

Provisions on Procedures for Investigation and Handling by Administrative Authorities for Industry and Commerce of Cases of Monopolistic Agreements and Abuse of Dominant Market Position

- Article 1 These Provisions are formulated pursuant to the Anti-Monopoly Law of the People's Republic of China for the purpose of regulating and safeguarding the investigation and handling of monopolistic conduct by the administrative authorities for industry and commerce in accordance with laws.
- Article 2 The State Administration for Industry and Commerce shall be responsible for anti-monopoly law enforcement in relation to monopolistic agreements and abuse of dominant market position in a unified manner.
- Where work requires, the State Administration for Industry and Commerce may authorise the administrative bureaus for industry and commerce of relevant provinces, autonomous regions or municipalities directly under the Central Government (hereinafter referred to as the "administrative bureaus for industry and commerce at provincial level") to be responsible for the anti-monopoly law enforcement in relation to monopolistic agreements and abuse of dominant market position.
- Article 3 The following monopolistic conducts shall be investigated and handled by the State Administration for Industry and Commerce:
- (1) monopolistic conduct which has a significant influence across the nation;
- (2) monopolistic conduct over which the State Administration for Industry and Commerce considers itself should have jurisdiction.
- The investigation and handling of the following monopolistic conduct may be authorised to the administrative bureau for industry and commerce at provincial level:
- (1) monopolistic conduct which takes place within this administrative area;
- (2) monopolistic conduct which takes place across provinces, autonomous regions or municipalities directly under the Central Government, with the principal place of conduct being within this administrative area;
- (3) monopolistic conduct of which the State Administration for Industry and Commerce deems it appropriate to authorise the jurisdiction to the administrative bureau for industry and commerce at provincial level.
- The authorisation shall be made on a case by case basis. The administrative bureau for industry and commerce at provincial level so authorised may not make further authorisation to its inferior administrative bureaus for industry and commerce.
- Article 4 The administrative authorities for industry and commerce shall, by virtue of its authority or by way of complaints, transferring of case from other

authorities, or passing down of case from the superior authorities, discover monopolistic conduct and investigate and handle monopolistic conduct in accordance with laws.

Article 5

Any entity or individual has the right to make a complaint in respect of any suspected monopolistic conduct to the administrative authorities for industry and commerce. The administrative authorities for industry and commerce shall keep the identity of the complainant confidential.

Reports made in writing shall contain the following:

- (1) basic information of the complainant. Where the complainant is an individual, his or her name, address and contact details etc. shall be provided; where the complainant is a business operator, the name, address, contact details as well as the main businesses and products of or services provided by the complainant shall be provided;
- (2) basic information of the business operator subject of the complaint, including the name, address as well as the main businesses and products of or services provided by it;
- (3) the relevant facts of the suspected monopolistic conduct, including the facts of the monopolistic conduct by the business operator subject of the complaint in violation of laws, regulations and rules as well as the time and location of the relevant conduct;
- (4) relevant evidence, including written evidence, material evidence, witness testimony, audio or visual information, computer data, expert's determination, etc. and relevant evidence shall be signed by the providers of evidence with the sources of the evidence being specified;
- (5) whether the complainant has with the same facts complained to other administrative authorities or launched a lawsuit before the People's Courts.

Article 6

The State Administration for Industry and Commerce and the administrative bureaus for industry and commerce at provincial level are responsible for accepting the complaint materials. Where the administrative authorities for industry and commerce below the provincial level receive the complaint materials, they shall submit the same to the administrative bureaus for industry and commerce at provincial level within 5 working days.

After receiving complaint materials, the authorities accepting the same shall register the same and verify and examine the contents of the complaint.

Where the report materials are incomplete, the authorities accepting the same shall notify the complainant to provide supplementary materials in a timely manner.

For anonymous written complaints, if there are detailed facts indicating the violation of law and the relevant evidence has been provided, the authorities accepting the same shall register the same and verify and examine the contents of the complaint.

Article 7 The administrative bureaus for industry and commerce at provincial level shall verify the complaints of suspected monopolistic conduct which mainly take place within their own administrative areas, and report to the State Administration for Industry and Commerce the results of their verification and examination and their opinions on whether a case shall be established.

Where there is a complaint of suspected monopolistic conduct involving two or more administrative areas at or above provincial level and the complaint materials are complete, the administrative bureau for industry and commerce at provincial level shall submit the complaint materials in a timely manner to the State Administration for Industry and Commerce.

Article 8 The State Administration for Industry and Commerce shall, based on verification and examination of the contents of a complaint, decide on whether or not to establish a case for investigation and handling. The State Administration for Industry and Commerce may establish a case for investigation and handling on its own or pursuant to Article 3 of these Provisions authorise relevant administrative bureaus for industry and commerce at provincial level to establish a case to conduct investigation and handling.

