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The Antitrust Undertaking Commitment System in the United States: Consent Decrees and Consent Orders

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Abstract

The undertaking commitment system originated in the United States and has gradually been adopted by other countries and regions following the global expansion of U.S. law after World War II. As an important mode of antitrust enforcement, it is of great significance in the swift restoration of fair competition market order, the effective enhancement of antitrust enforcement efficacy, and the efficient conservation of antitrust enforcement resources. In the United States, this system primarily takes two forms: consent decrees and consent orders. China likewise introduced this system in the process of learning from advanced rule-of-law experiences of the West and constructing a socialist legal system with Chinese characteristics, and has applied it extensively in antitrust enforcement practice. This article compares and introduces the antitrust undertaking commitment systems of China and the United States from three aspects: Part I provides a brief overview of the origin and basic theory of the antitrust commitment system; Part II focuses on analyzing the U.S. consent decree and consent order; and Part III examines China's undertaking commitment system and its application.

Keywords

Commitment System, Consent Decree, Consent Order

1. Overview of the Undertaking Commitment System

(I) The Debate over the Definition of the Commitment System

At present, there is no globally unified concept of the undertaking commitment system in antitrust law. Even in countries and regions such as the United States and the European Union, where the commitment system has been applied for a relatively long time with favorable practical outcomes, its precise concept remains

unclear. In Chinese academic circles, there are two different designations for this system in theory: some refer to it as the "undertaking commitment system" (Huang, 2014), while others call it the "antitrust settlement system" (Luo, 2016).

The antitrust commitment system is not a concept in the normative sense; it can only be abstractly summarized based on the content of legal norms. From the perspective of its nature, the essence of the antitrust commitment system can be simply characterized as a negotiated approach to handling monopolistic conduct. When antitrust enforcement authorities investigate monopoly cases, if the investigated market entity undertakes to cease, rectify, or engage in specific conduct, and the enforcement authority deems the undertaking sufficient to eliminate the negative effects of the monopolistic conduct, it may accept the undertaking and, based thereon, issue a decision requiring the market entity to fulfill the undertaking, thereby concluding the case investigation procedure.

(II) The U.S. Definition of the Antitrust Undertaking Commitment System: Consent Decrees and Consent Orders

The provisions on the commitment system in U.S. antitrust law primarily manifest as "consent decrees" led by the Department of Justice and "consent orders" applied by the Federal Trade Commission (Yin, 2013).

Under the Clayton Act[1], the U.S. Department of Justice may, pursuant to antitrust law, negotiate and reach an agreement with an investigated undertaking during litigation against a suspected monopolist, and submit such agreement to a court for review. An approved agreement following review is termed a consent decree. However, the commitment agreement does not constitute a finding that the undertaking's conduct violated the antitrust laws, and the concessions made by the undertaking to reach the agreement may not be admitted as evidence of suspected monopolization. In antitrust civil actions brought by the Department of Justice, the commitment agreement possesses considerable flexibility and may extend throughout the entire trial proceedings without being necessarily bound by legal constraints.

The application of consent decrees in the United States has undergone significant evolution. Initially, consent decrees were judgments rendered against defendants who had violated antitrust laws in civil or criminal proceedings. Such judgments could also serve as evidence in subsequent lawsuits brought by other interested parties against the defendant, with the exception that "consent decrees entered before trial are not admissible". This meant that the earlier an antitrust-violating enterprise completed a consent decree, the more advantageous it was for the enterprise itself, thereby encouraging defendants to seek expeditious consent decrees with the government to terminate antitrust cases. Subsequently, consent decrees underwent significant transformation: the negotiation process excluded public participation and relevant information was no longer disclosed (Dau-Schmidt et al., 2000).

