Provisions on the Prohibition of Abuse of Market Dominance of the People’s Republic of China

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

Issued by the State Administration for Market Regulation on March 24, 2022 (SAMR Order No. 54 of 2022)

Effective: May 15, 2022

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Article 1 — These Provisions are formulated in accordance with the Anti-Monopoly Law of the People's Republic of China for the purpose of preventing and prohibiting the abuse of dominant market position, protecting fair competition in the market, safeguarding the interests of consumers and the public interest, and promoting the healthy development of the socialist market economy.

Article 2 — These Provisions apply to the anti-monopoly law enforcement work concerning the abuse of dominant market position within the territory of the People's Republic of China. For the purposes of these Provisions, "dominant market position" means a market position in which an undertaking has the ability to control the price, quantity, or other trading conditions of goods in the relevant market, or to obstruct or affect the ability of other undertakings to enter the relevant market.

Article 3 — The State Administration for Market Regulation (SAMR) shall be responsible for the unified anti-monopoly law enforcement work concerning the abuse of dominant market position. SAMR may, in accordance with the needs of its work, authorize the market regulation departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government to be responsible for the anti-monopoly law enforcement work concerning the abuse of dominant market position within their respective administrative regions.

Article 4 — In determining whether an undertaking has a dominant market position in the relevant market, the following factors shall be considered in accordance with the provisions of the Anti-Monopoly Law: (1) the market share of the undertaking in the relevant market and the competitive landscape 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 technological conditions of the undertaking; (4) the degree of reliance of other undertakings on the undertaking in the relevant market; (5) the degree of difficulty for other undertakings to enter the relevant market; and (6) other factors relevant to the determination of the market position of the undertaking.

Article 5 — In determining the market share of an undertaking in the relevant market, factors such as sales revenue, sales volume, and production capacity may be considered. The market share of an undertaking may be presumed based on the following circumstances: (1) where the market share of one undertaking reaches 1/2 in the relevant market; (2) where the combined market share of two undertakings reaches 2/3 in the relevant market; or (3) where the combined market share of three undertakings reaches 3/4 in the relevant market. Under the circumstances specified in subparagraphs (2) and (3) of the preceding paragraph, where the market share of one of the undertakings is less than 1/10, the undertaking 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 prove that it does not have a dominant market position, it shall not be determined to have a dominant market position.

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Article 6 — An undertaking with a dominant market position shall not sell goods at unfairly high prices or purchase goods at unfairly low prices. In determining whether the price is "unfairly high" or "unfairly low," the following factors may be considered: (1) whether the sales price is significantly higher than the price at which other undertakings sell the same type of goods; (2) whether the increase in price significantly exceeds the increase in costs; (3) whether the purchase price is significantly lower than the price at which other undertakings purchase the same type of goods; and (4) other factors that may be considered in determining unfairly high or low prices.

Article 7 — An undertaking with a dominant market position shall not sell goods at below-cost prices without justifiable reasons. For the purposes of the preceding paragraph, "justifiable reasons" includes: (1) reducing prices on fresh or live goods, seasonal goods, or goods with a short shelf life; (2) reducing prices to address unsalable goods; (3) reducing prices for repayment of debts, change of business, or closure of business; and (4) engaging in promotional activities within a reasonable period.

Article 8 — An undertaking with a dominant market position shall not refuse to deal with a counterparty without justifiable reasons. "Justifiable reasons" includes: (1) the counterparty has a serious bad credit record or there are other circumstances indicating a deterioration in business conditions that may endanger transaction security; (2) dealing with the counterparty would result in unreasonable additional costs for the undertaking; (3) the counterparty refuses to pay the price for goods in accordance with the usual commercial practice; and (4) other justifiable reasons stipulated by the contract.

Article 9 — An undertaking with a dominant market position shall not restrict the counterparty to a transaction to deal exclusively with it or restrict the counterparty to deal only with a designated undertaking without justifiable reasons. Such restriction includes: (1) restricting the counterparty to a transaction from dealing in, purchasing, or using goods provided by other undertakings; and (2) restricting the counterparty to a transaction from selling goods to other undertakings.

Article 10 — An undertaking with a dominant market position shall not engage in tying or imposing other unreasonable trading conditions without justifiable reasons. "Tying or imposing other unreasonable trading conditions" includes: (1) bundling different goods in violation of trading practices or consumption habits, or imposing other unreasonable conditions in the sale of goods; (2) imposing unreasonable restrictions on the term of the contract or the method, place, or object of payment or delivery; and (3) imposing unreasonable restrictions on the after-sales service or on the object, area, and scope of the counterparty's sales of goods.

Article 11 — An undertaking with a dominant market position shall not apply differential treatment to counterparties with the same conditions without justifiable reasons. "Differential treatment" includes: (1) applying different transaction prices, quantities, varieties, or quality standards to counterparties with the same conditions; (2) applying different credit conditions, payment methods, or delivery methods to counterparties with the same conditions; and (3) other differential treatment that may exclude or restrict competition in the relevant market.

Article 12 — An undertaking with a dominant market position shall not engage in other acts that constitute an abuse of dominant market position as determined by the anti-monopoly law enforcement authority under the State Council.

Article 13 — The relevant market as specified in these Provisions refers to the range of goods and the geographic area within which undertakings compete with each other over a certain period of time with respect to specific goods or services. The scope of the relevant market shall be determined by analyzing the substitutability of goods and geographical factors.

Article 14 — The anti-monopoly law enforcement authority shall conduct investigations in accordance with legal procedures when investigating suspected abuse of dominant market position. The anti-monopoly law enforcement authority may take the following measures when conducting investigations: (1) conducting on-site inspections of the business premises or other relevant premises of the undertaking under

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investigation; (2) questioning the undertaking under investigation, interested parties, and other relevant entities or individuals, and requiring them to explain the relevant circumstances; (3) reviewing and copying the relevant documents, materials, and data of the undertaking under investigation, interested parties, and other relevant entities or individuals; (4) sealing up or seizing relevant evidence; and (5) inquiring into the bank accounts of the undertaking under investigation.

Article 15 — Where the anti-monopoly law enforcement authority determines that an act constitutes an abuse of dominant market position, it shall order the undertaking to cease the illegal act, confiscate the illegal gains, and impose a fine of not less than 1% but not more than 10% of the sales revenue in the previous year. Where the violation has not resulted in illegal gains, a fine of not more than 5,000,000 yuan may be imposed.

Article 16 — Where an undertaking is suspected of violating these Provisions and voluntarily reports to the anti-monopoly law enforcement authority and provides important evidence, the anti-monopoly law enforcement authority may mitigate or exempt the penalties in accordance with the law. Where an undertaking under investigation undertakes to take specific measures to eliminate the consequences within the time limit approved by the anti-monopoly law enforcement authority, the anti-monopoly law enforcement authority may decide to suspend the investigation.

Article 17 — The anti-monopoly law enforcement authority shall determine the amount of fines based on the nature, extent, duration, and other circumstances of the illegal act. In determining the specific amount of a fine, the following factors shall be considered: (1) the nature and extent of the illegal act; (2) the duration of the illegal act; (3) the consequences of the illegal act, including its impact on competition and consumers; (4) the attitude of the undertaking in cooperating with the investigation and its rectification measures; and (5) other factors that the anti-monopoly law enforcement authority deems necessary to consider.

Article 18 — These Provisions shall come into force on May 15, 2022. The Interim Provisions on the Prohibition of Abuse of Dominant Market Position issued by the former State Administration for Industry and Commerce on June 17, 2019, shall be repealed simultaneously.

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