

Anti-Monopoly Law of the People's Republic of China - Extract

Please note: This is an unofficial Mayer Brown JSM translation of relevant Articles in the official Chinese language law.

Prohibited Monopoly Agreements

Article 13 [Horizontal Monopoly Agreements]

The following monopoly agreements among competing undertakings are prohibited:

- (i) fix or change prices of products;
- (ii) limit the production volume or sales volume of products;
- (iii) segment the sales markets or the raw material purchasing markets;
- (iv) limit the purchase of new technology, new facilities or limit the development of new technology or new products;
- (v) jointly boycott transactions;
- (vi) other monopoly agreements determined by the [Enforcement Authority].

The monopoly agreements mentioned in this Law are agreements, decisions or other concerted practices that eliminate or restrict competition.

Article 14 [Vertical Monopoly Agreements]

The following monopoly agreements between undertakings and their trading partners are prohibited:

- (i) fix prices of products re-sold to third persons;
- (ii) limit the minimum prices of products re-sold to third persons;
- (iii) other monopoly agreements determined by the [Enforcement Authority].

Article 15 [Exemptions from the Monopoly Agreement Prohibitions]

If the undertakings can prove that the concluded agreements aim for the following objectives, Article 13 and Article 14 in this Law shall not apply:

- (i) to improve technology, research and develop new product;
- (ii) to upgrade the product quality, reduce cost, enhance efficiency, unify the specifications and standards of product, or implement division of specialization;
- (iii) to improve operational efficiency and enhance competitiveness of small and medium-sized undertakings ;
- (iv) to realize the social public interests such as to energy saving, environmental protection, and disaster rescue and remedy;
- (v) during the period of economic depression, to moderate serious decreases in sales volumes or distinct production surpluses;
- (vi) to ensure the legitimate interests in foreign trade and economic cooperation;
- (vii) other circumstances prescribed in the law or by the State Council.

In order to be exempted from application of Articles 13 and 14, in addition to any of the circumstances set out in items (i) to (iv) of the preceding paragraph, the undertakings shall also prove that the agreements reached will not seriously restrict competition in the relevant market and the consumers are able to share the benefits derived therefrom.

Prohibited Abuse of dominance

Article 17 [Abuse of Dominance]

Undertakings with dominant market positions are prohibited from performing the following conducts by abusing their dominant market positions:

- (i) selling products at unfair high or buying products at unfair low prices;
- (ii) without valid reasons, selling products at prices below cost ;
- (iii) without valid reasons, refusing to trade with trading partners;
- (iv) without valid reasons, compelling trading partners to only trade with themselves, or restricting trading partners to only trade with designated undertaking or undertakings;
- (v) without valid reasons, tying products or imposing other unreasonable trading conditions during the deals;
- (vi) without valid reasons, applying differentiated treatment in regards to transaction conditions such as trading prices to equivalent trading partners;
- (vii) other abuses of dominant market position determined by the [Enforcement Authority].

Article 18 [Identifying dominant undertakings]

The dominant market position of an undertaking shall be determined based on the following factors:

- (i) market share of the undertaking and the competition situation in the relevant market;
- (ii) ability of the undertaking to control the sales market or the purchase market of raw materials;
- (iii) financial and technical conditions of the undertaking;
- (iv) the extent of dependent relationship on the undertaking of other undertakings;
- (v) the difficulty of entering the relevant market by other undertakings;
- (vi) other factors relating to the dominant market position of the undertaking.

Article 19 [Presumed dominance]

Undertakings that have any of the following conditions can be concluded to hold a dominant market position:

- (i) the market share of one undertaking in relevant market accounts for 1/2;
- (ii) the joint market share of two undertakings as a whole in relevant market accounts for 2/3;
- (iii) the joint market share of three undertakings as a whole in relevant market accounts for 3/4.

In situations stipulated in the preceding paragraphs (ii) and (iii), if an undertaking has market share less than 1/10, it shall not be concluded to hold a dominant market position. If an undertaking that has been concluded to hold a dominant market position can provide evidence to prove the non-existence of its dominant market position, it shall not be concluded to hold a dominant market position.

Prohibited and notifiable concentrations

Article 20 [Concentrations - definition]

A concentration of undertakings refers to the following situations: (1) a merger of undertakings; (2) an undertaking's acquisition of controlling rights over other undertakings by means of acquisition of shares or assets; (3) an acquisition of control of other undertakings or the capability of imposing determinative effects on other undertakings by contract or other means.

Article 21 [Concentrations - Notification obligation]

If a concentration of undertakings reaches the threshold of filing required by the State Council, undertakings shall make filings with [the Ministry of Commerce] in advance before carrying out the concentration.