

Order of the President of the People's Republic of China

(No.68)

The Anti-monopoly Law of the People's Republic of China, which was adopted at the 29th meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on August 30, 2007, is hereby promulgated, and shall be effective as of August 1, 2008.

President of the People's Republic of China: Hu Jintao

August 30, 2007

Anti-monopoly Law of the People's Republic of China

(Adopted at the 29th meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on August 30, 2007)

Table of Contents

Chapter I General Provisions

Chapter II Monopoly Agreements

Chapter III Abuse of Dominant Market Position

Chapter IV Concentration of Business Operators

Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition

Chapter VI Investigation into Suspicious Monopolistic Conducts

Chapter VII Legal Liabilities

Chapter VIII Supplementary Provisions

Chapter I General Provisions

Article 1 This Law is enacted for the purpose of preventing and curbing monopolistic conducts, protecting fair market competition, enhancing economic efficiency, maintaining the consumer interests and the public interests, and promoting the healthy development of socialist market economy.

Article 2 This Law shall apply to the monopolistic conducts in economic activities within the territory of the People's Republic of China. This Law shall apply to the monopolistic conducts outside the territory of the People's Republic of China that has the effect of eliminating or restricting competition on the domestic market of China.

Article 3 The term "monopolistic conducts" as mentioned in this Law includes:

1. Monopoly agreements reached between business operators;
2. Abuse of dominant market position by business operators; and
3. Concentration of business operators that may have the effect of eliminating or restricting competition.

Article 4 The State shall make and implement competition rules suitable for the socialist market

economy, perfect the macro control, and improve a united, open, competitive and well-ordered market system.

Article 5 Business operators may, through fair competition and voluntary association, get together according to law, to expand the scale of their business operations and enhance their market competitiveness.

Article 6 No business operator with dominant market position may abuse its dominant position to eliminate or restrict competition.

Article 7 With respect to the industries controlled by the State-owned economy and concerning the lifeline of national economy and national security or the industries lawfully enjoying exclusive production and sales, the State shall protect these lawful business operations conducted by the business operators therein, and shall supervise and control these business operations and the prices of these commodities and services provided by these business operators, so as to protect the consumer interests and facilitate technological advancements.

The business operators mentioned in the previous paragraph shall operate according to law, be honest, faithful and strictly self-disciplined, and accept public supervision, and shall not harm the consumer interests by taking advantage of their controlling or exclusive dealing position.

Article 8 No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative powers to eliminate or restrict competition.

Article 9 The State Council shall establish an Anti-monopoly Commission, which is responsible for organizing, coordinating and guiding the anti-monopoly work and performs the following functions:

1. Studying and drafting relevant competition policies;
2. Organizing the investigation and assessment of overall competition situations, and releasing an assessment report;
3. Formulating and releasing anti-monopoly guidelines;
4. Coordinating the anti-monopoly administrative law enforcement; and
5. Other functions assigned by the State Council.

The composition and working rules of the Anti-monopoly Committee shall be established by the State Council.

Article 10 The anti-monopoly law enforcement agency designated by the State Council (hereinafter referred to as the Anti-monopoly Law Enforcement Agency under the State Council) shall be responsible for the anti-monopoly law enforcement work.

The Anti-monopoly Law Enforcement Agency under the State Council may, as required by the work, empower corresponding agencies in the people's governments of the provinces,

autonomous regions and municipalities directly under the Central Government to be responsible for the anti-monopoly law enforcement work according to this Law.

Article 11 A trade association shall strengthen the self-discipline within the industry, lead the business operators in the industry toward lawful competition, and maintain the market competition order.

Article 12 The term “business operator” as mentioned in this Law refers to a natural person, legal person, or any other organization that engages in the production or business of commodities or provides services.

The term “relevant market” as mentioned in this Law refers to the commodity scope or territorial scope within which the business operators compete against each other during a certain period of time for specific commodities or services (hereinafter referred to as “commodities”).

Chapter II Monopoly Agreement

Article 13 The competing business operators are prohibited from reaching any of the following monopoly agreements with each other:

1. Fixing or changing the price of commodities;
2. Restricting the production quantity or sales volume of commodities;
3. Dividing the sales market or the raw material supply market;
4. Restricting the purchase of new technology or new facilities or the development of new technology or new products;
5. Jointly boycotting transactions; or
6. Other monopoly agreements as determined by the Anti-monopoly Law Enforcement Agency under the State Council.

The term “monopoly agreements” as mentioned in this Law refers to the agreements, decisions or other concerted behaviors that may eliminate or restrict competition.

