

The Protection of Consumers' Rights and Interests under China's Anti-Monopoly Law

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Abstract

In today's market economy, where opposition to monopolies has gradually become the basic social consensus, the promulgation and implementation of the Anti-Monopoly Law has played an important role in effectively preventing and combating monopolies, promoting fair competition in the social market order, improving the efficiency of the market economy, safeguarding the legitimate rights and interests of consumers and promoting the healthy and orderly development of the market economy under the socialist rule of law with special characteristics. It plays an important guiding role. The consumer is not a direct party to the competitive relationship in the market, but as one of the terminal subjects of the economic chain, his interests are likely to be damaged in various aspects, and it is necessary to protect him through legal means. The impact of our anti-monopoly law on the protection of consumer rights and interests is discussed here in order to promote a better understanding of the nature and role of anti-monopoly law.

Keywords

Socialist Market Economy; Market Competition and Monopoly; Anti-Monopoly; Protection of Consumer Rights and Interests.

1. Introduction

Since the reform and opening up of China in the 1970s, the country has been promoting the development of a socialist market economy and more and more subjects have had the opportunity to participate in market activities, one of which is the consumer group. As we all know, production, exchange, distribution and consumption are the four segments of the total process of social production, of which the consumer segment is the digestive end of all the products produced in the first segment. According to the economic theory of value, the value of a commodity can only be realised once it has been exchanged, in other words, the value of a commodity can only be realised once a part of the market has purchased it as a consumer. In other words, the value of a commodity can only be realised if some of the market players purchase it as consumers. It follows that consumers are an inevitable and crucial group in the development of a market economy and that the effective protection of their interests is therefore an important issue.

2. Problems of Antitrust Law on Consumer Rights and Interests

The protection of the interests of consumer groups can be achieved in a number of ways. At the national level, there is the Consumer Rights Protection Act, which provides legal support for the protection of consumers' rights and other interests, and consumers themselves can exercise their right of oversight by reporting to the relevant authorities, such as local consumer associations and government departments. On this basis, we are seeking external support for

the protection of this important interest in more ways than one. Different laws regulate different social relations, and when it comes to the more economic aspects of society, such as the market economy, we naturally look to economic law. However, there is a vast body of law under economic law, and here I will focus on antitrust law and briefly discuss its function in relation to the protection of consumer rights and interests.

Firstly, the following is a further discussion of the central keyword, consumer rights. In 1985, the United Nations draft guidelines for consumer protection, which were considered and adopted by the UN, set out The draft Code of Consumer Protection, adopted by the United Nations in 1985, sets out six fundamental rights that consumers should enjoy in accordance with the law, such as the right to be free from any harm to healthy and safe food, to be educated in good consumer ethics, to have access to adequate consumer information and to be free to make their own legitimate choices. The Law on the Protection of the Rights and Interests of Consumers in China provides for the protection of nine types of rights, including the right to safe products, the right to know the truth about goods, the right to fair and equitable transactions and the right to compensation for damages. In summary, the protection of the basic rights of the consumer is in fact a protection of the basic human rights of the individual consumer, mainly the right to life. The fact that the core of the protection is closely linked to human rights is also sufficient to demonstrate the need to protect the rights and interests of consumers.

The motivation for the protection of consumer rights has evolved over a period of time. The definition of individual consumer ownership at the level of national law and policy refers to whether or not the group of consumers is a group of natural persons who buy, use or receive consumer services on their own in order to satisfy the needs of everyday life. Although we are at a late stage in the development of the theory of a democratic market economy in the real sense of the modern word, consumers, like in other countries with a long history of market economy, have always existed in society. If consumers have existed for a long time and in large numbers, why did the protection of their rights and the formalisation of the relevant laws only begin to take off at a certain point? The answer to this question is inevitably oriented towards certain historical events - the development of objective realities that influence people's thinking. The development of awareness of consumer protection should be directly linked to the violation of consumer rights, which has been a common occurrence since ancient times, but the development of a market economy takes time to develop, and it takes time to draw attention to consumer protection. Initially, due to the size of the market economy and the size of the consumer base, consumer rights violations were isolated and sporadic, compared to other pressing social issues, so for a long time there was a gap in the legislative practice of consumer protection. It was not until the 1990s that the consumer protection movement took off in the United States of America. In 1891, the New York Consumers Association was officially incorporated in the United States, the first Chinese consumer protection association in the world at that time, and consumer protection organisations blossomed throughout the Chinese territories of the United States. This was the first national consumer protection organisation in the world, and against the backdrop of the United States' growing global influence, this practice in the United States had already sown the seeds of the worldwide consumer protection boom that followed. In 1960, for example, the China-China International Food Consumer Protection Organisation was established with the participation of five Chinese leaders from the United States, Australia, the Netherlands, the United Kingdom and the Netherlands. The combined influence of these organisations led to a global consumer movement, and in the 1960s, this global consumer movement led to the introduction of legislation to protect the rights and interests of consumers in various countries around the world.

