

RESTRICTIVE TRADE PRACTICES LAW, 5748-1988

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CHAPTER I: DEFINITIONS

1. Definitions

In this Law -

"President of the Tribunal"- including the deputy to the President of the Tribunal;

"Trade association"- a body of persons, whether or not incorporated, all or some of whose purposes involve the promotion of the business interests of its members;

"Consumers' association"- an association representing consumers, approved by the Minister of Justice for the purposes of this Law;

"Tribunal"- the Antitrust Tribunal, established pursuant to this Law;

"Restrictive trade practice"- a restrictive arrangement, monopoly or merger of companies;

"Arrangement"- whether express or implied, whether written, oral or by behavior, whether or not legally binding;

"Company"- a company founded and incorporated in accordance with the Companies Ordinance [New Version], 5743-1983, including a foreign company so incorporated, an incorporated cooperative society within its meaning in the Cooperative Societies Ordinance and a partnership incorporated in accordance with the Partnerships Ordinance [New Version] 5735-1975;

"Subsidiary"- a company in which another company holds a controlling interest;

"Price"- including linkage differentials to an index or a foreign currency, interest, installments and any other terms of payment;

"Merger of companies"- including the acquisition of the principal assets of a company by another company or the acquisition of shares in a company by another company which accord the acquiring company more than a quarter of the nominal value of the issued share capital, or of the voting power, or the power to appoint more than a quarter of the directors, or participation in more than a quarter of the profits of said company; the acquisition may be direct or indirect or by way of rights accorded by contract;

"The General Director"- the General Director of the Restrictive Trade Practices appointed pursuant to Section 41;

"Asset"- chattels, real property and rights;

"Business"- engaging in the production, sale, marketing, acquisition, import or export of an asset as well as engaging in the provision or the receipt of a service;

"Controlling interest"- possession of more than half of one of the following means of control:

(1) The right to vote at a company's general meeting or the parallel body of another corporation;

(2) The right to appoint the directors of a corporation;

"The Minister" - the Minister of Trade and Industry.

CHAPTER II: RESTRICTIVE ARRANGEMENT

Part A: Restrictive Arrangement Defined

2. Restrictive Arrangement

(a) A restrictive arrangement is an arrangement entered into by persons conducting business, according to which at least one of the parties restricts itself in a manner liable to eliminate or reduce the business competition between it and the other parties to the arrangement, or any of them, or between it and a person not party to the arrangement.

(b) Without derogating from the generality of the provisions of subsection (a), an arrangement involving a restraint relating to one of the following issues shall be deemed to be a restrictive arrangement:

(1) The price to be demanded, offered or paid;

(2) The profit to be obtained;

(3) Division of all or part of the market, according to the location of the business or according to the persons or type of persons with whom business is to be conducted;

(4) The quantity, quality or type of assets or services in the business.

3. Arrangements which are Not Restrictive

Notwithstanding the provisions of Section 2, the following arrangements shall not be deemed restrictive arrangements:

- (1) An arrangement involving restraints, all of which are established by law;
- (2) An arrangement involving restraints, all of which relate to the right to use of any of the following assets: patents, designs, trademarks, copyrights, performers' rights or developers' rights, provided that the following two conditions are met:
 - (a) The arrangement is entered into by the proprietor of the said asset and the party receiving the right to use the said asset;
 - (b) If the said asset is subject to registration by law - it is so registered.
- (3) An arrangement entered into by a person assigning a right to real property and a person acquiring such right, involving restraints, all of which relate to the types of assets or services which the acquirer of the right is to engage in on such property;
- (4) An arrangement involving restraints, all of which relate to growing or marketing domestic agricultural produce of the following kinds: fruits, vegetables, field crops, milk, eggs, honey, cattle, sheep, poultry or fish, provided all parties thereto are growers or wholesale marketers; the above provision shall not apply to products manufactured from such agricultural produce; the Minister, with the consent of the Minister of Agriculture and the ratification of the Knesset Economic Affairs Committee, may, by order, add or delete types of agricultural produce;
- (5) An arrangement entered into by a company and its subsidiary;
- (6) An arrangement entered into by the purchaser of an asset or service and its supplier, involving restraints, all of which constitute a commitment of the supplier not to supply certain assets or services for marketing other than to the purchaser, and a commitment of the purchaser to purchase such assets or services only from the supplier, provided that both the supplier and the purchaser are not engaged in the production of such assets or the provision of such services; such an arrangement may apply to the entire area of the country or to a part thereof;
- (7) An arrangement involving restraints, all of which relate to international air or sea transport, or combined air and ground international transport, provided that all parties to the arrangement are -
 - (1) Air carriers; or,
 - (2) Air carriers and an international association of airlines approved for this purpose by the Minister of Transport; And provided notice of such an arrangement shall be delivered to the Minister of Transport in such manner as he shall determine; the Minister of Transport shall notify the Knesset Economic Affairs Committee once a year of such notices;

(8) An obligation by the seller of a business sold in its entirety, towards the purchaser of the business not to engage in the same type of business, provided such obligation is not contrary to reasonable and accepted practices;

(9) An arrangement to which a trade union or an employers' association is party, involving restraints, all of which relate to the employment of workers and to working conditions.

3A. Arrangements between Air Carriers

(a) Notwithstanding the provisions of Section 3(7), an arrangement pursuant to that Section shall be deemed a restrictive arrangement if any one of the following conditions articulated in paragraphs (1) to (3) apply to it:

(1) The parties to the arrangement are Israeli air carriers;

(2) The parties to the arrangement are air carriers at least one of whom is Israeli and at least one of whom is not Israeli;

(3) The following two conditions are met:

a. The parties to the arrangement are non-Israeli air carriers at least one of whom maintains an operation or has a representation in Israel;

b. One of the principal issues of the arrangement is air transport to or from Israel, and the restraints contained in the agreement relate to the operation in Israel or lack thereof of any of the parties.

(b) The provisions of subsections (a)(2) or (3) shall not apply to an arrangement pursuant to that subsection if the arrangement has been approved by the Minister of Foreign Affairs and the Minister of Transport, by means of a reasoned decision, for reasons of preventing a substantial harm to Israel's foreign relations, including its foreign economic and trade relations, or in order to guarantee the continuity of air freedom rights between Israel and other countries; said approval shall be granted after consultation with the Minister of Finance and after receiving the General Director's position on this matter.

Part B: Prohibition of Restrictive Arrangements

4. Prohibition of Restrictive Arrangements

No person shall be party to a restrictive arrangement, in whole or in part, unless it has obtained the approval of the Tribunal pursuant to Section 9 or a temporary permit pursuant to Section 13 or an exemption pursuant to Section 14, or if all restraints in the arrangement are exempt under a block exemption issued pursuant to Section 15A; if the approval, temporary permit, exemption or block exemption are conditional, they shall be void unless the conditions stipulated therein are met.

5. Determination of a Course of Action by a Trade Association

A course of action determined by a trade association for its members or some of them, which is liable to eliminate or reduce business competition among them, or such course of action which the trade association recommended to them, shall be deemed to be a restrictive arrangement as defined in Section 2, and the trade association and any member acting in accordance with such course of action shall be deemed to be party to a restrictive arrangement.

6. Adaptation to a Restrictive Arrangement

A person conducting business and aware of the existence of a restrictive arrangement, who adapts his actions to such arrangement, in whole or in part, shall be deemed to be party to such arrangement.

Part C: Registration and Approval of a Restrictive Arrangement

7. Motion for Approval of a Restrictive Arrangement

(a) Any person wishing to enter into a restrictive arrangement shall file a motion with the Tribunal for approval of the restrictive arrangement, in such manner as determined by Regulations, after registering a copy of the motion in accordance with subsection (b).

(b) The applicant shall deliver a copy of the motion to the General Director; the General Director shall register the motion in the registry kept in accordance with Section 42 and shall publish a notice thereof in the Official Gazette and in two daily newspapers; the details and the means of publication shall be as determined by Regulations.

8. Hearing the General Director and Objections

(a) The General Director shall be summoned to present his position and arguments regarding the motion before the Tribunal.

(b) Any person liable to be harmed by the restrictive arrangement, any trade association, and any consumers' association may submit a reasoned written objection to the Tribunal within thirty days of the publication of the notice in the Official Gazette pursuant to Section 7(b).

9. The Judgment of the Tribunal

The Tribunal shall decide to approve a restrictive arrangement, in whole or in part, if it believes that this is in the public interest, and it may stipulate conditions for its approval.

10. Considerations of the Public Interest

When considering the public interest for the purposes of this Chapter, the Tribunal shall take into consideration, *inter alia*, the contribution of the

restrictive arrangement to the issues enumerated below, and whether the expected benefit to the public is substantially greater than the damage liable to be caused to the public or to any part thereof, or to anyone not party to the arrangement; the issues are:

- (1) Optimizing efficiency of the production and marketing of goods or services, assuring their quality, or reducing their price to the consumer;
- (2) Assuring a sufficient supply of goods or services to the public;
- (3) Preventing unfair competition by a person not party to the arrangement and liable to cause a reduction in the competition for the supply of the goods or the services in which the parties to the arrangement are engaged;
- (4) Enabling the parties to the arrangement to obtain the supply of goods or services on reasonable terms from a person who controls a considerable share of the supply of such goods or services, or to supply goods or services on reasonable terms to a person who controls a considerable share of the purchase of such goods or services;
- (5) Preventing severe harm to a sector which is important to the national economy;
- (6) Protecting the continued existence of factories as a source of employment in areas in which substantial unemployment may be created as the result of their closure or reduction in their production;
- (7) Improving the balance of payments of the State by reducing imports or the prices thereof or by increasing exports and their feasibility.

