Law Analysis about Monopolistic Sino-American Multinational Enterprises

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ABSTRACT

As globalization proceeds, there is a trend that Multinational Enterprises (MNEs) are increasingly expanding to the international market. MNEs can gain monopoly powers because local enterprises have less competitive advantages and lack antitrust solutions. The U.S. was a pioneer in the legal regulation of monopolistic MNEs while China did not own its anti-trust law until 2008. Introducing the relationship between the global economy and the monopoly MNEs, this essay highlights the necessity of anti-monopoly regulation and jurisprudence by analyzing the status quo with economic principles and cases like Coca-Cola's failed Acquisition of Huiyuan. Afterward, the reasons for problems in the Chinese anti-monopoly system is examined. With case studies and comparison, the authors analysed anti-trust policy, mechanisms and their functions, and regulatory models and bodies in both China and the U.S. After comparison, this paper put forward three feasible solutions for the advancement of anti-trust in China including the reform of enforcement agencies, the shift of anti-trust policy and the establishment of an international anti-trust arbitration. The Chinese anti-trust law still has a long way to go in terms of ensuring the protection of consumers' welfare and fair competition while catering to the trends of globalization. The authors hope that China's anti-monopoly reform will also provide a comparative reference solution for other developing countries. The authors also hope that inter-state antitrust cooperation will serve as a bridge and positive lubricant for diplomatic relations and globalization among countries.

Keywords: *Antitrust Law, MNEs, Sino-American trade.*

1.INTRODUCTION

Increasing enterprises in developed countries are seeking their market out of the domestic area. After years of exploration, MNEs and the foreign direct investment running inside their company structure or outside are currently substantial components of the global economy. Contributing to approximately 32% of the world GDP, [1] MNEs are more like dominators in trans-border trade rather than participants. In this case, the monopoly power of MNEs gradually emerges in almost any country and any industry due to their internal structure and general abilities. Although the FDI brings host states' people working opportunities, economic promotion, and enjoyment of cutting-edge technologies, MNEs are penetrating host states' domestic markets, usurping their market shares due to their advantages in a variety of fields. In many developing countries, rights of consumers and labourers are violated, and local businesses lose vitality because of MNEs' monopolies. Meanwhile, these countries lack experience against MNEs' monopolies, well-established antitrust legislation, and efficient regulatory manners to correspond.

Many scholars in China study antitrust laws in developed countries, extraterritorial effects of the domestic law and multinational enterprises mergers' impact on the domestic market. Generally, some scholars reach a consensus that MNEs' monopolies will negatively affect welfares of civilians in many host counties. Current Chinese legal regulation is comparatively poor. Many problems of MNEs' monopoly cannot be addressed effectively and there is an urgent need of effective regulation. [2]

The research about illegal behaviors caused by MNEs' monopoly in China is cited in this report. For

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example, the research done by Bo Wang illustrated problems including a violation of laborer's human rights, avoiding of taxation, and MNEs' industrial monopoly that affects coordination in the whole industry. [2] This would help to emphasize the necessity of having an effective regulation especially in developing countries like China. Xi Chen pointed out problems of the legal system itself, lacking unified law enforcers and criteria in Chinese anti-monopoly law for determining monopoly status and application of centralized operations are considered vague. [3]

Similar ideas about vague criteria and refining legislation could be found in Kefei Chang' s studies on the global economy and Sino-American comparison of MNEs' cross-border M&A problems. [4] Regulatory bodies and censorship of antitrust were analyzed in this paper, it concluded China needed to refine its legislation and system. However, the international corporation is also needed on extraterritorial investigation and forensics to make sure antitrust laws are effective against mergers of MNEs. As developed countries already had an advanced set of legislations and generally good enforcement of domestic antitrust law, more scholars in these countries study the global economy, international law, and extraterritorial effectiveness of domestic law. [5-6]

The research in this report is going to focus on the current situation and problems in regulating MNEs, and compare how America responds to MNEs' monopolies and China's response with the research of development of American antitrust law. The American law will provide China and other developing countries with legal experiences and lessons and propose a suitable solution.

