

Platform Monopoly and Regulatory Measures

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ABSTRACT

Recently, the Chinese government has been emphasizing anti-monopoly issues and has introduced administrative measures to address monopoly issues. The platform economy is a characteristic form of China's economy, and its expansion has created a series of problems that harm the rights and interests of consumers. The traditional regulatory tools are difficult to solve the problem properly. So, the Chinese government should innovate its regulatory thinking and improve its legal system, as a way to solve the new problems that are emerging.

Keywords: anti-monopoly, platform economy, regulatory tools, abuse of market dominance position

1. INTRODUCTION

Strengthening anti-monopoly measures and preventing disorderly expansion of capital is one of China's important economic tasks. State Administration for Market Regulation (SAMR) carried out administrative penalties against Alibaba and other companies, as well as further anti-monopoly investigations. The government has suggested improve legal norms, including but not limited to monopoly determination for platforms, data collection. These signals are the requirements for promoting a better combination of efficient markets, which signify that the central government has entered a whole new phase for anti-monopoly. This article analyzes the causes and effect in the development of platforms, and proposes corresponding countermeasures.

2. PROBLEMS ARISING FROM THE MONOPOLY OF PLATFORMS

The rise of digital platforms and the relevance they have in the structure of the market have resulted in a novel significance that goes beyond their being mere "trust", becoming a markets' actual controller, which could define the role of digital platforms as monopoly.

2.1 Monopolistic behavior destroys the industry development ecology

What makes digital platforms so unique is Big Data, the use of which promotes a feedback loop, allowing

companies to create products and offer services that will attract current as well as new customers. This assures substantial economies of scale and drives the market in favor of the already dominant platforms. Antitrust issues in the digital economy, especially those concerning big data and algorithms, have attracted the attention of both scholars and practitioners all around the world. Against the back drop of rapid development of China's digital economy, many online platforms now have a largely data or algorithm-driven business model. Concurrently, the antitrust issues in relation to data and algorithms have also triggered social concerns [1]. In this new business model based on big data, platforms adopt data-driven strategies to gain and maintain competitive advantages. In the early stage of the development, platforms use such means as restricting data migration or predatory pricing to gain market share, such as the "cash burning" of bicycle-sharing. When they have a large enough scale, platforms levy high commissions on internal merchants, on the other hand, they use "stranglehold acquisitions" on external companies to acquire, suppress, or adopt trading practices, as exemplified by the "Lark's acquisition". The control of platform enterprises over the market has increased significantly, leading to structural monopoly, what's more, the platforms may take advantage of the internal integration involving data fusion and changes in business rules to complete the "information sharing" and the signing of implied terms and conditions without the consumers' knowledge, infringing on the rights and interests of consumers.

2.2 Abuse of Market Power by Infringing Consumers Protection Rules

The monopolistic behavior of platform companies constitutes a restriction on consumers' right to free choice. First, the platforms predict, analyze and track the prices trend or other behaviors of other operators according to the algorithm based on the users' data in its possession to adopt response strategies and thus achieve its commercial purposes [2]. For example, since 2020, Alibaba and Meituan have been exposed to the behavior of "Behavior-Based Pricing". Second, the platforms through the manipulation of algorithms and other behaviors to enhance the competitive advantage of payers or own goods or services, distorting the competition within the platform, such as Baidu "bidding algorithm" for keyword search ranking. Due to the secrecy of electronic data resources and algorithms, it is difficult for regulators to accurately determine the scope and best timing of anti-monopoly enforcement for the behaviors mentioned above, and it is even more difficult to accurately identify substantive monopoly behaviors achieved by algorithms. This situation makes it difficult for consumers to obtain timely remedies for their legal rights.

2.3 Platforms evade legal regulation through digital monopolies

Internet platforms use big data and algorithms to emerge an extremely hidden new form of digital monopoly agreement. This digital monopoly is not only difficult to monitor, but also impossible to use existing laws to make reasonable definitions of its illegal acts and damage effects. Platforms can not only form an algorithmic conspiracy for implicit control of pricing, but choose to share data among themselves to complete market segmentation and form a de facto dominant market position, which damages the normal market order and is not conducive to the effective development of economic activities.

2.4 Data-Driven Behavioral Abuses

In digital economy, firms compete not in the market but for the market leading to a "winner takes all" situation [3]. In particular, when data is a key input, new kinds of abusive conduct occur to take the market, namely (1) limit trading behavior, (2) tying behavior and (3) self-preferential behavior. Specifically, the limit trading behavior including: limited transactions, exclusive transactions, exclusive transactions, etc., what's more, search exceptions, traffic restrictions and a series of covert suppression. For example, the "either-or choice", directly harmed the trading opportunities and economic interests of other e-commerce platform operators and e-commerce operators, and obviously affect the consumer's choice and interests. Second, tying

behavior. Different from the traditional bundled sales, the digital economy is only reflected in the "bundling" behavior, there is no "sales" behavior, such as the behavior of cell phones pre-installed software. Third, self-preferential behavior. The main point is that the Internet platform enhances the competitive advantage of its own goods or services through manipulating algorithms and other behaviors, and distorts the competition within the platform. The platform treats its own business differently from the third-party business, leading to unfair competition. For example, Apple Store adopts different profit draw models for self-owned applications and third-party applications. With the increasing market concentration of platform enterprises and the trend of vertical integration, the possibility of their abuse of platform management power gradually increases in order to further expand the economy of scale and obtain the dividends of network effect.

