

Reflections on Monopolistic Behavior in the Platform Economy

Taoran Yang

Wuhan University of Technology, Wuhan, Hubei, China

*Corresponding author. Email: 18907996711@163.com

ABSTRACT

The Anti-Monopoly Bureau's formal listing and the overhaul of the anti-monopoly law show that China's anti-monopoly regulation has entered a new era. In the information age, the platform economy is becoming increasingly important to China. However, the development of platform economy has challenged China's anti-monopoly business. Therefore, we must maintain fair competition in China's economic market. Regulating the economic monopoly of platform is a problem that should be considered in China's anti-monopoly at present.

Keywords: *Informatization, Platform economy, Fair competition, Regulation, Monopolistic behaviour.*

1. THE SIGNIFICANCE OF REGULATING PLATFORM ECONOMIC MONOPOLY

The vigorous development of big data and algorithm makes the monopoly behavior of platform economy more complicated and concealed than the monopoly of traditional industries. Meanwhile, the platform enterprises are mostly giants with abundant financial resources and advanced technological conditions. The monopolistic behavior of regulating the platform economy also has the following significance.

1.1. Regulate monopolistic behavior of platform economy is able to protect the rights and interests of consumers and platform businesses

For businesses, the platform economy is a more competitive and transparent market than traditional economic forms. Businesses are more transparent on the platform, and consumers obtain more symmetrical information. Businesses are mostly running in small profits but quick turnover. However, some monopolistic behaviors of the platform, such as the "one out of two" monopolistic behavior of the platform, meituan and ELEME, Taobao and JD, will force the merchants participating in the platform to select one of the two platforms to limit the transaction, so that the merchants can either increase the cost, expand the market, or reduce the cost to limit the transaction of one platform, This kind of monopolistic behavior forces businesses to

accept unfair service terms and infringes on the legitimate rights and interests of businesses. Or Self preferential behavior, platform operators take advantage of their platform service providers, abuse their dominant market position, offer preferential treatment or preferential treatment to their products or services, and restrict other competitors' behavior. And the platform uses predatory pricing, using unreasonable low price and promotion means to rob market share and disturb the local market economic order.

Monopolistic behavior in the economic field of such platforms not only directly damages the legitimate rights and interests of merchants in the platform, but also attracts consumers' benefits in the early days after attracting numerous traffic and network advantages. After the platform economy occupied the market, the dependence of consumers increased, which caused the platform economy to use digital technology to "kill" and other phenomena, which infringed the legitimate rights and interests of consumers. Therefore, regulation platform economic monopoly can protect the rights and interests of businesses and consumers.

1.2. Regulate platform economy monopoly is able to improve the level of platform enterprises

Taking advantage of network information technology and big data, platform economy can quickly crush other enterprises in the industry by using predatory pricing such as low price, cash back, discount and so on. After defeating competitive enterprises, the

market competition pressure of platform economy becomes smaller. Many platform enterprises can obtain large profits by relying on monopoly position without spending too much Research & Design and innovation. They will be addicted to capital accumulation instead of improving their own level.

Therefore, regulating the monopolistic behavior in the economic field of the platform, so that some of its profits will flow into the small and medium-sized enterprises, like the catfish effect, there are many small and medium-sized enterprises' competitive pressures, which will also push the platform industry of the industry giants to innovate continuously, improve their competitiveness and competitive advantage.

1.3. Regulate monopolistic behavior in the field of platform economy, maintain social stability and improve the overall level of the industry

Platform is platform trading platform based on information technology, such as digitalization, algorithm and big data, and so on, so the market can achieve the trans regional bilateral or multiparty transactions beyond the traditional market by means of platform. However, the development of information technology is rapid. After other information technology enterprises in the industry seize the market share of large enterprises through emerging algorithms or technologies, when threatened, large platform enterprises will rely on their huge user group and capital strength to wipe out the good and fair competition of the Internet, so that when platform users in the market are not exposed to emerging technologies, Destroy or acquire emerging technologies.

This exclusive killing of the platform of the same industry has made the sophisticated economy of the platform economy develop slowly and fall into a bogus of malicious suppression or malicious swallowing. Therefore, regulating monopoly behaviors such as Merge & Acquisition in the field of platform economy will help to improve the development of the whole industry. The development of various emerging enterprises will provide jobs for more workers and maintain social stability.

