

# One Month to Adapt Your Business to China's New Anti-Monopoly Law

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On 24 June 2022, China's Congress passed the amendment to China's *Anti-Monopoly Law* ("AML"), which will come into force on 1 August 2022. Businesses will have one month to adapt to this new set of, extensively revised, competition rules in China. The new AML particularly matters your distribution systems and M&As. This alert will reflect these key new rules and some other important changes.

## I. Vertical Agreements: Rebuttable RPM and the Safe Harbor

The new AML has radically changed the regulation landscape of vertical monopoly agreements. One of the most significant revisions is that it partly confirms the approach taken by Chinese courts that the illegality of resale price maintenance ("RPM") is rebuttable. In addition, the new AML shrinks the scope of illegal vertical agreements by establishing safe harbor regime.

### ● RPM becomes rebuttable but will still be risky in China

Article 18(1) of the new AML still prohibits RPM, but Article 18(2) provides that RPM will not be prohibited if undertakings can prove that the RPM agreements do not have anti-competitive effect. This is arguably the most fundamental amendment of the AML as it seemingly overturns the long-perceived notion of Chinese public enforcement that RPM is *per se* illegal.

Previously, there was a long-existing controversy over the approach to deal with RPM in China: while Chinese courts traditionally held that evidence of anti-competitive effect is essential to an RPM claim, public enforcement authorities have been sending out penalty decisions without addressing the agreement's anti-competitive effects. The debate intensified sharply with the Yutai case (2018)<sup>2</sup>. With the new amendment, some therefore argues that the new AML basically gives permission to RPM and RPM is not *per se* illegal in China now.

Encouraging as this may be, a rebuttable illegal presumption is nowhere near a free pass. In addition, considering the grave difficulty of demonstrating anti-competitive effect in an RPM case (in history, most plaintiffs failed to prove the existence of anti-competitive effect in RPM litigations due to the courts' rule of reason approach and the plaintiffs' burden of proof), when the burden of proof shifts to the undertakings engaging in RPM, the illegal presumption may *de facto* not be rebuttable. This is more obvious in public enforcement cases.

Nonetheless, it does provide possibilities for undertakings to escape from hefty penalties, and as a matter of fact, lately the Chinese public enforcement authorities have been more cautious with RPM cases and targeting mainly giant or leading companies in their industries. It is also possible that the authorities may require complainants to submit evidence on anti-competitive effect when they report RPM. Another practical consequence may be that as RPM is presumed to be illegal and anti-competitive, companies aim to annul RPM agreements for illegality may stand a better chance of winning in civil courts since the new AML says that the defendants bear the burden of proof. We will see more economic analysis is required in this regard.

<sup>2</sup> For a detailed explanation of the Yutai case and other relevant RPM cases, please see Jet Deng, Ken Dai and Rangji He. "Yutai: A Landmark Case on Resale Price Maintenance in China — The Divergence in Public and Private Enforcement is Now Institutionalized." *CPI*, <https://www.competitionpolicyinternational.com/yutai-a-landmark-case-on-resale-price-maintenance-in-china-the-divergence-in-public-and-private-enforcement-is-now-institutionalized/#>.

- **Safe harbors for vertical monopoly agreements**

Article 18(3) of the new AML provides that vertical monopoly agreements will not be prohibited if the undertakings pass the market share test and met certain conditions to be set by the State Administration for Market Regulation (“SAMR”).

The wording of the clause seems to cover all types of vertical agreements including even RPM, yet the details of the rules are not clear now and will be formulated later by SAMR in implementation guidelines. With reference to previous antitrust guidelines, it is possible that the market share threshold may be set around 30%. As such, the safe harbors will provide more clarities and assurance for small companies doing business in China.

- **Hub-and-spoke cartel**

Article 19 of the new AML expressly prohibits organizing and assisting in the execution of monopoly agreements, covering hence hub-and-spoke cartel, and provides same legal liabilities for both the hub and the spokes. In contrast, in some previous cases, the hub was not penalized due to lack of clear rules in the old AML.

The new rule against hub-and-spoke cartel should be studied carefully by businesses who runs exclusive or selective distribution system in China. They need to be wary of not communicating competitively sensitive information of one distributor to another, particularly when passive sales are made by one distributor to the territory or customer of another distributor.

## II. Merger Control: New Procedures and Heavier Fines for Gun-Jumping

The new AML has made certain substantial changes to the merger control system in China. It not only incorporates the provisions previously scattered in other regulations into the AML, but also adjusts a number of provisions based on practical issues.

- **“Stop the Clock” introduced for the first time**

Article 32 of the AML introduces the "stop the clock" mechanism into China's merger control regime for the first time. It provides for three circumstances that may stop the clock on time limit, i.e., (i) when the notifying parties fail to submit materials as required, (ii) when it is necessary to verify new situations or facts, and (iii) when further assessment of the remedy proposals is needed and the notifying parties request stopping the clock. In particular, the further evaluation of the remedy proposals is of great practical significance. This will avoid the compromise solution adopted now that the notifying parties have to withdraw the notification and resubmit once or twice in order to proceed with the transaction due to the insufficient time limit.

As compared to other jurisdictions, the number of antitrust officials in China is quite limited. The introduction of this mechanism will reduce the time limit pressure on the enforcement authority, in particular for cases that may be prohibited or cleared conditionally. As regards the detailed rules on this mechanism, we expect the supporting regulations to be released in the near future, which will provide undertakings with more predictability on this new procedure.

- **Heavier fines for gun-jumping**

Gun-jumping was only fined up to RMB 500,000 (approx. USD 80,000) under the old AML. Although SAMR has imposed such maximum fines in a number of cases, it appears the deterrence effect is very limited. Now the new AML has increased the fines for gun-jumping to “up to RMB 5,000,000 (approx. USD 800,000)” or “up to 10% of the turnover in the previous year for concentrations have or may have the anti-competitive effect”.

Such fines reach the same level of fines for monopoly agreement and abuse of dominance. Therefore, the deterrent effect for gun-jumping is greatly improved and it is expected that increasingly more parties will submit remedial notifications, voluntarily apply for consultation, voluntarily file notifications and even self-report themselves for gun-jumping before the new AML come into force on 1 August 2022. In this regard, it is still uncertain whether the old fine rule or the new fine rule is applicable to concentrations consummated before the new AML is effective. According to China’s general *Administrative Penalty Law*, if such concentrations are still operative, the new fine rule may be applicable since the concentrations are still in the status of gun-jumping.

