

中华人民共和国反垄断法
Anti-monopoly Law of the People's Republic of China

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第一章 总则

第一条

CHAPTER 1 — GENERAL PRINCIPLES

Article 1

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。

第二条

This Law is formulated for the purposes of preventing and
curbing monopolistic activities, protecting fair market
competition, raising economic efficiency, safeguarding the
interests of consumers and the public interest and promoting
steady development of the socialist market economy.

Article 2

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。

第三条

This Law shall apply to monopolistic activities in the domestic
economic activities in the People's Republic of China; this Law
shall apply to monopolistic activities outside the People's
Republic of China which eliminate or restrict market
competition in China.

Article 3

本法规定的垄断行为包括：

Monopolistic activities stipulated in this Law shall include:

(一) 经营者达成垄断协

(1) monopolistic agreements between undertakings;

<p>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>(2) abuse of dominant market position by undertakings; and</p> <p>(3) concentration of undertakings which has or may have an effect of eliminating or restricting competition.</p>
<p>第四条</p>	<p>Article 4</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>The State formulates and implements competition rules which correspond to the socialist market economy, refines macro-control and improves upon a unified, open, competitive and orderly market system.</p>
<p>第五条</p>	<p>Article 5</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>Undertakings may implement concentration pursuant to the law through fair competition and voluntary collaboration, expand their scale of business and raise market competitiveness.</p>
<p>第六条</p>	<p>Article 6</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>Undertakings which hold dominant market position shall not abuse their dominant market position to eliminate or restrict competition.</p>
<p>第七条</p>	<p>Article 7</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>For industries where State-owned economy holds a controlling position which affects the lifeline of national economy and national security and industries which implement exclusive dealing pursuant to the law, the State shall protect the legitimate business activities of the undertakings, implement control and regulation over the business activities of the undertakings and the prices of their commodities and services pursuant to the law, safeguard the interests of consumers and promote technological advancement.</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>Undertakings in the industries stipulated in the preceding paragraph shall conduct their businesses pursuant to the law, act honestly and trustworthily, exercise strict self-discipline, accept public supervision and shall not use their controlling position or exclusive dealing position to harm the interests of consumers.</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，排除、限制竞争。

The administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions shall not abuse their administrative powers to eliminate or restrict competition.

第九条

Article 9

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：

The State Council shall establish an anti-monopoly commission to be responsible for organising, coordinating and providing guidance for anti-monopoly tasks and perform the following duties:

(一) 研究拟订有关竞争政策；

(1) study and draft the relevant competition policies;

(二) 组织调查、评估市场总体竞争状况，发布评估报告；

(2) organise investigation, evaluation overall market competition, and issue evaluation reports;

(三) 制定、发布反垄断指南；

(3) formulate and issue anti-monopoly guidelines;

(四) 协调反垄断行政执法工作；

(4) coordinate anti-monopoly administrative enforcement tasks; and

(五) 国务院规定的其他职责。

(5) perform any other duties stipulated by the State Council.

The composition and working rules for the anti-monopoly commission of the State Council shall be formulated 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。

第十条

Article 10

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。

The agency stipulated by the State Council to perform anti-monopoly enforcement duties (hereinafter referred to as the "anti-monopoly enforcement agency of the State Council") shall be responsible for anti-monopoly enforcement tasks pursuant to the provisions of this Law.

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。

The anti-monopoly enforcement agency of the State Council may, pursuant to work requirements, delegate the relevant anti-monopoly enforcement tasks to the corresponding agencies of the People's Governments of the provinces, autonomous regions and centrally-administered municipalities pursuant to the provisions of this Law.