3. Causes of Antitrust Law Problems on Consumer Rights and Interests

The need to protect consumer rights is not a moot point, it is deeply rooted in reality. The reasons for the protection of consumer rights can be broadly divided into two categories. On the one hand, there are inevitable internal weaknesses within the consumer community itself. In particular, when faced with the huge number of goods and services available on the market, there is a large number of consumers who are unable to distinguish between good and bad products due to their knowledge and professionalism, and who are characterised by fragmentation and a lack of self-protection. This is often followed by a vicious circle of negative damage, as some consumers are afraid or unwilling to take legal action even when their interests have been clearly damaged.

On the other hand, the inadequate development of the current market economy is one of the most important reasons for the protection of consumer rights. This can be directly linked to the occurrence of monopolies, which will be discussed next. The market economy, with competition at its core, is prone to market failures while optimising the allocation of resources. In this state, the type and characteristics of the products offered by the various operators are subject to change at any time, and the differences in the products on the market become more and more obvious. Therefore, in the case of intensified competition, the capital invested by these more specialised operators in the markets and product areas in which they mainly invest will accumulate with the development of time, and the scale of production will also expand accordingly. Up to this point, the production and operation in a limited area is already in a state where it is extremely easy to transform into monopolistic behaviour, and when these original specialised operators have completed their "occupation" of different small areas, the monopoly resources they have acquired can support them in a new round of capital accumulation and expansion, and they are driven by their interests to challenge the completion of their occupation of larger areas. The process of economic expansion is also the process by which they achieve economic monopoly. Market regulation itself is flawed and unable to prevent and control this phenomenon spontaneously, hence the term market failure. It is for these two reasons that monopolies often occur in our economic life. For example, the joint price increase of instant noodle manufacturers in 2007 and, more recently, the price spike in the supply of masks during the New Crown pneumonia epidemic were also the result of short-term monopolies caused by the hoarding and other irrational business policies of some businesses.

The different legal norms we have enacted are used to regulate different social relations, and the monopolistic behaviour in the market, which is controlled and prohibited by the anti-monopoly law, is a vicious profit-seeking behaviour made by market players. It is normal for market players to seek profits, but the practice of monopolistic behaviour has clearly exceeded the limits of the free exercise of the rights of market players to obtain expected benefits, and such behaviour has clearly damaged the market order. From the perspective of market competition, a healthy and normal market development should be one in which all operators compete fairly, follow market guidelines together and pursue their interests reasonably, but when monopolistic behaviour emerges, a certain industry or field of the market enters a state of being monopolised, in which a single monopoly or several oligopolies join together to maliciously manipulate market prices and prevent free market competition. In a market economy, once sufficient and reasonable market competition is lacking, there are many adverse effects.

Firstly, this will directly affect the dynamism of the market itself. In a state of limited competition, enterprises will be more likely to jump into the "comfort zone" and not actively optimise their products and improve the quality of their services, often resulting in inflated prices for finished products and values that do not live up to their names. Secondly, in a

monopoly situation, control over price fluctuations of the relevant goods is often unreasonably transferred - from the hands of consumers to those of the monopolistic enterprise. In a healthy free competitive market environment, the operators tend to compete by increasing the profitability of their products, making full use of surplus value, offering consumers lower prices for their products that they are more willing to accept by reducing their costs, and at the same time, guaranteeing the quality of their products, and really putting a large number of good quality and inexpensive goods on the market. Thirdly, when an industry or sector of the market is monopolised, consumers' freedom of choice is greatly restricted. The diversified competition model brings an abundance of good quality and inexpensive goods, providing consumers with a wide range of choices, but once the relevant industry or field is monopolised, consumers can only choose a limited number of goods provided by the monopolist, and if this state of affairs persists for a long time, the price and quality of goods often change very unreasonably, and the value mechanism will be distorted as a result. -Where monopoly prices do not reflect changes in market supply and demand, consumers are often misled by the inaccurate information obtained from monopoly prices, making it difficult for them to make the right decisions.