11. Period of Approval

The Tribunal's approval shall be for such period as it shall determine; if the Tribunal does not determine a period, the arrangement shall be approved for the period determined by the parties or for a period of three years, whichever is shorter.

12. Revocation and Modification of an Approval

- (a) The Tribunal may revoke an approval granted by it or amend the terms thereof, if it is persuaded, upon motion by the General Director, that substantial changes have occurred in the circumstances that existed at the time the approval was issued.
- (b) Any person liable to be harmed by the restrictive arrangement, any consumers' association and any trade association which believes that a substantial change has occurred in the circumstances of an approved arrangement, may apply to the General Director requesting that he exercise his authority under subsection (a); if the General Director decides that the circumstances do not justify the exercise of said authority, he shall so inform the applicant, by means of a reasoned response in writing, within thirty days of the date of receipt of the application.

13. Temporary Permit

- (a) When an motion is submitted for the approval of a restrictive arrangement, the President of the Tribunal may, if the General Director so recommends and if he is persuaded that the arrangement is *prima facie* in the public interest, within the meaning of the term under Section 10, grant the parties, upon their motion, a temporary permit to act in accordance with the arrangement; the permit shall be in force for a pre-determined period not exceeding one year, or until the final judgment of the Tribunal pursuant to Section 9, whichever is the earlier; the President of the Tribunal may stipulate conditions for the issuance of the permit.
- (b) The General Director shall give notice of a temporary permit granted to any person who has filed an objection to that arrangement pursuant to Section 8.
- (c) The President of the Tribunal may, upon motion by the General Director or any person who has filed an objection to the arrangement, revoke a temporary permit that has been granted or amend its terms, provided that the parties to the restrictive arrangement, the General Director and the party motioning for the revocation, have been given an opportunity to present their arguments.

14. Exemption from Approval

- (a) The General Director may, upon the request of a party to a restrictive arrangement and following consultation with the Exemptions and Mergers Advisory Committee in accordance with section 23 (hereinafter - "the Committee"), by means of a reasoned decision, exempt the parties to a restrictive arrangement from the duty to obtain the approval of the Tribunal, if he is persuaded that all of the following conditions are met:
- (1) The restraints in the restrictive arrangement do not limit the competition in a considerable share of a market affected by the arrangement, or they are liable to limit the competition in a considerable share of such market but are not sufficient to substantially harm the competition in that market.
 - (2) The objective of the arrangement is not to reduce or eliminate competition, and the arrangement does not include any restraints which are not necessary to fulfill its objective.
- (b) The General Director may, after consultation with the Committee, stipulate conditions for the exemption, amend it, or revoke it.
- (c) Notice regarding an exemption and conditions therefor, amendments to such conditions and revocation of an exemption shall be delivered to the parties to the arrangement and to the President of the Tribunal and shall be published in the Official Gazette.
- (d) If a request for an exemption is filed regarding an arrangement over which one of the government ministries has jurisdiction, the General Director shall notify the director-general of such ministry of the request and

shall not issue his decision regarding the request until at least fourteen days have passed since the dispatch of such notification.

(e) Filing a request for an exemption to the Antitrust Tribunal according to this section, is contingent upon payment of a fee, as the Minister and the Minister of Treasury will determine; The Ministers may establish by regulations under this section, the manner of updating the fee.

14A. The Period for Issuing the General Director's Decision

The General Director shall issue his decision within 90 days of receiving a request pursuant to section 14, unless he decides to extend such period for a further 60 days, for reasons to be noted; the period elapsing from the time the General Director requests additional information required to examine the request and until such information is received, shall not be counted.

15. Revocation of an Exemption

(a) Any person liable to be harmed by a restrictive arrangement which has been granted an exemption pursuant to Section 14, any trade association and any consumers' association, may appeal to the President of the Tribunal, by means of a reasoned and written submission, against the General Director's decision to grant an exemption or not to revoke an exemption granted.

(b) The President of the Tribunal shall revoke the exemption if he finds that the restrictive arrangement does not meet one of the conditions set forth in Section

14(a); the revocation shall take effect from the time determined by the President of the Tribunal.

(c) The decision of the President of the Tribunal shall not be issued until the parties to the restrictive arrangement and the General Director have been given an opportunity to present their arguments.

15A. Block Exemption

(a) The General Director may, with the ratification of the Committee, establish rules regarding types of restrictive arrangements for which the parties shall be exempt from applying for the Tribunal's approval (hereinafter - Block Exemption

Rules), provided that all of the following conditions are met:

(1) The restraints in the restrictive arrangement do not limit the competition in a considerable share of a market affected by the arrangement, or they are liable to limit the competition in a considerable share of such market but are not sufficient to substantially harm the competition in that market.

(2) The objective of the arrangement is not to reduce or eliminate

competition, and the arrangement does not include any restraints which are not necessary to fulfill its objective.

(b) The General Director shall publish a notice, in two daily newspapers, of his intention to submit Block Exemption Rules to the Committee for ratification, at least 60 days prior to such submission, and shall make such rules available for public scrutiny.

(c) If any objections are received from the public regarding the Block Exemption Rules, the General Director, when submitting the Block Exemption Rules to the Committee for ratification, shall give a detailed response to such objections.

(d) If the Committee ratifies the Block Exemption Rules, the General Director shall submit them to the Minister for signature; the Minister shall sign the Block Exemption Rules unless he is persuaded, on exceptional grounds, that they should not be ratified.

(e) The Block Exemption Rules shall remain in force for five years, unless a shorter period is provided by the Block Exemption Rules.

(f) The General Director may, from time to time, with the ratification of the Committee, amend the Block Exemption Rules, or renew them for further periods not exceeding five years each, with or without amendments; the provisions of this Section shall apply, *mutatis mutandis*, to the amendment and renewal of Block Exemption Rules.

(g) The General Director may determine that an exemption granted by the Block Exemption Rules shall not apply to a specific restrictive arrangement, commencing as of such date as he shall determine, and may direct the parties to the arrangement to apply for the Tribunal's approval in accordance with Section 9; the provisions of Section 43(b) through (e) shall apply to such determination.

16. Changes in a Restrictive Arrangement

(a) A material change in a restrictive arrangement approved by the Tribunal or an arrangement for which a temporary permit has been granted pursuant to Section 13 or an arrangement for which an exemption has been granted pursuant to Section 14, shall be deemed a new restrictive arrangement, requiring application for approval pursuant to Section 7, within thirty days of the date of such change.

(b) The parties to said restrictive arrangement shall notify the General Director of any change therein that, in their opinion, is not a material change; if the General Director believes that the change is material, he shall apply to the President of the Tribunal to rule on the matter.

(c) In this section "change" includes the addition of a party to an arrangement or the removal of a party therefrom.

Chapter III: Merger of Companies

Part A: Application and Prohibition of Merger

17. Application

- (a) The provisions of this Chapter shall apply to a merger of companies in any of the following instances:
- (1) As a result of the merger, the share of the merging companies in the total production, sale, marketing or purchase of a particular asset and a similar asset or in the provision of a particular service and a similar service, would exceed fifty percent, or a lower market share if the Minister so determined with regard to a monopoly pursuant to Section 26(c);
 - (2) The combined sales turnover of the merging companies, in the fiscal year preceding the merger, exceeded 150 million NIS; the Minister may, with the ratification of the Knesset Economic Affairs Committee, amend the above amount;
 - (3) One of the merging companies is a monopoly within the meaning of the term under Section 26.
- (b) (1) The amount stated in subsection (a)(2) shall be update annually on the 1st of January (hereinafter - "the update day") according to the rate of the increase in the index compared to the base index, provided that the aforesaid rate of increase of the index shall exceed ten percent.
- (2) The amount so updated shall be rounded off to the nearest multiple of 10,000 NIS.
- (3) The updated amount shall come into effect on the date on which the Minister publishes notice thereof in the Official Gazette.
- (4) In this Section-
- "Index" - the Consumer Price Index published by the Central Bureau of Statistics;
- "The new index" - the index last published prior to the update day;
- "The base index"- the last index published before to the previous update day and, for the purpose of the first update day following the commencement of this Law - the index published in October 1988.
- (c) The Minister, with the ratification of the Knesset Economic Affairs Committee, may establish by regulation the manner of determining a company's share pursuant to subsection (a)(1), and its sales turnover pursuant to subsection (a)(2).
- (d) In this Section-
- "Similar asset"- an asset of similar characteristics even if not identical in all respects;

"Similar service"- a service of similar characteristics even if not identical in all respects.

18. Merger with a Company Engaged in Business Overseas

In the case of a merger with a company conducting business both in Israel and overseas, the provisions of this Chapter shall apply solely with respect to the sales turnover of the company within Israel and with respect to the company's share in Israel in the production, sale, purchase and marketing of an asset or the provision or receipt of a service within Israel.

