

工商行政管理机关禁止垄断协议行为的规定
Rules of AIC on Prohibition of Monopoly Agreements

<p>第一条</p> <p>为了制止经济活动中的垄断协议行为，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 the Anti-Monopoly Law of the People's Republic of China (hereinafter referred to as "AML") for purpose of preventing monopoly agreement in economic activities.</p>
<p>第二条</p> <p>禁止经营者在经济活动中达成垄断协议。</p> <p>垄断协议是指违反《反垄断法》第十三条、第十四条、第十六条的规定，经营者之间达成的或者行业协会组织本行业经营者达成的排除、限制竞争的协议、决定或者其他协同行为。</p> <p>协议或者决定包括书面形式和口头形式。</p> <p>其他协同行为是指经营者虽未明确订立书面或者口头形式的协议或者决定，但实质上存在协调一致的行为。</p>	<p>Article 2</p> <p>Undertakings are prohibited from reaching any monopoly agreement in economic activities.</p> <p>Monopoly agreements shall mean any agreement, decision and other concerted practice reached among undertakings or organized by industry association that eliminate or restrict competition in violation of Article 13, 14, 16 of the AML.</p> <p>An agreement or decision may take written and oral forms.</p> <p>Other concerted practice shall mean colluded coordination in practice between undertakings without express oral or written agreements or decisions.</p>
<p>第三条</p> <p>认定其他协同行为，应当考虑下列因素：</p> <p>（一）经营者的市场行为是否具有一致性；</p> <p>（二）经营者之间是否进行过意思联络或者信息交流；</p> <p>（三）经营者能否对一致行为作出合理的解释。</p> <p>认定其他协同行为，还应当考虑相关市场的结构情况、竞争状况、市场变化情况、行业情况等。</p>	<p>Article 3</p> <p>To find other concerted practice, the following factors shall be considered:</p> <p>(1) Whether the market conduct of undertakings are uniform;</p> <p>(2) Whether there is any intention of contact or information exchange among the undertakings.</p> <p>(3) Whether the undertakings can provide a reasonable justification for the uniformity of conduct.</p> <p>The market structure, competitive conditions, changes in the market, industry condition, etc. shall also be considered in finding other concerted practice.</p>

<p>第四条</p> <p>禁止具有竞争关系的经营者就限制商品的生产数量或者销售数量达成下列垄断协议：</p> <p>（一）以限制产量、固定产量、停止生产等方式限制商品的生产数量或者限制商品特定品种、型号的生产数量；</p> <p>（二）以拒绝供货、限制商品投放量等方式限制商品的销售数量或者限制商品特定品种、型号的销售数量。</p>	<p>Article 4</p> <p>Competing undertakings shall be prohibited from entering into the following monopoly agreements that restrict output or sales volume of products:</p> <p>(1) Agreements that restrict output of products or certain types or models of a product by curtailing production, fixed production, stop production or otherwise.</p> <p>(2) Agreements that restrict sales volume of products, or certain types or models of a product by refusing to supply, restricting the products supply or otherwise.</p>
<p>第五条</p> <p>禁止具有竞争关系的经营者就分割销售市场或者原材料采购市场达成下列垄断协议：</p> <p>（一）划分商品销售地域、销售对象或者销售商品的种类、数量；</p> <p>（二）划分原料、半成品、零部件、相关设备等原材料的采购区域、种类、数量；</p> <p>（三）划分原料、半成品、零部件、相关设备等原材料的供应商。</p>	<p>Article 5</p> <p>Competing undertakings shall be prohibited from entering into the following monopoly agreements that split sales market or raw material purchasing market:</p> <p>(1) Agreements that split market by territory, customer or product type and volume.</p> <p>(2) Agreements that split purchasing market of raw material, semi-finished products, parts, components, relevant equipments and other raw materials by territory, type and volume.</p> <p>(3) Agreements that split suppliers of raw material, semi-finished products, parts, components, relevant equipments and other raw materials.</p>

