

Regulations for Prohibiting Monopoly Agreements (Draft for Comments)

The following is an unofficial translation prepared by [MWE China Law Offices](#).

- Article 1 These Provisions are formulated pursuant to the Anti-Monopoly Law of the People's Republic of China for the purpose of prohibiting monopoly agreements.
- Article 2 Business operators are prohibited from reaching and implementing monopoly agreements.
- Article 3 The monopoly agreement as defined herein refers to an agreement, a decision or other action in concert (excluding price-related monopoly agreements) reached by two or more business operators to eliminate or restrict competition, including the following forms:
- (1) A written agreement or a written decision;
 - (2) A verbal agreement or a verbal decision; and
 - (3) A tacit action in concert among business operators in the absence of a written or verbal agreement or decision.
- Article 4 The following factors may be taken into account when defining an action in concert:
- (1) The actions of business operators who are in concert; or
 - (2) The actions of business operators are identical or similar without a justifiable reason.
- Market structure and market change shall be taken into account when the foregoing factors are under consideration.
- Article 5 The following monopoly agreements among competing business operators shall be prohibited:
- (1) Limiting output or sales of products, including limiting total output and sales by limiting or ceasing production or hoarding goods, or limiting output or sales of a certain product type or model;
 - (2) Allocating sales market or raw materials supply market, including dividing regions for the sales of products, targets of sales or categories of products for sale, and dividing purchasing regions and suppliers of raw materials, *etc.* Raw materials include materials, semi-finished

goods, parts and components, related equipment, *etc.*, necessary for the production and operation of an enterprise;

- (3) Limiting the purchase of new technologies and equipment or limiting the development of new technologies and products, including the limiting of investment, development, use of new technologies, new equipment or new products and the leasing of new equipment, *etc.*;
- (4) Jointly boycotting transactions, including jointly refusing to provide or sell products to certain business operators, jointly refusing to purchase or sell the products of certain business operators, and jointly demanding certain business operators not to conduct transactions with competing business operators;
- (5) Collusive bidding, including agreements made among bidders to decide a bid winner, win the bid in turn and conduct collusive actions regarding matters other than the quotation price; and
- (6) Other monopoly agreements determined by the State Administration for Industry and Commerce.

Article 6 The following agreements among business operators and their trading counter parties are prohibited:

- (1) Monopoly agreements among tenderees and bidders in bidding activities, including a tenderee informing other bidders of the bidding information, assisting bidders to replace the bid documents, and other collusive actions among tenderees and bidders regarding matters other than the quotation price;
- (2) Agreements among business operators and their trading counterparties without justifiable reasons, requiring their trading counter parties to conduct business activities only in certain regional markets;
- (3) Agreements among business operators and their trading counterparties without justifiable reasons, requiring their trading counterparties to trade only with the business operators or to trade with the only parties as are designated by the business operators; and
- (4) Other monopoly agreements determined by the State Administration for Industry and Commerce.

Article 7 If business operators are able to prove that the agreements reached by them are in conformity with the provisions of Article 15 of the Anti-Monopoly Law, Article 5 and Article 6 hereof shall not be applied.