<p>第十一条</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>Article 11</p> <p>Industry associations shall strengthen industry self-governance, guide the undertakings in the respective industries to engage in competition pursuant to the law and safeguard the order of market competition.</p>
<p>第十二条</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>Article 12</p> <p>Undertakings referred to in this Law shall mean natural persons, legal persons and any other organisations engaging in production and sale of commodities or provision of services.</p> <p>The relevant market referred to in this Law shall mean the scope of commodities and territorial scope in which an undertaking engages in competition in respect of certain commodities or services within a stipulated period (hereinafter referred to collectively as the "commodities").</p>
<p>第二章 垄断协议</p> <p>第十三条</p>	<p>CHAPTER 2 — MONOPOLISTIC AGREEMENTS</p> <p>Article 13</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>（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>The following monopolistic agreements between competing undertakings shall be prohibited:</p> <p>(1) fixing or altering prices of commodities;</p> <p>(2) restricting the production quantity or sale quantity of commodities;</p> <p>(3) dividing sale market or procurement market of raw materials;</p> <p>(4) restricting the procurement of new technologies and new equipment or restricting the development of new technologies and new products;</p> <p>(5) jointly boycott transactions; and</p> <p>(6) any other monopolistic agreements as defined by the anti-monopoly enforcement agency of the State Council.</p> <p>Monopolistic agreements referred to in this Law shall mean the agreements or decisions to eliminate or restrict competition or other collaborative practices.</p>

第十四条

Article 14

禁止经营者与交易相对人达成下列垄断协议：

The following monopolistic agreements between undertakings and trading counterparts shall be prohibited:

(一) 固定向第三人转售商品的价格；

(1) fixing the price of commodities for resale to third party;

(2) fixing the lowest price for resale of commodities to third party; and

(二) 限定向第三人转售商品的最低价格；

(3) any other monopolistic agreements as defined by the anti-monopoly enforcement agency of the State Council.

(三) 国务院反垄断执法机构认定的其他垄断协议。

第十五条

Article 15

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：

Where an undertaking is able to prove that the agreement it has entered into falls under any of the following descriptions, the provisions of Article 13 and Article 14 shall not apply:

(一) 为改进技术、研究开发新产品的；

(1) where the objective is technological improvement or research and development of new products;

(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；

(2) where the objective is to raise product quality, lower costs, improve efficiency, standardise product specifications and standards or implement specialisation;

(三) 为提高中小经营者经营效率，增强中小经营者竞争力的；

(3) where the objective is to raise business efficiency of small and medium undertakings and to strengthen the competitiveness of small and medium undertakings;

(四) 为实现节约能源、保护环境、救灾救助等社会公共利益的；

(4) where the objective is to fulfill public interest such as energy conservation, environmental protection and disaster relief etc;

(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；

(5) where the objective is to alleviate serious drop in sale quantity or obvious over-production in times of recession;

(6) where the objective is to protect the legitimate interests in foreign trade and economic cooperation; or

(六) 为保障对外贸易和对外经济合作中的正当利益的；

(7) any other circumstances stipulated by the laws and the State Council.

Where the provisions of Article 13 and Article 14 do not apply under any of the circumstances stipulated in item (1) to item (5)

(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。

第十六条

Article 16

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
第十七条

Industry associations shall not organise the undertakings in the respective industries to engage in monopolistic activities prohibited by this Chapter.

CHAPTER 3 — ABUSE OF DOMINANT MARKET POSITION
Article 17

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：

Undertakings which hold dominant market position shall not abuse their dominant market position to engage in the following activities:

(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；

(1) sell commodities at unfairly high prices or purchase commodities at unfairly low prices;

(2) sell commodities at below-cost prices without a valid reason;

(二)没有正当理由，以低于成本的价格销售商品；

(3) refuse to transact with trading counterparts without a valid reason;

(三)没有正当理由，拒绝与交易相对人进行交易；

(4) restrict trading counterparts to transact only with the undertaking or only with designated undertakings without a valid reason;

(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；

(5) bundle sale of commodities without a valid reason or imposition of any other unreasonable terms of transaction during a transaction; or

(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；

(6) implement differential treatment for terms of transaction such as transaction price for similar trading counterparts without a valid reason; or

(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；

(7) perform any other activities of abuse of dominant market position as defined by the anti-monopoly enforcement agency

(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。

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。

第十八条

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。

第十九条

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

of the State Council.

Dominant market position referred to in this Law shall mean that an undertaking is able to control the prices, quantities or any other terms of transaction in the relevant market or is able to obstruct and affect the entry of other undertakings into the relevant market.

Article 18

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

(1) the market share of the undertaking in the relevant market and the status of competition in the relevant market;

(2) the ability of the undertaking to control the sale market or the procurement market for raw materials;

(3) the financial strength and technological conditions of the undertaking;

(4) the extent of reliance by other undertakings on transactions with the undertaking;

(5) the level of ease or difficulty for entry by other undertakings into the relevant market; and

(6) any other factors relating to the determination of dominant market position of the undertaking.

