

## Major Overhaul of Israel's Merger Notifications – What you Should Know

The Economic Affairs Committee of the Knesset (the Israeli Parliament) recently approved the Antitrust Regulations (Registration, Publication and Report of Transactions) (Amendment) 2020 (the “**New Reporting Regulations**”). The New Reporting Regulations raise the minimum turnover threshold requiring merging parties to file merger notifications, and replace current merger types of notification forms with a unified new form.

**While the change to the turnover threshold is not expected to significantly affect the number of reported transactions, the changes in the merger notification forms are expected to substantially increase the burden borne by merging parties seeking the Competition Commissioner’s approval for transactions. The changes in the merger notification forms require parties of a proposed merger to begin preparing the data gathering and the filing documents for the Israeli Competition Authority (“ICA”), and to involve attorneys specializing in competition law, at an earlier stage.**

### Raising the turnover reporting threshold

Parties to a merger are required to obtain approval from the Competition Commissioner when at least one of the reporting alternatives set forth in Section 17(a) of the Economic Competition Law, 1988 (the “**Law**”) is met. The most common reporting threshold refers to the turnover of the merging entities in the fiscal year prior to the transaction. This alternative is met when the combined turnover of the merging companies exceeds ILS 360 million and the turnover of at least two merging companies exceeds ILS 10 million each. The New Reporting Regulations increase the latter turnover threshold from ILS 10 million to ILS 20 million. **However, this change is of limited significance since even today, the ICA exempts parties from a reporting obligation when the turnover of only one of the merging entities exceeds the ILS 20 million threshold, provided the parties have filed a written request for a waiver.** Furthermore, the change to the turnover threshold does not detract from the parties’ reporting obligations under other thresholds set forth in the Law, which refer to the parties’ market shares.

### The changes to the merger notification forms

A more meaningful change brought about by the New Reporting Regulations concerns the replacement of the existing merger notification forms – the long form and the shortened form – with a new unified form. **As part of the new form, the merging parties will be required to provide the Competition Commissioner with a substantial and extensive scope of information that significantly exceeds the current reporting obligations. This elevated burden applies not only to complicated mergers, but also to mergers that do not raise actual competitive concerns.**

For example, the new form significantly expands the scope of examination of competitive relations between the merging parties, and parties will be required to make reasonable efforts to obtain information regarding their shareholders and regarding companies in which they (or their shareholders) have holdings, while in many cases such information is not easily accessible. Under the current merger notification forms, merging parties are obligated to disclose their business activities and their competitive relations to entities with controlling ties to the merging parties. The new merger notification form extends the scope of disclosure on business activities and competitive relations to entities whose ownership connections to the merging companies are ‘looser,’ and that do not meet the definition of the term ‘Control’

in the Law. This matter is expected to significantly increase the complexity of the reporting process, especially for companies held by several significant shareholders, companies that are part of large business conglomerates and companies in which a substantial portion of shares is held by private equity or other investment funds. The difficulty in this matter is not merely procedural but also substantial, where companies are unable to demand or obtain information from shareholders and from affiliated companies that have no controlling ties to the merging party.

Under the new form, parties to horizontal mergers are required to provide information about the scope of their business activity in revenue and quantity terms (in the current form, the parties are required to disclose such information only regarding markets where their aggregate market share exceeds 25%), the filing entities' market shares, details on competition and competitors in the market, and names of customers and suppliers.

Parties to a horizontal merger holding an aggregate market share of 25% or above, will be required to provide additional information about the market (such as competition assessment, competitors' differentiation, costumers' way of choosing their suppliers, distinct groups of customers and their characteristics), a characterization of the competition in the relevant markets, and more. Parties to such merger will be required to report arrangements with competitors in the areas of activity of the merger transaction (including a temporary cooperation or an agreement of purely financial nature) in the two years prior to the merger. The requirement to report arrangements with competitors in the fields of the merger transaction also applies to vertical mergers, where at least one of the merging parties hold a market share of 30% or more in markets where the parties have potential vertical relations. Unlike the current merger notification forms, the new form includes questions aimed at assessing potential competition between the merging parties.

The new form defines a new term of "markets with increased reporting obligations." In horizontal mergers – markets in which the merging companies hold a market share of 20% or above; in vertical mergers – markets in which at least one of the merging companies holds 30% or above. The reporting of mergers that meet such definition entails special provisions and requires increased disclosure. Merging parties operating in "markets with increased reporting obligations" will be obligated to address entry, regulatory, and expansion barriers, the expected benefits of the merger, the existing competition from import in the relevant market and more. As part of the new form, the broad reporting requirement in such markets will also apply to entities whose ownership ties to the reporting merging party are 'looser' (minority shareholders in the filing entity or companies in which the filing entity is a minority shareholding).

The New Reporting Regulations and the unified new merger notification form are expected to significantly increase the burden imposed on merging parties and to prolong the reporting preparation process of the merger to the ICA. The scope of information the merging parties will be required to disclose under the new form is expected to increase the costs of the filing process, irrespective of the competitive issues and complexities arising from the merger. We advise parties who expect to submit merger notification forms to the ICA to plan ahead rather than wait until the conclusion of the agreement before they begin preparing the submission.

The New Reporting Regulations will take effect two months after their publication date.

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