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A Practical Review of the Draft Amendment to the Anti-Monopoly Law of China: Highlighting Six Areas with Eighteen Changes

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Foreword

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On 2 January 2020, the State Administration for Market Regulation of China (“SAMR”) released a draft of the proposed amendment to the Anti-Monopoly Law of China (“**Draft Amendment**”) to solicit public comments from different sectors of society. It indicates that after twelve years, at the beginning of the 2020s, the *Anti-Monopoly Law of China* (“AML”) is envisioning an overhaul.

Enacted on 30 August 2007 and implemented on 1 August 2008, the enforcement of the AML in its current form has entered the twelfth year. These years have seen a series of changes, for example, in the domestic and foreign economic environment, the policy goals and the governance concepts of the Chinese government, the characteristics of business competition, and the institutional structure of the antitrust authorities. In the course of the AML enforcement, various problems continuously emerge and enforcement experience is thus accumulated, part of which has been reflected in the implementing rules of the AML. In contrast, some provisions in the AML can no longer adapt themselves to the current practices nor provide sufficient certainty for the latest enforcement cases, thus hindering the achievement of the AML’s legislative goals to ensure fair market competition and to safeguard consumers’ interests.

In countries with long-established market economy, antitrust law (known as “Antitrust Law” in the United States, “Competition Law” in Europe, and translated as “Anti-Monopoly Law” in China) is honored as the “economic constitution”, since it is the primary legal basis for governments to intervene in the operation of the economy at the micro-level. China's proposed amendment to the AML this time will be the first major overhaul of this "economic constitution" twelve years since it took effect. The significance of the amendment is self-explanatory against the pressure of the economic downturn, the escalation of international economic and trade frictions, and the most critical challenge of optimizing economic structure. As lawyers who have witnessed the entire evolvement process of China’s antitrust enforcement, we will make remarks about the Draft Amendment from a practical standpoint and in combination with real cases, with a view to making some modest contribution to the amendment of this law, which could influence the operation of the economy and millions of enterprises.

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Table of Contents

I.	Looking back the AML Legislative Process and Looking forward	1
II.	Overview of the Draft Amendment: Six Areas with Eighteen Changes	2
A.	Strengthening the Position of “Economic Constitution”: Legislative Goal, Competition Policy and Fair Competition Review Added.....	2
(a)	Adding “Encouraging Innovation” as Legislative Goal	2
(b)	Establishing the Fundamental Status of Competition Policy	3
(c)	Enshrining the Fair Competition Review System	3
B.	Adjusting the Structure of Regulating Monopoly Agreement.....	4
(a)	Providing Leeway for Harmonizing Rules of Vertical Monopoly Agreements in Future: a Standalone Definition of Monopoly Agreement.....	4
(b)	Prohibiting of Organizing and Aiding Other Undertakings in Entering into Monopoly Agreement	5
C.	Systematically Modifying the Merger Control Regime.....	6
(a)	Introducing the Definition of Control.....	6
(b)	Clarifying that the Triggering Thresholds for the Concentration of Undertakings Can Be Adjusted Timely.....	6
(c)	Introducing “Stop-the-clock” System for Merger Review.....	7
(d)	Clarifying Liabilities for Providing False Information in Notification	8
(e)	Getting Much Tougher on Gun Jumping.....	8
D.	Optimizing Antitrust Public Enforcement Procedures with More Efficiency.....	9
(a)	Authorizing Central Enforcement Agency to Set up Regional Offices	9
(b)	Clarifying that Commitment Mechanism Shall Not Apply to Hardcore Cartels	9
(c)	Supporting Antitrust Investigation with Police Force.....	10
(d)	Confirming the Obligations of Administrative Agencies to Cooperate with Administrative Monopoly Investigation	10

E.	Increasing the Severity of Administrative Penalties and Enhancing Deterrence of the AML.....	10
(a)	Providing Potential Convergence with Future Criminal Code that Hardcore Cartels May Constitute Crimes	10
(b)	Substantially Increasing Penalties for Certain Offenses	11
F.	Keeping up with Trends by Introducing Clauses concerning Internet Industry and Privacy Protection.....	12
(a)	Adding Factors for Determining Dominant Market Position in the Internet Industry	12
(b)	Supplementing Antitrust Authority’s Duty of Confidentiality for Personal Privacy	13
III.	A Draft Amendment to be Improved: Practical Observations	14
A.	Connecting Antitrust Public Enforcement and Private Actions.....	14
B.	Failing to Provide Rules of Single Economic Entity	15
C.	Other Realistic Issues: Rules of Vertical Price Monopoly Agreements, Effective Regulation of Administrative Monopolies, and Calculation of Illegal Gains and Fines.....	16
IV.	Appendix: Comparison of the Proposed Amendments to and Current Version of PRC Anti-monopoly Law.....	19

I. Looking back the AML Legislative Process and Looking forward

There is no single perfect statute in the world. The same goes for competition law. The Sherman Act of the United States has undergone several amendments or supplements in the past 130 years, the last of which was made in the early 2000s. For a late-developing market economy country like China, which enacted antitrust law as late as in 2007 and on the basis of its thirty-years “Reform and Opening-up”, it is also indispensable to revise laws in response to the era of development and the needs of practice.

According to the legislative process, as stipulated by the *Legislative Law of China*, the amendment process of a statute generally includes three stages. First, relevant ministries or commissions propose a draft of amendment. For example, the Draft Amendment here is proposed by SAMR on the basis of its past law enforcement practices. Second, the ministries and commissions will then submit the draft proposal to the State Council’s legislative department, currently undertaken by the Ministry of Justice,² which will form a new draft based on opinions from all sectors of society. Then the State Council’s legislative department will submit the new draft proposal to the legislative department of the National People’s Congress (“NPC”), for the AML usually the Economic Law Office under the Legislative Affairs Commission of the NPC Standing Committee, which will deliberate and produce a new version submitted to the NPC for discussion. If passed by the NPC or its Standing Committee, it will be signed by the President and announced.

At the level of the highest legislative body – the NPC, the AML at the time of its birth on 30 August 2007 was passed by the NPC Standing Committee, since it was not included in the scope of “basic laws” (such as the Civil Code or Criminal Code) that need to be reviewed and passed by the NPC’s plenary. The same applies to the amendment of the AML; it need not be passed at the NPC’s plenary session in March every year, but only be considered and approved by the NPC Standing Committee’s session, which is held every two months.

When the amendment to the AML was included in the *2015 State Council’s Legislative Work Plan*, it signaled the official kickoff. In 2018, it was again included in the *Legislative Plan of the Thirteenth NPC Standing Committee*. Judging from the Draft Amendment, SAMR did not make a substantive change to the existing framework and kept the basic structure of eight chapters and four pillars. The focus was placed on improving and optimizing the existing

² Before 2018, the State Council’s legislative department was the Legislative Affairs Office. In 2018, the National People’s Congress (“NPC”) of the new term passed the reform plan of central ministries and commissions. The functions of the former Legislative Affairs Office merged with the current Ministry of Justice.

antitrust legal system, enhancing the efficiency and consistency of law enforcement, and increasing the deterrent effect of the AML.

At present, the amendment to the AML just reached the first stage of the legislative process mentioned above, that is, the drafting of the proposal by a competent department under the State Council – SAMR. According to the announcement made by SAMR, the solicitation of opinions will be open until 31 January 2020. Surely, the general legislative process mentioned above does not preclude the possibility to simplify or speed up the process in special or emergent situations. Nonetheless, in whatever way, the NPC or its Standing Committee’s deliberation and approval is a necessary step.

II. Overview of the Draft Amendment: Six Areas with Eighteen Changes

The Draft Amendment retains the core structure of eight chapters and four pillars of the current law. There are more articles added than removed, the total number increasing from fifty-seven to sixty-four. The contents of some preserved provisions are also modified. In response to this Draft Amendment, there have been comments from antitrust academia and officials all over the media. We would like to examine the Draft Amendment from a lawyer’s practical perspective. The changes can be summarized as “six areas with eighteen changes.”

A. Strengthening the Position of “Economic Constitution”: Legislative Goal, Competition Policy and Fair Competition Review Added

In the chapter “General Provisions”, the Draft Amendment strengthened the position of the AML as the “economic constitution” from three aspects: (1) adding “encouraging innovation” as one of the legislative goals; (2) establishing the “fundamental status of competition policy”, and (3) enshrining the fair competition review system.

(a) Adding “Encouraging Innovation” as Legislative Goal

Article 1 of the AML establishes a number of legislative goals of this law, including: preventing and restraining monopolistic behaviors; protecting fair market competition; improving the efficiency of economic operation; safeguarding consumer interests and public welfare; and promoting the healthy development of the socialist market economy. The Draft Amendment includes “encouraging innovation” in the legislative purpose, a move that has multiple meanings. For example, it shows that the goal of the AML is compatible with that of the intellectual property laws, and reflects its support for the new economy and new industries. It also means when the different legislative goals conflict with each other, encouraging innovation could be one of the considerations to balance against.

In the past twelve years, in China there have been many antitrust enforcement and litigation cases in the field of intellectual property, particularly those concerning patents. *Qualcomm's Abuse of Dominant Market Position (2015)* – the highest fine record (CNY 6,088 million) to date – as well as *Huawei Technologies Co., Ltd. v. InterDigital Inc. (2013)*, *Xi'an Xidianjietong Radio Network Co. v. Sony Mobile Communications Products (China) Co., Ltd. (2017)*, all involve the abuse of standard essential patents to eliminate or restrict competition. In 2019, SAMR carried out a raid on Ericsson's China office, also pointing to its alleged abuse of standard essential patents.³ As the economic structure in China is undergoing a remarkable transformation nowadays, it is of huge significance, beyond doubt, to assert that the AML has the same legislative goal to “encourage innovation” as the intellectual property laws.⁴

(b) Establishing the Fundamental Status of Competition Policy

The Draft Amendment adds that “the State strengthen the fundamental status of competition policy” in Article 4. It, on the one hand, confirms establishing competition policy system based on the AML, and legalizes the fundamental status of competition policy in the overall national economic policies on the other hand. Previously, the fundamental status of competition policy was already introduced in the *Notice of the State Council on Issuing the Plan for Market Regulation during the 13th Five-Year Plan Period* (State Council, No. 6, 2017) and other documents issued by the Party and the State Council, especially the *Decision of the Central Committee of the Communist Party of China on Some Major Issues concerning Comprehensively Deepening the Reform*. The credit should be given to the continuous calling and efforts by insightful people of the antitrust academic and practice community. The Draft Amendment would substantially improve the position of the AML in the national governance, promote the balancing and coordination between competition policy and other economic policies such as industry policy, and further demonstrate the State's latest governance concepts such as administration decentralization, state-owned enterprises reform, industrial transformation and upgrading, innovative country build-up and business environment optimization.

(c) Enshrining the Fair Competition Review System

In June 2016, the issuance of the *Opinions on Establishing the Fair Competition Review System in the Construction of the Market System* (State Council, No. 34, 2016) by the State Council

³ Ericsson: *Raided for Antitrust Investigation in China*, TENCENT NEWS (15 Apr. 2019), <https://new.qq.com/rain/a/20190415A0MJRM>.

⁴ Xianlin Wang, *Establishment and Development of China's Anti-monopoly Rules on Abuse of Intellectual Property*, 2(00) COMPETITION LAW AND POLICY REVIEW 53 (2016).

marked the establishment of the fair competition review system. Since then, supplementary systems such as the *Letter of the General Office of the State Council on Approval of the Establishment of the Inter-Ministerial Joint Meeting System for Fair Competition Review*, the *Detailed Rules for the Implementation of the Fair Competition Review System (for Interim Implementation)* and the *Implementation Guide of Assessment of Fair Competition Review by Third Party*, further perfect such system.⁵ To date, government at all levels have conducted the fair competition review of a large number of regulatory documents, and have revised or withdrawn many documents that violate the AML.

The Amendment Draft enshrines the fair competition review system in the AML, in order to make the system risen to become law for one purpose and to ensure its position in the antitrust system for another, thereby further implementing the fundamental status of competition policy and establishing an institutionalized and normalized “semi-judicial review” system – i.e., a system which allows review of the compliance of regulatory documents by government at all levels with the “economic constitution”, AML.

B. Adjusting the Structure of Regulating Monopoly Agreement

The Draft Amendment clarifies the regulatory principles and system of monopoly agreements, which is mainly reflected in defining monopoly agreements in a separate clause and adding a clause prohibiting the organizers and aiders of monopoly agreements.

(a) Providing Leeway for Harmonizing Rules of Vertical Monopoly Agreements in Future: a Standalone Definition of Monopoly Agreement

The Draft Amendment repositions the current Article 13, Paragraph 2 – the definition of monopoly agreement – as a separate clause and expressly prohibits reaching a monopoly agreement between undertakings. This change helps to solve the divergence between the enforcement authorities and the courts over vertical monopoly agreement, especially where it concerns the principle of the resale price maintenance (“RPM”). For example, in *Hainan Yutai Scientific Feed Company v. Hainan Provincial Price Bureau (2018)* and *Toyota RPM Decision (2019)*, the enforcement authorities adopted the “strict prohibition + exemption” approach, presuming RPM conduct is illegal. However, the courts hold that rule of reason should be applied in judicial practice – i.e., whether RPM is illegal or not depends on whether it has the effect of eliminating or restricting competition.⁶ The Draft Amendment has not yet specified

⁵ Xianling Wang, *Implementation and Perfection of the Chinese Fair Competition System*, BI-MONTHLY ISSUE OF MARKET SUPERVISION AND REGULATION (30 Aug 2019).

⁶ Chun Zhong, *Administrative and Judicial Criteria for the Legality of RPM*, 7 CHINA MARKET REGULATION (16 July 2019).

whether the rule of reason or the “strict prohibition + exemption” principle applies here. However, the change in structure provides some leeway for unification in the future.

(b) Prohibiting of Organizing and Aiding Other Undertakings in Entering into Monopoly Agreement

The Draft Amendment adds a new provision under Chapter II “Monopoly Agreements”, which “prohibit organizing and aiding other undertakings in entering into monopoly agreement”, and corresponding penalties are stated under Chapter VII, “Legal Liabilities”. Under the current AML, monopoly agreements mainly regulate the three kinds of subjects (excluding administrative agencies and organizations under administrative monopoly): the first is “competing undertakings” in horizontal agreements; the second is “undertakings and their trading parties” in vertical agreements; the third is “trade associations” which organize undertakings in reaching and implementing monopoly agreements. In the past twelve years of enforcement, most horizontal monopoly agreements cases involve the organization, assistance and implementation of monopoly agreements by industry associations. Examples can be found in *Chifeng City Bahrain Left Banner Catering Industry Monopoly Agreement (2019)*, *Heze City Automobile Industry Association Organizing Undertakings to Reach Monopoly Agreement (2019)*, *Beijing Driving Training Association and Eleven Driving Training Institutions Reaching Horizontal Monopoly Agreement (2018)*, *Guangdong Zhongshan City Gas Association Organizing Members to Allocate Sales Market (2018)*, *Beijing Real Estate Management Evaluation Industry Price Monopoly Agreement (2017)*, *Hunan Insurance Industry Association Monopoly Agreement (2016)*, *Guangzhou Fanyu Animation Industry Association Monopoly Agreement (2015)*, *Zhejiang Auto Insurance Price Monopoly Agreement (2014)*, *Shanghai Gold Industry Monopoly Agreement (2013)*, *Zhejiang Fuyang Papermaking Industry Price Monopoly Agreement (2011)*, etc.

However, in practice, there have been some undertakings, who do not belong to the above three categories but have played a major role in reaching and implementing the monopoly agreements: for example, the (unpunished) wholesaler which helped the three active pharmaceutical ingredient (API) manufacturers reaching a monopoly agreement in the *Glacial Acetic Acid Monopoly Agreement (2018)*, and the insurance brokerage company (who was handed over to competent authority) that led eleven property insurance companies to reach a monopoly agreement in the *Loudi Insurance Industry Monopoly Agreement (2012)*. Due to the absence of clear foundation in the AML, it is difficult for the enforcement authorities to punish them accordingly, leaving a loophole in the enforcement of the AML. In other jurisdictions, this type of undertakings may be characterized as “hub-and-spoke agreements” and be severely punished accordingly (for examples, undertakings who assume the hub role in the British Toy

Company Case – *Hasbro/Argos/Littlewoods* (2003) and the *United States v. Apple Inc.* (2012) were deemed to be engaged in monopolistic conducts), either being fined or being required to pay settlement. The Draft Amendment finally keeps up with other jurisdictions and provides a clear legal basis for China's antitrust authorities to investigate into and deal with conducts of this kind.

C. Systematically Modifying the Merger Control Regime

The Draft Amendment has made significant changes to the merger control regime. It not only incorporates the provisions previously scattered in other regulations and policy documents into the AML, but also adjusts a large number of provisions based on existing issues in practice.

(a) Introducing the Definition of Control

The definition of “control” under the AML differs from that in the *Company Law of China* or the *Securities Law of China*, and such difference often leads to confusion in the filing and review of the concentration of undertakings.⁷ Common misjudgment situations include the acquisitions by minority shareholders and the establishment of joint ventures. When faced with such situations, companies often come to incorrect conclusions regarding whether the transaction constitutes a concentration because they cannot accurately assess the change of control in the transaction.

Control is a core concept in the concentration of undertakings, and of the utmost importance when determining whether a transaction needs to be filed. Previously, antitrust authorities have included some factors for determining control in departmental regulations and guidance. The Draft Amendment now adds the definition of control in Article 23, Paragraph 2, as “an undertaking's direct or indirect, separate or collective right or actual status which have or may have the decisive influence on the production and operation activities or other major decisions of other undertakings”.⁸ This will provide as an enabling statute the legal foundation for relevant regulations issued before and also the start point for further improvement.

