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Cartels 2022

China: Law & Practice
and
China: Trends & Developments

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Law and Practice

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1. BASIC LEGAL FRAMEWORK

1.1 Statutory Bases for Challenging Cartel Behaviour/Effects

The term “cartel” used in this article refers to monopolistic agreements, including both horizontal monopolistic agreements and vertical monopolistic agreements. Under PRC laws, cartel conducts may be identified pursuant to the Anti-Monopoly Law (the “AML”) and the Interim Provisions on Prohibition of Monopoly Agreements (revised on 24 March 2022 and implemented on 1 May 2022, the “Interim Provisions”).

In addition, the Pricing Law and the Bidding Law also provide for special types of cartels.

1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards

Since the institutional reform of the State Council in 2018, the State Administration for Market Regulation (SAMR) has undertaken a unified anti-monopoly enforcement function by establishing the Anti-Monopoly Bureau responsible for specific tasks. By the end of December 2018, SAMR granted authorisation for local anti-monopoly bureaus to regulate and manage anti-monopoly enforcement work at the provincial level in their respective administrative regions.

On 18 November 2021, the State Anti-Monopoly Bureau was officially established to organise and implement anti-monopoly enforcement work. In addition, the former Anti-Monopoly Bureau under SAMR was reformed into three departments, including the establishment of the Anti-Monopoly Enforcement Department I, responsible for monopolistic agreements and other related matters.

Article 46 of the Anti-Monopoly Law provides, “where an enterprise, in violation of the provisions of this Law, concludes and implements a monopolistic 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 monopolistic agreement has not been implemented, it may be fined no more than 500,000 yuan”.

Apart from the administrative liability of cartels, Article 50 of the AML provides that “operators who engage in monopolistic behaviour shall assume the civil liability in accordance with the law for the losses caused to others due to their monopolistic activities”.

The current AML does not specify the criminal liability for cartel conducts. However, regarding collusion among bidders, Article 223 of the Criminal Law provides that this may be a criminal offence punishable by a fixed-term imprisonment of not more than three years or criminal detention and/or only a fine.

In addition, the Anti-Monopoly Law (Draft Amendment) (Draft for Comment) (the “AML Draft Amendment”) released on 23 October 2021 has added Article 67, which reads as follows: “Where a violation of the provisions hereof constitutes a criminal offence, the criminal liability shall be pursued in accordance with the law.” It is reasonable to assume that China may be strengthening provisions on monopolistic criminal liability.

1.3 Private Challenges of Cartel Behaviour/Effects

The latest revision to the Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of

Civil Dispute Cases Arising from Monopolistic Conduct (the “Judicial Interpretation on Monopoly Disputes”) was issued by the Supreme People’s Court on 29 December 2020 and came into force on 1 January 2021.

Article 1 and Article 2 of the Judicial Interpretation on Monopoly Disputes state that natural persons, legal persons or unincorporated organisations suffering losses caused by monopolistic conduct or having disputes arising from the non-compliance by contractual provisions, bylaws of industry associations with the AML can file a civil lawsuit with a people’s court directly or after the effectiveness of the decision made by the anti-monopoly enforcement agency affirming the existence of monopolistic conducts. The people’s court shall accept the lawsuit filed if such lawsuit satisfies other conditions for acceptance as provided by law.

1.4 Definition of “Cartel Conduct”

Article 13 of the AML provides, “The following monopolistic agreements are prohibited from being made between operators which are in competition:

- those on fixing or changing prices of commodities;
- those on limiting the production or sales volume of commodities;
- those on dividing a sales market or material purchase market;
- those on restricting the purchase of new technologies or new equipment or restricting the development thereof; and
- those on jointly boycotting trading; and
- other monopolistic agreements as determined by the State Council anti-monopoly enforcement authorities.”

Article 14 of the AML provides, “The following monopoly agreements shall not be made between operators and their trading counterparts:

- those on fixing the price of commodities to for resale a third party;
- those on restricting the minimum price of commodities for resale to a third party; and
- other monopolistic agreements as determined by the State Council anti-monopoly enforcement authorities.”

Articles 7 through 13 of the Interim Provisions provide more details to Articles 13 and 14 of the Anti-Monopoly Law.

Article 56 of the AML sets out the application on particular industries, stating that the AML shall not apply to the alliance or concerted conduct by agricultural producers and rural economic organisations in the production, processing, sales, transportation, storage and other business activities of agricultural products.

In addition, Article 18 of the AML Draft Amendment states that a business operator shall not organise other business operators to reach monopolistic agreements or provide other business operators with substantial assistance in reaching monopolistic agreements.

1.5 Limitation Periods Administrative Punishment

Article 36 of the Administrative Penalty Law provides, “Where an unlawful act is not discovered within two years of its commission, an administrative penalty will not be imposed; if it involves citizens’ life and health security or financial security, and causes harmful consequences, the above-mentioned period shall be extended to five years, except as otherwise prescribed by laws.

The period prescribed in the preceding paragraph shall be counted from the date on which the unlawful act is committed, or if the act is ongoing or continuous, from the date on which the act ends.”

The two-year limitation also applies to the administrative penalties for cartel conducts imposed by anti-monopoly enforcement agencies.

In addition, given the persistence of cartel conducts, the limitation period shall commence from the time when cartel conducts cease.

Civil Liability

Article 188 of the Civil Code sets out three year limitation period of action regarding applications to a people's court for protection of civil-law rights; the limitation period begins from the date when the obligee knows or should have known that their right has been infringed upon and who the obligor is; however, no protection to a right is to be granted by the people's court if 20 years have elapsed since the date of the infringement, except that the people's court may, upon request of the obligee, extend the limitation period of action under special circumstances.

Article 195 of the Civil Code provides, "A limitation period of action is interrupted under any of the following circumstances, and it shall recommence from the time when the interruption or the relevant proceeding is terminated:

- the obligee requests the obligor to perform the obligation;
- the obligor agrees to perform the obligation;
- the obligee files a lawsuit or applying for arbitration; or
- there exist any other circumstances that have the same effect as filing a lawsuit or applying for arbitration."

Criminal Liability

Criminal Law stipulated that the limitation of action of collusive bidding crime is five years. The limitation period for prosecution is counted from the date when the crime is committed; if the criminal act is of a continual or continuous

nature, the period shall commence from the date when the criminal act ceases.

