

中华人民共和国反垄断法(草案)
(三次审议稿)

Anti-Monopoly Law of the People's Republic of China
(Draft)
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第一章 总 则

Chapter I - General Provisions

第一条 为了预防和制止垄断行为,保护市场竞争,提高经济运行效率,维护消费者合法权益和社会公共利益,促进社会主义市场经济健康发展,制定本法。

Article 1 This Law will be enacted for the purpose of guarding against or ceasing monopolistic conduct, safeguarding and promoting the order of market competition, improving economic efficiency, protecting the legitimate rights and interests of the consumer, protecting the public interest, and promoting the healthy development of the socialist market economy.

第二条 中华人民共和国境内经济活动中的垄断行为,适用本法;中华人民共和国境外的垄断行为,对境内市场竞争产生排除、限制影响的,适用本法。

Article 2 This Law is applicable to monopolistic conduct in economic activities within the territory of the People's Republic of China. This Law is applicable to monopolistic conduct outside the territory of the People's Republic of China that eliminates or has restrictive effects on competition in the domestic market of the People's Republic of China.

第三条 本法规定的垄断行为包括:

Article 3 "Monopolistic conduct" defined in this Law include the following:

(一)经营者达成垄断协议;

(i) Monopoly agreements made between undertakings;

(二)经营者滥用市场支配地位;

(ii) Abuse of a dominant market position by undertakings; and

(三)具有或者可能具有排除、限制竞争效果的经营者集中。

Concentrations conducted by undertakings that may have the effect of eliminating or restricting competition;

第四条 国家制定和实施与社会主义市场经济相适应的竞争规则,加强和完善宏观调控,健全统一、开放、竞争、有序的市场体系。

Article 4 The State shall make and implement competition rules appropriate for the socialist market economy and improve macroeconomic measures for a united, open, competitive, and well-ordered market system.

第五条 经营者可以通过公平竞争、自愿联合,依法实施集中,扩大经营规模,提高市场竞争能力。

Article 5 Undertakings may concentrate when such an action is in accordance with the law and adheres to fair competition and is a voluntary union that expands the scale of operation and improves market competition.

第六条 具有市场支配地位的经营者,不得滥用市场支配地位,排除、限制竞争。

Article 6 Undertakings with a dominant market position shall not abuse that dominant position to eliminate or restrict competition.

第七条 国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业,国家对其经营者的合法经营活动予以保护,并对经营者的经营行为及其商品和服务的价格依法实施监管和调控,维护消费者利益,促进技术进步。

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 supervise 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.

前款规定行业的经营者应当依法经营,诚实守信,严格自律,接受政府和社会公众的监督,不得利用其控制地位或者专营专卖地位损害消费者利益。

The undertakings mentioned in the paragraph above shall operate, in good faith, in accordance with the law and in a self-disciplined manner, accepting public supervision and shall not harm the interests of the consumer from a controlling or exclusive dealing position.

第八条 行政机关和法律、法规授权的具有管理公共事务的职能的组织(以下简称公共组织)不得滥用行政权力,排除、限制竞争。

Article 8 Administrative agencies and organizations empowered by laws and regulations to manage public affairs shall not abuse their administrative power to eliminate or restrict competition.

第九条 国务院设立反垄断委员会,负责组织、协调、指导反垄断工作,履行下列职责:

Article 9 The Anti-monopoly Committee under the State Council performs the following functions:

- (1) 研究拟定有关竞争政策;
 - (2) 组织调查、评估市场总体竞争情况,并发布评估报告;
 - (3) 制定、发布反垄断指南;
 - (4) 协调监督反垄断行政执法工作;
 - (5) 国务院规定的其他职责。
- 国务院反垄断委员会的组成和工作规则由国务院规定。

- (i) Making competition policies;
 - (ii) Organizing the investigation and assessment of the market competition status as a whole and publicizing an assessment report;
 - (iii) Making and publishing the anti-monopoly guidelines;
 - (iv) Coordinating the anti-monopoly administrative enforcement work; and
 - (v) Other functions assigned by the State Council.
- The structure and protocol of the Anti-monopoly Committee shall be developed by the State Council

第十条 国务院规定的承担反垄断执法职责的机构(以下统称国务院反垄断执法机构)依照本法规定,负责反垄断执法工作。

国务院反垄断执法机构根据工作需要,可以授权省、自治区、直辖市人民政府相应的机构,依照本法规定负责有关反垄断执法工作。

第十一条 行业协会应当加强行业自律,引导本行业经营者依法竞争,维护市场竞争秩序。

第十二条 本法所称经营者,是指从事商品生产、经营或者提供服务的自然人、法人和其他组织。

本法所称相关市场,是指经营者在一定时期内就特定商品或者服务(以下统称商品)进行竞争的商品范围和地域范围。

第二章 垄断协议

第十三条 禁止具有竞争关系的经营者达成下列垄断协议:

