

# A practical review of the Draft Amendment to the Anti-Monopoly Law of China: Highlighting six areas with eighteen changes

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On January 2, 2020, the State Administration for Market Regulation of China (“SAMR”) released a draft of the proposed amendment to the Anti-Monopoly Law of China (“Draft Amendment”) to solicit public comments from different sectors of society. It indicates that after 12 years, the Anti-Monopoly Law of China (“AML”) is going to be overhauled.

Enacted on August 30, 2007 and implemented on August 1, 2008, the AML in its current form is now in its twelfth year. These years have seen a series of changes, for example in the domestic and foreign economic environment, the policy goals and the governance concepts of the Chinese government, the characteristics of business competition, and the institutional structure of the antitrust authorities. In the course of the AML enforcement, various problems have continuously emerged and enforcement experience is thus accumulated, part of which has been reflected in the implementing rules of the AML. In contrast, some provisions in the AML can no longer be adapted to the current practices, nor provide sufficient certainty for the latest enforcement cases, thus hindering the achievement of the AML’s legislative goals to ensure fair market competition and to safeguard consumers’ interests.

In countries with a long-established market economy, antitrust law (known as “Antitrust Law” in the United States, “Competition Law” in Europe, and translated as “Anti-Monopoly Law” in China) is honored as the “economic constitution”, since it is the primary legal basis for governments to intervene in the operation of the economy at the micro-level. China’s proposed amendment to the AML will be the first major overhaul of this “economic constitution” since it took effect 12 years ago. The significance of the amendment is self-evident, especially at a time of economic downturn, the escalation of international economic and trade frictions, and the critical challenge of optimizing the economic structure. As lawyers who have witnessed the entire evolution of China’s antitrust enforcement, we will make remarks about the Draft Amendment from a practical standpoint using real cases, with a view to making some modest contribution to the amendment of this law, which could influence the operation of the economy and millions of enterprises.

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