

Exploration of the Enforcement Dilemmas of China's Antitrust Law

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Abstract: Since its implementation in 2008, China's Antitrust Law has provided legal protection for market competition, but it faces numerous dilemmas in practice. With the rise of emerging industries such as the internet platform economy, big data, and artificial intelligence, the traditional antitrust law framework has increasingly revealed its inadequacies, particularly in regulating new types of monopolistic behaviors, such as data monopolies and platform monopolies. This article reviews the development of China's Antitrust Law and analyzes the enforcement dilemmas it faces, including structural flaws in the administrative system, political priorities, and delays in legal enforcement. Furthermore, the article proposes reform directions to address these dilemmas, including improving the legal framework, enhancing enforcement efficiency, strengthening interdepartmental collaboration, and increasing public participation. The goal is to improve the effectiveness of antitrust law enforcement and promote the healthy development of China's market.

Keywords: China's Antitrust Law; Enforcement Dilemmas; Legal Framework; Internet Platform Economy.

1. Introduction

With the continuous development of China's market economy and the acceleration of globalization, market competition has become increasingly intense, and monopolistic phenomena have gradually emerged, becoming a major obstacle to fair market competition and economic efficiency. In particular, with the rapid rise of emerging industries such as the internet platform economy, big data, and artificial intelligence, the monopolistic issues in traditional industries have gradually shifted to more implicit forms of "technological monopolies" or "data monopolies." These new types of monopolistic behaviors pose significant challenges to the existing antitrust law framework, and the traditional antitrust law has increasingly exposed its inadequacy in addressing these emerging industries.

Since the formal implementation of the Antitrust Law in 2008, it has played an important role in maintaining market competition order and promoting healthy economic development. However, it still faces multiple dilemmas in practice. China's antitrust law has problems at multiple levels, including legal frameworks, law enforcement mechanisms, and political factors, which have resulted in its effectiveness in actual enforcement being far from the expected outcome. Especially with the rapid development of the internet platform economy and emerging technologies, the issues of lag and inadequate adaptability in the existing legal system have become increasingly evident.

This article aims to explore the main dilemmas in the implementation of China's antitrust law and conduct an in-depth analysis of the underlying political, economic, and institutional factors. It will review the development history of the Antitrust Law, analyze the challenges faced in its enforcement, and propose directions for future reforms and policy recommendations. By continuously improving the legal framework and reforming the law enforcement mechanism, the goal is to ensure that the antitrust law can adapt to the new market environment, truly achieve fair competition, and promote the sustained and healthy development of China's economy.

2. The Development of China's Antitrust Law

The formulation of China's Antitrust Law began in the 1990s, as the market economy system gradually took shape and the pace of opening up accelerated. The intensity of market competition also increased, and monopolistic behaviors gradually became apparent. Especially after China joined the World Trade Organization (WTO), the pressure of globalization highlighted the monopolistic issues in the domestic market. In order to adapt to international economic rules and ensure fair competition in the domestic market, China gradually recognized the urgency of formulating and implementing an antitrust law.

In 2008, the formal introduction of the Antitrust Law marked the beginning of a new phase in the implementation of antitrust regulation in China. The two main motivations for the introduction of this law were: first, to address the competitive pressures of globalization and safeguard fair competition in the domestic market; and second, to break the monopolies held by state-owned enterprises in key industries, thereby promoting market innovation and competition.

The main provisions of the Antitrust Law include the review of mergers and acquisitions, restrictions on the abuse of market dominance, and regulation of unfair competition. However, as China's economy has continued to develop, particularly with the rapid rise of the internet and platform economies, the traditional antitrust law has increasingly revealed its inadequacies in addressing the challenges posed by emerging industries.

To meet these new challenges, the Antitrust Law was amended in 2022, with particular emphasis on strengthening regulation in areas such as big data and artificial intelligence. The revised law clarified the regulation of data monopolies within the platform economy and enhanced scrutiny of domestic enterprises' cross-border mergers and acquisitions. These amendments have further adapted to the rapidly evolving market environment and provided clearer guidance for future antitrust enforcement.

3. Dilemmas in Antitrust Law Enforcement

Since the implementation of the Antitrust Law in 2008, although it has provided legal protection for market competition, the law still faces multiple dilemmas in practice. These dilemmas are not only reflected in the implementation and enforcement of legal provisions but are also intertwined with political, economic, and other factors, resulting in the actual effectiveness of the Antitrust Law falling far short of expectations.

3.1. Structural Flaws in the Administrative Management System

The implementation of the Antitrust Law faces structural flaws in China's administrative system, particularly in terms of the role played by local governments. China's administrative system is relatively complex, and decentralization of power combined with local protectionism creates significant obstacles in antitrust law enforcement. Local governments often protect local enterprises by implementing a series of competition-limiting measures, which in turn affects the central government's enforcement of the Antitrust Law.

