

# **Perfection of Anti-Monopoly Fine System in China from the Perspective of Protecting Small and Medium-Sized Enterprises**

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**Abstract:** Small and medium-sized enterprises occupy an important proportion in China's economic structure and are the basic force to promote China's economic development. Therefore, there are many laws and regulations on the protection of small and medium-sized enterprises in China, among which the most significant is the anti-monopoly protection measures for small and medium-sized enterprises. Based on the basic understanding of the anti-monopoly fine system, this paper analyzes the problems existing in the protection of small and medium-sized enterprises in the current domestic anti-monopoly fine system, and takes effective optimization path for these problems, hoping to give full play to the anti-monopoly fine system to protect the steady development of small and medium-sized enterprises.

## **1. Introduction**

In the process of the development of China's national economy, small and medium-sized enterprises play the most significant role in promoting the quality of national life. However, in the increasingly fierce market competition, large enterprises are better than small and medium-sized enterprises in terms of capital, manpower and technology, which restricts the development of small and medium-sized enterprises to a certain extent. To keep the healthy and stable development of small and medium-sized enterprises and make them win a place in the market competition, the government has issued protection policies for small and medium-sized enterprises, among which the most prominent is the anti-monopoly law. Although the anti-monopoly law provides much protection for small and medium-sized enterprises, there are still some problems that need to be solved to better play the protective role of small and medium-sized enterprises.

## **2. Basic Understanding of China's Anti-Monopoly Fine System**

Anti-monopoly law is a kind of law against monopoly and protecting competition. It is the basic legal system to promote the development of market economy. The anti-monopoly law plays an important role in protecting the healthy development of small and medium-sized enterprises and in the competition of market economy. The fine system in the anti-monopoly law is an effective means to restrict the monopoly behavior in the market competition. Its functions are mainly reflected in the following aspects: first, to strike down the existing law-violators and deter the potential law-violators; second, to protect the legitimate rights and interests of consumers; third, to restrict competition agreements and avoid the existence of unfair competition forces. Therefore, it can be seen that the anti-monopoly law has protected the development of small and medium-sized enterprises, safeguarded the market principle of unification, openness and competition, encouraged fair competition in the market and improved the market competitiveness. In China's provisional anti-monopoly law, there is no obvious standard for defining the sum of fines, and the exemption rules for fines are relatively general, and the government has not published the calculation method of fines, making the anti-monopoly law lack transparency and predictability. In order to make the anti-monopoly law play a greater role, it is a must to improve the anti-monopoly fine system.

## **3. Analysis on the Problems in China's Anti-Monopoly Fine System from the Perspective of**

## **Protecting Small and Medium-Sized Enterprises**

### **3.1 Unclear Defining Standard of China's Small and Medium-Sized Enterprises in the Anti-Monopoly Law**

Small and medium-sized enterprises play an important role in the development of market economy and also have special significance in China's legal system. Because different legal systems have different definitions of small and medium-sized enterprises, the anti-monopoly fine system of small and medium-sized enterprises should be defined according to the scale of enterprises, which is divided according to industry categories, assets and human resources of enterprises in The standard of Printing and Issuing Small and Medium-sized Enterprises. In the current anti-monopoly law, although small and medium-sized enterprises are called operators of small and medium-sized enterprises, there is no clear concept division on whether they are consistent with the small and medium-sized enterprises classified in The standard of Printing and Issuing Small and Medium-sized Enterprises. Therefore, whether small and medium-sized enterprises can be protected and restricted by the anti-monopoly fine system needs to be clearly divided.

### **3.2 Improper Threshold of Fine Ratio of Small and Medium-Sized Enterprises in China**

China's anti-monopoly fine system is mainly aimed at fining abuse in market domination, restriction in competition agreement and concentration of operators, and penalty contents of each violation are regulated in the relevant laws. The general calculation method of fines is as follows: sales volume of the previous year  $\times$  unfixed ratio - amount of reduction and exemption = amount of anti-monopoly fine<sup>[1]</sup>. However, there is no clear regulation on the "unfixed ratio", which makes the threshold of fine rate fluctuate widely. As a result, it is impossible to accurately measure the fine of small and medium-sized enterprises in the implementation of the anti-monopoly fine system.

### **3.3 Unclear Exemption Rules of Fines for Small and Medium-Sized Enterprises in China**

For the exemption rules of monopoly agreement, because the monopoly agreement itself has legitimacy and social welfare, comprehensive consideration should be taken when confiscating illegal gains and imposing fines in accordance with the provisions. Thus, exemption rules are exceptional provisions in the anti-monopoly fine system, so we must ensure its strict logic and clear concept principle. However, in the current anti-monopoly law, there is no clear judgment requirement for the exemption rules of small and medium-sized enterprises, and the exemption rules are too general, so the protection function of the anti-monopoly law on small and medium-sized enterprises is reduced in the implementation of law enforcement.