2. CHALLENGES OF ANTI-MONOPOLY IN PLATFORM ECONOMY

The above common monopoly behaviors in the platform economy field are listed in the anti-monopoly guide of the anti-monopoly Commission of the State Council on the platform economy field (hereinafter referred to as the guide) issued on February 7, 2021. In view of the new development in the platform economy field, in terms of the characteristics of the monopoly behavior and what factors can be considered to determine the composition of the behavior, Compared

with the anti-monopoly law of the people's Republic of China in 2007 (hereinafter referred to as the anti-monopoly law), there are more detailed and comprehensive provisions. The publication of this guide is of great significance. However, the monopoly regulation in the platform economy still exists. The following two aspects are analyzed from the following aspects: the relief way of the injured subject and the legal status and effectiveness of the guide.

2.1. The plight of the injured subject in the way of relief

2.1.1. Who should we seek for help

Article 38 of China's anti-monopoly law stipulates that any unit or individual can report suspected illegal acts to the anti-monopoly law enforcement agency. Now, after the establishment of the national antimonopoly Bureau, the national anti-monopoly bureau should be a law enforcement agency. However, the national monopoly bureau is mostly an anti-monopoly law enforcement agency in the name of the state. For ordinary merchants, such as Taobao merchants in small cities along the southeast coast, who want to report to the national Anti-monopoly Bureau, its operability in reality is somewhat "going to Beijing to report".

Considering that the civil disputes caused by monopoly are often more hidden and complex, especially the difficulty of obtaining evidence, handing over the jurisdiction of such cases to the above courts actually takes into account the technicality of hearing such cases and the convenience of litigants' response. For example, in the case of Xiaoqin Wu v. Shaanxi radio and television media company's bundling transaction, the Supreme People's court initiated the civil retrial procedure and upheld the judgment of first instance after hearing in accordance with the anti-monopoly law, that is, it found that Shaanxi radio and television media company took advantage of its dominant market position to carry out tying or other unreasonable transaction conditions prohibited by the anti-monopoly law, It was ruled that the act of radio and television company in collecting the plaintiff Wu Xiaoqin's TV fee was invalid and ordered to return it within a time limit. According to this case, we can know that the current court's review of monopoly disputes is only to deal with and remedy cases in accordance with contract or tort, but not to deal with monopolistic behavior in itself. Even if the law quoted is antitrust law, the fact that it is recognized is monopolistic behavior.

2.1.2. How should we seek for help

According to Article 38 of the anti-monopoly law, only after the informant provides relevant facts and evidence in writing can the anti-monopoly authority

conduct necessary investigation. In other words, if relevant factual evidence is not provided or cannot be provided, it is difficult to start antitrust investigation through reporting.

To file a civil lawsuit against monopoly behavior in the people's court, follow the principle of who advocates who provides evidence. If the plaintiff wants to file a lawsuit against the platform, it needs to bear a heavy burden of proof. What is more difficult is that the current platform economy presents a giant model. Compared with the businesses in the platform, it has strong financial resources and advanced technology. Therefore, when implementing monopoly behavior, it often has strong concealment and complexity. Taking how to rescue the self-preferential behavior of the platform as an example, the self-preferential behavior is often based on big data and algorithms, the plaintiff wants to investigate and collect evidence from the data or algorithm system of the platform. The shortcomings of its own technology and obstacles in obtaining evidence authority make the feasibility of this operation very low. The current situation of low success rate in China's current judicial practice of civil litigation filed on the grounds of abuse of market dominant position in the judgment document network confirms the weakness of anti-monopoly judicial relief.

2.2. The orientation and application of the guide

China's anti-monopoly law gives the Anti-monopoly Commission the authority to formulate and issue anti-monopoly guidelines, but the positioning and effectiveness of this guide remain to be discussed.

Judging from the name or form of "guide", there is no corresponding expression of "guide" in China's current laws and regulations system; from the perspective of formulation subject and effectiveness level, the guide is formulated by the antitrust Commission of the State Council. The specific work of the Commission is undertaken by the State Administration of market supervision, and the office is also located in the State Administration of market supervision. The effectiveness of the guide should be lower than departmental rules and belong to departmental normative documents; however, from the perspective of the staffing of the committee, the director of the anti-monopoly committee is the state councilor, and the deputy director is the director of the General Administration of market supervision and the Deputy Secretary General of the State Council. In this view, the status of the committee should be higher than or at least equal to that of ministries and commissions, and the effectiveness of the guidelines formulated by it should also be the effectiveness of the regulations of the standard departments.

