

反垄断法明年8月起施行 垄断行业价格接受监控

十届全国人大常委会第二十九次会议30日下午完成各项议程后在北京人民大会堂闭幕。会议经表决,通过了反垄断法、突发事件应对法、就业促进法、修改后的动物防疫法和全国人大常委会关于修改城市房地产管理法的决定。

反垄断法将自2008年8月1日起施行,共分为8章57条,包括:总则、垄断协议、滥用市场支配地位、经营者集中、滥用行政权力排除、限制竞争、对涉嫌垄断行为的调查、法律责任和附则。

反垄断法明确规定,禁止大型国企借控制地位损害消费者利益,国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业,国家对经营者的经营行为及其商品和服务的价格依法实施监管和调控,维护消费者利益。

◎综合新华社报道



反垄断法规定,依法实行专营专卖的行业,国家对其经营者的经营行为及其商品和服务的价格依法实施监管和调控,维护消费者利益 资料图

禁止借垄断损害消费者利益

30日通过的反垄断法规定,对于关系国民经济命脉的行业,国家对其经营者合法经营活动予以保护,同时,禁止经营者借控制地位损害消费者利益。

反垄断法第七条明确规定,国有经济占控制地位的关系国民经济命脉和国家安全的行业以及依法实行专营专卖的行业,国家对其经营者的合法经营活动予以保护,并对经营者的经营行为及其商品和服务的价格依法实施监管和调控,维护消费者利益,促进技术进步。

法律同时规定,前款规定行业的经营者应当依法经营,诚实守信,严格自律,接受社会公众的监督,不得利用其控制地位或者专营专卖地位损害消费者利益。

七种行为属滥用市场支配地位

反垄断法规定,经营者的七种行为属经营者滥用市场支配地位行为。

法律第十七条规定,禁止具有市场支配地位的经营者从事下列滥用市场支配地位的行为:以不公平的高价销售商品或者以不公平的低价购买商品;没有正当理由,以低于成本的价格销售商品;没有正当理由,拒绝与交易相对人进行交易;没有正当理由,限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易;没有正当理由搭售商品,或者在交易时附加其他不合理的交易条件;没有正当理由,对条件相同的交易相对人在交易价格等交易条件上实行差别待遇;国务院反垄断执法机构认定的其他滥用市场支配地位的行为。

据全国人大常委会主任委员杨景宇介绍,本法所称市场支配地位,是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件,或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。

规定了三种垄断行为

反垄断法规定了三种垄断行为,即:经营者达成垄断协议;经营者滥用市场支配地位;具有或者可能具有排除、限制竞争效果的经营者集中。

根据法律规定,垄断协议是指排除、限制竞争的协议、决定或者其他协同行为。

法律所称市场支配地位,是指经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件,或者能够阻碍、影响其他经营者进入相关市场能力的市场地位。

经营者集中是指以下三种情形:经营者合并;经营者通过取得股权或者资产的方式取得对其他经营者的控制权;经营者通过合同等方式取得对其他经营者的控制权或者能够对其他经营者施加决定性影响。

据介绍,国际上反垄断法通常包括三大制度,即:禁止垄断协议、禁止滥用市场支配地位、控制经营者集中,我国在制定反垄断法时充分借鉴了国际经验。

七种情况可得豁免
根据30日通过的反垄断法,因技术进步而达成协议等七种情况可得到反垄断法相关条款的“豁免”。

根据规定,经营者能够证明达成的协议属于下列情形之一的,不适用于相关禁止条款:为改进技术、研究开发新产品;为提高产品质量、降低成本、增进效率,统一产品规格、标准或者实行专业化分工;为提高中小经营者经营效率,增强中小经营者竞争力的;为实现节约能源、保护环境、救灾救助等社会公共利益的;因经济不景气,为缓解销售量严重下降或者生产明显过剩的;为保障对外贸易和对外经济合作中的正当利益的;法律和国务院规定的其他情形。

