

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

Procedural Rules by Administration of Industry and Commerce regarding Prohibition of Abuse of Administrative Power for the Purpose of Eliminating or Restricting Competition

第一条

为制止滥用行政权力排除、限制竞争行为，依据《中华人民共和国反垄断法》制定本规定。

Article 1

This Rule is promulgated in accordance with the Anti-Monopoly Law of the People's Republic of China in order to prevent abuse of administrative power for the purpose of eliminating or restricting competition.

第二条

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。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（以下简称省级工商行政管理局）可以向有关上级机关提出依法处理的建议。

Article 2

Where any administrative authority or any organization tasked by relevant laws or regulations with the administration of relevant public affairs shall abuse its administrative power to eliminate or limit competition, the competent superior authority shall order rectification of such abuse, and the principal official directly responsible for such abuse, as well as any other person directly responsible for such abuse shall be duly punished under law. The State Administration of Industry and Commerce (the "SAIC"), and the relevant Administration of Industry and Commerce of the province, autonomous region or directly administered cities (the "Provincial AIC") may make a proposal for duly dealing with the offense to the relevant superior authority.

第三条

国家工商行政管理总局对国务院所属部门、省级人民政府滥用行政权力排除、限制竞争的，可以向国务院提出依法处理的建议。

Article 3

In case of any abuse of administrative power for elimination and limitation of competition committed by any authority under the State Council or by any provincial people's government, SAIC may make a proposal for duly dealing with the offense to the State Council.

对法律、法规授权的具有管理全国公共事务职能的组织滥用行政权力排除、限制竞争的，国家工商行政管理总局可以向管理该组织的机关提出依法处理的建议。

In case of any abuse of administrative power aimed at elimination and limitation of competition committed by any organization

tasked by relevant laws or regulations with the administration of relevant national public affairs, SAIC may make a proposal for duly dealing with the offense to the authority managing the abusing authority.

第四条

省级工商行政管理局对省级人民政府所属部门、省以下地方人民政府及其所属部门滥用行政权力排除、限制竞争的，可以向有关上级机关提出依法处理的建议。

对法律、法规授权的具有管理地方公共事务职能的组织滥用行政权力排除、限制竞争的，省级工商行政管理局可以向管理该组织的机关提出依法处理的建议。

Article 4

In case of any abuse of administrative power for elimination and limitation of competition committed by any department of the provincial people's government, or by any people's government below the provincial level and its relevant departments, the Provincial AIC may make a proposal for duly dealing with the offense to the relevant superior authority.

In case of any abuse of administrative power aimed at elimination and limitation of competition committed by any organization tasked by relevant laws or regulations with the administration of relevant local public affairs, the Provincial AIC may make a proposal for duly dealing with the offense to the authority managing the abusing authority.

第五条

经营者不得以行政机关和法律、法规授权的具有管理公共事务职能的组织强制、指定、授权等为由，从事垄断行为。

经营者从事垄断协议和滥用市场支配地位行为的，适用《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》。

Article 5

No undertaking shall engage in any anti-trust activities on ground that it is authorized, designated or forced by any administrative authority or by any organization tasked by relevant laws or regulations with the administration of relevant public affairs.

Any monopoly agreement entered into or any act of abuse of dominant market position by any undertaking shall be subject to and governed by Procedural Rules regarding Investigation and Handling of Cases relating to Monopoly Agreement and Abuse of Dominant Market Position by Administration of Industry and Commerce

第六条

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

Article 6

Where any law or administrative regulation shall provide otherwise regarding handling of any abuse of administrative power for

行政权力排除、限制竞争行为的处理另有规定的，依照其规定。

elimination or limitation of competition by any administrative authority or any organization tasked by relevant laws or regulations with the administration of relevant public affairs, such laws and administrative regulations shall govern.

第七条

省级工商行政管理局依据本规定第四条提出依法处理的建议后，应当于十个工作日内报国家工商行政管理总局备案。

Article 7

Within ten (10) business days of making a proposal by the Provincial AIC for duly dealing with the offenses under Article 4 hereof, the Provincial AIC shall make a filing with the SAIC.

第八条

工商行政管理机关工作人员违反本规定，滥用职权、玩忽职守、徇私舞弊，尚不构成犯罪的，依法给予行政处分；构成犯罪的，依法追究刑事责任。

Article 8

Where any personnel of the AIC shall abuse its authority, neglect its duties, or practice favoritism or embezzlement in violation of the rules hereof, such personnel shall be given administrative penalty if the offense does not yet constitute a crime, and shall be held criminally liable if such offense constitutes a crime.

第九条

本规定不适用于制止行政机关和法律、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、限制竞争涉及的价格方面的行为。

Article 9

This Rule shall not be applicable to any pricing activities that may be involved in deterring the abuse of administrative power for elimination or limitation of competition committed by any administrative authority or any organization tasked by relevant laws or regulations with the administration of relevant public affairs

第十条

本规定由国家工商行政管理总局负责解释。

Article 10

SAIC is responsible for interpretation of this Rule.

第十一条

本规定自 2009 年 7 月 1 日起施行。

Article 11

This Rule takes effect as of July 1, 2009.