

Theoretical Validation and Institutional Adaptation of "Monopoly Prevention"

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Abstract: Prevention of monopoly as an important means of realizing the effective control of monopoly risk, both in theoretical research and legislative practice are of great significance to the reform of China's monopoly market regulation model. On the concept of preventive monopoly regulation how to effectively with the existing monopoly regulatory system, how to improve the existing preventive intervention means, the key to the problem lies in how to understand the substantive connotation and functional positioning of preventive monopoly, how to understand the logical relationship between the two legislative purposes of prevention and suppression. Based on this, the logical justification and necessity of preventive monopoly is based on the substantive connotation of preventive monopoly, and it emphasizes the improvement of the review, assessment and regulation in the context of preventive monopoly under the guidance of the risk prevention theory, the improvement of the extensibility, coverage and applicability of the relevant system, and the construction of a systematic mechanism for judging the risk of monopoly and the control of monopoly regulation and discretionary mechanism.

Keywords: Monopoly prevention, Risk society, Risk prevention, Market competition

1. Introduction

Article 1 of the General Provisions of China's Antimonopoly Law^① specifies the legislative purpose and legislative intent of "preventing and suppressing monopolistic acts", and it should be said that the prevention of monopoly risks and the suppression of monopoly damages in the process of market competition are the actual externalization of the legislative effects of various antimonopoly principles and spirits. However, compared with the filling of actual damages and the regulation of actual violation of law, the prevention of monopoly behavior in advance or effective avoidance of the occurrence of monopoly behavior is a more idealized state. On the one hand, the law itself has a lag, which is particularly obvious in the field of market regulation, because the speed of development of the market economy, the type of economic development and mode of innovation are presented with a high degree of flexibility and uncertainty, to the market regulation of the advance planning to cause obvious resistance, increase the cost of advance regulation. On the other hand, based on the economic law of the market first, the influence of the principle of modesty of intervention, make the market competition On the other hand, based on the influence of the principles of market priority and modest intervention of economic law, it makes the early intervention of market competition problems become more cautious. It is based on the limitations of the aforementioned elements, for the "prevention of monopoly behavior" research is still in a state of uncertainty^[1], "prevention of monopoly" is still a relatively limited understanding of the term so far in our country, the positioning of the term is not precise enough.

For a long time, how to define "preventive monopoly" in the market regulatory environment of the status and scope of application, especially the prevention of monopoly in what role, how, to what extent and the existing monopoly rule of law with the articulation, has been China's market regulation law theory research and practice of the important issues. For this reason, this paper will try to "pierce" the veil of preventive monopoly, from the essence of the legal connotation and logical basis for the study of preventive monopoly. It is hoped that through the analysis and development of the relevant theoretical

^① Article 1 of the Anti-Monopoly Law of the People's Republic of China This Law is enacted for the purpose of preventing and curbing monopolistic practices, protecting fair competition in the market, enhancing the efficiency of economic operation, safeguarding the interests of consumers and the public interest of society, and promoting the healthy development of the socialist market economy.

logic, while accurately grasping the fundamental nature and core elements of preventive monopoly, it can be beneficial to the correct understanding and application of the relevant concepts and systems in the field of China's market regulation,^[19] exploring how the market monopoly regulation mechanism should be adjusted to take into account the two levels of development equity and growth efficiency, and constructing a more universal and systematic mechanism that conforms to the law of market development and responds to the needs of benign competition in the market. It is also important to construct a more universal and systematic monopoly regulatory system that conforms to the laws of market development and responds to the needs of healthy competition in the market^[2].

2. The Essence of Monopoly Prevention is Risk Prevention

For the prevention of monopoly how to get rid of the existing rule of law dilemma, realize the effective judicial application of a series of issues such as the study should first from the prevention of monopoly theory itself, in the prevention of monopoly theory to clarify the connotation of the theory and the essence of the law on the basis of the concept of the existing concept of the siege and the shackles of the system of breakthroughs.

Since the development of modern society, with the progress of information science and technology and the level of industrialization, the barriers between social elements have been gradually broken down, the circulation of social elements (including material and human resources) has increased significantly, and the complexity of the social environment has also increased significantly, and in the context of this "internal and external integration", Under the background of globalization and marketization environment of "internal and external integration" and "factor implication", the increase or decrease of any factor may produce the "butterfly effect" in the whole social environment, thus increasing the risk of the operation of the whole society.

