

Order of the State Administration for Industry and Commerce

No. 53

The *Provisions for Prohibition by Administrative Authorities for Industry and Commerce against Monopolistic Agreement Acts* have been considered and adopted at the Administration Affairs Meeting of the State Administration for Industry and Commerce of the People's Republic of China and are hereby promulgated and shall come into effect from 1 February 2011.

Chief: Zhou Bohua

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Provisions for Prohibition by Administrative Authorities for Industry and Commerce against Monopolistic Agreement Acts

- Article 1 These Provisions are formulated pursuant to the *Anti-Monopoly Law of the People's Republic of China* (the "**Anti-Monopoly Law**") in order to prohibit monopolistic agreements entered into in the course of economic activities.
- Article 2 Business operators shall be prohibited from entering into any monopolistic agreements in the course of economic activities.
- "Monopolistic agreements" means any agreements, decisions or other concerted practices entered into between business operators or implemented by business operators organised by their industry association to exclude or restrict competition in violation of Articles 13, 14 or 16 of the Anti-Monopoly Law.
- "Agreements or decisions" shall include written and oral agreements or decisions.
- "Other concerted practices" means the essential existence of acts of coordination among the business operators in the absence of any express written or oral agreements or decisions.
- Article 3 The following factors shall be taken into consideration in determining the existence of other concerted practices:
- (1) whether the market behaviours of the business operators are consistent;
 - (2) whether the business operators have communicated their intentions or exchanged any information among themselves;

- (3) whether the business operators are able to provide reasonable explanations for their identical behaviours.

When determining the existence of other concerted practices, considerations shall also be given to the market structure, competition conditions, market changes, industry situations, etc. in the relevant market.

Article 4

Competing business operators shall be prohibited from entering into any of the following monopolistic agreements to restrict the production quantity or the sales quantity of products:

- (1) restricting the production quantity or restricting the production quantity of specific types or models of products by means of limiting the production quantity, fixing production quantity, or ceasing production, etc.;
- (2) restricting the quantity of sales of products or restricting the quantity of sales of specific types or models of products through refusing to supply, limiting the product quantity put into the market, etc.

Article 5

Competing business operators shall be prohibited from entering into any of the following monopolistic agreements to divide the sales market or the raw material procurement market:

- (1) dividing the product sales territories, sales targets, types and quantity of the products for sale;
- (2) dividing the procurement territories, types and quantity of the raw materials including crude materials, semi-finished products, spare parts and components, and relevant equipment, etc.;
- (3) dividing the suppliers of raw materials, including crude materials, semi-finished products, spare parts and components, and relevant equipment, etc.

Article 6

Competing business operators shall be prohibited from entering into any of the following monopolistic agreements to restrict the purchase of new technologies or new equipment or to restrict the development of new technologies or new products:

- (1) restricting the purchase or use of new technologies or new processes;
- (2) restricting the purchase, lease or use of new equipment;
- (3) restricting the investment or research and development of new technologies, new processes or new products;
- (4) refusing the use of new technologies, new processes or new equipment;
- (5) refusing to adopt new technical standards.

Article 7

Competing business operators shall be prohibited from entering into any of the following monopolistic agreements to jointly boycott transactions:

