

Anti-monopoly Law

Full text

Chapter I General Provisions

Article 1 This Law is enacted for the purpose of preventing and restraining monopolistic conducts, protecting fair competition in the market, enhancing economic efficiency, safeguarding the interests of consumers and the public interest and promoting the healthy development of the socialist market economy.

Article 2 This Law is applicable to monopolistic conducts in economic activities within the People's Republic of China. This Law is applicable to conducts outside the territory of the People's Republic of China if they eliminate or have restrictive effects on competition on the domestic market of the PRC.

Article 3 "Monopolistic conduct" is defined in this law as any of the following activities:

- (i) monopolistic agreements among undertakings;
- (ii) abuse of a dominant market position by undertakings;
- (iii) concentration of undertakings that eliminates or restricts competition or might be eliminating or restricting competition;

Article 4 The State shall formulate and implement competition rules which in accordance with the socialist market economy and improve macroeconomic and advance a unified, open, competitive and orderly market system.

Article 5 Undertakings may concentrate if such conduct is in accordance with the law, achieved through fair competition and voluntary alliance and expands the scope of operation, and enhances competition ability.

Article 6 Undertakings with a dominant position shall be prohibited to abuse that dominant position to eliminate or restrict competition.

Article 7 Industries controlled by the State-owned economy and relied upon by the national economy and national security or industries implementing exclusive operation and sales in accordance with the law shall be protected by the State to conduct lawful operation by the undertakings. The State shall regulate and control the price of commodities and services provided by these undertakings and the operation of these undertakings so as to protect the interests of the consumer and facilitate technical progress. The undertakings mentioned above shall operate lawfully, honestly, faithfully, strictly self-disciplined, accepting public supervision and shall not use their dominant or exclusive positions to harm interests of consumers.

Article 8 Administrative agencies and organisations empowered by laws and regulations administer

public issues shall be prohibited to abuse their administrative power to eliminate or restrict competition.

Article 9 The State Council establishes the Antimonopoly Commission, which in charge of organizing, coordinating, guiding antimonopoly works and performs the following tasks:

- (i) researching and drafting related competition policies;
- (ii) organizing the investigation, assessing general competition status in the market and issuing assessment report;
- (iii) enacting and issuing the antimonopoly guidelines;
- (iv) coordinating antimonopoly enforcement works;
- (v) other tasks stipulated by the State Council.

The State Council stipulates the structure and protocol of the Antimonopoly Commission.

Article 10 The antimonopoly authorities are in charge of antimonopoly enforcement in accordance with this law. The antimonopoly authorities may authorise corresponding authorities at the provincial, autonomous region or directly municipality to in charge of antimonopoly enforcement activities in accordance this law, when needed.

Article 11 Association of undertakings should intensify the self-discipline of the industry, guide undertakings to lawfully compete and safeguard the competition order in the market.

Article 12 An “undertaking” in this law refers to a natural person, legal person, or other organization that engages in businesses of commodities or services. A “relevant market” in this law refers to the territorial area within which the undertakings compete against each other during a time period for relevant commodities or services (hereinafter “commodities” include services).

Chapter 2 Monopolistic Agreement

Article 13 Any of the following agreements among undertakings competing with each other are prohibited:

- (i) fixing, or changing the price of products;
- (ii) limiting the output or sales of products;
- (iii) allocating the sales markets or the raw material purchasing markets;
- (iv) limiting the purchase of new technology or new facilities, or the development of new products or new technology;
- (v) jointly boycotting transactions;
- (vi) other monopolistic agreements identified by the antimonopoly authorities.

“Monopolistic agreement” in this law refers to agreements, decisions or concerted actions which eliminate or restrict competition.

Article 14 Any of the following agreements between an undertaking and a counterparty are prohibited:

- (i) fixing the price for resale;

- (ii) restricting the lowest price for resale;
- (iii) other monopolistic agreement identified by the antimonopoly authorities.

