



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

Investigation and Handling of Horizontal Monopoly Case in Insurance Industry

Division No.1 of Anti-monopoly Investigation

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Sichuan



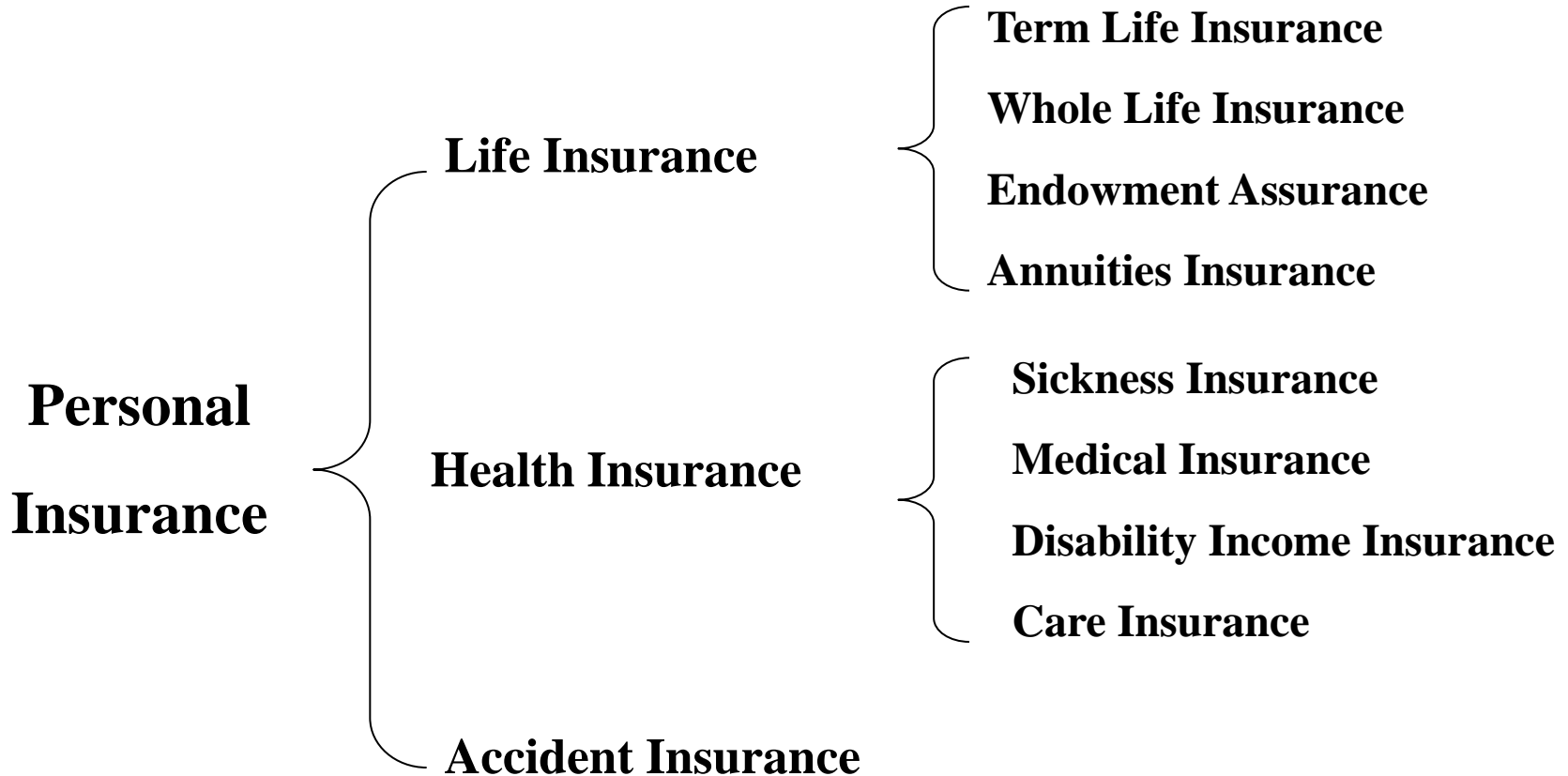
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I . Overview of the Insurance Industry



