Provisions on the Prohibition of Monopoly Agreements 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 — Definition of Monopoly Agreements 2

Chapter III — Investigation Procedures 3

Chapter IV — Legal Liability 4

Chapter V — Supplementary Provisions 5

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

Table of Contents

- Chapter I — General Provisions
- Chapter II — Definition of Monopoly Agreements
- 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 monopoly agreements, protecting fair market competition, encouraging innovation, enhancing economic efficiency, safeguarding the interests of consumers, and promoting the healthy development of the socialist market economy.

Article 2 — The State Administration for Market Regulation (hereinafter referred to as "SAMR") shall be responsible for the anti-monopoly enforcement work concerning monopoly agreements 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 anti-monopoly enforcement work concerning monopoly agreements within their respective administrative regions, in accordance with the relevant provisions.

Source: https://www.danyoungcpa.com/provisions-prohibition-monopoly-agreements-samr-prc-2023/

Article 4 — In the enforcement of the law on monopoly agreements, the principle of combining punishment with education shall be adhered to, and undertakings shall be guided to operate in compliance with laws and regulations.

Chapter II — Definition of Monopoly Agreements

Article 5 — Monopoly agreements referred to in these Provisions mean agreements, decisions, or other concerted practices that eliminate or restrict competition, as specified in Articles 17, 18, and 19 of the Anti-Monopoly Law.

Article 6 — In determining whether an agreement constitutes a monopoly agreement, the following factors shall be comprehensively considered: (1) whether the undertaking reaches or carries out an agreement, decision, or other concerted practice; (2) the relevant market involved; (3) whether the agreement has the effect of eliminating or restricting competition; (4) whether the agreement falls under any of the circumstances provided for in Article 20 of the Anti-Monopoly Law, which may be exempted.

Article 7 — A monopoly agreement between undertakings that are in a competitive relationship shall mean an agreement, decision, or other concerted practice that falls under any of the following circumstances: (1) fixing or changing the price of commodities; (2) restricting the quantity of production or sales of commodities; (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 determined by the anti-monopoly enforcement authority under the State Council.

Article 8 — Price-related monopoly agreements prohibited shall include: (1) fixing or changing price levels, price increase or decrease ranges, or calculation formulas for prices; (2) fixing or changing commissions, discounts, handling fees, or other fee rates; (3) agreeing on prices by using standard formulas, algorithms, platforms, or other means; (4) restricting the autonomy of undertakings to set prices for their own operations.

Article 9 — Monopoly agreements that restrict the quantity of production or sales of commodities shall include: (1) restricting production in the form of limiting output, fixing output, ceasing production, or otherwise; (2) restricting the quantity of specific varieties or models of commodities; (3) restricting sales in the form of limiting sales volume, fixing sales volume, ceasing sales, or otherwise; (4) restricting the quantity of commodities supplied to specific customers or destined for specific regions.

Article 10 — Monopoly agreements that divide markets shall include: (1) dividing the geographical scope of commodity sales or the scope of raw material procurement; (2) dividing the types, specifications, or grades of commodities sold or purchased; (3) dividing the categories of customers, specific customers, or suppliers for commodity sales or raw material procurement; (4) dividing time periods, seasons, or operating stages for commodity sales or raw material procurement.

Article 11 — Monopoly agreements that restrict the procurement of new technology, new equipment, or restrict the development of new technology or new products shall include: (1) restricting the procurement or use of new technology or new processes; (2) restricting the procurement, leasing, or use of new equipment or new products; (3) restricting investment in or research and development of new technology, new processes, new equipment, or new products; (4) prohibiting the use of new technology, new processes, new equipment, or new products; (5) restricting the adoption of specific technical standards or specifications in the procurement, rental, or use of new technology, new equipment, or new products.

Article 12 — Monopoly agreements that jointly boycott transactions shall include: (1) jointly refusing to supply commodities to specific undertakings; (2) jointly refusing to purchase or sell commodities of specific undertakings; (3) jointly restricting specific undertakings from trading with undertakings that have a competitive relationship with them.