Part B: Pre-Merger Notification and Consent of the General Director

19. Prohibition of the Merger of Companies

Companies may not merge unless a pre-merger notification has first been filed and the consent of the General Director to the merger has been obtained and, if such consent is conditional - in accordance with the conditions stipulated, all as provided in this Part.

20. Pre-Merger Notification

(a) Every one of the companies intending to merge shall give the General Director notice thereof, providing such details as shall be determined by the Regulations (hereinafter - "pre-merger notification"); the General Director may request further information if he deems it necessary for the examination of the application.

(b) Within thirty days of the date on which he received a pre-merger notification from all of the companies seeking to merge, the General Director shall notify the companies as to whether he consents or objects to the merger or stipulate conditions for it as shall be provided in such notification; failure to give such notification within the thirty days provided shall be deemed to constitute a notice of consent, unless the period is extended pursuant to Section 38.

(c) If a pre-merger notification is delivered to the General Director and the sphere of activity of the companies seeking to merge comes under the jurisdiction of one of the government ministries, the General Director shall forward a copy of the application to the director-general of such ministry.

(d) Submitting a pre-merger notification to the General Director pursuant to this Section is conditioned upon the payment of a fee, as determined by the Minister and the Minister of Finance; in the Regulations pursuant to this subsection, the Ministers may determine the manner by which said fee shall be updated.

21. The General Director's Decision

(a) The General Director shall object to a merger of companies or stipulate conditions for it, if in his opinion there is a reasonable risk that, as a result of the merger as proposed, the competition in that sector would be significantly harmed or the public would be harmed in one of the following regards:

- (1) The price level of an asset or a service;
- (2) Low quality of an asset or of a service;
- (3) The quantity of the asset or the scope of the service supplied, or the constancy and conditions of such supply.

(b) The General Director shall publish a notice of his decision to consent to a merger of companies, to object to it or to stipulate conditions for it, in the Official Gazette and in two daily newspapers.

22. Appeal against the General Director's Decision

(a) Should the General Director object to a merger of companies or stipulate conditions for it, each of the companies seeking to merge may appeal to the Tribunal, within thirty days of the date on which the General Director's decision is received.

(b) Should the General Director consent to a merger of companies, whether conditionally or unconditionally, any person who is liable to be harmed by the merger, any trade association and any consumers' association, may appeal to the Tribunal against the General Director's decision, within thirty days of the date on which notice of the General Director's decision was published in two daily newspapers.

(c) The Tribunal may affirm the General Director's decision, revoke it or amend it.

(d) Filing an appeal pursuant to subsection (b) shall not cause the merger to be delayed, unless an order is issued pursuant to Section 36.

23. The Exemptions and Mergers Advisory Committee

(a) An Exemptions and Mergers Advisory Committee shall be established.

(b) The Minister shall designate five members who shall be civil servants possessing knowledge and expertise in economics, accountancy, business administration or law (hereinafter in this Section - "the Committee's fields of expertise"), and eight members who shall be representatives of the public, among whom -

(1) Four members shall be highly reputed researchers and teachers in the

Committee's fields of expertise;

(2) Four shall be members of the general public possessing academic degrees in the Committee's fields of expertise, and having at least seven years of cumulative knowledge and experience in said fields.

(b1) Among the members of the Committee, there shall be –

- (1) at least 5 women;
- (2) at least 5 jurists.

(c) The Minister shall appoint a chairperson for the Committee from among its public representative members; notice of the appointment of the Committee's chairperson and members shall be published in the Official Gazette.

(d) The chairperson of the Committee shall appoint the Committee's panel from amongst its members, as follows:

(1) For the purposes of the ratification of Block Exemption Rules – seven members, four of whom shall be designated representatives of the public, including the chairperson of the Committee, who shall chair the panel;

(2) For the purposes of a pre-merger notification and a request for an exemption pursuant to Section 14 – three members, two of whom shall be designated representatives of the public, of whom one shall be appointed by him to chair the panel.

(3) For the purposes of a monetary penalty pursuant to Chapter VIII – three members, at least one of whom shall be a jurist and two of whom shall be designated representatives of the public; one of the representatives of the public shall be appointed by him to chair the panel.

(e) The chairperson of the Committee may designate sub-committees from amongst the members of the Committee for the purposes of fulfilling the Committee's duties.

(f) Any objections received from the public regarding Block Exemption Rules pursuant to Section 15A(c) shall be brought before the Committee or before a sub-committee designated by the chairperson of the Committee; if a sub-committee has been so designated, its findings and recommendations shall be brought before the members of the panel at least seven days prior to the date set for deliberations regarding the ratification of the Rules.

23A. Conflict of Interest

(a) No person shall be a member of the Committee, if he is liable to regularly find himself, directly or indirectly, in a conflict of interest between his duties as a Committee member and another interest that he has, or that his relative has, or that a corporation in which either he or his relative is an interested party; for the purposes of this Section –

"Relative" – spouse or parent, or the offspring of either of the above, or any dependent;

"Interested party" – within its meaning in the Securities Law, 5728-1968.

(b) Any Committee member who may have a direct or indirect interest in any matter to be deliberated by a panel of the Committee, shall notify the

chairperson of the Committee of such, as soon as he learns of such conflict, and shall not participate in any deliberations regarding such matter.

23B. Procedure

- (a) The requisite quorum for the Committee's sessions shall be a majority of the members of the panel.
- (b) The Committee's decisions shall be carried by a vote of the majority of the members voting and present at that session; in the case of a tied vote, the chairperson shall have an additional vote.
- (c) Minutes shall be kept of the Committee's sessions, recording the documents brought before the Committee and the decisions made; during sessions regarding the ratification of Block Exemption Rules, a summary of the discussion shall be kept; during sessions regarding monetary penalties, full minutes shall be kept; the minutes shall be open to the public, provided that the information published does not include information which must not be provided or which there is no obligation to provide, pursuant to Section 9 of the Freedom of Information Act, 5758-1998.
- (d) The General Director shall be invited to attend every session of the Committee; in Committee sessions regarding monetary penalties, the General Director shall present before the members of the Committee his position, including the principal evidence upon which said position relies, as well as arguments submitted by the offender pursuant to Section 50G in writing, and, regarding an offender who also made arguments orally - full minutes of such oral arguments.
- (e) The chairperson shall determine the Committee's procedures to the extent not provided by this Section.
- (f) The continued existence of the Committee, its powers and the validity of its decisions shall not be prejudiced as a result of a vacancy in its membership.

23C. Committee Members who are Not Civil Servants

Committee members who are not civil servants shall be deemed to be civil servants for the purposes of the following statutes:

- (1) Public Service (Gifts) Law, 5740-1979;
- (2) Penal Law, 5737-1977, regarding the provisions applicable to civil servants;
- (c) Torts Ordinance [New Version].

23D. Expiration and Cessation of Service

- (a) The members of the Committee shall be appointed for a term of three years. They may be re-appointed, provided they serve for no more than three consecutive terms.
- (b) A member shall cease to serve prior to the expiration of his term, if one of

the following occurs:

- (1) The member resigns by delivering a letter of resignation to the chairperson of the Committee;
- (2) The member becomes permanently unable to fulfill his duties, and the Minister, with the Chairperson's consent, terminates his term by written notice;
- (3) The member is convicted of a crime, which due its nature, severity or circumstances, renders him unsuitable to be a Committee member;
- (4) The circumstances which originally rendered such member eligible for membership cease to exist.

(c) Should a Committee member be indicted for an offense, and the Minister is of the opinion that the provisions of subsection (b)(3) are *prima facie* fulfilled, the

Minister may suspend his membership until a final verdict on the matter is reached.

24. Obligation to Consult

- (a) The General Director shall not consent to a merger of companies, conditionally or unconditionally, except after consultation with the Committee.
- (b) The General Director shall provide the chairperson of the Committee with a copy of every pre-merger notification, immediately upon its receipt.

Part C: Divestiture of Companies

25. The Authority of the Tribunal to Divest Merged Companies

- (a) If the Tribunal believes, upon application by the General Director, that there is a reasonable likelihood that, as a result of a merger of companies undertaken contrary to the provisions of this Law, competition in the relevant sector will be significantly harmed or the public will be harmed pursuant to Section 21, it may order the divestiture of the merged companies.
- (b) The divestiture of merged companies shall take place by means of restoring the situation to its former state, or by means of transferring some of the shares to a body of such companies' choosing and unrelated to them, or by means of establishing another company to which some of the assets of such companies shall be transferred, or by any other means as the Tribunal sees fit.

(c) If the sphere of activity of the company comes under the jurisdiction of one of the government ministries, the General Director shall forward a copy of the application to the director-general of such ministry.

(d) The provisions of this Section shall not detract from the provisions of Section 31.

Chapter IV: Monopoly

26. Monopoly and Monopolist

(a) For the purposes of this Law, the concentration of more than half of the total supply or acquisition of an asset, or more than half of the total provision or acquisition of a service, in the hands of one person (hereinafter - "monopolist") shall be deemed to be a monopoly. The General Director shall declare the existence of a monopoly by notice in the Official Gazette; the provisions of Section 43(b) through (e) shall apply to such declaration, as though it were a determination pursuant to Section 43(a).

