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27 November 2011

The Committee for Increasing Competition
In the Marketplace
1 Kaplan Street
Jerusalem 91030

File No: 30783

Dear Sirs,

Supplementary Position Paper on behalf of the Abeles Family

On behalf of our clients, Michael and Helen Abeles (the "Abeles Family"), we respectfully present this Position Paper in response to the draft recommendations of the Committee for Increasing Competition in the Marketplace (the "Committee"). This Position Paper is supplementary to the Position Paper submitted on behalf of F.I.B.I. Holdings Limited ("FIBI"), Paz Petroleum Company Limited ("Paz") and the Bino, Abeles and Liberman Families. The purpose of this Position Paper is to add to that original Position Paper, and not to detract from or contradict that Position Paper in any way.

At the outset, we wish to emphasise our support for all of the arguments and recommendations set out in the initial Position Paper submitted on behalf of FIBI, Paz and the various Families concerned. We do not believe that the current shareholdings of the Bino, Abeles and Liberman Families in both Paz and First International Bank of Israel Limited (the "Bank") give rise to any of the anti-competitive symptoms in the Israeli marketplace which the Committee is attempting to alleviate.

The purpose of this Position Paper is to convince the Honourable Committee that even if the Committee is adamant that, despite all arguments to the contrary, the current shareholdings in Paz and the Bank are anti-competitive, nevertheless, the current recommendations of the Committee will result in unreasonable and disproportionate harm to the Abeles Family. There is no justification for the harm that the recommendations of the Committee will cause. Requiring the

Abeles Family to sell its interest in either Paz or the Bank will not assist, even remotely, in achieving the objectives for which the Committee was established.

1. The Abeles Family from Australia operates in Israel as a direct result of the investment activity of the *paterfamilias*, the late Mr. Jack Liberman, an Australian Jew who decided to invest a significant portion of his wealth in Israel. The late Mr. Liberman was motivated by, among other things, his passionate support of Zionism and his desire to strengthen the ties between Israel and the Jews of the Diaspora. Today, the business activities of the late Mr. Liberman in Israel are continued by his descendants, the Abeles and Liberman Families. These two Families operate entirely independently of each other, and without any reliance by one on the other. Each of the Abeles and Liberman Families takes its own independent business decisions and they no longer act in unison.¹ For example, when the opportunity arose, one of the Families decided to sell shares in Paz while the other did not.
2. The Abeles Family holds approximately 7.7% of the issued share capital of Paz.² In addition, the Abeles Family holds, indirectly, approximately 8.44% of the Bank.

The Liberman Family holds approximately 5.1% of the shares of Paz, and also holds approximately 8.44% of the Bank.

3. In the case of both Paz and the Bank, the Liberman and Abeles Families have entered into Shareholders Agreements with the Bino Family. As will be explained in greater detail below, the arrangements currently in place are a result of the demand of the relevant Regulators to establish a stable and financially sound control block for the Bank as well as for Paz (a requirement that was reinforced at the time of the acquisition by Paz of the Oil Refineries in Ashdod).
4. The draft recommendations of the Committee regarding the holding of interests in both real and financial companies include the proposal that a "significant real entity" or a person controlling a "significant real entity" may not control a "significant financial entity", and may not hold an interest in a significant financial entity greater than the shareholding to be determined by the Regulators authorised for this purpose. In any event, the Committee recommends that the maximum level of shareholding in this situation should not exceed 10% of any of the means of control in a significant financial entity, and if the significant financial entity does not have any "control block", then the shareholding in the significant financial entity should not exceed the level of 5% of any of the means of control.
5. The Committee has expressly rejected the idea of a "blanket prohibition" against a significant real entity or a person controlling a significant real entity holding shares in a financial entity. As a result, the Committee wants to maintain the possibility that a significant real entity or a person controlling a significant real entity will also be a shareholder (as a general rule up to a level of 10%) in a significant financial entity. To the best of our understanding, this arrangement is based on the assumption that in a situation like this, the shareholder (of up to 10% in a real financial entity) will view its holding in the significant financial asset as merely a **financial investment, without any real ability on the part of the investor to control the significant financial entity**. There can surely be no concern that a significant real entity or

¹ The Abeles Family comprises Michael Abeles and Helen Abeles. Helen Abeles is the daughter of the late Jack Liberman and is the wife of Michael Abeles.
The Liberman Family comprises Lee Liberman (widow of the late Leon Liberman, the son of the late Jack Liberman) and her children, Joshua Liberman, Cassie Harris and Berry Liberman, all of whom are individuals resident in Australia. Since the death of the late Leon Liberman, Lee Liberman has remarried.

² The interests of the Abeles and Liberman Families in Paz and the Bank are held via a series of holding companies and trusts.

a person controlling a significant real entity will be able to cause any of the "harm" which the Committee is attempting to prevent merely by holding a minor "financial" investment in a significant financial entity.

6. In determining whether a party "controls" a significant financial entity, the Committee has relied on the definition of control on the Banking (Licensing) Law 5741-1981 (the "Banking Law"):

" 'Control' - the ability, alone or together with others, to direct the activities of the entity, excluding the ability resulting only from performing the duties of director or other office holder in the entity; without limiting the generality of the aforesaid, a person will be viewed as controlling an entity if one of the following conditions is satisfied:

(i) he holds half or more of any class of means of control in the entity;

(ii) he has the ability to prevent business decisions of the entity, other than decisions concerning the issuance of means of control in the entity, or decisions concerning the sale or winding up of the majority of the business interests of the entity or any significant change therein."

