

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

Adopted at the 29th meeting of the Standing Committee of the 10th National People's Congress
of the People's Republic of China on August 30, 2007

Chapter I General Provisions

Article 1 This Law is enacted for the purpose of preventing and refraining monopolistic conducts, protecting fair competition on the market, enhancing economic efficiency, safeguarding the interests of consumers and social public interests and promoting 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 effects on competition on the domestic market.

Article 3 For the purposes of this Law, "monopolistic conducts" are defined as follows:

- (1) Monopolistic agreements among business operators;
- (2) Abuse of dominant market positions by business operators; and
- (3) Concentration of business operators that eliminates or restricts competition or might eliminate or restrict competition.

Article 4 The state constitutes and carries out competition rules which accord with the socialist market economy, perfects macro-control, and advances a unified, open, competitive and orderly market system.

Article 5 Business operators may, through fair competition and voluntary alliance, concentrate themselves according to law, expand the scope of business operations and enhance competitiveness.

Article 6 Any business operator with a dominant market position may not abuse that dominant position to eliminate or restrict competition.

Article 7 With respect to the industries controlled by the state-owned economy and concerning the lifeline of national economy and national security or the industries implementing exclusive operation and sales according to law, the state protects the lawful business operations conducted by the business operators therein. The state also lawfully supervises and regulates their business operations and the prices of their commodities and services so as to safeguard the interests of consumers and promote technical progresses.

The business operators as mentioned above shall operate lawfully, be honest and faithful, be strictly self-disciplined, accept social supervision and shall not damage the interests of consumers by virtue of their dominant or exclusive positions.

Article 8 No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative powers to eliminate or restrict competition.

Article 9 The State Council shall establish the Anti-Monopoly Commission, which is in charge of organizing, coordinating and guiding anti-monopoly work, shall perform the following functions:

- (1) Studying and drafting related competition policies;
- (2) Organizing investigation and assessment of overall competition situations in the market and issuing assessment reports;
- (3) Constituting and issuing anti-monopoly guidelines;
- (4) Coordinating anti-monopoly administrative law enforcement; and
- (5) Other functions as assigned by the State Council.

The State Council shall stipulate composition and working rules of the Anti-Monopoly Commission.

Article 10 The anti-monopoly authority designated by the State Council (hereinafter referred to as the anti-monopoly authority under the State Council) shall be in charge of anti-monopoly law enforcement in accordance with this Law.

The anti-monopoly authority under the State Council may, when needed, authorize corresponding authorities in the people's governments of provinces, autonomous regions and municipalities directly under the Central Government to take charge of anti-monopoly law enforcement in accordance with this Law.

Article 11 A trade association shall intensify industrial self-discipline, guide business operators to compete lawfully and safeguard the competition order in the market.

Article 12 For the purposes of this Law, "business operator" refers to a natural person, legal person or any other organization that is engaged in commodity production or operation or service provision.

For the purposes of this Law, "relevant market" refers to the commodity scope or territorial scope within which the business operators compete against each other during a certain period of time for specific commodities or services (hereinafter generally referred to as "commodities").

Chapter II Monopoly Agreement

Article 13 Any of the following monopoly agreements among competing business operators shall be prohibited:

- (1) Fixing or changing prices of commodities;
- (2) Limiting the output or sales volume of commodities;
- (3) Dividing the sales market or the raw material procurement market;
- (4) Restricting purchase of new technology or new facilities or restricting development of new technology or new products;
- (5) Boycotting transactions; or
- (6) Other monopoly agreements as determined by the anti-monopoly authority under the State Council.

For the purposes of this Law, "monopoly agreements" refer to agreements, decisions or other concerted actions which eliminate or restrict competition.

Article 14 Any of the following agreements among business operators and their trading parties are prohibited:

- (1) Fixing the price of commodities for resale to a third party;
- (2) Restricting the minimum price of commodities for resale to a third party; or
- (3) Other monopoly agreements as determined by the anti-monopoly authority under the State Council.

