

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

Procedural Rules by Administration of Industry and Commerce regarding Investigation and Handling of Cases relating to Monopoly Agreement and Abuse of Dominant Market Position

第一条

为规范和保障工商行政管理机关依法查处垄断行为，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 for the purpose of regulating and safeguarding enforcement activities by the Administration of Industry and Commerce ("AIC") against monopolistic conducts.

第二条

国家工商行政管理总局统一负责垄断协议、滥用市场支配地位方面的反垄断执法工作。

Article 2

The State Administration of Industry and Commerce ("SAIC") is in general responsible for anti-monopoly law enforcement activities with regard to monopoly agreement and abuse of dominant market position.

国家工商行政管理总局根据工作需要，可以授权有关省、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）负责垄断协议、滥用市场支配地位方面的反垄断执法工作。

Where necessary, SAIC may delegate to relevant AIC of a province, an autonomous region, or a municipality ("Provincial AIC") the authority of anti-monopoly law enforcement with regard to monopoly agreement and abuse of dominant market position.

第三条

下列垄断行为应当由国家工商行政管理总局负责查处：

- （一）全国范围内有重大影响的；
- （二）国家工商行政管理总局认为应当由其管辖的。

下列垄断行为可以授权省级工商行政管理局负责查处：

- （一）该行政区域内发生的；
- （二）跨省、自治区、直辖市发生，但主要行为地在该行政区域内的；

Article 3

SAIC shall be responsible for investigating and handling the following monopolistic conducts:

- (1) conduct that has significant impact throughout the country;
- (2) conduct that SAIC finds within its jurisdiction.

Provincial AIC may be authorized to investigate and handle the following monopolistic conducts:

- (1) conduct that occurs in that administrative region;

(三) 国家工商行政管理总局认为可以授权省级工商行政管理局管辖的。

授权以个案的形式进行。被授权的省级工商行政管理局不得再次向下级工商行政管理局授权。

第四条

工商行政管理机关依据职权，或者通过举报、其他机关移送、上级机关交办等途径，发现垄断行为并依法查处。

第五条

任何单位和个人有权向工商行政管理机关举报涉嫌垄断行为，工商行政管理机关应当为举报人保密。

举报采取书面形式的，应当包括以下内容：

(一) 举报人的基本情况。举报人为个人的，应当提供姓名、住址、联系方式等。举报人为经营者的，应当提供名称、地址、联系方式、主要从事的行业、生产的产品或者提供的服务等；

(二) 被举报人的基本情况。包括经营者名称、地址、主要从事的行业、生产的产品或者提供的服务等；

(三) 涉嫌垄断的相关事实。包括被举报人违反法律、法规和规章实施垄断行为的事实以及有关行为的时间、地点等；

(四) 相关证据。包括书证、物证、证人证言、视听资料、计算机数据、鉴定结论等，有关证据应当有证据提供人的签名并

(2) conduct that involves several provinces (or autonomous regions or municipalities) but principally occurs in that administrative region;

(3) Other conducts that SAIC may deem advisable to be entrusted for jurisdiction by a Provincial AIC.

Delegation of authority will be decided on a case by case basis. The delegated authority should not re-delegate that authority to lower AIC.

Article 4

AIC may, *ex officio* or by way of reporting, transfer from other AIC or delegation from higher AIC or other means, discover, investigate and handle monopolistic conducts in accordance with law.

Article 5

Any entity or person is entitled to report suspected anti-monopoly law violations to AIC, and AIC shall keep the reporter confidential.

The report of a suspected anti-monopoly law violation shall be in writing, and shall include the following materials:

(1) Basic information of the reporter, including name, address, and contact information in case of a natural person, and including name, address, contact information, and industries mainly engaged in and major products or services provided in case of a business operator;

(2) Basic information of the suspected violator, including name, address, and industries mainly engaged in and major products or services provided;

(3) Relevant facts of the suspected violations, including facts relating to monopolistic conducts in violation of relevant laws, regulations or rules, and the time and place of the suspected violation.