Thereafter, the Antitrust Subcommittee of the Judiciary Committee decided in

[1]The US Clayton Act §5(e), (f).

its discussions to reduce the secrecy of antitrust cases. By instituting procedures such as hearings and public comment, the public was enabled to participate in the consent decree process, thereby enhancing procedural transparency and safeguarding the public's right to seek redress in antitrust cases.[2]

In the enforcement process of the Federal Trade Commission, under the Federal Trade Commission Act, if an investigated undertaking commits to taking or ceasing certain actions to eliminate the adverse effects of suspected monopolistic conduct, the Commission has the authority to decide during the investigation whether to negotiate with the undertaking, reach an agreement, and issue a consent order to conclude the case investigation. Of course, the undertaking's commitment is not the sole condition for issuing a consent order; the issuance of a consent order must also go through a series of procedures including public notice and comment collection. Similar to a consent decree, the principal characteristic of a consent order is that the enforcement authority does not make a finding as to whether the investigated party has violated the law. As long as the undertaking requests the application of a consent order and takes action to comply with the order issued by the Commission, the conditions for issuing the consent order are satisfied[3]. Currently, the consent order is the primary instrument employed by the Federal Trade Commission to regulate monopolistic conduct. If the parties do not petition a court of appeals for judicial review within a reasonable period, the consent order becomes final and effective.

(III) The Definition of China's Undertaking Commitment System

Unlike the United States, Chinese law designates the commitment system in antitrust law as the "undertaking commitment system". Under Article 53 of the Anti-Monopoly Law, the undertaking commitment system refers to a method of handling monopolistic conduct whereby, during an antitrust enforcement investigation, if the investigated undertaking commits to taking specific measures within a timeframe approved by the antitrust enforcement authority to eliminate the negative consequences of suspected monopolistic conduct, the antitrust enforcement authority may issue a decision to suspend the investigation; upon the undertaking's fulfillment of its commitments, the antitrust enforcement authority may issue a decision to terminate the investigation, thereby concluding the enforcement procedure.

In addition to the Anti-Monopoly Law's provisions on the commitment system, the other two major enforcement authorities with jurisdiction to investigate monopolistic conduct have also addressed the commitment system in their respective enforcement procedural rules. These include: the 2009 Provisions of the State Administration for Industry and Commerce on the Procedures for Investigating and Handling Monopoly Agreements and Abuse of Market Dominance (now repealed), the 2010 Provisions of the National Development and Reform Commission on Administrative Enforcement Procedures for Anti-Price Monopoly (now

[2]The US Clayton Act § 5(b),(c).
[3]The US 16 C.F.R § 2.31-2.34.

repealed), and the 2019 Provisions of the State Administration for Market Regulation on Prohibiting Monopoly Agreements, the Provisions on Prohibiting the Abuse of Market Dominance, and the Provisions on Preventing the Abuse of Administrative Power to Eliminate or Restrict Competition.

Although China has numerous provisions regarding the commitment system, they are relatively principled in nature, and there is a lack of clear and specific rules on how to apply the commitment system in enforcement practice. To provide undertakings with more operable guidance, enhance the standardization and transparency of antitrust enforcement, apply the commitment system more accurately and normatively in enforcement practice, and effectively realize the system's functions, the Anti-Monopoly Commission of the State Council of the People's Republic of China, pursuant to the Anti-Monopoly Law, issued the Guide on Undertaking Commitments in Monopoly Cases in 2019, recognizing the significance of establishing a sound undertaking commitment system for strengthening and improving antitrust enforcement and protecting fair market competition. The classification of commitment types mentioned earlier is further refined in the Guide, which categorizes commitments into three specific types: structural measures, behavioral measures, and comprehensive measures. Behavioral measures include adjusting pricing strategies, eliminating or modifying various transaction restriction measures, opening infrastructure such as networks or platforms, and licensing patents, trade secrets, or other intellectual property rights; structural measures include divesting tangible assets, intangible assets such as intellectual property rights, or related equity interests.

