



CHINA: NEW REVISIONS OF ANTI-MONOPOLY LAW

The Standing Committee of the National People's Congress has issued recently the decision of amending the Anti-Monopoly Law of the People's Republic of China (AML Amendment), effective from August 1, 2022.

Executive summary

- The AML Amendment introduces the “safe harbour” rule to make the conditions concerning the fixation of price less restrictive. If companies would like to benefit from the “safe harbour” rule, they shall make sure that their distribution agreements have no effect of excluding or limiting competition or that their market share meets relevant conditions.
- The AML Amendment also increases substantially the penalties applied in case of violation of anti-monopoly rules.

What it is going to change

The “safe harbor” rule

The “safe harbor” rule regulates the fixation of price in vertical agreements.

Previous provisions provided that the following monopoly agreements are prohibited:

1. those on **fixing the price** for resale of a commodity to a third party;
2. those on **restricting the minimum price** for resale of a commodity to a third party; and
3. other monopoly agreements as determined by the State Council's AML enforcement authority.

We have a recent illustration of the previous practice involving a Foreign company in a decision issued by Beijing Municipal Administration for Market Regulation (Beijing AMR) and dated on February 9, 2022. The party in question is a wholly owned subsidiary of a Swiss company established in China and its main business is the sale of medical devices. The party required its distributors to sell the devices at a price no lower than a specific percentage of the recommended guide price set by the party. Beijing AMR considered it as a monopoly agreement prohibited under the Anti-Monopoly Law and ordered the party to stop the illegal act. Besides, it imposed a fine of 3% of the party's sales amount in China of the previous year, amounting to RMB 9,123,598.

The AML Amendment introduces “**safe harbor**” rule¹ providing that the said prohibited agreements will be no longer prohibited if the business operator can prove that they do not have the effect of excluding or limiting competition, or that their market share in the relevant market is lower than the threshold set by the State Council's AML enforcement authority and other conditions set by the State Council's AML enforcement authority are also met.

On June 27, 2022, the State Administration for Market Regulation published the Provisions on Prohibition of Monopoly Agreements (Draft) to solicit public comments. According to Article 15(1) of the Draft, the market share threshold is 15%. The specific conditions still need to be further clarified.

The relevant enforcement authorities have been trying to introduce such a rule since 2015. For suppliers with a low market share, such vertical price restraints would no longer be illegal. Previously, it was common for such vertical price restraints to be sanctioned; presumably, after the amendment, it will become less frequent. As a consequence, the AML Amendment will greatly impact small and medium-sized enterprises.

Increased penalties

On another hand, AML Amendment has significantly increased penalties in case of violation of the anti-monopoly rules:

AML Amendment	Previous AML
Where a business operator violates the AML by entering into a monopoly agreement, if the monopoly agreement has not been implemented , the AML enforcement authority may impose a fine of not more than CNY 3 million . ²	The previous amount was CNY 0.5 million .
If the legal representative, main head person or any directly responsible person of the business operator's organization was personally liable for the monopoly agreement, a fine of not more than CNY 1 million may be imposed on that individual. ³	N/A
Where a business operator organizes other business operators to enter into a monopoly agreement or provides any substantive assistance to other operators in entering into a monopoly agreement , the AML authority shall order it to cease its illegal activities, confiscate its illegal earnings, and impose on it a fine of not less than one percent but not more than ten percent of its last year's sales revenue, or if no sales revenue was made in the last year, a fine of not more than CNY 5 million. Besides, the said sanctions concerning the unimplemented monopoly agreement and the legal representative, main head person and any directly responsible person also apply. ⁴	N/A
The violation of the AML shall be entered into the business operator's credit records pursuant to the relevant provisions of the State, and the information shall be disclosed to the society. A credit record will affect the operator's corporate image and have an impact on the company's goodwill and future bidding activities , etc. ⁵	N/A

1. Article 18 of the AML Amendment.
 2. Article 56 of the AML Amendment.
 3. Article 56 of the AML Amendment.
 4. Article 56 of the AML Amendment.
 5. Article 64 of the AML Amendment.

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