

Chinese Antimonopoly Law

(adopted at the 29th session of the Tenth National People's Congress on August 30, 2007)

Chapter 1: General Provisions

Chapter 2: Monopolistic Agreement

Chapter 3: Abuse of a Dominant Market Position

Chapter 4: Concentration of Undertakings

Chapter 5: Abuse of Administrative Power to Eliminate or Restrict Competition

Chapter 6: Investigation of the Suspected Monopolistic Conducts

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Translated by Jia Yuan

September 1, 2007

Chapter 1: 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 social public interest, promoting the healthy development of the socialist market economy.

Article 2:

This Law shall be applicable to monopolistic conducts in economic activities within the People's Republic of China.

This Law shall apply to the conducts outside the territory of the People's Republic of China if they eliminate or have restrictive effect on competition on the domestic market of the PRC.

Article 3:

“Monopolistic conduct” is defined in this law as the following activities:

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

Article 4:

The State formulates and carries out competition rules which in accordance with the socialist market economy, perfects macro-control, and advances a unified, open, competitive and orderly market system.

Article 5:

Undertakings shall through fair competition, voluntary alliance concentrate according to law, expand the scope of operation, and enhance competition ability.

Article 6:

Undertakings of a dominant position shall be prohibited to abuse a dominant position, eliminate, and restrict competition.

Article 7:

For the undertaking in the state-owned economy controlled industries to which are related to national economic lifeline and state security, and in the industries to which the state grants special or exclusive rights, the state protects their lawful operation. The state also lawfully regulates and controls their operation and the price of their commodities and services, safeguards interests of consumers, promotes technical progresses.

Undertakings mentioned above shall lawfully operate, be honest and faithful, be strict self-discipline, accept social supervision, shall not damage interests of consumers using their dominant or exclusive positions.

Article 8:

Administrative power by government and organisations to which laws and regulations grant rights to administer public issues shall be prohibited to abuse 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, performs the following responsibilities:

- (i) study and draft related competition policies;
- (ii) organize research, assess general competition situations in the market, issue assess report;
- (iii) enact and issue antimonopoly guidelines;
- (iv) coordinate antimonopoly execution works;
- (v) other responsibilities stipulated by the State Council.

The State Council stipulates composition and working rules of the Antimonopoly Commission.

Article 10:

Antimonopoly authorities are in charge of antimonopoly execution pursuant to this law.

Antimonopoly authorities shall authorise the corresponded authorities of provincial government or government in an autonomous region or directly municipality to in charge of antimonopoly execution pursuant to this law, when needed.

Article 11:

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

Article 12:

An *undertaking* in this law refers to a legal person, other organization or natural person that engages in businesses of commodities (hereinafter *commodities* include 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 products.

Chapter 2: Monopolistic Agreement

Article 13:

Any following agreements among the undertakings competed with each other shall be prohibited:

- (i) fix, or change prices of products;
- (ii) limit the output or sales of the products;
- (iii) allocate the sales markets or the raw material purchasing markets;
- (iv) limit the purchase new technology or new facilities, or the development of, new products or new technology;
- (v) jointly boycott transactions;
- (vi) other agreements identified by antimonopoly authorities.

Agreements referred to this law are agreement, decision or concerted action which eliminates or restricts competition.

Article 14:

Any following agreements among undertaking and counterparty are prohibited:

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

Article 15:

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

- (i) agreements to improve technology, to research and develop new products.
- (ii) agreements for the purpose of product quality upgrading, cost reduction and efficiency improvement, of unify standards, norms or specialise;
- (iii) agreements by small and medium-sized enterprises to improve operational efficiency and to enhance their competitiveness;
- (v) agreements to cope with economic depression, to moderate serious decrease in sales volumes or distinct production surplus;
- (iv) agreements to achieve public interests, such as save energy, protect environment, relieve the victims of a disaster and so on;
- (vi) agreements to maintain legitimate interest in the cooperation with foreign economic entities and foreign trade;
- (vii) other situation stipulated by laws and the State Council.

Undertakings pursuant to (i) to (v), and therefore exempted from Article 13, 14, must additionally prove, that the agreements can enable consumers to share impartially the interests 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 law.

Chapter 3: Abuse of a Dominant Market Position

Article 17

Undertakings of a dominant market position shall not abuse their dominant market positions to carry out following conducts:

- (i) sell commodities at unfairly high prices or buy commodities at unfairly low prices;**
- (ii) sell commodities at prices below cost without legitimate reasons;**
- (iii) refuse to trade with counterparties without legitimate reasons;**
- (iv) require its counterparty to trade exclusively with it or trade exclusively with the appointed undertakings without legitimate reasons;**
- (v) tie products or require as unreasonable conditions for trading without legitimate reasons;**
- (vi) apply dissimilar prices or other transaction terms to equivalent counterparties;**
- (vii) other conducts identified as abuse of a dominant position by antimonopoly authorities**

For the purposes of this law, ;°dominant market position;± 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) market share in relevant market, and the competition situation of the relevant market;**
- (ii) ability to control the sales markets or the raw material purchasing markets;**
- (iii) financial status and technical conditions of the undertaking;**
- (iv) the degree of dependence of other undertakings;**
- (v) entry to relevant market by other undertakings;**
- (vi) other factors related to find a dominant market position.**

Article 19:

Undertakings that have 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.**

Undertakings with a market share of less than 1/10 will not be deemed as occupying a dominant market position even if they fall within the scope of second or third item.

