover threshold of filing; it also shortens the timetables to review of requests for an exemption of restrictive arrangements; and broadens the self-assessment regime. In parallel, the reform strengthens the powers of the Israel Competition Authority *inter alia* in two substantive aspects: the definition of a Monopoly has been broadened to include any corporation with substantial market power, *in addition* to the previous definition based on a market share greater than 50 per cent; and the maximum administrative fine which the General Director is authorized to impose on corporations has increased from NIS 24 million, to a maximum administrative fine of NIS 100 million.

5. In addition, during 2018, the ICA continued to invest considerable efforts in advocacy work. The ICA takes an active role in the work of government committees aimed at removing competitive barriers. Regulators and policy makers turn to the ICA for an advice *inter alia* due to its expertise and professional reputation. The ICA's opinions and recommendations are a significant consideration in other regulators' opinions. Some examples of advocacy work from 2018 include advancing the reform in the electricity sector in Israel, in advising on an agreement with the Israel Electricity Company (hereinafter – "IEC") and consulting on the sale of IEC power stations to third parties; taking part in the Israel Ports reform in advising the Israel Ports Company concerning a tender on the allocation of a chemicals platform; advising on the establishment of new water desalination facilities; advising on the issue of advanced payments methods; on matters arising from the separation of the Israel credit card companies from Israeli banks; on the imposition of an antidumping levy on cement, and on many additional matters.

6. At the same time, the ICA continued performing its primary role as a law enforcement agency. *Inter alia,* four indictments were filed in different criminal cases to Court. The Israel Supreme Court furnished its ruling on the Water Meter Cartel case, which upheld the District Court's conviction of the water meter companies, and their managers. The Supreme Court further upheld the imprisonment sentences and the fines imposed by the District Court; In addition, the District Court convicted 17 defendants, and sentenced some of them to imprisonment sentences, ranging between 2-11 months in the Tree Pruning Cartel case.

7. During 2018, the ICA, also continued to implement its focus on enforcement against monopolies. The ICA *inter alia* announced its intention to impose financial sanctions of around NIS 30 million on Bezeq Israel Communications Company Ltd. (hereinafter – "Bezeq"), for abusing its monopoly over communications infrastructures in a manner liable to harm competition for the supply of communications services, and NIS 700,000 on a senior manager (subject to hearing). On a different case, a consent decree, recently approved by court, was reached with Huliot (Agricultural Cooperation Association) Ltd. (hereinafter – "Huliot"), a company active in piping products for home sewage, according to which the company admits to abuse of its monopoly position. Huliot undertook to pay NIS 2.5 million, an executive in the company undertook to pay NIS 95,000; In addition, a consent decree with Tnuva Central Cooperative for the Marketing of Agricultural Produce in Israel Ltd (hereafter – Tnuva)[1] was approved by the Court, according to which the company admits responsibility for three restrictive arrangements and undertakes to pay NIS 25 million – the largest amount paid by a company in Israel for a violation of the Competition Law. A consent decree was also reached with Shufersal

1 Tnuva, either itself or through related companies, inter alia produces, markets and distributes food products, including dairy products, meet, fish, eggs and more. It is a declared monopoly in drinking milk and dairy products. See Declaration of a monopoly: Tnuva (25.12.1988) antitrust 4100052.

(largest food chain in Israel) according to which it will cancel all exclusivity arrangements in real estate (approximately 185 agreements) which the company is a party to, and pay an administrative fine of NIS 8.9 million for violations of the Israeli Food Law.

8. The ICA continued to carry out its task of merger control, in 2018 a total number of 205 mergers were submitted for review; Out of these, four mergers were blocked; one merger was withdrawn by the parties in view of concerns raised by the ICA to the parties; one merger was approved subject to remedies. The average review period of mergers was shortened from 26 days in average between 2014-2017, to 22.5 days during 2018, as was the average examination period of a restrictive arrangement from 66 days in 2017 to 57 days in 2018.

9. The Concentration Law enacted in December 2013, determines that regulators allocating economic rights (e.g. licences, permits, government franchises and privatisations) must take into account competition considerations. Regulators are obliged to consult with the Director General regarding rights included in a list of rights prior to allocation of these rights. In 2018, the Director General consulted regarding the allocation of 3 rights in this framework.

10. Furthermore, the Concentration Law formed the Committee for Reduction of Economy-Wide Concentration (headed by the Director General) (hereinafter – the "Concentration Committee"), which advises the government on economy-wide ramifications of the allocation of essential facilities to concentrated entities. The Concentration Committee developed and published a methodology paper for examining economy-wide concentration. The document specifies that the committee's examination will focus on concerns arising from the potential of a concentrated entity with significant bargaining power and influence, to make use of those *towards policy makers*, in order to gain advantages that are not derived from its economic efficiency, while undermining public interests. In 2018, the Concentration Committee received 17 requests for consultation, and provided its advice in 3 cases.