### ● Power to review transactions below threshold granted

For merger control, in addition to mandatory notification for concentration of undertakings that meet the threshold, Article 26(2) of the new AML grants SAMR the power to require the undertakings to notify and then to review a transaction below the threshold but may have the effect of eliminating or restricting competition. For example, mergers between companies with no or little turnover due to their operation models, or some “killer acquisitions” that the target does not reach the threshold, now fall within the realm of merger control.

It is worth noting that while Article 26(2) stipulates that for such mergers, the authority “can require the undertakings to notify”, Article 26(3) provides that the authority “shall investigate if the undertakings fail to notify” in accordance with Article 26(2). Compared with the provision in the first draft of the AML that “the authority shall investigate a transaction below the threshold that may have the effect of eliminating or restricting competition”, we understand that the undertakings now can notify the transaction below the threshold with the authority without concern of being investigated directly when receiving the filing requirement. The authority can only launch an investigation if the undertakings refuse to notify as required by the authority.

### ● Classification and categorization of merger control cases

Article 37 of the new AML introduces a “mechanism of classification and categorization of merger control cases”. This mechanism aims to improve the efficiency of the enforcement authority, save notification time for undertakings, and reduce institutional transaction costs on the one hand; and will help the authority focuses on cases that may cause competition concerns on the other hand.

In practice, since the beginning of this year, SAMR has begun to require the notifying parties to mark that whether a platform company is involved in the transaction. This indicates that the authority has begun to classify merger control cases by sensitive sectors. However, SAMR may still need some time to establish this mechanism and publicize the entire rules thereof.

## III. Private enforcement: Public Interest Lawsuit

The antitrust enforcement in China has been featured by the imbalance between public enforcement and private enforcement. Although the number of private actions initiated is not necessarily smaller than that of public enforcement, few of them have turned into substantive rulings and even fewer end up with a successful challenge of monopolistic behaviors. A significant barrier for antitrust private actions in China is that, due to the absence of class action proceeding, plaintiffs have to devote huge resources to meet relatively high burden of proof and, due to the lack of punitive or exemplary damages, monetary awards are usually not sufficient to provide incentives.

The new AML intends to change the landscape by introducing public interest lawsuit for monopolistic behaviors. In Article 60, it adds a second clause which provides that if a business operator conducts monopolistic behaviors and infringes on public interests, procuratorial organs can file a civil public interest lawsuit with courts in accordance with the law. It suggests that public prosecutors, as state organs with administrative resources, are better positioned than individuals or small businesses to pursue the civil liabilities of antitrust offenders. Actually, the Fourth Plenary Session of the 19th CPC Central Committee in 2019 has proposed to “expand the scope of public interest lawsuits” and after that the promotion of public interest lawsuits by procuratorial organs has been raised in a number of government statements.

For companies, the introduction of public interest lawsuit means more risks and higher compliance standards for behaviors affecting public interests or, in other words, people’s livelihoods. For example, big data “killing familiarity” (i.e., using big data to analyze price elasticity and loyalty of users to implement price discrimination) is a phenomenon in China’s e-commerce sector criticized for long and may qualify as a target of antitrust public interest lawsuit. Public interest may become a new factor in assessing legal exposures for companies’ compliance work.

#### IV. Fines: Heavier and New Fine Rule for Individuals

One of the most significant amendment to the AML lies on the legal liabilities. Not only the penalty for existing liabilities rises sharply but includes new liabilities including penalties on individuals, undertakings’ violations of the AML to be registered in credit records, which will significantly enhance the deterrence of the AML.

The detailed comparison of the legal liabilities provided by the old and the new AML are as follows:

Violations	Amount of Fines under the old AML	Amount of Fines under the new AML	Increase
<b><i>Monopoly Agreements</i></b>			
Agreements concluded and carried out	(1) confiscation of illegal gains; and	(1) confiscation of illegal gains; and (2) fine of 1% to 10% of the turnover in the previous year; or	[see the note at the bottom of the form]

		(2) fine of 1% to 10% of the turnover in the previous year	(3) when there is no turnover in the previous year, fine of up to RMB 5,000,000 (approx. USD 800,000)	
Agreements concluded but not carried out		fine of up to RMB 500,000 (approx. USD 80,000)	fine of up to RMB 3,000,000 (approx. USD 500,000)	5x
Personal liabilities (legal representatives, major principals, and persons directly in charge)	/		fine of up to RMB 1,000,000 (approx. USD 200,000)	newly added
Undertakings that organize other undertakings to enter into monopoly agreements or provide substantial assistance to other undertakings to enter into monopoly agreements (e.g., hub-and-spoke cartel)	/		the above penalties are equally applicable	newly added
Industry associations that organize undertakings in their industry to enter into monopoly agreements		(1) fine of up to RMB 500,000 (approx. USD 80,000) (2) deregistration	(1) fine of up to RMB 3,000,000 (approx. USD 500,000) (2) deregistration	5x
<b><i>Abuse of Dominant Market Position</i></b>				
Abuse of dominant market position		(1) confiscation of illegal gains; and (2) fine of 1% to 10% of the turnover in the previous year	(1) confiscation of illegal gains; and (2) fine of 1% to 10% of the turnover in the previous year	[see the note at the bottom of the form]
<b><i>Merger Control</i></b>				
Illegal merger / gun-jumping	Transaction with or probably with anti-competitive effect	(1) fine of up to RMB 500,000 (approx. USD 80,000) (2) taking necessary measures to restore market competition	(1) fine of up to 10% of the turnover in the previous year; and (2) taking necessary measures to restore market competition	geometric growth
	Transaction without anti-	fine of up to RMB 500,000 (approx. USD 80,000).	fine of up to RMB 5,000,000 (approx. USD 800,000).	9x

	competitive effect			
<b><i>Failure to Cooperate with Law Enforcement Agencies in Examinations and Investigations</i></b>				
Refusal to provide material, provision of false material, concealment, destruction or transfer of evidence	individual	fine of up to RMB 100,000 (approx. USD 20,000)	fine of up to RMB 500,000 (approx. USD 80,000)	4x
	entity	fine of up to RMB 1,000,000 (approx. USD 200,000)	(1) fine of up to 1% of the turnover in the previous year; or (2) when there is no turnover in the previous year, fine of up to RMB 5,000,000 (approx. USD 800,000).	geometric growth
<b>Note:</b>				
(1) For all of the above-mentioned violations that have far-reaching adverse consequence, a fine of 200% to 500% of the above amounts will be imposed.				
(2) Undertakings found to violate the AML will be registered in China’s national enterprise credit record which is available to the public.				

## V. Key Compliance Points in One Month

The new AML has made revisions to over 30 clauses. In addition to the revisions mentioned above, there are some China-feature revisions which erect the AML as the true “economic constitution” in China. Firstly, Article 4 announces that the State enhances the fundamental position of competition policy. Secondly, Article 5 emphasize the importance of the fair competition review system (like the state aid regime in the EU). Thirdly, certain new types of administrative monopoly are prohibited. As such, the AML has been attached greater importance by the government for improving the market economy.

