环球律师事务所
反垄断法律专递

2020 年 8 月

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目 录

钱伯斯《全球法律指南》系列——《经营者集中趋势与发展（2020 版）》之中国篇

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编者按

受国际权威法律评级机构钱伯斯（ Chambers and Partners）的邀请，环球律师事务所反垄断团队为其独家撰写了 2020 年度《全球法律指南》系列中的《经营者集中趋势与发展（2020 版）》之中国篇。该指南各个国家（地区）的部分均邀请钱伯斯排行榜中该专业领域顶级的律所撰写，以简明扼要地介绍各司法管辖区域内的法律体系及当地法律实践。本文英文版于 2020 年 5 月完成，2020 年 7 月在钱伯斯官网发布，中文版是根据英文版制作的翻译稿，谨供环球《反垄断法律专递》的客户作为参考。

一、导言

1. 法律框架

中国的经营者集中反垄断审查法律体系分为四个层级：

中华人民共和国全国人民代表大会于 2008 年颁布并生效实施的《反垄断法》奠定了经营者集中反垄断审查制度（即并购控制制度）的法律基础；

同年，国务院配套出台的行政法规《国务院关于经营者集中申报标准的规定》设定了触发经营者集中申报的标准；

以上述法律、行政法规为基础，国务院反垄断执法机构制定并不时修订了配套行政规章，包括《经营者集中申报办法》《经营者集中审查办法》《未依法申报经营者集中调查处理暂行办法》等；

国务院反垄断执法机构发布并修订了一些规范性文件，包括《关于经营者集中简易案件适用标准的暂行规定》《关于评估经营者集中竞争影响的暂行规定》《关于经营者集中申报的指导意见》等；以及

国务院反垄断执法机构还与有关行业主管机关共同制定并发布了适用于某些特定行业的规范性文件，例如《金融业经营者集中申报营业额计算办法》等。

2. 执法机构

中国的经营者集中的审查机构目前为国家市场监督管理总局（“市场监管总局”），在 2018 年 3 月之前为商务部。

市场监管总局专设反垄断局，负责经营者集中的审查和调查、垄断协议和滥用市场支配地位案件调查等工作。反垄断局内设三个处负责经营者集中案件审查，一个处负责未依法申报案件调查和附加限制性条件批准案件的监督执行。

3. 执法概况

2019 年，市场监管总局共收到经营者集中申报 503 件，立案 462 件，审结 465 件（包括撤回申报案件）。在作出审查决定的 448 件中，无条件批准 443 件（占 98.9%），附加限制性条件批准 5 件（占 1.1%），禁止 0 件。2019 年，市场监管总局调查经营者集中未依法申报案件 36 件，作出行政处罚决定 18 件。

截止 2019 年 12 月 31 日，中国累计无条件批准经营者集中 2944 件，附加限制性条件批准 44 件，禁止 2 件，累计处罚违法实施集中案件 52 件（其中，50 件为未依法申报案件，另 2 件为违反附条件批准决定而被处罚的案件）。

二、法律修订

1. 反垄断法修订草案征求意见稿

市场监管总局于 2020 年 1 月 2 日公布了《〈中华人民共和国反垄断法〉修订草案（公开征求意见稿）》。其中涉及经营者集中的主要修订包括：

（1）考虑到经营者集中审查实践中控制权认定的复杂性和重要性，提议增加了“控制权”的定义，即经营者直接或者间接，单独或者共同对其他经营者的生产经营活动或者其他重大决策具有或者可能具有决定性影响的权利或者实际状态（第 23 条第 2 款）。这一提议如果获得通过，我们预期相应经营者集中配套行政法规规章会据此定义延申出一套明确的判定标准。

（2）提议授权作为国务院反垄断执法机构的市场监管总局（目前法律规定为国务院）根据经济发展水平、行业规模等制定和修改申报标准（第 24 条第 2 款）。我们认为，现行申报标准自 2008 年以来没有进行过修改，预计市场监管总局获得授权后将适当提高申报的营业额标准，集中有限的执法资源办理大案要案，提高反竞争执法质量和效率。此外，也不排除市场监管总局在营业额标准之外制定补充性申报标准（如参考交易金额、市场份额等）的可能性。

（3）提议调查虽未达到申报标准但具有或者可能具有排除、限制竞争效果的经营者集中（第 24 条第 3 款）。这一提议对经营者集中合规提出了更高的要求，企业必须在实施集中之前，全面评估并明确判定交易是否具有或可能具有排除、限制竞争效果，否则相关交易将面临较大的不确定性，交割后可能被附加限制性条件或被要求恢复到交易前的状态等（第 34 条）。市场份额较高的经营者应密切关注这一提议在后期修法流程中的进展。

（4）提议引入“停钟”机制，即在“经申报人申请或者同意后”“（经营者）补交文件、资料”“（经营者与执法机构）磋商附加限制性条件建议”三种情况下停止计算审查时限（第 30 条）。这有利于经营者和执法机构有充分的时间处理和应对复杂案件的申报和审查，避免以往经常发生的撤回重报现象。但另一方面，案件的实际审查时间有可能因此延长。

（5）提议明确经营者违反提交申报材料真实性要求的责任（第 26 条）。反垄断执法机构作出审查决定后，如有证据表明申报人提供的材料不真实、不准确的，可以撤销原审查决定（第 51 条）。经营者拒绝提供材料、信息或者提供虚假材料、信息的，对单位可以处上一年度销售额 1%以下的罚款（上一年度没有销售额或者销售额难以计算的，处 500 万元以下的罚款），对个人可以处 20 万元以上 100 万元以下的罚款（第 59 条）。

（6）对违法实施集中的行为（包括未依法申报、申报后未经批准实施集中、违反附加限制性条件或禁止集中的决定等），提议调整法律责任，将罚款上限由 50 万元人民币调整为上一年度销售额的 10%（第 55 条第 1 款）。这一提议会大幅提高营业额比较高的经营者的违法成本，这类经营者应密切关注这一提议的后期立法走势，并采取更高标准的合规举措予以应对。

2. 《经营者集中审查暂行规定（征求意见稿）》

2020 年 1 月 7 日，市场监管总局公布《经营者集中审查暂行规定（征求意见稿）》。该征求意见稿主要是为了回应经营者集中执法机构调整，整合并适当调整了此前既存的由商务部和市场监管总局分别制定的多个规章和规范性文件。

三、应申报交易

从申报实践来看，主要应从两个方面判断某一交易是否应当在中国进行申报：（1）是否构成经营者集中，其核心是交易前后是否发生控制权变化；（2）参与集中的经营者的营业额是否达到申报标准。

这两方面可能需要考量的问题，我们将通过下文列举的 2019 年市场监管总局办理的多个案件进行说明，在这些案件中，市场监管总局对一些具体问题首次予以了明确，对另一些问题则再次予以重申。

1. 收购少数股权也可能需要经营者集中申报

收购少数股权也可能取得控制权，这从现有规定中已经可以推导出来，实践中也已有不少申报案例。市场监管总局于 2019 年通过在安博凯收购思妍丽股权案中作出的未依法申报处罚决定明确了这个原则。该案中，收购方仅取得目标公司 23.53%的股权，市场监管总局认定收购方取得了控制权，该交易属于经营者集中；由于在思妍丽完成变更登记之前，安博凯未依法申报，市场监管总局认定其构成未依法申报的经营者集中。

该案还是第一起投资基金被处罚的未依法申报案例，提醒基金业应重视投资并购中的反垄断合规。

2. “同一控制”下的交易无需申报

《反垄断法》第 22 条规定了无需申报的两种情形，分别是参与集中的一方拥有参与集中的其他各方 50%以上有表决权的股份，或者参与集中的各方 50%以上有表决权的股份均被同一个未参与集中的经营者拥有。然而，对于持股低于 50%但属于同一控制的情形是否也无需申报，由于缺乏明确的法律依据和执法案例，以往一直没有定论。

2019 年的三起撤回申报案例澄清了这一问题。根据华峰氨纶、辉隆股份、新疆天业等三家上市公司的公告，就各自拟实施的股权收购交易，其申请撤回此前提交的经营者集中申报，获得了市场监管总局的同意。例如，新疆天业的公告称，相关收购“属于同一控制下的资产重组，且收购前后本公司的实际控制人并未发生变化，经与反垄断局沟通，本次收购可能不构成反垄断法和相关规则之下的经营者集中”。

3. “平行收购”被视为同一个集中

平行收购，在欧盟等其他法域，被视为同一个经营者集中是有条件的，即除非这些收购都得以实施，否则收购方没有义务收购任一个被收购方，且任一个出让方均没有义务出让任一个被收购方。

2019 年 12 月，市场监管总局处罚了一起“平行收购”的交易。在辽宁港口集团收购大连港集团和营口港务集团股权案中，对两个目标公司的收购系通过两份协议（于同一天签署）实现且出让方不同，从形式上看两个交易是相互独立的。市场监管总局将两个交易视为同一个集中，尽管收购方作为新成立的公司在“上一会计年度”没有营业额，但由于两个被收购方的营业额较高，市场监管总局认为该集中达到了申报标准。这个案件的耐人寻味之处在于，市场监管总局判定该案应视为一个集中进行申报所适用的原则是独具中国特色的原则还是与其他法域类似的原则。基于公开信息，我们尚无从判断。后续我们会持续关注该案的信息，并及时分享我们的发现。

4. “上一会计年度”的含义

“上一会计年度”营业额是判断是否需要进行经营者集中申报的一个关键指标。但是，现行法律法规中并未明确该“上一会计年度”是相对于哪一个时点起算的“上一会计年度”。

并购实践中，主动申报的案件通常采用“集中协议签署日”（例如，签署股权收购协议的日期）起算的上一会计年度的营业额来进行判断。然而值得注意的是，在处理未依法申报处罚案例中，市场监管总局更多采用实施集中日（例如，变更登记的日期）起算的上一会计年度营业额。在 2019 年的处罚案例中，市场监管总局继续延续了上述实践。在集中协议签署日和实施集中日属于不同年度的全部 3 个案例中，市场监管总局均采用了实施集中日的上一年度的营业额来论述相关交易达到了申报标准，例如前文提到的安博凯收购思妍丽股权案。

四、审查程序

1. 对简易案件的审查

自 2014 年起，中国设立了经营者集中简易申报程序。对于简易案件，除了申报所需提交的材料相对较少外，更重要的是审查速度更快。2019 年批准的简易案件，绝大多数都在法律规定的初步审查阶段内（即立案后 30 天）获得批准，自立案至批准的平均审查时间为 16 天，与 2018 年基本持平，显著低于 2017 年的 23 天。

需要注意的是，现行简易案件申报规则并未就从申报人递交申报资料到市场监管总局立案的期限作出规定，也难以进行这方面的统计。根据我们的经验，极少数的简易案件可以在 1 周内立案，而大多数简易案件需要 2 至 4 周才能立案。

简易案件应当公示，即市场监管总局会按规定格式的简易案件公示表在其官方网站上公示 10 天。在公示期内，任何第三方均可对该案件是否可以作为简易案件审查提出异议，包括相关市场界定不当、市场份额信息不准确、交易对市场竞争有不利影响等。我们注意到，越来越多的企业重视利用公示程序对竞争者或上下游企业的集中案件发表意见。

2. 对普通案件的审查

与简易案件相比，普通案件所需提交的申报资料繁多，所需审查时间也冗长。根据我们的经验，多数普通案件从递交申报资料到立案一般需要 4-6 周时间。而从立案到获得批准的时间则具有较大的不确定性。这既是因为某些普通案件本身就存在竞争关注，另外也因为市场监管总局在普通案件的审查程序中会征求有关政府部门、行业协会、同业竞争者及上下游企业的意见。

3. 简易案件向普通案件的转化

对于按照简易案件立案审查的经营者集中申报，如果在审查过程中发现不应认定为简易案件的，或者因为在简易案件公示期内收到异议并且异议被认可的，市场监管总局会撤销简易案件认定，并要求申报人按普通案件重新申报。最新的一个作为简易案件申报，但因为第三方异议且异议被市场监管总局接受而转化为普通案件重新申报的例子是 2019 年附加限制性条件批准的诺贝丽斯收购爱励案。从公开信息看，申报人最初界定的相关市场范围过宽，而按照重新界定的相关市场，集中各方在同一相关市场的市场份额远超过 15%的上限。

4. 应对 COVID-19 的特殊安排

2020 年 1 月以来突然爆发的 COVID-19 疫情对经营者集中审查工作带来了新的挑战。市场监管总局于 2020 年 2 月 5 日发布公告，为防止疫情传播，经营者集中审查工作改由非现场方式进行。具体而言，申报人可将申报材料及补充问题回复的电子版发送至反垄断局邮箱进行网上申报与提交，市场监管总局也将通过电子邮箱或传真向申报人送达相应的通知和决定。