1. Changes to competition laws and policies

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

1.1.1. Primary legislation

11. On 1 January 2019, following intensive legislative and advocacy work, as well as long internal deliberation and public debate, a substantial reform to the Restrictive Trade Practices Law – 1988, now titled the Competition Law, was enacted. Among the key amendments enacted, are the following:

- Broadening the definition of a ‘monopoly’, which prior to the amendment included only entities with a market share of over 50 per cent, to include, in addition, any entity with substantial market power, even if its market share is below 50 per cent;
- Raising the turnover threshold for merger notification, from NIS 150 million to NIS 360 million, and providing the Director General with the authority to extend the previously set 30 days review period for mergers, by up to 120 days;
- Shortening the statutory review period of applications for an exemption for a restrictive arrangement, from 90 days to 30 days;

- Increasing the maximum administrative fines applicable under the General Director's Authority on a corporation, from NIS 24 million, to NIS 100 million;
- Amending the maximum criminal sanctions on restrictive arrangements; and
- Amending relevant titles, including the title of the Authority, to the Israel Competition Authority, and similarly the title of the law, to the Economic Competition Law.

12. In addition, previous to the above-referenced amendment, in July 2018, the Competition Law was amended, to limit exclusive importers from preventing competition originating in parallel import. The amendment provides the General Director with the authority to impose concrete instructions against such exclusive importers. This power was granted in the framework of a temporary order, for three years, with an extension possibility for an additional three years.

1.1.2. Secondary Legislation

13. Additional amendments were enacted in the framework of secondary legislation:

- In June 2018 the ICA issued the Antitrust Rules (Block Exemption for Syndication Loans) (temporary order). This Block Exemption sets forth conditions under which, a group of financial entities are able to grant joint syndication loans, without receiving prior approval from the General Director, as set forth therein. The purpose of this Block Exemption is to create legal certainty and to prevent the need for specific approvals in joint loans which do not raise competitive concerns.
- In July 2018, the ICA revised and renewed the Antitrust Rules (Block Exemption regarding Non-horizontal Arrangement that do not include particular price restraints) (temporary order) – 2013. This Block Exemption, allows parties who are not competitors, to enter agreements without receiving prior approval from the General Director. In this framework, the definition of Competitors was refined to be examined according to an excepted economic test and a factual test, to determine whether the parties where competitors during the relevant period of time.
- In November 2018, the ICA revised the Antitrust Rules (Block Exemption for Joint Ventures) (temporary order) – 2006 and the Antitrust Rules (Block Exemption for Restraints Ancillary to Mergers) – 2009. These amendments, as also referenced above, seek to expand the self-assessment regime concerning restrictive arrangements, and enable parties to apply these Block Exemptions even if such parties exceed relevant market share boundaries, as specified therein. Accordingly, restrictive arrangements of the types covered by these amended Block Exemptions will not require prior exemptions from the Director General, if they meet the following two cumulative requirements: (a) The arrangement is not "naked"; i.e., it is not aimed at harming competition or preventing it, and it does not include restraints which are not necessary to fulfil its purpose; and (b) The arrangement will not result in significant harm to competition.
- Also in November, the ICA revised and renewed the Antitrust Rules (Block Exemption Arrangements between Air Carriers) (No.2) - 2014. The amendment, provides a substantive self-assessment test, in addition to the conditions already set forth in this Block Exemption. This substantive test includes the above referenced two cumulative requirements: (a) The arrangement is not "naked"; (b) The arrangement will not result in a significant harm to competition.

14. Notably, in 2018, the Israel Competition Authority was substantially involved in 9 legislation proceedings in Parliament, including *inter alia* concerning the Supervision of the Financial Services (regulated financial services) Law; The Electricity Sector Law; the Gas Sector Law, in legislation concerning advanced payments methods, API and more.

1.2. Other relevant measures including new guidelines

15. In November 2018, the ICA published Guidelines 1/18: regarding the Director General's Interpretation of Section 14(a)(2) and Section 15A(a)(2) of the Competition Law, and parallel sections in the Antitrust Rules, concerning block exemption. These guidelines seek to provide possible interpretations regarding the question: What is an arrangement aimed at harming competition or preventing it (a "naked" arrangement). It further emphasizes that in order to fall under the relevant Block Exemption, it is not sufficient to show a lack of significant harm to competition, but rather that the arrangement is not "naked".

2. Enforcement of competition laws and policies

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

16. 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, to concentration groups (collectively dominant groups), and against exclusive importers in order to limit them from preventing competition originating in parallel import, based on their market dominance.

17. 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.

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 only to horizontal arrangements, and not to vertical ones.

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.

2.1.1. Restrictive arrangements – statistics and significant cases:

18. During 2018, the Director General's decisions concerning requests for specific exemptions for restrictive arrangements were as follows:[2],[3]

Table 1.