Article 14 Business operators are prohibited from reaching any of the following monopoly agreements with their trading parties:

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; or
3. Other monopoly agreements as determined by the Anti-monopoly Law Enforcement Agency under the State Council.

Article 15 Where the business operators can prove that a monopoly agreement reached by them falls under any of the following circumstances, the monopoly agreement shall be exempt from Articles 13 and 14 of this Law:

1. For the purpose of improving technologies, researching, and developing new products;
2. For the purpose of upgrading product quality, reducing costs, improving efficiency, unifying product specifications or standards, or carrying out professional labor division;

3. For the purpose of enhancing operational efficiency and reinforcing the competitiveness of small and medium-sized business operators;
4. For the purpose of realizing public interests such as conserving energy, protecting the environment and providing disaster relief, etc.;
5. For the purpose of mitigating the severe decrease of sales volume or obviously excessive production during economic recessions;
6. For the purpose of protecting the justifiable interests of the foreign trade or foreign economic cooperation; or
7. Other circumstances prescribed by the law or the State Council.

Where a monopoly agreement falls under any of the circumstances prescribed in Items 1-5 and is exempt from Articles 13 and 14 of this Law, the business operators shall also prove that the reached such an agreement shall not substantially restrict competition in the relevant market and can enable the consumers to share the benefits from the agreement.

Article 16 No trade association may organize the business operators in its own industry to implement the monopolistic conducts as prohibited by this Chapter.

Chapter III Abuse of Dominant Market Position

Article 17 Business operators with a dominant market position are prohibited from committing any of the following acts of abusing the dominant market position:

1. Selling products at unfairly high prices or buying products at unfairly low prices;
2. Selling products at prices below cost without any justifiable causes;
3. Refusing to trade with a trading party without any justifiable causes;
4. Restricting their trading party so that it may conduct deals exclusively with themselves or with the designated business operators without any justifiable causes;
5. Implementing tie-in sales or imposing other unreasonable trading conditions at the time of trading without any justifiable causes (“tie-in sale” refers to an unfair sale practice in which a business operator bundles other undesirable commodities with a hot-sale commodity – noted by the translator for clarification.);
6. Applying discriminatory treatments on trading prices or other trading conditions to their trading parties with equal standing without any justifiable causes; or
7. Other forms of abusing the dominant market position as determined by the Anti-monopoly Law Enforcement Agency under the State Council.

The term “dominant market position” as mentioned in this Law refers to a market position held by business operators that have the ability to control the price or quantity of commodities or other trading conditions in the relevant market or block or affect the entry of other business operators into the relevant market.

Article 18 The dominant market position of a business operator shall be determined according to the following factors:

1. The market share of the business operator and its competitive status in the relevant market;

2. The ability of the business operator to control the sales market or the raw material supply market;
3. The financial and technological conditions of the business operator;
4. The extent of reliance on the business operator by other business operators in the transactions;
5. The degree of difficulty for other business operators to enter the relevant market; and
6. Other factors relevant to the determination of the dominant market position of the business operator.

Article 19 Under any of the following circumstances, a business operator may be presumed to have a dominant market position:

1. The market share of one business operator accounts for 1/2 or more in the relevant market;
 2. The joint market share of two business operators accounts for 2/3 or more in the relevant market;
- or
3. The joint market share of three business operators accounts for 3/4 or more in the relevant market.

Under the circumstance prescribed in Item 2 or 3 of the previous paragraph, if any of the business operators has a market share of less than 1/10, that business operator shall not be considered to have a dominant market position.

A business operator that has been presumed to have a dominant market position shall not be considered as having a dominant market position if the operator can provide opposite evidence.

Chapter IV Concentration of Business Operators

Article 20 The “concentration of business operators” refers to any of the following circumstances:

1. Merger of business operators;
2. A business operator acquires control over other business operators by acquiring their equities or assets; or
3. A business operator acquires control over other business operators or is able to exert a decisive influence on other business operators by contract or any other means.

Article 21 Business operators shall declare in advance the concentration reaching the threshold of declaration prescribed by the State Council to the Anti-monopoly Law Enforcement Agency, and otherwise, they shall not implement the concentration.

Article 22 Under any of the following circumstances, business operators may not need to file a concentration declaration to the Anti-monopoly Law Enforcement Agency under the State Council:

1. Among all business operators involved in the concentration, one business operator possesses 50% or more of the voting shares or assets of every other business operator; or
2. A business operator not involved in the concentration possesses 50% or more of the voting shares or assets of every business operator that is involved in the concentration.

