
THE AMENDED ANTI-MONOPOLY LAW: KEY CHANGES
UNDER THE COMPETITION POLICY

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I. INTRODUCTION

The Anti-Monopoly Law of People's Republic of China (hereinafter referred to as "AML") is regarded as the legal basis for the fundamental development of market economy in China, providing legal protection for fair market competition and effective operation of the market economy.¹ China's AML was promulgated in August 2007 and has taken legal effect since 1 August 2008. Over the past decade, AML has gone through substantive progress in theoretical research, legislation, and enforcement in China, which provides crucial benefits in enhancing China's socialist market economy system, improving the basic rules of market competition, and realizing the positive role of market mechanism. On 24 June 2022, the 13th National People's Congress Standing Committee voted at its 35th meeting on amending the AML decision, which has recently come into effect on 1 August 2022 (hereinafter referred to as the "Amended AML"). This update has attracted intensive attention from the academic circle, legal practitioners, and enterprises in the market, etc.

This article will firstly identify the background of the AML and the necessity of the amendment in Part II. An overview of the Amended AML and its guiding policy will be depicted in Part III, and Part IV will focus on the revision's responses to three controversial topics, i.e., regulations over digital economy, the safe harbor rule, and the enhanced legal liability. Finally, Part V will summarize the article by briefly concluding the key changes and expectations for future practice.

II. BACKGROUND OF THE AML AND THE NECESSITY OF AMENDMENT

Ever since the reform and opening up, China's economy has shifted from the stage of high-speed growth to the stage of high-quality development. Nowadays, the competition policy has become the basic economic policy in China, and industrial policy has receded to a secondary position instead. Generally speaking, the industrial policy where the state guarantees the resource allocation is applicable to the stage of budding industrial development. However, with the gradual prosperity of China's commodity economy and the increasing complexity of China's administrative hierarchy, the competition policy where resource allocation and efficiency of economic operation are determined by the market *per se* has gradually gained its dominant position and laid the solid

¹ Zhang Chenying (张晨颖), *Fanlongduan Fa Xiuding Zhuanti Xuyu* (《反垄断法》修订专题絮语) [Topic Preambles on the Anti-monopoly Law Revision], 4 QINGHUA FAXUE (清华法学) [TSINGHUA UNIVERSITY LAW JOURNAL] 5, 5 (2022).

foundation for China's economic development.² Only by establishing the fundamental position of competition policy can China truly establish an economic system with "effective market mechanism as well as dynamic micro and macro regulation".³

From 2020 to 2021, the State Administration for Market Regulation (hereinafter referred to as "SAMR") released the Request for Public Comments on the Anti-monopoly Law (Draft Amendment Bill) and the Report on the Work of the Government adopted at the Fourth Session of the 13th National People's Congress which clearly stated that the AML shall strengthen anti-monopoly regulation, prevent the disordered expansion of capital, and resolutely maintain a fair and competitive market environment.⁴ However, based on the current situation of China's development, the AML mainly faces the following challenges:

First, while the existing AML is lacking clear, complete and relevant regulations, individualized anti-monopoly issues in China's economy have emerged in the course of law enforcement. Problems regarding the effective regulation of abuse of administrative power to exclude or restrict competition, the legalization of fair competition review system, and the balance of the relationship between the AML and the review system are all in need of detailed interpretation and clarification.

Second, regarding the rising of digital economy industry, China's AML can no longer meet the present and future needs. The advancement of the market economy and the competition pattern brought about by new technologies and new business models have given rise to new competition issues, which have challenged the concept, logic, jurisprudence, and technology of anti-monopoly law. For instance, how the AML shall effectively regulate the abuse of market dominance by super platforms in terms of big data usage, algorithmic collusion, algorithmic discrimination, data-driven mergers and acquisitions, etc.; whether the legislative objectives and basic analytical framework of the AML have changed in the context of the digital economy; and what changes have occurred

² Lu Yan (卢雁), *Chanye Jingzheng yu Jingzheng Zhengce de Guanxi Yanjiu* (产业竞争与竞争政策的关系研究) [Research on the relationship between industrial competition and competition policy], 1 ZHONGGUO SHICHANG JIANGUAN YANJIU (中国市场监管研究) [CHINA MARKET REGULATION STUDY] 34, 34-36 (2022).