During the drafting of the Guide, the drafting authority fully referenced the advanced enforcement experiences of other countries while grounding itself in China's national conditions and combining antitrust enforcement practice, reflecting to a certain extent the continuously improving capability and level of China's antitrust enforcement. The promulgation and implementation of the Guide will help strengthen and improve the antitrust enforcement system, promote the establishment of a unified, open, and competitively orderly market environment, and better realize the legislative objectives of the Anti-Monopoly Law in protecting fair market competition and safeguarding consumer interests and the public interest (State Administration for Market Regulation of China, 2020).

2. Overview of the U.S. Undertaking Commitment System

(I) The U.S. Consent Decree System

The world's first consent decree was established in the United States in 1906[4] and has been applied there for over a century. According to reports by American scholars, in 1950 alone, 50% of antitrust cases in the country were settled through negotiation, and this proportion has now reached 90%[5]. The non-adversarial, commitment-oriented, and efficient characteristics have led to the widespread ap-

[4]United States v. Otis Elevator Co., I Decrees &Judgments in Fed. Antitrust Cas. 107 (N.D. Cal. 1906).
[5]OMPETITION COMMITTEE IN ANTITRUST CASES, https://one.oecd.org/document/DAF/COMP/M(2016)1/ANN3/FINAL/en/pdf.

plication of the commitment system in U.S. antitrust practice.

The Antitrust Division of the U.S. Department of Justice (DOJ) and the U.S. Federal Trade Commission (FTC) are the enforcement authorities responsible for investigating monopolistic conduct[6], initiating litigation against relevant entities, or reaching settlements with them. Regarding the form of case closure, the two agencies respectively enforce against monopolistic conduct through accepting the commitments of investigated undertakings in the form of consent decrees or consent orders. The consent decree system refers to a dispute resolution mechanism in non-criminal monopoly cases whereby the DOJ Antitrust Division can resolve cases without trial through agreements reached with defendants. Consent orders, which do not require judicial review by a court, represent the FTC's method of concluding investigation procedures.

The protection of the public interest is the core of the consent decree system, and the preservation of competitive order is its direct objective. The procedural framework established by statute forms the basic architecture of consent decrees, and moderate judicial involvement is the most distinguishing feature of the consent decree system compared to settlement systems in other jurisdictions, also ensuring the special efficacy and enforceability of this system.

Generally, a consent decree contains jurisdiction clauses, definition clauses, conduct prohibition clauses, claim clauses, reporting or monitoring clauses, cooperation clauses (such as provisions granting the DOJ the right to inspect and copy relevant documents and interview relevant personnel), change of notice clauses, and court ruling clauses. The decree also specifies that the court retains enforcement jurisdiction. Many settlement agreements contain "fencing-in provisions", which prohibit conduct that may not itself violate the law but carries the potential for the relevant parties to repeat the violation. Among these provisions, particular attention should be paid to the provisions concerning the duration of the consent decree; absent special cause, the effective period is generally three years from the date of court approval. Of course, this period is not fixed and falls within the scope of the DOJ's discretionary authority, varying in different cases. The Antitrust Division retains the right to interpret the relevant provisions.

(II) The U.S. Consent Order System

The consent order is another pathway of the U.S. antitrust commitment system alongside the consent decree. Under the consent order mechanism, market entities subject to antitrust investigations may proactively acknowledge to the enforcement authority the existence of improper conduct, commit to ceasing the disputed practices, and undertake necessary measures to eliminate the anticompetitive threats and effects caused by such conduct. The relevant commitments, after being agreed upon through negotiation between the enforcement parties, are formulated as terms and ultimately issued in the form of an FTC decision and order, known as a "consent order". A consent order does not make a finding of illegality regarding the undertaking's conduct; it serves solely as a dispute resolu-

[6]15 U.S.C. § 18 (2012) (Clayton Act).

tion mechanism in antitrust enforcement.