The form of "guidelines" is not the first case. For example, in 2016, the national development and Reform Commission also published the anti-monopoly guidelines on the automobile industry (Exposure Draft). The instructions on defining relevant markets in the guidelines have been cited for many times as the basis for judicial decisions of Chinese courts. The guidelines published by the Anti-monopoly Commission this time, It was also cited as the basis for administrative law enforcement in this year's decision on administrative punishment against meituan. There are also views that the guide is neither an administrative regulation nor a departmental regulation. It cannot be regarded as a formal legal source in China and cannot be cited as the basis for law enforcement or judgment.

In foreign countries, antitrust guidelines are usually normative documents formulated by antitrust law enforcement agencies, which aims to clarify the fuzziness of antitrust law. The fuzziness of the anti-monopoly law is mainly reflected in the cross application with economics. The formulation of the anti-monopoly law inevitably transplants economic terms, such as competition, market share and prosperity. However, the economic theory is constantly updated, and the anti-monopoly law also needs to adjust and delete these terms according to its own situation. At the same time, the anti-monopoly law enforcement also has the characteristics of complexity and strong technicality, which requires the anti-monopoly law enforcement agency to explain how to implement the anti-monopoly law in the form of guidelines. That is, the guide can be used as a means of interpretation to serve the agency's anti-monopoly law enforcement. However, at present, the anti-monopoly Committee, which makes the guidelines, has no law enforcement power. The law enforcement authority has not yet formulated the antitrust guide in the platform economic field, which makes the application of the antitrust guide in the platform economy field a bit awkward and insufficient.

The advantage is that the anti-monopoly guide in the field of platform economy has been absorbed in the latest anti-monopoly law (Revised Draft). I believe it can solve this dilemma and better regulate the platform economy.

3. SUGGESTIONS ON THE IMPROVEMENT OF ANTI-MONOPOLY REGULATION IN PLATFORM ECONOMY

It is inevitable that the monopoly of giant platform enterprises will cause damage to the free competition and market environment of the whole society. It is a common practice in China to regulate the platform monopoly in the name of the state. With the establishment of the national Anti-monopoly Bureau, the continuous improvement of the anti-monopoly legal system and the increasingly strict requirements for the

anti-monopoly compliance of platform enterprises, the overall trend of China's regulation effect on platform economy will be better in the future. However, it cannot be ignored that platform monopoly will also cause varying degrees of infringement on operators in the platform. Therefore, the following will focus on putting forward some suggestions on the regulation and relief of antitrust in the field of platform economy from the perspective of operators in the platform.

3.1. In view of the current situation of great disparity between operators and platforms, it is suggested to introduce civil public interest litigation

The purpose of public interest litigation is to maintain social and public interests. Monopoly is also the market environment of free competition. Therefore, it is reasonable to introduce public interest litigation in the field of anti-monopoly. The public interest litigation stipulated in China's civil procedure law includes cases that damage the legitimate rights and interests of many consumers. Taking the "one out of two" behavior of platform enterprises as an example, in fact, it also causes limited damage to many operators in the platform.

The introduction of public interest litigation can better narrow the strength gap between operators and platforms, and is conducive to the full and effective trial of cases by judicial organs. The procuratorial organization can still be the subject of public interest litigation. It is worth mentioning that China's civil procedure law stipulates that if the procuratorate intends to file a civil lawsuit, it shall make an announcement according to law. The announcement period is 30 days. The announcement period of 30 days can give the platform enterprises suspected of monopoly the opportunity of compliance rectification and remedy, which is important for the self-regulation and consciously maintaining the market atmosphere of free competition is of great benefit. The chamber of Commerce or other representative associations may refer to the position of the consumer protection association as the prosecution body of the public interest litigation, and safeguard the legitimate rights and interests of the operators in the platform.

3.2. In view of the difficulty of obtaining evidence for the plaintiff, it is suggested to explore the specific evidence discovery system

The difficulty of obtaining evidence leads to the low success rate of the plaintiff in anti-monopoly civil litigation, which leads to the unwillingness of the injured party to file anti-monopoly civil litigation. The evidence discovery system can just eliminate the inequality between the parties in obtaining evidence

related to the case and avoid the platform enterprises of the strong Party deliberately concealing key evidence related to the case. This system is of great significance for judges to find out the facts of the case and improve the enthusiasm and success rate of victims in filing anti-monopoly civil litigation.