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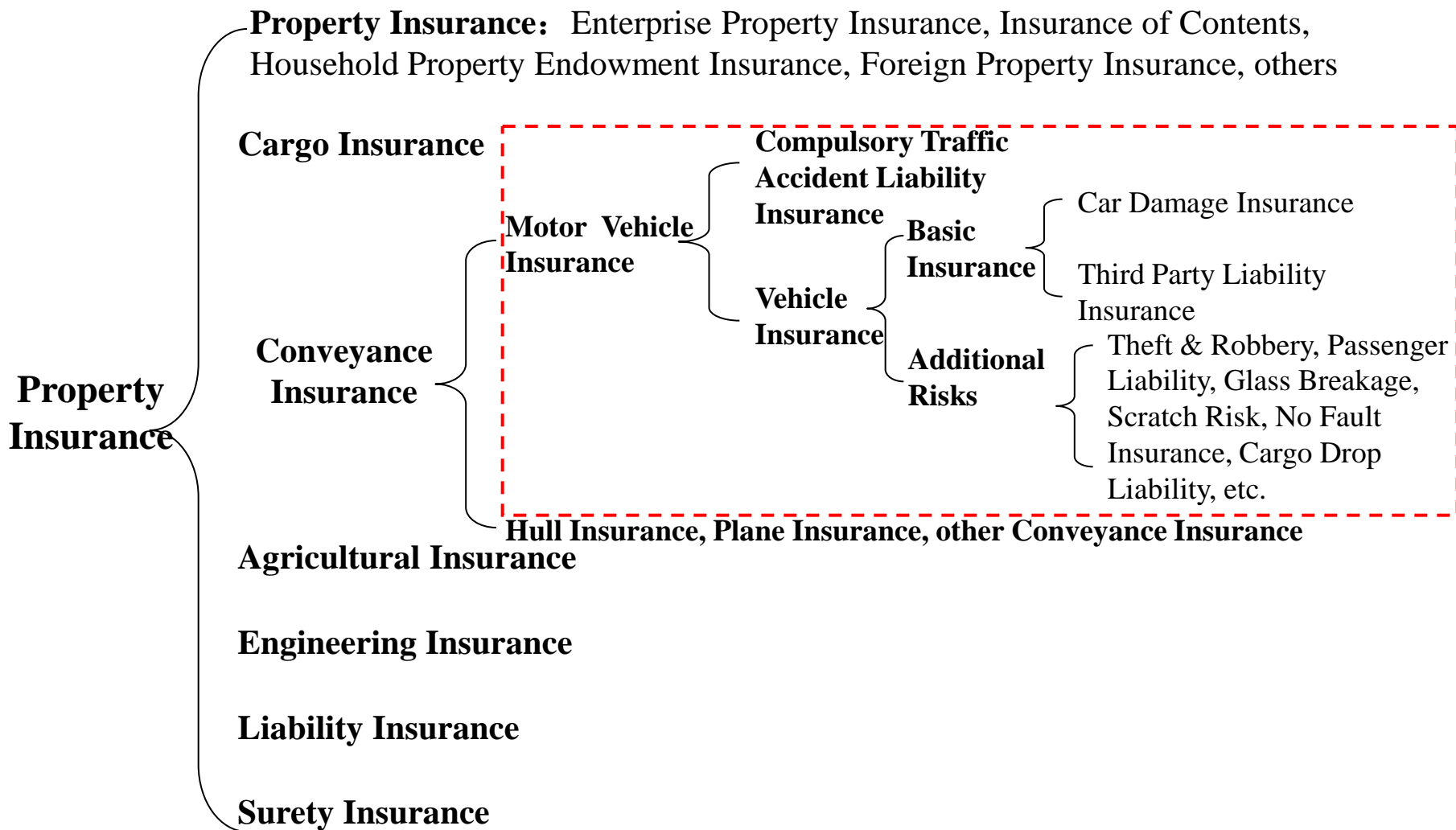
1. Insurance Classification





I . Overview of the Insurance Industry

1. Insurance Classification





I . Overview of the Insurance Industry

2. Overview of Property Insurance Industry

Depending on the different levels of economy development, there are about 15-30 property insurance companies in one region. The market shares of leading enterprises such as People's Insurance Co. of China (“PICC”), China Pacific Insurance Group Co., Ltd (“CPIC”) and Pingan Insurance (Group) Company of China, Ltd. (“Pingan”) are respectively 30%, 15% and 10%. Market Shares of China Life Property & Casualty Insurance Co., Ltd. (“China Life Property”), Sunshine Insurance Group, China Taiping Insurance Group Ltd. (“Taiping”), China United Property Insurance Co., Ltd. (“United Property”), Yongan Insurance Company (“Yongan”), China Continent Insurance Co., Ltd. (“Continent”), etc. are about 3-5%. Shares of Anbang Insurance Group (“Anbang”), Dubang Insurance Company (“Dubang”), Minan Property & Casualty Insurance Co., Ltd. (“Minan”), Bohai Property Insurance Co., Ltd. (“Bohai”), Anxin Agricultural Insurance Co., Ltd. (“Anxin”), BOC Insurance Company (“BOC”), etc. are less than 1%.

Property Insurance Companies usually cover vehicle insurance, enterprise property insurance, insurance of contents, liability insurance, engineering insurance, cargo insurance, credit insurance, special risk insurance (hull insurance, ship pollution insurance, etc.) and other insurance types. Among which, vehicle insurance is the biggest insurance type, accounting for 70% of the premium income, thus has critical importance to the operation of property insurance company. The second biggest insurance type is enterprise property insurance, accounting for 6-10% pf the premium income.



I . Overview of the Insurance Industry

3. Setting of Core Departments in Property Insurance Company

Departments

Office: mainly responsible for preservation of various documents and meeting minutes, etc.

Department of Finance: mainly responsible for preservation of performance bond, payment voucher of liquidated damages.