(b) A monopoly can be specific to a particular region.

(c) The Minister may, upon the General Director's recommendation, determine that, with respect to certain assets or a certain service, a concentration less than one half shall be deemed to be a monopoly, if he believes that a person holding such concentration has a decisive impact on the market for such assets or services.

(d) (repealed)

(e) Once every six months, the General Director shall submit a list of monopolists to the Knesset's Economic Affairs Committee.

(f) For the purposes of this Section, "person" includes a company and its subsidiaries, or the subsidiaries of one company, or a person and a company in which he holds a controlling interest.

27. Restrictions Applicable to a Monopolist

(a) The General Director may -

(1) Stipulate in writing that a monopolist contracting or intending to contract with customers or suppliers by means of a standard terms contract, within the meaning of the term under the Standard Contracts Law, 5743-1982, shall submit an application for approval of the contract pursuant to Chapter III of said Law; in the event that the monopolist does not submit such application within the period stipulated, it shall be precluded from contracting with its customers or suppliers by means of such standard terms contract;

(2) Stipulate that a monopoly manufacturing or importing an asset, or providing a service, the specifications of which are established by a standard in accordance with the Standards Law, 5713-1953, shall not manufacture, import or sell the asset or provide the service unless it conforms to the requirements of that standard.

28. Appeal against Restriction of a Monopoly

A monopolist may appeal to the Tribunal against a stipulation of the General Director pursuant to Section 27, within thirty days of receipt of such stipulation; filing an appeal shall not delay the implementation of the General Director's stipulation, unless the Tribunal otherwise determines.

29. Unreasonable Refusal

A monopolist may not unreasonably refuse to supply or purchase the asset or service over which the monopoly exists.

29A. Abuse of Position

- (a) A monopolist shall not abuse its position in the market in a manner liable to reduce business competition or injure the public.
- (b) A monopoly shall be deemed to be abusing its position in the market in a manner which might reduce business competition or injure the public, in any of the following instances:
 - (1) Establishing an unfair buying or selling price for the asset or service over which the monopoly exists;
 - (2) Reducing or increasing the quantity of the assets or the scope of the services offered by the monopolist, not within the context of fair competitive activity;
 - (3) Establishing different contractual conditions for similar transactions in a manner which may grant certain customers or suppliers an unfair advantage vis-à-vis their competitors;
 - (4) Including in a contract regarding the asset or service over which the monopoly exists conditions that, by their nature or according to accepted trading practices, are unrelated to the subject matter of the contract. The provisions of this subsection are supplementary to the provisions of subsection (a).

30. Regulation of Monopoly Activities

- (a) If the General Director believes that business competition or the public is being harmed as a result of the existence of a monopoly or the behavior of a monopolist, he may give the monopolist instructions regarding the measures that it must take to prevent such harm.

(b) If the General Director believes that there is a risk of substantial harm to competition or to the public as a result of the behavior of a monopolist, he may give the monopolist instructions regarding the measures it must take to prevent such harm.

(c) Any harm relating to one of the following matters shall be deemed to be a harm to business competition or to the public:

(1) The price of an asset or a service;

(2) The quality of an asset or a service;

(3) The quantity of assets or the scope of a service;

(4) The supply of an asset or service, and the regularity and conditions of such supply;

(5) A barrier to entry to the sector or switching barrier within the sector; for these purposes, "switching barrier" is a barrier limiting the ability of a customer to switch between suppliers in the sector – in the case of a monopoly in the supply of assets or services, or a barrier limiting to ability of a supplier to switch between customers in the sector – in the case of a monopoly in the purchase of assets or services; The provisions of this subsection are supplementary to the provisions of subsections (a) and (b).

(d) The General Director shall publish his intention to give instructions pursuant to this Section in two daily newspapers, at least 14 days in advance, and shall make such instructions available to public scrutiny.

(e) The General Director shall deliver the instructions to the monopolist and shall publish the fact of their delivery in two daily newspapers; the text of the instructions given shall be included in the registry of monopolies pursuant to Section 42; if the General Director believes that the public interest requires the publication of the text of the instructions, he shall publish them in newspapers as aforesaid.

(f) The monopolist to whom the General Director's instructions were delivered, any consumers' organization and any other person injured by such instructions, may file a written objection to the General Director's instructions with the Tribunal, detailing the grounds for such objection, within 30 days of the date of publication regarding delivery of such instructions pursuant to subsection (e); after hearing the parties, the Tribunal may affirm, revoke or amend the General Director's instructions.

(g) The General Director's instructions shall enter into force 30 days following the date of publication as provided by Subsection (e) or a later date provided by the General Director; if a monopolist files an objection to the instructions, the Tribunal may suspend them pending the decision regarding the objection or until such other date as provided by the Tribunal.

(h) The provisions of this Section are supplementary to the provisions of Section 36.

31. Breaking Up a Monopoly

(a) If the Tribunal believes, upon application by the General Director, that the public is substantially harmed, whether in one of the manners enumerated in Section 30 or in any other way, as the result of the existence of a monopoly, and that such harm cannot efficiently be prevented by regulating the activities of the monopoly pursuant to Section 30, but may only be prevented by breaking up the monopoly into two or more distinct business corporations, it may order the breakup of the monopoly.

(b) The breakup of a monopoly shall take place by means of transferring some of the shares to a body of the monopolist's choosing unrelated to the monopolist, or by means of establishing another company to which some of the assets of the monopoly shall be transferred, or by any other means as the Tribunal sees fit.

(c) If the sphere of activity of the monopolist comes under the jurisdiction of one of the government ministries, the General Director shall forward a copy of his application to the director-general of such ministry.

Chapter IV1: Concentration Group

31A. Definitions for Purposes of Chapter IV1

In this Chapter -

"Person" - as defined in Section 26(f);

"Switching barrier" - a barrier limiting the ability of a customer to switch between suppliers in the sector - in the case of a concentration group in the supply of assets or services, or a barrier limiting to ability of a supplier to switch between customers in the sector - in the case of a concentration group in the purchase of assets or services.

31B. Concentration Group

(a) The General Director may determine, pursuant to Section 43(a)(6), that a limited group of persons conducting business and possessing a concentration of more than half of the total supply or acquisition of an asset or provision or acquisition of a service, constitutes a concentration group (in this Chapter - "concentration group"), and that every such person is a member of the concentration group, if he determines that all of the following conditions are met:

(1) There is limited business competition or there are conditions for limited business competition between the members of the group or within the sector in which they operate;

(2) Taking steps pursuant to Section 31C may prevent harm or a risk of significant harm to the public or to the business competition between the members of the group or within the sector in which they operate, or

may significantly increase the competition in the sector or create the conditions for a significant increase in the competition in the sector.

(b) For the purposes of subsection (a)(1), a barrier to entry to the sector, in combination with two or more of the conditions listed below, *inter alia*, shall be regarded as conditions for limited business competition between the members of a concentration group or in the sector in which they operate:

- (1) A switching barrier in the sector;
- (2) A person holding any right in another person operating in that sector, at least one of whom is a member of the group; or two persons operating in that sector, at least one of whom is a member of the group, holding any right in a third person; or a person holding any right in two or more persons operating in that sector, at least one of whom is a member of the group;
- (3) The members of the group have similar market shares in supplying or purchasing assets or services in the sector;
- (4) The assets or services supplied or purchased by the members of the group in the sector are to a large degree similar to one another;
- (5) The members of the group supply assets or services in the sector to a large number of customers or suppliers or purchase such assets or services from a large number of customers or suppliers;
- (6) All or most of members of the group have the ability to know the principal terms of contracts between customers or suppliers and most of the other members of the group, for supply or purchase of the assets or services in the sector.

31C. Regulating the Activities of a Concentration Group

(a) The General Director may instruct some or all of the members of a concentration group regarding the steps that they must take to prevent harm or a risk of significant harm to the public or to the business competition between the members of the group or within the sector in which they operate, or to significantly increase the competition between the members of the groups or in the sector or create the conditions for a significant increase in the competition in the sector, including the following:

- (1) Instructing that barriers to entry to the sector or switching barriers within the sector which are results of an act or omission of any member of the group, be removed or reduced;
- (2) Instructing that a certain activity of a member of the group cease, if he believes that said activity makes it easier for any member of the group to match his behavior to the behavior of any other member of the group;
- (3) Forbidding that information be transferred or publicized among the members of the group or between members of the group and any other person, if such transfer or publication may make it easier for any member of the group to match his behavior to the behavior of another

member of the group,

(b) If the Tribunal believes, following an application by the General Director, that a person holds any right in another person operating in the same sector, at least one of whom is a member of a concentration group; or that two persons operating in the same sector, at least one of whom is a member of a concentration group, hold any right in a third person; or a person holds any right in two or more persons operating in the same sector, at least one of whom is a member of a concentration group, it may instruct that said holdings be sold, in whole or in part, and stipulate a date for said sale, if it finds that this will prevent harm or a risk of significant harm to the public or to the business competition between the members of the group or within the sector in which they operate, or to significantly increase the competition between the members of the group or in the sector or create the conditions for a significant increase in the competition as aforesaid.

