

# **EXHIBIT 1**

中华人民共和国主席令

第 六十八 号

《中华人民共和国反垄断法》已由中华人民共和国第十届全国人民代表大会常务委员会第二十九次会议于2007年8月30日通过，现予公布，自2008年8月1日起施行。

中华人民共和国主席 胡锦涛

2007年8月30日

中华人民共和国反垄断法

(2007年8月30日第十届全国人民代表大会常务委员会第二十九次会议通过)

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第一条

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

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 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。

## 第四条

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。

## 第五条

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。

## 第六条

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。

## 第七条

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。

## 第八条

行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，排除、限制竞争。

## 第九条

国务院设立反垄断委员会，负责组织、协调、指导反垄断工作，履行下列职责：

- （一）研究拟订有关竞争政策；
- （二）组织调查、评估市场总体竞争状况，发布评估报告；
- （三）制定、发布反垄断指南；

(四) 协调反垄断行政执法工作;

(五) 国务院规定的其他职责。

国务院反垄断委员会的组成和工作规则由国务院规定。

#### 第十条

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。

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。

#### 第十一条

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。

#### 第十二条

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。

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。

## 第二章 垄断协议

第十三条 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。

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。

第十四条 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。

第十五条

经营者能够证明所达成的协议属于下列情形之一的，不适用本法第十三条、第十四条的规定：

- （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 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

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。

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 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

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

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、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；
- （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。

#### 第二十九条

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限制性条件。

#### 第三十条

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。

#### 第三十一条

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，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。

#### 第三十三条

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。

#### 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。

### 第六章 对涉嫌垄断行为的调查

#### 第三十八条 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。

#### 第三十九条 反垄断执法机构调查涉嫌垄断行为，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。

执法人员进行询问和调查，应当制作笔录，并由被询问人或者被调查人签字。

#### 第四十一条

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负有保密义务。

#### 第四十二条

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责，不得拒绝、阻碍反垄断执法机构的调查。

#### 第四十三条

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。

#### 第四十四条

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，并可以向社会公布。

#### 第四十五条

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。

### 第五十一条

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。

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。

### 第五十二条

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。

#### 第五十三条

对反垄断执法机构依据本法第二十八条、第二十九条作出的决定不服的，可以先依法申请行政复议；对行政复议决定不服的，可以依法提起行政诉讼。

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。

# **Anti-Monopoly Law of the People's Republic of China**

(Adopted at the 29<sup>th</sup> Session of the Standing Committee of the 10<sup>th</sup> National People's Congress on August 30, 2007)

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## **Chapter I      General Provisions**

### **Article 1**

This Law is enacted for the purposes of guarding against and prohibiting monopolistic conduct, safeguarding fair market competition, improving economic efficiency, protecting the interests of consumers and public interests, and promoting the healthy development of the socialist market economy.

### **Article 2**

This Law is applicable to monopolistic conducts in economic activities within the territory of the People's Republic of China; this Law is applicable to conducts outside the territory of the People's Republic of China that have eliminative or restrictive effects on competition in the domestic market of the People's Republic of China.

### **Article 3**

Monopolistic conduct under this Law includes:

- (1) Undertakings concluding monopoly agreements;
- (2) Abuse of dominant market position by undertakings;
- (3) Concentration of undertakings that has or may have the effect of eliminating or restricting competition.

### **Article 4**

The State shall formulate and implement competition rules, which are suitable to the socialist market economy, improve macroeconomic control, as well as improve a unified, open, competitive and orderly market system.

### **Article 5**

Undertakings may implement concentration through fair competition and voluntary coalition in accordance with law to expand their business scale and increase their market competitiveness.

### **Article 6**

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

### **Article 7**

With respect to industries that are dominated by the State-owned economy and that have a direct bearing on national economic wellbeing and national security, as well as industries that conduct exclusive and monopolistic sales in accordance with law, the State shall protect the legitimate business activities of the undertakings in these industries. The State shall implement the supervision, adjustment and control of the business operations and the prices of products and service of these undertakings in accordance with law, safeguard the legitimate interests of consumers and promote technological progress.

Undertakings of industries under the previous paragraph shall conduct their business in accordance with law in an honest and trustworthy manner, impose strict self-discipline, and accept supervision from the public. These undertakings shall not harm the interests of consumers by making use of their position of control or their position of exclusive and monopolistic sales.

### **Article 8**

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to eliminate or restrict competition.