2. STATUS QUO AND INADEQUACIES

2.1. Case

One typical case that revealed some drawbacks of Chinese present anti-trust system is Coca-Cola's failed Acquisition of Huiyuan in 2008. On the third of September 2008, the Coca-Cola company declared that they were planning to acquire China Huiyuan Juice Group, which was listed in Hongkong Limited for 2.4 billion USD. The Ministry of Commerce of PRC announced the ban on Coca-Cola's acquisition on 4 December 2009, stating that it was due to monopoly precautions to prevent damage to the efficiency of market competition. Therefore, the Ministry of Commerce stopped and public pressure under the merger failed, and this incident also formed a watershed in the development of Huiyuan juice. It was because of that failed acquisition that Huiyuan juice began a decade of loss road and eventually delisted in January 2021. [7]

The failure of Huiyuan Juice is not only attributed to the lack of innovation and competitiveness of the product, the failed merger has also been haunted. In 2011, Zhu Xinli, the founder of Huiyuan Juice, said in a media interview, there was nothing wrong with selling Huiyuan to Coca-Cola. He even said that if the 2008 deal had been successful, Huiyuan Juice could have transformed into an upstream industry in the beverage industry and become a $100 billion company. [9] However, regardless of the legality of the ban on Coca-Cola's acquisition of Huiyuan, the decision has largely influenced other countries' attitudes towards Chinese bids for their own companies. As Huiyuan juice is a major national industry, it has also influenced concerns about rising economic nationalism in China. [10] This case reflects that China is still on its way to forming a matured and uniform anti-trust standard. It is important to decide whether to regulate the monopoly behaviour in certain cases and to what extent the regulation can maximize its economic and social utility.

2.2. MNEs' Monopoly and Wrongful Acts

Therefore, it is reasonable to say that MNEs do have the potential to 'rule' the global value chains (GVCs), along with some MNEs taking monopoly within a specific sector or throughout the global market. Monopoly MNEs are generally technological, Internet, or energy firms, given the international resources, markets, and subsidies they get.

Though an ideal market can reach its optimal state without any interference, the real market will collapse into a bubble without any regulations. Internal corruption and financial fraud will devastate a firm while economic crimes and violation of human rights can greatly harm the public rights. Higher prices and lower output as a result of monopolies seriously undermine consumer welfare. [5] Regulations on monopoly and oligopoly aim to protect the rights of consumers and promote a healthy environment for fair competition, preventing consumers from paying an unreasonable price.

The regulation over monopoly MNEs also aims to promote fair competition between companies, making them more innovative in product portfolio development. Computer operating system' s iterations are far less than smart phones' because Microsoft is in an absolute dominating position in the market of computing OS. According to He's analysis, [11] by now 75.7% of computer users are using Windows OS. The price for Windows 10 OS is 119 US dollars, which is very expensive. MNEs from developed countries tend to carry out new operations in developing states due to a variety of reasons including cheaper costs, cheaper raw material costs, lower cost to build up chains of supply, and loose policies on environmental pollution and labor rights. For example, the fast fashion brand H&M choose to mass-produce in factories of Bangladeshi, Uzbekistan, and China and then sell their clothes in local markets.

Due to the combination of their technological advantages and listed reasons, it is easy for them to reach economies of scale and then penetrate the local market with lower prices. At last, it will take over substantial amounts of market shares and then compete unfairly. In long term, consumers would no longer have the right to choose other products and be forced to pay unreasonable prices because of the monopoly. If this happens in a third-world country without a well-established competition law and labour law, it will bring human rights crisis for working classes. If there is no regulation for foreign MNEs' monopoly, a company acquired monopoly will seek a lower cost because there are no competitors in the market. There was not any cost when corporate social responsibilities were ignored. [2] H&M once was reported, one of their foundries in Bangladesh collapsed, causing 1138 deaths. [6] Local people will even increasingly depend on MNEs from developed countries because there are only a few market shares for local businesses. People also increasingly rely on the convenience and job opportunities these foreign MNEs brought in the long term. This module may promote the local economy, but the cost is an unhealthy market and violated the rights of laborers.