2020 年 4 月 5 日，市场监管总局发布一份新的公告，宣布经营者集中继续采取非现场申报方式，并对与支持疫情防控和复工复产有关的集中案件建立审查绿色通道，加速审查。可享受绿色通道的经营者集中申报案件涵盖：医药制造、医疗仪器设备及器械制造、食品制造、交通运输、批发零售等与疫情防控和基本民生密切相关领域，受疫情影响较重的餐饮、住宿、旅游等行业，以及为复工复产实施的经营者集中案件。

就目前的情况来看，经营者集中申报和审查并未因疫情而受到明显影响。自 2 月 5 日至 6 月 30 日，市场监管总局无条件批准了 186 起交易、附加限制性条件批准 5 起交易，案件数量与疫情发生前基本持平，案件审结时间甚至有所缩短。

五、竞争影响评估及救济措施

2019 年，市场监管总局在 5 起案件中作出了附加限制性条件批准决定。其中 4 件的集中各方均为境外企业，1 件的一方为境外企业、另一方为境内企业。这 5 起案件的审查决定对于外界了解市场监管总局如何评估交易的竞争影响以及倾向于采取什么样的救济措施来解决竞争关注很有帮助。

1. 横向并购

在卡哥特科收购特瑞斯部分业务案、高意收购菲尼萨股权案、花园与帝斯曼新设合营企业案、诺贝丽斯收购爱励股权案等四个案件中，集中双方均存在横向重叠。对于横向并购案件，市场监管总局一般主要从集中各方的市场份额、相关市场的集中度、集中各方是否互为紧密竞争者、市场进入壁垒等方面，分析集中是否具有单边效应和/或协调效应。例如，在诺贝丽斯收购爱丽股权案中，市场监管总局认为该交易对中国汽车车身铝薄板内板市场和中国汽车车身铝薄板外板市场“可能具有”排除、限制竞争效果，理由主要包括：（1）诺丽贝斯在交易之前的市场份额高达 65%-70%，已经具有市场支配地位，交易后市场支配地位将进一步增强；（2）爱励在两个市场的市场份额均居第三位，本次集中将消除对诺贝丽斯的重要竞争约束；（3）两个市场均为高度集中市场，交易后仅剩 4 家或 2 家竞争者，发生合谋或协同的可能性增大；（4）由于存在极高的技术门槛等因素，相关市场进入困难。

为解决横向并购的竞争担忧，剥离是很多司法辖区采用的救济措施。在上述四个案件中，市场监管总局就诺贝丽斯收购爱励股权案附加了剥离爱励相关业务的限制性条件（美国与欧盟也附加了相似条件）。对另外三个案件，市场监管总局则采取“保持相互独立”（hold separate）并辅之以信息隔离（ring-fencing）的救济措施来保持市场竞争。此外，对这四个案件，市场监管总局都附加了行为性条件。例如，在卡哥特科收购特瑞斯部分业务案中，集中双方被要求不得在中国市场上对三种相关产品实施涨价（即不得高于最近 3 个日历年度的平均供货价格），并且除非有正当理由，不得拒绝或限制向中国客户供货。

2. 非横向并购

科天收购奥宝股权案既涉及纵向关联，也涉及相邻关系，而花园与帝斯曼新设合营企业案除涉及横向重叠（如上所述）外，还涉及纵向关联。

对于纵向关联，市场监管总局主要关注交易是否具有封锁效应。在前一案件中，市场监管总局担忧，科天可能会利用其在工艺控制设备（上游产品）市场的支配地位，通过拒绝供应、差别待遇等手段，对沉积和蚀刻设备（下游产品）市场上奥宝的竞争对手实施纵向封锁。在后一案件中，集中双方在下游市场的市场份额之和超过 50%，同时其中一方在上游市场的份额超过 50%，市场监管总局认为，双方可能在交易后实施原材料和客户封锁，排除、限制上下游市场的竞争。此外，在前一案件中，市场监管总局还担忧，科天有机会获得奥宝竞争对手的竞争性敏感信息并将这些信息提供给奥宝。

为解决上述关注，市场监管总局在两个案件中均附加了如下行为性条件，即生产上游产品的集中一方应当根据公平、合理、无歧视（FRAND）的原则，向所有下游厂商提供商品或服务。此外，在科天收购奥宝股权案中，还附加了信息隔离措施。

就科天收购奥宝股权案中还存在的相邻关系（工艺控制设备与沉积和蚀刻设备拥有相同的客户群——半导体器件制造商和封装企业），市场监管总局附加了如下行为性条件：对于向中国市场供应的两种产品，没有正当理由，不得进行搭售或捆绑销售。

可见，中国反垄断执法机构在竞争影响评估和救济措施选用方面具有一定的特色，尤其表现在以“保持相互独立”代替剥离以及附加“保供”条件上。

六、对未依法申报违法实施集中案件的处罚力度加大

1. 处罚案件数量再创新高

截至 2019 年底，商务部和市场监管总局累计公布了 50 个未依法申报违法实施经营者集中处罚案例，2018 和 2019 两年的处罚案例数量合计占到累计数量的 66%。其中，2018 年处罚案件达 15 件，比 2017 年增长了 150%；2019 年又增长到 18 件（包括 14 个股权收购案、4 个新设合营企业案）。

2. 首例申报后批准前抢跑案件

2019 年出现了第一例申报后批准前抢跑案。在该案中，收购方新希望投资在签署收购协议后向市场监管总局提交了申报文件，并于 2019 年 4 月 9 日正式立案。在公示期届满的前一天（2019 年 4 月 17 日），各方办理了股份过户登记手续。市场监管总局于 2019 年 6 月 3 日对抢跑行为立案调查，并于 2019 年 12 月 13 日作出处罚决定书。

3. 上市公司和国企违法占比较高

2019 年至少有 7 件处罚案例涉及上市公司，占比近 40%。7 起处罚案例中，涉及境内 A 股上市公司的有 5 件，其中 3 件涉及的上市公司是股权收购的收购方，2 件涉及的上市公司是股权收购的被收购方。上市公司负有信息披露义务，违法行为更容易被举报或被执法机构发现，而对其处罚往往也更为严重（除罚款外，还会对后续资本运作和市值管理等造成不利影响），因此涉及上市公司的并购各方对于经营者集中应给与充分的重视。

2019 年，在至少 7 起案件中，国资背景的企业受到处罚。从交易形式看，除市场化的股权收购和新设合营企业外，国有股权无偿划转未依法进行经营者集中申报也受到了处罚。

4. 执法机构主动发现的违法案件增多

2019 年处罚的 18 起案件中，有 13 起案件可能是市场监管总局自行发现案件线索，或者是通过新闻等公开信息，或者是在审查后续交易的过程中发现的。

5. 违法案件调查时间远超申报案件的审查时间，但有缩短趋势

2019 年处罚的 18 个案例中，从立案调查到作出处罚决定的时间（“调查时间”）最长的为 418 天，最短的为 94 天，平均为 234 天。2019 年的案件调查时间平均比 2018 年缩短了近 10%。尽管如此，调查时间仍远超正常申报案件的审查时间。这意味着经营者为应对违法案件调查所花费的时间、精力和费用将远超合规申报案件，违法成本其实非常高昂。

6. 处罚力度略有增强

对于迄今的所有 50 件未依法申报违法实施集中案件，市场监管总局/商务部均只处以罚款，而没有采取责令停止实施集中或者处分已取得的股权等其他措施。就罚款而言，现行的法定罚款上限为 50 万元。2019 年，市场监管总局在该限额内提高了实际的罚款金额。在 2014-2018 年的 32 起案件中，罚款 30 万或以上的为 13 件，占比约 40%；而在 2019 年的 18 起案件中，罚款 30 万或以上的为 17 件，占比为 94%。

七、结语和展望

展望 2020，市场监管总局预计将推进反垄断法修订工作。对于拟议的几项重要修改，包括申报标准的调整、对未达申报标准的案件的依职权调查、申报人配合调查的义务强化、抢跑的违法成本显著提高等，均值得经营者密切关注。截至目前，COVID-19 疫情似乎未对经营者集中申报和审查工作造成明显不利影响。市场监管总局在疫情期间实行的一些临时做法（例如非现场申报和绿色通道）未来是否长期实施，尚待观察。

此外，在 2019 年的跨国并购案件审查中，有一个案件吸引了业界的关注，这就是永辉超市收购中百集团案。在这一案件中，永辉超市在刚披露通过经营者集中审查之后即被要求进行外商投资安全审查，最终导致了永辉超市放弃了这一交易。这一案件显示了中国监管机构对涉及中国的跨国并

购案件的审查监管越来越呈现全方位管理的趋势。中国的外国投资安全审查机构和机制在未来如何与经营者集中审查制度衔接，是未来的重要看点之一；而如何统筹应对这两个审查机制，值得跨国并购的交易各方高度重视。我们也会对中国安全审查制度进行专门的介绍和评论。

中国作为世界第二大经济体，重大跨境并购交易顺利通过中国的经营者集中审查至关重要。企业在交易准备阶段就应开始谋划经营者集中申报的合规策略，尽早分析、论证交易是否需要在中国及其他司法辖区进行经营者集中申报以及获得批准的前景，并在此基础上合理设计交易文件中的交割条件、交割期限、分手费等条款，以便统筹安排交易进度和申报进度。鉴于经营者集中申报以及违法调查应对属于典型的中国法律业务，外国律所直接介入这项业务存在市场准入的障碍，因此，在交易或者应对违法调查准备阶段尽早引入在这方面富有实战经验的中国执业律师为交易和调查应对谋划提供建议、并在后续阶段监督策略的实施到位这一点至关重要。

Chambers Global Practice Guide Merger Control 2020 (T&D): China

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1. Introduction

1.1 Legal framework

The Anti-monopoly Law, which came into force in 2008, laid the foundation for the anti-monopoly review for concentration of business operators – ie, merger control;

The Provisions of the State Council on the Thresholds for Notification of Concentration of Business Operators, which was released by the State Council also in 2008, has established a threshold for the notification of concentration.

Based on the above-mentioned law and administrative regulations, the anti-monopoly enforcement authority under the State Council has formulated several administrative rules on merger control, including:

- Measures for the Notification of Concentration of Business Operators;
- Measures for the Review of Concentration of Business Operators;
- Provisional Measures on Investigation and Punishment of Failing to Notify the Concentration of Business Operators; and
- Measures to Calculate Turnover for the Notification of Concentration of Business Operators in Financial Industry.

The anti-monopoly enforcement authority under the State Council has also formulated several standards and guiding opinions, including:

- Interim Provisions on Standards Applicable to Simple Cases regarding Concentration of Business Operators;
- Interim Provisions on Assessment of the Impact of Concentration of Business Operators on Competition; and
- Guiding Opinions for Notification of Concentration of Business Operotors, etc.

1.2 Competent authority

The competent authority for merger control is the State Administration for Market Regulation (SAMR). The Ministry of Commerce (MOFCOM) had served in this role prior to March 2018.

Within SAMR, the Anti-monopoly Bureau is in charge of reviewing and investigating the concentration of business operators, while it is also responsible for investigations into monopoly agreements and abuses of market dominance. The Anti-monopoly Bureau has three divisions dedicated to reviewing the concentration of business operators and one division responsible for the investigation of suspected illegal concentrations of business operotors, including so-called "gun-jumping" violations.

1.3 Enforcement overview

In 2019, the SAMR received 503 notified concentration cases, initiated reviews of 462 cases, and completed reviews of 465 cases (including withdrawn cases). Among the 448 cases in which decisions were taken after review, 443 cases were approved without condition (accounting for 98.9%), 5 cases were approved with restrictive conditions or remedies (accounting for 1.1%), and no cases were prohibited. In the same year, the SAMR investigated 36 suspected gun-jumping cases and imposed administrative penalties in 18 of those cases.

As of 31 December 2019, China has, in total, approved 2,944 concentration cases without conditions, approved 44 cases with remedies, prohibited 2 cases, and imposed punishments in 52 concentration cases (including 50 gun-jumping cases and another 2 cases due to the violation of restrictive conditions).

2. Development of Legislation

2.1 Draft amendment to the Anti-monopoly Law (Draft for Public Comment)

The SMAR released the Draft Amendment to the Anti-monopoly Law (Draft for Public Comment) on 2 January 2020. The main proposed amendments concerning merger control are discussed below.

