

# Competition Law in China

Laws, Regulations, and Cases

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# Table of Contents

PART A	<b>Laws 法律</b>	1
A-1	<b>Anti-Monopoly Law of the People's Republic of China (8/30/2007)</b> 中华人民共和国反垄断法（2007年8月30日）	3
A-2	<b>Criminal Law of the People's Republic of China (Articles 223, 225, and 226) (7/01/1979)</b> 中华人民共和国刑法第二百二十三条、二百二十五条和二百二十六条（1979年7月1日）	23
A-3	<b>Patent Law of the People's Republic of China (Article 48) (3/12/1984)</b> 中华人民共和国专利法第四十八条（1984年3月12日）	25
A-4	<b>Anti-Unfair Competition Law of the People's Republic of China (Excerpts) (9/02/1993)</b> 中华人民共和国反不正当竞争法（节选）（1993年9月2日）	26
A-5	<b>Foreign Trade Law of the People's Republic of China (Articles 2, 30, 32, and 33) (5/12/1994)</b> 中华人民共和国对外贸易法第二条、三十条、三十二条和三十三条（1994年5月12日）	30
A-6	<b>Price Law of the People's Republic of China (Articles 14, 40, and 41) (12/29/1997)</b> 中华人民共和国价格法第十四条、四十条和四十一条（1997年12月29日）	32
A-7	<b>Contract Law of the People's Republic of China (Articles 329 and 343) (3/15/1999) and Supreme People's Court Judicial Interpretation on Technology Contracts (11/30/2004)</b> 中华人民共和国合同法第三百二十九条和三百四十三条（1999年3月15日）以及最高人民法院关于技术合同的司法解释（11/30/2004）	35
A-8	<b>Bidding Law of the People's Republic of China (Excerpts) (8/30/1999)</b> 中华人民共和国招标投标法（节选）（1999年8月30日）	38

PART B	<b>Regulations 法规</b>	43
	<b>STATE COUNCIL 国务院法规</b>	45
B-1	<b>Regulation on Administrative Penalties for Pricing Violations (Excerpts) (7/10/1999)</b> 价格违法行为行政处罚规定（节选）（1999年7月10日）	45
B-2	<b>Regulation on the Administration of Import and Export of Technologies of the People's Republic of China (Articles 2, 27, and 29) (10/31/2001)</b> 中华人民共和国技术进出口管理条例第二条、二十七条和二十九条（2001年10月31日）	50
B-3	<b>Circular of the General Office of the State Council on the Main Functions and Constituent Members of the Anti-Monopoly Commission of the State Council (7/28/2008)</b> 国务院办公厅关于国务院反垄断委员会主要职责和组成人员的通知（2008年7月28日）	52
B-4	<b>Regulation of the State Council on the Notification Thresholds for Concentrations of Undertakings (8/03/2008)</b> 国务院关于经营者集中申报标准的规定（2008年8月3日）	55
B-5	<b>Guidelines on the Definition of the Relevant Market by the Anti-Monopoly Commission of the State Council (5/24/2009)</b> 国务院反垄断委员会关于相关市场界定的指南（2009年5月24日）	57
B-6	<b>Rules for the Calculation of Turnover for the Notification of Concentrations of Undertakings in the Financial Sector (7/15/2009)</b> 金融业经营者集中申报营业额计算办法（2009年7月15日）	68
B-7	<b>Circular of the General Office of the State Council Regarding the Institution of a Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (2/03/2011)</b> 国务院办公厅关于建立外国投资者并购境内企业安全审查制度的通知（2011年2月3日）	71
	<b>MOFCOM 商务部法规</b>	79
B-8	<b>Rules for the Notification of Concentrations of Undertakings (11/21/2009)</b> 经营者集中申报办法（2009年11月21日）	79
B-9	<b>Rules for the Review of Concentrations of Undertakings (11/24/2009)</b> 经营者集中审查办法（2009年11月24日）	87

B-10	<b>Interim Provisions on Asset or Business Divestiture during the Implementation of Concentrations of Undertakings (7/05/2010)</b> 关于实施经营者集中资产或业务剥离的暂行规定 (2010年7月5日)	94
B-11	<b>Provisions of the Ministry of Commerce on the Implementation of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (8/25/2011)</b> 商务部实施外国投资者并购境内企业安全审查制度的规定 (2011年8月25日)	102
B-12	<b>Interim Provisions for the Assessment of the Effects of Concentrations of Undertakings on Competition (8/29/2011)</b> 关于评估经营者集中竞争影响的暂行规定 (2011年8月29日)	111
B-13	<b>Interim Rules on the Investigation and Handling of Concentrations of Undertakings not Notified in Accordance with the Law (12/30/2011)</b> 未依法申报经营者集中调查处理暂行办法 (2011年12月30日)	119
B-14	<b>Anti-Monopoly Notification Form for Concentrations of Undertakings (6/06/2012)</b> 经营者集中反垄断审查申报表 (2012年6月6日)	126
B-15	<b>Provisions on Regulating Competition Activities in Foreign Investment and Cooperation (3/18/2013)</b> 规范对外投资合作领域竞争行为的规定 (2013年3月18日)	157
B-16	<b>Interim Rules on the Gathering of Evidence for Suspected Monopolistic Concentrations of Undertakings not Reaching the Notification Thresholds (Draft for Public Comment) (1/19/2009)</b> 关于对未达申报标准涉嫌垄断的经营者集中证据收集的暂行办法 (草案) (2009年1月19日)	160
B-17	<b>Interim Rules on the Investigation and Handling of Suspected Monopolistic Concentrations of Undertakings not Reaching the Notification Thresholds (Draft for Public Comment) (2/06/2009)</b> 关于对未达申报标准涉嫌垄断的经营者集中调查处理的暂行办法 (草案) (2009年2月6日)	166
B-18	<b>Provisions on the Imposition of Restrictive Conditions on Concentrations of Undertakings (Draft for Public Comment) (3/27/2013)</b> 关于经营者集中附加限制性条件的规定 (征求意见稿) (2013年3月27日)	172