实际生活中,一些经营者达成的某些协议虽然具有限制竞争的后果,但整体上有利于技术进步、经济发展和社会公共利益。

将设立反垄断委员会

反垄断法规定,国务院设立的反垄断委员会负责组织、协调、指导反垄断工作。

反垄断法第九条明确规定,国务院设立反垄断委员会,负责组织、协调、指导反垄断工作,履行以下五大职能:研究拟订有关竞争政策;组织调查、评估市场总体竞争状况,并发布评估报告;制定、发布反垄断指南;协调反垄断行政执法工作;国务院规定的其他职责。

此外还规定,国务院反垄断委员会的组成和工作规则由国务院规定。

法律第十条还规定,国务院规定的承担反垄断执法职责的机构(国务院反垄断执法机构)依照本法规定,负责反垄断执法工作。

全国人大常委会主任委员杨景宇说,全国人大常委会经同财政经济委员会和国务院法制办等部门研究认为,反垄断法工作是由国务院规定的反垄断执法机构负责的,国务院反垄断委员会只是履行“组织、协调、指导”反垄断工作职能的议事协调机构,并不行使行政权力、作出行政决定。

并不反对企业做大做强

全国人大常委会法制工作委员会经济法室主任黄建初30日在全国人大常委会新闻发布会上说,反垄断法并不反对企业做大做强。

黄建初说,我国由于市场发展程度不够,很多产业的产业集中度不够高。因为产业集中可以降低成本,提高效率,因此反垄断法本身并不反对企业做大做强,只是禁止优势企业滥用市场支配地位,排除、限制竞争,阻碍技术进步,损害消费者和其他经营者的合法权益。这实际上是很多国家的反垄断法通行的原则。

黄建初解释说,我国反垄断法的导向是既要防止经营者过度集中,形成垄断,同时又要有利于国内企业通过依法兼并做大做强,发展规模经济,提高产业集中度。“因为法律规定得很清楚,经营者可以通过公平竞争、自愿联合,依法实施集中,扩大经营规模,提高市场竞争能力。”黄建初说。

透视反垄断法

宗旨:

为了预防和制止垄断行为,保护市场公平竞争,提高经济运行效率,维护消费者利益和社会公共利益,促进社会主义市场经济健康发展。

要点:

反垄断法规定的垄断行为包括:经营者达成垄断协议;经营者滥用市场支配地位;具有或者可能具有排除、限制竞争效果的经营者集中。

反垄断法规定,具有市场支配地位的经营者,不得滥用市场支配地位,排除、限制竞争。

反垄断法明确,国务院设立反垄断委员会,负责组织、协调、指导反垄断工作,履行以下五大职能:研究拟订有关竞争政策;组织调查、评估市场总体竞争状况,并发布评估报告;制定、发布反垄断指南;协调反垄断行政执法工作;国务院规定的其他职责。

反垄断法还规定,国务院规定的承担反垄断执法职责的机构(国务院反垄断执法机构)依照本法规定,负责反垄断执法工作。

资料链接

反垄断法立法历程

1994年,由商务部负责起草和调研工作,被列入第八届全国人大常委会立法规划。

1998年,再次被列入第九届全国人大常委会立法规划。

2003年12月,全国人大常委会又将该法列入十届全国人大立法规划。

2004年,国务院将该法列入立法计划。

2005年2月,《反垄断法》又一次被全国人大常委会列入立法计划。

2005年12月,商务部称《反垄断法》修改审查已获较大进展。

2006年3月,政协委员呼吁尽快出台《反垄断法》。

2006年6月,反垄断法草案提交全国人大常委会首次审议。

2007年8月30日,十届全国人大常委会表决通过反垄断法草案。

新闻快评

利剑出鞘“斩断”市场垄断

十届全国人大常委会第二十九次会议30日下午表决通过的反垄断法将自明年8月1日起施行。它的出台是中国市场经济前进道路中的重要里程碑,必将有效维护消费者合法权益,成为保护公平竞争市场秩序的法律武器。