Article 15 An agreement among business operators shall be exempted from application of Articles 13 and 14 if it can be proven to be in any of the following circumstances:

- (1) For the purpose of improving technologies and researching and developing new products;
- (2) For the purpose of upgrading product quality, reducing cost and improving efficiency, unifying product specifications or standards, or carrying out professional labor division;
- (3) For the purpose of improving operational efficiency and enhancing the competitiveness of small and medium-sized business operators;

- (4) For the purpose of achieving public interests such as conserving energy, protecting the environment, providing disaster relief and so on;
- (5) For the purpose of mitigating serious decrease in sales volume or obviously excessive production during economic recessions;
- (6) For the purpose of safeguarding justifiable interests in foreign trade and foreign economic cooperation; or
- (7) Other circumstances as stipulated by laws and the State Council.

Where a monopoly agreement is in any of the circumstances stipulated in Items 1 through 5 and is exempt from Articles 13 and 14 of this Law, the business operators must additionally prove that the agreement will not severely restrict competition in relevant market and can enable consumers to share the interests derived from the agreement.

Article 16 Any trade association may not organize the business operators in its industry to implement the monopolistic conducts as prohibited by this Chapter.

Chapter III Abuse of Dominant Market Position

Article 17 A business operator with a dominant market position shall not abuse its dominant market position to conduct the following acts:

- (1) Selling commodities at unfairly high prices or buying commodities at unfairly low prices;
- (2) Selling products at prices below cost without any justifiable cause;
- (3) Refusing to trade with a trading party without any justifiable cause;
- (4) Requiring a trading party to trade exclusively with itself or trade exclusively with a designated business operator without any justifiable cause;
- (5) Tying products or imposing unreasonable trading conditions at the time of trading without any justifiable cause;
- (6) Applying dissimilar prices or other transaction terms to trading parties with equal standing;
- (7) Other conducts determined as abuse of dominant market position by the anti-monopoly authority under the State Council.

For the purposes of this Law, "dominant market position" refers to a market position held by a business operator having the capacity to control price, quantity or other trading conditions of commodities in relevant market, or to hinder or affect any other business operator to enter the

relevant market.

Article 18 The dominant market position shall be determined according to the following factors:

- (1) The market share of a business operator in relevant market, and the competition situation of the relevant market;
- (2) The capacity of a business operator to control the sales market or the raw material procurement market;
- (3) The financial and technical conditions of a business operator;
- (4) The degree of dependence of other business operators upon a business operator in transactions;
- (5) The degree of difficulty for other business operators to enter the relevant market; and
- (6) Other factors related to determining a dominant market position of the said business operator.

Article 19 Where a business operator is under any of the following circumstances, it may be assumed to have a dominant market position:

- (1) The market share of a business operator accounts for half or above in the relevant market;
- (2) The joint market share of two business operators accounts for two thirds or above; or
- (3) The joint market share of three business operators accounts for three fourths or above.

A business operator with a market share of less than one 10th shall not be presumed as having a dominant market position even if they fall within the scope of Item 2 or 3.

Where a business operator who has been presumed to have a dominant market position can otherwise prove that they do not have a dominant market, it shall not be determined as having a dominant market position.

Chapter IV Concentration of Business Operators

Article 20 Concentration of business operators refers to the following circumstances:

- (1) Merger of business operators;
- (2) Acquiring control over other business operators by virtue of acquiring their equities or assets;
or

(3) Acquiring control over other business operators or possibility of exercising decisive influence on other business operators by virtue of contract or any other means.

Article 21 Where a concentration reaches the threshold of declaration stipulated by the State Council, a declaration must be lodged in advance with the anti-monopoly authority under the State Council, otherwise the concentration shall not be implemented.

Article 22 Where a concentration is under any of the following circumstances, it may not be declared to the anti-monopoly authority under the State Council:

(1) One of the business operators participated in the concentration has more than 50 percent of shares or assets with voting rights in each of the other business operators; or

(2) More than 50 percent of the shares or assets with voting rights in each business operator participated in the concentration are owned by the same business operator who does not participated in the concentration.

Article 23 A business operator shall, when lodge a concentration declaration with the anti-monopoly authority under the State Council, submit the following documents and materials:

(1) A declaration letter;

(2) Explanations of the effect of the concentration on the relevant market competition;

(3) The agreement of concentration;

(4) The financial and accounting reports of the proceeding accounting year of business operators participated in the concentration audited by accounting firms; and

(5) Other documents and materials as stipulated by the anti-monopoly authority under the State Council.