1.6 Extent of Jurisdiction

Article 2 of the AML provides, "This Law is applicable to monopolistic practices as part of economic activities occurring within the People's Republic of China. This Law is also applicable to monopolistic practices outside of the People's Republic of China which have the effect of eliminating or restricting Chinese market competition."

Therefore, the AML shall apply to the cartel conducts taking place in a foreign jurisdiction as long as they eliminate and restrict competition in China's domestic market.

1.7 Principles of Comity

China's Anti-Monopoly Law does not provide for the international comity doctrine.

In practice, a case that has been or is under investigation in other jurisdictions potentially may be investigated by China's anti-monopoly enforcement agencies. In such case, although there is no relevant express provision, it does not mean that China's anti-monopoly enforcement agencies do not take international comity into account when conducting investigations.

1.8 COVID-19

On 5 April 2020, the SAMR issued the Announcement on Supporting Anti-Monopoly Enforcement in Epidemic Prevention and Control and Resumption of Work and Production, which states that "strict, heavy and quick investigation and handling of the monopolistic behaviours that hinder epidemic prevention and control and resumption are legally required". Since then, several provincial anti-monopoly bureaus have embraced the approach, vowing to strengthen their anti-monopoly enforcement on the epidemic prevention and control.

2. PROCEDURAL FRAMEWORK FOR CARTEL ENFORCEMENT – INITIAL STEPS

2.1 Initial Investigatory Steps

First, an anti-monopoly enforcement agency may search for and discover monopolistic behaviours through:

- its ex officio action;
- receiving informants' reports; or
- accepting transfers from other authorities or assignment from higher-level authorities.

After a necessary investigation of the suspected monopolistic agreement, the anti-monopoly enforcement agency will decide whether or not to file a case.

Second, after a case is filed, the anti-monopoly enforcement agency will carry out an investigation in accordance with the law, and the party being investigated is obligated to co-operate with the investigation.

Third, the anti-monopoly enforcement agency will make a preliminary conclusion based on the evidence obtained and issue a prior notice of administrative penalties to the party under investigation. The party has the right to present its opinions, defend itself and apply for a public hearing where necessary.

Finally, after considering the facts of the case and the opinions of the party being investigated, the anti-monopoly enforcement agency will make a final decision on the penalty and issue such a decision to the investigated party.

2.2 Dawn Raids

A dawn raid, as a common method of anti-monopoly investigation, is commonly used in many cases in practice, such as anti-monopoly

investigations against Microsoft in 2013, Mercedes-Benz in 2014, Medtronic in 2016, and Zibo Lianhe Cement Enterprise Management Co Ltd in 2019.

The AML does not expressly provide for dawn raids; however, China's anti-monopoly enforcement agencies may carry out unannounced inspections entering the business premises of suspected companies or other related premises under Item 1, Paragraph 1 of Article 39 thereof.

The provisions of the AML on anti-monopoly investigation apply to dawn raids on the ground of the nature of the anti-monopoly investigation method.

A firm or individual faced with such an inquiry is obligated to co-operate in the dawn raids and must not refuse or hinder the investigation by the anti-monopoly enforcement agency. Refusals to co-operate may be considered "refusing or hindering the anti-monopoly investigation", and the related liability is described in **2.3 Spoilation of Information**.

When investigating suspected monopolistic practices, the anti-monopoly enforcement agencies may take the following measures:

- investigating the operator's place of business and other relevant locations;
- conducting interrogations of the operator, interested parties, and other relevant entities and individuals, requiring them to provide explanations;
- inspecting and making copies of certificates, agreements, accounts, correspondence, computer data, and other documents belonging to the operator, interested parties, and other relevant entities and individuals;
- seizing or freezing relevant evidence; or
- checking the operator's banking account.

During the investigation, the anti-monopoly enforcement agencies may request operators' officers or employees to respond to interviews/questions during the dawn raid or surprise visit. When conducting interviews/questions, the law enforcement officers shall make transcripts with signatures of the interviewees or the persons being investigated. Unless otherwise provided for in relevant laws, the companies or interviewees are generally not permitted to obtain copies of such transcripts in practice. In addition, the anti-monopoly enforcement agencies may access computers and emails and seize relevant documents.

Please refer to **2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony** for procedural requirements.

As for restrictions on dawn raids or surprise visits, currently, there is no specific provision of the AML and other relevant laws and regulations stating that the law enforcement officers may enter into private homes for investigation; in practice, the anti-monopoly enforcement agencies generally do not do so.

In practice, in response to a dawn raid, an attorney will be permitted to assist the party responding to the investigation by an anti-monopoly enforcement agency and provide legal advice on site after presenting a letter of proxy to the law enforcement officers.

2.3 Spoliation of Information

"Spoliation of potentially relevant information" will be deemed as "refusing or hindering the anti-monopoly investigation".

Article 42 of the AML provides, "Operators under investigation, interested parties, and other relevant entities or individuals shall cooperate with the anti-monopoly enforcement agency in their performance of duties, and shall not refuse

or hinder the investigation." Article 52 of the AML provides, "Persons who refuse to provide the relevant materials and information to the anti-monopoly enforcement agency for examination and investigation pursuant to the law or provide false materials and information or conceal, destroy or remove evidence or commit any other act to refuse or obstruct investigation shall be ordered by the anti-monopoly enforcement agency to make correction; a fine of not more than RMB20,000 may be imposed on individuals and a fine of not more than RMB200,000 may be imposed on organisations; where the case is serious, a fine ranging from RMB20,000 to RMB100,000 may be imposed on individuals and a fine ranging from RMB200,000 to RMB1 million may be imposed on organisations; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law."

Besides, the AML Draft Amendment intends to toughen the punishment for refusing or obstructing an anti-monopoly investigation, ie, to increase the upper limit of fines on entities to 1% of the sales revenue of the previous year (if there is no sales revenue or it is difficult to calculate the sales revenue of the previous year, the upper limit is RMB5,000,000), and increase the upper limit of fines on individuals to RMB500,000.

2.4 Role of Counsel

The AML and other relevant laws and regulations do not state whether operators' officers or employees have a right to counsel; however, counsel will be permitted by law enforcement officers to assist operators' officers or employees in responding to the investigations and provide legal advice on-site; however, counsel is not permitted to accompany the officers or employees in responding to the inquiries.

The reason is that the AML and other relevant laws and regulations do not provide for the individual

liability for cartel conduct, and individuals thus do not need to engage attorneys. However, it shall be noted that the AML Draft Amendment has introduced the individual liability for the cartel conducts, ie, the legal representatives, persons chiefly in charge and directly responsible persons of the business operators personally liable for the cartel conducts will be imposed a fine up to RMB1 million. If this provision is adopted in the future, individuals may need to engage attorneys to respond to the investigations of cartel conducts.