Article 23 When making a concentration declaration to the Anti-monopoly Law Enforcement

Agency under the State Council, the business operators shall submit the following documents and materials:

1. The Declaration Form;
2. Explanations of the concentration effects on the relevant market competition situations;
3. Concentration agreements;
4. The financial and accounting reports for the previous fiscal year of the business operators involved in the concentration, which should be audited by an accounting firm; and
5. Other documents and materials required by the Anti-monopoly Law Enforcement Agency under the State Council.

The declaration form shall contain the names of the business operators involved in the concentration, their domiciles, business scopes, the date on which the concentration is to be implemented, and other matters prescribed by the Anti-monopoly Law Enforcement Agency under the State Council.

Article 24 Where the documents or materials submitted by the business operators are not complete, the business operators concerned shall supplement the relevant documents or materials within the time limit prescribed by the Anti-monopoly Law Enforcement Agency under the State Council. Otherwise, the declaration shall be deemed as not being filed.

Article 25 The Anti-monopoly Law Enforcement Agency under the State Council shall, within 30 days upon receipt of the documents and materials submitted by the business operators pursuant to Article 23 of this Law, conduct a preliminary examination of the declared concentration of business operators, make a decision on whether to conduct further examination, and notify the business operators of that decision in written form. The business operators shall not implement the concentration until the Anti-monopoly Law Enforcement Agency under the State Council makes such a decision.

Where the Anti-monopoly Law Enforcement Agency under the State Council makes a decision that no further examination shall be conducted or where the Anti-monopoly Law Enforcement Agency fails to make a decision within the time limit, the business operators may implement the concentration.

Article 26 Where the Anti-monopoly Law Enforcement Agency under the State Council decides to conduct further examination, it shall, within 90 days from the date of decision, complete the examination, make a decision on whether to prohibit the concentration, and notify the business operators of the decision in written form. If the Anti-monopoly Law Enforcement Agency under the State Council decides to prohibit the concentration, it shall explain the reasons. The business operators shall refrain from implementing the concentration within the period of examination.

Under any of the following circumstances, the Anti-monopoly Law Enforcement Agency under the State Council may, after notifying the business operators concerned in written form, extend the time limit of examination as prescribed in the preceding paragraph, with the extension being no more than 60 days:

1. The business operators agree to extend the time limit of examination;
2. The documents or materials submitted by business operators are inaccurate and need further verification; or
3. The relevant circumstances have significantly changed after the declaration by the business operators.

Where the Anti-monopoly Law Enforcement Agency under the State Council fails to make a decision within the time limit, business operators may implement the concentration.

Article 27 The following factors shall be taken into account in the examination of the concentration of business operators:

1. The involved business operators' market share in the relevant market and their controlling power over that market;
2. The degree of market concentration in the relevant market;
3. The impact of the concentration of business operators on the market access and technological advancements;
4. The impact of the concentration of business operators on the consumers and other business operators;
5. The impact of the concentration of business operators on the national economic development; and
6. Other factors that may affect the market competition and shall be considered as deemed by the Anti-monopoly Law Enforcement Agency under the State Council.

Article 28 Where the concentration of business operators will or may eliminate or restrict competition, the Anti-monopoly Law Enforcement Agency under the State Council shall make a decision to prohibit the concentration. However, if the business operators can prove either that the favorable impact of the concentration on competition obviously exceeds the adverse impact, or that the concentration meets the public interests, the Anti-monopoly Law Enforcement Agency under the State Council may decide not to prohibit the concentration.

Article 29 Where the concentration of business operators is not prohibited, the Anti-monopoly Law Enforcement Agency under the State Council may decide to attach restrictive conditions for reducing the adverse impact of such concentration on competition.

Article 30 The Anti-monopoly Law Enforcement Agency under the State Council shall timely publicize a decision on prohibiting the concentration of business operators or a decision on attaching restrictive conditions to the concentration of business operators.

Article 31 Where a foreign investor participates in the concentration of business operators by merging or acquiring a domestic enterprise or by any other means and the national security is involved, besides the examination on the concentration of business operators according to this Law, the examination on the national security shall also be conducted according to the relevant provisions of the State.

Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition

Article 32 No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative power to force or use a disguised form to force any entities or individuals to deal, purchase, or use the commodities provided by the business operators designated by such an administrative organ or organization.

Article 33 No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative power to block the inter-region free trading of commodity by taking the following measures:

1. Setting discriminatory charges, implementing discriminatory charge rates, or fixing discriminatory prices for non-local commodities;
2. Imposing technical requirements or inspection standards on non-local commodities that are different from those on their local counterparts, or taking discriminatory technical measures, such as repeated inspections or repeated certifications on non-local commodities, so as to restrict the entry of non-local commodities into the local market;
3. Adopting the administrative licensing aimed at non-local commodities, so as to restrict the entry of non-local commodities into the local market;
4. Setting up barriers or adopting any other means to block either the entry of non-local commodities or the exit of local commodities; or
5. Other activities that may block the inter-region free trading of commodity.

