

Review and Improvement of the Objective to Safeguard Market Competition Freedom in Anti-Monopoly Civil Litigation

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Abstract: Safeguarding market competition freedom is the primary objective of anti-monopoly law, and anti-monopoly civil litigation serves as a crucial judicial mechanism to achieve this goal. Since the implementation of the Anti-Monopoly Law, continuous improvements through judicial interpretations and typical cases have gradually shaped a distinctive anti-monopoly civil litigation system characterized by private enforcement. However, current practices indicate that this system still faces multiple challenges in realizing its objective of safeguarding market competition freedom. To enhance the effectiveness of anti-monopoly civil litigation in protecting market competition freedom, it is necessary to reposition the value objectives of China's anti-monopoly civil litigation system. This includes establishing the goal of reconstructing a social market order of free competition and balancing the dynamics between market competition freedom and innovation encouragement. Such measures will enable anti-monopoly civil litigation to more effectively dismantle market barriers, curb monopolistic practices, and ultimately contribute to the construction of a unified national market and the achievement of high-quality development.

Keywords: Civil litigation, anti-monopoly, market competition freedom.

1. Introduction

Market competition freedom is a core element of the market economy system, and the Anti-Monopoly Law bears the crucial mission of safeguarding this freedom. The anti-monopoly civil litigation system, by granting private entities the right to file lawsuits, enables them to directly participate in regulating monopolistic conduct, thereby becoming an indispensable part of the Anti-Monopoly Law's enforcement mechanism. Since the implementation of China's Anti-Monopoly Law, civil litigation has not only provided victims with a means of redress but has also enhanced the deterrent effect of the Anti-Monopoly Law through the active participation of private entities, contributing to the formation of a fair and efficient market competition environment. However, in the process of achieving the goal of safeguarding market competition freedom, anti-monopoly civil litigation still faces numerous challenges that hinder the full realization of its effectiveness. Based on the core objective of "safeguarding market competition freedom," this paper aims to systematically review and reflect on China's anti-monopoly civil litigation system, proposing specific recommendations to enhance its role in protecting market competition freedom. The goal is to provide theoretical support and practical references for strengthening the protection of market competition freedom and building a unified national market.

2. Safeguarding market competition freedom is the primary objective of the Anti-Monopoly Law

Competition freedom requires legal protection, as only under the safeguard of law can freedom become stable and achievable. In essence, the Anti-Monopoly Law is designed to protect competition freedom, with its foundation rooted in maintaining competition freedom and regulating competitive relationships. [1] The protection of market competition

freedom by the Anti-Monopoly Law is primarily manifested in two aspects: eliminating coercion and infringement by market entities, and preventing the abuse of freedom itself.

2.1. The Anti-Monopoly Law Eliminates Coercion and Infringement by Market Entities

In market competition, due to the diversity of entities and conflicting interests, conflicts in market transactions are inevitable, often leading to situations where the strong bully the weak. With its unique normative and coercive power, the law prevents improper monopolistic behaviors such as the abuse of market dominance, thereby eliminating coercion and infringement in market competition. The restrictions imposed by the Anti-Monopoly Law on monopolistic conduct are not a disregard for economic freedom but rather a means to safeguard freedom by limiting it. As John Locke aptly stated, "The purpose of law is not to abolish or restrict freedom, but to preserve and enlarge it." [2] Since the implementation of the socialist market economy in 1979, production and distribution in China have been primarily regulated by market mechanisms, as opposed to the planned economy era. The socialist market economy is inherently competitive, with a free and fair competitive environment serving as the foundation for resource allocation. Different market structures—such as perfect competition, monopolistic competition, and oligopolistic competition—require the establishment of corresponding competitive conditions suited to their specific contexts. Legitimate competitive behavior constitutes the fundamental condition for enterprises to achieve development and innovation, forming the basis for macro-level competitive activities [3].