First, recognising the importance of “control” for the purpose of determining whether a transaction constitutes a concentration of business operators, a definition for “control” is proposed to be introduced into the law – the rights or actual conditions through which business operators which, directly or indirectly, individually or jointly, have or may have a decisive impact on the manufacturing and business activities or other significant decisions of other business operator(s) (Paragraph 2 of Article 23). If adopted, we anticipate that supporting regulations and rules might add further details.

Second, it is proposed that the anti-monopoly enforcement authority under the State Council (ie, the SAMR) will be authorised to formulate and revise the notification threshold from time to time based on factors such as economic development level and scale of industry (Paragraph 2 of Article 24). This is a power presently exercised by the State Council. Given that the current threshold has remained unchanged since 2008, we estimate that the SAMR may wish to raise the turnover-based threshold, which may enable the SAMR to focus its limited enforcement resources on cases with competitive concerns. It is also possible for the SAMR to introduce supplementary thresholds by reference to transaction value or market share, etc.

Third, it is proposed to investigate concentration cases that do not meet the notification threshold but otherwise have or may have the effect of eliminating or restricting competition (Paragraph 3 of Article 24). This proposal calls for a higher level of merger control compliance – ie, prior to closing, parties to a transaction need to assess whether that transaction has, or might have, the effect of eliminating or restricting competition. Otherwise, restrictive conditions might be imposed upon that transaction, or the parties may be required to unwind the transaction to return to the pre-concentration status (Article 34). Business operators with relatively high market shares are recommended to keep a close eye on the future development of this proposal.

Fourth, a "stopping the clock" mechanism is proposed – ie, the time taken for the following three circumstances shall not be counted in the review period:

- suspension of the review at the request of or with the consent of the notifying party/parties;
- the submission of supplementary documentation and materials by the notifying party/parties; and
- the negotiation of proposed remedies between the notifying party/parties and the enforcement authority (Article 30).

This mechanism is designed to give sufficient time to both the notifying parties and the SAMR to handle the notification and review of complicated cases, and to avoid the need for the re-notifications after withdrawal that frequently occurred in the past. It, however, may also result in it taking a longer time for a case to be cleared.

Fifth, the liabilities of the notifying party/parties breaching the authenticity requirement of submitted notification materials are proposed to be clarified (Article 26). An approval decision could be revoked where there is evidence showing that the materials provided by the notifying party/parties are false or inaccurate (Article 51). Furthermore, a business operator that refuses to provide materials and information or provides false materials and information will be subject to a fine of no more than 1% of its sales in the preceding year, or a fine of up to CNY5 million where there are no sales or it is difficult to calculate such sales in the preceding year (Article 59)

Sixth, it is proposed that the upper limit of the fine be increased from CNY500,000 to 10% of the sales in the preceding year for illegal concentrations including:

- those which were not notified as required by law;
- those which were notified but closed prior to the clearance; and
- violations of restrictive conditions or prohibition decisions (Paragraph 1 of Article 55).

The potential cost of violation for business operators with high sales would thus be significantly increased. Such business operators are advised to closely follow the development of this proposed amendment and take extra compliance measures in response.

2.2 Interim Provisions on the Review of Concentration of Operators (Draft for Public Comments)

On 7 January 2020, the SAMR released the Interim Provisions for the Review of the Concentration of Business Operators (Draft for Public Comments). This draft mainly aims to consolidate a number of rules and standards previously formulated by MOFCOM and several standards and guiding opinions formulated by the SAMR since March 2018 into a comprehensive set of merger control rules.

3. Development of Enforcement: Notifiable Transactions

In general, whether a transaction shall be notified to SAMR depends on two factors:

- whether a concentration of business operators occurs, or put another way, whether any change of control occurs as a result of the transaction; and
- whether the turnovers of the business operators participating in the concentration reach the threshold.

Certain issues to be considered for these two factors have been clarified or reaffirmed in the following cases handled by the SAMR in 2019.

3.1 An acquisition of a minority equity stake may be notifiable

An acquisition of a minority equity stake may constitute an acquisition of control. Although this can be inferred from existing regulations and is also evidenced by notified cases in the past, it has been clearly illustrated by the SAMR's decision to impose penalties in the MBK/Siyanli case. In this case, the acquiring party only obtained 23.53% of the equity in the target company, but the SAMR determined that the acquiring party had acquired control over the target company and the transaction was thus deemed to be a concentration of business operators. The SAMR further determined that this transaction had constituted a gun-jumping violation because MBK had failed to notify the transaction before the change in Siyanli's shareholding was registered.

The MBK case is also the first case in which an investment fund was punished for gun-jumping violations, and serves as a reminder to the fund industry to pay attention to merger control compliance in contemplating investments.

3.2 Notification is not required for transactions under "same control"

Article 22 of the Anti-monopoly Law provides two circumstances under which a notification is not required:

- a party to the concentration owns more than 50% of the voting shares of all other parties to the concentration; or
- more than 50% of the voting shares of each party to the concentration is owned by the same business operator that does not participate in this concentration.

However, it is not clear whether a notification is required for transactions in which the voting shares hold are less than 50% but the parties are otherwise under "same control".

This issue has been clarified by three withdrawn notifications in 2019. According to the announcements of three listed companies – Huafon Spandex, Huilong, and Xinjiang Tianye, the SAMR approved their applications to withdraw their notifications for their respective proposed equity acquisitions under "same control". As stated in Xinjiang Tianye's announcement, the concerned acquisition "is an asset restructuring under the same control and there will be no change in the actual controller of the company due to the said acquisition so, as communicated with the Anti-monopoly Bureau, this acquisition may not constitute a concentration of business operators under the Anti-monopoly Law and relevant rules."

3.3 "Parallel acquisitions" are treated as a single concentration

In other jurisdictions, such as the EU, parallel acquisitions of control of undertakings B and C by undertaking A in parallel from separate sellers would be treated as a single concentration on the condition that A is not obliged to buy either and neither seller is obliged to sell, unless both transactions proceed.

In December 2019, the SAMR imposed punishments on such "parallel acquisitions" whereby the Liaoning Port Group acquired the equities of the Dalian Port Group and the Yingkou Port Group, respectively. Liaoning Port Group acquired the two target companies through two separate agreements (signed on the same day) and from different sellers. Being formally independent of each other, these two transactions were nevertheless treated by the SAMR as a single concentration. On that basis, though the acquiring party, as a newly established company, had no turnover in the preceding fiscal year, the SAMR was of the view that the concentration in question had met the notification threshold considering the high turnover of the two target companies. Based on public information, it is not clear whether the SAMR, in treating the two acquisitions as a single concentration, adopted the same standard as, or one similar to, that in other jurisdictions such as the EU. We will follow-up on this case and share our findings accordingly.

3.4 Meaning of the "preceding fiscal year"

The precise definition of turnover in the "preceding fiscal year" is crucially important in determining whether a concentration is notifiable. However, current laws and regulations have not clarified the time point for the determination of the preceding fiscal year.

In practice, voluntarily notified cases usually use the turnovers of the fiscal year preceding the "execution date of the concentration agreement" – eg, the signature date of a share purchase agreement. However, the SAMR has more often counted the turnovers of the fiscal year preceding the date of implementation/closing of the concentration (eg, the date of registration of the change of shareholding) in gun-jumping cases. This practice of the SAMR continued in 2019. In all three cases where the execution date of the concentration agreement was different from the date of the closing

of the concentration, the SAMR counted the turnovers of the fiscal year preceding the date of the closing in support of its determination that the notification threshold had been met.

4. Development of Enforcement: Review Process

4.1 Review of simple cases

The "simple case" system was officially introduced in 2014. If qualified as a simple case, the documentary requirements will be less, and more importantly, the review period is much shorter. In 2019, most simple cases were approved within the 30-day period of preliminary review. The average period from initiation of review to clearance was 16 days in 2019, which is basically the same as in 2018 but significantly shorter than the 23-day average in 2017.

It should be noted that there is no statutory time limit for the SAMR to initiate its review after having received the notification documents. In our experience, it takes two to four weeks for the SAMR to initiate the review in most simple cases.

The SAMR will publish a summary of each simple case in a prescribed format on its official website in order to solicit public comments for ten days. During the publicity period, any third party may object to the treatment of the case as a simple case. An increasing number of enterprises have used this channel to make comments on, or objections to, concentrations by or among their competitors or upstream/downstream enterprises.

4.2 Review of non-simple cases

Compared to simple cases, the notification of non-simple cases requires more documentation and a longer review period. In our experience, it normally takes four to six weeks for the SAMR to initiate the review of a non-simple case. The period from initiation of the review to clearance significantly varies. It may be as short as one or two months, but can also be more than one year in complicated cases – eg, the average review period for the five cases eventually approved with remedies in 2019 (see below) was 353 days. This review is time-consuming because, in addition to the fact that non-simple cases would more likely give rise to competitive concerns, the SAMR needs to collect opinions from relevant government authorities, industry associations, peer-competitors, and upstream and downstream enterprises during the review. In large mergers, it is particularly important to get a green light from the aforesaid stakeholders.

4.3 Conversion from a simple case to a non-simple case

If the SAMR finds during the course of its review, either by itself or upon receiving an objection from a third party, that a concentration does not qualify as a simple case, it shall revoke its determination that the case is a simple one and require the notifying party/parties to re-notify the case as a non-simple one. The latest example is Novelis' acquisition of Aleris, which was approved with remedies in December 2019. Based on publicly available information, the transaction had been notified as a simple case in late August 2018 on the basis of definitions of broader relevant markets. The SAMR

received objections from third parties during the publicity period, and required Novelis to re-notify the transaction as a non-simple one. Novelis did so, in a process in which it redefined two narrower relevant markets.

5. Development of Enforcement: Competitive Assessment and Remedies

In 2019, the SAMR approved five concentration cases with remedies, of these four cases involved only foreign enterprises while one case involved a foreign enterprise as one party and a domestic enterprise as the other. From the SAMR's decisions in these five cases, it is possible to better understand how the SAMR will assess the competitive effects of a particular transaction and what remedies will be taken to address the identified competitive concerns.

5.1 Horizontal mergers

In four cases including Cargotec/TTS, II-VI/Finisar, Garden/DSM and Novelis/Aleris, there existed horizontal overlap between the parties to the concentration. For horizontal mergers, the SAMR normally assesses whether the concentration will have unilateral effects or co-ordination effects by considering factors including:

- the market shares of the parties;
- the market concentration;
- whether the parties are close competitors; and
- the market entry barriers.

For example, in Novelis/Aleris, the SAMR found that the concentration would likely eliminate or restrict the market competition mainly on the grounds that:

- Novelis, already in a position of market dominance with a market share of 65-70%, would further reinforce its dominance in the market;
- because Aleris was the number three player in the relevant markets, this transaction would eliminate significant competition constraint for Novelis;
- both markets having a high level of concentration, there would be only four or two competitors active in the markets following the transaction and thus the likelihood of co-ordination would be increased; and
- it is difficult for new entrants to enter the markets thanks to very high technical thresholds acting as barriers to entry.

In many jurisdictions, divesture is the typical remedy adopted to address the competitive concerns arising in horizontal mergers. In contrast, the SAMR only required divesture in one of the above four cases (ie, Novelis/Aleris) as did its US and EU counterparts. As to the other three cases, the SAMR imposed "hold separate" requirements together with ring-fencing remedies. In addition, behavioural remedies were imposed in all the four cases. For example, the parties in the Cargotec/TTS case were required not to increase the price of each of three relevant products in the Chinese market – ie, the price should not be higher than the average price in the most recent three calendar years.

5.2 Non-horizontal mergers

The KLA-Tencor/Orbotech case involved both vertical and neighbouring relations, while the Garden/ DSM involved vertical relations in additional to horizontal overlap (see above).

With regard to vertical relations, the SAMR is mainly concerned with possible foreclosure effects. In the former case, the SAMR considered that KLA-Tencor/Orbotech might use its dominance in the upstream market for process control equipment to foreclose Orbotech's competitors in the downstream deposition and etching equipment market by way of refusal to supply, discrimination, etc. In the latter case, the two parties' combined market shares in the two downstream markets were both over 50% and the market share of one of the two parties in the upstream market was over 50%. The SAMR considered that the parties might pursue foreclosure in respect of both raw materials and customers and thus eliminate or restrict the competition in both upstream and downstream markets. Furthermore, the SAMR had concerns that KLA-Tencor might obtain competitively sensitive information about competitors of Orbotech and provide that information to Orbotech.

In order to address the above concerns, the SAMR imposed behavioural conditions on both cases – ie, the party manufacturing the upstream product shall supply that product to all manufacturers of downstream products worldwide or within China on the basis of the fair, reasonable and non-discriminatory (FRAND) principle. In addition, ring-fencing remedies were imposed in KLA-Tencor/Orbotech.