(b) Clarifying that the Triggering Thresholds for the Concentration of Undertakings Can Be Adjusted Timely

⁷ Fagen Jiang, *The Substantive Law Theory concerned by the Merger Control of the AML — Commenting on Chapter IV of the Antitrust Law of the PRC (Draft)*, 3 JOURNAL OF ANHUI RADIO & TV UNIVERSITY 17 (2007).

⁸ See the *Guiding Opinions of the Anti-monopoly Bureau of the Ministry of Commerce on the Declaration of Concentrations Between Undertakings* (2014), <http://fldj.mofcom.gov.cn/article/i/201406/20140600614679.shtml>; see also the *Amendment to the Measures for Reviewing the Concentration of Undertakings (Draft for Comments)* (2017), <http://tfs.mofcom.gov.cn/article/as/201709/20170902640565.shtml>.

Article 24, Paragraph 2 of the Draft Amendment adds that, “the antitrust authority under the State Council can formulate and modify merger notification thresholds in accordance with the level of economic development and industry scale, and make them publicly available in a timely manner.”

According to the current rule, if the nationwide turnover within China of an undertaking participating in the concentration exceeds CNY 400 million, such concentration may need to file a notification. This rule was made in accordance with the social and economic development at the time of formulation, but it probably can no longer properly define the notification thresholds since China has experienced more than ten years’ rapid economic development. If a large number of small and medium-sized enterprises (SMEs) that are too small to influence market competition are included in the scope of merger review, it may unnecessarily burden the companies with notification filings and also the law enforcement agencies with too much review work. On the other hand, the current notification standard only adopts turnover as the indicator, and cannot cover other scenarios under the AML in which the undertakings’ turnover does not meet notification threshold but the transaction may impact market competition. As to these issues, the Draft Amendment may bring three changes in the future: (1) raising the turnover thresholds to adapt to the current economic development; (2) introducing multi-factor standards, for example, considering platform companies’ gross merchandise volume (GMV), (3) regularly assessing and modifying the merger notification thresholds by the antitrust authority under the State Council (namely, SAMR).

These changes are drawn from international practices. For instance, the US’s notification thresholds will be revised annually, based on the GDP and inflation levels of the previous year, and will be published by Federal Trade Commission (FTC) according to Hart-Scott-Rodino Antitrust Improvements Act.⁹

(c) Introducing “Stop-the-clock” System for Merger Review

The Draft Amendment adds Article 30, which lists multiple reasons for which the clock shall be stopped for merger review. This helps enforcement agencies to avoid the inefficient way that they would in practice require the notifying parties to withdraw the notification and to re-file a new notification. The “stop-the-clock” system will be supplemented by other specific rules. “Stop-the-clock” is a common practice in EU’s merger control procedure. If the notifying

⁹ For the US’s current merger notification thresholds, please refer to: <https://www.ftc.gov/enforcement/premerger-notification-program/current-thresholds>.

parties do not provide an important piece of information which the Commission has requested from them, the clock can be stopped until such missing information is supplied.¹⁰

(d) Clarifying Liabilities for Providing False Information in Notification

Article 51 of the Draft Amendment newly provides that, the enforcement agencies can revoke the merger review decision if the notifying parties provide false or incorrect information. For the notification usually involves a large amount of industry information irrelevant with laws, the officials would have great difficulty in verifying such information. Article 51 helps to prevent the notifying parties from providing false information to “muddle through.” In EU, providing incorrect information for merger notification is a serious breach of law, and there have been many decisions with huge fines for failure to provide accurate and truthful information. For instance, in 2017, the Commission fined Facebook EUR 110 million for providing misleading information about WhatsApp takeover (2014).¹¹ In 2019, the Commission fined General Electric EUR 52 million for providing incorrect information in LM Wind takeover (2017) (withdrawn and then re-notified by General Electric).¹²

(e) Getting Much Tougher on Gun Jumping

In the past twelve years, the antitrust authorities have publicized fifty administrative penalty decisions for gun jumping. Especially in recent two years, more gun jumping cases have been investigated and penalized, including fifteen cases in 2018 and sixteen in 2019. Currently, the fines for gun jumping range from CNY 150,000 to CNY 400,000, which obviously lacks deterrent effect for M&A deals at hundreds of millions, billions or even tens of billions by value. Thus there are a number of gun-jumping cases in reality, such as Alibaba acquiring the Amap (2014), the merger of Ganji.com and 58.com (2015), the merger of DiDi and Uber (2016), the merger of Ele.com and Baidu Food Delivery (2017).¹³

Article 55 of the Draft Amendment provides that, the fines for gun-jumping will be increased from “up to CNY 500,000” to “up to 10% of its sales revenue in the previous year”, which reaches the same level of fines for monopoly agreement and abuse of dominance. Therefore, the deterrent effect for gun-jumping will be greatly improved and it is expected that

¹⁰ https://ec.europa.eu/competition/mergers/procedures_en.html.

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1369.

¹² https://ec.europa.eu/commission/presscorner/detail/en/IP_19_2049.

¹³ Xu Liu, *Antitrust Enforcement Should Not Tolerate Internet Oligopoly*, THE PAPER (29 Aug 2018), https://www.thepaper.cn/newsDetail_forward_2390564.

increasingly more parties will submit remedial notifications, voluntarily apply for consultation, voluntarily file notifications and even self-report themselves for gun-jumping.

D. Optimizing Antitrust Public Enforcement Procedures with More Efficiency

(a) Authorizing Central Enforcement Agency to Set up Regional Offices

At the beginning of 2019, SAMR released a notice generally authorizing thirty-one provincial administrations for market regulations (“AMR”) to investigate monopolistic conducts within their own jurisdictions.¹⁴ Due to limited job quota, it is highly unlikely for central enforcement agency to conduct investigation of antitrust cases nationwide, considering China’s vast territory and large population. Though this problem can be alleviated by authorizing provincial AMRs to conduct investigations, the manpower and budget of provincial AMRs are subject to local government, thus unable to solve the problem of local protectionism. At the same time, the administrative efficiency of the thirty-one provincial law enforcement agencies are often unsatisfactory. To address this issue, in some jurisdictions, central law enforcement agencies have set up its regional offices, such as Japan and the US. Japan Fair Trade Commission (JFTC) has set up regional offices at Hokkaido, Kyushu, Tohoku, Chubu, etc.¹⁵ The Antitrust Division of Department of Justice (DOJ) has set up field offices in eight states.¹⁶ Central antitrust agency setting up regional offices is similar to the practice of the Supreme Court setting up circuit courts nationwide, which can solve the problems of inefficiency and protectionism.

(b) Clarifying that Commitment Mechanism Shall Not Apply to Hardcore Cartels

Theoretically, the commitment mechanism can apply to all types of monopoly agreement and abuse of dominance, for the AML does not limit the types of behaviors covered by it. According to public information, until the end of December 2019, about twenty-one cases were suspended by the antitrust authorities based on the commitment mechanism, including fifteen cases of abuse of market dominance, three cases of horizontal monopoly agreement, and three cases of vertical monopoly agreement.

In June 2019, SAMR released the *Interim Provisions on Prohibition of Monopoly Agreements*, which excluded hardcore cartels (price-fixing, output restriction and market sharing) for the first time from the scope of applying commitment mechanism by undertakings. The Draft Amendment again confirms this provision, and its Article 50 states that, “for monopoly

¹⁴ The SAMR Notice on Authorization of Anti-monopoly Enforcement (SAMR Antitrust, No. 265, 2018), http://www.gov.cn/xinwen/2019-01/04/content_5354782.htm.

¹⁵ https://www.jftc.go.jp/regional_office/.

¹⁶ <https://www.justice.gov/jmd/antitrust-division-field-offices>.

agreements suspected of violating items of (1) (2) (3) of Article 15 of this Law, antitrust authorities may not suspend investigation.”

(c) Supporting Antitrust Investigation with Police Force

According to Article 44, Paragraph 2 of the Draft Amendment, when antitrust authorities investigate alleged monopolistic behaviors, “public security organs shall assist where necessary pursuant to laws.” In reality, when being investigated, some companies would use violence against law enforcement, or obstruct law enforcement process, or even threaten law enforcement officials’ safety. In such situations, the assistance of public security organs is particularly necessary. For example, in the antitrust enforcement obstruction case of a Guangzhou Toyota dealer, when the antitrust enforcer carried an antitrust raid on Guangzhou Toyota Car Sales Company, the general manager and the legal representative of the company not only unplugged an official’s USB flash drive when they were extracting evidence from the company’s computer, but also refused to give it back on the official’s demand, and even insulted officials and claimed that they had no power to investigate. In the end, the antitrust enforcer imposed fines on the company’s legal representative and general manager, totaling CNY 20,000.

(d) Confirming the Obligations of Administrative Agencies to Cooperate with Administrative Monopoly Investigation

In practice, it is often difficult for law enforcement agencies to conduct and complete administrative monopoly investigations without the cooperation of administrative agencies. Article 52, which is newly added to the Draft Amendment, makes it clear that administrative agencies have the responsibility to cooperate with the investigations conducted by antitrust authorities and provide relevant information, which provides a legal basis for antitrust authorities to conduct investigations and obtain relevant information.

E. Increasing the Severity of Administrative Penalties and Enhancing Deterrence of the AML

(a) Providing Potential Convergence with Future Criminal Code that Hardcore Cartels May Constitute Crimes

Article 57 of the Draft Amendment stipulates that, “if an undertaking implements a monopolistic conduct and causes losses to others, it shall bear civil liability in accordance with the law. If it constitutes a crime, criminal liability shall be pursued in accordance with the law.” This means that a regime of antitrust criminal liability may be established in the future in China.

Currently, the AML only provides two provisions concerning criminal liability, but they do not aim at monopolistic behaviors. Article 52 of the AML stipulates that “if a person refuses to

provide relevant materials and information to the antitrust authorities for examination and investigation pursuant to the law, or provide false materials and information, or conceal, destroy, or remove evidence, or commit any other act to refuse or obstruct investigation, and it constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.” The provision, in fact, stipulates the crime of interference with public duties. Article 54 of the AML stipulates that “for a person of antitrust authorities who is found guilty of abusing their official powers, dereliction of duties, corruption or divulging commercial secrets which have come to their knowledge during the enforcement process, criminal liability shall be pursued in accordance with the law if the case constitutes a criminal offence.” The above provision stipulates the crime of dereliction of duty and the crime of infringing trade secrets, which do not involve the monopolistic behavior itself.

The criminal liability provisions in the current AML are mainly to protect the implementation of the AML. Monopolistic behaviors including monopoly agreements, abuse of market dominance, and concentration of undertakings are only subject to civil liability and administrative liability, without criminal liability. Since China strictly adopts statutory law crimes, only the criminal code can provide criminal charges. That means no new crimes can be added simply by amending the AML, and the antitrust criminal liability can only be added through the NPC’s amendment of the criminal code. Therefore, Article 57 of the Draft Amendment in the Chapter “Legal Liability” leaves the possibility of applying in concert with the *Criminal Law of China* in the future. Seeing from the trend of international antitrust legislation,¹⁷ it is probable that the three hardcore cartels of price fixing, output restriction, and market division may constitute crimes in the days to come.

(b) Substantially Increasing Penalties for Certain Offenses

Chapter VII of the Draft Amendment has substantially increased the amount of penalties for some illegal behaviors: (1) the penalty for a monopoly agreement that has not been implemented increases hundredfold (from CNY 500,000 to CNY 50 million); (2) the upper limit of penalties of obstructing investigation and inspection increases tenfold for individuals (from CNY 100,000 to CNY 1 million), and for entities may reach 1% of the previous year’s revenue or CNY 5 million (if no revenue or clear revenue record in the previous year); and (3) the penalty for industry associations that organize monopoly agreements increases tenfold (from CNY 500,000 to CNY 5 million). These changes have greatly enhanced the deterrent effect of the AML.

¹⁷ For example, the focus of criminal charges in the United States in practice is the core cartels, and the United Kingdom and Ireland have only stipulated crimes against the core cartels.

There have been voices questioning that the cost of antitrust violations in China is too low,¹⁸ and it is difficult to deter or warn the parties. For example, for behaviors of monopoly agreements that haven't been implemented, in the monopoly agreement case involving seven companies including Hunan Yongzhou Aodu Concrete Co., Ltd., Hunan Provincial Administration for Industry and Commerce only imposed a fine of CNY 30,000 on the parties.¹⁹ For obstruction of investigation, in the case that Anhui Xinyada Company refused to provide relevant materials to enforcement agencies, Anhui Provincial Administration for Industry and Commerce imposed a fine of only CNY 200,000 on Xinyada.²⁰ For monopoly agreement organized by industry associations, in the price monopoly case of Hunan Loudi insurance industry, Hunan Price Bureau only imposed a fine of CNY 200,000 on Loudi Insurance Industry Association.²¹ Considering the size of the enterprises or the transactions, these amounts are obviously difficult to have a deterrent effect.

F. Keeping up with Trends by Introducing Clauses concerning Internet Industry and Privacy Protection

(a) Adding Factors for Determining Dominant Market Position in the Internet Industry

Article 21 of the Draft Amendment, providing factors for determining dominant market position, adds a provision on the factors for the Internet industry, that is, “the determination of dominant market position of an Internet undertaking shall also consider network effects, economies of scale, lock-in effects, and the abilities to obtain and process relevant data.”

This provision not only echoes the three departmental regulations issued by SAMR that took effect on 1 September 2019,²² but also reflects the basic attitude that central government and market supervision departments insisted in recent years toward new economy regulation, which should be “broad-minded and prudent.”²³ In fact, China's Internet industry is developing

¹⁸ See Jian Wang & Jing Zhang, *Deterrence Theory and the Perfection of China's Anti-Monopoly Penalty System – Research Approaches in Law and Economics*, 34(04) SCIENCE OF LAW (JOURNAL OF NORTHWEST UNIVERSITY OF POLITICAL SCIENCE AND LAW) 124 (2016); see also Yanbo Jiang, *Research on the Penalty of Antitrust Confiscated Illegal gains – Based on the Perspective of Law and Economics*, 1 ECONOMIC LAW REVIEW 119 (2017).

¹⁹ <http://www.competitionlaw.cn/info/1025/23932.htm>.

²⁰ http://www.samr.gov.cn/fldj/tzgg/xzcf/201703/t20170309_301560.html.

²¹ http://www.gov.cn/jrzq/2012-12/28/content_2301393.htm.

²² The *Interim Provisions on the Prohibition of Monopoly Agreements*, the *Interim Provisions on the Prohibition of Abusing Dominant Market Position* and the *Interim Provisions on the Prohibition of Abusing Administrative Power to Eliminate or Restrict Competition*.

²³ For example, at the State Council's regular policy briefing on 8 August 2019, Premier Li Keqiang stressed that, insisting broad-minded and prudent regulation as well as supporting new business forms and models play significant roles in strengthening digital economy. The *Draft Regulation on Improving Business Environment* adopted on 8 October 2019 also

rapidly and ranks second only to the US in the world. The Wall Street Journal has pointed out that the Internet industry plays a significant role in China's economic structural transformation and overtaking.²⁴

Different from the boom in the Internet field, there have been criticisms at home and abroad of the “absence” of antitrust law enforcement in the Internet field in China for the past twelve years.²⁵ How this Internet clause will eventually be implemented in practice, and whether it means a “zero breakthrough” in antitrust enforcement in the Internet field, certainly worth the attention.

(b) Supplementing Antitrust Authority's Duty of Confidentiality for Personal Privacy

With the promulgation of the *Cybersecurity Law* and a series of relative regulations, as well as the citizens' increasing awareness of individual privacy, the protection of personal information has become one of the characteristics of this era.²⁶ The latest version of the *Draft Civil Code* specifically sets up Chapter Six which regulates the right to privacy and personal information protection.²⁷ Meanwhile, the *Personal Information Protection Law* has been incorporated into this year's legislation plan.²⁸ Represented by “dawn raid”, the antitrust raid mechanism is a useful weapon in antitrust administrative enforcement. The current law only stipulates that the antitrust enforcement authority and the officials have confidential obligation of trade secrets learned in the course of enforcement activities. However, as antitrust investigations are usually launched without notice and are like “sudden attacks”, a large amount of employees' privacy are inevitably disclosed during the enforcement. The supplement of “personal privacy” into the

proposes to determine regulatory approaches and standards for new industries, new forms of business, new technologies and new models in accordance with the principle of encouraging innovation, open-mindedness and prudence.

²⁴ See Charles Hutzler, *China's Growing Power, and a Growing Backlash*, WALL STREET JOURNAL (17 Dec. 2019), <https://www.wsj.com/articles/chinas-growing-power-and-a-growing-backlash-11576630800>; see also, THE GLOBAL TIMES (11 Jan. 2018), <https://opinion.huanqiu.com/article/9CaKmK6j63> (“the development of artificial intelligence in China is not slow, big data and artificial intelligence have increased China's possibility of corner overtaking”).

²⁵ See Xu Liu, *Antitrust Enforcement Should Not Tolerate Internet Oligopoly*, THE PAPER (29 Aug 2018), https://www.thepaper.cn/newsDetail_forward_2390564 (criticizing the Internet giant for not filing merger notifications and circumventing antitrust reviews); see also Shanming Jin, *Reflection and Transformation of China's Antitrust Law Research Approach*, 34(04) LAW BUSINESS STUDIES 71 (2017); Yang Cao, *Legal Regulations of Behaviors of Abusing Comparative Advantage in the Internet Field*, 34(03) FORUM ON LAW 79 (2019).

