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Research on Antitrust Issues in the Public Domain

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Abstract

Competition is an indispensable element in the economic development of any nation. While driving forward economic progress, free competition also brings a series of negative consequences such as monopolies. Monopolistic practices in public utilities, cloaked in the guise of public authority, pose particularly grave dangers. Addressing this issue, the report of the 20th CPC National Congress emphasizes that economic development is a critical endeavor directly impacting the people's vital interests, and that antitrust enforcement stands as one of the key legal tools for maintaining stable economic order. Among the diverse domains of antitrust enforcement, the public welfare sector holds the most significant importance and enforcement demands. Research on antitrust regulation in the public sector must be grounded in the pain points of people's livelihoods and guided by practical needs. Building upon an analysis of monopolistic practices in the public sector, it should identify existing challenges and shortcomings in antitrust regulation and formulate regulatory solutions tailored to the unique characteristics of the public sector.

Keywords

Public Domain; Administrative Monopoly; Antitrust Enforcement.

1. Introduction

Research on antitrust issues in the public utility sector refers to specialized studies addressing monopolistic phenomena arising from enterprises operating within this domain. As outlined in the State Administration for Market Regulation's Announcement on Prominent Issues of Restrictive Competition and Monopolistic Practices in Public Utility Enterprises, public utility enterprises are defined as operators providing essential public goods or services to society, encompassing sectors such as water supply, electricity, heating, gas, public transportation, and funeral services[1][1]. The rationale for distinguishing and conducting specialized analysis of monopolistic phenomena in the public utilities sector stems from the fact that most public service industries in this domain operate under franchise agreements. This structure inherently exposes such industries to risks of administrative monopolies from the outset of authorization and makes them highly susceptible to disputes concerning market monopolies during subsequent operational phases. Although China's Anti-Monopoly Law, Price Law, and other relevant regulations acknowledge the exclusive status of public utilities while imposing certain restrictions on their business practices to prevent monopolistic behavior, However, due to industry characteristics, market dynamics, and policy influences, monopolistic practices have emerged in certain public service sectors. Examples include the 2021 State Grid “Three Designations” monopoly case in the electricity sector and gas monopoly cases in Hainan, Chongqing, and other regions. Similarly, monopoly cases have occurred in public industries such as water supply, public transportation, and funeral services.

Against this backdrop, the report of the 20th CPC National Congress emphasized that building a high-level socialist market economy requires strengthening anti-monopoly and anti-unfair competition efforts, eliminating local protectionism and administrative monopolies, and regulating and guiding the healthy development of capital in accordance with the law[2]. Among the various domains of antitrust enforcement, the importance and enforcement needs in the livelihood sector are most pronounced. Safeguarding people's livelihoods and combating monopolies are considered crucial components of establishing a high-level socialist market economy and achieving common prosperity. Evidently, regulating monopolistic practices in public utilities constitutes a fundamental task for economic development and social stability. Accordingly, this paper focuses on the public utilities sector as a basic category, using monopolistic phenomena as its entry point. It analyzes the causes and various types of monopolistic conduct within public service industries and, through corresponding case studies, seeks solutions to resolve monopolistic issues in this domain.

2. Causes of Monopoly in the Public Utilities Sector

Monopoly phenomena are an inevitable outcome of economic production reaching a certain stage of development, and the resulting antitrust regulation research is likewise an inevitable product of socioeconomic advancement to a certain level. Theoretically, administrative monopoly refers to actions taken by administrative agencies and organizations authorized by laws and regulations to manage public affairs, where they abuse administrative power and violate legal provisions to restrict market competition[3]. Market monopolies, on the other hand, refer to dominant market positions naturally formed by enterprises through competitive market forces. Compared to market monopolies in public utility sectors, administrative monopolies pose greater harm. Indeed, it is precisely the existence of administrative monopolies in these sectors that facilitates and inevitably paves the way for subsequent market monopolies. Consequently, regulating administrative monopolies presents greater challenges and urgency.

Compared to enterprises, institutions, and industries outside the public sector, administrative monopolies in public utilities often exhibit characteristics such as regional concentration and natural monopoly. Their monopoly costs are lower, yet the social impact of such monopolies is more severe. Notably, the entities engaging in administrative monopolies are not limited to administrative agencies; other authorized non-administrative bodies may also become perpetrators of administrative monopolistic conduct.