<p>第六条</p> <p>禁止具有竞争关系的经营者就限制购买新技术、新设备或者限制开发新技术、新产品达成下列垄断协议：</p> <p>（一）限制购买、使用新技术、新工艺；</p> <p>（二）限制购买、租赁、使用新设备；</p> <p>（三）限制投资、研发新技术、新工艺、新产品；</p> <p>（四）拒绝使用新技术、新工艺、新设备；</p> <p>（五）拒绝采用新的技术标准。</p>	<p>Article 6</p> <p>Competing undertakings shall be prohibited from entering into the following monopoly agreements that restrict purchasing new technologies, new equipments, or restrict developing new technologies or new products:</p> <p>(1) Agreements that restrict purchasing and using new technologies, new processes;</p> <p>(2) Agreements that restrict purchasing, leasing or using new equipments;</p> <p>(3) Agreements that restrict investing in and developing new technologies, new process, or new products.</p> <p>(4) Agreements that refuse to use new technologies, new process, or new equipments;</p> <p>(5) Agreements that refuse to adopt new technical standards.</p>
<p>第七条</p> <p>禁止具有竞争关系的经营者就联合抵制交易达成以下垄断协议：</p> <p>（一） 联合拒绝向特定经营者供货或者销售商品；</p> <p>（二） 联合拒绝采购或者销售特定经营者的商品；</p> <p>（三） 联合限定特定经营者不得与其具有竞争关系的经营者进行交易。</p>	<p>Article 7</p> <p>Competing undertakings shall be prohibited from entering into the following monopoly agreements to jointly boycott:</p> <p>(1) concerted refusal to supply or sell products to a specific undertaking;</p> <p>(2) concerted refusal to purchase or sell products of a specific undertaking;</p> <p>(3) concerted restraint on a specific undertaking from dealing with a competing undertaking.</p>
<p>第八条</p> <p>本规定未明确规定的其他垄断协议，除价格垄断协议外，由国家工商行政管理总局依法认定。</p>	<p>Article 8</p> <p>Except price monopoly agreement, the State Administration for Industry and Commerce shall be responsible for finding other monopoly agreements according to law that are not expressly provided for in these Rules.</p>