Article 34 No administrative organs or organizations empowered by law or administrative regulation to administer public affairs may abuse their administrative power to reject or restrict the participation of non-local business operators in local tendering and bidding activities by imposing discriminatory qualification requirements or assessment standards or failing to publicize the binding information according to law.

Article 35 No administrative organs or organizations empowered by law or administrative regulation to administer public affairs may abuse its administrative power to reject or restrict either investment in its jurisdiction or the establishment of local branches by non-local business operators by imposing unequal treatments on them that are different from those on the local business operators.

Article 36 No administrative organs or organizations empowered by law or administrative regulation to administer public affairs may abuse its administrative power to compel business operators to engage in monopolistic activities that are prohibited by this Law.

Article 37 No administrative organs may abuse its administrative power to formulate any provisions on eliminating or restricting competition.

Chapter VI Investigation of Suspicious Monopolistic Conducts

Article 38 The Anti-monopoly Law Enforcement Agency shall investigate any suspicious

monopolistic conducts according to law.

Any entities or individuals may tip off any suspicious monopolistic conducts to the Anti-monopoly Law Enforcement Agency. The Anti-monopoly Law Enforcement Agency shall keep the informer confidential.

The Anti-monopoly Law Enforcement Agency shall conduct necessary investigations where the tip-off is made in writing and supported by relevant facts and evidence.

Article 39 When investigating a suspicious monopolistic conduct, the Anti-monopoly Law Enforcement Agency may take the following measures:

1. Enter the business premises of the business operators who are under investigation or any other relevant place to investigate;
2. Inquire the business operators who are under investigation, interested parties, or other relevant entities or individuals, and request them to disclose relevant information;
3. Review and duplicate the relevant business documents, agreements, accounting books, business correspondences, electronic data, files, or documentations of the business operators who are under investigation, interested parties, or other relevant entities or individuals;
4. Seize and detain the relevant evidence; and
5. Inquire about the bank accounts of the business operators who are under investigation.

Before any of the measures prescribed in the previous paragraph is adopted, a written report shall be submitted to the principal officials of the Anti-monopoly Law Enforcement Agency for approval.

Article 40 When the Anti-monopoly Law Enforcement Agency is investigating a suspicious monopolistic conduct, the agency shall send at least two officials for the investigation and they shall present their law enforcement badges.

When any law enforcement official is conducting an inquiry or investigation, he shall make a written transcript for the inquiry and investigation and have the person who is under inquiry or investigation sign the transcript.

Article 41 The Anti-monopoly Law Enforcement Agency and its functionaries shall have the responsibility to keep the business secrets, which they obtain when enforcing the law, confidential.

Article 42 The business operators, interested parties and other relevant entities or individuals who are under investigation shall assist the Anti-monopoly Law Enforcement Agency in performing its functions and shall not refuse or obstruct the investigation conducted by the Anti-monopoly Law Enforcement Agency.

Article 43 The business operators and interested parties who are under investigation shall be entitled to make statements on the investigation. The Anti-monopoly Law Enforcement Agency shall verify the facts, reasons and evidence presented by the business operators and interested

parties under investigation.

Article 44 When the Anti-monopoly Law Enforcement Agency deems that a suspicious monopolistic conduct is constituted a monopolistic conduct after an investigation and verification, the agency shall make a decision on how to deal with the monopolistic conduct, and may publicize its decision.

Article 45 As for a suspicious monopolistic conduct that the Anti-monopoly Law Enforcement Agency is investigating, if the business operators under investigation promise to eliminate the effects of the conduct through the use of concrete measures within the time limit accepted by the Anti-monopoly Law Enforcement Agency, the Anti-monopoly Law Enforcement Agency may decide to suspend the investigation. The decision of suspending the investigation shall state the concrete measures promised by the business operators under investigation.

Where the Anti-monopoly Law Enforcement Agency decides to suspend an investigation, it shall supervise the implementation of the promise by the relevant business operators. If the business operators implement the promise, the Anti-monopoly Law Enforcement Agency may decide to terminate the investigation.

However, under any of the following circumstances, the Anti-monopoly Law Enforcement Agency shall resume the investigation:

1. The business operator fails to implement its promise;
2. Significant changes have taken place to the facts, on which the decision of suspending the investigation was made; or
3. The decision on suspending the investigation was made on the basis of incomplete or inaccurate information submitted by the business operators.