²⁶ According to statistics, privacy protection legislation has been enacted in more than 107 countries around the world and the overall global trend of personal information legislation has been strengthened gradually. See Xiangang Liu & Yanzhe He, *Research on the Path to Strengthening the Protection of Personal Information with a Balanced Approach of Development and Protection*, 8 CHINA INFORMATION SECURITY 96 (2019).

²⁷ *The Part of Personality Rights of the Draft Civil Code for Third Review: Strengthening the Protection of Privacy and Personal Information*, CHINA PEOPLE'S CONGRESS (22 Aug. 2019), <http://www.npc.gov.cn/npc/cw36/201908/70b9b2fa5b72475dada54ec33121d4bf.shtml>.

²⁸ Shu Wang, *Personal Information Protection Law among Others Included in Next Year's Legislation Plan*, THE BEIJING NEWS (21 Dec. 2019), http://epaper.bjnews.com.cn/html/2019-12/21/content_774666.htm?div=1.

scope of confidentiality in Article 46 by the Draft Amendment echoes the feature of this era and the demands in reality.

III. A Draft Amendment to be Improved: Practical Observations

On the basis of the enforcement practices during the past twelve years, the Draft Amendment revises provisions on a series of issues emerging in antitrust practice. These revisions concern various aspects of the antitrust legal system and are of great significance. On the other hand, it goes without saying that the Draft Amendment does have certain deficiencies which remain to be resolved by various communities of the society together. We try to point out some of them from the perspective of lawyers' practical observations.

A. Connecting Antitrust Public Enforcement and Private Actions

There are mainly two ways of antitrust enforcement. One is public enforcement of the antitrust law, which is launched by administrative enforcement authority through administrative investigations or reviews on behalf of the state. In China, public enforcement is carried out by SAMR and provincial AMRs. The other is private enforcement of the antitrust law, which is implemented via private litigations brought up by companies or individuals suffering from monopolistic behaviors and seeking damages. In China, antitrust litigations are heard by the intellectual property courts in Beijing, Shanghai and Guangzhou or the intellectual property tribunals of intermediate courts set up with the Supreme Court's approval.

According to incomplete statistics, in the past twelve years, the number of antitrust public enforcement cases was more than 200 (not including the approx. 3,000 merger cases) and the number of private litigations was more than 600.²⁹ However, despite the 200 administrative enforcement cases in which the companies investigated were found committing monopoly agreements or abuse of dominance, there were only four private litigations in which the plaintiff prevailed.³⁰ In fact, the number of private litigation cases won by plaintiffs nationwide is extremely small, but it does not mean that there are very few monopolistic behaviors for which the victims should be compensated. On the contrary, the statistic shows that plaintiffs in

²⁹ On 16 November 2018, the Supreme Court held a symposium to commemorate the tenth anniversary of the implementation of the AML. The Presiding Judge Xiaoming Song of the Intellectual Property Tribunal of the Supreme People's Court briefed on the basic situation of antitrust civil litigations in the past ten years. It was disclosed that from the implementation of the AML to the end of 2017, courts nationwide have accepted a total of 700 civil cases and closed 630 cases concerning monopoly at first instance. According to public statistics, nationwide courts at all levels closed thirty-seven cases in total concerning monopoly at first instance in 2018 and closed eighteen cases in total in 2019.

³⁰ Here, "prevailing" refers to the circumstance that the defendant's behavior was found by court as monopoly and the plaintiff was compensated. These four cases are: (1) *Beijing Ruibang Yonghe Science and Technology Trade Co., Ltd. v. Johnson & Johnson Medical (Shanghai) Co., Ltd.* (2013); (2) *Huawei Technology Co., Ltd. v. InterDigital, Inc.* (2013); (3) *Xiaoqin Wu v. Shaanxi Broadcasting and TV Network Media (Group) Co., Ltd.* (2016); (4) *Zongli Wu v. Yongfu County Water Supply Company* (2019).

antitrust cases bear a heavy burden of proof and are stuck in a dilemma that they cannot use evidence collected in administrative enforcement as proof before the court.³¹

The Draft Amendment does not address the issue of connection between administrative enforcement and private actions. Unlike China, the penalty decision made by the EU's competition enforcement authority can at least be taken as *prima facie* evidence in follow-on litigations, and the EU laws have specific provisions on the discovery of evidence regarding documents from the enforcement authority.³² In addition, the EU court in private litigations will assess whether to suspend the case in order to avoid made decisions inconsistent with administrative enforcement decision. There are various ways to lower the plaintiff's burden of proof in antitrust private litigations, of which the most effective one is to allow the court or the parties to have access, through reasonable channels, to the evidence materials in administrative enforcement. If the final amendment to the AML does not provide even general provisions for this mechanism, a gap will still be left in this institutional arrangement that could not support a balance between public and private enforcement.

B. Failing to Provide Rules of Single Economic Entity

The Single Economic Entity doctrine refers to the situation in which one or more economic entities actually belong to the same controller, and should be considered as a single unit under the antitrust law. The Single Economic Entity doctrine has vital practical significance for the determination of the subject of a monopoly agreement, the factors to be considered in merger

³¹ For example, in the follow-on action, *Junwei Tian v. Beijing Carrefour Shuangjing Store* (2013), "the plaintiff lost trials at both first and second instances. The Court of second instance held that the plaintiff failed to prove that a monopoly agreement exists between Carrefour Shuangjing and Abbott. The reason is that in the penalty decision issued by the National Development and Reform Commission regarding Abbott's vertical price maintenance and monopoly agreement restricting the price of goods reselling to third parties which was reached and implemented with the counterparty in transaction, the specific counterparty in transaction, i.e. the distributor, was not identified. The consumers were unable to give sufficient proof and, therefore, was unable to seek compensation from the milk powder distributors." Yanbo Jiang, *A Study on Antitrust Penalty of Confiscating Illegal gains: Based on the Perspective of Law and Economics*, 1 ECONOMIC LAW FORUM 119 (2017). In response to this issue, Professor Xianlin Wang pointed out, "relatively, antitrust enforcement authority has their unique advantages in evidence collection. The answer of how to provide the evidence collected by authority to parties in litigations and how the courts consider the effectiveness of these evidences is an important aspect of coordinating antitrust administrative enforcement and antitrust civil litigations. If antitrust enforcement authority can support private plaintiffs in terms of evidence and the court would recognize the effectiveness of these evidences in principle, it will be beneficial to the realization of the parties' civil litigation rights and will also help to save the cost of evidence collection as well as to minimize the difficulty in pursuing the responsibility of illegal acts caused by insufficient evidence...In China, although there is no relevant laws in this regard, based on our tradition and the reality, it is suggested that the courts shall recognize the effectiveness of the evidence in antitrust enforcement authority's decision in civil cases, unless there is other evidence to the contrary."

³² Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, and Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union.

control, and the calculation of fines and legal liability in investigations including those concerning the abuse of market dominance.³³

The Draft Amendment fails to clarify this major practical issue as well as many confusions associated with it in reality.

C. Other Realistic Issues: Rules of Vertical Price Monopoly Agreements, Effective Regulation of Administrative Monopolies, and Calculation of Illegal Gains and Fines

In the course of antitrust enforcement in the past twelve years, it has been found that some legal provisions are incomplete, unclear or ambiguous. To give just four examples:

First, there is a divergence between the administrative enforcement and the judicial rules on how to deal with RPM. The administrative enforcement obviously adopts the “strict prohibition + exemption” principle, while the courts not only require the defendant’s conduct of vertical price restriction, but also require the plaintiff to prove the effect of elimination or restriction of competition, which is referred as the “rule of reason.” It was represented by the case, *Beijing Ruibang Yonghe Technology & Trade Co., Ltd. v. Johnson & Johnson Medical (Shanghai) Co., Ltd. (2013)*, the first antitrust civil lawsuit won by the plaintiff in China.³⁴ Although the Draft

³³ Unlike illegal acts in other areas of departmental law, in antitrust cases, although the parent company does not directly implement the illegal act, the business model or price policy of the subsidiary company is often part of the overall business strategy of the parent company. In cases where only the subsidiaries are held accountable, it will be difficult to have effective deterrence on the parent company, and may even lead the parent company to implement illegal acts through the subsidiaries and easily circumvent sanctions. To solve such issues, EU competition law created “Single Entity” rules. Wuchao Liu, *Single Entity Rule in EU Competition Law and Its Use for Reference*, 4 COMPARATIVE LAW JOURNAL 135 (2014). In merger review, “an undertaking” not only refers to the enterprises involved in the transaction, but also includes the group to which the enterprise belongs. According to the Regulation (EC) 139/2004 (Merger Regulation), it refers to “enterprises that collectively form an economic entity with independent decision-making power” (“single economic entity”). For state-owned enterprises (“SOE”), the Commission’s Consolidated Jurisdictional Notice provides more detailed rules. If the independent decision-making power of an SOE is controlled by the state or other public entities, by which it can “coordinate with other state-owned enterprises”, then the aforementioned SOEs together form a single economic entity and jointly form an operator. When the European Commission determines that SOEs do not have independent decision-making power, it will review the competition impact of the single economic entity to which they belong. However, even if the Commission does not determine that the company have no independent decision-making power, it still uses the “worst-case assumption” for the test. That is, if it is not clear that whether the trading party and other SOEs constitute a single economic entity, the Commission would conduct the review on assumption that they do. In the *Dyestuffs case (1969)*, the European Court of Justice first adopted the Single Economic Entity doctrine, stating that “the fact that a subsidiary has independent legal personality status is not sufficient to rule out the possibility of attributing its actions to the parent company ...In the application of competition law under this circumstance, the formal separation caused by the independent legal status of each company cannot be more important than the integrity of their actions.” The American International Law Association has repeatedly reviewed the theory of extraterritorial application since 1964, and confirmed the Single Economic Entity doctrine at the New York Conference in 1972. It was pointed out that when the anticompetitive conducts of domestic subsidiaries was carried out as a result of instructions from a foreign parent company, or that the former’s behavior was attributable to the latter, the victim country’s extraterritorial jurisdiction can be recognized. Yan Gao, *Extraterritorial Application of Merger Regulations in European and American Antitrust Laws*, GRADUATION THESIS OF CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW (2004).

³⁴ In *Beijing Ruibang Yonghe Technology & Trade Co., Ltd. v. Johnson & Johnson Medical (Shanghai) Co., Ltd. (2013)*, the Shanghai court clarified the attitude of applying the rule of reason to vertical monopoly agreements. The main disputes about vertical monopoly agreements includes: (1) whether the principle of per se illegal or the rule of reason should be applied; (2) whether the market share of the undertaking in the relevant market should be considered; (3) whether the punishment measures for violation of the price-fixing policy should be an element to prove the existence of the vertical monopoly agreement. The

Amendment lists the definition of a monopoly agreement as a separate article, it has not yet clarified which approach should be adopted or how to reconcile the divergence.

Second, administrative monopoly behavior is actually the most serious problem faced by China's antitrust enforcement. Enforcement agencies' enforcement power against administrative monopoly under the current AML is limited to giving suggestions to the superior authorities of the administrative organs suspected of administrative monopoly behaviors. The deterrence is obviously insufficient. The Draft Amendment only mentions that "the antitrust authorities can order corrections," which is unlikely to change this situation in effect.

Third, when it comes to punishment, the current AML lists "confiscation of illegal gains" as a mandatory option, but in actual enforcement cases, some had illegal gains confiscated while others did not.³⁵ Besides, there is the problem that a claim for compensation in civil suits would actually repeat the confiscation of illegal gains.³⁶

Finally, regarding the calculation of the base number for the fine of monopolistic behaviors, which should be 1% to 10% of the previous year's sale, there are also disputes in practice

Shanghai First Intermediate People's Court clearly applied the rule of reason in the first instance, holding that the analysis of RPM behavior should take into account the relevant undertakings' share in the relevant market, the level of competition in the relevant market, the changes in product supply and prices, etc. The collegiate panel of the Shanghai High Court also stated that whether a vertical agreement violate antitrust laws depends on whether it has the effect of eliminating or restricting competition.

³⁵ For example, in the *Chlorphenamine APIs Monopoly Case (2019)* announced in January 2019, SAMR confiscated CNY 2,394,700 of illegal gains from Hunan Erkang and imposed a fine of CNY 8,479,400 on this company, which counted for 8% of its annual sale in the previous year, while the authority only imposed a fine of CNY 1,557,300 on Henan Jiushi, which counted for 4% of its annual sale in the previous year, and did not confiscate illegal gains. Professor Jian Wang pointed out, "among the twenty-seven cases investigated and dealt with by the National Development and Reform Commission, only the fourth case (in its series) was both confiscated and fined, and the remaining twenty-six cases did not involve the punishment of confiscation of illegal gains. Of the twenty-two cases punished by the State Administration for Industry and Commerce, nine cases were both punished with confiscation of illegal gains and fines, four cases were not punished for confiscation of illegal gains because they could not calculate the illegal gains, one case did not involve the confiscation of illegal gains because the enterprise failed to generate additional income, and another seven cases were fined separately without involving the confiscation of illegal gains." Jian Wang, *Pursuing the Certainty of Antitrust Fines – Analysis Based on Typical Anti-Monopoly Fines in China*, 12 LAW SCIENCE 66 (2016). There is also controversy in practice concerning this phenomenon. E.g., "in recent years, China's antitrust administrative fines have hit record highs and their international influence has increased. However, domestic and foreign media have also questioned and criticized the sizes of China's antitrust fines. Firstly, due to the difficulty in calculating the confiscation of illegal gains – applying in less than 10% cases – and there is a tendency of 'fines centralism', which refers to the behavior of replacing confiscation of illegal gains with fines." Bo Feng, *Influencing Factors and Empirical Test of the Penalty Amount in Anti-Monopoly Law – Based on the Past Ten Years' Data since the implementation of China's Anti-Monopoly Law*, 3 JOURNAL OF SHANDONG UNIVERSITY (PHILOSOPHY AND SOCIAL SCIENCES) 11 (2019).

³⁶ E.g., "in the area of follow-on action, the sum of fines and damages may cause excessive deterrence to offenders. On the one hand, excessive deterrence may cause legal business behavior to be deterred, and on the other hand, it may impose an unreasonable economic burden on the undertaking, resulting in its inability to bear the punishment or even the risk of bankruptcy." Sen La, *Coordination Mechanism of Fines and Damages in Antitrust Enforcement*, 4 LAW APPLICATION 117 (2016).

because the subject company, the products concerned, and the geographical scope of the annual sale are not clearly defined.³⁷ The Draft Amendment does not clarify the above issues either.

At the back of the shortcomings of the Draft Amendment rest issues arising from the overall system and the complex realities. For example, the issue of administrative monopoly involves the entire national institutions and economic system, which cannot simply be solved by the AML. It needs to be changed systematically from the administrative law or even the constitutional level. In addition, the current amendment work is in the working stage of the competent authority. The Draft Amendment is proposed by SAMR, which plays the role as an enforcement agency, and the authority just naturally focuses on the improvement of the administrative enforcement system. In a country like China that focuses on the statute law system, laws are often presented in the form of principles rather than having many specific technical details. Perfecting these details will still await implementing rules or judicial interpretations in the future.

In a word, at the beginning of the 2020s, an age marked by the pressure of economic structural transformation and the mission of deepening reform in China, the amendment of the AML – the “economic constitution”, which concerns the economic operation and the broad masses of business entities – is loaded with the earnest expectations of people from all walks of life, including practitioners as lawyers, to push the rule of law and the development of market economy in China.

³⁷ E.g., “the determination of the fine base is the first step in antitrust fines. According to Articles 46 and 47 of the AML, the base for antitrust fines is ‘sales in the previous year’. Based on this, the following two questions need to be resolved: first, how to determine ‘sales’; and second, how to determine ‘previous year’ ... The understanding of ‘sales’ is not consistent in the practice, and there is great uncertainty.” Jian Wang, *Pursuing the Certainty of Antitrust Fines – Analysis Based on Typical Anti-Monopoly Fines in China*, 12 LAW SCIENCE 66 (2016). See also, “with the gradual deepening of the implementation of the AML and the significant increase in fine cases, the disadvantages of the uncertainty of antitrust fines gradually appear. Uncertain fines may violate the principles of fairness, proportionality, and full measurement in administrative law, causing excessive or insufficient deterrence. In addition, the fact that the law enforcement authority has too much discretion accompanied by the uncertainty of antitrust fines will lead to arbitrary law enforcement, deterring both illegal acts and acts that may be legal and efficient ... China’s regulations on antitrust fines often appear in the form of principles, leading to a lot of uncertainty in practice. Jian Wang, *The Development Trend of Anti-Monopoly Fine*, 1 ECONOMIC LAW FORUM 91 (2017). In addition, in response to issues regarding the antitrust fine base, Zhenguo Wu, the Director General of the Anti-Monopoly Bureau, said in an interview in May 2019 that the base of antitrust fine should be the total sales of the company in the previous year rather than the sales of the products involved. In this regard, SAMR had specifically requested the Legislative Affairs Commission of the NPC’s Standing Committee and had received a clear reply. At present, SAMR is studying and formulating working rules of the administrative sanctions for monopoly cases in order to unify law enforcement standards.