Department of Vehicle Insurance : operation and management of vehicle insurance business.

Department of Non-vehicle Insurance: operation and management of non-vehicle insurance business.



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II . Constitutive Elements of Horizontal Monopoly Case in Insurance Industry



II. Constitutive Elements

1. Subject Element:

(1) Competing Undertakings

Is the branch of a insurance company an undertaking?

→ Insurance company in city lower than provincial (municipal) level is not “independent legal person”, but other “other organization”.



II. Constitutive Elements

1. Subject Element:

(2) Interested third party



Trade Association

Arranging and promoting insurance company to fix the price by means of industrial self-discipline, plays a key role in the process of reaching horizontal monopoly agreement.

Intermediary

Intermediary of insurance agency business(Ruite Insurance Broker Company) or other organization (Shenyang New Car Coinsurance Center).

Regulatory Agency

Local Insurance Regulatory Bureaus, when promoting the industrial self-discipline of insurance trade association and insurance companies, play a role in fueling for price fixing.



II. Constitutive Elements

2. Behavior Element: Agreement, Decision or other Concerted

Conducts

(1) Conclusion of Monopoly Agreement

form

Signing an contract: insurance companies reach consensus on price fixing in the name of industrial self-discipline through the platform of trade association, affect each company's underwriting policies by forms of **Self-discipline Convention, Implementing Rules and Supplementary Regulations**.

Reaching an agreement: transferring the Self-discipline Convention into internal control policy and underwriting policy of a company.



II. Constitutive Elements

2. Behavior Element: Agreement, Decision or other concerted conducts

(1) Conclusion of Monopoly Agreement

Content Identification

If the Insurance Regulatory Commission already has specific provisions, discuss on how to implement such provisions.

If the Insurance Regulatory Commission already has provisions, but the provisions are not clear or specific, discuss to elaborate and fix such provisions by meeting.

If the Insurance Regulatory Commission has no provisions, discuss price fixing clause supplemented by themselves by meeting.



