



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

This country-specific Q&A provides an overview to cartels laws and regulations that may occur in China.

This Q&A is part of the global guide to Cartels. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/cartels/>



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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 2019 spring. These guidelines contain a large number of cartel's new regulatory policy. In addition, the newly established State Administration for Market Regulation (SAMR) is drafting The Regulation on Prohibition of Monopoly Agreements and other regulations, in order to replace the previous regulations issued by the National Development and Reform Commission (NDRC) and the State Administration for Industry and Commerce (SAIC). If successful, it will be promulgated in 2019. According to the draft published recently, it includes some new regulations such as the Safe Harbor.

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.

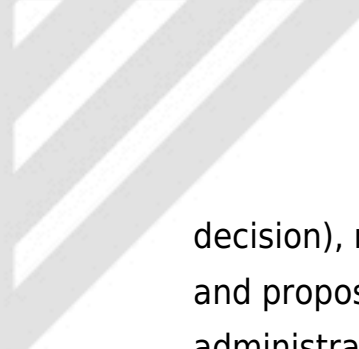
3. Does the law apply to conduct that occurs outside the jurisdiction?

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 AML.

4. 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 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 the Notice on Anti-Monopoly Enforcement Authorization issued by SAMR on January 3, 2019, 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 10 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, and proposed administrative advice on a treatment of an abuse of administrative power to eliminate or restrict competitions, provincial AMRs shall accept the guidance and supervision of SAMR. They shall submit the relevant documents to SAMR within 5 working days after making the final decision, suspending and terminating the investigation decision, and proposal on a treatment of an abuse of administrative power. 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.

5. **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.

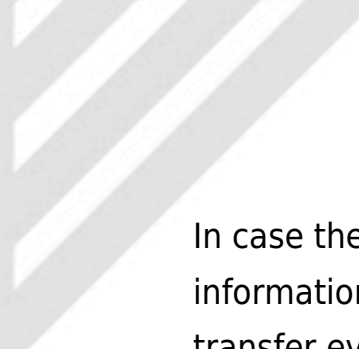
Thirdly, the AMEA makes a preliminary conclusion based on the evidence obtained from the investigation, and issues an Administrative Penalty Prior Notice (Statement of Objection) to the investigated party. The investigated party has the right to state opinions, make defenses, and apply for a public hearing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

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.

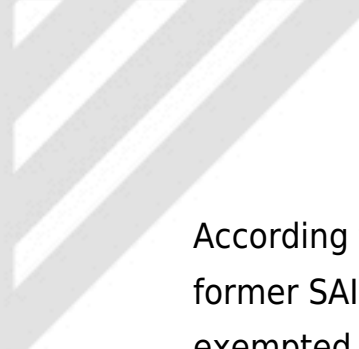


In case the investigated party refuses to provide relevant materials, information, or provide false materials, information, or conceal, destroy, transfer evidence, or other refusing or obstructing conduct with respect to the investigation conducted by the AMEA, the AMEA may require corrections, and impose a fine up to 20,000 yuan to individuals and up to 200,000 yuan to undertakings. 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.

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?

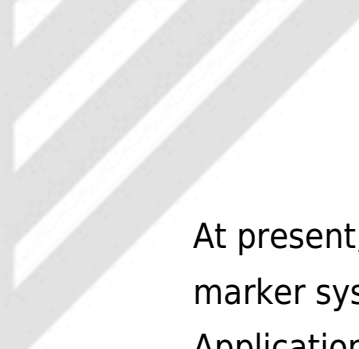


According to the previous cases and the regulations of NDRC and the former SAIC, the undertakings with the first proactive report can be exempted from penalty. At the same time, the undertaking must: (1) proactively provide the AMEA with relevant information on the monopoly agreement; (2) provide important evidence; and (3) comprehensively and proactively cooperate with the investigation. 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. The upcoming Guideline on the Application of the Leniency Program drafted by AMC of the State Council is believed to have clearer regulations.