For businesses, it is advisable to study and adapt to the new AML in a timely manner. Some key compliance points deserve the priority:

- Raise awareness of the management. The new AML will fine the individuals (e.g., the management themselves) and violations of the AML will cause heavier fine for the businesses. Hence, antitrust compliance program to key personnel is necessary.
- Update the antitrust compliance manual. Antitrust training to all the employees is time-consuming. Alternatively, updating the antitrust compliance manual and sending it to all the employees can be a quick start.
- Review the distribution agreement to avoid RPM risks. Although RPM violation is rebuttable in the new AML, it would still be difficult for large companies to challenge the antitrust authority. Also, the antitrust authority will now focus more on the large companies for RPM violations.

- Review the past M&As for gun-jumping risks. Since the first draft of the amendment to the AML was released in October last year, many companies have already taken actions to review their past M&As to assess the gun-jumping risks and decide whether to make self-report so as to avoid heavier fine set by the new AML. Now there is still time to complete this task. SAMR has been unsatisfied with the low fine level for many years and it cannot wait to exercise its new power.

Besides the new AML, we expect there will be more implementing rules to be issued by SAMR in this year. The antitrust system will be updated thoroughly at that time. Also, more officials will join SAMR in the second half of this year, and thus the cases piled up will be handled more efficiently. As such, the new AML and its enforcement is gaining momentum in China.



## VI. ANNEX: Full English Translation of the New AML by Dentons

中华人民共和国反垄断法	Anti-Monopoly Law of the People's Republic of China
主席令 2007 年第 68 号	Decree of the President of the People's Republic of China No.68 [2007]
2007 年 8 月 30 日发布 2008 年 8 月 1 日实施	Promulgated on 30 August 2007 Come into force on 1 August 2008
主席令 2022 年第 116 号	Decree of the President of the People's Republic of China No.116 [2022]
2022 年 6 月 24 日修订 2022 年 8 月 1 日实施	Revised on 24 June 2022 Come into force on 1 August 2022
<b>第一章 总则</b>	<b>Chapter I General Provisions</b>
<b>第一条</b>	<b>Article 1</b>
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。	This Law is formulated to prevent and curb monopolistic acts, to protect fair market competition, to encourage innovation, to enhance economic efficiency, to safeguard consumers' interests and the public interest, and to promote the healthy development of the socialist market economy.
<b>第二条</b>	<b>Article 2</b>
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。	This Law applies to monopolistic acts in economic activities within the territory of the People's Republic of China; and applies to monopolistic acts outside the territory of the People's Republic of China that eliminate or restrict competition in China's domestic market.
<b>第三条</b>	<b>Article 3</b>
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。	For the purposes of this Law, monopolistic acts include: (1) monopoly agreements concluded between undertakings; (2) abuse of dominant market position by undertakings; and (3) concentrations of undertakings that have or may have the effect of eliminating or restricting competition.
<b>第四条</b>	<b>Article 4</b>

反垄断工作坚持中国共产党的领导。

国家坚持市场化、法治化原则，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。

### 第五条

国家建立健全公平竞争审查制度。

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，应当进行公平竞争审查。

### 第六条

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。

### 第七条

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。

### 第八条

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

The leadership of the Communist Party of China shall be adhered to in anti-monopoly work.

The state adheres to the principles of marketization and the rule of law, strengthens the foundational status of competition policies as well as formulates and implements competition rules that are compatible with the socialist market economy, so as to improve macroeconomic regulation and perfect an integrated, open, competitive, and orderly market system.

### Article 5

The State establishes the fair competition review system.

The fair competition review shall be conducted in the formulation of the rules involving the economic activities of market players by administrative agencies and organizations empowered by laws or regulations to perform the function of administering public affairs.

### Article 6

Undertakings may, through fair competition and voluntary association, implement concentrations according to law, expand the scale of business operations and enhance market competitiveness.

### Article 7

Undertakings with a dominant market position shall not abuse such position to eliminate or restrict competition.

### Article 8

With respect to the industries controlled by the State-owned economy and concerning the lifeline of national economy and national security or the industries implementing franchise according to law, the State protects the lawful business operations of the undertakings therein, and, in accordance with law, regulates and controls their business operations and the prices of their goods and services, in

进技术进步。

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。

### 第九条

经营者不得利用数据和算法、技术、资本优势以及平台规则等从事本法禁止的垄断行为。

### 第十条

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。

### 第十一条

国家健全完善反垄断规则制度，强化反垄断监管力量，提高监管能力和监管体系现代化水平，加强反垄断执法司法，依法公正高效审理垄断案件，健全行政执法和司法衔接机制，维护公平竞争秩序。

### 第十二条

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；

order to protect the interests of consumers and promote technological advance.

The undertakings of industries mentioned in the preceding paragraph shall lawfully operate, be honest and faithful, be strictly self-disciplined, accept social supervision, and shall not harm the interests of consumers by taking advantage of their controlling positions or their franchises.

### Article 9

Undertakings shall not use data, algorithms, technology, capital advantages and platform rules to engage in monopolistic acts prohibited by this Law.

### Article 10

Administrative agencies or organizations empowered by laws or regulations to perform the function of administering public affairs shall not abuse their administrative power to eliminate or restrict competition.

### Article 11

The state improves the system of anti-monopoly rules, reinforces the anti-monopoly regulatory force, enhances regulatory capacity and the level of modernization of regulatory system, strengthens the anti-monopoly law enforcement and judicial work, handles various monopoly cases in a fair and efficient manner according to law, improves the mechanism to link administrative law enforcement with judicial work, and safeguards the order of fair competition.

### Article 12

The State Council shall establish the Anti-Monopoly Commission, which is in charge of organizing, coordinating and guiding anti-monopoly work and performs the following functions:

- (1) studying and drafting relevant competition policies;
- (2) organizing the survey and assessment of overall competition situations in the market, and issuing assessment reports;
- (3) formulating and releasing anti-monopoly guidelines;

(五) 国务院规定的其他职责。

(4) coordinating the administrative anti-monopoly law-enforcement; and

(5) other functions as prescribed by the State Council.

国务院反垄断委员会的组成和工作规则由国务院规定。

The composition and working rules of the Anti-Monopoly Commission shall be specified by the State Council.

### 第十三条

### Article 13

国务院反垄断执法机构负责反垄断统一执法工作。

The Anti-Monopoly Law Enforcement Authority of the State Council is responsible for anti-monopoly unified law enforcement.

