



The Legal 500 Country Comparative Guides

China

CARTELS

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This country-specific Q&A provides an overview of cartels laws and regulations applicable in China.

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CHINA CARTELS



1. What is the relevant legislative framework?

The Anti-Monopoly Law (AML) provides clear and detailed provisions for cartels. The Interim Provisions on Prohibition of Monopoly Agreements (Interim Provisions) further refine the regulation rules for cartels. In the meantime, the Price Law, the Law on Tendering and Bidding and other laws are also applicable to special types of cartels. 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 Commitments were formulated by the Anti-Monopoly Commission (AMC) of the State Council on January 4th, 2019 and officially released to the public in June 2020. In addition, the State Administration for Market Regulation (SAMR) issued the Anti-Monopoly Compliance Guidance for Undertakings on September 18th, 2020, and the Anti-Monopoly Guidelines on the Platform Economy on February 7th, 2021. Meanwhile, the SAMR issued the exposure draft of the AML Amendment on January 2nd, 2020, the exposure draft of the Anti-Monopoly Compliance Guidelines on Companies' Overseas Operation on September 18th, 2020 and the exposure draft of the Anti-Monopoly Guidelines in the Field of APIs on October 13th, 2020. These anti-monopoly regulations and guidelines (or their exposure drafts) contain new regulatory policies regarding cartels.

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 (cartels) in the AML, the courts tend to analyze the illegality of cartels, 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.

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.

4. Which authorities can investigate cartels?

Before 2018, the National Development and Reform Commission (NDRC) and the State Administration for Industry and Commerce (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 cartels enforcement work within their administrative regions and deal with it in the name of their own authority. The Interim Provisions also requires that the provincial AMRs report to SAMR within 7 working days after a case is initiated. Before the decisions made in regard to the suspension of an investigation, termination of an investigation or before the notice of administrative penalty, provincial AMRs shall report to the SAMR. Provincial AMRs shall file the relevant documents to SAMR for record within 7 working days after serving their decision of suspending the investigation, terminating the investigation or decision on administrative penalty to undertakings under investigation. SAMR may commission provincial AMRs to conduct case investigations. Similarly, provincial AMRs may also entrust other provincial or subordinate AMRs to conduct case investigations. The entrusted authorities can only conduct investigations in the name of the entrusting authority, and cannot investigate and handle the case in its own name.

5. What are the key steps in a cartel investigation?

The investigation of a cartel case mainly includes steps as finding clues, initiating 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 initiate 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.

6. 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.

Article 59 of the exposure draft of the AML Amendment announced on January 2nd, 2020 significantly increases the liability of the party under investigation for refusing to cooperate in anti-monopoly investigations. For companies, a fine of not more than 1% of its sales amount of the previous year may be imposed; in the absence of sales amounts in the previous year or it is hard to calculate the sales amounts, a fine of not more than 5 million yuan may be imposed. In the case of an individual, a fine of not less than 200,000 yuan but not more than 1 million yuan may be imposed. If a crime is constituted, criminal liability shall be held in accordance with the law.

7. 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.

8. 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 a 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.

Guidelines on the Application of Leniency System to Horizontal Monopoly Agreement Cases (the Guidelines on Leniency) has more detailed regulations on the exemption from a penalty for the first ordinal undertaking: (1) for the first ordinal undertaking, the law enforcement authorities may exempt all fines or mitigate fines to the extent of not less than 80%; (2) the undertaking that applies for leniency before investigation procedures are initiated by the law enforcement authorities and that is determined as the first ordinal undertaking will be exempted from the full amount of fines by the law enforcement authorities. However, for those undertakings that coerce or organize other undertakings to participate in reaching or implementing monopoly agreements or hinder other undertakings to stop the aforesaid illegal practice, the law enforcement authorities will not exempt them from a penalty but may impose a mitigated penalty against them accordingly.

9. 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%. In addition, for the subsequent undertaking, the law enforcement authorities may mitigate not more than 20% fines according to the Guidelines on Leniency.