II. Constitutive Elements

2. Behavior Element: Agreement, Decision or other concerted conducts

(2) Implementation of Monopoly Agreement

→Insurance policies before\after signing a contract

→Notice of Self-discipline inspection

→Document of punishment for breach of contract

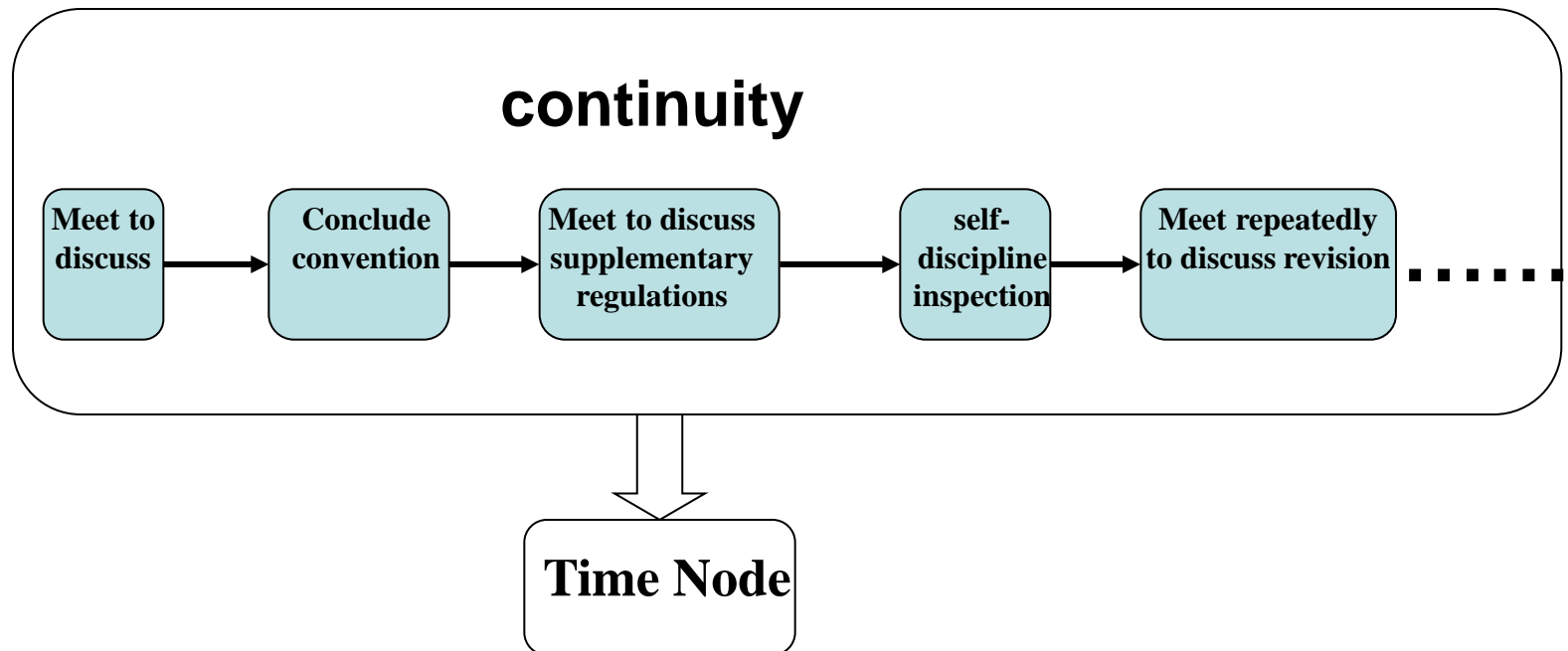


II. Constitutive Elements

2. Behavior Element: Agreement, Decision or other concerted conducts

(3) Continuity and Time Node of Monopoly Conduct

Retroactive period → 2 years





II. Constitutive Elements

3. Effect Element

- ◆ **eliminate or restrict competition**
- ◆ **prejudice the legitimate interests of the policyholder**



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III. Investigation into Horizontal Monopoly Case in Insurance Industry



III. Investigation