Article 19

An undertaking which satisfies any of the following criteria shall be deemed to be holding dominant market position:

(1) an undertaking holds half of the market share in the relevant market;

(2) two undertakings hold an aggregate of two-thirds of the

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
第二十条

market share in the relevant market; or

(3) three undertakings hold an aggregate of three-quarter of the market share in the relevant market.

Under the circumstances stipulated in item (2) and item (3) of the preceding paragraph, where one of the undertakings hold less than one-tenth of the market share, such an undertaking shall not be deemed to hold dominant market position.

Where an undertaking which is deemed to hold dominant market position is able to prove that it does not hold dominant market position, it shall not be defined to be holding dominant market position.

CHAPTER 4 — CONCENTRATION OF UNDERTAKINGS
Article 20

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够对其他经营者施加决定性影响。

第二十一条

Concentration of undertakings shall refer to the following circumstances:

(1) merger of undertakings;

(2) acquisition of the controlling stake in other undertakings by an undertaking through acquisition of equity or assets;

(3) acquisition of the controlling stake in other undertakings by way of contractivities etc or decisive influence by an undertaking over other undertakings.

Article 21

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。

第二十二条

Where the concentration of undertakings has attained the standard for which a declaration is required to be made pursuant to the stipulation of the State Council, an undertaking shall make a declaration to the anti-monopoly enforcement agency of the State Council in advance; where the declaration has not been made, such concentration shall not be implemented.

Article 22

经营者集中有下列情形之一

Under any of the following circumstances of concentration of

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。

第二十三条

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：

（一）申报书；

（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。

第二十四条

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、

undertakings, the declaration to the anti-monopoly enforcement agency of the State Council may be exempted:

(1) where an undertaking involved in the concentration owns 50% and above of voting shares or assets of each of the other undertakings;

(2) where 50% and above of the voting shares or assets of each of the undertaking involved in the concentration is owned by an undertaking which is not involved in the concentration.

Article 23

An undertaking shall submit the following documents and materials in its declaration of concentration to the anti-monopoly enforcement agency of the State Council:

(1) letter of declaration;

(2) explanation on the impact of concentration on the status of competition in the relevant market;

(3) concentration agreement;

(4) the financial accounting reports of the undertakings involved in the concentration for the preceding year as audited by an accounting firm; and

(5) any other documents and materials stipulated by the anti-monopoly enforcement agency of the State Council.

The letter of declaration shall state the name, address, scope of business of the undertakings involved in the concentration, the scheduled date of implementation of concentration and any other matters stipulated by the anti-monopoly enforcement agency of the State Council.

Article 24

Where the documents and materials submitted by an undertaking are incomplete, the undertaking shall submit the remaining documents and materials within the period stipulated by the anti-monopoly enforcement agency of the

资料的，视为未申报。

第二十五条

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。

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。

第二十六条

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；

State Council. Where the undertaking failed to submit the remaining documents and materials within a stipulated period, the declaration shall be deemed not to have been made.

Article 25

The anti-monopoly enforcement agency of the State Council shall carry out preliminary examination of the declared concentration of undertakings within 30 days from receipt of the documents and materials submitted by an undertaking which comply with the provisions of Article 23 and make a decision on whether a further examination will be implemented and notify the undertaking in writing. Prior to a decision made by the anti-monopoly enforcement agency of the State Council, the undertakings shall not implement the concentration.

Where the anti-monopoly enforcement agency of the State Council has decided not to carry out further examination or has not made a decision within the stipulated period, the undertaking may implement the concentration.

Article 26

Where the anti-monopoly enforcement agency of the State Council has decided to carry out further examination, such further examination shall be completed within 90 days from the date of the decision and a decision on whether the concentration of undertakings is to be prohibited shall be made and the undertaking shall be notified in writing. Where a decision on prohibition of concentration of undertakings is made, the reason shall be stated. The undertaking shall not implement the concentration during the examination period.

Under any of the following circumstances, the anti-monopoly enforcement agency of the State Council may, upon written notification to the undertaking, extend the examination period stipulated in the preceding paragraph but the extension shall not exceed 60 days:

(1) where the undertaking agrees to an extension of examination period;

(2) where the documents and materials submitted by the

(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。

第二十七条

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。

第二十八条

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。

undertaking are inaccurate and require further verification; or

(3) where there is significant change to the relevant matters following the declaration made by the undertaking.