³ Meng Yanbei (孟雁北), *Qianghua Jingzheng Zhengce Jichu Diwei Shiyu Xia Zhongguo Fanlongduan Fa Xiuding Jiayan* (强化竞争政策基础地位视域下中国《反垄断法》修订建言) [Proposals for Amending China's Anti-Monopoly Law under the Perspective of Strengthening the Basic Status of Competition Policy], 3 ZHONGGUO JINGJI BAOGAO (中国经济报告) CHINA POLICY REVIEW 32, 32-37 (2021).

⁴ Fanlongduan Fa (Xiuzheng Cao'an) zhengqiu Yijian (反垄断法(修正草案)征求意见) [Request for Public Comments on the Anti-monopoly Law (Draft Amendment Bill)] (promulgated by the Standing Committee of the National People's Congress, Oct 23, 2021) (Chinalawinfo); Part III § 3 of the Report on the Work of the Government adopted at the Fourth Session of the 13th National People's Congress (第十三届全国人民代表大会第四次会议《政府工作报告》) points out: The state shall support the innovative development of platform enterprises and enhance international competitiveness, while regulating development and sound digital rules in accordance with the law. The state shall strengthen anti-monopoly and prevent disorderly expansion of capital, and resolutely maintain a fair competitive market environment.

in the elements and tools of antitrust analysis in response to the rapid development of digital economy are all issues awaiting further instructions.

Third, in terms of the legal liability, although China's AML can already maintain certain market competition and suppress attempts of illegal conducts by regulating monopoly agreements, abuse of dominant market position, concentration of operators that severely restrict competition, the legal liability is still unevenly allocated, and the deterrent effect is limited as well. The AML does not contain legal liabilities for individuals and that the penalty fine is too low to prevent monopolistic behaviors. All these issues require urgent modification in the revision.

It is undeniable that AML plays an extremely important role in safeguarding the legitimate rights and interests of operators and consumers, promoting technological innovation and progress, improving the competitiveness of enterprises, and ensuring the healthy, sustainable and coordinated development of the national economy.⁵ Therefore, considering the aforementioned factors, it is of crucial necessity and urgency to revise the AML under the competition policy so as to reinforce the goals of anti-monopoly legislation and maintain the fair competition in the market.

III. OVERVIEW OF THE AMENDED ANTI-MONOPOLY LAW UNDER THE COMPETITION POLICY

On 24 June 2022, the Amended AML has been promulgated by the Standing Committee of the National People's Congress and has taken legal effect on 1 August. In this amendment, the total number of articles has increased from 57 to 70, the order of 19 articles has been adjusted, and 7 new paragraphs have been added to the AML.

The purpose of the Amended AML is to better cater the demands arose from practice by providing a stronger legal basis for enforcement and a reasonable guideline for judicial decisions. First, the revision clarifies the basic status of competition policy and emphasizes the significance of administrative enforcement and judicial adjudication, which enhances the quality and effectiveness of adjudication. Second, the amendment makes adjustments to the rules of monopoly behaviors and responds to the disparities of the determination of illegal monopolistic behaviors in practice. Third, the amendment adds provisions on monopolistic acts in the field of digital economy, providing a legal basis for maintaining fair competition in the digital market under the information

⁵ Zuigao Renmin Fayuan Guanyu Rezhen Xuexi he Guanche Zhonghua Renmin Gongheguo Fanlongduan Fa de Tongzhi (最高人民法院关于认真学习和贯彻《中华人民共和国反垄断法》的通知) [Notice by the Supreme People's Court of Studying and Applying the Anti-Monopoly Law of People's Republic of China] (Chinalawinfo).

explosive era. Fourth, the amendment also comprehensively strengthens the legal liability for misconducts and introduces a public interest litigation regime.⁶

Generally, all these changes are made under the guiding competition policy as responses to the problems emerged during the AML's enforcement and the demands of the rapidly developing society.