As the German sociologist Beck pointed out, "modern society is a risk society",^[3] This risk is obviously different from the "natural and man-made disasters" in the context of traditional hazards,^[20] Compared with the actual and visible harmful acts and harmful results, this risk is the "risk" of social modernization and development that cannot be avoided. Compared with the actual and visible harmful acts and harmful results, this kind of risk is the unavoidable "derivative" of social modernization and development, i.e. a kind of uncertain harmful result that is endogenous and expanding due to the operation of modernization factors. Taking the rise and development of the Internet information age as an example, the rapid progress of information technology injects new vitality into the market economy, creates new economic models, derives new legal relations, and promotes the overall improvement of the total economy, but the neutrality of information technology makes it difficult to cover the profitability goals of the technology owners (e.g. platform enterprises, etc.) and the non-calculatable consequences of the behaviors, and the misuse of^[3] technology can easily lead to the ordinary social groups being trapped in a series of unknown risks such as information leakage.

The misuse of technology can easily lead ordinary social groups to fall into a series of unknown risks such as information leakage. In fact, this risk does not happen completely, it is only an unavoidable risk possibility brought about by the development of technology, and once it becomes an actual damage, the scope of its damage is continuously expanded and deepened due to the convenience of data transaction and the rapidity of data dissemination in the era of informatization, which finally leads to serious damage to the interests of the subject. In other words, the rapid development of society and the innovation of elements make the society itself in a kind of uncertainty, and this kind of uncertainty is the so-called "social risk".

With regard to such unactivated potential risks, given their implicit and diffuse nature, and given the superimposition of risks on each other,^[2] cannot simply consider "0" and "1" as purely a question of whether they will occur or not, because the closeness of risks to modernization and development and the complexity of modernization and development are determined by the fact that the risk is not only a risk, but also a risk that will be taken into account in the future. The complexity of modernization and development has determined that risk management can only be a beautiful "utopia", a model of social governance that does not have practical expectations, rather than absolute management, we should consider making effective efforts between "0" and "1". Instead of absolute control, effective efforts should be considered between "0" and "1" to realize effective control as far as possible. Based on this, the rule of law in the risk society should pay more attention to the preventive nature of the legal system, that is, combined with the real needs of society and the development of the law of reasonable expansion of the scope of legal regulation, through the law to achieve the purpose of risk mitigation,^[2] through the

law to effectively accommodate a certain degree of social change and technological innovation, to reduce the lagging effect of the application of the law, to avoid imbalance of interests.

It should be said that the background of the risk society to give full play to the inclusiveness and dynamism of the law, advance prediction and effective response to resolve the risk is the inevitable trend of social development, this environment, the preventive function of the law has been referred to a new height, this prevention is a holistic vision of the rule of law under the overall construction of the overall preventive, and the prevention of monopoly is in fact the prevention of the function of the law in the modernization of the monopoly regulation in the special context of the effective transformation of the special context, the root is still a form of monopoly, but also the prevention of monopoly. Fundamentally^[3], it is still a risk prevention. The theory of risk society and related risk treatment constitutes the theoretical support of preventive monopoly.

Interpretation of the connotations of monopoly prevention. The so-called "preventive monopoly", compared with the establishment of the stop-loss doctrine (stop-loss equalization of interests) and salvage doctrine (punishment to correct the violation of the law) and other ideas based on the monopoly behavior after the occurrence of the existing harmful behavior of the regulation and intervention activities, it is more emphasis on the prediction of the unknown risk and decision. In advance, through a certain system, policy constraints within the market of unspecified subjects in unspecified nodes of the market transaction behavior.

