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ANALYSIS OF THE PROBLEMS ON ARTICLE 7 OF THE ANTI-MONOPOLY LAW OF THE PEOPLE'S REPUBLIC OF CHINA

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Abstract: *As an important law in market economy countries to maintain fair competition and protect the interests of consumers, the Anti-Monopoly Law is of great significance to promote the development of market economy and improve economic efficiency. Article 7², as one of the core provisions of the Anti-Monopoly Law, involves special provisions for industries in which the state-owned economy occupies a controlling position, which are related to the lifeblood of the national economy and national security, as well as industries that implement exclusive sales according to law(Sun Weichen,2012 . However, in the actual implementation process, the nature and existing problems of Article 7 have always been the hotspot and difficulty of the research on the Anti-Monopoly Law. Therefore, this article will start with the nature of Article 7 of the Anti-Monopoly Law, conduct an in-depth analysis of its existing problems, and propose corresponding improvement suggestions.*

Keywords: *Anti-monopoly law; Exception for applicable; Legal regulation.*

I. Introduction

Article 7 of China's Anti-monopoly Law is a legal regulation of specific industries in China, which is the embodiment of the spirit of the socialist national constitution, and maintains the fundamental principle of the anti-monopoly Law prohibiting operators from abusing their dominant market position. Personally, this belongs to an applicable exclusion system. Strict restrictions have been put on the industry: the state-owned economy is related to the lifeline of the national economy and national security, and the industry of monopoly according to law, mainly refers to China's military industry, petroleum industry, transportation industry, tobacco industry and so on. The business activities of the relevant subjects in the above-mentioned industries have special

reasons for the purpose of safeguarding the national interests and the social and public interests.

Article 7 of the Anti-Monopoly Law emphasizes the importance of protecting the legitimate rights and interests of operators in the state-owned economy and monopoly industries while also protecting the interests of consumers. This indicates that the Anti-Monopoly Law should not only maintain market order and fair competition, but also pay attention to the protection of consumers' interests. Only by balancing the interests between operators and consumers can we achieve a virtuous cycle and healthy development of the market.

II. Current Problems

2. 1. The conflict of legal doctrines

The long history help China have a set of

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² Article 7 of the Anti-Monopoly Law of the People's Republic of China is: The state protects the legitimate business activities of operators in industries where the state-owned economy holds a controlling position, which are related to the lifeblood of the national economy and national security, and industries that implement exclusive sales according to law. The state also supervises and regulates the business activities of operators and the prices of their goods and services according to law, safeguards the interests of consumers, and promotes technological progress.

The operators of the industries specified in the preceding paragraph shall operate in accordance with the law, be honest and trustworthy, strictly self-disciplined, and accept supervision by the public. They shall not use their controlling or exclusive status to harm the interests of consumers.



independent political system and cultural system. Since the Han Dynasty was regarded as orthodox Confucianism, loyalty, filial piety, benevolence, righteousness and wisdom have become the life motto of Chinese with lofty ideals. It is not tough to discover that since ancient times, loyalty to the emperor and patriotism of the country is the first priority, and the emperor represents the whole country, so the concept of the supremacy of the country has always existed. This concept, politically, is conducive to the formation of a multi-ethnic unified country, economically conducive to the consolidation of the feudal economy with the ruling group as the core, and ideologically developed into the notion of national interests above all else.

The provisions of Article 7 of the Anti-monopoly Law of China are highly representative of the tradition of putting national interests preferentially. This provision is the concrete embodiment of Article 7 of the Constitution, which complements the provisions of the elementary economic system and jointly ensures the dominant situation of China's state-owned economy. However, with the introduction of western modern legal thought and the advance of China's reform and opening up, the principle of equality and the protection of private property rights have come into our vision, and the application of the business behavior of state-owned economic subjects has been debated.

Article 7 of the Anti-Monopoly Law emphasizes the importance of protecting the legitimate rights and interests of operators in the state-owned economy and monopoly industries while also protecting the interests of consumers. This indicates that the Anti-Monopoly Law should not only maintain market order and fair competition, but also pay attention to the protection of consumers' interests. Only by balancing the interests between operators and consumers can we achieve a virtuous cycle and healthy development of the market.

In my opinion, article 7 of the Law of the Anti-Monopoly Law better handles the contradiction between the national interests and the public interests. The first paragraph of the law makes strict requirements for the subjects who meet the exemption conditions, and the second paragraph stipulates that the improper operation of the relevant subjects from harming the interests of consumers. Although the two stakeholders are taken into account, we can toujours detect the principle of putting national interests first, which is not coordinated with the dogmas of equality, fairness and competitiveness of Chinese socialist market economy. In today's world,

the legislative orientation has gradually changed from safeguarding the interests of the ruling class to protecting the social interests and the safeguard of the national well-being. There is the political ideal of putting people first in China. Therefore, whether the value orientation of Article 7 of the Anti-monopoly Law is appropriate, I reckon there is enough room for further discussion.