IV. RESPONSES TO THREE HEATED TOPICS IN THE AML

A considerable number of provisions have been amended in the revision so as to respond to the controversies. This section will, however, introduce and analyze the rationale behind three key changes which are most commonly debated in the field of AML, i.e., the enhanced regulation toward platform economy, **the addition of safe harbor rule for vertical monopoly agreements, and the elevated legal liability.**

A. *The Strengthened Regulatory Efforts to the Platform Economy and the Digital Economy*

The Amended AML has well reflected its trend of keeping up with the latest development as Articles 9 and 22 highlight the regulations that operators must not use data and algorithms, technology, capital advantages and platform rules to engage in monopolistic practices, abuse of dominant market position and other anti-competitive conduct.

Over the past few years, the unilateral rules set by China's Internet giants for their services and platforms have been repeatedly challenged in Chinese judicial systems and have attracted the attention of academics and society at large. Concerning the background of internet usage, three reasons have contributed to the new regulation over digital economy. First, as social networks, Internet search and e-commerce have perpetuated every corner of people's life, the field of platform and digital economy is closely related to people's livelihood and privacy and is becoming increasingly significant. "Picking one from two" "big data killing" "self-preferential treatment", and "stifling mergers and acquisitions" all involve data, algorithm use and digital technology. All of these are affecting the interests of consumers and are in urgent need of regulation. Second, as internet platforms are stepping into a bilateral market, leading enterprises have formed huge barriers for startups and small companies to enter the field of platform economy, resulting in the "winner takes it all" phenomenon. Finally, anti-monopoly in the platform economy has become an international trend. For instance, from 2017 to 2021, there were nearly 150 monopoly cases involving the four major international tech giants, i.e., Google, Apple,

⁶ Huang Yong (黄勇), *Lun Woguo Fanlongduan Sifa Shijian de Xin Tiaozhan Jiqi Yingdui* (论我国反垄断司法实践的新挑战及其应对) [*On the New Challenges of Antitrust Judicial Practice in China and Its Response*], 9 *FALV SHIYONG* (法律适用) [JOURNAL OF LAW APPLICATION] 21, 22-24 (2022).

Facebook and Amazon.⁷ As can be seen, successful big digital companies have left no room for competition in the European and American markets. The international society is calling for strengthening the regulation of antitrust.⁸

Looking from a perspective of comparative jurisprudence, various jurisdictions have taken actions to strengthen their regulation over digital economy. In the United States, for instance, President Donald Trump signed the Criminal Antitrust Anti-Retaliation Act in 2020 to explicitly prohibit employers from retaliating against individuals who report antitrust violations and protect employees who are whistleblowers from retaliatory conduct. In 2021, the U.S. House Judiciary Committee considered and passed six bills aimed at strengthening antitrust enforcement and restoring platforms. All these reflect the U.S. legislature's vigilance against platform monopolies.⁹ Moreover, as the European Union maintained a strict regulation toward data protection in the past decades, the EU has been at the forefront of strengthening antitrust enforcement on digital platforms in recent years as well. In 2020, the EU published a draft Digital Services Act and a Digital Marketplace Act to regulate the EU's digital marketplace by restricting certain market practices of technology giants. Once the two bills come into effect, large digital platforms will face stricter regulation and, in the European market, harsher penalties including business splitting and large fines.¹⁰

