

工商行政管理机关
禁止滥用市场支配地位行为的规定

Rules of the Administration for Industry and Commerce on Prohibition of Abuse of
Dominant Market Position

<p>第一条</p> <p>为了制止经济活动中的滥用市场支配地位行为，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>Article 1</p> <p>These Rules are formulated in accordance with <i>The Anti-Monopoly Law of the People's Republic of China</i> (“AML”) for the purpose of prohibiting abuse of dominant market position in economic activities.</p>
<p>第二条</p> <p>禁止具有市场支配地位的经营者在经济活动中滥用市场支配地位，排除、限制竞争。</p>	<p>Article 2</p> <p>An undertaking with a dominant market position is prohibited from abusing its dominant market position to eliminate or restrict competition in economic activities .</p>
<p>第三条</p> <p>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。</p> <p>本条所称其他交易条件是指除商品价格、数量之外能够对市场交易产生实质影响的其他因素，包括商品品质、付款条件、交付方式、售后服务等。</p> <p>本条所称能够阻碍、影响其他经营者进入相关市场，是指排除其他经营者进入相关市场，或者延缓其他经营者在合理时间内进入相关市场，或者其他经营者虽能够进入该相关市场，但进入成本提高难以在市场中开展有效竞争等。</p>	<p>Article 3</p> <p>“A dominant market position” refers to a market position by which an undertaking is able to control the price, output or other transaction conditions of a product in the relevant market, or to impede or prevent entry into the relevant market by other undertakings.</p> <p>For purpose of this Article, “Other transaction conditions” refers to elements other than price and volume that may substantially affect market transactions, including product quality, payment condition, delivery method and after-sale service of the product etc.</p> <p>For purpose of this Article, “Impeding or preventing entry into the relevant market by other undertakings” refers to preventing other undertakings from entering the relevant market, or deferring other undertakings’ entry into the relevant market within a reasonable time, or increasing the market entry cost, thus making it difficult for the new entrant to compete effectively in the market although entry into the relevant market is possible.</p>

<p>第四条</p> <p>禁止具有市场支配地位的经营者没有正当理由，通过下列方式拒绝与交易相对人进行交易：</p> <p>（一）削减与交易相对人的现有交易数量；</p> <p>（二）拖延、中断与交易相对人的现有交易；</p> <p>（三）拒绝与交易相对人进行新的交易；</p> <p>（四）设置限制性条件，使交易相对人难以继续与其进行交易；</p> <p>（五）拒绝交易相对人在生产经营活动中以合理条件使用其必需设施。</p> <p>在认定前款第（五）项时，应当综合考虑另行投资建设、另行开发建造该设施的可行性、交易相对人有效开展生产经营活动对该设施的依赖程度、该经营者提供该设施的可能性以及对自身生产经营活动造成的影响等因素。</p>	<p>Article 4</p> <p>An undertaking with a dominant market position is prohibited from refusing to deal with the counterparty by means of the following without valid justification:</p> <p>(1) reducing its current trade volume with the counterparty;</p> <p>(2) delaying, terminating its current transaction with the counterparty;</p> <p>(3) refusing to have any new transaction with the counterparty;</p> <p>(4) imposing restrictive conditions which makes it difficult for the counterparty to continue its dealings with the said undertaking;</p> <p>(5) refusing to allow the counterparty to use its necessary facilities under reasonable conditions in the course of production and operations.</p> <p>For finding of violation under Item (5), factors such as the following shall be considered on a comprehensive basis: feasibility in separately investing and building, or developing such facilities, degree of reliance of the counterparty on such facilities in effectively running its production and operations, possibilities of such undertaking making available such facilities, and its impact over the production and operations of such undertaking.</p>
<p>第五条</p> <p>禁止具有市场支配地位的经营者没有正当理由，实施下列限定交易行为：</p> <p>（一）限定交易相对人只能与其进行交易；</p> <p>（二）限定交易相对人只能与其指定的经营者进行交易；</p> <p>（三）限定交易相对人不得与其竞争对手进行交易。</p>	<p>Article 5</p> <p>An undertaking with a dominant market position is prohibited from engaging in any of the following restrictive trading conduct without valid justification:</p> <p>(1) restricting the counterparty to trade exclusively with itself;</p> <p>(2) restricting the counterparty to trade exclusively with a designated undertaking;</p> <p>(3) restricting the counterparty from trading with any of its competitors.</p>

