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## L1 - Anti-monopoly Law of the People's Republic of China

**【Statute Title】** Anti-monopoly Law of the People's Republic of China [Effective]

**【法规标题】** 中华人民共和国反垄断法 [现行有效]

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Order of the President of the People's Republic of China  
(No.68)

中华人民共和国主席令  
(第六十八号)

The Anti-monopoly Law of the People's Republic of China, which was adopted at the 29th meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on August 30, 2007, is hereby promulgated, and shall be effective as of August 1, 2008.

(相关资料: 法律 4 篇 行政法规 4 篇 部门规章 40 篇 司法解释 6 篇 其他规范性文件 1 篇 地方 法规 42 篇 裁判文书 7 篇 条文释义 相关论文 271 篇)

President of the People's Republic of China: Hu Jintao  
August 30, 2007

《中华人民共和国反垄断法》已由中华人民共和国第十届全国人民代表大会常务委员会第二十九次会议于 2007 年 8 月 30 日通过，现予公布，自 2008 年 8 月 1 日起施行。

Anti-monopoly Law of the People's Republic of China  
(Adopted at the 29th meeting of the Standing Committee of the Tenth National People's

中华人民共和国主席 胡锦涛

Congress of the People's Republic of China on August 30, 2007)

2007年8月30日

中华人民共和国反垄断法  
(2007年8月30日第十届全国人民代表大会  
常务委员会第二十九次会议通过)

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Chapter I General Provisions

第一章 总则

**Article 1** This Law is enacted for the purpose of preventing and curbing monopolistic conducts, protecting fair market competition, enhancing economic efficiency, maintaining the consumer interests and the public interests, and promoting the healthy development

**第一条** 为了预防和制止垄断行为, 保护市场公平竞争, 提高经济运行效率, 维护消费者利益和社会公共利益, 促进社会主义市场经济健康发展, 制定本法。

of socialist market economy.

**Article 2** This Law shall apply to the monopolistic conducts in economic activities within the territory of the People's Republic of China. This Law shall apply to the monopolistic conducts outside the territory of the People's Republic of China that has the effect of eliminating or restricting competition on the domestic market of China.

**Article 3** The term "monopolistic conducts" as mentioned in this Law includes:

1. Monopoly agreements reached between business operators;
2. Abuse of dominant market position by business operators; and
3. Concentration of business operators that may have the effect of eliminating or restricting competition.

**Article 4** The State shall make and implement competition rules suitable for the socialist market economy, perfect the macro control, and improve a united, open, competitive and well-ordered market system.

**Article 5** Business operators may, through fair competition and voluntary association, get together according to law, to expand the scale of their business operations and enhance their market competitiveness.

**Article 6** No business operator with dominant market position may abuse its dominant

(相关资料: 条文释义 相关论文 12 篇)

**第二条** 中华人民共和国境内经济活动中的垄断行为, 适用本法; 中华人民共和国境外的垄断行为, 对境内市场竞争产生排除、限制影响的, 适用本法。

(相关资料: 条文释义 相关论文 8 篇)

**第三条** 本法规定的垄断行为包括:

- (一) 经营者达成垄断协议;
- (二) 经营者滥用市场支配地位;
- (三) 具有或者可能具有排除、限制竞争效果的经营者集中。

(相关资料: 条文释义 相关论文 7 篇)

**第四条** 国家制定和实施与社会主义市场经济相适应的竞争规则, 完善宏观调控, 健全统一、开放、竞争、有序的市场体系。

(相关资料: 条文释义 相关论文 1 篇)

**第五条** 经营者可以通过公平竞争、自愿联合, 依法实施集中, 扩大经营规模, 提高市场竞争能力。

(相关资料: 条文释义 相关论文 7 篇)

**第六条** 具有市场支配地位的经营者, 不得

position to eliminate or restrict competition.

**Article 7** With respect to the industries controlled by the State-owned economy and concerning the lifeline of national economy and national security or the industries lawfully enjoying exclusive production and sales, the State shall protect these lawful business operations conducted by the business operators therein, and shall supervise and control these business operations and the prices of these commodities and services provided by these business operators, so as to protect the consumer interests and facilitate technological advancements.

The business operators mentioned in the previous paragraph shall operate according to law, be honest, faithful and strictly self-disciplined, and accept public supervision, and shall not harm the consumer interests by taking advantage of their controlling or exclusive dealing position.

**Article 8** No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative powers to eliminate or restrict competition.

**Article 9** The State Council shall establish an Anti-monopoly Commission, which is responsible for organizing, coordinating and guiding the anti-monopoly work and performs the following functions:

滥用市场支配地位，排除、限制竞争。

（相关资料: 裁判文书 1 篇 条文释义 相关论文 2 篇）

**第七条** 国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业，国家对其经营者的合法经营活动予以保护，并对经营者的经营行为及其商品和服务的价格依法实施监管和调控，维护消费者利益，促进技术进步。

前款规定行业的经营者应当依法经营，诚实守信，严格自律，接受社会公众的监督，不得利用其控制地位或者专营专卖地位损害消费者利益。

（相关资料: 条文释义 相关论文 13 篇）

**第八条** 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，排除、限制竞争。

（相关资料: 条文释义 相关论文 6 篇）

**第九条** 国务院设立反垄断委员会，负责组织、协调、指导反垄断工作，履行下列职责：

（一）研究拟订有关竞争政策。

1. Studying and drafting relevant competition policies;
2. Organizing the investigation and assessment of overall competition situations, and releasing an assessment report;
3. Formulating and releasing anti-monopoly guidelines;
4. Coordinating the anti-monopoly administrative law enforcement; and
5. Other functions assigned by the State Council.

The composition and working rules of the Anti-monopoly Committee shall be established by the State Council.

**Article 10** The anti-monopoly law enforcement agency designated by the State Council (hereinafter referred to as the Anti-monopoly Law Enforcement Agency under the State Council) shall be responsible for the anti-monopoly law enforcement work.

The Anti-monopoly Law Enforcement Agency under the State Council may, as required by the work, empower corresponding agencies in the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government to be responsible for the anti-monopoly law enforcement work according to this Law.

**Article 11** A trade association shall strengthen the self-discipline within the industry, lead the business operators in the industry toward lawful competition, and maintain the market competition order.

(二) 组织调查、评估市场总体竞争状况，发布评估报告；

(三) 制定、发布反垄断指南；

(四) 协调反垄断行政执法工作；

(五) 国务院规定的其他职责。

国务院反垄断委员会的组成和工作规则由国务院规定。

(相关资料: 条文释义 相关论文 5 篇)

**第十条** 国务院规定的承担反垄断执法职责的机构（以下统称国务院反垄断执法机构）依照本法规定，负责反垄断执法工作。

国务院反垄断执法机构根据工作需要，可以授权省、自治区、直辖市人民政府相应的机构，依照本法规定负责有关反垄断执法工作。

(相关资料: 条文释义 相关论文 6 篇)

**第十一条** 行业协会应当加强行业自律，引导本行业的经营者依法竞争，维护市场竞争秩序。

(相关资料: 条文释义 相关论文 4 篇)

**Article 12** The term “business operator” as mentioned in this Law refers to a natural person, legal person, or any other organization that engages in the production or business of commodities or provides services.

The term “relevant market” as mentioned in this Law refers to the commodity scope or territorial scope within which the business operators compete against each other during a certain period of time for specific commodities or services (hereinafter referred to as “commodities”).

## Chapter II Monopoly Agreement

**Article 13** The competing business operators are prohibited from reaching any of the following monopoly agreements with each other:

1. Fixing or changing the price of commodities;
2. Restricting the production quantity or sales volume of commodities;
3. Dividing the sales market or the raw material supply market;
4. Restricting the purchase of new technology or new facilities or the development of new technology or new products;
5. Jointly boycotting transactions; or
6. Other monopoly agreements as determined by the Anti-monopoly Law Enforcement Agency under the State Council.

The term “monopoly agreements” as mentioned in this Law refers to the agreements,

**第十二条** 本法所称经营者，是指从事商品生产、经营或者提供服务的自然人、法人和其他组织。

本法所称相关市场，是指经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的商品范围和地域范围。

（相关资料：条文释义 相关论文 5 篇）

## 第二章 垄断协议

**第十三条** 禁止具有竞争关系的经营者达成下列垄断协议：

- （一）固定或者变更商品价格；
- （二）限制商品的生产数量或者销售数量；
- （三）分割销售市场或者原材料采购市场；
- （四）限制购买新技术、新设备或者限制开发新技术、新产品；
- （五）联合抵制交易；
- （六）国务院反垄断执法机构认定的其他垄断协议。

本法所称垄断协议，是指排除、限制竞争的协议、决定或者其他协同行为。

（相关资料：条文释义 相关论文 6 篇）

decisions or other concerted behaviors that may eliminate or restrict competition.

**Article 14** Business operators are prohibited from reaching any of the following monopoly agreements with their trading parties:

1. Fixing the price of commodities for resale to a third party;
2. Restricting the minimum price of commodities for resale to a third party; or
3. Other monopoly agreements as determined by the Anti-monopoly Law Enforcement Agency under the State Council.

**Article 15** Where the business operators can prove that a monopoly agreement reached by them falls under any of the following circumstances, the monopoly agreement shall be exempt from Articles 13 and 14 of this Law:

1. For the purpose of improving technologies, researching, and developing new products;
2. For the purpose of upgrading product quality, reducing costs, improving efficiency, unifying product specifications or standards, or carrying out professional labor division;
3. For the purpose of enhancing operational efficiency and reinforcing the competitiveness of small and medium-sized business operators;
4. For the purpose of realizing public interests such as conserving energy, protecting the environment and providing disaster relief, etc.;
5. For the purpose of mitigating the severe decrease of sales volume or obviously excessive production during economic recessions;
6. For the purpose of protecting the justifiable interests of the foreign trade or foreign economic cooperation; or
7. Other circumstances prescribed by the law or the State Council.

**第十四条** 禁止经营者与交易相对人达成下列垄断协议:

- (一) 固定向第三人转售商品的价格;
- (二) 限定向第三人转售商品的最低价格;
- (三) 国务院反垄断执法机构认定的其他垄断协议。

(相关资料: 条文释义 相关论文 6 篇)

**第十五条** 经营者能够证明所达成的协议属于下列情形之一的, 不适用本法第十三条、第十四条的规定:

- (一) 为改进技术、研究开发新产品的;
- (二) 为提高产品质量、降低成本、增进效率, 统一产品规格、标准或者实行专业化分工的;
- (三) 为提高中小经营者经营效率, 增强中小经营者竞争力的;
- (四) 为实现节约能源、保护环境、救灾救助等社会公共利益的;
- (五) 因经济不景气, 为缓解销售量严重下降或者生产明显过剩的;
- (六) 为保障对外贸易和对外经济合作中的正当利益的。

Where a monopoly agreement falls under any of the circumstances prescribed in Items 1-5 and is exempt from Articles 13 and 14 of this Law, the business operators shall also prove that the reached such an agreement shall not substantially restrict competition in the relevant market and can enable the consumers to share the benefits from the agreement.

**Article 16** No trade association may organize the business operators in its own industry to implement the monopolistic conducts as prohibited by this Chapter.

### Chapter III Abuse of Dominant Market Position

**Article 17** Business operators with a dominant market position are prohibited from committing any of the following acts of abusing the dominant market position:

1. Selling products at unfairly high prices or buying products at unfairly low prices;
2. Selling products at prices below cost without any justifiable causes;
3. Refusing to trade with a trading party without any justifiable causes;
4. Restricting their trading party so that it may conduct deals exclusively with themselves or with the designated business operators without any justifiable causes;
5. Implementing tie-in sales or imposing other unreasonable trading conditions at the time of trading without any justifiable causes (“tie-in sale” refers to an unfair sale practice in which a business operator bundles other undesirable commodities with a hot-sale commodity. noted by the translator for clarification.)

(七)法律和国务院规定的其他情形。

属于前款第一项至第五项情形，不适用本法第十三条、第十四条规定的，经营者还应当证明所达成的协议不会严重限制相关市场的竞争，并且能够使消费者分享由此产生的利益。

(相关资料: 部门规章 1 篇 条文释义 相关论文 9 篇)

**第十六条** 行业协会不得组织本行业的经营者从事本章禁止的垄断行为。

(相关资料: 条文释义 相关论文 5 篇)

### 第三章 滥用市场支配地位

**第十七条** 禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为:

(一) 以不公平的高价销售商品或者以不公平的低价购买商品;

(二) 没有正当理由，以低于成本的价格销售商品;

(三) 没有正当理由，拒绝与交易相对人进行交易;

(四) 没有正当理由，限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易。



6. Applying discriminatory treatments on trading prices or other trading conditions to their trading parties with equal standing without any justifiable causes; or
7. Other forms of abusing the dominant market position as determined by the Anti-monopoly Law Enforcement Agency under the State Council.

The term “dominant market position” as mentioned in this Law refers to a market position held by business operators that have the ability to control the price or quantity of commodities or other trading conditions in the relevant market or block or affect the entry of other business operators into the relevant market.