- (一) 固定或者变更商品价格;
- (二) 限制商品的生产数量或者销售数量;
- (三) 分割销售市场或者原材料采购市场;
- (四) 限制购买新技术、新设备或者限制开发新技术、新产品;
- (五) 联合抵制交易;
- (六) 国务院反垄断执法机构认定的其他垄断协议。

Article 10 The Anti-monopoly Enforcement Authority designated by the State Council (Anti-monopoly Enforcement Authority) is responsible for the enforcement of the anti-monopoly law.

The Anti-monopoly Enforcement Authority, if appropriate, may empower corresponding government agencies at the provincial, autonomous region, and municipal level to be responsible for anti-monopoly enforcement activities in accordance with this Law.

Article 11 The Industry Associations shall strengthen the self-discipline of industries to lead undertakings toward competing in accordance with the law and protecting the order of market competition.

Article 12 An “undertaking” in this Law refers to a natural person, legal person, or other organization that engages in the production or business of commodities or provides services.

A “relevant market” in this Law refers to the commodity scope or regional area within which the undertakings compete against each other during a certain period of time for specific commodities or services (hereinafter “commodities”).

Chapter II Monopoly Agreements

Article 13 The following monopoly agreements between competing undertakings are prohibited:

- (i) Fixing or changing the price of products;
 - (ii) Restricting the output volume or sales volume of the products;
 - (iii) Dividing the sales market or the raw material purchasing market;
 - (iv) Restricting the purchase of new technology or new facilities or the development of new technology or new products;
- Jointly boycotting transactions; and
Other monopoly agreements confirmed by the Anti-monopoly Enforcement Authority under the State

Council.

本法所称垄断协议，是指排除、限制竞争的协议、决定或者其他协同行为。

“Monopoly agreements,” in this Law, refer to agreements, decisions or other concerted behavior that eliminates or restricts competition.

第十四条 禁止经营者与交易相对人达成下列垄断协议：

Article 14 Undertakings are prohibited from entering into the following monopoly agreements with a second party of the transaction:

固定向第三人转售商品的价格；

Fixing the price for resale to a third party;

限定向第三人转售商品的最低价格；

Restricting the minimum price for resale to a third party; or

国务院反垄断法执法机构认定的其他垄断协议。

Other monopoly agreements confirmed by Anti-monopoly Enforcement Authority under the State Council.

第十五条 经营者能够证明达成的协议是属于下列情形之一的，不适用本法第十三条、十四条的规定：

Article 15 Monopoly agreements between undertakings that can be proven to fall under any of the following cases shall be exempt from the application of Articles 13 and 14:

(一)为改进技术、研究开发新产品的；

(i) For the purpose of improving techniques, researching, and developing new products;

(二)为提高产品质量、降低成本、增进效率，统一产品规格、标准或者实行专业化分工的；

(ii) For the purpose of upgrading product quality, reducing costs, improving efficiency, unifying product models and standards, or carrying out professional labor distribution;

(三)为提高中小经营者经营效率，增强中小经营者竞争力的；

(iii) For the purpose of improving operational efficiency and enhancing the competitiveness of small and medium-sized enterprises;

(四)为实现节约能源、保护环境、救灾救助等社会公共利益的；

(iv) For the purpose of maintaining the public welfare such as conserving energy, protecting the environment, providing disaster relief, and etc.;

(五)因经济不景气，为缓解销售量严重下降或者生产明显过剩的；

(v) For the purpose of mitigating the severe decrease of sales volume or excessive overstock during economic recessions.

(六)为保障对外贸易和经济合作中的正当利益的；

(vi) For the purpose of protecting the legitimate interests of international trade and foreign economic cooperation; or

(七)法律和国务院规定的其他情形。

Other cases stipulated by the law or the State Council.

