



# A Systematic Review of the Antitrust Compliance System in the Platform Economy

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**Abstract.** The compliance system characterized by the operator's initiative to follow legal norms has its unique instrumental value in the economic development of the new era. Although China has initially established an antitrust compliance system, the frequent occurrence of new types of monopolistic acts reflects the lack of supervisory capacity of China's antitrust compliance system and the inadequate supply of supporting systems. The main reasons for enterprises to build an antitrust compliance system are the need to respond to the severe regulation, the economic consideration of the cost-benefit difference of the system and the demand for co-creation and sharing of the business environment under the rule of law. The future construction of antitrust compliance system by business operators should follow the path of "one core value and two basic objectives", so that it can maximize its preventive and precautionary functions and contribute to the orderly development of China's economy.

**Keywords:** Anti-monopoly Compliance System, Antitrust Law, Legal Remedies.

## 1 Foreword

The implementation of antitrust law mainly includes three paths: enforcement of antitrust law (administrative enforcement), judicial application of antitrust law (judicial) and compliance with antitrust law (law-abiding) [1]. Among them, antitrust enforcement and judicial enforcement through state intervention and law enforcement are the most effective and common, but antitrust enforcement should not be equated with law enforcement and judicial enforcement. Given the very limited resources of state enforcement and judicial agencies, the most effective and desirable form of enforcement is to lead market participants to consciously comply with the code of conduct set forth in the competition law [2]. On April 10, 2021, the State Administration of Market Supervision (SAMS), in accordance with the Anti-Monopoly Law of the People's Republic of China (hereinafter referred to as the "Anti-Monopoly Law"), issued a lawsuit against Alibaba Group Holding Limited (hereinafter referred to as ("Alibaba Group")) for abusing its dominant market position, forcing operators to implement "two-for-one" and excluding competition in the relevant market, and imposed an ad-

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ministrative penalty of RMB 18.228 billion in fines and orders to stop the illegal acts [3]. At the same time, the State Administration of Market Supervision and Administration issued an administrative guidance letter to Ali Group, providing specific administrative guidance on how to cooperate with anti-monopoly compliance building. It can be seen that the current anti-monopoly mechanism and post-facto legal remedies in China, mainly by means of fine deterrence, are obviously no longer suitable for the new illegal acts in the current digital economy, and the problem of anti-monopoly implementation and supervision in the platform economy needs to be solved in a new way.

The compliance system was introduced into China as an imported product, and it is known as competition compliance system in foreign countries. In the United States, Italy, Australia and other countries where competition compliance system has been established, the competition compliance system was not legally mandatory, but with the strengthening of competition enforcement and the spread of competition culture, more and more enterprises have consciously complied with the competition law, and the antitrust enforcement agencies of various countries such as ACCC, OFT, KFTC and JFTC have gradually reached a consensus that the antitrust compliance guideline system is one of the indispensable regulatory tools. The antitrust enforcement agencies of various countries, such as ACCC, OFT, KFTC, JFTC, etc., have gradually reached a consensus that the antitrust compliance guidelines system is one of the indispensable regulatory tools.

In recent years, China has also issued the "Operator's Antitrust Compliance Guide" [4], "Guidelines on Antitrust Compliance Outside of China" [5] and other documents in response to the trend of globalization [6], and some provincial jurisdictions such as Shanghai and Zhejiang have also made their own useful explorations [7]. From a comprehensive point of view, China's antitrust compliance system is rather fragmented. There are also many scholars who have made in-depth studies on the antitrust compliance system, but there are fewer studies on the antitrust compliance system in the field of Internet platform economy. Some scholars believe that the antitrust compliance system can be constructed by drawing on the Korean antitrust compliance rating mechanism; some other scholars propose a new perspective of administrative settlement to urge enterprises to establish compliance plans so as to achieve antitrust compliance. On the issue of antitrust regulation, some scholars believe that the antitrust regulation model of China's platform economy needs to be transformed based on the consideration of responsive regulation theory [8]; other scholars propose that the emergence of the platform economy requires the coordination of antitrust and regulation to promote the construction of a dualistic governance system of the platform economy.