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。

As needed for work, the Anti-Monopoly Law Enforcement Authority of the State Council may authorize the appropriate bodies of the people's governments of the provinces, autonomous regions, or directly governed municipalities to take charge of the relevant anti-monopoly law enforcement work in accordance with the provisions of this Law.

### 第十四条

### Article 14

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，合规经营，维护市场竞争秩序。

Trade associations shall tighten industrial self-discipline, guide the undertakings in their respective industries to compete lawfully, operate in accordance with laws and regulations, and safeguard the competition order in the market.

### 第十五条

### Article 15

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、法人和非法人组织。

“Undertakings” as used in this Law refers to natural persons, legal persons, and unincorporated organizations that engage in the manufacture or trading of goods or in the provision of services.

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。

A “relevant market” as used in this Law refers to the scope of goods or territories in which undertakings compete for specific goods or services (hereinafter collectively referred to as “goods”) during a certain period of time.

## 第二章 垄断协议

## Chapter II Monopoly Agreements

### 第十六条

### Article 16

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。

### 第十七条

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。

### 第十八条

禁止经营者与交易相对人达成下列垄断协议：

- (一)固定向第三人转售商品的价格；
- (二)限定向第三人转售商品的最低价格；
- (三)国务院反垄断执法机构认定的其他垄断协议。

对前款第一项和第二项规定的协议，经营者能够证明其不具有排除、限制竞争效果的，不予禁止。

经营者能够证明其在相关市场的市场份额低于国务院反垄断执法机构规定的标准，并符合国务院反垄断执法机构规定的其他条件的，不予禁止。

### 第十九条

“Monopoly agreements” as used in this Law refers to agreements, decisions, or concerted actions that eliminate or restrict competition.

### Article 17

Competing undertakings are prohibited from concluding the following monopoly agreements:

- (1) that fix or change the price of goods;
- (2) that limit the quantity of goods manufactured or sold;
- (3) that divide the sales market or procurement market of raw materials;
- (4) that restrict the purchase of new technology or new equipment or restrict the development of new technology or new product;
- (5) that jointly boycott transactions;
- (6) of other types as determined by the Anti-Monopoly Law Enforcement Authority of the State Council.

### Article 18

Undertakings are prohibited from concluding the following monopoly agreements with trading counterparties:

- (1) that fix the price of goods resold to a third party;
- (2) that limit the lowest price of goods resold to a third party;
- (3) of other types as determined by the Anti-Monopoly Law Enforcement Authority of the State Council.

The agreements as specified in subparagraphs (1) and (2) shall not be prohibited if the undertakings can prove the agreements do not have the effect of eliminating or restricting competition.

Where an undertaking can prove that its market share in the relevant market is lower than the standard set by the Anti-Monopoly Law Enforcement Authority of the State Council and that other conditions stipulated by the Anti-Monopoly Law Enforcement Authority of the State Council are met, the agreement shall not be prohibited.

### Article 19

经营者不得组织其他经营者达成垄断协议或者为其他经营者达成垄断协议提供实质性帮助。

## 第二十条

经营者能够证明所达成的协议属于下列情形之一的，不适用本法第十七条、第十八条第一款、第十九条的规定：

- (一)为改进技术、研究开发新产品的；
- (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；
- (三)为提高中小经营者经营效率，增强中小经营者竞争力的；
- (四)为实现节约能源、保护环境、救灾救助等社会公共利益的；
- (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；
- (六)为保障对外贸易和对外经济合作中的正当利益的；
- (七)法律和国务院规定的其他情形。

属于前款第一项至第五项情形，不适用本法第十七条、第十八条第一款、第十九条规定的，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。

## 第二十一条

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。

## 第三章 滥用市场支配地位

No undertaking may organize other undertakings to reach a monopoly agreement or provide them with substantive assistance for reaching a monopoly agreement.

## Article 20

Where undertakings can demonstrate that a monopoly agreement concluded has one of the following circumstances, the provisions of Article 17, the first paragraph of Article 18, and Article 19 of this Law do not apply:

- (1) to improve technologies or to research and develop new products;
- (2) to improve product quality, lower cost, or increase efficiency by unifying the specifications or standards of products or by implementing specialized division of labor;
- (3) to increase the operating efficiency of small and medium-sized undertakings or to increase their competitiveness;
- (4) to achieve energy conservation, environmental protection, disaster relief, and such other public interests;
- (5) to mitigate the sharp decline in sales volume or obvious overproduction due to an economic recession;
- (6) to safeguard the legitimate interests in foreign trade or in foreign economic cooperation;
- (7) other circumstances prescribed by laws or the State Council.

Where the provisions of Article 17, the first paragraph of Article 18, and Article 19 of this Law do not apply due to the circumstances under subparagraphs (1) through (5) of the previous paragraph, the undertakings shall additionally prove that the agreement concluded will not seriously restrict competition in the relevant market, and that it will enable the consumers to share the resulting benefits.

## Article 21

Trade associations shall not organize undertakings of the industry to engage in the monopolistic acts prohibited by this Chapter.

## Chapter III Abuse of Dominant Market Position

**第二十二條**

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：

- （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；
- （二）没有正当理由，以低于成本的价格销售商品；
- （三）没有正当理由，拒绝与交易相对人进行交易；
- （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；
- （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；
- （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；
- （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。

具有市场支配地位的经营者不得利用数据和算法、技术以及平台规则等从事前款规定的滥用市场支配地位的行为。

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。

**第二十三條**

认定经营者具有市场支配地位，应当依据下列因素：

- （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

**Article 22**

Undertakings holding a dominant market position are prohibited from engaging in the following practices that abuse the dominant market position:

- (1) selling goods at unfairly high prices or buying goods at unfairly low prices;
- (2) selling goods at below-cost prices without legitimate reasons;
- (3) refusing to trade with trading counterparties without legitimate reasons;
- (4) restricting trading counterparties to trade solely with themselves or with undertakings designated by them without legitimate reasons;
- (5) conducting tie-in sales of goods, or attaching other unreasonable trading conditions to transactions without legitimate reasons;
- (6) applying discriminatory treatment to trading counterparties with the same conditions with respect to prices and other trading conditions without legitimate reasons;
- (7) other practices abusing the dominant market position as determined by the Anti-Monopoly Law Enforcement Authority of the State Council.

An undertaking with a dominant market position shall not use data, algorithms, technology and platform rules to engage in acts of abusing its dominant market position as prescribed in the preceding paragraph.

A “dominant market position” as used in this Law refers to a market position held by undertakings that enables them to control the prices or quantities of goods or other trading conditions, or to hinder or affect the ability of other undertakings to enter the relevant market.

