



Israel Competition Authority Proposes New Merger Regulations

On July 28, 2019, the Israel Competition Authority (ICA) published a draft of the Economic Competition Regulations (Registration, Posting and Reporting of Transactions). Comments on the draft may be submitted by August 25, 2019.

The draft addresses two major issues - raising the merger threshold requiring filing and ICA approval, and replacing the existing merger notice form with a form requesting additional information, in order to streamline and economize the ICA's examination process.

The new regulations significantly expand the scope of information that a merging party must provide in Israeli merger notices. Consequently, locating and processing the information is expected to extend merger notices' submission preparation time and increase transaction cost. There is a real concern that multinational corporations with considerable global activity and international funds with extensive holdings will find it difficult to provide the information as required by the new merger notice form.

Raising the merger threshold requiring filing and approval

- ❖ Currently, there is a duty to report a proposed merger and obtain approval when the aggregate sales revenue in Israel of the parties to the merger exceeds ILS 360 million and the sales revenue in Israel of at least two of the merging companies exceeds ILS 10 million each. The draft proposes to raise the latter threshold from ILS 10 million to ILS 20 million, in order to reduce the volume of transactions which require approval.

- ❖ **However, the draft seeks to expand the definition of “control”** as set forth in the Economic Competition Law, which is relatively limited, by applying the definition contained in the Securities Law. This will affect the way in which the relevant sales revenue is calculated for the purpose of the threshold filing conditions, as the relevant sales revenue includes the filing corporation, any entity which controls it, directly or indirectly, and any entity which is controlled by the latter. **The expansion of the definition of control is therefore expected to increase the number of mergers subject to filing in Israel**, since the sale revenues of related companies, that were previously excluded, will now be combined for the purpose of calculating the relevant sales revenue.

Extensive changes to the merger notice form

- ❖ Overall, the ICA seeks to **significantly expand** the scope of the information that each party to the proposed merger will be required to provide. **The draft also requires significant information regarding the activity of foreign corporations outside of Israel.**

- ❖ Among others, foreign companies, foreign funds and Israeli companies operating abroad will now be required to provide many details regarding their activity and holdings outside Israel.

To illustrate, a merger between two multinational corporations active in Israel will require each one to provide detailed information, including:

- ❖ Full details regarding the global and local (Israeli) sale revenue of itself and any company with which it has a direct or indirect control relationship;
- ❖ Full details of all products or services of the corporation and affiliated entities (as above) which are either competitive, inputs, complementary or sold to the same client type as the products of the other party to the merger;
- ❖ Details regarding merger notices submitted under the merger control laws in other jurisdictions;
- ❖ In the case of a transaction between competitors, details of all the company's fields of activity, including those of any company with which it has a direct or indirect control relationship; and
- ❖ Under certain circumstances, details of corporations (and the ultimate controlling shareholders thereof) controlled by the company and its ultimate controlling shareholder, or in which they have a right to appoint an office holder.

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; Adv. Nimrod Prawer, Partner, Antitrust and Competition Department: nimrod.prawer@goldfarb.com; Adv. Zohar David, Partner, Antitrust and Competition Department: zohar.david@goldfarb.com; or at: +972-3-6089850.