Where the anti-monopoly enforcement agency of the State Council failed to make a decision within the stipulated period, the undertaking may implement the concentration.

Article 27

Examination of concentration of undertakings shall take into account the following factors:

(1) the market shares of the undertakings involved in the concentration and their control over the market;

(2) the degree of market concentration of the relevant market;

(3) the impact of the concentration of undertakings on market entry and technological advancement;

(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 national economy; and

(6) any other factors deemed by the anti-monopoly enforcement agency of the State Council to be relevant for consideration.

Article 28

Where the concentration of undertakings has or may have an effect on eliminating or restricting competition, the anti-monopoly enforcement agency of the State Council shall make a decision on prohibition of the concentration of undertakings. However, where an undertaking is able to prove that the positive impact of the concentration on competition far outweighs the negative impact or that the concentration is favourable for the public interest, the anti-monopoly enforcement agency of the State Council may decide to allow

第二十九条	the concentration of undertakings. Article 29
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。	Where a concentration of undertakings is allowed, the anti-monopoly enforcement agency of the State Council may decide to impose restrictive conditions to alleviate the negative impact of the concentration on competition.
第三十条	Article 30
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。	The anti-monopoly enforcement agency of the State Council shall promptly make a public announcement on a decision on prohibition of concentration of undertakings or a decision on imposition of restrictive conditions on concentration of
第三十一条	undertakings. Article 31
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。	For participation in concentration of undertakings by way of foreign-funded merger and acquisition of domestic enterprises or any other method which involves national security, the examination of concentration of undertakings shall be carried out pursuant to the provisions of this Law and examination of national security shall be carried out pursuant to the relevant
第五章 滥用行政权力排除、限制竞争	provisions of the State. CHAPTER 5 — ABUSE OF ADMINISTRATIVE POWERS FOR ELIMINATION AND RESTRICTION OF COMPETITION
第三十二条	Article 32
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。	The administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions shall not abuse their administrative powers to restrict, directly or under any pretext, the sale, purchase or use by organisations and individuals of commodities provided by designated undertakings.
第三十三条	Article 33
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：	The administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions shall not abuse their administrative powers to perform the following activities of restricting free circulation of commodities from one region to another:
(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；	(1) impose discriminatory fees on foreign commodities, implement discriminatory fee rates or stipulate discriminatory prices;

(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。
第三十四条

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，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。

第三十五条

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，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。
第三十六条

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，强制经营者从事本法规定的垄断行为。

(2) stipulate different technical requirements and inspection standards for foreign commodities and identical domestic commodities or adopt discriminatory technical measures such as repetitive inspection or repetitive authentication on foreign commodities to restrict entry of foreign commodities into the domestic market;

(3) adopt specific administrative licensing targeted at foreign commodities to restrict entry of foreign commodities into the domestic market;

(4) set up Customs barriers or adopt other means to obstruct entry of foreign commodities or outwards shipment of domestic commodities; and

(5) any other activities which obstruct free circulation of commodities from one region to another.
Article 34

The administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions shall not abuse their administrative powers to create discriminatory qualification requirements or review standards and shall not disseminate information in a manner which is non-pursuant to the law to exclude or restrict foreign undertakings from participating in tenders organised in China.

Article 35

The administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions shall not abuse their administrative powers to adopt unequal treatment between domestic and foreign undertakings to exclude or restrict foreign undertakings from investing or setting up branches in China.

Article 36

The administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions shall not abuse their administrative powers to force undertakings to engage in any monopolistic