2.2. The Anti-Monopoly Law Prevents the Abuse of Freedom by Market Entities

Free competition serves as the cornerstone for the functioning of the law of value and market regulation

mechanisms. Market competition operates on the principle of survival of the fittest. As monopolistic enterprises gradually expand in scale, their pursuit of monopoly profits and Blindness in production may lead to imbalances in economic structure proportions, thereby hindering the operation of the market economy. Practices such as collusive agreements and excessive concentration of market players restrict market competition. Both market participants—business operators and consumers—require legal protection to ensure free market transactions. For business operators, the right to freedom manifests as the autonomy to decide whether to enter or exit the market under the same rules; for consumers, it means the right to choose goods and their substitutes according to their preferences and to participate in decisions regarding commodity prices. The essence of the market economy lies in freedom. The Anti-Monopoly Law, born and developed within the context of the market economy, takes the protection of market competition freedom as its primary value objective.

3. Anti-Monopoly Civil Litigation Fails to Fully Reflect the Protection of Market Competition Freedom

The realization of the Anti-Monopoly Law's value objectives relies on its enforcement, particularly through judicial proceedings. The value objectives of the Anti-Monopoly Law significantly influence the civil litigation system. With the phased development and directional adjustments of China's economy, the market-oriented principle has become more clearly defined. As the economy evolves, the law must keep pace, providing a rare opportunity for the development of anti-monopoly civil litigation in China. At this stage, to adapt to the new economic landscape, the participants in anti-monopoly civil litigation, as integral parts of the market, possess a deeper understanding of market operations. Entrusting them with the task of regulating market order and safeguarding free competition mechanisms appears more direct, effective, and legally grounded. However, the value objectives of China's anti-monopoly civil litigation system largely align with those of traditional civil litigation, focusing primarily on protecting individual rights and resolving civil disputes. In specific cases, insufficient consideration is given to the value objectives of the Anti-Monopoly Law, such as safeguarding market competition freedom.

First, the existing anti-monopoly civil litigation system struggles to meet the needs of safeguarding competition freedom. Anti-monopoly cases often involve public interests and large-scale infringements, yet the current litigation framework fails to fully realize the value objectives of anti-monopoly civil litigation. For instance, in determining plaintiff eligibility, plaintiffs in anti-monopoly civil cases in China are limited to individuals, legal entities, or other social organizations that have suffered losses due to monopolistic conduct or are involved in disputes over contracts, charters, resolutions, or decisions of business associations that violate the Anti-Monopoly Law. When monopolistic practices harm public interests (such as distorting the overall competitive order) without causing significant direct losses to specific individuals, there is a lack of effective litigation mechanisms to address such issues.

Second, anti-monopoly civil litigation has not sufficiently emphasized the rebuilding of a social market order of free

competition. In theory, anti-monopoly civil litigation should serve as a critical tool for reconstructing a free competition order. However, in current practice, its function of reshaping the overall social market order remains underutilized. Judging from the intent of relevant regulations, such as judicial interpretations, the primary goal is to adjudicate civil monopoly disputes fairly and efficiently in accordance with the law and to protect consumer interests. To some extent, this approach overemphasizes ex-post economic compensation for individual victims while failing to fully activate its deeper function of restoring and reshaping a healthy market competition landscape.

Finally, anti-monopoly civil litigation has overlooked the dynamic balance between market competition freedom and innovation encouragement. The ultimate goal of the Anti-Monopoly Law is not merely to maintain a static number of market competitors but to promote economic efficiency and consumer welfare by safeguarding competition freedom. Within this framework, "innovation" represents a crucial long-term dynamic efficiency. However, in the judicial practice of anti-monopoly civil litigation, there is a notable tendency to focus excessively on restoring short-term competition patterns (market competition freedom) while relatively neglecting the potential inhibitory effects of judgments on long-term innovation incentives (innovation encouragement). This lack of dynamic balance undermines the adaptability of the anti-monopoly system in the modern knowledge-based economy.

