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

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Adopted at the 29th Session of the Standing Committee of the Tenth National People's Congress on August 30, 2007; amended at the 35th Session of the Standing Committee of the Thirteenth National People's Congress on June 24, 2022

Effective: August 1, 2008 (amended effective August 1, 2022)

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of preventing and restraining monopolistic conduct, protecting fair market competition, encouraging innovation, improving economic efficiency, safeguarding the interests of consumers and the public interest, and promoting the healthy development of the socialist market economy.

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Article 2 — This Law shall apply to monopolistic conduct in economic activities within the territory of the People's Republic of China. This Law shall also apply to monopolistic conduct outside the territory of the People's Republic of China that eliminates or restricts competition in the domestic market of China.

Article 3 — Monopolistic conduct includes:

(1) monopoly agreements between undertakings;

(2) abuse by an undertaking of its dominant market position;

(3) concentration of undertakings that have or may have the effect of eliminating or restricting competition.

Article 4 — The state shall adhere to the principles of marketization and the rule of law, strengthen the foundational position of competition policy, and formulate and implement competition rules that are compatible with the socialist market economy, improve macro-control, and promote a unified, open, competitive, and orderly market system.

Article 5 — Undertakings may, through fair competition and voluntary alliances, concentrate in accordance with the law, expand their business scale, and improve their market competitiveness.

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

Article 7 — With respect to industries that are subject to exclusive operation and exclusive sales by law, the state shall protect the lawful business activities of the undertakings operating therein, and shall supervise and regulate their business activities and the prices of their goods and services. The undertakings operating in such industries shall operate in good faith, strictly self-discipline, subject themselves to public supervision, and shall not harm the interests of consumers by taking advantage of their controlling position or their exclusive operation and exclusive sales status.

Article 8 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to eliminate or restrict competition.

Article 9 — Undertakings shall not use data, algorithms, technologies, capital advantages, platform rules, or other means to engage in monopolistic conduct prohibited by this Law.

Article 10 — Undertakings with a dominant market position shall not abuse their data, algorithms, technologies, platform rules, and other means to engage in acts that exclude or restrict competition.

Article 11 — The state shall improve the system of rules for fair competition in the digital economy and other fields, establish and strengthen rules for the digital economy and other fields. Undertakings shall not use data and algorithms, technology, capital advantages, or platform rules to engage in monopolistic conduct.

Article 12 — The anti-monopoly enforcement agency under the State Council shall be responsible for the unified anti-monopoly enforcement work in accordance with the provisions of this Law. The anti-monopoly enforcement agency under the State Council may, as required for work, authorize the corresponding authorities of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government to be responsible for the relevant anti-monopoly enforcement work in accordance with the provisions of this Law.

Article 13 — The State Council shall establish an anti-monopoly commission to be responsible for organizing, coordinating, and guiding anti-monopoly work and performing the following duties:

(1) researching and drafting relevant competition policies;

(2) organizing investigations and assessments of the overall market competition situation and publishing assessment reports;

(3) formulating and publishing anti-monopoly guidelines;

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(4) coordinating anti-monopoly administrative enforcement;

(5) other duties as prescribed by the State Council.

The composition and working rules of the anti-monopoly commission under the State Council shall be prescribed by the State Council.

Article 14 — Industry associations shall strengthen self-discipline in their industries, guide undertakings in their industries in lawful competition and compliance operations, and maintain the market competition order.

Article 15 — For purposes of this Law, the term "undertaking" means a natural person, legal person, or unincorporated organization that engages in the production or business operation of goods or the provision of services.

Chapter II — Monopoly Agreements

Article 16 — For purposes of this Law, the term "monopoly agreement" means an agreement, decision, or other concerted practice that eliminates or restricts competition.

Article 17 — Competing undertakings are prohibited from entering into the following monopoly agreements:

(1) fixing or changing the prices of goods;

(2) restricting the production quantity or sales quantity of goods;

(3) dividing the sales market or the raw material procurement market;

(4) restricting the purchase of new technology or new equipment, or restricting the development of new technology or new products;

(5) jointly boycotting transactions;

(6) other monopoly agreements as determined by the anti-monopoly enforcement agency under the State Council.

Article 18 — Undertakings are prohibited from entering into the following monopoly agreements with trading counterparts:

(1) fixing the price at which goods are resold to a third party;

(2) restricting the minimum price at which goods are resold to a third party;

(3) other monopoly agreements as determined by the anti-monopoly enforcement agency under the State Council.