2.2. The standard bounds are not quantified

Article 7 of the Anti-Monopoly Law clearly stipulates special treatment for industries that are controlled by the state-owned economy and have a vital role in the national economy and national security, as well as industries that implement exclusive sales according to law. This reflects the important position and role of these industries in economic and social development. The state-owned economy is an important pillar of the national economy, involving national security and people's livelihood and well-being, so it needs to be strengthened supervision and protection. Nevertheless, the exclusive sales industry often involves special resources and markets, so it is necessary to ensure fair competition and market order.

There is no formal normative document to define the "state-owned economy" in the regulation. Article 7 of the Anti-Monopoly Law is vague in defining the scope of industries in which the state-owned economy occupies a dominant position and industries that implement exclusive sales according to law, and lacks specific standards and rules. This makes it difficult to accurately determine which industries fall within this scope in practice, which can easily lead to disputes and misunderstandings. Therefore, it is necessary to further clarify the scope and develop corresponding standards and rules to improve the operability and enforcement effectiveness of the law.

The lack of accurate understanding of the "control status" is easy to lead to difficulties in the identification of the antitrust authorities, and increases the artificial operability, which may be the phenomenon of taemperor advantage of legal loopholes. Personally, I consider we can refer to the relevant provisions of the abuse of dominant market position, list the common situations of control status, define the control status, and give the anti-monopoly law enforcement agency appropriate discretion while maemperor detailed provisions. For the quantitative standard of control status, it will be more efficient that the absolute plus relative standard method should be adopted,





that is, to analyze the absolute number of sales volume and sales volume of economic subjects, and pay attention to the proportional percentage of sales volume and sales volume in the whole industry.

In the era of big data, various emerging industries have poured out one after another, and the “Internet +” economy has developed a hot word in the society. While the Internet brings convenience, it also brings about the problems of difficult supervision and large liquidity. The connotation of monopoly industries should keep pace with the times, especially the upstream and downstream industries of related fields, so it is necessary to strictly check and prevent possible problems from growing.

2.3. Squeeze the space for other enterprises

China implements the vital economic system in which public ownership is the main body and various forms of ownership flourish together. The state-owned enterprises, as the core of chief body, naturally occupy the dominant role of the ethnic economy (Li Fuge, 2013). The long-term historical tradition determines the natural superiority of the state-owned economy. Under the premise of limited resources and finite opportunities, if other forms of ownership do not possess obvious advantages, the policy dividend will almost undoubtedly incline to the state-owned economy. The primary part of the state-owned economy already utilizes the ethnic strength as the strong backbone. If more policies bonuses appear, it will inevitably compress the living space of other ownership economies such as private economy, individual economy, foreign capital economy, etc., and it is painless for a state-owned enterprise to be principle.

In China, the oil industry and the transportation industry are the typical cases of the state-owned economy, and they are also such an industry with too many negative reviews. These two industries refer to the crucial benefits of the country, so they are controlled by the government, and the private and foreign capital have few access to engage in. The oil and aviation giants gain overdraft the policy dividend every year. They get hundreds or even hundreds of billions of financial subsidies from the administration each year, and the economic benefits never seem to be as vital as political and social interests. Healthy competition can promote the valid progress of enterprises. Numerous state-owned enterprises are lack of competitors, which have long been criticized as inefficiency and waste of resources.

As far as I can see, the oil industry, transportation industry and other industries

are indeed the lifeblood industries of the national economy, and the method of introducing non-state-owned subject competitors is not feasible for the time being. Never the less for example, in the ban emperor industry, which takes service as its lifeline, it is hard to provide high-quality services without competitors. Therefore, the measures to realize the shareholding reform and the appropriate opening of the capital market are worth advocating. National security and the unity of opposition, to achieve the opening on the foundations of safeguarding ethnic security, national security under the guidance of CPC, are eternal propositions, so that we are supposed to pursue a balance.

2.4. Regulatory body homogeneity

It is often said that athletes and referees cannot be one person. “Anti-monopoly Law” article 7 of the “specific industry operators”, which is called the state-owned economic clause, includes not only an economic issue in China, but also a certain political characteristic. At the same time, the regulators and conductors of “implementing supervision and regulation in accordance with the law” and they symbolize anti-monopoly law enforcement agencies and else state organs. They are executives that master public power on behalf of Chinese, based on national laws and regulations. Thus, there is the contradiction of homogeneity. Here, the homogeneity means that the specific industry operators and their regulators are backed by the state power, and there is a high degree of economic and political consistency.

The emergence of homogeneity has triggered my thin emperor about the appropriateness and diversity of the regulatory agencies of operators in specific industries. To be honest, the current supervision system in China mainly revolves around the supervision of political parties and the state, and the enthusiasm of citizens to participate in the supervision is not adequate, and the social supervision ineffectively carries out (Lv Rong, 2011). Therefore, under the leadership of the Communist Party of China, we should set up a comprehensive and diversified supervision system with the state supervision as the root, as well as the social supervision as the branch. Meanwhile, the government should undertake the obligation to fully concentrate on public opinion, strive to improve the service quality of state-owned economic subjects, and combine the organic unity of economic benefits, political benefits and social benefits. The state-owned economy subject in China is mainly enterprises owned

by the whole people, which solidly grasp the economic lifeline and ensure the normal operation of the country. Undoubtedly, it is necessary to update the concept of sharing the achievements of reform and opening up, accept the supervision of the people, and maintain the fundamental interests of the vast majority of the people.

