

工商行政管理机关  
制止滥用行政权力排除、限制竞争行为的规定

Rules of Administration of Industry and Commerce on Prohibition of Abuse of  
Administrative Power for the Purposes of Eliminating or Restricting Competition

<p><b>第一条</b> 为了制止滥用行政权力排除、限制竞争行为，根据《中华人民共和国反垄断法》（以下简称《反垄断法》），制定本规定。</p>	<p><b>Article 1</b> These Rules are promulgated in accordance with the <i>Anti-Monopoly Law of the People's Republic of China</i> (hereinafter the <i>Anti-Monopoly Law</i>) in order to prevent abuse of administrative power for the purpose of eliminating or restricting competition.</p>
<p><b>第二条</b> 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，排除、限制竞争。</p>	<p><b>Article 2</b> Administrative agencies and organizations empowered by laws and regulations to perform the functions of public affairs administration shall not abuse their administrative power to eliminate or restrict competition.</p>
<p><b>第三条</b> 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，从事下列行为： （一）以明确要求、暗示或者拒绝、拖延行政许可以及重复检查等方式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或者限定他人正常的经营活动； （二）对外地商品执行与本地同类商品不同的技术要求、检验标准，或者采取重复检验、重复认证等歧视性技术措施，阻碍、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，或者对外地商品实施行政许可时采取不同的许可条件、程序、期限等，阻碍、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、限制外地商品进入本地市场或者本地商品运往外地市场； （五）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； （六）采取不平等待遇等方式，排斥或者限制外地经营者在本地投资或者设立分支机构或者妨碍外地经营者在本地正常经营活动； （七）强制经营者之间达成、实施排除、限制竞争的垄断协议，强制具有市场支配地位的经营者从事滥用市场支配地位行为。</p>	<p><b>Article 3</b> Administrative agencies and organizations empowered by laws and regulations to perform the functions of public affairs administration shall not abuse their administrative power by engaging in any of the following conducts: (1) restricting or disguisedly restricting organizations or individuals to deal, purchase, or use products provided by designated undertakings or restricting the normal operation activities of others by expressly requiring, implying, rejecting or postponing administrative licensing, repeatedly inspecting, or any other forms; (2) blocking or restricting the entry of products originating from other regions into the local market by imposing technical requirements or inspection standards on products originating from other regions that are different from those on local like products, or taking discriminatory technical measures, such as repeated inspection or certification on products originating from other regions; (3) blocking or restricting the entry of products originating from other regions into the local market by creating administrative licensing targeting products from other regions, or adopting different conditions, procedures, time limit when implementing administrative</p>

	<p>licensing on products originating from other regions;</p> <p>(4) blocking or restricting either the entry of products originating from other regions into the local market or the exit of local products to the market of other regions by setting up checkpoints or other measures;</p> <p>(5) repulsing or restricting participation of undertakings from other regions in local bidding activities by imposing discriminatory qualification requirements or assessment standards or by failing to publish information in accordance with the law;</p> <p>(6) repulsing or restricting either investment or the establishment of local branches in their region by undertakings from other regions by adopting discriminatory treatment etc.;</p> <p>(7) compelling undertakings to conclude and implement monopoly agreement for the purpose of eliminating or restricting competition, or compelling undertakings to abuse their dominant market position.</p>
<p><b>第四条</b></p> <p>行政机关不得滥用行政权力，以决定、公告、通告、通知、意见、会议纪要等形式，制定、发布含有排除、限制竞争内容的规定。</p> <p>前款规定适用于法律、法规授权的具有管理公共事务职能的组织。</p>	<p><b>Article 4</b></p> <p>Administrative agencies shall not abuse their administrative power to promulgate or issue any regulation containing eliminating or restricting competition contents by forms of decision, public notice, announcement, notification, opinion, meeting minutes, or any other forms.</p> <p>The preceding paragraph applies to organizations empowered by laws and regulations to perform the functions of public affairs administration.</p>
<p><b>第五条</b></p> <p>经营者不得从事下列行为：</p> <p>（一）以行政机关和法律、法规授权的具有管理公共事务职能的组织的行政限定为由，达成、实施垄断协议和滥用市场支配地位；</p> <p>（二）以行政机关和法律、法规授权的具有管理公共事务职能的组织的行政授权为由，达成、实施垄断协议和滥用市场支配地位；</p> <p>（三）以依据行政机关和法律、法规授权的具有管理公共事务职能的组织制定、发布的行政规定为由，达成、实施垄断协议和滥用市场支配地位。</p>	<p><b>Article 5</b></p> <p>Undertakings shall not engage in any of the following conducts:</p> <p>(1) conclude, implement monopoly agreement or abuse dominant market position on the ground of the administrative restriction by administrative agencies and organizations empowered by laws and regulations to perform the functions of public affairs administration;</p> <p>(2) conclude, implement monopoly agreement or abuse dominant market position on the ground of the administrative authorization by administrative agencies and organizations</p>