Where undertakings can demonstrate that the agreements specified in items (1) and (2) of the preceding paragraph do not eliminate or restrict competition, such agreements shall not be prohibited. Where undertakings can demonstrate that their market share in the relevant market is lower than the standard prescribed by the anti-monopoly enforcement agency under the State Council and meets other conditions prescribed by the anti-monopoly enforcement agency under the State Council, such agreements shall not be prohibited.

Article 19 — Undertakings shall not organize other undertakings to enter into monopoly agreements or provide substantial assistance for other undertakings to enter into monopoly agreements.

Article 20 — Where undertakings can demonstrate that an agreement they have entered into falls under any of the following circumstances, Article 17, paragraph 1 of Article 18, and Article 19 of this Law shall not apply:

(1) where it is for the purposes of improving technology, researching and developing new products;

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(2) where it is for the purposes of improving product quality, reducing costs, improving efficiency, unifying product specifications and standards, or implementing specialized division of labor;

(3) where it is for the purposes of improving the operational efficiency and competitiveness of small and medium-sized undertakings;

(4) where it is for the purposes of realizing social public interests such as energy conservation, environmental protection, and disaster relief;

(5) where it is for the purposes of alleviating a serious decline in sales volumes or a clear overcapacity during an economic downturn;

(6) where it is for the purposes of safeguarding legitimate interests in foreign trade and foreign economic cooperation;

(7) other circumstances as provided for by laws and the State Council.

Where any of the circumstances set out in items (1) to (5) of the preceding paragraph apply and Articles 17, 18, and 19 of this Law are not applicable, the undertakings shall also demonstrate that the agreement entered into will not seriously restrict competition in the relevant market and that consumers are able to share in the benefits derived therefrom.

Chapter III — Abuse of Dominant Market Position

Article 21 — For purposes of this Law, the term "dominant market position" means the market position held by an undertaking that enables it to control the price, quantity, or other trading conditions of goods in the relevant market, or to hinder or affect the ability of other undertakings to enter the relevant market.

Article 22 — Undertakings with a dominant market position are prohibited from engaging in the following acts of abusing their dominant market position:

(1) selling goods at unfairly high prices or purchasing goods at unfairly low prices;

(2) selling goods at prices below cost without justifiable reasons;

(3) refusing to deal with trading counterparts without justifiable reasons;

(4) restricting trading counterparts to dealing exclusively with them or with designated undertakings without justifiable reasons;

(5) conducting tie-in sales or imposing other unreasonable trading conditions without justifiable reasons;

(6) applying discriminatory treatment such as differences in price or other trading conditions to trading counterparts of equal standing without justifiable reasons;

(7) other acts of abusing a dominant market position as determined by the anti-monopoly enforcement agency under the State Council.

Undertakings with a dominant market position that use data and algorithms, technology, platform rules, and other means to engage in the acts specified in the preceding paragraph shall be prohibited.

Article 23 — The following factors shall be taken into account in determining that an undertaking has a dominant market position:

(1) the market share of the undertaking in the relevant market and the competition situation of the relevant market;

(2) the ability of the undertaking to control the sales market or the raw material procurement market;

(3) the financial strength and technical conditions of the undertaking;

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(4) the degree of dependence of other undertakings on the undertaking in terms of transactions;

(5) the degree of difficulty for other undertakings to enter the relevant market;

(6) other factors relating to the determination of the dominant market position of the undertaking.

Article 24 — An undertaking may be presumed to have a dominant market position under any of the following circumstances:

(1) one undertaking has a market share of one-half or more in the relevant market;

(2) two undertakings have a combined market share of two-thirds or more in the relevant market;

(3) three undertakings have a combined market share of three-quarters or more in the relevant market.

Where an undertaking under item (2) or (3) of the preceding paragraph has a market share of less than one-tenth, it shall not be presumed to have a dominant market position. Where an undertaking that is presumed to have a dominant market position has evidence to show that it does not have a dominant market position, it shall not be determined to have a dominant market position.

Chapter IV — Concentration of Undertakings

Article 25 — Concentration of undertakings means any of the following circumstances:

(1) merger of undertakings;

(2) acquisition by an undertaking of control over another undertaking through the acquisition of equity interests or assets;

(3) acquisition by an undertaking of control over another undertaking or the ability to exercise decisive influence over another undertaking through contractual or other means.