Monopoly prevention is in fact the legal regulation of a contingent state of affairs oriented towards future development trends from the point of view of actual social realities and contradictions. The contingency of preventing monopolization should be understood at both the macro and micro levels. Macro is to emphasize the whole monopoly regulation should be done in advance, effective response, the social development trend and the potential risk of imbalance of interests into account, emphasizing a principle, global monopoly system design direction. At the micro level, for specific market players and economic activities, the principle of preventing monopolization is mainly transformed into a specific review or regulatory system. However, whether at the macro or micro level, the path of realization of the system design goals presupposed by the prevention of monopoly is dual. One is to intervene in the risk itself, from the objective elements of social development (such as information technology) control to prevent, respond to and resolve the risk;^[2] the second is to intervene in the risk of the main body, from the more subjective market players to start, through the system to become a norm to achieve the deterrence of the main body itself and the subject of the constraints on the behavior of the system.

In general, monopoly prevention is a special kind of market risk prevention, and its relationship with the risk of monopolization is not an adversarial competition, because risk is also an important opportunity for the development of modern society. Monopoly prevention serves more as a "guardrail along the highway", which allows a certain amount of free driving space and reduces the risk factor on the basis of reasonably defining a safe operating area and guaranteeing compliant operation.

3. Logical Basis for the Concept of Preventive Monopoly Regulation

The solution of real problems depends on the solution of virtualism, and in order to effectively realize the implementation and transformation of preventive monopoly, the logic of its application should be clarified first. Preventing monopoly is a double expression, on the one hand is the purpose of state intervention in market competition and trading activities, on the other hand is a specific means of intervention and regulation. Based on this, the author intends to start from the legitimacy of the end and the necessity of the means to explain the logic of its application.

3.1 Necessity analysis

Legal necessity emphasizes the indispensability of the means, and preventive monopoly, as a conceptual collection of preventive monopoly regulation means, is absolutely irreplaceable for the regulation of monopolistic behavior as a whole.

One of the prevention monopoly is the inevitable choice of the risk society. High-speed development of modern society is essentially a collection of various risk elements, but the inevitability of the existence of risk is not the same as the inevitability of the occurrence of risk. On the one hand, the occurrence of risk is in fact neutral technology and non-neutral technology between the game. The process of using the technology by the technician is highly subjective and unstable, and it is very easy to be disturbed and tempted by external elements. Therefore, it is very necessary to consider regulating and guiding the

subjective initiative in advance readers. On the other hand, although there is no inevitability of the occurrence of risk, but the potential, unknown risk often because of its non-calculable and unpredictable and easy to produce a wider range and deeper degree of damage results. At the same time, considering that social risk itself is a complex collection of intertwined interests and that risks interact with each other, advance prediction and reasonable intervention can reduce the risk factor.

Monopoly prevention lays the foundation for ex post regulation. Generally speaking, regulation in the field of market regulation can be chronologically divided into three phases: ex ante, ex post and ex post, with a progressive approach running through the entire timeline of monopoly regulation. In terms of the timing and mode of intervention, ex ante regulation corresponds broadly to monopoly prevention.

Although under the influence of the principle of market preference, the state intervention in economic activities should be more prudent, and market players should be given full freedom of operation, but the prevention of monopoly represented by ex-ante regulation is in fact a kind of "risk diversion", if purely relying on ex ante and ex post regulation, its regulatory efforts are difficult to cope with too large and too heavy volume of market risk, easy to make the state organs miss the reasonable intervention node, into a passive regulatory dilemma. It should be said that the pre-event and post-event itself is a concentric different regulation links, prevention of monopoly for the subsequent regulatory intervention in the direction and strength of the pavement, and their mutual is "mutual achievement, mutual cooperation" parallel relationship, rather than the three choose one of the antagonistic competition relationship.

3.2 Legitimacy Test

Legal legitimacy emphasizes legality and reasonableness of purpose. The legitimacy of preventing monopolization is illustrated in two main ways, positive and negative.

First of all, in line with the basic spirit of economic law and the purpose of anti-monopoly legislation is the logical starting point of the legitimacy of the concept of preventing monopoly regulation. On the one hand, economic law emphasizes the intervention of state power to adjust the behavior of market economic subjects to achieve the realistic goal of ensuring the smooth operation of economic order, while the regulatory goal of preventing monopoly to promote development and stabilize order is not affected by its special regulatory time node, and the pursuit of fair competition environment and good and international order is common and consistent in nature. On the other hand, China's Anti-Monopoly Law On the other hand, China's Anti-Monopoly Law directly puts forward the legislative goal of "preventing and regulating monopoly" in the General Provisions, which directly provides the legitimacy basis for the prevention of monopoly, and at the same time takes into account the fact that operators with dominant position in the market (e.g. platform enterprises) have the possibility to utilize their dominant position in monopolizing the market to disrupt the order of competition.^[6] Therefore, ex ante standardization and reasonable guidance can achieve risk Therefore, prior regulation and reasonable guidance can realize risk diversion, which is in line with the legislative spirit and purpose of China's Antimonopoly Law.