(c) The following provisions shall apply to a concentration group operating in a sector whose regulation is under the jurisdiction of some government office or which some other body has been given authority by law to regulate:

(1) The Director General shall consult with said office or body with regard to giving instructions pursuant to subsection (a) and intended to prevent harm or a risk of significant harm to the public or to the business competition between the members of the group or within the sector, and also with regard to application to the Tribunal pursuant to subsection (b);

(2) The Director General shall receive the consent of said office or body with regard to giving instructions pursuant to subsection (a) and intended to significantly increase the competition between the members of the group or in the sector or to create the conditions for a significant increase in the competition as aforesaid.

(d) The provisions of Section 30(c) through (h) shall apply, *mutatis mutandis*, to the Director General's instructions under subsection (a).

31D Special Provisions regarding Concentration Group in the Fields of Banking and Insurance¹

(a) The Director General shall consult with the Governor of the Bank of Israel and the Supervisor of Banks with regard to his intention to determine that a limited group of persons is a concentration group, and shall also inform them of his intent to give an instruction pursuant to Section 31C(a) intended to prevent harm or a risk of significant harm to the public or to the business competition between the members of the group or within the sector in which they operate, if said determination or instruction relates to a person operating in a sector under the jurisdiction of the Bank of Israel under the provisions of the Bank of Israel Law; if the Governor of the Bank of Israel or the Supervisor of Banks, upon receipt of notice pursuant to this Section, believes

that giving such an instruction would endanger the stability of a banking corporation or the stability of the banking system, he shall inform the Director General of such, and the Director General shall refrain from giving said instruction.

(b) The Director General shall consult with the Commissioner of Capital Market with regard to his intention to determine that a limited group of persons is a concentration group, and shall also inform him of his intent to give an instruction pursuant to Section 31C(a) intended to prevent harm or a risk of significant harm to the public or to the business competition between the members of the group or within the sector in which they operate, if said determination or instruction relates to a person operating in a sector under the jurisdiction of the Commissioner of Capital Markets; if the Commissioner of Capital Markets, upon receipt of notice pursuant to this Section, believes that giving such an instruction would endanger the stability of an insurer or the stability of the insurance and pensions savings system, he shall inform the Director General of such, and the Director General shall refrain from giving said instruction.

(c) (1) If the Director General refrained from giving an instruction due to notice by the Governor of the Bank of Israel, the Supervisor of Banks or the Insurance Supervisor, pursuant to the provisions of this Section, he shall publicize on the Authority's internet site the fact that he received such notice, without noting its justifications, immediately upon receipt, and noting its justifications, within six months of receipt.

(2) Notwithstanding the provisions of paragraph (1), if the Director General and the Governor of the Bank of Israel, the Supervisor of Banks or the Insurance Supervisor, as may be applicable, agree that publication pursuant to said subsection may harm the stability of the bodies or the systems as provided in subsection (a) and (b), the Director General shall delay said publication, in whole or in part, until such date as agreed upon by them.

(d) In this Section:

"Bank of Israel Law" - Bank of Israel Law, 5770-2010;

"Insurer" - as defined in the Supervision of Financial Services (Insurance) law, 5741-1981;

"Commissioner of Capital Markets" - Commissioner of Capital Markets, Insurance and Savings in the Ministry of Finance;

"Supervisor of Banks" - Supervisor of Banks appointed pursuant to Section 5 of the Banking Ordinance, 1941;

"Banking corporation" - As defined in the Banking (Registration) Law, 5741-1981.

Chapter V: The Antitrust Tribunal

32. Establishment of the Tribunal and Appointment of its Members

- (a) An Antitrust Tribunal is hereby established.
- (b) The number of members of the Tribunal shall not exceed seventeen.
- (c) The President of the Tribunal and his Deputy shall be district court judges and shall be appointed by the Minister of Justice in consultation with the President of the Supreme Court.
 - (c1) Should the President of the Tribunal or his Deputy be unable to fulfill their duties for a period not exceeding one year, the Minister of Justice may, in consultation with the President of the Supreme Court, appoint a substitute, who shall be a district court judge, for that period or any part thereof.
- (d) The other members of the Tribunal shall be appointed by the Minister of Justice, upon the recommendation of the Minister, and shall include at least three representatives of consumers' organizations and three representatives of economic organizations; the number of civil servant members shall not exceed one third of the total members.
- (e) The term of office of members of the Tribunal shall be three years; a member whose term of office has expired may be re-appointed, provided that no member, other than the President of the Tribunal or his deputy, may serve for more than three consecutive terms of office.
- (f) Notice regarding the appointment of members of the Tribunal shall be published in the Official Gazette.

33. The Tribunal Panel

The Tribunal shall adjudicate in a panel of three judges. However, the judge adjudicating in a preliminary hearing may provide that proceedings shall take place before a sole adjudicator, that adjudicator being the President of the Tribunal or his Deputy; the decision to hold proceedings before a sole adjudicator shall be issued after the parties have been heard.

34. Conflict of Interest

- (a) Any person whose other occupations are liable to create a conflict of interest with his position as a member of a Tribunal panel in a particular proceeding, or who has a personal interest in a proceeding – shall not serve as a member of the panel adjudicating said proceeding, and shall so notify the President of the Tribunal.
- (b) If a panel member is unsure whether a conflict of interest is liable to develop, he shall so inform the President of the Tribunal.

35. Auxiliary Powers

Should the Tribunal issue a judgment regarding a restrictive trade practice, it may, whether as part of such judgment or in another judgment, issue any order

it deems necessary to ensure that its judgment is obeyed.

36. Interim Orders

In any matter brought before the Tribunal or before the President of the Tribunal, the Tribunal or the President of the Tribunal may issue an interim order, if they deem it appropriate to do so under the circumstances.

37. Evidence and Procedure

(a) The Tribunal and the President of the Tribunal shall not be bound by the laws of evidence, other than laws regarding immunity of witnesses and privileged evidence as provided by Chapter III of the Evidence Ordinance [New Version] 5731-1971.

(b) For the purposes of summoning witnesses and taking evidence, the President of the Tribunal shall have the powers of a district court judge in a civil matter; and, for the purposes of the execution of orders and of contempt of court, an order of the Tribunal shall have the force for an order of a district court in a civil matter.

38. Extension

The President of the Tribunal may, upon motion by the General Director or an interested party, extend any period pursuant to this Law, even if already elapsed, if he believes there are exceptional grounds to do so.

39. Right of Appeal

Any litigant injured by a judgment of the Tribunal, including a judgment made pursuant to Section 30 and an interim order, or by a temporary permit granted by the President of the Tribunal pursuant to Section 13, may appeal them to the Supreme Court within forty five days of receipt of notice thereof; any appeal against an interim order, a judgment of the Tribunal on appeal pursuant to Section 43 or a temporary permit, shall be heard by a single judge, unless the President of the Supreme Court otherwise determines.

40. Procedures

(a) The Tribunal and the President of the Tribunal shall adjudicate in accordance with such procedures as the Minister of Justice shall establish by regulations pursuant to Subsection (b); in the absence of such procedures, they shall adjudicate in the manner deemed most effective for a just and expedient resolution.

(b) The Minister of Justice may issue procedural regulations –

(1) Regarding proceedings before the Tribunal or the President of the Tribunal, including provisions regarding –

- (a) The persons and organizations entitled to argue on behalf of a litigant or to be respondents or to be heard prior to the issuance of a judgment;
 - (b) The continuity of deliberations;
 - (c) Payment of costs, legal fees and compensation to witnesses for their time;
 - (d) Court fees.
- (2) Regarding proceedings before the Supreme Court in appeals pursuant to Section 39.

Chapter VI: The Antitrust Authority and the General Director,

Functions and Authorities

41. The General Director

- (a) The Government shall appoint a General Director of Restrictive Trade Practices, upon the recommendation of the Minister; the General Director shall be a civil servant.
- (b) Notice of said appointment shall be published in the Official Gazette.

41A. The Antitrust Authority

- (a) An Antitrust Authority is hereby established (hereinafter, "the Authority").
- (b) The General Director shall be the Director of the Authority.
- (c) The budget of the Authority shall be provided by the Budget Law in a separate budgetary line, within the meaning of this term in the Foundations of the Budget Law, 5745-1985. The administrator of such budgetary line, for the purposes of said Law, shall be the Director of the Authority.
- (d) The Director of the Authority shall be authorized, in conjunction with the comptroller of the Authority, to represent the Government in transactions as provided by Sections 4 and 5 of the State Assets Law, 5711-1951, other than transactions involving real property, for purposes of the implementation of this Law, and to sign documents in the name of the State regarding such transactions.

41B. Authority Employees

- (a) Employees of the Authority shall be civil servants and shall be subject to the Civil Service (Appointments) Law, 5719-1959; however, the General Director shall be authorized, together with the comptroller of the Authority and with the consent of the Minister, to represent the State in making special contracts with employees.
- (b) The employees of the Authority shall act in accordance with the instructions of the Director of the Authority and under his supervision.

42. Maintenance of a Registry and Publications in the Official Gazette

(a) The General Director shall keep a registry of motions for restrictive arrangements and of restrictive arrangements approved, a registry of temporary permits granted, a registry of exemptions granted pursuant to Section 14, a registry of mergers of companies granted approval by the General Director or the Tribunal, a registry of monopolies and a registry of concentration groups.