(1) Regional Characteristics of Public Service Industry Development

The regional nature of administrative monopolies in public utilities stems from the inherent regional characteristics of the service industries themselves. Take popular public service sectors like water and electricity supply, or road transportation as examples: the primary providers of water and power in a given area are often fixed entities. On one hand, this reflects the geographical specificity of these industries-water and power services must rely on the living and production needs within their local area, offering limited flexibility. On the other hand, whether in large cities or small towns, for the sake of facilitating public administration, long-term and foundational industries like water and electricity supply rarely undergo significant changes. Otherwise, it would disrupt public management in the area and inconvenience basic production and living needs within the region. Therefore, public service industries in such livelihood sectors exhibit strong regional characteristics. Furthermore, resource-based public utilities also exhibit regional characteristics due to the geographical distribution of resources themselves. The most common example is the regional distribution of resources like petroleum and natural gas. China's crude oil reserves are primarily concentrated in Northeast China, Northwest China, North China, and the Bohai Bay area, while petroleum consumption spans the entire nation. This inherent disparity between resource distribution and consumption creates distinct regional characteristics within the petroleum industry.

(2) The inherent monopolistic characteristics of the public utilities sector

Public service industries in the public domain inherently possess a degree of monopolistic characteristics, making administrative monopolies more likely to occur in this sector. The reason these industries are considered naturally monopolistic lies primarily in the fact that market competition pressures within the public domain are often less intense than those in the private sector. Public sector industries generally possess a public welfare and service-oriented nature. For instance, in the public transportation sector, the upfront investment costs for the vast majority of road construction and transportation infrastructure development are extraordinarily high, and the subsequent cost recovery process involves significant long-term time commitments. Given these industry characteristics, private entities often cannot shoulder such high costs. Yet the necessity of these industries for societal development makes them impossible to ignore. Consequently, these sectors are typically developed under state leadership, with the primary objective being public service rather than profit-seeking. Thus, industries within the public sector inherently possess public welfare and service-oriented attributes.

Consequently, public service industries typically exhibit high initial investment costs and extended capital recovery cycles. Compared to private-sector industries with low entry barriers and high investment returns, public service sectors have fewer market participants. Driven by profit motives, private enterprises rarely voluntarily enter public service industries. Consequently, public service industries within the public domain operate in an environment lacking fully market-driven competition. Under such circumstances, these industries appear to possess a natural monopoly status, where transaction parties have limited choices for counterparties. In this context, if public sector entities providing services consciously leverage their market position to engage in administrative monopolization, the ease of implementing monopolistic practices is significantly reduced, thereby increasing the likelihood of monopolistic conduct occurring.

(3) The Dual Illegality of Monopolies in the Public Utilities Sector

Administrative monopolies in the public sector can have severe societal impacts. On one hand, public service industries in this domain are fundamentally foundational sectors affecting people's livelihoods, where even minor changes can disrupt daily life. Taking Jiang Qi and Wang Yue's regional economic theory as an example, in the short term, administrative monopolies may grant state-owned or state-controlled enterprises additional capital and policy advantages, accelerating operational efficiency, increasing R&D spending, and encouraging innovation[4]. However, from a long-term developmental perspective, administrative monopolies can lead to negative technological growth for specific, resource-intensive enterprises—particularly traditional petrochemical firms. Evidently, such administrative monopolies hinder the sustainable development of public service industries. Since these sectors form the foundation of grassroots production and daily life, failure to safeguard basic living and production needs inevitably diminishes socioeconomic development efficiency.

On the other hand, monopolistic practices in the public sector carry dual attributes of administrative illegality and economic illegality[5]. From an administrative perspective, administrative monopolies in public utilities inherently constitute administrative violations. Monopolistic entities exploit their public authority to implement practices that undermine fair competition within their sectors. Examples include excluding compliant competitors through official documents or predetermining outcomes in public bidding processes—both constituting administrative violations. From an economic illegality perspective, monopolistic conduct in public service industries also violates economic laws and regulations, undermining economic order. For instance, China's Anti-Monopoly Law and Anti-Unfair Competition Law both regulate administrative monopolistic conduct in public service sectors, reflecting its economic illegality to a significant degree. Understanding the dual nature of illegality in the public utilities sector highlights the negative societal impacts of administrative monopolistic practices at both the

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administrative and economic levels. Recognizing this dual nature is also crucial for dismantling administrative monopolies within the public utilities sector[6].