### **Article 9**

The State Council shall establish the Anti-Monopoly Commission, which shall be responsible for organizing, coordinating and guiding anti-monopoly work and it shall have the following functions:

- (1) Research and formulate relevant competition policies;
- (2) Organize investigations, assess the state of overall market competition, and issue assessment reports;
- (3) Formulate and promulgate anti-monopoly guidelines;
- (4) Coordinate the anti-monopoly administrative enforcement work ; and
- (5) Other functions as specified by the State Council.

The State Council shall stipulate the composition of and the work protocols of the Anti-Monopoly Commission under the State Council.

### **Article 10**

The authority empowered by the State Council to have the functions for anti-monopoly law enforcement (hereafter the “Anti-Monopoly Enforcement Authority under the State Council”) is responsible for the anti-monopoly law enforcement in accordance with provisions of this Law.



If necessary in light of the practical work, the Anti-Monopoly Enforcement Authority under the State Council may delegate to corresponding agencies at the levels of province, autonomous region and municipality directly under the State Council functions for relevant anti-monopoly law enforcement in accordance with provisions of this Law.

#### **Article 11**

Industry associations shall strengthen self-disciplining of undertakings within their industries and guide these undertakings to compete in accordance with law and maintain the order of market competition.

#### **Article 12**

For the purposes of this Law, an “undertaking” means a natural person, legal person or other organization that engages in manufacturing commodities, operating or providing services.

For the purposes of this Law, a “relevant market” means the product scope or territory within which undertakings compete with respect to specific products or services (hereafter collectively “products”) during a certain period.

### **Chapter II Monopoly Agreements**

#### **Article 13**

The following Monopoly Agreements among undertakings with competing relationships shall be prohibited:

- (1) Fix or change prices of products;
- (2) Restrict the production output or sales volume of products;
- (3) Allocate the sales markets or the raw material purchasing markets;
- (4) Restrict the purchase of new technology or new equipment, or restricts the development of new technology or new products;
- (5) Jointly boycott transactions; and
- (6) Other Monopoly Agreements as otherwise determined by the Anti-Monopoly Enforcement Authority under the State Council.

A monopolistic agreement referred to in this Law refers to any agreements, decisions or other concerted actions that eliminate or restrict competition.

#### **Article 14**

Undertakings are prohibited from reaching the following Monopoly Agreements with their counter-parties that:

- (1) Fix the resale price of products with respect to third parties;
- (2) Restrict the minimal resale price of products with respect to the third parties;
- (3) are monopoly agreements as otherwise determined by the Anti-monopoly Enforcement Authority under the State Council.

#### **Article 15**

Monopoly Agreements between undertakings that can be proven to fall under any of the following cases shall be exempt from the application of Article 13 and Article 14:

- (1) For the purpose of technology improvement, or research and development of new products;
- (2) For the purpose of upgrading product quality, reducing cost and improving efficiency, unifying products specifications or standards or implementing the division of labour based on specialization;
- (3) For the purpose of improving operational efficiency of small and medium-sized undertakings and enhancing their competitiveness;
- (4) For the purpose of achieving such public interests as energy savings, environmental protection, disaster relief and other charitable assistance;
- (5) For the purpose of mitigating serious decrease in sales volumes or distinctive production oversupply during economic depression.
- (6) For the purpose of safeguarding the legitimate interests in foreign trade and economic cooperation; or
- (7) Other circumstances as stipulated by law and the State Council. (*New Provision*)

In the case that Monopoly Agreements fall within the circumstances set out in subparagraphs (1) to (5), undertakings shall also prove that the agreements entered into will not substantially restrict competition in the relevant market, and consumers are able to share the benefits derived from such agreements.

#### **Article 16**

Industrial Associations shall not organize undertakings within their industries to engage in monopolistic conducts prohibited by this Chapter.

## **Chapter III Abuse of Dominant Market Position**

### **Article 17**

Undertakings holding a dominant market position are prohibited from engaging in the following activities by abusing their dominant market position:

- (1) Selling products at unfairly high prices or buying products at unfairly low prices;
- (2) Selling products at prices below cost without any justification;
- (3) Refusing to enter into transactions with their counter-parties without any justification;
- (4) Limiting their counter-parties to enter into transactions exclusively with them or undertakings designated by them without any justification;
- (5) Implementing tie-in sales without any justification or imposing any other unreasonable transaction terms in the course of transactions;
- (6) Applying discriminating treatment on prices or other transaction terms to their counter-parties that are in the same positions without any justification; and
- (7) Other abusive exploitations of dominant market position as determined by the Anti-Monopoly Enforcement Authority under the State Council.