10. Are markers available and, if so, in what circumstances?

Article 7 of the Guidelines on Leniency has established a clear and transparent marker system:

1. If the first undertaking to apply for exemption from penalty submits a report and important evidence on the monopoly agreement to the AMEA, the AMEA shall issue a written receipt to the undertaking, specifying the time of receipt and a list of materials.
2. If the report submitted to the AMEA by the first undertaking to apply for exemption from penalty does not meet the requirements, the AMEA will not issue a written receipt.
3. If the report submitted to the AMEA by the first undertaking to apply for exemption from penalty meets the requirements, but no evidence is provided or the evidence is incomplete, the AMEA may register and issue the written receipt in (1) above, and require the undertaking to supplement relevant evidence within the prescribed time limit. If the undertaking submits relevant evidence within the time limit required by the AMEA, the AMEA will regard the time it receives the report as the time of applying for leniency; if the undertaking fails to submit relevant evidence as required within the time limit, the AMEA will cancel its registration.
4. After being disqualified from registration, the first undertaking who applied for exemption from penalty can still complete relevant evidence and apply to the AMEA for exemption as long as no other undertakings have applied for leniency; if other undertakings have applied for leniency before the first undertaking applies for exemption again, the disqualified undertaking can apply

for mitigating the penalty.

5. If the undertaking applying for the exemption from the penalty is disqualified from registration, the first undertaking who has applied for mitigating the penalty will automatically be adjusted to the applicant for the exemption from the penalty.

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

According to the Guidelines on Leniency, undertakings could obtain leniency only if they submit reports and evidence in accordance with the requirements from the guideline and meet all the following conditions: (1) immediately cease the alleged violation after applying for leniency, but exception applies to the situation that the law enforcement authorities require the undertakings to continuously implement the aforesaid practice in order to ensure the smooth progress of the investigation. The undertakings who have applied for leniency to overseas law enforcement authorities and are required to continue to implement the aforesaid practice shall report to the law enforcement authorities; (2) cooperate with the law enforcement authorities in investigation in a prompt, sustainable, comprehensive and sincere manner; (3) properly preserve and provide the evidence and information and shall not conceal, destroy or transfer evidence or provide false materials or information; (4) shall not disclose their application to the law enforcement authorities for leniency without the approval of the law enforcement authorities; and (5) shall not have any other practice that affects the anti-monopoly law enforcement investigation.

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

Until now, the AML does not provide criminal liability (neither individuals nor undertakings) for cartels, so there is no criminal exemption for individuals. Nevertheless, according to Article 57 of the exposure draft of the AML Amendment published on January 2nd, 2020, An undertaking shall bear civil liability in accordance with the law for any loss caused to others by its monopolistic practice. If a crime is constituted, criminal liability shall be held in accordance with the law. It seems to imply that Chinese AML may establish criminal liability for the perpetrators of monopolistic behaviour in the future.

13. Is there an 'amnesty plus' programme?

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

14. 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 the 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 the legal basis for the anti-monopoly enforcement agencies to accept commitments made by companies. 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 Guidelines on Commitments of Undertakings in Anti-Monopoly Cases (Guidelines on Commitments) provides that in cases of horizontal monopoly agreements to fix or change prices, to limit the number of goods produced or sold, 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 behavioural measures, while it cannot be ruled out that the AMEA may require the structural measures to be committed in the future. The Guidelines on Commitments stipulates that 'The measures committed by undertakings can be behavioural, structural or a hybrid of the two. Behavioural measures include adjusting pricing strategies, cancelling or changing various transaction restrictions and opening up infrastructure such as networks or platforms, licensing patents, technical secrets or other intellectual property rights. Structural measures include divesting 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 Article 3 of the

Guidelines on Commitments.

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

The benefits for undertakings to voluntarily make 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 Article 46 of the AML. If the undertaking fulfils 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 Guidelines on 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.

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

(1) Cooperation between domestic administrative agencies

The AMEA may cooperate with other domestic government agencies. In general, other government agencies which find clues or receive materials about suspected monopoly conducts should transfer the clues or materials to the AMEA, and evidence and materials collected by these agencies can be used by the AMEA as evidence. For example, in 2012 the Public Security Bureau of Wuxi County transferred clues of a suspected monopoly conduct to the Administration for Industry and Commerce (AIC) of Wuxi County. The latter then reported to the AIC of Chongqing Municipality, which, after having been authorized by the State Administration for Industry and Commerce (SAIC), conducted the investigation and finally made an administrative penalty decision.

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

(2) Cooperation with 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 regulatory authorities of about 30 countries and regions, including the US, the EU, the UK, Korea and Australia. For example, the National Development and Reform Commission (NDRC), SAIC and the Ministry of Commerce of the People's Republic of China (MOFCOM) signed MOUs with U.S. Federal Trade Commission and the U.S. Department of Justice on July 27, 2011.

Article 2 of the AML stipulates that "this Law shall apply to monopolistic acts outside the People's Republic of China that have the effect of eliminating or restricting competition in the domestic market." The investigation and penalties imposed by the AMEA are independent from foreign authorities. An enterprise 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.