属于前款第一项至第五项情形，不适用本法第十三条、第十四条规定的，经营者

In that case that the monopoly agreement falls under any of the cases from (i) to (v), the undertakings shall also prove that the agreement will not substantially

还应当证明所达成的协议不会严重限制相关市场的竞争，并且能够使消费者分享由此产生的利益。

restrict competition in its relevant market and can enable the consumers to share the benefits provided by the agreement in order to be exempt from Articles 13 and 14 of this Law,

第三章 滥用市场支配地位

Chapter III Abuse of Dominant Market Position

第十六条 禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为：

Article 16 Undertakings are prohibited from the following behavior that abuses their dominant market position:

- (1) 以不公平的高价销售商品或者以不公平的低价购买商品；
- (2) 没有正当理由，以低于成本的价格销售商品；
- (3) 没有正当理由，拒绝与交易相对人进行交易；
- (4) 没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易；
- (5) 没有正当理由，搭售商品或者在交易时附加其他不合理的交易条件；
- (6) 没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇；
- (7) 国务院反垄断执法机构认定的其他滥用市场支配地位的行为。

- (i) Selling products at unfairly high prices or buying products at unfairly low prices;
- (ii) Selling products at prices below cost without any justification;
- (iii) Refusing to trade with relative trading parties without any justification;
- (iv) Limiting relative trading parties to conduct deals exclusively with them or designated parties without any justification;
- (v) Implementing tie-in sales without any justification, or imposing other unreasonable trading conditions;
- (vi) Applying discriminating treatment on prices or other transaction terms to relative trading parties with equal standing without any justification; and
- (vii) Other activities that abuse the dominant market position as recognized by the Anti-monopoly Enforcement Authority.

本法所称市场支配地位，是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件，或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。

“Dominant market position” in this Law refers to a market position held by undertakings that can control the price or quantity of products or other transaction conditions in the relevant market or can block or affect the access of other undertakings to the relevant market.

第十七条 认定经营者具有市场支配地位，应当依据下列因素：

Article 17 A dominant market position shall be determined based on the following factors:

(一) 该经营者在相关市场的市场份额，以及相关市场

(i) The market share of the undertakings and their competitive status in the relevant market;

的竞争状况；

(二) 该经营者控制销售市场或者原材料采购市场的能力；

(三) 该经营者的财力和技术条件；

(四) 其他经营者对该经营者在交易上的依赖程度；

(五) 其他经营者进入相关市场的难易程度；

(六) 与该经营者市场支配地位有关的其他因素。

(ii) The ability of the undertakings to control the sales market or the raw material purchasing market;

(iii) The financial and technical status of the undertakings;

(iv) The extent of the reliance on the undertakings during transactions by other undertakings;

(v) The degree of difficulty for other undertakings to enter the relevant market; and

(vi) Other factors relevant to the undertakings' dominant market position.

第十八条 有下列情形之一的,可以推定经营者具有市场支配地位:

(一) 一个经营者在相关市场的市场份额达到二分之一的;

(二) 两个经营者在相关市场的市场份额合计达到三分之二以上的;

(三) 三个经营者在相关市场的市场份额合计达到四分之三以上的。

有前款第二项、第三项规定的情形,其中有的经营者市场份额不足十分之一的,不应当推定该经营者具有市场支配地位。

被推定具有市场支配地位的经营者,有证据证明不具有市场支配地位的,不应当认定其具有市场支配地位。

Article 18 Undertakings can be constructed to have a dominant market position if any of the following conditions is fulfilled:

(i) The market share of one undertaking accounts for 1/2 in the relevant market;

(ii) The joint market share of two undertakings amounts for 2/3 in the relevant market; or

(iii) The joint market share of three undertakings amounts for 3/4 in the relevant market.

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 a dominant market position.

Undertakings that are constructed to have a dominant market position shall not be considered to have a dominant market position provided that there is opposite evidence.

第四章 经营者集中

Chapter IV Concentrations

第十九条 经营者集中是指下列情形:

(一) 经营者合并;

(二) 经营者通过取得股权或者资产的方式得对其他经营

Article 19 Concentrations refer to the following situations:

(i) Mergers conducted by undertakings

(ii) Controlling other undertakings by acquiring their shares or assets or through other means; and

者的控制权；

(三)经营者通过合同等方式取得对其他经营者的控制权或者能够对其他经营者施加决定性影响。

第二十条 经营者集中达到国务院规定的申报标准的,经营者应当事先向国务院反垄断执法机构申报,未申报的不得实施集中。

第二十一条 经营者集中有下列情形之一的,可以不向国务院反垄断执法机构申报:

(一)参与集中的一个经营者拥有其他每个经营者百分之五十以上有表决权的股份或者资产的;

(二)参与集中的每个经营者百分之五十以上有表决权的股份或者资产被同一个未参与集中的经营者拥有的。

第二十二条 经营者向国务院反垄断执法机构申报集中,提交下列文件、资料:

(一)申报书;

(二)集中对相关市场竞争状况影响的说明;

(三)集中协议;

(四)参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告;

(五)国务院反垄断执法机构规定的其他文件、资料。

申报书应当载明参与集

(iii) Acquiring control over other undertakings by contract or other means or by obtaining the ability to exercise decisive influence over other undertakings by contract or other means.