As fiscal decentralization has progressed, local governments have gained increasing importance in economic management, and the severity of local protectionism has intensified. In order to ensure local economic growth, local governments often adopt measures such as setting up trade barriers or restricting the entry of outside enterprises to protect local businesses, leading to the formation of local monopolies. Despite the national antitrust law, the central government's enforcement efforts are often interfered with by the interests of local governments, due to their significant role in the market and control over resources.

Moreover, the enforcement of the Antitrust Law lacks a unified coordination mechanism. Multiple government departments are responsible for enforcing antitrust law, but due to unclear distribution of duties, there are significant problems in the division of authority and communication between departments, leading to overlap and inconsistencies in administrative management. The Ministry of Commerce is responsible for reviewing business concentrations, the National Development and Reform Commission supervises price monopolies, while the State Administration for Market Regulation handles the regulation of abuse of market dominance. The overlapping functions of these departments, coupled with a lack of effective coordination, ultimately impact the efficiency and effectiveness of antitrust law enforcement.

3.2. Political Prioritization in Antitrust Law Enforcement

In China, the enforcement of antitrust law is often influenced by political priorities. Due to the socialist market economy system in China, the government's goals are not solely focused on maintaining fair market competition but also on ensuring social stability, particularly in areas such as price control, employment, and social welfare. In many cases, the implementation of antitrust law has been used as a tool for controlling prices, rather than addressing the issue of unfair market competition.

For example, in cases involving price control, the government is more concerned with whether price

monopolies exist, especially in industries related to people's livelihoods, such as energy and telecommunications. Even if a company has formed a monopoly in a certain sector, as long as its prices remain within what the government considers an acceptable range, the government typically will not intervene. Therefore, antitrust enforcement often focuses on price control while neglecting deeper scrutiny of market structure and competition dynamics.

This phenomenon is particularly pronounced in the internet industry. In the case of internet platform companies, market monopolies formed through technological means and capital operations may not result in significant price increases but still pose a threat to market competition. These forms of implicit monopolies have not been effectively regulated in a timely manner.

3.3. Delayed Legal Enforcement and Corporate Strategies

The delayed nature of antitrust law enforcement is another significant challenge. Despite the Chinese government's increasing efforts in antitrust law enforcement, due to the complexity of market development and the flexible responses of companies, antitrust law is often unable to intervene in monopolistic behavior at its early stages. This is particularly evident in the mergers and acquisitions of some internet platforms and large enterprises.

For example, Tencent rapidly gained control of the domestic online music market by acquiring or holding shares in related companies, forming a clear market monopoly. Although this behavior violated Article 21 of the Antitrust Law, the investigation and punishment by the relevant government departments were delayed by four years. Antitrust authorities failed to conduct an effective investigation in a timely manner, which was closely related to the government's focus on price control at the time and its neglect of market competition. The enforcement of antitrust law is not only delayed due to the inherent lag of the law itself but also due to the government's political priority of short-term control over the market.

Moreover, monopolistic enterprises often use "capital penetration" and "price wars" to quickly capture market share, using low-price strategies or other means to push competitors out of the market. Once the market structure changes, monopolistic behavior becomes entrenched, making antitrust enforcement much more difficult. This "after-the-fact" regulatory approach greatly diminishes the preventive function of antitrust law, resulting in irreversible damage to the competitive environment of the market.

3.4. Challenges of Monopoly in the Internet Industry

The rapid development of the internet industry, especially the formation of platform effects, has posed unprecedented challenges to China's antitrust law. With the rise of platform companies such as Alibaba, Tencent, and Baidu, resources such as data, users, and traffic have become key elements of market competition. These internet giants utilize platform effects and big data technology to break traditional industry boundaries, forming strong market control.

Traditional antitrust law faces regulatory blind spots when dealing with these new types of monopolies. Internet companies quickly capture market share through platform control, data monopolies, and user stickiness. These companies not only gain massive amounts of data and users

but also suppress competitors through targeted advertising, product bundling, and other methods. Such implicit monopolistic behavior is difficult to define legally, and the existing antitrust law enforcement mechanisms are unable to effectively address these new forms of monopolistic behavior.

4. Directions for Reform of Antitrust Law

To effectively address the dilemmas in the enforcement of antitrust law and improve its implementation, future reforms to China's Antitrust Law should focus on enhancing the legal framework, improving law enforcement mechanisms, and strengthening interdepartmental collaboration. This will ensure the law can adapt to the rapidly evolving market environment, effectively combat monopolistic behavior, and promote fair competition.