In 1925, the Federal Trade Commission formally codified the commitment mechanism in its Commission Rules of Organization, Procedure, and Practice, referring to it as "stipulation", which was the precursor to the consent order system[7]. On July 21, 1961, the FTC formally replaced the stipulation procedure with the consent order mechanism in its revised Rules and prescribed the application procedures, form and content, and legal effect of consent orders in Section 3 of Chapter 2 of the Rules[8]. Where the nature of the case and the public interest so permit, investigated undertakings may petition the Commission to resolve antitrust disputes in the form of a consent order and determine the commitment obligations through negotiation with the Commission[9]. Following public notice and comment, the consent order is issued by the Commission in the form of a decision and order. Unlike the DOJ's consent decree mechanism, a consent order does not require confirmation by a federal court and becomes effective upon issuance. Its effect is equivalent to a final order issued by the Commission in an administrative adjudication proceeding, and the procedures for modification, amendment, and rescission are the same as those for administrative orders issued by the Commission in other statutory forms[10].

The consent order mechanism originated in practice and has accumulated nearly a century of experience, forming a relatively comprehensive set of procedural rules. Because it can conserve enforcement resources, improve enforcement efficiency, and promptly correct the impact of monopolistic conduct on market competition without prejudicing the public interest, it has become the preferred instrument of the FTC in enforcement proceedings.

3. China's Undertaking Commitment System

(I) Overview of China's Undertaking Commitment System

On August 1, 2022, the amended Anti-Monopoly Law of the People's Republic of China came into effect. The new Anti-Monopoly Law regulates monopolistic conduct implemented through digital platform rules and establishes a "safe harbor" system (Shi,2022). The undertaking commitment provision was renumbered from Article 45 to Article 53, but the text itself was not further refined and remains consistent with the prior version.

Under Paragraph 1 of Article 53 of the Anti-Monopoly Law, the undertaking commitment system primarily refers to a mechanism whereby an undertaking, in relation to conduct under investigation for suspected monopolization, applies to the antitrust enforcement authority and makes commitments, exchanging promises to take corresponding measures within a specified timeframe to eliminate the consequences of the monopolistic conduct for the enforcement authority's deci-

[7]Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1925.
[8]Annual Report of the Federal Trade Commission for the Fiscal Year Ended June 30, 1962.
[9]16 C.F.R. §2.31 (a) (2026).
[10]16 C.F.R. §2.32 (2026).

sion to suspend the investigation. After the antitrust enforcement authority decides to suspend the investigation, it must supervise the undertaking's conduct; if the undertaking fulfills its commitments, the investigation is terminated, and conversely, the investigation procedure is resumed. Paragraph 2 of the same article specifies three circumstances under which the antitrust enforcement authority shall resume the investigation.

Pursuant to the Anti-Monopoly Law, the Anti-Monopoly Commission of the State Council of the People's Republic of China issued the Guide on Undertaking Commitments in Monopoly Cases (hereinafter "the Guide") in January 2019. The Guide refines the measures undertaken by commitments into three specific categories: structural measures, behavioral measures, and comprehensive measures. Behavioral measures include adjusting pricing strategies, eliminating or modifying various transaction restriction measures, opening infrastructure such as networks or platforms, and licensing patents, trade secrets, or other intellectual property rights; structural measures include divesting tangible assets, intangible assets such as intellectual property rights, or related equity interests.

In addition, Article 36 of the Anti-Monopoly Law and the 2020 Provisions of the State Administration for Market Regulation on the Review of Concentrations of Undertakings stipulate the decision of "approval with restrictive conditions attached". The basic meaning is that during the review process, the undertakings involved in the concentration may propose restrictive conditions for adjusting the concentration transaction plan, and both the SAMR and the participating undertakings may propose opinions and suggestions for modifying the restrictive conditions, in order to eliminate or reduce the anticompetitive effects that the concentration has or may have. If the restrictive conditions are ultimately accepted, the SAMR will issue a decision of "approval with restrictive conditions attached". From the above, the decision of "approval with restrictive conditions attached" is essentially the same as the undertaking commitment system and can in practice be regarded as a type of commitment decision.

