

Exhibit B

Israel Antitrust Authority's proposed legislative amendment to Deal with Oligopolies

The text below is an unofficial free translation of the official legislative memorandum ("tazkir") distributed by the IAA on June 19, 2008 (posted on the IAA website on June 22). The original text is available at

<http://www.antitrust.gov.il/NR/rdonlyres/B58CAF2F-691C-408D-A612-9718D51DC34D/596/Law.pdf>

A shorter press release in English is available at http://www.antitrust.gov.il/Antitrust/en-US/PublicInformation/PressReleases/Legis_olig.htm

Because of the length of the official memorandum, it is not translated in full. The proposed revision is translated in full (enclosed as a separate redline version of the Law) as well as the general remarks. However the text explaining each revision (under "D – Explaining the Bill") is an English summary of the original text.

A. The Proposed Bill's Title

The Restrictive Practices Law (Amendment No. 11), 5768-2008.

B. The Gist of the Proposed Law

The amendment is aimed at dealing with competitive failures in market sectors that present a combination of a small number of competitors along with high entry barriers. The amendment is aimed at providing a new set of tools for effective handling of these type of competition problems.

In contrast with the provisions of the current Restrictive Practices Act, 5748-1988 (hereinafter: "**The Law**"), the proposed amendment differentiates the set of norms applying to a holder of monopoly [power] from those applying to a member of an oligopoly, given the significant differences between the economic phenomena at the basis of a monopoly and an oligopoly, as well as the accumulated experience demonstrating that the difference between these phenomena mandates different legal solutions.

C. The Proposed Amendment's Goal and Why it is Needed:

The proposed Law forms the second part of the work of a committee for a re-evaluation of the Law, that was set-up by the Minister of Industry Commerce and Labor in March 2005. This part of the committee's work focused on examining the Law's provisions dealing with oligopolies. The committee concludes that there is a clear need for a substantive revision of the Law's treatment of oligopolies. The proposed amendment enables the address of competitive failure caused in markets which display only a few market players.

The Gist of the Law - General

The Bill addresses competitive failure known as “market mower.” Market power is reflected in a business or a group of businesses’ ability to digress from the supply (or procurement) conditions that would have been set in a significantly competitive market, by way of setting a higher supply price, or a lower quantity, quality or variety level. The damages of such competitive failure to the public and the country’s [national] market are significant and multi-faceted. Among other things, utilization of market power causes an inefficient allocation of the market’s production factors, compromises research, development and adoption of new technologies, and distorts allocation of resources within the public, while enriching a few at the expense of the broad public.

There are three main scenarios in which businesses possess market power: A monopoly – market power held by a single firm; A cartel – market power held by a number of firms who coordinate their activity, thus creating a quasi-monopoly; [and] An oligopoly – a market characterized by a small number of players, whose structure and dynamics allow those players to avoid effective competition, even without explicit coordination among them.

Unlike monopolies and cartels, the Law does not include a specific chapter for regulating the oligopoly phenomenon, but rather treats this phenomenon as a quasi-monopoly. In addition, the current Law’s treatment of oligopolies is highly incomplete, and in part artificial and unsuitable for dealing with the particular characteristics of the oligopoly phenomenon. As a result of this deficiency the Law, as currently drafted, allows for a continuous and systematic injury to the broad public and the national market, emanating from the oligopoly members use of their market power.

The characteristics of the Israeli market demonstrate that, a relatively large number of industries display conditions that are convenient for oligopolistic behavior. The Israeli market is characterized by a small demand volume, in comparison to other developed markets, and this is, inter alia, due to the modest volume of local demand and various commerce barriers such as geographic isolation, geo-political barriers and language barriers. These characteristics limit the number of players that can efficiently participate in many varied sectors. Hence, many Israeli industries are characterized by a small number of players, and lack of effective competition.

The proposed amendment provides new tools for dealing with the oligopoly phenomenon, and corrects deficiencies in the Law’s current drafting. In essence, the bill includes two main revisions, which balance one another:

First, the bill corrects the definition of the term oligopoly [literally: “concentration group” – the two terms are used interchangeably in the translation]. The current definition, in section 26(d) of the Law, is solely focused on the actual level of competition between the members of the concentration group, mandating that a concentration group exists where there is no competition between the members whatsoever, or “there is only slight competition between them.” However, in practice, it is often impractical and often impossible to measure the level of competition empirically. Hence there is a need for an enforceable measure for recognizing market sectors at which, either factually or as a result of specific conduct, there’s a conclusive problem of market power. Such a test is proposed in the bill.

Second, the bill eliminates the current legal arrangement, under which members of a concentration group are subject to an the same norms as a monopolist. Naturally, the Law's provisions dealing with a monopolists were tailored to address supervision of a single firm, held out to dominate the market. However the conduct patterns the Law prohibits a monopolist from carrying out are not necessarily the same conduct patterns that raise problems in the context of a concentration group. Thus, the proposed amendment grants the General Director of the [Israel] Antitrust Authority (the "**General Director**") the right to give instructions to all or some of the members of an oligopoly, aimed at preventing harm or the likelihood of harm to the public or to competition, or to significantly increase competition between members of the oligopoly or in the market sector, or to create conditions that increase competition between the members of the oligopoly or in the market sector. These provisions do not prejudice the norms that apply to a monopolist.