Generally, the following principal initial steps will be taken during the initial phase of an enforcement effort:

- After accepting the engagement, an attorney may inquire the party about the investigation, including the current stage of the investigation, the investigation objects, the monopolistic behaviours mainly focused by the anti-monopoly enforcement agencies, and the facts of the alleged monopolistic conducts.
- The attorney may, based on the above information, assist the party in responding to the investigation conducted by anti-monopoly enforcement agencies, including providing the party with legal advice on-site, assisting the party in responding to inquiries, collecting defence and evidence, etc.

Further, if the conditions of the exemption, suspension of investigation and/or application of leniency programme are satisfied, the attorney may assist the party in applying for exemption, suspension of investigation and/or application of leniency programme.

2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony

China's anti-monopoly enforcement agencies obtain documentary evidence or testimony,

and other types of (eg, non-documentary) information in the course of investigating alleged cartel conducts through the following ways:

- informants' reporting;
- evidence obtained during the anti-monopoly investigation;
- evidence provided by cartel members in the application of the leniency programme.

Regarding the application of procedural requirements, the anti-monopoly enforcement agencies shall strictly follow the investigation rules stipulated by the law during the investigation:

- to take the investigation measures specified in Paragraph 1, Article 39 of the AML;
- to submit a written report to the person in charge of an anti-monopoly enforcement agency for approval; there shall be no less than two law enforcement officers, who shall show their law enforcement certificates before the investigation; and
- transcripts shall be made during the inquiry and investigation and be signed by the person being inquired or investigated.

The anti-monopoly enforcement agencies shall also perform the obligations related to the investigation, such as the obligation to keep confidential the trade secrets they have access to in the inquiry.

2.6 Obligation to Produce Documents/ Evidence Located in Other Jurisdictions

Given the above said, the business operators, interested parties and other related entities or individuals shall cooperate with the anti-monopoly enforcement agencies in their duties and may not refuse or hinder the investigation. In this regard, we learn that companies or individuals must produce documents and other evidence available to them, even if such documents and

evidence are in another jurisdiction, including information stored in another jurisdiction.

Requirements for obtaining evidence from another jurisdiction are set out in **3.3 Obtaining Information From Entities Outside This Jurisdiction**.

2.7 Attorney-Client Privilege

There is no attorney-client privilege in China. Business operators may not refuse to disclose documents or other materials by relying on this privilege.

2.8 Non-cooperation With Enforcement Agencies

In practice, individuals and firms usually do not resist requests for information; otherwise, the enforcement agencies may obtain the information through dawn raids. However, if the individual and firms have doubts about the requests for information, eg, deeming the requested information irrelevant, communication between the individual and firms with the enforcement agencies is permitted.

Non-co-operation with the enforcement agency's requests or insistence on strict fulfilment of legal conditions precedent may be deemed as refusing or hindering the anti-monopoly investigation. The legal penalties will be imposed as set out in **2.3 Spoilation of Information**.

2.9 Protection of Confidential/ Proprietary Information

The AML stipulates that an anti-monopoly enforcement agency and its functionaries are responsible for keeping confidential the business secrets that come to their knowledge in the enforcement process. In case the anti-monopoly enforcement agency's functionaries disclose such business secrets, they shall be investigated for criminal liability if a crime is

constituted or shall be imposed punishment if no crime is constituted.

The AML does not contain any provisions on the treatment of personal information and privacy during an anti-monopoly investigation; however, the Personal Information Protection Law issued in 2021 provides for the requirements of treatment of personal information made by the state agencies in Section 3, Chapter II; therefore, the anti-monopoly enforcement agencies shall comply with the provision during anti-monopoly investigations.

In addition, apart from the business secrets, the AML Draft Amendment integrates the privacy and personal information of natural persons into the scope of the confidentiality obligations to be performed in the enforcement process.

2.10 Procedure for Defence Counsel to Raise Arguments Against Enforcement

During the whole process of cartel investigation, before an anti-monopoly enforcement agency makes a decision on administrative penalties, an attorney may assist the party in raising legal and factual arguments and reasonable defence.

After the anti-monopoly enforcement agency decides on administrative penalties, the attorney may assist the party in applying for administrative reconsideration and/or administrative proceedings if the party is dissatisfied with such administrative penalties.

2.11 Leniency and/or Immunity Regime Leniency Programme

The leniency programme is provided for in Paragraph 2, Article 46 of the AML and the Guidelines for the Application of the Leniency Programme to Horizontal Monopoly Agreement Cases.

Where a business operator voluntarily reports the relevant information on reaching a monopolistic agreement and provides material evidence to an anti-monopoly enforcement agency, the agency may, at its discretion, mitigate the punishment of the business operator or exempt the punishment.

A business operator involved in a monopolistic agreement may apply to the enforcement agency for the leniency programme before or after the enforcement agency places the case on file or initiates investigation procedures in accordance with the AML, but before giving a notice of administrative penalties.

A company may apply for a “marker” as follows:

- The first business operator who submits a report on relevant information about the monopolistic agreement and material evidence, may apply for exemption of punishment, and the enforcement agency will issue a written acknowledgement of receipt to the business operator stating the time of receipt and the list of received documents.
- The second business operator who submits a report on relevant information about a monopolistic agreement and material evidence may apply for mitigation of punishment, and the enforcement agency will issue a written acknowledgement of receipt to the business operator stating the time of receipt and the list of received documents.
- If the registration of a business operator that applies for exemption of punishment is cancelled, the first business operator who applies for mitigation of punishment shall be automatically adjusted as the applicant for exemption of punishment.

A business operator that organises or coerces other business operators to participate in reaching and/or implementing monopolistic agreements or prevents other business operators

from ceasing the illegal acts shall not be exempt from punishment by the enforcement agency, but may be imposed a mitigated punishment accordingly. In this regard, if the party is a “ringleader” of the activity, it shall not be exempt from punishment but may be given a mitigated punishment.

In general, the enforcement agency may only grant leniency to up to three business operators for the same monopolistic agreement case. For a significant and complex case involving numerous business operators that apply for leniency and provide different material evidence, the enforcement agency may consider granting leniency to more business operators.