**Article 18** The dominant market position of a business operator shall be determined according to the following factors:

1. The market share of the business operator and its competitive status in the relevant market;
2. The ability of the business operator to control the sales market or the raw material supply market;
3. The financial and technological conditions of the business operator;
4. The extent of reliance on the business operator by other business operators in the transactions;
5. The degree of difficulty for other business operators to enter the relevant market; and
6. Other factors relevant to the determination of the dominant market position of the

（五）没有正当理由搭售商品，或者在交易时附加其他不合理的交易条件；

（六）没有正当理由，对条件相同的交易相对人在交易价格等交易条件上实行差别待遇；

（七）国务院反垄断执法机构认定的其他滥用市场支配地位的行为。

本法所称市场支配地位，是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件，或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。

（相关资料：裁判文书 2 篇 条文释义 相关论文 8 篇）

**第十八条** 认定经营者具有市场支配地位，应当依据下列因素：

（一）该经营者在相关市场的市场份额，以及相关市场的竞争状况；

（二）该经营者控制销售市场或者原材料采购市场的能力；

（三）该经营者的财力和技术条件；

（四）其他经营者对该经营者在交易上的依赖程度；

（五）其他经营者进入相关市场的难易程度；

（六）与认定该经营者市场支配地位有关的

business operator.

**Article 19** Under any of the following circumstances, a business operator may be presumed to have a dominant market position:

1. The market share of one business operator accounts for 1/2 or more in the relevant market;
2. The joint market share of two business operators accounts for 2/3 or more in the relevant market; or
3. The joint market share of three business operators accounts for 3/4 or more in the relevant market.

Under the circumstance prescribed in Item 2 or 3 of the previous paragraph, if any of the business operators has a market share of less than 1/10, that business operator shall not be considered to have a dominant market position.

A business operator that has been presumed to have a dominant market position shall not be considered as having a dominant market position if the operator can provide opposite evidence.

#### Chapter IV Concentration of Business Operators

**Article 20** The “concentration of business operators” refers to any of the following

其他因素。

（相关资料: 裁判文书 1 篇 条文释义 相关论文 4 篇）

**第十九条** 有下列情形之一的，可以推定经营者具有市场支配地位：

- （一）一个经营者在相关市场的市场份额达到二分之一的；
- （二）两个经营者在相关市场的市场份额合计达到三分之二的；
- （三）三个经营者在相关市场的市场份额合计达到四分之三的。

有前款第二项、第三项规定的情形，其中有的经营者市场份额不足十分之一的，不应当推定该经营者具有市场支配地位。

被推定具有市场支配地位的经营者，有证据证明不具有市场支配地位的，不应当认定其具有市场支配地位。

（相关资料: 裁判文书 1 篇 条文释义 相关论文 2 篇）

#### 第四章 经营者集中

**第二十条** 经营者集中是指下列情形：

circumstances:

1. Merger of business operators;
2. A business operator acquires control over other business operators by acquiring their equities or assets; or
3. A business operator acquires control over other business operators or is able to exert a decisive influence on other business operators by contract or any other means.

**Article 21** Business operators shall declare in advance the concentration reaching the threshold of declaration prescribed by the State Council to the Anti-monopoly Law Enforcement Agency, and otherwise, they shall not implement the concentration.

**Article 22** Under any of the following circumstances, business operators may not need to file a concentration declaration to the Anti-monopoly Law Enforcement Agency under the State Council:

1. Among all business operators involved in the concentration, one business operator possesses 50% or more of the voting shares or assets of every other business operator; or
2. A business operator not involved in the concentration possesses 50% or more of the voting shares or assets of every business operator that is involved in the concentration.

**Article 23** When making a concentration declaration to the Anti-monopoly Law Enforcement Agency under the State Council, the business operators shall submit the

(一) 经营者合并;

(二) 经营者通过取得股权或者资产的方式取得对其他经营者的控制权;

(三) 经营者通过合同等方式取得对其他经营者的控制权或者能够对其他经营者施加决定性影响。

(相关资料: 部门规章 1 篇 条文释义 相关论文 6 篇)

**第二十一条** 经营者集中达到国务院规定的申报标准的, 经营者应当事先向国务院反垄断执法机构申报, 未申报的不得实施集中。

(相关资料: 条文释义 相关论文 6 篇)

**第二十二条** 经营者集中有下列情形之一的, 可以不向国务院反垄断执法机构申报:

(一) 参与集中的一个经营者拥有其他每个经营者百分之五十以上有表决权的股份或者资产的;

(二) 参与集中的每个经营者百分之五十以上有表决权的股份或者资产被同一个未参与集中的经营者拥有的。

(相关资料: 条文释义 相关论文 7 篇)

**第二十三条** 经营者向国务院反垄断执法机构申报集中, 应当提交下列文件、资料:

following documents and materials:

1. The Declaration Form;
2. Explanations of the concentration effects on the relevant market competition situations;
3. Concentration agreements;
4. The financial and accounting reports for the previous fiscal year of the business operators involved in the concentration, which should be audited by an accounting firm; and
5. Other documents and materials required by the Anti-monopoly Law Enforcement Agency under the State Council.

The declaration form shall contain the names of the business operators involved in the concentration, their domiciles, business scopes, the date on which the concentration is to be implemented, and other matters prescribed by the Anti-monopoly Law Enforcement Agency under the State Council.

**Article 24** Where the documents or materials submitted by the business operators are not complete, the business operators concerned shall supplement the relevant documents or materials within the time limit prescribed by the Anti-monopoly Law Enforcement Agency under the State Council. Otherwise, the declaration shall be deemed as not being filed.

**Article 25** The Anti-monopoly Law Enforcement Agency under the State Council shall, within 30 days upon receipt of the documents and materials submitted by the business operators pursuant to Article 23 of this Law, conduct a preliminary examination of the

- (一) 申报书;
- (二) 集中对相关市场竞争状况影响的说明;
- (三) 集中协议;
- (四) 参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告;
- (五) 国务院反垄断执法机构规定的其他文件、资料。

申报书应当载明参与集中的经营者的名称、住所、经营范围、预定实施集中的日期和国务院反垄断执法机构规定的其他事项。

(相关资料: 部门规章 5 篇 条文释义 相关论文 3 篇)

**第二十四条** 经营者提交的文件、资料不完备的, 应当在国务院反垄断执法机构规定的期限内补交文件、资料。经营者逾期未补交文件、资料的, 视为未申报。

(相关资料: 条文释义 相关论文 2 篇)

**第二十五条** 国务院反垄断执法机构应当自收到经营者提交的符合本法第二十三条规定的文件、资料之日起二十日内, 对申报的经营者集中

declared concentration of business operators, make a decision on whether to conduct further examination, and notify the business operators of that decision in written form. The business operators shall not implement the concentration until the Anti-monopoly Law Enforcement Agency under the State Council makes such a decision.

Where the Anti-monopoly Law Enforcement Agency under the State Council makes a decision that no further examination shall be conducted or where the Anti-monopoly Law Enforcement Agency fails to make a decision within the time limit, the business operators may implement the concentration.

**Article 26** Where the Anti-monopoly Law Enforcement Agency under the State Council decides to conduct further examination, it shall, within 90 days from the date of decision, complete the examination, make a decision on whether to prohibit the concentration, and notify the business operators of the decision in written form. If the Anti-monopoly Law Enforcement Agency under the State Council decides to prohibit the concentration, it shall explain the reasons. The business operators shall refrain from implementing the concentration within the period of examination.

Under any of the following circumstances, the Anti-monopoly Law Enforcement Agency under the State Council may, after notifying the business operators concerned in written form, extend the time limit of examination as prescribed in the preceding paragraph, with the extension being no more than 60 days:

1. The business operators agree to extend the time limit of examination;
2. The documents or materials submitted by business operators are inaccurate and need

进行初步审查，作出是否实施进一步审查的决定，并书面通知经营者。国务院反垄断执法机构作出决定前，经营者不得实施集中。

国务院反垄断执法机构作出不实施进一步审查的决定或者逾期未作出决定的，经营者可以实施集中。

（相关资料：部门规章 1 篇 条文释义）

**第二十六条** 国务院反垄断执法机构决定实施进一步审查的，应当自决定之日起九十日内审查完毕，作出是否禁止经营者集中的决定，并书面通知经营者。作出禁止经营者集中的决定，应当说明理由。审查期间，经营者不得实施集中。

有下列情形之一的，国务院反垄断执法机构经书面通知经营者，可以延长前款规定的审查期限，但最长不得超过六十日：

- （一）经营者同意延长审查期限的；
- （二）经营者提交的文件、资料不准确，需要进一步核实的；
- （三）经营者申报后有关情况发生重大变化的。

国务院反垄断执法机构逾期未作出决定的

further verification; or

3. The relevant circumstances have significantly changed after the declaration by the business operators.

Where the Anti-monopoly Law Enforcement Agency under the State Council fails to make a decision within the time limit, business operators may implement the concentration.

**Article 27** The following factors shall be taken into account in the examination of the concentration of business operators:

1. The involved business operators' market share in the relevant market and their controlling power over that market;
2. The degree of market concentration in the relevant market;
3. The impact of the concentration of business operators on the market access and technological advancements;
4. The impact of the concentration of business operators on the consumers and other business operators;
5. The impact of the concentration of business operators on the national economic development; and
6. Other factors that may affect the market competition and shall be considered as deemed by the Anti-monopoly Law Enforcement Agency under the State Council.

**Article 28** Where the concentration of business operators will or may eliminate or restrict competition, the Anti-monopoly Law Enforcement Agency under the State Council shall

经营者可以实施集中。

（相关资料：部门规章 2 篇 条文释义）

**第二十七条** 审查经营者集中，应当考虑下列因素：

- （一）参与集中的经营者在相关市场的市场份额及其对市场的控制力；
- （二）相关市场的市场集中度；
- （三）经营者集中对市场进入、技术进步的影响；
- （四）经营者集中对消费者和其他有关经营者的影响；
- （五）经营者集中对国民经济发展的影响；
- （六）国务院反垄断执法机构认为应当考虑的影响市场竞争的其他因素。

（相关资料：部门规章 5 篇 条文释义 相关论文 3 篇）

**第二十八条** 经营者集中具有或者可能具有排除、限制竞争效果的，国务院反垄断执法机构

make a decision to prohibit the concentration. However, if the business operators can prove either that the favorable impact of the concentration on competition obviously exceeds the adverse impact, or that the concentration meets the public interests, the Anti-monopoly Law Enforcement Agency under the State Council may decide not to prohibit the concentration.

**Article 29** Where the concentration of business operators is not prohibited, the Anti-monopoly Law Enforcement Agency under the State Council may decide to attach restrictive conditions for reducing the adverse impact of such concentration on competition.

**Article 30** The Anti-monopoly Law Enforcement Agency under the State Council shall timely publicize a decision on prohibiting the concentration of business operators or a decision on attaching restrictive conditions to the concentration of business operators.

**Article 31** Where a foreign investor participates in the concentration of business operators by merging or acquiring a domestic enterprise or by any other means and the national security is involved, besides the examination on the concentration of business operators according to this Law, the examination on the national security shall also be conducted according to the relevant provisions of the State.

应当作出禁止经营者集中的决定。但是，经营者能够证明该集中对竞争产生的有利影响明显大于不利影响，或者符合社会公共利益的，国务院反垄断执法机构可以作出对经营者集中不予禁止的决定。

（相关资料：部门规章 4 篇 条文释义 相关论文 8 篇）

**第二十九条** 对不予禁止的经营者集中，国务院反垄断执法机构可以决定附加减少集中对竞争产生不利影响的限制性条件。

（相关资料：部门规章 4 篇 条文释义 相关论文 1 篇）

**第三十条** 国务院反垄断执法机构应当将禁止经营者集中的决定或者对经营者集中附加限制性条件的决定，及时向社会公布。

（相关资料：部门规章 5 篇 条文释义）

**第三十一条** 对外资并购境内企业或者以其他方式参与经营者集中，涉及国家安全的，除依照本法规定进行经营者集中审查外，还应当按照国家有关规定进行国家安全审查。

（相关资料：条文释义 相关论文 2 篇）

## Chapter V Abuse of Administrative Power to Eliminate or Restrict Competition

**Article 32** No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative power to force or use a disguised form to force any entities or individuals to deal, purchase, or use the commodities provided by the business operators designated by such an administrative organ or organization.

**Article 33** No administrative organ or organization empowered by a law or administrative regulation to administer public affairs may abuse its administrative power to block the inter-region free trading of commodity by taking the following measures:

1. Setting discriminatory charges, implementing discriminatory charge rates, or fixing discriminatory prices for non-local commodities;
2. Imposing technical requirements or inspection standards on non-local commodities that are different from those on their local counterparts, or taking discriminatory technical measures, such as repeated inspections or repeated certifications on non-local commodities, so as to restrict the entry of non-local commodities into the local market;
3. Adopting the administrative licensing aimed at non-local commodities, so as to restrict the entry of non-local commodities into the local market;
4. Setting up barriers or adopting any other means to block either the entry of non-local commodities or the exit of local commodities; or
5. Other activities that may block the inter-region free trading of commodity.

## 第五章 滥用行政权力排除、限制竞争

**第三十二条** 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，限定或者变相限定单位或者个人经营、购买、使用其指定的经营者提供的商品。

（相关资料：条文释义 相关论文 2 篇）

**第三十三条** 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，实施下列行为，妨碍商品在地区之间的自由流通：

（一）对外地商品设定歧视性收费项目、实行歧视性收费标准，或者规定歧视性价格；

（二）对外地商品规定与本地同类商品不同的技术要求、检验标准，或者对外地商品采取重复检验、重复认证等歧视性技术措施，限制外地商品进入本地市场；

（三）采取专门针对外地商品的行政许可，限制外地商品进入本地市场；

（四）设置关卡或者采取其他手段，阻碍外地商品进入或者本地商品运出；

（五）妨碍商品在地区之间自由流通的其他行为



**Article 34** No administrative organs or organizations empowered by law or administrative regulation to administer public affairs may abuse their administrative power to reject or restrict the participation of non-local business operators in local tendering and bidding activities by imposing discriminatory qualification requirements or assessment standards or failing to publicize the binding information according to law.