(b) The registry shall be open to public review; the Tribunal may, however, instruct that a particular matter shall not be open to public review if it believes this should be done for reasons of state security, foreign relations or some other vital interest, including a person's interest in a trade secret.

(c) The General Director shall publish a notice in the Official Gazette regarding judgments by the Tribunal and judgments by the Supreme Court in appeals thereon, in the following matters:

- (1) Approval of a restrictive arrangement pursuant to Section 9;
- (2) A judgment on an appeal regarding a merger of companies pursuant to Section 22;
- (3) Instructions to a monopolist pursuant to Section 30;
- (4) Instructions to members of concentration groups pursuant to Section 31C.

43. The General Director's Determination

(a) The General Director may determine whether –

- (1) An arrangement, or an arrangement which the parties seek to reach, constitutes a restrictive arrangement;
- (2) A course of action determined or recommended by a trade association or which a trade association seeks to determine or to recommend constitutes a restrictive arrangement;
- (3) The conditions provided by Section 17 are satisfied by a merger of companies;
- (4) (repealed)
- (5) A monopoly has abused its position in the market pursuant to the provisions of Section 29A;
- (6) A limited group of persons is a concentration group pursuant to Chapter

IV1.

(b) Notice regarding the General Director's determination shall be provided to the parties to the restrictive arrangement, the parties to the merger of companies, the monopolists and the members of the concentration group, as applicable, and may be published in the Official Gazette; if the General

Director believes that the public interest necessitates publication, he shall publish the determination in the Official Gazette and in two daily newspapers, thirty days following the delivery of the notice.

(c) Any person receiving a notification pursuant to Subsection (b) and who is opposed to the determination or any part thereof, may appeal to the Tribunal within thirty days of the date of delivery of such notice. The burden of proof before the Tribunal shall rest with the appellant.

(d) The Tribunal, after having heard the parties, may affirm, revoke or amend the General Director's determination.

(e) The General Director's determination shall constitute *prima facie* proof of its subject matter in any legal procedure.

(f) The General Director's exercise of his authority pursuant to this Section, or his failure to exercise it, shall not prevent the prosecution of any person who violates the provisions of this Law.

43A. Pre-Rulings

The General Director may issue pre-rulings and may provide and publish procedures for the issuance of such rulings; the provisions of this Section shall not be construed as detracting from the General Director's discretion as to whether to issue a pre-ruling, and, for this purpose, the General Director also may take into consideration the circumstances of each case and the Authority's priorities in its actions.

44. The General Director's Application to the Tribunal

The General Director shall apply to the Tribunal to exercise its authorities pursuant to Sections 25, 31 or 31C(b), as may be applicable, if he believes that –

(1) There is a reasonable risk that, as a result of a merger of companies undertaken contrary to the provisions of this Law, competition in that sector, may be substantially harmed or the public may be harmed in a manner provided in

Section 21(a);

(2) (repealed)

(3) The injury as provided in Section 30 cannot be avoided by regulation of the monopoly but only by its breakup pursuant to Section 31;

(4) A person holds any right in another person operating in the same sector, at least one of whom is a member of a concentration group; or two persons operating in the same sector, at least one of whom is a member of a concentration group, hold any right in a third person; or a person holds any right in two or more persons operating in the same sector, at least one of whom is a member of a concentration group, and issuing an instruction regarding sale of said holdings, in part or in whole, pursuant to Section 31C(b), would prevent harm or a risk of significant harm to the public or

to the business competition between the members of the group or within the sector, or significantly increase the competition between the members of the group or in the sector or create the conditions for an increase in the competition.

44A. Examination Regarding the Level of Competition in Various Sectors

(a) The General Director may conduct examinations regarding the level of competition in various sectors, including examination of the existence of competition failures and of barriers to competition, and he may hand his reasoned conclusions and recommendations to the Minister responsible for the sector examined and the Minister of Treasury, and in a sector which is by law regulated by another body – also to the head of that body.

(b) The General Director will publish his conclusions on the Authority's web site and in any other manner he sees fit.

45. Search and Seizure

(a) The General Director, or any person authorized by him from amongst the civil servants, may, if he has reasonable grounds to presume that it is necessary in order to ensure the implementation of this Law or to prevent its violation –

(1) Enter into any business premises and search there; however, residential premises may not be entered except in accordance with a search warrant issued by a court with competent jurisdiction; the provisions of Sections 26 through 29 of the Criminal Procedure (Arrest and Search) Ordinance [New Version], 5729-1969, shall apply, *mutatis mutandis*, to a search pursuant to this paragraph;

(2) Seize any article, as defined in said Ordinance, that he has reasonable grounds to presume may serve as evidence in a trial for such an offense.

(b) Any article seized pursuant to Subsection (a) may be held until the court with which an indictment for an offense related to such article is filed, and, if no indictment has yet been filed, the Tribunal or the court to which a motion related to said article is filed, shall determine how it shall be disposed of; if no indictment is filed within six months of the date of seizure – the article shall be returned; if an uncertainty arises as to whom it should be returned to, the matter shall be determined by the Magistrates' Court having jurisdiction over the area where the article was seized, upon motion of any person claiming a right to such article, or upon motion by the General Director, or upon motion by any person authorized by him for such purpose.

(b1) A Magistrates' Court may, upon motion by the General Director, extend the period provided by subsection (b) by additional periods, and it may stipulate conditions for such extension.

(c) (1) In this Law, "document" includes computer material within the meaning of the term in the Computers Law, 5755-1995;

(2) If a person's document has been seized pursuant to subsection (a), the party holding it shall allow the document to be copied, upon such

person's request;

(3) The General Director may refuse a request pursuant to paragraph (2) for a period of three months from the date of seizure, if he believes copying the document may disrupt an investigation regarding a violation of this Law.

(4) A Magistrates' Court may, upon motion by the General Director, extend the period provided in paragraph (3) by additional periods, and it may stipulate conditions for such extension.

(c1) The person whose document has been seized may appeal the General Director's decision pursuant to subsection (c) to a Magistrates' Court.

(d) The party holding an article seized pursuant to subsection (a) shall treat such article with due care; if it does not do so and the article is destroyed or damaged, the owner shall be compensated by the State Treasury.

(e) The Magistrates' Court having jurisdiction over the area where the article was seized may, upon motion by the General Director, or upon motion by any person authorized by him for such purpose, or upon motion by any person claiming a right to the article, order that the article be handed over to the person claiming a right thereto or to any other person or that it be otherwise disposed of as the Court direct and subject to such conditions as it shall stipulate.

45A. Appointment of an Investigator

The General Director shall not authorize an investigator pursuant to Section 46(a), unless he is a civil servant and the following two conditions are met:

(1) The Israel Police does not give notification, within a month of the Authority's application to it, that it objects to such authorization for reasons of public security;

(2) He receives appropriate training, as agreed upon by the General Director and the Israel Police.

46. Investigations and Provision of Information

(a) Should a suspicion arise that a violation of this Law has been committed, or should a suspicion arise that, incidental to an investigation of a violation of this Law, a violation of Sections 242, 244, 245, 247 or 249 of the Penal Law, 5737-1977 has been committed, the General Director, or any person authorized by him for such purpose (hereinafter, "investigator"), may investigate any person connected to any such violation, or any person who may have information regarding such violation, and may demand that any such person report to him for such investigation, accompany him for an investigation and provide him with any detail, document or information relevant to such violation; Sections 2 and 3 of the Criminal Procedure (Testimony) Ordinance shall apply to such investigation.

(b) All persons shall be obliged, upon demand by the General Director or any person authorized by him for such purpose from amongst the civil

servants, to provide him with all information, documents, ledgers and other certificates which, in the opinion of the General Director, would ensure or facilitate the implementation of this Law.

(c) The provisions of Section 45 shall apply, *mutatis mutandis*, to holding and returning certificates provided pursuant to subsection (b).

(d) With respect to any offense that may be investigated pursuant to subsection

(a) and which constitutes an arrestable offense under the Criminal Procedure (Powers of Enforcement - Arrests) Law, 5756-1996 (hereinafter, "the Arrests Law"), the General Director, the director of the Authority's Investigations Department and his deputy, and any other investigators as the General Director may authorize for such purpose, shall have powers of detention, arrest and release pursuant to Sections 23(a)(2), (3), (6), 23(b), (c), 27, 67 - excluding the power to detain a person about to commit an offense - and 68 of the Arrests Law and the provisions of Chapter II of the Arrests Law shall apply *mutatis mutandis*.

(e) For these purposes, the director of the Authority's Investigations Department and his deputy shall be deemed to be an "officer in charge" under the Arrests Law, and the offices of the Authority so declared by an order of the General Director shall be deemed to be a "police station", provided that no detainee not undergoing an investigation at that time may be held at the Authority's offices after 20:00; such person must be brought to a police station.

Chapter VII (repealed)

46A. (repealed)

46B. (repealed)

46C. (repealed)

46D. (repealed).