Such items shall be embodied in the declaration letter as the name, domicile and business scopes of the business operators involved in the concentration as well as the date of the scheduled concentration and other items as stipulated by the anti-monopoly authority under the State Council.

Article 24 Where the documents or materials submitted by a business operator are incomplete, it shall submit the rest of the documents and materials within the time limit stipulated by the anti-monopoly authority under the State Council; otherwise, the declaration shall be deemed as not filed.

Article 25 The anti-monopoly authority under the State Council shall conduct a preliminary review of the declared concentration of business operators, make a decision whether to conduct

further review and notify the business operators in written form within 30 days upon receipt of the documents and materials submitted by the business operators pursuant to Article 23 of this Law. Before such a decision made by the anti-monopoly authority under the State Council, the concentration may be not implemented.

Where the anti-monopoly authority under the State Council decides not to conduct further review or fails to make a decision at expiry of the stipulated period, the concentration may be implemented.

Article 26 Where the anti-monopoly authority under the State Council decides to conduct further review, they shall, within 90 days from the date of decision, complete the review, make a decision on whether to prohibit the concentration, and notify the business operators in written form. A decision of prohibition shall be attached with reasons therefor. Within the review period the concentration may not be implemented.

Under any of the following circumstances, the anti-monopoly authority under the State Council may notify the business operators in written form that the time limit as stipulated in the preceding paragraph may be extended no more than 60 days:

- (1) The business operators concerned agree to extend the time limit;
- (2) The documents or materials submitted by business operators are inaccurate and need further verification;
- (3) Circumstances have significantly changed after the declaration is made.

If the anti-monopoly authority under the State Council fails to make a decision at expiry of the period, the concentration may be implemented.

Article 27 In examination of the concentration of business operators, the following factors shall be considered:

- (1) The market share in the relevant market and the controlling power thereof over that market of the business operators involved in the concentration and,
- (2) The degree of market concentration in the relevant market,
- (3) The influence of the concentration of business operators on the market access and technological progress,
- (4) The influence of the concentration of business operators on the consumers and other business operators,
- (5) The influence of the concentration of business operators on the national economic

development, and

(6) Other factors that may have an effect on the market competition and shall be taken into account as regarded by the anti-monopoly authority under the State Council.

Article 28 Where a concentration of business operators has or may have effect of eliminating or restricting competition, the anti-monopoly authority under the State Council shall make a decision to prohibit the concentration. However, if the business operators concerned can prove that the concentration will bring significantly more positive impact than negative impact on competition, or the concentration is pursuant to public interests, the anti-monopoly authority under the State Council may decide not to prohibit the concentration.

Article 29 Where the concentration is not prohibited, the anti-monopoly authority under the State Council may decide to attach restrictive conditions for reducing the negative impact of such concentration on competition.

Article 30 Where the anti-monopoly authority under the State Council decides to prohibit a concentration or attaches restrictive conditions on concentration, it shall publicize such decisions to the general public in a timely manner.

Article 31 Where a foreign investor merges and acquires a domestic enterprise or participates in concentration by other means, if state security is involved, besides the examination on the concentration in accordance with this Law, the examination on national security shall also be conducted in accordance with the relevant state provisions.

Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition

Article 32 Any administrative organ or organization empowered by a law or administrative regulation to administer public affairs may not abuse its administrative power to restrict or restrict in a disguised form entities and individuals to operate, purchase or use commodities provided by business operators designated by it.

Article 33 Any administrative organ or organization empowered by a law or an administrative regulation to administer public affairs may not have any of the following conducts by abusing its administrative power to block free circulation of commodities between regions:

(1) Imposing discriminative charge items, discriminative charge standards or discriminative prices upon commodities from outside of the locality,

(2) Imposing such technical requirements and inspection standards upon commodities from outside of the locality as different from those upon local commodities of the same classification, or taking such discriminative technical measures as repeated inspections or repeated certifications to commodities from outside of the locality, so as to restrict them to enter the local market,

(3) Taking administrative licensing specially on commodities from outside of the locality so as to restrict them to enter the local market,

(4) Setting barriers or taking other measures so as to hamper commodities from outside of the locality from entering the local market or hamper local commodities from moving outside; or

(5) Other conducts for the purpose of hampering commodities from free circulation between regions.

