



對外經濟貿易大學
University of International Business and Economics



競爭法中心
COMPETITION LAW CENTER

The legislation and enforcement of collective dominance in China's Anti-monopoly Law

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[Outline]



The origin and development of collective dominance theory



The evolution of legislation on China's collective dominance



The law enforcement practice of the abuse of collective dominance in China





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I. The origin and development of collective dominance theory



I. The origin and development of collective dominance theory

1、The collective dominance is originated from EU competition law

❖ The application of abuse of collective dominance theory is always closely linked with oligopolistic market.

❖ Oligopolistic markets are characterized by easy operation of price coordination without express or tacit collusion.

❖ It is difficult to prove in practice that the operator had reached price coordination with express or tacit collusion, or implement a collaborative agreement about competition restriction acts, therefore we can not punish them under monopoly agreements (TFEU Article 101). In this case, according to TFEU Article 102, the application to abuse of collective dominance theory plays an important role in it.



I. The origin and development of collective dominance theory

2. European Commission has used the Air tours/First choice case to refine conditions about application of abuse of collective dominance in the regulations for the concentrations of undertakings.

3. European Court of First Instance overturned the European Commission's decision on Air Tours, and made more stringent requirements on the application of this theory .

❖ After the Air Tours case, there is no rejected merger or finds any anti-competitive behavior of the case according to this theory for the time being.





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II. The evolution of legislation on China's collective dominance



II. The evolution of legislation on China's collective dominance

1. The provisions of abuse collective dominance in China's Anti-monopoly Law is mainly referred from EU's legislative mode.

2. China's Anti-monopoly Law (draft) have clear provisions for collective dominance.

❖ **Anti-monopoly Law** (draft) Article 12: a dominant market position in this Act, means an operator or several operators in the relevant market as a whole, having the ability to control the price, quantity or other trading conditions, or have the market position to hinder or affect other operators to enter the relevant market.



II. The evolution of legislation on China's collective dominance

3. How to understand several operators in the relevant market as a whole?

❖ German "against restricting competition law" Article 19: Multiple companies formed a whole meets the following conditions, will regarded as having a dominant market position: When company less than three jointly occupy more than 50 percent market share, or companies less than five jointly occupy more than two-thirds of the market, will considered have dominant market position, unless they can prove they have competition substantially and does not have a relative prominent market position compare to other competitors.

❖ Taiwan "Fair Trade Law" Article 5, paragraph 1: as monopolize defined in this Law, is refers to the specific enterprise in a certain market have a dominant position, or does not face competitive pressure, and have the ability to exclude competition in the market. If two or more enterprises have no price competition, and these companies, constitute a previously described situation externally, it will also be regarded as monopolize.



II. The evolution of legislation on China's collective dominance

4. The provisions for collective dominance in China's Anti-monopoly Law is obscure

❖ Article 17: a dominant market position in this Act, means an operator or several operators in the relevant market as a whole, having the ability to control the price, quantity or other trading conditions, or have the market position to hinder or affect other operators to enter the relevant market.

❖ Article 19: when satisfied one of the following circumstances, the operator can be presumed to have a dominant market position: (A) an operator's market share in the relevant market reaches half of market (B) two operators market share in the relevant market reach two-thirds of the total market (C) three operators in the relevant market share reached three-quarters of the total market.

❖ Anti-monopoly Law does not require multiple operators to be a whole when take in the scope of investigation, and have not describe the case of more than three operators.





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III. The law enforcement practice of the abuse of collective dominance in China



The law enforcement practice of the abuse of collective dominance in China

- 1.The provisions for collective dominance in China's Anti-monopoly Law is obscure.
- 2.There is no case applied this theory in China's current enforcement practices.
3. Consider the reality, and it is necessary to interpret the law and attempt the enforcement.

❖Most of the industry concentration in Chinese market is not high, which does not form an oligopoly market and made the situation difficult to apply the collective dominance theory.

❖Oligopoly industries in china are mostly regulated industries, and the state-owned enterprises are the oligarchs of these industries, such as oil, telecommunications and so on. Market structure of these industries exist by law, Anti-monopoly Law can not intervene them.

❖However, the state-owned industry still have a certain range of competition, and collective dominance theory can hit the tacit collaboration, and promote competition within the industry.





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Thank you!♪



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