	<p>empowered by laws and regulations to perform the functions of public affairs administration;</p> <p>(3) conclude, implement monopoly agreement or abuse dominant market position on the ground of the administrative regulation promulgated or issued by administrative agencies and organizations empowered by laws and regulations to perform the functions of public affairs administration.</p>
<p><b>第六条</b></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违反本规定第三条、第四条规定的，国家工商行政管理总局和省、自治区、直辖市工商行政管理局依照《反垄断法》第五十一条的规定，可以就行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力排除、限制竞争的行为表现及其后果，向其有关上级机关提出依法处理的建议。</p>	<p><b>Article 6</b></p> <p>When an administrative agency or an organization empowered by laws and regulations to perform the functions of public affairs administration violates Article 3 or Article 4 of these Rules, SAIC and Provincial AIC may, in accordance with Article 51 of the <i>Anti-Monopoly Law</i>, make a proposal on handling of the matter to the relevant superior authority in connection with any abuse of administrative power, and effects thereof, by administrative agencies and organizations empowered by laws and regulations to perform the functions of public affairs administration for the purpose of eliminating or restricting competition.</p>
<p><b>第七条</b></p> <p>经营者违反本规定第五条规定从事垄断行为的，依照《工商行政管理机关禁止垄断协议行为的规定》、《工商行政管理机关禁止滥用市场支配地位行为的规定》处理。</p>	<p><b>Article 7</b></p> <p>An undertaking which engages in monopolistic conducts in violation of Article 5 hereof shall be dealt with in accordance with the <i>SAIC Rules on Prohibition of Monopoly Agreements</i> and the <i>SAIC Rules on Prohibition of Dominant Market Position</i>.</p>
<p><b>第八条</b></p> <p>经营者达成并实施垄断协议的，由工商行政管理机关责令停止违法行为，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。经营者滥用市场支配地位的，由工商行政管理机关责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款。</p>	<p><b>Article 8</b></p> <p>Where an undertaking has entered into and implemented a monopoly agreement, the AIC authority shall order the undertaking to cease the violation, confiscate the illegal gains, and impose a fine of 1-10% of the turnover in the previous fiscal year; where the monopoly agreement has not been implemented, the offender may be imposed a fine of no more than RMB 500,000. Where an undertaking abuses its dominant market position, the AIC authority shall order the undertaking to cease the violation, confiscate the illegal gains, and impose a fine of 1-10% of the</p>

	turnover in the previous fiscal year.
<b>第九条</b> 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。	<b>Article 9</b> Where other laws or administrative regulations provide for the handling of abuses by administrative agencies and organizations empowered by laws and regulations to perform the functions of public affairs administration of their administrative power to engage in conducts that eliminate or restrict competition, those provisions shall apply.
<b>第十条</b> 工商行政管理机关反垄断执法人员应当按照《工商行政管理机关制止滥用行政权力排除、限制竞争行为程序规定》的规定，严格依法办案。 工商行政管理机关反垄断执法人员滥用职权、玩忽职守、徇私舞弊或者泄露执法过程中知悉的商业秘密的，依照有关规定处理。	<b>Article 10</b> Anti-Monopoly Law enforcement officials with the AIC authority shall handle cases strictly in accordance with <i>Procedural Rules by Administration of Industry and Commerce regarding Investigation and Handling of Cases relating to Monopoly Agreement and Abuse of Dominant Market Position</i> . Any Anti-Monopoly Law enforcement official with the AIC authority who misuse his/her authority, neglect his/her duties, engage in malpractices for his/her personal gain, or disclose trade secrets obtained in the law enforcement work shall be punished according to relevant rules and regulations.
<b>第十一条</b> 本规定所称商品包括服务。	<b>Article 11</b> For the purpose of these Rules, products shall include services.
<b>第十二条</b> 本规定由国家工商行政管理总局负责解释。	<b>Article 12</b> These Rules are subject to interpretation by the State Administration for Industry and Commerce.
<b>第十三条</b> 本规定自2011年2月1日起施行。	<b>Article 13</b> These Rules shall come into effect on February 1, 2011.