As to the neighbouring relations involved in KLA-Tencor/Orbotech (the fact that process control equipment and deposition and etching equipment share the same class of customers), the SAMR imposed additional behavioural remedies – ie, without justifiable reasons, the two products shall not be tied or bundled in sale in the Chinese market.

It can be seen from the above that the Chinese Anti-monopoly authority, although following international practice, has developed its own style in terms of competitive assessment and choice of remedies. In particular, it prefers "hold separate" instead of divesture and frequently imposes behavioural conditions like maintenance of supply.

6. Development of Enforcement: Punishment of Gun-Jumping Violations

6.1 The number of punished cases hits a new record

As of the end of 2019, MOFCOM and the SAMR had released punishment decisions in relation to 50 gun-jumping cases. Among them, there were 15 punished cases in 2018, with an increase of 150% over 2017, and the number further increased 20% to 18 punished cases in 2019, including 14 equity acquisition cases and four cases involving the establishment of joint ventures).

6.2 The SAMR punishes the first "prior to clearance" gun-jumping case

Previously, all punished gun-jumping cases were transactions the closing of which had taken place without, or prior to, notification. In 2019, the SAMR punished the first "gun-jumping" case where a notification of the underlying transaction had been made but the parties closed the transaction prior to the clearance by the SAMR. In this case, the notification was made by the acquiring party very soon after the share purchase agreement was signed, and was officially accepted by the SAMR on 9 April 2019. The publicity period was scheduled to expire on 18 April 2019. However, the shares were transferred to the acquiring party on 17 April 2019. The SAMR did not clear the notified case, but initiated an investigation into the gun-jumping violation on 3 June 2019 and issued the penalty decision on 13 December 2019.

6.3 Nearly half of the punished cases involve listed companies and SOEs respectively

In 2019, there were at least seven punished cases involving listed companies, accounting for nearly 40% of the total. Among them, five cases involved A-share (domestic) listed companies, respectively acting as the acquiring party in three cases and the acquired party in two cases. Listed companies are subject to strict information disclosure requirements, so their gun-jumping violations are more likely to be reported by third parties or otherwise discovered by the SAMR. The consequences of gun-jumping violations are usually more severe for listed companies. In addition to the fines imposed by the SAMR, the market value of the company and/or subsequent operations in the capital market may be adversely impacted. Therefore, the parties in an acquisition involving listed companies should pay particular attention to merger control compliance.

In 2019, enterprises with state-owned investment backgrounds were punished in at least seven cases. It is worth noting that, besides market-based equity acquisitions and establishment of joint ventures, gun-jumping transfers of state-owned equity without consideration have also been punished.

6.4 More violation cases seem to be being discovered by the SAMR itself

Among 18 punished cases in 2019, 13 cases may have been discovered by the SAMR itself, either from news report or other public information, or during its review of subsequent notified transactions.

6.5 Investigation time

Among 18 punished cases in 2019, the longest time from the initiation of investigation to the penalty decision (investigation time) was 418 days, and the shortest was 94 days, with the average being 234 days. The average investigation time in 2019 has been shortened by nearly 10% compared to 2018. Nevertheless, it still far exceeded the review period of normally notified cases, which implies that it would take much more time, energy, and/or money to deal with investigations of gun-jumping violations.

6.6 Penalties

For all 50 gun-jumping cases, the SAMR/MOFCOM has only imposed fines without taking other measures, such as the prohibition of concentration or the disposal of acquired equity. Within the current statutory upper limit for fines (ie, CNY500,000), the SAMR has imposed higher fines in 2019. From 2014 to 2018, 13 out of the 32 punished cases had a fine of CNY300,000 or more imposed, accounting for about 40%, while in 2019, 17 out of the 18 cases involved a fine of CNY300,000 or more, accounting for 94%.

7. Special Arrangements Responding to COVID-19

The outbreak of COVID-19 since January 2020 has imposed new challenges on the SAMR's merger control work. The SAMR released an announcement on 5 February 2020, introducing off-site review with the aim of preventing the spread of the epidemic. In particular, notifying parties may send electronic copies of notification materials as well as replies to the SAMR's request for further information (RFI). The SAMR may also send notices and decisions to the notifying parties via email or fax.

On 4 April 2020, the SAMR released a new announcement that the off-site review shall remain applicable and that a green channel has been established to accelerate the review process for transactions supporting the prevention and control of the epidemic and the resumption of work and production. Concentration cases that can enjoy accelerated review via this green channel include cases:

- in fields closely related to epidemic prevention and control and people's basic livelihood, such as pharmaceutical manufacturing, medical instruments, equipment and device manufacturing, food manufacturing, transportation, wholesale and retail;
- in the catering, accommodation, tourism, and other industries seriously affected by the epidemic; and
- implemented for the resumption of work and production.

To date, it seems that the efficiency of the SAMR's merger control work has not been materially impacted by the epidemic. From February to April, the SAMR approved 115 transactions without condition, and 3 transactions with remedies. The number of reviewed cases has not significantly dropped compared to the corresponding period of the last year, and the average period for reviewing simple cases seems to have even been shortened, as the average length in the first quarter of 2020 was 12.8 days only (as opposed to 13.4 days in the fourth quarter of 2019).

8. Looking Ahead

The SAMR is expected to carry forward the amendments to the Anti-monopoly Law. Business operators should pay close attention to the proposed major amendments, including adjustment of notification thresholds, investigations of concentrations that do not reach the notification thresholds, enhanced obligations of the notifying parties to co-operate with SAMR's review, and the higher costs of gun-jumping violations, etc. As of now, it seems that COVID-19 has not caused significant adverse

effects on merger control notification and review. It remains to be seen whether certain temporary practices (eg, the off-site notification and the green channel) implemented by the SAMR during the epidemic period will be applicable in the long-term.

Among cross-border M&A in 2019, the case of Yonghui's acquisition of Zhongbai attracted wide attention. In this case, Yonghui was required by the National Development and Reform Commission (NDRC) to go through national security review for foreign investment just after Yonghui had announced its receipt of merger control clearance from the SAMR, which eventually led Yonghui to give up the transaction. This case indicates that cross-border M&A in relation to the Chinese market may face all-around supervision and regulation in China. The interaction between the national security review and the merger control review will be an important issue to focus on in the future.

As China is the second largest economy in the world, it is crucial for most major cross-border M&A to be cleared in China. The parties to such transactions are advised to formulate a strategy for merger control review at an early stage of the transaction, including whether the transaction is notifiable and whether and when the clearance can be obtained in China (and other jurisdictions). Furthermore, the prospect of merger control review should be taken into account when closing conditions, closing deadlines, break-up fees, and other terms in the transaction documents are designed. Given that merger control is regulated under PRC law, it is crucial that experienced PRC lawyers are retained at an early stage to advise on the transaction or the handling of violation investigations, as well as for the follow-up implementation of the formulated strategies.

The Legal 500 & The In-House Lawyer《比较法指南》系列：《卡特尔》之中国篇

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编者按

受国际权威法律评级机构 The Legal 500 & The In-House Lawyer 的邀请，环球律师事务所反垄断团队为其独家撰写了 2020 年度《比较法指南》系列中的《卡特尔》之中国篇。该指南各个国家（地区）的部分均邀请 The Legal 500 排行榜中该专业领域顶级的律所撰写，以简明扼要地介绍各司法管辖区域内的法律体系及当地法律实践。本文英文版于 2020 年 1 月完成，2020 年 4 月在 The Legal 500 官网发布，中文版是根据英文版制作的翻译稿，谨供环球《反垄断法律专递》的客户作为参考。本期专递推送时，《关于汽车业的反垄断指南》《横向垄断协议案件宽大制度适用指南》《关于知识产权领域的反垄断指南》《垄断案件经营者承诺指南》等四部指南已于 2020 年 8 月初由国家市场监督管理总局以书籍汇编的形式正式对外发布，但本文的中英文稿尚未能进行更新。就《关于汽车业的反垄断指南》等四部指南的详细解读，敬请关注环球律师事务所官方微信公众号“反垄断新规系列解读”文章。

一、 相关立法和监管体制

（一）与卡特尔相关的立法体系是什么？

《反垄断法》针对卡特尔垄断行为制定了明确具体的规定。同时《价格法》《招标投标法》也适用于一些特殊类型的卡特尔。《招标投标法》规定了串通投标等犯罪行为。2017 年之前，《反不正当竞争法》也包含了卡特尔的相关规定。但这些规定在 2017 年《反不正当竞争法》修订过程中已被删除。

国务院反垄断委员会起草的《关于汽车业的反垄断指南》《横向垄断协议案件宽大制度适用指南》《关于知识产权领域的反垄断指南》《垄断案件经营者承诺指南》等四部反垄断指南已完成内部程序，并将于 2020 年发布。这些指南中，也包含有关卡特尔的大量新监管政策。此外，国家市场监督管理总局（以下简称“市场监管总局”）于 2019 年 6 月 26 日发布了《禁止垄断协议暂行规定》（以下简称“《暂行规定》”），并于 2019 年 9 月 1 日生效。

（二）证明违法性时，是否以对市场具有排除、限制竞争效果为前提？

《反垄断法》规定“垄断协议是指排除、限制竞争的协议、决定或其他协同行为。”根据之前的案例，反垄断执法机构倾向于认为，《反垄断法》第 13 条和第 14 条所列的任何行为都会对市场造成损害，并且其本身也违法。但是如果符合第 15 条所列的某些条件，可以豁免。然而，鉴于《反

垄断法》中垄断协议（卡特尔）的定义，司法机关倾向于分析卡特尔的违法性，即对于是否具有排除、限制竞争效果进行个案判断。

2019 年，在海南省物价局与海南省裕泰科技饲料有限公司行政处罚纠纷案的再审中，最高人民法院作出支持海南省物价局的裁定。最高人民法院认为，考虑到反垄断执法效率问题，反垄断执法机构不需要在固定转售价格的纵向垄断协议案件中对排除、限制竞争效果承担举证责任。但最高人民法院还强调，法院系统在民事案件中应遵循以下标准：考虑纵向垄断协议是否具有排除或限制竞争的效果。

（三）反垄断相关法律是否适用于域外发生的行为?

《反垄断法》第 2 条规定了对境外垄断行为的管辖权，但前提是必须达到排除或限制中国境内的市场竞争的效果。在过去的十年中，有大量的案例表明，尽管这些行为发生在中国境外，其仍受到中国反垄断执法机构的监管。

二、 卡特尔的调查

（一）哪些机关有权对卡特尔垄断行为进行调查?

在 2018 年以前，国家发展和改革委员会（以下简称“国家发改委”）、国家工商行政管理总局（以下简称“工商总局”）分别负责价格卡特尔和非价格卡特尔的执法。2018 年中国政府进行机构改革后，市场监管总局负责反垄断执法工作，具体由下设的反垄断局负责。

在地方层面，《暂行规定》规定，省级市场监管部门负责其辖区内的反垄断执法工作，并且以自己的权限和名义执行工作。该《暂行规定》还规定，省级市场监管部门在立案后 7 个工作日内向市场监管总局报告。省级市场监管部门作出中止调查决定、终止调查决定或者行政处罚告知前，应当向市场监管总局报告。省级市场监管部门向被调查经营者送达中止调查决定书、终止调查决定书或者行政处罚决定书后，应当在 7 个工作日内向市场监管总局备案。

市场监管总局可以委托省级市场监管部门进行案件调查。同样，省级市场监管部门也可以商请其他省级市场监管部门或委托下级市场监管部门进行案件调查。受委托的机构只能以委托机构的名义进行调查，而不能以自己的名义进行调查和处理。

（二）卡特尔反垄断调查的关键步骤是什么?