In a market economy, production and consumption are interdependent and the absence of either will make it difficult to sustain the development of the other. Consumer protection is an indispensable and important part of the process of social and economic reproduction and development in China. Only by giving adequate and reasonable economic protection to the protection of the legitimate rights and interests of consumers can the various consumer psychological desires and needs of consumers be truly and effectively stimulated, thus effectively stimulating the effective supply of social products and public services in all aspects of social production and ultimately effectively promoting the healthy development of the social market economy. The market monopoly, however, completely denies the important leading role of protecting the legitimate rights and interests of consumers in the process of social market competition, and constitutes a serious damage to the stability of the social order of social and economic reproduction in China. Obviously, monopolies are extremely detrimental to the development of the market economy and the exercise of consumers' rights. Therefore, the protection of consumers' rights and interests by means of anti-monopoly law is supported by the doctrinal basis in the sense of economic law.

The Anti-Monopoly Law is a law on the operation of the market economy, which was enacted in order to effectively prevent unreasonable violations of monopolistic competition in the commercial market. However, this part of the law is still very much concerned with the basic protection of the economic rights and interests of consumers, and there are various kinds of protection of the economic rights and interests of consumers. The protection of the consumer's right to choose goods and to trade freely. As far as its nature is concerned, it will be distinguished from the Consumer Protection Act.

The Protection of Consumer Rights and Interests Act protects several specific rights described above with the direct purpose of guaranteeing the realisation of the consumer's right to autonomy of intent, in other words, the Act wishes to protect the right to freedom of contract and the actual state of the consumer, and this protection of consumer rights and interests is a direct protection with a short-term character, as well as a protection of specific consumer rights and interests with a clear orientation, often It is a one-off protection of the specific rights and interests of a particular consumer in the course of a specific transaction. On the contrary, the Antimonopoly Law is not directly related to the protection of the rights and interests of consumers, but rather to the protection of the free competitive market environment and the idealized improvement of economic efficiency, which is first expected to be achieved through the regulation of the market order after the monopoly is stopped, and then to the state of free competition in the market after the regulation of the market order, and after the freedom of

competition is achieved. The Anti-Monopoly Law protects the rights and interests of consumers indirectly in this interlocking process.

A typology can be made of the commercial monopolies currently prevailing in the international market, which can be divided into two main categories: administrative economic commercial monopolies and other administrative economic monopolies. The economic monopoly refers to a number of market operators or economic consortia formed by other operators who originally compete on a normal and equal footing with other economic operators in order to retain absolute dominance over other economic forces and advantages for a long period of time, and choose to monopolise other market economies by concentrating other economic forces or by combining other economic forces. The main function of monopoly domination is to act as a constant suppression of other new competitors in the market, even in the form of illegal restrictions on market access to sectoral industries, in order to achieve monopoly and dominance in the market by reducing or even eliminating competition within a certain range of markets. Western administrative economic monopoly, on the other hand, refers mainly in general to an unreasonable socio-economic administrative monopoly in Western countries, which is a concept unique to China. Due to the special nature of the administrative status of the state, it is reasonable to enjoy the monopoly of state administrative and economic activities, as well as the many economic monopolies that are naturally formed within a certain extent by the legislation of the state public economic undertakings, which are often implemented by the administrative power of the state and need to be guaranteed by law. However, once those enterprises enjoying a certain degree of exclusive privileges granted by the state law have abused their exclusive rights, created many industrial economic barriers and formed regional economic barriers, organised local governments to restrict privileged transactions and forced privileged transactions. This constitutes an administrative monopoly that is illegal and needs to be regulated by law.

Due to the tortuous path of economic development since the founding of our country, it was not until after the reform and opening up that the awareness and legislative practice of consumer protection in China followed the world trend. However, just like the rapid and high quality development of our economy, the legislative practice for the protection of consumer rights and interests has been remarkable so far. The main examples are the Civil Code, the Law on the Protection of Consumer Rights and Interests and, of course, the Anti-Monopoly Law.

The main purpose of China's anti-monopoly legislation is to protect the comprehensive rights and interests of consumers in accordance with the existing types of monopolistic practices. The main purpose of China's Anti-Monopoly Law is to effectively achieve market anti-monopoly through market regulation legislation of other economic and administrative market monopolies, and to protect the rights and interests of consumers. The relevant norms and measures provided for in our law are discussed below in relation to each of these two aspects.

