



(unofficial translation only intended for internal use)

Anti-Monopoly Law of the People's Republic of China

(Adopted at the 29th Session of the Standing Committee of the 10th National People's Congress on August 30, 2007)

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Chapter I General Provisions

Article 1

This Law is enacted for the purposes of guarding against and prohibiting monopolistic conduct, safeguarding fair market competition, improving economic efficiency, protecting the interests of consumers and public interests, and promoting the healthy development of the socialist market economy.

Article 2

This Law is applicable to monopolistic conducts in economic activities within the territory of the People's Republic of China; this Law is applicable to conducts outside the territory of the People's Republic of China that have eliminative or restrictive effects on competition in the domestic market of the People's Republic of China.

Article 3

Monopolistic conduct under this Law includes:

- (1) Undertakings concluding monopoly agreements;
- (2) Abuse of dominant market position by undertakings;
- (3) Concentration of undertakings that has or may have the effect of eliminating or restricting competition.

Article 4

The State shall formulate and implement competition rules, which are suitable to the socialist market economy, improve macroeconomic control, as well as improve a unified, open, competitive and orderly market system.

Article 5

Undertakings may implement concentration through fair competition and voluntary coalition in accordance with law to expand their business scale and increase their market competitiveness.

Article 6

Undertakings with a dominant market position shall not abuse their market dominant position to eliminate or restrict competition.

Article 7

With respect to industries that are dominated by the State-owned economy and that have a direct bearing on national economic wellbeing and national security, as well as industries that conduct exclusive and monopolistic sales in accordance with law, the State shall protect the legitimate business activities of the undertakings in these industries. The State shall implement the supervision, adjustment and control of the business operations and the prices of products and service of these undertakings in accordance with law, safeguard the legitimate interests of consumers and promote technological progress.

Undertakings of industries under the previous paragraph shall conduct their business in accordance with law in an honest and trustworthy manner, impose strict self-discipline, and accept supervision from the public. These undertakings shall not harm the interests of consumers by making use of their position of control or their position of exclusive and monopolistic sales.

Article 8

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to eliminate or restrict competition.

Article 9

The State Council shall establish the Anti-Monopoly Commission, which shall be responsible for organizing, coordinating and guiding anti-monopoly work and it shall have the following functions:

- (1) Research and formulate relevant competition policies;
- (2) Organize investigations, assess the state of overall market competition, and issue assessment reports;
- (3) Formulate and promulgate anti-monopoly guidelines;
- (4) Coordinate the anti-monopoly administrative enforcement work ; and
- (5) Other functions as specified by the State Council.

The State Council shall stipulate the composition of and the work protocols of the Anti-Monopoly Commission under the State Council.

Article 10

The authority empowered by the State Council to have the functions for anti-monopoly law enforcement (hereafter the “Anti-Monopoly Enforcement Authority under the State Council”) is responsible for the anti-monopoly law enforcement in accordance with provisions of this Law.

If necessary in light of the practical work, the Anti-Monopoly Enforcement Authority under the State Council may delegate to corresponding agencies at the levels of province, autonomous region and municipality directly under the State Council functions for relevant anti-monopoly law enforcement in accordance with provisions of this Law.

Article 11

Industry associations shall strengthen self-disciplining of undertakings within their industries and guide these undertakings to compete in accordance with law and maintain the order of market competition.

Article 12

For the purposes of this Law, an “undertaking” means a natural person, legal person or other organization that engages in manufacturing commodities, operating or providing services.

For the purposes of this Law, a “relevant market” means the product scope or territory within which undertakings compete with respect to specific products or services (hereafter collectively “products”) during a certain period.

Chapter II Monopoly Agreements

Article 13

The following Monopoly Agreements among undertakings with competing relationships shall be prohibited:

- (1) Fix or change prices of products;
- (2) Restrict the production output or sales volume of products;
- (3) Allocate the sales markets or the raw material purchasing markets;
- (4) Restrict the purchase of new technology or new equipment, or restricts the development of new technology or new products;
- (5) Jointly boycott transactions; and
- (6) Other Monopoly Agreements as otherwise determined by the Anti-Monopoly Enforcement Authority under the State Council.

A monopolistic agreement referred to in this Law refers to any agreements, decisions or other concerted actions that eliminate or restrict competition.

