

## Client Update

### Israeli Supreme Court Upholds Decision to Block Indirect Purchasers' Class Action against an International Cartel, but Warns That the Result Is Undesirable

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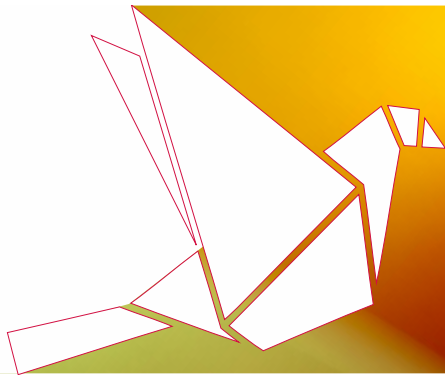
Dear Clients and Friends,

This short update addresses a [recent decision](#) of the Israeli Supreme Court to uphold the [decision of the Central/Lod District Court](#) concerning service overseas of an antitrust class action filed by an indirect purchaser seeking damages under the Israeli Restrictive Trade Practices Law, 1988. In this case, the plaintiff argues that the international "LCD-Panels cartel" harmed Israeli consumers who purchased products that included the cartelized panels.

The District Court's decision rejected the validity of the plaintiff's purported service outside the jurisdiction to non-Israeli defendants and the Supreme Court's decision upheld this result. Nonetheless, the Supreme Court expressed a feeling of discomfort, describing as "undesirable" the situation whereby Israeli consumers are unable to retrieve damages from entities which, allegedly, colluded in an international cartel.

This precedential decision may limit the ability of indirect purchasers to seek damages with regard to international cartels in Israel. It may also serve as a catalyst to expedite the process of changing current Israeli Civil Procedure Regulations in this regard.

In any case, this does not include entities that have a local presence in Israel (subsidiaries, distributors) through which court documents may be served in Israel.



## Background

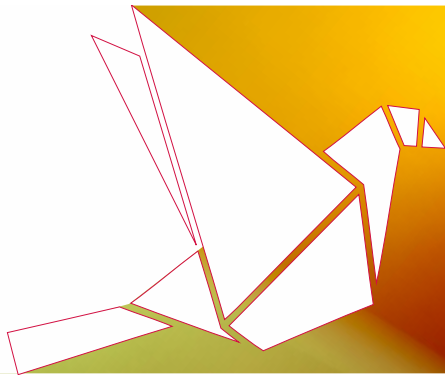
In recent years, there have been a number of "imported" class actions in Israel whereby the plaintiffs have attempted to seek damages in Israel arising from alleged overcharge by international cartels. The "trigger event" for most of these proceedings were decisions by various courts and regulators outside Israel regarding international cartels, *e.g.* the European Commission and European courts, US courts (in either criminal proceedings or class actions) and the like. Some of the class actions have been filed in cooperation with overseas law firms dealing with the same cartels outside of Israel.

Moreover, some of the class actions' defendants were not even active in Israel and some of the allegedly cartelized products were never sold directly in Israel and were used only as components in end-products sold to importers and end-consumers in Israel. These products were sold not by the defendants, but rather by their customers, the alleged direct victims of the cartels actions.

A few examples of such class actions include a follow-on class action to the air cargo antitrust litigation; a follow-on class action to the LCD-panel antitrust litigation; the CRT antitrust litigation; the Lithium batteries antitrust litigation and the alleged prohibited information exchanges between truck manufacturers and, most recently, a class action against international manufacturers of capacitors, which was filed last week. All of these examples relied on antitrust regulatory decisions and/or litigation outside of Israel.

## The District Court's Decision

The Central District Court's decision was rendered in connection with the Israeli follow-on class action to the LCD-panel antitrust litigation. The Court cancelled a decision to permit service outside of the jurisdiction which was rendered by the Court Registrar in March 2016. The decision concerned several non-Israeli defendants allegedly involved in the "LCD-panels cartel". Both the defendants and the plaintiffs agreed that the cartel itself existed outside of



Israel; that the relevant products – LCD-panels – were also sold outside Israel and were not targeted specifically to Israel; and that none of the defendants sold the final products into which the LCD-panels were incorporated in Israel or to Israel.

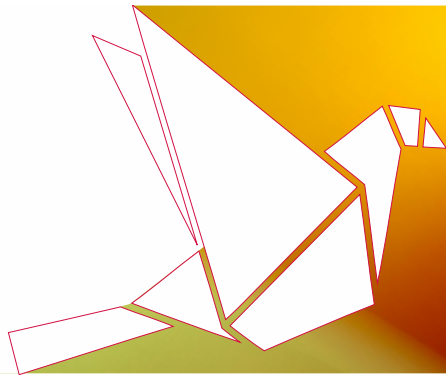
The Court Registrar was of the opinion that these facts do not prevent service outside of the jurisdiction, *inter alia*, since the cartelized ingredients had a substantive influence on the end-product price in Israel. On appeal, the District Court reversed the registrar's decision, stating that to establish jurisdiction over non-Israeli defendants who have no presence in Israel, the Court must grant its permission for service to be made outside of the jurisdiction under rule 500(7) of Israel's Civil Procedure Regulations 1984. Under this rule, the plaintiff must prove that the "action is based on an act or omission in the state of Israel". The act or omission concerned must be an act or omission of the defendants or someone on their behalf in order to establish jurisdiction against them. The plaintiff failed to prove the existence of an "act or omission" occurring in Israel with regard to the activity of the international cartel. Damage in Israel alone does not suffice to establish the required nexus to Israel.

### **The Supreme Court's Decision**

In its decision of July 31<sup>st</sup>, the Israeli Supreme Court upheld this decision, stating, quite plainly, that Regulation 500(7), as currently phrased, does not permit service abroad when no act or omission but only damage occurred in Israel.

Nonetheless, the Supreme Court expressed a feeling of "certain discomfort" stemming from the result of its decision. The court noted that

*"A situation whereby the Israeli consumer is unable to retrieve damages from entities which, allegedly, colluded in an international cartel which caused harm to such consumer is an undesirable situation, and from this perspective, it is doubtful whether the regulation [500(7)], in its current form, is in line with globalization and technological development trends in our world..."*



## Comment

As mentioned in the both the District Court's decision and the Supreme Court's decision, Israeli Ministry of Justice is currently considering an amendment to Regulation 500(7), which will allow service outside of Israel based solely on damage occurring within Israel. The Supreme' Court's decision, and its remarks concerning the undesirability of the result, may serve as a catalyst to expedite such amendment. Should such an amendment be enacted, it will remain to be seen how the courts will treat the consequential harm suffered by indirect purchasers of cartelized products.

It should be emphasized that such lawsuits can still be filed against defendants who have a direct or indirect local presence, which enables service to be made within the State of Israel, subject to the conditions set out in rule 482 of Israeli Civil Procedure Regulations, 1984, for example, via distributors or subsidiaries which satisfy the preconditions stipulated in Rule 482 and the case law interpreting it.

**For any questions or clarifications, we remain at your disposal.**

The Antitrust & Competition Department | Herzog Fox & Neeman

**Talya Solomon | Partner**

Head of Antitrust & Competition Department

03-692-5960

[solomonta@hfn.co.il](mailto:solomonta@hfn.co.il)

**Yaacov Sharvit | Partner**

Head of Litigation Department

03-692-2281

[sharvit@hfn.co.il](mailto:sharvit@hfn.co.il)

**Iris Achmon**

Antitrust & Competition Department

03-692-5960

[achmoni@hfn.co.il](mailto:achmoni@hfn.co.il)