	<b>SAIC 工商行政管理机关法规</b>	186
B-19	<b>Procedural Rules of the Administration for Industry and Commerce Regarding the Investigation and Handling of Cases Relating to Monopoly Agreements and Abuses of Dominant Market Positions (5/26/2009)</b> 工商行政管理机关查处垄断协议、滥用市场支配地位案件程序规定（2009年5月26日）	186
B-20	<b>Procedural Rules of the Administration for Industry and Commerce Regarding the Prohibition of Abuses of Administrative Power that Eliminate and/or Restrict Competition (5/26/2009)</b> 工商行政管理机关制止滥用行政权力排除、限制竞争行为程序规定（2009年5月26日）	197
B-21	<b>Rules of the Administration for Industry and Commerce on the Prohibition of Monopoly Agreements (12/31/2010)</b> 工商行政管理机关禁止垄断协议行为的规定（2010年12月31日）	201
B-22	<b>Rules of the Administration for Industry and Commerce on the Prohibition of Abuses of Dominant Market Position (12/31/2010)</b> 工商行政管理机关禁止滥用市场支配地位行为的规定（2010年12月31日）	208
B-23	<b>Rules of the Administration for Industry and Commerce on the Prohibition of Abuses of Administrative Power that Eliminate and/or Restrict Competition (12/31/2010)</b> 工商行政管理机关制止滥用行政权力排除、限制竞争行为的规定（2010年12月31日）	216
	<b>NDRC 国家发展和改革委员会法规</b>	222
B-24	<b>Anti-Price Monopoly Rules (12/29/2010)</b> 反价格垄断规定（2010年12月29日）	222
B-25	<b>Procedural Rules on Administrative Enforcement against Price Monopoly (12/29/2010)</b> 反价格垄断行政执法程序规定（2010年12月29日）	232
PART C	<b>Judicial Interpretations 司法解释</b>	241
C-1	<b>Rules by the Supreme People's Court on Certain Issues Relating to Application of Laws for Adjudicating Cases of Civil Disputes Caused by Monopoly Conduct (5/03/2012)</b> 最高人民法院关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定（2012年5月3日）	243

PART D	<b>Administrative Decisions 审查决定</b>	249
	<b>MOFCOM 商务部审查决定</b>	251
D-1	<b>MOFCOM Announcement [2008] No. 95 Regarding the Conditional Approval of InBev's Acquisition of Anheuser-Busch (11/18/2008)</b> 中华人民共和国商务部公告[2008]第95号(商务部关于附条件批准英博集团公司收购AB公司反垄断审查决定的公告)(2008年11月18日)	251
D-2	<b>MOFCOM Announcement [2009] No. 22 (MOFCOM Announcement Regarding the Prohibition of Coca-Cola's Acquisition of Huiyuan) (3/18/2009)</b> 中华人民共和国商务部公告[2009年]第22号(商务部关于禁止可口可乐公司收购中国汇源公司审查决定的公告)(2009年3月18日)	254
D-3	<b>MOFCOM Announcement [2009] No. 28 Regarding the Conditional Approval of Mitsubishi Rayon's Acquisition of Lucite International (4/24/2009)</b> 中华人民共和国商务部公告2009年第28号(商务部关于附条件批准日本三菱丽阳公司收购璐彩特国际公司反垄断审查决定的公告)(2009年4月24日)	259
D-4	<b>MOFCOM Announcement [2009] No. 76 Regarding the Conditional Approval of General Motors' Acquisition of Delphi (9/28/2009)</b> 中华人民共和国商务部公告2009年第76号(商务部关于附条件批准美国通用汽车公司收购美国德尔福汽车公司反垄断审查决定的公告)(2009年9月28日)	265
D-5	<b>MOFCOM Announcement [2009] No. 77 Regarding the Conditional Approval of Pfizer's Acquisition of Wyeth (9/29/2009)</b> 中华人民共和国商务部公告[2009]第77号(关于附条件批准辉瑞公司收购惠氏公司反垄断审查决定的公告)(2009年9月29日)	272
D-6	<b>MOFCOM Announcement [2009] No. 82 Regarding the Conditional Approval of Panasonic's Acquisition of Sanyo (10/30/2009)</b> 中华人民共和国商务部[2009年]第82号公告(关于附条件批准松下公司收购三洋公司反垄断审查决定的公告)(2009年10月30日)	278