III. Suggestions for improvement

3.1. Defining the standard clearly

It is suggested that the definition of monopolistic behavior should be further clarified, and specific quantitative indicators and judgment criteria should be formulated to improve the operability and accuracy of Article 7 of the Anti-Monopoly Law. At the same time, it is also possible to draw on international experience and best practices to continuously improve the definition of monopolistic behavior to meet the needs of market economic development.

3.2. Strengthening law enforcement

It is suggested that the law enforcement agencies of the anti-monopoly law should be strengthened, including increasing the number of law enforcement personnel, improving the quality of law enforcement personnel, and strengthening the construction of law enforcement equipment, so as to ensure the effective implementation of the anti-monopoly law. At the same time, the supervision and evaluation of the law enforcement agencies should be strengthened to prevent abuse of power and unfair law enforcement.

3.3. Improve the supervision mechanism

It is suggested that the regulatory mechanism of the Anti-Monopoly Law should be improved, especially for industries involving the national economy and people's livelihood. It is necessary to strengthen supervision, establish industry regulatory institutions, and formulate industry regulatory rules to ensure fairness and effectiveness of market competition. Adhere to the leadership of the Party, take comprehensive deepening of reform as a guide, take the reform of Party and state institutions as an opportunity, give full play to the decisive role of the market in resource

allocation, and improve the macro-control mechanism to promote the sustainable and healthy development of the economy and society. In addition, it is necessary to strengthen the construction of the anti-monopoly system, form a good situation of coordination and cooperation between the Anti-Monopoly Law and other laws and regulations, form a regulatory joint force, and give full play to the system effect.

3.4. Strengthening international cooperation and exchanges

With the deepening of globalization, transnational monopolistic behavior is increasing. It is suggested that we should strengthen anti-monopoly cooperation and exchanges with other countries and regions, jointly combat transnational monopolistic behavior, and maintain the fair competition order of the global market. Based on China's national conditions and adhering to the basic economic system of socialism, we should actively draw on the achievements of human civilization of the rule of law, absorb beneficial experience of foreign anti-monopoly, enhance China's global voice in the field of anti-monopoly law, and lay a foundation of the rule of law for the great rejuvenation of the Chinese nation.

IV. Conclusion

This essay conducts an in-depth analysis of the theoretical basis and existing problems of Article 7 of the Anti-Monopoly Law, and proposes a series of targeted improvement suggestions. These suggestions cover clarifying the definition of standards, strengthening law enforcement, improving the regulatory mechanism, and strengthening international cooperation and exchanges. By implementing these suggestions, the implementation efficiency and fairness of the Anti-Monopoly Law can be further improved, ensuring that the fair competition order in the market is effectively maintained, and providing strong guarantees for the interests of consumers and the public interest of society. In the future development, we expect the Anti-Monopoly Law to continue to improve, providing a solid guarantee for the healthy development of the market economy.

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《中华人民共和国反垄断法》第七条问题分析

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摘要：反垄断法作为市场经济国家维护公平竞争、保护消费者权益的重要法律，对于促进市场经济发展、提高经济效率具有重要意义。第七条作为反垄断法的核心条款之一，涉及到国有经济占控制地位的关系国民经济命脉和国家安全行业以及依法实行专营专卖行业的特殊规定。然而，在实际执行过程中，第七条的性质和存在的问题一直是反垄断法研究的热点和难点。因此，本文将从反垄断法第七条的性质入手，对其存在的问题进行深入分析，并提出相应的完善建议。

关键词：反垄断法；适用除外；法律规制

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АНАЛИЗ ПРОБЛЕМ ПО СТАТЬЕ 7 АНТИМОНОПОЛЬНОГО ЗАКОНА КИТАЙСКОЙ НАРОДНОЙ РЕСПУБЛИКИ

Антимонопольный закон, являющийся важным законом в странах с рыночной экономикой для поддержания честной конкуренции и защиты интересов потребителей, имеет большое значение для содействия развитию рыночной экономики и повышения экономической эффективности. Статья 7, как одно из основных положений Антимонопольного закона, включает специальные положения для отраслей, в которых государственная экономика занимает контролирующее положение, которые связаны с жизненной силой национальной экономики и национальной безопасностью, а также отрасли, которые осуществляют эксклюзивные продажи в соответствии с законом (SunWeichen, 2012). Однако в реальном процессе реализации характер и существующие проблемы статьи 7 всегда были горячей точкой и трудностью исследования Антимонопольного закона. Таким образом, Данная статья начнется с сущности статьи 7 Антимонопольного закона, проведет углубленный анализ ее существующих проблем и предложит соответствующие предложения по улучшению.

Ключевые слова: антимонопольное законодательство, исключение применимо, правовое регулирование.

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