

An empirical study on the abuse of market dominance by urban pipeline gas in 2020-2022

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Abstract. City pipeline gas has significant natural monopoly properties and regional characteristics. This paper sorted out the administrative law enforcement cases of abuse of market dominance in the field of urban pipeline gas in the three years from 2020 to 2022, and found that the acts of Article 17 (5) and (4) of the Anti-Monopoly Law accounted for the highest proportion, and the punishment was generally mild, and most of them were private enterprises. At the same time, the corresponding regulatory implications are studied and proposed, that is, strengthening the supervision of natural monopoly enterprises extending upstream and downstream links, introducing qualified enterprises in franchise operation, and making full use of information technology to improve regulatory capabilities and regulatory efficiency.

Keywords: City pipeline gas; Abuse of a dominant market position; supervise.

1. Introduction

City pipeline gas supply has significant natural monopoly properties and regional characteristics. Since the 1990s, franchise reform has been widely implemented in the urban gas field to introduce social capital and competition mechanism, and this field has also been a key area of anti-monopoly supervision and law enforcement in China [1]. In November 2023, the third meeting of the Central Deep Reform Commission deliberated and adopted the "Implementation Opinions on Improving the Regulatory System and Mechanism of Natural Monopoly Links" (hereinafter referred to as the "Implementation Opinions"), which clearly stated that it was necessary to improve the regulatory method to promote the natural monopoly links to better meet the needs of building a modern infrastructure system and ensuring national security. Through the practice of anti-monopoly law enforcement in the field of urban pipeline gas, it can give beneficial regulatory inspiration and help to understand the great significance of the "Implementation Opinions".

2. Analysis of law enforcement results in urban pipeline gas field in recent years

Water supply, power supply, gas supply, heating and other public utilities have natural monopoly properties and are closely related to the people's livelihood, and have always been regarded as the key areas of anti-monopoly law enforcement by China's anti-monopoly law enforcement agencies, among which, the gas supply field is the field of frequent cases. From 2020 to 2022, anti-monopoly law enforcement agencies have concluded a total of 21 cases of abuse of market dominance in the utility industry, of which 8 cases are in the field of urban pipeline gas, accounting for nearly 40%. Based on the Annual Report on China's Anti-Monopoly Law Enforcement in the three years from 2020 to 2022, this paper sorted out 8 administrative law enforcement cases involving abuse of market dominance in the field of urban pipeline gas, and consulted their corresponding administrative penalties. The law enforcement results were analyzed as follows.

(1) From the perspective of the type of "abuse" behavior, Article 17 (5) of the Anti-Monopoly Law accounts for the highest proportion.

Among the illegal acts involved in the 8 cases, there were 5 cases involving the act of (5) "linking commodities without justifiable reasons, or attaching other unreasonable trading conditions to the transaction", and there were 4 cases involving the act of (4) "without justifiable reasons, restricting



the counterparty of the transaction only to transact with it or to transact only with the designated operator". Second only to the former, these two behaviors are the most common abuses of market dominance by urban pipeline gas enterprises. In addition, there was one other case concerning the conduct in paragraph (1) "selling goods at unfairly high prices or buying goods at unfairly low prices".

(2) From the point of view of the fine, it is generally a million yuan scale, most of the fine ratio is 2%, and only 2 cases are relatively heavy because of the serious punishment of the illegal situation.

Article 47 of the Anti-Monopoly Law stipulates that those who abuse a dominant market position shall be ordered by the anti-monopoly law enforcement agency to stop the illegal act, confiscate the illegal income, and impose a fine of more than 1% and less than 10% of the previous annual sales. In terms of the amount of fines (that is, the amount of confiscation + the amount of fines), the largest is the case of Jiangsu Yixing Ganghua Gas Co., LTD., the amount is as high as 40.4422 million, the rest are millions, and the smallest is the case of Ningxia Changgas Co., Ltd. abusing its dominant position in the market, which is 1.110,600 million. From the point of view of the fine ratio, of the 8 cases, 5 cases were fined 2%, and 1 case was fined 1%, that is to say, 75% of the cases were relatively mild. In the other two cases, the proportion of fines was relatively high, among which, the case of Chongqing Yongkang Gas Co., Ltd. abusing its dominant position in the market was exposed by the TV station and caused relatively serious negative impact, and the proportion of fines was increased to 5%; Minhe Chuanzhong Oil and Gas Company abuse of market dominance case due to serious circumstances, bad nature and obstruction of anti-monopoly investigation behavior, the proportion of fine reached 9%, close to the maximum punishment.

(3) From the nature of illegal enterprises, private enterprises occupy the majority in number.