4. Recommendations for Improving the Protection of Market Competition Freedom as an Objective in Anti-Monopoly Civil Litigation

Since the enactment of China's Anti-Monopoly Law, the number of anti-monopoly civil litigation cases has increased. Building on the experience accumulated from previous civil litigation cases, the Supreme People's Court of China issued the Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Arising from Monopolistic Conduct in 2012. The promulgation of this interpretation marked the establishment of the fundamental rules for anti-monopoly civil litigation in China. The interpretation summarized key aspects of monopoly civil dispute cases, including the basic types of cases, plaintiff eligibility, litigation methods, jurisdiction over civil dispute cases, and the allocation of the burden of proof. In 2024, the Supreme People's Court issued the Interpretation on Several Issues Concerning the Application of Law in the Trial of Monopoly Civil Dispute Cases. This judicial interpretation, while incorporating and merging all the provisions of the 2012 regulations, systematically redefined issues related to anti-monopoly civil litigation based on the 2022 amendments to the Anti-Monopoly Law. However, the value objectives of China's current anti-monopoly civil litigation system still fail to fully reflect the protection of market competition freedom, necessitating further improvements.

4.1. Establishing the Protection of Competition Freedom as the Primary Value Objective of the Anti-Monopoly Civil Litigation System Is a Practical Necessity

Competition and freedom are inherently inseparable.

Market competition must be grounded in the free development of the economy, and the most fundamental safeguard for competition is freedom—without freedom, there can be no free competition. [4] The renowned British sociologist L.T. Hobhouse pointed out that monopoly and freedom are fundamentally incompatible: "The principle of free competition stands in opposition to monopoly and wages war against it." [5] This freedom of competition must be guaranteed by establishing a coercive force within the market to restrain monopolies, and anti-monopoly civil litigation serves as an effective means to achieve this. The freedom of competition protected by anti-monopoly civil litigation encompasses both positive freedom and negative freedom. In his essay *Two Concepts of Liberty*, Isaiah Berlin categorized freedom into "negative liberty" and "positive liberty." [6] Berlin defined positive liberty as the freedom in the active sense, where individuals make decisions and choices through independent thinking, based on their own will rather than external coercion or compulsion to act or refrain from acting. The demand for positive liberty arises from every individual's endeavor to be their own master. In the context of market competition, positive liberty manifests as the freedom of choice for market participants, whether competitors or consumers, emphasizing their initiative and autonomy in participating in the market or transactions. Negative liberty, on the other hand, refers to freedom in the "passive" sense, where individuals are free from coercion in their will and interference in their actions when making choices. This negative liberty emphasizes the absence of constraints imposed by external environments or forces. In the market, negative liberty should be reflected in a fair and freedom-guaranteed market environment created by the government. Negative liberty tends to protect and preserve rights, while positive liberty tends to strive for rights. As Walter Eucken stated, "Private ownership of the means of production is a prerequisite for a competitive order, and a competitive order is also a prerequisite for avoiding the adverse economic and social conditions that private ownership of the means of production may cause." [7] In Eucken's theory, the competitive order is referred to as a "rule-induced system of free competition," and the enforcement of such rules must be carried out by an authoritative state.

Under China's current anti-monopoly framework, the enforcement of the Anti-Monopoly Law operates through both judicial and administrative channels. However, compared to the judicial resources dedicated to the anti-monopoly civil litigation system, China's administrative enforcement resources against monopolistic conduct remain relatively scarce. Although combating monopolistic practices in the market falls within the purview of administrative agencies, the identification of monopolistic conduct in administrative enforcement requires high-quality enforcement personnel as a guarantee. Currently, China's existing administrative enforcement capacity still appears somewhat inadequate. In contrast, the judicial authorities responsible for implementing the anti-monopoly civil litigation system, as independent entities, possess more abundant judicial resources and carry the weight of authoritative judicial rulings. Their role is undoubtedly crucial in restoring a freely competitive market order. Moreover, private entities seeking free competition within the market order serve as the primary driving force behind anti-monopoly civil litigation. These private actors, motivated by their need for free competition, are better positioned to

promptly identify improper monopolistic practices and respond proactively. Therefore, the protection of market competition freedom must be incorporated as an essential value objective within the anti-monopoly civil litigation system.