**Article 35** No administrative organs or organizations empowered by law or administrative regulation to administer public affairs may abuse its administrative power to reject or restrict either investment in its jurisdiction or the establishment of local branches by non-local business operators by imposing unequal treatments on them that are different from those on the local business operators.

**Article 36** No administrative organs or organizations empowered by law or administrative regulation to administer public affairs may abuse its administrative power to compel business operators to engage in monopolistic activities that are prohibited by this Law.

**Article 37** No administrative organs may abuse its administrative power to formulate any provisions on eliminating or restricting competition.

## Chapter VI Investigation of Suspicious Monopolistic Conducts

（相关资料: 条文释义）

**第三十四条** 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，以设定歧视性资质要求、评审标准或者不依法发布信息等方式，排斥或者限制外地经营者参加本地的招标投标活动。

（相关资料: 条文释义 相关论文 1 篇）

**第三十五条** 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，采取与本地经营者不平等待遇等方式，排斥或者限制外地经营者在本地投资或者设立分支机构。

（相关资料: 条文释义）

**第三十六条** 行政机关和法律、法规授权的具有管理公共事务职能的组织不得滥用行政权力，强制经营者从事本法规定的垄断行为。

（相关资料: 条文释义 相关论文 2 篇）

**第三十七条** 行政机关不得滥用行政权力，制定含有排除、限制竞争内容的规定。

（相关资料: 条文释义 相关论文 5 篇）

## 第六章 对涉嫌垄断行为的调查

**Article 38** The Anti-monopoly Law Enforcement Agency shall investigate any suspicious monopolistic conducts according to law.

Any entities or individuals may tip off any suspicious monopolistic conducts to the Anti-monopoly Law Enforcement Agency. The Anti-monopoly Law Enforcement Agency shall keep the informer confidential.

The Anti-monopoly Law Enforcement Agency shall conduct necessary investigations where the tip-off is made in writing and supported by relevant facts and evidence.

**Article 39** When investigating a suspicious monopolistic conduct, the Anti-monopoly Law Enforcement Agency may take the following measures:

1. Enter the business premises of the business operators who are under investigation or any other relevant place to investigate;
2. Inquire the business operators who are under investigation, interested parties, or other relevant entities or individuals, and request them to disclose relevant information;
3. Review and duplicate the relevant business documents, agreements, accounting books, business correspondences, electronic data, files, or documentations of the business operators who are under investigation, interested parties, or other relevant entities or individuals;
4. Seize and detain the relevant evidence; and
5. Inquire about the bank accounts of the business operators who are under investigation.

**第三十八条** 反垄断执法机构依法对涉嫌垄断行为进行调查。

对涉嫌垄断行为，任何单位和个人有权向反垄断执法机构举报。反垄断执法机构应当为举报人保密。

举报采用书面形式并提供相关事实和证据的，反垄断执法机构应当进行必要的调查。

（相关资料：条文释义 相关论文 2 篇）

**第三十九条** 反垄断执法机构调查涉嫌垄断行为，可以采取下列措施：

（一）进入被调查的经营者的营业场所或者其他有关场所进行检查；

（二）询问被调查的经营者、利害关系人或者其他有关单位或者个人，要求其说明有关情况；

（三）查阅、复制被调查的经营者、利害关系人或者其他有关单位或者个人的有关单证、协议、会计账簿、业务函电、电子数据等文件、资料；

（四）查封、扣押相关证据；

（五）查询经营者的银行账户。

采取前款规定的措施，应当向反垄断执法机

Before any of the measures prescribed in the previous paragraph is adopted, a written report shall be submitted to the principal officials of the Anti-monopoly Law Enforcement Agency for approval.

**Article 40** When the Anti-monopoly Law Enforcement Agency is investigating a suspicious monopolistic conduct, the agency shall send at least two officials for the investigation and they shall present their law enforcement badges.

When any law enforcement official is conducting an inquiry or investigation, he shall make a written transcript for the inquiry and investigation and have the person who is under inquiry or investigation sign the transcript.

**Article 41** The Anti-monopoly Law Enforcement Agency and its functionaries shall have the responsibility to keep the business secrets, which they obtain when enforcing the law, confidential.

**Article 42** The business operators, interested parties and other relevant entities or individuals who are under investigation shall assist the Anti-monopoly Law Enforcement Agency in performing its functions and shall not refuse or obstruct the investigation conducted by the Anti-monopoly Law Enforcement Agency.

**Article 43** The business operators and interested parties who are under investigation shall be entitled to make statements on the investigation. The Anti-monopoly Law

构主要负责人书面报告，并经批准。

（相关资料: 条文释义 相关论文 1 篇）

**第四十条** 反垄断执法机构调查涉嫌垄断行为，执法人员不得少于二人，并应当出示执法证件。

执法人员进行询问和调查，应当制作笔录，并由被询问人或者被调查人签字。

（相关资料: 条文释义）

**第四十一条** 反垄断执法机构及其工作人员对执法过程中知悉的商业秘密负有保密义务。

（相关资料: 条文释义）

**第四十二条** 被调查的经营者、利害关系人或者其他有关单位或者个人应当配合反垄断执法机构依法履行职责，不得拒绝、阻碍反垄断执法机构的调查。

（相关资料: 条文释义）

**第四十三条** 被调查的经营者、利害关系人有权陈述意见。反垄断执法机构应当对被调查的

Enforcement Agency shall verify the facts, reasons and evidence presented by the business operators and interested parties under investigation.

**Article 44** When the Anti-monopoly Law Enforcement Agency deems that a suspicious monopolistic conduct is constituted a monopolistic conduct after an investigation and verification, the agency shall make a decision on how to deal with the monopolistic conduct, and may publicize its decision.

**Article 45** As for a suspicious monopolistic conduct that the Anti-monopoly Law Enforcement Agency is investigating, if the business operators under investigation promise to eliminate the effects of the conduct through the use of concrete measures within the time limit accepted by the Anti-monopoly Law Enforcement Agency, the Anti-monopoly Law Enforcement Agency may decide to suspend the investigation. The decision of suspending the investigation shall state the concrete measures promised by the business operators under investigation.

Where the Anti-monopoly Law Enforcement Agency decides to suspend an investigation, it shall supervise the implementation of the promise by the relevant business operators. If the business operators implement the promise, the Anti-monopoly Law Enforcement Agency may decide to terminate the investigation.

However, under any of the following circumstances, the Anti-monopoly Law Enforcement Agency shall resume the investigation:

1. The business operator fails to implement its promise;

经营者、利害关系人提出的事实、理由和证据进行核实。

（相关资料: 条文释义 相关论文 1 篇）

**第四十四条** 反垄断执法机构对涉嫌垄断行为调查核实后, 认为构成垄断行为的, 应当依法作出处理决定, 并可以向社会公布。

（相关资料: 条文释义 相关论文 2 篇）

**第四十五条** 对反垄断执法机构调查的涉嫌垄断行为, 被调查的经营者承诺在反垄断执法机构认可的期限内采取具体措施消除该行为后果的, 反垄断执法机构可以决定中止调查。中止调查的决定应当载明被调查的经营者承诺的具体内容。

反垄断执法机构决定中止调查的, 应当对经营者履行承诺的情况进行监督。经营者履行承诺的, 反垄断执法机构可以决定终止调查。

有下列情形之一的, 反垄断执法机构应当恢复调查:

（一）经营者未履行承诺的;

（二）作出中止调查决定所依据的事实发生重大变化的;

（三）中止调查的决定是基于经营者提供的不完整或者不真实的信自作出的

2. Significant changes have taken place to the facts, on which the decision of suspending the investigation was made; or
3. The decision on suspending the investigation was made on the basis of incomplete or inaccurate information submitted by the business operators.

## Chapter VII Legal Liability

**Article 46** Where the business operators reach and fulfill a monopoly agreement in violation of this Law, the Anti-monopoly Law Enforcement Agency shall order them to stop the violations, confiscate the illegal gains and impose a fine of 1% up to 10% of the sales revenue made in the previous year. Where the reached monopoly agreement has not been fulfilled, a fine of less than 500,000 yuan may be imposed.

Where a business operator who is engaged in a monopoly agreement voluntarily confesses the information about the monopoly agreement and provides the important evidence to the Anti-monopoly Law Enforcement Agency, the operator may be given a mitigated punishment or be exempt from punishment at the discretion of the Anti-monopoly Law Enforcement Agency.

Where a trade association organizes the business operators in its own industry to reach a monopoly agreement in violation of this Law, the Anti-monopoly Law Enforcement Agency may impose a fine of less than 500,000 yuan; where the circumstances are serious, the authority in charge of social group registration may deregister the trade

（相关资料: 条文释义 相关论文 3 篇）

## 第七章 法律责任

**第四十六条** 经营者违反本法规定，达成并实施垄断协议的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款；尚未实施所达成的垄断协议的，可以处五十万元以下的罚款。

经营者主动向反垄断执法机构报告达成垄断协议的有关情况并提供重要证据的，反垄断执法机构可以酌情减轻或者免除对该经营者的处罚。

行业协会违反本法规定，组织本行业的经营者达成垄断协议的，反垄断执法机构可以处五十万元以下的罚款；情节严重的，社会团体登记管理机关可以依法撤销登记。

（相关资料: 地方法规 1 篇 条文释义 相关论文 6 篇）

association.

**Article 47** Where the business operators abuse their dominant market position in violation of this Law, the Anti-monopoly Law Enforcement Agency shall order them to stop such violations, confiscate the illegal gains, and impose a fine of 1% up to 10% of the total sales volume made in the previous year.

**Article 48** Where the business operators implement the concentration in violation of this Law, the Anti-monopoly Law Enforcement Agency under the State Council shall order them to stop the concentration, to dispose shares or assets, transfer the business or adopt other necessary measures to restore the market situation before the concentration within a time limit, and may impose a fine of less than 500,000 yuan.

**Article 49** To determine the specific amount of fines prescribed by Articles 46-48 of this Law, the Anti-monopoly Law Enforcement Agency shall consider such factors as nature, extent and duration of the violations.

**Article 50** The business operators that carry out the monopolistic conducts and cause

**第四十七条** 经营者违反本法规定，滥用市场支配地位的，由反垄断执法机构责令停止违法行为，没收违法所得，并处上一年度销售额百分之一以上百分之十以下的罚款。

（相关资料: 地方法规 1 篇 条文释义 相关论文 1 篇）

**第四十八条** 经营者违反本法规定实施集中的，由国务院反垄断执法机构责令停止实施集中、限期处分股份或者资产、限期转让营业以及采取其他必要措施恢复到集中前的状态，可以处五十万元以下的罚款。

（相关资料: 地方法规 1 篇 条文释义 相关论文 1 篇）

**第四十九条** 对本法第四十六条、第四十七条、第四十八条规定的罚款，反垄断执法机构确定具体罚款数额时，应当考虑违法行为的性质、程度和持续的时间等因素。

（相关资料: 地方法规 1 篇 条文释义 相关论文 2 篇）

**第五十条** 经营者实施垄断行为，给他人造

damages to others shall bear the civil liability according to law.

**Article 51** Where an administrative organ or organization empowered by law or administrative regulation to administer public affairs abuses its administrative power to eliminate or restrict competition, the superior authority thereof shall order the agency to make rectification and impose punishments on the directly responsible persons in charge and the other directly liable persons. The Anti-monopoly Law Enforcement Agency may offer suggestions to the relevant superior authority regarding how to handle the abuse according to law.

Where a law or administrative regulation provides otherwise for the handling of an administrative organ or organization empowered by law or administrative regulation to administer public affairs that abuses its administrative power to eliminate or restrict competition, such provisions shall prevail.

**Article 52** As for the examination and investigation implemented by the Anti-monopoly Law Enforcement Agency, if business operators refuse to submit related materials and information, submit fraudulent materials or information, conceal, destroy or remove evidence, or refuse or obstruct investigation in other ways, the Anti-monopoly Law Enforcement Agency shall order them to make rectification, impose a fine of less than 20,000 yuan on individuals, and a fine of less than 200,000 yuan on entities; and where the circumstances are serious, the Anti-monopoly Law Enforcement Agency may impose a fine of 20,000 yuan or up to 100,000 yuan on an individual, and a fine of 200,000 yuan

成损失的，依法承担民事责任。

（相关资料：司法解释 1 篇 条文释义 相关论文 6 篇）

**第五十一条** 行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力，实施排除、限制竞争行为的，由上级机关责令改正；对直接负责的主管人员和其他直接责任人员依法给予处分。反垄断执法机构可以向有关上级机关提出依法处理的建议。

法律、行政法规对行政机关和法律、法规授权的具有管理公共事务职能的组织滥用行政权力实施排除、限制竞争行为的处理另有规定的，依照其规定。

（相关资料：条文释义 相关论文 8 篇）

**第五十二条** 对反垄断执法机构依法实施的审查和调查，拒绝提供有关材料、信息，或者提供虚假材料、信息，或者隐匿、销毁、转移证据，或者有其他拒绝、阻碍调查行为的，由反垄断执法机构责令改正，对个人可以处二万元以下的罚款，对单位可以处二十万元以下的罚款；情节严重的，对个人处二万元以上十万元以下的罚款，对单位处二十万元以上一百万元以下的罚款。

or up to one million yuan on an entity; where a crime is constituted, the relevant business operators shall be investigated for the criminal liabilities.