竞争是市场经济的灵魂和基本法则,但是,市场本身并不能保证竞争的自由和公平。虽然此前我国部分法律和行政法规中有一些反垄断方面的规定,但这些规定不全面,也不够系统,对垄断行为的处罚也不平衡。

由于反垄断法的缺失,垄断现象在我国当前经济生活中的表现尤为突出;以订立协议固定价格、限制产量、划分市场和滥用市场支配地位为特点的经济垄断屡禁不止,一些领域和行业利用行政权力并通过市场方式形成垄断的事件时有发生。

在一些国家,限制竞争的垄断行为被视为严重的犯罪。因为垄断的最大弊端在于,它扰乱市场的优胜劣汰规则。少数企业可凭借雄厚的经济实力对生产和市场进行控制,并在一定的市场领域内限制竞争行为,不但会影响经营者间的正常竞争,损害消费者的正当权益,而且,它还会破坏资源优化配置的市场运行机制,最终抑制经济发展的动力。

如今,在成熟的市场经济国家,反垄断法已成为国家基本的法律制度,

量、划分市场和滥用市场支配地位

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如今,在成熟的市场经济国家,反垄断法已成为国家基本的法律制度,

在有些国家,这部法律占据了经济法律体系的核心地位。我国市场经济发展到目前阶段,亟须建立一部反对垄断、保护竞争的法律。因为如果竞争机制遭到破坏,那么市场经济就无从谈起。

在这部刚刚诞生的法律中,50余项法律条款集中对目前社会中大量存在的垄断协议、滥用市场支配地位、经营者集中等三类行为作出规划,并对滥用行政权力排除、限制竞争的行政垄断作出规划,有效防范用行政权力抹杀市场竞争。

当然,一部法律的出台,并不能解决市场秩序中的所有问题,公平、竞争、有序的市场秩序的确立和维护,更多地还需要市场主体的共同努力。

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HSBC Securities Services (HSS) is the leading, preferred provider of custodian services in mainland China for foreign investors. HSSB China is able to provide custody services for Qualified Foreign Institutional Investors (QFIs), B-share foreign investors, domestic insurance companies' overseas and domestic investment, and commercial banks' overseas wealth management services for their customers, under the Qualified Domestic Institutional Investor (QDII) program. Our custodian business in mainland China is by far the largest in the country serving QFIs in the mainland A-share market, and foreign investors in the B-share market.

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Head of Business Development, HSBC Securities Services
证券业务部业务发展副经理(1名) 地点: 上海

Job Duties:

- To establish HSS sales strategy in China and lead a team in achievement of sales revenue targets and maintaining profitability.
- To manage Client Relationship, to provide advice, for negotiations, account administration & documentation, review legal agreements, service level agreements etc.
- To increase market awareness and awareness of HSS offering in China and enhance the Group's status as the preferred provider of HSS services.
- To work with other business units within HSS to minimize business synergies.
- To protect the interests of the Bank and the customers.
- To achieve agreed financial targets.
- To be fully aware of market developments.
- To train and motivate staff, manage direct reports in accordance with cost of the guidelines.

Job Requirements:

- Over 10 years working experience in the industry, Master Graduate is preferred.
- Experienced in communication with local financial institutions, banks, financial institutions (e.g. insurance, houses and asset management companies), and liaise with regulators (CBRC, CSRC, SAFE and MoFSS for insurance).
- Strong relationship building skills.
- Self-motivated and self-organised.
- Good language/presentation skills (both English and Mandarin).
- A team player.
- Can travel a lot as required.
- (Note: Junior position is available according to working experience)

Market Advisory Manager, HSBC Securities Services
证券业务部市场副经理(1名) 地点: 上海

Job Duties:

- To assist the HSS Business Support Manager to maintain close contact with regulators in direct contact with the market and provide investment advice and market research to clients. Our views could be sought by regulators as they consider introducing change which will impact HSS business.
- To be familiar with the market practice/regulatory products and participate in formal discussions held by regulators on regulatory practice/business issues.
- Self-motivated and self-organised.
- Good language/presentation skills (both English and Mandarin).
- A team player.
- Can travel a lot as required.