Article 34 Any administrative organ or organization empowered by a law or administrative regulation to administer public affairs may not abuse its administrative power to reject or restrict business operators from outside of the locality to participate in local tendering and bidding activities by such means as imposing discriminative qualification requirements or assessment standards or not releasing information in accordance with law.

Article 35 Any administrative organ or organization empowered by a law or administrative regulation to administer public affairs may not abuse its administrative power to reject or restrict business operators from outside of the locality to invest or set up branches in the locality by imposing unequal treatment thereupon from local business operators.

Article 36 Any administrative organ or organization empowered by a law or administrative regulation to administer public affairs may not abuse its administrative power to force business operators to engage in the monopolistic conducts as prescribed in this Law.

Article 37 Any administrative organ may not abuse its administrative power to set down such provisions in respect of eliminating or restricting competition.

Chapter VI Investigation Into the Suspicious Monopolistic Conducts

Article 38 The anti-monopoly authority shall make investigations into suspicious monopolistic conducts in accordance with law.

Any entity or individual may report suspicious monopolistic conducts to the anti-monopoly authority. The anti-monopoly authority shall keep the informer confidential.

Where an informer makes the reporting in written form and provides relevant facts and evidence, the anti-monopoly authority shall make necessary investigation.

Article 39 The anti-monopoly authority may take any of the following measures in investigating suspicious monopolistic conducts:

(1) Conducting inspection by getting into the business premises of business operators under investigation or by getting into any other relevant place,

- (2) Inquiring the business operators under investigation, interested parties or other relevant entities or individuals, and requiring them to explain the relevant conditions,
- (3) Consulting and duplicating the relevant documents, agreements, account books, business correspondences and electronic data, etc. of the business operators under investigation, interested parties and other relevant entities or individuals,
- (4) Seizing and detaining relevant evidence; and
- (5) Inquiring about bank accounts of the business operators under investigation.

Before the measures as prescribed in the preceding paragraph are taken, a written report shall be submitted to the chief person in charge of the anti-monopoly authority for approval.

Article 40 When investigating suspicious monopolistic conducts, there shall be at least two law enforcers, and they shall show their law enforcement certificates.

When inquiring and investigating suspicious monopolistic conducts, law enforcers shall make transcript thereon, which shall bear the signatures of the persons under inquiry or investigation.

Article 41 The anti-monopoly authority and functionaries thereof shall be obliged to keep confidential the trade secrets they have access to during the course of law enforcement.

Article 42 Business operators, interested parties and other relevant entities and individuals under investigation shall cooperate with the anti-monopoly authority in performing its duties, and may not reject or hamper investigation by the anti-monopoly authority.

Article 43 Business operators and interested parties under investigation have the right to voice their opinions. The anti-monopoly authority shall verify the facts, reasons and evidence provided by the business operators and interested parties under investigation.

Article 44 Where the anti-monopoly authority deems that a monopolistic conduct is constituted after investigating and verifying a suspicious monopolistic conduct, it shall make a decision on how to deal with the monopolistic conduct and publicize to the public.

Article 45 As regards a suspicious monopolistic conduct that the anti-monopoly authority is investigating, if the business operators under investigation promise to eliminate the impact of the conduct by taking specific measures within the time limit prescribed by the anti-monopoly authority, the anti-monopoly authority may decide to suspend the investigation. The decision on suspending the investigation shall specify the specific contents as promised by the business operators under investigation.

Where the anti-monopoly authority decides to suspend the investigation, it shall supervise the

implementation of the promise by the business operators. If the business operators keep their promise, the anti-monopoly authority may decide to terminate the investigation.

The anti-monopoly authority shall resume the investigation, where

- (1) The business operators fail to implement the promise;
- (2) Significant changes have taken place to the facts based on which the decision on suspending the investigation was made; or
- (3) The decision on suspending the investigation was made based on incomplete or inaccurate information provided by the business operators.