对卡特尔案件的调查主要包括发现线索、立案、进行调查、作出初步决定和作出最终决定。

首先，反垄断执法机构依职权，或者通过举报、其他机关移送、上级机关交办等途径，发现垄断行为的线索。经过必要调查后，反垄断执法机构决定是否立案。

其次，立案后，反垄断执法机构依法开展调查，被调查人有配合调查的义务。

再次，反垄断执法机构基于调查中所获证据作出初步决定，并向被调查方送达行政处罚告知书。被调查方有权进行陈述和申辩，并在必要时申请公开听证。

最后，在考虑案件事实和被调查方的意见之后，反垄断执法机构作出最终处罚决定并向被调查方送达行政处罚决定书。

（三）有关执法机构可以采取的调查权限主要有哪些？

根据《反垄断法》第 39 条规定，反垄断执法机构调查涉嫌垄断行为，可以采取下列措施：

1. 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；

2. 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；

3. 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；

4. 查封、扣押相关证据；

5. 查询经营者的银行账户。

如果被调查方对反垄断执法机构依法实施的审查和调查，拒绝提供有关材料、信息，或者提供虚假材料、信息，或者隐匿、销毁、转移证据，或者有其他拒绝、阻碍调查行为的，由反垄断执法机构责令改正，对个人可以处二万元以下的罚款，对单位可以处二十万元以下的罚款；情节严重的，对个人处二万元以上十万元以下的罚款，对单位处二十万元以上一百万元以下的罚款；构成犯罪的，依法追究刑事责任。

（四）在有关执法机构提出要求的情况下，基于何种理由可以拒绝出示特定的文件？

被调查方有配合反垄断执法机构调查的义务，除非反垄断执法机构在执法过程中出现严重的程序缺陷。例如：在执法过程中少于两名执法人员，或无法核实执法人员的身份等。除此以外，被调查方可以要求记录或复制反垄断执法机构要求提供的文件。对于某些不适合提交的文件，被调查方有权提交合法副本或在必要时要求反垄断执法机构退还这些文件。

三、 宽大制度

（一）被完全免除处罚的情形是什么？ 申请人需要提交什么证据？ 是否需要正式的申请？

根据《暂行规定》，为免除处罚，经营者必须：（1）主动向反垄断执法机构报告达成垄断协议有关情况；（2）提供重要证据。重要证据是指能够对反垄断执法机构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、涉及的商品范围、达成协议的内容和方式、协议的具体实施等情况。

（二）后续举报申请人是否可以获得宽大处理，可以获得多大程度的宽大处理以及需要具备什么资质条件？

根据《暂行规定》的要求，对于第一个申请者，反垄断执法机构可以免除处罚或者按照不低于80%的幅度减轻罚款；对于第二个申请者，可以按照 30%至 50%的幅度减轻罚款；对于第三个申请者，可以按照 20%至 30%的幅度减轻罚款。

（三）是否有标记制度？如果有，在什么情况下适用？

截止到目前，反垄断执法机构尚未建立清晰透明的标记制度。但是即将出台的《横向垄断协议案件宽大制度适用指南》可能会对标记系统作出更明确的规定。

（四）在配合有关部门申请卡特尔豁免或宽大处理时，对申请人有什么要求？

国家发改委起草并发布的《横向垄断协议案件宽大制度适用指南》（征求意见稿）指出，涉嫌实施垄断行为的经营者必须迅速、持续、全面、真诚地配合执法机构的调查工作。经营者须提交宽大的申请报告或者初步报告。经营者提交初步报告后，执法机构认为有必要的，可以要求经营者在一定期限内补充相关材料，该期限最长一般不超过 30 日，特殊情况下可以延长至 60 日。经营者未在期限内按要求补充提交相关材料的，视为经营者未提出宽大申请。该指南还规定，未经执法机构同意，不得对外公布向执法机构申请宽大的情况。此外，反垄断执法机构可根据经营者的申请对经营者相关信息承担保密义务。更多详细的标准需要等正式版本出台后才可确认。

（五）豁免或宽大是否可以使目前在职或已离职的职工/高管免于刑事程序？

《反垄断法》针对卡特尔垄断行为的处罚不包含刑事责任（无论是个人还是法人），因此没有针对个人的刑事豁免制度。

（六）是否有特赦制度？

根据相关法律和过去的案件，目前并无赦免制度。

四、 经营者承诺制度

（一）反垄断执法机构在调查中是否有权签订和解协议或进行辩诉交易？如果有，相关的程序是什么？

在中国，反垄断执法中没有建立像欧盟和美国一样的和解或辩诉交易制度。但是，根据中国的法律制度，反垄断执法机构在接受被调查经营者的承诺后，可以中止调查；并且在经营者履行承诺后，可以终止调查。

《反垄断法》第 45 条为反垄断执法机构接受经营者的承诺提供了法律依据。此外，应当注意的是，尽管承诺制度既可以适用于垄断协议也可以适用于滥用市场支配地位，但实际上，承诺制度主要用于滥用市场支配地位的情况。在这方面，国家发改委于 2016 年 2 月 3 日发布了《反垄断案件经营者承诺指南》（征求意见稿）（以下简称“《承诺指南草案》”）。该草案明确规定，在固定或变更价格、限制产量或销量、或者划分销售市场或原材料采购市场方面，反垄断执法机构不接受承诺。

迄今为止，大部分承诺内容都是采取行为措施，但是不能排除反垄断执法机构未来会要求经营者采取结构性措施的可能。《承诺指南草案》规定“经营者提出的承诺措施可以是行为性、结构性或者是二者相结合的措施。其中行为性措施包括开放网络或者平台等基础设施，许可专利、技术秘密或者其他知识产权，终止排他性协议等；结构性措施包括剥离有形资产、知识产权等无形资产或者相关权益等。”

最后，中止和终止调查的决定不需要法院的批准。因此，上述决定可能不会妨碍其他经营者或消费者对可疑的垄断行为提起民事诉讼，同时也不应作为证明存在垄断行为的证据。《承诺指南草案》第 3 条也规定了这一点。

（二）向反垄断执法机构作出承诺对于涉嫌垄断的经营者一方的主要利弊各是什么？

涉嫌卡特尔垄断行为的经营者自愿向反垄断执法机构作出承诺的好处有：

第一，避免行政处罚。中止调查的决定不是行政处罚决定，因此被调查经营者可以暂时避免《反垄断法》第 46 条规定的经济性行政处罚（见下述“六、法律责任”部分）。如果经营者履行其承诺，反垄断执法机构可以决定终止调查，因此经营者将完全避免行政处罚。

第二，经营者可以尽快结束调查程序。有关垄断行为的存在以及由此产生的危害后果存疑的情况下，经营者作出的承诺可以很快中止并终止调查程序，以减少不确定性，避免对经营管理的持续影响或减少对公司并购业务、资本市场运作方面的波及。

第三，承诺的措施可根据涉案经营者自身能力进行调整。承诺的措施由经营者根据自己的条件提出，这一点对经营者自身而言更加切实可行。

根据个案的具体情况，可能的不利之处包括：

第一，中止调查的申请书和中止调查的决定书上，都应当载明涉嫌垄断行为的事实及其可能产生的影响。尽管在《承诺指南草案》第 3 条明确了，中止或终止调查的任何决定都不能视为已对该行为是否构成垄断行为作出认定。但是，经营者在承诺中承认存在涉嫌垄断的行为可能会触发或引起其他经营者或消费者提起民事诉讼。

第二，反垄断执法机构仍可以对涉案经营者的其他类似行为进行调查，并依法给予行政处罚。

第三，中止调查的申请由经营者自愿提出。因此，该经营者不能针对其在申请中提议和承诺的具体措施申请行政复议或提起行政诉讼。

第四，反垄断执法机构作出的中止调查的决定，包括经营者承诺的内容，将予以对外公布。因此，除受到反垄断执法机构的监督外，该经营者还将受到公众监督。

五、 跨机构合作

（一）中国反垄断执法机构与其他调查机构（包括其他司法管辖区的调查机构）合作的性质和程度如何？

1. 国内行政机构间的合作

中国反垄断执法机构可以与国内其他政府机构合作。一般而言，其他政府机构发现线索或收到有关涉嫌垄断行为的材料的，应将这些材料和线索转交给反垄断执法机构，并且反垄断执法机构可以将其他政府机构收集的证据和材料用作证据。例如，2012 年巫溪县公安局将涉嫌垄断行为的线索转交到巫溪县工商局。巫溪县工商局随后向重庆市工商局报告。重庆市工商局在经工商总局授权后，进行了调查，最终作出行政处罚决定。

在调查过程中，反垄断执法机构可以征求相关行业主管部门的意见，例如工业和信息化部、交通运输部、中国人民银行、国家知识产权局、中国银行保险监督管理委员会。

2. 与其他司法管辖区调查机构的合作

自《反垄断法》于 2008 年实施以来，中国相继与包括美国、欧盟、英国、韩国、澳大利亚在内的 30 多个国家和地区的竞争监管机构签订了 50 多个合作协议或谅解备忘录。例如：国家发改委、工商总局和商务部于 2011 年 7 月 27 日与美国联邦贸易委员会和美国司法部签署了谅解备忘录。

《反垄断法》第 2 条规定“中华人民共和国境外的垄断行为，对境内市场竞争产生排除、限制影响的，适用本法。”中国反垄断执法机构的调查和处罚行为独立于境外执法机构。在中国境外提交宽大处理申请或达成和解协议的经营者，不会自动免于在中国受到调查或处罚，该涉案经营者须另行向中国反垄断执法机构提出宽大处理申请或作出承诺。

六、 法律责任

（一）如果经营者被认定实施了卡特尔垄断行为，其所面临的民事和刑事责任分别是什么？

《反垄断法》第 46 条第 1 款规定“经营者违反本法规定，达成并实施垄断协议的，由反垄断执法机构责令停止违法行为，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。”以上行政处罚均针对被调查经营者，而非管理团队或直接负责达成和/或实施垄断协议的人员。

应当注意的是，通过串通投标达成的垄断协议也将受到《招标投标法》和《刑法》的制裁。具体而言，根据《招标投标法》第 53 条规定，投标人相互串通投标或者与招标人串通投标的，处中标项目金额千分之五以上千分之十以下的罚款，对单位直接负责的主管人员和其他直接责任人员处单位罚款数额百分之五以上百分之十以下的罚款。情节严重的，取消其一年至二年内参加依法必须进行招标的项目的投标资格并予以公告，直至由工商行政管理机关吊销营业执照；构成犯罪的，依法追究刑事责任。给他人造成损失的，依法承担赔偿责任。此外，根据《刑法》第 223 条，投标人相互串通投标报价，损害招标人或者其他投标人利益，情节严重的，处三年以下有期徒刑或者拘役，并处或者单处罚金。

（二）反垄断执法机构作出罚款时会考虑哪些因素？在实务当中，对近期的国内卡特尔和国际卡特尔案件的最高罚款额是多少？

如上所述，垄断协议是否已经实施将对罚款数额产生重大影响。如果实施了垄断协议，对涉案经营者处以前一年销售额的百分之一以上百分之十以下的罚款。如果垄断协议未得到实施，可对涉案经营者处以五十万元以下的罚款。同时，反垄断执法机构确定罚款金额时还会考虑违法行为的持续时间、程度和性质。

对垄断协议作出过的最高比例罚款为销售额的 9%，出现在 2015 年 8 家国际滚装海运企业通过串通投标实施垄断协议的案例中。考虑到垄断协议持续了很长时间（不少于四年）并产生了广泛的影响力（涵盖了北美-中国、欧洲-中国和中国-南美等主要航线）等因素，国家发改委对相关企业分别处以 2014 年度与中国市场相关的滚装货物国际海运服务销售额 4%至 9%不等的罚款。

在另一起涉及国内公司的案件，即 2016 年的别嘌醇片案件中，重庆青阳药业有限公司及其关联公司重庆大同医药有限公司被处以上一年度销售额 8%的罚款，其他公司则被处以上一年度销售额 5%的罚款。

长安福特和丰田汽车的固定转售价格案则是 2019 年反垄断执法机构作出的重大行政处罚。长安福特的行政处罚决定书并未在网上公布，但根据已知信息，该公司被处以重庆地区年销售额 4%的罚款，共计 1.628 亿元。经过近两年的调查取证，丰田汽车最终被处以 8,761 万元的罚款，占江苏地区年销售额的 2%。

（三）母公司是否会被推定与实施垄断行为的子公司一起承担连带责任？

没有法律明确要求母公司对其子公司的垄断行为承担连带责任，也没有任何案例显示母公司对其子公司的垄断行为负有法律责任。

七、 反垄断私人诉讼

（一）针对卡特尔垄断行为能否进行民事诉讼和集体诉讼？

《反垄断法》第 50 条规定，经营者实施垄断行为给他人造成损失的，应当依法承担民事责任。根据《最高人民法院关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》（以下简称“《垄断纠纷司法解释》”），因垄断行为受到损失以及因合同内容、行业协会的章程等违反反垄断法而发生争议的自然人、法人或者其他组织，均可向法院提起民事诉讼。

例如，2014 年，北京家乐福商业有限公司双井店和雅培贸易（上海）有限公司涉嫌垄断协议，被消费者田军伟提起诉讼。2018 年，上海韩泰轮胎销售有限公司由于涉嫌垄断协议、滥用市场支配地位，被武汉市汉阳光明贸易有限责任公司提起诉讼。但在以上两个案件中，原告的诉讼请求均未获得法院的支持。