D-7	<p><b>MOFCOM Announcement [2010] No. 53 Regarding the Conditional Approval of Novartis AG's Acquisition of Alcon Inc. (8/13/2010)</b>                      中华人民共和国商务部公告[2010年]第53号（关于附条件批准诺华股份公司收购爱尔康公司反垄断审查决定的公告）（2010年8月13日）</p>	289
D-8	<p><b>MOFCOM Announcement [2011] No. 33 Regarding the Conditional Approval of the Acquisition of Public Joint-Stock Company Silvinit by Public Joint-Stock Company Uralkali (6/02/2011)</b>                      中华人民共和国商务部[2011]第33号公告（关于附条件批准乌拉尔开放型股份公司吸收合并谢尔维尼特开放型股份公司反垄断审查决定的公告）（2011年6月2日）</p>	295
D-9	<p><b>MOFCOM Announcement [2011] No. 73 Regarding the Conditional Approval for the Acquisition of Savio Macchine Tessili S.P.A. by Penelope Company Limited (10/31/2011)</b>                      商务部公告2011年第73号关于附条件批准佩内洛普有限责任公司收购萨维奥纺织机械股份有限公司反垄断审查决定的公告（2011年10月31日）</p>	302
D-10	<p><b>MOFCOM Announcement [2011] No. 74 Regarding the Anti-Monopoly Review Decision for Conditional Approval of the Contemplated Joint Ventures between GE (China) Co., Ltd. and China Shenhua Coal to Liquid and Chemical Co., Ltd. (11/10/2011)</b>                      商务部公告2011年第74号关于附条件批准通用电气（中国）有限公司与中国神华煤制油化工有限公司设立合营企业反垄断审查决定的公告（2011年11月10日）</p>	308
D-11	<p><b>MOFCOM Announcement [2011] No. 90 Regarding the Conditional Approval of the Acquisition of the Hard Disk Drive Business of Samsung Electronics Co., Ltd. by Seagate Technology plc (12/12/2011)</b>                      商务部公告2011年第90号关于附条件批准希捷科技公司收购三星电子有限公司硬盘驱动器业务反垄断审查决定的公告（2011年12月12日）</p>	314
D-12	<p><b>MOFCOM Announcement [2012] No. 6 Regarding the Conditional Approval of the Establishment of a Joint Venture by Henkel Hong Kong and Tiande Chemical (2/09/2012)</b>                      商务部公告2012年第6号关于附加限制性条件批准汉高香港与天德化工组建合营企业经营者集中反垄断审查决定的公告（2012年2月9日）</p>	326



D-13	<b>MOFCOM Announcement [2012] No. 9 Regarding the Conditional Approval of the Acquisition of Hitachi Global Storage Technologies by Western Digital Corp. (3/02/2012)</b> 商务部公告2012年第9号 关于附加限制性条件批准西部数据收购日立存储经营者集中反垄断审查决定的公告 (2012年3月2日)	332
D-14	<b>MOFCOM Announcement [2012] No. 25 Regarding the Conditional Approval of Google's Acquisition of Motorola Mobility (5/19/2012)</b> 商务部公告2012年第25号 关于附加限制性条件批准谷歌收购摩托罗拉移动经营者集中反垄断审查决定的公告 (2012年5月19日)	345
D-15	<b>MOFCOM Announcement [2012] No. 35 Regarding the Conditional Approval of the Acquisition of Goodrich by United Technologies (6/15/2012)</b> 商务部公告2012年第35号 关于附加限制性条件批准联合技术收购古德里奇经营者集中反垄断审查决定的公告 (2012年6月15日)	355
D-16	<b>MOFCOM Announcement [2012] No. 49 Regarding the Conditional Approval of Walmart's Acquisition of 33.6% of Newheight Holdings (8/13/2012)</b> 商务部公告2012年第49号 关于附加限制性条件批准沃尔玛公司收购纽海控股33.6%股权经营者集中反垄断审查决定的公告 (2012年8月13日)	362
D-17	<b>MOFCOM Announcement [2012] No. 87 Regarding the Conditional Approval of the Joint Venture between ARM Holdings, Giesecke &amp; Devrient, and Gemalto (12/06/2012)</b> 商务部公告2012年第87号 关于附加限制性条件批准安谋公司、捷德公司和金雅拓公司组建合营企业经营者集中反垄断审查决定的公告 (2012年12月6日)	368
D-18	<b>MOFCOM Announcement [2013] No. 20 Regarding the Conditional Approval of the Acquisition of Xstrata plc by Glencore International plc (4/16/2013)</b> 商务部公告2013年第20号关于附加限制性条件批准嘉能可国际公司收购斯特拉塔公司经营者集中反垄断审查决定的公告 (2013年4月16日)	373
D-19	<b>MOFCOM Announcement [2013] No. 22 Regarding the Conditional Approval of the Acquisition of a 100% Equity Interest in Gavilon Holdings, LLC by Marubeni Corporation (4/22/2013)</b> 商务部公告2013年第22号 关于附加限制性条件批准丸红公司收购高鸿公司100%股权经营者集中反垄断审查决定的公告 (2013年4月22日)	420

D-20	<b>MOFCOM Announcement [2013] No. 58 Regarding the Conditional Approval of the Acquisition of Gambro AB by Baxter International Inc. (8/13/2013)</b> 商务部公告2013年第58号 关于附加限制性条件批准美国百特国际有限公司收购瑞典金宝公司经营者集中反垄断审查决定的公告（2013年8月13日）	431
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## Anti-Monopoly Law of the People's Republic of China