Article 20 Undertakings shall notify the Anti-monopoly Enforcement Authority regarding concentrations reaching the threshold of notification stipulated by the State Council.

Article 21 Undertakings may not file a concentration notification to the Anti-monopoly Enforcement Authority under the State Council in any of the following situations:

(i) Among all undertakings involved in the concentration, one undertaking possesses more than 50% of the voting shares or assets of each undertaking; or

(ii) An undertaking not involved in the concentration possesses more than 50% of the voting shares or assets of each undertaking that is involved in the concentration.

Article 22 Undertakings that submit a notification of concentration shall also submit the following documents to the Anti-monopoly Enforcement Authority under the State Council:

(i) The notification;

(ii) The evaluation report on the effects that the concentration may have on relevant market competition;

(iii) The concentration agreements;

(iv) The financial reports, audited by an accounting firm, of the undertakings involved in the concentration in the previous accounting year; and

(v) Other information required by the Anti-monopoly Enforcement Authority under the State Council.

The notification shall contain the names of the

中的经营者的名称、住所、经营范围、预定实施集中的日期和国务院反垄断执法机构规定的其他事项。

第二十三条 经营者提交的文件、资料不完备的，应当在国务院反垄断执法机构规定的期限内补交文件、资料。经营者逾期未补交文件、资料的，视为未申报。

第二十四条 国务院反垄断执法机构应当自收到经营者提交的符合本法第二十二条规定的文件、资料之日起三十日内，对申报的经营者集中进行初步审查，作出是否实施进一步审查的决定，并书面通知经营者。国务院反垄断执法机构作出决定前，经营者不得实施集中。

国务院反垄断执法机构作出不实施进一步审查的决定或者逾期未作出决定的，经营者可以实施集中。

第二十五条 国务院反垄断执法机构决定实施进一步审查的，应当自决定之日起九十日内审查完毕，作出是否禁止经营者集中的决定，并书面通知经营者；作出禁止经营者集中的决定，应当说明理由。审查期间，经营者不得实施集中。

undertakings involved in the concentration, their domiciles, business scopes, the date on which the concentration agreement is to be implemented, and other information stipulated by the Anti-monopoly Enforcement Authority under the State Council.

Article 23 In the case that the documents submitted for notification by the undertakings are not complete, the undertakings concerned shall supplement the relevant documents within the period provided by the Anti-monopoly Enforcement Authority under the State Council. A notification shall be deemed not filed if the documents fail to be supplemented by the undertaking within the provided period.

Article 24 The Anti-monopoly Enforcement Authority under the State Council shall conduct a preliminary investigation of the filed concentration, make a decision whether to implement further examination within 30 days of receiving the documents submitted by the undertakings, and notify the undertakings of that decision in written form. Before the decision is made by the Anti-monopoly Enforcement Authority, the undertakings shall refrain from implementing the concentration.

Where the Anti-monopoly Enforcement Authority under the State Council makes a decision that no further examination should be conducted or where the Anti-monopoly Enforcement Authority makes no decision at the time that the 30-day time limit expires, the undertakings are free to implement the concentration.

Article 25 The Anti-monopoly Enforcement Authority under the State Council shall decide to approve or prohibit the concentration within 90 working days from the date of its decision for implementing further examination. The decision to approve or prohibit the concentration shall be given in written form to the undertakings concerned. If the Anti-monopoly Enforcement Authority decides to prohibit the concentration, the Authority shall explain the reasons thereof. The undertakings shall refrain from implementing the concentration within the period of

有下列情形之一的,国务院反垄断执法机构经书面通知经营者,可以延长前款规定的审查时限,但延长的时限最长不超过六十日:

(一)经营者同意延长审查时限的;

(二)经营者提交的文件、资料不准确,需要进一步核实的;

(三)经营者申报后有关情况发生重大变化的。

国务院反垄断执法机构逾期未作出决定的,视为对经营者集中不予禁止。

第二十六条 审查经营者集中,应当考虑下列因素:

(一)参与集中的经营者在相关市场的市场份额及其对市场的控制力;

(二)相关市场的市场集中度;

(三)经营者集中对市场进入、技术进步的影响;

(四)经营者集中对消费者和其他有关经营者的影响;

(五)经营者集中对国民经济发展的影响;

(六)国务院反垄断执法机构认为应当考虑的影响市场竞争的其他因素。

第二十七条 经营者集中中具有或者可能具有排除、限制竞争效果的,国务院反垄断执法机构应当作出禁止经营者集中的决定。但是,经营者能够证明集中对竞争产生的有利因素明显大于不利因素,或者符合社会公共利益的,国

examination.