Article 15 Agreements among undertakings with one of the following objectives shall be exempted from the application of article 13, 14 if:

- (i) agreements made to improve technology, to research and develop new products.
- (ii) agreements made for the purpose of improving product quality, reducing cost, improving efficiency, unifying standards, norms or specialise;
- (iii) agreements made by small and medium-sized enterprises to improve operational efficiency and to enhance their competitiveness;
- (v) agreements made to cope with economic depression, to mitigate a serious decrease in sales volumes or excessive overstock;
- (iv) agreements made to achieve public interests, such as saving energy, protecting environment, relieving the victims of a disaster and so on;
- (vi) agreements made to maintain legitimate interest in the cooperation with foreign economic entities and foreign trade;
- (vii) other cases stipulated by laws and the State Council.

In case an agreement falls within the scope of (i) to (v), and therefore exempted from Article 13, 14, they shall also prove that the agreements allow consumers to share the benefits derived from the agreements and will not entirely eliminate the competition in relevant market.

Article 16 Association of undertakings shall be prohibited to organize undertakings to carry out monopolistic conducts being prohibited by this chapter.

Chapter 3 Abuse of a Dominant Market Position

Article 17 Undertakings with a dominant market position a prohibited to abuse their dominant market positions by carrying out following conducts:

- (i) selling commodities at unfairly high prices or buying commodities at unfairly low prices;
- (ii) selling commodities at prices below cost without legitimate reasons;
- (iii) refusing to trade with counterparties without legitimate reasons;
- (iv) requiring its counterparty to trade exclusively with it or trade exclusively with the appointed undertakings without legitimate reasons;
- (v) tying products or imposing unreasonable conditions for trading without legitimate reasons;
- (vi) applying dissimilar prices or other transaction terms to equivalent counterparties;
- (vii) other conducts identified as abuse of a dominant position by antimonopoly authorities

“Dominant market position” in this law refers to the undertaking(s) having the ability to control the price, quantity or other trading conditions of products in relevant market, or to hinder or affect other undertakings to enter the relevant market.

Article 18 The following factors will be taken into consideration in finding dominant market position:

- (i) the market share in relevant market, and the competition situation of the relevant market;
- (ii) the ability to control the sales markets or the raw material purchasing markets;
- (iii) the financial status and technical conditions of the undertaking;
- (iv) the extent of the reliance on the undertaking during transactions by other undertakings;
- (v) the degree of difficulty for other undertakings to enter the relevant market;
- (vi) other factors relevant to find a dominant market position.

Article 19 Undertakings in any of the following situations can be assumed to have a dominant market position:

- (i) the relevant market share of one undertaking accounts for 1/2 or above;
- (ii) the joint relevant market share of two undertakings accounts for 2/3 or above;
- (iii) the joint relevant market share of three undertakings accounts for 3/4 or above.

In the case that the circumstance of the undertakings fall under the conditions (ii) or (iii) and any of the undertakings has a market share of less than 10%, that undertaking shall not be considered to have dominant market position. Undertakings that are assumed to have a dominant market position shall not be considered to have a dominant market position if they can provide opposite evidence.

Chapter 4 Concentration of Undertakings

Article 20 A concentration refers to the following situations:

- (i) the merger of undertakings;
- (ii) the acquisition by undertakings, whether by purchase of securities or assets, of control of other undertakings;
- (iii) the acquisition by contract or any other means, of control of other undertakings or of the ability to exercise decisive influence over other undertakings.

Article 21 Any concentration that falls under the notification criteria issued by the State Council must be notified in advance with the antimonopoly authorities. Without notification the concentration shall not be implemented.