46E. (repealed)

46F. (repealed)

46G. (repealed)

46H. (repealed)

46I. (repealed)

46J. (repealed)

Chapter VII: Penalties and Remedies

47. Penalties

(a) Any person committing one of the following:

- (1) Being party to a restrictive arrangement not duly approved, nor granted a temporary permit or exemption pursuant to Section 14;
- (2) Not complying with a condition for the approval of a restrictive arrangement or the grant of a temporary permit or an exemption, as may be applicable;
- (3) Not giving notice of a merger of companies or performing an act tantamount to a full or partial merger, contrary to the provisions of Chapter III;
- (4) Not complying with a condition stipulated for approval of a merger;
- (4a) Abusing his position in the market pursuant to the provisions of Section 29A, provided that his intention to reduce business competition or to injure the public has been proven;
- (5) Violating instructions given pursuant to Sections 30 or 31C or an order issued pursuant to Sections 25 or 31;
- (6) Violating an order issued pursuant to Sections 35 or 36, shall be liable to three years' imprisonment or a fine ten times the fine provided by Section 61(a)(4) of the Penal Law, 5737-1977 (hereinafter, "the

Penal Law") and an additional fine ten times the fine provided by Section 61(c) of the Penal Law (hereinafter, "additional fine") for each day that such offense persists, and, in the case of an offense as provided by paragraphs (1) or (3) – for each day such offense persists following provision of the General Director's notice pursuant to Section 43; if the offender is a corporation, the fine or the additional fine, as applicable, shall be doubled.

(b) Any person violating any other provision of this Law shall be liable to one year's imprisonment or a fine ten times the fine provided by Section 61(a)(3) of the Penal Law and an additional fine for each day that such offense persists; if the offender is a corporation, the fine or the additional fine, as applicable, shall be doubled.

47A. Aggravating Circumstances

Any person committing an offense pursuant to Section 47(a) under aggravating circumstances shall be liable to five years' imprisonment or a fine as provided by the final clause of Section 47(a); for the purposes of this Section, "aggravating circumstances" are circumstances in which substantial harm is liable to be caused to business competition due, *inter alia*, to one or more of the following factors:

- (1) The share and position of the accused in the sector affected by the offense;
- (2) The duration of the offense;

(3) The damage caused or expected to be caused to the public as a result of the offense;

(4) The benefits obtained by the accused.

48. Responsibility of a Corporation

If an offense under this Law is committed by a corporation, every person serving in the corporation, at the time of the commission of the offense, as an active manager, a partner - other than a limited partner - or a senior managerial employee responsible for the relevant field, shall also be indicted for such offense, unless he has proved that the offense was committed without his knowledge and that he took all reasonable measures to ensure compliance with this Law.

49. Employees and Authorized Persons Defense

It shall be a valid defense for an employee or an authorized person indicted for an offense as provided by this Law, if he can prove that he acted on behalf of his employer or client and in accordance with their instructions, and that he believed in good faith that his actions were not tantamount to a violation of this Law.

50. Civil Wrongs

(a) An act or omission contrary to the provisions of this Law has the legal standing of a tort in accordance with the Civil Wrongs Ordinance [New Version].

(b) An instruction by the General Director or a condition stipulated under this Law shall be deemed, for the purposes of Section 63 of the Civil Wrongs Ordinance [New Version], to be an enactment.

50A. Injunction

The President of the Tribunal, and, in his absence, another judge of the Jerusalem District Court, may, upon motion by the General Director -

(1) Order any person to refrain from taking an action which violates the provisions of this Law, and to give security therefor;

(2) Order any action necessary to prevent such violation.

50B. Consent Decree

(a) A court with competent jurisdiction over offenses under this Law, or the Tribunal (hereinafter in this Section, "the Court") may, upon motion by the General Director and in lieu of proceedings pursuant to Sections 26, 43, 47, 48, or 50A or under Chapter VII1, give an agreement reached between the General Director and another person (hereinafter, "consent decree") the

force of a judgment; a consent decree may be reached without admission of liability with regard to the period prior to its issuance and may include, *inter alia*, an commitment by such person to pay a sum of money to the State Treasury, and a commitment by such person to take or to refrain from taking a specific action.

(b) The General Director's motion for the issuance of a consent decree shall be reasoned, and shall specify, *inter alia*, alternatives to the consent decree which were considered by the General Director.

(c) A consent decree issued by the Court shall, for all intents and purposes, have the force of a District Court judgment.

(d) A motion for the issuance of a consent decree shall be deliberated by the Court only when all of the following conditions are met:

(1) The General Director has published, at least thirty days prior to filing said motion, a notice in two daily newspapers of his intent to file a consent decree for Court approval; said notice shall include an invitation to any person liable to be harmed by the consent decree and any consumers' organization or industry association, to bring their objections to the decree before the General Director;

(2) The General Director has attached to the motion all objections brought before him pursuant to paragraph (1) and his response to such objections.

(e) The Court may at any time amend the provisions of the consent decree in any of the following instances:

(1) All parties to the consent decree file an agreed motion to amend the decree;

(2) The General Director or the person with whom the General Director enters into the consent decree files a motion for the amendment of the decree, and the Court is persuaded that a substantial change in circumstances has occurred since the consent decree was granted;

The provisions of subsection (d) shall apply to a motion for amendment of a consent decree filed pursuant to paragraph (1) or filed by the General Director pursuant to paragraph (2).

(f) If the Court decides not to grant the consent decree, such decree, anything said in the proceedings relating thereto, and any document prepared at the request of the General Director by the person with whom the General Director wished to enter into the consent decree for the purpose of such proceedings, shall not be admissible as evidence in any other legal proceedings; however, nothing in said failure to grant a consent decree shall be construed as preventing the General Director from instigating further proceedings under this Law.

50C. Publication of Notice

Any notice which the General Director must publish under this Law in two daily newspapers, shall be published in at least one Hebrew-language daily

newspaper with a wide circulation, and at least one Arabic-language daily or weekly newspaper published in Israel with a wide circulation, and, wherever possible, such notice shall additionally be published on the Authority's internet site.

Chapter VII1: Monetary Penalties

50D. Monetary Penalties

(a) Should a person violate any provision of this Law as enumerate below, the General Director may impose a monetary penalty upon him pursuant to the provisions of this Chapter, in an amount of up to one million NIS; if the violator is a corporation which had, in the year proceeding the fiscal year in which the offense was committed, a sales turnover exceeding ten million NIS, the Director General may impose a monetary penalty in an amount of up to eight percent of said sales turnover, provided that the penalty does not exceed 24 million NIS:

- (1) Being party to a restrictive arrangement, in whole or in part, without approval, temporary permit, exemption or block exemption, or violating any of the conditions stipulated for such approval, temporary permit or exemption, in violation of the provisions of Section 4;
- (2) Performing an act tantamount to a merger, in whole or in part, not in accordance with the provisions of Chapter III, including violating a condition stipulated by the Tribunal or the General Director pursuant to Section 21(a) or 22(c);
- (3) Performing an act constituting unreasonable refusal to supply or purchase an asset or service for which a monopoly exists, in violation of the provisions of Section 29, or constituting abuse of position, in violation of the provisions of Section 29A, provided that the act is of the type of acts stipulated by the General Director in this regard, in the Official Gazette;
- (4) Violating an instruction given by the General Director with regard to a monopoly, pursuant to Section 30;
- (5) Violating an instruction given by the General Director with regard to a concentration group, pursuant to Section 31C;
- (6) Violating any provision of a consent decree issued pursuant to Section 50B.

(b) Should a person violate a demand to provide information, documents, ledgers and other certificates issued pursuant to Section 46(b), the General Director may impose a monetary penalty pursuant to the provisions of this Chapter, in an amount of up to 300,000 NIS; if the violator is a corporation which had, in the year proceeding the fiscal year in which the offense was committed, a sales turnover exceeding ten million NIS, the Director General may impose a monetary penalty in an amount up

to three percent of said sales turnover, provided that the penalty does not exceed eight million NIS.

(c) In this Section, "sales turnover" is used within the meaning of the term under Section 17, *mutatis mutandis*.

50E. Considerations when Determining Amount of Monetary Penalty

When determining the amount of the monetary penalty to be imposed pursuant to

Section 50D, the General Director shall weigh, *inter alia*, the following circumstances and considerations, as may be applicable:

- (1) The duration of the offense;
- (2) The harm that the offense was liable to cause to competition or to the public;
- (3) The offender's share in the offense, and his level of influence over its commission;
- (4) The existence or absence of prior offenses and the date of their commission;
- (5) Actions taken by offender to prevent repetition of the offense or to terminate the offense, including reporting the offense on his own initiative, or actions taken to repair the effects of the offense;
- (6) Regarding an offender who is an individual - his financial capacity, including income derived or accrued from the corporation related to the offense, and personal circumstances due to which the offense was committed or severe personal circumstances which justify not applying the full extent of the law against the offender;
- (7) Regarding an offender who is a corporation - the existence of a significant risk that as a result of imposing the penalty, the offender will not be able to pay its debts and its activities will be terminated.

50F. Notice of Intent to Impose Penalty

(a) If the Director General has reasonable grounds to presume that a person has violated any provision of this Law pursuant to Section 50D (in this Chapter - "the offender"), and he intends to impose a penalty pursuant to that

Section, he shall provide the offender with notice of the intent to impose a monetary penalty upon him (in this Chapter - "notice of intent to impose penalty").