3. Types of Administrative Monopoly Practices in the Public Sector

(1) Restricted Trading Activities

Administrative-imposed transactions refer to situations where administrative agencies abuse their authority, violating legal provisions by mandating or indirectly requiring businesses or consumers to purchase goods exclusively from designated suppliers. In normal market transactions, both parties engage on an equal footing, reaching mutual agreement through negotiation and genuine mutual consent before finalizing the deal. However, in public service sectors, the geographical nature of these industries means fewer providers exist within a given area, and most public service sectors inherently possess monopolistic characteristics[7]. Consequently, counterparties often struggle to find equivalent or substitute providers within their local area. This inherently limits their choice of transaction partners. When public utilities leverage their quasi-governmental authority and geographical advantages, it readily gives rise to various restrictive trading practices[8].

Take the 2021 State Grid “Three Designations” monopoly case as an example. In this case, leveraging its monopoly position in power transmission and distribution, State Grid forced users to accept its designated power engineering services by mandating specific design units, construction contractors, and equipment suppliers. This deprived users of their right to choose and constituted the practice of restricting transactions as defined by the Anti-Monopoly Law[9]. Ultimately, the State Administration for Market Regulation imposed administrative penalties totaling 772 million yuan and required the company to revoke the relevant “three designations” documents. This marked China's first major penalty against a power grid enterprise for monopolistic conduct.

Furthermore, restricted trading practices can manifest as either explicit and direct or implicit and indirect. Consider China's first case involving monopolistic conduct through implicit restricted trading: the dispute over Weihai Water Group Co., Ltd.'s abuse of market dominance. In this case, Weihai Water Group, as a public utility provider holding exclusive rights to local water supply services, published a “Service Guide for Water Supply and Drainage Operations” accessible to the public. The guide only listed contact information for the company and its subsidiaries, failing to inform or advise transaction counterparts that they could choose other qualified water supply and drainage construction enterprises. The Supreme People's Court deemed this conduct an implicit restriction of transactions. The court further noted that cases in the public utilities sector typically exhibit strong regional characteristics, distinct industry features, and inherent monopolistic traits, often granting market dominance to industry players. Consequently, transaction counterparts and society at large should pay heightened attention to whether these entities engage in transactional restrictions or disruptions to normal trading order during business dealings.

(2) Conditional transaction

Conditional trading practices refer to situations where public utility service industries in the public sector, during normal market transactions, bundle goods without legitimate justification or impose other unreasonable transaction conditions. Under standard market rules, transactions are completed once both parties meet essential conditions and reach mutual agreement. However, in scenarios where administrative monopolies exist within public service sectors, certain providers may impose additional transaction conditions to pursue illegal monopoly profits. These conditions are often unrelated to the core transaction or are non-essential for its completion. Public service providers exploit their inherent monopoly position and the appearance of public authority to impose such additional conditions, profiting from them while harming the interests of their counterparties. Tying practices in public utility transactions exemplify conditional transactions. Tying occurs when a public utility provider, without legitimate justification, requires or directs a counterparty to purchase goods or services specified by the provider. Should the counterparty refuse, the provider withholds further service.

Consider the case of Guangxi Yongfu County Water Supply Company's abuse of market dominance, featured in the Supreme People's Court's "Ten Major Antitrust and Anti-Unfair Competition Cases." In this case, the company committed four administrative monopolistic acts, one of which involved unjustified tying. The court determined that when providing water supply services to counterparties, the company required them to complete a "Water Service Application Form." This form, however, bundled subsequent water usage and water meter installation services into a single agreement. The company further compelled counterparties to sign this contract and pay service fees for the additional services. During this transaction, the company should have entered into a standalone water supply service contract with the counterparties. Instead, it unilaterally bundled subsequent water meter installation services and related equipment purchase services into the water supply contract, denying counterparties the freedom to choose. This demonstrates that Yongfu County Water Supply Company exploited its position as the sole water service provider in Yongfu County to engage in illegal bundling, thereby harming the legitimate interests of its counterparties. Similar cases include the 2022 Ningxia Natural Gas Company case involving abuse of market dominance, where illegal bundling practices persisted locally for over 30 years. Additionally, the bundling of basic digital TV viewing services with paid digital TV programming by broadcasting companies, as addressed in Supreme Court Guiding Case No. 79, constitutes a classic example of conditional transactions.