Total	Granted (without conditions)	Granted subject to conditions	Not granted	Average examination period (days)
33	25	7	1	57

19. The following is a summary of a few main cases reviewed by the ICA:

Daily credit card settlement

20. On 25 April 2018, the Israel Competition Authority announced the implementation of a key recommendation of the Strum Committee (the Committee to Increase Competition in Common Banking and Financial Services) – a transition to a daily credit card settlement scheme, and a series of additional provisions pertaining to payment cards. As of 1 July 2021, issuers of payment cards will be obligated to transfer payments to acquirers within one day of the transaction execution date, and not once a month, which had been the current payment scheme. The delayed transfer of payments is set forth in a cross-settlement arrangement between the credit card companies – this is a settling scheme unique to Israel which differs the date on which the payment may be transferred from the acquirer to

2 In addition to the table, which refers to decisions pursuant to the Competition Law, the Director General granted 3 exemptions pursuant to the Food Law.

3 Additional 7 requests for exemptions were terminated in 2018, as they were directed to self-assessment; 21 additional requests were withdrawn for various reasons, by the parties.

merchants, thereby compelling the merchants to bear the credit cost, instead of the banks and the credit card companies. This excessive cost is rolled onto the consumer prices. The transition date to the daily settlement scheme has been scheduled, in coordination with the Bank of Israel's Supervisor of Banks, for July 1, 2021, in order to enable the credit card companies, under their new ownership, sufficient time to prepare for the transition. The Israel Competition Authority, also announced a series of additional provisions relating to payment cards, including the imposition of an obligation on the credit card companies to add to the agreement between them, at no cost, new issuers or new acquirers, and a prohibition on the existing credit card companies from employing anti-competitive practices that are liable to hinder new competitors' entry into the field of issuing or the field of acquiring or hinder the introduction of alternative payment methods to credit cards, such as debit cards.

Cooperation between media acquisition companies – objection to grant an exemption

21. On 16 May 2018 the ICA published its decision *not* to grant an exemption to two media buying companies, Publicis and MediaCom, with reference to their request to conduct joint negotiations vis-à-vis Israeli commercial broadcasters. The parties to the proposed cooperation, are competitors in the media buying field. As part of this competition, they compete on the acquisition of commercial time from the commercial broadcasters (Keshet, Reshet, Channel 10, and more), which they in turn sell to their customers. The ICA found that the requested cooperation is mostly intended to concentrate market power, in the hands of the requesting parties, in the framework of the negotiation with the commercial broadcasters. Such market power, shall be accomplished by eliminating the competition between them vis-à-vis the commercial broadcasters. The clear concern thus becomes, increasing the concertation in the media buying field. The practical meaning of the requested arrangement, is harming the income of the commercial broadcasters (received from the requesting parties), which in turn may harm the quality and the variety of the broadcasting, and thus harm the public. The parties have not shown that the consumer would gain from such requested joint negotiation. Thus, the General Director found that the arrangement is aimed at harming competition, and is not suitable for an exemption.

2.1.2. Anticompetitive practices - description of significant cases:

22. The ICA devotes extensive efforts and resources to enforcement against anticompetitive practices in a wide range of industries. The following are some of the main enforcement activities which took place in 2018:

Approval of consent decree and administrative fines - Shufersal

23. On 30 July 2018, a consent decree was reached with Shufersal according to which it will cancel all of its exclusivity arrangements in real estate (approximately 185 agreements) which the company is a party to. Shufersal also undertook to inform additional owners of property in real estate which it owns, that Shufersal does not uphold its right to exclusivity in such property, and will not take any measures to execute such right. On 19 November 2018, the Competition Tribunal approved the consent Decree. Shufersal also agreed to pay an administrative fine of NIS 8.9 million for violations of the Israeli Food Law.

Administrative fines – Bezeq

24. On 7 March 2018 the ICA published a statement of objections according to which it considers imposing NIS 30 million on Bezeq, and sanctions amounting to NIS 700,000 on a senior official in Bezeq for allegedly abusing its monopoly in passive telecommunications infrastructure in a manner liable to harm competition. The suspected abuse involved blocking and obstructing competitors that wished to deploy a line-based communications network over the Bezeq infrastructure. In many places in Israel, the only complete passive infrastructure available for telecommunications cables belongs to Bezeq. Setting up an additional independent passive infrastructure in populated areas would be extremely difficult, due to the high costs, the extensive excavation work involved, the disruption it would cause to the general public and the numerous permits required to lay the infrastructure. Therefore, Bezeq's conducts could impede the development of competition in the supply of telecommunications services that are supplied over a line-based network such as internet, television and line-based telephony.