The Anti-monopoly Enforcement Authority under the State Council may extend the time limit stipulated in the preceding paragraph under any of the following circumstances, but in no case shall the extension exceed 60 days:

(i) The undertakings agree to extend the time limit;

(ii) The documents submitted by the notifying undertakings are inaccurate and need further verification; or

(iii) The relevant circumstances have significantly changed after notification by the undertakings.

Undertakings are allowed to implement the concentration, provided that the Anti-monopoly Enforcement Authority fails to make written decision at the expiration of the provided period of time,

Article 26 The following factors shall be considered in the examination of concentrations:

(i) The involved undertakings' market share in the relevant market and their controlling power over that market;

(ii) The degree of concentration in the relevant market;

(iii) The influence of the concentration over access to the market and over the advancement of technology;

(iv) The influence of the concentration over consumers and other undertakings;

(v) The influence of the concentration over national economic development; and

(vi) Other factors that affect market competition thought to be worth considering by the Anti-monopoly Enforcement Authority under the State Council.

Article 27 In the case that the undertaking's concentration will or may eliminate or restrict market competition, the Anti-monopoly Enforcement Authority shall make a decision to prohibit the concentration and give reasons thereof. However, the Anti-monopoly Enforcement Authority may decide not to prohibit the concentration if the involved undertakings can prove either that the advantages of

务院反垄断执法机构可以作出对经营者集中不予禁止的决定。

implementing the concentration exceed the disadvantages, or that the concentration is in harmony with the public interest.

第二十八条 对不予禁止的经营者集中,国务院反垄断执法机构可以决定附加减少集中对竞争产生不利影响的限制性条件。

Article 28 Where a concentration is approved, restrictive conditions may be attached to implementing such a concentration by the Anti-monopoly Enforcement Authority.

第二十九条 国务院反垄断执法机构应当将禁止经营者集中的决定或者对经营者集中附加限制性条件的决定,及时向社会公告。

Article 29 The Anti-monopoly Enforcement Authority under the State Council shall publicize, in a timely manner, decisions to prohibit concentrations or decisions to attach restrictive conditions to concentrations.

第三十条 对外资并购国内企业或者以其他方式参与经营者集中,涉及国家安全的,除依照本法规定进行经营者集中审查外,还应当按照国家有关规定进行国家安全审查。

Article 30 In the case that national security is concerned, besides the examination on concentration in accordance with this Law, the examination on national security according to the relevant regulations of the State shall be conducted as well on the acquisition of domestic undertakings by foreign capital or other circumstances involving the concentration of foreign capital.

第五章 滥用行政权力排除、限制竞争

Chapter V Prohibition of Abuse of Administrative Powers to Restrict Competition

第三十一条 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力,限定或者变相限定单位和个人经营、购买、使用指定的经营者提供的商品。

Article 31 Administrative agencies and organizations authorized with administrative powers of public affairs by laws and regulations shall not abuse their administrative powers by limiting, or limiting in disguised form, organizations or individuals by requiring them to deal, purchase, or use commodities provided by designated undertakings.

第三十二条,行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力,实施下列行为,妨碍商品在地区之间的自由流通:

Article 32 Administrative agencies and organizations authorized with administrative powers of public affairs by laws and regulations shall not abuse their administrative powers to block regional commodity circulation by employing the following behaviors:

(一) 对外地商品设定歧视性

(i) Setting discriminatory charging items,

收费项目、实行歧视性收费标准，或者规定歧视性价格；

(二)对外地商品采取与本地同类商品不同的技术要求、检验标准，或者对外地商品采取重复检验，重复认证等歧视性技术措施，限制外地商品进入本地市场；

(三)采取专门针对外地商品的行政许可，限制外地商品进入本地市场；

(四)设置关卡或者采取其他手段，阻碍外地商品进入或者本地商品运出。

第三十三条 行政机关和公共组织不得滥用行政权力，以设定歧视性资质要求、评审标准或者不依法发布信息等方式，排斥或者限制外地经营者参加本地的招标投标活动。

第三十四条 行政机关和公共组织不得滥用行政权力，以采取同本地经营者不平等待遇等方式，排斥或者限制外地经营者在本地投资或者设立分支机构。

第三十五条 行政机关和公共组织不得滥用行政权力，强制经营者从事本法规定的垄断行为。

fixing discriminatory prices, or implementing discriminatory charging standards for commodities originating from other regions;

(ii) Stipulating technical requirements or inspection standards on commodities originating from other regions 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 commodities from other regions to restrict the access of those commodities to the local market; or

(iv) Setting up checkpoints on roads to block either the entry of commodities originating from other regions or the exit of local commodities.