Chapter VII Legal Liability

Article 46 Where the business operators reach and fulfill a monopoly agreement in violation of this Law, the Anti-monopoly Law Enforcement Agency shall order them to stop the violations, confiscate the illegal gains and impose a fine of 1% up to 10% of the sales revenue made in the previous year. Where the reached monopoly agreement has not been fulfilled, a fine of less than 500,000 yuan may be imposed.

Where a business operator who is engaged in a monopoly agreement voluntarily confesses the information about the monopoly agreement and provides the important evidence to the Anti-monopoly Law Enforcement Agency, the operator may be given a mitigated punishment or be exempt from punishment at the discretion of the Anti-monopoly Law Enforcement Agency.

Where a trade association organizes the business operators in its own industry to reach a monopoly agreement in violation of this Law, the Anti-monopoly Law Enforcement Agency may impose a fine of less than 500,000 yuan; where the circumstances are serious, the authority in charge of social group registration may deregister the trade association.

Article 47 Where the business operators abuse their dominant market position in violation of this Law, the Anti-monopoly Law Enforcement Agency shall order them to stop such violations, confiscate the illegal gains, and impose a fine of 1% up to 10% of the total sales volume made in the previous year.

Article 48 Where the business operators implement the concentration in violation of this Law, the Anti-monopoly Law Enforcement Agency under the State Council shall order them to stop the concentration, to dispose shares or assets, transfer the business or adopt other necessary measures to restore the market situation before the concentration within a time limit, and may impose a fine of less than 500,000 yuan.

Article 49 To determine the specific amount of fines prescribed by Articles 46-48 of this Law, the Anti-monopoly Law Enforcement Agency shall consider such factors as nature, extent and duration of the violations.

Article 50 The business operators that carry out the monopolistic conducts and cause damages to others shall bear the civil liability according to law.

Article 51 Where an administrative organ or organization empowered by law or administrative regulation to administer public affairs abuses its administrative power to eliminate or restrict competition, the superior authority thereof shall order the agency to make rectification and impose punishments on the directly responsible persons in charge and the other directly liable persons. The Anti-monopoly Law Enforcement Agency may offer suggestions to the relevant superior authority regarding how to handle the abuse according to law.

Where a law or administrative regulation provides otherwise for the handling of an administrative organ or organization empowered by law or administrative regulation to administer public affairs that abuses its administrative power to eliminate or restrict competition, such provisions shall prevail.

Article 52 As for the examination and investigation implemented by the Anti-monopoly Law Enforcement Agency, if business operators refuse to submit related materials and information, submit fraudulent materials or information, conceal, destroy or remove evidence, or refuse or obstruct investigation in other ways, the Anti-monopoly Law Enforcement Agency shall order them to make rectification, impose a fine of less than 20,000 yuan on individuals, and a fine of less than 200,000 yuan on entities; and where the circumstances are serious, the Anti-monopoly Law Enforcement Agency may impose a fine of 20,000 yuan or up to 100,000 yuan on an individual, and a fine of 200,000 yuan or up to one million yuan on an entity; where a crime is constituted, the relevant business operators shall be investigated for the criminal liabilities.

Article 53 Where any party concerned is dissatisfied with the decision made by the Anti-monopoly Law Enforcement Agency pursuant to Articles 28 and 29 of this Law, the party may first apply for an administrative reconsideration; if the party is still dissatisfied with the

reconsideration decision, it may lodge an administrative lawsuit according to law.

Where any party concerned is dissatisfied with any decision made by the Anti-monopoly Law Enforcement Agency other than the decisions prescribed in the previous paragraph, it may apply for an administrative reconsideration or lodge an administrative lawsuit according to law.

Article 54 Where any functionary in the Anti-monopoly Law Enforcement Agency abuses his authority, neglects his duty, makes falsehood for personal gains, or discloses trade secrets known when enforcing the law, and a crime is constituted, he shall be investigated for criminal liability; and if no crime is constituted, he may be given a disciplinary sanction.

Chapter VIII Supplementary Provisions

Article 55 This law shall not apply to the conduct of business operators to exercise their intellectual property rights according to the laws and relevant administrative regulations on intellectual property rights; however, this Law shall apply to the conduct of business operators to eliminate or restrict market competition by abusing their intellectual property rights.

Article 56 This law shall not apply to the ally or concerted actions of agricultural producers and rural economic organizations in the economic activities such as production, processing, sales, transportation and storage of agricultural products.

Article 57 This law shall come into effect as of August 1, 2008.