Article 26 — Where a concentration of undertakings reaches the notification threshold prescribed by the State Council, the undertakings shall file a notification with the anti-monopoly enforcement agency under the State Council in advance; no concentration shall be implemented until the notification has been filed.

Where a concentration of undertakings fails to reach the notification threshold prescribed by the State Council but there is evidence that the concentration of undertakings has or may have the effect of eliminating or restricting competition, the anti-monopoly enforcement agency under the State Council may require the undertakings to file a notification.

Where undertakings fail to file a notification in accordance with the provisions of the preceding two paragraphs, the anti-monopoly enforcement agency under the State Council shall investigate in accordance with the law.

Article 27 — A concentration of undertakings shall not be required to be notified to the anti-monopoly enforcement agency under the State Council in any of the following circumstances:

(1) where one of the undertakings participating in the concentration already holds 50% or more of the voting shares or assets of each of the other undertakings;

(2) where 50% or more of the voting shares or assets of each of the undertakings participating in the concentration not involved in the same concentration are held by the same undertaking not participating in the concentration.

Article 28 — When filing a notification of a concentration of undertakings, the undertakings shall submit the following documents and materials:

(1) a notification form;

(2) an explanation of the effect of the concentration on competition in the relevant market;

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(3) the concentration agreement;

(4) the financial and accounting reports of the undertakings participating in the concentration for the preceding fiscal year audited by an accounting firm;

(5) other documents and materials as prescribed by the anti-monopoly enforcement agency under the State Council.

Article 29 — Within 30 days from the date of receipt of the documents and materials submitted by the undertakings that meet the prescribed requirements, the anti-monopoly enforcement agency under the State Council shall conduct a preliminary review of the notified concentration of undertakings, make a decision on whether to conduct a further review, and notify the undertakings in writing. Before the anti-monopoly enforcement agency under the State Council makes a decision, the undertakings shall not implement the concentration.

Where the anti-monopoly enforcement agency under the State Council decides not to conduct a further review or fails to make a decision upon expiry of the time limit, the undertakings may implement the concentration.

Article 30 — Where the anti-monopoly enforcement agency under the State Council decides to conduct a further review, it shall complete the review within 90 days from the date of the decision, make a decision on whether to prohibit the concentration, and notify the undertakings in writing. Where it is necessary to extend the review period, the period may be extended by no more than 60 days upon the approval of the principal person in charge of the anti-monopoly enforcement agency under the State Council, and the undertakings shall be notified in writing. Under any of the following circumstances, the anti-monopoly enforcement agency under the State Council may decide to suspend the calculation of the review period upon notifying the undertakings in writing:

(1) where the undertakings agree to extend the review period;

(2) where the documents or materials submitted by the undertakings are inaccurate and require further verification;

(3) where the relevant circumstances have materially changed after the notification was filed by the undertakings.

Article 31 — The anti-monopoly enforcement agency under the State Council shall prohibit a concentration of undertakings if the concentration of undertakings has or may have the effect of eliminating or restricting competition. However, if the undertakings can demonstrate either that the beneficial effects of the concentration on competition clearly outweigh the adverse effects, or that the concentration is in the public interest, the anti-monopoly enforcement agency under the State Council may decide not to prohibit the concentration.

Article 32 — Where the national security review is required for a concentration of undertakings involving foreign investment in accordance with the law, such review shall be conducted in accordance with the relevant provisions of the state.

Chapter V — Abuse of Administrative Power to Eliminate or Restrict Competition

Article 39 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to restrict or indirectly restrict the business activities of undertakings or the circulation of goods between regions by entering into cooperation agreements, joint declarations, or other such means with other administrative organs or organizations.

Article 40 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to implement the following acts that restrict the business

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activities of undertakings or the circulation of goods between regions:

(1) imposing discriminatory fees on goods from other regions, setting discriminatory fee rates, or applying discriminatory fee standards;

(2) setting technical or inspection standards for goods from other regions that differ from those for local goods of the same type, or adopting discriminatory technical measures such as repeated inspections or repeated certifications for goods from other regions, so as to restrict the entry of goods from other regions into the local market;

(3) adopting administrative licensing measures specifically targeting goods from other regions, so as to restrict the entry of goods from other regions into the local market;

(4) setting up checkpoints or adopting other means to prevent the entry of goods from other regions into the local market or the exit of local goods;

(5) other acts that abuse administrative power to eliminate or restrict competition by preventing the free flow of goods between regions.