These departmental rules have refined the procedures for applying the commitment system in various aspects, including the scope of cases eligible for the commitment system, the applicable timeframe, the form of undertakings' applications, and their obligations throughout the process. While being grounded in China's antitrust enforcement practice, they also reference advanced foreign legislative experiences, contributing to the strengthening and improvement of the antitrust enforcement system.

(II) Improving China's Undertaking Commitment System

Advanced experience in foreign rule of law serves as an important reference for improving domestic legal construction. Similar to the United States and the European Union, regarding the scope of applicable cases, China has also adopted the approach of enumerating a "negative list", explicitly specifying that hardcore cartels—namely, the three categories of horizontal monopoly agreements of "fixing or changing prices of commodities", "limiting the production or sales volume of

commodities", and "dividing sales markets or markets for purchasing raw materials"—are ineligible for the commitment system. Beyond these, other types of horizontal monopoly agreements referenced in Article 17 of the Anti-Monopoly Law, vertical monopoly agreements under Article 18, and abuse of market dominance cases are eligible for the undertaking commitment system.

To further restrict antitrust enforcement authorities from "imposing different commitments for similar cases" and abusing their discretionary power, and to give full play to the value of the commitment system, it is possible to positively enumerate cases suitable for the commitment system. First, typical cases with clear facts and minor circumstances that do not require time-consuming and labor-intensive investigation are suitable for the "undertaking commitment system", such as the handling of the Beijing Shengkai Sports Development Co., Ltd. case. Second, cases with special circumstances, complex facts, and multiple layers where the expenditure of investigative resources would be manifestly unreasonable are also suitable for resolution through the commitment system, such as the cases enumerated in the Treaty on the Functioning of the European Union involving price squeezes, high technology industries, and reprisal abuses, which are relatively opaque in nature (Lang, 2003).

Among the publicly available documents relating to the undertaking commitment system, whether the applications submitted by undertakings or the suspension or termination decisions issued by enforcement authorities, the content of commitment measures largely includes pro forma items such as "earnestly studying antitrust-related knowledge". However, the purpose of enforcement lies not only in correcting prior conduct but also in preventing similar conduct, and in providing "accountability" to other undertakings, consumers, and other third parties. Among the commitment measures currently available, none involve the undertaking's prospective arrangements for non-investigated products or subsequent business operations. In contrast, the commitment documents issued by the United States and the European Union are relatively detailed; in complex cases, they may even span over a hundred pages.

To ensure the effectiveness of the commitment system, clear, specific, and enforceable commitment content is key. Enforcement authorities should provide more detailed commitment application templates, which should include not only explanatory clauses regarding the commitments themselves, such as "explanation of the competitive impact of the undertaking's conduct", "specific content of the commitment measures", and "utility of the commitment measures in restoring competitive order", but should also specify concrete implementation measures and liability for non-performance. Where the "trustee" system commonly used in EU enforcement is adopted, the qualifications and authority of the relevant third parties should also be specified.

As mentioned earlier, Article 11 of the Guide provides the factors to be considered in analyzing and reviewing commitment measures, offering guidance for enforcement authorities in reviewing commitment content. However, because fac-

tors such as the undertaking's "subjective attitude" lack clear evaluation criteria, enforcement authorities possess considerable discretionary power in reviewing commitment content, which has not been subject to clear and effective constraints.

By contrast, in EU-related legislation and enforcement practice, the core criterion for determining whether commitment content is appropriate is the principle of proportionality (Pera & Carpagnano, 2008). The principle of proportionality is set forth in Article 5 of the Treaty on European Union and holds constitutional status in the EU legal system. To limit the broad discretionary power of the European Commission, both prohibition decisions and commitment decisions made by the Commission must comply with the requirements of the principle of proportionality, meaning that the content of commitments should be necessary for eliminating the negative effects of monopolistic conduct and appropriate in degree. Specifically: first, the commitment content should satisfy the principle of appropriateness, i.e., it should contribute to the timely elimination of the competitive problems caused by the suspected monopolistic conduct (Jiao, 2020). To this end, the commitment content should be clear and have a reasonable timeframe; second, the commitment content should satisfy the principle of necessity, i.e., where multiple measures can achieve the objective, the undertaking may select the measure with the least impact on itself, and the enforcement authority may not require the undertaking to make excessively burdensome commitments. Therefore, the European Commission typically needs only to apply behavioral measures in commitment decisions; structural measures should only be imposed where behavioral measures cannot resolve the competitive problem, where it is difficult to achieve the same effect as structural measures, or where the implementation of any equally effective behavioral measure would impose a heavier burden on the enterprise (Jiao, 2017); finally, the principle of proportionality in the narrow sense requires that the commitment content accepted by the enforcement authority should be proportionate to the objectives of antitrust enforcement.

