



**Goldfarb Seligman**  
Law Offices | Established 1930

## **A Recent District Court Decision Narrows the Interpretation of the "Effects Doctrine" Under Competition Law**

A recent District Court decision narrows the interpretation of the "Effects Doctrine", which allows the application of the Competition Law to foreign conduct which harmed competition in Israel. The ruling is significant, as it may stem the growing trend of follow-up class actions filed in Israel on the basis of competition violation findings by foreign authorities.

### **Background**

On September 8, 2019, the District Court declined to allow the disclosure of documents as part of a motion to certify a class action regarding an alleged pricing coordination in the trucking industry.

The motion to certify a class action was filed following the EU Commission decision from July 2016, which established that the truck manufacturers coordinated prices. In the EU the case has been settled, and the cartel participants paid a fine of Euro 2.93 billion.

The class action in Israel is part of a growing trend of class actions filed following competition infringement decisions by foreign competition authorities, even when the infringement was made by foreign companies outside of Israel.

The District Court's decision is significant, as it sheds light on the circumstances under which the "Effects Doctrine" can be applied in Israel. So far, the applicability of the "Effects Doctrine" has been referenced in the decisions of the ICA's General Director, but this is the first time in which the court has conducted an in-depth analysis of the doctrine.

In the decision, the court allowed only a narrow interpretation of the "Effects Doctrine", a fact which will likely have a substantial influence upon the likelihood of future class actions filed in Israel regarding foreign cartels.

We shall herein review the main issues in the decision.

### **The Court's decision**

According to Israeli case law, when a request to disclose documents is filed as part of a motion to certify a class action, the applicant should present prima-facie that conditions required for the certification are met, mainly the existence of a cause of action under Israeli Law.

In Israel, the Effects Doctrine is being applied in order to attain extraterritorial jurisdiction over restrictive arrangements which were made by foreign companies. The doctrine allows the application of the Competition Law to foreign conduct which harmed competition in Israel.

In the Court's latest decision, the court mentioned that the "Effects Doctrine" of the Israeli Competition Law could indeed have an extraterritorial application with regard to restrictive arrangements made by foreign companies outside of Israel. More importantly, the court also shed light upon the application of the Effects Doctrine, stating that it applies only when there is substantive, direct and deliberate influence upon the Israeli market:

*"To my understanding, only when there is substantive, direct and deliberate influence of the restrictive arrangement upon Israeli competition, the Effects Doctrine could allow the extraterritorial application of the Competition Law to restrictive arrangements that were made between foreign companies outside of Israel".*

This is an important precedent, as this is the first time an Israeli court made an in-depth analysis of the borders of the Effects Doctrine.

#### **Application of the Effects Doctrine to the case at hand**

The court's found that Israel was not mentioned in the European Commission decision regarding the cartel, and there were no actions listed in relation to Israel or with the intention to influence the Israeli market.

In light of the above, the court found that the applicant didn't present preliminary evidential basis for proving any influence, and in particular no substantive, direct and deliberate influence as required in Israel.

#### **Summary**

The court's decision is the first significant discussion in Israeli case law regarding the application of the Effects Doctrine, and it clarifies the circumstances under which the "Effects Doctrine" may be applied in Israeli law, including initiation of legal procedure.

Although the court acknowledged that the Competition Law may be applied to foreign arrangements, it allowed only a limited application of the Effects Doctrine, according to which the arrangements must have a substantive, direct and deliberate influence on Israeli competition.

This decision is likely to stem the growing trend of follow-up class actions brought in Israel, which are based on competition violation findings of foreign authorities.

\*\*\*

**The content in this Memo is provided for informational purposes only and does not serve to replace professional legal advice required on a case by case basis. The Firm does not undertake to update the information in this Memo, or its recipients, about any normative, legal, or other changes that may impact the subject matter of this Memo.**

**Should you have any questions or need additional information regarding this matter, please feel free to contact Adv. Boaz Golan, Head of the Antitrust and Competition Department: [boaz.golan@goldfarb.com](mailto:boaz.golan@goldfarb.com); Adv. Nimrod Prawer, Partner, Antitrust and Competition Department: [nimrod.prawer@goldfarb.com](mailto:nimrod.prawer@goldfarb.com); Adv. Zohar David, Partner, Antitrust and Competition Department: [zohar.david@goldfarb.com](mailto:zohar.david@goldfarb.com); or at: +972-3-6089850.**