4.2. Establishing the Value of Antitrust Civil Litigation in Reconstructing a Social Market Order of Free Competition

The establishment of any legal system is influenced by specific value judgments. Consequently, the value orientation of the antitrust civil litigation system directly impacts the design of its specific institutional arrangements. As the foundational law for antitrust research, the Antitrust Law undoubtedly aims to protect market competition itself. The value of antitrust civil litigation is intrinsically linked to the value orientation of the Antitrust Law. The functions and objectives of the Antitrust Law distinguish it from other traditional civil laws. Serving as a fundamental law safeguarding China's market economy, the Antitrust Law protects diverse interests. The civil liability reflected in the litigation process must not only consider private interests but also balance public interests. In other words, the Antitrust Law protects an abstract "imagined value." [8] From the perspective of litigation value orientation, litigation can be divided into two distinct models: the dispute-resolution model and the order-construction model. The dispute-resolution model addresses individual conflicts, with its primary goal being the resolution of interest disputes. This model proceeds solely from individual interests, treating each person as the best judge of their own interests. Under this litigation model, the judiciary need not consider public values; instead, it pursues dispute resolution and the maximization of satisfaction for both parties. Conversely, for the order-construction model, the focus is not on determining the right or wrong of conduct, but on the impact of the parties' individual rights and interests on the overall social public structure. Judgments are made based on reasonable relational structure requirements or the pursuit of an ideal social order, thereby constructing an ideal social public order.

As a market regulation law, the value of antitrust civil litigation lies not merely in resolving disputes, but in reconstructing a social market order of free competition. The definition of this litigation value model is based on the following two understandings: First, the value of China's Antitrust Law lies in restricting and eliminating conduct that harms competition, preventing monopolistic practices from disrupting market order. Furthermore, monopolistic conduct among individual business operators also falls within the scope of antitrust civil litigation, aiming to resolve economic disputes between individuals, protect the interests of business operators, and maximize the protection of consumer rights. Second, monopolistic conduct in China's market primarily originates from collusion among business operators, such as boycotts and exclusion of competition, which leads to industry monopolies. Coupled with improper interference in the competition order due to the abuse of administrative power by relevant government departments, this triggers instability in the market economy. Such circumstances pose a significant threat to the maintenance of market economic order and cause damage to the market structure system or the competition order.

Antitrust civil litigation refers to civil cases filed by natural persons, legal persons, or unincorporated organizations that

have suffered losses due to monopolistic conduct or are involved in disputes over contracts or industry association charters that violate the Antitrust Law. It is evident that antitrust civil litigation also aims to resolve disputes. Its pursued litigation value is to effectively resolve disputes through litigation, restore the original state, and protect the rights of the parties involved. In this litigation model, the court participates passively, aiming to mediate disputes between the parties as an arbitrator. It need not involve public interests, dealing only with disputes between the parties, aiming to minimize the dispute or maximize the parties' satisfaction with the judgment outcome. Thus, it can be seen that China's antitrust civil litigation serves a dispute-resolution function. As a market regulation law, the most important legislative value of the Antitrust Law lies in maintaining the stability of the market economy. Correspondingly, its procedural aspects also aim to maintain social order and protect social public interests. For example, Alibaba's abuse of market dominance, enforcing an "either-or" choice for merchants on its platform, constituted suspected monopolistic conduct, harmed the interests of merchants, severely disrupted the order of free market competition, and ultimately led to a fine of over 18 billion yuan imposed on the Alibaba Group by the State Administration for Market Regulation. Although this fine was not imposed through antitrust litigation, it demonstrates China's "zero-tolerance" attitude towards monopolistic conduct. Because monopolistic conduct seriously harms the interests of all parties and even affects orderly market competition.