Article 14

Undertakings are prohibited from reaching the following Monopoly Agreements with their counter-parties that:

- (1) Fix the resale price of products with respect to third parties;
- (2) Restrict the minimal resale price of products with respect to the third parties;
- (3) are monopoly agreements as otherwise determined by the Anti-monopoly Enforcement Authority under the State Council.

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 Article 13 and Article 14:

- (1) For the purpose of technology improvement, or research and development of new products;
- (2) For the purpose of upgrading product quality, reducing cost and improving efficiency, unifying products specifications or standards or implementing the division of labour based on specialization;
- (3) For the purpose of improving operational efficiency of small and medium-sized undertakings and enhancing their competitiveness;
- (4) For the purpose of achieving such public interests as energy savings, environmental protection, disaster relief and other charitable assistance;
- (5) For the purpose of mitigating serious decrease in sales volumes or distinctive production oversupply during economic depression.
- (6) For the purpose of safeguarding the legitimate interests in foreign trade and economic cooperation; or
- (7) Other circumstances as stipulated by law and the State Council. (*New Provision*)

In the case that Monopoly Agreements fall within the circumstances set out in subparagraphs (1) to (5), undertakings shall also prove that the agreements entered into will not substantially restrict competition in the relevant market, and consumers are able to share the benefits derived from such agreements.

Article 16

Industrial Associations shall not organize undertakings within their industries to engage in monopolistic conducts prohibited by this Chapter.

Chapter III Abuse of Dominant Market Position

Article 17

Undertakings holding a dominant market position are prohibited from engaging in the following activities by abusing their dominant market position:

- (1) Selling products at unfairly high prices or buying products at unfairly low prices;
- (2) Selling products at prices below cost without any justification;
- (3) Refusing to enter into transactions with their counter-parties without any justification;
- (4) Limiting their counter-parties to enter into transactions exclusively with them or undertakings designated by them without any justification;
- (5) Implementing tie-in sales without any justification or imposing any other unreasonable transaction terms in the course of transactions;
- (6) Applying discriminating treatment on prices or other transaction terms to their counter-parties that are in the same positions without any justification; and
- (7) Other abusive exploitations of dominant market position as determined by the Anti-Monopoly Enforcement Authority under the State Council.

For the purpose of this Law, a “dominant market position” means the market position of undertakings to control the price, quantity of products or other transaction terms in the relevant market, or to enable them to block or affect other undertakings in entering into the relevant market.

Article 18

A finding of a dominant market position of an undertaking shall be based on the following factors:

- (1) The market share of the undertaking in the relevant market, and the competitive conditions in the relevant market;
- (2) The ability of the undertaking to control the sales market or raw material purchasing market;
- (3) The financial status and technical conditions/capabilities of the undertaking;

- (4) The extent of dependence on the undertaking by other undertakings in respect to transactions;
- (5) The level of difficulty for other undertakings to enter into the relevant market; and
- (6) Other factors relating to the dominant market position of the undertaking.

Article 19

In any of the following cases, a dominant market position of an undertaking or undertakings may be presumed:

- (1) The market share of one undertaking in the relevant market accounts for 1/2;
- (2) The aggregate market share of two undertakings in the relevant market accounts for 2/3; or
- (3) The aggregate market share of three undertakings in the relevant market accounts for 3/4.

In case of sub-paragraphs (2) or (3), an undertaking with a market share of less than 1/10 shall not be presumed to hold a dominant market position.

An undertaking which is presumed to hold a dominant market position shall not be found to be in a dominant market position, if it can provide evidence which shows it does not hold a dominant market position.

Chapter IV Concentration of Undertakings

Article 20

A “concentration of undertakings” means any of the following circumstances:

- (1) A merger among undertakings;
- (2) Acquisition by an undertaking(s) of control of other undertakings through means of acquiring shares or assets; or
- (3) By contract or other means, an acquisition by an undertaking(s) of control of other undertakings, or an acquisition by an undertaking(s) of the ability to impose decisive influence on other undertakings.

Article 21

Where a concentration of undertakings meets the relevant thresholds for notification as stipulated by the State Council, the undertakings shall file a notification with the Anti-Monopoly Enforcement Authority under the State Council; without notification

with the Anti-Monopoly Enforcement Authority under the State Council, the undertakings shall be prohibited from implementing the concentration.

Article 22

In any of the following cases, the undertakings to a concentration may dispense with the notification with the Anti-monopoly Enforcement Authority under the State Council:

- (1) One undertaking to the concentration holds more than 50% of the shares with voting rights or assets of each of the other participating undertakings;
- (2) More than 50% of the shares with voting rights or assets of each of the undertakings to the concentration are owned by a single undertaking that is not participating in the concentration.