### 中华人民共和国反垄断法

(Adopted by the Standing Committee of the 10th National People's Congress on August 30, 2007, effective as of August 1, 2008)

(第十届全国人民代表大会常务委员会于2007年8月30日审议通过，自2008年8月1日起施行)

<p>第一章 总则</p>	<p>Chapter I General Provisions</p>
<p>第一条</p> <p>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。</p>	<p><b>Article 1</b></p> <p>This law is enacted for the purposes of preventing and prohibiting monopoly conduct, safeguarding fair market competition, improving efficiency of economic operations, protecting consumers and the public interest, and promoting the healthy development of the socialist market economy.</p>
<p>第二条</p> <p>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。</p>	<p><b>Article 2</b></p> <p>This law is applicable to monopoly conduct in economic activities within the territory of the People's Republic of China. This law is also applicable to monopoly conduct outside the territory of the People's Republic of China that has the effect of eliminating and/or restricting competition in the domestic market of the People's Republic of China.</p>

(Continued)

第一章 总则	<b>Chapter I General Provisions</b>
<p>第三条</p> <p>本法规定的垄断行为包括：</p> <p>(一) 经营者达成垄断协议；</p> <p>(二) 经营者滥用市场支配地位；</p> <p>(三) 具有或者可能具有排除、限制竞争效果的经营者集中。</p>	<p><b>Article 3</b></p> <p>“Monopoly conduct” is defined in this law as the following conduct:</p> <p>(1) monopoly agreements among undertakings;</p> <p>(2) abuse of dominant market positions by undertakings; and</p> <p>(3) concentrations of undertakings that have or may have the effect of eliminating and/or restricting competition.</p>
<p>第四条</p> <p>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。</p>	<p><b>Article 4</b></p> <p>The State shall formulate and implement competition rules compatible with the socialist market economy, improve macroeconomic supervision and control, and develop a united, open, competitive and orderly market system.</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><b>Article 5</b></p> <p>Undertakings may, through fair competition and voluntary alliances, legally implement concentrations, to expand their business scale and improve 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><b>Article 6</b></p> <p>Undertakings with a dominant market position shall not abuse their dominant position to eliminate and/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><b>Article 7</b></p> <p>In industries that have a vital bearing on the lifelines of the national economy and national security, which are controlled by state-owned enterprises, and in industries in which monopolies are granted by law, the State shall protect the lawful business activities of those enterprises, supervise and control their conduct and prices for the products and services in accordance with the law, protect the interests of consumers, and promote technological progress.</p>

	<p>The undertakings in the industries specified in the preceding paragraph shall conduct their business in accordance with the law, act in good faith, observe strict self-discipline, subject themselves to supervision from the public, and shall not impair the interests of consumers by exploitation of their control positions or granted monopolies.</p>
<p>第八条 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><b>Article 8</b> Administrative agencies and organizations designated by laws and regulations to manage public affairs shall not abuse their administrative power to eliminate and/or restrict competition.</p>
<p>第九条 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： (一) 研究拟订有关竞争政策； (二) 组织调查、评估市场总体竞争状况，发布评估报告； (三) 制定、发布反垄断指南； (四) 协调反垄断行政执法工作； (五) 国务院规定的其他职责。 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><b>Article 9</b> The State Council will set up the Anti-Monopoly Commission ("AMC"), which is responsible for organizing, coordinating, and supervising anti-monopoly-related activities, and performs the following functions: (1) researching and formulating competition policies; (2) organizing investigations and evaluations of the overall market competitive conditions and publishing evaluation reports; (3) formulating and publishing anti-monopoly guidelines; (4) coordinating administrative enforcement of the Anti-Monopoly Law; and (5) other functions specified by the State Council. The organization and working rules of the Anti-Monopoly Commission shall be formulated by the State Council.</p>

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<p><b>第十条</b></p> <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><b>Article 10</b></p> <p>The Anti-Monopoly Enforcement Authority designated by the State Council to undertake the responsibilities of Anti-Monopoly Law enforcement (hereinafter referred to as Anti-Monopoly Enforcement Authority under the State Council, “AMEA”) is responsible for the enforcement of the Anti-Monopoly Law.</p> <p>The AMEA, if necessary, may authorize corresponding organs of the People’s Governments of provinces, autonomous regions, and provincial level municipalities to be responsible for relevant anti-monopoly enforcement activities in accordance with this law.</p>
<p><b>第十一条</b></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><b>Article 11</b></p> <p>Trade associations shall strengthen industry self-discipline, provide guidance for undertakings in relevant industries to compete lawfully, and maintain the order of market competition.</p>
<p><b>第十二条</b></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><b>Article 12</b></p> <p>“Undertaking” in this law refers to a natural person, a legal person, or any other organization that engages in the production or operation of products or provision of services.</p> <p>“Relevant market” in this law refers to the products and geographic scope within which the undertakings compete against each other during a certain period of time with respect to specific products or services (hereinafter “products”).</p>
<p><b>第二章 垄断协议</b></p>	<p><b>Chapter II Monopoly Agreements</b></p>
<p><b>第十三条</b></p> <p>禁止具有竞争关系的经营者达成下列垄断协议:</p> <p>(一) 固定或者变更商品价格;</p> <p>(二) 限制商品的生产数量或者销售数量;</p>	<p><b>Article 13</b></p> <p>The following monopoly agreements among competing undertakings shall be prohibited:</p> <p>(1) fixing or changing prices of products;</p>