**Article 23**

A determination that an undertaking holds a dominant market position shall be based on the following factors:

- (1) the undertaking’s market share in the relevant market and the level of competition in the relevant market;

况；

(二) 该经营者控制销售市场或者原材料采购市场的能力；

(三) 该经营者的财力和技术条件；

(四) 其他经营者对该经营者在交易上的依赖程度；

(五) 其他经营者进入相关市场的难易程度；

(六) 与认定该经营者市场支配地位有关的其他因素。

## 第二十四条

有下列情形之一的，可以推定经营者具有市场支配地位：

(一) 一个经营者在相关市场的市场份额达到二分之一的；

(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；

(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。

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。

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。

## 第四章 经营者集中

### 第二十五条

经营者集中是指下列情形：

(一) 经营者合并；

(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；

(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

(2) the undertaking's ability to control the sales markets or the procurement markets for raw materials;

(3) the undertaking's financial resources and technical capabilities;

(4) the extent to which other undertakings rely on the undertaking for trading;

(5) the level of difficulty for other undertakings to enter the relevant market;

(6) other factors relevant to determining the undertaking's dominant market position.

## Article 24

In one of the following circumstances, it may be presumed that undertakings hold dominant market positions:

(1) where one undertaking's market share amounts to one-half of a relevant market;

(2) where two undertakings' aggregate market share amounts to two-thirds of a relevant market

(3) where three undertakings' aggregate market share amounts to third-fourths of a relevant market.

In the circumstances provided in subparagraph (2) or (3) of the previous paragraph, if one of the undertakings has a market share of less than one-tenth, it shall not be presumed that the said undertaking holds a dominant market position.

Where an undertaking that is presumed to hold a dominant market position has evidence that it does not hold a dominant market position, it shall not be determined to hold a dominant market position.

## Chapter IV Concentration of Undertakings

### Article 25

Concentrations of undertakings refer to the following circumstances:

(1) merger of undertakings;

(2) acquiring control over other undertakings through acquiring their equities or assets; and



够对其他经营者施加决定性影响。

## 第二十六条

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。

经营者集中未达到国务院规定的申报标准，但有证据证明该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可以要求经营者申报。

经营者未依照前两款规定进行申报的，国务院反垄断执法机构应当依法进行调查。

## 第二十七条

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：

- （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；
- （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。

## 第二十八条

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，并对提交的材料的真实性负责：

- （一）申报书；

(3) acquiring control over other undertakings or the ability to exercise a decisive influence on other undertakings through contracts or other means.

## Article 26

Where a concentration of undertakings meets the notification thresholds prescribed by the State Council, the undertakings shall notify to the Anti-Monopoly Law Enforcement Authority of the State Council, and shall not implement the concentration without such a notification.

Where a concentration of undertakings does not meet the notification thresholds prescribed by the State Council, but there is evidence proving that the concentration has or may have the effect of eliminating or restricting competition, the Anti-Monopoly Law Enforcement Authority of the State Council may require the undertakings to notify.

Where the undertakings fail to notify in accordance with the provisions of the preceding paragraphs, the Anti-Monopoly Law Enforcement Authority of the State Council shall investigate in accordance with the law.

## Article 27

In any of the following circumstances, a concentration of undertakings need not be notified to the Anti-Monopoly Law Enforcement Authority of the State Council:

- (1) where one of the undertakings concerned owns fifty percent or more of the voting shares or assets of each of the other undertakings concerned;
- (2) where fifty percent or more of the voting shares or assets of each of the undertakings concerned is owned by the same undertaking that does not participate in the concentration.

## Article 28

Undertakings that notify a concentration to the Anti-Monopoly Law Enforcement Authority of the State Council shall submit the following documents and materials:

- (1) A written notification;
- (2) an explanation of the effect of the concentration on

(二) 集中对相关市场竞争状况影响的说明;

(三) 集中协议;

(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;

(五) 国务院反垄断执法机构规定的其他文件、资料。

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。

## 第二十九条

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。

## 第三十条

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二十八条规定的文件、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。

国务院反垄断执法机构作出不同意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。

competition in the relevant market;

(3) the concentration agreements;

(4) the financial statements of the undertakings concerned for the previous accounting year that have been audited by accounting firms;

(5) other documents and materials specified by the Anti-Monopoly Law Enforcement Authority of the State Council.

The written notification shall clearly state the names of the undertakings concerned, their domiciles, the scope of their businesses, their scheduled date for implementing the concentration, and other matters specified by the Anti-Monopoly Law Enforcement Authority of the State Council.

## Article 29

Where the documents and materials submitted by undertakings are incomplete, they shall submit the remaining documents and materials within the period of time prescribed by the Anti-Monopoly Law Enforcement Authority of the State Council. Where the undertakings fail to submit the remaining documents and materials within that period, they will be deemed to have made no notification.

## Article 30

Within 30 days of receiving documents and materials submitted by undertakings that comply with the provisions of Article 28 of this Law, the Anti-Monopoly Law Enforcement Authority of the State Council shall conduct a preliminary review of the concentration of undertakings notified, decide whether to conduct a further review, and notify the undertakings in writing. The undertakings shall not implement the concentration before the Anti-Monopoly Law Enforcement Authority of the State Council makes such a decision.

Where the Anti-Monopoly Law Enforcement Authority of the State Council decides not to conduct a further review or fails to make a decision within the time limit, the undertakings may implement the concentration.

**第三十一条**

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。

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：

- （一）经营者同意延长审查期限的；
- （二）经营者提交的文件、资料不准确，需要进一步核实的；
- （三）经营者申报后有关情况发生重大变化的。

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。

**第三十二条**

有下列情形之一的，国务院反垄断执法机构可以决定中止计算经营者集中的审查期限，并书面通知经营者：

- （一）经营者未按照规定提交文件、资料，导致审查工作无法进行；
- （二）出现对经营者集中审查具有重大影响的新情况、新事实，不经核实将导致审查工作无法进行；
- （三）需要对经营者集中附加的限制性条件进一步评估，且经营

**Article 31**

Where the Anti-Monopoly Law Enforcement Authority of the State Council decides to conduct further review, it shall, within 90 days from the date of decision, complete such review, decide whether to prohibit the concentration of undertakings, and inform the undertakings of its decision in writing. Where a decision on prohibiting the concentration of undertakings is made, the reasons for such decision shall be given. The undertakings shall not implement concentration during the period of review.

In any of the following circumstances, after informing the undertakings in writing, the Anti-Monopoly Law Enforcement Authority of the State Council may extend the period for review as prescribed by the previous paragraph, but not by more than 60 days:

- (1) where the undertakings consent to extending the period for review;
- (2) where the documents or materials submitted by the undertakings are inaccurate and need further verification;
- (3) where the relevant circumstances have materially changed after the undertakings made the notification.