Consent Decree – Huliot

25. On 10 April 2018, the General Director informed Huliot and a manager in the company, about her intention to determine that Huliot abused its monopolistic position in contravention of the Competition Law, and therefore that she intends to impose fines on both the company and the executive, in the amount NIS 4.8 million and NIS 360,000, respectively. Huliot manufactures, among other things, piping products for home sewage removal. According to the statement of objections, Huliot specializes in the production and marketing of residential piping products, including silent sewage pipes made out of polypropylene. After one of the major retailers buying from Huliot began purchasing silent polypropylene sewage pipes from a competitor of Huliot, Huliot stopped selling its products to that customer. Huliot also discontinued the discounts received by another major retailer, who began purchasing these products from the new competitor. On 23 January 2018, the General Director, Huliot and the executive, reached an agreement, published for public comments, according to which Huliot and the executive admit to the violation of Section 29A of the Competition Law. In addition to the admission by Huliot and its executive that Huliot had abused its monopoly position, Huliot also undertook to pay the State Treasury NIS 2.5 million, and the executive undertook to pay NIS 95,000. On 17 April 2019 the Competition Tribunal approved the consent decree.

Consent Decree – Tnuva

26. On 19 August 2018, the Competition Tribunal approved a consent decree reached by the ICA and Tnuva, according to which Tnuva admits responsibility for three restrictive arrangements and undertakes to pay NIS 25 million – the largest amount ever paid by a company for a violation of the Competition Law. In addition, two senior ex-executives in Tnuva, paid a personal fine of NIS 75,000 each. Notably, after the approval of the consent decree, the money was automatically transferred, without any additional action, to the consumers through their credit cards. The consent decree is the finalization of an investigation conducted by the ICA's Investigations Department, which started on 16 July 2012.

2.1.3. Overall statistics regarding administrative fines:

27. During 2018, the Competition Tribunal approved 9[4] consent decrees. The overall fines in these decrees amount to the sum of approximately NIS 32 million.

28. Moreover, the ICA imposed final administrative fines in the sum of approximately NIS 9,180,000 (for violations of the Food Law), and published statement of objections one other case - Bezeq, referenced above.

2.2. Mergers and acquisitions

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

29. 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.

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:

1. As a result of the merger, the share of the merging companies in the relevant market exceeds 50 per cent;
2. The joint sales volume of the merging companies according to their balance sheets for the year preceding the merger exceeds NIS 360 million and the turnover of at least two of the merging parties was not lower, in the same period, than NIS 10 million.
3. One of the merging companies' share of the total supply or acquisition of an asset, or the total provision or acquisition of a service, exceeds 50 per cent.

30. 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.

31. In 2018, a total number of 205 mergers were submitted for review; Out of these, four mergers were blocked: Israir Airlines and Sundor International Airlines Ltd, Bank Mizrahi-Tefahot and Bank Igud, Union Media Israel and TMF Media Force, and N.A.R.A Medical Center Ltd. and Mayan Medical Center; one merger was withdrawn by the parties

4 Including in the Tnuva case, referenced above.

in view of concerns raised by the ICA to the parties; one merger was approved subject to remedies. The following table describes the type of decisions in merger filings since 2001:

Table 2. Decision in merger filings

	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	215	97.2%	0.5%	2.1%

2.2.2. Summary of significant merger cases

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

Proposed merger between Bank Mizrahi and Bank Igud

33. On 30 May 2018, The ICA announced its objection to a proposed merger between Bank Mizrahi and Bank Igud, after finding that the merger is likely to significantly harm competition and the public in the retail banking sector, and the market for issuing credit to the diamonds sector (under appeal).

34. The Israeli Banking sector is characterized by few competitors and significant entry barriers, which have led to the fact the no new banks have entered the market in Israel, during the past few decades. The retail banking sector is characterized by very high switching barriers, and in practice, the amount of customers which switch banks, is very low. The ICA's examination, indicated that there is reasonable concern that the proposed merger would cause an increase in prices, as a result of the removal of Bank Igud. The examination also raised concern, that after the proposed merger, the existing banks' ability to reach a coordinated equilibrium would increase. In addition, in the market for issuing credit to the diamonds sector, there are few competitors, and the aggregated share of the merging parties in this market, is significant – over 50%. *Inter alia* in light of the above, the ICA's examination indicated that there is reasonable concern that as a result of the proposed merger, competition in this market as well would be significantly harmed.

Merger between Reshet and Channel 10

35. On 8 August 2018 the General Director approved a merger between Reshet Media Inc. (hereinafter – "Reshet") and the New Channel 10 Inc. (hereinafter – Channel 10), subject to a condition requiring Reshet to sell its shares in the Israeli News Company Inc., which it owns jointly with Keshet Broadcasting Inc. According to the condition, the holdings must be sold before the parties may merge ("fix it first").

36. The Director General's decision to approve the merger, was based on the Failing Firm Doctrine. The ICA's findings indicated that absent the merger, Channel 10 may likely exit the market. Examining Channel 10's data, including its financial status, indicated that there was significant doubt as to its ability to continue existing absent the merger. The Director General was convinced that there was no alternative buyer, a merger with which, would raise fewer competitive concerns. In light of the above, it became clear that approving the merger would not lead to a smaller number of competitors, compared to blocking the merger – in either case, only two commercial channels were expected to remain.