IV. Appendix: Comparison of the Proposed Amendments to and Current Version of PRC Anti-monopoly Law

反垄断法（现行）	反垄断法（修订草案）
Anti-Monopoly Law of People's Republic of China (Effective)	Anti-Monopoly Law of People's Republic of China (Draft of Amendments)
第一章 总则	第一章 总则
Chapter I General Provisions	Chapter I General Provisions
第一条 为了预防和制止垄断行为，保护市场公平竞争，提高经济运行效率，维护消费者利益和社会公共利益，促进社会主义市场经济健康发展，制定本法。	第一条 为了预防和制止垄断行为，保护市场公平竞争， 鼓励创新 ，提高经济运行效率，维护消费者利益和社会公共利益，促进社会主义市场经济健康发展，制定本法。
Article 1 This Law is enacted for the purpose of preventing and restraining monopolistic conducts, protecting fair market competition, enhancing economic efficiency, safeguarding the consumer interests and the public interests, and promoting the healthy development of socialist market economy.	Article 1 This Law is enacted for the purpose of preventing and restraining monopolistic conducts, protecting fair market competition, encouraging innovation , enhancing economic efficiency, safeguarding the consumer interests and the public interests, and promoting the healthy development of socialist market economy.
第二条 中华人民共和国境内经济活动中的垄断行为，适用本法；中华人民共和国境外的垄断行为，对境内市场竞争产生排除、限制影响的，适用本法。	第二条 中华人民共和国境内经济活动中的垄断行为，适用本法；中华人民共和国境外的垄断行为，对境内市场竞争产生排除、限制影响的，适用本法。
Article 2 This Law shall apply to monopolistic conducts in economic activities within the territory of the People's Republic of China ("PRC"). This Law	Article 2 This Law shall apply to monopolistic conducts in economic activities within the territory of the People's Republic of China ("PRC"). This Law shall apply to

shall apply to the monopolistic conducts outside the territory of the PRC that has the effect of eliminating or restricting competition on the domestic market of the PRC.	the monopolistic conducts outside the territory of the PRC that has the effect of eliminating or restricting competition on the domestic market of the PRC.
第三条 本法规定的垄断行为包括： （一）经营者达成垄断协议； （二）经营者滥用市场支配地位； （三）具有或者可能具有排除、限制竞争效果的经营者集中。	第三条 本法规定的垄断行为包括： （一）经营者达成垄断协议； （二）经营者滥用市场支配地位； （三）具有或者可能具有排除、限制竞争效果的经营者集中。
Article 3 For the purpose of this Law, “monopolistic conducts” include the following: (1) Monopoly agreements reached among undertakings; (2) Abuse of dominant market position by undertakings; and (3) Concentration of undertakings that may have the effect of eliminating or restricting competition.	Article 3 For the purpose of this Law, “monopolistic conducts” include the following: (1) Monopoly agreements reached among undertakings; (2) Abuse of dominant market position by undertakings; and (3) Concentration of undertakings that may have the effect of eliminating or restricting competition.
第四条 国家制定和实施与社会主义市场经济相适应的竞争规则，完善宏观调控，健全统一、开放、竞争、有序的市场体系。	第四条 国家 强化竞争政策基础地位 ，制定和实施与社会主义市场经济相适应的竞争规则，完善宏观调控，健全统一、开放、竞争、有序的市场体系
Article 4 The State constitutes and implements competition rules which accord with the socialist market economy, perfects macro control, and advances a united, open, competitive and orderly market system.	Article 4 The State strengthens the fundamental status of competition policy , constitutes and implements competition rules which accord with the socialist market economy, perfects macro control, and advances a united, open, competitive and orderly market system.

<p>第五条</p> <p>经营者可以通过公平竞争、自愿联合，依法实施集中，扩大经营规模，提高市场竞争能力。</p>	<p>第五条</p> <p>经营者可以通过公平竞争、自愿联合，依法实施集中，扩大经营规模，提高市场竞争能力。</p>
<p>Article 5</p> <p>Undertakings may through fair competition, voluntary alliance, concentrate according to law, expand business operation scale and enhance their market competitiveness.</p>	<p>Article 5</p> <p>Undertakings may through fair competition, voluntary alliance, concentrate according to law, expand business operation scale and enhance their market competitiveness.</p>
<p>第六条</p> <p>具有市场支配地位的经营者，不得滥用市场支配地位，排除、限制竞争。</p>	<p>第六条</p> <p>具有市场支配地位的经营者，不得滥用市场支配地位，排除、限制竞争</p>
<p>Article 6</p> <p>Any undertaking with a dominant position shall not abuse its dominant position to eliminate or restrict competition.</p>	<p>Article 6</p> <p>Any undertaking with a dominant position shall not abuse its dominant position to eliminate or restrict competition.</p>
<p>第七条</p> <p>国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护，并对经营者的经营行为及其商品和服务的价格依法实施监管和调控，维护消费者利益，促进技术进步。</p> <p>前款规定行业的经营者应当依法经营，诚实守信，严格自律，接受社会公众的监督，不得利用其控制地位或者专营专卖地位损害消费者利益。</p>	<p>第七条</p> <p>国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护，并对经营者的经营行为及其商品和服务的价格依法实施监管和调控，维护消费者利益，促进技术进步。</p> <p>前款规定行业的经营者应当依法经营，诚实守信，严格自律，接受社会公众的监督，不得利用其控制地位或者专营专卖地位损害消费者利益。</p>
<p>Article 7</p> <p>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</p>	<p>Article 7</p> <p>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</p>

<p>and sales, the State protects the lawful business operations conducted by the undertakings therein, and supervise and control their business operations and the prices of their commodities and services so as to protect the consumer interests and facilitate technological advance.</p> <p>The undertakings mentioned above shall operate in accordance with the law, be honest, faithful and strictly self-disciplined, and accept public supervision, and shall not harm the consumer interests by virtue of their controlling or exclusive dealing positions.</p>	<p>sales, the State protects the lawful business operations conducted by the undertakings therein, and supervise and control their business operations and the prices of their commodities and services so as to protect the consumer interests and facilitate technological advance.</p> <p>The undertakings mentioned above shall operate in accordance with the law, be honest, faithful and strictly self-disciplined, and accept public supervision, and shall not harm the consumer interests by virtue of their controlling or exclusive dealing positions.</p>
<p>第八条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，排除、限制竞争。</p>	<p>第八条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，排除、限制竞争。</p>
<p>Article 8</p> <p>Administrative organs or organisations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to eliminate or restrict competition.</p>	<p>Article 8</p> <p>Administrative organs or organisations authorized by laws or regulations to administer public affairs shall not abuse their administrative power to eliminate or restrict competition.</p>
	<p>第九条</p> <p>国家建立和实施公平竞争审查制度，规范政府行政行为，防止出台排除、限制竞争的政策措施。</p>
	<p>Article 9</p> <p>The state establishes and implements fair competition review system, standardizes government administrative behaviours, prevents</p>

	the introduction of policies and measures which eliminates and restricts competition.
<p>第九条</p> <p>国务院设立反垄断委员会，负责组织、协调、指导反垄断工作，履行下列职责：</p> <p>（一）研究拟订有关竞争政策；</p> <p>（二）组织调查、评估市场总体竞争状况，发布评估报告；</p> <p>（三）制定、发布反垄断指南；</p> <p>（四）协调反垄断行政执法工作；</p> <p>（五）国务院规定的其他职责。</p> <p>国务院反垄断委员会的组成和工作规则由国务院规定。</p>	<p>第十条</p> <p>国务院设立反垄断委员会，负责组织、协调、指导反垄断工作，履行下列职责：</p> <p>（一）研究拟订有关竞争政策；</p> <p>（二）组织调查、评估市场总体竞争状况，发布评估报告；</p> <p>（三）制定、发布反垄断指南；</p> <p>（四）协调反垄断行政执法和公平竞争审查工作；</p> <p>（五）国务院规定的其他职责。</p> <p>国务院反垄断委员会的组成和工作规则由国务院规定。</p>
<p>Article 9</p> <p>The State Council establishes an Anti-monopoly Commission, which is responsible for organising, coordinating and guiding anti-monopoly work and performs the following functions:</p> <p>(1) Studying and drafting relevant competition policies;</p> <p>(2) Organising the investigation and assessment of overall competition situations, and issuing assessment reports;</p> <p>(3) Formulating and releasing anti-monopoly guidelines;</p> <p>(4) Coordinating the anti-monopoly administrative enforcement; and</p> <p>(5) Other functions assigned by the State Council.</p> <p>The composition of and procedural rules of the Anti-monopoly Commission shall be specified by the State Council.</p>	<p>Article 10</p> <p>The State Council establishes an Anti-monopoly Commission, which is responsible for organising, coordinating and guiding anti-monopoly work and performs the following functions:</p> <p>(1) Studying and drafting relevant competition policies;</p> <p>(2) Organising the investigation and assessment of overall competition situations, and issuing assessment reports;</p> <p>(3) Formulating and releasing anti-monopoly guidelines;</p> <p>(4) Coordinating the anti-monopoly administrative enforcement and fair competition review; and</p> <p>(5) Other functions assigned by the State Council.</p> <p>The composition of and procedural rules of the Anti-monopoly Commission shall be specified by the State Council.</p>
第十条	第十一条

<p>国务院规定的承担反垄断执法职责的机构（以下统称国务院反垄断执法机构）依照本法规定，负责反垄断执法工作。</p> <p>国务院反垄断执法机构根据工作需要，可以授权省、自治区、直辖市人民政府相应的机构，依照本法规定负责有关反垄断执法工作。</p>	<p>国务院市场监督管理部门依照本法规定，负责反垄断执法工作（以下称国务院反垄断执法机构）。</p> <p>国务院反垄断执法机构根据工作需要，可以设立派出机构或者授权省、自治区、直辖市人民政府相应的机构，依照本法规定负责有关反垄断执法工作。</p>
<p>Article 10</p> <p>The Anti-monopoly Enforcement Authority designated by the State Council is responsible for anti-monopoly enforcement in accordance with this Law (hereinafter collectively referred to as the State Council's Anti-Monopoly Enforcement Authority).</p> <p>The State Council's Anti-Monopoly Enforcement Authority may, when needed, authorise the corresponding agencies of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government to take charge of anti-monopoly law enforcement in accordance with the provisions of this Law.</p>	<p>Article 11</p> <p>The State Administration for Market Regulation of the State Council is responsible for anti-monopoly enforcement in accordance with this Law (hereinafter referred to as the State Council's Anti-Monopoly Enforcement Authority).</p> <p>The State Council's Anti-Monopoly Enforcement Authority may, when needed, set up field offices or authorise the corresponding agencies of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government to take charge of anti-monopoly law enforcement in accordance with the provisions of this Law.</p>
<p>第十一条</p> <p>行业协会应当加强行业自律，引导本行业的经营者依法竞争，维护市场竞争秩序。</p>	<p>第十二条</p> <p>行业协会应当加强行业自律，引导本行业的经营者依法竞争，维护市场竞争秩序。</p>
<p>Article 11</p> <p>A trade association shall strengthen industrial self-discipline, guide undertakings to lawfully compete, and safeguard the market competition order.</p>	<p>Article 12</p> <p>A trade association shall strengthen industrial self-discipline, guide undertakings to lawfully compete, and safeguard the market competition order.</p>
<p>第十二条</p> <p>本法所称经营者，是指从事商品生产、经营或者提供服务的自然人、法人和其他组织。</p> <p>本法所称相关市场，是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。</p>	<p>第十三条</p> <p>本法所称经营者，是指从事商品生产、经营或者提供服务的自然人、法人和其他组织。</p> <p>本法所称相关市场，是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。</p>
<p>Article 12</p> <p>For the purpose of this law, “undertakings” refers to</p>	<p>Article 13</p> <p>For the purpose of this law, “undertakings” refers to</p>

natural persons, legal persons, or any other organisations that engage in the commodities production or operation or services provision. “Relevant market” refers to the commodity scope or territorial scope within which the undertakings compete against each other during a certain period of time for specific commodities or services (hereinafter referred to as “commodities”).	natural persons, legal persons, or any other organisations that engage in the commodities production or operation or services provision. “Relevant market” refers to the commodity scope or territorial scope within which the undertakings compete against each other during a certain period of time for specific commodities or services (hereinafter referred to as “commodities”).
第二章 垄断协议	第二章 垄断协议
Chapter II Monopoly Agreements	Chapter II Monopoly Agreements
	第十四条 禁止经营者之间达成垄断协议。 本法所称垄断协议，是指排除、限制竞争的协议、决定或者协同行为。
	Article 14 Monopoly agreements among undertakings are prohibited. For the purpose of this Law, “monopoly agreement” refers to agreements, decisions or other concerted conducts which eliminate or restrict competition.
第十三条 禁止具有竞争关系的经营者达成下列垄断协议： （一）固定或者变更商品价格； （二）限制商品的生产数量或者销售数量； （三）分割销售市场或者 原材料 采购市场； （四）限制 购买 新技术、新设备或者限制开发新技术、新产品； （五）联合抵制交易； （六）国务院反垄断执法机构认定的其他垄断协议。 本法所称垄断协议，是指排除、限制竞争的协议、决定或者其他协同行为。	第十五条 禁止具有竞争关系的经营者达成下列垄断协议： （一）固定或者变更商品价格； （二）限制商品的生产数量或者销售数量； （三）分割销售市场或者采购市场； （四）限制 获取 新技术、新设备或者限制开发新技术、新产品； （五）联合抵制交易； （六）国务院反垄断执法机构认定的其他垄断协议。
Article 13 Any of the following monopoly agreements among the competing undertakings shall be prohibited:	Article 15 Any of the following monopoly agreements among the competing undertakings shall be prohibited:

<p>(1) Fixing or changing the price of commodities;</p> <p>(2) Restricting the output or sales of commodities;</p> <p>(3) Dividing the sales market or the raw material procurement market;</p> <p>(4) Restricting the purchase of new technology or new facilities or the development of new technology or new products;</p> <p>(5) Jointly boycotting transactions; or</p> <p>(6) Other monopoly agreements as determined by the State Council's Anti-Monopoly Enforcement Authority.</p> <p>The term “monopoly agreements” as mentioned in this Law refers to the agreements, decisions or other concerted behaviours that may eliminate or restrict competition.</p>	<p>(1) Fixing or changing the price of commodities;</p> <p>(2) Restricting the output or sales of commodities;</p> <p>(3) Dividing the sales market or the procurement market;</p> <p>(4) Restricting the acquiring of new technology or new facilities or the development of new technology or new products;</p> <p>(5) Jointly boycotting transactions; or</p> <p>(6) Other monopoly agreements as determined by the State Council's Anti-Monopoly Enforcement Authority.</p>
<p>第十四条</p> <p>禁止经营者与交易相对人达成下列垄断协议：</p> <p>（一）固定向第三人转售商品的价格；</p> <p>（二）限定向第三人转售商品的最低价格；</p> <p>（三）国务院反垄断执法机构认定的其他垄断协议。</p>	<p>第十六条</p> <p>禁止经营者与交易相对人达成下列垄断协议：</p> <p>（一）固定向第三人转售商品的价格；</p> <p>（二）限定向第三人转售商品的最低价格；</p> <p>（三）国务院反垄断执法机构认定的其他垄断协议。</p>
<p>Article 14</p> <p>Any of the following agreements among undertakings and their trading parties are prohibited:</p> <p>(1) Fixing the price of commodities for resale to a third party;</p> <p>(2) Restricting the minimum price of commodities for resale to a third party; or</p> <p>(3) Other monopoly agreements as determined by the State Council's Anti-Monopoly Enforcement Authority.</p>	<p>Article 16</p> <p>Any of the following agreements among undertakings and their trading parties are prohibited:</p> <p>(1) Fixing the price of commodities for resale to a third party;</p> <p>(2) Restricting the minimum price of commodities for resale to a third party; or</p> <p>(3) Other monopoly agreements as determined by the State Council's Anti-Monopoly Enforcement Authority.</p>
	<p>第十七条</p> <p>禁止经营者组织、帮助其他经营者达成垄断协议。</p>

	<p>Article 17</p> <p>Undertakings shall be prohibited from organising or assisting other undertakings to reach monopoly agreements.</p>
<p>第十五条</p> <p>经营者能够证明所达成的协议属于下列情形之一的，不适用本法第十三条、第十四条的规定：</p> <p>（一）为改进技术、研究开发新产品的；</p> <p>（二）为提高产品质量、降低成本、增进效率，统一产品规格、标准或者实行专业化分工的；</p> <p>（三）为提高中小经营者经营效率，增强中小经营者竞争力的；</p> <p>（四）为实现节约能源、保护环境、救灾救助等社会公共利益的；</p> <p>（五）因经济不景气，为缓解销售量严重下降或者生产明显过剩的；</p> <p>（六）为保障对外贸易和对外经济合作中的正当利益的；</p> <p>（七）法律和国务院规定的其他情形。</p> <p>属于前款第一项至第五项情形，不适用本法第十三条、第十四条规定的，经营者还应当证明所达成的协议不会严重限制相关市场的竞争，并且能够使消费者分享由此产生的利益。</p>	<p>第十八条</p> <p>经营者能够证明所达成的垄断协议属于下列情形之一的，不适用本法第十五条、第十六条、第十七条的规定：</p> <p>（一）为改进技术、研究开发新产品的；</p> <p>（二）为提高产品质量、降低成本、增进效率，统一产品规格、标准或者实行专业化分工的；</p> <p>（三）为提高中小经营者经营效率，增强中小经营者竞争力的；</p> <p>（四）为实现节约能源、保护环境、救灾救助等社会公共利益的；</p> <p>（五）因经济不景气，为缓解销售量严重下降或者生产明显过剩的；</p> <p>（六）为保障对外贸易和对外经济合作中的正当利益的；</p> <p>（七）法律和国务院规定的其他情形。</p> <p>属于前款第一项至第五项情形，不适用本法第十五条、第十六条、第十七条规定的，经营者还应当证明所达成的协议是实现相关情形的必要条件，且不会严重限制相关市场的竞争，并且能够使消费者分享由此产生的利益。</p>
<p>Article 15</p> <p>An agreement among undertakings shall be exempted from application of articles 15, 16 and 17 if it can be proven to be in any of the following circumstances:</p> <p>(1) For the purpose of improving technologies, researching, and developing new products;</p> <p>(2) For the purpose of upgrading product quality, reducing costs, improving efficiency, unifying product specifications or standards, or carrying out</p>	<p>Article 18</p> <p>An agreement among undertakings shall be exempted from application of articles 15, 16 and 17 if it can be proven to be in any of the following circumstances:</p> <p>(1) For the purpose of improving technologies, researching, and developing new products;</p> <p>(2) For the purpose of upgrading product quality, reducing costs, improving efficiency, unifying product specifications or standards, or carrying out professional labour division;</p>