	activities stipulated in this Law. Article 37
第三十七条 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。	The administrative authorities shall not abuse their administrative powers to formulate provisions which exclude or restrict competition.
第六章 对涉嫌垄断行为的调查	CHAPTER 6 — INVESTIGATION OF ALLEGED MONOPOLISTIC ACTIVITIES
第三十八条	Article 38
反垄断执法机构依法对涉嫌垄断行为进行调查。	The anti-monopoly enforcement agency shall investigate alleged monopolistic activities pursuant to the law.
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。	Any organisation and individual shall have the right to report an alleged monopoly act to the anti-monopoly enforcement agency. The anti-monopoly enforcement agency shall keep confidentiality of the identity of the informant.
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。	Where a report is made in writing and the relevant activities and evidence are provided, the anti-monopoly enforcement agency shall carry out the necessary investigation.
第三十九条	Article 39
反垄断执法机构调查涉嫌垄断行为，可以采取下列措施：	The anti-monopoly enforcement agency may adopt the following measures in the investigation of an alleged monopoly act:
（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；	(1) enter the business premises or any other relevant premises of the undertaking which is under investigation to carry out inspection;
（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；	(2) question the undertaking which is under investigation, the interested parties or any other related organisations or individuals and require them to provide the relevant explanation;
（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；	(3) inspect or make copies of the relevant documents and materials such as certificates, agreements, accounts books, business correspondence, electronic data etc of the undertaking which is under investigation, the interested parties or any other related organisations or individuals;
（四）查封、扣押相关证据；	(4) seal up or confiscate the relevant evidence; or

<p>(五) 查询经营者的银行账户。</p>	<p>(5) enquire into the bank accounts of the undertaking.</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>Where the measures stipulated in the preceding paragraph are adopted, a written report shall be submitted to the key person-in-charge of the anti-monopoly enforcement agency for approval.</p>
<p>第四十条</p>	<p>Article 40</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>When the anti-monopoly enforcement agency investigates an alleged monopoly act, the number of enforcement personnel assigned to the case shall not be less than two and they shall present their enforcement identity pass.</p>
<p>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。</p>	<p>Enforcement personnel shall keep written records of questioning and investigation and the interviewees shall sign on the written records.</p>
<p>第四十一条</p>	<p>Article 41</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>The anti-monopoly enforcement agency and its personnel shall be obligated to keep confidentiality of the commercial secret that have come to their knowledge during the enforcement process.</p>
<p>第四十二条</p>	<p>Article 42</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>The undertaking which is under investigation, the interested parties or any other related organisations or individuals shall cooperate with the anti-monopoly enforcement agency in their performance of duties pursuant to the law and shall not refuse or obstruct the investigation of the anti-monopoly enforcement agency.</p>
<p>第四十三条</p>	<p>Article 43</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>The undertaking which is under investigation and the interested parties shall have the right to state their opinion. The anti-monopoly enforcement agency shall verify the factivities, reasons and evidence raised by the undertaking which is under investigation and the interested parties.</p>
<p>第四十四条</p>	<p>Article 44</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>Where the anti-monopoly enforcement agency has verified the investigation of an alleged monopoly act and concludes that the act constitutes a monopoly act, it shall make a handling decision pursuant to the law and make a public announcement.</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。

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。

第七章 法律责任
第四十六条

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；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。

经营者主动向反垄断执法机

Where during the investigation of an alleged monopoly act by the anti-monopoly enforcement agency, the undertaking which is under investigation undertakes to adopt specific measures to eliminate the consequences of such an act within a period approved by the anti-monopoly enforcement agency, the anti-monopoly enforcement agency may decide to suspend the investigation. A decision on suspension of investigation shall state the specific contents of undertakings made by the business operation which is under investigation.

Where the anti-monopoly enforcement agency has decided to suspend the investigation, it shall supervise the status of performance of the undertaking made by the undertaking. Where the undertaking has performed the undertaking, the anti-monopoly enforcement agency may decide to terminate the investigation.

The anti-monopoly enforcement agency shall resume investigation under any of the following circumstances:

(1) the undertaking fails to perform the undertaking;

(2) there are significant changes to the activities on which the decision to suspend investigation is based on;

(3) the decision to suspend investigation was based on incomplete or untrue information provided by the undertaking.

CHAPTER 7 — LEGAL LIABILITY
Article 46

Where an undertaking has violated the provisions of this Law in entering into and implementing a monopolistic agreement, the anti-monopoly enforcement agency shall order the undertaking to stop the illegal act and confiscate the illegal income; a fine ranging from 1% to 10% of the sale amount of the preceding year shall be imposed; where a monopolistic agreement has been entered into but has not been implemented, a fine of not more than RMB500,000 may be imposed.

Where an undertaking has voluntarily reported the relevant

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。

第四十七条

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。

第四十八条

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。

第四十九条

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。

第五十条

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

factivities on entering into a monopolistic agreement to the anti-monopoly enforcement agency and provided important evidence, the anti-monopoly enforcement agency may, at its discretion, reduce or waive the punishment for such an undertaking.

