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## CLIENT UPDATE



### The Competition Authority seeks to impose administrative fines in its first Excessive Pricing case

November 23, 2021

The Acting Commissioner of the Israeli Competition Authority (ICA) informed MBI, a Pharmaceutical Trading House, of its intention, subject to a hearing, to impose financial sanctions in the amount of NIS 8 million (approximately 2.5 million USD), and additional sanctions in the amount of approximately NIS 600,000 on two officers in the company, for abuse of dominance through excessive pricing of the drug "Leadiant".

According to the ICA, MBI, which has a dominant position in the relevant market, raised its price within one year from 8,000 NIS to 50,000 NIS per pack - over 6 times as high as the original price. The ICA's announcement further indicates that the original price refers to the pricing of a drug called "Xenbilox", which was practically identical to Leadiant, and which MBI previously distributed in Israel. On 2017, Xenbilox was no longer being produced, and its manufacturer began supplying MBI with Leadiant instead. MBI priced Leadiant at 50,000 NIS, triggering a complaint from the Ministry of Health, which led to the opening of an investigation by the ICA. Against this background, quite a few questions still arise that the ICA's announcement does not address. For example, did the price increase come from the foreign manufacturer or the local distributor? How does the fact that ultimately a maximum regulatory price was set for the drug, affect the liability of the local distributor, assuming it did not exceed such maximum price? These questions will probably be dealt with during the hearing and will be reflected in the final decision.

While there is extensive litigation in class action lawsuits in Israel regarding excessive pricing claims – some of which are currently pending before the Israeli Supreme Court, which has yet to officially confirm a cause of action of excessive pricing exists, nor to set its boundaries and conditions – this is the first excessive pricing case initiated by the ICA. As such it could educate the market which cases the ICA intends to prioritize and how it will implement its own guidelines regarding excessive pricing.

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