Source: https://www.danyoungcpa.com/provisions-prohibition-monopoly-agreements-samr-prc-2023/

Article 13 — A monopoly agreement between an undertaking and its trading counterpart shall mean an agreement, decision, or other concerted practice that falls under any of the following circumstances: (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; (3) other monopoly agreements determined by the anti-monopoly enforcement authority under the State Council.

Article 14 — The prohibited acts of fixing the price of commodities for resale to a third party or restricting the minimum price of commodities for resale to a third party shall include: (1) fixing the resale price level, price fluctuation range, profit margin, or discount level; (2) restricting the minimum resale price or price fluctuation range; (3) punishing or offering inducements to a trading counterpart through the suspension of supply, restriction of supply, reduction of supply, cancellation of rebates, increase of supply price, or other means, for failing to comply with price restrictions; (4) restricting the resale price in disguised form through other means.

Article 15 — In determining other concerted practices as provided for in Articles 7 and 13 of these Provisions, the following factors shall be considered: (1) whether the market conduct of the undertakings is consistent; (2) whether there have been contacts or exchanges of information between undertakings; (3) whether the undertakings can provide reasonable explanations for the consistency of their conduct; (4) the structure of the relevant market, the state of competition, changes in the market, and other circumstances.

Article 16 — Where an undertaking can prove that the market share of the undertaking in the relevant market is lower than the standard prescribed by the anti-monopoly enforcement authority under the State Council, and at the same time meets other conditions prescribed by the anti-monopoly enforcement authority under the State Council, the agreement between undertakings that are in a competitive relationship as provided for in Article 7 of these Provisions shall not be prohibited, unless there is evidence to the contrary that the agreement eliminates or restricts competition.

Article 17 — Where an undertaking can prove that the following conditions are met, the monopoly agreements specified in Articles 7 and 13 of these Provisions shall not be prohibited: (1) the agreement is made for the purpose of improving technology, researching and developing new products; (2) the agreement is made for the purpose of improving product quality, reducing costs, enhancing efficiency, unifying product specifications or standards, or implementing specialized division of labor; (3) the agreement is made for the purpose of enhancing the operational efficiency of small and medium-sized undertakings and strengthening their competitiveness; (4) the agreement is made for the purpose of realizing social public interests such as energy conservation, environmental protection, or disaster relief; (5) the agreement is made for the purpose of alleviating a serious decrease in sales volume or a significant overproduction during an economic depression; (6) the agreement is made for the purpose of safeguarding legitimate interests in foreign trade and foreign economic cooperation; (7) other circumstances prescribed by laws and the State Council.

Article 18 — Undertakings that claim an exemption under Article 17 of these Provisions shall bear the burden of proof that the agreement meets the conditions for exemption.

Article 19 — Trade associations shall not organize undertakings within their industry to engage in monopoly agreement activities prohibited by the Anti-Monopoly Law. "Organize" as used in the preceding paragraph means any of the following: (1) formulating and issuing rules, decisions, notices, standards, opinions, or other normative documents containing provisions that eliminate or restrict competition; (2) organizing undertakings through meetings, correspondence, or other means to exchange competitively sensitive information such as price, cost, or quantity, to reach a monopoly agreement; (3) coordinating undertakings through other means to fix or change prices, restrict the quantity of production or sales, divide markets, restrict the purchase of new technology or new equipment or restrict the development of new technology or new products, jointly boycott transactions, or otherwise engage in monopoly agreement conduct.

Chapter III — Investigation Procedures

Source: https://www.danyoungcpa.com/provisions-prohibition-monopoly-agreements-samr-prc-2023/

Article 20 — Where an undertaking voluntarily reports to the anti-monopoly enforcement authority the relevant circumstances of a monopoly agreement and provides important evidence, the anti-monopoly enforcement authority may, in its discretion, reduce or exempt the penalty imposed on the undertaking in accordance with the Anti-Monopoly Law.

Article 21 — An undertaking that applies for leniency pursuant to Article 20 shall submit a written application to the anti-monopoly enforcement authority before the authority has initiated an investigation or made a decision to impose an administrative penalty, stating the basic facts of the monopoly agreement and submitting the evidence it holds.