The existing foreign literature mainly discusses the issue from two aspects: competition enforcement agencies and enterprises. From the level of competition enforcement agencies, on the one hand, competition enforcement is strengthened to increase the cost of violation and promote enterprises' active compliance; on the other hand, competition enforcement agencies issue competition compliance guidelines to provide guidance for enterprises. These compliance guidelines contain a clear institutional framework, and enterprises can refer to the guidelines and tailor their compliance

systems to their own circumstances. Competition enforcement agencies in all countries regard competition culture as an important element, or even a prerequisite element, of their competition compliance systems. At the enterprise level, with the assistance of the competition enforcement agency, establish a competition compliance system that is appropriate for the enterprise and ensure that the competition compliance system is not put on the shelf, but is diligently practiced. Competition compliance systems have an important preventive and remedial value for businesses. Data shows that more and more foreign companies have competition compliance systems in place, especially multinational companies that have clear competition compliance policies, competition compliance manuals, internal competition compliance guidelines, and other documents in an effort to conform corporate behavior to the competition laws of different jurisdictions.

## **2 Problems with the Anti-monopoly Compliance System in China's Platform Sector**

The term "compliance" is originally translated as "compliance with the law", specifically in the field of economic law, since enterprises may face various anti-monopoly compliance risks in their daily operations, such as monopoly agreements, abuse of dominant market position, concentration of operators and overseas operations, they need to take appropriate measures in accordance with their own business scope and work plan. Therefore, enterprises need to take corresponding measures according to their own business scope and work plan, and strive to maximize their compliance with antitrust laws and regulations [9]. Therefore, the antitrust compliance system is also inextricably linked to the antitrust law, the anti-unfair competition law, and the antitrust regulation and enforcement. Compared with the unilateral deterrence and remedy of law enforcement agencies, antitrust compliance shifts the focus of regulation forward, which not only saves judicial resources and law enforcement costs, but also helps promote a benign market competition environment and the formation of a competitive culture. However, the antitrust compliance system in practice also has the following problems [10].

### **2.1 Lack of Traditional Post-event Regulatory Capacity**

Although antitrust law is a strong ex post regulatory approach to deter and stop violations, it has a long period of administrative investigation or judicial proceedings, high regulatory costs, untimely remedies, and ineffective enforcement, which can easily lead to the loss of market opportunities to restore competition. In particular, antitrust investigation of platforms requires analysis of massive data or audit of machine learning algorithms, which is a major challenge to understand the working principle of algorithms and analyze their competitive effects due to their "black box" and uninterpretable characteristics [11]. In addition, China's anti-monopoly regulation is mainly based on administrative penalties, and the role of flexible regulatory tools such as administrative settlement and administrative guidance in anti-monopoly compliance

regulation has long been downplayed as "consultative" and lacking in consultative thinking.

## **2.2 Gaps in the Existing Antitrust Compliance System**

Currently, the outstanding problems presented in the development of platform economy include: First, the highly concentrated market of platform economy inhibits the innovation of SMEs, because platforms have the development characteristics of economy of scale, network effect and economy of scope, and after platforms have a large amount of data, they can realize positive feedback effect, and the data advantage, user advantage and product advantage are further enhanced, forming a "winner-takes-all" pattern [12]. Second, platforms may also use the secrecy of algorithms to implement complicity, which is difficult for regulators to detect. Finally, the disorderly expansion of platforms and the misuse of data undermine the order of industry competition and harm the welfare of consumers. The new monopolistic behaviors that keep emerging in the platform economy also precisely map out the loopholes in China's antitrust compliance system.