7. The Abeles Family holds, indirectly, approximately 8.44% of the Bank, while the Bino Family, which is the largest shareholder in the Bank, holds indirectly approximately 25.44% of the shares of the Bank. As we have mentioned above, each of the Abeles and Liberman Families acts independently of the other. In these circumstances, it is a simple conclusion that the Abeles Family does not have any ability to control the affairs of the Bank or otherwise to exercise control over the Bank. The holdings of the Abeles Family do not give rise to any of the concerns which form the theoretical basis for the recommendations of the Committee.

This point is reinforced in light of the even smaller holdings which each of the Abeles and Liberman Families holds in Paz (the Abeles Family holds approximately 7.7% of the shares of Paz and the Liberman Family holds approximately 5.1% of the shares of Paz) while the Bino Family holds approximately 45% of the shares of Paz.

8. Both the Bank and Paz (in particular as a result of its acquisition of the Oil Refineries in Ashdod) operate in highly regulated sectors. As a result of the requirements of the Regulators in those specific areas of activity, the Abeles and Liberman Families entered into shareholder agreements with the Bino Family. As a result of these agreements, the Abeles Family is categorized as forming the control group of both Paz and the Bank, together with the Bino and Liberman Families. In light of the fact that the Committee has relied on the definition of "Control" in the Banking Law, (which includes control "alone or together with others"), the Abeles Family is likely to be viewed as itself controlling Paz and the Bank, so that the recommendations of the Committee regarding holdings in both real and financial entities will apply to it. The result will be that the Abeles Family will be required to sell its holdings in either Paz or the Bank.

9. As we have mentioned, **the Regulators responsible for supervising the activities of both the Bank and Paz required the Bino Family on the one hand and the Abeles Family and the Liberman Family on the other hand to enter into shareholder agreements.** Even a superficial review of these shareholder arrangements shows that the Abeles Family has no ability to direct the activities of the Bank or Paz. **Neither the Abeles Family nor the Liberman Family has the exclusive right or ability to appoint any director of the Bank.** The Abeles Family cannot alone appoint a director of Paz. (It was a specific requirement in the Permit granting permission for Paz to acquire the Oil Refineries in Ashdod that the Bino Family alone maintains control within the control group of Paz). **The Abeles Family has no representative on the Board of the Bank. The two families are limited to one**

representative each on the Board of FIBI and one in total on the Board of Paz. According to the shareholder arrangements approved by the Regulators, the Abeles Family has only the rights aimed at **protecting its interests as minority shareholders** in Paz and the Bank. The Abeles Family has no ability to direct the activities of the Bank or Paz.

10. **It is abundantly clear that in forming its recommendations, the Committee was not aiming at investors such as the Abeles Family, and the Committee cannot have intended to capture passive investors such as these in its recommendations.**
11. Here is the irony. The Abeles Family does not (nor do the Abeles Family and the Liberman Family together) control either Paz or the Bank in any respect. It is only as a result of the requirements of the Regulators in the respective areas of activity of Paz and the Bank that the Abeles Family is deemed to "control" either a significant real entity (Paz) or a significant financial entity (the Bank). And now, the Committee is recommending that the Abeles Family be required to sell its interests in either Paz or the Bank by virtue of "controlling" those two entities.
12. **We respectfully submit that the reliance of the Committee on the definition of the term "Control" in the Banking Law leads in the present circumstances to a situation in which passive investors who have no actual or effective control over either a real or a financial entity, yet who have entered into shareholder arrangements as a direct result of the requirements of the Regulators concerned, are forced to sell the interests in one or other of those entities, most likely at a significant loss. If the Abeles Family continues to hold shares in Paz and the Bank in the circumstances described above, and whether or not the Abeles Family sells its holdings in either Paz or the Bank (or both), will not have the slightest effect on competition in the Israeli economy, on the supply of credit in the Israeli marketplace or in any way achieve any of the purposes for which the Committee was established.**
13. We respectfully submit that the Committee should take into consideration the economic realities of the investment of the Abeles Family independent of the shareholding of the Bino Family and the Liberman Family in Paz and the Bank. If the conclusion is (and inevitably, this is the only conclusion) that the Abeles Family does not control either Paz or the Bank in any respect, then the Abeles Family – mere passive "financial" investors in Paz and the Bank – should not be subject to the recommendations of the Committee, nor should it be required to sell its holdings in either Paz or the Bank.
14. As we have already mentioned above, the Abeles Family have not invested in Israel for economic interests alone, but also as an inseparable part of their desire to maintain ties with the State of Israel. It is clear that recommendations such as those currently proposed by the Committee, which are liable to cause significant economic harm to the business interests of the Family without any corresponding benefit to the economy of the State of Israel, will undermine the willingness and desire of overseas investors such as the Abeles Family and others like them to invest in the State of Israel.

In light of the above, and in light of the direct and significant consequences of the recommendations of the Committee for the Abeles Family, we request that the Committee invite the representatives of the Abeles Family to appear before it.

Yours truly,

Alan Sacks, Adv.
Herzog, Fox & Neeman