

Research on the Protection of Consumers' Rights and Interests in China's Antitrust Law from the Perspective of Experience Economy

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Abstract: As an important part of market competition law, antitrust law plays an important role in China's market regulation. However, due to the rapid renewal of the market development stage and the lack of experience in dealing with the infringement of consumers' rights and interests in the monopoly market, China's current anti-monopoly law can not effectively safeguard the legitimate rights and interests of every market consumer. From theoretical depth to practical measures, it constantly reflects the lack of consumer protection in the field of antitrust in China, which deviates from the trend that the world pays more and more attention to consumer protection. Combined with the experience and lessons of developed countries (regions), China's anti-monopoly law should not only change ideas on the basis of theory, but also comprehensively improve legislation, law enforcement and judicature. Advanced experience such as consumer private enforcement system, inversion of the burden of proof, punitive damages and so on should also be paid attention to and applied in practice. From the perspective of experience economy, strengthening and continuously improving the protection of consumers' rights and interests in the field of antitrust is not only an individual problem of today's consumers, but also an important measure related to the national economy and the people's livelihood.

Key words: experience economy; Antitrust law; Consumer rights; punitive damages

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Introduction

The historical evolution of social and economic development has changed from agricultural economy,

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industrial economy and service economy to today's "experience economy". Pine (2002) believes that experience refers to creating memorable activities around consumers with service props and commodities as the stage. Pay more attention to the perspective of consumer experience and consumer demand. Under the experience economy, enterprises can pass the unique "experience" to consumers through products, facilities, services and interactive processes, and through sensory marketing, emotional marketing, thinking marketing, action marketing and relationship marketing five ways to create a wonderful and unforgettable "experience" for consumers to improve customer satisfaction.

As the leading law of economic law, antitrust law undertakes the great mission of maintaining the order of market competition and promoting the development of market economy. However, as a closely related issue, the protection of consumers' rights and interests has been ignored because it is not very close to the legislative purpose of the anti-monopoly law. Although we have many competition laws to protect various problems under normal competition, the protection of consumers' rights and interests in the field of monopoly has not received due attention. China's existing anti-monopoly law regulates many problems in market operation in two major aspects: market monopoly in three aspects: monopoly agreement, abuse of market dominant position and business concentration, and administrative monopoly characterized by administrative compulsion. Nevertheless, China's anti-monopoly law is still a relatively young law. In the identification of litigation subject qualification and responsibility distribution of anti-monopoly, There are still many areas that need to be improved in terms of Punishment Rights and interests. The unclear punishment of rights and responsibilities not only makes the development of monopoly enterprises unscrupulous, but also seriously affects the self-interests of consumer groups. Nowadays, in the face of such an embarrassing situation, some of our scholars have begun to advocate the transformation of thinking mode. We should not put the protection of consumers' rights and interests in the monopoly field in a weak position. We should regard the protection of consumers' interests as an interest group that can not be ignored and give our consumers the right of recovery. This idea does not conflict with our protection of the market competition order. Only by effectively safeguarding the rights and interests of consumers in the monopoly field can we call a benign market competition order and be more clearly reflected in the implementation of the next specific measures.

1. The theoretical coincidence between China's anti-monopoly law and the protection of consumers' rights and interests

The competition between enterprises is accompanied by the rights and interests of consumers, just as both sides of things are unified in our huge market system. Therefore, simply reading the legal provisions and observing the legal facts, it is difficult for us to find the laws hidden in the competitive market. Only by changing the thinking mode of imprisonment can we find the value pursuit of consumer rights and interests in the anti-monopoly law in the cruel market competition.

1.1 From giving priority to competitive efficiency to adhering to consumer welfare

First, in terms of relevant monopoly agreements, according to paragraph 1 of Article 15 of China's anti-monopoly law, it can be seen that simply proving that the reached monopoly agreement or the formed monopoly organization does not hinder the operation of the relevant market can not exempt the punishment of its monopoly behavior from the anti-monopoly law. Only by connecting the anti-monopoly law with the interests of consumers can we truly comply with the anti-monopoly law. In order to protect market competition and safeguard the substantive connotation of consumers' legitimate rights and interests, China's anti-monopoly law can be more deeply understood.

