

The Anti-Monopoly Regulation Path of Collusive Bidding

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ABSTRACT

The bidding system is a product of the development of the commodity economy, and its purpose is to achieve an "open, fair and just" market competition mechanism. However, the collusion of bidding in China is parasitic in bidding. The current "Bidding Law" is limited by its own limitations and cannot effectively manage collusion bidding. In addition, the "Anti-Unfair Competition Law" deletes the provisions on collusion in bidding behavior; The "Antitrust Law" should take heavy responsibilities for regulating collusion and bidding. At the time when China's "Antitrust Law" and "Bidding Law" were amended; corresponding adjustments were made in the determination of collusion in bidding and bidding, the leniency system, and the coordination of Anti-monopoly law and bidding law, to achieve the fundamental goal of the bidding system.

Keywords: *Collusion, the antitrust laws, regulation*

1. INTRODUCTION

As a product of the highly developed commodity economy, the bidding system is a transaction method that effectively utilizes the competitive mechanism of the market economy. China promulgated and implemented the "Tendering Law" as early as 1999, and subsequently promulgated a series of laws related to the field of tendering, including the "Regulations on the Implementation of the Tendering Law" and the "Procurement Law". However, in the process of implementing bidding, the collusion bidding behavior parasitized in the bidding as a stubborn tumor, and has not been alleviated. Under the current legal framework, it should be explored in the "Antitrust Law" to maintain fair market competition.

2. IDENTIFICATION OF COLLUSION IN BIDDING IN ANTI-MONOPOLY LAW

2.1. Identification of Horizontal Monopoly Agreement in Collusion with Bidding

Horizontal monopoly agreements are also known as "cartels". For horizontal monopoly agreements, the world generally adopts the principle of general prohibition. Article 32, paragraph 1, of China's "Bidding and Bidding Law" states: "Bidders must not collude with each other in bidding, must not exclude fair competition from other bidders, and harm the legal rights and interests of bidders or other bidders." In practice, bidders' collusive bidding usually manifests as: The successful bidder, Number of

planned bids, Pre-bid price (bid price), Information exchange. Regardless of the bidding law or the practice of bidding, bidders' collusion in bidding is an agreement or cooperative behavior between bidders who have a competitive relationship, using improper means to crowd out competitors and restrict competition. It is an act of horizontal monopoly agreement explicitly prohibited by the Antimonopoly Law.

2.2. Determination of Collusion in Bidding Vertical Monopoly Agreement

Vertical monopoly agreements are also called vertical restriction agreements, vertical agreements, vertical restrictions, vertical agreements, etc. It refers to an agreement that excludes or restricts competition reached by explicit or implicit means in the same industry where two or more operators at different economic levels have no direct competition relationship but have a sales relationship. In the bidding process, common collusion between bidders and bidders, such as making collusion instructions, indicating the bidder's intention, revealing important information, implementing differential treatment, guiding questions, and setting obstacles to help specific bidders. The purpose of these collusion bidding activities is to restrict other bidders from participating in the competition and severely hinder the relevant market entry. It should be regarded as a collusion bidding vertical monopoly agreement, which is regulated by the antitrust law.

3. LEGISLATIVE LOGIC OF ANTITRUST REGULATIONS AND COLLUSION

3.1. Limitations of the Tendering and Bidding Act Regulating Collusion and Bidding

The "Tendering and Bidding Law" focuses on standardizing the bidding procedures to prevent collusion bidding before and during the event. The act of collusion in bidding is only prohibited in principle in article 32 of the bidding law. At the same time, in the "Bidding Law", there is no clear stipulation on the attribute determination and regulatory principles of collusive bidding, which leads to the uncertainty caused by excessive discretion in judicial practice, and it is extremely easy to illegally implement collusion bidding. The behavior leaves loopholes and it is difficult to achieve the purpose of preventing collusion bidding.

In order to make up for the problems caused by the principled provisions of the Bidding Law, the State Council promulgated the "Implementation Regulations of the Bidding Law", which stipulated the behavior of collusive bidding in a list. Although the listed methods are convenient for judicial practice, these regulations cannot cover all collusion bidding. Especially with the development of the economy, the number of bidding projects has increased dramatically, and the boundary between the horizontal monopoly agreement and the vertical monopoly agreement has gradually blurred. Sometimes collusion between multiple bidders and bidders may occur. Therefore, the methods listed by law are insufficient to regulate collusion bidding, and cannot achieve a "fair, open, and fair" market competition environment for bidding.

3.2. Poor Regulation of General Legal Liability for Collusion in Bidding

In addition to China's "Tendering and Bidding Law", "Government Procurement Law" and "Regulations on the Implementation of Bidding and Tendering", the legal responsibility for collusion and bidding is also provided in the Civil Law and Criminal Law. Formed a multi-responsibility situation of civil compensation, administrative punishment and criminal punishment. However, due to the different legal values embodied by various legal departments, there are some deviations in the regulation principles and measures of collusion bidding, which cannot be coordinated and unified to achieve the goal of effective regulation of collusion bidding behavior.