<p>(三) 分割销售市场或者原材料采购市场；</p> <p>(四) 限制购买新技术、新设备或者限制开发新技术、新产品；</p> <p>(五) 联合抵制交易；</p> <p>(六) 国务院反垄断执法机构认定的其他垄断协议。</p> <p>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。</p>	<p>(2) restricting output or sales volume of products;</p> <p>(3) allocating sales market or raw material purchasing market;</p> <p>(4) restricting the purchase of new technology or new equipment, or restricting the development of new technologies or new products;</p> <p>(5) jointly boycotting; and</p> <p>(6) other monopoly agreements as determined by the AMEA.</p> <p>“Monopoly agreement” in this law refers to agreements, decisions, or other concerted conducts that eliminate and/or restrict competition.</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><b>Article 14</b></p> <p>The following monopoly agreements between undertakings and their trading partners shall be prohibited:</p> <p>(1) fixing the resale price to a third party;</p> <p>(2) restricting the minimum price for resale to a third party; or</p> <p>(3) other monopoly agreements determined by the AMEA.</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><b>Article 15</b></p> <p>An agreement shall be exempted from the application of Articles 13 and 14 if the undertakings prove that it was entered into for one of the following objectives:</p> <p>(1) improving techniques, or researching and developing new products;</p> <p>(2) upgrading product quality, reducing costs, improving efficiency, unifying product specifications and standards, or realizing job specialization;</p> <p>(3) improving operational efficiency and enhancing the competitiveness of small and medium-sized enterprises;</p> <p>(4) realizing public welfare such as conserving energy, protecting the environment, and providing disaster relief;</p>

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<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>(5) mitigating the severe decrease of sales volume or excessive overstock during economic recessions;</p> <p>(6) protecting legitimate interests in foreign trade and economic cooperation; or</p> <p>(7) other circumstances stipulated by laws and regulations of the State Council.</p> <p>Where a monopoly agreement falls under items (1) to (5) in the preceding paragraph, the undertakings shall, in order to be exempted from application of Articles 13 and 14 of this law, also prove that the agreement will not substantially restrict competition in the relevant market and will enable the consumers to share the benefits derived from the agreement.</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><b>Article 16</b></p> <p>Trade associations shall not organize industry undertakings to engage in any monopoly conduct prohibited under this Chapter.</p>
<p>第三章 滥用市场支配地位</p>	<p><b>Chapter III Abuse of Dominant Market Position</b></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>(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><b>Article 17</b></p> <p>Undertakings with a dominant market position are prohibited from engaging in any of the following conduct that abuses their dominant market position:</p> <p>(1) selling products at unfairly high prices or buying products at unfairly low prices;</p> <p>(2) without valid justification, selling products at prices below cost;</p> <p>(3) without valid justification, refusing to deal with trading partners;</p> <p>(4) without valid justification, restricting trading partners to deal exclusively with themselves or with undertakings designated by them;</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>(5) without valid justification, tying products or imposing other unreasonable trading conditions;</p> <p>(6) without valid justification, according differentiated treatment in regard to transaction conditions such as prices to equivalent trading partners; and</p> <p>(7) other activities determined by the AMEA as abuse of dominant market positions.</p> <p>“Dominant market position” in this law refers to a market position that enables an undertaking to control the price or quantity of products or other trading conditions in the relevant market or to impede 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><b>Article 18</b></p> <p>A dominant market position shall be determined based on the following factors:</p> <p>(1) the market share of the undertaking and competitive conditions in the relevant market;</p> <p>(2) the ability of the undertaking to control the sales market or the raw material purchasing market;</p> <p>(3) the financial and technological capabilities of the undertaking;</p> <p>(4) the degree of reliance on the undertaking by other undertakings in transactions;</p> <p>(5) the difficulty for other undertakings to enter the relevant market; and</p> <p>(6) other factors relevant to the determination of the undertaking's dominant market position.</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><b>Article 19</b></p> <p>Undertakings can be presumed to have a dominant market position if any of the following conditions is fulfilled:</p> <p>(1) the market share of one undertaking accounts for more than half of the relevant market;</p>