## **2.3 Insufficient Supply of Supporting Systems for Antitrust Compliance**

So far, China's antitrust compliance system covers from the central level of the Operator's Antitrust Compliance Guide, the Guidelines on Antitrust Compliance Outside of Enterprises, to the local level of Shanghai, Zhejiang and other six provincial jurisdictions to make useful exploration, a comprehensive view of the antitrust compliance system is relatively fragmented. In September 2020, the Antitrust Commission of the State Council issued the Operator's Antitrust Compliance Guide, which also meant that China began to promote antitrust compliance at the national level, and in November 2021, the General Administration of Market Regulation also issued the Guidelines for Antitrust Compliance Outside of Enterprises. At the local level, local market supervision bureaus have made useful explorations, and since the release of the Shanghai Operator Antitrust Compliance Guidelines in December 2019, Shandong, Hubei, Zhejiang and other provinces and cities have issued competition guideline documents for their administrative jurisdictions, each with its own highlights. However, as these guidelines are generally not mandatory, and the final implementation of antitrust compliance still requires the establishment and operation of enterprises' own compliance systems and mechanisms and the formation of a good competition culture [13]. Therefore, it is difficult for China to make a qualitative leap in the practical level of antitrust compliance in a short period of time.

### **3 The Need for China's Internet Platform Operators to Establish an Antitrust Compliance System**

#### **3.1 Companies Respond to the Need for Tougher Antitrust Regulation**

With the advent of the digital economy, the data-driven platform economy based on digital technology is rapidly developing, and platform operators are using their technology, capital, and algorithms to exclude or restrict competition, causing antitrust enforcement agencies to crack down on them, and antitrust enforcement is trending towards normalized regulation and tougher enforcement [14]. The Office of Fair Trading (OFT) has conducted 22 interviews with large domestic companies to gain a more detailed insight into the intrinsic motivation of competition compliance, and all respondents indicated that the risk of fines of up to 10% of global turnover is the main motivation for competition compliance [15]. According to statistics, from 2017 to December 2021, technology giants such as Google, Amazon, Facebook, and Apple were subject to 149 antitrust investigations and disputes worldwide, including 34 new cases in 2021. China's recent anti-monopoly enforcement agencies, from central to local levels, have also followed a tough regulatory path, as exemplified by the heavy fines imposed by the State Administration of Market Supervision and Administration on Alibaba Group for abusing its dominant market position, and the penalty decision by the Shanghai Municipal Administration of Market Supervision on Shanghai Food Pairs Trade Development Co. The trend of normalized regulation and severe enforcement has prompted enterprises to change their governance philosophy from passively accepting investigations and bearing large fines to proactively responding to regulatory trends, building their own anti-monopoly compliance systems and improving their own governance capabilities. For law enforcement agencies, the new changes in the development of the platform economy have also led to a significant increase in their regulatory difficulties. As the platform economy is characterized by chain effect, network effect, and so on, the highly centralized platform economy model makes traditional analytical tools fail and regulators are unable to identify illegal acts in a timely and effective manner. Therefore, it is namely important to build a strong and effective antitrust compliance system.

#### **3.2 Economics-based Analysis of the Institutional Costs of Antitrust Compliance**

Cost is one of the key factors that determine the supply curve of competitive behavior. The cost of the system is the price that must be paid for the whole dynamic process of system operation, and its level is also the main basis for people to make supply decisions, and it is the "barometer" for people to choose to comply with or circumvent the law or even violate the law. For business operators who aim for high profits, whether they choose to establish an antitrust compliance system or not also has its own cost and benefit considerations. Therefore, from an economic perspective, it is inevitable for enterprises to establish an antitrust compliance system. If an enterprise builds an antitrust compliance system, the costs it pays are mainly [16]: (1) the cost of develop-

ing an antitrust compliance system, including the expenditure of human, material and financial resources as well as the time and information spent in the process of developing the system; (2) the cost of implementing the antitrust compliance system, including the cost of publicity and training of employees, the cost of changing employees, the cost of influencing old business practices, the cost of hiring compliance consultants, the cost of conducting compliance audits, and the cost of conducting legal audits, costs of implementing compliance audits, other necessary costs paid when conducting legal risk control, etc.

At the same time, it is obvious that the establishment of an antitrust compliance system by an enterprise will bring benefits to the enterprise:

(1) avoidance or reduction of fines. All countries provide for high fines for monopolistic acts, and since the implementation of monopolistic acts can cost the enterprise or its customers a lot of money, the direct avoidance of fines brought about by a compliance system is one of the most direct and important benefits for the enterprise. Although China does not explicitly consider the antitrust compliance program as a legal ground for reducing or waiving its fines, the compliance program has become one of the factors considered by the enforcement agency in terminating the investigation and reducing the fines, and even the compliance program plays an increasingly important role in it. If an enterprise has established a strong and effective internal compliance program enforcement agency and has seriously implemented the program in its business process, and has made efforts for orderly competition and compliance, the act can be rewarded by the enforcement agency for avoiding or reducing fines.