Secondly, the purpose of monopoly prevention itself is not to combat competition risks, but to reduce the risk factor and respond effectively. Competition itself is full of risks, and to some extent, risks are an important basis for the existence and sustainability of competition. Good competition emphasizes not the absolute extinction of risk, but its reasonable control. The term "prevention" in the context of monopoly prevention should be understood as "pre-emptive", emphasizing, on the one hand, advancement in time and, on the other hand, conscious preventive risk intervention. Prevention should be more oriented towards an interventionist attitude and a sense of engagement, with a strict distinction being made between the degree of risk prevention and risk management/elimination.

In general, although the prevention of monopolization may be controversial in its implementation, the legitimacy of its regulatory purpose and the necessity of its use as a means of regulation should be recognized, and it is only on the basis of clarifying its logical kernel that it is possible to define more rationally the scope of its practical application and a series of other issues.

4. Rethinking the Application of Monopoly Prevention in the Context of Market Regulation

Compared with the concentration of operators, abuse of dominant market position and other anti-monopoly law regulatory provisions with practical operational standards, the prevention of monopoly due to its regulatory concept of macro, principles and operational standards of abstraction and other characteristics in the application of the practice of the process of divergence and conflict, and its judicial application is also in a difficult situation.

Hainan Yutai administrative penalty case is a typical case that focuses on the conflict of judicial practice in the application of monopoly prevention.^[4]The case has been through the Intermediate Court, the Higher Court and the Supreme Court of the triple hearing, which on the two sides agreed but did not actually perform the monopoly terms constitute "monopoly behavior", whether to invoke the "Antimonopoly Law" in the prevention of monopoly principle to achieve the purpose of regulation has become the main focus of controversy. Hainan High Court advocated the affirmation of the independent value of "preventive monopoly" and the Supreme Court advocated that it could not be separated from the specific monopoly behavior to understand and apply the preventive monopoly conflict.

The two courts for the prevention of monopoly theory characterization and system positioning of the differences is in fact the theory of the practical implementation of the problem of intuitive performance, based on this, the author intends to start from the actual dispute of the typical case, through the prevention of monopoly in the field of the application of the existing disputes in the way of rhetorical questions, in answering the controversial questions at the same time to further clarify the essence of the prevention of monopoly and the core connotation of the substantive requirements.

4.1 The purpose of China's monopoly regulation and debugging

The aforementioned case of the supreme law and the hai nan high court for prevention of monopoly can be applied as an independent basis for judicial practice in specific disputes in fact is to prevent the monopoly of independent value of the problem of disagreement, in other words, is not yet unified cognition of its functional characterization, resulting in the application of the problem of conflict. In this paper, the prevention of monopoly is with independent value, but the value of the "form of realization" is not necessarily independent, that is, whether it can be applied independently should be analyzed on a case-by-case basis^[4].

On the one hand, prevention of monopolization has an independent value. From the perspective of textual interpretation, according to the expression of Article 1 of the General Provisions of the Antimonopoly Law[®], the "prevention" and "suppression" of monopoly behavior are two side-by-side regulatory purposes, and there is no dependence and derivation. From the perspective of systemic interpretation, "prevention" and "suppression" are only different regulatory means and ways in the risk intervention nodes. From the point of view of system interpretation, "prevention" and "suppression" are only different regulatory means and ways that differ in the nodes of risk intervention, and together they constitute a complete regulatory system, which is a cooperative and collaborative rather than a subordinate relationship between each other. It should be said that according to the previous analysis of the legitimacy and necessity of the prevention of monopoly, it can be clear that the prevention of monopoly itself is in line with the legislative purpose of the antimonopoly law, the results of its intervention is also conducive to the control of monopoly risk, especially in the modernization of the highly concentrated risk of the society, the effectiveness of such preventive measures and systems of intervention in the risk of the more obvious, the prevention of monopoly in monopoly should be recognized in the control of the risk of the issue of the independent value of the monopoly.