37. In addition, the ICA's examination indicated that, absent the merger, there was a significant chance that only one leading news channel (held jointly by Reshet and Keshet) would remain in the market in the near future. Such a situation would be significantly worse than should the merger be approved, for two primary reasons: First, the public would have fewer options for news programming than with the merger and thus there would be less competition in news broadcasting. Second, this structure would leave Reshet and Keshet as partners in a significant part of their programming production, within their joint news company – a partnership that was liable to harm their incentives to compete against one another in general.

38. Thus, the condition for the merger is intended to ensure that there will be two primary, competing news channels and to dissolve the affiliation between Reshet and Keshet. The approval of the merger subject to this condition is competitively preferable to Channel 10's closing. The merger is currently pending appeal.

Proposed merger between Union Media Israel and TMF Force

39. On 11 July 2018, the ICA announced its objection to the proposed merger between two of Israel's 5 media buying companies, Union Media Israel (hereinafter – Union), and TMF Force (hereinafter – TMF). The Media buying industry in Israel is concentrated, and is controlled by five companies. Israel's main commercial broadcasters (at the time of the decision), the main income source of which is advertisement, are Channel 10, Keshet, and Reshet. They serve as a significant advertising tool for advertisers. The broadcasters rely on the media buying companies to sell advertisements and use them to sell most of their commercial time. The ICA's examination showed that the proposed merger may intensify the market power of the media buying companies in a manner which would allow them to decrease the prices they pay the broadcasters (as they would decrease from five to four should the merger be consummated). A decrease in the said prices, may in turn, harm the incentive of the broadcasters to invest in content, and thus also harm the viewers. In addition, the proposed merger may increase the media buying companies' market power vis-à-vis the advertisers, in selling broadcasted advertising time. Specifically, for some of the advertisers, the media buying companies who serve a close competitor, are a worse alternative than those that do not serve a close competitor, and thus the concern of exercising market power towards then (in the form of increase in prices, or decrease in

quality) is strengthened. The decision was subject to an appeal before the Competition Tribunal which was withdrawn by the parties.

Proposed merger between El Al Israel Airlines Ltd. and Israir Airlines Ltd.

40. On January 2018, the ICA announced its objection to the proposed merger between El Al Israel Airlines Ltd. (hereinafter – "El Al") and Israir Airlines Ltd. (hereinafter – Israir Airlines). In the proposed merger, Sun D'Or International Airlines Ltd, a wholly owned subsidiary of El Al would have acquired 100% of the shares in Israir from IDB Tourism Ltd. in exchange for USD 24 million and 25% of the shares in Sun D'Or. The ICA objected to the merger, *inter alia* on the following grounds:

41. Firstly, the merger would have prevented any possibility of El Al independently operating domestic flights to Eilat (city in southern Israel), thus perpetuating the duopoly that Israir and Arkia Israeli Airlines Ltd. (hereinafter – "Arkia") hold in these routes. El Al operated a regular flight route from Ben Gurion Airport to Eilat from 2010 until 2013. El Al's exit from this route was based on safety and operational considerations, rather than economic ones. The ICA found evidence that El Al had concrete plans to reopen the route in the future, with the planned opening of the Ilan and Assaf Ramon Airport in Timna (near Eilat).

42. Secondly, the merger raised concerns regarding competition in international flights, particularly in light of Israeli airlines' – and specifically Arkia's – dependence on security services provided on such flights exclusively by El Al. As a result of the merger, El Al would have stood to gain more from using the flight security services to foreclose Arkia, thus increasing its incentive to do so.

2.3. Criminal Investigations and Cases

2.3.1. The Tree-Pruning Cartel - Verdict

43. On 23 January 2018, after a lengthy trial, the Jerusalem District Court convicted 17 tree-pruning contractors (corporations and individuals) in connection with the rigging of bids for large-scale contracts with the Israel Electric Company and with two municipalities.

44. In 2010 the ICA, together with the Israel Police, began a wide-ranging investigation of bid-rigging among tree-pruning contractors. In July 2013 the ICA, together with the Economic Crimes Department of the State's Attorney's Office, filed indictments against more than 40 contractors, for the rigging of bids for 18 contracts during 2009 and 2010. More than 20 of the contractors pled guilty under plea bargains. Seventeen of the remaining defendants were convicted in the court's 23 January 2018 decision. In addition to antitrust offenses, nearly all defendants were also convicted of fraud offenses; several of the defendants were also convicted of money-laundering offenses. An appeal filed by the ICA and the state attorney, is pending.

2.3.2. Cartel of Organizers of Youth Delegations to Poland

45. The Israeli Ministry of Education (MOE) organizes youth delegationsto memorial sites and concentrations camps in Poland as a very important part of the Holocaust memorial studies. During 2015 the ICA gathered evidence which indicated the existence of a cartel between the travel agencies handling these delegations. The covert intelligence gathering stage was followed by dawn raids, arrests and interrogations, which were conducted at the very beginning of 2016. The investigation continued throughout 2016.

