The Application of Consumer Interests in China's Anti-monopoly Law Enforcement: Take the Cases of Industry and Commerce Bureau as an Example

Xue YANGª, Lan-Fang FEI®
Jinan University Law School, Guangzhou 510000, Guangdong, China
ª1941025901@qq.com, ®fei27@hotmail.com

Keywords: Consumer interests; Enforcement of the Anti-monopoly Law; Industry and commerce bureau, Case.

Abstract. Article 1 of China's Anti-monopoly Law stipulates that one of its legislative purposes is to protect the interests of consumers. In the Article 15 of China's Anti-monopoly Law, it is explicitly required that the exemption from monopoly agreements is "enable consumers to share the benefits." How to Interpret Consumer Interests in China's Anti-monopoly Law Enforcement? Is this interpretation consistent and clear? What is the difference with other jurisdictions? What is the problem? This paper will only choose Industry and Commerce Bureau’s cases to analyse, in the view of consumer interests. Eventually we will know the application of consumer interests in China's Anti-monopoly Law Enforcement, through the analysis and understanding of the cases.

The Concept of Consumer in China's Anti-monopoly Law

In terms of law, the concept of a consumer familiar to the common people is derived from Article 2 of the Law of the PRC on the Protection of the Rights and Interests of Consumers: "The rights and interests of consumers when purchasing or using commodities or receiving services as consumer needs for daily use shall be protected by this Law." Although the law does not specify the concept of consumers, but the law identified "purchasing or using commodities or receiving services" as consumer behavior, which can reasonably conclude that consumption of consumers refers to the consumer Law are social members who purchase or use commodities or receive services as consumer needs for daily use.

The consumer to be discussed in this article refers to the Article 1 of China’s Anti-monopoly Law: "This Law is enacted for the purpose of preventing and restraining monopolistic conducts, protecting fair market competition, enhancing economic efficiency, safeguarding the interests of consumers and the interests of the society as a whole, and promoting the healthy development of socialist market economy." And Article 15" ……and that they can enable the consumers to share the benefits derived therefrom ", while the concept of consumer here is obviously different from the concept of consumer in the consumer Law.

Firstly, consumers in consumer law refer to individual consumers, that is, those who buy, use, or receive services; and consumers in the Anti-monopoly law mean the entire consumer, whether they purchase, use, receive services or not. Secondly, the legal relationship in the consumer law occurs after the actual consumption; and the Anti-monopoly law is to protect the legal relationship that has occurred and may occur.

In addition to the concept of consumers, this article argues that there are many similarities or differences between Anti-monopoly law and consumer law, such as adjustment methods, values and legislative purposes, which lead to the special status of consumers in the Anti-monopoly law. In addition to daily use, it also shoulders the function of judging whether the monopoly acts have violate the Anti-monopoly law. After clarifying the meaning of consumers, we can deepen our understanding of the essence of Anti-monopoly law and apply it accurately in practice.
Consumer Interests in China's Anti-monopoly Law

When it comes to the protection of consumers by Anti-monopoly law, scholars use a variety of terms, such as consumer well-being, consumer rights, consumer interests, consumer welfare, consumer surplus and more. Article 1 of China's Anti-Monopoly Law stipulates: "This Law is enacted for the purpose of preventing and restraining monopolistic conducts, protecting fair market competition, enhancing economic efficiency, safeguarding the interests of consumers and the interests of the society as a whole, and promoting the healthy development of socialist market economy." In the official text, the term "consumer interest" is used to describe the protection of consumers by Anti-Monopoly law. What are the specific benefits of consumer interests in Anti-Monopoly law? Scholars also have different opinions. Due to space limitations, this article describes only two of the mainstream views.

Some scholars think that the consumer's interest is that consumers enjoy better services at a lower price. Such as Guangfeng Tao think that "compared with the Consumer Law, the Anti-Monopoly 's protection is a profound protection, that is, through the maintenance of competition mechanisms and improve economic efficiency, the overall product quality has been improved and the price can be reduced, then the benefits of consumers can be maximized. The other scholars believe that consumer interests are consumer's right to fair trades and choice. Shuzhen Wang think that "these four types of monopolistic behavior, no matter what kind of monopoly, its intrinsical features are all restricting, excluding full and effective competition, and ultimately infringes the core rights of consumers: the right to choose and fair trade, undermines the rights and interests of consumers."

The Applications of Consumer Interests in China's Anti-monopoly Law Enforcement

August 30, 2017, The 6th China Competition Policy Forum was held in Shanghai. The theme of this forum is "Competition Policy in the Context of Economic Globalization." At the forum, Hongcan Yang, director of the competition law enforcement bureau of SAIC, introduced that since the Anti-monopoly Law came into force in 2008, the Industry and Commerce Bureau investigated and prosecuted 82 suspected monopoly cases, 40 were suspected of monopoly agreements and 42 were suspected of abuse of market dominance, 50 cases closed. Involved in industries including medicine, tobacco, radio and television, insurance, oil, gas, electricity, computer software, home building materials and other livelihood areas and social issues.

The decision of Industry and commerce Bureau shows that, at present, whether the interests of consumers are harmed is concentrated on three aspects: the right of consumers to choose, the right to know, the price and the quality of products. Take the notice of Termination of the investigation decision of Ningxia Hui Autonomous Region Branch of China Unicom (Ning Business Industry and commerce Bureau [2017] No. 2) as an example, which focused on the protection of the interests of consumers. In the decision, after fulfilling the promised measures, The parties need not continue to be investigated. These measures mainly include three points, the first is "stop bundling sales" to safeguard the consumer's right to choose; the second is "through the business hall, call center and other channels to strengthen publicity" to protect the consumer's right to know; The third point is that "users who was forced to tie up fixed-line apply for the cancellation of fixed-line telephone service, the company's all business halls must be handled " This improves the service quality and avoids unnecessary expenses for consumers.