<p>第九条</p> <p>禁止行业协会以下列方式组织本行业的经营者从事本规定禁止的垄断协议行为：</p> <p>（一）制定、发布含有排除、限制竞争内容的行业协会章程、规则、决定、通知、标准等；</p> <p>（二）召集、组织或者推动本行业的经营者达成含有排除、限制竞争内容的协议、决议、纪要、备忘录等。</p>	<p>Article 9</p> <p>Industry associations shall be prohibited from organizing its members to engage in any monopoly agreement as prohibited hereunder by means set forth below:</p> <p>(1) formulating and issuing articles of association, rules, decision, notice or standard containing contents eliminating or restricting competition by the industry association ;</p> <p>(2) Convening, organizing or promoting undertakings in the relevant industry to reach agreements, decisions, minutes and/or memorandums containing contents eliminating or restricting competition.</p>
<p>第十条</p> <p>经营者违反本规定第四条至第八条规定，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。</p> <p>行业协会违反本规定第九条规定，组织本行业的经营者达成垄断协议的，工商行政管理机关可以对其处五十万元以下的罚款；情节严重的，工商行政管理机关可以提请社会团体登记管理机关依法撤销登记。</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>经营者之间串通或者行业协会组织经营者串通，尚未达成垄断协议的，工商行政管理机关应当及时予以制止。</p> <p>经营者主动停止垄断协议行为的，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 10</p> <p>Where undertakings have entered into and implemented a monopoly agreement in violation of provisions from Article 4 to Article 8 of these Rules, the AIC authorities shall order them 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 enforced, the violator may be imposed a fine of no more than RMB 500,000.</p> <p>The AIC authorities shall impose a fine of no more than RMB 500,000 on any industry association that organizes its members to enter into monopoly agreements in violation of Article 9 of these Rules. In serious cases, the AIC authorities may request the relevant social organization registration administration to duly deregister such industry association.</p> <p>When determining the specific magnitude of the fine, the AIC authorities shall consider the nature, circumstances, the seriousness and the duration of the violation and other relevant factors.</p> <p>Where undertakings collude or industry association organizes undertakings in the relevant industry to collude and a monopoly agreement has not yet been concluded, the AIC authorities shall prevent it in time.</p> <p>Where the undertakings voluntarily cease monopoly agreement, 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>第十一条</p> <p>经营者主动向工商行政管理机关报告所达成垄断协议的有关情况并提供重要证据的，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>工商行政管理机关决定减轻或者免除处罚，应当根据经营者主动报告的时间顺序、提供证据的重要程度、达成、实施垄断协议的有关情况以及配合调查的情况确定。</p> <p>重要证据是指能够对工商行政管理机关启动调查或者对认定垄断协议行为起到关键性作用的证据，包括参与垄断协议的经营者、涉及的产品范围、达成协议的内容和方式、协议的具体实施情况等。</p>	<p>Article 11</p> <p>Undertakings who report to the AIC authority the monopoly agreement and provide important evidence on their own initiatives may be granted by the AIC authority a mitigated penalty or be exempted from penalty.</p> <p>Exemption or mitigation of the penalty by AIC authority shall be determined in accordance with the time sequences of voluntary self-reports by the undertakings, importance of the evidence provided, relevant information about concluding or implementing the monopoly agreement, and its cooperation with the investigation.</p> <p>Important evidence refers to evidence that is sufficient to initiate an investigation or that plays a pivotal role in finding a monopoly agreement by AIC authority, including information on the parties to the agreement, products involved, the form and content of the agreement and specific details of implementation of the agreement.</p>
<p>第十二条</p> <p>对第一个主动报告所达成垄断协议的有关情况、提供重要证据并全面主动配合调查的经营者，免除处罚。对主动向工商行政管理机关报告所达成垄断协议的有关情况并提供重要证据的其他经营者，酌情减轻处罚。</p>	<p>Article 12</p> <p>For the first undertaking who voluntarily self-reports to the AIC authority the monopoly agreement, provides important evidence and cooperates with the investigation comprehensively and voluntarily, penalty should be exempted. For other undertaking who voluntarily self-reports the monopoly agreement, and provides important evidence, penalty shall be mitigated discretionally.</p>
<p>第十三条</p> <p>本规定第十一条、第十二条所称的减轻或者免除处罚，主要是指对《反垄断法》第四十六条规定的罚款的减轻或者免除。</p>	<p>Article 13</p> <p>Exemption or mitigation of penalty referred to in Article 11 and 12 herein shall mainly refer to exemption or mitigation of fines that are specified in Article 46 of the AML.</p>
<p>第十四条</p> <p>经营者能够提供材料，证明所达成的协议符合《反垄断法》第十五条规定的，经工商行政管理机关认定，不适用本规定。</p>	<p>Article 14</p> <p>Where undertakings can provide materials to prove that the agreement concluded falls under Article 15 of the AML, and AIC authority finds so, these Rules shall not be applicable to such agreement.</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 rendered by the AIC authority according to these Rules may apply for an administrative review or bring an administrative action in accordance with 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 with the AIC 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>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，不适用本规定。</p>	<p>Article 17</p> <p>These Rules are not applicable to any alliance or concerted practice by agricultural producers and rural economic organizations in their business activities of production, processing, sale, transportation and storage of farm products etc.</p>
<p>第十八条</p> <p>本规定所称商品包括服务。</p>	<p>Article 18</p> <p>For the purpose of these Rules, products shall include services.</p>
<p>第十九条</p> <p>本规定由国家工商行政管理总局负责解释。</p>	<p>Article 19</p> <p>These Rules are subject to interpretation by the State Administration for Industry and Commerce.</p>
<p>第二十条</p> <p>本规定自2011年2月1日起施行。</p>	<p>Article 20</p> <p>These Rules shall come into effect on February 1, 2011.</p>