

Regulations on Procedures of Administrative Authorities for Industry and Commerce for Investigating Cases Involving Monopoly Agreements and Abuses of Dominant Market Positions

Promulgated on May 26, 2009 by the order No.42 of the State Administration for Industry and Commerce (“SAIC”)

Article 1 These regulations are formulated pursuant to the Anti-Monopoly Law of the People’s Republic of China (“AML”) for the purposes of regulating and ensuring administrative authorities for industry and commerce to investigate monopolistic behaviors according to law.

Article 2 The SAIC shall be the primary authority responsible for anti-monopoly enforcement with respect to monopoly agreements and abuses of dominant market positions.

SAIC, when necessary, may delegate its anti-monopoly enforcement authority, to a subordinate Provincial Administration for Industry and Commerce (“PAIC”) for anti-monopoly enforcement with respect to monopoly agreements and abuses of dominant market position.

Article 3 The SAIC shall be responsible for investigating the following monopolistic behaviors:

- 1 Behaviors having substantial influence throughout the country; and
- 2 Behaviors deemed by SAIC as under its jurisdiction.

The PAIC may be authorized to be responsible for investigating the following monopolistic behaviors:

- 1 Behaviors occurring within the administrative region of the province;
- 2 Behaviors occurring across provinces, autonomous regions, or municipalities directly under the Central Government. However, the main place where such behaviors occur shall be within the administrative region; and
- 3 Behaviors that the SAIC believes can be delegated to a PAIC for jurisdiction.

Such authorization shall be carried out on a case by case basis. The authorized PAIC shall not delegate the matter to administrations for industry and commerce at lower levels.

Article 4 An administrative authority for industry and commerce shall lawfully investigate any monopolistic behavior it discovers in light of its authority. Alternatively, it shall report and transfer a case to the other appropriate or its superior authority.

Article 5 Any unit or individual has the right to report monopolistic behaviors to an administrative authority for industry and commerce: The receiving authority shall keep the identity of the reporter confidential.

Where the report is in writing, it shall encompass the following content:

- 1 General information about the reporter. Where the reporter is an individual, he/she shall provide his/her name, address, and contact information etc. Where the reporter is a business operator, he/she shall provide his/her name, address, contact information, industry engaged in, and products produced or services provided etc.;
- 2 General information of the person/business operator being reported, including name, address, industry engaged in, and products it produces or services it provides etc.;
- 3 Relevant facts about monopolistic behavior, including the facts of instances of such behavior conducted by the person/business operator being reported in violation of laws, regulations, and rules as well as the place and time where such behavior occurred;
- 4 Relevant evidence, including documentary evidence, material evidence, testimony of witnesses, audio-visual materials, computer data, expert's conclusions etc. Evidence providers' signatures shall be affixed to the relevant evidence and the sources of evidence shall also be indicated; and
- 5 Whether the same matter has been reported to any other administrative authority or has been taken to the peoples' court.

Article 6 The SAIC and the PAIC are responsible for the acceptance of reporting materials. If an administration for industry and commerce at a level lower than provincial level receives reporting materials, it shall submit the relevant reporting materials to the appropriate PAIC within 5 working days.

Upon the receipt of reporting materials, the accepting authority shall conduct registration for the report and check its content.

Where the reporting materials are incomplete, the accepting authority shall notify the reporter to supplement the materials.

Regarding anonymous reports in writing, if concrete facts of violation of laws exist and relevant evidence is provided, the acceptance authority shall conduct registration for the report and check its content.

Article 7 The PAICs shall be responsible for checking the content of reports in which the reported behavior occurs predominantly within the administrative region of its province, and they shall report their findings and their opinion concerning whether to place the case on file with the SAIC.

With respect to reports with complete reporting materials, of which the reported behaviors occur across two or more provincial administrative regions, the Provincial Administrations shall submit such reports to the SAIC in a timely manner.

Article 8 The SAIC shall decide to place the case on file for investigation according to its check of the content of the report. The SAIC may investigate further by itself or authorize the relevant PAIC to initiate investigation in accordance with Article 3 herein.