On the other hand, the prevention of monopolization does not necessarily have the value of independent application. First, because of the abstract nature of the monopoly risk itself leads to prevent monopoly judgment is difficult^[5]. Second, because if the direct independent application of monopoly identification and regulation, and the actual occurrence of the monopoly regulation of the contrast between the results of the damage is prone to produce an imbalance between the regulation. Third, because the risk does not have the inevitability of the occurrence of the risk of the existence of the risk of assumptions, similar to the criminal law of "Ideological crime", if it is also the same strict regulation and punishment is likely to lead to the imbalance of the government's power and enterprise rights and interests of the imbalance of the situation^[6]. Therefore, for the prevention of monopoly application of the problem, should not yet implemented under the premise of monopoly behavior, comprehensive consideration of the subject involved in the specific business behavior (including explicit and implicit level) based on the possibility of monopoly judgment^[7]. If only because of the objective limitations and cannot reach the monopoly behavior, should be regulated under the provisions of the prevention of monopoly, but its regulatory efforts should be considered lower than the actual monopoly regulation, mainly reflecting the role of "reminder, prevention and warning". On the premise that monopolistic behavior has already been formed, priority shall be given to the punishment of monopolistic behavior, and the prevention of monopoly shall be applied as a supplementary or corroborative basis.

Whether prevention of monopolization is contrary to the principle of market primacy. One of the major obstacles to the practical implementation of monopoly prevention is the confrontation with the principle of market priority. Prevention of monopoly regulation concept of state organs to intervene in advance of the time, before the actual formation of monopoly behavior can intervene in the production and operation of the market economy, some scholars believe that this is an unreasonable expansion of the power to intervene, easy to undermine the socialist market economy in the context of the "free and open" atmosphere of business management, and frustrate the production and operation enthusiasm of the relevant subjects. Some scholars believe that this is an unreasonable expansion of intervention power, which is likely to damage the "free and open" business management atmosphere in the context of socialist market economy, and dampen the production and management enthusiasm of relevant subjects. However, the author believes that this kind of early intervention does not violate the principle of market priority, nor does it harm the free operation rights of market economic subjects. First, the intervention of public power is not aimed at enterprises but at monopolistic behavior, not at competition but at unfair competition, not at risk but at unreasonable and abnormal market risk. The purpose of preventing monopoly is not to punish but to provide reasonable guidance to enterprises in complying with the operation and effective prevention of social risks. Secondly, even in the context of preventing monopoly, it still emphasizes the respect for reasonable market risks and normal production and business activities, and the relevant law enforcement agencies do not enjoy the "super discretion" to intervene arbitrarily. As an abstract monopoly concept and monopoly system design direction, preventive monopoly does not expand the type of monopoly behavior, but in the process of responding to the reality of the risk environment of the monopoly regulation put forward to improve the accuracy, certainty and applicability of the requirements. The starting point of monopoly prevention lies in the expansion of the concept of monopoly regulation rather than in the broadening of monopoly enforcement powers^[8].

4.2 The principle of monopoly regulation and debugging in China

As can be seen from the foregoing, the prevention of monopolization is a kind of early intervention and reasonable regulation of the risk of monopolization in the market. The term monopoly (here does not emphasize the administrative monopoly, mainly for the monopoly problem under the competition relationship of ordinary market players) traces its roots to an unreasonable market structure within the economy and society, and monopoly behavior and its damaging results, the degree of risk of the assessment of the standard evaluation of most of the use of economic indicators, through the modeling of the data, the market share of the data such as the practical and objective data to carry out scientific judgments. Generally speaking, the implementation of monopoly behavior on the market structure of the impact of the aforementioned data can be obtained through the intuitive display, but for the prevention of monopoly, due to the monopoly has not yet been implemented, the corresponding market indicators have not yet responded, so cannot be based on purely economic science and technology to judge and assess the risk of preventing monopoly should be a kind of legal judgment^[9].

