Provisions on the Prohibition of Abuse of Administrative Power to Exclude or Restrict Competition of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Abuse of Administrative Power to Exclude or Restrict Competition 2

Chapter III — Investigation Procedures 3

Chapter IV — Legal Liability 4

Chapter V — Supplementary Provisions 4

Promulgated by Order No. 12 of the State Administration for Market Regulation on March 10, 2023
Effective: April 15, 2023

Table of Contents

- Chapter I — General Provisions
- Chapter II — Abuse of Administrative Power to Exclude or Restrict Competition
- Chapter III — Investigation Procedures
- Chapter IV — Legal Liability
- Chapter V — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Provisions are enacted in accordance with the Anti-Monopoly Law of the People's Republic of China (hereinafter referred to as the "Anti-Monopoly Law") for the purposes of preventing and prohibiting the abuse of administrative power to exclude or restrict competition, protecting fair market competition, safeguarding the legitimate rights and interests of undertakings and consumers, and promoting the construction of a unified, open, competitive, and orderly market system.

Article 2 — The State Administration for Market Regulation (hereinafter referred to as "SAMR") shall be responsible for the anti-monopoly enforcement work concerning the abuse of administrative power to exclude or restrict competition throughout the country.

Article 3 — SAMR may authorize the market regulation departments of provinces, autonomous regions, and municipalities directly under the Central Government to be responsible for the relevant work concerning the abuse of administrative power to exclude or restrict competition within their respective administrative regions, in accordance with the relevant provisions.

Source: https://www.danyoungcpa.com/provisions-prohibition-abuse-administrative-power-competition-samr-prc-2023/

Article 4 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to exclude or restrict competition.

Article 5 — In the enforcement of the law on the abuse of administrative power to exclude or restrict competition, the principle of combining punishment with prevention shall be adhered to, and administrative organs and organizations authorized by laws or regulations to administer public affairs shall be guided to exercise their powers in accordance with the law.

Chapter II — Abuse of Administrative Power to Exclude or Restrict Competition

Article 6 — Administrative organs and organizations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to engage in any of the following acts that exclude or restrict competition: (1) restricting or requiring, in disguised form, undertakings or individuals to deal in, purchase, or use commodities provided by designated undertakings; (2) obstructing the free flow of commodities between regions by setting discriminatory charging standards, prescribing different technical requirements or inspection standards for commodities of non-local origin, or adopting other means; (3) setting up regional barriers to exclude or restrict non-local undertakings from participating in local tendering and bidding activities; (4) excluding or restricting non-local undertakings from investing or setting up branches in the local area; (5) compelling undertakings to engage in monopoly conduct prohibited by the Anti-Monopoly Law; (6) abusing administrative power to formulate and issue regulations or documents that contain provisions excluding or restricting competition.

Article 7 — "Restricting or requiring, in disguised form, undertakings or individuals to deal in, purchase, or use commodities provided by designated undertakings" as specified in Article 6(1) shall include: (1) explicitly specifying or requiring in disguised form undertakings or individuals to deal in, purchase, or use commodities provided by specific undertakings; (2) restricting undertakings or individuals from dealing in, purchasing, or using commodities provided by other undertakings by means of not issuing administrative permits, refusing to handle procedures, or imposing other restrictions; (3) compelling undertakings or individuals to deal in, purchase, or use commodities provided by specific undertakings by means of evaluation, ranking, or certification; (4) restricting undertakings or individuals from freely choosing commodities by other means.

Article 8 — "Obstructing the free flow of commodities between regions" as specified in Article 6(2) shall include: (1) imposing discriminatory charging items, charging standards, or prices on non-local commodities; (2) imposing technical requirements or inspection standards on non-local commodities that are different from or higher than those imposed on local commodities of the same type, or imposing repetitive inspections or repetitive certifications on non-local commodities; (3) imposing administrative licensing specifically targeting non-local commodities, or restricting non-local commodities from entering the local market through administrative licensing procedures; (4) setting up checkpoints or employing other means to obstruct non-local commodities from entering or local commodities from leaving; (5) obstructing the free flow of commodities between regions by other means.

Article 9 — "Setting up regional barriers to exclude or restrict non-local undertakings from participating in local tendering and bidding activities" as specified in Article 6(3) shall include: (1) failing to publish information on tendering and bidding in accordance with the law; (2) setting qualifications or conditions for participation in tendering and bidding that explicitly require undertakings to be registered in the local area, manufacture their goods in the local area, have a specified scale of operations in the local area, or pay taxes in the local area; (3) setting qualifications or conditions for participation in tendering and bidding that specify non-local undertakings must establish branches, have specific business premises, or have specific office facilities in the local area; (4) setting evaluation and scoring standards that discriminate against non-local undertakings; (5) assessing non-local undertakings by standards different from those used for local undertakings; (6) restricting non-local undertakings from becoming members of local associations or chambers of commerce; (7) setting discriminatory qualifications or conditions for participation in tendering

Source: https://www.danyoungcpa.com/provisions-prohibition-abuse-administrative-power-competition-samr-prc-2023/

and bidding by other means.

Article 10 — "Excluding or restricting non-local undertakings from investing or setting up branches in the local area" as specified in Article 6(4) shall include: (1) refusing non-local undertakings to invest or set up branches in the local area, or applying more stringent conditions to them than to local undertakings; (2) not providing government services to non-local undertakings investing or setting up branches in the local area without just cause, or failing to fulfill the commitments made to them; (3) compelling non-local undertakings to set up branches in the local area as a condition for their commodities or services to enter the local market; (4) excluding or restricting non-local undertakings from investing or setting up branches in the local area by other means.