- Article 8 Trade associations are prohibited from organising business operators in their industry to reach monopoly agreements as prohibited herein through the following means:
- (1) Enacting and promulgating rules, decisions and notices of the trade association to eliminate or restrict competition;
 - (2) Assembling members of the trade associations and forming agreements, resolutions, summaries or memorandums;
 - (3) Facilitating business operators' ability to communicate, discuss or coordinate to reach monopoly agreements; and
 - (4) Other means determined by the State Administration for Industry and Commerce.
- Article 9 The State Administration for Industry and Commerce is responsible for investigating and handling the following monopoly agreement actions:
- (1) Actions creating significant nationwide influence; and
 - (2) Actions the State Administration for Industry and Commerce considers it has the jurisdiction over.
- Article 10 The State Administration for Industry and Commerce may, if necessary, authorise Administrations for Industry and Commerce of provinces, autonomous regions and municipalities directly under the Central Government (hereinafter referred to as Provincial Administrations for Industry and Commerce) to be responsible for investigating and prosecuting the following monopoly agreement actions:
- (1) Actions occurring within that administrative region;
 - (2) Actions occurring across administrative regions of provinces, autonomous regions and municipalities directly under the Central Government, but which mainly occur in that administrative region; and
 - (3) Actions that the State Administration for Industry and Commerce deems that it may authorise a Provincial Administration for Industry and Commerce to handle.
- Article 11 Where business operators reach and perform any monopoly agreement in violation of Article 5 and Article 6 hereof, the State Administration for Industry and Commerce shall order the undertakings to cease such illegal action, confiscate the illegal gains and impose fines from 1 per cent to 10 per cent of the total sales revenue for the previous year; where such monopoly agreement is not performed, a fine below RMB500,000 may be imposed.

Where industrial associations organise business operators to reach any monopoly agreement in violation of Article 8 hereof, the State Administration for Industry and Commerce could impose a fine below RMB500,000. In case of a serious circumstance, an administrative organisation for industry and commerce may request the Registration and Administration Authority for Social Organisations to cancel the registration of the trade associations according to the law. If business operators reach and perform any monopoly agreement accordingly, they shall be treated according to the preceding paragraph.

An administrative organisation for industry and commerce shall take into account the nature, degree and duration of the illegal act when determining the specific amount of the fine imposed.

Article 12 Where a business operator involved in a monopoly agreement voluntarily reports information of the monopoly agreement to the concerned administrative entity for industry and commerce first, and provides important evidence, the first business operator may be exempted from being punished by the administrative organisation for industry and commerce. Important evidence refers to the evidence which may trigger an investigation or is crucial in determining monopoly agreement action, including participating business operators, scope of involved products, means by which the monopoly agreement is reached, specific situation of the implementation of such agreement, *etc.*

In addition to the provisions of the preceding paragraph, where other business operators involved in a monopoly agreement voluntarily report information of the monopoly agreement and provide important evidence to the administrative organisation for industry and commerce, the administration for industry and commerce, at its discretion, shall impose a lesser punishment in accordance with their circumstances.

Article 13 The exemption or mitigation of punishment shall be determined in accordance with the time order of voluntary report by business operators, degree of importance of the evidence provided, relevant information of how a monopoly agreement is reached and implemented, and whether the concerned party cooperates in the investigation:

- (1) The first voluntary reporter will be exempted from punishment.
- (2) The second voluntary reporter will be given a punishment mitigated by 50 per cent.
- (3) The third voluntary reporter will be given a punishment mitigated by 30 per cent.

The preceding paragraphs do not apply to organisers or initiators of a monopoly agreement, or business operators who force others to participate in the monopoly agreement by means of threats.

- Article 14 The parties who are dissatisfied with the decision, such as administrative punishment, made by an Administrative Organisation for Industry and Commerce pursuant to these Regulations may apply for administrative reconsideration or file an administrative lawsuit according to the law.
- Article 15 The anti-monopoly enforcement personnel of the Administrative Organisations for Industry and Commerce shall strictly perform their administrative duties according to the law, pursuant to the Procedural Provisions on the Investigation by the Administrative Organisations for Industry and Commerce of the Cases of Monopoly Agreement and Abuse of Dominant Market Position. Where any such personnel abuse their authority, neglect their duty, commit malpractice, or disclose trade secrets known when enforcing the law, and no crime is constituted, they may be given disciplinary sanctions, and if a crime is constituted, they shall be prosecuted for criminal liability.
- Article 16 These Regulations are not applicable to any alliance, or action in concert, of agricultural producers and rural economic organisations in operational activities such as production, processing, sales, transportation and storage of farm products.
- Article 17 The Commodities as mentioned herein shall include services.
- Article 18 The State Administration for Industry and Commerce shall be responsible for interpreting these Provisions.
- Article 19 This Provision shall become effective as of _____ 2009.