

PUBLICATION OF A DRAFT STATEMENT OF POSITION FOR PUBLIC HEARING ON THE ASSESSMENT OF SIGNIFICANT MARKET POWER

On January 10, 2019, the Israeli Knesset amended the Economic Competition Law (formerly the Restrictive Trade Practices Law), and included in the definition of a monopolist anyone holding significant market power. Following this amendment, the Israeli Competition Authority (ICA) published draft guidelines on the assessment of significant market power.

The draft guidelines explain the ICA's methodology for assessing whether a company has significant market power. According to the ICA's position, significant market power is the power to charge a price that is significantly higher than the price that would have been charged in a competitive market, or to provide other terms of service that are significantly worse than what would have been provided in a competitive market.

The ICA provides a number of ancillary tests for assessing the existence of significant market power. For example, the ICA suggests: examining the market share of the relevant party; the structure of the market and the market share of its competitors; the level of distinction of the relevant party's products; and the existence of switching barriers. The ICA also emphasizes examination of barriers to entry for new competitors into the market and barriers to expansion for existing competitors.

The ICA adds that the actual conduct of the relevant party may also indicate that it holds significant market power. Examples for conduct evidencing the existence of significant market power include: demanding exclusivity from suppliers or customers; imposing tying arrangements; and practicing price discrimination between customers.

The also ICA announced that it will prioritize the enforcement of the restrictions on monopolies on entities that hold significant market power, rather than entities with monopolistic status solely by virtue of their market share.

The ICA has invited the public to present its comments on the draft statement of position by March 11, 2019. We shall gladly provide additional details and clarifications with respect to the ICA's guidelines or any question that arises with respect thereto.

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
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