For the purpose of this Law, a “dominant market position” means the market position of undertakings to control the price, quantity of products or other transaction terms in the relevant market, or to enable them to block or affect other undertakings in entering into the relevant market.

### **Article 18**

A finding of a 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 competitive conditions in the relevant market;
- (2) The ability of the undertaking to control the sales market or raw material purchasing market;
- (3) The financial status and technical conditions/capabilities of the undertaking;

- (4) The extent of dependence on the undertaking by other undertakings in respect to transactions;
- (5) The level of difficulty for other undertakings to enter into the relevant market; and
- (6) Other factors relating to the dominant market position of the undertaking.

#### **Article 19**

In any of the following cases, a dominant market position of an undertaking or undertakings may be presumed:

- (1) The market share of one undertaking in the relevant market accounts for 1/2;
- (2) The aggregate market share of two undertakings in the relevant market accounts for 2/3; or
- (3) The aggregate market share of three undertakings in the relevant market accounts for 3/4.

In case of sub-paragraphs (2) or (3), an undertaking with a market share of less than 1/10 shall not be presumed to hold a dominant market position.

An undertaking which is presumed to hold a dominant market position shall not be found to be in a dominant market position, if it can provide evidence which shows it does not hold a dominant market position.

### **Chapter IV Concentration of Undertakings**

#### **Article 20**

A “concentration of undertakings” means any of the following circumstances:

- (1) A merger among undertakings;
- (2) Acquisition by an undertaking(s) of control of other undertakings through means of acquiring shares or assets; or
- (3) By contract or other means, an acquisition by an undertaking(s) of control of other undertakings, or an acquisition by an undertaking(s) of the ability to impose decisive influence on other undertakings.

#### **Article 21**

Where a concentration of undertakings meets the relevant thresholds for notification as stipulated by the State Council, the undertakings shall file a notification with the Anti-Monopoly Enforcement Authority under the State Council; without notification

with the Anti-Monopoly Enforcement Authority under the State Council, the undertakings shall be prohibited from implementing the concentration.

#### **Article 22**

In any of the following cases, the undertakings to a concentration may dispense with the notification with the Anti-monopoly Enforcement Authority under the State Council:

- (1) One undertaking to the concentration holds more than 50% of the shares with voting rights or assets of each of the other participating undertakings;
- (2) More than 50% of the shares with voting rights or assets of each of the undertakings to the concentration are owned by a single undertaking that is not participating in the concentration.

#### **Article 23**

In filing a notification of concentration with the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall submit the following documents and materials:

- (1) The notification;
- (2) Explanation regarding the impact of the concentration on competition in the relevant market;
- (3) The agreement of the concentration;
- (4) The financial and accounting reports in the preceding accounting year of the undertakings participating in the concentration, which reports shall have been audited by an accountant; and
- (5) Other documents or materials required by the Anti-Monopoly Enforcement Authority under the State Council.

The notification shall specify matters such as the names, addresses, scope of business, proposed date for implementing the concentration and other matters as stipulated by the Anti-Monopoly Enforcement Authority under the State Council.

#### **Article 24**

In case that the documents and materials submitted for notification by the undertakings are not complete, the undertakings shall supplement the documents and materials within the time limit specified by the Anti-Monopoly Enforcement Authority under the State Council. Where the undertakings fail to supplement such documents or materials within the time limit, it shall be deemed that no notification is filed.

## **Article 25**

Within 30 days from the date of receipt of the documents and materials that are consistent with provisions of Article 23 of this Law as submitted by the undertakings, the Anti-Monopoly Enforcement Authority under the State Council shall initiate the preliminary review, make a decision whether or not to initiate further review, and notify the undertakings in writing. Pending the decision of the Anti-Monopoly Enforcement Authority under the State Council, undertakings shall refrain from implementing the concentration.

Where the Anti-Monopoly Enforcement Authority under the State Council decides not to initiate further review or makes no decision within the time limit, the undertakings may implement the concentration.