This kind of legal judgment focuses on the value emphasizing the consideration of whether the interests between different subjects are balanced and whether the rights and responsibilities within the same subject are balanced. This value judgment is in fact in the subjective business risk and social risk between the trade-off, taking into account the subjective judgment of individual differences, on the one hand,^[10]should be allowed to prevent the application of monopoly has a certain reasonable discretionary space, on the other hand, also corresponding to the power supervision mechanism put forward a higher demand, should give full play to the supervision of the other market players, to avoid the abuse of power.

4.3 The way of monopoly regulation and debugging in China

Compared to the monopoly behavior after the occurrence of market regulation, the special characteristics of the prevention of monopoly is expressed in a node of time in advance, the second is not effectively monopoly behavior can also be intervened, in fact, this is the scope of monopoly regulation directly expand, on the surface of this expansion seems to blur the boundaries of the monopoly regulation, overfill the monopoly regulation of the connotation of the author believes that the substance of the kernel of the prevention of monopoly is not the requirement to achieve the "everything regulation" degree or goal.

The author believes that the substantive core of the prevention of monopoly is not required to achieve the degree or goal of "regulation of everything". Prevent monopoly this expansion should be done "legal certainty" expansion of understanding, this certainty does not mean that the micro-level regulation of the complete expansion of the category of behavior, but rather emphasize the macro-level risk regulation and

control of the effective scope of the increase in the extensibility, coverage and applicability have been further enhanced. One of the reasons for this is that regulation of everything is not only contrary to the nature of the market economy subject at the same time need to invest excessive human and material resources and financial resources, not practical operation, and the second is that the prevention of monopoly and risk is not purely elimination and elimination of the relationship, the prevention of monopoly is the risk society to maintain a reasonable risk factor of the necessary considerations and effective way^[11].

It should be said that the current dilemma in the implementation of the prevention of monopoly is due to the nature of its regulation, the ambiguity of the positioning of the system, in fact, this is more a theory is able to effectively transform the problem, cannot be because of the legislative technology and institutional design of the suffering of the whole denied the legitimacy and necessity of its own, should be through the prevention of monopoly hidden behind the core elements of the understanding of the prevention of monopoly, to find prevention of monopoly materialization of effective paths^[21] improve the monopoly regulation system and reduce the monopoly risk factor.

5. Institutional Adaptation of China's Monopoly Regulation under the Guidance of Risk Prevention

5.1 Purpose of Adaptation

According to the previous analysis, preventive monopoly is in fact a practical transformation of the theory of risk prevention in the field of monopoly regulation.^[12] The proposal and application of preventive monopoly has challenged the regulation mode that mainly focuses on the intervention to stop the damage after the occurrence of monopoly behavior, and requires the mode of monopoly market risk management to change in response to the changes in the volume and internal structure of the social risk under the risk society, and to effectively move towards the monopoly regulation mode of cooperation and parallelism of "risk prevention+harm prevention", and to improve the ability of identifying and predicting the monopoly risk, and to carry out effective risk response and risk intervention.^{[4][13]}

Improve the ability to identify and predict monopoly risks, and carry out effective risk response and risk intervention. However, the prevention of monopoly should not become the dominant monopoly regulation, and cannot replace the traditional monopoly ex post regulation.it only requires, to a certain extent, to improve the certainty of monopoly regulation, emphasizing the increase of the effective scope of risk regulation and control at the macro level, and the improvement of the relevant systems and policies in terms of extensibility, coverage, applicability, etc.^[14]

Therefore, this change should be made within the original framework of "risk prevention + harm suppression" cooperation and parallel regulation. Therefore, this change should be an adaptive and perfect change on the basis of the original monopoly regulation pattern, and a reasonable filling of the core of monopoly regulation. Under the premise of accurately grasping the legal nature and functional positioning of monopoly prevention, and based on the characteristic that monopoly prevention is a kind of advance legal value judgment, a systematic mechanism for judging monopoly risks and controlling regulatory discretion should be constructed on the basis of the principle of intervention with modesty and precision, with ex ante review and compliance as the main hand, and on the basis of the participation of multi-levels and multi-subjects.^{[5][15]}

5.2 Principles of Adaptation

In the process of adapting the relevant system to implement the concept of monopoly prevention and improve monopoly regulation, the involvement of State power should follow the principles of modest intervention and precise intervention. First of all, for the development of modernized society, risk itself is a double-edged sword. On the one hand, normal and reasonable risk can promote social and economic development, and stimulate the vitality and enthusiasm of market competition.but on the other hand, the risk coefficient exceeding the reasonable range will destroy the market order and jeopardize the interests of the main body.

