CLIENT UPDATE
Abuse of Monopolistic Position by the Central Bottling Co. Ltd.

The Director General of the Israel Competition Authority (ICA) imposed an $11.3 million (39 million NIS) administrative fine on the Central Bottling Co. Ltd. (CBC), for its violation of various clauses of the Israeli Economic Competition Law in connection with abuse of its monopoly power in the soft drinks market. Violations include: abuse of monopolistic position; unreasonable refusal supply; violation of previous instructions given by the ICA; violation of a consent decree; and violation of merger conditions.

The CBC is the strongest competitor in the Israeli soft drinks industry. Its main brand, Coca Cola, enjoys undisputed and substantial market power. Many consumers strongly and clearly prefer Coca Cola to other soft drink brands, and therefore the CBC's sodas are a "must have" for many retailers. The CBC's soft drink repertoire also includes juice, soda and mineral water. However, these brands are weaker and more exposed to competition from other market players.

In February 2014, the ICA initiated a criminal investigation against the CBC. The investigation focused on retail points of sale that belong to the "refrigerated market", *inter alia*, snack bars and fast food restaurants selling refrigerated soft beverages for immediate consumption[1]. In April 2016 it was decided that the investigation's results were inappropriate for indictment, and the ICA shifted the investigation to administrative enforcement.

The Director General of the ICA found that the CBC **abused its monopolistic position** and used its market power, specifically the Coca Cola brand, to promote sales of brands exposed to fiercer competition. It was also found that the CBC abused its power towards the retail points of sale in the refrigerated market in order to displace its competitors' products.

The CBC used various practices to this end. For example, its agreements with the points of sale included a condition that the CBC may terminate the agreement if the sale point significantly reduces its sales; it barred its customers from putting competing products into its refrigerators, and acted to remove competitors' refrigerators from points of sale; it specifically targeted Nestea drink dispensers and encouraged employees to remove such devices from points of sale.

1. The beverages market is customarily divided into the "unrefrigerated market" and the "refrigerated market" - the unrefrigerated market includes the points of sale in which the drinks are sold unrefrigerated, designated for future consumption. The "refrigerated market" includes the points of sale in which the drinks are sold refrigerated, designated for immediate consumption.

Tel-Aviv Electra Tower, Yigal Alon St 98
Tel: +972-3-6078607 | Fax: +972-3-6078666
Jerusalem Malcha Technology Park, Bldg. 1
Tel: +972-2-5607607 | Fax: +972-2-5639948
WWW.AGMON-LAW.CO.IL

It was further held that the CBC abused its position adopting a policy of terminating supply agreements with customers who sold Coca Cola products from parallel import. The CBC's abuse was manifested in both the threat of the policy and the actual termination of contracts.
It was also held that by executing exclusivity agreements with certain customers and tying discounts on Coca Cola to purchases of Neviot bottled water, the CBC violated the Economic Competition Law; special instructions given to the CBC in 1998; conditions to the 2004 CBC- Neviot merger; and a consent decree from 2005.

It was held that given the extent and severity of the violations, the total administrative fine will be approximately ILS 39 million. This sum is substantially lower than the sum quoted in the original Director General’s announcement of the fine in April 2019. The fine was reduced due to the ICA's partial acceptance of the CBC’s arguments concerning the effect of the CBC actions on competition and their arguments regarding the extended duration of the proceedings.

The Director General’s resolution is a warning for all monopolies - it lists certain behaviors which the Director General considers abuse of monopolist power, including: contractual mechanisms that effectively create exclusivity or preserve the monopoly’s market power, behaviors that marginalize competitors, and abusive monopolistic tying.

However, we stress that in this case the enforcement proceedings mainly focused on violation of specific conditions imposed on the CBC. The violation of such conditions is an independent cause for imposing fines that is inapplicable to most Israeli monopoles. A substantial part of the fine is due to the CBC’s conduct or former violations.

The Director General’s resolution and the abundance of evidence produced during the investigation testify of the need to have an effective compliance program. The efficacy of compliance programs is measured both in the program's content and in the company’s operations, but also, perhaps mostly, in the conduct of employees and the organizational culture. Without effective compliance programs, employee conduct in violation to the Economic Competition Law renders the company and its officers liable.

Note that this is not the end of the road - the CBC has a right to appeal and will most likely exercise such right and appeal to the Competition Court on the sum and imposition of the fine. The ICA announced its position - but we will only know what the law is after the Court decides in the matter.

The above review is a summary, provided for informative purposes only and does not constitute legal advice. For more details please contact Adv. Mattan Meridor, partner and head of the Antitrust and Competition Department

meridor@agmon-law.co.il 972-3-6078607