Where the Anti-Monopoly Law Enforcement Authority of the State Council fails to make a decision within the time limit, the undertakings may implement the concentration.

**Article 32**

In any of the following circumstances, the Anti-Monopoly Law Enforcement Authority of the State Council may suspend the periods for review of the concentration, and inform the undertakings in writing:

- (1) where the undertakings fail to submit documents and materials in accordance with the provisions, resulting in that the review cannot be conducted;
- (2) where new circumstances and facts that have a major impact on the review of concentration arise, resulting in that the review cannot be conducted if unverified;
- (3) where restrictive conditions imposed on the concentration need to be further evaluated and the undertaking make a request for suspension.

者提出中止请求。

自中止计算审查期限的情形消除之日起，审查期限继续计算，国务院反垄断执法机构应当书面通知经营者。

### 第三十三条

审查经营者集中，应当考虑下列因素：

- （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；
- （二）相关市场的市场集中度；
- （三）经营者集中对市场进入、技术进步的影响；
- （四）经营者集中对消费者和其他有关经营者的影响；
- （五）经营者集中对国民经济发展的影响；
- （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。

### 第三十四条

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。

### 第三十五条

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

The period of review shall continue to be counted from the date on which the suspending circumstance of the period of review is eliminated. The Anti-Monopoly Law Enforcement Authority of the State Council shall notify the undertakings in writing.

### Article 33

The following factors shall be taken into consideration in the review of concentrations of undertakings:

- (1) the market shares of the undertakings concerned in the relevant market and their power of control over the market;
- (2) the degree of market concentration in the relevant market;
- (3) the impact of the concentration of undertakings on the market entry and technological advance;
- (4) the impact of the concentration of undertakings on consumers and other relevant undertakings;
- (5) the impact of the concentration of undertakings on the development of the national economy; and
- (6) other factors affecting the market competition which the Anti-Monopoly Law Enforcement Authority of the State Council deems to need consideration.

### Article 34

Where a concentration of undertakings has or may have the effect of eliminating or restricting competition, the Anti-Monopoly Law Enforcement Authority of the State Council shall make a decision to prohibit the concentration of undertakings. However, if the undertakings can prove that the concentration will bring obviously more positive impact than negative impact on competition, or that the concentration is in the social public interest, the Anti-Monopoly Law Enforcement Authority of the State Council may decide not to prohibit the concentration of undertakings.

### Article 35

Where a concentration of undertakings is not prohibited, the Anti-Monopoly Law Enforcement Authority of the State Council may decide to impose restrictive conditions

限制性条件。

### 第三十六条

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。

### 第三十七条

国务院反垄断执法机构应当健全经营者集中分类分级审查制度，依法加强对涉及国计民生等重要领域的经营者集中的审查，提高审查质量和效率。

### 第三十八条

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。

## 第五章 滥用行政权力排除、限制竞争

### 第三十九条

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，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。

### 第四十条

that lessen the negative impact of such concentration on competition.

### Article 36

The Anti-Monopoly Law Enforcement Authority of the State Council shall, in a timely manner, publicize its decisions on prohibiting a concentration of undertakings or its decisions on imposing restrictive conditions on the concentration of undertakings.

### Article 37

The Anti-Monopoly Law Enforcement Authority of the State Council shall improve the classification and grading system for the review of concentration of undertakings, strengthen the review of concentration of undertakings in critical areas concerning national development and livelihood according to law, and improve the quality and efficiency of the review.

### Article 38

Where a foreign investor participates in the concentration of undertakings by merging and acquiring a domestic enterprise or by other means, which involves national security, such concentration shall be subject to national security review in accordance with the relevant State regulations, in addition to the review of the concentration of undertakings in accordance with the provisions of this Law.

## Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition

### Article 39

Administrative agencies and organizations empowered by laws or regulations to administer public affairs shall not abuse their administrative power to require or require in disguised forms entities or individuals to trade in, purchase, or use only the goods supplied by the undertakings designated by them.

### Article 40

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，通过与经营者签订合作协议、备忘录等方式，妨碍其他经营者进入相关市场或者对其他经营者实行不平等待遇，排除、限制竞争。

#### 第四十一条

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，实施下列行为，妨碍商品在地区之间的自由流通：

（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；

（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；

（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；

（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；

（五）妨碍商品在地区之间自由流通的其他行为。

#### 第四十二条

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，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以及其他经营活动。

#### 第四十三条

Administrative agencies and organizations empowered by laws or regulations to administer public affairs shall not abuse their administrative power to obstruct other undertakings to enter relevant markets or give unequal treatment to other undertakings, eliminate or restrict competition by signing cooperation agreements, memorandum, etc. with undertakings.

#### Article 41

Administrative agencies and organizations empowered by laws or regulations to administer public affairs shall not abuse their administrative power to carry out the following acts, thereby obstructing the free flow of goods among different regions:

(1) setting discriminatory fee items, implementing discriminatory fee rates, or setting discriminatory prices for non-local goods;

(2) imposing on non-local goods technical requirements or inspection standards different from those imposed on similar local goods, or taking discriminatory technical measures, such as repeated inspections or repeated certifications, against non-local goods, so as to restrict non-local goods from entering the local market;

(3) implementing administrative licenses specifically targeting non-local goods to restrict non-local goods from entering the local market;

(4) setting up checkpoints or taking other measures to prevent non-local goods from entering or local goods from exiting; and

(5) other acts obstructing the free flow of goods among different regions.

#### Article 42

Administrative agencies and organizations empowered by laws or regulations to administer public affairs shall not abuse their administrative power to exclude or restrict undertakings from participating in bid-inviting, bidding and other activities, by means such as setting discriminatory qualification requirements or evaluation standards or by not publishing information in accordance with law.

#### Article 43

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、强制或者变相强制外地经营者在本地投资或者设立分支机构。

#### 第四十四条

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，强制或者变相强制经营者从事本法规定的垄断行为。

#### 第四十五条

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，制定含有排除、限制竞争内容的规定。

### 第六章 对涉嫌垄断行为的调查

#### 第四十六条

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。

#### 第四十七条

反垄断执法机构调查涉嫌垄断行

Administrative agencies and organizations empowered by laws or regulations to administer public affairs shall not abuse their administrative power to exclude, restrict non-local undertakings from investing locally or establishing local branch offices, to directly or in disguised forms compel them to do so, by means such as treating them unequally as compared to local undertakings.

#### Article 44

Administrative agencies and organizations empowered by laws or regulations to administer public affairs shall not abuse their administrative power to directly or in disguised forms compel undertakings to engage in the monopolistic acts provided by this Law.