The first applicant in sequent may be exempted from punishment or receive at least an 80% reduction of the applicable fine; the second applicant in sequent may receive a reduction between 30%-50% of the fine; the third applicant in sequent may receive a reduction between 20%-30% of the fine; and a reduction not more than 20% may be applicable for the subsequent applicants. In addition, the enforcement agency may also consider treating the illegal income of a business operator with reference to the aforementioned reduction proportion.

Exemption System

Paragraph 1 of Article 15 of the AML specifies the exemption system: Articles 13 and 14 hereof are not applicable if operators can prove that the agreements are concluded for:

- advancing technology, or researching and developing new products;
- improving product quality, lowering cost, increasing efficiency, unifying specifications and standards, or implementing a division of labour based on specialisation;

- improving the operation efficiency and competitiveness of small- and medium-sized operators;
- realising public interests such as energy conservation, environmental protection, and rescue and relief efforts;
- alleviating problems related to a serious drop in sales quantity or obvious overproduction during an economic recession;
- protecting legitimate interests in foreign trade or foreign economic co-operation; or
- involving other circumstances specified by-laws or the State Council.

Where Articles 13 and 14 do not apply under any of the circumstances of Items 1-5 of the preceding paragraph, the operators shall also prove that the agreements do not severely restrict the competition in the relevant market and enable consumers to benefit from the interests arising therefrom.

2.12 Amnesty Regime

In China, the AML and relevant laws and regulations do not provide for the Amnesty Regime.

3. PROCEDURAL FRAMEWORK FOR CARTEL ENFORCEMENT – WHEN ENFORCEMENT ACTIVITY PROCEEDS

3.1 Obtaining Information Directly From Employees

According to Item 2, Paragraph 1 of Article 39 of the AML, when investigating alleged monopolistic activities, the anti-monopoly enforcement agency may conduct interrogations of the operator, interested parties, and other relevant entities and individuals, requiring them to provide explanations. Therefore, the

anti-monopoly enforcement agency may seek information directly from a company employee.

As for process and rules, please see **2.2 Dawn Raids**.

3.2 Obtaining Documentary Information From the Target Company

According to Item 3, Paragraph 1 of Article 39 of the AML, when investigating alleged monopolistic activities, the anti-monopoly enforcement agency may consult and make copies of certificates, agreements, accounts, correspondence, computer data, and other documents that belong to the operator, interested parties, and other relevant entities and individuals. Therefore, the anti-monopoly enforcement agency may seek documentary information directly from the target company or others.

As for process and rules, please see **2.2 Dawn Raids**.

3.3 Obtaining Information From Entities Located Outside This Jurisdiction

An anti-monopoly enforcement agency may obtain evidence from entities outside the territory of China.

Article 27 of the Provisions on Procedures for Administrative Punishments for Market Regulation states, “A documentary evidence formed outside the territory of the People’s Republic of China shall be notarised by a notary agency of the country where the documentary evidence is formed, or the procedures for certification shall be completed in accordance with the relevant treaty entered into by and between the People’s Republic of China and the country. Relationship evidence shall be notarised by a notary agency of the country where the evidence is formed and be authenticated by the embassy or consulate of the People’s Republic

of China in that country, or the procedures for certification shall be completed in accordance with the relevant treaty entered into by and between the People's Republic of China and the country.”

For evidence formed in Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan of the People's Republic of China, the relevant certification formalities shall be completed.

For evidence or audio-visual materials in foreign language, “a Chinese translation translated by a qualified translation company or individuals shall be attached and shall be sealed by the translation company or signed by translators”.

3.4 Inter-agency Co-operation/Co-ordination

For the decision-making of competition policies, the Anti-Monopoly Commission of the State Council consists of personnel from 14 agencies under the State Council which formulate policies and guidelines and co-ordinate and direct the administrative anti-monopoly enforcement work through the Anti-Monopoly Commission.

In practice, other government agencies shall pass on clues they discovered or materials related to the suspected monopolistic activities to the anti-monopoly enforcement agency, and it may cite the evidence and materials collected by other government agencies. For example, the administrative penalty decision for the monopolistic agreement case involving Fengcheng Ready-Mixed Concrete Association and its member enterprises in 2021 indicates that the investigation was conducted “based on the clues referred by the public security organ” in the section of “case source and investigation process”. In such case, the competent authority, the Jiangxi Provincial Administration for Market Regulation, also cited the evidence and

materials collected by the public security organ, such as transcripts, as evidence of reaching and performing the monopolistic agreements.

In addition, in the process of investigation, the anti-monopoly enforcement agency may seek the opinions of relevant industry authorities, such as the Ministry of Industry and Information Technology, the Ministry of Transport, the People's Bank of China, the State Intellectual Property Office, and the China Banking and Insurance Regulatory Commission.

3.5 Co-operation With Foreign Enforcement Agencies

Since the implementation of the AML in 2008, China has signed more than 50 co-operation agreements or memorandums of understanding with competition regulators of more than 30 countries and regions, including the US, the EU, Singapore, and Russia. For example, on 29 December 2021, China and Singapore signed the Memorandum of Understanding on Cooperation in the Field of Competition Law; on 4 February 2022, China and Russia signed the Agreement between the Government of the People's Republic of China and the Government of the Russian Federation on Cooperation in the Field of Countering Unfair Competition and Anti-Monopoly.

3.6 Procedure for Issuing Complaints/Indictments in Criminal Cases

No provision of the AML sets out the criminal liability for cartel conducts, but punishment will be given in accordance with the Criminal Law for the monopolistic agreements reached by collusive bidding. Specifically, Article 223 of the Criminal Law states that bidders who act in collusion with each other in offering bidding prices and jeopardise the interests of bid inviters or other bidders, if the circumstances are serious, shall be sentenced to not more than three years of fixed-term imprisonment or

criminal detention, together with fines, or shall be fined only.

Criminal cases of monopolistic agreements reached by collusive bidding shall:

- for hierarchical jurisdiction, be the primary people's courts which have jurisdiction as the court of first instance over the ordinary criminal cases, in accordance with Article 20 of the Criminal Procedure Law; and
- for territorial jurisdiction, in general, be the people's court in the place where the crime was committed, in accordance with Article 25 of the Criminal Procedure Law.

However, where it is more appropriate for the case to be tried by the people's court where the defendant resides, then that court may have jurisdiction over the case.