<p>professional labour division;</p> <p>(3) For the purpose of enhancing operational efficiency and reinforcing the competitiveness of small and medium-sized undertakings;</p> <p>(4) For the purpose of achieving public interests such as conserving energy, protecting the environment and providing disaster relief, etc.;</p> <p>(5) For the purpose of mitigating the severe decrease in sales volume or obviously excessive production during economic recessions;</p> <p>(6) For the purpose of protecting the justifiable interests of the foreign trade or foreign economic cooperation; or</p> <p>(7) Other circumstances prescribed by the law or the State Council.</p> <p>Where a monopoly agreement falls under any of the circumstances prescribed in the above subsections 1-5 and is exempt from Articles 15, 16 and 17 of this Law, the undertakings shall also prove that the agreement will not substantially restrict competition in the relevant market, and may enable consumers to share the benefits derived from it.</p>	<p>(3) For the purpose of enhancing operational efficiency and reinforcing the competitiveness of small and medium-sized undertakings;</p> <p>(4) For the purpose of achieving public interests such as conserving energy, protecting the environment and providing disaster relief, etc.;</p> <p>(5) For the purpose of mitigating the severe decrease in sales volume or obviously excessive production during economic recessions;</p> <p>(6) For the purpose of protecting the justifiable interests of the foreign trade or foreign economic cooperation; or</p> <p>(7) Other circumstances prescribed by the law or the State Council.</p> <p>Where a monopoly agreement falls under any of the circumstances prescribed in the above subsections 1-5 and is exempt from Articles 15, 16 and 17 of this Law, the undertakings shall also prove that the agreement reached is a necessary condition to achieve the relevant situation, and will not substantially restrict competition in the relevant market, and may enable consumers to share the benefits derived from it.</p>
<p>第十六条</p> <p>行业协会不得组织本行业的经营者从事本章禁止的垄断行为</p>	<p>第十九条</p> <p>行业协会不得组织经营者从事本章禁止的垄断行为。</p>
<p>Article 16</p> <p>Any trade association may not organize the undertakings in its own industry to implement the monopolistic conducts as prohibited by this Chapter.</p>	<p>Article 19</p> <p>Any trade association may not organize the undertakings to implement the monopolistic conducts as prohibited by this Chapter.</p>
<p>第三章 滥用市场支配地位</p>	<p>第三章 滥用市场支配地位</p>
<p>Chapter III Abuse of Dominant Position</p>	<p>Chapter III Abuse of Dominant Position</p>
<p>第十七条</p> <p>禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为：</p>	<p>第二十条</p> <p>禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为：</p>

<p>(一) 以不公平的高价销售商品或者以不公平的低价购买商品；</p> <p>(二) 没有正当理由，以低于成本的价格销售商品；</p> <p>(三) 没有正当理由，拒绝与交易相对人进行交易；</p> <p>(四) 没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易；</p> <p>(五) 没有正当理由搭售商品，或者在交易时附加其他不合理的交易条件；</p> <p>(六) 没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇；</p> <p>(七) 国务院反垄断执法机构认定的其他滥用市场支配地位的行为。</p> <p>本法所称市场支配地位，是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件，或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。</p>	<p>(一) 以不公平的高价销售商品或者以不公平的低价购买商品；</p> <p>(二) 没有正当理由，以低于成本的价格销售商品；</p> <p>(三) 没有正当理由，拒绝与交易相对人进行交易；</p> <p>(四) 没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易；</p> <p>(五) 没有正当理由搭售商品，或者在交易时附加其他不合理的交易条件；</p> <p>(六) 没有正当理由，对交易相对人在交易价格等交易条件上实行差别待遇；</p> <p>(七) 国务院反垄断执法机构认定的其他滥用市场支配地位的行为。</p> <p>本法所称市场支配地位，是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件，或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。</p>
<p>Article 17</p> <p>An undertaking of a dominant market position shall not abuse its dominant position to conduct the following acts:</p> <p>(1) Selling commodities at unfairly high prices or buying products at unfairly low prices;</p> <p>(2) Selling commodities at prices below cost without any justifiable causes;</p> <p>(3) Refusing to trade with a trading party without any justifiable causes;</p> <p>(4) Requiring a trading party to trade exclusively with itself or trade exclusively with a designated undertaking(s) without any justifiable causes;</p> <p>(5) Tying products or imposing unreasonable trading conditions at the time of trading without any justifiable causes;</p>	<p>Article 20</p> <p>An undertaking of a dominant market position shall not abuse its dominant position to conduct the following acts:</p> <p>(1) Selling commodities at unfairly high prices or buying products at unfairly low prices;</p> <p>(2) Selling commodities at prices below cost without any justifiable causes;</p> <p>(3) Refusing to trade with a trading party without any justifiable causes;</p> <p>(4) Requiring a trading party to trade exclusively with itself or trade exclusively with a designated undertaking(s) without any justifiable causes;</p> <p>(5) Tying products or imposing unreasonable trading conditions at the time of trading without any justifiable causes;</p>

<p>(6) Applying dissimilar prices or other transaction terms to counterparties with equal standing without any justifiable causes; or</p> <p>(7) Other conducts determined as abuse of a dominant position by the State Council's Anti-Monopoly Enforcement Authority.</p> <p>For the purposes of this Law, “dominant market position” refers to a market position held by undertakings that have the ability to control the price or quantity of commodities or other trading conditions in the relevant market or to hinder or affect the entry of other undertakings into the relevant market.</p>	<p>(6) Applying dissimilar prices or other transaction terms to counterparties without any justifiable causes; or</p> <p>(7) Other conducts determined as abuse of a dominant position by the State Council's Anti-Monopoly Enforcement Authority.</p> <p>For the purposes of this Law, “dominant market position” refers to a market position held by undertakings that have the ability to control the price or quantity of commodities or other trading conditions in the relevant market or to hinder or affect the entry of other undertakings into the relevant market.</p>
<p>第十八条</p> <p>认定经营者具有市场支配地位，应当依据下列因素：</p> <p>（一）该经营者在相关市场的市场份额，以及相关市场的竞争状况；</p> <p>（二）该经营者控制销售市场或者原材料采购市场的能力；</p> <p>（三）该经营者的财力和技术条件；</p> <p>（四）其他经营者对该经营者在交易上的依赖程度；</p> <p>（五）其他经营者进入相关市场的难易程度；</p> <p>（六）与认定该经营者市场支配地位有关的其他因素。</p>	<p>第二十一条</p> <p>认定经营者具有市场支配地位，应当依据下列因素：</p> <p>（一）该经营者在相关市场的市场份额，以及相关市场的竞争状况；</p> <p>（二）该经营者控制销售市场或者原材料采购市场的能力；</p> <p>（三）该经营者的财力和技术条件；</p> <p>（四）其他经营者对该经营者在交易上的依赖程度；</p> <p>（五）其他经营者进入相关市场的难易程度；</p> <p>（六）与认定该经营者市场支配地位有关的其他因素。</p> <p>认定互联网领域经营者具有市场支配地位还应当考虑网络效应、规模经济、锁定效应、掌握和处理相关数据的能力等因素。</p>
<p>Article 18</p> <p>The dominant market position of an undertaking shall be determined according to the following factors:</p> <p>(1) The market share of the undertaking and its competitive status in the relevant market;</p> <p>(2) The ability of the undertaking to control the</p>	<p>Article 21</p> <p>The dominant market position of an undertaking shall be determined according to the following factors:</p> <p>(1) The market share of the undertaking and its competitive status in the relevant market;</p> <p>(2) The ability of the undertaking to control the sales market or the raw material supply market;</p>

<p>sales market or the raw material supply market;</p> <p>(3) The financial and technological conditions of the undertaking;</p> <p>(4) The extent of reliance on the undertaking by other undertakings in the transactions;</p> <p>(5) The degree of difficulty for other undertakings to enter the relevant market; and</p> <p>(6) Other factors relevant to the determination of the dominant market position of the undertaking.</p>	<p>(3) The financial and technological conditions of the undertaking;</p> <p>(4) The extent of reliance on the undertaking by other undertakings in the transactions;</p> <p>(5) The degree of difficulty for other undertakings to enter the relevant market; and</p> <p>(6) Other factors relevant to the determination of the dominant market position of the undertaking.</p> <p>To determine that the dominant position of undertakings in the internet industry shall also consider factors, such as network effects, economies scale, lock-in effects, and the ability to master and process related data.</p>
<p>第十九条</p> <p>有下列情形之一的，可以推定经营者具有市场支配地位：</p> <p>（一）一个经营者在相关市场的市场份额达到二分之一的；</p> <p>（二）两个经营者在相关市场的市场份额合计达到三分之二的；</p> <p>（三）三个经营者在相关市场的市场份额合计达到四分之三的。</p> <p>有前款第二项、第三项规定的情形，其中有的经营者市场份额不足十分之一的，不应当推定该经营者具有市场支配地位。</p> <p>被推定具有市场支配地位的经营者，有证据证明不具有市场支配地位的，不应当认定其具有市场支配地位。</p>	<p>第二十二条</p> <p>有下列情形之一的，可以推定经营者具有市场支配地位：</p> <p>（一）一个经营者在相关市场的市场份额达到二分之一的；</p> <p>（二）两个经营者在相关市场的市场份额合计达到三分之二的；</p> <p>（三）三个经营者在相关市场的市场份额合计达到四分之三的。</p> <p>有前款第二项、第三项规定的情形，其中有的经营者市场份额不足十分之一的，不应当推定该经营者具有市场支配地位。</p> <p>被推定具有市场支配地位的经营者，有证据证明不具有市场支配地位的，不应当认定其具有市场支配地位。</p>
<p>Article 19</p> <p>Where an undertaking is under any of the following circumstances, it may be assumed to be have a dominant market position:</p> <p>(1) The market share of one undertaking accounts for 1/2 or more in the relevant market;</p> <p>(2) The joint market share of two undertakings accounts for 2/3 or more in the relevant market; or</p>	<p>Article 22</p> <p>Where an undertaking is under any of the following circumstances, it may be assumed to be have a dominant market position:</p> <p>(1) The market share of one undertaking accounts for 1/2 or more in the relevant market;</p> <p>(2) The joint market share of two undertakings accounts for 2/3 or more in the relevant market; or</p>

<p>(3) The joint market share of three undertakings accounts for 3/4 or more in the relevant market.</p> <p>An undertaking with a market share of less than 1/10 shall not be presumed as having a dominant market position even if they fall within the scope of second or third item.</p> <p>Where an undertaking who has been presumed to have a dominant market position can otherwise prove that they do not have a dominant market, it shall not be determined as having a dominant market position.</p>	<p>(3) The joint market share of three undertakings accounts for 3/4 or more in the relevant market.</p> <p>An undertaking with a market share of less than 1/10 shall not be presumed as having a dominant market position even if they fall within the scope of second or third item.</p> <p>Where an undertaking who has been presumed to have a dominant market position can otherwise prove that they do not have a dominant market, it shall not be determined as having a dominant market position.</p>
第四章 经营者集中	第四章 经营者集中
Chapter IV Concentration of Undertakings	Chapter IV Concentration of Undertakings
<p>第二十条</p> <p>经营者集中是指下列情形：</p> <p>（一）经营者合并；</p> <p>（二）经营者通过取得股权或者资产的方式取得对其他经营者的控制权；</p> <p>（三）经营者通过合同等方式取得对其他经营者的控制权 或者能够对其他经营者施加决定性影响。</p>	<p>第二十三条</p> <p>经营者集中是指下列情形：</p> <p>（一）经营者合并；</p> <p>（二）经营者通过取得股权或者资产的方式取得对其他经营者的控制权；</p> <p>（三）经营者通过合同等方式取得对其他经营者的控制权。</p> <p>前款所称控制权，是指经营者直接或者间接，单独或者共同对其他经营者的生产经营活动或者其他重大决策具有或者可能具有决定性影响的权力或者实际状态。</p>
<p>Article 20</p> <p>A “concentration of undertakings” refers to any of the following circumstances:</p> <p>(1) Merger of undertakings;</p> <p>(2) An undertaking acquires control over other undertakings by acquiring their equities or assets; or</p> <p>(3) An undertaking acquires control over other undertakings or is able to exert a decisive influence on other undertakings by contract or any other means.</p>	<p>Article 23</p> <p>A “concentration of undertakings” refers to any of the following circumstances:</p> <p>(1) Merger of undertakings;</p> <p>(2) An undertaking acquires control over other undertakings by acquiring their equities or assets; or</p> <p>(3) An undertaking acquires control over other undertakings by contract or any other means.</p> <p>The term “control” as mentioned in the preceding paragraph refers to an undertaking's direct or indirect, separate or collective right or actual status which have or may have a decisive influence</p>

	on the production and operation activities or other major decisions of other operators.
<p>第二十一条</p> <p>经营者集中达到国务院规定的申报标准的，经营者应当事先向国务院反垄断执法机构申报，未申报的不得实施集中。</p>	<p>第二十四条</p> <p>经营者集中达到国务院反垄断执法机构规定的申报标准的，经营者应当事先向国务院反垄断执法机构申报，未申报的不得实施集中。</p> <p>国务院反垄断执法机构可以根据经济发展水平、行业规模等制定和修改申报标准，并及时向社会公布。</p> <p>经营者集中达到申报标准，经营者未依法申报实施集中的，或者经营者集中未达到申报标准，但具有或者可能具有排除、限制竞争效果的，国务院反垄断执法机构应当依法进行调查。</p>
<p>Article 21</p> <p>Where a concentration reaches the threshold of declaration stipulated by the State Council, a declaration must be filed in advance with the State Council's Anti-Monopoly Enforcement Authority, or otherwise the concentration shall not be implemented.</p>	<p>Article 24</p> <p>Where a concentration reaches the threshold of declaration stipulated by the State Council's Anti-Monopoly Enforcement Authority, a declaration must be filed in advance with the State Council's Anti-Monopoly Enforcement Authority, or otherwise the concentration shall not be implemented.</p> <p>The State Council's Anti-Monopoly Enforcement Authority may formulate and modify notification thresholds based on the level of economic development and industry scale, and public in time.</p> <p>Where a concentration reaches the threshold, yet the undertakings fail to file, or a concentration of undertakings has not reached the thresholds but has or may have the effect of excluding or restricting competition, the State Council's Anti-Monopoly Enforcement Authority shall conduct investigations in accordance with the law.</p>
<p>第二十二条</p> <p>经营者集中有下列情形之一的，可以不向国务院反垄断执法机构申报：</p>	<p>第二十五条</p> <p>经营者集中有下列情形之一的，可以不向国务院反垄断执法机构申报：</p>

<p>(一) 参与集中的一个经营者拥有其他每个经营者百分之五十以上有表决权的股份或者资产的；</p> <p>(二) 参与集中的每个经营者百分之五十以上有表决权的股份或者资产被同一个未参与集中的经营者拥有的。</p>	<p>(一) 参与集中的一个经营者拥有其他每个经营者百分之五十以上有表决权的股份或者资产的；</p> <p>(二) 参与集中的每个经营者百分之五十以上有表决权的股份或者资产被同一个未参与集中的经营者拥有的。</p>
<p>Article 22</p> <p>Where a concentration is under any of the following circumstances, filing to the State Council's Anti-Monopoly Enforcement Authority may not be necessary:</p> <p>(1) One undertaking who is a party to the concentration has the power to exercise more than half the voting rights of every other undertaking, whether of the equity or the assets; or; or</p> <p>(2) One undertaking who is not a party to the concentration has the power to exercise more than half the voting rights of every undertaking concerned, whether of the equity or the assets.</p>	<p>Article 25</p> <p>Where a concentration is under any of the following circumstances, filing to the State Council's Anti-Monopoly Enforcement Authority may not be necessary:</p> <p>(1) One undertaking who is a party to the concentration has the power to exercise more than half the voting rights of every other undertaking, whether of the equity or the assets; or; or</p> <p>(2) One undertaking who is not a party to the concentration has the power to exercise more than half the voting rights of every undertaking concerned, whether of the equity or the assets.</p>
<p>第二十三条</p> <p>经营者向国务院反垄断执法机构申报集中，应当提交下列文件、资料：</p> <p>(一) 申报书；</p> <p>(二) 集中对相关市场竞争状况影响的说明；</p> <p>(三) 集中协议；</p> <p>(四) 参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告；</p> <p>(五) 国务院反垄断执法机构规定的其他文件、资料。</p> <p>申报书应当载明参与集中的经营者的名称、住所、经营范围、预定实施集中的日期和国务院反垄断执法机构规定的其他事项。</p>	<p>第二十六条</p> <p>经营者向国务院反垄断执法机构申报集中，应当提交下列文件、资料，并对提交的材料真实性负责：</p> <p>(一) 申报书；</p> <p>(二) 集中对相关市场竞争状况影响的说明；</p> <p>(三) 集中协议；</p> <p>(四) 参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告；</p> <p>(五) 国务院反垄断执法机构规定的其他文件、资料。</p> <p>申报书应当载明参与集中的经营者的名称、住所、经营范围、预定实施集中的日期和国务院反垄断执法机构规定的其他事项。</p>
<p>Article 23</p> <p>An undertaking shall, when file with the A the State Council's Anti-Monopoly Enforcement Authority,</p>	<p>Article 26</p> <p>An undertaking shall, when file with the A the State Council's Anti-Monopoly Enforcement Authority,</p>