Job Requirements:

- Graduated from a university in the industry.
- Experienced in communication with local financial institutions (e.g. CBRC, CSRC, SAFE and MoFSS for insurance).
- Strong language/presentation skills (both English and Mandarin).
- Self-motivated.
- Good language/presentation skills (both English and Mandarin).
- Can travel a lot as required.

HSBC is an equal opportunity employer. We value the diversity of individuals, ideas, perspectives, insights and values, and what they bring to the workplace. Applications are welcome from all qualified candidates. (Data held by the Bank relating to employment applications will be kept confidential and used only for processing applications. Applicants who are not contacted within eight weeks may consider their application unsuccessful. The Bank will retain their applications for a maximum of one year and may refer suitable applicants to other vacancies within the Group.)

Product Development Officer, HSBC Securities Services

证券业务部产品开发主任(1名) 地点: 上海

Job Duties:

- To study on latest market changes and regulations and analyse possible business opportunities.
- To prepare research paper and feasibility report for new products.
- To communicate with regulators, authorities, and other market participants for product related issues.
- To prepare the application package and data for QFI by Control & Product Development team to coordinate the establishment of new business services.

Job Requirements:

- At least 2 years experience in banks or securities related businesses.
- Good knowledge in account as a banker.
- Good language skill (both English and Mandarin).
- Analytical thinking.
- Good analytical skills.
- Good communication and interpersonal skills.
- Good time management skill and willing to work under pressure.

Account Administration Officer, HSBC Securities Services

证券业务部会计主任(1名) 地点: 上海

Job Duties:

- To be responsible for supervising the operation of accounts held at the Stock Exchange and Central Depository by HSSB in respect of with clients, mainly foreign investors, on the collection of relevant data and ensure its timely and accuracy, and manage a team of administrative staff.
- To ensure the accuracy of the subscription, financial account opening and maintenance.
- To ensure monthly invoice and billing preparation and accurate reconciliation as well as timely distribution to clients.
- To ensure the accuracy of the reconciliation in terms of B-share account management as well as liaisons and always to manage a team of staff with placed responsibility with the Account Administration Officer.

Job Requirements:

- University Graduate, preferably in Finance and Accounting.
- At least 2 years of relevant experience in banking related businesses in China as well as foreign experience.
- Strong communication skills and a self-motivated attitude.
- Detail oriented and a team player.
- Good command of written and spoken English.

Senior Settlement Clerk, HSBC Securities Services

证券业务部高级清算员(5名) 地点: 上海

Job Duties:

- To monitor and ensure smooth operations settlement for both Shanghai & Shenzhen A-share before the deadline to ensure good trade settlement and ensure the accuracy of the settlement process and to be able to handle all the settlement process and to ensure the accuracy of the settlement process.
- To monitor the productivity and accuracy of junior settlement clerk and be able to handle all the settlement process and to ensure the accuracy of the settlement process.
- To work closely with overseas clients to ensure accurate settlement for non-archived and non-transaction, and to follow up on all the transactions as needed.
- To maintain close working relationship with overseas clients/central depositories, to handle and answer all the related enquiries and inquiries, and to contact clients and counterparties on a regular basis.
- To ensure the preparation and delivery of the daily settlement report and STP reports overseas counterparties with working days and weekends, and to assist customers in making settlement queries and SIP queries.
- To regularly review and monitor the settlement and compliance with Settlement and Settlement and Service Level Agreements.
- To ensure the accuracy of the settlement process and to ensure the accuracy of the settlement process.
- To monitor and ensure the smooth transfer between central depository PBOC and ensure good communication to ensure all related queries and funding report are made according to schedules.

Job Requirements:

- University graduate, working experience in Securities Company or Fund Management Company is a plus.
- Good command of spoken and written English, good IT skills.
- Good interpersonal and communication skills.
- Good time management and ability to work under pressure.