3. ANALYSIS

By now, in both America and China, many companies' positions in their industries are almost unassailable, one reason for this is the laws and current domestic or international enforcement resorts are not effective enough to impair their monopoly power. There is no reached consensus on whether the economic benefits brought by these antitrust cases worth the loss of prohibiting them. In this case, a general standard or law statute is not enough to exert into any specific case. What's worse is that when it comes to the monopoly of MNEs, which means the cases usually involve more than one country's interest, it is even more difficult to reach a balance between countries' interests and companies' profits. As mentioned above, the both China and US governments may allow some degree of monopoly or oligopoly in certain vital industries to make sure the development of such industries is stable. The monopoly of a certain company may bring people welfare, the cost is that it may also destroy fairness of competition and violate labours' human rights. Even after a series of sanctions, for example, companies like Google and Alibaba their monopoly powers are still thriving. Since China is more tolerant of monopoly and has less enforcement of labor law, it is more attractive for FDI than other top-tier economies. Then the growth of foreign capital from weak to powerful in the nation has led to it becoming a monopoly capital, which has a severe influence on the country's economic, political, and social security. It is difficult for China, as the host nation, to oppose because of the great economic might and political backing of the home country.

One of the major reasons for this is the strong public relations of multinational foreign investors and the corruption of staff in the host country. With their strong financial position, they have cleverly used their contacts to lobby for policy. Carlyle Capital, known for acquiring lifeline companies in various countries, actively lobbied the local government and relevant authorities to gain support for the acquisition of XCMG, which was a leading Chinese construction machinery company. Simultaneously, brokers are operating within the host country that connects international investors with domestic government officials to build communities of interest with transnational monopoly capital for personal advantage. There are even some domestic asset companies that are willing to be used and acquired by multinational capital for short-term gain. There have not been good legal provisions or existing cases in China to address these examples. Meanwhile, American anti-trust law seems not that effective or not targeted to MNEs with their home states in the U.S. Considering American national interest and the limitation of jurisdiction, the American anti-trust system is difficult to be applied to MNEs who mainly use their monopoly strategy outside of America.

In most cases, what the enforcement agencies in the U.S. do is punish the MNEs' parent company based on their turnover within America. However, the host states' governments, which seem to have the jurisdiction of the MNEs' oversea parts, may sometimes indulge these MNEs because of economic benefits or corruption problems. While in other cases, the host states' governments are positively involved in the monopoly regulation of these MNEs. However, because these assets have been transferred to the parent company in the host country or to other branches in third countries, the host government cannot effectively enforce penalties against the assets of the MNE. Therefore, this often leads to a grey area of global monopoly without any regulation of world-scale monopoly.

4.COMPARISON OFANTITRUST MECHANISMS BETWEEN CHINA AND THE U.S.

4.1. Legislative History

To regulate their domestic markets, 130 areas passed the law of anti-monopoly. The U.S is one of the leaders in introducing a modern competition law: according to Colino, it ushered in the modern era of competition law [5]. One of the most influential laws was the American Sherman Antitrust Act of 1890, which was made to protect the local farmers from suffering the high freight transport costs priced by Railway companies with substantial market shares. Subsequently, *The Sherman Anti-Trust Act* was complemented by two other acts including *the Clayton Act of 1914* and *the Federal*

Trade Commission Act of 1914, which was used against monopolies such as Northern Securities Company, the American Tobacco Company, and the giant Microsoft computer software company. At the beginning of antitrust regulation, the American government's goal was to protect the consumers from unfair price monopoly, though. It was not until the end of the 19th Century and the beginning of the 20th that regulation made the turn toward preserving competition, which was more rational in concept and operational in practice. When this paper focuses our lens back on the specific situation between China and the U.S, the purpose of regulation varies between these two jurisdictions.