The police also took part in this investigation, thus enabled enhanced enforcement, as it seized sums of money, which were part of money laundering crimes, and investigated corruption crimes that were exposed during the investigation, such as fraud and breach of trust by public **officials. During 2017 the ICA's legal department filed charges against 15 suspects subject to a hearing process. Hearings took place, and on 4 July 2018 the ICA filed indictments against the agencies, for bid rigging, as well as fraud, money laundering, and bribery offenses.**

2.3.3. The Water Meter Manufacturers Cartel

46. On 21 August 2018 the Supreme Court furnished its verdict in the Water Meter Cartel, upholding the District Court's decision.

47. In 2011 the ICA indicted 6 manufacturers of water meters and their executives for being part of a cartel between the years 2004-2009. In 2017 the Jerusalem District Court found the companies and their executives guilty of the cartel. In the beginning of 2018 the District Court sentenced the main participants of the cartel as follows: 5 executives were sentenced to imprisonment (periods between 4.5 months to one month), and disqualification from being a company director for five years. The fines for the companies and the executives were concluded at approx. NIS 250,000. Both The ICA and the water meter companies appealed the verdict to the Supreme Court. As noted, on 21 August 2018, the Supreme Court upheld the District Court's decision.

48. During the period relevant for this report, the ICA opened four covert criminal investigations, as follows:

- *Bus Transportation Cartel* - In May 2018, after an extensive covert investigation, the ICA opened an overt investigation regarding suspicions of restrictive arrangements between bus transportation companies. The suspicions related *inter alia* to the companies dividing the market between then and bid rigging. The investigation was conducted in cooperation with the National Fraud Unit.
- *Restrictive Arrangements in the power tools brand "Makita"* - In September 2018 the ICA opened an overt investigation concerning suspicions of restrictive arrangements, including price coordination, between marketers of the "Makita" brand, and between them and the importer of the brand.
- *Suspicions of restrictive arrangements concerning the Israel Bar exams* – In November 2018, an investigation was launched concerning suspicions of a restrictive arrangement concerning the Israeli Bar exams. The case was closed.
- *Investigation of CEO for public expressions* – In December 2018 the CEO of a food retail chain was investigated concerning restrictive arrangements and violations of the Food Law, through public expressions, published in the newspaper.

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

49. 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.**

50. The ICA works 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. The ICA has also been expanding its role as an advocate to competition to the general public, through guest lectures at Israeli universities, holding forums including the ICA's senior management within conferences, organizing specialized seminars etc.

3.1. Market Studies and Reports

51. The Competition Law provides the Director General with the authority to conduct market studies in sectors of the economy, 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. In 2018, The ICA published 3 reports for public hearing, and initiated 3 more researches, including the following:

3.1.1. Report in the Brokerage Sector

52. In November 2018, the ICA published a draft report, jointly with the Israel Securities Authority concerning competition in the brokerage sector for public comments; The report concludes that 97% of the private customers trading in securities do it through banks, despite bank charges being, for the most part, higher than those offered by non-bank stock exchange members that provide trading services (brokers). The report also concludes that there are a number of obstacles that reduce or prevent competition, including the following:

- Banks are perceived by the public as being more secure than non-bank stock exchange members;
- Customers are inclined to acquire securities trading services in the bank where they keep their existing debitory account and which provides them with a "basket" of banking services;
- Banks offer their customers investment advice, whereas non-bank stock exchange members can only provide investment marketing services, and in the majority of cases, in practice, they don't;
- It is difficult to open an account with a non-bank stock exchange member, one reason being that they don't have the same branch distribution as banks;
- Customers seeking to transfer securities trading activity to a non-bank stock exchange member are met by customer retention attempts, including discounts that are not offered to other customers. Some even claimed that more aggressive

strategies of customer retention have sometimes been adopted, such as: an attempt to persuade the customer that the transfer to a non-bank stock exchange member may put them at risk, or an attempt to create difficulties for the transfer process;

- It is difficult for customers to compare the fees charged by the various providers.

53. The report formulates a number of recommendations to handle the above referenced barriers:

- Customer compensation scheme – an examination of the establishment of a joint compensation scheme that would cover investors in the event of corporate fraud or negligence.
- Broker-dealer legislation – propose regulation of the broker-dealer sector similar to the regulation in developed capital markets around the world. Such regulation would increase protection for the investing public and thus increase the public's confidence in that activity.
- Possibility of trading through an external broker within the bank account – Providing the various stock exchange members with the possibility of making trades in securities for a customer directly from his bank account, without needing to transfer the securities and money to the stock exchange member. This measure should remove a number of obstacles to competition, since it would alleviate concern over transferring the money to another account and the customer would continue to manage all his accounts in one place.
- Allowing opening a securities account (non-bank) online;
- Transfer of an account by the receiving party – All aspects of dealing with the transfer of the customer's account from their current provider to the party to which they wish to transfer will be attended to by the receiving party.
- Providing the possibility of making payments and performing various other activities in the securities account – giving stock exchange members a permit to issue means of payment (debit card and such like) directly from the customer's trading account. This will make the need to transfer money back to the bank for it to be used, redundant.
- Price comparison mechanism – adopting the recommendations of the Strum Committee on this issue, which will make it easier for customers to compare prices and examine the feasibility of making a transfer.