**Article 53** Where any party concerned is dissatisfied with the decision made by the Anti-monopoly Law Enforcement Agency pursuant to Articles 28 and 29 of this Law, the party may first apply for an administrative reconsideration; if the party is still dissatisfied with the reconsideration decision, it may lodge an administrative lawsuit according to law.

Where any party concerned is dissatisfied with any decision made by the Anti-monopoly Law Enforcement Agency other than the decisions prescribed in the previous paragraph, it may apply for an administrative reconsideration or lodge an administrative lawsuit according to law.

**Article 54** Where any functionary in the Anti-monopoly Law Enforcement Agency abuses his authority, neglects his duty, makes falsehood for personal gains, or discloses trade secrets known when enforcing the law, and a crime is constituted, he shall be investigated for criminal liability; and if no crime is constituted, he may be given a disciplinary sanction.

## Chapter VIII Supplementary Provisions

款；构成犯罪的，依法追究刑事责任。

（相关资料：部门规章 1 篇 地方法规 1 篇 条文释义）

**第五十三条** 对反垄断执法机构依据本法第二十八条、第二十九条作出的决定不服的，可以先依法申请行政复议；对行政复议决定不服的，可以依法提起行政诉讼。

对反垄断执法机构作出的前款规定以外的决定不服的，可以依法申请行政复议或者提起行政诉讼。

（相关资料：司法解释 1 篇 条文释义 相关论文 4 篇）

**第五十四条** 反垄断执法机构工作人员滥用职权、玩忽职守、徇私舞弊或者泄露执法过程中知悉的商业秘密，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予处分。

（相关资料：条文释义 相关论文 5 篇）

## 第八章 附则



**Article 55** This law shall not apply to the conduct of business operators to exercise their intellectual property rights according to the laws and relevant administrative regulations on intellectual property rights; however, this Law shall apply to the conduct of business operators to eliminate or restrict market competition by abusing their intellectual property rights.

**Article 56** This law shall not apply to the ally or concerted actions of agricultural producers and rural economic organizations in the economic activities such as production, processing, sales, transportation and storage of agricultural products.

**Article 57** This law shall come into effect as of August 1, 2008.

**第五十五条** 经营者依照有关知识产权的法律、行政法规规定行使知识产权的行为，不适用本法；但是，经营者滥用知识产权，排除、限制竞争的行为，适用本法。

（相关资料: 条文释义 相关论文 6 篇）

**第五十六条** 农业生产者及农村经济组织在农产品生产、加工、销售、运输、储存等经营活动中实施的联合或者协同行为，不适用本法。

（相关资料: 条文释义 相关论文 1 篇）

**第五十七条** 本法自 2008 年 8 月 1 日起施行。

（相关资料: 条文释义）

## D.1. Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators

**【Statute Title】** Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators [Effective]

**【法规标题】** 国务院关于经营者集中申报标准的规定 [现行有效]

**Promulgation date:** 08-03-2008

**Effective date:** 08-03-2008

**发布日期:** 2008-08-03

**Department:** State Council  
**Subject:** Enterprises

**生效日期:** 2008-08-03  
**发布部门:** 国务院  
**类别:** 企业

Order of the State Council of the People's Republic of China  
(No. 529)

The Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators, which were adopted at the 20th executive meeting of the State Council on August 1, 2008, are hereby promulgated, and shall come into force as of the date of promulgation.

Premier: Wen Jiabao  
August 3, 2008

Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators

**Article 1** For clarifying the standards for the declaration of concentration of business operators, these Provisions are formulated in accordance with [the Antimonopoly Law of the People's Republic of China](#).

**Article 2** Concentration of business operators refers to the following circumstances:

- merger of business operators;
- a business operator acquires control over another business operator by way of acquiring shares or assets of the latter; and
- a business operator acquires control over another business operator by way of acquisition

中华人民共和国国务院令  
(第 529 号)

(相关资料: 部门规章 6 篇 相关论文 6 篇)

《国务院关于经营者集中申报标准的规定》已经 2008 年 8 月 1 日国务院第 20 次常务会议通过, 现予公布, 自公布之日起施行。

总 理 温家宝  
二〇〇八年八月三日

国务院关于经营者集中申报标准的规定

**第一条** 为了明确经营者集中的申报标准, 根据《[中华人民共和国反垄断法](#)》, 制定本规定。

**第二条** 经营者集中是指下列情形:

- 经营者合并;
- 经营者通过取得股权或者资产的方式取得对其他经营者的控制权;
- 经营者通过合同等方式取得对其他经营者的控

decisive influence upon another business operator by way of contract or other means.

**Article 3** Where the concentration of business operators reaches any of the following standards, the business operators concerned shall declare it to the competent department of commerce of the State Council beforehand, otherwise, the concentration is not allowed:

1. the worldwide business volume of all the business operators involved in the concentration exceeds 10 billion yuan in the last accounting year, and the business volume in China of at least two business operators among them exceeds 400 million yuan separately in the last accounting year;
2. the business volume in China of all the business operators involved in the concentration exceeds 2 billion yuan in the last accounting year, and the business volume in China of at least two business operators among them exceeds 400 million yuan separately in the last accounting year;

When calculating the business volume, the characteristics and actual situation of the special industry or field such as bank, insurance, securities and futures shall be taken into consideration. The specific measures shall be determined by the competent department of commerce of the State Council together with other departments under the State Council.

**Article 4** Where a concentration of business operators does not reach the standards for declaration as prescribed in Article 3 of these Provisions, but the fact and evidence collected according to the prescribed procedures show that this concentration of business operators has or may have the effect of eliminating or restricting competition, the competent department of commerce of the State Council may investigate it according to law.

**Article 5** These Provisions shall come into force as of the date of promulgation.

制权或者能够对其他经营者施加决定性影响。

**第三条** 经营者集中达到下列标准之一的，经营者应当事先向国务院商务主管部门申报，未申报的不得实施集中：

（一）参与集中的所有经营者上一会计年度在全球范围内的营业额合计超过 100 亿元人民币，并且其中至少两个经营者上一会计年度在中国境内的营业额均超过 4 亿元人民币；

（二）参与集中的所有经营者上一会计年度在中国境内的营业额合计超过 20 亿元人民币，并且其中至少两个经营者上一会计年度在中国境内的营业额均超过 4 亿元人民币。

营业额的计算，应当考虑银行、保险、证券、期货等特殊行业、领域的实际情况，具体办法由国务院商务主管部门会同国务院有关部门制定。

（相关资料：部门规章 1 篇 相关论文 2 篇）

**第四条** 经营者集中未达到本规定第三条规定的申报标准，但按照规定程序收集的事实和证据表明该经营者集中具有或者可能具有排除、限制竞争效果的，国务院商务主管部门应当依法进行调查。

**第五条** 本规定自公布之日起施行。

## R.2. Measure for the Undertaking Concentration Examination

【Statute Title】 Measure for the Undertaking Concentration Examination [Effective]

【法规标题】 经营者集中审查办法 [现行有效]

Promulgation date: 11-24-2009

Effective date: 01-01-2010

Department: Ministry of Commerce

Subject: Commerce and Trading Materials

发布日期: 2009-11-24

期:

生效日期: 2010-01-01

期:

发布部门: 商务部

类别: 商贸物资

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Order of the Ministry of Commerce  
(No. 12 [2009])

商务部令  
(2009年第12号)

The Measure for the Undertaking Concentration Examination, which was deliberated and adopted in the No. 26 executive meeting of the Ministry of Commerce on July 15, 2009, is hereby promulgated. It comes into force on January 1, 2010.

《经营者集中审查办法》已经2009年7月15日商务部第26次部务会议审议通过，现予公布，自2010年1月1日起施行。

Chen Deming, Ministry of Commerce  
November 24, 2009

部长：陈德铭···

二〇〇九年十一月二十四日

Measure for the Undertaking Concentration Examination

经营者集中审查办法

**Article 1** For the purpose of regulating the antimonopoly examination of undertaking concentration and clarifying the procedures for antimonopoly examination of undertaking concentration, the Measures are formulated in accordance with the [Antimonopoly Law of the People's Republic of China](#) (hereinafter referred to as the [Antimonopoly Law](#)).

**Article 2** The Ministry of Commerce (hereinafter referred to as MOFCOM) shall be the antimonopoly examination and law enforcement agent for undertaking concentration, responsible for specific law enforcement works concerning acceptance and examination of undertaking concentration declarations.

**Article 3** After the MOFCOM accepts an application and before it makes any examination decision, if the declarer requests to withdraw its undertaking concentration declaration, it shall file an application in written form and make explanations. Except for the situation of abandonment of such concentration transaction, the withdrawal of declaration shall be subject to the consent of the MOFCOM.

If an undertaking concentration declaration has been withdrawn, the examination procedures shall be terminated. The consent of the MOFCOM on withdrawal of such declaration shall not be deemed as approval of such concentration.

**Article 4** During the examination process, the MOFCOM shall encourage a declarer to proactively submit any document and material helpful for the MOFCOM to make examination of and decisions on undertaking concentration as early as possible.

**第一条** 为规范经营者集中反垄断审查工作，明确经营者集中反垄断审查程序，根据《[中华人民共和国反垄断法](#)》（以下简称《[反垄断法](#)》），制定本办法。

**第二条** 商务部是经营者集中反垄断审查执法机构，承担受理和审查经营者集中申报的具体执法工作。

**第三条** 在商务部立案之后、做出审查决定之前，申报人要求撤回经营者集中申报的，应当提交书面申请并说明理由。除放弃集中交易的情形外，申报的撤回应当经商务部同意。

撤回经营者集中申报的，审查程序终止。商务部同意撤回申报不视为对集中的批准。

**第四条** 在审查过程中，商务部鼓励申报人尽早主动提供有助于对经营者集中进行审查和做出决定的有关文件、资料。

**Article 5** During the examination process, the undertakings participating in concentration may make written statements and arguments concerning the relevant declaration issues by letter or fax, and the MOFCOM shall listen to the statements and arguments of the party concerned.

**Article 6** During the examination process, the MOFCOM may take counsel with units or individuals including the relevant governmental departments, industrial associations, undertakings and consumers.

**Article 7** During the examination process, the MOFCOM may hold hearings initiatively or as response to the request of the relevant parties, making investigations, collecting evidences and listening to the opinions of the relevant parties. When holding a hearing, the MOFCOM shall notify the participators of the hearing in written form in advance. If a participator of the hearing intends to produce a written opinion, it/he shall submit the opinion to the MOFCOM before the hearing.

When holding a hearing, the MOFCOM may notify the undertakings participating in concentration and their competitors and enterprises in the upper and lower-stream industries as well as representatives from other relevant enterprises to attend the hearing, and may invite, as appropriate, relevant experts and representatives of industrial associations and relevant governmental departments as well as consumers.

Participators of a hearing shall attend the hearing in time and follow the procedures of the hearing and arrangement of the chairman of the hearing.

**第五条** 在审查过程中，参与集中的经营者可以通过信函、传真等方式向商务部就有关申报事项进行书面陈述、申辩，商务部应当听取当事人的陈述和申辩。

**第六条** 在审查过程中，商务部可以根据需要征求有关政府部门、行业协会、经营者、消费者等单位或个人的意见。

**第七条** 在审查过程中，商务部可以主动或应有关方面的请求决定召开听证会，调查取证，听取有关各方的意见。商务部召开听证会，应当提前书面通知听证会参加方。听证会参加方提出书面意见的，应当在听证会举办前向商务部提交。

商务部举行听证会，可以通知参与集中的经营者及其竞争者、上下游企业及其他相关企业的代表参加，并可以酌情邀请有关专家、行业协会代表、有关政府部门的代表以及消费者代表参加。

听证会参加方应当按时出席听证会，遵守听证会程序，服从听证会主持人安排。

听证会参加方出于商业秘密等保密因素考虑，委托单独陈述的，可以安排单独听证。安排

If a participator of a hearing wishes to make a separate statement for the purpose of keeping confidential business secrets, a separate hearing may be arranged. If such separate hearing is arranged, the contents of the hearing shall be treated according to the relevant confidential provisions.

**Article 8** A hearing shall be held in accordance with the following procedures:

- (1) The chairman of the hearing announces commencement and reads out the disciplines to be followed in the hearing;
- (2) The participators of the hearing are checked;
- (3) Participators make statements on issues raised in the hearing;
- (4) The chairman of the hearing consults the relevant participators with respect to issues raised in the hearing; and
- (5) The chairman of the hearing announces end of the hearing.