<p>submit the following documents and materials:</p> <ol style="list-style-type: none"> (1) A notification form; (2) Explanations of the effects of the concentration on the relevant market competition; (3) The concentration agreement; (4) The financial and accounting reports for the previous fiscal year of the undertakings involved in the concentration, which should be audited by an accounting firm; and (5) Other documents and materials required by the State Council's Anti-Monopoly Enforcement Authority. <p>The notification form shall contain the names of the undertakings involved in the concentration, their domiciles, business scopes, as well as the date of the scheduled concentration, and other matters prescribed by the State Council's Anti-Monopoly Enforcement Authority.</p>	<p>submit the following documents and materials, and account for its authenticity:</p> <ol style="list-style-type: none"> (1) A notification form; (2) Explanations of the effects of the concentration on the relevant market competition; (3) The concentration agreement; (4) The financial and accounting reports for the previous fiscal year of the undertakings involved in the concentration, which should be audited by an accounting firm; and (5) Other documents and materials required by the State Council's Anti-Monopoly Enforcement Authority. <p>The notification form shall contain the names of the undertakings involved in the concentration, their domiciles, business scopes, as well as the date of the scheduled concentration, and other matters prescribed by the State Council's Anti-Monopoly Enforcement Authority.</p>
<p>第二十四条</p> <p>经营者提交的文件、资料不完备的，应当在国务院反垄断执法机构规定的期限内补交文件、资料。经营者逾期未补交文件、资料的，视为未申报。</p>	<p>第二十七条</p> <p>经营者提交的文件、资料不完备的，应当在国务院反垄断执法机构规定的期限内补交文件、资料。经营者逾期未补交文件、资料的，视为未申报。</p>
<p>Article 24</p> <p>Where the documents or materials submitted by the undertakings are not complete, the undertakings concerned shall supplement relevant documents or materials within the time limits prescribed by the State Council's Anti-Monopoly Enforcement Authority. Otherwise, the notification shall be deemed as not being filed.</p>	<p>Article 27</p> <p>Where the documents or materials submitted by the undertakings are not complete, the undertakings concerned shall supplement relevant documents or materials within the time limits prescribed by the State Council's Anti-Monopoly Enforcement Authority. Otherwise, the notification shall be deemed as not being filed.</p>
<p>第二十五条</p> <p>国务院反垄断执法机构应当自收到经营者提交的符合本法第二十三条规定的文件、资料之日起三十日内，对申报的经营者集中进行</p>	<p>第二十八条</p> <p>国务院反垄断执法机构应当自收到经营者提交的符合本法第二十六条规定的文件、资料之日起三十日内，对申报的经营者集中进行初步</p>

<p>初步审查,作出是否实施进一步审查的决定,并书面通知经营者。国务院反垄断执法机构作出决定前,经营者不得实施集中。</p> <p>国务院反垄断执法机构作出不实施进一步审查的决定或者逾期未作出决定的,经营者可以实施集中。</p>	<p>审查,作出是否实施进一步审查的决定,并书面通知经营者。国务院反垄断执法机构作出决定前,经营者不得实施集中。</p> <p>国务院反垄断执法机构作出不实施进一步审查的决定或者逾期未作出决定的,经营者可以实施集中。</p>
<p>Article 25</p> <p>The State Council's Anti-Monopoly Enforcement Authority shall conduct a preliminary review of the declared concentration of undertakings, make a decision whether to conduct further review and notify the undertakings in written form within 30 days upon receipt of the documents and materials submitted by the undertakings pursuant to Article 26 of this Law. Before such a decision made by the State Council's Anti-Monopoly Enforcement Authority, the concentration may be not implemented.</p> <p>Where the State Council's Anti-Monopoly Enforcement Authority decides not to conduct further review or fails to make a decision at expiry of the stipulated period, the concentration may be implemented.</p>	<p>Article 28</p> <p>The State Council's Anti-Monopoly Enforcement Authority shall conduct a preliminary review of the declared concentration of undertakings, make a decision whether to conduct further review and notify the undertakings in written form within 30 days upon receipt of the documents and materials submitted by the undertakings pursuant to Article 26 of this Law. Before such a decision made by the State Council's Anti-Monopoly Enforcement Authority, the concentration may be not implemented.</p> <p>Where the State Council's Anti-Monopoly Enforcement Authority decides not to conduct further review or fails to make a decision at expiry of the stipulated period, the concentration may be implemented.</p>
<p>第二十六条</p> <p>国务院反垄断执法机构决定实施进一步审查的,应当自决定之日起九十日内审查完毕,作出是否禁止经营者集中的决定,并书面通知经营者。作出禁止经营者集中的决定,应当说明理由。审查期间,经营者不得实施集中。</p> <p>有下列情形之一的,国务院反垄断执法机构经书面通知经营者,可以延长前款规定的审查期限,但最长不得超过六十日:</p> <p>(一) 经营者同意延长审查期限的;</p> <p>(二) 经营者提交的文件、资料不准确,需要进一步核实的;</p>	<p>第二十九条</p> <p>国务院反垄断执法机构决定实施进一步审查的,应当自决定之日起九十日内审查完毕,作出是否禁止经营者集中的决定,并书面通知经营者。作出禁止经营者集中的决定,应当说明理由。审查期间,经营者不得实施集中。</p> <p>有下列情形之一的,国务院反垄断执法机构经书面通知经营者,可以延长前款规定的审查期限,但最长不得超过六十日:</p> <p>(一) 经营者同意延长审查期限的;</p> <p>(二) 经营者提交的文件、资料不准确,需要进一步核实的;</p>

<p>(三) 经营者申报后有关情况发生重大变化的。</p> <p>国务院反垄断执法机构逾期未作出决定的，经营者可以实施集中。</p>	<p>(三) 经营者申报后有关情况发生重大变化的。</p> <p>国务院反垄断执法机构逾期未作出决定的，经营者可以实施集中。</p>
<p>Article 26</p> <p>Where the State Council's Anti-Monopoly Enforcement Authority 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 undertakings of the decision in written form. If the State Council's Anti-Monopoly Enforcement Authority decides to prohibit the concentration, it shall explain the reasons. The undertakings shall refrain from implementing the concentration within the period of examination.</p> <p>Under any of the following circumstances, the State Council's Anti-Monopoly Enforcement Authority may, after notifying the undertakings concerned in written form, extend the time limits of examination as prescribed in the preceding paragraph, with the extension being no more than 60 days:</p> <p>(1) The undertakings agree to extend the time limits of examination;</p> <p>(2) The documents or materials submitted by undertakings are inaccurate and need further verification; or</p> <p>(3) The relevant circumstances have significantly changed after the notification by the undertakings.</p> <p>Where the State Council's Anti-Monopoly Enforcement Authority fails to make a decision within the time limits, undertakings may implement the concentration.</p>	<p>Article 29</p> <p>Where the State Council's Anti-Monopoly Enforcement Authority 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 undertakings of the decision in written form. If the State Council's Anti-Monopoly Enforcement Authority decides to prohibit the concentration, it shall explain the reasons. The undertakings shall refrain from implementing the concentration within the period of examination.</p> <p>Under any of the following circumstances, the State Council's Anti-Monopoly Enforcement Authority may, after notifying the undertakings concerned in written form, extend the time limits of examination as prescribed in the preceding paragraph, with the extension being no more than 60 days:</p> <p>(1) The undertakings agree to extend the time limits of examination;</p> <p>(2) The documents or materials submitted by undertakings are inaccurate and need further verification; or</p> <p>(3) The relevant circumstances have significantly changed after the notification by the undertakings.</p> <p>Where the State Council's Anti-Monopoly Enforcement Authority fails to make a decision within the time limits, undertakings may implement the concentration.</p>
	<p>第三十条</p> <p>下列情形所需时间不计入本法第二十八、第二十九条规定的审查时限：</p>

	<p>(一)经申报人申请或者同意,暂停审查期间;</p> <p>(二)经营者按照国务院反垄断执法机构的要求补交文件、资料的;</p> <p>(三)国务院反垄断执法机构与经营者按照本法第三十三条规定对附加限制性条件建议进行磋商的。</p> <p>停止计算审查期限的具体规定,由国务院反垄断执法机构另行制定。</p>
	<p>Article 30</p> <p>The time required for the following circumstances shall not be included in the time limits for examination as provided in Articles 28 and 29 of this law:</p> <p>(1) The period of examination is suspended upon required or consent by the notified parties;</p> <p>(2) Undertakings submit documents and materials submitted per requested by the State Council's Anti-Monopoly Enforcement Authority;</p> <p>(3) The State Council's Anti-Monopoly Enforcement Authority negotiates with the undertakings on the proposal of restrictive conditions in accordance with Article 33 of this law.</p> <p>The specific provisions for suspension shall be formulated separately by the State Council's Anti-Monopoly Enforcement Authority.</p>
<p>第二十七条</p> <p>审查经营者集中,应当考虑下列因素:</p> <p>(一)参与集中的经营者在相关市场的市场份额及其对市场的控制力;</p> <p>(二)相关市场的市场集中度;</p> <p>(三)经营者集中对市场进入、技术进步的影响;</p>	<p>第三十一条</p> <p>对经营者集中进行审查和调查,应当考虑下列因素:</p> <p>(一)参与集中的经营者在相关市场的市场份额及其对市场的控制力;</p> <p>(二)相关市场的市场集中度;</p>

<p>(四) 经营者集中对消费者和其他有关经营者的影响;</p> <p>(五) 经营者集中对国民经济发展的影响;</p> <p>(六) 国务院反垄断执法机构认为应当考虑的影响市场竞争的其他因素。</p>	<p>(三) 经营者集中对市场进入、技术进步的影 响;</p> <p>(四) 经营者集中对消费者和其他有关经营者的影响;</p> <p>(五) 经营者集中对国民经济发展的影响;</p> <p>(六) 国务院反垄断执法机构认为应当考虑的影响市场竞争的其他因素。</p>
<p>Article 27</p> <p>The following factors shall be taken into account of the concentration of undertakings:</p> <p>(1) The market share of the business operators involved in the relevant market and the controlling power thereof over that market;</p> <p>(2) The degree of market concentration in the relevant market;</p> <p>(3) The impact of the concentration of undertakings on the market access and technological advancements;</p> <p>(4) The impact of the concentration of undertakings on the consumers and other undertakings;</p> <p>(5) The impact of the concentration of undertakings on the national economic development; and</p> <p>Other factors that may affect the market competition and shall be considered as deemed by the State Council's Anti-Monopoly Enforcement Authority.</p>	<p>Article 31</p> <p>The following factors shall be taken into account in reviewing and investigating the concentration of undertakings:</p> <p>(1) The market share of the business operators involved in the relevant market and the controlling power thereof over that market;</p> <p>(2) The degree of market concentration in the relevant market;</p> <p>(3) The impact of the concentration of undertakings on the market access and technological advancements;</p> <p>(4) The impact of the concentration of undertakings on the consumers and other undertakings;</p> <p>(5) The impact of the concentration of undertakings on the national economic development; and</p> <p>Other factors that may affect the market competition and shall be considered as deemed by the State Council's Anti-Monopoly Enforcement Authority.</p>
<p>第二十八条</p> <p>经营者集中具有或者可能具有排除、限制竞争效果的，国务院反垄断执法机构应当作出禁止经营者集中的决定。但是，经营者能够证明该集中对竞争产生的有利影响明显大于不利影响，或者符合社会公共利益的，国务</p>	<p>第三十二条</p> <p>经营者集中具有或者可能具有排除、限制竞争效果的，国务院反垄断执法机构应当作出禁止经营者集中的决定。但是，经营者能够证明该集中对竞争产生的有利影响明显大于不利影 响，或者符合社会公共利益的，国务院反垄断</p>

院反垄断执法机构可以作出对经营者集中不予禁止的决定。	执法机构可以作出对经营者集中不予禁止的决定。
Article 28 Where a concentration of undertakings will or may eliminate or restrict competition, the State Council's Anti-Monopoly Enforcement Authority shall make a decision to prohibit the concentration. However, if the undertakings can prove either that would bring more positive impact than negative impact on competition, or the concentration is pursuant to public interests, the State Council's Anti-Monopoly Enforcement Authority may decide not to prohibit the concentration.	Article 32 Where a concentration of undertakings will or may eliminate or restrict competition, the State Council's Anti-Monopoly Enforcement Authority shall make a decision to prohibit the concentration. However, if the undertakings can prove either that would bring more positive impact than negative impact on competition, or the concentration is pursuant to public interests, the State Council's Anti-Monopoly Enforcement Authority may decide not to prohibit the concentration.
第二十九条 对不予禁止的经营者集中，国务院反垄断执法机构可以决定附加减少集中对竞争产生不利影响的限制性条件。	第三十三条 对不予禁止的经营者集中，国务院反垄断执法机构可以决定附加减少集中对竞争产生不利影响的限制性条件。
Article 29 Where the concentration of undertakings is not prohibited, the State Council's Anti-Monopoly Enforcement Authority may decide to attach restrictive conditions for reducing the adverse impact of such concentration on competition.	Article 33 Where the concentration of undertakings is not prohibited, the State Council's Anti-Monopoly Enforcement Authority may decide to attach restrictive conditions for reducing the adverse impact of such concentration on competition.
	第三十四条 未达申报标准的经营者集中，经调查具有或者可能具有排除、限制竞争效果的，国务院反垄断执法机构可以按照本法第三十二条、第三十三条规定作出处理决定。经营者已经实施集中的，国务院反垄断执法机构还可以责令停止实施集中、限期处分股份或者资产、限期转让营

	业以及采取其他必要救济措施恢复到集中前的状态。
	<p>Article 34</p> <p>Where State Council's Anti-Monopoly Enforcement Authority, upon investigation, finds that a concentration of undertakings which fails to meet the notification thresholds has or may have the effect of excluding or restricting competition after investigation, it may make a decision in accordance with Articles 32 and 33 of this Law. Where the concentration is already implemented, the State Council's Anti-Monopoly Enforcement Authority may also order to cease, require dispose of shares or assets or the transfer business certain time limits, and take other necessary relief measures to restore it to the pre-concentration status.</p>
<p>第三十条</p> <p>国务院反垄断执法机构应当将禁止经营者集中的决定或者对经营者集中附加限制性条件的决定，及时向社会公布。</p>	<p>第三十五条</p> <p>国务院反垄断执法机构应当将禁止经营者集中的决定或者对经营者集中附加限制性条件的决定，及时向社会公布。</p>
<p>Article 30</p> <p>The State Council's Anti-Monopoly Enforcement Authority shall publicize a decision on prohibiting the concentration of undertakings or a decision on attaching restrictive conditions to the concentration of undertakings in a timely manner.</p>	<p>Article 35</p> <p>The State Council's Anti-Monopoly Enforcement Authority shall publicize a decision on prohibiting the concentration of undertakings or a decision on attaching restrictive conditions to the concentration of undertakings in a timely manner.</p>
第三十一条	第三十六条

<p>对外资并购境内企业或者以其他方式参与经营者集中，涉及国家安全的，除依照本法规定进行经营者集中审查外，还应当按照国家有关规定进行国家安全审查。</p>	<p>经营者集中涉及国家安全的，应当按照国家有关规定进行国家安全审查。</p>
<p>Article 31</p> <p>Where concentration of undertakings participated by a foreign investor through merging or acquiring a domestic enterprise or other means involves national security, besides the examination on the concentration of undertakings according to this Law, the national security review shall be conducted in accordance with relevant provisions of the State.</p>	<p>Article 36</p> <p>Where concentration of undertakings involves national security, the national security review shall be conducted in accordance with relevant provisions of the State.</p>
<p>第五章 滥用行政权力排除、限制竞争</p>	<p>第五章 滥用行政权力排除、限制竞争</p>
<p>Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition</p>	<p>Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition</p>
<p>第三十二条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，限定或者变相限定单位或者个人经营、购买、使用其指定的经营者提供的商品。</p>	<p>第三十七条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，限定或者变相限定单位或者个人经营、购买、使用其指定的经营者提供的商品。</p>
<p>Article 32</p> <p>No administrative organs or organisations empowered by a law or regulation to administer public affairs may abuse its administrative power to restrict or restrict in a disguised form any entities or individuals from operating, purchasing, or using the commodities provided by the undertakings designated by such an administrative organ or organisation.</p>	<p>Article 37</p> <p>No administrative organs or organisations empowered by a law or regulation to administer public affairs may abuse its administrative power to restrict or restrict in a disguised form any entities or individuals from operating, purchasing, or using the commodities provided by the undertakings designated by such an administrative organ or organisation.</p>