3.1.2. Report on Personal Import

54. In August 2018, the ICA published an extensive report concerning personal import, as a tool to advance competition in Israel. The report found that in Israel, personal import currently faces substantial regulatory and bureaucratic barriers. Furthermore, decreasing the bureaucratic and regulatory burden as well as levelling the playing fields between the courier services companies and the Israel Mail Company, would support the trend towards an increase in the personal import channel as competition vis-à-vis the commercial import channel.

55. In light of the above, the report details the following 6 recommendation for implementations, 4 of which are directed towards the relevant regulator: (1) creating a clear definition for "personal import"; (2) easing the conditions which the regulators impose on

personal import; (3) making information more accessible to the public; (4) improving the communication channels with the various regulators, specifically transferring to submitting online requests to the relevant authorities and to the customs management; The two additional recommendations address the economic ministries and existing and potential players in the delivery segment (5) establishing a logistics centre which would also support personal import, with government assistance; (6) encouraging cooperation in the local logistics schemes, to develop the delivery in the last mile segment, and exhausting advantages to scale.

3.1.3. Competition in the Digital Economy - Call for Public Comments

56. In September 2018, the ICA published a Call for Public Comments, regarding Competition in the Digital Economy. The aim of the call for comments is to receive input from the public, including start-up companies and leading and established companies in the high-tech sector, regarding contemporary issues in competition as they relate to the online world. the public was requested to comment on 4 main questions/issues: (1) Merger control - should scrutiny be increased on mergers involving large tech firms? What would be possible effects of such increased scrutiny on competition? What are possible incentives to invest in the technology sector? (2) The methods of competition analysis in digital sectors of the economy, and specifically regarding market definitions and market power; (3) The competitive effects of behavioural conditions which may limit the behaviour of dominant firms, such as a requirement to allow access to outside developers (APIs), databases, etc. (4) the importance of access to data in the digital sector ("big data"); including, how, if at all, should competition authorities deal with the threat of market foreclosure as a result of competitive advantages which arise from access to data. The ICA is currently reviewing comments it has received.

3.1.4. Infant Formula Industry – Impact Report

57. In January 2018, the ICA published an impact analysis research regarding the Israeli infant formula industry for public hearing. The infant formula industry was under the ICA's review in 2013, which found that the industry is highly concentrated as two firms account for over 90% of the sales. The review also indicated that one of the major barriers to entry and expansion in the industry is the common practice of exclusivity agreements between the two major suppliers and most of the hospitals. Consequently, in February 2014, the ICA reached a consent decree with all formula suppliers that allowed hospitals to receive payments from formula suppliers only if they allow free access to all suppliers. After signing the abovementioned consent decree the ICA conducted an impact analysis. The following were the conclusions of the impact report: First, the practice of exclusivity agreements between formula suppliers and hospitals were abolished. Thus, the vast majority of hospitals are now allowing every formula supplier who wishes to provide its formula at the hospital, to do so. Second, the entry of all formula suppliers to hospitals reduced entry and expansion barriers in both hospitals and the retail sector, mainly for small supplier. The research also shows that the mere presence of a formula supplier in hospitals has an essential contribution to product reputation – from the consumer's perspective. However, the study showed that there was no distinct change in pricing, in the retail sector, that could be related to the implementation of the consent decree.

3.2. Consultation to Government

3.2.1. General

58. In 2018, the Israel Competition Authority was substantially involved in 9 legislation proceedings in Parliament, including concerning: The Supervision of the Financial Services (regulated financial services) Law; The Electricity Sector Law; the Natural Gas Sector Law. In legislation concerning advanced payments methods, API and more. Moreover, in 2018, the ICA formally consulted regulators in 18 occasions. Below are some of such cases:

- The ICA was involved in the Committee for Advancing Competition in Banking and Financial Services, and is active in advancing the recommendations of the committee (e.g., regulating of payments services based on European standards (PSD); regulating of the activity of entities which allow clients access to their financial information (information services), and the activity of entities which allow third parties to initiate bank transfers from a client account to a beneficiary);
- The ICA advised several authorities regarding the reform in the electricity sector of 2018, including, *inter alia*, the transfer the network management to a separate government company than the Electricity Company, as well as selling five manufacturing sites of the Electricity Company to the private sector. The ICA was involved in the deliberations concerning the reform, in the drafting process of the relevant legislation, as well as advised on the participation of various entities in the sale process to the private sector and the effect on competition, including market-wide concentration.
- The ICA advised the inter-ministerial tender committee (comprised of the Ministry of Finance, the Ministry of Transport, National Infrastructures and Road Safety and the Jerusalem Municipality) regarding the tender for the financing, design, construction, operation and maintenance of a Jerusalem light rail transit network.
- The ICA advised the Israel Ports Company regarding the tender for the operation of a chemical terminal in the Haifa port.
- The ICA advised and drafted an extensive report and participated in several inter-governmental and ministerial committees with reference to an antidumping levy in the cement industry.