Second, for the concentration of business operators, the efficiency defense legal system of concentration of business operators is to give business operators the right to prove that concentration of business operators can produce significant efficiency, and the benefits of this efficiency can offset or even exceed the possible effects of exclusion and restriction of competition caused by concentration of business operators. In fact, the concentration of business operators in the monopoly field is very common, because the concentration of business operators will not produce many negative consequences that are not conducive to market competition like the conclusion of monopoly agreement. On the contrary, the concentration of business operators will promote the survival of the superior among the market enterprise subjects to a certain extent and promote the progress and improvement of the market. Whether in judicial practice or relevant legal provisions, we will always find that the concentration of business operators for the interests of consumers is not the place that the anti-monopoly law needs to pay attention to. On the other hand, it also shows that the protection of consumers' interests has increasingly become a more important aspect of antitrust law. In other words, the core connotation of the anti-monopoly law can not simply improve the overall social interests and completely ignore the interest distribution within the market. Although such a deformed market can provide a good economic foundation for the overall social progress, if the ultimate beneficiaries of the interests can not be controlled, the increase or decrease of the overall market interests is meaningless for every consumer with personal feelings.

1.2 From the conception of the overall interests of the market to the direct protection of the interests of consumers

For a competitive market, what consumers need is to ensure whether their rights can be implemented quickly and effectively. However, for a monopoly market, whether to protect the implementation of consumer rights is no longer the primary problem. Because, due to the lack of necessary and orderly competition, consumers in the monopoly market have lost many opportunities and means of choice. Therefore, simply increasing the obligations of monopoly enterprises can not fundamentally solve the fundamental problem of protecting the interests of consumers. It has become particularly important to change the value orientation of the monopoly market and give the protection of consumers' interests, so as to promote market competition and enhance market vitality.

However, for the protection of consumers' interests, direct regulations are likely to produce a series of

avoidance consequences and affect market competition. But similarly, this is also an unavoidable and urgent problem to be solved. If we improve efficiency and increase total social welfare without considering the distribution of interests between enterprises and consumers in the market, this is the so-called "overall interests of the market". The limitation of doing so is that it must ignore the distribution of consumers' interests in the whole monopoly market and can not really obtain the benefits of market competition. Therefore, the author would like to explain the relationship between consumers in competition in several specific aspects:

First of all, as consumers are common participants in market competition, they are more representative and universal than monopoly enterprises. It can also be concluded that consumers can better represent the general interests of a competitive market, which is more in line with the reasonable connotation of the anti-monopoly law to protect the competitive order.

Secondly, judge whether the market monopoly behavior is reasonable and legal only by the increase or decrease of the overall interests of the market. The way to draw a conclusion seems single, which is contrary to the rich value connotation of the anti-monopoly law. Hayek has long said: "the formulation of an economic plan must involve the conflict or competition of multiple objectives, which reflects the different needs of different people." The market under mutual connection and influence is a complete and competitive market.

Thirdly, the direct protection of consumers' rights is more direct and effective than the "preferential protection" of consumers. Compared with the preferential protection mode of the consumer protection law, in the field of antitrust, if the rights of consumers do not have substantive strong rights, it is impossible to fundamentally change the control position of monopoly enterprises. At the same time, in order to protect consumers, we need not only to conduct in-depth investigation on monopoly enterprises, but also to conduct in-depth research on the damaged interests of consumers. Only in this way can we draw a reliable conclusion.

2. Current situation and deficiency of consumer rights and interests protection in China's anti-monopoly law

There are two main forms of monopoly in China's anti-monopoly law, one is administrative monopoly and the other is economic monopoly. There are relevant exemption provisions under monopoly measures. Among the few legal provisions, according to the two principles of "itself illegal" and "reasonable law", the author will analyze them one by one in order to relatively clarify the current situation and deficiencies of consumer rights and interests protection in the anti-monopoly law.

2.1 Protection of consumers' rights and interests in the regulation of monopoly agreement

According to the provisions of Articles 13 and 14 of China's anti monopoly law, monopoly agreement is also known as restrictive competition agreement. In China, it refers to the market coordination agreement between the same industry or between upstream and downstream enterprises with

supply and marketing relationship in the monopoly market to eliminate and restrict competition and seek illegitimate interests. With the continuous development of industry and commerce, enterprise competition has become the main melody of the market. Following competition is bound to be a development trend of scouring the sand. However, violating the competition order will also damage the legitimate rights and interests of consumers.

