

China Specifies Safe Harbor Provision for Certain Vertical Agreements

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China's State Administration for Market Regulation (SAMR) recently revised its Provisions on Prohibiting Monopoly Agreements (禁止垄断协议规定) to specify when vertical agreements will be presumed legal under the Chinese Anti-Monopoly Law's safe harbor provision (the Safe Harbor).^[1] This revision, which will take effect on February 1, 2026, provides specific Safe Harbor criteria that distinguish between agreements to fix resale prices or set minimum resale price (i.e., RPM agreements) and all other vertical agreements.

BACKGROUND

The Chinese Anti-Monopoly Law generally prohibits vertical agreements that (1) fix resale prices, (2) set minimum resale prices, or (3) are otherwise prohibited by SAMR.^[2] However, the law also provides a safe harbor: A vertical agreement is not prohibited if the parties can prove that their market shares in the relevant market are lower than thresholds set by SAMR and meet other conditions required by SAMR.^[3]

Although this Safe Harbor was added to the Anti-Monopoly Law in 2022, its thresholds and other conditions had remained unspecified. In 2023, SAMR promulgated the Provisions on Prohibiting Monopoly Agreements that address various agreement-related issues but again only included a general placeholder provision for the Safe Harbor without specific thresholds and conditions, due to controversies among the stakeholders.^[4]

SAMR's revised Provisions now specify the thresholds and conditions for the Safe Harbor and provides procedural details about how the Safe Harbor operates.

THE NEW SAFE HARBOR STANDARDS

Under the revised Provisions on Prohibiting Monopoly Agreements, the Safe Harbor differentiates resale price restrictions from other vertical agreements.

- **Resale Price Restrictions:** For restrictions that fix resale prices or set minimum resale prices, the parties involved must have no more than a 5% share in each of the relevant markets (both upstream and downstream) in each year and less than 100 million yuan (approximately 14 million USD) of annual turnovers in the products subject to the agreement in each year.

- **All Other Vertical Agreements:** For other vertical agreements, the market share limit for each of the relevant markets (upstream and downstream) is 15% each year, and there is no requirement regarding annual turnover.^[5]

All parties to the agreement at issue must meet the requirements—if multiple buyers or sellers are involved, the market shares in the same relevant market and the turnovers of products involved in the agreement shall be calculated in the aggregate.^[6]

If SAMR sets special rules for certain industries or types of agreements, such special rules shall prevail.^[7] SAMR's interpretation of the revision only identifies the “Provisions on Prohibition of the Abuse of Intellectual Property to Exclude or Restrict Competition” as falling into this category, but SAMR may establish more special rules in the future.^[8]

EFFECTS OF THE SAFE HARBOR

The Safe Harbor is a presumption of legality for businesses to assert when their vertical agreements have been subject to investigation.^[9] Businesses under investigation must apply to the law enforcement agency and provide materials, including (1) information about the entry and performance of the agreement; (2) the ownership structures and control relationships of the parties and their business conditions in the relevant market; (3) annual market shares and product turnovers of every year during the agreement, with basis of calculation; and (4) other materials proving the agreement qualifies for the Safe Harbor.^[10]

After reviewing and verifying the materials, the law enforcement agency, which can be SAMR or a SAMR provincial bureau,^[11] may decide not to open a case or terminate an investigation. But the law enforcement agency may still conduct an investigation if an earlier decision is based on incomplete or untruthful information, or there is a material change of circumstances.^[12]

The Safe Harbor does not apply if there is evidence showing the agreement at issue eliminates or restricts competition, though the boundary of this exception remains to be clarified in practice.^[13]

IMPLICATIONS

By creating a presumption of legality, the Safe Harbor provides a potential defense for businesses under investigation and thus provides more certainty for businesses to arrange relationships with suppliers and customers. But businesses should be mindful that regulators may still investigate and potentially take action on an agreement they deem anticompetitive even though the parties meet the formal thresholds under the Safe Harbor.

[1] Provisions on Prohibiting Monopoly Agreements (禁止垄断协议规定), as revised by Order No. 111 of the State Administration for Market Regulation (Dec. 9, 2025).

[2] The Anti-Monopoly Law refers to prohibitions by the enforcement agency of the State Council, which is currently SAMR.

[3] Anti-Monopoly Law (反垄断法) (2022 revision) art. 18.

[4] Provisions on Prohibiting Monopoly Agreements (禁止垄断协议规定) (2023) art. 17; Announcement of the State Administration for Market Regulation on Public Solicitation of Comments on the “Provisions on Prohibition of Monopoly Agreements” (Revised Draft for Solicitation of Comments): Attachment 2 Drafting Notes (市场监管总局关于公开征求《禁止垄断协议规定 (修订草案征求意见稿)》意见的公告: 附件2关于《禁止垄断协议规定 (修订草案)》的说明) at 2.

[5] Provisions on Prohibiting Monopoly Agreements (2025 revision), *supra* note 1, art. 17; SAMR Anti-Monopoly Enforcement First Department, *Interpretation of Revision of Provisions on Prohibiting Monopoly Agreements* (《禁止垄断协议规定》修改解读), https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/xwxs/2025/art_3c28c2bfff22144d2bd36b913956f1159.html.

[6] Provisions on Prohibiting Monopoly Agreements (2025 revision), *supra* note 1, art. 17; SAMR Anti-Monopoly Enforcement First Department, *supra* note 5.

[7] Provisions on Prohibiting Monopoly Agreements (2025 revision), *supra* note 1, art. 17.

[8] SAMR Anti-Monopoly Enforcement First Department, *supra* note 5; Prohibition of the Abuse of Intellectual Property to Exclude or Restrict Competition (禁止滥用知识产权排除、限制竞争行为规定), Order No. 79 of SAMR (promulgated June 25, 2023).

[9] SAMR Anti-Monopoly Enforcement First Department, *supra* note 5.

[10] Provisions on Prohibiting Monopoly Agreements (2025 revision), *supra* note 1, art. 18.

[11] *Id.*, art. 2.

[12] *Id.* art. 19.

[13] *Id.*

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