Article 23

In filing a notification of concentration with the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall submit the following documents and materials:

- (1) The notification;
- (2) Explanation regarding the impact of the concentration on competition in the relevant market;
- (3) The agreement of the concentration;
- (4) The financial and accounting reports in the preceding accounting year of the undertakings participating in the concentration, which reports shall have been audited by an accountant; and
- (5) Other documents or materials required by the Anti-Monopoly Enforcement Authority under the State Council.

The notification shall specify matters such as the names, addresses, scope of business, proposed date for implementing the concentration and other matters as stipulated by the Anti-Monopoly Enforcement Authority under the State Council.

Article 24

In case that the documents and materials submitted for notification by the undertakings are not complete, the undertakings shall supplement the documents and materials within the time limit specified by the Anti-Monopoly Enforcement Authority under the State Council. Where the undertakings fail to supplement such documents or materials within the time limit, it shall be deemed that no notification is filed.

Article 25

Within 30 days from the date of receipt of the documents and materials that are consistent with provisions of Article 23 of this Law as submitted by the undertakings, the Anti-Monopoly Enforcement Authority under the State Council shall initiate the preliminary review, make a decision whether or not to initiate further review, and notify the undertakings in writing. Pending the decision of the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall refrain from implementing the concentration.

Where the Anti-Monopoly Enforcement Authority under the State Council decides not to initiate further review or makes no decision within the time limit, the undertakings may implement the concentration.

Article 26

Where the Anti-monopoly Enforcement Authority under the State Council decides to initiate further review, it shall complete the review within 90 days from the date of the decision, makes a decision whether or not to prohibit the concentration of undertakings and notify the undertakings in writing; in case of a decision to prohibit the concentration of undertakings, the Anti-monopoly Enforcement Authority under the State Council shall state its reasons thereof. During the period of the further review, undertakings shall not implement the concentration.

In any of the following cases, the Anti-Monopoly Enforcement Authority under the State Council may extend the time limit specified in the above paragraph after notifying the undertakings in writing, provided that the maximum extension period does not exceed 60 days:

- (1) The undertakings agree to extend the time limit;
- (2) The documents or materials submitted by the undertakings are inaccurate and need further verification; or
- (3) Material changes have occurred with respect to relevant circumstances since the filing of the notification by the undertakings.

Where the Anti-monopoly Enforcement Authority under the State Council makes no decision within the time limit, undertakings may implement the concentration

Article 27

In reviewing a concentration of undertakings, the following factors shall be taken into consideration:

- (1) The market shares of the undertakings participating in the concentration in the relevant market(s) and their ability to control the market(s);
- (2) The degree of concentration in the relevant market(s);

- (3) The effect of the proposed concentration on market access and technological progress;
- (4) The effect of the proposed concentration on consumers and other relevant undertakings;
- (5) The effect of the proposed concentration on the development of the national economy ; and
- (6) Other factors having effects on market competition that the Anti-Monopoly Enforcement Authority under the State Council considers shall be taken into consideration.

Article 28

Where the concentration of undertakings has or may have the effect of eliminating or restricting competition, the Anti-monopoly Enforcement Authority under the State Council shall make a decision to prohibit the concentration of undertakings. However, the Anti-Monopoly Enforcement Authority under the State Council may make a decision not to prohibit the concentration of undertakings where the undertakings can prove that its positive effects on competition significantly overweighs its negative effects on competition, or that the concentration of undertakings is in the public interest.

Article 29

Where the Anti-Monopoly Enforcement Authority under the State Council does not prohibit the concentration of undertakings, it may decide to impose restrictive conditions on the concentration of undertakings to reduce anti-competitive effects arising from the concentration.

Article 30

The Anti-Monopoly Enforcement Authority under the State Council shall make a public announcement in a timely manner with respect to a decision to prohibit a concentration of undertakings or a decision to impose restrictive conditions on the concentration of undertakings.

Article 31

With respect to mergers with and acquisitions of domestic enterprises by foreign investors or other forms of concentration involving foreign investors that concern national security, apart from the review of concentration of undertakings under this Law, they shall be examined in accordance with relevant provisions of the State for national security review.