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

The first paragraph of Article 46 of the AML provides, "where an enterprise, 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 sales achieved 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 are imposed on the enterprise 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 reached through collusion bidding 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 collusion 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 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 from

bidding for a project subject to bidding as required by law for one to two years and the disqualification shall be announced, or the business license of the entity may be revoked by the AIC. 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, and/or be imposed a fine.

18. 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 fines. If the monopoly agreement has been implemented, the enterprise may be fined not less than 1% but not more than 10% of its sales achieved 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 fines. NDRC published a draft of Guidelines on Calculation of Illegal Gains and Penalties for Monopoly Conducts (Draft Guidelines on Calculation) in June 2016, with an aim to provide specific guidance on how to determine the amount of fines. It is, however, reported that the legislative process of the Draft Guidelines on Calculation has been slow given the existence of certain divergence.

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, amounting to 407 million yuan in total.

In another case involving domestic companies, i.e. the Allopurinol case in 2016, Chongqing Qingyang Pharmaceutical Co., Ltd. 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.

19. 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 has there been any case where a parent company was so held liable for the monopoly conducts of its subsidiary.

Article 19 of the Draft Guidelines on Calculation provides that, "although as a rule the AMEA shall impose punishment against the enterprise that directly carries out monopolistic acts, it may punish the parent company of the enterprise if the parent company has a decisive influence on the implementation of monopolistic acts by the enterprise." It remains unclear whether the foregoing provisions will be retained in the final text.

20. 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 enterprises which commit cartels and cause losses to others shall bear civil liability according to law. According to the revised Regulations of the Supreme People's Court Concerning the Application of Law in Civil Disputes Relating to Monopoly Conducts (Judicial Interpretation Concerning Monopoly Disputes), which was implemented on Jan. 1st, 2021, a natural person, legal person, or unincorporated association that suffers from losses caused by monopoly acts or is involved in disputes due to the contents of a contract or articles of association of an industry association that violates the AML may bring a civil lawsuit in court.

In 2014, Shuangjing store of Carrefour Beijing Co., Ltd. and Abbott Trading (Shanghai) Co., Ltd. were suspected of being involved in a monopoly agreement, and were sued by the consumer Tian Junwei. 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 failed in both cases.

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

According to the Civil Procedure Law of China, 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 conducts that harm mass consumers' legitimate interests and rights.

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

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

According to Article 50 of the AML and the Judicial Interpretation Concerning Monopoly Disputes, where a defendant commits monopoly conducts and causes losses to the plaintiff, the court may order 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. The AML formulates a compensatory compensation system. No law nor regulation empowers the infringed party with legal rights to claim a reward beyond its actual damage.

According to the Judicial Interpretation Concerning Monopoly Disputes, courts may credit the reasonable costs arising from investigation and prevention of monopoly conducts in the scope of loss compensation.. For example, in 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, the court of appeal held that Johnson & Johnson should compensate Rui Bang for the economic losses directly arising from the monopoly agreement.

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

According to the AML, where a party thinks the administrative penalty decision made by the AMEA concerning monopoly agreement infringes upon its legitimate rights and interests, he may apply for administrative reconsideration or file an administrative litigation. However, implementation of the administrative penalty decision shall continue during the administrative reconsideration or administrative litigation.

23. What is the process for filing an appeal?

As for the penalty decision with regard to the monopoly agreement made by the AMEA, 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 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.

At present, the AMEA for monopoly agreement cases is the SAMR and its authorized provincial AMRs. The provincial AMRs is responsible for the anti-monopoly law enforcement within its administrative regions and cases authorized by the SAMR. 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 people's government or to SAMR, subject to the discretion of the applicant.

In 2016, Shaanxi Provincial Price Bureau made administrative penalties to the Shaanxi Vehicle Inspection Association and more than 30 vehicle inspection agencies for concluding and implementing price monopoly agreements. Some of the agencies involved challenged the decision and made application for administrative reconsideration to Shaanxi provincial's people's government. The administrative reconsideration authority heard the case and upheld 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 the case is filed. If the time limit for trial needs to be extended under special circumstances, the extension shall be approved by the high people's court; if the high people's court needs to extend the time limit for trial of an administrative case of first instance, the extension shall be approved by the Supreme People's Court. If the summary procedure is applied to an administrative case of first instance, the court shall conclude the case within 45 days of the date of filing the case. The time limit for trial through 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 ruling made by court which has not become effective shall be 10 days after receiving the written ruling. According to the Provisions of the Supreme People's Court on Several Issues concerning the Intellectual Property Tribunal which was implemented on Jan. 1st, 2019, cases on appeals filed against the judgements of first-instance civil cases concerning monopoly and first-instance administrative cases involving administrative penalties imposed on monopoly will all be tried by the Intellectual Property Tribunal of the Supreme People's Court. When hearing administrative appeal case, the court shall make final judgment within three months after receiving the appeal, which is also extendable following similar procedures aforementioned under special circumstances.