The people's procuratorate shall bear the burden of proof and shall submit relevant evidence to the court. Where a defender believes that the public security organ or the people's procuratorate does not submit evidence collected during the investigation and examination before prosecution proving that the criminal suspect or defendant is not guilty or commits a minor offence, the defender is entitled to apply to the people's procuratorate or the people's court for submission of such evidence. The attorney may collect information pertaining to the case from witnesses or other relevant entities and individuals with their consent and also apply to the people's procuratorate or the people's court for collecting and obtaining evidence or apply to the people's court for informing the witnesses to appear in court and give testimony.

3.7 Procedure for Issuing Complaints/ Indictments in Civil Cases

Article 50 of the AML provides that "operators who engage in monopolistic behaviour shall

assume the civil liability in accordance with the law for the losses caused to others due to their monopolistic activities". Therefore, a person who suffers losses due to cartel conducts may request the cartel implementers to bear the corresponding civil liability. Further, based on Article 50, the AML Draft Amendment clarifies the types of civil liability, including cessation of infringement, restoration to the original state, and compensation for losses.

The court of jurisdiction of civil monopoly disputes shall:

- for hierarchical jurisdiction, be intellectual property courts, intermediate people's courts of cities where the people's governments of provinces, autonomous regions and municipalities directly under the Central Government are located and cities specifically designated in the state plan, and intermediate people's courts designated by the Supreme People's Court, as the court of first sentence, in accordance with Article 3 of the Judicial Interpretation on Monopoly Disputes; and
- for territorial jurisdiction, be determined based on the specific circumstances of the case and pursuant to the provisions of the Civil Procedure Law and relevant judicial interpretations on the jurisdiction of tort disputes, contract disputes, in accordance with Article 4 of the Judicial Interpretation on Monopoly Disputes, that is, for a tort dispute, the plaintiff shall bring a lawsuit to the court at the place where the tort occurs or where the defendant is domiciled; for a contractual dispute, the plaintiff shall bring a lawsuit to the court where the defendant is domiciled or where the contract is performed.

When bringing a lawsuit to the court, the plaintiff shall submit evidence to the court. Where the evidence cannot be collected due to objective reasons (eg, the evidence is held by the anti-

monopoly enforcement agency or a third party), the plaintiff or the defendant may apply to the court in writing for investigation and obtaining evidence within a certain time limit.

3.8 Enforcement Against Multiple Parties

Given that a monopolistic agreement usually involves multiple business operators, actions of anti-monopoly enforcement agencies must direct at all business operators involved in the agreement.

3.9 Burden of Proof

It is the anti-monopoly enforcement agency's responsibility to prove the existence of a monopolistic agreement in anti-monopoly investigations. For monopolistic agreements described in Item 6 Paragraph 1 of Article 13 and Item 2 Paragraph 1 of Article 14 of the AML, the enforcement agency must also demonstrate that the monopolistic agreement eliminates or restricts competition.

In anti-monopoly civil litigation, the plaintiff bears the burden of proof, which includes proving the existence of the monopolistic agreement, the existence of the adverse consequences of the agreement, and the causal relationship between the agreement and the adverse consequences (but the plaintiff does not need to prove the effects of eliminating or restricting competition of the monopolistic agreement referred in Item (1)-(5), Paragraph 1, Article 13 of the AML).

In criminal proceedings involving a monopolistic agreement reached by collusive bidding, the procuratorate bears the burden of proof of the existence of the crime.

3.10 Finders of Fact

The judge is the discoverer of facts and applies the law accordingly in civil proceedings before Chinese courts in relation to monopoly disputes

involving a cartel and criminal proceedings for monopolistic agreements reached by collusive bidding.

3.11 Use of Evidence Obtained From One Proceeding in Other Proceedings

China's Anti-Monopoly Law and its relevant regulations do not expressly provide for the reciprocal applicability of evidence between anti-monopoly enforcement investigations and monopoly litigation. However, Article 27 (2) of the Administrative Penalty Law states that "the authority imposing an administrative penalty shall strengthen coordination and cooperation with the judicial authority, establish and improve a case transfer system, facilitate transfer and receipt of evidence materials, and improve the case information exchange mechanism". Meanwhile, Article 67 (2) of the Civil Procedure Law states, "Where the party and its agent are unable to collect evidence for objective reasons, or where the court believes it is necessary, the court shall investigate and collect evidence." According to Article 94 of the Supreme People's Court Interpretation on the Application of the Civil Procedure Law, such evidence must be kept by the relevant governmental authorities, and parties and their agents have no right to access or review it.

Based on these provisions and relevant practices, the court may order the anti-monopoly enforcement agency to provide evidence obtained during the anti-monopoly investigation, and the anti-monopoly enforcement agency may also request the court to provide relevant evidence gathered during monopoly litigations.

3.12 Rules of Evidence

Please see **3.9 Burden of Proof**.

3.13 Role of Experts

Experts may conduct market surveys or provide economic analysis reports regarding the

technical issues of the case, according to Article 13 of the Judicial Interpretation on Monopoly Disputes. A court shall review the expert's surveys or reports by referring to the provisions of the Civil Procedure Law and relevant judicial interpretations regarding expert opinions. The scope of experts mentioned above is not limited to economists.

3.14 Recognition of Privileges

Please see **3.12 Rules of Evidence** and **2.7 Attorney-Client Privilege**.

3.15 Possibility for Multiple Proceedings Involving the Same Facts

With the same monopolistic agreement or related facts, an anti-monopoly administrative investigation may be initiated as a result of the informant's reporting or the anti-monopoly enforcement agency's ex officio action. Meanwhile, the injured party may file a monopoly civil action in court as a plaintiff. Criminal proceedings may also be initiated if a crime is involved.

4. SANCTIONS AND REMEDIES IN GOVERNMENT CARTEL ENFORCEMENT

4.1 Imposition of Sanctions

Penalties may be imposed directly by the anti-monopoly enforcement agency. However, under the Measures for Hearings on Administrative Penalties of Market Regulation, which were revised on 2 July 2021 and went into effect on 15 July 2021, where an anti-monopoly enforcement agency imposes a fine of more than RMB10,000 on a natural person or a fine of more than RMB100,000 on a legal person or other organisation, the parties have the right to request a hearing.

4.2 Procedure for Plea Bargaining or Settlement

According to Article 45 of the AML and Article 25 of the Interim Provisions, with regards to the suspected monopolistic practices under investigation, if the operator agrees to undertake certain specific measures that will lead to the elimination of said practices within a time limit designated by the anti-monopoly enforcement agency, the anti-monopoly enforcement agency may decide to suspend the investigation. If the operator performs its commitment, the anti-monopoly enforcement agency may decide to terminate the investigation.