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

According to the former standards of NDRC, for the undertaking with the second proactive report on the relevant situation of the monopoly agreement and who provides important evidence, the penalty may be mitigated by more than 50%; for other active reporter who provides the relevant situation of the monopoly agreement and provides important evidence, the penalty can be reduced by no more than 50%. Meanwhile, undertakings have to cooperate with the investigating authority comprehensively and proactively.

10. 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.

11. **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.

12. **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.

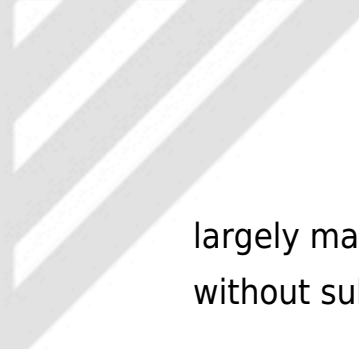
13. Is there an ‘amnesty plus’ programme?

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 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, while Article 15 through 19 of the Regulation on the Procedures for the AIC to Investigate Cases Concerning Monopoly Agreements and Abuses of Dominant Market Positions (Order of SAIC, which has entered into force since July 1, 2009) and Articles 15 through 18 of the Regulations on Procedures for Administrative Law Enforcement on Anti-Price Monopoly (Order of NDRC, which has entered into force on February 1, 2011) stipulate detailed rules and procedures. The draft Regulation on Prohibition of Monopoly Agreements published SMAR



largely maintained the existing rules and procedures on commitment without substantial changes.

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 3, 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.

15. **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.

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

1. Inter-agency cooperation

The AMEA may cooperate with other 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 the other government 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 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, Sino Intellectual Property

Office, China Banking Regulatory Commission and China 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 monopolistic acts 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.

17. **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 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 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 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 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.

- 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 fine. If the monopoly agreement has been implemented, the undertaking 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 fine. 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 fine. It is, however, reported that the legislative process of the Draft Guidelines on Calculation has been slow given the existence of certain divergence.

So far, the maximum amount of the penalty for domestic enterprises conducting monopoly agreement is 457 million yuan in the case of PVC in 2017. This case involved 18 companies, including state-owned enterprises and private companies. With consideration of the extent of the violation and its duration as well as the industry situation that the PVC industry was suffering recession, the 18 companies were imposed a fine from 1% to 2% of their 2016 sales.

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.

In December, 2018, SAMR announced the first monopoly agreement case after its establishment, i.e. the Tianjin port storage yard case, where Tianjin Development and Reform Commission (TDRC) made administrative penalty decisions against 17 companies. Having taken into account the circumstances of each company, including the degree of cooperation, the cessation of illegal conducts and the duration of the illegal conducts, TDRC imposed fines on the 17 companies in five tiers, namely 5%, 3%, 2.5%, 2% of the respective sales in the previous year and an exemption from penalty.

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 there has been any case where a parent company was so hold 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 undertaking that

directly carries out monopolistic acts, it may punish the parent company of the undertaking if the parent company has a decisive influence on the implementation of monopolistic acts by the undertaking'. It remains unclear whether the foregoing provisions will be maintained 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 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.

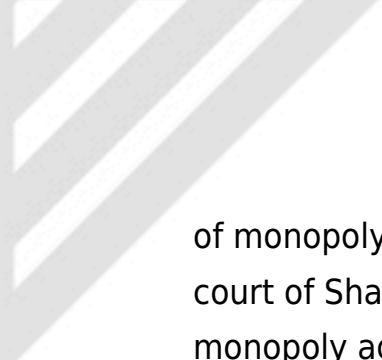
According to the Civil Procedure Law in China that institutions and relevant organizations appointed by law may initiate legal actions in court when environmental pollution, customers' rights infringement or harms to public interests occurs. While the Law on the Protection of the Rights and Interests 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.