Historically, China started its reform of the economic system in the late 1970s and had successfully shifted its economic system from a centrally planned one to a mixed component one. During this epical reform, in 2008, China managed in joining the World Trade Organization (WTO). Chinese first antitrust law was made at this significant point in time. In the very early stage of practice, China was somehow 'compromised' to MNEs' monopoly power because the induction of these monopolies alleviated the surplus of labour brought by the imbalance between limited working opportunities and its large population. Therefore, Chinese Legal policy and enforcement were more tolerant to monopoly compared to the U.S. at the same period. As the reform of the economic system gradually deepened and Chinese general strength greatly increased, the provision of antitrust law became more rigorous and its enforcement of it became more standardized during this phase. *The National Development and Reform Commission (NDRC)* imposed on U.S. Qualcomm a monopoly fine of 6 billion RMB in 2013. [12] Though this monopoly punishment remains to be controversial, it undoubtedly shows the Chinese authority's strong determination to regulate monopoly suspicious companies more and more strictly.

The American antitrust law has a long history since the nineteenth century and the anti-trust policy is highly influenced by the prevailing economic thinking. Therefore, the legislative purpose of anti-trust law also changed over time. In the 1950s, 1960s, and 1970s, American anti-trust policy continued to be dominated by the "Harvard School" of economic thought. "Havard School" encouraged the government's intervention in monopoly and sought to create more bright-line rules. [8] However, during the 1960s and 1970s, the legislative purpose turned to "consumer welfare", which viewed the purpose as ensuring that prices were as low as possible. This was because the "Chicago School" saw markets as self-correcting, not every conduct that increased prices would be unlawful. Later in the 1990s, the "Post-Chicago School" incorporated the so-called "consumer welfare" with social and political realities. Beginning in the 2010s, the "New Brandeisians" tried to cast away the “consumer welfare” and re-established a more politically considered anti-trust legislative purpose. This means that the New Brandeisians economists take labor market, racial equity, and other political factors into their consideration.

From a relatively simple purpose at the onset of the 20th century that "big is bad" to a long period of tolerant anti-trust enforcement concerning consumer welfare, it seems that the New Brandeisians are now revolving the anti-trust legislation to a more modern political standard. Meanwhile, a drastic shift in anti-trust purpose silently took place between the older Structuralism and more rational Behaviorism.

Chinese anti-trust law had experienced a relatively shorter time of practice since it first came out in 2008. The anti-trust system in China is more politically oriented, rather than economy leading. What’s more, the legislative purpose of the anti-trust law in China is to prohibit "price cartels", control mergers and acquisitions, and administrative monopoly. [4] The legislative purpose falls on the protection of consumer welfare and the boost the economy. However, the enforcement of anti-trust law in China often neglects the “net economic effect”, or sometimes fails to correctly figure out the final economic effect. Chinese anti-trust law somehow directly theorizes "big is bad" because of this lack of economic consideration. In this case, the control of mergers and acquisitions is extremely strict in China. Under such strict provisions of mergers and acquisitions, the economic benefit is greatly affected. In the prohibition of the merging between Coca-Cola acquiring Huiyuan Juice, Chinese anti-trust regulators seemed to misjudge its economic effect because twelve years after that failed merge case, Huiyuan Juice had to delist from HKSE due to great loss.

Both China and the U.S. are still dynamically exploring the most suitable legislation purpose for their nation. [13] Since the consideration of this issue started earlier in America, the U.S. was currently in a leading position with its deep combination of legal, economic, and political factors. To clarify the purpose of the Chinese anti-trust law, Chinese economists must involve more actively in the anti-trust regulation. At the same time, the severe situation of administrative monopoly is also supposed to be realized by the Chinese government.