<p>第六条</p> <p>禁止具有市场支配地位的经营者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：</p> <p>（一）违背交易惯例、消费习惯等或者无视商品的功能，将不同商品强制捆绑销售或者组合销售；</p> <p>（二）对合同期限、支付方式、商品的运输及交付方式或者服务的提供方式等附加不合理的限制；</p> <p>（三）对商品的销售地域、销售对象、售后服务等附加不合理的限制；</p> <p>（四）附加与交易标的无关的交易条件。</p>	<p>Article 6</p> <p>An undertaking with a dominant market position is prohibited from tying in products or imposing any other unreasonable trading conditions at the time of the transaction:</p> <p>(1) forcibly tying in different products or bundling of different products in violation of the trade practices or consumer habits, or in disregard of the functions of the product;</p> <p>(2) imposing unreasonable restrictions regarding term of the contract, method of payment, transport of the products, manner of delivery and manner in which the services are delivered etc.</p> <p>(3) imposing unreasonable restrictions regarding sales territory, target customers and after-sales services etc. for the products;</p> <p>(4) imposing trading conditions irrelevant to the subject product of the transaction.</p>
<p>第七条</p> <p>禁止具有市场支配地位的经营者没有正当理由，对条件相同的交易相对人在交易条件上实行下列差别待遇：</p> <p>（一）实行不同的交易数量、品种、品质等级；</p> <p>（二）实行不同的数量折扣等优惠条件；</p> <p>（三）实行不同的付款条件、交付方式；</p> <p>（四）实行不同的保修内容和期限、维修内容和时间、零配件供应、技术指导等售后服务条件。</p>	<p>Article 7</p> <p>An undertaking with a dominant market position is prohibited from according differential treatment to similarly situated counterparties in respect of conditions of the transaction without valid justification:</p> <p>(1) offering different trade volumes, grades, qualities;</p> <p>(2) offering differential preferential conditions, such as differential quantity-based discounts;</p> <p>(3) applying differential terms of payment and method of delivery;</p> <p>(4) applying differential after-sales services conditions, such as different warranty services and warranty period, different maintenance items and maintenance period, different spare parts supply and technical instructions.</p>