#### Article 45

Administrative agencies and organizations empowered by laws or regulations to administer public affairs shall not abuse their administrative power to formulate rules with contents that eliminate or restrict competition.

### Chapter VI Investigation into Suspected Monopolistic Acts

#### Article 46

The Anti-Monopoly Law Enforcement Authorities are to investigate suspected monopolistic acts in accordance with law.

All entities and individuals have the right to report suspected monopolistic acts to the Anti-Monopoly Law Enforcement Authorities. The Anti-Monopoly Law Enforcement Authorities shall keep the reporters confidential.

Where a report is in writing and provides relevant facts and evidence, the Anti-Monopoly Law Enforcement Authorities shall conduct necessary investigations.

#### Article 47

The Anti-Monopoly Law Enforcement Authorities may take the

为，可以采取下列措施：

（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；

（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；

（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；

（四）查封、扣押相关证据；

（五）查询经营者的银行账户。

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。

#### 第四十八条

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。

#### 第四十九条

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、个人隐私和个人信息依法负有保密义务。

#### 第五十条

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

following measures when investigating suspected monopolistic acts:

(1) entering the business premises or other relevant premises of the undertakings under investigation to conduct inspections;

(2) Examining the undertakings under investigation, the interested parties, or other relevant entities or individuals and requiring them to explain the relevant situations;

(3) inspecting and copying the relevant documents and materials of the undertakings under investigation, the interested parties, or other relevant entities or individuals, such as bills, agreements, books of accounts, business correspondence, and electronic data;

(4) sealing and seizing the relevant evidence;

(5) examining the undertakings' bank accounts.

To take the measures specified in the previous paragraph, written reports shall be submitted to the principal person in charge of the Anti-Monopoly Law Enforcement Authorities to obtain approval.

#### Article 48

When the Anti-Monopoly Law Enforcement Authorities investigate suspected monopolistic acts, there shall be no fewer than two law enforcement officials, who shall present their law enforcement documents.

When conducting examinations and investigations, law enforcement officials shall make written records and have them signed by the persons examined or being investigated.

#### Article 49

The Anti-Monopoly Law Enforcement Authorities and their officials are obligated to, according to law, keep confidential the trade secrets, personal privacy and personal information they learn in the course of law enforcement.

#### Article 50

The undertakings under investigation, the interested parties, or other relevant entities or individuals shall cooperate with the Anti-Monopoly Law Enforcement Authorities in their lawful



责，不得拒绝、阻碍反垄断执法机构的调查。

### 第五十一条

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。

### 第五十二条

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，并向社会公布。

### 第五十三条

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：

- (一) 经营者未履行承诺的；
- (二) 作出中止调查决定所依据

performance of duties and shall not refuse or obstruct investigations by the Anti-Monopoly Law Enforcement Authorities.

### Article 51

The undertakings under investigation and the interested parties have the right to state their opinions. The Anti-Monopoly Law Enforcement Authorities shall verify the facts, reasons, and evidence presented by the undertakings under investigation or by the interested parties.

### Article 52

Where, after investigating and verifying the suspected monopolistic acts, the Anti-Monopoly Law Enforcement Authorities deem them to constitute monopolistic acts, they shall make administrative decisions in accordance with law and may release them to the public.

### Article 53

With respect to the suspected monopolistic act which is under investigation by the Anti-Monopoly Law Enforcement Authorities, if the undertakings under investigation commit themselves to take specific measures to eliminate the consequences of such conduct within the time limit approved by the Anti-Monopoly Law Enforcement Authorities, the Anti-Monopoly Law Enforcement Authorities may decide to suspend the investigation. In the decision of suspending the investigation, the details of the commitments made by the undertakings under investigation shall clearly be stated.

Where the Anti-Monopoly Law Enforcement Authorities decide to suspend the investigation, it shall supervise the fulfillment of the commitments by the undertakings. If the undertakings fulfill their commitments, the Anti-Monopoly Law Enforcement Authorities may decide to terminate the investigation.

In any of the following circumstances, the Anti-Monopoly Law Enforcement Authorities shall resume the investigation:

- (1) where the undertakings fail to fulfill their commitments;
- (2) where major changes have taken place in respect of the facts

的事实发生重大变化的；

(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。

#### 第五十四条

反垄断执法机构依法对涉嫌滥用行政权力排除、限制竞争的行为进行调查，有关单位或者个人应当配合。

#### 第五十五条

经营者、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，涉嫌违反本法规定的，反垄断执法机构可以对其法定代表人或者负责人进行约谈，要求其提出整改措施。

### 第七章 法律责任

#### 第五十六条

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，上一年度没有销售额的，处五百万元以下的罚款；尚未实施所达成的垄断协议的，可以处三百万元以下的罚款。经营者的法定代表人、主要负责人和直接责任人员对达成垄断协议负有个人责任的，可以处一百万元以下的罚款。

经营者组织其他经营者达成垄断协议或者为其他经营者达成垄断协议提供实质性帮助的，适用前款规定。

on which the decision of suspending the investigation was based; or

(3) where the decision of suspending the investigation was based on incomplete or untrue information provided by the undertakings.

#### Article 54

The Anti-Monopoly Law Enforcement Authorities are to investigate suspected abuse of administrative power to eliminate or restrict competition in accordance with law. Relevant entities or individuals shall cooperate.

#### Article 55

Where undertakings, administrative agencies and organizations empowered by laws or regulations to administer public affairs are suspected of violating the provisions of this Law, the Anti-Monopoly Law Enforcement Authorities may conduct an interview with their legal representative or the person in charge and require them to propose rectification measures.

### Chapter VII Legal Liabilities

#### Article 56

Where an undertaking concludes and implements a monopoly agreement in violation of the provisions of this Law, the Anti-Monopoly Law Enforcement Authorities shall order it to cease the violation, confiscate its illegal gains, and impose a fine of at least 1 percent but up to 10 percent of its turnover from the previous year. Where an undertaking has no turnover from the previous year, a fine of up to CNY 5,000,000 may be imposed. If the monopoly agreement has not been implemented, a fine of not more than CNY 3,000,000 may be imposed. If the legal representative, person in charge or directly liable persons of the undertakings is personally responsible for reaching the monopoly agreement, a fine of up to CNY 1,000,000 may be imposed.

The provisions of the previous paragraph apply to the organizing other undertakings to or providing other undertakings with substantive assistance to conclude monopoly agreements.