《民事诉讼法》设立了中国的代表人诉讼制度，该制度与美国等其他司法辖区的“集体诉讼”较为相似，但在诉讼代表人的产生方式、诉讼代表人的权限、法院裁判是否对所有当事人有效等方面有较大差异。

《民事诉讼法》规定，对污染环境、侵害消费者合法权益或者损害公共利益的行为，法律规定的机关和有关组织可以向法院提起诉讼。根据《消费者权益保护法》，对侵害众多消费者合法权益的行为，中国消费者协会以及在省、自治区、直辖市设立的消费者协会，可以向法院提起诉讼。

目前中国尚未出现反垄断集体诉讼案例。

（二）什么类型的损失可以得到赔偿，以及如何量化损失？

根据《反垄断法》第 50 条，经营者实施垄断行为，给他人造成损失的，依法承担民事责任。根据《垄断纠纷司法解释》，被告实施垄断行为，给原告造成损失的，根据原告的诉讼请求和查明的事实，人民法院可以依法判令被告承担停止侵害、赔偿损失等民事责任。《反垄断法》规定的是补偿性的损害赔偿制度，法律法规没有赋予受害人提出超过实际损害赔偿的法定权利。

根据《垄断纠纷司法解释》，法院可以将原告因调查、制止垄断行为所支付的合理开支计入损失赔偿范围。在 2013 年北京锐邦涌和科贸有限公司（以下简称“锐邦公司”）与强生（中国）医疗器材有限公司（以下简称“强生公司”）纵向垄断协议纠纷的二审判决中，法院判定强生公司赔偿给锐邦公司造成的与垄断协议有直接因果关系的经济损失。

八、反垄断处罚的救济

（一）何种情形下涉案经营者可以对有关机构的处罚决定进行救济？

根据《反垄断法》的规定，当事人对反垄断执法机构作出的垄断协议处罚决定不服的，可以向行政复议机关申请行政复议，或向法院提起行政诉讼。但是，在行政复议或者行政诉讼期间，当事人应当继续执行行政处罚决定。

（二）提出救济的程序是什么？

对反垄断执法机构作出的垄断协议处罚决定，当事人可以在收到行政处罚决定书之日起 60 日内，向行政复议机关申请行政复议。行政复议机关应自复议申请受理之日起 60 日内作出行政复议决定。该审理期限经批准可以延长，但延长期限最多不超过 30 日。行政复议机关作出复议决定，当事人不服的，可以提起行政诉讼。

目前，垄断协议案件的反垄断执法机构为市场监管总局及其授权的省级市场监管部门。省级市场监管部门负责本行政区域内有关反垄断执法工作以及市场监管总局授权查处的案件。如果行政处罚决定是由作为国务院部门的市场监管总局作出的，当事人对决定不服申请行政复议的，行政复议机关为市场监管总局。如果行政处罚决定是由省级市场监管部门作出的，当事人对决定不服申请行政复议的，行政复议机关为市场监管总局或该部门所在的省级人民政府，具体向哪个机关申请复议由当事人选择。

例如，2016 年陕西省物价局对陕西省机动车辆检测协会及 30 多家机动车检测机构组织达成并实施价格垄断协议的行为作出行政处罚。部分涉案单位不服，申请行政复议。但复议机关经审理作出了维持行政处罚的复议决定。

对反垄断执法机构作出的垄断协议处罚决定，当事人可以在收到行政处罚决定书之日起六个月内，向法院提起行政诉讼。如果先申请行政复议，而后对行政复议决定不服的，可以在收到复议决定书之日起 15 日内向法院提起诉讼。如果复议决定维持了原行政处罚决定，当事人可将作出垄断协议处罚决定的反垄断执法机构及复议机关作为共同被告起诉。

法院审理一审行政案件，适用普通程序的，应当自立案之日起六个月内作出判决。有特殊情况需要延长审理期限的，由高级人民法院批准；高级人民法院审理一审行政案件需要延长审理期限的，由最高人民法院批准。法院审理一审行政案件，适用简易程序的，应当在立案之日起 45 日内审结。简易程序审理期限不得延长。

当事人不服法院未生效的一审判决的，应当在判决书送达之日起 15 日内向上一级法院提起上诉；当事人不服法院未生效的一审裁定的，有权在裁定书送达之日起 10 日内向上一级法院提起上诉。根据《最高人民法院关于知识产权法庭若干问题的规定》，对垄断行政处罚作出的第一审行政案件判决、裁定提起上诉的，将由最高人民法院知识产权法庭审理。法院审理二审行政案件，应当自收到上诉状之日起三个月内作出终审判决。有特殊情况需要延长审理期限的，延长方法同一审普通程序。

九、中国辖区内的实践要点

（一）反垄断执法机构的整合

2018 年 3 月，原三大反垄断执法机构（国家发改委、工商总局和商务部）的反垄断行政执法职责统一整合到新设立的市场监管总局。2018 年 8 月，市场监管总局设立新的反垄断局。

2018 年 12 月底，市场监管总局统一授权省级市场监管部门负责本行政区域内的反垄断执法工作。

（二）反垄断调查的核心领域

公用事业、医药（尤其是原料药）、建材和日常消费品等影响居民生活并关系国民经济的领域仍然是反垄断执法的重点。

汽车行业是 2019 年的反垄断执法重点。除上述长安福特和丰田汽车转售价格维持案以外，湖北省市场监督管理局对咸宁市 3 家机动车安全技术检测机构达成并实施垄断协议的行为共计罚没 119.42 万元。

此外，建筑材料是市场监管总局执法的另一个重点领域。例如，延安市十家混凝土企业因联合涨价被罚款共计约 490 万元；山西五家混凝土企业因达成固定价格的垄断协议（尚未实施）被罚款共计 25 万元；此外，重庆九家建材企业因固定或者变更商品价格及限制数量而受到处罚，罚没总额共计约 387 万元。

（三）反垄断立法动态

1. 《反垄断法》的修订

根据市场监管总局 2020 年 1 月 2 日发布的《<反垄断法>修订草案（公开征求意见稿）》，反垄断法的威慑力将大大提高，违反反垄断法的成本将大大增加，并且经营者将面临前所未有的合规压力。例如，根据该草案第 53 条，对于上一年度没有销售额的经营者或者尚未实施所达成的垄断协议的经营者，可以处五千万元以下的罚款。组织、帮助经营者达成垄断协议的，罚则与达成垄断协议的经营者相同。

2. 通过四部反垄断指南

除已经公布的《关于相关市场界定的指南》以外，截至 2018 年 12 月，国务院反垄断委员会又通过了四部反垄断指南，即《关于滥用知识产权的反垄断指南》《关于汽车业的反垄断指南》《反垄断案件经营者承诺指南》《横向垄断协议案件宽大制度适用指南》。上述指南预计将在 2020 年正式颁布并生效。上述指南将会给经营者适用《反垄断法》提供更多的指引，同时也会使执法程序更加清晰明确。

3. 程序法规的修订

2019 年 4 月 1 日，市场监管总局颁布的《市场监督管理行政处罚程序暂行规定》及《市场监督管理行政处罚听证暂行办法》已正式施行。未来还会针对《反垄断法》的行政处罚程序另行出台专项规定，提供更加具体的指引。上述规定及办法为统一和规范反垄断行政调查和处罚程序、加强反垄断行政执法的公开度和透明度提供了保证。

（四）反垄断执法力度还将进一步加强

2020 年，市场监管总局将继续以公用事业、药品、建材、日用消费品等民生领域为重点，加大对垄断协议和滥用市场支配地位行为的查处力度。

目前，中国 34 个省、自治区、直辖市的省级市场监管部门均已挂牌成立，而地方市场监管部门也已被明确授予在本行政辖区内的反垄断执法权限，中国反垄断执法机构，尤其是省级反垄断执法机构对垄断协议的查处活动将更加活跃。

The Legal 500 & The In-House Lawyer Comparative Legal Guide: China: Cartels

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1. Relevant legislation and regulatory regime

1.1 What is the relevant legislative framework?

The Anti-Monopoly Law (AML) provides clear and detailed provisions for cartels. In the meantime, The Price Law, The Law on Tendering and Bidding and other laws are also applicable to special types of cartel. The Law on Tendering and Bidding stipulates criminal acts such as collusive bidding. Prior to 2017, The Anti-Unfair Competition Law also contained provisions relating to cartels, but these provisions were deleted in the 2017 revision.

The four Anti-Monopoly Guidelines on the Automobile Industry, on the Abuses of Intellectual Property Rights, on the Leniency System and on the Commitment drafted by the Anti-Monopoly Commission (AMC) of the State Council have completed internal procedures and will be announced in 2020. These guidelines contain a large number of cartel's new regulatory policy. In addition, on June 26th, 2019, the State Administration for Market Regulation (SAMR) published Interim Provisions on Prohibiting Monopoly Agreement(Interim Provisions), and it has came into force on Sep 1st, 2019 .

1.2 To establish an infringement, does there need to have been an effect on the market?

The AML stipulates that 'monopoly agreement refers to an agreement, decision or other coordinated action that eliminates or restricts competition.' According to previous cases, AML enforcement authorities (AMEA) tend to consider any conduct listed in Article 13 and Article 14 of the AML causes damage to the market and is illegal *per se*, but at the same time allows it to be exempted if it meets certain conditions presented in Article 15. However, in view of the definition of a monopoly agreement (cartel) in the AML, the courts tend to analyze the illegality of cartel, i.e., whether it has the effect of eliminating or restricting the competition case by case.

In 2019, in the retrial ruling for the case between Hainan Yutai Technology Feed Company and Hainan Price Bureau in respect of the administrative penalty towards RPM, the Supreme Court finally supported the decision of Hainan Price Bureau , which hold that the AMEAs currently do not need to bear the burden of proof for the effect of eliminating or restricting competition in RPM cases in the enforcement activity considering the efficiency of AML enforcement. But the Supreme court also emphasized that the court system should follow the standard of taking into consideration the effect of eliminating or restricting competition of the vertical monopoly agreement in civil cases.

1.3 Does the law apply to conduct that occurs outside the jurisdiction?

Article 2 of the AML stipulates jurisdiction over extraterritorial monopolistic conducts, but only if it eliminates or restricts the market competition within China. In the past decade, there have been a large number of cases showing that despite the conducts happened outside the territory of China, it is still subject to the regulation of Chinese AMEA.

2. Conduct of a cartel investigation

2.1 Which authorities can investigate cartels?

Before 2018, NDRC and SAIC took charge of price-related cartels and non-price-related cartels respectively. After the implementation of the Chinese government's institutional reform in 2018, SAMR is responsible for AML enforcement, which is specifically assumed by its anti-monopoly bureau.

At the local level, according to Interim Provisions, provincial Administrations for Market Regulation (AMRs) are authorized to take charge of the AML enforcement work within their administrative regions and deal with it in the name of their own authority. The Notice also requires that the provincial AMRs to report to SAMR within 7 working days after a case is filed. Before the decisions made in regard of case cancellation, prior notice of administrative penalty (Statement of Objection), final decision, suspension of an investigation (Commitment decision), resumption of an investigation, termination of an investigation, provincial AMRs shall accept the guidance and supervision of SAMR. They shall submit the relevant documents to SAMR within 7 working days after making the final decision, suspending and terminating the investigation decision. SAMR and provincial AMRs shall simultaneously announce law enforcement information to the public.

SAMR may entrust provincial AMRs to conduct case investigations. Similarly, provincial AMRs may also commission other provincial or subordinate AMRs to conduct case investigations. The commissioned authorities can only conduct investigations in the name of the commissioning authority, and cannot investigate and handle the case in its own name.

2.2 What are the key steps in a cartel investigation?

The investigation of a cartel case mainly includes steps as finding clues, filing a case, investigating, making preliminary conclusions, and making final conclusions.

Firstly, an AMEA searches for clues of the monopolistic conduct *ex officio*, through people's reports, assignment by higher authorities or case transferring from other agencies. After necessary investigation, it will decide whether to file the case.

Secondly, the AMEA conducts investigations according to law, and the investigated parties have the obligation to cooperate with the investigation.

Thirdly, the AMEA makes a preliminary conclusion based on the evidence obtained from the investigation, and issues an Administrative Penalty Prior Notice (Statement of Objection) to the investigated party. The investigated party has the right to state opinions, make defenses, and apply for a public hearing if necessary.

Lastly, after considering the facts of the case and the opinions of the investigated party, the AMEA makes a final punishment decision and issues an Administrative Punishment Decision (Final Decision) to the investigated party.

