



Legal Update

July 2018

Antitrust and Competition Department

New Amendment to the Israeli Restrictive Trade Practices Law regarding Parallel Importing

Dear Clients and Colleagues,

The Israeli Parliament (the Knesset) recently approved (on July 18, 2018), an amendment to the Israeli Restrictive Trade Practices Law, 5748-1988 (the "**Law**") regarding parallel importing (the Restrictive Trade Practices Law (Amendment 20 – Temporary Order), 5778-2018) (the "**Amendment**").

According to the Amendment's explanatory notes, the purpose of the Amendment is to facilitate the removal of barriers for parallel importing to the Israeli market and to prevent harm to parallel importing to Israel by official importers.

In summary, the Amendment authorizes the General Director of the Antitrust Authority (the "**General Director**"), in certain cases, to instruct an official importer regarding steps he must take in order to dispel the concern for substantial harm to competition, as described below. The Amendment provides that a breach of the General Director's orders may result in criminal and/or administrative sanctions.

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The Background of the Amendment

Most imports to Israel reach the country through the following two main channels:

- Importing by official importers, who are connected by an agreement to the original manufacturers abroad; often the official importer receives exclusivity for the distribution of the manufacturer's products in Israel.
- Importation by a parallel importer, who does not purchase the products directly from the original manufacturer, but rather from other sources, such as – surplus inventory of distributors in other countries, wholesalers, etc.

In the background of the Amendment are the recommendations from 2014 of the Israeli Committee for the Increase of Competition and removing Barriers to Imports (the "**Committee**"). The Committee concluded that official importers may abuse their market power by taking steps to prevent or make it more difficult for parallel importers to access various distribution channels. The Israeli Government adopted the Committee's recommendations in a decision in December 2014 (Government Decision No. 2318).

Against the backdrop of the Committee's recommendations and the Government Decision, the Israel Antitrust Authority published in 2017 a memorandum of law in which it recommended to give the General Director the authority to issue instructions to an official importer in certain cases. With minor changes, this memorandum was adopted as the above mentioned Amendment.

Main Elements of the Amendment – Giving the General Director tools to Supervise Official Importers

The following are the main elements that the Amendment introduces:

- The Amendment defines a "direct importer" (official importer) – as one of:
 1. A person who imports goods to Israel or who distributes goods which were imported to Israel, in accordance with an arrangement with the manufacturer of the goods outside of Israel;
 2. A person who manufactures goods in Israel under an

arrangement with a person outside of Israel.

At the same time, the Law defines parallel importing as the importing to Israel of goods by a person who is not a direct importer or who does not carry out personal importing.¹

- The Amendment to the Law establishes that the General Director may issue instructions to a direct importer if she believes that as a result of the direct importer's position or behavior, there is concern for substantial harm to parallel or personal importing, and as a result, competition in the relevant field may be harmed in a substantial manner.
- In this context, the Amendment to the Law establishes that the General Director will order the direct importer to take concrete steps in order to dispel the concern for harm to competition (similar to General Director's authority to issue orders to a monopoly holder or to the members of a concentration group).
- Accordingly, the Amendment to the Law allows the General Director to act specifically against a particular direct importer, without imposing a prohibition relating to the conduct of all of the direct importers in the market. The Amendment to the Law therefore, does not interfere in a sweeping and general manner in all relations between direct importers and original manufacturers. For example, the Amendment does not categorically prohibit exclusivity arrangements between the direct importer and the original manufacturer, so long that such relationship does not violate the requirements established under the Law.
- The Amendment also establishes that direct importers who breach the General Director's orders may be exposed to criminal and/or administrative sanctions (such as administrative fines).
- Finally, it is noted that the Amendment was enacted as a temporary order that is limited to a period of three years, which can be extended by an additional three year period. It is noted

¹ Personal importing is defined as importing goods by an individual, which is not meant for the purposes, of supply, manufacturing, or provision of services and which is not done in the framework of commercial activity, but only if the goods are imported in a reasonable quantity for personal or family use of the individual.

that the Amendment was enacted as a temporary order so that during this period an evaluation can be made on if a need still exists for the above mentioned Amendment and to evaluate its consequences and advantages.

- The main consequence of the General-Director's new authority to issue concrete instructions is expected to be noticed under the following circumstances:

a) Where a common practice among direct importers and original manufacturers, which does not breach the traditional antitrust laws (the practice is not a restraint on trade, or a monopoly's abuse of power), but raises the concern for substantial harm to parallel importing (or personal importing), and as a result, competition in the relevant field may be harmed in a substantial manner.

b) The direct importer does not hold a monopoly,² but his position in the market (such as, its significant market share, even if less than 50%), raises the concern that parallel importing (or personal importing) will be substantially harmed, and as a result, competition in the relevant field may be harmed in a substantial manner.

We would be happy to answer any questions that you might have.

Sincerely,

Antitrust and Competition Department

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² Monopoly is defined under the Law as holding more than 50 per cent of the total supply or purchase in a certain market in Israel, which may be either a product or a service market.