(3) Other acts that have the effect of excluding or restricting competition

In judicial practice, administrative monopolistic practices implemented by public service industries in the public sector take diverse forms. Although China's Anti-Monopoly Law and Anti-Unfair Competition Law provide detailed legal regulations for various monopolistic practices that may arise in practice, new administrative monopoly tactics may emerge now or in the future as public service industries continue to develop. Relying solely on existing detailed legal provisions would fail to reasonably regulate newly emerging monopolistic behaviors[10]. Therefore, extending the scope of administrative monopolistic conduct to encompass other unjustified acts that exclude or restrict competition during transactions will better facilitate antitrust regulation in the public utilities sector.

Unlike the specific administrative actions mentioned earlier-such as restrictive trading practices and conditional transactions-"other acts that exclude or restrict competition" constitutes a prohibition targeting more abstract administrative conduct. Compared to concrete, actionable monopolistic acts, abstract administrative monopolistic conduct poses broader harm. The content of such documents can be repeatedly applied within a region, prolonging the duration of detrimental effects. Moreover, documents constituting such conduct are typically non-actionable, depriving transaction counterparties not only of fair market trading positions but also of normal avenues for judicial remedy.

Regarding the criteria for identifying "other conduct with the effect of excluding or restricting competition," detailed provisions exist not only in the State Administration for Market Regulation's "Regulations on Prohibiting the Abuse of Administrative Power to Exclude or Restrict Competition" but are also reflected in explicit statutory requirements within judicial precedents. Take the case of Shanwei Public Bus Transport Co., Ltd. v. Shanwei Municipal People's Government over exclusion and restriction of competition, featured in the Guangdong Provincial High Court's 2018 Top Ten Typical Administrative Litigation Cases. In this case, the court determined that the matter constituted an administrative monopoly case related to public transportation franchising. The fundamental rules for identifying administrative restrictive competition practices within franchising permits should be comprehensively determined by integrating legal provisions with regulations such as the “Measures for the Administration of Infrastructure and Public Utility Franchising” and the “Measures for the Administration of Municipal Public Utility Franchising.” On one hand, if a franchise is granted to a single operator or investor through statutory procedures, it may objectively exclude or restrict other competitors. However, such actions do not constitute administrative restrictive competition practices regulated by the Anti-Monopoly Law. Conversely, if the government or implementing agency violates relevant regulations during the licensing process-failing to follow fair, open, and impartial competition mechanisms, disregarding statutory procedures, or deliberately imposing unreasonable conditions to designate a franchisee-thereby excluding or restricting the fair competition rights and participation rights of other operators in the same market and harming consumers' freedom of choice, such actions should be deemed administrative acts restricting competition. Evidently, the determination of “having the effect of excluding or restricting competition” is primarily based on substantive outcomes.

4. Recommendations for Antitrust Regulation in the Public Domain

Antitrust regulation serves as a powerful measure against various monopolistic practices in contemporary market competition. Within the public domain, antitrust regulations targeting public utility sectors should be more stringent and tailored to the characteristics of the public sphere. This is also a necessary measure to maintain a fair competitive market environment and prevent the continued development of administrative monopolistic conduct. Within the public sector, antitrust regulations targeting public service industries should be more stringent and better aligned with the characteristics of the public domain. This is also a necessary measure to maintain a fair competitive market environment and prevent the continued development of administrative monopolistic practices[11].

(1) Develop specialized antitrust regulatory measures

Compared to other market sectors, the public utilities industry in the public domain exhibits distinct characteristics such as natural monopoly, territoriality, public welfare orientation, and foundational importance. Consequently, its monopolistic behaviors and patterns differ from those in other industries. Therefore, antitrust regulation must pay particular attention to these characteristics and establish antitrust systems tailored to the unique features of the public domain[12].