Key point: Obtaining evidences of undertakings' consultation and consensus on price, production and market share, etc.

However, these evidences are difficult to find, collect and preserve.





III. Investigation

1. Preliminary Investigation Without Alerting Target Undertaking

- ◆ Online search public reports or agreements online (trade association, website of a company, Baidu Wenku, etc.)
- ◆ Make good legal preparations, making clear the mandatory laws and regulations regarding on the involved type of insurance.

Insurance Law

Regulations on Compulsory Traffic Accident Liability Insurance for Motor Vehicles

Measures for the Administration of Insurance Clauses and Premium Rates of Property Insurance Companies

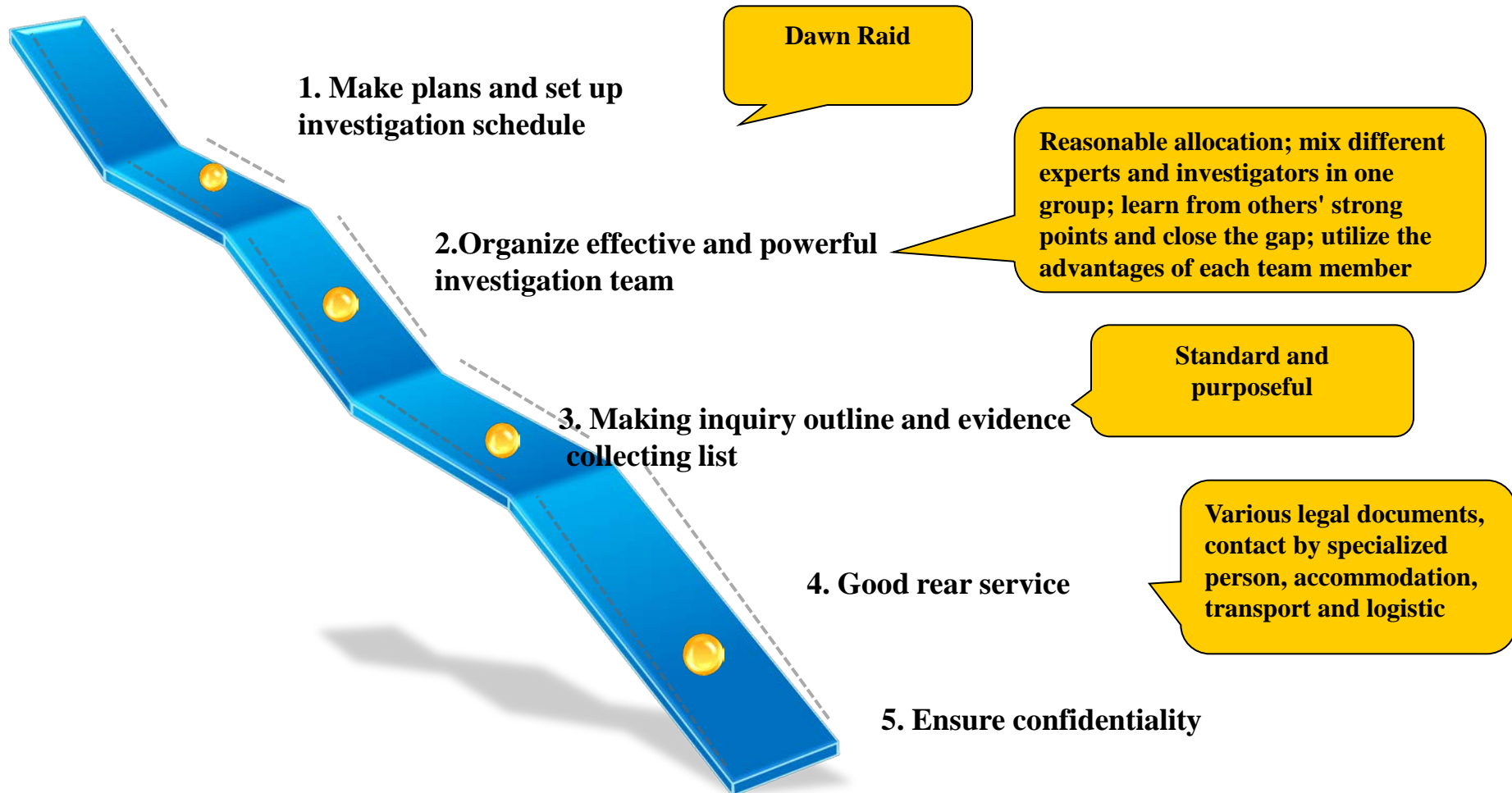
Notice of the China Insurance Regulatory Commission on Strengthening the Administration of Commercial Motor Vehicle Insurance Clause and Premium Rates