It is undeniable that the legislation over the anti-monopoly actions for digital platforms in the international community had provided ample experience for China's strategic choices. However, the developmental disparities in different areas should never be neglected. Where the EU's local digital economy development is not as drastic and balanced as that of China, its main regulatory subjects aimed at the U.S. technology giants. Where the widening gap between the rich and the poor as well as the sluggishness of the manufacturing industry has been the intrinsic causes of the economic constraints in the United States, the U.S.'s enhanced digital economy regulation is designed to deal with such

⁷ See Li Ling (李玲), *Nandu Niandu Fanlongduan Baogao Jiance Gaixie Hulianwang Guize Geguo Zhengduo Huayuquan* (南都年度反垄断报告: 监管改写互联网规则, 各国争夺话语权) [*Nandu's Annual Antitrust Report: Regulation Rewrites Internet Rules as Countries Vie for the Right to Speak*], NANFANG DUSHI BAO (南方都市报) [NANFANG METROPOLIS DAILY] (Dec. 17, 2021 23:07), <http://m.mp.oeeee.com/a/BAAFRD000020211217634947.html>.

⁸ Wang Xiaoye (王晓晔), *Fanlongduan Fa Xiuzheng Cao'an de Pingxi* (反垄断法(修正草案)的评析) [*Review on the Anti-monopoly Law (Draft Amendment)*], 3 DANGDAI FAXUE (当代法学) [CONTEMPORARY LAW REVIEW] 36, 38-39 (2022).

⁹ See Li Ling (李玲), *Mei Zhongyiyuan Sifa Weiyuanhui Tongguo Liuxiang Fanlongduan Fa'an Keji Jutou Zheng Youshui Dizhi* (美国众议院司法委员会通过六项反垄断法案, 科技巨头加紧游说抵制) [*U.S. House Judiciary Committee Passes Six Antitrust Bills, Tech Giants Step Up Lobbying to Resist*], NANFANG DUSHI BAO (南方都市报) [NANFANG METROPOLIS DAILY] (June 26, 2021 10:34), https://www.sohu.com/a/474175548_161795.

¹⁰ Wang Xianlin (王先林), *Shuzi Pingtai Fanlongduan de Guoji Guancha Yu Guonei Sikao*, (数字平台反垄断的国际观察与国内思考) [*Anti-monopoly Actions over Digital Platforms, Perspectives from Comparative Law and Reflections on Domestic Law*] 5 ZHONGGUO SHEHUI KEXUEYUAN DAXUE XUEBAO (中国社会科学院大学学报) [JOURNAL OF GRADUATE SCHOOL OF CHINESE ACADEMY OF SOCIAL SCIENCES] 49, 53-54 (2022).

problems. Similarly, China did not adopt directly foreign experiences and its strategy is fundamentally based on the realities of its own steady yet fast-paced digital economy development, where it faces the issue of platform monopoly and disorder expansion of capital. Thus, the Amended AML focuses on the balance of multiple-valued objectives of anti-monopoly and continuously improves the precision and specialization of anti-monopoly enforcement and examines the scale of anti-monopoly law with a developmental viewpoint and strategic perspective.¹¹

Moreover, the state authorities are also in strong support of the legislation. The National Development and Reform Commission issued “Several Opinions on Promoting the Standardized, Healthy and Sustainable Development of the Platform Economy”, which clearly proposes to adhere to both development and regulation, establish sound governance systems for platform economy, improve the level of regulatory capacity, and promote the standardized, sustainable, and healthy development of the platform economy. Whereas the regulation over the digital economy is highly compatible with the goal of common prosperity and the characteristics of the digital economy, it provides both a powerful driving force for economic growth and a sharing mechanism for balanced development. This is by no means conducive to solving the problems of inadequacy as well as the imbalance in development and helping common prosperity to steadily advance in high-quality development.¹²