Therefore, the order-construction model focuses on maintaining social order, stabilizing the healthy development of the market economy, and protecting free market competition. Although antitrust civil litigation primarily focuses on maintaining market economic order, it also possesses a dispute-resolution function. Hence, the construction of the value objectives of China's antitrust civil litigation system should be primarily based on the order-construction model, supplemented by the dispute-resolution model. Only by combining these two models can we build a system that meets the needs of the market economy development in the new era, unleash the values of free competition, economic efficiency, and substantive social fairness inherent in the Antitrust Law, and thereby promote the construction of the value objectives of the antitrust civil litigation system.

4.3. Maintaining a Dynamic Balance Between Market Competition Freedom and Innovation Encouragement in Anti-Monopoly Civil Litigation

While the anti-monopoly civil litigation system must safeguard market competition freedom, the determination of the legitimacy of competitive conduct involves balancing multiple interests. Assessing the legitimacy of competitive behavior requires reconciling conflicts among three types of interests: those of business operators, consumers, and the public, reflecting the tension among diverse interests. In the process of determining improper conduct, it is essential to comprehensively consider whether the behavior distorts the competition order and harms healthy market competition mechanisms, among other factors. This includes evaluating whether it enhances market competitiveness, innovation value, and technological progress. Maintaining an ecosystem

of free market competition and an atmosphere that incentivizes innovation requires treating competitors fairly, without bias. Excessive protection of existing market structures, particularly for overt competitors with homogeneous competitive interests, may weaken or inhibit further technological innovation in the market. The ultimate value of anti-monopoly litigation lies in social governance. Therefore, while preserving the free market competition ecosystem, it is also necessary to maintain a dynamic balance between market competition freedom and innovation encouragement.

Achieving a positive interaction between competition freedom and innovation encouragement in anti-monopoly civil litigation requires systematic efforts. It is crucial to optimize analytical methods and strengthen the application of the rule of reason. For market conduct involving innovation, the rule of reason should be more frequently applied to comprehensively assess both the anti-competitive effects of the conduct and its potential positive effects, such as promoting innovation and improving efficiency. The Anti-Monopoly Guidelines in the Field of Intellectual Property Rights issued by the State Council Anti-Monopoly Committee also emphasize this approach, requiring consideration of the characteristics of intellectual property and the positive impact of conduct on innovation and efficiency. The concept of innovation balance should be integrated into the refinement of rules. In the design of specific rules, such as the allocation of the burden of proof and the calculation of damages, the characteristics of innovation activities can be considered in greater detail. For example, when determining abuse of market dominance involving intellectual property rights, it is necessary to carefully define the relevant market, and the mere fact that a business operator owns intellectual property rights should not directly lead to a presumption of market dominance.

5. Conclusions

As a crucial legal instrument for safeguarding market competition freedom, the efficacy of the anti-monopoly civil litigation system directly impacts the construction of a unified, open, and competitively orderly modern market system. The examination in this paper reveals that although China's anti-monopoly civil litigation system has continuously advanced through the refinement of rules and practical exploration, it still faces structural challenges in fully achieving the deeper objective of reconstructing a social market order of free competition. It is noteworthy that China's judicial system has recognized these issues and is actively seeking improvements. Looking ahead, further efforts should be made to enhance the effectiveness of anti-monopoly civil litigation in protecting the objective of market competition freedom. Ultimately, an anti-monopoly civil litigation system capable of effectively reconstructing a free competition order is not only essential for protecting consumer welfare and incentivizing innovation but also a necessary requirement for strengthening the micro-foundations of high-quality development and ensuring the construction of a unified national market. Through continuous institutional refinement and practical exploration, anti-monopoly civil litigation is bound to play an even more critical role in maintaining fair market competition and stimulating the vitality of various market entities.

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