(4) Relevant evidence, including documentary evidence, physical exhibits,

注明获得证据的来源；

(五) 是否就同一事实已向其他行政机关举报或者向人民法院提起诉讼。

第六条

国家工商行政管理总局和省级工商行政管理局负责举报材料的受理。省级以下工商行政管理机关收到举报材料的，应当在5个工作日内将有关举报材料报送省级工商行政管理局。

受理机关收到举报材料后，应当进行登记并对举报内容进行核查。

举报材料不齐全的，应当通知举报人及时补齐。

对于匿名的书面举报，如果有具体的违法事实并提供相关证据的，受理机关应当进行登记并对举报内容进行核查。

第七条

省级工商行政管理局应当对主要发生在本行政区域内涉嫌垄断行为的举报进行核查，并将核查的情况以及是否立案的意见报国家工商行政管理总局。

省级工商行政管理局对举报材料齐全、涉及两个以上省级行政区域的涉嫌垄断行为的举报，应当及时将举报材料报送国家工商行政管理总局。

第八条

国家工商行政管理总局根据对举报内容核查的情况，决定立案查处工作。国家工商行政管理总局可以自己立案查处，也可以

testimonies, visual and audio materials, electronic data and certification of examination etc. Evidence shall bear the signature of the evidence provider and the source of the evidence shall be identified.

(5) Information on whether the same fact has been reported to any other administrative authority or filed with the People's Court.

Article 6

SAIC and provincial AIC shall be responsible for the acceptance of reporting materials. AIC below provincial level that has received reporting materials shall, within 5 business days, transfer the relevant reporting materials to provincial AIC.

The authority accepting the reporting materials shall make record of the report and examine and verify the content of the reporting materials.

If the reporting materials are not complete, the reporter shall be notified to supplement the materials in time.

In case of anonymous written reporting, if specific facts of suspected violations are substantiated by evidence, the authority accepting the reporting materials shall make record of the report and examine and verify the content of the reporting materials.

Article 7

Provincial AIC shall examine and verify report of suspected violation that principally occurs in its administrative region and submit to SAIC findings of examination and verification and opinions on whether to initiate a case (initiate formal investigation).

Provincial AIC shall transfer to SAIC in a timely manner complete reporting material for suspected monopolistic conduct that involves two or more administrative regions.

Article 8

SAIC shall decide whether to initiate a case according to the findings of examination and verification. SAIC may initiate, investigate and decide a case on its own or delegate the

根据本规定第三条的规定授权有关省级工商行政管理局立案查处。

第九条

国家工商行政管理总局对自己立案查处的案件，可以自行开展调查，也可以委托有关省级、计划单列市、副省级市工商行政管理局开展案件调查工作。

省级工商行政管理局对经授权由其立案查处的案件，应当依据本规定组织案件调查等相关工作。

第十条

工商行政管理机关调查涉嫌垄断行为，经向有权查处垄断案件机关的主要负责人书面报告并经批准，可以采取下列调查措施：

(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。

第十一条

工商行政管理机关执法人员调查案件，不得少于两人，并应当出示执法证件。

第十二条

工商行政管理机关调查涉嫌垄断行为时，可以要求被调查的经营者、利害关系人或

authority to provincial AIC to initiate, investigate and decide a case pursuant to Article 3.

Article 9

For cases initiated by SAIC, SAIC may investigate or entrust relevant AIC of the corresponding province, autonomous region, or municipality, a city specifically designated in the state plan or Sub-provincial city to carry out the preliminary investigation.

The provincial AIC shall organize investigation of cases authorized by SAIC in according with this Rule.