In the long run, China will continue to enhance anti-monopoly regulation and enforcement in the digital economy in the future, ultimately achieving the overall goal of promoting the healthy development of the digital economy and improving the welfare of consumers. However, China’s existing platform anti-trust mainly relies on external forces and its AML needs further development in the self-governance regime to make up for the deficiencies of the traditional antitrust mechanism. Additionally, the majority of the traditional market governance is post-facto regulation which is no longer applicable under current market environment. For the monopolistic behavior of platforms with strong concealment, an all-round supervision both from *ex ante* and *ex post* perspectives is expected to be adopted to reduce risks.¹³

B. The Introduction of “Safe Harbor” Rule for Monopoly Agreements

The Amended AML introduces a “safe harbor” rule to vertical monopoly agreements. In circumstances where *undertakings can prove that their market share in the relevant market is lower than the standards set by the anti-monopoly law*

¹¹ *Id.* at 58-61.

¹² Wangji Jian (王健) & Li Xing (李星), *Lun Fanlongduan Fa yu Gongtong Fuyu de Shixian* (论反垄断法与共同富裕的实现) [*On Anti-monopoly Law and the Realization of Common Prosperity*], 3 FAZHI SHEHUI (法治社会) [LAW-BASED SOCIETY] 33, 36 (2022).

¹³ Chen Yingying (陈盈盈), Gu Yuqian (顾彧婧), Deng Ruyi (邓如一), *Pingtai Jingji Fanlongduan de Kunjing yu Duice Yanjiu* (平台经济反垄断的困境与对策研究) [*Research on the Predicament and Countermeasures of Anti-monopoly in the Platform Economy*], 20 SHANGZHAN JINGJI (商展经济) [TRADE FAIR ECONOMY] 18, 20 (2022).

*enforcement agency of the State Council and meet other conditions set by that authority, such act shall not be prohibited.*¹⁴

A “safe harbor” is a concept used in the maritime transportation industry which means a port where a ship can arrive and depart safely and without risk to the ship.¹⁵ When applied to the legal field, the term “safe harbor” carries a meaning of an exception to the prohibition of the law and an exemption of the exception. In other words, conducts will not be forbidden or punished if they fall within the ambit of the safe harbor. The rule is actually not a new concept in the Chinese legal system as such provisions are already prevalent in the field of Maritime Law, Securities Law, Intellectual Property Law, etc. In the field of antitrust, the safe harbor rule can previously be found in some sector guidelines, such as the Provisions of the State Administration for Industry and Commerce on Prohibiting the Abuse of Intellectual Property Rights to Preclude or Restrict Competition revised in 2020 and Anti-monopoly Guideline on the Automobile Industry promulgated in 2019, but the Amended AML now recognizes the legitimacy of such exemption for vertical agreements in a higher-level of law.

However, different from its counterparts in the United States and the European Union, the safe harbor rule referred to in the Amended AML is only limited to the category of vertical monopoly agreement. Given that operators without significant market power implementing a particular type of agreement usually do not have the effect of excluding or restricting competition, from the perspective of improving the efficiency of law enforcement, there is a direct presumption that it is not illegal. However, the presumption is allowed to be rebutted by substantive evidence.¹⁶

Whether from the perspective of market share standard or from the perspective of scope of application, limiting the safe harbor rule to the field of vertical monopoly agreements is essentially a contraction of the rule. Several reasons could explain why this is the case. First, judging from the purpose of the safe harbor rule, in order to improve the efficiency of antitrust enforcement, increase operators’ expectations, and reduce compliance costs, the rule aims to exempt certain monopolistic acts that cause little or no harm to competition. It is

¹⁴ Art. 18 ¶ 2 of the Amended AML: An agreement specified in subparagraph (1) or (2) of the preceding paragraph, which, as the undertaking is able to prove, has no effect of precluding or restricting competition, shall not be prohibited; Art. 18 ¶ 3 of the Amended AML: If the undertaking is able to prove that its share of the relevant market is lower than the standard established by the anti-monopoly enforcement body of the State Council, and satisfies the other conditions specified by the anti-monopoly enforcement body of the State Council, the agreement shall not be prohibited.