<p>第八条</p> <p>工商行政管理机关认定本规定第四条至第七条所称的正当理由，应当综合考虑下列因素：</p> <p>（一）有关行为是否为经营者基于自身正常经营活动及正常效益而采取；</p> <p>（二）有关行为对经济运行效率、社会公共利益及经济发展的影响。</p>	<p>Article 8</p> <p>The relevant administration for industry and commerce shall consider the following factors on a comprehensive basis when determining the valid justification as cited in Article 4 to Article 7:</p> <p>(1) whether the conduct is based on normal operations and for normal benefits of the undertaking;</p> <p>(2) the effect of the relevant conduct on economic efficiency, public interest and economic growth.</p>
<p>第九条</p> <p>本规定未明确规定的其他滥用市场支配地位行为，除价格垄断行为外，由国家工商行政管理总局依法认定。</p>	<p>Article 9</p> <p>Except price monopolistic conduct, the State Administration for Industry and Commerce shall determine, according to laws, any other abuse of dominant market position not expressly covered in these Rules.</p>
<p>第十条</p> <p>认定经营者具有市场支配地位，应当依据下列因素：</p> <p>（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。</p> <p>市场份额是指一定时期内经营者的特定商品销售额、销售数量等指标在相关市场所占的比重。</p> <p>分析相关市场竞争状况应当考虑相关市场的发展状况、现有竞争者的数量和市场份额、商品差异程度以及潜在竞争者的情况等。</p> <p>（二）该经营者控制销售市场或者原材料采购市场的能力。</p> <p>认定经营者控制销售市场或者原材料采购市场的能力，应当考虑该经营者控制销售渠道或者采购渠道的能力，影响或者决定价格、数量、合同期限或者其它交易条件的能力以及优先获得企业生产经营所必需的原料、半成品、零部件及相关设备等原材料的能力。</p> <p>（三）该经营者的财力和技术条件。</p> <p>认定经营者的财力和技术条件，应当考虑该经营者的资产规模、财务能力、盈利能力、融资能力、研发能力、技术装备、技术创新和应用能力、拥有的知识产权等。</p>	<p>Article 10</p> <p>In finding of a dominant market position, the following factors shall be taken into consideration:</p> <p>(1) Market share of the undertaking in question, and the competition status in the relevant market.</p> <p>Market share refers to the turnover, sales volume and other measurements of an undertaking expressed as a percentage in the relevant market over a given period of time.</p> <p>When analyzing the competition status of relevant market, consideration shall be given to development of the relevant market, number of existing competitors, market shares, differentiation of products and situation of potential competitors, etc..</p> <p>(2) Ability of the undertaking to control the sales market or the raw materials purchasing market.</p> <p>When determining the ability of the undertaking to control the sales market or the raw materials purchasing market, consideration shall be given to its ability to control the sales channels or the purchase channels, the ability to impact or determine the price, the output, term or other contract conditions and to have priority access to raw material, such as raw material supplies, semi-products, part and component, as well as relevant equipment necessary for the production and operation of an undertaking.</p>

<p>对于经营者的财力和技术条件的分析认定，应当同时考虑其关联方的财力和技术条件。</p> <p>（四）其他经营者对该经营者在交易上的依赖程度。</p> <p>认定其他经营者对该经营者在交易上的依赖程度，应当考虑其他经营者与该经营者之间的交易量、交易关系的持续时间、转向其他交易相对人的难易程度等。</p> <p>（五）其他经营者进入相关市场的难易程度。</p> <p>认定其他经营者进入相关市场的难易程度，应当考虑市场准入制度、拥有必需设施的情况、销售渠道、资金和技术要求以及成本等。</p> <p>（六）与认定该经营者市场支配地位有关的其他因素。</p>	<p>(3) The financial and technological conditions of the undertaking.</p> <p>When determining the financial and technological conditions of the undertaking, consideration shall be given to capital scale, the financial position, the profitability, the financing capability, the R&D capability, technical equipment, technology innovation and application ability, and the intellectual property owned by such undertaking.</p> <p>Analysis of the financial and technological conditions of the undertaking shall also take into consideration those of its affiliates.</p> <p>(4) Degree of dependence of other undertakings on the undertaking in question.</p> <p>When determining the degree of dependence of other undertakings on the undertaking in question, consideration shall be given to transaction volume, duration of the trading relationship with such undertaking in question, and degree of difficulty to switch to other counterparties.</p> <p>(5) Degree of difficulty for other undertakings to enter the relevant market.</p> <p>When determining the degree of difficulty for other undertakings to enter the relevant market, considerations shall be given to regulation on the market access, possession of essential facilities, distribution channel, financial and technological requirements and costs, etc.</p> <p>(6) Other factors concerning the finding of a dominant market position.</p>
<p>第十一条</p> <p>有下列情形之一的，可以推定经营者具有市场支配地位：</p> <p>（一）一个经营者在相关市场的市场份额达到二分之一的；</p> <p>（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；</p> <p>（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。</p> <p>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</p>	<p>Article 11</p> <p>Undertakings may be considered to be in a dominant market position in one of the following events:</p> <p>(1) the market share of one undertaking in relevant market reaches or exceeds 1/2;</p> <p>(2) the combined market share of two undertakings in relevant market reaches or exceeds 2/3; or</p> <p>(3) the combined market share of three undertakings in relevant market reaches or exceeds 3/4.</p> <p>Among those undertakings that fall within Item (2) or (3) of the preceding paragraph, an undertaking shall not be considered to have the dominant market</p>