The protection of consumers' rights and interests in the anti-monopoly law can be said to be of the nature of a "Declaration". For such similar or related behaviors as limiting the quantity and price of goods, limiting the technological innovation of goods and boycotting transactions in the market, it not only increases the burden of consumers, but also limits consumers' right to choose and know. At the same time, the price alliance between manufacturers and dealers, as upstream and downstream enterprises, has also achieved the goal of crowding out and suppressing competitors to a great extent, resulting in serious consequences of restricting market competition. Now it seems that the attitude of anti-monopoly law towards horizontal monopoly agreement and vertical monopoly agreement is basically the same, that is, the monopoly agreement itself is full of discriminatory price and differentiation, so it must be punished to protect the legitimate rights and interests of consumers. However, in a few legal provisions, what can be found is only an attitude, but there are few strong measures.

2.2. Protection of consumers' rights and interests in the regulation of abusing market dominant position

The market is always a place full of competition. Enterprises compare and compete with each other in all aspects with their unique advantages. When an enterprise obtains the right to speak in the industry, it will have a great impact on the whole market. If this impact is explained according to the principle of rationality, as long as there is no "abuse" in the use of market dominance, it will not be prohibited and limited by the anti-monopoly law.

So, what is "abuse" of market dominance? Leaving aside some speculative technical provisions in the legal provisions, it is actually a relevant concept relative to consumers for enterprises to abuse their dominant position in the market. Some scholars have divided the abuse of market dominance into two categories: exploitative abuse and exclusive abuse. Whether it is unreasonable tying goods, price discrimination, or commodity pricing without justifiable reasons, refusing to trade and so on, the core is to hinder the market competition order in the market, and then directly damage the legitimate rights and interests of consumers. In fact, in the short term, consumers may get some benefits from the market competition between enterprises. However, in the long run, when enterprises grasp the dominant position in the industry, enterprises are likely to recover the benefits they paid in order to seize the market support position in various ways. In the absence of full competition, the predatory pricing that dominates enterprises will become more serious. Such benefits are constantly transferred among enterprises, and finally the transaction costs and other additional costs are transferred to consumers. In order to safeguard the legitimate rights and interests of consumers, China's anti-monopoly law not only prohibits such

similar acts, but also determines various influencing factors in relevant markets on the basis of full respect for consumers, For example, the determination of the price, quantity and cost of alternative goods. While ensuring the restriction and punishment of illegal acts of monopoly enterprises, we should ensure that consumption will not be affected too much, so that its adverse aspects will be weakened layer by layer in the process of transmission.

2.3 Protection of consumers' rights and interests in the regulation of business concentration

In order to ensure that enterprises will not lag behind people in the market competition, the mutual merger and reorganization between enterprises is also common in the real market environment. Because only in this way can enterprises rely on group advantages to gain a corner in the fierce market competition. As in the current electric vehicle sales market, the "leaders" of various automobile enterprises are ready to take a share in this emerging industry, but the basic work of building charging piles and laying cables is a difficult problem for automobile enterprises. Because no enterprise can avoid the problem of less charging equipment and fragmentation in reality, but at the same time, if automobile enterprises can not stand out in such cruel market competition, they will be washed away by other competition in this market. Today's market forces enterprises to cooperate and divide labor, and improve their business philosophy in clear and professional peers, so that they can survive and even develop in such a bad market competition.

There are three main situations in the concentration of business operators stipulated in China's Anti-monopoly Law: the merger between business operators; A business operator obtains control over other business operators by acquiring equity or assets; Business operators obtain control over other business operators through contracts or can exert decisive influence on other business operators. As mentioned above, business concentration has its advantages. However, as the premise of monopoly, the resource integration between monopoly enterprises is largely for the survival and development of their own enterprises. In the face of the protection of consumers' interests, enterprises will not pay too much attention to it. Therefore, before the concentration of enterprises, the functional departments of the state require the enterprises that need to be merged to declare and review in advance, and it is not allowed to make a supplementary report at any time. After passing the review, the enterprise merger can be carried out. Such regulations not only maintain the legal procedures of merger between enterprises, but also help consumers directly supervise the centralized behavior of enterprises.