Model Clauses (Clause A, B, C) of Commercial Motor Vehicle Insurance.



III. Investigation

2. Make Implementation Plans





III. Investigation

3. Prejudgment of Main Target

Various Roles:

- initial arranger
- active participant
- adrift follower
- helplessly involved person
- seller and purchaser whose legal interests were infringed by horizontal monopoly agreement





III. Investigation

3. Prejudgment of Main Target

- **Trade association:** go-between person; fully participator; witness; supervisor; thus has most complete evidences.
- **Insurance company with the biggest market share:** usually the head of a professional committee; also important initiator; active promoter; major beneficiary; has best knowledge of conclusion and implementation of horizontal monopoly; if punished, will receive heaviest punishment; most likely to surrender and revolt.
- **Insurance company with the relative small market share:** adrift follower; helplessly involved company; easy to "subvert" and "capitulate".



III. Investigation

4. Seeking Breakthrough Opportunity

1. **Alienate and instigation**
2. **Carrot and stick**



**Case of abuse of dominance
easy to collect evidence but
difficult to define**

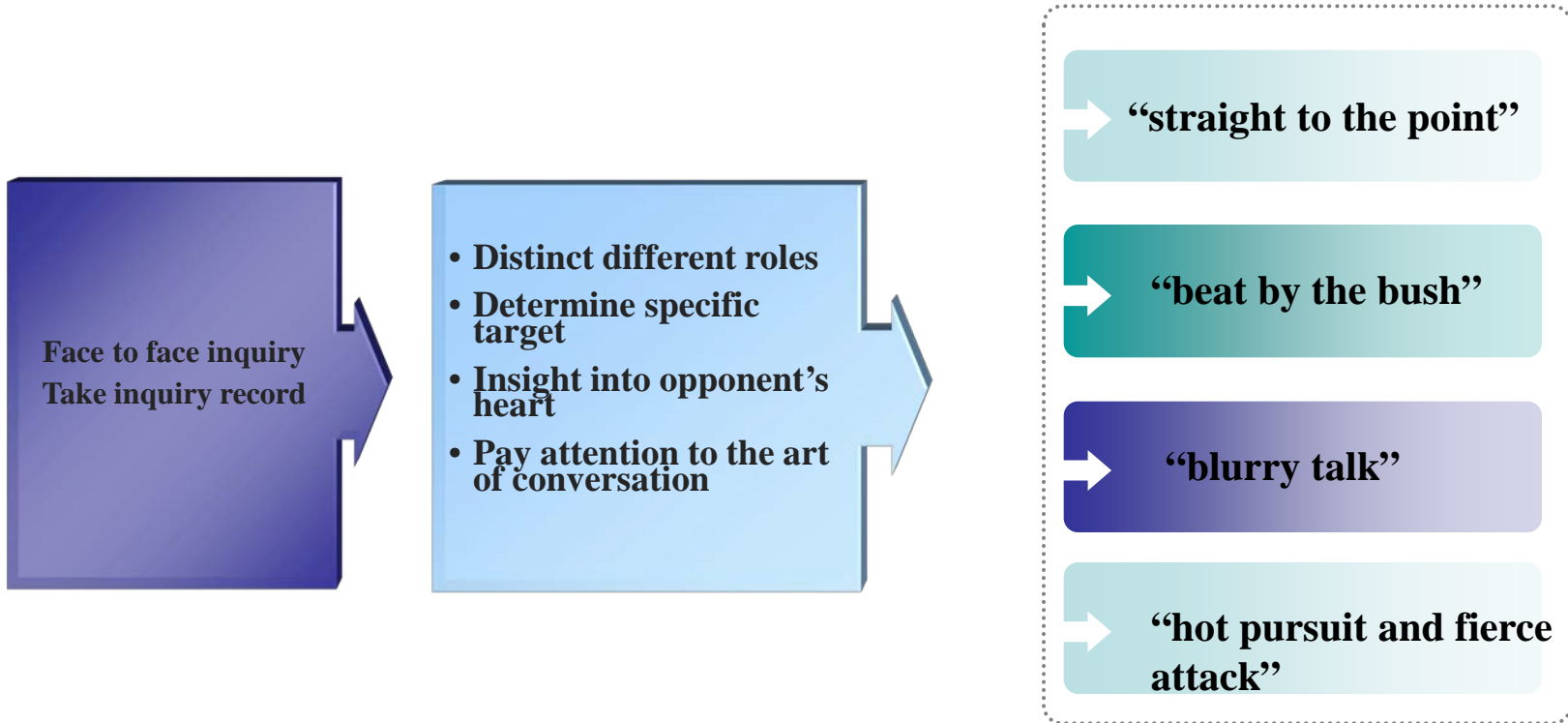


**Case of horizontal
monopoly agreement
easy to define but
difficult to collect
evidence**



III. Investigation

5. Focusing on Investigation and Inquiry





III. Investigation

6. Taking Records Carefully

Fast



record, print, review and sign on the spot

Accurate



ensure accurate and correct, no distortion or mistake

Simple



understand intent accurately, take notes of core content, do not violate party's original intent

Gentle



be a needle hidden in silk floss, don't be too aggressive



III. Investigation

7. Finding Sufficient Evidence

Insurance Company

Agreement, self-discipline convention, meeting minutes, the meeting receipt, issuance notice of trade association, send and receive files within corporate systems, emails of key person, QQ(chatting group) record, underwriting policy, insurance policy before\after key time node, working notes of relevant department manager, deputy manager and general manager in charge, default penalty and rectification decision, financial statement of performance bond and default fine, record of key person.

Trade Association

Agreement, self-discipline convention (including implementation rules, supplementary regulations), meeting minutes, conference registration table, documents issued or received by trade association, email and working notes of key person, QQ(chatting group) record, inspection record of self-discipline team, default penalty and rectification decision, financial statement of performance bond and default fine, record of key person.



III. Investigation

7. Finding Sufficient Evidence

Expand the scope of collecting evidence:

Investigation and taking of evidence should focus on one or two types of insurance ; if other type of insurance is found suspected of being involved in monopoly, take evidence together to expand breakthrough of investigation and increase bargaining chips.



III. Investigation

8. Collating and Analyzing Evidence Collected in time

Collate and analyze evidence collected quickly, communicate with each team in time to clarify the time subsequence of reaching monopoly agreement and find out core evidence as well as key time node, purposefully taking supplementary evidence and record.



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IV. Handling of Horizontal Monopoly Case in Insurance Industry



IV. Case Handling

I. Determine the Behavior's Nature

1. **Insurers'** behavior of fixing premiums, premium discounts or handling charges is horizontal monopoly conduct which limits and eliminates competition, and it violates Article 13 of Anti-Monopoly Law ("AML") and Article 7 of Anti-Price-Monopoly Regulation ("APMR").

2. **Industry Association's** behavior of organizing insurers to fix premiums, premium discounts or handling charges violates Article 16 of AML and Article 9 of APMR.

3. **Intermediaries'** behavior of uniting with insurers to build up monopoly institutes, fix agent handling charges, divide insurance market, and restrict transaction parties via agreements, involves horizontal agreement as well as dominance of market power, violates Article 13, 17 of AML and Article 7, 14 of APMR. (to be further discussed.)

4. **Supervision Authorities'** behavior of organizing insurers to fix premiums, premium discounts or handling charges violates Article 36 of AML: administrative authorities and organizations carrying public affair functions with the authorization from administrative authorities, laws and regulations, cannot abuse their administrative powers and force the undertakings to conduct monopoly behavior provided in this law.



IV. Case Handling

II. Principle of Handling

1. Suspend investigation does not apply to horizontal monopoly case.
2. Exemption and mitigation policy may apply to those who take the initiative to report and provide significant evidence.
3. Difficult to calculate illegal gains.
4. Be cautious to make sure whether it is the previous year of implementation, the previous year of investigation or the previous year of the end of investigation.
5. The trade association can be imposed by a fine of 500 thousand Yuan at most.