Article 33 Administrative agencies and organizations authorized with administrative powers of public affairs by laws and regulations shall not abuse their administrative powers to restrict or reject the participation of undertakings from other regions in local bidding activities by imposing discriminatory qualification requirements or assessment standards or by failing to publish information in accordance with the law.

Article 34 Administrative agencies and organizations authorized with administrative powers of public affairs by laws and regulations shall not abuse their administrative powers through the use of discriminatory treatment to restrict or reject either investment in their region or the establishment of local branches by undertakings from other regions.

Article 35 Administrative agencies and organizations authorized with administrative powers of public affairs by laws and regulations shall not abuse their administrative powers to compel undertakings to engage in monopolistic activities that are prohibited under this Law.

第三十六条 行政机关不得滥用行政权力,制定含有排除、限制竞争内容的规定。

Article 36 Administrative agencies shall not abuse their administrative power to make regulations that eliminate or restrict competition.

第六章 对涉嫌垄断行为的调查

Chapter VI The Investigation of Suspicious Monopoly Behavior (Changed from “Anti-monopoly Authority”)

第三十七条 反垄断执法机构依法对涉嫌垄断行为进行调查。

Article 37 Anti-monopoly Enforcement Authority shall investigate suspicious monopoly behavior in accordance with the law.

任何单位和个人对涉嫌垄断行为,都有权向反垄断执法机构举报。反垄断执法机构应当为举报人保密。

Any enterprise or individual may report suspected monopolistic conduct to the Anti-monopoly Enforcement Authority. The Anti-monopoly Enforcement Authority should keep the names of the reporters confidential.

举报采用书面形式并提供相关事实和证据的,反垄断执法机构应当进行必要的调查。

The Anti-monopoly Enforcement Authority shall conduct the necessary investigations for those reports that are in written form containing relative facts and necessary evidence.

第三十八条 反垄断执法机构调查涉嫌垄断行为,可以采取下列措施:

Article 38 When investigating suspected monopolistic conduct, the Anti-monopoly Authority can take the following measures:

(一) 进入被调查的经营者的营业场所或者其他有关场所进行检查;

(i) Conduct on-the-spot inspection at the location that the business takes place or other places that are relevant to the undertakings;

(二) 询问被调查的经营者、利害关系人或者其他有关单位和个人,要求其说明有关情况;

(ii) Question the undertaking under investigation, interested parties, and other relevant organizations and individuals of the relevant circumstances;

(三) 查阅、复制或者要求被调查的经营者、利害关系人或者其他有关单位和个人提供有关单证、协议、会计账簿、业务函电、电子数据等文件、资料;

(iii) Examine or copy the relevant documents, agreements, contracts, accounting books, business mail, and electronic data submitted by the undertaking concerned, interested parties, and other relevant organizations or individuals;

(四) 查封、扣押相关证据;

(iv) Seal up and retain relevant evidence; and

(五) 查询经营者的银行账户。

(v) Inquire after the bank accounts of the undertakings concerned;

采取前款规定的措施,应当向反垄断执法机构主要负责人书面报告,并经批准。

Before any of the actions described in this Article are applied, a written report must be submitted to the senior officials of the Anti-monopoly Enforcement

Authority for approval.

第三十九条 反垄断执法机构调查涉嫌垄断行为,执法人员不得少于二人,并应当出示执法证件,

执法人员进行询问和调查,应当制作笔录,并由被询问人或者被调查人签字。

第四十条 反垄断执法机构及其工作人员对执法过程中知悉的商业秘密负有保密义务。

第四十一条 被调查的经营者、利害关系人或者其他有关单位和个人应当配合反垄断执法机构依法履行职责,不得拒绝、阻碍反垄断执法机构的调查。

第四十二条 被调查的经营者、利害关系人有权陈述意见。反垄断执法机构应当对被调查的经营者、利害关系人提出的事实、理由和证据进行核实。

第四十三条 反垄断执法机构对涉嫌垄断行为调查核实后,认为构成垄断行为的,应当依法作出处理决定,并可以向社会公布。

第四十四条 对反垄断执法机构调查的涉嫌垄断行为,被调查的经营者承诺在反垄断执法机构认可的期限内采取具体措施消除垄断行为后果的,反垄断执法机构可以决

Article 39 When investigating suspected monopolistic conduct, there shall be at least two law enforcing persons, and they shall present their certificates.