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<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>(2) the combined market share of two undertakings accounts for two-thirds of the relevant market; or</p> <p>(3) the combined market share of three undertakings accounts for three-quarters of the relevant market.</p> <p>Among those undertakings that fall under item (2) or (3) of the preceding paragraph, an undertaking whose market share is less than 10% shall not be presumed to have a dominant market position.</p> <p>Where the undertaking presumed to have a dominant market position provides evidence of the absence of a dominant market position, such undertaking shall not be determined to hold a dominant market position.</p>
<p>第四章 经营者集中</p>	<p><b>Chapter IV Concentrations of Undertakings</b></p>
<p>第二十条 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><b>Article 20</b></p> <p>Concentrations of undertakings refer to the following situations:</p> <p>(1) mergers;</p> <p>(2) acquisition of control over other undertakings through the acquisition of equity or assets; or</p> <p>(3) acquisition of control over other undertakings or the capacity to exercise decisive influence on other undertakings by contract or any other means.</p>
<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><b>Article 21</b></p> <p>A prior notification shall be filed with the AMEA by the undertaking if the concentration exceeds the thresholds for notification stipulated by the State Council. The concentration transaction shall not be closed without prior notification.</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>(一) 参与集中的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><b>Article 22</b></p> <p>In any of the following situations, undertakings may choose not to file the notification with the AMEA:</p> <p>(1) one undertaking involved in the concentration owns more than 50% of the voting shares or assets of every other undertaking; or</p> <p>(2) an undertaking not involved in the concentration owns more than 50% of the voting shares or assets of each undertaking that is involved in the concentration.</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><b>Article 23</b></p> <p>Undertakings that make a notification of a concentration shall submit the following documents and information to the AMEA:</p> <p>(1) a notification letter;</p> <p>(2) an explanation regarding the effects that the concentration may have on competitive conditions in the relevant market;</p> <p>(3) concentration agreement(s);</p> <p>(4) financial reports, audited by a certified public accountant, of the undertakings concerned by the concentration in the previous fiscal year; and</p> <p>(5) other information required by the AMEA.</p> <p>The notification letter shall contain the names of the undertakings concerned by the concentration, their domiciles, business scopes, the proposed date on which the concentration is to be implemented, and other information stipulated by the AMEA.</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><b>Article 24</b></p> <p>Where the documents and materials submitted are not complete, the undertakings shall submit supplemental documents and materials within the time limit stipulated by the AMEA. If the undertakings fail to do so within the provided time limit, no notification shall be deemed made.</p>

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<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><b>Article 25</b></p> <p>The AMEA shall conduct a preliminary review of the filed notification. It shall decide whether to initiate further review within 30 days from the date of receipt of the documents and materials as required by Article 23 of this law, and notify the undertakings of that decision in writing. Before the decision is made by the AMEA, the undertakings concerned shall be prohibited from implementing the concentration.</p> <p>Where the AMEA decides that no further review will be conducted or where the AMEA makes no decision at the expiry of the specified time limit, the undertakings may implement the concentration.</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>(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><b>Article 26</b></p> <p>If the AMEA decides to conduct a further review, it shall complete the review within 90 days from the date of its decision for further review, and decide whether to approve or prohibit the concentration, and notify the undertaking of its decision in writing. If the AMEA decides to prohibit the concentration, it shall explain the reasons thereof. The undertakings shall be prohibited from implementing the concentration during the review period.</p> <p>Under any of the following circumstances, the AMEA may extend the time limit stipulated in the preceding paragraph, provided that the extension does not exceed 60 days at the maximum:</p> <ol style="list-style-type: none"> <li>(1) the undertakings agree to extend the review period;</li> <li>(2) the documents submitted by the notifying undertakings are inaccurate and need further verification; or</li> <li>(3) the relevant circumstances have significantly changed after notification by the undertakings.</li> </ol>

	Where the AMEA fails to take a decision at the expiry of the specified period of time, the undertaking may implement the concentration.
<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>(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><b>Article 27</b></p> <p>The following factors shall be considered in the review of concentrations:</p> <p>(1) the market shares of the undertakings concerned by the concentration in the relevant market and their ability to control the market;</p> <p>(2) the level of concentration in the relevant market;</p> <p>(3) the effect of the concentration on the market entry and the progress of technologies;</p> <p>(4) the effect of the concentration on consumers and other undertakings;</p> <p>(5) the effect of the concentration on the development of the national economy; and</p> <p>(6) other factors affecting market competition as determined by the AMEA.</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。</p>	<p><b>Article 28</b></p> <p>Where a concentration of undertakings results in or may result in the effect of eliminating and/or restricting market competition, the AMEA shall make a decision to prohibit the concentration. However, the AMEA may decide not to prohibit the concentration if the undertakings involved can prove either that the positive effects of the concentration exceed the adverse effects, or that the concentration is in the public interest.</p>
<p>第二十九条</p> <p>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。</p>	<p><b>Article 29</b></p> <p>Where a concentration is not prohibited, the AMEA may impose restrictive conditions to mitigate the adverse effects of the concentration on competition.</p>