24. What are some recent notable cartel cases (limited to one or two key examples, with a very short summary of the facts, decision and sanctions/level of fine)?

The RPM cases of Chang'an Ford and Toyota were the key cases of AML enforcement in 2019. Chang'an Ford had imposed RPM restrictions on its distributors in Chongqing and was thus fined 4% of its sales in Chongqing, which was 162.8 million in total. Toyota was fined of 87.61 million yuan for imposing RPM restrictions on its distributors for sales price on the Internet and for imposing RPM on some of its models, which amounts to 2% of its annual sales in Jiangsu.

25. What are the key recent trends (e.g. in terms of fines, sectors under investigation, applications for leniency, approach to settlement, number of appeals, impact of

COVID-19 in enforcement practice etc.)?

Public utilities, medicines (especially active pharmaceutical ingredients), construction 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 2020, automobile peripheral industry is the focus of AML enforcement. In March 2020, the Guizhou Provincial AMR imposed a fine of 3.6 million yuan on 17 companies in the driver's license training industry in Xingyi City, Qianxinan Prefecture for implementing a horizontal monopoly agreement. In May 2020, the Guangdong Provincial AMR imposed a fine of 1.76 million yuan on 32 companies in the automobile inspection industry in Huizhou for implementing a horizontal monopoly agreement. In July 2020, the Hubei Provincial AMR imposed a fine of 200,000 yuan on the Huanggang Lantian Used Motor Vehicle Trading Market Co., Ltd. and two other companies that reached and implemented a horizontal monopoly agreement.

Besides, construction material is another important sector of SAMR enforcement. For example, In June 2020, the Guangdong Provincial AMR imposed a fine of 7.65 million yuan on 19 concrete companies in Maoming City for implementing horizontal monopoly agreements. What's more, 13 concrete enterprises in Hangzhou city were punished for reaching and implementing monopoly agreements of fixing prices, limiting volumes of production and dividing sales markets and were fined of 4.15 million yuan.

26. What are the key expected developments over the next 12 months (e.g. imminent statutory changes, procedural changes, upcoming decisions, etc.)?

Amendment of the AML

According to the exposure draft of the revised AML published by SAMR on Jan. 2nd, 2020, the deterrence effect 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 the exposure draft of the revised AML that where an enterprise enters into and performs a monopoly agreement in violation of the present Law, the AMEA shall order it to stop the illegal practice, confiscate its illegal income, and impose a fine ranging from 1% to

10% of the sales amount of the preceding year against it; If the enterprise has no sales in the preceding year or has not performed the monopoly agreement, a fine of not more than 50 million yuan may be imposed. The preceding provisions shall apply to those which organise and assist enterprises in entering into a monopoly agreement.

As for the schedule of the revision, the Work Report of the Standing Committee of the National People's Congress approved in March 2021 clearly stated that the AML will be revised in 2021.

Adoption of two new anti-monopoly guidelines

It is expected that in 2021, the AMC of the State Council will formally promulgate the Anti-Monopoly Guidance in the Field of APIs and the Guidelines for Overseas Anti-Monopoly Compliance of Enterprises.

The promulgation and implementation of above guidelines will provide more and precise guidance for enterprises to comply with the AML, and will also make law enforcement procedures clearer.

Amendment of procedural regulations

On Apr. 1st, 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 the SAMR was formally implemented. On Nov. 3rd, 2020, the SAMR released the Flow Chart of Administrative Penalties and Administrative Mandatory Market Regulation. In the future, special provisions will be issued for the administrative penalty procedure of the AML to provide more specific guidance. The abovementioned provisions, measures and flow chart 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.

Enforcement of the AML will be further strengthened.

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. On Dec. 11th, 2020, the Political Bureau of the CPC Central Committee held a meeting to emphasize the need to strengthen anti-monopoly and prevent the disorderly expansion of capital in the future. On Jan. 18th, 2021,

the National Market Supervision Work Conference was held in Beijing, the meeting of which emphasized the strengthening of anti-monopoly and anti-unfair competition law enforcement. On Dec. 24th, 2020, the SAMR initiated an investigation into Alibaba Group

Holdings Co., Ltd. for suspected monopolistic conduct such as “choosing one or the other” according to a tip-off report. It is expected that anti-monopoly law enforcement activities in the field of platform economy will be more active in the future.

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