Article 11 — "Compelling undertakings to engage in monopoly conduct prohibited by the Anti-Monopoly Law" as specified in Article 6(5) shall include: (1) compelling undertakings to reach or implement monopoly agreements; (2) compelling undertakings with dominant market positions to engage in abuse of dominant market position; (3) compelling undertakings to carry out concentrations of undertakings that may exclude or restrict competition; (4) compelling undertakings to engage in other monopoly conduct prohibited by the Anti-Monopoly Law.

Article 12 — "Abusing administrative power to formulate and issue regulations or documents that contain provisions excluding or restricting competition" as specified in Article 6(6) shall include: (1) formulating and issuing regulations or documents that contain provisions restricting or requiring, in disguised form, undertakings or individuals to deal in, purchase, or use commodities provided by designated undertakings; (2) formulating and issuing regulations or documents that contain provisions obstructing the free flow of commodities between regions; (3) formulating and issuing regulations or documents that contain provisions excluding or restricting non-local undertakings from participating in local tendering and bidding activities; (4) formulating and issuing regulations or documents that contain provisions excluding or restricting non-local undertakings from investing or setting up branches in the local area; (5) formulating and issuing regulations or documents that contain provisions compelling undertakings to engage in monopoly conduct prohibited by the Anti-Monopoly Law; (6) formulating and issuing regulations or documents that contain other provisions excluding or restricting competition.

Chapter III — Investigation Procedures

Article 13 — Any entity or individual shall have the right to report to the anti-monopoly enforcement authority regarding suspected abuse of administrative power to exclude or restrict competition. The anti-monopoly enforcement authority shall keep the identity of the reporter confidential.

Article 14 — Where the anti-monopoly enforcement authority receives a report on suspected abuse of administrative power to exclude or restrict competition, it shall verify the relevant facts and handle the matter in accordance with the law.

Article 15 — Where the anti-monopoly enforcement authority, upon investigation, finds that an administrative organ or an organization authorized by laws or regulations to administer public affairs is suspected of abusing administrative power to exclude or restrict competition, it may conduct an interview with the legal representative or principal responsible person of the administrative organ or organization.

Article 16 — An administrative organ or organization authorized by laws or regulations to administer public affairs that is under investigation has the right to make statements and representations. The anti-monopoly enforcement authority shall verify the facts, reasons, and evidence put forward.

Article 17 — Where the anti-monopoly enforcement authority, upon investigation, determines that the conduct constitutes an abuse of administrative power to exclude or restrict competition, it shall prepare an investigation report and may make a recommendation to the people's government at the corresponding level or the superior authority of the relevant administrative organ for handling the matter.

Source: https://www.danyoungcpa.com/provisions-prohibition-abuse-administrative-power-competition-samr-prc-2023/

Article 18 — The administrative organ or organization under investigation shall, after receiving the recommendation letter from the anti-monopoly enforcement authority, take relevant measures to correct the illegal conduct and report the correction to the anti-monopoly enforcement authority within the prescribed time limit.

Article 19 — Where an administrative organ or an organization authorized by laws or regulations to administer public affairs is suspected of abusing administrative power to exclude or restrict competition, the anti-monopoly enforcement authority may, in accordance with the relevant provisions, make the relevant facts public.

Chapter IV — Legal Liability

Article 20 — Where an administrative organ or an organization authorized by laws or regulations to administer public affairs abuses its administrative power to exclude or restrict competition, the superior authority shall order it to make rectification. The directly responsible person in charge and other directly responsible persons shall be subject to sanctions in accordance with the law.

Article 21 — Where the anti-monopoly enforcement authority proposes a recommendation for handling the matter in accordance with the law, the relevant administrative organ or organization shall make rectification within the prescribed time limit and provide written feedback on the rectification to the anti-monopoly enforcement authority.

Article 22 — If an administrative organ or organization fails to make rectification, the anti-monopoly enforcement authority may, in accordance with the relevant provisions, report the matter to a higher-level authority or make the relevant circumstances public.

Article 23 — Where an administrative organ or an organization authorized by laws or regulations to administer public affairs refuses to provide the required materials or information during an anti-monopoly investigation, or provides false materials or information, or conceals, destroys, or transfers evidence, the anti-monopoly enforcement authority may make a recommendation for sanctions to the relevant authority.

Chapter V — Supplementary Provisions

Article 24 — These Provisions shall apply to the investigation and handling by the anti-monopoly enforcement authority of the abuse of administrative power to exclude or restrict competition. Where the Anti-Monopoly Law provides otherwise, such provisions shall prevail.

Article 25 — These Provisions shall be subject to interpretation by SAMR.

Article 26 — These Provisions shall come into force on April 15, 2023. The Interim Provisions on the Prevention of the Abuse of Administrative Power to Exclude or Restrict Competition promulgated by Order No. 12 of the State Administration for Market Regulation on June 26, 2019, are repealed simultaneously.

Disclaimer: This English translation is provided for reference and informational purposes only. It is not an official translation and shall not be relied upon as legally authoritative. The original Chinese text promulgated by the State Administration for Market Regulation (SAMR) shall prevail in all legal matters. Dan Young Business Consultancy makes no warranty as to the accuracy or completeness of this translation and disclaims all liability for any loss or damage arising from reliance on it. For legal advice regarding the application of these Provisions, please consult a qualified PRC legal professional.