In the field of monopoly regulation, the identification of monopoly risk and the regulation of monopoly behavior can easily have a significant impact on the interests of market players and the market, so the intervention of the state regulatory power should have maintained a prudent attitude. In this regulatory context, the prevention of monopoly as a preemptive system, policy constraints within the

market through a certain system, the concept of regulation of market transactions of unspecified subjects in unspecified nodes, its preventive measures cannot be against the socialist market economy self-regulation of the risk of the qualities of the premise of respect for the status of market players and the market priority to intervene, and to implement the principle of moderation of the intervention. Secondly, the prevention of monopoly does not mean that monopoly power is not a monopoly, and the state regulatory power is not a monopoly, so it should be cautious. Monopoly by no means represents the unlimited expansion of monopoly power, does not represent the monopoly regulation of the "generalization", to prevent monopoly due to its intervention in advance, in order to avoid "accidental injury" to the good market order and normal market competition "counterproductive force", but to avoid the "counterproductive force", in order to avoid "accidental injury" to the good market order and normal market competition "counterproductive force". Counterforce", but more need to improve the accuracy of intervention, including risk judgment, intervention object, intervention efforts, intervention cycle and other aspects of accuracy, to achieve precise intervention^[16].

5.3 Specific Adaptation Pathways

Improvement of prior review and strengthening of compliance management. Preventive monopoly emphasizes the effective control of risks through early intervention, reducing the pressure of risk response and improving the efficiency of risk resolution. Its realization path contains two aspects, one is to intervene in the risk itself, and the other is to intervene in the risk subject.

Specifically, the intervention of the risk itself is centered on the prior review of the business behavior of market players. In order to realize the purpose of risk reduction through prior review, one is to ensure the "strict implementation" of prior review, the review link should not only be used as the core basis for enterprises to carry out specific business activities, but also as an important indicator of the performance evaluation of the review body (the performance here does not emphasize the number of reviews, but mainly emphasizes whether the implementation of due diligence review).^[17]

Secondly, according to the rhythm of social development, the content and standards of prior review should be improved, and the coverage and accuracy of the review should be enhanced. Particular attention should be paid to the review of substantive business behavior and hidden monopoly intentions, should not be purely limited to the review of intuitive economic data such as the amount of assets, should uphold the holistic vision of comprehensive judgment focused review. The intervention of risky subjects, taking into account the initiative of the market players in the business behavior and the pursuit of profitability, should be strengthened to advocate and incentives for the concept of compliant management, to adopt a "Leniency and severity" approach for reasonable guidance, that is, in the punitive measures to play a deterrent and constraints at the same time through tax incentives, financial support, policy tilts and other positive incentives to encourage market players to operate legally, to avoid undue and unreasonable risk of gambling and profit race, through the standardization of the subject of the risk of guiding the business environment and risk control to reduce the occurrence of risky behaviors. Through the standardized guidance of risky subjects and the risk control of business environment, the probability and opportunity of risky behaviors can be reduced.^[18]

Improve risk assessment and implement risk ratings. Since the prevention of monopolization emphasizes the advance prediction of risks and preventive interventions on the premise that monopolistic practices have not yet been substantively implemented, the assessment and judgment of risks is an important part of the process. Considering the potential nature of risk in this context, the traditional market damage outcome cannot be relied upon to determine the level of risk, and consideration should be given to updating and improving risk assessment criteria. Specifically, risk assessment should be considered from both subjective and objective aspects. Objectively, it mainly emphasizes the value judgment of the possibility of a risk implementation ability, relying on the corresponding practical and visible economic data such as liquid assets, market share, etc. to judge whether there is a possibility of monopoly. Subjectively, it mainly emphasizes the value judgment of the risk implementation intention, judging whether there is an explicit and implicit manifestation of monopoly behavior. The judgment of subjective consciousness relies on the improper and unreasonable behaviors after the externalization of consciousness, such as the existence of monopoly pre-preparation behaviors such as the signing of the corresponding agreement, etc.