IV. Case Handling

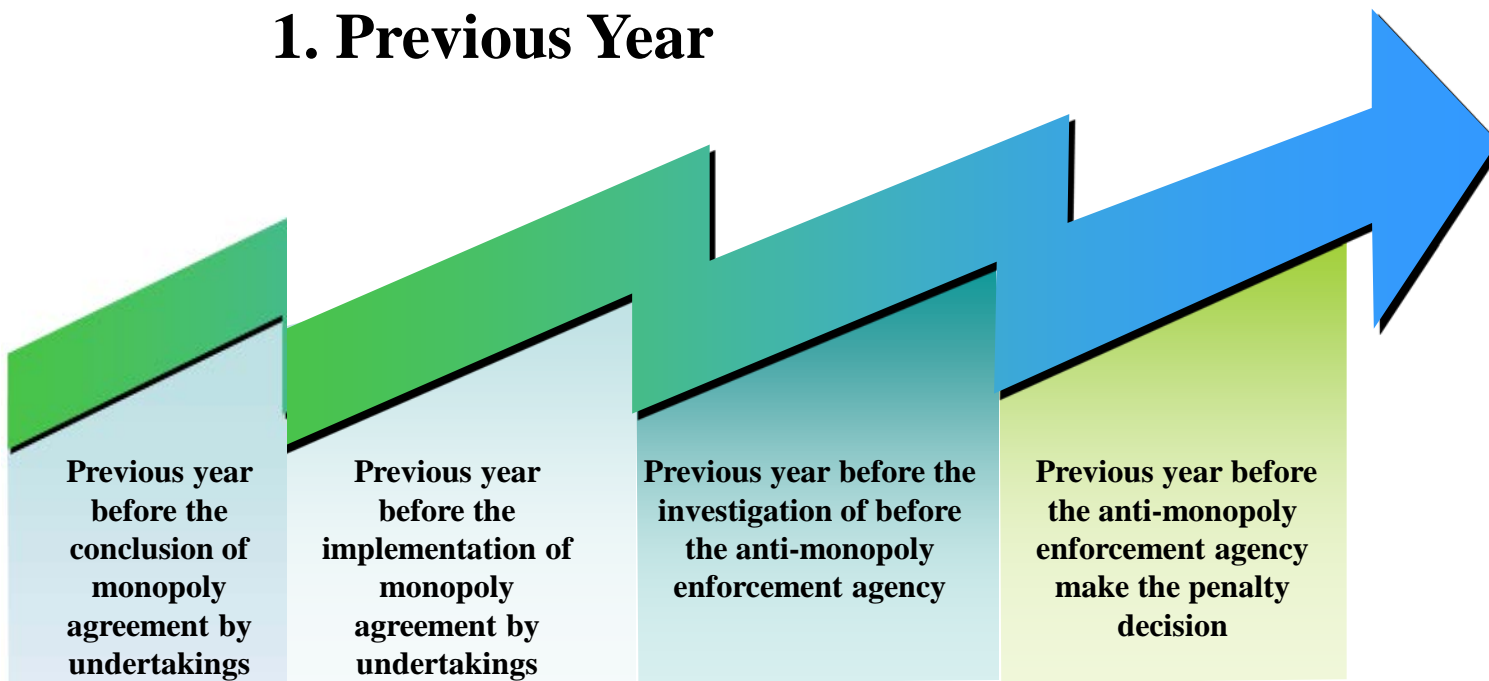
III. Handling in Accordance with the Law

◆ PRACTICE

determine the basic amount of fine

determine the fine proportion

1. Previous Year



We tend to understand the previous year as “the previous year before the anti-monopoly enforcement agency make the penalty decision”



IV. Case Handling

1. Previous Year

Rules of the EU: Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003

01

The basic amount of the fine will be related to a proportion (up to 30%) of the value of sales in relevant market in the last year of undertaking's illegal conduct

02

The fine imposed may be adjusted on the basic amount in accordance with relevant circumstances, but final amount of the fine shall not, in any event, exceed 10% of the total turnover in the preceding business year of the undertaking or association.



IV. Case Handling

1. Previous Year

U.K. Office of Fair Trading “*Guidelines for Calculation of the Appropriate Penalty*” Article 2.17 provides: “Per the provisions above, the final penalty shall not exceed 10% of the undertaking’s global turnover in the last fiscal year. Last fiscal year means the previous year before Office of Fair Trading makes its decision.”

Taiwan “*Measures on Calculation Method of Imposing Penalty in Essential Cases Involving Violation of Fair Trade Law Article 10 and Article 14*” provides “last accounting year’s sales volume means last accounting year’s total turnover amount of the undertaking when the central authorities make their penalty decision.”



IV. Case Handling

2. Sales Volume

Is all sales volume, related sales volume or sales volume of a single kind?

◆ EU, U.K.: Limits to the respective undertaking's all lines' global turnover.

<p>EU's Approach to Determine A Fine</p>	<p>Penalty Base = the respective product and service turnover of the undertaking with EU × certain percentage (below 30%) × years of the continued illegal behavior</p> <p>Discretion: taking all attenuating and aggravating circumstances into consideration, while the penalty is limited to 10% of the respective undertaking's all lines' global turnover.</p>
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IV. Case Handling

2. Sales Volume

◆ China

China AML provides confiscation of all illegal gains, which cannot be found in EU. Therefore, theoretically speaking, if the illegal gains can be calculated accurately, no matter the sales volume is defined as the all lines' global turnover or related line's sales volume in given region, the penalty would never be too gentle. This question requires further research.



IV. Case Handling

3. Percentage

1%-10%	Very severe violation of horizontal agreement related provisions with adverse nature and huge damages ($5\% \leq \text{Percentage} \leq 10\%$)
	Minor violation ($\text{Percentage} < 5\%$)
	Slight violation ($1\% \leq \text{Percentage} < 5\%$)

Also AML Article 52 provides: Where, during the review and investigation conducted by the authority for enforcement of the Anti-monopoly Law, a unit or individual refuses to provide relevant materials or information, or provides false materials or information, or conceals, or destroys, or transfers evidence, or refuses to submit to or obstructs investigation in any other manner, the authority for enforcement of the Anti-monopoly Law shall instruct it/him to rectify, and a fine of not more than 20,000 Yuan shall be imposed on the individual and not more than 200,000 Yuan on the unit; if the circumstances are serious, a fine of not less than 20,000 Yuan but not more than 100,000 Yuan shall be imposed on the individual and not less than 200,000 Yuan but not more than one million Yuan on the unit; and if a crime is constituted, criminal liability shall be investigated for in accordance with law.