Chapter V Abuse of Administrative Powers to Eliminate or Restrict Competition

Article 32

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to mandate or mandate in disguised form any entities or persons to operate, buy or use only the products supplied by the undertakings designated by them.

Article 33

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers and take any of the following actions that impede the free flow of products among different regions:

- (1) To set discriminatory items for fees or charges, implement discriminatory fee standards or fix discriminatory prices for products originated from other regions;
- (2) To impose on products originated from other regions technical requirements or inspection standards different from those on similar local products, or require repeated inspection or certification on products originated from other regions, restricting entry of products originated from other regions into the local markets;
- (3) To implement administrative license measures as applicable only to products originated from other regions, restricting entry of products originated from other regions into the local markets;
- (4) To prevent entry of products originated from other regions into the local markets or the exit/sale of the local products into other regions by setting up checkpoints or other means; or
- (5) Other actions which impede the free flow of products among different regions.

Article 34

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict the participation of undertakings from other regions in local bidding activities by such means as prescribing discriminatory qualification requirements or assessment standards, or by not publishing information according to law.

Article 35

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict investment or the establishment of branches in their regions by undertakings from other regions by such means as according treatment unequal to that enjoyed by their local undertakings.

Article 36

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to compel undertakings to engage in monopolistic conducts prohibited by this Law.

Article 37

Administrative agencies shall not abuse their administrative powers to make regulations containing provisions eliminating or restricting competition.

Chapter VI Investigation of Suspected Monopolistic Conducts

Article 38

The Anti-Monopoly Enforcement Authority shall investigate suspected monopolistic conducts in accordance with the law.

Any entity or individual shall have the right to report any suspected monopolistic conducts to the Anti-Monopoly Enforcement Authority. The Anti-monopoly Enforcement Authority shall maintain confidentiality for such entity or individual.

Where such report is in writing and furnished with relevant facts and evidence, the Anti-Monopoly Enforcement Authority shall conduct necessary investigations.

Article 39

In investigating suspected monopolistic conducts, the Anti-monopoly Enforcement Authority may take the following measures:

- (1) To enter into the business premises or other places of the investigated undertakings for inspection;
- (2) To interview undertakings, interested parties or other relevant entities or individuals being investigated, and request them to explain the relevant facts and circumstances;
- (3) To inspect and copy relevant documents and materials of undertakings, interested parties or other relevant entities or individuals being investigated,

such as relevant vouchers and certificates, agreements, accounting books, business correspondence, electronic data;

- (4) To seal or seize relevant evidence; and
- (5) To examine bank accounts of the undertakings.

Measures in the above paragraph shall be applied only after a written report is submitted to principal responsible persons of the Anti-Monopoly Enforcement Authority and the relevant approval is obtained.

Article 40

For investigation of suspected monopolistic conducts by the Anti-monopoly Enforcement Authority, there shall be at least two enforcement officers attending the investigation, and they shall present the proofs of enforcement certificates.

Enforcement officers shall maintain written record of their inquiries and such written record shall be signed by those being interviewed or investigated.

Article 41

The Anti-Monopoly Enforcement Authority and its staff shall keep confidential the commercial secrets obtained during the course of law enforcement.

Article 42

Undertakings, interested parties, other relevant organizations or individuals being investigated shall cooperate with the Anti-Monopoly Enforcement Authority with respect to the performance of its functions and shall not refuse or hinder the investigation by the Anti-Monopoly Enforcement Authority.

Article 43

Undertakings being investigated and interested parties shall have the right to state their opinions. The Anti-Monopoly Enforcement Authority shall verify the facts, reasons and supporting evidences furnished by the undertakings being investigated or interested parties.

Article 44

After investigations and verification, if the Anti-Monopoly Enforcement Authority considers that the suspected monopolistic conduct constitutes monopolistic conduct, it shall make a decision in accordance with law and may publish the decision to the public.

Article 45

With respect to a suspected monopolistic conduct that is investigated by the Anti-Monopoly Enforcement Authority, if the undertaking being investigated undertakes to take concrete measures to eliminate consequences of such monopolistic conduct within the time limit accepted by the Anti-Monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may decide to suspend the investigation. The decision to suspend the investigation shall expressly state detailed contents of such commitments of the undertaking.

Where the Anti-Monopoly Enforcement Authority decides to suspend the investigation, it shall monitor the undertaking's performance of its commitments. Where the undertaking performed its commitments, the Anti-Monopoly Enforcement Authority may decide to cease the investigation.