D. Explaining the Bill [A summary]

1. Eliminating Section 26(d)

It is proposed that Section 26(d), which sets out the current "oligopoly" definition, be deleted and replaced with new oligopoly provisions. It is reiterated that the addition of Chapter IV-1 does not prejudice the set of obligations and norms that apply to members of concentration groups under other provisions of the Law, apart from the monopoly chapter ceasing to apply to oligopolies. For example, conduct that would have been considered a restrictive arrangement prior to the amendment will continue to be viewed as such afterwards.

2. Revising Section 30

The proposed revision replaces the current broad and general test of "prejudice to fair business competition" with more familiar tests of barriers to entry or to switching. As a result, the Director General's authority to instruct a monopolist becomes clearer, and there is greater uniformity in the language of Section 30(c), because all its sub-sections will deal with familiar and well defined competitive harms as a result from use of market power.

In addition, the revision to Section 30(g) is suggested to prevent the current situation under which any Director General's instructions are suspended immediately, which obstructs the ability to effectively prevent monopolistic abuses of competition and the public through [the Director General's] instructions.

3. Adding Chapter IV-1: Oligopoly

As noted above, the current Law treats monopolists and oligopolists equally, despite significant differences between the two phenomena. The proposed revisions aims to correct this flaw.

Adding Section 31A

Under the bill, the Director General may determine the existence of an oligopoly where three **cumulative** are filled:

- (1) A small number of persons hold a concentration of over half of the supply of goods and services in the market sector;

- (2) The Director General notices the existence of conditions for slight business competition among these persons or in the market sector in which they are active, or [if] business competition among them is slight;
- (3) The Director General realizes that mandating certain measures may prevent harm, or the likelihood of harm, to the public or to business competition among the members of the group or the market sector, or may increase competition in the market sector or create conditions that similarly increase such competition.

The first and second tests are inherently related to the oligopoly phenomenon. The first test requires a high level of concentration – many theoretical and empirical studies indicate a high correlation between increased market concentration and the ability to abuse market power. However, a high market concentration is insufficient, in and of itself, for indicating ineffective competition, and hence, the second condition. The proposed second test replaces the current Law’s text, under which an oligopoly exists where, de facto, the level of competition is slight or there is no competition in place at all. Because economic science does not offer any tools for measuring the level of competition, the current drafting has effectively emptied the current oligopoly provisions from any contents. The proposed text is based on antitrust tests that are established, both practically and doctrinally.

In requiring that Director General to be capable of affecting the competitive situation prior to determining the existence of an oligopoly, the third test recognizes that there are commercial-economic conditions in which it is impossible to affect the competitive situation, nor create the conditions for such a change.

Section 31A(b) is identical to 26(f) and complements it, since the definition of “oligopoly” has now moved from 26(d) to 31A.

Section 31A(c) adds to 31A(a), in describing three conditions, each of which may contribute to slight competition in a highly concentrated sector: (1) a barrier to entry; (2) a barrier to switching; (3) cross ownership of one market player in another, or of two players in a third player.

Adding Section 31B

Section 31B(a) grants the Director General the authority to issue instructions to all or some members of the oligopoly. The instructions include duties to do or duties to refrain from doing.

Under the current Law, the Director General’s authority to issue instructions is directly derived, and is identical to, its authority to issue instructions to a monopolist. The proposed revision tailors the type of instructions the Directory General may issue to the unique characteristics of oligopolies. The instructions are subject to an appeal to the Antitrust Tribunal.

The sub-sections of Section 31B(a) include a non-exhaustive list of instructions the Director General may issue to members of an oligopoly.

Section 31B(b) deals with various types of structural associations among members of a concentration group.

4. Revising Section 42

Adding a requirement for a registry of oligopolies (harmonizes the treatment of oligopolies with that of other antitrust matters – approved restrictive arrangements, exemptions under Section 14, approved mergers, determined monopolies etc.)

5. Revising Section 43

A duty to inform members of the concentration group that the existence of an oligopoly has been determined.

6. Revising Section 47(a)(5)

The proposed amendment maintains the current legal arrangement that applies to an oligopoly member's failure to comply with the Director General's instructions. It simply shifts the source of the sanction from Section 30 (that, until now, dealt with both monopolists and oligopoly members) to Section 31B.

7. Revising Section 50

The revision called for because, after adding Chapter IV-1, the general norms of the monopoly chapter shall no longer apply to members of an oligopoly. The restrictions on members of an oligopoly will be set in instructions issued by the Director General. Therefore, absent a legal right to sue for breach of the Director General's instructions, those harmed by the breach would be not be able to sue for damages resulting from the breach.

It is suggested that a few years after the amendment is adopted, once practical experience from its application has been accumulated, a provision setting a general norm applying to members of concentration groups shall be added to the law. Such provision would be similar to the existing provision prohibiting an abuse by a monopolist.

E. The Bill's Effect on the Existing Law

Sections 30(c)(5), 30(7), 42(a), 42(c), 43(a)(4), 43(b), 47(a)(5) and 50 of the Law shall be revised. In addition, a new chapter, Chapter IV-1, shall be added to the Law, and include Sections 31A and 31B.

F. The Bill's Effect on the National Budget

The Bill will have no effect on the national budget.

The Test of the Proposed Amendment [see enclosed redline]

[Encl. A redline version of the Law reflecting the proposed revisions].