2.4 Protection of consumers' rights and interests in the regulation of administrative monopoly

Facing the increasing complexity of market competition, the problems faced by antitrust law are becoming more and more abundant. China's anti-monopoly law makes relevant provisions from two aspects: specific administrative act and abstract administrative act. The traditional market monopoly behavior is only limited to the competition behavior between enterprises, while today's administrative monopoly behavior has become more and more harmful with the intervention of government functional departments. In essence, the reason for administrative monopoly is the unclear positioning of market functions in the process of market transformation. What kind of relationship exists between the

government and the market and how to deal with it, many local governments and their departments do not have any clear concept, and some even stay in the era of planned economy. Such lagging thinking mode is bound to be incompatible with today's market economy. Administrative monopoly, whether it is local barriers, technical barriers, circulation barriers or "red headed document" local policies, is far more harmful to consumers than pure enterprise competition.

Professor Zheng Pengcheng, a Chinese scholar, has a very unique opinion in the discussion of administrative monopoly behavior. He believes that the harm degree of administrative monopoly behavior is much higher than that caused by other monopoly behaviors. In the monopoly behavior of administrative bank, the analysis of its monopoly subject is the most important. "From the legislative level, there are three cases: the first case clearly defines the public institutions with administrative functions as the subject of administrative monopoly; the second case is to treat the public institutions as public enterprises; the third case is to treat the public institutions or enterprises with administrative functions neither as administrative organs nor as public institutions, but as a new subject independent of the two." The author agrees with Professor Zheng's view and treats its monopoly subject as a public enterprise.

In a word, the monopoly behavior of the administrative bank infringes not only the current market competition order, but also the authority of the government departments. In today's society, the legitimate rights and interests of consumers can not compete with monopoly enterprises, let alone face the powerful right of government departments. Therefore, the negative evaluation of administrative monopoly in China's anti-monopoly law is a great progress compared with the traditional civil law. It not only protects the national judicial authority, but also ensures the legal basis and legal protection of consumers in this regard, which is of great significance.

4.The current situation and deficiency of consumer rights and interests protection in China's anti-monopoly justice

China's anti-monopoly law has indeed made remarkable contributions in breaking the market monopoly law. There are more and more anti-monopoly cases, higher and higher punitive fines, more and more popular anti-monopoly thinking and the objective achievements of denial. With the mark of the times, however, today's market competition is more and more efficient and rich, which is not only an inevitable problem in China's anti-monopoly field, but also a growing problem, especially the protection of consumers' rights and interests in the anti-monopoly field. The author hopes to deeply analyze some disadvantages of China's anti-monopoly law from the whole process of law formulation and implementation, and play a guiding role.

4.1 Provisions on the court with jurisdiction over litigation

Articles 3, 4 and 5 of the provisions stipulate the level, region and transfer of jurisdiction of the anti-monopoly law. In terms of Hierarchical Jurisdiction, it is no longer only the intermediate and higher

courts that have the qualification to be sued, but also some grass-roots people's courts have the conditions to be sued under the designation of the Supreme Court. Such provisions not only put aside the influence of money amount, but also relax the threshold of prosecution to a certain extent, which is in line with the objective reality of more and more antitrust cases. With the importance of the case, the most suitable court is found to carry out litigation. On the one hand, it alleviates the litigation pressure of the intermediate court. On the other hand, some relatively simple litigation cases are quickly solved in the lower level courts; However, in terms of regional jurisdiction, the author believes that some regional concepts in the provisions need to be further clarified and can not copy the relevant provisions of the civil procedure law and its judicial interpretation. According to the point of view of the civil procedure law, the place of filing a lawsuit can be the defendant's domicile or the place of tort or the place where the result occurs. The defendant's domicile belongs to the concept of person. Of course, the region can be easily found by determining the registration place or main business place of the enterprise. However, combined with the particularity of monopoly behavior, it is not easy to determine the standard of the place of infringement or the place where the result occurs. As for the merger and acquisition of multinational corporations, if the scope of the place of conduct is too wide for the concentration of business operators, the regional scope determined during the prosecution will be too scattered, which increases the unnecessary burden for the antitrust litigation which is itself full of complexity and difficulty. At the same time, it is likely to become an interface for mutual delay and mutual inducement in the litigation. Therefore, we must not set the regional jurisdiction of antitrust cases too broad, which will affect the smooth progress of antitrust litigation cases.