In any of the following circumstances, the Anti-monopoly Enforcement Authority shall resume its investigation:

- (1) Where the undertaking fails to meet its commitments;
- (2) Where material changes have occurred with respect to the facts on which the decision to suspend the investigation is based;
- (3) Where the decision to suspend the investigation was made based on incomplete or inaccurate information provided by the undertaking.

Chapter VII Legal Liability

Article 46

For undertakings that enter into any monopoly agreement in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such act, confiscate the illegal gains and impose fines of more than 1% and less than 10% of the turnover in the preceding year; fines of no more than RMB 500,000 yuan may be imposed where the monopolistic agreement has not yet been implemented.

Where any undertaking on its own initiative reports the relevant circumstances of the monopoly agreement and furnishes important evidence to the Anti-monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may in its discretion mitigate or exempt such undertaking from punishment.

For industrial associations that organize the undertakings within their industries to reach monopoly agreements, the Anti-Monopoly Enforcement Authority may impose fines of no more than RMB 500,000 yuan; in serious circumstances, the authority for registration and administration of social organizations may revoke the registration of the industrial associations according to law.

Article 47

For undertakings that abuse their dominant market position in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such an act, confiscate the illegal gains, and impose fines of more than 1% and less than 10% of the turnover in the preceding year.

Article 48

For undertakings that implement concentrations in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority under the State Council is authorised to order such undertakings to cease the implementation of the concentration, or to dispose of shares or assets or transfer businesses within a given time limit, and take other measures necessary to restore to the state before the concentration of such undertakings, and may impose fines of no more than RMB 500,000 yuan.

Article 49

In determining the specific amount of fines imposed under Articles 46, 47 and 48 of this Law, the Anti-Monopoly Enforcement Authority shall take into account such factors as the nature, extent and duration of an illegal conduct.

Article 50

Undertakings shall be responsible for civil liabilities according to law for losses caused to others as a result of their monopolistic conducts.

Article 51

Where any administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration engages in conducts that eliminate or restrict competition in abuse of their administrative powers, its superior agency shall order it to make correction; the persons directly in charge and others who are directly responsible shall be subject to disciplinary sanctions in accordance with law. The Anti-Monopoly Enforcement Authority may make proposals to the relevant superior agency of the administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration on handling of the case in accordance with law.

Where laws or administrative regulations otherwise make provisions for the regulation of conducts eliminating or restricting competition by administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration in abuse of their administrative powers, such provisions shall prevail.

Article 52

If any individual or entity in an examination and investigation implemented by the Anti-Monopoly Enforcement Authority in accordance with the law, refuses to submit relevant materials or information, submits false materials or information, conceals, destroys or removes evidence, or refuses to be investigated or hinders the

investigation, the Anti-Monopoly Enforcement Authority is authorised to order such individual or entity to cease and desist such act and to impose fines of no more than RMB 20,000 yuan on individuals or fines of no more than RMB 200,000 yuan on entities; in serious circumstances, the Anti-Monopoly Enforcement Authority may impose fines that is between RMB 20,000 yuan and RMB 100,000 yuan on individuals or fines of between RMB 200,000 yuan and RMB 1 million yuan on entities; if the case constitutes a criminal offence, criminal liabilities shall be prosecuted according to law.

Article 53

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with Article 28 and Article 29 of this law may first apply for an administrative review according to law; and, if object to the decision in the administrative review, may file an administrative suit according to law.

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with provisions other than the previous provisions may apply for an administrative review or bring an administrative action according to law.

Article 54

Any working staff of the Anti-Monopoly Enforcement Authority who abuses his powers, neglects his duties, bends the law for personal gains, or divulges business secrets obtained in the process of law enforcement, shall be prosecuted for criminal liabilities according to law if the case constitute a criminal offence, or shall be imposed disciplinary sanctions according to law if the case does not constitute a criminal offence.

Chapter VIII Supplementary Provisions

Article 55

This Law is not applicable to undertakings' conduct in exercise of intellectual property rights pursuant to provisions of laws and administrative regulations relating to intellectual property rights; but this Law is applicable to undertakings' conduct that eliminates or restricts competition by abusing their intellectual property rights.

Article 56

This Law is not applicable to the alliance or concerted actions among farmers and farmers' economic organisations in connection with operational activities such as the production, processing, sales, transportation and storage of agricultural products.

Article 57

This Law is effective as of 1 August 2008.