4.2. Legal Structures

In the US, the Federal Trade Commission (FTC) and the Department of Justice are the main enforcers of the anti-trust law. There are five Commissioners in FTC and they are appointed by the president. Ordinarily, FTC will ask the anti-trust suspect to sign a consent order, promising to stop controversial practices. In section 4 of *the Sherman Act*, the judiciary was entitled to the

jurisdiction in preventing anti-trust violation, and the state attorneys were responsible for litigation under the direction of the AG. Then effectiveness in managing local anti-trust practices in each state were promoted. For China, Chinese anti-monopoly enforcers are relatively inefficient due to China's structure of power. [3] The Chinese coexistence of the three enforcement agencies instead of a unified one is not the most scientific arrangement. The State Ministry of Commerce, the State Administration for Industry and Commerce, and the National Development and Reform Commission consist of the first layer of anti-monopoly law enforcers related to affairs in China. Although in America FTC is accountable to the congress and Antitrust department is under the control of the DOJ, the legislature, executive and judiciary are separately functioning in America. China's legislature, executive, and the judiciary are highly integrated, which leaves access for officers in executive bodies to abuse their 'executive powers' for excluding or limiting competition by interfering with anti-monopoly enforcers' investigation.

Different enforcers rely on different laws. There are several laws for regulating the monopoly of MNEs in China, along with *the Anti-Monopoly Law of the People's Republic of China*, there is *the Acquisition of Domestic Enterprises by Foreign Investors Provisions* 2009, and *Company Law*, etc. Taking the First layer of administration, for example, the State Ministry of Commerce mainly relies on the Acquisition of Domestic Enterprises by Foreign Investors Provisions 2009 to enforce while the State Administration for Industry and Commerce relies on Anti-Unfair Competition Act 1993, and the National Development and Reform Commission rely on Price Act 1997. The American anti-trust system currently has become a collection of mostly federal laws that regulate the conduct and organization of corporations and are generally intended to promote competition and prevent monopoly. The main statutes are *The Sherman Act* of 1890, *The Clayton Act* of 1914, and *The Federal Trade Commission Act* of 1914. The Chinese antitrust system began to establish in 2008 when China was trying to join WTO. Therefore, it was more extrinsically stimulated compared to the development of the US antitrust system.

As many economists and jurisconsults mentioned, it was the development of the economy that intrinsically promoted the development and complement of antitrust law in the US. [14] In this case, the economic influence will be prioritized when executive departments trade-off whether to punish certain companies or not. Meanwhile, since the industry department of the US is quite complete and stable, the antitrust policy is correspondingly more inclined to competition policy rather than industrial policy.

The Chinese antitrust system began to establish in 2008 when China was trying to join WTO. Therefore, it was more extrinsically stimulated compared to the development of the US antitrust system. Since the execution of *the Anti-Monopoly Law*, the State Council, the Anti-Monopoly Commission of the State Council (AMC), and three anti-monopoly enforcement agencies have issued a series of supporting regulations. On August 3, 2008, the State Council of PRC promulgated the "Regulations of the State Council on the Standards for Declaration of Concentration of Business Operators". In May 2009, The Anti-Monopoly Commission issued the "Guidelines on the Definition of Relevant Markets". The Ministry of Commerce has so far issued 12 departmental regulations to refine the enforcement of the anti-monopoly review of the concentration of undertakings. The National Development and Reform Commission issued the "Anti-Price Monopoly" on December 29, 2011. Furthermore, the Provisions on Anti-Monopoly Administrative Enforcement Procedures and Provisions on Anti-Price Monopoly Administrative Enforcement Procedures greatly support the implementation of *The Anti-trust Law*. The General Administration of Market Regulation of China formulated and issued *The Guidelines on Offshore Antitrust Compliance for Enterprises* on 15 November 2021. The guidelines apply to Chinese enterprises engaged in business outside China including those engaged in import and export trade, overseas investment, and other cross-border business activities designed to operate outside China. The issuance of this guideline is conducive to enterprises' better grasp of international regulations, safeguarding their legitimate interests while enhancing their international competitiveness. All these regulations have led to a Chinese path of antitrust regulation during the ten years of execution.

