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Comments on the Anti-Monopoly Law
of the People’s Republic of China

Abstract The Anti-Monopoly Law of the People’s Republic of China has provided to prohibit monopoly agreements and abuse of dominant market position, control concentration of business operators and fight against administrative monopoly. The transformation of China’s economic system is incomplete, and the Anti-Monopoly Law has many flaws. At the initial stage of enforcing the Anti-Monopoly Law, severe challenges will occur in legislative purposes, enforcement authorities, fighting against administrative monopoly and handling of the relationship between anti-monopoly enforcement and industry supervision. Thus, the promulgation of the Anti-Monopoly Law is only the first step in the legislation on anti-monopoly.

Keywords Anti-Monopoly Law, monopoly agreement, abuse of dominant market position, concentration of operators, administrative monopoly, industry regulation

Abstract 中国反垄断法规定了禁止垄断协议、禁止滥用市场支配地位、控制经营者集中、反对行政垄断等制度。中国经济体制转型尚未彻底完成,反对垄断法也存在很多不足,反垄断执法初期在立法目的、执法机关、反对行政垄断、处理反垄断执法与行业监管的关系方面会遇到严峻挑战。因此,颁布反垄断法只是反垄断立法的第一步。

Keywords 反垄断法,垄断协议,滥用市场支配地位,经营者集中,行政垄断,行业监管
On August 30, 2007, the Anti-Monopoly Law of the People’s Republic of China (“Anti-Monopoly Law”) was adopted at the 29th meeting of the 10th NPC Standing Committee. The promulgation of the Anti-Monopoly Law is a major event in Chinese legal system, which is of great significance to the establishment of the legal system of Chinese socialist market economy; and in Chinese economic system, it is a milestone in the economic reform. Anti-monopoly law is a legal system unique in market economy, marking that the basis of national resource allocation and economic development is market mechanism and competition mechanism, and thus, the promulgation of China’s Anti-Monopoly Law may strongly declare that China has basically established the socialist market economy mechanism. The anti-monopoly law will be of important influence on the national economy and almost all the economic sectors as well as the actions of enterprises and consumers, which is the basic law regulating the national economic order and market order. According to Article 57, the Anti-Monopoly Law became effective on August 1, 2008. However, the transformation of Chinese economic system is incomplete. Furthermore, the Anti-Monopoly Law still remains to be improved, and hence the enforcement of China’s Anti-Monopoly Law faces many challenges at the initial stage.

1 Analysis and comment on the substantive law system of China’s Anti-Monopoly Law

According to the economic principle of anti-monopoly law, if the market share of an enterprise is too large, the product prices tend to increase with the reduction of market supply. Consequently, the task of anti-monopoly law is to prevent and suppress monopoly in the market and in the circumstance of existing lawful monopoly, supervise monopoly enterprises in order to prevent the abuse of dominant market. Therefore, China’s Anti-Monopoly Law has provided for the following substantive law systems.

1.1 Prohibition of monopoly agreements

The monopoly agreement refers to the agreement, written or oral, reached by business operators for the purpose of expelling and restricting competition, or for producing such effects. By learning from the practices of the US antitrust law, EC competition law and German law against the restraint on competition, the monopoly agreements in China’s Anti-Monopoly Law are divided into horizontal agreements and vertical agreements.