The enforcement agencies shall not accept commitments made by operators and suspend the investigation in the case of horizontal monopoly agreements between competing operators that function to fix or change commodity prices, restrict production or sales quantity of a commodity, segment sales market or raw material procurement market.

The applicable standards and procedures for operators' commitments application shall be governed by the Interim Provisions and the Guidelines for Undertakings' Commitment in Monopoly Cases.

The anti-monopoly enforcement authorities shall resume a suspended investigation if:

- the operator has failed to perform its commitment;
- a major change has occurred on which the suspension of the investigation was based; or
- the suspension of the investigation was based on incomplete or inaccurate information provided by the operator.

4.3 Collateral Effects of Establishing Liability/Responsibility

If an anti-monopoly enforcement agency ultimately determines that a business operator reached and implemented a monopolistic agreement and imposes penalties, the business operator may lose the qualification to submit a tender in government's or some large enterprises' projects and may face difficulties in the listing process.

The business operator may attempt to mitigate the impact of the decision by committing as required for anti-monopoly enforcement agencies to terminate their investigations.

Consumers or other business operators may seek civil compensation from the punished business operators implementing monopolistic agreements based on the punishment imposed by the anti-monopoly enforcement agency.

Furthermore, according to Article 2 of the Provisions on the Publicity of Administrative Penalty Information of Market Regulation (promulgated on 30 July 2021 and implemented on 1 September 2021), relevant administrative penalty decisions made by anti-monopoly enforcement agencies on cartel activities in accordance with general procedures shall be recorded in the National Enterprise Credit Information Publicity System and disclosed to the public (most cartel cases can only be dealt with under general procedures rather than summary procedures). This may impact the reputation of the business operators being punished.

4.4 Sanctions and Penalties Available in Criminal Proceedings

Please see **3.6 Procedure for Issuing Complaints/Indictments in Criminal Cases.**

4.5 Sanctions and Penalties Available in Civil Proceedings

In non-criminal proceedings, anti-monopoly enforcement agencies have the authority to impose penalties on business operators, while courts have no authority to punish business operators who enter into monopolistic agreements in civil cases. However, business operators must assume civil liability for losses caused to others due to their monopolistic behaviours.

4.6 Relevance of “Effective Compliance Programmes”

An “effective compliance programme” maintained by a company cannot be used as a statutory basis for mitigating administrative penalties under the Chinese Anti-Monopoly Law. However, anti-monopoly enforcement agencies have some discretion in determining the amount of punishment; the existence of an “effective compliance programme” is, therefore, considered in practice when deciding whether or not to lessen the penalties.

Furthermore, as previously stated, if an operator under investigation promises to take specific measures to eliminate the consequences within the time limit agreed upon by the anti-monopoly enforcement agency, the investigation may be suspended. If the enforcement agency determines that the operator has kept its promise, the investigation may be closed.

In September 2020, the Anti-Monopoly Commission of the State Council issued the Anti-Monopoly Compliance Guidelines for Business Operators, encouraging business operators to establish an anti-monopoly compliance management system. Several provinces and cities, including Shanghai, Jiangsu and Zhejiang, also issued compliance guidelines around the same time.

4.7 Mandatory Consumer Redress

Not at present, however, consumers can bring their own civil action for compensation.

4.8 Available Forms of Judicial Review or Appeal

If a business operator disagrees with the anti-monopoly enforcement agency's administrative decision on the penalty, it can request administrative reconsideration or initiate an administrative lawsuit.

According to the Administrative Review Law, the parties can apply to SAMR or provincial people's governments, as the case may be, for administrative reconsideration within 60 days from the date of receiving the Decision on Administrative Punishment; if they are not satisfied with the Decision of Administrative Reconsideration, they may bring an administrative lawsuit with the people's court within 15 days from the date of receiving the Decision; or they may without going through administrative reconsideration, directly launch an administrative lawsuit against the anti-monopoly enforcement agency's penalty decision. According to the Administrative Procedure Law, a business operator may bring administrative litigation within six months of the penalty decision made by the anti-monopoly enforcement agency.

On 9 November 2021, Gan Lin, Director of the State Anti-Monopoly Bureau, stated in a media interview that there have been more than 700 monopoly cases investigated and dealt with since the AML's implementation, but public data show that only about ten administrative lawsuits involving monopolistic agreements have been filed, which is a very small number.

5. PRIVATE CIVIL LITIGATION INVOLVING ALLEGED CARTELS

5.1 Private Right of Action

As mentioned above, Article 50 of the AML provides that "operators who engage in monopolistic behaviour shall assume the civil liability in accordance with the law for the losses caused to others due to their monopolistic activities".

According to Articles 1 and 2 of the Judicial Interpretation on Monopoly Disputes, if natural individuals, legal persons, or unincorporated organisations suffer damages as a result of monopolistic conduct or have disputes over the terms of contracts or the articles of association of industry associations that violate the AML, they may file civil lawsuits directly with the people's court, or file such lawsuit after the anti-monopoly enforcement agencies' decisions confirming the existence of monopolistic behaviours have become effective. The people's court will accept the case if it meets the legal requirements for case acceptance.

The processes regulating anti-monopoly civil actions are detailed in **3.7 Procedure for Issuing Complaints/Indictments in Civil Cases**.

5.2 Collective Action

Article 56 of the Civil Procedure Law provides that "a joint action in which one party consists of multiple persons may be brought by a representative elected by such persons". And Article 57 of the Civil Procedure Law provides that "if the object of the action is of the same category and a party consists of multiple persons but the number of persons is not confirmed at the time of filing of the action, the people's court may issue a public announcement stating the particulars of the case and the claims and notify the rights holders to register with the people's

court within a certain period of time. Rights holders who have registered with the people's court may elect a representative to engage in litigation; if such representative cannot be elected, the people's court may discuss with the registered rights holders on such representative".

The above provisions set out China's representative litigation system. This system is analogous to class-action litigation in the US but differs in terms of how the litigation representatives are elected and empowered, as well as whether court decisions are binding on all parties.