<p>第三十三条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，实施下列行为，妨碍商品在地区之间的自由流通：</p> <p>（一）对外地商品设定歧视性收费项目、实行歧视性收费标准，或者规定歧视性价格；</p> <p>（二）对外地商品规定与本地同类商品不同的技术要求、检验标准，或者对外地商品采取重复检验、重复认证等歧视性技术措施，限制外地商品进入本地市场；</p> <p>（三）采取专门针对外地商品的行政许可，限制外地商品进入本地市场；</p> <p>（四）设置关卡或者采取其他手段，阻碍外地商品进入或者本地商品运出；</p> <p>（五）妨碍商品在地区之间自由流通的其他行为。</p>	<p>第三十八条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，实施下列行为，妨碍商品在地区之间的自由流通：</p> <p>（一）对外地商品设定歧视性收费项目、实行歧视性收费标准，或者规定歧视性价格；</p> <p>（二）对外地商品规定与本地同类商品不同的技术要求、检验标准，或者对外地商品采取重复检验、重复认证等歧视性技术措施，限制外地商品进入本地市场；</p> <p>（三）采取专门针对外地商品的行政许可，限制外地商品进入本地市场；</p> <p>（四）设置关卡或者采取其他手段，阻碍外地商品进入或者本地商品运出；</p> <p>（五）妨碍商品在地区之间自由流通的其他行为。</p>
<p>Article 33</p> <p>No administrative organs or organisations empowered by a law or administrative regulation to administer public affairs may abuse its administrative power to block free circulation of commodities between regions:</p> <p>(1) Setting discriminatory charges, implementing discriminatory charge rates, or fixing discriminatory prices for non-local commodities;</p> <p>(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;</p>	<p>Article 38</p> <p>No administrative organs or organisations empowered by a law or administrative regulation to administer public affairs may abuse its administrative power to block free circulation of commodities between regions:</p> <p>(1) Setting discriminatory charges, implementing discriminatory charge rates, or fixing discriminatory prices for non-local commodities;</p> <p>(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;</p> <p>(3) Adopting the administrative licensing aimed at</p>

<p>(3) Adopting the administrative licensing aimed at non-local commodities, so as to restrict the entry of non-local commodities into the local market;</p> <p>(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</p> <p>Other activities that may block the inter-region free trading of commodities.</p>	<p>non-local commodities, so as to restrict the entry of non-local commodities into the local market;</p> <p>(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</p> <p>Other activities that may block the inter-region free trading of commodities.</p>
<p>第三十四条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，以设定歧视性资质要求、评审标准或者不依法发布信息等方式，排斥或者限制外地经营者参加本地的招标投标活动。</p>	<p>第三十九条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，以设定歧视性资质要求、评审标准或者不依法发布信息等方式，排斥或者限制经营者参加招标投标活动。</p>
<p>Article 34</p> <p>No administrative organs or organisations empowered by a law or administrative regulation to administer public affairs may abuse their administrative power to reject or restrict the participation of non-local undertakings in local tendering and bidding activities by imposing discriminatory qualification requirements or assessment standards or failing to publicize the binding information according to the law.</p>	<p>Article 39</p> <p>No administrative organs or organisations empowered by a law or administrative regulation to administer public affairs may abuse their administrative power to reject or restrict the participation of undertakings in tendering and bidding activities by imposing discriminatory qualification requirements or assessment standards or failing to publicize the binding information according to the law.</p>
<p>第三十五条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，采取与本地经营者不平等待遇等方式，排斥或者限制外地经营者在本地投资或者设立分支机构。</p>	<p>第四十条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，采取与本地经营者不平等待遇等方式，排斥、限制或者强制外地经营者在本地投资或者设立分支机构。</p>

<p>Article 35</p> <p>No administrative organs or organisations 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 undertakings by imposing unequal treatments on them that are different from those on the local undertakings.</p>	<p>Article 40</p> <p>No administrative organs or organisations empowered by law or administrative regulation to administer public affairs may abuse its administrative power to reject, restrict or compel either investment in its jurisdiction or the establishment of local branches by non-local undertakings by imposing unequal treatments on them that are different from those on the local undertakings.</p>
<p>第三十六条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，强制经营者从事本法规定的垄断行为。</p>	<p>第四十一条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，强制或者变相强制经营者从事本法规定的垄断行为。</p>
<p>Article 36</p> <p>No administrative organs or organisations empowered by law or administrative regulation to administer public affairs may abuse its administrative power to compel undertakings to engage in monopolistic activities that are prohibited by this Law.</p>	<p>Article 41</p> <p>No administrative organs or organisations empowered by law or administrative regulation to administer public affairs may abuse its administrative power to compel or compel in disguise undertakings to engage in monopolistic activities that are prohibited by this Law.</p>
<p>第三十七条</p> <p>行政机关不得滥用行政权力，制定含有排除、限制竞争内容的规定。</p>	<p>第四十二条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织，不得滥用行政权力，制定含有排除、限制竞争内容的规定。</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织，在制定涉及市场主体经济活动的规定时，应当按照国家有关规定进行公平竞争审查。</p>
<p>Article 37</p> <p>No administrative organs may abuse its</p>	<p>Article 42</p> <p>No administrative organs or organisations</p>

administrative power to formulate any provisions on eliminating or restricting competition.	empowered by law or administrative regulation to administer public affairs may abuse its administrative power to formulate any provisions on eliminating or restricting competition. Administrative organs or organisations empowered by law or administrative regulation to administer public affairs shall conduct fair competition review in accordance with the relevant provisions of the State when formulating regulations concerning the economic activities of market entities.
第六章 对涉嫌 垄断 行为的调查	第六章 对涉嫌 违法 行为的调查
Chapter VI Investigation into the Suspicious Monopolistic Conducts	Chapter VI Investigation into the Suspicious Illegal Conducts
第三十八条 反垄断执法机构依法对涉嫌垄断行为进行调查。 对涉嫌垄断行为，任何单位和个人有权向反垄断执法机构举报。反垄断执法机构应当为举报人保密。 举报采用书面形式并提供相关事实和证据的，反垄断执法机构应当进行必要的调查。	第四十三条 反垄断执法机构依法对涉嫌垄断行为进行调查。 对涉嫌垄断行为，任何单位和个人有权向反垄断执法机构举报。反垄断执法机构应当为举报人保密。 举报采用书面形式并提供相关事实和证据的，反垄断执法机构应当进行必要的调查。
Article 38 The Anti-Monopoly Enforcement Authority shall investigate any suspicious monopolistic conducts according to law. Any entity or individual may report any suspicious monopolistic conducts to the Anti-Monopoly Enforcement Authority. The Anti-Monopoly	Article 43 The Anti-Monopoly Enforcement Authority shall investigate any suspicious monopolistic conducts according to law. Any entity or individual may report any suspicious monopolistic conducts to the Anti-Monopoly Enforcement Authority. The Anti-Monopoly

<p>Enforcement Authority shall keep the informer confidential.</p> <p>The Anti-Monopoly Enforcement Authority shall conduct necessary investigations where the reporting is made in written form and supported by relevant facts and evidence.</p>	<p>Enforcement Authority shall keep the informer confidential.</p> <p>The Anti-Monopoly Enforcement Authority shall conduct necessary investigations where the reporting is made in written form and supported by relevant facts and evidence.</p>
<p>第三十九条</p> <p>反垄断执法机构调查涉嫌垄断行为，可以采取下列措施：</p> <p>（一）进入被调查的经营者的营业场所或者其他有关场所进行检查；</p> <p>（二）询问被调查的经营者、利害关系人或者其他有关单位或者个人，要求其说明有关情况；</p> <p>（三）查阅、复制被调查的经营者、利害关系人或者其他有关单位或者个人的有关单证、协议、会计账簿、业务函电、电子数据等文件、资料；</p> <p>（四）查封、扣押相关证据；</p> <p>（五）查询经营者的银行账户。</p> <p>采取前款规定的措施，应当向反垄断执法机构主要负责人书面报告，并经批准。</p>	<p>第四十四条</p> <p>反垄断执法机构调查涉嫌垄断行为，可以采取下列措施：</p> <p>（一）进入被调查的经营者的营业场所或者其他有关场所进行检查；</p> <p>（二）询问被调查的经营者、利害关系人或者其他有关单位或者个人，要求其说明有关情况；</p> <p>（三）查阅、复制被调查的经营者、利害关系人或者其他有关单位或者个人的有关单证、协议、会计账簿、业务函电、电子数据等文件、资料；</p> <p>（四）查封、扣押相关证据；</p> <p>（五）查询经营者的银行账户。</p> <p>采取前款规定的措施，应当向反垄断执法机构主要负责人书面报告，并经批准。必要时，公安机关应当依法予以协助。</p>
<p>Article 39</p> <p>When investigating a suspicious monopolistic conduct, the Anti-Monopoly Enforcement Authority may take the following measures:</p> <p>(1) Entering the business premises of the undertakings who are under investigation or any other relevant place to investigate;</p> <p>(2) Inquiring the undertakings who are under investigation, interested parties, or other relevant entities or individuals, and requesting</p>	<p>Article 44</p> <p>When investigating a suspicious monopolistic conduct, the Anti-Monopoly Enforcement Authority may take the following measures:</p> <p>(1) Entering the business premises of the undertakings who are under investigation or any other relevant place to investigate;</p> <p>(2) Inquiring the undertakings who are under investigation, interested parties, or other relevant entities or individuals, and requesting them to</p>

<p>them to disclose relevant information;</p> <p>(3) Reviewing and duplicating relevant business documents, agreements, accounting books, business correspondences, electronic data, files, or documentations of the undertakings who are under investigation, interested parties, or other relevant entities or individuals;</p> <p>(4) Seizing and detaining the relevant evidence; and</p> <p>(5) Inquiring about the bank accounts of the undertakings who are under investigation.</p> <p>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 Enforcement Authority for approval.</p>	<p>disclose relevant information;</p> <p>(3) Reviewing and duplicating relevant business documents, agreements, accounting books, business correspondences, electronic data, files, or documentations of the undertakings who are under investigation, interested parties, or other relevant entities or individuals;</p> <p>(4) Seizing and detaining the relevant evidence; and</p> <p>(5) Inquiring about the bank accounts of the undertakings who are under investigation.</p> <p>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 Enforcement Authority for approval.</p> <p>When necessary, the public security organ shall assist in accordance with the law.</p>
<p>第四十条</p> <p>反垄断执法机构调查涉嫌垄断行为，执法人员不得少于二人，并应当出示执法证件。执法人员询问和调查，应当制作笔录，并由被询问人或者被调查人签字。</p>	<p>第四十五条</p> <p>反垄断执法机构调查涉嫌垄断行为，执法人员不得少于二人，并应当出示执法证件。执法人员询问和调查，应当制作笔录，并由被询问人或者被调查人签字。</p>
<p>Article 40</p> <p>When inspecting suspicious monopolistic conducts, there shall be at least two law enforcers, and they shall show their law enforcement badges.</p> <p>When inquiring about and investigating suspicious monopolistic conducts, law enforcers shall make notes thereon, which shall bear the signatures of the persons under inquiry or investigation.</p>	<p>Article 45</p> <p>When inspecting suspicious monopolistic conducts, there shall be at least two law enforcers, and they shall show their law enforcement badges.</p> <p>When inquiring about and investigating suspicious monopolistic conducts, law enforcers shall make notes thereon, which shall bear the signatures of the persons under inquiry or investigation.</p>
<p>第四十一条</p> <p>反垄断执法机构及其工作人员对执法过程中知悉的商业秘密负有保密义务。</p>	<p>第四十六条</p> <p>反垄断执法机构及其工作人员对执法过程中知悉的商业秘密和个人隐私负有保密义务。</p>

Article 41 The Anti-Monopoly Enforcement Authority and its officers shall be obliged to keep confidential the trade secrets they have access to during the course of the law enforcement.	Article 46 The Anti-Monopoly Enforcement Authority and its officers shall be obliged to keep confidential the trade secrets and personal privacy they have access to during the course of the law enforcement.
第四十二条 被调查的经营者、利害关系人或者其他有关单位或者个人应当配合反垄断执法机构依法履行职责，不得拒绝、阻碍反垄断执法机构的调查。	第四十七条 被调查的经营者、利害关系人或者其他有关单位或者个人应当配合反垄断执法机构依法履行职责，不得拒绝、阻碍反垄断执法机构的调查。
Article 42 Undertakings, interested parties and other relevant entities or individuals who are under investigation shall assist the Anti-Monopoly Enforcement Authority in performing its duties and shall not refuse or obstruct the investigation conducted by the Anti-Monopoly Enforcement Authority.	Article 47 Undertakings, interested parties and other relevant entities or individuals who are under investigation shall assist the Anti-Monopoly Enforcement Authority in performing its duties and shall not refuse or obstruct the investigation conducted by the Anti-Monopoly Enforcement Authority.
第四十三条 被调查的经营者、利害关系人有权陈述意见。反垄断执法机构应当对被调查的经营者、利害关系人提出的事实、理由和证据进行核实。	第四十八条 被调查的经营者、利害关系人有权陈述意见。反垄断执法机构应当对被调查的经营者、利害关系人提出的事实、理由和证据进行核实。
Article 43 The undertakings and interested parties who are under investigation have the right to express their opinions. The Anti-Monopoly Enforcement Authority shall verify the facts, reasons and evidence raised by the undertakings and interested parties under investigation.	Article 48 The undertakings and interested parties who are under investigation have the right to express their opinions. The Anti-Monopoly Enforcement Authority shall verify the facts, reasons and evidence raised by the undertakings and interested parties under investigation.
第四十四条	第四十九条

反垄断执法机构对涉嫌垄断行为调查核实后，认为构成垄断行为的，应当依法作出处理决定，并可以向社会公布。	反垄断执法机构对涉嫌垄断行为调查核实后，认为构成垄断行为的，应当依法作出处理决定，并可以向社会公布。
Article 44 When the Anti-Monopoly Enforcement Authority deems that a suspicious monopolistic conduct constitutes a monopolistic conduct upon investigation and verification, the agency shall make a decision and may publicize its decision.	Article 49 When the Anti-Monopoly Enforcement Authority deems that a suspicious monopolistic conduct constitutes a monopolistic conduct upon investigation and verification, the agency shall make a decision and may publicize its decision.
第四十五条 对反垄断执法机构调查的涉嫌垄断行为，被调查的经营者承诺在反垄断执法机构认可的期限内采取具体措施消除该行为后果的，反垄断执法机构可以决定中止调查。中止调查的决定应当载明被调查的经营者承诺的具体内容。 反垄断执法机构决定中止调查的，应当对经营者履行承诺的情况进行监督。经营者履行承诺的，反垄断执法机构可以决定终止调查。有下列情形之一的，反垄断执法机构应当恢复调查： <p>（一）经营者未履行承诺的；</p> <p>（二）作出中止调查决定所依据的事实发生重大变化的；</p> <p>（三）中止调查的决定是基于经营者提供的不完整或者不真实的信息作出的。</p>	第五十条 对反垄断执法机构调查的涉嫌垄断行为，被调查的经营者承诺在反垄断执法机构认可的期限内采取具体措施消除该行为后果的，反垄断执法机构可以决定中止调查。中止调查的决定应当载明被调查的经营者承诺的具体内容。 对涉嫌违反本法第十五条第（一）（二）（三）项规定的垄断协议，反垄断执法机构不得中止调查。 反垄断执法机构决定中止调查的，应当对经营者履行承诺的情况进行监督。 经营者应当在规定的时限内向反垄断执法机构书面报告承诺履行情况。 经营者履行承诺的，反垄断执法机构可以决定终止调查。 有下列情形之一的，反垄断执法机构应当恢复调查： <p>（一）经营者未履行承诺的；</p> <p>（二）作出中止调查决定所依据的事实发生重大变化的；</p> <p>（三）中止调查的决定是基于经营者提供的不完整或者不真实的信息作出的。</p>
Article 45 As regards a suspicious monopolistic conduct that the Anti-Monopoly Enforcement Authority is	Article 50 As regards a suspicious monopolistic conduct that the Anti-Monopoly Enforcement Authority is

<p>investigating, if the undertakings under investigation promise to eliminate the effects of the conduct through the use of concrete measures within the time limits accepted by the Anti-Monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may decide to suspend the investigation. The decision of suspending the investigation shall state the concrete measures promised by the undertakings under investigation.</p> <p>Where the Anti-Monopoly Enforcement Authority decides to suspend the investigation, it shall supervise the implementation of the promise by the relevant undertakings. If the undertakings keep the promise, the Anti-Monopoly Enforcement Authority may decide to terminate the investigation. However, under any of the following circumstances, the Anti-Monopoly Enforcement Authority shall resume the investigation:</p> <ol style="list-style-type: none"> (1) The undertaking 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 based on incomplete or inaccurate information submitted by the undertakings. 	<p>investigating, if the undertakings under investigation promise to eliminate the effects of the conduct through the use of concrete measures within the time limits accepted by the Anti-Monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may decide to suspend the investigation. The decision of suspending the investigation shall state the concrete measures promised by the undertakings under investigation.</p> <p>Anti-monopoly law enforcement agencies shall not suspend investigations of monopoly agreements that are suspected of violating Article 15 (1) (2) (3) of this Law.</p> <p>Where the Anti-Monopoly Enforcement Authority decides to suspend the investigation, it shall supervise the implementation of the promise by the relevant undertakings. The undertaking shall notify in writing to the Anti-Monopoly Enforcement Authority on the performance of its commitments within the prescribed time limits. If the undertakings keep the promise, the Anti-Monopoly Enforcement Authority may decide to terminate the investigation.</p> <p>However, under any of the following circumstances, the Anti-Monopoly Enforcement Authority shall resume the investigation:</p> <ol style="list-style-type: none"> (1) The undertaking fails to implement its promise; (2) Significant changes have taken place to the facts,
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	<p>on which the decision of suspending the investigation was made; or</p> <p>(3) The decision on suspending the investigation was made based on incomplete or inaccurate information submitted by the undertakings.</p>
	<p>第五十一条</p> <p>国务院反垄断执法机构作出经营者集中审查决定后，有事实和证据表明申报人提供的文件、资料存在或者可能存在不真实、不准确，需要重新审查的，国务院反垄断执法机构可以根据利害关系人的请求或者依据职权，依法进行调查，并撤销原审查决定。</p>
	<p>Article 51</p> <p>After the State Council's Anti-Monopoly Enforcement Authority makes a decision on the concentration of undertakings, if facts and evidence indicate that the documents and materials provided by the declarant are or may be untrue, inaccurate and need to be reviewed, the State Council's Anti-Monopoly Enforcement Authority may conduct investigation and revoke the original review decision at the request of an interested party or in accordance with its functions and powers.</p>
	<p>第五十二条</p> <p>反垄断执法机构依法对滥用行政权力排除、限制竞争的行为进行调查。被调查的行政机关或者法律、法规授权的具有管理公共事务职能的组织、经营者、利害关系人或者其他有关单位或者个人应当按照反垄断执法机构的要求报告相关事项、提交相关资料，并就报告事项和提供的资料作出说明。</p>