Article 9 For the cases established by itself for its own investigation and handling, the State Administration for Industry and Commerce may conduct the investigation on its own or entrust the administrative bureaus for industry and commerce at relevant provincial level, the administrative bureaus for industry and commerce of municipalities and cities separately listed for administration purpose or the administrative bureaus for industry and commerce at “quasi” provincial level to conduct the investigation.

The administrative bureaus for industry and commerce at provincial level shall investigate and handle the cases which they are authorized to establish, investigate and handle pursuant these Provisions.

Article 10 When investigating suspected monopolistic conduct, upon the submission of a written report to and the approval of the main person-in-charge in the authorities which are entitled to conduct investigation and handling of monopolistic conduct, the administrative authorities for industry and commerce may take the following investigation measures:

- (1) entering into the business premises or other relevant premises of the business operators under investigation for inspection;
- (2) questioning the business operators under investigation, interested parties or other relevant entities or individuals and requiring them to provide an explanation of the relevant facts;
- (3) reviewing and making photocopies of the relevant instruments, agreements, accounting books, business correspondence, electronic data and other documents and materials of the business operators under investigation, interested parties or other relevant entities or individuals;
- (4) sealing up or seizing the related evidence; and

- (5) making enquiries of the bank accounts of the business operators concerned.

Article 11

When conducting investigations, there shall be at least two law enforcement officials from the administrative authorities for industry and commerce, and such officials' law enforcement certificates shall also be presented.

Article 12

When conducting investigations into suspected monopolistic conduct, the administrative authorities for industry and commerce may require business operators, interested parties or other relevant entities or individuals (referred to hereinafter as the "persons under investigation") to provide the following written information within the prescribed time limit:

- (1) Basic information on the persons under investigation, including their forms of organisation, names, contact persons and contact details, and the photocopies of business licenses or the legal person registration certificates and the legal person organisation and institution code certificates of social organisations. Where the business operator is an individual, photocopy of his or her identity card and his or her contact details shall be provided;
- (2) Where the person under investigation is a business operator, information on its production and operations over the past three years, annual sales, payment of taxes, business dealings and co-operation agreement with counterparties to transactions as well as overseas investments. In the case of a listed company, information on its stock yield shall also be provided;
- (3) Where the person under investigation is an industry association, it shall also provide its articles of association, grounds for relevant industry policies, information on production and operation planning of the industry and its implementation, and information on meetings, activities and documents and materials relating to the suspected monopolistic conduct;
- (4) Explanations on relevant issues raised by the administrative authorities for industry and commerce; and
- (5) Other written information requested by the administrative authorities for industry and commerce.

The administrative authorities for industry and commerce and their officials are obliged to keep the business secrets made known to them during the course of law enforcement confidential.

- Article 13 The business operator and interested parties under investigation shall have the right to present their views. The administrative authorities for industry and commerce shall verify and examine the facts, reasons and evidence provided by the business operator and interested parties under investigation.
- Article 14 When the administrative authorities for industry and commerce conduct examinations and investigations in accordance with laws, any person who refuses to provide any relevant materials or information, or provides incomplete material or information, or provides fraudulent material or information, or fails to provide any relevant materials or information within the prescribed time limit, or conceals, destroys or relocates any evidence, or otherwise rejects or impedes any investigation shall be handled in accordance with Article 52 of the AML.
- Article 15 Any business operator suspected of monopolistic conduct may, during the period of being investigated, apply for suspension of investigation, and commit to take specific measures to remove the impact of the monopolistic conduct within a specific period approved by the administrative authorities for industry and commerce.
- Article 16 The application for suspension of investigation shall be made in writing and be signed and sealed by the legal representative, the person-in-charge in other organisations, or the individuals. The application shall specify the following items:
- (1) facts of the suspected violations of law and the possible impact it may have;
 - (2) specific measures to be taken to remove the impact of the conduct;
 - (3) schedules for complying with the commitments and statement of warranties.
- Article 17 Upon receipt of the application of the business operator under investigation, the administrative authorities for industry and commerce may, by taking into consideration of the nature, duration, consequences and social impact of monopolistic conduct, determine to suspend the investigation and issue its written decision on suspension of investigation. The decision on the suspension of investigation shall state the facts of the suspected violations of law by the business operator, details of the undertakings, details of the measures to be taken to remove the impact, timing and the consequences of failure to comply with the commitments and of partial compliance with the commitments, etc.
- Article 18 If the administrative authorities for industry and commerce decide to suspend the investigation of monopolistic conduct, the business operator shall report to the administrative authorities for industry and commerce on the progress of its compliance with the commitments within the prescribed time limit.
- Article 19 The administrative authorities for industry and commerce shall supervise the compliance by the business operator concerned with its commitments.