2.3 What are the key investigative powers that are available to the relevant authorities?

According to Article 39 of the AML, the AMEA have following investigative powers:

(1) conducting on-premise inspections of the place of business of the investigated undertakings or other relevant places;
(2) questioning the undertakings, interested parties or other relevant entities or individuals, and asking for information about the situation;
(3) inspecting and duplicating related documents, contracts, account books, business correspondences, electronic data and other relevant documents or materials of the undertakings, interested parties or other relevant entities or individuals under investigation;
(4) sealing up and detaining relevant evidence;
(5) enquiring bank accounts of the undertakings.

In case the investigated party refuses to provide relevant materials, information, or provide false materials, information, or conceal, destroy, transfer evidence, or other refusing or obstructing conduct with respect to the investigation conducted by the AMEA, the AMEA may require corrections, and impose a fine up to 20,000 yuan to individuals and up to 200,000 yuan to entities. In case of serious circumstance, the individual shall be fined not less than 20,000 yuan but not more than 100,000 yuan, and an entity shall be fined no less than 200,000 yuan but no more than 1 million yuan; if criminal violation occurs, they would be subject to investigation and prosecution according to law.

2.4 On what grounds can legal privilege be invoked to withhold the production of certain documents in the context of a request by the relevant authorities?

The investigated party has a duty to cooperate with the AMEA, unless the AMEA have procedural defects in the investigation process, such as less than two law enforcement officers are presented, or the law enforcement officer cannot verify his identity. In addition, the investigated party may require registering and copying documents obtained by the AMEA. For some documents that are not suitable for submission, they have the right to submit legitimate copies or request the AMEA to return the pieces when necessary.

3. Leniency

3.1 What are the conditions for a granting of full immunity? What evidence does the applicant need to provide? Is a formal admission required?

According to Interim Provisions, the undertakings who aim to be exempted from penalty must: (1) proactively provide the relevant information on the monopoly agreement; (2) provide important evidence. Evidence is important if it is essential in initiating the investigation by the AMEA or essential in determining the monopoly conduct, including the identities of other involved undertakings, the scope of goods involved, the content of such an agreement, the method of reaching the agreement, specific implementation status of the agreement and so on.

3.2 What level of leniency, if any, is available to subsequent applicants and what are the eligibility conditions?

According to Interim Provisions, for the undertaking with the first proactive report on the relevant situation of the monopoly agreement and who provides important evidence, the penalty may be mitigated from 80% to 100%; for the second reporter who provides the relevant situation of the monopoly agreement and provides important evidence, the penalty can be reduced from 30% to 50%; for the third reporter, the penalty can be reduced from 20% to 30%.

3.3 Are markers available and, if so, in what circumstances?

At present, the AMEA have not yet established the clear and transparent marker system. However, it is said that the forthcoming Guidelines on the Application of the Leniency Program would make clearer provisions on the marker system.

3.4 What is required of immunity/leniency applicants in terms of ongoing cooperation with the relevant authorities?

The Guideline on the Application of the Leniency Program in Horizontal Monopoly Agreements (Draft for Comment), drafted and published by NDRC stated that undertakings must cooperate with inspections from the AMEA in a prompt, continuous, comprehensive and sincere manner. After the undertaking submits the preliminary report, if the AMEA believe supplemental materials are necessary, the undertaking shall submit the requested materials within 30 days, and within 60 days in special circumstances. Failure to supplement, it will be deemed as no lenient application has been filed. The Guideline also stipulates that applicants may not disclose any information regarding the application without consent of AMEA. In addition, the AMEA may also impose other possible confidentiality obligations on applicants on the ground of the cooperation requirements. More specific criteria have yet to be determined after the official publication of the Guideline.

3.5 Does the grant of immunity/leniency extend to immunity from criminal prosecution (if any) for current/former employees and directors?

The AML does not provide criminal liability (neither individuals nor undertakings) for cartels, so there is no criminal exemption for related individuals.

3.6 Is there an 'amnesty plus' programme?

According to relevant law and previous cases, there is no 'amnesty plus' programme.

4. Settlement

4.1 Does the investigating authority have the ability to enter into a settlement agreement or plea bargain and, if so, what is the process for doing so?

In China, there is no settlement or plea-bargaining system equivalent to those in European Union and the United States. However, under the PRC law, the AMEA may suspend the investigation upon acceptance of commitments of the undertaking under investigation, and may thereafter terminate the investigation after the undertaking fulfilled the commitments.

Article 45 of the AML provided legal basis for acceptance of commitments. In addition, it should be noted that although it may be applied to both monopoly agreements and abuse of dominant market position, the commitment system, in practice, is mainly used in cases of abuse of dominant market position. In this respect, the draft of the Guidelines for Commitments of Undertakings in Anti-Monopoly Cases (Draft Guidelines on Commitments), published by the NDRC for soliciting comments on February 3rd 2016, expressly provides that in cases of horizontal monopoly agreements to fix or change prices, limit volumes of production or sales, or divide sales markets or the raw material procurement markets, the AMEA shall not accept commitments.

To date, the vast majority of measures committed are behavioral measures, while it cannot be ruled out that the AMEA may require the structural measures to be committed in the future. The Draft Guidelines on Commitments stipulates that 'The measures can be behavioral measures, structural measures or a hybrid of the two. Behavioral measures include opening up infrastructure such as networks or platforms, licensing patent, technical secrets or other intellectual property rights, and terminating exclusive agreements. Structural measures include divest tangible assets, intangible assets including intellectual property rights, or related rights and interests.'

Finally, the decisions of suspension and termination of investigation do not require approvals from courts. Accordingly, the said decisions may not impede other undertakings or consumers from filing civil suits upon the suspected monopoly conducts, and should not serve as evidence to demonstrate the existence of monopoly conducts. This is also stipulated in the Article 3 of the Draft Guidelines on Commitments.

4.2 What are the key pros and cons for a party that is considering entering into settlement?

The benefits for undertakings to voluntarily makes commitments to the AMEA include:

(1) avoiding administrative penalties: the decision on suspension of investigation is not an administrative penalty decision, so the undertaking under investigation can temporarily

avoid the economic penalty stipulated in the Article 46 of the AML (See Question 6.1 below). If the undertaking fulfills its commitments, the AMEA may decide to terminate the investigation, and the undertaking will thus avoid administrative penalty definitely.

(2) ending the investigation procedure as quickly as possible: in cases where it is controversial as to the existence of monopolistic conducts and the consequence caused by such conducts, commitments made by the undertaking may suspend and terminate the investigation procedure soon, so as to reduce the uncertainty and avoid the continuous impact on the operation and management of the undertaking, or even its contemplating mergers and acquisitions or capital market operation.

(3) tailoring to undertakings' own capabilities: the committed measures are proposed by the undertaking itself according to its own conditions, which would be more practicable.

Depending on the circumstances of individual cases, the possible disadvantages may include:

(1) the application for suspension of investigation and the decision to suspend the investigation shall set forth the facts of suspected monopoly conducts and the possible effects thereof. Notwithstanding Article 3 of the Draft Guidelines for Commitment intends to clarify that none of the decisions to suspend or terminate investigation serves as the determination on whether or not the conducts of undertaking constitute monopolistic conducts nor be taken as evidence for making such a determination, the commitment, in which the undertaking admit the existence of suspected monopoly conducts, may trigger or inspire other undertakings or consumers to lodge a civil lawsuit.

(2) the AMEA's acceptance of the commitments and decisions to suspend and terminate the investigation shall not serve as the determination on whether or not the conducts of undertaking constitute monopolistic conducts. The AMEA may conduct investigations as to other similar conducts of the undertakings and impose administrative penalties according to law.

(3) the application for suspending the investigation is voluntarily submitted by the undertaking. Therefore, the undertaking cannot apply for administrative reconsideration or file administrative litigation against the specific measures it proposed in the application and committed thereafter.

(4) the decision to suspend the investigation, including the contents of the commitment, will be made public. The undertaking will thus be subject to public supervision in addition to the supervision of the AMEA.

5. Inter-agency cooperation

5.1 What is the nature and extent of any cooperation with other investigating authorities, including from other jurisdictions?

(1) Inter-agency cooperation

The AMEAs may cooperate with other government agencies. In general, other government agencies which find clues or receive materials about suspected monopoly conducts should transfer them to

the AMEAs, and evidence and materials collected by the other government agencies can be used by the AMEAs as evidence. For example, in 2012 the Public Security Bureau of Wuxi County transferred clues of a suspected monopoly conduct to the AIC of Wuxi County. The latter then reported to the AIC of the Chongqing Municipality, which, after having been authorized by the SAIC, conducted the investigation and finally made an administrative punishment decision.

During the process of investigations, the AMEA may seek opinions from relevant authorities in charge of the industry concerned, such as the Ministry of Industry and Information Technology, Ministry of Transportation, People's Bank of China, National Intellectual Property Administration, China Banking and Insurance Regulatory Commission.

(2) Cooperation with other investigating authorities from other jurisdictions

Since the entry into force of the AML in 2008, China has entered into more than 50 cooperation agreements or memorandums of understanding ('MOUs') with competition authorities of about 30 countries and regions, including the US, the EU, the UK, Korea and Australia. For example, NDRC, SAIC and MOFCOM signed MOUs with U.S. Federal Trade Commission and the U.S. Department of Justice in July 27, 2011.

Article 2 of the AML stipulates that 'this Law shall apply to monopoly conducts outside the People's Republic of China that have the effect of eliminating or restricting competition in the domestic market.' The AMEA investigates and punishes monopoly conducts independently from foreign authorities. An undertaking who has submitted leniency applications or reached settlement agreements outside China would not automatically be exempted from investigations or punishment in China. It should submit leniency applications or propose to make commitments to the AMEA separately.

6. Sanctions

6.1 What are the potential civil and criminal sanctions if cartel activity is established?

Article 46 of the AML, the first paragraph, provides 'where an undertaking, in violation of the provisions of this Law, concludes and implements a monopoly agreement, the authority for enforcement of the AML shall order it to discontinue the violation, confiscate its unlawful gains, and, in addition, impose on it a fine of not less than 1% but not more than 10% of its turnover in the previous year. If such monopoly agreement has not been implemented, it may be fined no more than 500,000 yuan.' The above administrative penalties all target the undertaking under investigation rather than the management team or the persons directly responsible for the conclusion and/or implementation of monopoly agreements.

It should be noted that monopoly agreements which are concluded by bid-rigging would also be subject to sanctions under the Law on Tendering and Bidding and the Criminal Law. Specifically, according to Article 53 of the Law on Tendering and Bidding, the bidder shall be fined not less than 0.5% but not more than 1% of the value of the bid it won, and the persons who are directly in charge and the other persons who are directly responsible shall be fined not less than 5% but not more than

10% of the fine imposed on the bidder. In serious situations, the bidder may be disqualified for one to two years from taking part in bidding for projects for which bid invitation is required by law, and its business license may even be revoked. Further, according to Article 223 of the Criminal Law, bidders who act in collusion with one another may be sentenced to a fixed-term of imprisonment of not more than three years or criminal detention. They may also be fined only or together with the foresaid imprisonment or criminal detention.

6.2 What factors are taken into account when the fine is set? In practice, what is the maximum level of fines that has been imposed in the case of recent domestic and international cartels?

As mentioned above, whether the monopoly agreement has been implemented would significantly impact the amount of fine. If the monopoly agreement has been implemented, the undertaking may be fined not less than 1% but not more than 10% of its turnover in the previous year. If such monopoly agreement has not been implemented, it may be fined not more than 500,000 yuan. At the same time, the AMEA will consider the duration, degree and nature of the illegal conduct when determining the amount of fine.

The highest percentage of sales that has been imposed as fine for monopoly agreement cases is 9%, in a case where eight international ro-ro cargo shipping companies implemented a monopoly agreement by collusion bidding in 2015. Considering, *inter alia*, that the monopoly agreement lasted for a long time (no less than four years), and resulted in a wide range of influence (covering various main ship routes including North America-China, Europe-China and South America-China), NDRC imposed fines ranging from 4% to 9% of the sales of international shipping services of ro-ro cargo related to the Chinese market in 2014, i.e. 407 million yuan in total.

In another case involving domestic companies, the Allopurinol case in 2016, Chongqing Qingyang and its affiliated company Chongqing Datong were fined 8% of their sales in the previous year, while the other companies were fined 5% of their sales in the previous year.

The RPM cases of Changan Ford and Toyota were the key cases of AML enforcement in 2019. The written decision of administrative penalty of Changan Ford is not published on the internet, but according to the information is known, the company was fined 4% of sales in Chongqing, 162.8 million in total. As for Toyota, after nearly two years of investigation and evidence collection, the case was end up in a fine of 87.61 million yuan, 2% of annual sales in Jiangsu.

