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First Implementation of the Reform to the Antitrust Law

In the first implementation of the planned reform to the Antitrust Law, the Israel Antitrust Authority ("IAA") has published an amendment to two "block exemptions." The amendment to the block exemptions was accompanied by a "Public Statement" that sets out the IAA's position on the legal and practical interpretation that should be given to the amendment.

In this memorandum, we will briefly discuss the amendment and the effect it is expected to have on the business sector.

The amendment to the block exemption for restraints ancillary to mergers and the block exemption for joint ventures

The block exemption for restraints ancillary to mergers allows the parties to a merger to include restrictions in the merger agreement in the form of an undertaking by the seller not to compete with the business being sold, an undertaking to ensure the supply of goods (from the seller to the business being sold and vice versa) or any other restriction that is necessary to maintain the economic value of the business being sold in the merger, without requiring the authorization of the Antitrust Commissioner.

Similarly, the block exemption for joint ventures allows parties to a joint venture (including competitors) to include various restrictions in the agreement between them that are necessary to realize the key purpose of the agreement, including non-competition restrictions, without requiring the the Antitrust Commissioner's approval.
Prior to the amendment to these block exemptions, the possibility of relying on them was limited by essentially "technical" conditions which, in many cases, meant that the parties to the arrangement could not benefit from the block exemptions and had to apply for an exemption from the Antitrust Commissioner. Thus, for example, for the block exemption for restraints ancillary to mergers, the seller's undertaking not to compete with the business being sold was limited to just four years from the date on which the seller's share in the business being acquired in the merger was reduced by 20%. Any deviation from the condition meant that the exemption did not apply

and that it was therefore necessary to make an appropriate application to the Antitrust Commissioner. Under the amendment, a proviso has been added to the two block exemptions enabling the parties to a merger or a joint venture to benefit from the exemptions even if the restrictions under the agreement deviate from the technical conditions, provided that the restrictions meet three cumulative material conditions: 1. The key purpose of the arrangement is not to reduce or prevent competition; 2. the restriction is necessary in order to realize the key purpose of the arrangement; 3. the restriction does not significantly harm competition. The assessment of the material conditions and their application to the specific case can, and must, be carried out by the parties to the arrangement themselves through their professional advisors (in a self-assessment format) and not by way of an application to the IAA.
The amendment to the two block exemptions constitutes a significant leniency for the business sector because it exempts many more agreements from requiring the Antitrust Commissioner's authorization, with all that entails. However, the price paid for this leniency is the transfer of the burden of the responsibility for assessing restrictive arrangements from the IAA to the business sector. We would note, in this regard, that the IAA is already refusing to assess restrictive arrangements that would previously have been submitted to it and is referring the parties to the arrangements to the self-assessment format instead of submitting exemption applications.

The Public Statement accompanying the block exemptions

Concurrently with the publication of the amendment to the block exemptions, the IAA published a Public Statement that is intended to clarify the legal and practical interpretation which, according to it, should be given to the material conditions that underlie the block exemptions. As for the first condition, which requires the key purpose of the arrangement not to be a reduction or prevention of competition, the Public Statement clarifies that the arrangement must have a "key purpose" - a transaction for legitimate collaboration for the purpose of efficiency, increasing output, improving the product and such like, such as a joint venture for streamlining production processes. As for the second condition, which requires the restriction to be necessary to realize the key purpose of the arrangement, the Public Statement states that the restriction will be considered necessary if it is directly related to, and reasonably required for, the realization of the key purpose of the arrangement. The Public Statement further clarifies that the condition of necessity incorporates the requirement that the restriction be no broader than required and also that it be secondary to the key purpose of the arrangement.

For the official version of the block exemptions [click here].

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