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Highlights of ICA's annual convention

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Introduction

On 15 November 2022, the Israel Competition Authority (ICA) held its annual convention and shared various important updates and policy statements. Such conventions, which the ICA has hosted for several years, aim to bring together practitioners in the field of competition law in Israel. The November 2022 convention was the first since 2019; there was no convention in 2020 or 2021 due to the covid-19 pandemic. Since the last convention, a new commissioner has been appointed and the authority's policies seem to have gradually changed.

Enforcement

Enforcement against food suppliers and retailers

The ICA intends to step up enforcement against food suppliers and retailers, especially in connection with public statements to the media regarding prices (which has already prompted a full-blown investigation of the sector). The commissioner clarified that she sees a difference between a supplier/retailer:

- making an independent business decision regarding prices and then informing the customers or the public to give them necessary time to prepare; and
- indicating to the media that "prices should be raised" before making the decision.

The latter statement has the potential to influence the decision-making of other market participants and may lead to coordination of prices.

The commissioner stated that competitors should not publicly share pricing or other sensitive information, that they would not be allowed to share privately under the competition law principles that apply to information exchange. The global inflation rate has led to increased public discussion about potential price hikes and the media has been rampant with statements from many industries projecting price increases.

Expanding type of practices that are targeted

The commissioner expressed the need to keep developing the law and providing guidance on anticompetitive practices. In that framework, the commissioner has announced that the ICA will step up enforcement against interlocking shareholdings between competitors and exclusivity arrangements by dominant players, especially where network effects are present (eg, digital platforms).

Merger control

The director general noted that the number of merger notifications has increased over the past year and clarified that the ICA will deepen and extend examinations in mergers that raise competitive concerns – such that extended review periods may be expected. A significant increase in the length of merger review processes has already been seen, with an estimated record share of merger reviews in 2022 lasting longer than four months.

The ICA is monitoring the use of the new merger notifications and will insist on re-filing in cases that it deems the merger notification to be incomplete, even only for technical deficiencies.

The ICA may enforce transfer of sensitive information during the waiting period as a gun-jumping violation. To date, the transfer of sensitive information has mainly been assessed under the restrictive arrangement chapter if conducted between competitors, as per the ICA's guidelines concerning due diligence (DD) published in 2014. It is unclear whether the ICA's statements are an attempt to expand the rather narrow scenario of potential gun-jumping concerns expressed in the DD guidelines. The DD guidelines target the transfer of information that is "at the core of the target's competitive position and its transfer *de facto* precludes competition from the target during the interim or in case the transaction is blocked".

The ICA mentioned the public hearing on the analysis of conglomerate mergers. Senior officials opined that the analysis of these mergers should be more sceptical in two key respects:

- potential competition should be assumed more leniently, especially in the digital economy; and
- the bar for objecting conglomerate mergers based on theories of tying and bundling transactions should be reduced in concentrated industries.

More generally, the ICA's senior officials expressed a more critical approach towards considering dynamic analysis to approve mergers raising concerns from a static analysis point of view. These statements seem at tension with the ICA's past practice and the 2011 guidelines for assessing horizontal mergers.

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