6.3 Are parent companies presumed to be jointly and severally liable with an infringing subsidiary?

No law expressly requires that a parent company shall be jointly and severally liable for the monopoly conducts of its subsidiary, nor there has been any case where a parent company was so hold liable for the monopoly conducts of its subsidiary.

7. Private actions

7.1 Are private actions and/or class actions available for infringement of the cartel rules?

It is provided in Article 50 of the AML that the undertakings which commit cartels and cause losses to others shall bear civil liability according to law. According to the Regulations of the Supreme People's Court Concerning the Application of Several Legal on Civil Disputes Relating to Monopoly Conducts (Judicial Interpretation Concerning Monopoly Disputes), a natural person, corporation, or other organization, which suffers from losses caused by monopoly acts or is involved in disputes related to the AML breaches arising from contracts, the articles of associations of industrial associations, may bring a civil law suit in court.

In 2014, Shuangjing branch of Carrefour Beijing Co., Ltd. and Abbott Trading (Shanghai) Co., Ltd. were suspected of being involved in monopoly agreement conspiracy, against which Tian Junwei, as a customer, initiated a legal proceeding. In 2018, Wuhan Hanyang Sunshine Trading Co., Ltd. brought a lawsuit against Shanghai Hantai Tyre Selling Co., Ltd. for a suspected monopoly agreement and market dominance abuses. Plaintiffs fail in both cases.

The Representative Action System of China stipulated in the Civil Procedure Law of China is relatively similar to the class action in the United States of American. However, there are great differences between the two systems in terms of appointment and scope of authorization of the representative of litigants, and whether or not the judgment rendered by courts is binding on the parties.

According to the Civil Procedure Law in China that institutions and relevant organizations appointed by law may initiate legal actions in court when environmental pollution, customers' rights infringement or harms to public interests occurs. While the Law on the Protection of the Rights and Interests of Consumers also provides that China Consumers Association and its branches at provincial level may file a lawsuit at court against the conducts which harm mass consumers' legitimate interests and rights.

Yet, no anti-monopoly class action lawsuit has been brought up in China.

7.2 What type of damages can be recovered by claimants and how are they quantified?

According to article 50 of the AML and Judicial Interpretation Concerning Monopoly Disputes, for the defendant who commits monopoly conducts and cause losses to the plaintiff, the court may make judgement, ordering the defendant to assume civil liabilities such as ceasing the infringing act and making compensation on the basis of the claims made by the plaintiff. Accordingly, the AML formulates a supplementary damage compensation system. No law nor regulation empowers the infringed party with legal rights to claim a reward beyond its actual damage.

According to Judicial Interpretation Concerning Monopoly Disputes, courts may credit the reasonable costs arising from investigation and prevention of monopoly conducts to the scope of indemnification. For example, the court of Shanghai second instance trialed a dispute over vertical monopoly

agreement between Beijing Ruibang Yonghe Technology & Trade Co., Ltd. (Rui Bang) and Johnson & Johnson Medical (China) Co., Ltd. (Johnson & Johnson) in 2013, and held that Johnson & Johnson to compensate Rui Bang the economic losses directly arising from the monopoly agreement.

8. Appeal process

8.1 On what grounds can a decision of the relevant authority be appealed?

According to the AML, where a party challenges the administrative penalty decision made by the AMEA concerning monopoly agreement, he may apply administrative reconsideration or file an administrative litigation. However, implementation of the administrative penalty decision shall continue during the period of administrative reconsideration or administrative litigation.

8.2 What is the process for filing an appeal?

As for administrative reconsideration, a party shall submit an administrative reconsideration application within 60 days after receiving the administrative penalty decision rendered by the AMEA. The administrative reconsideration authority must render decisions within 60 days after accepting the application. The term of hearing may be extended up to 30 days upon approval. The party still has the opportunity to file an administrative litigation if it is unsatisfied with the decision made by administrative reconsideration authority.

The party challenging an administrative penalty decision made by SAMR must submit the application for administrative reconsideration to SAMR, which shall act as the administrative reconsideration authority. If the challenged administrative penalty decision is made by provincial AMRs, the application for administrative reconsideration may be submitted to the provincial government or to SAMR, subject to the discretion of the applicant.

In 2016, Shanxi Price Bureau made administrative penalties to Shanxi Vehicle Inspection Association and more than 30 vehicle inspection agencies for monopoly conspiracy and implementation pricing monopoly agreement. Some of the agencies involved challenged the decision and made application for administrative reconsideration to Shanxi provincial government. The administrative reconsideration authority heard the case and decided to uphold the original administrative penalty decisions.

As for administrative litigations, the party may file an administrative suit in court within six months after receiving the administrative penalty decision. If the party apply for administrative reconsideration at first but disagrees with the administrative reconsideration decision, the party may file a suit in court within 15 days after receiving the decision. In case the administrative reconsideration authority affirms the original administrative penalty decision, the party may bring a lawsuit, listing the AMEA making the previous penalty decision concerning monopoly agreement and the administrative reconsideration authority as co-defendants.

When applying ordinary procedures to hear an administrative case at first instance, the court must make judgment within six months after case acceptance. If the time limit for case hearing shall be extended under special circumstances, an approval must be obtained from the High Court. Time limit extension for hearing first-instance administrative case by the High Court is subject to the approval from the Supreme Court. Where the court hears a first-instance administrative case by applying summary procedure, the case shall be closed within 45 days after the acceptance of the case. Time limit for hearing case in summary procedure shall not be extended.

When challenging the first instance judgment rendered by court which has not come into force, the party shall appeal to the upper level court within 15 days after receiving the judgment; and the time limit for appealing to the upper level court against a first instance decision made by court which has not become effective shall be 10 days after receiving the written verdict. According to Provisions of the Supreme People's Court on Several Issues concerning the Intellectual Property Tribunal, cases on appeals filed against the judgements of first-instance administrative cases involving the administrative penalty imposed on monopoly will all be tried by the Intellectual Property Tribunal of The Supreme People's Court. when hearing second-instance administrative case, the court shall make final judgment within three months after receiving the appeal, which is also extendable similar to the above procedures under special circumstances.

9. Practitioner points specific to the jurisdiction

(1) Integration of the AMEA

In March 2018, the duties of the three former AMEAs (SAIC, NDRC and the Ministry of Commerce) were integrated into the newly established SAMR. In August 2018, SAMR established a new anti-monopoly bureau.

At the end of December 2018, SAMR authorized its provincial branches to take charge of AML enforcement within their respective administrative region.

(2) Key sectors under investigation

Public utilities, medicines (especially drug substances), building materials, day-to-day consumer goods, and other areas which affect people's livelihood and national economy, remain as the focus of AML enforcement.

In 2019, Automobile industry is the focus of AML enforcement. Besides of the foresaid RPM cases of Changan Ford and Toyota, Hubei provincial administration for market regulation imposed a penalty of 1.1942 million yuan on three institutions focused on motor vehicle safety technology testing, for they reached and implemented monopoly agreements in Xianning City.

Besides, building material is another important sector of SAMR enforcement. For example, ten concrete enterprises in Yanan were punished for rising prices jointly, with a total fine of 4.9 million yuan. And five concrete enterprises in Shanxi were punished for reaching monopoly agreements of

fixing prices (not yet implemented) and be fined of 250 thousand yuan. What's more, nine building material companies in Chongqing were punished for reaching and implementing monopoly agreements of rising prices jointly, with a total fine of 3.87 million yuan.

(3) Legislation

(a) Amendment of the AML

According to the Draft Revisions of AML for Public Comment (Draft AML) published by SAMR on Jan. 2nd 2020, the deterrence of anti-monopoly law will be greatly enhanced, the cost of violating the anti-monopoly law will be greatly increased, and enterprises will face unprecedented pressure of compliance. For example, it is mentioned in Article 53 of Draft AML that if the undertaking has no sales achieved in the previous year or the monopoly agreement has not been implemented, it may be fined not more than 50 million yuan, and if the undertakings organize or assist other undertakings in reaching a monopoly agreement, to the the former, the penalty provision towards the latter will be applied.

(b) Formulating and perfecting relevant anti-monopoly measures and guidelines

Adoption of four anti-monopoly guidelines

In addition to the published Guidelines on the Definition of Relevant Markets, the AMC of the State Council seem to adopt four anti-monopoly guidelines, namely, the Anti-Monopoly Guidelines on the Abuses of Intellectual Property Rights, Anti-Monopoly Guidelines on the Automobile Industry, Guidelines on the Commitment of Undertakings in Anti-Monopoly Cases and Guidelines on the Application of the Leniency Program in Horizontal Monopoly Agreements. The guidelines, which are expected to be formally promulgated and become effective in 2020, will provide more guidance for enterprises to comply with the AML, and will also make law enforcement procedures clearer.

(c) Amendment of procedural regulations

On April 1, 2019, the Interim Provisions on Procedures for Administrative Penalties Regarding Market Supervision and Administration and the Interim Measures for Hearings of Administrative Penalties Regarding Market Supervision and Administration promulgated by SAMR was formally implemented. In the future, special provisions will be issued for the administrative penalty procedure of the AML to provide more specific guidance. The above-mentioned provisions and measures provide a guarantee for the unification and standardization of anti-monopoly administrative investigation and punishment procedures, and for enhancing the openness and transparency of AML enforcement.

(4) Enforcement of the AML will be further tightened.

In 2020, SAMR will continue focusing on public utilities, drug substances, building materials, day-to-day consumer goods and other areas relating to the people's livelihood, and intensify efforts to investigate and punish monopoly agreements and abuse of market dominance.

Currently, 34 provincial AMRs have been listed and established, while local market supervision departments have also been clearly granted the power of AML enforcement within their jurisdictions. Chinese AMEA, especially at provincial level, will be more active in investigating and dealing with monopoly agreements.

本期作者简介

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环球简介

环球律师事务所（“我们”）是一家在中国处于领先地位的综合性律师事务所，为中国及外国客户就各类跨境及境内交易以及争议解决提供高质量的法律服务。

历史. 作为中国改革开放后成立的第一家律师事务所，我们成立于 1984 年，前身为 1979 年设立的中国国际贸易促进委员会法律顾问处。

荣誉. 作为公认领先的中国律师事务所之一，我们连续多年获得由国际著名的法律评级机构评选的奖项，如《亚太法律 500 强》（The Legal 500 Asia Pacific）、《钱伯斯杂志》（Chambers & Partners）、《亚洲法律杂志》（Asian Legal Business）等评选的奖项。

规模. 我们在北京、上海、深圳、成都四地办公室总计拥有逾 500 名的法律专业人才。我们的律师 均毕业于中国一流的法学院，其中绝大多数律师拥有法学硕士以上的学历，多数律师还曾学习或工作于北美、欧洲、澳洲和亚洲等地一流的法学院和国际性律师事务所，部分合伙人还拥有美国、英国、德国、瑞士和澳大利亚等地的律师执业资格。

专业. 我们能够将精湛的法律知识和丰富的执业经验结合起来，采用务实和建设性的方法解决法律问题。我们还拥有领先的专业创新能力，善于创造性地设计交易结构和细节。在过去的三十多年里，我们凭借对法律的深刻理解和运用，创造性地完成了许多堪称“中国第一例”的项目和案件。

服务. 我们秉承服务质量至上和客户满意至上的理念，致力于为客户提供个性化、细致入微和全方位的专业服务。在专业质量、合伙人参与程度、客户满意度方面，我们在中国同行中名列前茅。在《钱伯斯杂志》举办的“客户服务”这个类别的评比中，我们名列中国律师事务所首位。

环球反垄断业务简介

环球反垄断团队由近二十名合伙人和律师组成，其中多名合伙人和律师既有实务操作经验也有丰富的执法经验，已为医药、互联网、汽车、机械、电气、IT、食品、化工、矿产、航运、零售、物流等行业的众多境内外客户提供反垄断专业服务，服务范围包括经营者集中申报、反垄断调查、反垄断诉讼、反垄断风险防范与合规等。我们对中国反垄断法律法规及其实践具有深刻认识和专业理解。我们的主要服务内容包括：

- 为客户提供关于垄断、不正当竞争的风险防范以及合规审查的法律咨询；
- 代表客户进行中国境内反垄断申报，并协调在其他法域的反垄断申报；
- 代表客户应对反垄断执法机构发起的反垄断调查；
- 代表客户进行反垄断民事和行政诉讼等；
- 代表客户进行国家安全审查方面的申报和法律咨询等。

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