



中华人民共和国国家发展和改革委员会  
National Development and Reform Commission

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# **PROVISIONS IN THE ANTI-MONOPOLY LAW OF PRC ON ABUSE OF ADMINISTRATIVE POWERS TO ELIMINATE OR RESTRICT COMPETITION AND RELATED LAW ENFORCEMENT PRACTICE**

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# KEY TOPICS

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- The Anti-Monopoly Law of the PRC (AML) prohibits abuse of administrative powers to eliminate and restrict competition
- Law enforcement practice of NDRC in stopping abuse of administrative powers to eliminate and restrict competition
- Next steps

# Provisions in the General Provisions of AML

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■ **Article 8** Administrative authorities and organisations empowered by laws and regulations to exercise the functions of managing public affairs shall not abuse their administrative powers to eliminate or restrict competition.

✓ Subjects: 1. Administrative authorities; 2. Organisations empowered by laws and regulations to exercise the functions of managing public affairs

✓ Abuse of administrative powers to eliminate or restrict competition is prohibited generally.

# Provisions in Chapter V of AML (1)

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■ The AML specifically sets out a separate chapter (Chapter V: Abuse of Administrative Powers to Eliminate or Restrict Competition) to regulate the relevant conducts.

✓ Monopolistic conducts prohibited under Chapter V:

## **Article 32 (Prohibition of Designated Transactions)**

Administrative authorities and the organisations empowered by laws and regulations to exercise the function of managing public affairs shall not abuse their administrative powers to confine – or confine in disguised form – any entity or individual to dealing in, purchasing or using the Commodities supplied by their designated undertakings.

# Provisions in Chapter V of AML (2)

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## **Article 33 (Prohibition of impeding the free flow of commodities among different regions)**

Administrative authorities and the organisations empowered by laws and regulations to exercise the function of managing public affairs shall not abuse their administrative powers to carry out the following conducts to impede the free flow of Commodities among different regions:

- 1) to establish discriminatory items of charge, implement discriminatory charging standards or set discriminatory prices on Commodities from other regions;
- 2) to impose on Commodities from other regions technology requirements or inspection standards which are different from those for the same kind of local Commodities, or to adopt discriminatory technological measures such as duplicate inspection and re-certification for Commodities from other regions so as to restrict the entry of such Commodities from other regions into the local market;
- 3) to adopt special administrative licensing only applied to the Commodities from other regions to restrict the entry of such Commodities from other regions into the local market;
- 4) to set up checkpoints or adopt other measures to obstruct Commodities from other regions from being transported in or obstruct local Commodities from being transported out; and
- 5) other conducts that may impede the free flow of Commodities among different regions.

# Provisions in Chapter V of AML (3)

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## **Article 34            (Prohibition of local protection in tenders or biddings)**

Administrative authorities and the organisations empowered by laws and regulations to exercise the function of managing public affairs shall not abuse their administrative powers to exclude or restrict undertakings from other regions from participating in tenders or biddings in the local region by setting discriminatory qualification requirements or assessment criteria or by other means such as not publishing information in accordance with laws.

## **Article 35            (Prohibition of excluding or restricting investment or establishment of branches in the local region)**

Administrative authorities and the organisations empowered by laws and regulations to exercise the function of managing public affairs shall not abuse their administrative powers to exclude or restrict undertakings from other regions from investing or establishing branch(es) in the local region by adopting unequal treatment with local undertakings or by other means.

# Provisions in Chapter V of AML (4)

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## **Article 36 (Prohibition of compelling undertakings to engage in monopolistic conducts)**

Administrative authorities and the organisations empowered by laws and regulations to exercise the function of managing public affairs shall not abuse their administrative powers to compel undertakings to engage in any monopolistic conducts set out in this Law.

## **Article 37 (Prohibition of formulating provisions containing contents of eliminating or restricting competition)**

Administrative authorities shall not abuse their administrative powers to formulate any provisions containing contents of eliminating or restricting competition.

# Legal Liabilities for Administrative Restrictions on Competition

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## Article 51

Administrative authorities and the organisations empowered by laws and regulations to exercise the function of managing public affairs which abuse administrative powers and carry out conducts that eliminate or restrict competition shall be ordered by their superior authorities to rectify the conducts. The directly responsible person(s)-in-charge and other directly responsible person(s) shall be subject to administrative penalties in accordance with laws. The Anti-Monopoly Law Enforcement Authority may provide the relevant superior authorities with the proposals to address the above in accordance with laws.

If it is otherwise provided in the laws and administrative regulations concerning the abuse of administrative powers by administrative authorities or organisations empowered by laws and regulations to exercise the function of managing public affairs to eliminate or restrict competition, such provisions shall apply.



# Relevant Law Enforcement Development

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- ✓ NDRC has investigated and addressed a number of cases that involve the abuse of administrative powers to eliminate or restrict competition in accordance with relevant provisions of the AML.
- ✓ Relevant activities involve designated transactions, setting discriminatory prices, compelling undertakings to engage in monopolistic conducts and formulating provisions that contain contents of eliminating or restricting competition, etc.

# Relevant Law Enforcement Development

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## ■ Abuse of administrative powers to eliminate or restrict competition by the Transport Department and several other departments of Hebei Province

- In October 2013, the Transport Department and several other departments of Hebei Province jointly issued a notice to provide preferential highway tolls for passenger coaches of Hebei Province: the passenger coaches will be given 50% discount on the tolls by using ETC cards or monthly pass.
- NDRC launched investigation upon receiving reports and issued a law enforcement recommendation letter to the People's Government of Hebei Province in September 2014, advising the latter to order the Transport Department and several other departments of Hebei Province to rectify relevant conducts.
- At the end of September 2014, the Transport Department of Hebei Province issued a notice to provide the same preferential toll discount for passenger coaches of other provinces operating on interprovincial lines to or from Hebei Province.

# Next Steps

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✓The core issue of the reform of the economic system is “to balance the role of the government and that of the market, enabling the market to play a decisive role in the allocation of resources and giving better play to the role of the government”. “Establishing a unified, open, competitive and orderly market system is fundamental for the market to play a decisive role in the allocation of resources.”

✓“Repeal and eliminate all sorts of regulations and practices that impede nationwide unified market and fair competition, strictly prohibit and sanction all sorts of unlawful preferential policies, and combat local protection, monopoly and unfair competition.”

-- Decision of the CPC Central Committee on Several Major Issues Concerning Comprehensive In-depth Reform, 2013



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Thank You !