	<p>Article 52</p> <p>The Anti-Monopoly Enforcement Authority shall investigate conducts of abusing administrative power to exclude or restrict competition. Administrative organ or organisation, operator, stakeholder, or other relevant unit or individual authorized to manage public affairs by laws or regulations under investigation shall report relevant matters and submit relevant documents per requested by the Anti-Monopoly Enforcement Authority and provide explanation about report matters and documents submitted.</p>
第七章 法律责任	第七章 法律责任
Chapter VII Legal Liabilities	Chapter VII Legal Liabilities
<p>第四十六条</p> <p>经营者违反本法规定，达成并实施垄断协议的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款；尚未实施所达成的垄断协议的，可以处五十万元以下的罚款。</p> <p>经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的，反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。</p> <p>行业协会违反本法规定，组织本行业的经营者达成垄断协议的，反垄断执法机构可以处五十万元以下的罚款；情节严重的，社会团体登记管理机关可以依法撤销登记。</p>	<p>第五十三条</p> <p>经营者违反本法规定，达成并实施垄断协议的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款；对于上一年度没有销售额的经营者或者尚未实施所达成的垄断协议的，可以处五千万元以下的罚款。</p> <p>组织、帮助经营者达成垄断协议的，适用前款规定。</p> <p>经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的，反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。</p> <p>行业协会违反本法规定，组织经营者达成垄断协议的，由反垄断执法机构责令停止违法行为，可以处五百万元以下的罚款；情节严重的，社会团体登记管理机关可以依法撤销登记。</p>

<p>Article 46</p> <p>Where the undertakings reach and perform it in violation of this Law, the Anti-Monopoly Enforcement Authority shall order them to cease the violations, and shall confiscate the illegal proceeds and impose a fine of 1% up to 10% of the turnover in the previous year. Where the reached monopoly agreement has not been implemented, a fine of less than CNY 0.5 million may be imposed.</p> <p>Where an undertaking voluntarily reports the conditions on reaching the monopoly agreement and provides important evidences to the Anti-Monopoly Enforcement Authority, it may be imposed a mitigated punishment or exemption from punishment as the case may be.</p> <p>Where a trade association organise undertakings in its own industry to reach a monopoly agreement in violation of this Law, the Anti-Monopoly Enforcement Authority shall impose a fine of less than CNY 0.5 million; in case of serious circumstances, the social group registration authority may deregister the trade association in accordance with the Law.</p>	<p>Article 53</p> <p>Where the undertakings reach and perform it in violation of this Law, the Anti-Monopoly Enforcement Authority shall order them to cease the violations, and shall confiscate the illegal proceeds and impose a fine of 1% up to 10% of the turnover in the previous year. Where the undertakings have no turnover or where the reached monopoly agreement has not been implemented, a fine of less than CNY 50 million may be imposed.</p> <p>In the case of organising and helping undertakings to reach a monopoly agreement, the preceding paragraph shall apply.</p> <p>Where an undertaking voluntarily reports the conditions on reaching the monopoly agreement and provides important evidences to the Anti-Monopoly Enforcement Authority, it may be imposed a mitigated punishment or exemption from punishment as the case may be.</p> <p>Where a trade association organise undertakings to reach a monopoly agreement in violation of this Law, the Anti-Monopoly Enforcement Authority shall order them to cease the violations and impose a fine of less than CNY 5 million; in case of serious circumstances, the social group registration authority may deregister the trade association in accordance with the Law.</p>
第四十七条	第五十四条

经营者违反本法规定,滥用市场支配地位的,由反垄断执法机构责令停止违法行为,没收违法所得,并处上一年度销售额百分之一以上百分之十以下的罚款	经营者违反本法规定,滥用市场支配地位的,由反垄断执法机构责令停止违法行为,没收违法所得,并处上一年度销售额百分之一以上百分之十以下的罚款。
Article 47 Where the undertakings abuse their dominant market position in violation of this Law, the Anti-Monopoly Enforcement Authority shall order them to stop such violations, confiscate the illegal gains, and impose a fine of 1% up to 10% of the total turnover in the previous year.	Article 54 Where the undertakings abuse their dominant market position in violation of this Law, the Anti-Monopoly Enforcement Authority shall order them to stop such violations, confiscate the illegal gains, and impose a fine of 1% up to 10% of the total turnover in the previous year.
第四十八条 经营者违反本法规定实施集中的,由国务院反垄断执法机构责令停止实施集中、限期处分股份或者资产、限期转让营业以及采取其他必要措施恢复到集中前的状态,可以处五十万元以下的罚款。	第五十五条 经营者集中具有以下情形之一的,由反垄断执法机构处上一年度销售额百分之十以下的罚款: (一) 应当申报而未申报即实施集中的; (二) 申报后未经批准实施集中的; (三) 违反附加限制性条件决定的; (四) 违反禁止经营者集中的决定实施集中的。 除前款规定外,反垄断执法机构可以根据具体情形责令停止实施集中,附加减少集中对竞争产生不利影响的限制性条件,责令继续履行附加的限制性条件中的义务或变更附加的限制性条件,责令限期处分股份或者资产、限期转让营业以及采取其他必要救济措施恢复到集中前的状态。
Article 48 Where the undertakings implement the concentration in violation of this Law, the Anti-monopoly Law Enforcement Agency under the State Council shall order them to stop the	Article 55 Where undertakings are under any of the following circumstances, the Anti-Monopoly Enforcement Authority shall impose a fine of 1% up to 10% of the total turnover in the previous

<p>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 CNY 0.5 million</p>	<p>year.</p> <p>(1) Failing to file a transaction that reaches the thresholds;</p> <p>(2) Implementing the transaction before obtaining an approval;</p> <p>(3) Violating restrictive conditions;</p> <p>(4) Violating of the prohibition decision.</p> <p>Except the provisions in the preceding paragraph, the Anti-Monopoly Enforcement Authority may, based on the specific situation, order the undertakings to cease the implementation of concentration and add restrictive conditions which would reduce anti-competitive effects of the concentration, to continue to perform the restrictive conditions, or may change restrictive conditions, instructs the disposal of shares or assets, transfer of business within certain time limits and adopt other necessary remedy measures to restore the pre-concentration status.</p>
<p>第四十九条</p> <p>对本法第四十六条、第四十七条、第四十八条规定的罚款，反垄断执法机构确定具体罚款数额时，应当考虑违法行为的性质、程度和持续的时间等因素。</p>	<p>第五十六条</p> <p>对本法第五十三条、第五十四条、第五十五条规定的罚款，反垄断执法机构确定具体罚款数额时，应当考虑违法行为的性质、程度、持续时间和消除违法行为后果的情况等因素。</p>
<p>Article 49</p> <p>To determine the specific amount of fines prescribed by Articles 46-48 of this Law, the Anti-Monopoly Enforcement Authority shall consider factors such as the nature, extent and duration of the violations.</p>	<p>Article 56</p> <p>To determine the specific amount of fines prescribed by Articles 53-55 of this Law, the Anti-Monopoly Enforcement Authority shall consider factors such as the nature, extent, duration of the violations and violation elimination results.</p>

<p>第五十条</p> <p>经营者实施垄断行为，给他人造成损失的，依法承担民事责任。</p>	<p>第五十七条</p> <p>经营者实施垄断行为，给他人造成损失的，依法承担民事责任。构成犯罪的，依法追究刑事责任。</p>
<p>Article 50</p> <p>The undertakings that carry out the monopolistic conducts and cause damages to others shall bear civil liabilities according to the law.</p>	<p>Article 57</p> <p>The undertakings that carry out the monopolistic conducts and cause damages to others shall bear civil liabilities according to the law; if such conduct constitute a crime, criminal responsibility shall be pursued according to the law.</p>
<p>第五十一条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力，实施排除、限制竞争行为的，由上级机关责令改正；对直接负责的主管人员和其他直接责任人员依法给予处分。反垄断执法机构可以向有关上级机关提出依法处理的建议。</p> <p>法律、行政法规对行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力实施排除、限制竞争行为的处理另有规定的，依照其规定。</p>	<p>第五十八条</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力，实施排除、限制竞争行为的，反垄断执法机构可以责令改正，并向有关上级机关提出依法处理的建议，对直接负责的主管人员和其他直接责任人员由上级机关依法给予处分。</p> <p>行政机关和法律、法规授权的具有管理公共事务职能的组织应当在反垄断执法机构规定的时间内完成改正行为，并将有关改正情况书面报告反垄断执法机构。</p>
<p>Article 51</p> <p>Where an administrative organ or organisations empowered by a law or administrative regulation to administer public affairs abuses its administrative power to eliminate or restrict competition, the superior authority may order it to rectify, and according to law to impose punishments on the directly liable person(s)-in-charge and other directly liable persons. The Anti-monopoly Enforcement Authority may provide suggestions to</p>	<p>Article 58</p> <p>Where an administrative organ or organisations empowered by a law or administrative regulation to administer public affairs abuses its administrative power to eliminate or restrict competition, the Anti-Monopoly Enforcement Authority may order it to rectify and provide suggestions to the relevant superior authority according to law to impose punishments on the directly liable person(s)-in-charge and other directly liable persons.</p>

<p>the relevant superior authority according to law.</p> <p>Where a law or administrative regulation provides otherwise for the handling of an administrative organ and organisation empowered by a law or administrative regulation to administer public affairs that abuses its administrative power to eliminate or restrict competition, such provisions shall prevail.</p>	<p>The administrative organ or organisation empowered by a law or administrative regulation to administer public affairs shall complete the rectification and notify in writing to the Anti-Monopoly Enforcement Authority within the time limits specified by the Anti-Monopoly Enforcement Authority.</p>
<p>第五十二条</p> <p>对反垄断执法机构依法实施的审查和调查，拒绝提供有关材料、信息，或者提供虚假材料、信息，或者隐匿、销毁、转移证据，或者有其他拒绝、阻碍调查行为的，由反垄断执法机构责令改正，对个人可以处二万元以下的罚款，对单位可以处二十万元以下的罚款；情节严重的，对个人处二万元以上十万元以下的罚款，对单位处二十万元以上一百万元以下的罚款；构成犯罪的，依法追究刑事责任。</p>	<p>第五十九条</p> <p>对反垄断执法机构依法实施的审查和调查，拒绝提供有关材料、信息，或者提供虚假材料、信息，或者隐匿、销毁、转移证据，或者威胁人身安全，或者有其他拒绝、阻碍调查行为的，由反垄断执法机构责令改正，对行政机关和法律、法规授权的具有管理公共事务职能的组织可以向有关上级机关和监察机关提出依法给予处分的建议，对其他单位处上一年度销售额百分之一下的罚款，上一年度没有销售额或者销售额难以计算的，处五百万元以下的罚款；对个人可以处二十万元以上一百万元以下的罚款；构成犯罪的，依法追究刑事责任。</p>
<p>Article 52</p> <p>As regards the inspection and investigation by the Anti-Monopoly Enforcement Authority, if undertakings 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 Enforcement Authority shall order them to make rectification, and may impose a fine</p>	<p>Article 59</p> <p>As regards the inspection and investigation by the Anti-Monopoly Enforcement Authority, if undertakings refuse to submit related materials and information, submit fraudulent materials or information, conceal, destroy or remove evidence, threaten personal safety, or refuse or obstruct investigation in other ways, the Anti-Monopoly Enforcement Authority shall order them to make</p>

<p>of less than CNY 0.02 million on individuals, and a fine of less than CNY 0.2 million on entities; and where the circumstances are serious, the Anti-monopoly Enforcement Authority may impose a fine of CNY 0.02 million or up to CNY 0.1 million on an individual, and a fine of CNY 0.2 million or up to CNY 1 million on an entity; where a crime is constituted, criminal liability shall be pursued according to the law.</p>	<p>rectification. For the administrative organs and organizations empowered by a law or administrative regulation to administer public affairs, the Anti-Monopoly Enforcement Authority can make recommendations to the relevant superior authorities and supervisory organs to impose sanctions according to law. And for other organisations, it can impose fines less than 1% of the turnover in the previous year's sales. If there is no turnover in the previous year or it is difficult to calculate the turnover, a fine of less than CNY 5 million shall be imposed; a fine of CNY 0.2 million to 1 million yuan may be imposed on individuals; where a crime is constituted, criminal liability shall be pursued according to the law.</p>
<p>第五十三条</p> <p>对反垄断执法机构依据本法第二十八条、第二十九条作出的决定不服的，可以先依法申请行政复议；对行政复议决定不服的，可以依法提起行政诉讼。</p> <p>对反垄断执法机构作出的前款规定以外的决定不服的，可以依法申请行政复议或者提起行政诉讼。</p>	<p>第六十条</p> <p>对反垄断执法机构依据本法第三十一条、第三十二条作出的决定不服的，可以先依法申请行政复议；对行政复议决定不服的，可以依法提起行政诉讼。</p> <p>对反垄断执法机构作出的前款规定以外的决定不服的，可以依法申请行政复议或者提起行政诉讼。</p>
<p>Article 53</p> <p>Where any party concerned objects to the decision made by the Anti-Monopoly Enforcement Authority pursuant to Articles 28 and 29 of this Law, the party may first apply for an administrative review; if it objects to the review decision, it may</p>	<p>Article 60</p> <p>Where any party concerned objects to the decision made by the Anti-Monopoly Enforcement Authority pursuant to Articles 31 and 32 of this Law, the party may first apply for an administrative review; if it objects to the review decision, it may file an</p>

<p>file an administrative lawsuit according to law.</p> <p>Where any party concerned objects any decision made by the Anti-Monopoly Enforcement Authority other than the decisions prescribed in the previous paragraph, it may apply for an administrative review or file an administrative lawsuit according to the law.</p>	<p>administrative lawsuit according to law.</p> <p>Where any party concerned objects any decision made by the Anti-Monopoly Enforcement Authority other than the decisions prescribed in the previous paragraph, it may apply for an administrative review or file an administrative lawsuit according to the law.</p>
<p>第五十四条</p> <p>反垄断执法机构工作人员滥用职权、玩忽职守、徇私舞弊或者泄露执法过程中知悉的商业秘密，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。</p>	<p>第六十一条</p> <p>反垄断执法机构工作人员滥用职权、玩忽职守、徇私舞弊或者泄露执法过程中知悉的商业秘密，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。</p>
<p>Article 54</p> <p>Where any officials in the Anti-Monopoly Enforcement Authority abuses his/her authority, neglects his/her duty, seeks private benefits, or discloses trade secrets he/she has access to during the process of law enforcement, and a crime is constituted, he/she shall be subject to the criminal liability; where no crime is constituted, he/she shall be imposed upon a disciplinary sanction.</p>	<p>Article 61</p> <p>Where any officials in the Anti-Monopoly Enforcement Authority abuses his/her authority, neglects his/her duty, seeks private benefits, or discloses trade secrets he/she has access to during the process of law enforcement, and a crime is constituted, he/she shall be subject to the criminal liability; where no crime is constituted, he/she shall be imposed upon a disciplinary sanction.</p>
<p>第八章 附则</p>	<p>第八章 附则</p>
<p>Chapter VIII Supplementary Provisions</p>	<p>Chapter VIII Supplementary Provisions</p>
<p>第五十五条</p> <p>经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法；但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法。</p>	<p>第六十二条</p> <p>经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法；但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法。</p>
<p>Article 55</p> <p>This Law does not govern the conduct of</p>	<p>Article 62</p> <p>This Law does not govern the conduct of</p>

undertakings to exercise their intellectual property rights under laws and relevant administrative regulations on intellectual property rights; however, undertakings' conduct to eliminate or restrict market competition by abusing their intellectual property rights shall be governed by this Law.	undertakings to exercise their intellectual property rights under laws and relevant administrative regulations on intellectual property rights; however, undertakings' conduct to eliminate or restrict market competition by abusing their intellectual property rights shall be governed by this Law.
第五十六条 农业生产者及农村经济组织在农产品生产、加工、销售、运输、储存等经营活动中实施的联合或者协同行为，不适用本法。	第六十三条 农业生产者及农村经济组织在农产品生产、加工、销售、运输、储存等经营活动中实施的联合或者协同行为，不适用本法。
Article 56 This Law does not govern the ally or concerted actions of agricultural producers and rural economic organisations in the economic activities such as production, processing, sales, transportation and storage of agricultural products.	Article 63 This Law does not govern the ally or concerted actions of agricultural producers and rural economic organisations in the economic activities such as production, processing, sales, transportation and storage of agricultural products.
第五十七条 本法自 2008 年 8 月 1 日起施行。	第六十四条 本法自 年 月 日起施行。
Article 57 This law shall come into effect as of 01/ 08 /2008	Article 64 This law shall come into effect as of DD MM YYYY.

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