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<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><b>Article 30</b></p> <p>The AMEA shall publicize, in a timely manner, decisions to prohibit concentrations or decisions to impose restrictive conditions to concentrations.</p>
<p>第三十一条</p> <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><b>Article 31</b></p> <p>In addition to reviews of concentrations stipulated by this law, mergers with or acquisitions of domestic companies by foreign investors or other forms of concentration involving foreign capital, which implicate national security, shall also undergo a national security review according to relevant laws and regulations.</p>
<p>第五章 滥用行政权力排除、限制竞争</p>	<p><b>Chapter V Prohibition of Abuses of Administrative Powers to Restrict Competition</b></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><b>Article 32</b></p> <p>Administrative agencies and organizations designated by laws and regulations to manage public affairs shall not abuse their administrative powers by requiring, or requiring in any disguised form, organizations or individuals to deal, purchase, or use products provided by designated undertakings.</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><b>Article 33</b></p> <p>Administrative agencies and organizations designated by laws and regulations to manage public affairs shall not abuse their administrative powers to hamper the free movement of products among regions by employing one of the following behaviors:</p> <p>(1) setting discriminatory fee items, implementing discriminatory fee standards, or setting discriminatory prices for products originating from other regions;</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>(2) imposing technical requirements or inspection standards on products originating from other regions that are different from those on similar local products, or taking discriminatory technical measures, such as repeated inspection or certification on products originating from other regions, so as to restrict the entry of products originating from other regions into the local market;</p> <p>(3) creating administrative licensing procedures targeting products from other regions to restrict the access of those products to the local market;</p> <p>(4) setting up checkpoints on roads to block either the entry of products originating from other regions or the exit of local products; or</p> <p>(5) other acts preventing the free flow of products among regions.</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><b>Article 34</b></p> <p>Administrative agencies and organizations designated by laws and regulations to manage public affairs shall not abuse their administrative powers to exclude or restrict the participation of undertakings from other regions in local bidding activities by imposing discriminatory qualification requirements or assessment standards or by failing to publish information in accordance with 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><b>Article 35</b></p> <p>Administrative agencies and organizations designated by laws and regulations to manage public affairs shall not abuse their administrative powers through the use of discriminatory treatment to exclude or restrict either investment in their region or the establishment of local branches by undertakings from other regions.</p>

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<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><b>Article 36</b></p> <p>Administrative agencies and organizations designated by laws and regulations to manage public affairs shall not abuse their administrative powers to compel undertakings to engage in monopoly conduct that is prohibited under 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><b>Article 37</b></p> <p>Administrative agencies shall not abuse their administrative power to promulgate regulations containing provisions that eliminate and/or restrict competition.</p>
<p>第六章 对涉嫌垄断行为的调查</p>	<p><b>Chapter VI The Investigation of Suspicious Monopoly Conduct</b></p>
<p>第三十八条</p> <p>反垄断执法机构依法对涉嫌垄断行为进行调查。</p> <p>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。</p> <p>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。</p>	<p><b>Article 38</b></p> <p>The AMEA shall investigate suspicious monopoly conduct in accordance with the law.</p> <p>Any entity or individual may report suspected monopoly conduct that is in violation of this law to the AMEA. The AMEA shall keep the name of the informer confidential.</p> <p>The AMEA shall conduct the necessary investigation for those reports that are in writing and contain related 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><b>Article 39</b></p> <p>When investigating suspected monopoly conduct, the AMEA can take the following measures:</p> <ol style="list-style-type: none"> <li>(1) conduct on-premise inspections of the place of business of the investigated undertaking or other relevant places;</li> <li>(2) question the investigated undertaking, interested parties, and other relevant entities and individuals, requiring them to provide relevant information;</li> </ol>



<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>(3) examine or copy relevant documents and information including related documentation, contracts, accounting books, business mails, and electronic data, etc. of the investigated undertaking, interested parties, and other relevant entities or individuals;</p> <p>(4) seal up and detain relevant evidence; and</p> <p>(5) inquire about the bank accounts of the undertakings.</p> <p>Before taking any of the measures stipulated in the preceding paragraph, the enforcement official shall report in writing to the principal of the AMEA and obtain approval.</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。</p> <p>执法人员进行询问和调查，应当制作笔录，并由被询问人或者被调查人签字。</p>	<p><b>Article 40</b></p> <p>When investigating suspected monopoly conduct, there shall be at least two law enforcement officials, and they shall present valid documents showing their authority to carry out the investigation.</p> <p>The law enforcement officials shall make a written record of the inquiry and investigation, and such report shall be signed by the inquired or investigated person.</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><b>Article 41</b></p> <p>The AMEA and its officials shall keep confidential the business secrets obtained in the course of enforcement.</p>
<p>第四十二条</p> <p>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。</p>	<p><b>Article 42</b></p> <p>The investigated undertakings, interested parties, and other relevant entities and individuals shall cooperate with the AMEA, and shall not reject or obstruct the investigation conducted by the AMEA.</p>

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<p>第四十三条</p> <p>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。</p>	<p><b>Article 43</b></p> <p>The investigated undertakings and interested parties have the right to submit statements. The AMEA shall hear the opinions of the investigated undertakings and interested parties and conduct necessary verification of the alleged facts, reasons, and evidence.</p>
<p>第四十四条</p> <p>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。</p>	<p><b>Article 44</b></p> <p>Where the AMEA, after investigation and verification of the suspected monopoly conduct determines that such conduct constitutes a monopoly conduct, it shall make a decision in accordance with the law and may publicize the decision.</p>
<p>第四十五条</p> <p>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。</p> <p>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。</p> <p>有下列情形之一的，反垄断执法机构应当恢复调查：</p> <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>	<p><b>Article 45</b></p> <p>During the investigation of the suspected monopoly conduct, the AMEA may suspend the investigation if the investigated undertakings commit to take concrete measures within the time limit as approved by the AMEA to eliminate the effects of such suspected conduct. The decision to suspend the investigation shall state the concrete commitments by the investigated undertakings.</p> <p>Where the AMEA has decided to suspend the investigation, the AMEA shall supervise the implementation of the commitments by the relevant undertakings. If the undertakings implement the commitments, the AMEA may terminate the investigation.</p> <p>However, the AMEA shall resume its investigation if any of the following occurs:</p> <ol style="list-style-type: none"> <li>(1) the undertakings fail to implement the commitments;</li> <li>(2) the facts on which the decision to suspend the investigation was based have undergone significant changes; or</li> </ol>