¹⁵ Xu Ying (徐颖) & Guo Xuelan (郭学兰), *Fanlongduan Fa Anquan Gang Zhidu Shiyong Jiexi* (《反垄断法》“安全港”制度适用解析) [*Application of Safe Harbor Rule in Anti-monopoly Law*], 10 ZHONGGUO JIAGE JIANGUAN YU FANLONGDUAN (中国价格监管与反垄断) [PRICE SUPERVISION AND ANTI-MONOPOLY IN CHINA] 38, 38 (2022).

¹⁶ Han Kun Law Offices, *Xin Longduanfa Jiexi Xilie Wenzhang Zhisan—Zongxiang Longduan Xieyi de Fanjingzheng Xiaoguo yu Anquangang Zhidu* (新《反垄断法》解析系列文章之三—纵向垄断协议的反竞争效果与安全港制度) [*The Third in a Series of Articles Explaining the New Antimonopoly Law—Anti-competitive Effects of Vertical Monopoly Agreements and the Safe Harbor Rule*], <https://mp.weixin.qq.com/s/ewAtJxssKOTRb9u9-wdHQ> (lasted visited Dec. 4, 2022).

reasonable to exclude the application of the safe harbor rule to conduct that is more damaging to competition. Since the horizontal monopoly agreement listed in China's AML is regarded as the most serious cartel act recognized by the international community, such category shall not be subject to the safe harbor rule.¹⁷ Second, the determination of the safe harbor rule depends on the definition of the "relevant market", and due to the complexity of the market mechanism and subjects, the definition of the relevant market in China is still immature, which will have a certain impact on the application of the safe harbor rule.¹⁸ Given that China's antitrust law has been implemented for a relatively short period of time and is still in the stage of experience accumulation, extra caution is especially needed in the design of the safe harbor rules.¹⁹

Similar to the mode of legislation of the AML as a whole, while absorbing experience from other jurisdictions, the safe harbor regime has also incorporated the characteristics of China's development into its legislation. This new rule has made great progress to provide clearer guidelines for operators and respond to the legislative purpose of encouraging innovation in the General Provisions and plays a catalytic role in stimulating market dynamics.²⁰ The rule is also prospective to indicate the boundary between lawful and unlawful behaviors for market players and provide guideline and transparency for market players to enforce the law.²¹ However, as the scope of the Amended AML is large and the subject matters of regulation are extensive and complex, how to define the relevant markets and how to calculate the market shares of operators and counterparties are still lack specific provisions. Certain clarity and implementation are expected to be made and various departments should also cooperate with each other and formulate detailed supporting rules and clear guidelines for operators.²²

¹⁷ Li Guohai (李国海), Wang Yining (王伊宁), *Woguo Fanlongduan Fa Anquan Gang Zhidu de Goujian* (我国反垄断法安全港制度的构建) [*Construction of Safe Harbor Rules in China's Anti-monopoly Law*], 2 *Jishou Daxue Xuebao* (吉首大学学报(社会科学版)) [JOURNAL OF JISHOU UNIVERSITY(SOCIAL SCIENCES)] 60, 68 (2022).

¹⁸ *Id.* at 66.

¹⁹ Wang Jun (王军) & Zhong Yuxin (钟雨欣), *Fanlongduan Fa Xiugai Jingyingzhe Jizhong Zhidu Wanshan Anquangang Guize Cheng Liangdian* (《反垄断法修改：经营者集中制度完善、安全港规则成亮点》) [*Amendments to the anti-monopoly law: improved the system for the concentration of business operators and brightened the safe harbor rules*], *FAN LONGDUAN SHIWU PINGLUN 反垄断实务评论* [ANTITRUST REVIEW] (June 24, 2022, 11:00 AM), <https://mp.weixin.qq.com/s/xaWRPUhXHGE3NZ40rkW8Dw>.

