

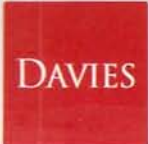
2008 ANTITRUST YEAR IN REVIEW

ABA SECTION OF INTERNATIONAL LAW
International Antitrust Law Committee



ARGENTINA
AUSTRALIA
AUSTRIA
BELGIUM
BRAZIL
CANADA
CHINA
DENMARK
EUROPEAN UNION
FRANCE
GERMANY
HUNGARY
INDONESIA
IRELAND
ISRAEL
ITALY
JAPAN
KOREA
MEXICO
NEPAL
NETHERLANDS
NEW ZEALAND
NORWAY
PERU
PORTUGAL
SERBIA
SOUTHEAST ASIA
SPAIN
SWEDEN
SWITZERLAND
TAIWAN
UKRAINE
UNITED KINGDOM
UNITED STATES

Edited by

 DAVIES
WARD
PHILLIPS &
VINEBERG LLP

2008 YEAR IN REVIEW AUTHORS

ARGENTINA	María José Rodríguez Macías Alfredo Rovira	Brons & Salas Abogados
AUSTRALIA	Paul Schoff Jackie Mortensen	Minter Ellison
AUSTRIA	Dr. Axel Reidlinger Dr. Heinrich Kühnert	Freshfields Bruckhaus Deringer LLP
BELGIUM	Thibault Balthazar Bruno Lebrun	Latham & Watkins LLP
BRAZIL	Mário Nogueira Ricardo Inglez de Souza Bruno Drago	Demarest e Almeida Advogados
CANADA	Mark Katz Jim Dinning	Davies Ward Phillips & Vineberg LLP
CHINA	Peter Wang Yizhe Zhang	Jones Day
DENMARK	Christian Karhula Lauridsen Thomas Herping Nielsen Christopher Kjoelby Jensen	Plesner
EUROPEAN UNION	Gunnar Wolf Michael Clancy	Covington & Burling LLP
FRANCE	Maria Trabucchi Jérôme Fabre Clémentine Baldon Caroline Genevois	Weil, Gotshal & Manges LLP
GERMANY	Dr. Andreas Weitbrecht Susanne Zuehlke	Latham & Watkins LLP
HUNGARY	Kornelia Nagy-Koppany	K&P Attorneys Nagy-Koppany Varga and Partners
INDONESIA	Widyawan Ponco Prawoko	Widyawan & Partners
IRELAND	Philip Andrews Gerald FitzGerald Úna Butler	McCann Fitzgerald
ISRAEL	Eytan Epstein Tamar Dolev-Green Michelle Morrison	Epstein, Chomsky, Osnat & Co.
ITALY	Alberto Pera Michele Carpagnano	Gianni, Origoni, Grippo & Partners
JAPAN	Shigeyoshi Ezaki	Anderson Mōri & Tomotsune

KOREA	Sai Ree Yun Youngjin Jung Sung Moo Jung Suejung Alexa Oh	Yulchon
MEXICO	Lucía Ojeda Cárdenas	SAI Abogados
NEPAL	Devendra Pradhan	Pradhan & Associates
NETHERLANDS	Winfred Knibbeler Nima Lorjé	Freshfields Bruckhaus Deringer LLP
NEW ZEALAND	Andrew Peterson Troy Pilkington	Russell McVeagh
NORWAY	Trygve Norum Gaute Sletten	Advokatfirmaet Haavind Vislie AS
PERU	Oscar L. Arrús	Estudio Rubio, Leguía, Normand y Asociados
PORTUGAL	António Vitorino Stéphanie Sá Silva	Cuatrecasas, Gonçalves Pereira & Associados, RL
SERBIA	Olga Cvetkovic	DFDL Mekong
SOUTHEAST ASIA – CAMBODIA LAOS VIETNAM	David Fruitman	
SPAIN	Susana Cabrera Konstantin Jörgens	Garrigues
SWEDEN	Per Karlsson Emma Dufva	Advokatfirman Vinge KB
SWITZERLAND	Dr. Patrick Sommer Stefan Brunnschweiler	CMS von Erlach Henrici Ltd
TAIWAN	John Lin	Jones Day
UKRAINE	Denis Lysenko Mariya Nizhnik	Vasil Ksil & Partners
UNITED KINGDOM	Stephen Kon Dr. Gordon Christian Anna Rampling	SJ Berwin LLP
UNITED STATES	Fiona Schaeffer Christopher Roberts Jonathan Sickler Claire Webb Robin Cook	Weil, Gotshal & Manges LLP

NEPAL

DEVENDRA PRADHAN
PRADHAN & ASSOCIATES

A. Introduction

On January 14, 2007, Nepal's long-awaited competition law, the Competition Promotion and Market Protection Act 2007 (the "Act"), came into force.¹ The Act is the first comprehensive law in Nepal that deals exclusively with anticompetitive activities, including multinational corporations doing business in Nepal. The Act governs a broad range of conduct, including mergers and acquisitions, anticompetitive agreements, abuse of a dominant position and other anticompetitive activities such as exclusive dealing, bid rigging, collusive bidding, market restriction and tied selling. The Act provides for the formation of a statutory competition authority, the Competition Promotion and Market Protection Board (the "Board"), to promote and protect competition in the country.²

B. Mergers

The Act restricts mergers or acquisitions that are designed solely to create a monopoly in the relevant market or to encourage restrictive practices in the relevant market.³ A merger or acquisition that results in a greater than 40% share in the relevant market for the production or distribution of a product or service in the country is presumed to create a monopoly in the relevant market, and thus to encourage restrictive practices in the market.⁴ Merger reviews are undertaken by the Office of the Company Registrar under the Companies Act and not by the Board.

¹ Competition Promotion and Market Protection Act (2007) No. 35, Nepali Official Gazette (January 14, 2007). A Nepali version of the Act is available at <http://www.parliament.gov.np/Legislation.htm>.

² *Id.* §12.

³ *Id.* §5. The Act does not specifically define the term "market"; however, a relevant market will generally include a product market and a geographic market.

⁴ *Id.*

C. Cartels

The Act prohibits forms of anticompetitive agreements - including market sharing agreements, pricing agreements, output restriction agreements, bid rigging and collusive bidding - which aim to restrict or limit competition for the production, supply and distribution of goods or services in a market.⁵ All anticompetitive agreements contravening the Act are considered void.⁶

D. Abuse of a Dominant Position

The Act prohibits entities that hold a dominant position in a market from abusing that position by restricting competition in respect of the production or distribution of goods or services.⁷ An entity is deemed to be in a "dominant position" if, acting solely or together with similar entities, it accounts for at least 40% of annual production or distribution in a relevant product market in Nepal or is otherwise in a position to act unilaterally in the market.⁸ The Board publishes a list of entities holding a dominant position.

E. Enforcement

The Act empowers both Market Protection Officers and the Board to investigate anticompetitive activities. Charges under the Act are brought by the State as plaintiff. Entities found to have engaged in anticompetitive activities are subject to civil penalties. A person acting in-chief on behalf of an entity (e.g., a corporation) is deemed to be responsible for any such penalties. Private claimants are also entitled to seek damages from a person or entity engaged in anticompetitive activities.

⁵ *Id.* §3.

⁶ *Id.*

⁷ *Id.* §4.

⁸ *Id.*