The principle of proportionality provides clear guidance for enforcement authorities in weighing commitment content, can effectively limit their broad discretionary power, and ensures that commitment measures can promptly and effectively resolve competitive problems without causing unreasonable harm to undertakings, interested parties, and the public interest. Therefore, the legislative and law enforcement experience of the EU can serve as reference. The principle of proportionality shall be taken as the criterion for reviewing commitment contents in accordance with Article 11 of the Guide. In addition, it should be noted that the European Court of Justice clarified the particularity of applying the principle of proportionality to commitment decisions in Commission v. Alrosa. To ensure the procedural efficiency and effectiveness of commitment decisions, the enforcement authority does not need to compare the commitment content with the measures in an infringement decision, nor does it need to investigate all other methods that could resolve the competitive problem; even if the commitment con-

tent is more burdensome due to the undertaking's voluntary offer based on commitment benefits, it does not violate the principle of proportionality.

To promote the improvement of China's undertaking commitment system, it is necessary to maintain the systematic risk of the settlement system through strong external oversight and interactive engagement. China's undertaking commitment system was established at a relatively late stage. In the localization process from scratch, the primary challenge is enhancing the system's public credibility. However, the United States and the European Union are relatively mature in this regard—they not only promptly publish case-related information on designated official websites but also facilitate discussions and responses from the parties and third parties on relevant issues.

Regarding public notice, China's undertaking commitment system can absorb the experience of foreign rule of law. For example, the undertaking's commitment measures, accompanied by explanations of the competitive impact of the relevant conduct and investigation details, should be posted on the official website of the relevant enforcement authority to accept comments and suggestions from interested undertakings and unspecified third parties, with timely responses provided. Furthermore, the timelines for publicizing suspension decisions and termination decisions need to be clarified; in practice, the intervals between making a decision and actual publication vary considerably, reflecting significant arbitrariness. As a former U.S. Attorney General emphasized: "In practice, the public must be allowed to participate in the oversight of the entire enforcement process; transparency ensures that we can fully hear feedback, obtain sufficient answers, collect all aspects of information needed for decision-making, and minimize error rates." Adopting the approach of first publishing and announcing, then making the decision on whether to accept the undertaking's commitments based on the suggestions and feedback from all parties, better conforms to the procedural rationality requirements of public participation.

4. Conclusion

The U.S. consent decree and consent order systems, having been tested through over a century of practice, have developed into indispensable core instruments in antitrust enforcement. They have significantly enhanced antitrust enforcement efficiency, facilitated the timely restoration of competitive order, and provided undertakings with reasonable expectations and incentives. Furthermore, the procedural design also accommodates the protection of the public interest.

Although the consent decree and consent order systems have played important roles in practice, their inherent institutional deficiencies cannot be ignored:

First, the excessive discretionary power of enforcement authorities poses a risk of "under-enforcement". During the application of the commitment system, enforcement authorities enjoy broad discretionary power over whether to accept an undertaking's commitments and whether the commitment content is sufficient. The exercise of such discretionary power lacks constraints from clear substantive

standards, which may lead enforcement authorities to accept insufficiently comprehensive commitment proposals in pursuit of case closure efficiency, thereby failing to effectively eliminate the competitive harm caused by monopolistic conduct. Particularly under the influence of political pressure or resource constraints, enforcement authorities may be inclined to trade lower commitment standards for rapid case closure, undermining the deterrent effect of antitrust enforcement.