Article 9 The SAIC may carry out investigation by itself on cases being placed on file for investigation, or it may empower relevant administrations for industry and commerce at provincial, sub-provincial, and cities under a separate State planning levels to carry out the investigation work.

The PAIC authorized to place the case on file for investigation shall organize all relevant work such as case investigation according to the regulations.

Article 10 After reporting in writing to the chief officer in charge of the authority who has the right to investigate monopoly cases, and upon receiving the approval thereof, the administrative authority for industry and commerce may adopt the following investigation measures to investigate suspected monopolistic behaviors:

- 1 Entering into the business premises or other related sites of the business operator under investigation to conduct inspections;
- 2 Inquiring of the business operator, interested parties, or other related units or individuals under investigation, and requiring them to explain related situations;
- 3 Reviewing and copying of documents and materials such as certificates, agreements, accounting books, business communications, electronic data etc., of the business operator, interested parties, or other related units or individuals under investigation;
- 4 Seizing and sequestering relevant evidence; and
- 5 Reviewing the business operator's bank accounts.

Article 11 When investigating a case, the number of law enforcement staff of an administrative authority for industry and commerce shall not be less than two people, and they shall show their law enforcement credentials.

Article 12 When investigating suspected monopolistic behaviors, the administrative authority for industry and commerce may require the business operator, interested parties, or other related units or individuals under investigation to provide the following materials in writing within a specified time limit:

- 1 General information of the party under investigation, including its organizational structure, name, contact person and his/her contact information, Business License or Registration Certificate of Legal Person in Non-governmental Organization, and copy of the Duplicate of Legal Person Organization Code Certificate. If the business operator is an individual, he/she shall provide his/her ID certificate copy and contact information;

- 2 If the party under investigation is a business operator, it shall also provide its production and operation state, annual sales, tax state, business transactions, cooperation agreements with other parties, and overseas investments etc. over the past 3 years. Listed companies shall also provide stock earnings information;
- 3 If the party under investigation is an industry association, it shall provide its industry association constitution; related industrial policy basis; production and operation plan for the industry and the implementation thereof; and conference activities and documents related to the suspected monopolistic behavior;
- 4 Explanation for relevant questions raised by the administrative authority for industry and commerce; and
- 5 Other written materials deemed as necessary to be provided by the administrative authority for industry and commerce.

The administrative authority for industry and commerce and its law enforcement staff have the obligation to keep the trade secrets they obtain in the course of investigation confidential.

Article 13 The business operator and interested parties under investigation have the right to present their statement. The administrative authority for industry and commerce shall verify the facts, reasons, and evidence provided by the business operator and interested parties under investigation.

Article 14 When under investigation by the administrative authority for industry and commerce, if the party under investigation refuses to submit, insufficiently submits, or fails to submit within the specified time limit related materials and information; submits fraudulent materials or information; hides, destroys or removes evidence; or commits other acts that prevent or hinder the investigation; such party will be punished according to Article 52 of the AML.

Article 15 During the period when the business operator who is suspected of conducting monopolistic behavior is under investigation, such business operator may apply for investigation suspension if he/she commits to taking specific measures to eliminate the effect of the behavior within the time limit approved by the administrative authority for industry and commerce.

Article 16 Application for investigation suspension shall be in written form, and shall be signed and sealed by the legal representative or responsible person or individual. The following matters shall be specified in the application:

- 1 Facts about the suspected violations of law and possible impacts caused thereby;
- 2 Specific measures to be taken so as to eliminate the effect of the behavior; and
- 3 Schedules regarding the realization of commitment and statement of guarantee.

Article 17 The administrative authority for industry and commerce may, according to the application of the business operator under investigation, decide to suspend the investigation after taking into account specific circumstances such as, the nature; the duration; the consequences; and the social impact of the behavior, and issue an investigation suspension letter. The investigation suspension letter shall specify the facts suspected of violating the law by the business operator, the specific content of the commitment, the specific measures to eliminate the effects, the time limit, and the legal consequences of failure to perform the commitment or partly performing the commitment.

Article 18 When a decision to suspend the investigation is made, the business operator shall submit a written report regarding the performance of the commitment to the administrative authority for industry and commerce within a specified time limit.