(2) Reduction of necessary expenses. In most cases, if an enterprise establishes an effective antitrust compliance system, it is possible for a court, jury, or enforcement agency to determine that the monopolistic conduct is not established because of the lack of subjective elements of the conduct. We need to be clear that a compliance program cannot completely curb all violations of the law. Although currently we do not explicitly consider antitrust compliance programs as a statutory reason to reduce or waive their fines, as the European Commission and the U.K. enforcement agencies say, "an effective compliance program can at least demonstrate an enterprise's determination to resist violations of the law," which is a result they would like to see, and likewise, if enforcement agencies consider suspending an antitrust investigation against an enterprise based on an effective compliance program. Likewise, if enforcement agencies consider suspending antitrust investigations based on effective compliance programs, it will save companies the labor, time, and other costs necessary to respond to investigations.

(3) Avoidance of business losses for the enterprise. Anti-monopoly acts are often realized by means of contracts. Competitors will enter into agreements of monopolistic nature such as fixing prices and dividing sales areas, etc. Although there are difficulties in finding monopoly agreements invalid due to the difficulty of collecting documentary evidence, China has proposed a new variation: that is, if there is an obvious anti-competitive effect of concerted behavior between operators, it can be considered as a conspiracy between operators. Once such an agreement is found to be invalid, the enterprise will be required to pay a fine, in addition to suffering significant economic losses as a result of the invalidation of the contract.

### **3.3 The Need for Co-creation and Sharing of the Legal Business Environment**

The rapid development of the platform economy has made the Internet platform an indispensable infrastructure for social operation and public life. The platform economy plays an increasingly important role in promoting technological innovation and market division of labor, and enhancing the efficiency of economic operation. The country has also repeatedly emphasized from the level of development strategy that efforts should be made to promote the development of digital economy and platform economy, provide favorable support for economic transformation and modernization, and allow new industries to flourish, new dynamic energy to grow and new talents to emerge". Therefore, the platform economy has been an important part of the country's economic development, and the construction of a compliance system for platform enterprises is not only an intrinsic safeguard mechanism for business development, but also a fundamental safeguard mechanism for economic order and social order, and a key part of the country's efforts to create a business environment under the rule of law.

## **4 Future Direction of Antitrust Compliance System**

It is the common desire of antitrust enforcement agencies in each country (region) that enterprises can actively comply with antitrust laws and regulations. Through an empirical examination of the process of establishing antitrust compliance systems and the antitrust compliance systems of enterprises in each country (region), the author finds that although the legal history and traditions of each country are different, the level of market competition culture varies, and the way in which antitrust enforcement agencies provide compliance guidance to enterprises varies. The external business environment faced by enterprises of different sizes, resources, turnover, and number of employees varies greatly, but it is certain that the antitrust compliance regimes of enterprises in different countries (regions) follow roughly the same path. These convergences reflect the general rules for the establishment of antitrust compliance system and the general framework for the establishment of antitrust compliance system.

### **4.1 One Core Value**

In conjunction with the above, the core value of a compliance regime is the degree to which its antitrust compliance is effective. The term "effective" refers to the degree of goal achievement and the efficiency of spending resources to obtain legal benefits, which is typical of result-orientedism. The vast majority of national and regional antitrust compliance currently uses guidelines or guides as the vehicle of the system. Although the antitrust compliance guidelines of different countries and regions have their own characteristics, the objective concept behind them is exactly the same, i.e., to minimize the risk of enterprises violating competition law by constructing an effective mechanism. After examining the antitrust compliance guidelines of more than ten countries and regions, including the EU, the UK, France, Korea and Italy, the author believes that the effectiveness of corporate antitrust compliance can be evaluated by

at least the following five core indicators: (1) the commitment of company management to compliance; (2) the establishment of a dedicated compliance management organization and personnel (compliance officer) and the provision of resources; (3) the development of long-term and effective compliance knowledge training; (4) development of a compliance operation mechanism covering risk identification, risk assessment, risk reduction and supervision and verification; and (5) development of a regular audit mechanism for antitrust compliance.