If it is confirmed that the business operator has complied its commitments, the administrative authorities for industry and commerce may decide to terminate the investigation and issue a decision on termination of investigation. The decision on termination of investigation shall state the facts of the suspected violations of law by the business operator, details of the undertakings, details of the measures adopted to remove the impact as well as the steps and timing for complying with the commitments.

The administrative authorities for industry and commerce shall resume the investigation if any of the following circumstances occurs:

- (1) where the business operator fails to comply with its commitments;
- (2) where there is any material change to the facts based on which the decision on suspension of investigation is granted;
- (3) where the decision on suspension of investigation is granted based on the incomplete, untrue or misleading information provided by the business operator.

- Article 20 If the business operator, on its initiative, reports to the administrative authorities for industry and commerce on its entry into any monopolistic agreement and provides important evidence, the administrative authorities for industry and commerce may at its discretion grant reduction of or immunity from the penalties on the business operator.
- The provisions concerning the reduction of or immunity from penalties shall not be applicable to the organisers of any monopolistic agreements.
- Important evidence means evidence which could initiate the investigation or is critical for the determination of monopolistic agreements or conduct.
- Article 21 If the business operator can show that the monopolistic agreement falls within the circumstances set out in Article 15 of the AML, the administrative authorities for industry and commerce may grant an exemption.
- Article 22 After the investigation into and verification of a suspected monopolistic conduct, if the administrative authorities for industry and commerce conclude that the conduct constitutes a monopolistic conduct, they shall impose administrative penalties in accordance with laws.
- Article 23 The State Administration for Industry and Commerce shall, prior to imposing administrative penalties against major monopoly cases, report to the Anti-Monopoly Committee under the State Council.
- The authorised administrative bureaus for industry and commerce at provincial level shall, in accordance with laws, make decisions to suspend investigation, terminate investigation or impose administrative penalties, provided that they shall report to the State Administration for Industry and Commerce prior to the decision. The administrative bureaus for industry and commerce at provincial level shall, within 10 working days after the grant of the decision, file the related documents, decisions and the final investigation report with the State Administration for Industry and Commerce for record.
- Article 24 Provided that the State Administration for Industry and Commerce after research determines that the AML shall not apply to the complaint, instead other laws and regulations related to industry and commerce administration shall apply to the complaint, it shall transfer the complaint in a timely manner to the relevant administrative authority for industry and commerce for its handling. Any complaint that is under the jurisdiction of other administrative authorities shall be transferred to such other competent authorities in accordance with laws.
- The administrative bureaus for industry and commerce below the provincial level may, pursuant to the provisions of other laws and regulations, supervise and examine conduct which restricts competition by any public utility enterprise or by other business operators enjoying an exclusive market position in accordance with law within their administrative areas.
- Article 25 The administrative authorities for industry and commerce may make public the monopolistic cases it handled in accordance with laws.

- Article 26 Any matters not covered herein which relate to the investigation into monopolistic conducts, hearing and penalty procedures shall be handled in accordance with the *Law of the People's Republic of China on Administrative Penalty, the Procedural Provisions on Administrative Penalty of Administrative Authorities for Industry and Commerce* and the *Provisions on the Hearing of Administrative Penalty Cases of Administrative Authorities for Industry and Commerce*, provided that the related provisions regarding time limit set out under the *Procedural Provisions on Administrative Penalty of Administrative Authorities for Industry and Commerce* and the *Provisions on the Hearing of Administrative Penalty Cases of Administrative Authorities for Industry and Commerce* shall not apply.
- Article 27 Any business operator which is aggrieved by any decision made by the administrative authorities for industry and commerce in accordance with these Provisions may apply for an administrative review or initiate administrative litigation in accordance with laws.
- Article 28 In the anti-monopoly law enforcement, the administrative authorities for industry and commerce shall increase the communication and cooperation with other anti-monopoly enforcement authorities and related authorities.
- Article 29 Any personnel of the administrative authorities for industry and commerce who abuse powers, neglect duties, malpractice for personal gain or disclose the commercial secrets known to the personnel during the course of law enforcement in violation of these Provisions shall be subject to administrative penalties in accordance with laws provided that that such conduct does not constitute a crime; provided that such conduct constitutes a crime, such a case shall be transferred to juridical authorities for handling.
- Article 30 These Provisions shall not apply to price monopolistic conduct, in relation to the investigation into monopolistic agreements and abuse of dominant market position.
- Article 31 These Provisions shall be interpreted by the State Administrative for Industry and Commerce.
- Article 32 These Provisions shall take effect from 1 July 2009.