3.3. The Necessity of Regulating Collusion in Bidding under the Anti-Monopoly Law

First, China's bidding system is set up to "regulate bidding and bidding activities, protect the national and social interests, and the legitimate rights and interests of parties to bidding and bidding activities, improve economic efficiency, and ensure project quality. Establish "open, fair, and just" Market competition order. The Anti-Monopoly Law, as an important legal department of economic law, clarified its legislative purpose at the beginning, that is, "to protect fair market competition, improve the efficiency of economic operations, safeguard consumer interests and social public interests, and promote the healthy development of the socialist market economy ". This is highly consistent with the purpose of China's bidding system, which is to adjust the macro economy and protect the micro economy.

Second, to regulate colluding bidding, the anti-competition law is replaced by the anti-monopoly law to meet the needs of the development of market economy. Anti-unfair competition law mainly focuses on the competition between companies in the market, and the purpose is to stop unfair competition. Antitrust law focuses on cooperation between competitors, the purpose of which is to prevent or prevent the market from excluding competition. Collusion in bidding often manifests itself in the establishment of alliances between bidders or conspiracy between bidders and bidders to manipulate bids. Collusion in bidding, especially between bidders and bidders, is not an unfair competition between companies to compete for the market, but collusion between enterprises to eliminate competition. Using anti - unfair competition law to regulate collusive bidding behavior is obviously not rational. Regardless of the purpose of the Anti-Monopoly Law or the determination of collusion bidding, it is the duty to regulate collusion bidding.

4. RECONSTRUCTION OF THE ANTITRUST LAW REGULATING COLLUSION IN BIDDING

4.1. Defining Rules for Collusion in Bidding

From the perspective of the "Anti-Monopoly Law", there is no doubt that collusion bidding behavior should be a monopoly agreement. However, whether to distinguish between the applicable principles of horizontal monopoly agreements and vertical monopoly agreements, it is recommended to cancel the "in itself illegal" and "reasonable principles" on the principle of collusion in bidding and bidding, and uniformly identify them as illegal. It also adopts the principle of "combination of prohibition and immunity" proposed by scholars during the review of the "Antitrust Law". Such adjustment is to take into account the judicial practice of antitrust law. The "Anti-Monopoly Law" has been implemented in China for

only ten years, and it is still being explored and improved. The introduction of "reasonable principles" into the regulation of collusion bidding will undoubtedly increase the burden on judicial and law enforcement agencies. Furthermore, in the collusion between bidders and bidders, the Tendering and Bidding Law has specified some reasonable vertical monopoly agreements. The collusion behavior between the tenderer and the bidder that has not been recognized by the bidding and tendering law, even if there is some rationality, is also minimal. From the perspective of "cost-benefit" of law and economics, collusion bidding behavior can be regarded as illegal as long as competition is restricted.

4.2. Improve the Relief System of the Antitrust Law

Collusion bidding behavior has a strong concealment, the full implementation of relief system is helpful to improve the efficiency of law enforcement, and can disintegrate it from within the collusion, forming a strong deterrence. China's "Antimonopoly Law" also introduced this system, but the provisions are too principled and not conducive to practical operation. Therefore, it is necessary to refine China's relief system when revising the Antitrust Law. First, clarify the main scope of the relief system. As far as bidding is concerned, it should be limited to collusion bidding personnel, including enterprises and individuals. Second, it is clear that the applicable time of the relief system. Applicants may apply for relief before or after the investigation begins and until the violation ceases. Third, make clear the range of relief and exemption system. In order to encourage the offender to disclose the act of collusion in bidding, the exemption may be granted according to the order in which the application for relief is made.

4.3 Strengthening the Coordination between Anti-Monopoly Law and Related Laws

Firstly, clarify the interaction between civil liability and antitrust law. The modification of the Anti-Monopoly Law should consider that the punishment is stricter than the general civil liability, especially for the act of colluding bidding, punitive damages should be applied in order to make up for the lack of supervision and encourage the society to supervise the act of colluding bidding and bidding.

Secondly, perfect the criminal responsibility of colluding bidding in criminal law. Anti-monopoly law considers collusion bidding as an agreement between bidders and between tenders and bidders. But the criminal law only stipulates that collusion between bidders is a crime of collusion in bidding. Therefore, collusion between tenders and bidders should also be explicitly included in criminal law.

Finally, the relationship between the bidding law and the anti-monopoly law should be straightened out. The "Bidding Law" mainly regulates specific procedures in the bidding process to prevent collusion. The anti-monopoly law mainly investigates and penalizes collusion in bidding. It is suggested that the general colluding bidding behavior should still be investigated and dealt with by relevant departments involved in the bidding, and the anti-monopoly law enforcement agencies should be handed over to the illegal acts with significant impact.

5. CONCLUSION

The higher the level of market economy, the higher the requirement of rule of law. After nearly 40 years of reform and opening up in China, a market economy has been initially established. If there is no legal system for punishing and preventing improper market behavior, the interests of trustworthy people will not be protected, and violations of the law will not be punished, the market economy cannot be truly realized. Collusion in bidding is a serious violation of the open, fair, and fair value pursuit of the market economy, its behavior should be brought into the scope of the anti-monopoly law regulation. Clarifying the standards for identifying monopoly behaviors in bidding, optimizing the relief system of the anti-monopoly law, and increasing the legal liability for illegal acts will be conducive to the continuous operation of the bidding system and the healthy development of the market economy.

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