the US M&A legal system applies to all enterprises because the US does not distinguish between domestic and international corporations and does not have a distinct legal structure for foreign investment. *The Sherman Act* of 1890, *The Clayton Act* of 1914, and subsequent revisions make up the US legal system, which was the first to govern mergers and acquisitions. The US Department of Justice provides merger guidelines every few years to help enforce antitrust laws by determining which mergers and acquisitions can and cannot be allowed. The Federal Trade Commission, the Department of Justice, and state authorities are in charge of enforcing these merger regulations. They've also enacted state merger laws that emphasize restrictions and penalties for bad faith mergers and acquisitions. Meanwhile, they often apply the law in a way that puts international merging businesses under more restrictions. Furthermore, if foreign money plans to buy an industry that is relevant to national security design, it will be scrutinized by the Committee on Foreign Investment in the United States (CFIUS).

Overall, the US has a more sophisticated core of cross-border capital controls, which is built on a liberal

legal system and framework, making cross-border M&A difficult to implement, but safeguarding national security and economic sovereignty. In contrast, China should step up its efforts to formulate relevant laws and regulations to close the legal loopholes associated with cross-border M&A management.

5. FEASIBLE SOLUTION

5.1. Possible Direction of Reform of Law Enforcement Agencies in China

To effectively regulate monopolistic MNEs, all country's enforcement agencies are inevitably one of the key factors. Accompanying a massive reform of the power framework, there must be restructuring of law enforcement agencies and changes in the law. A new, law-enforcing module that is independent of the government is very unfamiliar to China, where there has always been a central administration coordinating subordinate bodies' enforcement in parallel regulation. MNEs would gain more monopoly power at this phase as China's enforcers need to gain experience over a period of time on their own because China needs to insist on protectionism rather than promote fair competition to protect most domestic enterprises that are still in the fragile developing stage. [15]

The purpose of anti-monopoly law in China should remain political until most domestic enterprises are developed. The purpose of American antitrust law changes from its initial labour protection to fair competition promotion. The latter purpose needs a good economic basis and can be a direction for improvement. A comparatively feasible solution for China is having an evolutionary reform in the enforcement structure, specific anti-trust policy and the anti-trust law.

For the parallel structure reform at a starting point, the current three agencies can be simplified as one single agency that is directly under the control of the state council, which allows it to take over all devolved agencies' cases with full authority. Since previous functions are owned by one authority, higher efficiency can be reached once unnecessary internal depletion of resources is avoided. For example, investigation of centralized operation, monopoly protocols, and unfair prices can be conducted simultaneously. The power of having an investigation of 'Abuse of executive powers to exclude competition' should be transferred to procuratorates and Commission for Discipline Inspection. This new agency could be given more powers including anti-monopoly-related executive authorities, and part of antitrust-related legislative power authorized by the National People's Congress. Besides, the new agency can add a new department consisting of Economics Specialist and anti-trust lawyers who act as a supervisory for authorities' boundaries and an adviser.

Current laws can be refined and modified the current laws gradually by learning through practices as the new enforcement agency has related legislative power. China can reduce the harmful effect brought by monopoly MNEs through the refinement of labour law, tax law and FDI policies. It is urgent for China to focus more on refinement and enforcement of labour law, tax law and FDI policies to protect domestic labours' right and create a fairer market environment in China. For instance, having stricter regulations on working conditions, human rights and hours for production workers, in line with regular spot checks by enforcement authorities. Meanwhile, government could set the land rent and taxes as same as domestic enterprises' level if the investment is for manufacture factories. Along with new legislation, enacting corresponding guidelines would provide enforcers with specific rules to regulate. This essay argues giving a more explicit definition of the market including taking measurement by an internationally recognized standard like Herfindahl-Hirschman Index when deciding what size of business is considered a monopoly. Then, the censorship of notification of mergers would be more efficient due to a clear set of rules with international precedents and a unified regulatory body.