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。

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改正，可以处三百万元以下的罚款；情节严重的，社会团体登记管理机关可以依法撤销登记。

### 第五十七条

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。

### 第五十八条

经营者违反本法规定实施集中，且具有或者可能具有排除、限制竞争效果的，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，处上一年度销售额百分之十以下的罚款；不具有排除、限制竞争效果的，处五百万元以下的罚款。

### 第五十九条

对本法第五十六条、第五十七条、第五十八条规定的罚款，反垄断执法机构确定具体罚款数额

Where an undertaking voluntarily reports to the Anti-Monopoly Law Enforcement Authorities the relevant circumstances of the conclusion of a monopoly agreement and offers important evidence, the Anti-Monopoly Law Enforcement Authorities can, at their discretion, mitigate or waive the penalties imposed on the undertaking.

Where a trade association organizes undertakings to conclude a monopoly agreement in violation of the provisions of this Law, the Anti-Monopoly Law Enforcement Authorities shall order it to correct and may impose a fine of up to CNY 3,000,000; where the circumstances are serious, the administrative organ for the registration of social groups may revoke its registration in accordance with law.

### Article 57

Where an undertaking abuses its dominant market position in violation of the provisions of this Law, the Anti-Monopoly Law Enforcement Authorities shall order it to cease the violation, confiscate its illegal gains, and impose a fine of at least 1 percent but up to 10 percent of its turnover from the previous year.

### Article 58

Where an undertaking, in violation of the provisions of this Law, implements a concentration which has or may have the effect of eliminate or restrict competition, the Anti-Monopoly Law-Enforcement Authority of the State Council shall order it to cease the implementation of concentration, dispose of shares or assets within a specified time limit, transfer business within a specified time limit or take other necessary measures to return to the state prior to the concentration, and impose a fine of up to 10 percent of its turnover from the previous year; if without the effect of eliminating or restricting competition, a fine of up to CNY 5,000,000 shall be imposed.

### Article 59

For the fines prescribed by Articles 56, 57 and 58 of this Law, when determining the specific amount of fines to be imposed, the Anti-Monopoly Law Enforcement Authorities shall

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。

### 第六十条

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。

经营者实施垄断行为，侵害社会公共利益的，设区的市级以上人民检察院可以依法向人民法院提起民事公益诉讼。

### 第六十一条

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。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将有关改正情况书面报告上级机关和反垄断执法机构。

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。

### 第六十二条

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

consider factors such as the nature, extent, duration of the violations and the circumstances of eliminating the consequences of the violations.

### Article 60

Where an undertaking causes loss to others by engaging in monopolistic acts, it bears civil liabilities in accordance with law.

Where an undertaking commits a monopolistic act that infringes on the public interests, the People's Procuratorate at or above the level of cities with districts may file a civil public interest lawsuit in the People's Court in accordance with law.

### Article 61

Where an administrative organ or an organization empowered by laws or regulations to perform the function of administering public affairs abuses its administrative power to eliminate or restrict competition, its superior agency shall order it to make correction; the principal person directly in charge and other persons directly liable shall be given administrative sanctions according to law. The Anti-Monopoly Law Enforcement Authorities may put forward suggestions to the relevant superior agency on handling the matter according to law. The administrative agency or organization empowered by laws and regulations to administer public affairs shall report in writing regarding the relevant corrections to the superior agency and the Anti-monopoly Law Enforcement Authorities.

Where otherwise provided for by laws or administrative regulations in respect of handling the administrative agencies or organizations empowered by laws or regulations to perform the function of administering public affairs who abuse their administrative power to eliminate or restrict competition, such provisions shall prevail.

### Article 62

Where, during a review or an investigation lawfully conducted by the Anti-Monopoly Law Enforcement Authorities, one refuses to provide the relevant materials or information, provides false materials or information, conceals, destroys, or

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，对单位处上一年度销售额百分之一以下的罚款，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；对个人处五十万元以下的罚款。

### 第六十三条

违反本法规定，情节特别严重、影响特别恶劣、造成特别严重后果的，国务院反垄断执法机构可以在本法第五十六条、第五十七条、第五十八条、第六十二条规定的罚款数额的二倍以上五倍以下确定具体罚款数额。

### 第六十四条

经营者因违反本法规定受到行政处罚的，依照国家有关规定记入信用记录，并向社会公示。

### 第六十五条

对反垄断执法机构依据本法第三十四条、第三十五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。

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。

### 第六十六条

transfers evidence, threatens personal safety, or refuses or obstructs the investigation in other ways, the Anti-Monopoly Law Enforcement Authorities shall order it to make corrections, and shall impose a fine of up to 1 percent of its turnover from the previous year on the entity, or where the entity has no turnover or the turnover is hard to calculate, a fine of up to CNY 5,000,000; and for individuals, shall impose a fine of up to CNY 500,000.

### Article 63

If the violation of the provisions of this Law is especially serious, the impact is especially bad and the consequences are especially serious, the Anti-Monopoly Law Enforcement Authority of the State Council may determine the specific amount of fine amounting to not less than two times but not more than five times the amount of the fine prescribed in Articles 56, 57, 58 and 62 of this Law.

### Article 64

Where an undertaking is subject to administrative punishment for violating the provisions of this Law, it shall be recorded in the credit records in accordance with the relevant provisions of the State, and publicized to the society.

### Article 65

Where an undertaking is dissatisfied with a decision made by the Anti-Monopoly Law Enforcement Authorities in accordance with Articles 34 a 35 of this Law, it may first apply for an administrative reconsideration in accordance with law; where it is dissatisfied with the decision of the administrative reconsideration, it may file an administrative litigation in accordance with law.

Where an undertaking is dissatisfied with any decision made by the Anti-Monopoly Law Enforcement Authorities other than the decision as specified in the preceding paragraph, it may apply for administrative reconsideration or lodge an administrative lawsuit according to law.

### Article 66

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、个人隐私和个人信息的，依法给予处分。

#### 第六十七条

违反本法规定，构成犯罪的，依法追究刑事责任。

### 第八章 附则

#### 第六十八条

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。

#### 第六十九条

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。

#### 第七十条

本法自 2008 年 8 月 1 日起施行。

Where the employees of the Anti-Monopoly Law Enforcement Authorities abuse their authority, derelict their duties, show favoritism for personal gain, or divulge the trade secrets, personal privacy and personal information they learn in the course of law enforcement, sanctions are given in accordance with law.

#### Article 67

Whoever violates this Law and commits a crime shall be pursued criminal responsibility according to law.

### Chapter VIII Supplementary Provisions

#### Article 68

This Law does not apply to undertakings' exercise of intellectual property rights in accordance with the provisions of laws and administrative regulations concerning intellectual property rights; however, this Law applies to undertakings' abuse of intellectual property rights to eliminate or restrict competition.

#### Article 69

This Law does not apply to the joint or concerted actions taken by agricultural producers and rural economic organizations in business activities such as the production, processing, sale, transportation, or storage of agricultural products.

#### Article 70

This Law shall take effect on 1 August 2008.