- (1) jointly refusing to supply or sell products to specific business operators;
 - (2) jointly refusing to procure products from or sell products of specific business operators;
 - (3) jointly requiring specific business operators to refrain from dealing with their competitors;
- Article 8 Save for price-related monopolistic agreements, the State Administration for Industry and Commerce shall determine, in accordance with laws, any other monopolistic agreements that are not covered in these Provisions.
- Article 9 Industry associations shall be prohibited from organising any business operators in their own industries to engage in any monopolistic agreement acts prohibited by these Provisions by the following means:
- (1) formulating and publishing charters, rules, decisions, circulars, and standards, etc. of the industry associations which contain content relating to the elimination or restriction of competition;
 - (2) calling, organising or coercing business operators in their own industries to enter into agreements, resolutions, minutes, and memoranda, etc. which contain content relating to the elimination or restriction of competition.
- Article 10 For any business operator who has infringed Articles 4 to 8 hereof by entering into and implementing a monopolistic agreement, the administrative authorities for industry and commerce shall order termination of such infringement, confiscate illegal proceeds, and impose a fine of no less than 1% but no more than 10% of its annual turnover for the preceding year. If the monopolistic agreement has not yet been implemented, a fine of no more than RMB500,000 may be imposed.
- For any industry association who has violated Article 9 hereof and organised business operators in his own industries to reach monopolistic agreements, the administrative authorities for industry and commerce may impose on such industry association a fine of no more than RMB 500,000. If the situation is serious, the administrative authorities for industry and commerce may request the authority for the registration and administration of social organisations to revoke the registration of such industry association in accordance with laws.
- The administrative authority of industry and commerce shall consider factors such as the nature, circumstances, gravity and duration of the infringement in determining the exact amount of a fine.
- Where the business operators act in collusion or the industry association organises collusion amongst the business operators but no monopolistic agreement has been entered into, the administration authorities of industry and commerce shall prevent such an agreement from being concluded without delay.

- The business operator who, on his own initiative, terminates any monopolistic agreement act may be granted a reduction of or immunity from sanction applicable to him by the administrative authorities for industry and commerce at their discretion.
- Article 11 A business operator which, on its own initiative, reports to the administrative authorities for industry and commerce the details of any monopolistic agreement entered into and provides important evidence may be granted a reduction of or exemption from sanction applicable to it by the administrative authorities for industry and commerce at their discretion.
- When the administrative authorities for industry and commerce decide to grant a reduction of or immunity from sanction, such decisions shall be made based on factors including the time order in which the business operators made reports on their own initiative, the importance of the evidence provided, relevant details about the conclusion and implementation of the agreement and the cooperation of the business operators with the investigation.
- Important evidence means evidence which plays a critical role for the initiation of the investigation or for the determination of monopolistic agreement acts by the administrative authorities for industry and commerce, including information about the business operators who participate in the monopolistic agreement, scope of the products involved, the content of and the means used to reach the agreement, details of implementation of the agreement, etc.
- Article 12 The business operator who is the first, on its own initiative, to report the details of the monopolistic agreement entered into, provide important evidence and actively provide full cooperation in the investigation shall be granted an exemption from sanction. Any other business operators who, on their own initiative, report to the administrative authorities for industry and commerce the details of the monopolist agreement entered into and provide important evidence may be granted a reduction of sanction at the discretion of the authorities.
- Article 13 For the purpose of Articles 11 and 12 of these Provisions, the expressions “a reduction of or an immunity from sanction” shall bear the meaning of a reduction of, or an immunity from the imposition of, fines as provided in Article 46 of the Anti-Monopoly Law.
- Article 14 Where a business operator is able to provide evidence proving that the concluded agreement meets the requirements under Article 15 of the Anti-Monopoly Law, upon the determination by the administrative authorities for industry and commerce, these Provisions shall not apply.
- Article 15 A business operator who objects to the administrative sanction imposed by or any other decisions made by an administrative authority of industry and commerce in accordance with these Provisions may apply for an administrative review or initiate an administrative litigation in accordance with laws.

- Article 16 The anti-monopoly law enforcement personnel under administrative authorities for industry and commerce shall perform their duties strictly in accordance with laws and the *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*.
- Any anti-monopoly law enforcement personnel of the administrative authorities for industry and commerce who commit any behaviour abusing powers, neglecting duties, malpractice for personal gains or disclosing any business secrets coming to their knowledge in the course of law enforcement shall be dealt with in accordance with relevant provisions.
- Article 17 These Provisions shall not apply to joint or concerted conduct performed by agricultural producers or rural economic organisations in their business activities, such as production, processing, sales, transportation and storage of agricultural products.
- Article 18 Products referred to in these Provisions shall include services.
- Article 19 The power of interpretation of these Provisions shall be vested in the State Administration for Industry and Commerce.
- Article 20 These Provisions shall take effect from 1 February 2011.