When the Undertakings assumed to have a dominant market position can prove that they do not have a dominant market, shall not be assumed to have a dominant market position.

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 contact or any other means, of control of other undertakings or of possibility of exercising decisive influence on other undertakings.**

Article 21:

A concentration falls under the notification criteria issued by the State Council, a report must be notified in advance with the antimonopoly authorities. Without notification the concentration shall not be implemented.

Article 22:

A concentration refers to following situations, shall not notify to the antimonopoly authorities:

- (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 which notify a concentration in advance with the antimonopoly authorities, shall submit following documents or materials:

- (i) summary of notification;**
- (ii) the effect on competition on the relevant market of the concentration;**
- (iii) agreement of concentration;**
- (iv) the financial reports and accounting reports of the proceeding accounting year of the undertakings concerned;**
- (v) other documents or materials stipulated by antimonopoly authorities.**

The summary of notification shall record, 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 not complete, shall submit the rest of the documents and materials with a set period stipulated by antimonopoly authorities. It will be taken as not notified, when the added documents and materials are not timely submitted.

Article 25:

The antimonopoly authorities shall preliminarily review the notified concentration and take the decisions whether to precede 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 article 23 submitted by the undertakings.

Before a decision taken by the antimonopoly authorities, the concentration shall be not implemented.

If the antimonopoly authorities has taken decision not to precede review or has not decided in case of expiring of the period, the concentration shall be implemented.

Article 26:

If the antimonopoly authorities has decided to precede the review, they shall review and decide whether to prohibit the concentration and notify the undertakings in written form within 90 days, calculated form the date of the decision being taken.

If the concentration is prohibited, the reasons shall be explained. Within the review period the concentration shall be not implemented.

Under the following circumstances, the time limit stipulated in the first paragraph may be extended to add 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) other significant events occurred after notification.**

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

Article 27:

In the review of a concentration the following factors shall be considered:

- (i) market share in the relevant market of the undertakings concerned and their ability to control the market;**
- (ii) concentrate degree of the relevant market ;**
- (iii) effect on the market entry and technology improvement;**
- (iv) effect on consumers and other undertakings;**
- (v) effect on national economical improvement**
- (vi) other factors shall affect the competition, be considered by the antimonopoly authorities.**

Article 28:

If a concentration has or may have effect on eliminating or restricting competition, the antimonopoly authorities shall take decision of prohibition. However, if the undertakings can prove that the concentration bring more positive effect than negative effect on competition, or the concentration pursuant to public interests, the antimonopoly authorities shall decide, not to prohibit the concentration.

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 related regulations.

Chapter 5: Abuse of Administrative Power to Eliminate or Restrict Competition

Article 32:

Administrative power by government and organisations to which laws and regulations grant rights to administer public issues shall not abuse administrative power to limit or limit in a different form the organizations or persons to operate, purchase or use the products of any undertakings designated by them.

Article 33:

Administrative power by government and organisations to which laws and regulations grant rights to administer public issues shall not abuse administrative power to carry out following conducts, to hinder the free flow of the commodities between regions:

- (i) create discriminated items, carry out discriminated standards, or stipulate discriminated prices to non-local commodities.**
- (ii) stipulate different technical requisition, test standards to non-local an local commodities, or conduct repeat testing, repeat certification and so on, in order to limit non-local commodities to enter local market;**
- (iii) specially require administrative permit to counter non-local commodities, in order to limit non-local commodities to enter local market;**
- (iv) create burdens or other methods to limit non-local commodities enter or local commodities exit;**
- (v) other conducts which hinder commodities free flow between regions.**

Article 34:

Administrative power by government and organisations to which laws and regulations grant rights to administer public issues shall not abuse administrative power to exclude or restrict non-local undertakings to participate local bids activities through the manners that they create discriminated quality requisitions, judge standards or not announce information according to law.

Article 35:

Administrative power by government and organisations to which laws and regulations grant rights to administer public issues shall not abuse administrative power to exclude or restrict non-local undertakings to set up branches through that they give unfair treatment to non-local undertakings.

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Administrative power by government and organisations to which laws and regulations grant rights to administer public issues shall not abuse administrative power to exclude or restrict non-local undertakings to set up branches through that they give unfair treatment to non-local undertakings.

Article 36:

Administrative power by government and organisations to which laws and regulations grant rights to administer public issues shall not abuse administrative power to force the undertakings to carry out monopolistic conducts according to this law.

Article 37:

Administrative power shall not abuse administrative power to stipulate regulations including contents to eliminate or restrict competition.

Chapter 6: Investigation of the Suspected Monopolistic Conducts

Article 38:

The antimonopoly authorities investigate suspected monopolistic conducts according to law. Refers to suspected monopolistic conduct, any organization or person has the right to report it to the antimonopoly authorities. The antimonopoly authorities shall keep the secret for the reporter.