Article 41 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to restrict or indirectly restrict the participation of undertakings from other regions in local bidding activities by setting restrictive qualification conditions, review criteria, or other means that are discriminatory.

Article 42 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to restrict or indirectly restrict the investment or establishment of branches by undertakings from other regions in the local region by adopting treatment that is unequal to that applied to local undertakings.

Article 43 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to compel undertakings to engage in monopolistic conduct provided for in this Law, or to circumvent the legality of such conduct.

Article 44 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to formulate provisions containing content that eliminates or restricts competition.

Chapter VI — Investigation of Suspected Monopolistic Conduct

Article 46 — The anti-monopoly enforcement agency shall investigate any suspected monopolistic conduct in accordance with the law. Any entity or individual shall have the right to report suspected monopolistic conduct to the anti-monopoly enforcement agency. The anti-monopoly enforcement agency shall keep the identity of the reporters confidential. Where a report is made in writing and relevant facts and evidence are provided, the anti-monopoly enforcement agency shall conduct the necessary investigation.

Article 47 — In investigating suspected monopolistic conduct, the anti-monopoly enforcement agency may take the following measures:

(1) conducting inspections of the business premises or other relevant premises of the undertaking under investigation;

(2) interviewing the undertaking under investigation, interested parties, or other relevant entities or individuals and requiring them to explain the relevant circumstances;

(3) consulting and making copies of the relevant documents and materials of the undertaking under investigation, interested parties, and other relevant entities or individuals, such as documents, agreements, accounting books, business correspondence, and electronic data;

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(4) seizing and detaining relevant evidence;

(5) inquiring into the bank accounts of the undertaking under investigation.

Article 48 — Where an undertaking under investigation undertakes to adopt specific measures to eliminate the consequences of the suspected monopolistic conduct within a time limit approved by the anti-monopoly enforcement agency, the anti-monopoly enforcement agency may decide to suspend the investigation. The decision to suspend the investigation shall state the specific contents of the undertaking's commitments. Where the anti-monopoly enforcement agency decides to suspend the investigation, it shall supervise the undertaking's performance of its commitments. Where the undertaking performs its commitments, the anti-monopoly enforcement agency may decide to terminate the investigation.

Under any of the following circumstances, the anti-monopoly enforcement agency shall resume the investigation:

(1) where the undertaking fails to perform its commitments;

(2) where there have been material changes in the facts on which the decision to suspend the investigation was based;

(3) where the decision to suspend the investigation was based on incomplete or inaccurate information provided by the undertaking.

Chapter VII — Legal Liability

Article 56 — Where an undertaking enters into or implements a monopoly agreement in violation of the provisions of this Law, the anti-monopoly enforcement agency shall order it to cease the illegal act, confiscate illegal income, and impose a fine of not less than 1% and not more than 10% of the previous year's sales revenue. Where a monopoly agreement has been entered into but not yet implemented, a fine of not more than 3,000,000 yuan may be imposed. Where an undertaking takes the initiative to report the circumstances of the monopoly agreement to the anti-monopoly enforcement agency and provide important evidence, the anti-monopoly enforcement agency may, at its discretion, reduce or waive the penalty imposed on the undertaking. Where an undertaking has organized other undertakings to enter into a monopoly agreement or provided substantial assistance for other undertakings to enter into a monopoly agreement, the provisions of the preceding paragraphs shall apply. Where an industry association organizes undertakings in its industry to enter into a monopoly agreement in violation of the provisions of this Law, the anti-monopoly enforcement agency shall order it to rectify the situation and may impose a fine of not more than 3,000,000 yuan; where the circumstances are serious, the social organization registration authority may deregister the industry association in accordance with the law.

Article 57 — Where an undertaking abuses its dominant market position in violation of the provisions of this Law, the anti-monopoly enforcement agency shall order it to cease the illegal act, confiscate illegal income, and impose a fine of not less than 1% and not more than 10% of the previous year's sales revenue.