Article 22 — For the first undertaking that applies for leniency and provides important evidence, the anti-monopoly enforcement authority may exempt it from a penalty or reduce the penalty by no less than 80 percent. For the second undertaking, a reduction of 30 to 50 percent may be granted. For the third undertaking, a reduction of 20 to 30 percent may be granted.

Article 23 — "Important evidence" as used in Article 22 means evidence that is sufficient to enable the anti-monopoly enforcement authority to initiate an investigation or make a key determination regarding the monopoly agreement, including: (1) the participants in the monopoly agreement; (2) the products or services involved; (3) the content of the agreement; (4) the time and geographical scope of the agreement; (5) the method of implementation of the agreement.

Article 24 — The anti-monopoly enforcement authority shall protect the confidentiality of the information submitted by the leniency applicant and shall not disclose it to any third party except as otherwise provided by law.

Article 25 — If the anti-monopoly enforcement authority suspects that a monopoly agreement exists, it shall initiate an investigation in accordance with the law. Before initiating an investigation, the anti-monopoly enforcement authority may communicate with the undertaking, requesting it to voluntarily provide explanations or materials.

Article 26 — During an investigation of a suspected monopoly agreement, the anti-monopoly enforcement authority may interview the legal representative or person in charge of the undertaking being investigated, requiring them to provide explanations of the relevant matters.

Article 27 — An undertaking under investigation or an interested party has the right to make statements. The anti-monopoly enforcement authority shall verify the facts, reasons, and evidence put forward by the undertaking under investigation or the interested party.

Article 28 — The anti-monopoly enforcement authority may, based on the facts found through investigation, inform the undertaking of the facts and reasons for the determination that its conduct constitutes a monopoly agreement, and hear its opinions and representations.

Chapter IV — Legal Liability

Article 29 — Where an undertaking violates the provisions of the Anti-Monopoly Law by reaching and implementing a monopoly agreement, the anti-monopoly enforcement authority shall order it to cease the illegal conduct, confiscate its illegal gains, and impose a fine of not less than 1 percent but not more than 10 percent of its sales revenue in the preceding year. If the monopoly agreement has not been implemented, a fine of not more than 3 million yuan may be imposed.

Article 30 — Where a trade association violates the provisions of the Anti-Monopoly Law by organizing undertakings within its industry to reach a monopoly agreement, the anti-monopoly enforcement authority shall order it to make rectification and may impose a fine of not more than 3 million yuan. If the circumstances are serious, the authority for the registration and administration of social organizations may revoke its registration in accordance with the law.

Source: https://www.danyoungcpa.com/provisions-prohibition-monopoly-agreements-samr-prc-2023/

Article 31 — Where the legal representative, principal responsible person, or directly responsible person of an undertaking is personally responsible for the achievement of a monopoly agreement, the anti-monopoly enforcement authority may impose a fine of not more than 1 million yuan on that individual.

Article 32 — Where an undertaking's monopoly agreement damages social and public interests, the people's procuratorate may institute a public interest civil lawsuit before the people's court in accordance with the law.

Article 33 — The anti-monopoly enforcement authority shall, in determining the specific fine amount, consider factors including the nature, extent, duration, and consequences of the illegal conduct, as well as the circumstances of the undertaking's cooperation with the investigation.

Article 34 — Where an undertaking has made an application for leniency and meets the conditions, the anti-monopoly enforcement authority shall apply a reduction or exemption from the penalty in accordance with these Provisions.

Chapter V — Supplementary Provisions

Article 35 — These Provisions shall apply to the investigation and handling of monopoly agreements by the anti-monopoly enforcement authority. Where the Anti-Monopoly Law provides otherwise, such provisions shall prevail.

Article 36 — These Provisions shall be subject to interpretation by SAMR.

Article 37 — These Provisions shall come into force on April 15, 2023. The Interim Provisions on the Prohibition of Monopoly Agreements promulgated by Order No. 10 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.

Source: https://www.danyoungcpa.com/provisions-prohibition-monopoly-agreements-samr-prc-2023/