²⁰ Shichang Jianguan Zongju Guanyu Jinzhi Longduan Xieyi Xingwei de Guiding (Zhengqiu Yijian Gao) Gongkai Zhengqi Yijian de Gonggao (市场监管总局关于《禁止垄断协议行为的规定(征求意见稿)》公开征求意见的公告) [Announcement of the State Administration of Market Regulation on Public Soliciting Opinions on the Provisions on the Prohibition of Monopoly Agreement (Draft)] (Chinalawinfo).

²¹ Wang Xiaoye (王晓晔), *Fanlongduan Fa Xiuzheng Cao'an de Pingxi* (反垄断法(修正草案)的评析) [*Review on the Anti-monopoly Law (Draft Amendment)*], 3 *DANGDAI FAXUE* (当代法学) [CONTEMPORARY LAW REVIEW] 36, 46 (2022).

²² Xu & Guo, *supra* note 15, at 42.

C. *The Enhancement of Legal Liabilities and the Increase in Fines*

Apart from the amendment to substantive measures in regulating monopolistic behaviors, the strengthened legal liabilities also deserve wide attention from the public. Whereas the AML was previously considered as providing insufficient deterrence to social entities, the Amended AML has raised the fine amounts and included personal liabilities into its penalty regime. Such enhancement can be detected in the following aspects:

First, the fines for failure to file raises to tenfold of the previous amount. Pursuant to Article 58 of the Amended AML, where an undertaking implements a concentration in violation of the law, which has or may have an effect of precluding or restricting competition, the anti-monopoly enforcement body of the State Council shall impose a fine of not more than 10% of the notifying party's turnover of the previous year. Where in the absence of such competition concerns, a maximum fine of RMB 5 million yuan shall be imposed.²³ As can be seen, the fine regarding the same conduct was merely RMB 500,000 yuan before the revision,²⁴ which is one tenth of the current amount. For such a substantial increase in fines, it is easy to see the resolution of legislators to prevent and punish such violations.

Second, personal liability for monopoly agreement and the impact on credit record have been, for the first time, incorporated into the law for substantive antimonopoly violations. As stipulated in the previous AML, personal liability was only imposed on procedural violations, such as the obstruction of an anti-trust investigation.²⁵ However, as Article 56 of the Amended AML provides, in the case where a monopoly agreement violates the law, the legal representative, the primary person in charge, or the directly liable person of the undertaking may be fined up to RMB 1 million yuan if such person is personally liable for reaching the monopoly agreement. In addition, where an undertaking receives an administrative penalty for a violation of the AML, a record will also be documented into the social credit system in accordance with the relevant provisions issued by the state and such consequence shall be disclosed to the public at the same time. Admittedly, such measures are still up to further clarity

²³ Art. 58 of the Amended AML: Where an undertaking implements a concentration in violation of this Law, which has or may have an effect of precluding or restricting competition, the anti-monopoly enforcement body of the State Council shall order it to cease the implementation of the concentration, to dispose of shares or assets within a specified period, to transfer business within a specified period, and to take other necessary measures to restore the state before the concentration, and impose a fine of not more than 10% of its sales for the previous year; or in the absence of any effect of precluding or restricting competition, the anti-monopoly enforcement body of the State Council shall impose a fine of not more than 5 million yuan.

²⁴ Art. 48 of the AML: Where the business operators implement the concentration in violation of this Law, the Anti-monopoly Law Enforcement Agency under the State Council shall order them to stop the concentration, to dispose shares or assets, transfer the business or adopt other necessary measures to restore the market situation before the concentration within a time limit, and may impose a fine of less than 500,000 yuan.

