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First Decision by the Competition Commissioner Regarding Instructions for Direct Importer

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The Competition Commissioner recently instructed S. Schestowitz Ltd., a direct importer of Colgate-Palmolive products for many years, to cease acting according to a directive that required it (along with other direct importers of Colgate-Palmolive products around the world) to provide information to Colgate-Palmolive regarding the presence of toothpastes under the Colgate brand that were imported into Israel by parallel importation.

According to the Commissioner's decision, the Israeli Competition Authority (ICA) found that the purpose of Colgate-Palmolive's directive, according to which Schestowitz acted in its reports, was to reduce to the furthest extent possible, and even prevent, parallel imports of Colgate-Palmolive products, including toothpaste products under the Colgate brand. In light of this, the Competition Commissioner determined that Schestowitz's reports to Colgate-Palmolive raise the suspicion that parallel importation of these toothpastes to Israel may be significantly harmed.

The ICA's examination of the data and characteristics of the toothpaste sector revealed that the inter-brand competition in this sector could not restrain Schestowitz's ability to exert market power. Therefore, parallel import is particularly important for competition in this sector, and it is clear that harming it could significantly harm competition.

In these circumstances, and in order to prevent such possible harm, the Competition Commissioner deemed it fit to give her aforementioned decision.

This decision was made in accordance with the provisions of Article 31F of the Economic Competition Law, which confers upon the Competition Commissioner the authority to instruct a direct importer, regarding concrete steps that it must take, when the Commissioner considers that there is a risk of significant harm to parallel imports or personal import, which will lead to significant harm to competition in the relevant sector. It should be emphasized that the exercise of the authority under this article is not contingent on proving the existence of a restrictive arrangement or of a monopolistic status.

For the purpose of Article 31F of the Economic Competition Law, the term "Direct Importer" means a person for whom one of the following holds true: (1) he imports goods to Israel or distributes goods imported into Israel, in accordance with its arrangement with the producer of the goods in a foreign country; (2) he manufactures goods in Israel by virtue of an arrangement with a person in a foreign country.

Article 31F was added to the Economic Competition Law in an Amendment, which came into force on July 26, 2018, following the conclusions of the Committee for Increasing Competition and Removal of Barriers to Imports in Israel (the Lang Committee).

The Committee raised concerns about actions taken by international manufacturers and direct importers, whose purpose is to harm parallel imports. Therefore, in its concluding report, the Committee recommended on granting legal tools in order to deal with practices taken by direct importers, which could lead to the exclusion of parallel importers from the market, and consequently harm competition.

The Commissioner's decision in the Schestowitz case constitutes the first implementation of the provisions of Section 31F of the Economic Competition Law. It should be noted that a breach of the Commissioner's instructions to a direct importer may result in criminal and/or administrative sanctions.

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