Firstly, the way in which China's Anti-Monopoly Law controls economic monopoly behaviour can be summarised in two paths. One is to expressly prohibit monopoly agreements between market operators. In China's rapidly developing market economy in the broad sense, the subjects of civil activities often choose to use the specific form of civil contracts to make some kind of contractual description of the consensual obligations that both parties want to perform, which is mainly manifested in the field of anti-monopoly infringement treatment by anti-monopoly infringement agreements. A monopoly agreement is generally an agreement reached between various enterprises with the main purpose of stopping the restriction of monopolistic competition and seeking other monopolistic market benefits. Regardless of the specific form, a monopoly agreement is basically a monopoly in a specific market by limiting the quantity of goods supplied or raising the price of goods in a specific market, thus achieving a monopoly in a specific market area, which creates a huge obstacle to the development of free market competition. This is why China's anti-monopoly law explicitly prohibits such conduct at the

legislative level, which in effect inhibits economic monopolies at the source. Secondly, China mainly imposes quantitative restrictions and price controls on the concentration of production and the abuse of the dominant economic position of other market capitals by food operators. The existence of a large number of independent and autonomous operators in the market is a prerequisite for free competition in the market. Once there is an excessive concentration of operators, it will lead to a reduction of competition in the market and thus lead to monopolies. This is not to say that we do not allow large enterprises to exist, but that we do not allow large enterprises or consortia of small enterprises to abuse their dominant position in the market to create unreasonable restrictions on free competition or market access. In the above section on the motivation for consumer protection, the dynamic formation process of monopolistic behaviour was mentioned. When a part of enterprises or a consortium of enterprises completes the accumulation and expansion of capital and other aspects, the continuous encroachment on small areas eventually evolves into an industrial monopoly in a certain industry or field, what we have to do is precisely to impose reasonable restrictions on their market position in the process of their business accumulation and protect their business. What we need to do is to impose reasonable restrictions on their market position in the course of their business accumulation, to protect their right to operate and develop, and at the same time to prevent these enterprises from abusing their dominant market position, so as to prevent any obstruction to the socialist market economy.

In addition, the widespread existence of various administrative anti-monopoly practices also has a negative impact on the promotion of China's independent market economy and the strengthening of the protection of the legitimate rights and interests of consumers. For example, in 2006, the Harbin Municipal Government issued a notice to the public on the grounds of "creating a frugal authority", requiring all public vehicles of the relevant law enforcement departments at all levels in Harbin to purchase Hafei cars. Firstly, the administrative departments are prohibited from compulsorily limiting or disguising the purchase or use of goods provided by their designated operators by the administrative departments. This is mainly to prevent the administrative departments from taking the opportunity to obtain profits from the designated operators and hinder free competition in the market by harming other market operators; secondly, the relevant power departments are prohibited from hindering the inter-regional circulation of goods in any way. In the context of a flourishing market economy, economic ties between different regions have increased significantly, and the need for market players to circulate products between different regions in the process of free competition inevitably arises. Thirdly, the prohibition of local administrative departments to exclude or restrict foreign operators from making investments, participating in tenders and setting up branches in their own regions is also aimed at protecting free competition and preventing trade barriers and regional protectionism. Such restrictions, whether express or implied, are not permitted.

Through the regulation and management of monopolistic practices, the implementation of China's Anti-Monopoly Law has greatly protected the free competition in the market, and under the state of free competition being clearly guaranteed, the main market operators are engaged in market operation activities with full vitality, constantly improving their own profitability, reducing the constant costs, optimising the production mode and the required production technology, which on the one hand reduces their own. On the one hand, this reduces their own production costs and, on the other hand, promotes innovation in science, technology and related products and services from the supply side. The many electronic products on the market continue to form fierce competition at all price levels, with products and sales services constantly being optimised and prices fluctuating according to the actual needs and product choices of consumers, forming a dynamic price balance competition mechanism, which can

have a positive impact on the effective protection of the legitimate rights and interests of consumers and the healthy development of the market economy.

4. Countermeasures of the Antimonopoly Law on Consumer Rights and Interests

Ultimately, the protection of consumers' rights and interests through the Anti-Monopoly Law is the protection of consumers' rights and interests to freely choose the products and services they want to buy in the market, and the protection of their right to fair trade. It is only by creating a fair and free competitive environment for the operators in the market that it will be possible for them to innovate their products and services, to break out of their comfort zone and to promote the optimisation of the products they supply, and to lower their prices to meet consumer expectations - to obtain good quality products and services at low prices. The economy of the market is a force for innovation in products and services.