On the one hand, the number of private enterprises involved is the largest, 5 of the 8 cases are private enterprises, accounting for 63.5%, 2 are foreign-funded enterprises, and 1 is local state-owned enterprises. On the other hand, the only two cases that obstructed antitrust investigations were for private companies. Further analysis of the characteristics of the above private enterprises can be found that they are generally small scale and local enterprises absolutely controlled by natural persons, and irregular corporate governance and weak compliance awareness may be the causes of illegal behaviors.

(4) Under the influence of multiple factors, antitrust supervision presents the characteristics of great difficulty and challenge.

First of all, from the source of the case, most of the cases came from reports or TV exposure, only one was found by special inspection; From the perspective of the duration of the violation, the general illegal time is relatively long, and even three cases have been illegal for more than 10 years. This fully shows the passivity of supervision, in the face of urban pipeline gas enterprises widely distributed across the country, regulators are often difficult to timely and effectively capture relevant illegal information. Secondly, anti-monopoly law enforcement agencies from filing investigations to issuing administrative penalties, often have to go through a difficult and complicated investigation and evidence collection process, which takes a long time, such as 8 cases, the shortest time is 9 months, and the longest is even close to 3 years. Finally, two of the eight cases involved the government's use of administrative power to exclude or restrict competition, which further increased the difficulty of supervision.

3. Regulatory enlightenment

At present, China's natural gas pipeline network management system shows the basic pattern of transmission and distribution separation, urban pipeline gas assumes the function of natural gas distribution and sales, and generally adopts the franchise mode. It can be said that the field of urban pipeline gas is a natural monopoly link that introduces a certain competition mechanism, and its anti-monopoly law enforcement practice can give us many regulatory Revelations and suggestions on how to improve the supervision of natural monopoly link in the process of market-oriented reform.

(1) It is essential to prevent natural monopolies from extending upstream and downstream

From the above analysis, it can be seen that the most common behaviors of abusing market dominance, such as tying commodities or attaching unreasonable trading conditions to transactions and restricting traders to transact with them or their designated operators, are all caused by the extension of the upstream and downstream competitive links of natural monopolies driven by the pursuit of profits. Since natural monopoly enterprises operate the only pipeline network facilities, users are highly dependent on them and cannot choose them, so there must be a natural imbalance in status, and they have low cost and strong motivation to make profits from the upstream and downstream related links by taking advantage of monopoly advantages. Therefore, to improve the supervision of natural monopoly links, it is inevitable to implement key supervision on the competitive business of natural monopoly enterprises [2].

(2) The implementation of franchising in the natural monopoly link should attach great importance to the issue of enterprise qualification

The franchising model only introduces the competition mechanism in the entry stage, which aims to improve the operation efficiency, but it cannot change the feature of "complete monopoly" in the operation process of natural monopoly business [3]. When introducing competition mechanism reform in the access stage, it is bound to strengthen and strengthen the supervision of this stage simultaneously, and introduce the qualification examination of enterprises well. If the introduction of unqualified enterprises, often not only can not improve operational efficiency, but may lead to more regulatory compliance problems. The enterprises introduced can be state-owned, foreign or private, but it is necessary to focus on the scale of the enterprise, the background of shareholders, corporate governance, professional advantages, corporate brands and other aspects to ensure that the enterprise has the corresponding business qualifications.

(3) Use advanced technologies to continuously enrich regulatory methods and means to improve regulatory efficiency

From the perspective of the anti-monopoly supervision practice of urban pipeline gas, the anti-monopoly supervision is bound to face high difficulty and challenge in the face of numerous scattered supervision objects in the whole country. An important solution to this problem is to make full use of information technology to enable supervision, so as to greatly improve the supervision ability and efficiency [4]. For example, under the complex and high-frequency market trading, FERC makes full use of big data analysis as an important technical means to implement market supervision, ensuring the long-term stable operation of the electricity market.

4. Main conclusion

The main conclusions of this paper are as follows: First, from the type of "abuse" behavior, Article 17 (5) of the Anti-monopoly Law accounted for the highest proportion; Second, from the point of view of the fine, it is generally a million yuan scale, most of the fine proportion is 2%, and only 2 cases are relatively heavy because of the serious punishment of the illegal situation; Third, from the nature of illegal enterprises, the number of private enterprises occupy the majority; Fourth, under the influence of multiple factors, anti-monopoly supervision presents the characteristics of difficulty and challenge.

The regulatory implications of this paper are as follows: First, it is very important to prevent natural monopoly enterprises from extending upward and downstream; Second, we should attach great importance to the qualification of enterprises in the implementation of franchising in natural monopoly. Third, the use of advanced technologies to continuously enrich regulatory methods and means to improve regulatory effectiveness.

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