Of course, more specific provisions must be made on which evidence must be disclosed, which can be based on the factors listed in the anti-monopoly guidelines, such as the financial resources, technical conditions and user stickiness of the enterprise when determining the dominant market position. Exceptions, including trade secrets and personal data information of users, can be exempted.

3.3. In view of the disadvantages of post anti-monopoly supervision, it is suggested to explore the pre anti-monopoly supervision path

Scale effect and network effect make it inevitable for platform enterprises to become increasingly centralized. It is inevitable to restrict and eliminate competition in the process of maximizing the interests of enterprises. Looking back on the development process of the platform economy in recent years, the behavior of occupying and abusing the dominant market position has long occurred. Subject to the prudent and inclusive attitude of "let the bullet fly for a while" and the shortcomings brought by post supervision, a considerable number of operators in the platform are difficult to turn over. Front-end anti-monopoly supervision can solve this problem, timely and effectively prevent monopoly and safeguard the legitimate rights and interests of operators.

The following problems need to be paid attention to in the front-end anti-monopoly Supervision: first, strengthening supervision should pay equal attention to encouraging innovation. The modern anti-monopoly law does not oppose large enterprises themselves, let alone economies of scale, but opposes the elimination and restriction of competition. The purpose of supervision is to standardize market competition and encourage more enterprises to innovate; Second, we should adhere to the simultaneous development of effective market and promising government, pay attention to the ways and methods of anti-monopoly supervision, and take serving the market and stimulating the vitality of market competition as the starting point and foothold.

4. CONCLUSIONS

The establishment of the Anti-monopoly Bureau, the overhaul of the anti-monopoly law and the sky high anti-monopoly fines of meituan prove that China's determination to regulate the anti-monopoly behavior in the field of platform economy is particularly significant. However, unlike the traditional economic market, it is

very difficult to identify the standards of platform economy abusing market dominant position, exclusive abuse, deprivation abuse and predatory pricing. Moreover, the monopolistic behavior in the field of platform economy pursues expansion and annexation, which has a serious impact on small and medium-sized enterprises. Also, because of the huge volume of platform users, "killing cooked" and other behaviors also seriously damage the legitimate rights and interests of consumers. This also means that China should constantly improve the law enforcement ability of the Anti-monopoly Bureau and constantly update the promulgation and introduction of laws, regulations and judicial interpretations with the changing economic situation.

REFERENCES

- [1] Jiuding Li, Shuaiming Gao. Platform Economy and Internet Platform Monopoly[C]//Proceedings of 5th International Conference on Economics and Management, Education, Humanities and Social Sciences (EMEHSS 2021),2021:161-164.DOI:10.26914/c.cnkihy.2021.050133.
- [2] Rui Gao, Fan Zhang. Research on Anti-monopoly Regulations of Internet Platforms in China and Comments on the "Anti-Monopoly Guidelines on the Platform Economy Field"[C]//Proceedings of The first International Symposium on innovation management and Economics (ISIME 2021),2021:202-210.DOI:10.26914/c.cnkihy.2021.040687.
- [3] Herbert Hovenkamp. Antitrust and Platform Monopoly [J]. *The Yale Law Journal*,2021,130(8):
- [4] Mao Tian, Zhang Xin Yi. Platform Monopoly and Regulatory Measures [P]. 7th International Conference on Humanities and Social Science Research (ICHSSR 2021), 2021.
- [5] Tobias Menzel and Timm Teubner."Green energy platform economics – understanding platformization and sustainabilization in the energy sector." *International Journal of Energy Sector Management* 15.3(2021): doi:10.1108/IJESM-05-2020-0022.
- [6] Zhu Xiaoxi, et al." Cooperation and decision making in a two-sided market motivated by the externality of a third-party social media platform." *Annals of operations research*. prepublsh(2021): doi:10.1007/S10479-021-04109-W.
- [7] Lei Ya Wen. "Delivering Solidarity: Platform Architecture and Collective Contention in China's Platform Economy." *American Sociological Review* 86.2(2021): doi: 10.1177/0003122420979980.
- [8] Max Visser, and Thomas C. Arnold." Recognition and Work in the Platform Economy: a Normative Reconstruction." *Philosophy of Management*. prepublsh (2021): doi:10.1007/S40926-021-00172-2.