The executing officers shall make a written record of the inquiry and investigation, and such reports shall be signed by the inquired or investigated parties.

Article 40 The Anti-monopoly Enforcement Authority and its officials shall keep confidential the commercial secrets obtained in the process of enforcement.

Article 41 The undertakings concerned, interested parties, and other relevant organizations or individuals being investigated shall cooperate with the Anti-monopoly Enforcement Authority; subjects are prohibited from refusing or obstructing the investigation conducted by the Anti-monopoly Enforcement Authority.

Article 42 The undertakings concerned and interested parties have the right to submit statements. The Anti-monopoly Enforcement Authority shall hear the opinions of the undertakings concerned and interested parties and conduct the necessary verification of the alleged facts, reasons, and evidence.

Article 43 After investigation and verification of the suspected monopolistic conduct is complete, the Anti-monopoly Enforcement Authority shall make their determination in accordance with the law on the conduct considered to be in violation of this law, and they shall publicize their determination.

Article 44 In the process of investigating monopolistic conduct, the Anti-monopoly Enforcement Authority may suspend the investigation if the subject undertakings promise to eliminate the effects of the conduct through the use of concrete measures within the period prescribed by the Anti-monopoly

定中止调查。中止调查的决定应当载明被调查的经营者承诺的具体内容。

反垄断执法机构决定中止调查的,应当对经营者履行承诺的情况进行监督。经营者履行承诺的,反垄断执法机构可以决定终止调查,并可以决定减轻或者免除处罚。

有下列情形之一的,反垄断执法机构应当恢复调查:

(一)经营者未履行承诺的;

(二)作出中止调查决定所依据的事实发生重大变化的;

(三)中止调查的决定是基于经营者提供的不完整或者不真实的信息作出的。

第七章 法律责任

第四十五条 经营者违反本法规定,达成并实施垄断协议的,由反垄断执法机构责令停止违法行为,没收违法所得,并处上一年度销售额百分之十以下的罚款;尚未实施所达成的垄断协议的,可以处五十万元以下的罚款。

经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的,反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。

第四十六条 经营者违反本法规定,滥用市场支配地

Enforcement Authority. The determination to suspend investigation should state the concrete measures of the promise.

The Anti-monopoly Enforcement Authority shall supervise the implementation of the promise by the relevant undertakings. If the undertakings implement the promise, the Anti-monopoly Enforcement Authority may terminate the investigation.

However, the Anti-monopoly Enforcement Authority shall resume investigation if any of the following occurs:

(i) The undertakings fail to implement the promise;

(ii) The facts on which the decision of suspending investigation depended have undergone significant changes; or

(iii) The decision of suspending investigation was based on incomplete or inaccurate information submitted by the undertakings.

Chapter VII Legal Liability

Article 45 In the case that the undertakings violate the relevant provisions of this Law regarding the prohibition of monopoly agreements as well as implement monopolistic agreements, the Anti-monopoly Enforcement Authority shall order the undertakings concerned to cease and desist such acts, confiscate the illegal gains and impose fines from 1% to 10% of the total sales volume in the relevant market from the previous year; if monopolistic agreements have not been implemented, a fine of less than 500,000 RMB may be imposed.

If the undertakings involved in a monopoly agreement report their monopolistic conduct to the Anti-monopoly Enforcement Authority and provide important evidence, they may be given a mitigated punishment or be exempt from punishment at the discretion of the Anti-monopoly Enforcement Authority.

Article 46 In the case that the undertakings violate the relevant provisions of this law by abusing their

位的,由反垄断执法机构责令停止违法行为,处上一年度销售额百分之十以下的罚款,并处没收违法所得。

第四十七条 经营者违反本法规定实施集中的,由国务院反垄断执法机构责令停止实施集中或者责令限期处分股份、资产,转让营业以及采取其他必要措施恢复到集中前的状态,可以处五十万元以下的罚款。

第四十八条 对本法第四十五条、第四十六条、第四十七条规定的罚款,反垄断执法机构确定具体罚款数额时,应当考虑违法行为的性质、程度和持续的时间等因素。

第四十九条 经营者实施垄断行为,给他人造成损失的,依法承担民事责任。

第五十条 行政机关和公共组织滥用行政权力,实施排除、限制竞争行为的,由上级机关责令改正;对直接负责的主管人员和其他直接责任人员,依法给予处分。

法律、行政法规对行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力实施排除、限制竞争行为的处理另有规定的,依照其规定。

第五十一条 对反垄断

dominant market position, the Anti-monopoly Enforcement Authority shall order the undertakings concerned to cease and desist such acts, confiscate the illegal gains, and impose fines from 1% to 10% of the total sales volume in the relevant market from the previous year.