## **4. Effective Ways to Optimize the Anti-Monopoly Fine System of Small and Medium-Sized Enterprises in China**

The original intention of anti-monopoly law is to protect the healthy and stable development of small and medium-sized enterprises and improve their market competitiveness. However, it has not played a good protective role in the actual law enforcement process, and the effect is not satisfactory. In order to effectively implement the anti-monopoly fine system to produce great significance on the development of small and medium-sized enterprises, China has analyzed the causes and taken the following measures to improve the current anti-monopoly system.

### **4.1 Clarify the Defining Standard of Small and Medium-Sized Enterprises in Anti-Monopoly Law**

Our current Standard of Printing and Issuing Small and Medium-sized Enterprises do not have a clear division of small and medium-sized enterprises, resulting in China's small and medium-sized enterprises have no clear defining standard while enjoying the protection of the anti-monopoly law,

which reduces the protection effect of the anti-monopoly law on small and medium-sized enterprises. Therefore, we should clarify the classification of small and medium-sized enterprises and the defining criteria of small and medium-sized enterprises in the anti-monopoly law<sup>[2]</sup>. In the process of anti-monopoly law enforcement, the law enforcement is carried out according to the scale of the enterprise, and the competitive strength of the enterprise in the market can best reflect the scale of the enterprise. Therefore, we must be more cautious in the enforcement of the anti-monopoly law. A little carelessness will affect the application of the law and the responsibility of the enterprise. In China's market, whether an enterprise has competitive power depends on its market share. The higher the market share, the higher the market status is and the stronger the monopoly will be. On the contrary, there will be no monopoly. When dividing the scale of enterprises, we should not only consider the regulations on human resources, material resources and assets of enterprises in The standard of Printing and Issuing Small and Medium-sized Enterprises, but also consider the proportion of market share, combine the content of anti-monopoly supervision, and conduct the division in a comprehensive way, so as to perfect defining standard on the premise of meeting the requirements of The standard of Printing and Issuing Small and Medium-sized Enterprises and market share. For the specific improvement standards, we can refer to the actual situation of the market, the classification standards for enterprises in The standard of Printing and Issuing Small and Medium-sized Enterprises and some effective foreign index definitions to improve the definition standards in China's anti-monopoly law, so that small and medium-sized enterprises can enjoy the rights and obligations due to the anti-monopoly law.

#### **4.2 Adjust the Ratio and Threshold of Anti-Monopoly Fine of Small and Medium-Sized Enterprises in China**

The scale of small and medium-sized enterprises is different from that of large enterprises, and their monopoly behavior has different influence and harm on the market. Compared with large enterprises, the impact and harm of small and medium-sized enterprises are much smaller. Therefore, it is unfair for small and medium-sized enterprises to use the same anti-monopoly fine standard, which also violates the legislative principles of anti-monopoly law. As a result, it is necessary to reduce the threshold of fine ratio when implementing the fine system for small and medium-sized enterprises that meet the classification standard in The standard of Printing and Issuing Small and Medium-sized Enterprises and occupy a small market share<sup>[3]</sup>. At present, the penalty ratio of all enterprises in China is more than 10%, and it is stipulated that the degree, scope and nature of the violation should be considered when carrying out anti-monopoly punishment. In view of the current situation of small and medium-sized enterprises, it is relatively reasonable to limit the penalty ratio to less than 10%, but law enforcement personnel have a certain lack of understanding, leading to a little large range of penalty ratio between 1%-10%. In order to ensure the rationality and objectivity of the anti-monopoly law enforcement agencies and ensure that the legitimate rights of small and medium-sized enterprises are not infringed, we can cancel the lower limit of 1% penalty ratio and establish the punishment rules especially applicable to small and medium-sized enterprises on the basis of the existing anti-monopoly punishment system.

#### **4.3 Refine the Exemption Rules of Fines for Small and Medium-Sized Enterprises in China**

For fines of small and medium-sized enterprises, it is specified in the exemption provisions that the operators should bear the burden of proof that "consumers can share the benefits" and "it will not seriously restrict the market competition". This rule is too general. Therefore, it is necessary to refine the two burden of proof to provide correct guidance for anti-monopoly law enforcement personnel, so that the legislative purpose of the anti-monopoly law can be guaranteed and the protection of small and medium-sized enterprises can be realized. In view of this, the anti-monopoly law enforcement agencies must carefully divide the punishment exemption rules for small and medium-sized enterprises after careful consideration.<sup>[4]</sup>

## 5. Conclusion

To sum up, although the anti-monopoly law is mainly aimed at large enterprises, and the punishment system implemented are also determined for large enterprises, small and medium-sized enterprises, as the main component of the market economy, can't be excluded by the anti-monopoly system. In fact, to a large extent, the anti-monopoly punishment system evaluates the behavior of large enterprises through the influence of small enterprises in the law enforcement system. Under the new situation of deepening the reform of the market economic system, China's Anti-monopoly Law should be improved from the perspective of the protecting small and medium-sized enterprises, and it is necessary to formulate a well-differentiated, clear and standardized system, so as to strengthen the protection of small and medium-sized enterprises and the economic constitutional status of the anti-monopoly law itself.

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