Article 22 Undertakings may not file a concentration notification to the Antimonopoly authorities in any of the following situations:

- (i) one undertaking which is a party to the concentration has the power to exercise more than half the voting rights of every other undertaking, whether of the equity or the asset;
- (ii) one undertaking which is not a party to the concentration has the power to exercise more than half the voting rights of every undertaking concerned, whether of the equity or the asset;

Article 23 Undertakings that notify a concentration in advance with the antimonopoly authorities, shall submit the following documents or materials:

- (i) a summary of the notification;
- (ii) a report on the effect on competition on the relevant market of the concentration;
- (iii) the concentration agreements;
- (iv) the financial reports and accounting reports, audited by an accounting firm, of the undertakings concerned in the previous accounting year;
- (v) other documents or materials required by the antimonopoly authorities.

The summary of the notification shall contain the name, residence, scope of business, expected date for concentrating and other items stipulated by antimonopoly authorities of the undertakings concerned.

Article 24 In case that the documents submitted by the notifying undertakings are incomplete, the undertakings concerned shall submit the rest of the documents and materials within a set period stipulated by antimonopoly authorities. The notification will be deemed not filed when the added documents and materials are not timely submitted.

Article 25 The antimonopoly authorities shall preliminarily review the notified concentration and shall decide whether to proceed with the review and notify the undertakings in written form within 30 days, calculated from the date of receipt of the complete filing documents and materials referred to in article 23 submitted by the undertakings. Before a decision is made by the antimonopoly authorities, the concentration shall be not be implemented. In case the antimonopoly authorities decide not to proceed with the review or do not decide before the expiry of the aforementioned period, the concentration may be implemented.

Article 26 If the antimonopoly authorities have decided to proceed with the review, they shall review and decide whether to prohibit the concentration and notify the undertakings in written form within 90 days, calculated from the date of the decision being taken. In case the concentration is prohibited, the reasons shall be explained. Within the review period the concentration shall be not be implemented. Under the following circumstances, the time limit stipulated in the first paragraph may be extended to by another 60 days after notifying the undertakings in written form:

- (i) the undertakings concerned agree to extend the time limit;
- (ii) the documents or materials submitted are inaccurate and need verification;
- (iii) the relevant circumstances have significantly changed after notification by the undertakings.

In case the antimonopoly authorities have not decided in case of expiring of the period, the concentration may be implemented.

Article 27 The following factors shall be considered in the review of a concentration:

- (i) the market share in the relevant market of the undertakings concerned and their controlling power over that market;
- (ii) the degree of concentration in the relevant market ;
- (iii) the influence over access to the market and technology development;
- (iv) the influence over consumers and other undertakings;
- (v) the influence over national economical development

(vi) other factors that affect the competition being considered by the antimonopoly authorities.

Article 28 In case a concentration has or may have effect on eliminating or restricting competition, the antimonopoly authorities shall take decision of prohibition. However, the antimonopoly authorities may decide not to prohibit the concentration if the undertakings can prove either that the concentration bring more positive effect than negative effect on competition, or that the concentration is in harmony with public interests.

Article 29 The antimonopoly authorities shall make a decision of approval with restrictions and conditions where a concentration will reduce the negative effect on competition.

Article 30 The antimonopoly authorities shall announce the decisions of prohibition or conditional concentration to public.

Article 31 In case the acquisition of domestic enterprises by foreign investors or other manners to concentrate referred to national security, besides being reviewed according to this law, they shall be carried out national safety review according to relevant regulations.

Chapter 5 Abuse of Administrative Power to Eliminate or Restrict Competition

Article 32 Administrative agencies and organisations empowered by laws and regulations administer public issues shall not abuse their administrative powers by limiting, or limiting in a different form, organisations or persons to operate, purchase or use commodities of any undertakings designated by them.

Article 33 Administrative agencies and organisations empowered by laws and regulations administer public issues shall not abuse their administrative powers by implementing following conducts, to block regional commodity circulation:

- (i) setting discriminatory charging items, carrying out discriminatory charging standards, or stipulating discriminatory prices for non-local commodities.
- (ii) stipulating different technical requisition or test standards on non-local commodities that are different from those on local like commodities, or taking discriminatory technical measures, such as repeated inspection or certification on commodities originating from other regions, so as to restrict the entry of commodities originating from other regions into the local market;
- (iii) creating administrative licensing procedure targeting non-local commodities to restrict the access of those commodities to the local market;
- (iv) creating burdens or other methods to limit the entry of non-local commodities or the exit of local commodities;
- (v) other conducts that block free regional commodity circulation.