Chapter VII Legal Liabilities

Article 46 Where business operators reach an monopoly agreement and perform it in violation of this Law, the anti-monopoly authority shall order them to cease doing so, and shall confiscate the illegal gains and impose a fine of 1 percent up to 10 percent of the sales revenue in the previous year. Where the reached monopoly agreement has not been performed, a fine of less than 500,000 yuan may be imposed.

Where any business operator voluntarily reports the conditions on reaching monopoly agreement to the anti-monopoly authority and provides important evidence, it may be imposed a mitigated punishment or exempted from punishment on the merits of each case.

Where a trade association organizes business operators in its industry to reach monopoly agreement in violation of this Law, a fine of less than 500,000 yuan may be imposed thereupon by the anti-monopoly authority; in case of serious circumstances, the mass organization registration authority may deregister the trade association.

Article 47 Where any business operator abuses its dominant market position in violation of this Law, it shall be ordered to cease doing so. The anti-monopoly authority shall confiscate its illegal gains and impose thereupon a fine of 1 percent up to 10 percent of the sales revenue in the previous year.

Article 48 Where any business operator implements concentration in violation of this Law, the anti-monopoly authority shall order it to cease doing so, to dispose of shares or assets, transfer the business or take other necessary measures to restore the market situation before the concentration within a time limit, and may impose a fine of less than 500,000 yuan.

Article 49 The specific amount of the fines as prescribed in Articles 46 through 48 shall be determined in consideration of such factors as the nature, extent and duration of the violations.

Article 50 Where any loss was caused by a business operator's monopolistic conducts to other

entities and individuals, the business operator shall assume the civil liabilities.

Article 51 Where any administrative organ or an organization empowered by a law or administrative regulation to administer public affairs abuses its administrative power to eliminate or restrict competition, the superior authority thereof shall order it to make correction and impose punishment on the directly liable person-in-charge and other directly liable persons. The anti-monopoly authority may put forward suggestions on punishment according to law to the relevant superior authority.

Where it is otherwise provided in a law or administrative regulation for the punishment of the organization empowered by a law or administrative regulation to administer public affairs who abuses its administrative power to eliminate or restrict competition, such provisions shall prevail.

Article 52 As regards the inspection and investigation by the anti-monopoly authority, if business operators refuse to provide related materials and information, provide fraudulent materials or information, conceal, destroy or remove evidence, or refuse or obstruct investigation in other ways, the anti-monopoly authority shall order them to make rectification, and may impose a fine of less than 20,000 yuan on individuals and a fine of less than 200,000 yuan on entities; in case of serious circumstances, the anti-monopoly authority may impose a fine of 20,000 yuan up to 100,000 yuan on individuals, and a fine of 200,000 yuan up to 1 million yuan on entities; where a crime is constituted, the relevant business operators shall be ascertained criminal liabilities.

Article 53 Where any party concerned refuses to accept the decision made by the anti-monopoly authority in accordance with Articles 28 and 29 of this Law, it may first apply for an administrative reconsideration; if it refuses to accept the reconsideration decision, it may lodge an administrative lawsuit in accordance with law.

Where any party concerned refuses to accept any decision made by the anti-monopoly authority other than the decisions prescribed in the preceding paragraph, it may lodge an application for administrative reconsideration or initiate an administrative lawsuit in accordance with law.

Article 54 Where any functionary of the anti-monopoly authority abuses his/her power, neglects his/her duty, seeks private benefits or discloses trade secrets he/she has access to during the process of law enforcement, if a crime is constituted, he/she shall be subject to criminal liability; where no crime is constituted, he/she shall be imposed upon a disciplinary sanction.

Chapter VIII Supplementary Provisions

Article 55 This Law shall not be applicable to the conduct of business operators to exercise their intellectual property rights under relevant laws and administrative regulations on intellectual property rights; however, business operators' conduct to eliminate or restrict market competition by abusing their intellectual property rights shall be governed by this Law.

Article 56 This Law shall not be applicable to the allies or concerted actions of agricultural

producers and rural economic organizations in the economic activities such as production, processing, sales, transportation and storage of agricultural products.

Article 57 This Law shall enter into force as of August 1, 2008.