3.2.2. Consultations under the Concentration Law

59. A team of professionals assists the Director General in carrying out responsibilities under the Concentration Law, according to which regulators allocating economic rights must take into account competition considerations. In 2018, the Director General consulted regarding the allocation of 3 rights.

60. In addition, the Director General is the chairperson of the Concentration Committee, which advises the government on the economy-wide ramifications of the allocation of essential facilities to concentrated entities. In 2018, the Concentration Committee received 14 requests for consultations, and provided its advice regarding 5 different cases, including in the following significant cases:

IDE Technologies' participation in the tender for a new desalination facility

61. The General Director, the Committee for the Reduction of Concentration, the Inter-Ministerial Price Committee for Seawater Desalinization, and IDE, reached an arrangement, by which IDE will be allowed to participate in the tender to construct and operate a new desalinization plant, subject to divesting from its holdings in an existing plant. IDE is obliged to sell its holdings in the plant whether or not it wins the tender, and thus after the tender, IDE will hold no more than three desalinization plants out of six ("fix it anyway"). If IDE does not win the tender for the new desalinization plant, the company will be able to bid in future additional tenders. In such a case, where IDE participates and wins a tender for another plant, it will own no more than three out of seven desalinization plants.

Ofer Group road map for reducing its economy-wide concentration: obtaining electricity generation licenses subject to exiting the communications field

62. On 1 January 2019, the Concentration Committee, headed by the Director General of the ICA, arrived at an agreed roadmap with the Ofer Group for reducing its economy-wide concentration, according to which, the group will exit the communications field and will not operate therein in the future. After selling all the group's holdings in the communications field, the group will be allowed to obtain an electricity generation license.

63. On August 7, 2017, the Concentration Committee recommended to the Electricity Authority not to allocate to Zomet Energy Ltd., which is controlled by Idan Ofer, a conditional electricity generation license based on considerations of economy-wide concentration. The Electricity Authority accepted the Concentration Committee's recommendation and did not allow the Group to obtain the requested license. Consequently, the Idan Ofer Group held extended talks with the Committee at the end of which they arrived at an agreed roadmap. Under the roadmap, Ofer undertook to sell all rights in Reshet to a body that is not a concentrated entity and that is not related to him – as well as not to Ehud Angel with whom he has business relations – and undertook not to maintain any holding in the communications field during the next 25 years. Pursuant to the Group's disengagement from the communications field (under a *fix it first* mechanism) and after this disengagement is completed, the Concentration Committee's position was that economy-wide concentration grounds will not prevent the Group from allocations in the electricity generation field, for the next 8 years, so long as the total installed capacity held by the Group does not reach the limit prescribed in the Competition Authority's position on sectoral competition. Notably, the Group's undertaking includes its departure and disengagement from all activity in the communications field and a commitment not to operate in the field in the future and including that it will not hold any influential entity in the field of broadcasting or print media. The undertaking also restricts the Group with regard to holdings of foreign media outlets. This undertaking, which the Committee required, is intended to neutralize any media influence of the Idan Ofer Group.

64. Additional consultations were furnished by the Concentration Committee, including regarding the tender of the light train rail in Jerusalem; A guiding paper was published on the sale of the Israel Electricity Company's production sites (in the framework of the reform in the electricity sector); and the privatization of the Israel Post Office.

4. Resources of the ICA

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

4.1.1. Annual budget (NIS and $)

64,000,000 NIS (about $18,100,000) in 2018 and approximately the same in 2017.

4.1.2. Number of employees

Economists 32

Jurists 43

Other professionals - investigators 38

Support staff - administrative staff and Director General's office (including IT) - 34

All staff combined - 147

4.1.3. Human resources applied to:

Enforcement (criminal and administrative) against anticompetitive practices – Legal Department 38, Intelligence and Investigations Department 31.

Merger review and enforcement and Advocacy – 24 (including economists and lawyers)

Economic Department – 17 (including economists and a geographer)

Enforcement of the economic concentration law – 3

5. References to new reports and studies on competition policy issues:

- Report on competition in the retail brokerage market (in Hebrew) http://www.competition.gov.il/subject/166/item/35362.aspx
- Report concerning personal import, as a tool to advance competition in Israel (in Hebrew) http://www.competition.gov.il/subject/195/item/35183.aspx
- Call for comments regarding competition in the digital/internet economy (link to press release in English) http://www.competition.gov.il/subject/182/item/35247.aspx
- Final impact analysis research on the Israeli infant formula industry http://www.antitrust.gov.il/subject/195/item/34985.aspx