21. **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



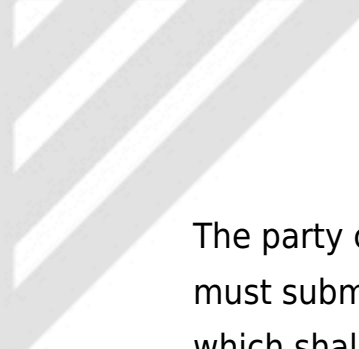
of monopoly conducts to the scope of indemnification. For example, the court of Shanghai second instance trialed a dispute over vertical monopoly agreement between Beijing Ruibang Yonghe Technology & Trade Co., Ltd. (Rui Bang) and Johnson & Johnson Medical (China) Co., Ltd. (Johnson & Johnson) in 2013, and held that Johnson & Johnson to compensate Rui Bang the economic losses directly arising from the monopoly agreement.

22. **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.

23. **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 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. The court, when hearing second-instance administrative case, shall make final judgment within three months after receiving the appeal, which is also extendable similar to the above procedures under special circumstances.

In February 2017, Hainan Price Bureau made administrative penalty on Hainan Yutai Technology Feed Company in respect of vertical price-related cartel. The company refused to accept the penalty and brought a lawsuit in the court. The court abrogated the administrative penalty decision in the first instance. Hainan Price Bureau made appeal and eventually win the case in the second instance.

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)?**



In March 2018, the duties of the three former AMEA (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.

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, etc.)?**

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 2018, the AMEA further probed into the medicine sector. one of the penalty cases involving monopoly agreements in this field was one involving three pharmaceutical ingredient manufacturers of glacial acetic acid, who were punished by SAMR for reaching and implementing monopoly agreements to fix or change commodity prices. Their illegal gains were confiscated and were fined 12.8338 million yuan in total. The fine is the highest in the pharmaceutical ingredient field since the implementation of the AML a decade ago.

In 2018, the shipping and port industry is another focus of AML enforcement. There are three cases involving monopoly agreements in

this field: four tugboat companies in Shenzhen were punished by SAMR for reaching and implementing monopoly agreements of 'fixing or changing commodity prices,' with a total fine of 12.8576 million yuan; two freight forwarding companies in Shenzhen were punished for reaching and implementing monopoly agreements to 'divide sales markets' and 'fix or change commodity prices,' with total fines of 3.1631 million yuan; 16 freight yard companies in Tianjin Port were punished by the TDRC for reaching and implementing monopoly agreements of 'fixing or changing commodity prices' (another such company was exempted from punishment), with total fines of more than 45.1 million yuan.

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

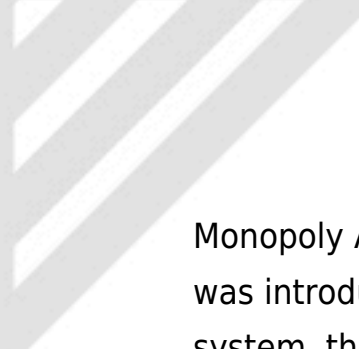
(a) Amendment of the AML

According to the Legislation Plan of the Standing Committee of the 13th National People's Congress, the AML will be reviewed and amended as a priority in the next five years. In 2018, the AMC of the State Council drafted a study report and a draft revision of the AML.

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

Planning to introduce the "safe harbor system"

In January 2019, SAMR promulgated the Regulations on the Prohibition of



Monopoly Agreements (Draft for Comments). The "safe harbor system" was introduced into the draft for consultation. After the adoption of this system, the risk of anti-monopoly compliance of the types of agreements other than hard-core cartels will be significantly reduced for enterprises with small market power.

Adoption of four anti-monopoly guidelines

In addition to the published Guidelines on the Definition of Relevant Markets, as of December 2018, the AMC of the State Council has adopted 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 2019, will provide more guidance for enterprises to comply with the AML, and will also make law enforcement procedures clearer.

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 will be 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.

Enforcement of the AML will be further tightened.

In 2019, 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.

As of January 2019, 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.