Article 34 Administrative agencies and organisations empowered by laws and regulations administer public issues shall not abuse their administrative power to reject or restrict non-local undertakings by participating local bids activities through the manners that they create discriminatory quality requisitions,

judge standards or not announce information in accordance with the law.

Article 35 Administrative agencies and organisations empowered by laws and regulations administer public issues shall not abuse their administrative power to reject or restrict non-local undertakings by establishing local branches through the use of unfair treatment by non-local undertakings.

Article 36 Administrative agencies and organisations empowered by laws and regulations administer public issues shall not abuse their administrative power to force undertakings to carry out monopolistic conducts under this law.

Article 37 Administrative agencies shall not abuse their administrative power to stipulate regulations that eliminate or restrict competition.

Chapter 6 Investigation of Suspected Monopolistic Conducts

Article 38 The antimonopoly authorities investigate suspected monopolistic conducts according to this law. Any organisation or person has the right to report a suspected monopolistic conduct to the antimonopoly authorities. The antimonopoly authorities should keep the secret of the reporter. The antimonopoly authorities shall conduct the necessary investigation if the report is submitted in written form and supplies relevant facts and evidences,.

Article 39 When conducting investigations, the antimonopoly authorities can take the following measures:

- (i) conducting inspection at the premise or other relevant places of the undertakings being investigated;
- (ii) requesting the undertaking concerned, interested parties and other relevant organisations or persons being investigated to explain the relevant circumstances;
- (iii) examining, copying relevant documents and materials of the undertakings, interested parties and other relevant organisations or persons being investigated, such as certificates, agreements, accounting books, letters and telegraphs of business, electronic data and so on.
- (iv) sealing up or detaining relevant evidence;
- (v) inquiring after the bank account information of the undertakings concerned.

Before taking the measures stipulated above, it shall be reported in written form to the chief person in charge of the antimonopoly authorities, and be approved.

Article 40 When investigating the suspected monopolistic conducts by the antimonopoly authorities, the executors shall be not less than two persons, and they shall show the certificates of execution. The executors conducting inquiring and investigating, shall fabricate written notes which are signature by the inquired or investigated person.

Article 41 The antimonopoly authorities and their staffs shall be obliged to keep the secret which known in the execution.

Article 42 The undertakings concerned, interested parties or other relevant organizations or persons being investigated shall cooperate with the antimonopoly authorities shall not refuse or hinder the

investigation of the antimonopoly authorities.

Article 43 The undertakings concerned, interested parties being investigated have the right to state opinions. The antimonopoly authorities shall verify the facts, reasons and proofs being given by undertakings concerned, interested parties being investigated.

Article 44 After investigation and verification of the suspected monopolistic conducts, the antimonopoly authorities shall take decisions according to law and publish it if they believe that monopolistic conduct was done.

Article 45 In case a suspected monopolistic conduct is investigated by the antimonopoly authorities, the antimonopoly authorities shall decide to suspend the investigation if the undertakings being investigated promise that they will conduct concrete measures to eliminate the negative effect of the monopolistic conducts within a time limit being acknowledged by the antimonopoly authorities. The decision to suspend the investigation should state the concrete measures of the promise. In case the antimonopoly authorities decide to suspend investigation, they shall supervision the implementation of the promise by the undertakings concerned. If the undertakings implement the promises, the antimonopoly authorities may decide to stop the investigation. The antimonopoly authorities shall regain the investigation under the following circumstances:

- (i) the undertakings have not implement the promises;
- (ii) the fact being applied to suspend the investigation has significant changed.
- (iii) the decision to suspend the investigation is based on uncompleted or untruthful information being supplied by the undertakings.

