

Anti-Monopoly Compliance Guidelines for Undertakings of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com
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Chapter I — General Provisions

Article 1 — These Guidelines are formulated in accordance with the Anti-Monopoly Law of the People's Republic of China and other relevant laws for the purpose of guiding and encouraging undertakings to establish and improve anti-monopoly compliance management systems, enhancing compliance awareness, preventing and reducing the occurrence of monopolistic conduct, and fostering a fair competition market environment.

Article 2 — These Guidelines apply to the anti-monopoly compliance management activities of undertakings within the territory of the People's Republic of China. Overseas undertakings whose conduct outside the territory of China has the effect of eliminating or restricting competition in the domestic market shall also refer to these Guidelines in their anti-monopoly compliance management activities.

Article 3 — Undertakings shall regard anti-monopoly compliance as an integral part of their corporate governance, establish and improve their anti-monopoly compliance management systems, and effectively prevent the risk of monopolistic conduct. Undertakings may establish anti-monopoly compliance

management systems commensurate with their size, business type, market position, and industry characteristics.

Chapter II — Compliance Management System

Article 4 — The anti-monopoly compliance management system shall include the following elements: (1) a compliance management organization and responsibilities; (2) identification, assessment, and reminder of compliance risks; (3) compliance review, reporting, and emergency response mechanisms; (4) compliance training, assessment, and incentive mechanisms; and (5) other elements required for anti-monopoly compliance.

Article 5 — Undertakings may establish an anti-monopoly compliance management organization consisting of senior management, a compliance department, and business departments. Senior management shall provide adequate support and resources for anti-monopoly compliance. The compliance department shall be responsible for the daily management of anti-monopoly compliance and shall report compliance matters to senior management.

Article 6 — Undertakings shall formulate anti-monopoly compliance management rules and regulations that clarify business conduct norms and prohibited conduct in areas such as horizontal monopoly agreements, vertical monopoly agreements, abuse of market dominance, and concentration of undertakings.

Article 7 — Undertakings shall establish an anti-monopoly compliance commitment system. Directors, senior officers, and employees of the undertaking shall make compliance commitments, indicating their understanding and compliance with the anti-monopoly compliance management rules and regulations.

Chapter III — Risk Identification and Assessment

Article 8 — Undertakings may identify and assess anti-monopoly compliance risks in light of their own circumstances, industry characteristics, market competition conditions, and law enforcement priorities, and establish a risk identification and assessment mechanism to promptly detect and warn of potential anti-monopoly compliance risks.

Article 9 — Undertakings shall identify and assess anti-monopoly compliance risks in the following key areas: (1) horizontal agreements such as price fixing, output restriction, market division, and joint boycotts between the undertaking and its competitors; (2) vertical agreements such as resale price maintenance and territorial restrictions between the undertaking and upstream or downstream undertakings; (3) whether the undertaking has a dominant market position and whether it engages in conduct constituting abuse of such position; and (4) whether the implementation of a concentration of undertakings meets the declaration threshold for concentrations of undertakings.

Article 10 — Undertakings shall conduct anti-monopoly compliance risk assessments based on the results of risk identification, evaluate the likelihood of risk occurrence and the degree of impact, delineate risk levels, and adopt corresponding risk response measures.

Chapter IV — Compliance Incentives

Article 11 — The Anti-Monopoly Law Enforcement Agency may take into account the status of the undertaking's anti-monopoly compliance management system as a factor in determining the nature and circumstances of the violation and the punishment. Where an undertaking has established an effective anti-monopoly compliance management system and has genuinely implemented it, and where the monopolistic conduct is an isolated act, the Anti-Monopoly Law Enforcement Agency may treat it as a circumstance for a mitigated or reduced punishment in accordance with the law.

Article 12 — Where an undertaking voluntarily reports its monopolistic conduct and actively adopts remedial measures, and the undertaking has an effective anti-monopoly compliance management system in place,

the Anti-Monopoly Law Enforcement Agency may, in its discretion, apply the leniency system specified in the Anti-Monopoly Law when determining the punishment.

Chapter V — Supplementary Provisions

Article 13 — Trade associations may refer to these Guidelines in guiding their member undertakings in anti-monopoly compliance. The Anti-Monopoly Law Enforcement Agency may evaluate the effectiveness of undertakings' anti-monopoly compliance management systems and provide targeted guidance and recommendations.

Article 14 — These Guidelines shall take effect on November 15, 2024. The Guide on Anti-Monopoly Compliance for Undertakings issued by the Anti-Monopoly Bureau of the State Administration for Market Regulation on October 28, 2020 shall be repealed on the same date.

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