



United States Council for International Business

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International Chamber of Commerce (ICC)
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RE: USCIB Comments for Draft Anti-Monopoly Law June 22, 2006 Version

The U.S. Council for International Business (USCIB) was pleased to co-sponsor an industry panel in November 2005 to discuss China's draft anti-monopoly law (AML), bringing together U.S. industry and a visiting delegation from China, including representatives from the National People's Congress (NPC), Ministry of Commerce (MOFCOM), and the State Intellectual Property Office (SIPO). (See attached for Summary of November 2005 Meeting)

We welcomed the opportunity to meet with this delegation to discuss such an important piece of legislation and issue, and would like on this occasion to express our appreciation of some recent developments that we have gleaned from the June 22, 2006 version of the draft AML, including the reinstatement of the Administrative Monopolies Chapter. The inclusion of the articles prohibiting administrative monopolies will ensure that all undertakings doing business in China will not face obstacles to competition from administrative monopolies.

At the same time, our members have noted some areas of concern which include:

- Article 14 and the definition of dominant market position, which should be even clearer that, at most, there is a rebuttable presumption of market power based on market shares;
- Mergers and acquisitions (M&A) provisions, as embodied in Chapter 4, which encompass transactions involving assets that are not located in China at all, even if they may involve undertakings with significant presence in China. Such overbroad coverage will burden both the enforcement authority and undertakings with the need to notify many transactions that will not affect China;
- Enforcement Structure, and specifically the multi-tiered proposed structure, because as proposed, it is open to political influence from many directions, and therefore would not be conducive to the development of a coherent competition law policy or enforcement and the credibility of the law would be undermined;
- Provisions regarding the relationship between enforcement authorities and the jurisdiction of sectoral authorities, because the current draft leaves open the possibility that major sectors of the economy will not be subject to competition policy, but will continue to be protected from competition, negating much of the potential benefits of the AML; and
- Provisions regarding fines because a minimum penalty deprives the enforcers the full flexibility to make the punishment fit the crime; in the alternative, a minimum RMB penalty rather than a percentage of turnover minimum, would provide sufficient weight to penalties while giving the enforcers needed flexibility, but that minimum would need to be set at a level low enough to be fair in appropriate cases.

Once again, we greatly appreciate the invitation to comment on both the law and its implementation. Our membership looks forward to continued dialogue on this very important matter with the Chinese government as this process continues to unfold. In the interim, USCIB stands ready to meet to discuss our recommendations and concerns at greater length.