Chapter 7 Legal Liabilities

Article 46 In case there exists monopolistic agreement and is implemented by the undertakings in violation of this law, the antimonopoly authorities shall order the undertakings to cease such act, the illegal gains shall be confiscated, and a fine between 1% and 10% of the turnover from the previous year shall be imposed; If the monopolistic agreement has not been implemented, a fine below 500,000 Yuan shall be imposed. If the undertakings report actively the circumstance of their monopoly agreement to the antimonopoly authorities and provide important evidences, the antimonopoly authorities shall reduce or remit the fines according to own judgement. In case the associations of operators organize undertakings of the industry to reach monopoly agreement in violation of this law, the antimonopoly authorities shall impose a fine below 500,000 Yuan; and if the circumstances are serious, the social organization register administrative department may rescind its registration.

Article 47 In case there exists an act abusing dominant market position by the undertakings in violation of this law, the antimonopoly authorities shall order the undertakings to cease such act, the illegal gains shall be confiscated, and a fine between 1% and 10% of the turnover from the previous year shall be imposed.

Article 48 In case the undertakings concentrate in violation of this law, the antimonopoly authorities shall order the undertakings to stop implementing concentration, dispose equities or assets in limited time,

transfer the operation and conduct other necessary measures to regain the status before the concentration, a fine below 500,000 Yuan may be imposed.

Article 49 Referred to the fines of article 46, 47, 48 of this law, the antimonopoly authorities shall consider factors such as the nature, extent and duration of the violation, to decide concrete amount of fine.

Article 50 The undertakings that carry out monopolistic conduct of this law and cause losses to others shall bear civil liability.

Article 51 The administrative agencies and organizations empowered by laws and regulations to manage public affairs shall be ordered by the superior authorities to correct themselves if they abuse their administrative power to eliminate or restrict competition; people in direct charge and people directly involved shall be imposed administrative punishment. The antimonopoly authorities shall provide advice of legal settlement to their superior authorities according to law. This article shall not apply to cases in which other administrative regulations or laws provide for the regulation of the abuse of administrative power by the organizations authorized with administrative powers of public affairs by laws and regulations.

Article 52 In reviewing and investigating by the antimonopoly authorities, if the undertakings refuse to provide relevant materials and information, or provide incorrect materials and information, or remove, hide or destroy evidences, or other conducts to refuse or obstruct investigation, the antimonopoly authorities shall order the operators to cease such act, a fine below 20,000 Yuan may be imposed on individuals and a fine below 200,000 Yuan may be imposed on organization. If the circumstances are serious, a fine between 20,000 Yuan and 100,000 Yuan may be imposed on individuals and a fine between 200,000 Yuan and 1,000,000 Yuan may be imposed on organization; a criminal liability may be imposed if a violation of criminal law occurs.

Article 53 If the undertakings do not accept the decision made by the antimonopoly authorities according to article 28, 29 of this law, they could first apply for an administrative reconsideration; and if the undertakings still disagree with the decision of the administrative reconsideration, they could file a administrative lawsuit according to law. If the undertakings do not accept the decision made by the antimonopoly authorities besides the decisions stipulated by first paragraph, they could apply for an administrative reconsideration according to law or file administrative lawsuit.

Article 54 The officials of the antimonopoly authorities shall be given administrative sanctions if they abuse their official power, neglect their duties, engage in malpractices or irregularities, or disclose any trade secret obtained in their enforcement activities, and such officials shall also receive criminal liability if their actions constitute a crime.

Chapter 8 Supplementary Articles

Article 55 This law is not applicable to conducts by undertakings to implement their intellectual property rights in according with relevant IP laws and administrative regulations; however, this law is applicable to the conduct by undertakings to eliminate or restrict market competition by abusing intellectual property rights.

Article 56 This law is not applicable to the alliance or concerted act in the producing, processing, selling, transporting or storing agricultural products by agricultural producers and rural economic organizations.

Article 57 This law is effective as of August 1, 2008