Of course, we also need to recognise that the protection of consumer rights and interests under the Anti-Monopoly Law in China is still inadequate and is mainly manifested in the following aspects. Firstly, there are no direct remedies for the protection of consumers' rights and interests in the Anti-Monopoly Law in China. The protection of consumers' rights and interests under the anti-monopoly law is an indirect protection, which is directly manifested in the regulation of monopolistic practices and indirectly affects consumers' right to fair trade by promoting free competition in the market. Article 50 of China's Anti-Monopoly Law clearly provides that operators who cause direct losses to the interests of others as a result of the implementation of illegal monopolistic market practices however, shall be held directly civilly liable for their conduct in accordance with the law. Although this provision does superficially indicate that when the operator causes losses to other subjects including consumers it should be remedied by way of civil liability, and the corresponding subjects are given the right to file civil lawsuits for relief, in practice, according to the relevant provisions of China's existing civil procedure law, the subjects who can file lawsuits in relation to monopolistic acts are limited to those who have directly suffered damage from the monopolistic acts, while Consumers are often scattered and unconnected, alone and limited in their ability to bring effective litigation against monopolistic acts, and even under the prescribed group litigation system, there are many inconveniences such as strict prosecution conditions and small radiation of the effect of judgments. The lack of direct provisions for consumer redress within the anti-monopoly law system is not conducive to the achievement of good legislative results.

In addition, the current mode of setting up anti-monopoly enforcement agencies is not conducive to the protection of consumers. The Anti-Monopoly Law of China clearly stipulates the organization of the relevant national law enforcement agencies and their main functions and responsibilities: the task of the National Anti-Monopoly Law Enforcement Committee is to organize, coordinate and technically guide the national anti-monopoly law enforcement activities, playing the role of its organizer and leader; while the State Council's National Anti-Monopoly Administration and Law Enforcement Administration is mainly responsible for the management of monopoly law enforcement. The State Council's National Anti-Monopoly Administrative and Law Enforcement Agency is responsible for monopoly enforcement and its content. According to the new "Three Definitions" work plan for market-related law enforcement in China this year, the organisational set-up of the market enforcement administration and the organisation of other related law enforcement work have been further clarified: the State Administration for Industry and Commerce is mainly responsible for this anti-monopoly mediation agreement and related abuses of the dominant position of other market economy subjects or other abuses of other administrative law enforcement powers that cannot exclude or restrict monopoly enforcement. The State Administration for Industry and

Commerce is responsible for the supervision and enforcement of market anti-monopoly agreements and other related legal issues which do not exclude or restrict the free competition of other market players; the Ministry of Commerce of China is responsible for the supervision and examination of market anti-monopoly competition by market operators; the National Development and Reform Commission is responsible for the supervision and examination of market price and anti-monopoly violations respectively. The National Development and Reform Commission (NDRC) is responsible for the supervision and review of market price and antitrust violations respectively. The three authorities are responsible for the division of labour to guide the implementation of specific national antitrust reviews. Although the areas of work of each of the three authorities were initially defined when their functions were delineated, in practice there is still a crossover in the management and implementation of functions. In the process of implementing the relevant measures, this three-pronged model of enforcement agencies often makes it difficult to achieve the expected results in the enforcement of anti-monopoly law. In fact, the protection of consumers' rights and interests is faced with many difficulties due to this shortcoming.

China is still in the early stages of socialist construction and has a long way to go on the basic path of social development in a market economy with socialist characteristics. Therefore, we should also take a developmental view of the inadequacies of the current anti-monopoly law in the protection of consumer rights and interests and always believe that we can eventually overcome the difficulties and achieve effective protection of consumer rights and interests through the Anti-monopoly Law.

In a comprehensive manner, the anti-monopoly law regulates the monopolies in the market, which is actually a kind of reconciliation and game to protect the interests of the profit-seeking market operators and consumers. The essence of the market economy is a competitive economy and there is nothing wrong with market players competing for profits, and in order to mobilise market dynamics, we also encourage legitimate and reasonable market competition, which means that market competition should have a bottom line and any market player should follow the basic principles when pursuing interests and participate in competition for profits within reasonable limits. If a part of the business operators in China suddenly oversteps this limit and creates a capital monopoly competition in a certain business sector or a certain business field in the capital market, it will certainly pose a great threat and serious infringement on the safety of the legitimate rights and interests of the business consumers. The aim is to strike a balance between the competition for capital and the protection of the legitimate rights and interests of consumers, in the hope that a harmonious state of competition in the capital market can be achieved through the establishment of a legal or regulatory system, thus effectively promoting the smooth and healthy development of our socialist capital market economy. We should continue to improve the legal system of the Anti-Monopoly Law and strengthen the relevant enforcement mechanism, so that the Anti-Monopoly Law, together with the Law on the Protection of Consumer Rights and Interests and other special laws, can achieve the effective protection of consumer rights and interests in all aspects.

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