

March 22nd, 2020

The ICA Provides Clarifications Regarding the Application of the Competition
Law During the Coronavirus Crisis

Last week the Israeli Competition Authority ("**ICA**") published several clarifications regarding the application of the Israeli Economic Competition Law in light of the coronavirus pandemic and the unprecedented business-related challenges it raises. It is a core principle of competition law that a state of emergency or business distress does not necessarily protect a cooperation between competitors. However, the current state of emergency may be relevant to the application of the law, for instance by increasing the economic and competitive benefits and necessity of certain types of collaboration arrangements between competitors.

The ICA clarifications address the following issues:

Collaboration arrangements between competitors to accommodate the state of emergency

The ICA clarifies that collaborations between competitors that would allow businesses to maintain their activity during this time of crisis may benefit long-term competition. The main legal instrument facilitating collaborations between competitors is the Antitrust Rules (Block Exemption for Joint Ventures) 5766-2006. Subject to certain circumstances, the Block Exemption permits a collaboration between competitors in the manufacturing, purchasing and marketing of goods. One of the conditions to apply the Block Exemption is that the main purpose of the arrangement is not "to decrease or prevent competition" (i.e. that the agreement is not "naked"). The Competition Commissioner has clarified that if an arrangement is necessary for maintaining business activity during this crisis, it would not be considered naked. This may be the case when a competitor, whose activity is disrupted by crisis-related circumstances, seeks backup, or would like to source equipment or input from competitors. However, it is also important to emphasize that the parties must always examine the probable effect of the arrangement on competition in accordance with the designated professional methodology.

A more flexible approach towards "gun-jumping" rules

Under competition law, it is generally strictly prohibited to execute a merger, in whole or in part, during the waiting period for the Competition Commissioner's

approval of the merger. The ICA clarifies that if the waiting period during this crisis might cause irreversible harm to the merging entities, they may approach the ICA in order to find solutions to difficulties that might arise in the face of the exceptional state of the economy.

Postponing the deadline for submission of reports to the ICA in accordance with the Food Sector Law

The Promotion of Competition in the Food Sector Law, 5774-2014 (the "**Food Law**"), and the Regulations of Promotion of Competition in the Food Sector Law (Reports of Major Suppliers and Major Retailers), 5774-2014, stipulate that "Major Suppliers" and "Major Retailers", as defined in the Food Law, are obliged to submit an annual report to the Competition Commissioner. The 2020 annual report must be submitted by March 31st, 2020. In light of the corona crisis, the ICA has postponed the deadline for the submission of annual reports to April 30th, 2020