Article 10

AIC may, subject to written reporting to and approval by the principal of the AIC who has the authority to handle the case, take the following measures to investigate suspected monopolistic conducts:

(1) Entering the place of business of the business operators being investigated or other relevant places to conduct investigation;

(2) Enquiring the business operators being investigated, interested parties, or any other relevant entities or natural person for relevant information;

(3) Inspecting and copying relevant documents and materials such as certificates, agreements, accounting books, business letters, and electronic data of the aforementioned person;

(4) Sealing up and detaining relevant evidence;

(5) Enquiring about the bank account of the business operators.

Article 11

When conducting investigation, at least two staff of AIC must be present and they shall bear certificate showing their authority to carry out the investigation.

Article 12

When conducting investigation, AIC may ask the business operators being investigated, interested parties or any other relevant

者其他有关单位或者个人（以下简称被调查人）在规定时限内提供以下书面材料：

（一）被调查人的基本情况，包括组织形式、名称、联系人及联系方式、营业执照或者社会团体法人登记证书、法人组织代码副本复印件。经营者为个人的，提供身份证复印件及联系方式；

（二）被调查人为经营者的，还应提供近三年的生产经营状况、年销售额情况、缴税情况、与交易相对人业务往来及合作协议、境外投资情况等，上市公司还要提供股票收益情况；

（三）被调查人为行业协会的，还应提供行业组织章程、相关产业政策依据、本行业生产经营规划以及执行情况、与涉嫌垄断行为有关的会议、活动情况及文件等；

（四）就工商行政管理机关提出的相关问题所作的说明；

（五）工商行政管理机关认为需要提供的其他书面材料。

工商行政管理机关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。

第十三条

被调查的经营者、利害关系人有权陈述意见。工商行政管理机关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。

第十四条

对工商行政管理机关依法实施的调查，拒绝提供、不完全提供或者超过规定时限提供有关材料、信息，或者提供虚假材料、信息，或者隐匿、销毁、转移证据，或者有拒绝、阻碍调查行为的，依照《反垄断

entities or natural person (hereinafter referred to as “the Investigated”) to submit the following materials in writing within prescribed time:

(1) Basic information of the Investigated, including its legal form, name, contacts, business license or registration certificate for social organization, and a copy of organization code of the legal person. If the Investigated is an individual, a photo copy of his ID card and contacts shall be provided;

(2) Where the Investigated is a business operator, additional information such as its business operation in the most recent three years, annual turnovers, taxes paid, business correspondence and agreements with its business partners and overseas investment shall be provided. Where the Investigated is a listed company, the information of stock returns shall also be provided;

(3) Where the Investigated is an industry association, additional information such as the Articles of Association, the basis of relevant industry policies, the production and operation plan for the industry and its implementation status, and meetings, activities or documents relating to the suspected monopolistic conduct shall be provided;

(4) Explanation in response to questions raised by AIC;

(5) Any other written materials that AIC may deem necessary.

Article 13

The business operators being investigated and interested parties are entitled to state their opinions. AIC shall make verification of the facts, reasons and evidences provided by those parties.

Article 14

During investigation carried out by AIC in accordance with law, persons that refuse to provide, provide incomplete relevant materials or information, or fail to provide within prescribed time limit, or provide false materials or information, or hide, destroy or

法》第五十二条的规定处理。

第十五条

涉嫌垄断行为的经营者在被调查期间，可以提出中止调查的申请，承诺在工商行政管理机关认可的期限内采取具体措施消除行为影响。

第十六条

中止调查申请应当以书面形式提出，并由法定代表人、其他组织负责人或者个人签字并盖章。申请书应当载明以下事项：

- （一）涉嫌违法的事实及可能造成的影响；
- （二）消除行为影响拟采取的具体措施；
- （三）实现承诺的日程安排和保证声明。

第十七条

工商行政管理机关根据被调查经营者的申请，在考虑行为的性质、持续时间、后果及社会影响等具体情况后，可以决定中止调查，并作出中止调查决定书。中止调查决定书应当载明被调查经营者涉嫌违法的事实、承诺的具体内容、消除影响的具体措施、时限以及不履行或者部分履行承诺的法律后果等内容。

第十八条

决定中止调查的，经营者应当在规定的时限内向工商行政管理机关提交履行承诺进展情况的书面报告。

displaces evidence, or refuse or impede the investigation, shall be punished in accordance with Article 52 of the Anti-Monopoly Law.