2.5 Promote Research Efforts and Establish an Expert Support System.

Research into platform monopoly issues is still at an early stage. Globally, actual cases that involve platform monopoly are still rare. The limited experience also calls for a prudent antitrust enforcement approach to algorithmic discrimination by online platforms. Excessive law enforcement can easily lead to chilling effects on innovation, which could in turn undermine consumer welfare. Considering the limited knowledge, we possess at this early stage, an important step is to conduct market research and industry surveys. For the new problems, China's antitrust law enforcement agency should conduct market research as soon as possible to understand the applications of big data and algorithms in China's digital market and identify major potential issues to lay a good foundation for potential antitrust law enforcement in the future.

3. THE MEASURES TO SOLVE THE PROBLEM OF PLATFORM MONOPOLY

The speed and extent of growth in the digital economy has been crucial in making digital platforms significant, demand and investigative challenges faced by regulators and competition authorities around the world [4]. These platforms make these markets even more intricately multi-sided. This has led to a wielding of massive control over commerce, communications and public speech.

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3.2. Empower stakeholders and strengthen the consumer protection system

First, introduce Internet clauses and personal privacy protection clauses to further strengthen the direct protection of transaction counterparties, which mainly include but are not limited to consumers (users). Clarify the platform trading model and reasonably expand the scope of protection for trading counterparties. In a multi-party market, the vertical market monopoly of the platform after using its market position for data collection should be focused on [5]. Second, tightening sanctions and enhancing the deterrent effect of anti-monopoly laws. At present, the fines are insignificant compared to the revenue of the platform. For the platforms that are repeatedly notified and have poor rectification effect, the law enforcement should be strengthened, and the main person in charge should be interviewed and listed for supervision to urge the relevant enterprises to implement rectification. Third, improve the consumer rights protection system. In constructing the corresponding system of monopoly damage compensation for consumers, it is necessary to provide incentives to consumers through the corresponding system design and appropriately reduce their burden of proof. Fourth, to optimize the anti-monopoly administrative enforcement procedures and improve the efficiency of enforcement.

3.3. Establish a data rights system to balance data mining and information protection

First, prevent data monopoly and establish data protection mechanism. At present, after the data of consumers' geographic location and consumption preferences, there is a risk of varied prices for same product or service based on different consumers. Therefore, on the one hand, external regulation is imposed on the relevant Internet platform companies, requiring the platforms to improve transparency, and on the other hand, data traceability and data protection are combined with blockchain and other technologies. Second, the purpose of balancing data mining and information protection is to respect the individual's right. While regulating data, it is also necessary to note that the concept of privacy itself is a multi-developmental

concept and the law can adapt to this trend by adopting a flexible approach to protect, which can adopt the principle of "express consent", respect individual choice, and avoid excessive costs of data protection [6]. Consideration could be given to introducing the right of data portability, where personal data can be transferred between platform service providers without hindrance. This right enables consumers to exercise their rights against data controllers and protects personal privacy. Also consider the scope of data portability, balancing the incentive for companies to innovate with consumer data protection.

3.4. Innovative antitrust analysis tools and enforcement ideas

First, exploring new analysis methods and realization methods. The characteristics of the bilateral market of the digit platform require the revision of the traditional hypothetical monopolist test, in order to renew the original antitrust law application, and improve the production factor-based data market definition tools. Secondly, we should pay attention to the assessment of the impact and effect of behavior and adopt the "reasonable principle" without excessive regulation. Therefore, a multi-stakeholder analysis framework should be established to dynamically regulate behaviors that undermine market competition and harm the interests of stakeholders.

4. CONCLUSION

The objective of this article is to discuss the monopoly problems and regulatory Countermeasures of China's digital platforms in the near future. The traditional anti-monopoly law is mainly applied to the traditional market and its products. There will be contradictions if the traditional theory is directly applied to the Internet.

This article explores the challenges the Chinese competition authority faces in dealing with competition issues raised by algorithms and big data. Indeed, even though given that some administrative antitrust decision has been issued against price discrimination so far, there remains a great deal of uncertainty as to how the SAMR would approach monopoly going forward. We believe a cautious approach to antitrust enforcement regarding online platforms' algorithmic regulation is warranted.

To better address the potential regulatory challenges, we have recommended in this article several preemptive measures that the SAMR could take. While it is reasonable for the antitrust authority to follow the "tolerant and prudent" principle to avoid hindering the growth and innovations in China's digital economy, it is still necessary to study and understand the conduct and evaluate the potential competitive harm such conduct might cause.

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