Changing in anti-trust policies could be a good way for the transition. It is suggested to clearify under what circumstance which type of policy can best maintain economic utility and social welfare. The market access policy in China is somehow a combination of industrial and competition policy. With the division of four layers including encouragement, permission, limitation and prohibition, it illustrates that in which industry an MNE is encouraged while in others an MNE may face some obstacles. During implementation, the market access is practically regulated via market competition. Even in some occasions, the industrial standard conflicts with the market competition. It is at this point that the Chinese government has to decide incline to which side. In long run, China is supposed to gradually shift its policy centre to competition policy while it is fine to also use the industrial policy as a supplement.

5.2 International Arbitration

There is no corresponding content related to arbitrability of antitrust dispute. When determining the arbitrability, Chinese court would consider 'public social interest' because China is tended to address monopoly cases through domestic judicial processes. Still, the problem is Chinese laws does not explicitly state definition of 'public social interest'. This might leave the judiciary too much discretion when deciding whether a monopoly dispute is of China's public interest.

When determining the arbitrability, judgement of U.S supreme court in Mitsubishi case will be referred, the first point is to find out whether the parties entered

into an arbitration agreement with antitrust content, then speculating on legislative intention with texts and purpose. This provides an example for China to improve along with refining of the law itself, Chinese judiciary can determine arbitrability by considering whether the parties enter into the agreement to and then the balance of social interest. It would be fairer for the parties.

Cooperation on the international level is necessary in face of the MNEs' global monopoly. The purpose of *the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards* is to provide a mutual standard for legislation. It is also related to extraterritorial effects of antitrust law. Laws may conflict in different areas, a behaviour of MNE may be considered illegal in China but not in the U.S. Meanwhile, there are difficulties in obtaining evidence across borders. Therefore, bilateral institutional cooperation becomes a usual manner. However, merely having basic cooperation like sharing information is not enough for actual regulation. Currently, international groups like WTO and International Competition Network could only promote negotiation and ensure the execution of the commercial agreement.

A solution in the future could be having an authority carries out regular investigation and screening on the overexpanded MNEs. At the same time, it would act as an inspector to ensure the rights of consumers and laborers are protected. This could assist developing countries to faster meet world standards for better development of globalization. However, the developing history of international antitrust arbitration is not satisfying, OCED's plan for an international guideline for MNEs to obey is slowly progressing with little effect. Meanwhile, Havana Charter was not passed by the American congress. Concerning all these above and further, it is time for countries to reach a consensus on international arbitration standards and promoting fair competitions on a global scale.

6. CONCLUSION

With the comparison between Chinese and the U.S. anti-trust law, the authors eventually come to several feasible solution proposed to the advancement of Chinese anti-trust system. Chinese government can simplify its anti-trust enforcement agency as the onset of an anti-trust reform. Furthermore, an anti-trust policy concerning economic benefits and social effect, as a whole, is supposed to become the strong legislative support of anti-trust enforcement. Meanwhile, on the international level, there should be an international neutral authority of anti-trust regulation especially focuses on the regulation over monopoly MNEs. This discussion of the difference between America and China shows the problems of current legal problems in many developing countries such as China. The evolutionary reform in enforcing structure, legislation, and policies would also be a comparatively suitable solution for other developing countries.

The regulation of monopolistic MNEs is a science about law, governance, global economy, and politics. In this way, posing legal approaches in the position of tools, rather than the purpose of the regulation, is a presumable better solution. Host states including China have better firstly judged the necessity of regulation with the ruler of economic effect and then lay out the legal "tools". This paper recommends the government officials, jurisconsults and economists should work together to tackle with the anti-trust regulation over MNEs. Hopefully, the monopolistic MNEs can be better regulated to maintain a free competition environment in the near future through international cooperation. If possible, this essay believes the cooperation between countries will be a bridge and a positive lubricant of their diplomatic relationship and globalization and minimize the harm of the monopoly of MNE.

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