In addition, the risk prevention should be associated with the daily business activities of the enterprise, and the risk indicators and risk coefficients should be set up according to the nature of the industry and the market demand, and the industry standard and the reasonable floating ratio should be set up. Risk rating is taken as an important indicator for the review of enterprise qualifications and operations.

5.4 Constructing a Systematic Monitoring Mechanism for the Regulation of Discretionary Powers

Although it has already been emphasized that, as an abstract concept of monopoly and the direction of monopoly system design, preventive monopoly is the requirement of the real risk society for monopoly regulation to improve precision, certainty and applicability, and that its foothold lies in the expansion of the concept of monopoly regulation rather than the broadening of the monopoly law enforcement power. However, the expansion of the possibility of monopoly regulation does bring the possibility of "abuse of power" and "excessive intervention" to the antitrust enforcement authorities, therefore, in the regulatory environment integrating the concept of preventive monopoly regulation, more attention should be paid to the exercise of power by the authority of the time and manner of effective supervision, and the construction of a new system to prevent monopoly regulation. Therefore, in the regulatory environment integrating the concept of preventive monopoly regulation, more attention should be paid to the effective supervision of the time and manner of the exercise of power by the authority, and the construction of a systematic regulatory discretionary supervision mechanism with the participation of many subjects at many levels.^[19]

Specifically, it is divided into two parts: internal and external. Inwardly, the main emphasis is on the internal self-examination and supervision of the antimonopoly enforcement agencies, and the implementation of the unit responsibility system and the collective discussion system for difficult cases for the determination and treatment of monopoly behaviors and monopoly risks, so as to form a systematic operation process for the identification of risks. Outwardly, the main emphasis is on the supervision of other social subjects represented by the public, and the implementation of their supervisory power is mainly implemented from the formal and substantive levels.^[20] First, the anti-monopoly law enforcement agencies should disclose information on relevant regulatory acts and policies, i.e. to improve the transparency of monopoly regulation and ensure the public's right to "formal participation".

The anti-monopoly law enforcement agencies should listen to a wide range of public opinions and suggestions through public hearings, expert consultation meetings, etc. so as to promptly understand the social demand for monopoly regulation in the market, and to make recommendations to the public on the needs for monopoly regulation. Secondly, antimonopoly enforcement agencies should listen to public opinions and suggestions through public hearings and expert consultations, etc. to understand the needs of the society for market monopoly regulation, and absorb and accept the parts that are in compliance with the law and have rationality, so as to effectively guarantee the public's right to "substantive participation" in monopoly regulation procedures. Through the mutual influence and constraints of multiple levels and subjects, a systematic monitoring mechanism for regulatory discretion is constructed.

6. Conclusion

The implementation of the law is closely related to the specific social environment. And the change of the law should correspond to the overall social situation. The integration and transformation of the concept of monopoly prevention in the field of market regulation is an inevitable choice under the risk society, and the new rhythm of social development and the new market have generated new needs for risk regulation. This paper starts from the essence of preventive monopoly, discusses its legitimacy and necessity based on the theoretical foundation of risk prevention, and elaborates on the corresponding system adjustment problems based on the clarification of its essence and core, such as pre-censorship, compliance management, risk assessment, and power control. Monopoly prevention as a preventive regulatory concept and regulatory means, in respect of the market competition order on the basis of the early intervention, effectively reduce the risk index, improve the risk response ability, compared to break the monopoly of the market "in the aftermath of the intervention,^[21] Monopoly prevention is a benign, soft means of intervention, but it is also this preemptive and uncertainty has become the prevention of monopoly to implement the important reasons for the greater difficulty of transformation. However, it is also this preemptive nature and uncertainty that makes the implementation of monopoly prevention more difficult to transform. This paper elaborates its theoretical logic and system adjustment problems from a macro level, and the system construction of specific links and the rights and responsibilities of specific subjects still need to be discussed and researched more deeply.

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