If the report is submitted in written form and supplies related facts and proofs, the antimonopoly authorities shall conduct necessary investigation.

Article 39:

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

- (i) enter the premise or other related places of the undertakings being investigated;
- (ii) request the undertaking concerned, interested parties and other relevant organizations or persons being investigated to explain related circumstances;
- (iii) exam, copy related documents and materials of the undertakings, interested parties and other relevant organizations or persons being investigated, such as certificates, agreements, accounting books, letters and telegraphs of business, electronic data and so on.
- (iv) seal up or detain related proofs;
- (v) inquire about the bank account information of the undertakings concerned.

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

Article 40:

Investigating the suspected monopolistic conducts by the antimonopoly authorities, the executors shall be not less than two persons, and shall show the papers of execution.

The executor conduct 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:

Undertakings concerned, interested parties or other related organizations or persons being investigated shall cooperate with the antimonopoly authorities by performing responsibility, shall not refuse or hinder the antimonopoly authorities to investigate.

Article 43:

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 investigating and verifying the suspected monopolistic conducts, if the antimonopoly authorities believe that monopolistic conduct was done, shall take decisions according to law and publish it.

Article 45:

In case of a suspected monopolistic conduct being investigated by the antimonopoly authorities, 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 antimonopoly authorities shall decide to suspend the investigation. The decision to suspend the investigation shall note what concrete was promised by the undertakings being investigated.

If the antimonopoly authorities decide to suspend investigation, shall supervision the circumstances in which undertakings perform their promises. If the undertakings have performed the promises, the antimonopoly authorities shall decide to stop the investigation. Under the following circumstances, the antimonopoly authorities shall regain the investigation:

- (i) undertakings have not performed 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 in the preceding year shall be imposed; If the monopolistic agreement is not implemented, a fine below 500,000 Yuan shall be imposed.

If the undertakings actively report the circumstance of the monopolistic agreement to the antimonopoly execution authorities and supply important proofs, the antimonopoly authorities shall reduce or remit the fines according to own judgement.

If the association of undertakings organise undertakings of the branch to reach monopolistic 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 shall dissolve the register.

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 in the preceding year shall be imposed.

Article 48:

In case the undertakings concentrate in violation of this law, the antimonopoly authorities shall order the undertakings to cease concentration, dispose securities 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 shall be imposed.

Article 49:

Referred to the fines of article 46, 47, 48 of this law, the antimonopoly authorities shall consider the nature, degree and time of duration of the violation, to decide concrete amount of fine.

Article 50:

If undertakings carry out monopolistic conduct, and cause losses to others, shall bear civil liability according to law.

Article 51:

If administrative power by government and organisations to which laws and regulations grant rights to administer public issues abuse administrative power, to eliminate or restrict competition, shall be ordered by superior authorities to correct themselves; people in direct charge and people directly involved shall be imposed administrative punishment. The antimonopoly authorities shall supply suggestion to related superior authorities to handle according to law.

If administrative power by government and organisations to which laws and regulations grant rights to administer public issues abuse administrative power, to eliminate or restrict competition will be handled by another regulation, shall be applied to another regulation.

Article 52:

In reviewing and investigating by the antimonopoly authorities, if they refuse to supply related materials, information, or supply incorrect materials, information, or remove, hide or destroy proofs, or other conducts to refuse or hinder investigation, the antimonopoly authorities shall order the undertakings to cease such act, A fine not to exceed 20,000 Yuan to individuals and 200,000 Yuan to organization may be assessed. If the circumstances are serious, a fine not to between 20,000 Yuan and 100,000 Yuan to individuals and between 200,000 Yuan and 1000,000 Yuan to organization may be assessed; if the said act constitutes a criminal offence, prosecution will be launched according to law.

Article 53:

If the undertaking does not accept the decision made by the antimonopoly authorities according to article 28, 29 of this law, he/she shall in the first place apply for administrative review; and if the undertaking still disagree with the decision of the administrative review, he/she may file a administrative lawsuit according to law.

If the undertaking does not accept the decision made by the antimonopoly authorities besides the decisions stipulated by first paragraph, he/she shall apply for administrative review according to law or file administrative lawsuit.

Article 54:

Any employee of the antimonopoly authorities who abuse his official power, neglect his duties, engage in malpractices or irregularities, or disclose any trade secret, constitute a criminal offence, prosecution will be launched according to law. Where the act is not so serious as to be prosecuted for criminal liability, he shall be imposed the administrative penalty according to law.

Chapter 8: Supplementary Articles

Article 55:

Undertakings exercise intellectual property rights according to laws , administrative regulations related intellectual property rights, shall not be applied to this law; however, undertakings abuse the intellectual property rights to eliminate or restrict competition, shall be applied to this law.

Article 56:

Agricultural producers and rural economic organizations alliance or concerted act in the producing, processing, selling, transporting or reserving agricultural products shall be not applied to this law.

Article 57:

This law is effective as of August 1, 2008