Article 19 The administrative authority for industry and commerce shall supervise the performance by the business operator of its commitment. Where the administrative authority for industry and commerce confirms that the business operator has performed its commitment, it may decide to terminate the investigation and issue an investigation termination letter. The investigation termination letter shall specify the facts suspected of violating the law by the business operator, the specific content of the commitment, the specific measures to eliminate the effects, and the specific approaches and time to perform the commitment.

The investigation shall be resumed if there are any of the circumstances below:

- 1 The business operator fails to perform its commitment;
- 2 The facts which the decision to suspend the investigation were based on have undergone major changes; or
- 3 The decision to suspend the investigation was made based on incomplete, untrue, or misleading information provided by the business operator.

Article 20 Where the business operator voluntarily reports information concerning the conclusion of the monopoly agreement and provides important evidence to the administrative authority for industry and commerce, they may, at the discretion of the administrative authority for industry and commerce, be given a mitigated punishment or be exempted from punishment.

The preceding paragraph does not apply to the organizer of the monopoly agreement.

Important evidence refers to evidence playing a key role in initiating an investigation or determining that monopolistic agreement behavior exists.

Article 21 Where the business operator can prove the agreement reached is in accordance with the provisions of Article 15 of the AML, the administrative authority for industry and commerce may give an exemption for the relevant behaviors.

- Article 22 Where the administrative authority for industry and commerce determines, after investigating and verifying the suspected monopolistic behavior, that the behavior constitutes monopolistic behavior, it shall make an administrative decision to punish such behavior in accordance with law.
- Article 23 The SAIC shall report significant monopoly cases to the Anti-Monopoly Committee of the State Council before making administrative punishment decisions.
- The authorized PAIC shall make the decision to suspend or terminate the investigation or make punishment according to law, however, it shall report to the SAIC before making such decision. The PAIC shall, within 10 working days after making such decision, submit related information, relevant decision letter, and case investigation termination report to the SAIC for filing.
- Article 24 If the SAIC, after its study, decides the AML does not apply to the report, but other regulations and rules of administration for industry and commerce are applicable, the report shall be transferred to relevant administrations for industry and commerce. Where such matter is under the jurisdiction of other administrative authority, it shall be transferred to the relevant authority according to law.
- The administrative authorities for industry and commerce at levels lower than provincial level may, in accordance with other laws and regulations, supervise and inspect the behaviors restricting competition conducted in its administrative region by public enterprises or other business operators who lawfully obtain market dominant positions.
- Article 25 The administrative authority for industry and commerce may publish the monopoly cases it investigates according to law.
- Article 26 Investigation, hearing, and punishment procedures for monopolistic behaviors that are not prescribed herein shall be carried out in accordance with the related provisions of the Administrative Punishment Law of the PRC, the Procedural Regulations of Administrative Authorities for Industry and Commerce on Administrative Punishment, and the Hearing Rules of Administrative Authorities for Industry and Commerce for Administrative Punishment Cases. However, the Procedural Regulations of Administrative Authorities for Industry and Commerce on Administrative Punishment and the Hearing Rules of Administrative Authorities for Industry and Commerce for Administrative Punishment Cases do not apply to the time limit issues.
- Article 27 Where a party is dissatisfied with the decisions, such as administrative punishment made by the administrative authority for industry and commerce according to the regulations, it may apply for an administrative review or institute a judicial review according to law.
- Article 28 In the course of anti-monopoly enforcement work, the administrative authority for industry and commerce shall enhance information communication and enforcement collaboration with other anti-monopoly authorities and relevant authorities.

- Article 29 In the case in which the staff members of the administrative authority for industry and commerce violate the Regulations, abuse their powers, are derelict in their duties, practice graft, or disclose trade secrets obtained in the enforcement of the Law, which does not constitute a criminal offence, administrative penalties shall be given in accordance with law. If the act constitutes a criminal offence, such case shall be transferred to a judicial body.
- Article 30 This regulation does not apply to investigations of price related monopolistic behaviors in relation to monopoly agreements and abuse of dominant market positions.
- Article 31 The SAIC is responsible for interpreting this regulation.
- Article 32 This regulation shall become effective as of July 1, 2009.