Article 58 of the Civil Procedure Law provides that "legally designated institutions and relevant organisations may initiate proceedings at the people's court against acts jeopardising public interest such as causing pollution to the environment or damaging the legitimate rights or interests of multiple consumers". The China Consumers Association and its branches in various provinces, autonomous regions, and municipalities may file legal proceedings in people's courts against activities that harm the legitimate rights and interests of the public, according to the Law on the Protection of Consumer Rights and Interests. Furthermore, Paragraph 2 of Article 60 of the AML Draft Amendment specifies that if a business operator engages in monopolistic behaviours that infringe upon the public interest of society, the People's Procuratorate may file a civil public interest lawsuit in the people's courts.

5.3 Indirect Purchasers and "Passing-On" Defences

Any natural person, legal person, or unincorporated organisation may file an anti-monopoly civil action if they suffer losses as a result of monopolistic practices or are involved in a dispute over the contractual terms or the articles of association of an industry association

that violate the AML, according to Article 1 of the Judicial Interpretation on Monopoly Disputes. In theory, indirect purchasers can file an action if they can show that they have suffered damages due to monopolistic behaviours.

However, there has been no precedent on whether courts will accept "passing-on" defences.

5.4 Admissibility of Evidence Obtained From Governmental Investigations/ Proceedings

As mentioned above, Article 27 (2) of the Administrative Penalty Law states that "the authority imposing an administrative penalty shall strengthen coordination and cooperation with the judicial authority, establish and improve a case transfer system, facilitate transfer and receipt of evidence materials, and improve the case information exchange mechanism".

Therefore, evidence from governmental investigations or proceedings may be admissible.

5.5 Frequency of Completion of Litigation

There are no published data to indicate how often claims of this type proceed to completion of litigation as opposed to dismissal or settlement.

According to the Civil Procedure Law, in the first instance of an anti-monopoly civil dispute case, the case shall be concluded within six months of the case filing date if the ordinary procedure is applicable; where the summary procedure is applicable, the case shall be completed within three months of the case filing date; if the procedure for small claims is applicable, the case shall be concluded within two months of the case filing date; in case of an appeal, the case shall be concluded within three months of the date of being filed as a second instance

case. The above time limits may be extended upon approval.

5.6 Compensation of Legal Representatives

The plaintiff may demand that the defendant pay the reasonable attorney fees incurred in investigating and halting the monopolistic behaviours. For example, in the case of Yangtze River Pharmaceutical Group v Hefei Medical and Pharmaceutical Co Ltd, the court determined that the defendant shall compensate the plaintiff for the attorney fees paid by the plaintiff in the amount of RMB 500,000.

5.7 Obligation of Unsuccessful Claimants to Pay Costs/Fees

The unsuccessful claimants may be ordered to compensate the respondent for the defence costs but shall not be obligated to pay its attorneys' fees.

5.8 Available Forms of Judicial Review of Appeal of Decisions Involving Private Civil Litigation

From 1 January 2019, any party that disagrees with the civil judgement of the first instance on a monopoly case may appeal to the Intellectual Property Tribunal of the Supreme People's Court; any party that disagrees with an effective monopoly civil case may apply for a retrial with the Supreme People's Court.

6. SUPPLEMENTARY INFORMATION

6.1 Other Pertinent Information

There is no other pertinent information.

6.2 Guides Published by Governmental Authorities

The following guidelines are available:

- the Guidelines for Price-related Acts of Industry Associations (issued by the National Development and Reform Commission on 20 July 2017);
- the Guidelines for the Pricing Behaviour of Operators Dealing in Drugs and Active Pharmaceutical Ingredients in Short Supply (issued by the National Development and Reform Commission on 16 November 2017);
- the Guidelines for Undertakings' Commitment in Monopoly Cases (issued by the Anti-Monopoly Commission of the State Council on 4 January 2019);
- the Guidelines for the Application of the Leniency Programme to Horizontal Monopoly Agreement Cases (issued by the Anti-Monopoly Commission of the State Council on 4 January 2019);
- the Anti-Monopoly Guidelines for the Intellectual Property Industry (issued by the Anti-Monopoly Commission of the State Council on 4 January 2019);
- the Anti-Monopoly Guidelines for the Automobile Industry (issued by the Anti-Monopoly Commission of the State Council on 4 January 2019);
- the Anti-Monopoly Compliance Guidelines for Business Operators (issued by the Anti-Monopoly Commission of the State Council on 11 September 2020);
- the Anti-Monopoly Guidelines for the Platform Economy Sector (issued by the Anti-Monopoly Commission of the State Council on 7 February 2021);
- the Anti-Monopoly Guidelines for the Active Pharmaceutical Ingredients Sector (issued by the Anti-Monopoly Commission of the State Council On 15 November 2021); and
- the Anti-Monopoly Compliance Guidelines for Overseas Enterprises (issued by the SAMR On 15 November 2021).

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Trends and Developments

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Evolution of Anti-Monopoly Law Enforcement Authorities

As part of China's attempt to improve its anti-monopoly regulatory capacity and anti-monopoly enforcement, on 18 November 2021, China established the State Anti-Monopoly Bureau to replace the former anti-monopoly bureau as the agency under SAMR's jurisdiction, with three new departments set thereunder, namely:

- the Anti-Monopoly Enforcement Department I;
- the Anti-Monopoly Enforcement Department II; and
- the Department of Competition Policy Coordination.

The Anti-Monopoly Enforcement Department I, in particular, is responsible for anti-monopoly enforcement regarding monopolistic agreements.

Antitrust Legislation

After being considered at the 31st Session of the 13th Standing Committee of the National People's Congress, the Anti-monopoly Law of the People's Republic of China (Draft Amendment) (hereafter referred to as the "AML Draft Amendment") was released on 23 October 2021. The AML Draft Amendment modified the relevant provisions in the existing AML regarding cartels (see below for details). On 6 May 2022, the National People's Congress Standing Committee published the annual legislative work plan for 2022, which will include amendments to the AML in the work plan for 2022, and a second review of the amendment is scheduled for June 2022. The amendments to the AML are expected to be completed in 2022.

Since 2021, antitrust laws and regulations have been passed one after the other. The Anti-monopoly Commission of the State Council issued the Anti-Monopoly Guidelines for the Platform Economy Sector on 7 February 2021 and the Anti-Monopoly Guidelines for the Active Pharmaceutical Ingredients Sector on 15 November 2021. On 15 November 2021, SAMR released the Anti-Monopoly Compliance Guidelines for Overseas Enterprises. Furthermore, since 2021, Jiangsu, Tianjin, Shaanxi, Heilongjiang, and other provinces and municipalities have released anti-monopoly compliance guidelines, while Beijing has issued the Beijing Anti-Monopoly Compliance Guidelines for the Platform Economy Sector. Although these anti-monopoly rules and guidelines are not legally binding, the provisions on cartels contained therein provide guidance for enforcement agencies in their enforcement actions against cartels and businesses in their compliance work.