Second, the absence of an illegality finding may weaken the system's deterrent function. A common feature of consent decrees and consent orders is that they do not make a finding of illegality regarding the investigated party's conduct. Although this institutional arrangement is conducive to incentivizing undertakings to cooperate voluntarily, it also means that the illegality of the monopolistic conduct is not confirmed through formal legal proceedings. On the one hand, this makes it difficult for private parties harmed by the same monopolistic conduct to cite consent decrees or consent orders as evidence in subsequent civil litigation; on the other hand, the absence of an illegality finding may also send ambiguous signals to the market, making it difficult for other undertakings to accurately judge the legality boundaries of specific conduct, thereby somewhat weakening the behavioral guidance function of antitrust law.

Third, the execution and supervision of commitment measures face practical difficulties. The effectiveness of consent decrees and consent orders depends on the actual fulfillment of commitment measures by undertakings. However, in practice, the supervision of commitment measure execution faces numerous challenges: the performance of behavioral measures is often difficult to quantify and evaluate; the execution effects of structural measures (such as asset divestiture) may be affected by changes in market conditions; and for commitment measures involving technical fields, enforcement authorities may lack sufficient professional capability for effective supervision. Although consent decrees typically include reporting and monitoring provisions, the actual operational effectiveness of the monitoring mechanisms remains to be improved.

Fourth, public participation procedures are substantively inadequate. Although the Tunney Act introduced a public comment procedure, in practice, public comments have had very limited impact on final outcomes. Courts typically adopt a relatively lenient "public interest" standard when reviewing consent decrees and rarely reject proposed agreements due to public opposition. The FTC's public notice and comment procedure suffers from similar issues—the public comment period is relatively short, and the Commission's responses to comments are often perfunctory. Therefore, public participation procedures largely remain at the formal level and have not fully performed a substantive oversight function.

Fifth, the modification and termination mechanisms for consent decrees are insufficiently flexible. Market conditions are constantly changing, and commitment measures that were reasonable at the time of execution may become inappropriate or even anticompetitive several years later. However, once a consent decree is approved by a court, it acquires judicial force, and its modification or ter-

mination requires strict judicial proceedings, which to some extent limits the system's adaptability to market changes. Although the DOJ has in recent years begun to address the issue of clearing "legacy consent decrees", overall, the system's dynamic adjustment mechanism still has room for improvement.

Regarding the implications for China, the institutional design of the dual-track system provides a useful reference for the improvement of China's undertaking commitment system. First, the external oversight mechanism for commitment decisions should be strengthened. Drawing on U.S. experience, more substantive public notice and comment procedures could be introduced, and the enforcement authority's obligation to respond to public opinions should be clearly specified. Second, the content standards for commitment measures should be refined. U.S. consent decrees typically contain detailed conduct prohibition clauses, reporting clauses, monitoring clauses, and duration clauses, with specific and enforceable content. By contrast, the measures in some of China's commitment decisions are relatively general and lack operability; China should draw on mature experience of the foreign-related rule of law to enhance the specificity and precision of commitment measures. Third, a sound dynamic adjustment mechanism for commitment measures should be established. As market competition conditions are constantly changing, commitment measures should possess institutional space for timely adjustment in response to market changes, to avoid rigid commitment content becoming an obstacle to market competition.

In summary, the U.S. consent decree and consent order systems, as typical representations of the antitrust commitment system, have played important roles in improving enforcement efficiency, restoring competitive order, and protecting the public interest. However, they also have limitations, including insufficient constraints on discretionary power, weakened deterrent function, and monitoring mechanisms that need improvement. In the process of improving the undertaking commitment system, China should, on the basis of fully drawing on the advantages of the foreign-related rule of law and in combination with its own enforcement practice and institutional environment, construct a more standardized, transparent, and efficient undertaking commitment system.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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