4.2 Provisions on the mechanism of class action

Like other scholars, the author believes that the most important thing is to strongly hope that the anti-monopoly law will introduce the group litigation mechanism. No matter what kind of commitment a monopoly enterprise makes, it is a huge and irresistible subject for every ordinary consumer. In the field of judicial practice, although the current law has stipulated the mechanism of public interest litigation, there are almost no consumer group litigation in the field of antitrust. There are many reasons for this. The most important one is that the anti-monopoly law does not give ordinary consumers a legal qualification of litigation subject. At the same time, for consumers, although they have received a large loss of interests when purchasing goods, if they realize their rights through a complex and long litigation mechanism, consumers will weigh the gains and losses. Obviously, it is very difficult for a professional public interest litigation group to adhere to the complex and long antitrust litigation, let alone for every ordinary consumer, which is by no means within the range that every ordinary consumer can bear. Therefore, it is of great significance to introduce consumer group litigation in the field of antitrust, which not only reduces the difficulty and burden of accepting cases in the court, but also reduces the repeated waste of judicial resources to a great extent. Consumers also better achieve the important purpose of safeguarding their legitimate rights by combining their own strength and relying on the professional knowledge of

public interest litigation organizations.

5.Perfection of consumer protection in China's antitrust law

5.1. Improve the anti-monopoly legislation with consumer rights and interests as the core

Antitrust is an important behavior throughout the market competition activities, in which the legislative activities should fundamentally determine the core position of consumers' rights and interests in order to truly maintain the market competition relationship in the monopoly field. Therefore, for anti-monopoly legislation, it is the beginning of all anti-monopoly activities and the foundation of the protection of consumers' rights and interests.

5.1.1. Establish the legislative concept based on the protection of consumers' rights and interests

Looking at the anti-monopoly legislation all over the world, its essence is to balance each other between safeguarding market competition and the legitimate rights and interests of consumers. However, it is not difficult to find that the anti-monopoly legislation in the world has begun to pay attention to the protection of consumers' rights and interests without exception, and began to tilt in this direction. China's anti-monopoly law has been revised for many times before and after, and has also experienced various changes in legal thinking, but it finally

The foothold of is still to maintain the competitive relationship and protect the legitimate rights and interests of consumers. However, from the perspective of the provisions of China's anti-monopoly law, the protection of consumers as an indirect purpose has not really been in the judicial practice of China's anti-monopoly law. We have paid practical attention to the of. Therefore, establishing the legislative concept based on the protection of consumers' rights and interests has become more practical significance. Specifically, it is mainly reflected in three aspects.

First, for the anti-monopoly law, we should reshape the relevant systems for the protection of consumers' rights and interests. Whether consumers are regarded as vulnerable groups or consumer groups with common interests, the protection of consumers has always been an important part of the anti-monopoly law. We should put the improvement of consumers' welfare and protection of rights and interests in the first place of the anti-monopoly legal adjudication standard, and take whether consumers are effectively and directly protected as the standard of the exemption system of monopoly enterprises. To form such a change of legal system, the first thing is to fundamentally change the value orientation of anti-monopoly law. It can no longer be limited to the traditional concepts of "weak protection" and "competitive efficiency", but pay attention to the group interests and welfare impact of consumers, so as to provide legal basis for consumers to provide direct and effective power support.

Second, pay attention to the regulation and integration of the existing legal system, (anti monopoly law) and((effective convergence of the law on the protection of consumers' rights and interests. The protection of consumers' rights and interests should not be unilateral, but should be diversified. In China's legal system at this stage, the provisions on the protection of consumers' rights and interests are

scattered in various legal provisions, lacking a certain regularity and unity. Therefore, Chinese legislators need to pay attention to the legal integration in the legislative stage and consider legal provisions from as many angles as possible so that it has regularity and unity fundamentally. This not only facilitates the way for consumers to protect their rights, but also protects the legitimate rights and interests of consumers at a deeper level. As for the existing anti-monopoly law and the consumer law and the law on the protection of rights and interests, the author believes that instead of spending time to revise the overlapping provisions between the two laws, it is better to take the protection of the rights and interests of consumers as the starting point and foothold, explain the internal relationship between the two laws from the existing legal provisions, and take the protection of the rights and interests of consumers as the bridge to build a general pattern of the protection of the rights and interests of consumers in China.