Article 47 In the case that the undertakings' concentration is in violation of the relevant provisions of this Law, the Anti-monopoly Enforcement Authority under the State Council shall order the undertakings concerned to correct the situation, impose a fine of less than 500,000 RMB, and may also order the undertakings concerned to dispose whole or part of its stock, transfer part of its business, or adopt other necessary measures to restore the market situation before the concentration.

Article 48 To decide the amount of fines pursuant to Article 45, Article 46 and Article 47, the Anti-monopoly Enforcement Authority should consider factors such as the nature, extent and duration of the illegal act.

Article 49 The undertakings that violate the provisions of this law and cause damage to others shall bear civil liability.

Article 50 The administrative agencies or organizations authorized with administrative powers of public affairs by laws and regulations shall be admonished by the superior authorities if they abuse their administrative power to eliminate or restrict competition; the individuals who are directly responsible shall be punished in accordance with the 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.

Article 51 For those undertakings who refuse to submit

执法机构依法实施的审查和调查,拒绝提供有关材料、信息或者提供虚假材料、信息,或者隐匿、销毁、转移证据,或者有其他拒绝、阻碍调查行为,由反垄断执法机构责令改正,对个人可以处二万元以下的罚款,对单位可以处二十万元以下的罚款;情节严重的,对个人处二万元以上十万元以下的罚款,对单位处二十万元以上一百万元以下的罚款;构成犯罪的,依法追究刑事责任:

第五十二条 对反垄断执法机构依据本法第二十七条作出的决定不服的,可以先依法申请行政复议;对行政复议决定不服的,可以再依法提起行政诉讼。

对反垄断执法机构作出的前款规定以外的决定不服的,可以依法申请行政复议或者提起行政诉讼。

第五十三条 反垄断执法机构工作人员,滥用职权、玩忽职守、徇私舞弊或者泄露执法过程中知悉的经营者的商业秘密,构成犯罪的,依法追究刑事责任;尚不构成犯罪的,依法给予处分。

第八章 附 则

第五十四条 行业协会等组织实施的排除,限制竞争的行为,适用本法。

related materials and information, have submitted fraudulent materials or information, have hid, destroyed or removed evidence, or refuse or obstruct investigation in other ways, the Anti-monopoly Enforcement Authority shall ask them to correct the situation. A fine of less than 20,000 RMB may be imposed on individuals, and a fine of less than 200,000 RMB may be imposed on enterprises; and in the case of a serious situation, the Anti-monopoly Enforcement Authority may impose fines from 20,000 RMB to 100,000 RMB against individuals or fines from 200,000 RMB to 1 Million RMB against enterprises; a criminal liability may be imposed if a violation of criminal law occurs.

Article 52 (Article 44 in the 2nd Version) Where the undertakings concerned and the interested parties are dissatisfied with the decisions made by the Anti-monopoly Enforcement Authority pursuant to Article 27 and Article 28 of this Law, they may first apply for an administrative reconsideration; if they are still dissatisfied with the reconsideration, they may bring an administrative suit in accordance with the law.

Where the undertakings are dissatisfied with any decisions made by the Authority other than the decisions made in accordance with the previous paragraph, the parties may apply for an administrative reconsideration or bring an administrative suit.

Article 53 The Anti-monopoly Enforcement Authority officials shall be given administrative sanctions if they abuse their power, neglect their duties, receive bribes and cheat, or disclose business secrets of the involved undertakings obtained in their enforcement activities, and such officials shall also receive criminal liability if their actions constitute a crime.

Chapter VII Supplementary Provisions

Article 54 This law is applicable to entities such as industry associations that organize the act of eliminating or restricting market competition.

第五十五条 经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法，但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法。

Article 55 This law is not applicable to conducts by undertakings to protect their legitimate intellectual property rights in accordance with the IP law and relevant administrative regulations; however, this Law is applicable to the conduct of undertakings to eliminate or restrict market competition by abusing intellectual property rights stipulated in the IP law and administrative regulations.

第五十六条 农业生产者及农村经济组织在农产品生产、加工、销售、运输、储存等经营活动中实施的联合或者协同行为，不适用本法。

Article 56 This law is not applicable to the ally or concerted actions related to the operation of production, processing, sales, transportation, and storage of agricultural commodities conducted by farmers or their professional enterprises.

第五十七条 本法自2008年8月1日起施行。

Article 57 This law shall become effective as of August 1, 2008.