Article 15

During the investigation of the suspected monopolistic conduct, the business operators being investigated may apply for suspension of investigation and make commitment to take specific measures within specified time approved by AIC to eliminate the effects brought about by the suspected violations.

Article 16

Application for suspension of investigation shall be in writing, and bear the signature of the legal representative, principal of other organizations or private person and the seal. The application shall include the following item:

- (1) Statement of the facts of suspected violation and the potential effects;
- (2) Measures to be taken to eliminate the effects;
- (3) Time schedule for fulfilling the commitments and a representation of guarantee.

Article 17

AIC may upon application decide to suspend the investigation taken into consideration the nature of the conduct, duration, effect and social impact etc., and make a written decision to that effect. The written decision shall bear the facts of suspected violation, content of the commitment, specific measures to be taken to eliminate the negative effects and the time limit, and the legal consequences for failing to fulfill or partly fulfilling the commitments etc.

Article 18

During suspended investigation, the business operator concerned shall submit to AIC, within prescribed time limit, written report regarding the progress in implementing the commitments.

第十九条

工商行政管理机关对经营者履行承诺的情况进行监督。确定经营者已经履行承诺的，可以决定终止调查，并作出终止调查决定书。终止调查决定书应当载明被调查经营者涉嫌违法的事实、承诺的具体内容、消除影响的具体措施、履行承诺的具体步骤和时间等内容。

有下列情形之一的，应当恢复调查：

- （一）经营者未履行承诺的；
- （二）作出中止调查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、不正确或者误导性的信息作出的。

第二十条

工商行政管理机关对主动报告达成垄断协议有关情况并提供重要证据的经营者，可以酌情减轻或者免除处罚。

对垄断协议的组织者，不适用前款规定。

重要证据应当是能够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。

第二十一条

经营者能够证明所达成的协议符合《反垄断法》第十五条规定情形的，工商行政管理机关可以对有关行为予以豁免。

第二十二条

工商行政管理机关对涉嫌垄断行为调查核实后，认定构成垄断行为的，应当依法作出行政处罚决定。

Article 19

AIC is responsible for supervising the implementation of the commitments. If the commitments are fulfilled, AIC may terminate the investigation and make a written decision to that effect. The written decision shall bear the facts of suspected violation, content of the commitment, specific measures to be taken to eliminate the negative effects and steps and schedule in implementing the commitments etc.

The investigation may be resumed under the following circumstances:

- (1) The business operator fails to implement the commitment;
- (2) The facts on which the decision to suspend the investigation was based has materially changed;
- (3) The decision to suspend the investigation was based on incomplete, inaccurate or misleading information provided by the business operator.

Article 20

AIC may exempt or reduce penalties for business operators who voluntarily report monopoly agreement and provide significant evidence.

The preceding paragraph shall not be applicable to business operators who organized the monopoly agreement

Significant evidence means evidence that plays a key role in the decision to initiate investigation or in finding of monopoly agreements.

Article 21

If the business operator can demonstrate that the agreement satisfies the prescription of Article 15 of the Anti-monopoly Law, AIC may exempt the relevant conducts.