## **Article 26**

Where the Anti-monopoly Enforcement Authority under the State Council decides to initiate further review, it shall complete the review within 90 days from the date of the decision, makes a decision whether or not to prohibit the concentration of undertakings and notify the undertakings in writing; in case of a decision to prohibit the concentration of undertakings, the Anti-monopoly Enforcement Authority under the State Council shall state its reasons thereof. During the period of the further review, undertakings shall not implement the concentration.

In any of the following cases, the Anti-Monopoly Enforcement Authority under the State Council may extend the time limit specified in the above paragraph after notifying the undertakings in writing, provided that the maximum extension period does not exceed 60 days:

- (1) The undertakings agree to extend the time limit;
- (2) The documents or materials submitted by the undertakings are inaccurate and need further verification; or
- (3) Material changes have occurred with respect to relevant circumstances since the filing of the notification by the undertakings.

Where the Anti-monopoly Enforcement Authority under the State Council makes no decision within the time limit, undertakings may implement the concentration

## **Article 27**

In reviewing a concentration of undertakings, the following factors shall be taken into consideration:

- (1) The market shares of the undertakings participating in the concentration in the relevant market(s) and their ability to control the market(s);
- (2) The degree of concentration in the relevant market(s);

- (3) The effect of the proposed concentration on market access and technological progress;
- (4) The effect of the proposed concentration on consumers and other relevant undertakings;
- (5) The effect of the proposed concentration on the development of the national economy ; and
- (6) Other factors having effects on market competition that the Anti-Monopoly Enforcement Authority under the State Council considers shall be taken into consideration.

#### **Article 28**

Where the concentration of undertakings has or may have the effect of eliminating or restricting competition, the Anti-monopoly Enforcement Authority under the State Council shall make a decision to prohibit the concentration of undertakings. However, the Anti-Monopoly Enforcement Authority under the State Council may make a decision not to prohibit the concentration of undertakings where the undertakings can prove that its positive effects on competition significantly outweighs its negative effects on competition, or that the concentration of undertakings is in the public interest.

#### **Article 29**

Where the Anti-Monopoly Enforcement Authority under the State Council does not prohibit the concentration of undertakings, it may decide to impose restrictive conditions on the concentration of undertakings to reduce anti-competitive effects arising from the concentration.

#### **Article 30**

The Anti-Monopoly Enforcement Authority under the State Council shall make a public announcement in a timely manner with respect to a decision to prohibit a concentration of undertakings or a decision to impose restrictive conditions on the concentration of undertakings.

#### **Article 31**

With respect to mergers with and acquisitions of domestic enterprises by foreign investors or other forms of concentration involving foreign investors that concern national security, apart from the review of concentration of undertakings under this Law, they shall be examined in accordance with relevant provisions of the State for national security review.

## **Chapter V Abuse of Administrative Powers to Eliminate or Restrict Competition**

### **Article 32**

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to mandate or mandate in disguised form any entities or persons to operate, buy or use only the products supplied by the undertakings designated by them.

### **Article 33**

Administrative agencies and organisations empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers and take any of the following actions that impede the free flow of products among different regions:

- (1) To set discriminatory items for fees or charges, implement discriminatory fee standards or fix discriminatory prices for products originated from other regions;
- (2) To impose on products originated from other regions technical requirements or inspection standards different from those on similar local products, or require repeated inspection or certification on products originated from other regions, restricting entry of products originated from other regions into the local markets;
- (3) To implement administrative license measures as applicable only to products originated from other regions, restricting entry of products originated from other regions into the local markets;
- (4) To prevent entry of products originated from other regions into the local markets or the exit/sale of the local products into other regions by setting up checkpoints or other means; or
- (5) Other actions which impede the free flow of products among different regions.

### **Article 34**

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict the participation of undertakings from other regions in local bidding activities by such means as prescribing discriminatory qualification requirements or assessment standards, or by not publishing information according to law.



### **Article 35**

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to reject or restrict investment or the establishment of branches in their regions by undertakings from other regions by such means as according treatment unequal to that enjoyed by their local undertakings.

### **Article 36**

Administrative agencies and organisation empowered by laws or regulations with responsibilities for public affairs administration shall not abuse their administrative powers to compel undertakings to engage in monopolistic conducts prohibited by this Law.

### **Article 37**

Administrative agencies shall not abuse their administrative powers to make regulations containing provisions eliminating or restricting competition.

## **Chapter VI Investigation of Suspected Monopolistic Conducts**

### **Article 38**

The Anti-Monopoly Enforcement Authority shall investigate suspected monopolistic conducts in accordance with the law.

