

August 3, 2014

Press Release

Unilateral Public Disclosures May Facilitate Cartel – Like Pricing

The Israeli Antitrust Authority has published a draft of a policy paper warning from public disclosures by the business sector that harm competition

The IAA has published Sunday a draft of a policy paper aimed to warn and set standards regarding unilateral public disclosures and publications by the business sector that may harm competition. The draft will be available for the public's review and comments until September 16, 2014.

Information delivered through public disclosure might be used as an instrument for the conservation or creation of a cartel, covert or overt, and increase its stability. When public disclosure by one competitor might affect the business conduct of another competitor, and the other competitor indeed changes his conduct according to the public disclosure, then it might amount to a forbidden restrictive arrangement. In other instances, a public disclosure may at least constitute an attempt to reach a forbidden restrictive arrangement. This may happen when the disclosed information is clear and precise enough so that at least one competitor could act upon the disclosed information in a manner that would create a forbidden restrictive arrangement.

Studies in the field have shown that even unilateral disclosure made public through a "trial balloon" may therefore help rivals to reduce uncertainty about prospective reactions and thereby to achieve coordination that harms consumers. Experience around the world shows that public disclosures that harm competition can occur in various forums. For example, in the United States, enforcement measures were taken towards a CEO that urged his competitors to abandon the fierce competition between them, while on an open conference call with analysts.

The IAA concludes in the paper that unilateral public disclosures and publications might have a harmful effects similar to those of communications and agreements made in the dark, and that the mere fact the executives and companies are communicating publicly does not render them immune from the IAA's enforcement.

The IAA's policy paper includes a list of issues that may be relevant to the examination of the severity of the disclosure:

- **The type of the disclosed information:** disclosures regarding competitively sensitive information that includes accurate and detailed information, as well as information about prices , pricing strategies, production cost and profitability, future strategies, and detailed information about customers or suppliers (existing or potential).

- **The structure of the market and its characteristics:** the fewer competitors in the market and the more it is concentrated, the greater is the anti – competitive potential of the disclosure.
- **The period to which the information relates:** information regarding future plans, or information about the past that in light of market characteristics can be used to derive conclusions about future behavior is more harmful.
- **Addressing various scenarios:** when communication with competitors includes clear terms for collusion or "event and reaction" scenarios.
- **Addressing specific competitors:** a disclosure aimed directly at competitors, particularly a specific competitor, is more harmful.
- **Reciprocal disclosures:** the disclosures are part of a series of other disclosures linked to each other.