	(3) the decision to suspend the investigation was based on incomplete or inaccurate information submitted by the undertakings.
第七章 法律责任	<b>Chapter VII Legal Liability</b>
<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><b>Article 46</b></p> <p>Where undertakings reach and implement a monopoly agreement in violation of the relevant provisions of this law, the AMEA shall order the undertakings to cease and desist such acts, confiscate the illegal gains, and impose a fine of more than 1% but less than 10% of the total turnover of the undertaking in the previous year; if the monopoly agreement has not been implemented, a fine of less than RMB 500,000 may be imposed.</p> <p>If an undertaking involved in a monopoly agreement reports its monopoly conduct to the AMEA and provides material evidence, the AMEA may grant a reduced penalty or an exemption from penalty at the discretion of the AMEA.</p> <p>Where trade associations organize the undertakings in the relevant industry to conclude monopoly agreements in violation of this law, the AMEA may impose a fine of less than RMB 500,000; in serious circumstances, the Registration and Administration Authority for Social Organizations may cancel their registration in accordance with the law.</p>
<p>第四十七条</p> <p>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。</p>	<p><b>Article 47</b></p> <p>Where an undertaking abuses its dominant market position in violation of the relevant provisions of this law, the AMEA shall order the undertaking to cease and desist such acts, confiscate the illegal gains, and impose a fine of more than 1% but less than 10% of the total turnover of the undertaking in the previous year.</p>

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<p>第四十八条</p> <p>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。</p>	<p><b>Article 48</b></p> <p>Where undertakings implement concentrations in violation of the relevant provisions of this law, the AMEA shall order the undertakings to stop implementing the concentration, to dispose of their stock or assets within a specified time limit, to sell their business within a specified time limit, to adopt other necessary measures to restore the market situation before the concentration, and a fine of less than RMB 500,000 may be imposed.</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><b>Article 49</b></p> <p>When determining the amount of fines pursuant to Article 46, Article 47, and Article 48, the AMEA shall consider factors such as the nature, seriousness, and duration of the illegal act.</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><b>Article 50</b></p> <p>Undertakings that implement monopoly conduct and cause damages to others shall bear civil liability in accordance with 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><b>Article 51</b></p> <p>Administrative agencies and organizations designated by laws and regulations to manage public affairs shall be admonished by their superior agencies or departments if they abuse their administrative power to eliminate and/or restrict competition; the persons in charge and the individuals who are directly responsible shall be disciplined in accordance with the law. The AMEA may make a proposal on handling of the matter to the relevant superior authority.</p> <p>Where other laws or administrative regulations provide for the handling of abuses of administrative power by administrative agencies and organizations designated by laws and regulations to manage public affairs, those provisions shall apply.</p>

<p><b>第五十二条</b></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><b>Article 52</b></p> <p>For those undertakings that refuse to submit related materials and information, submit fraudulent materials or information, conceal, destroy, or remove evidence, or refuse or obstruct investigations in any other way, the AMEA shall ask them to remedy the situation. A fine of less than RMB 20,000 may be imposed on individuals, and a fine of less than RMB 200,000 may be imposed on organizations; and in the case of a serious situation, the AMEA may impose fines from RMB 20,000 to RMB 100,000 against individuals or fines from RMB 200,000 to RMB 1 million against organizations; criminal liability may be pursued if a violation of criminal law occurs.</p>
<p><b>第五十三条</b></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><b>Article 53</b></p> <p>Where the undertakings are dissatisfied by the decisions made by the AMEA pursuant to Articles 28 and 29 of this law, they may first apply for administrative review; if they are still not satisfied with the decision of the administrative review, they may file an administrative lawsuit in accordance with the law.</p> <p>Where the undertakings are dissatisfied by any decision made by the AMEA other than the decisions specified in the preceding paragraph, the parties may apply for an administrative review or file an administrative lawsuit.</p>
<p><b>第五十四条</b></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><b>Article 54</b></p> <p>Where the employees from the AMEA abuse their power, neglect their duties, receive bribes and cheat, or disclose business secrets obtained during their enforcement activities, which constitutes a crime, criminal liability shall be pursued according to the law; if their conduct does not constitute a crime, administrative penalties shall be given.</p>

第八章 附则	<b>Chapter VIII Supplementary Provisions</b>
<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><b>Article 55</b></p> <p>This law is not applicable to the conduct of undertakings that exercise their intellectual property rights in accordance with the intellectual property laws and relevant administrative regulations; however, this law is applicable to the conduct of undertakings that abuse their intellectual property rights, eliminating and/or restricting competition.</p>
<p>第五十六条</p> <p>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。</p>	<p><b>Article 56</b></p> <p>This law is not applicable to alliances or other concerted conduct of farmers and rural economic organizations in such operational activities as production, processing, sales, transportation, and storage of agricultural products.</p>
<p>第五十七条</p> <p>本法自2008年8月1日起施行。</p>	<p><b>Article 57</b></p> <p>This law shall become effective as of August 1, 2008.</p>