**Article 9** At the primary examination stage, the MOFCOM shall make a decision on whether to execute further examinations within the time limit as provided in [Article 25](#) of the [Antimonopoly Law](#). If the MOFCOM makes the decision that no further examination will be executed, it shall notify the declarer in written form; while if it holds it is necessary

单独听证的，听证内容应当按有关保密规定处理。

**第八条** 听证会按照以下程序进行：

- (一) 听证会主持人宣布听证会开始，宣读听证会纪律；
- (二) 核对听证会参加方；
- (三) 参加方就听证内容进行陈述；
- (四) 听证会主持人就听证内容询问有关参加方；
- (五) 听证会主持人宣布听证会结束。

**第九条** 在初步审查阶段，商务部应当在《[反垄断法](#)》[第二十五条](#)规定的期限内做出是否实施进一步审查的决定。商务部做出不实施进一步审查决定的，应当书面通知申报人。认为有必

to make further examinations, it shall make the decision on further examination and notify the declarer in written form.

If the MOFCOM makes the decision that no further examination will be executed or fails to make any decision within the prescribed time limit, the undertakings participating in concentration may execute the concentration.

**Article 10** At the further examination stage, if the MOFCOM holds the undertaking concentration will or may lead to preclude or restrict competition, it shall notify the undertakings participating in concentration about its opposite opinion, and provide a reasonable time limit allowing the undertakings participating in concentration to submit their defenses in written form.

The written defenses of the undertakings participating in concentration shall include the relevant facts and reasons, and the relevant evidences shall be produced. The failure of the undertakings participating in concentration to provide their defenses within the time limit shall be deemed as no demurrer to the opposite opinion.

**Article 11** During the examination process, in order to eliminate or reduce the effects of precluding and restricting competition that will or may be resulted from such undertaking concentration, the undertakings participating in concentration may provide restrictive conditions by adjusting the concentration transaction plan.

According to the specific conditions of the undertaking concentration transaction, such

要实施进一步审查的，应当做出实施进一步审查的决定，并书面通知申报人。

商务部做出不实施进一步审查的决定或者逾期未做出决定的，参与集中的经营者可以实施集中。

**第十条** 在进一步审查阶段，商务部认为经营者集中具有或者可能具有排除、限制竞争效果的，应当将其反对意见告知参与集中的经营者，并设定一个允许参与集中的经营者提交书面抗辩意见的合理期限。

参与集中的经营者的书面抗辩意见应当包括相关的事实和理由，并提供相应的证据。参与集中的经营者逾期未提交书面抗辩意见的，视为对反对意见无异议。

**第十一条** 在审查过程中，为消除或减少经营者集中具有或者可能具有的排除、限制竞争的效果，参与集中的经营者可以提出对集中交易方案进行调整的限制性条件。

根据经营者集中交易具体情况，限制性条件可以包括如下种类。



restrictive conditions may include the following types:

(1) Structural conditions including stripping of partial assets or business of the undertakings participating in concentration;

(2) Behavioral conditions including granting access to such infrastructures as network or platform, licensing of key technologies (including patents, proprietary techniques or other intellectual property rights) and termination of exclusive agreements by the undertakings participating in concentration; or

(3) Hybrid conditions that combine structural conditions and behavioral conditions.

**Article 12** The restrictive conditions proposed by undertakings participating in concentration shall be able to eliminate or reduce the effects of precluding and restricting competition that will or may be resulted from undertaking concentration and shall be feasible. The text of the restrictive conditions shall be clear and definite enough to evaluate their effectiveness and feasibility.

**Article 13** During the examination process, in order to eliminate or reduce the effects of precluding and restricting competition that will or may be resulted from such undertaking concentration, both the MOFCOM and the undertakings participating in concentration may make opinions and advices on amendment of the restrictive conditions.

**Article 14** The MOFCOM shall make a decision on whether to prohibit an undertaking

(一) 剥离参与集中的经营者的部分资产或业务等结构性条件;

(二) 参与集中的经营者开放其网络或平台等基础设施、许可关键技术(包括专利、专有技术或其他知识产权)、终止排他性协议等行为性条件;

(三) 结构性条件和行为性条件相结合的综合条件。

**第十二条** 参与集中的经营者提出的限制性条件应当能够消除或减少经营者集中具有或者可能具有的排除、限制竞争效果,并具有现实的可操作性。限制性条件的书面文本应当清晰明确,以便于能够充分评价其有效性和可行性。

**第十三条** 在审查过程中,为消除或减少经营者集中具有或者可能具有的排除、限制竞争效果,商务部和参与集中的经营者均可以提出对限制性条件进行修改的意见和建议。

**第十四条** 商务部应当在《反垄断法》第

concentration or not within the time limit as prescribed in [Article 26](#) of the [Antimonopoly Law](#) and notify the declarer in written form. With respect to undertaking concentration not to be prohibited, the MOFCOM may decide whether to impose restrictive conditions to reduce the impacts of concentration on competition or not. Before the MOFCOM makes a decision whether to conduct further examinations, undertakings participating in concentration shall not execute concentration.

If the MOFCOM makes the decision not to prohibit such undertaking concentration or fails to make any decision, the undertakings participating in concentration may execute concentration.

**Article 15** As for the undertaking concentration approved with additional conditions, the MOFCOM shall make examination and supervision of the behaviors of the undertakings participating in concentration with respect to implementation of such restrictive conditions. The undertakings participating in concentration shall report its implementation of such restrictive conditions to the MOFCOM according to the prescribed schedule.

If any undertaking participating in concentration fails to perform its obligations in accordance with the restrictive conditions, the MOFCOM may order it to make correction within a time limit; and if the undertaking fails to make correction within the prescribed time limit, the MOFCOM may handle the issue in accordance with the relevant provisions of the [Antimonopoly Law](#).

**Article 16** The MOFCOM, a declarer and other units and individuals shall assume the

[二十六条](#)规定的期限内做出禁止或不予禁止经营者集中的决定，并书面通知申报人。对不予禁止的经营者集中，商务部可以决定附加减少集中对竞争产生不利影响的限制性条件。商务部做出进一步审查决定前，参与集中的经营者不得实施集中。

商务部做出对经营者集中不予禁止的决定或逾期未做出决定的，参与集中的经营者可以实施集中。

**第十五条** 对于附加限制性条件批准的经营者集中，商务部应当对参与集中的经营者履行限制性条件的行为进行监督检查，参与集中的经营者应当按指定期限向商务部报告限制性条件的执行情况。

参与集中的经营者未依限制性条件履行规定义务的，商务部可以责令其限期改正；参与集中的经营者在规定期限内未改正的，商务部可以依照《[反垄断法](#)》相关规定予以处理。

**第十六条** 商务部 申报人以及其它单位

obligation of keeping confidential business secrets known to them during examination of undertaking concentration as well as other information that shall be kept secret.

和个人对于在经营者集中审查中知悉的商业秘密和其他需要保密的信息承担保密义务。

**Article 17** The Measures herein comes into force on January 1, 2010.

**第十七条** 本办法自 2010 年 1 月 1 日起施行。

## R.1. Measure for the Undertaking Concentration Declaration

**【Statute Title】** Measure for the Undertaking Concentration Declaration [Effective]

**【法规标题】** 经营者集中申报办法 [现行有效]

**Promulgation date:** 11-21-2009

**Effective date:** 01-01-2010

**Department:** Ministry of Commerce

**Subject:** Commerce and Trading Materials

**发布日期:** 2009-11-21

**生效日期:** 2010-01-01

**发布部门:** 商务部

**类别:** 商贸物资

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Order of the Ministry of Commerce

商务部令

(No. 11 [2009])

The Measure for the Undertaking Concentration Declaration, which was deliberated and adopted in the No. 26 executive meeting of the Ministry of Commerce on July 15, 2009, is hereby promulgated. It comes into force on January 1, 2010.

Chen Deming, Minister of Commerce  
November 21, 2009

#### Measure for the Undertaking Concentration Declaration

**Article 1** For the purpose of regulating declaration of undertaking concentration and acceptance of declaration by the antimonopoly law enforcement authority, in accordance with the [Antimonopoly Law of the People's Republic of China](#) (hereinafter referred to as the "Antimonopoly Law") and the [Provisions of the State Council on Thresholds for Undertaking Concentration Declaration](#) (hereinafter referred to as the "Provisions"), the Measures herein are formulated.

**Article 2** The Ministry of Commerce (hereinafter referred to as MOFCOM) shall be the antimonopoly examination and law enforcement agent for undertaking concentration, responsible for specific law enforcement works concerning acceptance and examination of undertaking concentration declarations.

(2009 年第 11 号)

《经营者集中申报办法》已经 2009 年 7 月 15 日商务部第 26 次部务会议审议通过，现予公布，自 2010 年 1 月 1 日起施行。

部长：陈德铭· · ·

二〇〇九年十一月二十一日

#### 经营者集中申报办法

**第一条** 为规范经营者集中申报和反垄断执法机构受理申报，根据《[中华人民共和国反垄断法](#)》（以下简称《[反垄断法](#)》）和《[国务院关于经营者集中申报标准的规定](#)》（以下简称《[规定](#)》），制定本办法。

**第二条** 商务部是经营者集中反垄断审查执法机构，承担受理和审查经营者集中申报的具体执法工作。

**Article 3** The undertaking concentration herein refers to the following circumstances as provided in [Article 20](#) of the [Antimonopoly Law](#):

- (1) Merger of undertakings;
- (2) Acquisition of control over other undertaking(s) by an undertaking by means of acquiring equities or assets; or
- (3) Acquisition of control over or imposition of decisive influence on other undertakings(s) by an undertaking by contract or other means.

**Article 4** Turnover herein includes the income of an undertaking obtained from sale of products and provision of services within the previous fiscal year deducting the relevant taxes and additional fees.

“Within territory of China” as provided in [Article 3](#) of the [Provisions](#) means the place where the buyer of the products or services provided by an undertaking stays is within the territory of China.

**Article 5** The turnover of an individual undertaking that participates in concentration shall be the sum of the turnovers of the following undertakings:

- (1) The said individual undertaking;

**第三条** 本办法所称经营者集中，系指《[反垄断法](#)》[第二十条](#)所规定的下列情形：

- （一）经营者合并；
- （二）经营者通过取得股权或者资产的方式取得对其他经营者的控制权；
- （三）经营者通过合同等方式取得对其他经营者的控制权或者能够对其他经营者施加决定性影响。

**第四条** 营业额包括相关经营者上一会计年度内销售产品和提供服务所获得的收入，扣除相关税金及其附加。

《[规定](#)》[第三条](#)所称“在中国境内”是指经营者提供产品或服务的买方所在地在中国境内。

**第五条** 参与集中的单个经营者的营业额应当为下述经营者的营业额总和：

- （一）该单个经营者；
- （二）第（一）项所指经营者直接或间接控制的其他经营者。

(2) Other undertaking(s) directly or indirectly controlled by the undertaking as referred in Paragraph (1);

(3) Other undertaking that directly or indirectly controls the undertaking as referred in Paragraph (1);

(4) Other undertaking(s) directly or indirectly controlled by the undertaking as referred in Paragraph (3); and

(5) Other undertaking(s) jointly controlled by two or more undertakings as referred in Paragraph (1)-(4).

The turnover of an individual undertaking that participates in concentration shall not include the turnovers incurred between the undertakings as referred in Paragraph (1)-(5) herein.

If there is any other undertaking that is jointly controlled by individual undertakings participating in concentration or by individual undertaking(s) participating in concentration and undertaking(s) that does not participate in concentration, the turnover of the individual undertaking participating in concentration shall include the turnover of the undertaking(s) under joint control and that incurred between the said individual undertaking and a third party undertaking, and such turnover shall be calculated for only once.

(三) 直接或间接控制第(一)项所指经营者的其他经营者;

(四) 第(三)项所指经营者直接或间接控制的其他经营者;

(五) 第(一)至(四)项所指经营者中两个或两个以上经营者共同控制的其他经营者。

参与集中的单个经营者的营业额不包括上述(一)至(五)项所列经营者之间发生的营业额。

如果参与集中的单个经营者之间或者参与集中的单个经营者和未参与集中的经营者之间有共同控制的其他经营者,参与集中的单个经营者的营业额应当包括被共同控制的经营者与第三方经营者之间的营业额,且此营业额只计算一次。

**Article 6** If there is any other undertaking jointly controlled by individual undertakings participating in concentration, the sum of turnovers of all undertakings participating in concentration shall not include the turnover incurred between the undertaking under joint control and any of the undertakings participating in concentration that jointly controls it or undertaking(s) having control relationship with the latter.

**Article 7** When an undertaking concentration includes acquisition of part of one or more undertakings:

(1) As for seller, only the turnover involved with the said part shall be calculated; or

(2) If undertaking concentration has been carried out for several times within two years between the same undertakings while each time such concentration did not meet the declaration thresholds as provided in [Article 3](#) of the [Provisions](#), such concentration transactions shall be deemed as one concentration transaction and the concentration time shall be calculated from the latest transaction. The turnovers of each transaction shall be added as the turnover of such undertaking concentration.

“Within two years” in the previous paragraph refer to the period from finish of the first concentration transaction to the conclusion of the agreement on the last concentration transaction.

**Article 8** Before official declaration, undertakings participating in concentration may apply for consultation on the relevant issues concerning concentration declaration with

**第六条** 如果参与集中的单个经营者之间有共同控制的其他经营者，则参与集中的所有经营者的合计营业额不应包括被共同控制的经营者与任何一个共同控制他的参与集中的经营者，或与后者有控制关系的经营者之间发生的营业额。

**第七条** 在一项经营者集中包括收购一个或多个经营者的一部分时：

（一）对于卖方而言，只计算集中涉及部分的营业额；

（二）相同经营者之间在两年内多次实施的未达到《规定》[第三条](#)规定的申报标准的经营者集中，应当视为一次集中交易，集中发生时间从最后一次交易算起，该经营者集中的营业额应当将多次交易合并计算。经营者通过与其有控制关系的其他经营者实施的上述行为，依照本项规定处理。

前款第（二）项所称“两年内”是指从第一次集中交易完成之日起至最后一次集中交易签订协议之日止的期间。

**第八条** 在正式申报前，参与集中的经营者可以就集中申报的相关问题向商务部申请商

the MOFCOM, and such consultation application shall be filed in written form.

