

Research on the Applicability of Punitive Compensation in Competition Law

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Abstract

In the economic law system, competition law constitutes an important part of them. As part of the competition law, the fundamental purpose of the anti-unfair competition law is regulating the market behaviour. Therefore, the implementation of competition law is directly related to the overall competition order, relates to the smooth operation of the market. In the scope of competition law, punitive compensation is in essence a special type of compensation mechanism, which has strong punitive characteristics, in order to punish some undesirable behaviour of market players. For the competition law, it is necessary to clarify the basic principle of punitive compensation and delimit the exact scope of application. On this basis, the feasible countermeasure should be explored according to the present situation of punitive compensation.

Keywords: punitive compensation; competition law; applicability

1 Introduction

As a special compensation mechanism, the nature of punitive compensation is multi-level: the use of punitive compensation can be an orderly curb some of the main market irregularities, but also can play the role of punishment and compensation. Thus, punitive compensation the mechanism of competition law is very important. The main reason lies in the punitive nature of punitive compensation itself [1]. Punitive compensation at a large extent, accommodate the public power of the market regulation and intervention, and thus in line with the most basic purpose of competition law. The face of market conditions, the

relevant departments and their staff is still necessary to correctly implement the punitive compensation, through this means to make up the victims, disciplinary market unfair competition. This will help to obtain a good market order, to protect the normal operation of the market.

2 The necessary value of introduction punitive compensation in the competition law

From a narrow sense, the competition law refers specifically to anti-unfair competition law; broadly speaking, the competition law should also contain anti-monopoly law. In the economic law system, the competition law constitutes the core of the legal part. This is because the competition law is used to directly regulate the overall order of the market, so the implementation of laws and regulations are closely related to the rights and interests of consumers. As operators, it is necessary to conscientiously comply with the guidelines of competition law, on this basis, standardize the competitive behaviour in the weekdays, do not harm consumers. It can be seen, anti-unfair competition law is the fundamental purpose of regulating the market order, to ensure fair competition [2].

In recent years, the market competition has shown a more violent trend, with the corresponding unfair competition is endless. In the market competition, improper competition fundamentally destroyed the order, and therefore hindered the construction of a stable market order. From the statistical results, the current competition in all sectors of the industry has shown a rise in the total and the trend of the means of renovation, this situation rooted in the implementation of the shortcomings and shortcomings. In essence, competition law itself implies a flaw that can easily expand unfair competition in the marketplace today, and even encourage potentially unhealthy competition. As part of the statute, the compensation system designed by the competition law also exposes defects, cannot punish and deter violators of the market.

Thus, the system of punitive compensation within the competition system still has a very wide application space. As one of the most severe of the compensation system, punitive compensation has merged both private law and public law, thus showing the cross-domain legal characteristics. Punitive compensation can curb illegal, but also help the injured party to obtain the compensation should be due. However, in recent years, the punitive compensation in the field of economic law not only shows the unique advantages, but also exposed some ills. Through perfect application, we can eliminate the defects of competition law from the root, and perfect the punitive compensation in this process [3].

3 The applicability of punitive compensation

Up to now, the competition law still follows the monotonous mode of responsibility. If it is to be improved, then the inclusion of punitive compensation will be the best way. In particular, punitive compensation has the following applicability:

First of all, the nature of punitive compensation is in line with the purpose and objectives of economic law. This is because, punitive compensation both private law and public law attributes; at the same time, economic law also happens to have a double attribute. Therefore, punitive compensation cannot simply be attributed to civil law, but need to be extended to intervene in the field of market competition. At present, many countries have tried to punitive compensation into the various types of sector law. From our point of view, food safety law and consumer rights protection law were introduced to punitive compensation [4]. As a key part of the economic law, competition law is directly related to the most consumers, it is necessary to introduce punitive compensation, through punitive ways to protect consumers and curb bad competition.

Second, the competition law can be applied if the punitive compensation, you can maximize the unfair competition to fill the ills and loopholes. To do so, help prevent unfair competition expansion. It should be clear that competition law itself is not perfect, but is flawed. However, punitive competition has both multi-level punitive performance and compensation performance, which effectively compensates the natural defects of competition law. Punitive compensation can show their own important value in the aspects of curbing improper competition and strengthening state intervention.

Third, in the competition law, a single type of responsibility is not conducive to the performance of the law should have the strength, but also there is a mechanical responsibility to pursue. In this state, the administrative agencies themselves bear a heavy liability, simply by virtue of the administration has been difficult to curb from the root causes of a variety of unfair competition. From another point of view, consumers within the market have also suffered an increasingly serious injury; after being hurt, cannot make up their own rights. If we can introduce a punitive civil compensation mechanism, we can introduce public power to protect more consumers, thus showing the public power to intervene in unfair competition, the intensity and determination. Therefore, the specific application of punitive compensation in competition law will help to regulate the market flexibly and safeguard the public's rights and interests.

4 The specific application measures

4.1 Improve the applicable elements

Punitive compensation is the fundamental purpose of the establishment of disciplinary bad behaviour, for the victims to fight for the appropriate amount of compensation. Therefore, punitive compensation in the application process needs

to clearly apply the subject, the applicable acts and punitive consequences. From the present point of view, punitive compensation and failed to improve the relevant conditions of application, and thus to be applied to compensate for the elements. From a competition law point of view, punitive compensation need to be limited to the very vicious and highly harmful market competition behaviour; against the general market violations, you can not apply such severe penalties and compensation [5].

4.2 Determine the appropriate amount of compensation

For punitive compensation, the most critical is to determine the amount. For a long time, how to determine the amount of punitive compensation, this problem has always plagued scholars. Specifically, in designing the amount of compensation, the legislator need to take into account the following elements: the amount of compensation and the victims of the real loss is a specific proportion? Punitive compensation can play the most fundamental disciplinary effect? Whether it helps to curb similar violations of competition and business behaviour? In the real implementation, the judge also needs to closely combine the specific circumstances of the case, the specific discretion and make the appropriate decisions. Flexible use of legal discretion, this will help balance the interests of consumers and operators to prevent the excessive deprivation of the operator's property [6].

4.3 Consider the real loss

While the application of punitive compensation is subject to the rules and regulations, at the same time, it is necessary to take into account the plaintiff really suffered losses. In a specific case, the specific application of punitive compensation is not exactly the same. Punitive compensation can be applied to the premise is to confirm the actual loss, and then can use a specific proportion of the relationship between the amount of calculation. In addition, the judge also needs to measure the market harm caused by improper behaviour, orderly protection of public interest in market competition.

5. Conclusion

Punitive compensation has a long history and the system itself has a long history of evolution. As a special and ancient civil law mechanism, punitive compensation is necessary to apply to the present market competition and punitive compensation is used to curb the damage behaviour in the competitive process. From the perspective of competition law, punitive compensation has a wide application prospect and helps to regulate the free competition in the market from the root. However, up to now, the compensation mechanism of punitive compensation has not been perfected, and it needs to be improved in the long term. In the future practice, the relevant departments also need to constantly

explore the legislative and judicial experience, which serves to comprehensive improvement and implementation of the punish compensation.

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