Article 58 — Where an undertaking implements a concentration in violation of the provisions of this Law, the anti-monopoly enforcement agency under the State Council shall order it to cease the implementation of the concentration, to dispose of shares or assets within a prescribed period, to transfer the business within a prescribed period, and to take other necessary measures to restore the market to the state before the concentration, and shall impose a fine of not more than 500,000 yuan. Where the concentration of undertakings has or may have the effect of eliminating or restricting competition, the anti-monopoly enforcement agency under the State Council shall order it to cease the implementation of the concentration, to dispose of shares or assets within a prescribed period, to transfer the business within a prescribed period, and to take other necessary measures to restore the market to the state before the concentration, and shall impose a fine of not more than 10% of the previous year's sales revenue.

Article 59 — Where the administrative organ or the organization authorized by laws or regulations to administer public affairs abuses its administrative power to eliminate or restrict competition, the superior organ shall order it to rectify the situation. The persons directly in charge and other directly liable persons shall be subject to sanctions in accordance with the law. The anti-monopoly enforcement agency may make a proposal to the relevant superior organ for handling the matter in accordance with the law.

Article 60 — Where an undertaking causes damage to another person as a result of monopolistic conduct, it shall bear civil liability in accordance with the law. Where an undertaking causes damage to the public interest, the people's procuratorate at or above the level of a city divided into districts may file a civil public interest lawsuit with the people's court.

Article 61 — Where an undertaking violates the provisions of this Law by implementing a monopoly agreement, abusing its dominant market position, or implementing a concentration of undertakings that has or may have the effect of eliminating or restricting competition, the anti-monopoly enforcement agency under the State Council shall have the authority to impose a fine of not more than 10% of the previous year's sales revenue. Where the sales revenue in the preceding year cannot be calculated, the anti-monopoly enforcement agency under the State Council may impose a fine of not more than 5,000,000 yuan. Where the circumstances are particularly serious, the impact is particularly egregious, or the consequences are particularly serious, the anti-monopoly enforcement agency may, on the basis of the fine amount provided for in the preceding paragraphs, impose a fine of not less than two times but not more than five times of the amount so determined.

Article 62 — Where a party concerned refuses to provide relevant materials or information, provides false materials or information, conceals, destroys, or transfers evidence, or refuses or obstructs an investigation by any other means, the anti-monopoly enforcement agency shall order it to rectify the situation and shall impose a fine of not more than 1% of the previous year's sales revenue on the undertaking; where the undertaking has no sales revenue in the preceding year or the sales revenue is difficult to calculate, a fine of not more than 5,000,000 yuan shall be imposed. The individuals directly responsible shall be fined not less than 200,000 yuan and not more than 1,000,000 yuan.

Article 63 — Where the anti-monopoly enforcement agency under the State Council determines that the circumstances of the monopolistic conduct are particularly serious, the impact is particularly egregious, or the consequences are particularly serious, a fine of not less than two times but not more than five times the fine amount specified in Articles 56, 57, 58, and 61 of this Law may be imposed. The criminal liability of the undertaking shall also be pursued if a crime is constituted.

Article 64 — Where an undertaking is ordered by the anti-monopoly enforcement agency to cease the illegal act within a prescribed period, but the undertaking fails to do so upon expiration of the period, the anti-monopoly enforcement agency may, at its discretion, impose an additional fine of not more than 0.1% of the daily sales revenue for each day of delay.

Article 67 — Where a party is dissatisfied with a decision made by the anti-monopoly enforcement agency in accordance with the provisions of Articles 28 and 29 of this Law, it may first apply for administrative reconsideration in accordance with the law; where it is dissatisfied with the administrative reconsideration decision, it may file an administrative lawsuit in accordance with the law. Where a party is dissatisfied with any other decision made by the anti-monopoly enforcement agency other than those specified in the preceding paragraph, it may apply for administrative reconsideration or file an administrative lawsuit in accordance with the law.

Chapter VIII — Supplementary Provisions

Article 68 — Where an undertaking exercises intellectual property rights in accordance with the provisions of the relevant laws and administrative regulations on intellectual property rights, this Law shall not apply;

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however, this Law shall apply where an undertaking abuses its intellectual property rights to eliminate or restrict competition.

Article 69 — This Law shall not apply to cooperatives and other cooperative economic organizations that implement joint or cooperative operations such as joint production, joint marketing, purchase and sale on a commission basis, and processing on a commission basis in the course of agricultural production and processing, sales, transportation, storage, and other business activities relating to agricultural products.

Article 70 — This Law shall come into force on August 1, 2008.

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