**Article 9** Any undertaking concentration realized by means of acquisition may be declared by any undertaking participating in the acquisition; and any undertaking concentration realized by other means shall be declared by the undertaking that has the right to control or impose decisive influence on the acquired one and other undertaking(s) shall give assistance.

If the declaration obligor fails to make concentration declaration, other undertakings participating in the concentration may make such declaration.

The declaration obligor may make declaration by itself or entrust an agent to declare for it according to law.

**Article 10** Following documents and materials shall be submitted for declaration:

(1) A letter of declaration. The letter of declaration shall indicate the name, domicile, and scope of business of the undertakings participating in concentration and the date of the planned concentration, as well as the ID certificate or the registration certificate of the declarer. In case of declaration by agent, the power of attorney signed by the declarer shall be submitted.

(2) An explanation on impacts of such concentration on competition in the relevant market. Specifically, such explanation shall include: outline of the concentration

谈。商谈申请应当以书面方式提出。

**第九条** 通过合并方式实施的经营者集中，由参与合并的各方经营者申报；其他方式的经营者集中，由取得控制权或能够施加决定性影响的经营者申报，其他经营者予以配合。

申报义务人未进行集中申报的，其他参与集中的经营者可以提出申报。

申报义务人可以自行申报，也可以依法委托他人代理申报。

**第十条** 申报文件、材料应当包括如下内容：

(一) 申报书。申报书应当载明参与集中的经营者的名称、住所、经营范围、预定实施集中的日期。申报人的身份证明或注册登记证明，境外申报人还须提交当地公证机关的公证文件和相关的认证文件。委托代理人申报的，应当提交经申报人签字的授权委托书。

(二) 集中对相关市场竞争状况影响的说明。具体包括：集中交易概况、相关市场界定、



transaction; definition of the relevant market; market shares of the undertakings participating in concentration in the relevant market and their control force over the market; main competitors and their market shares; concentration rate of the market; market access; current development situations of the industry; impacts of such concentration on market competition structure, industrial development, technical progress, national economic development, consumers and other undertakings; and assessment of the impacts of such concentration on the relevant market competition and basis thereof.

(3) Concentration agreements and the relevant documents, specifically including: concentration agreement documents of various types, such as agreement, contract and corresponding supplementary documents.

(4) Financial accounting reports of the undertakings participating in concentration for the previous year that have been audited by accounting firms; and

(5) Other documents and materials required by the MOFCOM.

**Article 11** Except for the documents and materials required in Article 10 herein, a declarer may voluntarily provide other documents and materials conducive to making examination of and decisions on such concentration by the MOFCOM, such as opinions of local people's governments and competent authorities and reports that supporting concentration agreements and etc.

参与集中的经营者在相关市场的市场份额及其对市场的控制力；主要竞争者及其市场份额；市场集中度；市场进入；行业发展现状；集中对市场竞争结构、行业发展、技术进步、国民经济发展、消费者以及其他经营者的影响；集中对相关市场竞争影响的效果评估及依据。

（三）集中协议及相关文件。具体包括：各种形式的集中协议文件，如协议书、合同以及相应的补充文件等。

（四）参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告。

（五）商务部要求提交的其他文件、资料。

**第十一条** 除本规定第十条要求提供的文件、资料外，申报人可以自愿提供有助于商务部对该集中进行审查和做出决定的其他文件、资料，如地方人民政府和主管部门等有关方面的意见，支持集中协议的各类报告等。

**Article 12** When submitting papery declaration documents and materials, a declarer shall provide the electric documents with the same contents. Declaration documents and materials shall be arranged in reasonable order for convenience of review.

A declarer shall submit documents and materials prepared in Chinese. If the originals of such documents and materials are prepared in foreign language, Chinese versions shall be submitted and the originals shall be attached. If such documents and materials are duplicates, copies or fax of the originals, the originals shall be produced according to the requirements of the MOFCOM for verification.

A declarer shall also submit the open version and confidential version of the declaration documents and materials at the same time. The declarer shall make marks indicating business secret and other confidential information that shall be keep secret in such declaration documents and materials.

**Article 13** A declarer shall submit complete documents and materials and the MOFCOM shall review all of such documents and materials submitted by the declarer. If the MOFCOM finds that such documents and materials are incomplete, it may require the declarer to make supplementary provision within the prescribed time limit. The failure of the declarer to make such provision shall be deemed as non-declaration.

**Article 14** If the MOFCOM holds that declaration documents and materials consist with the legal requirements after review, it shall accept the application and notify the declarer

**第十二条** 申报人提交纸质申报文件、资料的同时，应当提交内容相同的光盘电子文档。申报文件、资料应当合理编排以方便查阅。

申报人应当提交中文撰写的文件、资料。文件、资料的原件是外文书写的，应当提交中文翻译件并附外文原件。文件、资料为副本、复印件或传真件的，应当根据商务部的要求出示原件供验证。

申报人应当同时提交申报文件、资料的公开版本和保密版本。申报人应当对申报文件、资料中的商业秘密和其他需要保密的信息进行标注。

**第十三条** 申报人应当提交完备的文件、资料，商务部应对申报人提交的文件、资料进行核查。商务部发现申报的文件、资料不完备的，可以要求申报人在规定期限内补交。申报人逾期未补交的，视为未申报。

**第十四条** 商务部经核查认为申报文件、资料符合法定要求的，应当自收到完备的申报文件、资料之日起予以立案并书面通知申报人

in written form upon receipt of complete declaration documents and materials.

**Article 15** If a declarer deliberately conceal material information or provide false information, the MOFCOM shall not accept the application.

**Article 16** If any undertaking concentration transaction does not reach the declaration thresholds as provided in [Article 3](#) of the [Provisions](#), while the undertakings participating in concentration voluntarily file an undertaking concentration declaration and the MOFCOM holds that such application shall be accepted after reviewing the declaration documents and materials received, the MOFCOM shall conduct acceptance examination and make decisions in accordance with the provisions of the [Antimonopoly Law](#).

During the declaration and acceptance examination period as mentioned in the previous paragraph, the undertakings participating in concentration may decide whether to suspend such concentration transaction or not and shall assume the corresponding results.

**Article 17** The MOFCOM and a declarer shall assume the obligation of keep confidential business secrets known to them from consultation before declaration and during declaration examination and other information that shall be kept secret.

**Article 18** The Measures herein comes into force on January 1, 2010.

**第十五条** 申报人故意隐瞒重要情况或者提供虚假信息的，商务部不予立案。

**第十六条** 经营者集中未达到《规定》第三条规定的申报标准，参与集中的经营者自愿提出经营者集中申报，商务部收到申报文件、资料后经审查认为有必要立案的，应当按照《反垄断法》的规定进行立案审查并作出决定。

在前款所述申报和立案审查期间，参与集中的经营者可以自行决定是否暂停实施其集中交易，并承担相应的后果。

**第十七条** 商务部和申报人对在经营者集中申报前商谈和申报审查工作中知悉的商业秘密和其他需要保密的信息承担保密义务。

**第十八条** 本办法自 2010 年 1 月 1 日起施行。

## R.3. Interim Provisions on the Divestiture of Assets or Business in the Concentration of Business Operators

**【Statute Title】** Interim Provisions on the Divestiture of Assets or Business in the Concentration of Business Operators [Effective]

**【法规标题】** 商务部关于实施经营者集中资产或业务剥离的暂行规定 [现行有效]

**Promulgation date:** 07-05-2010

**Effective date:** 07-05-2010

**Department:** Ministry of Commerce

**Subject:** Commerce and Trading Materials

**发布日期:** 2010-07-05

**生效日期:**

2010-07-05

**发布部门:**

商务部

**类别:**

商贸物资

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Announcement of the Ministry of Commerce  
(No.41 [2010])

商务部公告  
(2010年第41号)

To regulate the implementation of the decision on restrictions for the divestiture of assets or businesses in the concentration of business operators, pursuant to the [Measures for the Examination on the Concentration of Business Operators](#), the Ministry of Commerce has formulated the Interim Provisions on the Divestiture of Assets or Businesses in the Concentration of Business Operators, which are hereby promulgated, and shall come

为规范经营者集中附加资产或业务剥离限制性条件决定的实施，根据《[经营者集中审查办法](#)》，我部制定了《关于实施经营者集中资产或业务剥离的暂行规定》。现予公布，并自公布之

into force on the date of promulgation.

Ministry of Commerce of the People's Republic of China  
July 5, 2010

Interim Provisions on the Divestiture of Assets or Business in the Concentration of  
Business Operators

**Article 1** To regulate the implementation of the decision on restrictions for the divestiture of assets or businesses in the concentration of business operators and guarantee the smooth going of the divestiture of assets or businesses, these Provisions are formulated pursuant to the [Measures for the Examination on the Concentration of Business Operators](#).

**Article 2** The term “divestiture of assets or businesses” as mentioned in these Provisions refers to the divestiture of some of the assets or businesses and the behaviors in connection thereto by business operators to be concentrated who have the obligation to divest assets or businesses (hereinafter referred to as “divestiture obligor”) upon the decision of the Ministry of Commerce with regard to the concentration of business operations (hereinafter referred to as the “Decision”).

The divestiture obligor's divested assets or businesses shall be referred to as divested businesses.

日起施行。

特此公告。

中华人民共和国商务部  
二〇一〇年七月五日

关于实施经营者集中资产或业务剥离的暂行  
规定

**第一条** 为规范经营者集中附加资产或业务剥离限制性条件决定的实施，确保资产或业务剥离的顺利完成，根据《[经营者集中审查办法](#)》，制定本规定。

**第二条** 本规定所称资产或业务剥离是指根据商务部经营者集中审查决定（下称审查决定），负有资产或业务剥离义务的参与集中的经营者（下称剥离义务人）剥离其部分资产或业务及与之有关的行为（下称剥离）。

剥离义务人被剥离的部分资产或业务称为剥离业务。

**Article 3** The divestiture obligor shall, within the time prescribed by the Decision, find a proper buyer and conclude a sales agreement and other relevant agreements (hereinafter referred to as the “default divestiture”); if the divestiture obligor fails to complete a default divestiture within the prescribed time, the divestiture trustee shall find a proper buyer within the time limit and in the way prescribed in the Decision and conclude a sales agreement and other relevant agreements (hereinafter referred to as “trusted divestiture”)

The divestiture obligor shall, within 3 months after concluding a sales agreement or other relevant agreements, transfer the divested businesses to the buyer and complete the legal procedures for the transfer of ownership of the divested businesses. Upon the application and justification of the divestiture obligor, the Ministry of Commerce may properly extend the time limit for ownership transfer, as the case may be.

**Article 4** The divestiture obligor shall entrust a supervision trustee according to the requirements of the Decision and entrust a divestiture trustee when conducting a trusted divestiture.

A supervision trustee refers to a natural person, legal person or other organization entrusted by the divestiture obligor with the responsibility of supervising the whole divestiture process.

A divestiture trustee refers to a natural person, legal person or other organization entrusted by the divestiture obligor in the process of trusted divestiture with the

**第三条** 剥离义务人应当在审查决定规定的期限内，找到适当的买方并签订出售协议及其他相关协议（下称自行剥离）；如果剥离义务人未能如期完成自行剥离，则由剥离受托人按照审查决定规定的期限和方式找到适当的买方，并达成出售协议及其他相关协议（下称受托剥离）。

剥离义务人应当在出售协议及其他相关协议签订之日起3个月内将剥离业务转移给买方，并完成所有权转移等相关法律程序。根据案件具体情况，经剥离义务人申请并说明理由，商务部可酌情延长业务转移的期限。

**第四条** 剥离义务人应当根据审查决定的要求委托监督受托人，并在受托剥离阶段委托剥离受托人。

监督受托人是指受剥离义务人委托，负责对业务剥离进行全程监督的自然人、法人或其他组织。

剥离受托人是指在受托剥离阶段，受剥离义务人委托，负责找到适当的买方并达成出售协议及其他相关协议的自然人、法人或其他组织。

剥离义务人应当在商务部做出审查决定之日

responsibility to find a proper buyer and conclude a sales agreement or other relevant agreements with the buyer.

The divestiture obligor shall submit the supervision trustee candidate to the Ministry of Commerce within 15 days after the Ministry of Commerce makes a Decision and submit the divestiture trustee candidate to it within 30 days after entering the stage of trusted divestiture.

**Article 5** The supervision trustee and the divestiture trustee must be natural persons, legal persons or other organizations that have the resources and abilities required for the trustee business, be independent from the business operator to be concentrated and the buyer of the divested businesses, and have no material interest in them. The supervision trustee and the divestiture trustee could be a same natural person, legal person or other organization.

The supervision trustee and the divestiture trustee shall report to the Ministry of Commerce. Without the approval of the Ministry of Commerce, the divestiture obligor may not give instructions to the supervision trustee and the divestiture trustee.

**Article 6** The divestiture obligor shall conclude a written trust agreement with the supervision trustee and the divestiture trustee, clarifying the duties and obligations of both parties.