IV. Case Handling

IV. Leniency Provisions

- **Mitigation or Exemption of Punishments** should meet either of the below requirements:

“Minor violation and timely correction without any adverse consequences” provided by Article 27 of Administrative Penalty Law

or

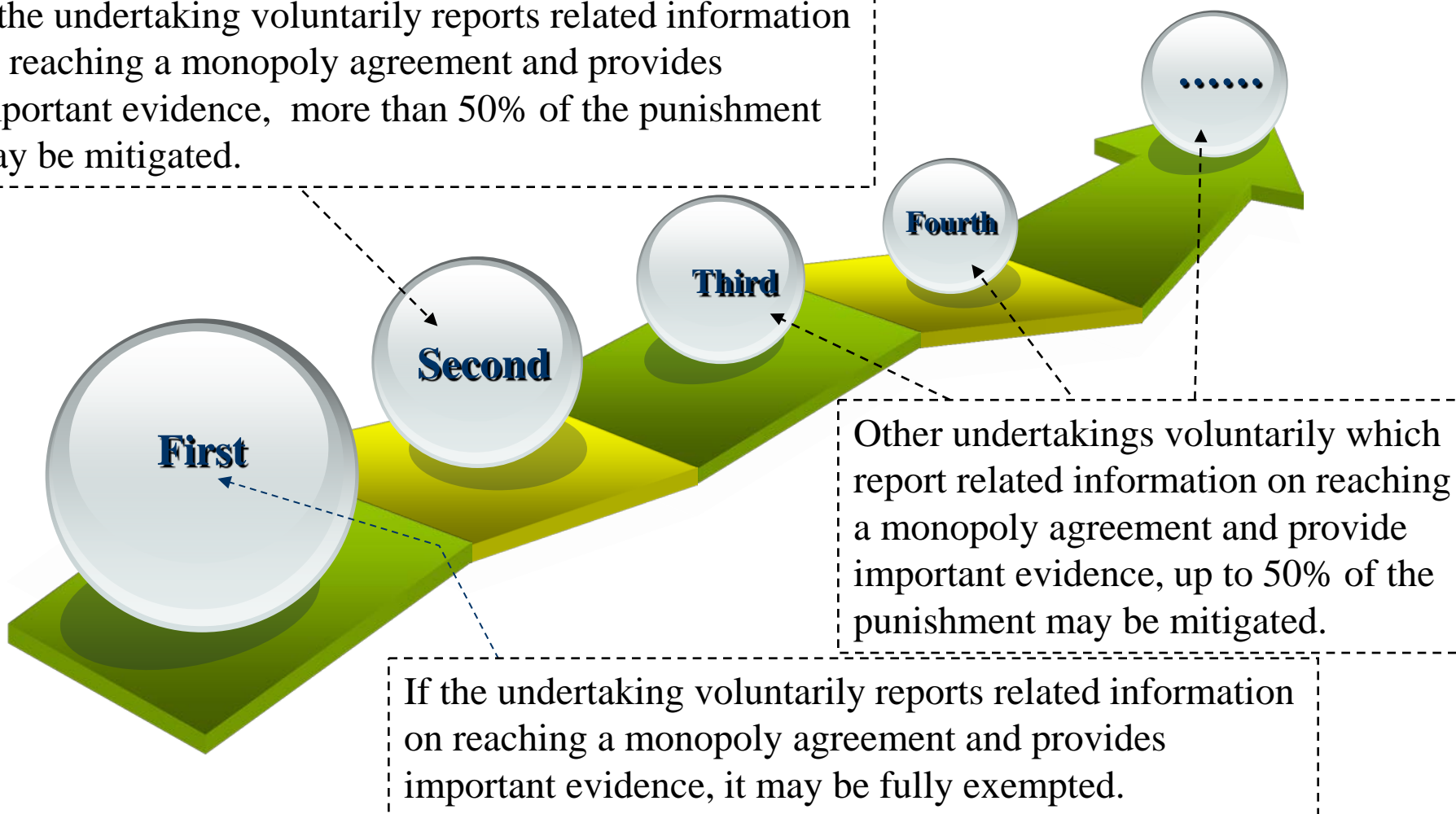
If the undertaking voluntarily reports related information on reaching a monopoly agreement and provides important evidence, anti-monopoly law enforcement may mitigate or exempt such undertaking's punishment in its discretion.



IV. Case Handling

Article 14 of “Anti-Price-Monopoly Administrative Law Enforcement Procedural Provisions” also sets forth leniency.

If the undertaking voluntarily reports related information on reaching a monopoly agreement and provides important evidence, more than 50% of the punishment may be mitigated.





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Thank you! Your comments or
advices are welcomed and
appreciated!