Any entity or individual shall have the right to report any suspected monopolistic conducts to the Anti-Monopoly Enforcement Authority. The Anti-monopoly Enforcement Authority shall maintain confidentiality for such entity or individual.

Where such report is in writing and furnished with relevant facts and evidence, the Anti-Monopoly Enforcement Authority shall conduct necessary investigations.

### **Article 39**

In investigating suspected monopolistic conducts, the Anti-monopoly Enforcement Authority may take the following measures:

- (1) To enter into the business premises or other places of the investigated undertakings for inspection;
- (2) To interview undertakings, interested parties or other relevant entities or individuals being investigated, and request them to explain the relevant facts and circumstances;
- (3) To inspect and copy relevant documents and materials of undertakings, interested parties or other relevant entities or individuals being investigated,

such as relevant vouchers and certificates, agreements, accounting books, business correspondence, electronic data;

- (4) To seal or seize relevant evidence; and
- (5) To examine bank accounts of the undertakings.

Measures in the above paragraph shall be applied only after a written report is submitted to principal responsible persons of the Anti-Monopoly Enforcement Authority and the relevant approval is obtained.

#### **Article 40**

For investigation of suspected monopolistic conducts by the Anti-monopoly Enforcement Authority, there shall be at least two enforcement officers attending the investigation, and they shall present the proofs of enforcement certificates.

Enforcement officers shall maintain written record of their inquiries and such written record shall be signed by those being interviewed or investigated.

#### **Article 41**

The Anti-Monopoly Enforcement Authority and its staff shall keep confidential the commercial secrets obtained during the course of law enforcement.

#### **Article 42**

Undertakings, interested parties, other relevant organizations or individuals being investigated shall cooperate with the Anti-Monopoly Enforcement Authority with respect to the performance of its functions and shall not refuse or hinder the investigation by the Anti-Monopoly Enforcement Authority.

#### **Article 43**

Undertakings being investigated and interested parties shall have the right to state their opinions. The Anti-Monopoly Enforcement Authority shall verify the facts, reasons and supporting evidences furnished by the undertakings being investigated or interested parties.

#### **Article 44**

After investigations and verification, if the Anti-Monopoly Enforcement Authority considers that the suspected monopolistic conduct constitutes monopolistic conduct, it shall make a decision in accordance with law and may publish the decision to the public.

#### **Article 45**

With respect to a suspected monopolistic conduct that is investigated by the Anti-Monopoly Enforcement Authority, if the undertaking being investigated undertakes to take concrete measures to eliminate consequences of such monopolistic conduct within the time limit accepted by the Anti-Monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may decide to suspend the investigation. The decision to suspend the investigation shall expressly state detailed contents of such commitments of the undertaking.

Where the Anti-Monopoly Enforcement Authority decides to suspend the investigation, it shall monitor the undertaking's performance of its commitments. Where the undertaking performed its commitments, the Anti-Monopoly Enforcement Authority may decide to cease the investigation.

In any of the following circumstances, the Anti-monopoly Enforcement Authority shall resume its investigation:

- (1) Where the undertaking fails to meet its commitments;
- (2) Where material changes have occurred with respect to the facts on which the decision to suspend the investigation is based;
- (3) Where the decision to suspend the investigation was made based on incomplete or inaccurate information provided by the undertaking.

## **Chapter VII      Legal Liability**

### **Article 46**

For undertakings that enter into any monopoly agreement in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such act, confiscate the illegal gains and impose fines of more than 1% and less than 10% of the turnover in the preceding year; fines of no more than RMB 500,000 yuan may be imposed where the monopolistic agreement has not yet been implemented.

Where any undertaking on its own initiative reports the relevant circumstances of the monopoly agreement and furnishes important evidence to the Anti-monopoly Enforcement Authority, the Anti-Monopoly Enforcement Authority may in its discretion mitigate or exempt such undertaking from punishment.

For industrial associations that organize the undertakings within their industries to reach monopoly agreements, the Anti-Monopoly Enforcement Authority may impose fines of no more than RMB 500,000 yuan; in serious circumstances, the authority for registration and administration of social organizations may revoke the registration of the industrial associations according to law.

### **Article 47**

For undertakings that abuse their dominant market position in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority is authorised to order such undertakings to cease and desist such an act, confiscate the illegal gains, and impose fines of more than 1% and less than 10% of the turnover in the preceding year.