The supervision trustee shall fulfill his/its obligations from the day when the trust

起 15 日内向商务部提交监督受托人人选，在进入受托剥离阶段 30 日前向商务部提交剥离受托人人选。

**第五条** 监督受托人和剥离受托人必须是具有从事受托业务的必要资源和能力的自然人、法人或其他组织，并且应独立于参与集中的经营者和剥离业务的买方，与其不存在实质性利害关系。监督受托人和剥离受托人可以是相同的自然人、法人或其他组织。

监督受托人和剥离受托人应当向商务部负责并报告工作。非经商务部同意，剥离义务人不得对监督受托人和剥离受托人发出指示。

**第六条** 剥离义务人应当与监督受托人和剥离受托人签订书面委托协议，明确双方的职责和义务。

监督受托人应当在自委托协议生效之日起，至业务剥离完成之日止的期间内履行职责。剥离

agreement becomes effective to the day when the divestiture of businesses is completed. The divestiture trustee shall fulfill his/its duties from the day when the trust agreement becomes effective to the day when the stage of trusted divestiture closes. Without the approval of the Ministry of Commerce, the divestiture obligor may not rescind or alter the trust agreement with the supervision or divestiture trustee.

The supervision trustee and the divestiture trustee shall be paid by the divestiture obligor. Neither the amount of payment nor the mode of payment may jeopardize the independence or efficiency of the supervision trustee and the divestiture trustee in fulfilling their duties.

**Article 7** The supervision trustee shall, under the watch of the Ministry of Commerce, fulfill the following duties independently from the divestiture obligor with due diligence:

1. Overseeing the divestiture obligor in fulfilling the obligations prescribed in Article 12 of these Provisions, and submitting reports to the Ministry of Commerce on a regular basis;
2. Evaluating the buyer candidate recommended by the divestiture obligor and the sales agreement and other relevant agreements concluded by the divestiture obligor, and submitting an evaluation report to the Ministry of Commerce;
3. Overseeing the fulfillment of the sales agreement and other relevant agreements, and submitting reports to the Ministry of Commerce on a regular basis;
4. Coordinating to solve the disputes between the divestiture obligor and the potential buyer on the divestiture matters, and reporting to the Ministry of Commerce; and
5. Submitting other reports on the divestiture of businesses upon the request of the Ministry of Commerce.

受托人应当自委托协议生效之日起，至受托剥离阶段结束之日止的期间内履行职责。非经商务部同意，剥离义务人不得解除、变更与监督受托人和剥离受托人的委托协议。

监督受托人和剥离受托人的报酬由剥离义务人支付，报酬数量及其支付方式不得损害监督受托人和剥离受托人履行受托职责的独立性及其工作效率。

**第七条** 监督受托人应当在商务部监督下，本着勤勉、尽职的原则，独立于剥离义务人履行下列职责：

- （一）监督剥离义务人履行本规定第十二条规定的义务，并定期向商务部提交监督报告；
- （二）对剥离义务人推荐的买方人选、拟签订的出售协议及其他相关协议等进行评估，并向商务部提交评估报告；
- （三）监督出售协议及其他相关协议的执行，并定期向商务部提交监督报告；
- （四）负责协调剥离义务人与潜在买方就剥离事项产生的争议，并向商务部报告；
- （五）应商务部要求提交其他与业务剥离有



The trust agreement with the supervision trustee shall clarify the above-mentioned duties of the supervision trustee.

The divestiture obligor shall provide support and convenience necessary for the supervision trustee to perform the above-mentioned duties, like providing the supervision trustee with information about the parties concerned to the divested business, the accounts and records of the divested business, the information as provided by the divestiture obligor to the potential buyer, information about the potential buyer, the divestiture progress and other information and support necessary for the supervision trustee to perform his/its duties.

A potential buyer refers to a business operator who meets the conditions as set forth in Article 9 of these Provisions and offers the divestiture obligor an intention to buy the divested business.

Without the approval of the Ministry of Commerce, the supervision trustee may not disclose to the divestiture obligor any report it submits to the Ministry of Commerce in the process of performing duties. The supervision trustee shall keep confidential the trade secrets and other secrets it had access to in the process of performing duties.

**Article 8** The divestiture trustee shall, under the watch of the Ministry of Commerce, find a proper buyer within the time and in the way prescribed in the Decision, and conclude a sales agreement or other relevant agreements

关的报告。

监督受托人委托协议中应当明确规定监督受托人的上述职责。

剥离义务人应当对监督受托人履行上述职责提供必要的支持和便利，包括向监督受托人提供剥离业务相关当事方的信息，剥离业务的账簿和记录，剥离义务人提供给潜在买方的信息，潜在买方的信息，剥离过程的进展以及监督受托人为履行职责需要的其他信息和支持等。

潜在买方是指符合本规定第九条所规定的标准，并向剥离义务人提出购买剥离业务意愿的经营者。

未经商务部同意，监督受托人不得向剥离义务人披露其在履行职责过程中向商务部提交的各种报告。监督受托人应当保守在履行职责过程中获悉的商业秘密和其他保密信息。

**第八条** 剥离受托人应当在商务部监督下，按照审查决定规定的期限和方式，找到适当的买方并达成出售协议和其他相关协议

The divestiture obligor shall, in the trust agreement, grant the divestiture trustee a written authorization to independently handle the divestiture of businesses and provide support and convenience necessary for the divestiture trustee to perform duties.

Without the approval of the Ministry of Commerce, the divestiture trustee may not disclose to the divestiture obligor any information it had access to in the process of performing duties. The divestiture trustee shall report the progress of the performance of duties to the Ministry of Commerce on a regular basis and keep confidential the trade secrets and other secrets it had access to in the process of performing duties.

**Article 9** The buyer of the divested businesses shall meet the following conditions:

1. The buyer is independent from the business operators participating in the concentration and has no material interest in them;
2. The buyer has the necessary resources and abilities and the will to maintain and develop the divested businesses;
3. The transaction will not lead to the exclusion or restriction of competition; and
4. The buyer meets the necessary conditions for getting the approval of other regulatory authorities if the transaction is subject to the approval of other regulatory authorities.

**Article 10** Any agreement between the divestiture obligor and the buyer, such as a sales agreement of the divested businesses or a transition agreement, may not contain any

剥离义务人在委托协议中应当给予剥离受托人独立处理剥离业务的书面授权，并应当为剥离受托人履行职责提供必要的支持和便利。

未经商务部同意，剥离受托人不得向剥离义务人披露其履行职责过程中的信息；剥离受托人应当向商务部定期报告其履行职责的进展情况，并保守在履行职责过程中获悉的商业秘密和其他保密信息。

**第九条** 剥离业务的买方应当符合下列要求：

- （一）独立于参与集中的经营者，与其不存在实质性利害关系；
- （二）拥有必要的资源、能力并有意愿维护和发展被剥离业务；
- （三）购买剥离业务不会产生排除、限制竞争的问题；
- （四）如果购买剥离业务需要其他有关部门的批准，买方应当具备取得其他监管机构批准的必要条件。

**第十条** 剥离义务人与买方之间签署的任何协议，包括剥离业务出售协议、过渡期协议

clause contravening the Decision.

**Article 11** The Ministry of Commerce will, under Articles 5, 9 and 10 of these Provisions, evaluate the candidates for the supervision trustee, the divestiture trustee and the buyer of divested businesses, the trust agreements, and the sales agreement and other relevant agreements to be concluded as submitted by the divestiture obligor so as to check whether they meet the requirements of the Decision. The evaluation time of the Ministry of Commerce will not be counted in the time limit for divestiture.

The Ministry shall oversee and assess the performance of duties by the supervision trustee and the divestiture trustee.

**Article 12** Before the divestiture is completed, the business operator to be concentrated shall fulfill the following obligations so as to maintain the value of the divested businesses:

1. Keeping the divested businesses independent from other businesses and managing them to the best interest of the divested businesses;
2. Not committing any acts which may exert adverse impact on the divested business, such as hiring the employees of the divested businesses or acquiring the trade secrets or other secrets of the divested businesses;
3. Appointing ad hoc personnel to manage the divested businesses and to fulfill the obligations listed in Items 1 and 2 herein, and making sure that the management personnel perform their duties under the supervision of the supervision trustee and that the appointment or replacement thereof subject to the approval of the supervision

等，不得含有与审查决定相违背的条款。

**第十一条** 商务部将根据本规定第五条、第九条、第十条的规定，对剥离义务人提交的监督受托人、剥离受托人、剥离业务买方人选、委托协议和拟签订的剥离业务出售协议及相关协议等进行评估，以确保其符合审查决定的要求。商务部在上述评估过程中所用时间不计入剥离期限之内。

商务部应当对监督受托人和剥离受托人履行职责的情况进行监督和评估。

**第十二条** 在剥离完成之前，参与集中的经营者应当履行下列义务，以确保剥离业务的价值：

- （一）保持剥离业务与其他业务之间相互独立，并以最符合剥离业务利益的方式进行管理；
- （二）不得实施任何可能对剥离业务有不利影响的行为，包括聘用被剥离业务的员工，获得剥离业务的商业秘密和其他保密信息等；
- （三）指定专门的管理人，负责管理剥离业务并履行第（一）、（二）项规定的义务。管理人在监督受托人的监督下履行职责，其任命和更换应得到监督受托人的同意。

trustee;

4. Making sure that the potential buyer has sufficient access to the information about the divested businesses by fair and reasonable ways so that the potential buyer can assess the value, range and potential of the divested businesses;

5. Providing necessary support and help based on the buyer's request to guarantee the smooth transition and stable operation of the divested businesses; and

6. Transferring the divested businesses to the buyer and going through the relevant legal procedures in a timely manner.

**Article 13** For the implementation of other restrictive conditions as mentioned in [Article 11](#) of the [Measures for the Examination on the Concentration of Business Operators](#), these Provisions can analogically apply.

（四）确保潜在买方能够以公平合理的方式获得有关剥离业务的充分信息，使得潜在买方能够评估剥离业务的价值、范围和商业潜力；

（五）根据买方的要求向其提供必要的支持和帮助，确保剥离业务的顺利交接和稳定经营；

（六）向买方及时移交剥离业务并履行相关法律程序。

**第十三条** 《经营者集中审查办法》第十一条规定的其他限制性条件的实施，可以参照适用本规定中的有关规定。

## R.4. Measures for Calculating the Turnover for the Declaration of Business Concentration in the Financial Industry

**【Statute Title】** Measures for Calculating the Turnover for the Declaration of Business Concentration in the Financial Industry

[Effective]

**【法规标题】** 金融业经营者集中申报营业额计算办法 [现行有效]

**Promulgation date:** 07-15-2009

**Effective date:** 08-15-2009

**Department:** China Banking Regulatory Commission, China Insurance Regulatory Commission, China Securities Regulatory Commission, Ministry of

发布日期 2009-07-15

期:

生效日 2009-08-15

期:

**Subject:**

Commerce, People's Bank of China  
Banking&Finance

**发布部门:**

中国银行业监督管理委员会，中国保险监督管理委员会，中国证券监督管理委员会，商务部，中国人民银行

**类别:**

金融

Order of the Ministry of Commerce, the People's Bank of China, the China Banking Regulatory Commission, the China Securities Regulatory Commission, and the China Insurance Regulatory Commission

(No. 10 [2009])

In accordance with the [Anti-monopoly Law of the People's Republic of China](#) and the [Provisions of the State Council on the Criteria for the Declaration of Business Concentration](#), the Ministry of Commerce has formulated the Measures for Calculating the Turnover for the Declaration of Business Concentration in the Financial Industry jointly with the People's Bank of China, the China Banking Regulatory Commission, the China Securities Regulatory Commission and the China Insurance Regulatory Commission, which were deliberated and adopted by the Anti-monopoly Committee of the State Council, are hereby promulgated and shall come into force 30 days after the date of promulgation. .

Minister of Commerce: Chen Deming ·

President of the People's Bank of China: Zhou Xiaochuan

商务部、中国人民银行、中国银行业监督管理委员会、中国证券监督管理委员会、中国保险监督管理委员会令  
(2009年第10号)

(相关资料: 部门规章 1 篇 相关论文 2 篇)

根据《[中华人民共和国反垄断法](#)》和《[国务院关于经营者集中申报标准的规定](#)》，商务部会同中国人民银行、中国银监会、中国证监会和中国保监会制定《[金融业经营者集中申报营业额计算办法](#)》，经国务院反垄断委员会审议通过，现予以公布，自公布之日起三十日后施行。

商务部部长 陈德铭·

中国人民银行行长 周小川

中国银监会主席 刘明康

中国证监会主席 尚福林

中国保监会主席 吴定富

二〇〇九年七月十五日

Chairman of the China Banking Regulatory Commission: Liu Mingkang

金融业经营者集中申报营业额计算办法

Chairman of the China Securities Regulatory Commission: Shang Fulin,

Chairman of the China Insurance Regulatory Commission: Wu Dingfu

July 15, 2009

Measures for Calculating the Turnover for the Declaration of Business Concentration in the Financial Industry

**Article 1** To clarify the criteria for the declaration of business concentration in the financial industry, these Measures are formulated in accordance with the Anti-monopoly Law and the Provisions of the State Council on the Criteria for the Declaration of Business Concentration (hereinafter referred to as the “Provisions”).