(b) In the notice of intent to impose penalty, the Director General shall enumerate, *inter alia*, the following:

- (1) The act or omission (in this Chapter - "the act") constituting the offense;

(2) The amount of the monetary penalty that he intends to impose upon the offender pursuant to Section 50D and the period set for payment thereof;

(3) The offender's right to make his arguments before the General Director pursuant to the provisions of Section 50G.

50G. Right to Be Heard

(a) An offender to whom a notice of intent to impose penalty has been provided pursuant to the provisions of Section 50E, may make his arguments, in writing, before the General Director, regarding the intent to impose a penalty upon him and regarding the amount of said penalty, within 60 days of the delivery of said notice; an offender who has made his arguments in writing may also make his arguments orally before the General Director.

(b) The General Director may extend the period set forth in subsection (a) by a period not exceeding 90 days, for reasons to be noted.

50H. General Director's Decision and Demand for Payment

(a) (1) The General Director shall decide, after weighing the arguments made pursuant to Section 50G, and after consultation with the Committee, whether to impose a monetary penalty on the offender and the sum of the monetary penalty to be imposed;

(2) The General Director's decision shall be issued within 30 days of the end of the period as provided in Section 50G(a) or (b), whichever is the later; however, if the General Director finds that additional examinations are required in order to reach a decision, he shall issue said decision within 30 days of the conclusion of the necessary examinations.

(b) Should the General Director decide, pursuant to the provisions of subsection (a) -

(1) to impose a monetary penalty on the offender - he shall issue a demand, in writing, for payment of the monetary penalty (in this Chapter - "demand for payment"); in the demand for payment, the General Director shall note, *inter alia*, the updated amount of the monetary penalty imposed and the period set for payment thereof;

(2) not to impose a monetary penalty on the offender - he shall provide notice of such, in writing.

(c) The General Director shall detail the reasons for his decision in the demand for payment or notice, pursuant to subsection (b), including with regard to the amount of the monetary penalty.

(d) If the offender does not make his arguments pursuant to the provisions of Section 50G, within 60 days of the day on which the notice of the intent to impose penalty was provided or within a longer period as

determined pursuant to Section 50G(b), if so determined, the notice of intent to impose penalty shall be regarded, at the conclusion of said period, as constituting a demand for payment issued to the offender on said date.

50I. Updated Amount of Monetary Penalty

(a) The monetary penalty shall be according to its updated amount on the date on which the demand for payment is issued, and for an offender who did not make his arguments before the General Director pursuant to Section 50G, on the date on which the notice of intent to impose penalty is provided; if an appeal has been filed pursuant to Sections 50M or 39 and the payment of the monetary penalty has been delayed, the monetary penalty shall be according to its updated amount on the date of the decision on the appeal.

(b) The amounts for the monetary penalty as provided in Section 50D shall be updated on the 1st of January of each year (in this subsection - "the update day"), according to the rate of the increase in the index known as of the update day compared to the index as of December 2011; said amount shall be rounded to the nearest multiple of 10 NIS; for these purposes, "the index" is the Consumer Price Index published by the Central Bureau of Statistics.

(c) The Director General shall publish notice in the Official Gazette of the updated amounts of the monetary penalties pursuant to subsection (b).

50J. Date for Payment of Monetary Penalty

(a) The monetary penalty shall be paid within 30 days of the day on which the demand for payment is issued pursuant to Section 50H.

(b) Notwithstanding the provisions of subsection (a), the Director General may delay the payment of the monetary penalty by 30 days or decide to spread out the payment of the monetary penalty, provided that the number of installments does not exceed ten monthly installments, upon the request of the offender and due to special circumstances existing in his case.

50K. Interest and Linkage Differentials

If the monetary penalty is not paid on time, interest and linkage differentials, as defined in the Interest and Linkage Judgment Law, shall be added to it, during the delinquency period and until payment.

50L. Collection

The monetary penalty shall be paid to the State Treasury, and the Tax Ordinance(Collection) shall apply to its collection.

50M. Appeal

(a) The offender may appeal the demand for payment to the Tribunal within 30 days from the day on which said demand is issued to the offender, and the provisions of Section 43(c) shall apply to said appeal, *mutatis mutandis*.

(b) Filing an appeal with the Tribunal pursuant to subsection (a) and filing an appeal with the Supreme Court on a Tribunal judgment pursuant to Section 39 shall not delay the payment of the monetary penalty, unless the Director General so agreed or the Tribunal or another court so ordered.

(c) Should the Tribunal decide to accept an appeal filed pursuant to subsection (a) or should the Supreme Court decide to accept an appeal filed pursuant to Section 39 after the monetary penalty has been paid pursuant to the provisions of this Chapter, the monetary penalty shall be refunded with the addition of interest and linkage differentials, from the date of its payment until the date of its refund.

50N. Publication

(a) If the Director General imposes a monetary penalty pursuant to the provisions of this Chapter, he shall publicize said fact while noting the following details, in a manner that will ensure transparency regarding the exercise of his discretion in reaching the decision to impose a monetary penalty:

- (1) The fact that the monetary penalty has been imposed;
- (2) The nature and circumstances of the offense for which the monetary penalty has been imposed;
- (3) The amount of the monetary penalty imposed and the primary reasons for said amount;
- (4) Particulars regarding the offender relevant to the matter at hand;
- (5) The name of the offender - if it is a corporation.

(b) If an appeal is filed with the Tribunal pursuant to Section 50M or with the Supreme Court pursuant to Section 39, the Director General shall publicize the fact that the appeal has been filed and its outcome.

(c) Notwithstanding the provisions of subsection (a)(5), the Director General may publicize the name of an offender who is an individual, if he feels that this is necessary in order to alert the public.

(d) Notwithstanding the provisions of this Section, the Director General shall not publicize information which a public authority is prohibited from providing under Section 9(a) of the Freedom of Information Act, 5758-1998, and is permitted not to publicize information under this Section which is classified as information which a public authority is not obliged to provide under Section 9(b) of said Law.

50O. Preservation of Criminal Liability

(a) Payment of a monetary penalty shall not derogate from a person's criminal liability for violation of any of the provisions of this Law enumerated in Section 50D and constituting a criminal offense.

(b) Notwithstanding the provisions of subsection (a), if the offender has paid a monetary penalty for an offense pursuant to said subsection, no indictment shall be filed against him for the same act, unless new facts or evidence are discovered that justify so doing.

(c) Should an indictment be filed against a person for an offense which constitutes a criminal offense as provided in subsection (a), he shall not be obliged to pay a monetary penalty for the same offense, and if the offender has paid a monetary penalty and an indictment has been filed against him subject to the circumstances provided in subsection (b), the sum of the monetary penalty paid shall be refunded to him, with the addition of interest and linkage differentials, from the date of its payment until the date of its refund.

50P. Prohibition of Indemnification and Insurance

(a) Notwithstanding the provisions of any other law, and without derogation from the provisions of Sections 262 through 264 to the Companies Law -

(1) A proceeding pursuant to this Chapter (in this Section - "proceeding") shall not be insured, directly or indirectly;

(2) Any insurance contract insuring the risk of a proceeding - is void;

(3) A corporation shall not indemnify and shall not directly or indirectly pay a monetary penalty imposed in a proceeding on its controlling shareholder, officer or employee;

(4) The controlling shareholder of a corporation shall not indemnify and shall not directly or indirectly pay a monetary penalty imposed in a proceeding on the corporation or on officers or employees of the corporation;

(5) Any instruction or commitment to indemnify against a proceeding - is void.

(b) (1) Notwithstanding the provisions of subsection (a), a corporation or its controlling shareholder may indemnify or insure a person for expenses incurred in relation to a proceeding conducted with regard to that person, including reasonable litigation expenses, including attorney's fees, and including by means of indemnification *ex ante*.

(2) A commitment to indemnify or insure an officer of a corporation pursuant to paragraph (1) shall have no validity, unless the corporation's charter includes a provision allowing such.

Chapter VIII: Miscellaneous Provisions

51. Implementation and Regulations

The Minister is responsible for the implementation of this Law and he may, with the ratification of the Knesset's Economic Affairs Committee, make regulations on any matter relating to its implementation.

52. Exemption

The Minister may, following consultation with the Knesset's Economic Affairs Committee, exempt a restrictive trade practice from all or some of the provisions of this Law, if he believes that such action is necessary for reasons of foreign policy or national security.

53. Revocation

The Restrictive Trade Practices Law, 5719-1959 (hereinafter - "the prior Law") is hereby revoked.

54. Entry into Force

This Law shall enter into force three months following the date of its publication.

55. Transitional Provisions

Yitzhak Shamir Prime Minister	Ariel Sharon Minister of Industry and Trade	Haim Herzog State President
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(a) A restrictive arrangement approved in accordance with the prior Law or granted a temporary permit in accordance with the prior Law shall be deemed to have received such in accordance with the provisions of this Law.

(b) If the Antitrust Council has commenced deliberations in accordance with the prior Law prior to entry into force of this Law, it shall complete its deliberations in accordance with the prior Law even after the entry into force of this Law.

56. Publication

This Law shall be published in the Official Gazette within thirty days of being passed.