²⁵ Clifford Chance, *China Passed Amendments To Its AML*. (June 27, 2022), <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2022/06/client%20briefing—china-passed-amendments-to-its-anti-monopoly-law-en.pdf>.

in the enforcement process, but we can still clearly perceive that the individual penalties do reflect SAMR's determination to increase the deterrent effect of the AML and that the alignment with new provisions on China's corporate social credit system also demonstrates the enhancement in transparency and accountability for unethical and illegal behaviors of enterprises.²⁶

Third, in regard to civil liabilities, as stipulated in Article 60 Paragraph 2,²⁷ the revision supplements the existing provisions by adding the public interest litigation regime in the legal liability section of the AML. Notably, such stipulation is a highlight of the Amended AML as it relates to the interests of consumers at a large scale. Violations of the law will not only bring harm to competitors and both parties of the transaction, but the affiliated damages will also unavoidably infringe the benefits of consumers in general. Granted, the regime of public interest litigation is a novel idea, especially in the antitrust area. It not only solves the problem of the limited compensation amount for individual consumers and the large cost of litigation, public interest litigation also effectively deters and punishes violators and protects the legitimate rights and interests of consumers.²⁸

Notwithstanding the merits, the regime of public interest litigation also faces some obstacles in enforcement. First, there are still many ambiguities regarding the practicality of public interest litigation in emerging areas such as the digital economy as well as the related procedural and substantive issues such as the filing standards, scope of jurisdiction, claims and prosecution requirements. Second, the lack of investigative and evidentiary capacity as well as the unclear rules of proof are also problems suffered by the regime. According to the general rule of evidence, the plaintiff is required to prove that the monopolistic act was carried out by the platform enterprise, that there was a causal relationship between the monopolistic act and the damage caused by the platform enterprise, and that the damage was caused by the inaction or improper action of the administrative supervision department. However, given that the procuratorial authorities rely too much on the public security organs to cooperate with the investigation or the business platform enterprises to cooperate in data provision, the existing investigation and evidence collection methods are too traditional and lack sufficient information to realize the determination of concepts like relevant market and market share, or to answer the question of whether the platform enterprises have abused their dominant market position.²⁹

²⁶ Arendse Huld, *What Has Changed in China's Amended Anti-Monopoly Law?*, CHINA BRIEFING (July 11, 2022), <https://www.china-briefing.com/news/what-has-changed-in-chinas-amended-anti-monopoly-law/>.

²⁷ Art. 60 ¶ 2 of the Amended AML: Where an undertaking engages in monopolistic conduct, causing any damage to public interest, the people's procuratorate at or above the districted city level may institute civil public interest litigation in the people's court in accordance with the law.

²⁸ Wang, *supra* note 21, at 46-47.

²⁹ Huang Junjie (黄俊杰), *Pingtai Jingji Fanlongduan Gongyi Susong Shijian Sikao yu Youhua Lujing* (平台经济反垄断公益诉讼实践思考与优化路径)[*Public Interest Lawsuit of Anti-monopoly Actions over Platforms, Reflections from Judicial Practices and methods to improve*], Vol 1 Shanghai Faxue Yanjiu (上海法学研究) [SHANGHAI CHINESE JOURNAL OF LAW] 62,66-68 (2022).

Therefore, although the public interest litigation in the Amended AML is a prospective regime that aims at bringing welfare to consumers, the plaintiffs are bearing a heavy burden of proof.

V. CONCLUSION

In conclusion, gaining experience from foreign jurisdictions and incorporating China's unique circumstances together, the Amended AML has well responded to the demand of high-quality development as well as the opportunities and challenges brought by the vigorous development and extensive use of digital technology, strengthened the anti-monopoly regulatory capacity, and improved the legal liability system. These are all conducive to preventing market monopoly and making the market play a decisive role in resource allocation. There are no doubts that the Amended AML has brought huge progress in promoting effective governmental regulation and achieving better fair competition in the market.

Nevertheless, even if the Amended AML has made a principled response to the problems reflected by the previous antitrust legislation, the revision remains merely normative and is too abstract and vague for enterprises, law practitioners, and future enforcement to refer to. Therefore, how to implement the new regulations in judicial practice and further improve the efficiency of judicial monopoly development have become a new requirement for improving the construction of anti-monopoly law system in the new developmental stage.