**第一条** 根据《反垄断法》及《国务院关于经营者集中申报标准的规定》（以下简称《规定》），为明确金融业经营者集中的申报标准，制定本办法。

**Article 2** These Measures shall apply to the calculation of turnovers for the declaration of business concentration of the banking financial institutions, securities companies, futures companies, fund management companies, insurance companies and other financial institutions.

**第二条** 本办法适用于银行业金融机构、证券公司、期货公司、基金管理公司和保险公司等金融业经营者集中申报营业额的计算。

银行业金融机构包括商业银行、城市信用合作社、农村信用合作社等吸收公众存款的金融机构以及政策性银行。

The banking financial institutions shall include commercial banks, urban credit cooperatives, rural credit cooperatives and other financial institutions absorbing public

对金融资产管理公司 信托公司 财务公

savings as well as policy banks.

The provisions of these Measures on banking financial institutions shall also apply to the calculation method for the turnovers of the financial asset management companies, trust companies, finance companies, financial leasing companies, auto finance companies, currency brokerage companies and other financial institutions established upon the approval of the banking supervision and administration institutions.

**Article 3** The elements of the turnover of a banking financial institution shall include the following items:

- (1) net interest income;
- (2) net income from handling charges and commissions;
- (3) investment income;
- (4) income from changes in fair value;
- (5) exchange gains; and
- (6) other business income.

**Article 4** The elements of the turnover of a securities company shall include the following

司、金融租赁公司、汽车金融公司、货币经纪公司以及经银行业监督管理机构批准设立的其他金融机构的营业额计算方法，适用本办法对银行业金融机构的规定。

**第三条** 银行业金融机构的营业额要素包括以下项目：

- 一、利息净收入；
- 二、手续费及佣金净收入；
- 三、投资收益；
- 四、公允价值变动收益；
- 五、汇兑收益；
- 六、其他业务收入。

**第四条** 证券公司的营业额要素包括以下

items:

(1) net income from handling charges and commissions (including brokerage business, asset management business, underwriting and sponsor business, financial consultant services, etc.);

(2) net interest income;

(3) investment income;

(4) exchange gains; and

(5) other business income.

**Article 5** The elements of the turnover of a futures company shall include the following items:

(1) net income from handling charges and commissions; and

(2) net interest income from bank deposits.

**Article 6** The elements of the turnover of a fund management company shall include the following items:

项目:

一、 手续费及佣金净收入（包括经纪业务、资产管理业务、承销与保荐业务和财务顾问业务等）；

二、 利息净收入；

三、 投资收益；

四、 汇兑收益；

五、 其他业务收入。

**第五条** 期货公司的营业额要素包括以下项目:

一、 手续费及佣金净收入；

二、 银行存款利息净收入。

**第六条** 基金管理公司的营业额要素包括以下项目:

一、 管理费收入。



(1) income from management fees; and

(2) income from handling charges.

**Article 7** The formula for calculating the turnover for the declaration of concentration of the aforesaid business shall be:

Turnover = (sum of turnover elements - Business tax and surcharges) × 10%

**Article 8** The formula for calculating the turnover for the declaration of concentration of the insurance business shall be:

Turnover = (Premium income - Business tax and surcharges) × 10%

In the above formula, Premium income = Premium income from the original insurance contracts + Reinsurance premium income – Ceded-out premium

**Article 9** The aforesaid calculation methods for turnovers shall be used only for the declaration of business concentration.

**Article 10** These Measures shall come into force 30 days after the date of promulgation.

二、 手续费收入。

**第七条** 上述经营者集中申报营业额的计算公式为：

营业额 = (营业额要素累加 - 营业税金及附加) × 10%

**第八条** 保险公司集中申报营业额的计算公式为：

营业额 = (保费收入 - 营业税金及附加) × 10%

其中，保费收入 = 原保险合同保费收入 + 分入保费 - 分出保费

**第九条** 以上营业额计算方法仅限用于经营者集中申报。

**第十条** 本办法自发布之日起三十日后生效。

## R.5. Guiding Opinions of the Anti-monopoly Bureau of the Ministry of Commerce on the Declaration of the Concentration of Business Operators

**【Statute Title】** Guiding Opinions of the Anti-monopoly Bureau of the Ministry of Commerce on the Declaration of the Concentration of Business Operators [Effective]

**【法规标题】** 商务部反垄断局关于经营者集中申报的指导意见 [现行有效]

**Promulgation date:** 01-05-2009

**Effective date:** 01-05-2009

**Department:** Ministry of Commerce

**Subject:** Commerce and Trading Materials

**发布日期:** 2009-01-05

**生效日期:**

**发布日期:** 2009-01-05

**发布部门:**

**发布部门:** 商务部

**类别:** 商贸物资

Guiding Opinions of the Anti-monopoly Bureau of the Ministry of Commerce on the Declaration of the Concentration of Business Operators

According to the Anti-monopoly Law of the People's Republic of China and the Provisions of the State Council on the Standards for the Declaration of Concentration of Business Operators, any concentration of business operators which reaches the prescribed standards shall be declared to the Ministry of Commerce beforehand. To facilitate the declaration of business operators, the Anti-monopoly Bureau of the Ministry of Commerce provides the following guiding opinions for the reference of business operators:

商务部反垄断局关于经营者集中申报的指导意见

依据《中华人民共和国反垄断法》和《国务院关于经营者集中申报标准的规定》，达到申报标准的集中，经营者应当事先向商务部申报。为方便经营者申报，商务部反垄断局提供如下指导意见供经营者参考。

**Article 1** If, before declaration, a business operator needs to negotiate with the Anti-monopoly Bureau on some specific issues concerning the declaration of concentration of business operators, the following conditions shall be satisfied:

1. the business operator shall submit a written application for negotiation and make an appointment on the negotiation time;
2. the written application shall contain the applicant, the application matter, a brief introduction to the transaction, the matters to be negotiated about and information about the contact persons; and
3. the business operator shall provide the Anti-monopoly Bureau with the necessary documents and materials related to the concentration transaction to be negotiated about.

**Article 2** In the case of merger of business operators, the declaration shall be made by all business operators involved in the merger. If the concentration is in any other form, the declaration shall be made by the business operator which acquires the control power or has decisive influence, and other business operators shall cooperate with it.

**Article 3** A declarer can make declaration by itself or authorize any other party to do so under the relevant provisions.

**Article 4** A business operator shall declare a concentration transaction only if it can submit the declaration documents and materials prescribed in [Article 23 of the Anti-monopoly Law](#). The Anti-monopoly Bureau suggests that business operators make appointments before declaration.

**第一条** 在申报前，经营者如需与反垄断局就经营者集中申报的具体问题商谈，应满足如下条件：

- （一）经营者应事先向反垄断局提出书面商谈申请，并预约商谈时间。
- （二）书面申请应包括申请人、申请事项、交易概况、拟商谈问题以及联系人等信息。
- （三）经营者应向反垄断局提供与拟进行商谈的集中交易有关的必要文件、资料。

**第二条** 经营者合并方式的集中，由参与合并的全部经营者申报；其他方式的经营者集中，由取得控制权或施加决定性影响的经营者申报，其他经营者予以配合。

**第三条** 申报人可以自行申报，也可以依照有关规定委托他人代理申报。

**第四条** 经营者应在能够提交符合《[反垄断法](#)》第 23 条规定的申报文件、资料后提出申报。反垄断局建议经营者提出申报前预约。

**Article 5** The Anti-monopoly Bureau shall, after receiving the declaration documents and materials submitted by a business operator, issue a Registration Form of the Anti-monopoly Declaration Information of the Concentration of Business Operators, but the issuance of such a registration form does not necessarily mean that the declaration documents and materials meet the requirements specified in [Article 23 of the Anti-monopoly Law](#).

**Article 6** If the documents and materials submitted by a business operator are not complete, integrated or accurate, it shall make a supplement, correction, clarification or explanation within the time prescribed by the Anti-monopoly Bureau. If it fails to do so within the prescribed time, it shall be deemed that it has not declared the concentration transaction.

**Article 7** The Anti-monopoly Bureau shall examine the documents and materials submitted by business operators. Where any declarer intentionally conceals important information or provides false information, the Anti-monopoly Bureau shall reject the declaration and repeal the acceptance decision if the declaration has been accepted. If the documents and materials submitted by a business operator meet the requirements specified in [Article 23 of the Anti-monopoly Law](#), the Anti-monopoly Bureau shall make a preliminary examination on the concentration transaction.

**Article 8** The declaration documents and materials shall include, but not limited to:  
1. a declaration form, which shall indicate the name, domicile and scope of business of each business operator involved in the concentration transaction, the scheduled date for

**第五条** 反垄断局接收经营者提交的申报文件、资料后，出具《经营者集中反垄断申报信息登记表》，但登记表不表明申报文件、资料符合《[反垄断法](#)》第 **23** 条规定的要求。

**第六条** 经营者提交的文件、资料不齐备、不完整或不准确的，应当在反垄断局规定的期限内补充、修改、澄清和说明。经营者逾期未补交、修改、澄清和说明的，视为未申报。

**第七条** 反垄断局应对经营者提交的文件、资料进行核查。申报人故意隐瞒重要情况或者提供虚假信息的，反垄断局有权不予受理，已经受理的有权撤销。经营者提交的文件、资料符合《[反垄断法](#)》第 **23** 条规定的，反垄断局对申报的经营者集中进行初步审查。

**第八条** 申报的文件、资料包括但不限于如下内容：

(一) 申报书 申报书应当载明参与集中的

the concentration transaction, and the identify certificate or registration certificate of the declarer; an overseas declarer must submit the notary deed and certification document issued by the local authority; if the declaration is made on a proxy basis, a power of attorney signed by the declarer shall be submitted;

2. an explanation on the impact of the concentration transaction on the competition status of the market, which includes a brief introduction to the concentration transaction; the definition of relevant markets; the market share of each business operator involved in the concentration transaction and its control power in the relevant markets; the major competitors and their market shares; the market concentration degree; market access; the status quo of the industry; the impact of the concentration transaction on the market competition structure, industrial development, technical advancement, national economic development, consumers and other business operators; the assessment on the impact of the concentration transaction on the competition situation of relevant markets and the basis thereof; the opinions of the relevant sides such as those of the local government and the competent department; etc.;

3. the concentration agreements, which include the concentration documents in various forms such as the concentration agreements or contracts and the supplementary documents; and reports supporting the concentration agreements such as a feasibility report on the concentration transaction, a due diligence report, an industrial development study report, a concentration planning report and a post-transaction prediction report, etc.;

4. the annual financial report of the last year of each business operator involved in the concentration, which shall have been audited by accounting firms; and

5. other documents and materials as specified by the Anti-monopoly Bureau.

经营者的名称、住所、经营范围、预定实施集中的日期。申报人身份证明或注册登记证明，境外申报人须提交当地有关机构出具的公证和认证文件。委托代理人申报的，应当提交经申报人签字的授权委托书。

（二）集中对相关市场竞争状况影响的说明。包括：集中交易概况；相关市场界定；参与集中的经营者在相关市场的市场份额及其对市场的控制力；主要竞争者及其市场份额；市场集中度；市场进入；行业发展现状；集中对市场竞争结构、行业发展、技术进步、国民经济发展、消费者以及其他经营者的影响；集中对相关市场竞争状况影响的效果评估及依据；有关方面的意见，如地方政府和主管部门的意见等。

（三）集中协议。包括：各种形式的集中协议文件，如协议书、合同以及相应的补充文件等；支持集中协议的各类报告，如集中交易的可行性研究报告、尽职调查报告、行业发展研究报告、集中策划报告以及交易后前景发展预测报告等。

（四）参与集中的经营者经会计师事务所审计的上一会计年度财务会计报告。

（五）反垄断局要求提交的其他文件资料。

**Article 9** Business operators shall, at the same time when submitting paper-form documents and materials, submit the electronic document CD which bear the same contents. For the purpose of making it convenient to consult, the paper-form declaration documents or materials shall be properly compiled and bound, and electronic documents shall be properly organized.

**Article 10** Business operators shall provide documents and materials in Chinese. Where any document or material is originally prepared in any foreign language, a standard Chinese version shall be submitted together with the original document. For any duplicate, photocopy or facsimile, the original shall be provided for verification if the Anti-monopoly Bureau so requests.

**Article 11** When submitting the declaration documents and materials, business operators shall submit both the public versions and the confidential versions. Trade secrets involved in the declaration documents and materials shall be marked out by business operators.

**Article 12** The Anti-monopoly Bureau shall be obliged to keep secret the trade secrets known in handling the anti-monopoly negotiation and declaration issues about the concentration of business operators.

Ministry of Commerce, Anti-monopoly Bureau  
January 5, 2009

**第九条** 经营者提交纸质申报文件、资料的同时，应提交内容相同的光盘电子文档。纸质申报文件、资料应合理编辑装订，电子文档应合理组织以方便查阅。

**第十条** 经营者应提交中文撰写的文件、资料。文件、资料原件为外文的，应同时提交规范的中文翻译件和外文原件。文件、资料为副本、复印件或传真件的，应根据反垄断局的要求出示原件供验证。

**第十一条** 经营者应同时提交申报文件资料的公开版本和保密版本。经营者应对申报文件资料中的商业秘密进行标注。

**第十二条** 反垄断局对在办理经营者集中反垄断商谈和申报工作中知悉的商业秘密承担保密义务。

商务部反垄断局·  
二〇〇九年一月五日