Where an industry association has violated the provisions of this Law in organising the undertakings in the industry to enter into a monopolistic agreement, the anti-monopoly enforcement agency may impose a fine of not more than RMB500,000; where the case is serious, the registration and administrative authorities for social organisations may de-register the industry association pursuant to the law.

Article 47

Where an undertaking has violated the provisions of this Law in abusing its dominant market position, the anti-monopoly enforcement agency shall order the undertaking to stop the illegal act and confiscate the illegal income; a fine of 1% to 10% of the sales amount of the preceding year shall be imposed.

Article 48

Where an undertaking has violated the provisions of this Law in implementing concentration, the anti-monopoly enforcement agency of the State Council shall order the undertaking to stop implementing concentration, to dispose of the shares or assets within a stipulated period or to transfer the business within a stipulated period and to adopt other necessary measures to reinstate the pre-concentration status; a fine of not more than RMB500,000 may be imposed.

Article 49

When the anti-monopoly enforcement agency determines the specific amount of the fines stipulated in Article 46, Article 47 and Article 48, it shall consider the nature of the illegal act, the extent and the period of time during which the act was continuing etc.

Article 50

Undertakings which implement monopolistic activities and causing others to suffer losses therefrom shall bear civil liability

<p>任。</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>pursuant to the law. Article 51</p> <p>The administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions which abuse their administrative powers to exclude or restrict competition shall be ordered by the higher authorities to make correction; the person(s)-in-charge who are directly responsible and other directly accountable personnel shall be punished pursuant to the law. The anti-monopoly enforcement agency may propose handling measure pursuant to the law to the relevant higher authorities.</p> <p>Where the laws and regulations provide otherwise on dealing with the administrative authorities and organisations which are empowered by the laws and regulations to carry out public administration functions which abuse their administrative powers to exclude or restrict competition, such provisions shall prevail.</p>
<p>第五十二条</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>Article 52</p> <p>Persons who refuse to provide the relevant materials and information to the anti-monopoly enforcement agency for examination and investigation pursuant to the law or provide false materials and information or conceal, destroy or remove evidence or commit any other act to refuse or obstruct investigation shall be ordered by the anti-monopoly enforcement agency to make correction; a fine of not more than RMB20,000 may be imposed on individuals and a fine of not more than RMB200,000 may be imposed on organisations; where the case is serious, a fine ranging from RMB20,000 to RMB100,000 may be imposed on individuals and a fine ranging from RMB200,000 to RMB1 million may be imposed on organisations; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.</p>
<p>第五十三条</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</p>	<p>Article 53</p> <p>Persons who disagree with the decision of the anti-monopoly enforcement agency made pursuant to the provisions of Article 28 and Article 29 may apply for administrative review pursuant to the law; persons who disagree with the administrative review</p>

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。

第五十四条

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。

第八章 附 则
第五十五条

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。

第五十六条

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。

第五十七条

本法自2008年8月1日起施行。

decision may file an administrative lawsuit pursuant to the law.

Persons who disagree with a decision of the anti-monopoly enforcement agency outside the scope of decisions stipulated in the preceding paragraph may apply for administrative review pursuant to the law or file an administrative lawsuit pursuant to the law.

Article 54

For personnel of the anti-monopoly enforcement agency who are found guilty of abusing their official powers, dereliction of duties, corruption or divulging commercial secrets which have come to their knowledge during the enforcement process, criminal liability shall be pursued in accordance with the law if the case constitutes a criminal offence; where the case does not constitute a criminal offence, punishment shall be meted out pursuant to the law.

CHAPTER 8 — SUPPLEMENTARY PROVISIONS
Article 55

This Law shall not apply to the exercise of intellectual property by undertakings pursuant to the relevant laws and administrative regulations on intellectual property; however, this Law shall apply to the abuse of intellectual property by undertakings to exclude or restrict competition.

Article 56

This Law shall not apply to cooperative or collaborative activities between agricultural producers and rural economic organisations in business activities such as the manufacture, processing, sale, transportation and storage etc of agricultural products.

Article 57

This Law shall be effective 1 August 2008.



扫一扫，手机阅读更方便