Comparison with Court Cases: Take Tencent Case as An Example

Introduction to the Case

On November 15, 2011, Beijing Qihoo Technology Co., Ltd. sued the Higher People's Court of Guangdong Province that Tencent Technology (Shenzhen) Co., Ltd., Shenzhen Tencent Computer Systems Co., Ltd. (jointly known as Tencent, etc.) have dominance in the instant messaging software
and the relevant market and accused Tencent of abusing the dominance and barring trading and bundling of sales without justifiable reasons. Qihoo ordered Tencent to immediately stop the abuse of market dominance, in conjunction with compensation for economic losses of Qihoo 150 million yuan. Guangdong Higher People's Court of First Instance ruled that all the claims of Qihoo Company were rejected. Qihoo refused to accept the suit and filed an appeal. The Supreme People's Court rejected the appeal and upheld the verdict.

**Judgment Points**

Firstly, the Supreme Court considered the consumer's right to choose. Tencent requires users to make a choice between using Tencent QQ and 360 security software, which affect the software environment for the majority of users, but the Supreme Court believes that due to the existence of adequate alternatives in the instant messaging market, it does not affect the user's needs, only cause inconvenience, and then the Supreme Court conclude that there is little influence on consumer interests.

Secondly, the Supreme Court considered the quality of products used by consumers. Tencent packaged QQ and QQ software management when users install QQ, so QQ can achieve functional integration, users can better manage and use QQ, account security can be protected too, thereby enhancing the performance and value of QQ. From the product quality point of view, such a tying apparently brought better results, it is can bring a better user experience to consumers, the Supreme Court believe that the package installation behavior is reasonable.

Finally, the Supreme Court considered the consumer's right to information. Tencent packaged QQ and QQ software management when users just install QQ, and it did not tell the users that they will install QQ software management at the same time, it has infringed the consumer's right to know. But when users upgrade the QQ software management, consumers will be informed of the right to choose install or not, which respect the consumer's right to know. The Supreme Court held that while Tencent infringer the consumers' right to information, Tencent also provided an uninstallation plan and that providing instant messaging services to subscribers did not require users to use QQ software management as their condition and did not have any substantive compulsion for users.

**Summary**

The above analysis shows that, in contrast to the decision of industry and commerce bureau and court judgments, they both primarily consider the right to choose, the right to information, product quality in terms of consumers interests, as in Tencent case, the software is free, so the judgment does not discuss the price issue. Consequently, we can conclude that the two organs both think that consumer interests is meaning more choices, full access to information and better product quality. Without influence these factors, the illegality of monopolistic behavior will correspondingly reduce or even no illegality. Both organs tend to be consistent with their understanding of the interests of consumers and also provide a clear guideline for the competitive behavior of the majority of operators in the market.

**Questions and Suggestions**

**Ex-post Review Is the Only Way**

These cases are punishable only after the illegal acts have actually occurred, although the enterprises bear the corresponding negative legal consequences, but these penalties actually come from consumer spending or eventually passed on to consumers, the interests of consumers have been damaged and cannot obtain corresponding compensation. If the penalties only remain in the ex-post review of illegal enterprises, the results of such penalties just have served to deter the fair competition in the market and have neglected the goals of promoting consumer interests.

At present, the relevant departments have started the revision of the Anti-Monopoly Law and the revision of the proposal has been under discussion. The relevant departments will strive to submit the
research results to the Legislative Affairs Office of the State Council this year. Experts said the major breakthrough in this revision is to establish the fundamental status of the competition policy. It is necessary to establish a prior review mechanism for monopolistic behavior and legalize the fair competition review system.

**Part of the Penalty Decision Is Not Clear**

Take the penalty decision of Shangyu Puyin Cement Co., Ltd. (Zhe Case [2014] No. 16) as an example. After the evidence is set out in the decision, it concludes: "It violated article 13 of the Anti-monopoly Law of the People's Republic of China... ... not part of Article 15 of the Anti-monopoly Law of the People's Republic of China ... ... and can not be waived." Without further elaboration of the ways, levels, consequences and causal relationships that affect the competition, the logic is not tight enough.

Law has a very high professionalism. In practice, the development of the market is rapidly changing. Even professional people have different understanding of the same law, which inevitably leads to ambiguity or controversy. Such a streamlined penalty decision cannot make the company which be punished feel "convinced" and can not give a clear guideline to other market players and affect the punishment to obtain good social effects. The detailed penalty decision can reflect that the level of China's Anti-monopoly law enforcement has improved.

**Abuse of the Standard of Consumer Interest**

There are many scholars and experts who theoretically limit the role of Anti-Monopoly Law to protect the interests of consumers. Such as Xiaoye Wang believes that "any provisions of the Anti-Monopoly law are intended to protect the interests of consumers," "any provisions of the competition law are Law on the Protection of the Rights and Interests of Consumers." Bing Chen believes that "the process of competition do not consider consumers, So what is the point of competition?" Clearly, all of these views fully recognize the consumer interests play a significant role in Anti-Monopoly law enforcement.

At present, our country's anti-monopoly law enforcement is mainly based on the European and American's law enforcement. With the overseas countries emphasis on the interests of consumers more and more, we should pay attention to the reasonable reference so that we can avoid excessive emphasis on the interests of consumers so that the Anti-Monopoly law enforcement has become narrower. In the process of Anti-Monopoly law enforcement, maintaining a market with fair competition and protecting consumers' interests should be combined.

**Acknowledgement**

This research was financially supported by the National Natural Science Foundation of China (71603099).

**References**