<p>该经营者具有市场支配地位。</p>	<p>position if the market share of such undertaking is less than 1/10.</p>
<p>第十二条</p> <p>被推定具有市场支配地位的经营者，能够根据本规定第十条所列因素，证明其在相关市场内不具有控制商品价格、数量或者其他交易条件，或者不具有能够阻碍、影响其他经营者进入相关市场的能力，则不应当认定其具有市场支配地位。</p>	<p>Article 12</p> <p>Where an undertaking that is presumed to hold a dominant market position proves that, based on the elements set forth in Article 10, it has no ability to control the price, the output of the product, or other transaction conditions in relevant market, or the ability to prevent or affect entry into the relevant market by other undertakings, it shall not be considered to hold a dominant market position.</p>
<p>第十三条</p> <p>涉嫌滥用市场支配地位行为的经营者，在工商行政管理机关规定的期限内，可以陈述其行为合理性的理由并提供有关证据。</p>	<p>Article 13</p> <p>An undertaking that is suspected of having abused its dominant market position may provide supporting evidence to prove the rationality of the challenged conduct within the time limit stipulated by the Administration for Industry and Commerce authority.</p>
<p>第十四条</p> <p>经营者违反本规定第四条至第七条、第九条规定，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>工商行政管理机关确定具体罚款数额时，应当考虑违法行为的性质、情节、程度、持续的时间等因素。</p> <p>经营者主动停止滥用市场支配地位行为的，工商行政管理机关可以酌情减轻或者免除对该经营者的处罚。</p>	<p>Article 14</p> <p>Where undertaking abuses the dominant market position thereof, violating Articles 4 to Article 7 and Article 9 of these Rules, the Administration for Industry and Commerce authorities shall order the undertaking to stop the violation, confiscate its illegal gains and impose a fine of 1-10% of the turnover in the previous fiscal year.</p> <p>The Administration for Industry and Commerce authorities shall consider the nature, circumstances, the seriousness and the duration of the violation and other relevant factors, when determining the specific magnitude of the fine.</p> <p>Where the undertakings voluntarily cease abuse of dominant market position, they may, to the discretion of the Administration for Industry and Commerce authorities, be given a mitigated penalty or be exempted from penalty.</p>
<p>第十五条</p> <p>对工商行政管理机关依照本规定作出的行政处罚等决定不服的，可以依法申请行政复议或者提起行政诉讼。</p>	<p>Article 15</p> <p>Undertakings that are not satisfied with the administrative penalty or any other rulings by the Administration for Industry and Commerce may apply for an administrative review or bring an administrative action according to law.</p>

<p>第十六条</p> <p>工商行政管理机关反垄断执法人员应当按照《工商行政管理机关查处垄断协议、滥用市场支配地位案件程序规定》的规定，严格依法办案。</p> <p>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。</p>	<p>Article 16</p> <p>Anti-Monopoly Law enforcement officials of the Administration for Industry and Commerce authority shall handle cases strictly in accordance with <i>the 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>.</p> <p>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.</p>
<p>第十七条</p> <p>本规定所称商品包括服务。</p>	<p>Article 17</p> <p>For the purpose of these Rules, a “product” referred to herein shall include service.</p>
<p>第十八条</p> <p>本规定由国家工商行政管理总局负责解释。</p>	<p>Article 18</p> <p>The State Administration for Industry and Commerce is responsible to interpret these Rules.</p>
<p>第十九条</p> <p>本规定自2011年2月1日起施行。</p>	<p>Article 19</p> <p>These Rules shall come into effect as of February 1, 2011.</p>