Article 22

After investigation and verification of the suspected monopolistic conduct, if the monopolistic conduct is convicted, AIC shall render a decision to impose administrative

第二十三条

国家工商行政管理总局对重大垄断案件，在作出行政处罚决定前应当向国务院反垄断委员会报告。

经授权的省级工商行政管理局应当依法作出中止调查、终止调查或者行政处罚决定，但在作出决定前应当向国家工商行政管理总局报告。省级工商行政管理局应当在作出决定后 10 个工作日内，将有关情况、相关决定书及案件调查终结报告报国家工商行政管理总局备案。

第二十四条

国家工商行政管理总局研究决定不适用《反垄断法》，但可以转致适用其他工商行政管理法律、法规处理的举报，应当及时转送有关工商行政管理机关依法处理。属于其他行政机关管辖的，应当依法移送其他有权机关。

省级以下工商行政管理机关可以依照其他法律、法规的规定，对发生在本行政区域内的公用企业或者其他依法具有独占地位经营者的限制竞争行为进行监督检查。

第二十五条

工商行政管理机关对依法查处的垄断案件，可以向社会公布。

第二十六条

本规定对垄断行为调查、听证和处罚程序未做规定的，依照《中华人民共和国行政处罚法》、《工商行政管理机关行政处罚程序规定》、《工商行政管理机关行政处罚案件听证规则》的有关规定执行，但有

penalty according to law.

Article 23

Regarding antimonopoly cases with great significance, SAIC shall report the case to the Anti-monopoly Commission before imposing administrative penalty.

The authorized provincial AIC shall make decisions regarding suspension of investigation, termination of investigation or imposing of administrative penalty, but it shall report to SAIC before making above decisions. Provincial AIC shall file with SAIC for record the relevant information, decisions and concluding report of the case within 10 working days after the issuance of the decision.

Article 24

Where SAIC decides after study that other industry and commerce related laws and regulations rather than Anti-monopoly Law is applicable, such reporting materials shall be transferred to relevant AIC for disposition according to law. If the reported matter is within the jurisdiction of other administrative authorities, it shall be transferred to such competent authority according to law.

AIC below provincial level may, in accordance with provisions of other law and regulation, supervise over and investigate into acts to restrict competition taken by public utilities or other business operators with dominant position according to law which occurred within its own administrative region.

Article 25

For anti-monopoly cases investigated and penalized according to law, AIC may publish to general public.

Article 26

Where there is no provision in this Rule with respect to the procedure for investigation, hearing and penalties, relevant provisions under the PRC Law of Administrative Penalties, SAIC Rules on Procedures for Imposition of Administrative Penalties and SAIC Rules on Hearings for Imposition of

关时限的规定不适用《工商行政管理机关行政处罚程序规定》、《工商行政管理机关行政处罚案件听证规则》。

第二十七条

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。

第二十八条

工商行政管理机关在反垄断执法工作中，要加强与其他反垄断执法机构和有关部门的信息沟通和执法协作。

第二十九条

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、徇私舞弊或者泄露执法过程中知悉的商业秘密，尚不构成犯罪的，依法给予行政处分；涉嫌犯罪的，移送司法机关处理。

第三十条

本规定不适用于查处垄断协议、滥用市场支配地位方面的价格垄断行为。

第三十一条

本规定由国家工商行政管理总局负责解释。

第三十二条

本规定自 2009 年 7 月 1 日起施行。

Administrative Penalties shall be applied except the provisions of the two SAIC Rules with regard to time limit.

Article 27

Business operators who are not satisfied with the administrative penalty or any other decisions by AIC may apply for an administrative reconsideration or bring an administrative action according to law.

Article 28

During enforcement of the Anti-monopoly Law, AIC shall strengthening the information exchange and enforcement cooperation with other antitrust authorities and relevant ministries.

Article 29

AIC staff who misuse their authority, neglect their duties, bend the law for their personal gain, or disclose business secrets obtained in the law enforcement work in violation of this Rule, shall be subject to administrative discipline if the violation does not constitute a crime, and shall be transferred to judicial authorities if the violation may constitute a crime.

Article 30

This Rule is not applicable to the investigation into acts of price monopoly with regards to monopoly agreement and abuse of dominant market position.

Article 31

SAIC is responsible for interpretation of this Rule.

Article 32

This Rule takes effect as of July 1, 2009.