

Antitrust & Competition

The New Merger Regulations that Entered into Force are Expected to Impose a Heavy Burden on the Filings of Merger Notices

The Merger Transaction Reporting Regulations amendment, which is part of the broader reform that began with the amendment of the Economic Competition Law, became effective on March 20, 2022. As part of the amendment to the above Regulations, the minimum annual turnover threshold of a party to a merger transaction – for filing and obtaining approval for the merger transaction – has been slightly increased. At the same time, the scope of information that the parties will be required to submit in order to obtain approval for the merger transaction has been vastly expanded.

According to the previous provisions of the merger regulations, the minimum annual turnover threshold for filing and obtaining approval for a merger transaction was NIS 10 million per party (in addition to the general requirement set forth in Economic Competition Law, according to which – the aggregate sales turnover of all parties of the merger must exceed NIS 360 million). The current amendment raises the minimum turnover threshold to NIS 20 million per party to the merger transaction. In this regard, the amendment seems to alleviate the regulatory burden by reducing the need to file merger notices when one of the parties to the merger transaction has a sales turnover of less than NIS 20 million.

On the other hand, the amendment dramatically changes the merger form that was published almost 20 years ago to shift most of the burden for determining the relevant market of the merger, from the Competition Authority to the parties to the merger transaction themselves. More broadly, the merger form will be changed in such a way that it will include a requirement to provide vast amounts of data regarding the parties to the merger transaction, their shareholders and companies that are related to them, and also about the markets in which they operate and conduct business.

For instance, the new merger form requires the merging parties to provide extensive data regarding their holding structure, such as details regarding entities that hold at least 10% of the rights in every merging party. As long as there are entities, which, directly or indirectly, hold, at least 20% of any party to the merger transaction, this party must also provide data regarding its ultimate controlling shareholder and all the companies he controls. Furthermore, in such a case, the merging party must specify whether any company whose ultimate controlling shareholder controls has any competitive affiliation to the other merging party.

The requirement to provide such extensive and detailed data will undoubtedly require the parties to the merger to invest more resources than was previously needed and to devote considerable time to preparing the merger form. Accordingly, parties to the merger will have to carefully consider this fact before setting a timetable for the "closing date" and the consummation of the merger transaction.

According to the Competition Authority, this new merger format will provide the full scope of information it needs to examine the transaction. Thus it will spare further inquiries (with the parties to the transaction and third parties) and shorten the Authority's response to the merger filings.

It should be noted that the obligation to submit merger notices according to the new reporting form would commence in May 22, 2022.

Please feel free to contact us with any questions that you have on this matter.



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