Third, achieve progressive levels and improve local legislative provisions. For local governments, we should pay more attention to the relevant provisions of anti-monopoly legislation. It is not only because the influence of antitrust enterprises is directly related to local finance and taxation, but also because the place is the beginning of all monopoly activities and lacks necessary legal restrictions, which is a disaster full of injustice and high price for every consumer. Although antitrust is a major issue related to the national economic market, local governments should still clarify their own authority and protect a series of legitimate rights and interests such as consumers' right to fair trade.

5.1.2. Comprehensively improve the liability system and introduce the punitive compensation mechanism

If the provisions of China's anti-monopoly system are not applied in other relevant legal fields, they are not included in China's anti-monopoly system. However, by investigating the relevant systems outside the territory, we will find that China should not only have differences in the concept of legal system, but also have a certain gap in the specific practical system. Therefore, further improving the liability system and introducing punitive compensation mechanism will play a more important role in protecting the rights and interests of consumers in the field of antitrust.

Firstly, for civil liability, we should broaden the liability of monopoly enterprises in China's anti-monopoly law on the basis of repositioning the principle of imputation, and focus on protecting the legitimate rights and interests of consumers. In the field of antitrust, protecting the legitimate rights and interests of consumers is different from general civil liability. The burden of proof on consumers should be reduced, and the determination of monopoly behavior should be based on no fault liability, so as to protect the legitimate rights and interests of consumers. The liability for damages can not mechanically copy the relevant compensation provisions in the civil law, and introduce the "triple compensation system" to increase the cost of monopoly enterprises and enhance the ability of consumers to protect their rights. China's current "consumer protection law" has also clearly stipulated the triple compensation system. This punitive compensation system, which seems to increase the burden of enterprises, will not damage the long-term interests of enterprises in essence. Imagine that in order to improve their

competitiveness, enterprises strive to improve technology and product quality, and the legitimate rights and interests of consumers are effectively protected, which will eventually bring rich returns to enterprises. Such a virtuous cycle and maintenance of market competition, but also for the protection of consumers' rights to the actual level, not just a declarative statement.

Secondly, for administrative responsibility, the key is to set up a responsibility system in line with China's reality. In China, both administrative monopoly and anti-monopoly institutions have a deep brand of administrative centralism. How to define the nature and punishment of monopoly behavior fairly and reasonably needs to be improved and considered as a whole. The author believes that it is difficult to deter monopoly behavior and maintain the order of market competition by simply punishing monopoly enterprises without punishing the implementers who make decisions. At the same time, before double punishment, we should clarify the difference between administrative responsibility and civil and criminal responsibility, so as to further improve administrative responsibility and safeguard the rights and interests of consumers. Further increase the types of anti-monopoly measures in China, help law enforcement departments punish monopoly behaviors in a more convenient and efficient way, and maintain market order.

6. Conclusion

In the unfair market environment, consumers can not only rely on this administrative force to relieve their legitimate rights and interests, but also need a practical and effective power to check and balance the dominant position of monopoly market operators. In reality, an illegal act of the operator has caused losses to a wide range of consumers. However, it seems insignificant to spread the losses to each consumer. Compared with the time and energy paid through litigation, more people choose to accept it. Over time, functional departments have formed to focus on investigating the market damage caused by monopoly enterprises, while ignoring the adverse impact on every consumer. But it is precisely these neglected consumer rights and interests that lead to one of the reasons why monopoly enterprises can make high profits at very little cost. Therefore, the first way to get rid of the disadvantages of monopoly is to pay attention to the consumer, and the fundamental way to pay attention to the consumer is to give power. Only when consumers really have their own strong voice in all aspects from legislation to law enforcement and then to justice, can they protect their legitimate rights and interests and severely deter the monopoly behavior of monopoly enterprises.

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