4.1. Improving the Legal Framework to Meet the Needs of Emerging Industries

With the rapid development of emerging industries such as the internet platform economy, artificial intelligence, and big data, traditional antitrust law faces new challenges. The current legal framework focuses primarily on monopolistic behavior in traditional industries, while regulations on new types of monopolies, such as data monopolies and platform monopolies, lag behind. Therefore, future antitrust law reforms should prioritize improving the legal framework for emerging industries, especially in the internet platform economy, where companies use data accumulation, platform effects, and user stickiness to rapidly dominate markets and disrupt traditional competition models.

Antitrust law should clearly define the concept of "data monopoly" and impose legal restrictions on unfair competition in the platform economy. For example, legal provisions should be introduced to address issues such as data control, user monopolies, and resource barriers between platforms, preventing companies from using technological barriers or data monopolies to dominate the market. Additionally, cross-sector and cross-border mergers in the internet industry often have significant market impacts, and antitrust agencies should strengthen their review of such mergers to ensure that they do not distort market competition or result in excessive concentration.

4.2. Strengthening the Law Enforcement Mechanism and Improving Efficiency

Enhancing the efficiency of antitrust law enforcement is a key aspect of future reforms. The existing antitrust law enforcement mechanism has fragmented responsibilities across multiple departments, leading to inefficiencies in enforcement. To improve enforcement efficiency, a more centralized antitrust law enforcement agency should be established to handle all antitrust cases and ensure effective interdepartmental coordination. By consolidating existing enforcement resources and reducing overlap, antitrust law can be implemented in a timelier manner.

Furthermore, the level of professional expertise within enforcement agencies needs to be improved. As the market rapidly evolves and new monopolistic behaviors become more complex, traditional enforcement methods are no longer adequate for the new market environment. Therefore, antitrust enforcement agencies should be staffed with professionals who possess expertise in technology, data

analysis, and market trend research to ensure they can accurately identify and address new types of monopolistic behavior.

4.3. Strengthening Interdepartmental Cooperation to Form Synergy

The implementation of antitrust law requires close cooperation between various departments. Currently, multiple government agencies are responsible for different aspects of antitrust law, but there is a lack of effective coordination mechanisms, leading to inefficiencies in case handling. To address this issue, it is recommended to enhance interdepartmental cooperation by establishing a unified coordination platform to ensure information sharing and resource integration. Regular antitrust coordination meetings should be held to focus on resolving cross-departmental issues, reduce unnecessary administrative interference and delays, and ensure efficient antitrust enforcement.

The role of local governments in the implementation of antitrust law should not be overlooked. Given their significant position in the market economy, local governments may be influenced by local protectionism when promoting the implementation of antitrust law. To overcome this challenge, it is advisable to strengthen coordination between the central government and local governments regarding antitrust policies, clarify the responsibilities of local governments in enforcement, and prevent local protectionism from undermining the effectiveness of national antitrust law.

4.4. Enhancing Public Participation and Raising Awareness

The effective enforcement of antitrust law relies not only on government and corporate actions but also on broad public support and involvement. Public awareness and participation in antitrust issues directly impact the law's effectiveness. Therefore, future reforms should focus on raising public awareness of antitrust issues and strengthening public oversight of antitrust law. The government should use media, education, and public forums to promote antitrust law, helping the public understand its importance for market competition, fairness, and consumer protection.

In addition, improving the whistleblower system and encouraging the public and businesses to actively report unfair monopolistic behavior is crucial for enhancing enforcement efficiency. The government should protect whistleblower rights through legislation, offering rewards and protection measures to encourage greater societal participation in antitrust efforts. Antitrust enforcement agencies should rigorously investigate reported information, ensuring transparency in the enforcement process and increasing public trust.

5. Conclusion

Since its implementation, China's Antitrust Law has played a positive role in promoting fair market competition and driving economic development. However, with the rapid growth of the internet platform economy, big data, artificial intelligence, and other emerging industries, traditional antitrust law faces new challenges in terms of applicability and enforcement. To address these challenges, it is essential to continually improve the legal framework and deepen reforms in enforcement mechanisms, ensuring the law plays a more critical role in maintaining fair competition, protecting

consumer rights, and promoting healthy market development.

In the future, governments at all levels, enforcement agencies, and various sectors of society must work together to provide stronger support and guarantees for the effective implementation of antitrust law. Antitrust law is not only a legal tool to maintain market competition but also the cornerstone of driving economic health. In the face of an increasingly complex market environment, reform and innovation will be key to resolving the current dilemmas. By continually improving antitrust law and ensuring it meets the demands of the new market environment, we will be able to promote sustainable economic development and provide strong support for China's long-term economic growth.

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