

Kluwer Competition Law Blog

Main Developments in Competition Law and Policy 2023 – Israel

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In 2023, Israel's competition law landscape has witnessed significant trends and shifts that are shaping the regulatory environment and influencing business strategies. From proposed amendments targeting distribution agreements to increased scrutiny during emergencies and pivotal legal rulings, this overview delves into the specific dynamics characterizing key competition law in Israel last year. These developments offer insights into the evolving regulatory framework and its implications for businesses navigating the competitive landscape.

Parallel import issues

In April 2023, the ICA (Israeli Competition Authority) [released a proposed modification](#) to the block exemption rules concerning exclusive distribution or franchise agreements. The proposed amendment seeks to exclude distribution agreements from the block exemption if they impose restrictions on the distributor's sales beyond the agreed-upon territory. In the accompanying explanatory notes for the draft amendment, the ICA clarified that such restrictions enable suppliers to control the sales of foreign distributors in Israel, potentially posing obstacles for parallel importers seeking to procure goods from international distributors.

Consequently, there were several amendments to the [Economic Competition Law 5748-1988](#) in respect to this matter. The [amendment](#) to the Economic Competition Law defines a "Direct Importer" as a person engaged in importing or distributing goods to Israel, either through contractual arrangements with foreign manufacturers or local production agreements with foreign entities.

Direct importers are prohibited from engaging in specific acts that may result in harm to parallel imports and are deemed unnecessary for the primary purpose of importing goods directly. The amendment places responsibilities on direct importers to ensure their actions do not hinder competition, especially from parallel imports. The direct importers are expected to refrain from acts that may result in harm to parallel or personal imports in their sector.

The legislative intent behind the amendment is to safeguard competition and address emerging trends in import practices. Recognizing the significance of authorized, parallel, and personal imports, the law aims to balance the interests of direct importers with the need to foster fair

competition within the market.

War-time recommendations

The recent security challenges faced by Israel have also brought unforeseen threats and difficulties to the Israeli economy. Given the need for extensive adjustments in various sectors of the economy due to the evolving situation and in response to inquiries received by the ICA, the Commissioner of Competition found it necessary to address several aspects related to business operations and consumer protection in the economy.

This [legal notice](#), likely issued by the Israeli Competition Authority in response to the current security situation in Israel, covers several key points:

The notice refers to the [General Business Restriction Rules \(Joint Ventures Exemption\) of 2006](#), emphasizing the legal framework allowing business collaborations that do not unduly restrict competition. It highlights that collaborations between businesses are permitted without prior approval if they adhere to the specified rules.

The notice clarifies the legal restrictions on companies seeking to merge, emphasizing that no merger-related actions can be taken without prior approval from the ICA. It acknowledges the unique challenges faced by businesses during times of emergency and expresses the authority's openness to engaging with merging parties to find interim solutions.

The notice mentions the postponement of deadlines for responding to data requests under Israel's various competition laws. This extension is attributed to the exceptional circumstances arising from the security situation and is in accordance with emergency regulations.

Despite the security situation, the notice asserts that norms derived from the Israeli competition law remain in effect. The authority retains the power to monitor market developments and take legal action against collusive practices or unilateral actions that may harm competition, ensuring that businesses do not exploit the emergency situation to engage in anti-competitive behaviour.

The notice concludes with expressions of hope for a swift resolution to the security situation, condolences to those affected, and wishes for the recovery of the injured. This human touch at the end underscores the understanding that businesses and individuals are grappling with extraordinary circumstances.

Case law and antimonopoly investigations

In March 2023, the Israeli Supreme Court made a [significant ruling in the Cottage Cheese case](#). The court sided with Tnuva (the defendant), upholding their appeal, and rejected the appeal from Naor (the plaintiff). The decision was based on the lack of evidence demonstrating that Tnuva had set an unreasonably high price for cottage cheese. Drawing from the precedent set by the [Coca-Cola case](#), the court underscored the need for a cautious and restrained approach when dealing with claims of excessively unfair pricing, especially in class action lawsuits. This approach is deemed necessary due to the complexities involved in scrutinizing such claims, the potential adverse effects

on competition and the public, the risk of errors in applying the cause of action, and the absence of a clear legal test that offers certainty in this matter.

In another interesting case, Wolt has agreed in 2023 to settle a fine of NIS 8.5 million (around \$2.3 million) with the ICA after [confessing to a breach of competition law](#). This resolution stems from an accord between the food delivery company and the ICA. The crux of the accusation against Wolt revolves around its practice of prominently featuring specific restaurants on the main page of its application. Prior to January 2022, the app's main page showcased a section labelled "Only on Wolt," which highlighted restaurants in the Tel Aviv area exclusively collaborating with Wolt's delivery service. The agreement notes that this approach posed a competitive threat and was in violation of the law. This determination took into account Wolt's operation within confined competitive parameters during the relevant period, the significant dependence of restaurants on its delivery service, and the company's considerable size and order volume.

Furthermore, [ICA called](#) the Strauss company and its senior officers for a hearing prior to a potential indictment. The charges relate to an alleged attempt at a binding arrangement, where Strauss signalled to competitors its intention to raise prices and sought an agreement on the matter. The Competition Authority's decision follows a thorough investigation into potential violations of competition law through public statements. The suspicion centres on the structure of the food products market in Israel, characterized by high concentration and a small number of dominant suppliers, with Strauss holding a significant market share and operating as a monopoly in certain food sectors. The allegations claim that Strauss, a public company, announced in its May 2021 quarterly report that it was exploring various options in response to increased raw material and transportation costs, including the possibility of adjusting sales prices. Despite internal discussions deeming price hikes a negligible and marginal possibility, Strauss publicly stated its deep consideration of raising prices, even though no concrete decision had been made. This move was made despite concerns within the company about potential negative consequences, such as damage to its reputation, adverse media coverage, and reduced consumer demand, especially considering Strauss was the first in the food sector to address the issue.

Conclusions

In 2023, Israel's competition law has seen some shifts, from proposed amendments targeting distribution agreements to heightened scrutiny during emergencies. The war-time recommendations demonstrate adaptability to unforeseen economic threats, emphasizing collaboration within legal frameworks. Recent case law, exemplified by the Cottage Cheese ruling, underscores a cautious approach in balancing competitive interests. The Wolt settlement highlights consequences for anti-competitive practices, while the ongoing investigation into Strauss reflects continued vigilance in maintaining fair market competition. These developments showcase the authorities' commitment to evolving regulations and ensuring a competitive landscape in Israel.

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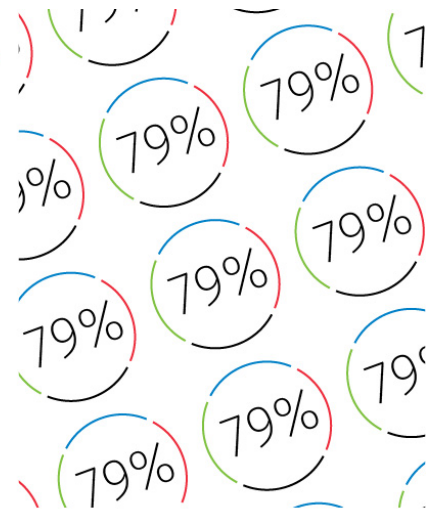
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