The key focus of antitrust regulation in the public sector lies in clarifying the relationship between public service industries and administrative agencies[13]. One crucial criterion for determining whether a public service industry involves administrative monopoly is precisely the definition of this relationship. Most enterprises in the public sector operate their personnel management, job benefits, and other functions based on normative documents issued by the government. This endows public service industries with the appearance of public authority. Therefore, when such industries enter market competition, they should strive to shed this aura of authority and compete on an equal footing. Antitrust regulation in the public sector must therefore focus on this aspect: whether public service industries, in the course of equal market competition, directly or indirectly exploit their public authority to interfere with market transactions. It requires these industries to achieve “de-administration” when engaging in transactions as market entities.

(2) Prioritize special enforcement actions against monopolies

Strengthen the intensity, scope, and depth of specialized antitrust enforcement. The report to the 20th CPC National Congress identified enhancing antitrust and anti-unfair competition efforts, while dismantling local protectionism and administrative monopolies, as crucial measures for building a high-level socialist market economy system. Guided by this directive, the State Administration for Market Regulation launched nationwide specialized antitrust enforcement actions targeting sectors vital to people's livelihoods, effectively safeguarding market transaction order. During these enforcement actions, the principle of “regulation for the people” must be consistently upheld. Public utilities constitute foundational sectors directly impacting people's livelihoods and essential production needs. Administrative monopolistic practices in these areas would severely disrupt daily life and economic interests. On the other hand, antitrust enforcement in the public utilities sector must adhere to a tiered and categorized approach. “Tiered” refers to prioritizing enforcement in industries within the people's livelihood sector that pose higher monopoly risks. “Categorized” means focusing on the types of monopolistic behaviors commonly found in different industries. The former approach allows specialized enforcement actions to concentrate resources on addressing high levels of administrative monopoly in public utilities, tackling key issues with focused efforts. This concentrates enforcement resources to strengthen oversight in critical sectors such as public utilities, education, healthcare, transportation, and government procurement. The latter facilitates the prevention of monopolistic conduct across all industries. Common administrative monopolistic practices vary across different public sectors. Adopting a classification approach enables enforcement agencies to conduct unified research on frequently occurring administrative monopolistic behaviors within each industry, thereby developing efficient and targeted, typology-based antitrust solutions.

(3) Strengthen industry self-discipline awareness

Enterprises must enhance their awareness of antitrust regulations and uphold fair market transaction practices. Beyond various antitrust measures, truly safeguarding consumer rights and maintaining a fair, just, and transparent market order also requires strengthening industry self-regulation within public service sectors. When engaging in market transactions, operators in public service sectors should focus on whether they engage in administrative monopolistic conduct or undermine market transaction order. Aware of their inherent market dominance, public service providers in the utilities sector bear an even greater obligation to prevent the abuse of their dominant market position through monopolistic conduct. Simultaneously, when engaging in activities potentially involving horizontal or vertical monopoly agreements, operators in the public utilities sector must exercise caution in communications and business arrangements with competitors and upstream/downstream partners. All actions should strictly adhere to laws, regulations, and local government requirements to avoid crossing antitrust red lines. In the case of Weihai Water Group Co., Ltd.'s abuse of market dominance, the court explicitly stated that as the exclusive operator of public water supply services within the region, the water group not only holds a natural monopoly position but also shoulders additional responsibilities for managing related water supply services. When the group or its subsidiaries compete within the same market, they bear a heightened duty of special care to refrain from excluding or restricting competition.

5. Conclusion

Although monopolistic conduct is expressly prohibited under China's Anti-Monopoly Law, various monopolistic phenomena persist in practice and cannot be eradicated. This is particularly true when such conduct intersects with special sectors like public utilities in the public service domain, where legal regulation becomes significantly more challenging. China's newly enacted Anti-Monopoly Law now provides more detailed provisions for antitrust regulation in the public sector. It not only requires the state to establish and improve a fair competition review system but also strengthens enforcement by increasing the cost of violations and adding provisions for investigations and interviews, thereby enhancing the authority of enforcement agencies. This framework maximizes consumer rights protection and upholds normal market transaction order. It particularly emphasizes the importance of antitrust efforts in livelihood sectors like healthcare and public utilities, heightens societal awareness of administrative monopolies in the public sector, and actively promotes self-regulation within public service industries to prevent the abuse of administrative power in market transactions. However, research on administrative monopolistic practices in the public sector remains a long-term endeavor. How to better coordinate and unify the relationship between government power and market competition in an era of continuous development is not only a priority for the present but also a key focus for future regulatory research on antitrust issues in the public sector.

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