#### **Article 48**

For undertakings that implement concentrations in violation of provisions of this Law, the Anti-Monopoly Enforcement Authority under the State Council is authorised to order such undertakings to cease the implementation of the concentration, or to dispose of shares or assets or transfer businesses within a given time limit, and take other measures necessary to restore to the state before the concentration of such undertakings, and may impose fines of no more than RMB 500,000 yuan.

#### **Article 49**

In determining the specific amount of fines imposed under Articles 46, 47 and 48 of this Law, the Anti-Monopoly Enforcement Authority shall take into account such factors as the nature, extent and duration of an illegal conduct.

#### **Article 50**

Undertakings shall be responsible for civil liabilities according to law for losses caused to others as a result of their monopolistic conducts.

#### **Article 51**

Where any administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration engages in conducts that eliminate or restrict competition in abuse of their administrative powers, its superior agency shall order it to make correction; the persons directly in charge and others who are directly responsible shall be subject to disciplinary sanctions in accordance with law. The Anti-Monopoly Enforcement Authority may make proposals to the relevant superior agency of the administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration on handling of the case in accordance with law.

Where laws or administrative regulations otherwise make provisions for the regulation of conducts eliminating or restricting competition by administrative agency or organisation empowered by laws or regulations with responsibilities for public affairs administration in abuse of their administrative powers, such provisions shall prevail.

#### **Article 52**

If any individual or entity in an examination and investigation implemented by the Anti-Monopoly Enforcement Authority in accordance with the law, refuses to submit relevant materials or information, submits false materials or information, conceals, destroys or removes evidence, or refuses to be investigated or hinders the

investigation, the Anti-Monopoly Enforcement Authority is authorised to order such individual or entity to cease and desist such act and to impose fines of no more than RMB 20,000 yuan on individuals or fines of no more than RMB 200,000 yuan on entities; in serious circumstances, the Anti-Monopoly Enforcement Authority may impose fines that is between RMB 20,000 yuan and RMB 100,000 yuan on individuals or fines of between RMB 200,000 yuan and RMB 1 million yuan on entities; if the case constitutes a criminal offence, criminal liabilities shall be prosecuted according to law.

### **Article 53**

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with Article 28 and Article 29 of this law may first apply for an administrative review according to law; and, if object to the decision in the administrative review, may file an administrative suit according to law.

Any undertaking or interested party that objects to a decision made by the Anti-Monopoly Enforcement Authority in accordance with provisions other than the previous provisions may apply for an administrative review or bring an administrative action according to law.

### **Article 54**

Any working staff of the Anti-Monopoly Enforcement Authority who abuses his powers, neglects his duties, bends the law for personal gains, or divulges business secrets obtained in the process of law enforcement, shall be prosecuted for criminal liabilities according to law if the case constitute a criminal offence, or shall be imposed disciplinary sanctions according to law if the case does not constitute a criminal offence.

## **Chapter VIII      Supplementary Provisions**

### **Article 55**

This Law is not applicable to undertakings' conduct in exercise of intellectual property rights pursuant to provisions of laws and administrative regulations relating to intellectual property rights; but this Law is applicable to undertakings' conduct that eliminates or restricts competition by abusing their intellectual property rights.

### **Article 56**

This Law is not applicable to the alliance or concerted actions among farmers and farmers' economic organisations in connection with operational activities such as the production, processing, sales, transportation and storage of agricultural products.

### **Article 57**

This Law is effective as of 1 August 2008.

I, Mary Xu, of Freshfields Bruckhaus Deringer, which is located at 34<sup>th</sup> Floor, Jin Mao Tower, 88 Century Boulevard, Pudong New Area, Shanghai, PRC, declare that I am well acquainted with both the Chinese and English languages, and that the document listed below has been accurately translated, to the best of my knowledge and ability:

*Exhibit 1: Anti-Monopoly Law of the People's Republic of China*

*Exhibit 3: Measures on the Notification of Concentrations of Undertakings (Ordinance of the Ministry of Commerce, 2009 No. 11)*

*Exhibit 5: English translation of the excerpts of MOFCOM press conference on 12 August 2008*

*Exhibit 6: Ministry of Commerce of the People's Republic of China Announcement (2009 No. 76)*

I declare that the foregoing is true and correct.

Signed.....*Mary Xu*.....  
Mary Xu

Date.....*28/09/2011*.....