Anti-monopoly Enforcement

The SAMR issued 16 decisions on the penalties of monopolistic agreements between January 2021 and April 2022, with 13 cases involving horizontal monopoly agreements and three involving vertical monopoly agreements. In four cases, fines in excess of RMB100 million were imposed.

Only one of the 16 cases was investigated directly by the SAMR, with the rest handled by the provincial market regulation departments. Cartel enforcement in China is projected to be reinforced in the future, as provincial market regulation departments play an increasingly crucial role in law enforcement.

Pharmaceuticals, construction materials, and daily consumer goods have become targets of cartel investigations and penalties.

In the pharmaceutical industry, the Tianjin Municipal Commission for Market Regulation investigated three manufacturers of fluocinolone acetonide active pharmaceutical ingredients for reaching and implementing a horizontal monopoly agreement to fix prices and split the market. The Jiangsu Provincial Administration for Market Regulation investigated and dealt with a horizontal monopoly agreement formed and implemented by three manufacturers of camphor active pharmaceutical ingredients to fix prices and split the market. In the case of vertical monopoly agreements, the SAMR imposed a fine of RMB764 million on Yangtze Pharmaceutical Group Co, Ltd. for reaching and implementing a vertical monopoly agreement (RPM) in drug sales, which was also the highest fine ever levied by China's anti-monopoly enforcement agency against RPM. Furthermore, the Beijing Administration for Market Regulation imposed a penalty on Geistlich Trade (Beijing) Co Ltd for entering and implementing a vertical monopoly agreement (RPM).

In the construction materials business, the Shandong Provincial Administration for Market Regulation investigated and penalised eight cement companies for reaching and implementing horizontal monopoly agreements to fix prices, limit quantities, and split the market. The Jiangxi Provincial Administration for Market Regulation investigated and penalised a premixed concrete association for organising its member companies to reach and implement horizontal monopoly agreements to fix prices, limit quantities, split the market, and boycott transactions in a concerted manner.

In addition, in respect of cartels, recent regulation has shown the following trends:

- When anti-monopoly enforcement agencies receive reports of alleged monopolistic behaviour, they respond quickly and take immediate action to investigate. Following the reports, they have recently launched several high-profile cartel investigations.
- Anti-monopoly enforcement agencies may investigate other aspects, including unfair competition, commercial bribery, data compliance, and tax compliance of enterprises, while regulating cartels of enterprises, echoing current trends of “intensified law enforcement” and “multi-dimensional regulation”.
- Emphasis is placed on cartels in the platform economy sector, especially focusing on the “hub and spoke agreement” easily reached in this field.

Key Points of the AML Draft Amendment

The AML Draft Amendment specifies the existence of the effect of eliminating or restricting competition as a constituent of the agreement that vertically fixes the resale price and restricts the minimum resale price (ie, RPM)

The AML Draft Amendment provides that “If the business operator can prove that relevant acts do not have the effect of eliminating or restricting competition, such acts are not forbidden by law”, which makes it clear that the effect of eliminating or restricting competition is a component of RPM. If this clause takes effect, anti-monopoly enforcement agencies investigating vertical monopoly agreements may require business operators to give a defence and statement regarding the absence of the effect of excluding or restricting competition. However, according to the AML Draft Amendment, the burden of proof for the absence of anti-competitive impacts is on the business operator.

Organising or assisting others in reaching monopolistic agreements is prohibited

The AML Draft Amendment provides that “A business operator shall not organise other business operators to reach a monopolistic agreement or provide substantive assistance to other business operators to reach a monopolistic agreement”, which explicitly clarifies at the legal level that “hub and spoke agreement”, which is of great concern in practice, constitutes a violation of the law. However, it is unclear how to define “organising” and “providing substantive assistance”. In practice, it is still unclear how a particular act or arrangement can be judged to have the impact of “organising” and “providing substantive assistance” for reaching the agreement.

The AML Draft Amendment contains the “safe harbour” clause

The AML Draft Amendment provides that prohibitions on horizontal monopoly agreements, vertical monopoly agreements, and hub and spoke agreements shall not apply where a business operator can prove that its market share in the relevant market is lower than the threshold set by the anti-monopoly enforcement agencies under the State Council unless there is evidence proving that the agreement reached by the business operator eliminates or restricts competition. This will not only improve enforcement efficiency and allow businesses to better forecast the consequences of their behaviours, lowering compliance costs and facilitating the growth of small- and medium-sized businesses. If this clause takes effect, it remains to be seen whether, firstly, the anti-monopoly enforcement agencies will create a market share-based safe harbour for the specific monopolistic agreements (such as a horizontal monopoly agreement for price fixing, market splitting, and quantity restriction, and a vertical monopoly agreement for resale price maintenance) explicitly prohibited by applicable

laws and regulations, and secondly how the specific number of market share benchmarks will be determined.

Punishment will be increased in accordance with the AML Draft Amendment

Fines for the following conducts shall be increased. For an operator who “has not yet implemented the monopolistic agreement reached”, the fine is increased from “less than RMB500,000” to “less than RMB3 million”; for an industry association that organises operators in the industry to enter into the monopolistic agreement, the fine is increased from “less than RMB500,000” to “less than RMB3 million”.

The AML Draft Amendment also includes the following acts that will be punished. A fine of up to RMB5 million will be imposed on a business operator who has reached and implemented a monopolistic agreement but has no sales in the previous year. Operators who organise other business operators to reach the monopolistic agreement or provide substantive assistance to other business operators to reach the monopolistic agreement are subject to the same penalties as the parties to the monopolistic agreement, namely, a fine of up to 10% of the previous year’s sales. If the legal representative, person in charge, or person directly responsible for the business operator are personally liable for reaching the monopolistic agreement, they may face a fine of no more than RMB1 million, ie, for the first time, it demonstrates that the responsible individual within the operators may also be subject to administrative penalties due to the monopolistic agreement reached.

A significant offence may result in double penalties. The fines will be increased to more than twice and less than five times the sales resulting from monopolistic conduct such as reaching monopolistic agreements; if the circumstances are exceptionally serious, the impact is

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particularly negative, or the consequences are particularly severe. As a result, operators that enter into monopolistic agreements may face a penalty of up to 50% of the previous year's sales.

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