#### **4.2 Two Basic Objectives**

For the antitrust law enforcement agencies, the purpose of guiding enterprises to establish an antitrust compliance system is definitely not to help the enemy, but to move the gate of antitrust remedy forward, to prevent the occurrence of monopoly acts and to detect them in time. For enterprises, the basic goal of developing and implementing an antitrust compliance system also lies in prevention and detection. (1) Prevention. Prevention is to avoid the occurrence of vicious competition and to prevent the legal risk of antitrust from the root. (2) Discovery. If an enterprise has to face the monopolistic behavior that has already been committed, it can remedy it through its own behavior. Such as through the "forgiveness system" to obtain relief from legal liability; through negotiation with law enforcement agencies to apply the "operator commitment system" to obtain relief from legal liability, etc.

### **5 Conclusion**

As an important emerging economy in China, the platform economy plays a pivotal role in serving the national development strategy in the future. The regulation of the platform economy should keep pace with the times, so that it can operate benignly on the track of legal system and contribute to the realization of the national development strategy goals. The establishment of an antitrust compliance system is a systematic project involving multiple disciplines and applied fields such as management, economics, law and ethics, and its establishment cannot be completed in a day.

At present, China's antitrust compliance system has taken shape, but more in-depth research is needed to maximize the superiority of the antitrust compliance system. At the same time, enterprises need to establish a sense of compliance and independently build a strong and effective compliance system that fits their business operations; at the same time, the independence and authority of antitrust enforcement agencies should be strengthened, and their enforcement capabilities should be enhanced, and a new model of antitrust regulation should be innovated with the antitrust enforcement agencies as the lead, so as to provide guidance for enterprises to build an antitrust compliance system. This paper is still inadequate, and the subsequent research will discuss in detail how to effectively promote the antitrust compliance system, the evaluation of the actual effect of the antitrust compliance system, and the extension of the compliance system in special fields.



## References

1. Dong Ma.: On the Construction Path of China's Antitrust Compliance Incentive Mechanism. *China Market Regulation Study*, 54-56 (2022).
2. The General Administration of Market Supervision (GAM) has imposed administrative penalties on Alibaba Group Holding Limited for its "two-for-one" monopoly in the online retail platform service market in China, <https://www.samr.gov.cn>, last accessed 2023/04/10.
3. See [https://www.samr.gov.cn/xw/zj/202104/t20210410\\_327702.html](https://www.samr.gov.cn/xw/zj/202104/t20210410_327702.html), last accessed 2023/3/1.
4. GB/T35770-2017 Guidelines for Compliance Management Systems, <https://www.yanwosq.com/41777.html>, last accessed 2023/3/1.
5. The Guidelines on Anti-monopoly Behavior of Operators, [https://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918\\_321796.html](https://gkml.samr.gov.cn/nsjg/fldj/202009/t20200918_321796.html), last accessed 2023/3/1.
6. The Guidelines on External Anti-monopoly Behavior of Enterprises, [http://www.gov.cn/zhengce/zhengceku/2021-11/19/content\\_5651797.htm](http://www.gov.cn/zhengce/zhengceku/2021-11/19/content_5651797.htm), last accessed 2023/3/1.
7. The Shanghai Operators' Antitrust Compliance Guidelines, <http://scjgj.sh.gov.cn/056/20200424/02e481ac6f25d2f3016f40c4bbc26fe8.html>, last accessed 2023/3/1.
8. Meng Zhang.: The Design of Corporate Compliance System and its Realization Path under the View of Deepening the Rule of Law in the New Era: An Empirical Analysis Based on Judicial Documents and Overseas Reference. *Shanghai Legal Studies*, 257-266 (2022).
9. Ruihua Chen.: On the Chineseization of Corporate Compliance. *Legal Science (Journal of Northwestern University of Political Science and Law)* (3), 34-48 (2020).
10. Xianlin, Wang.: The Complexity of Antitrust Issues in the Platform Economy and Related Suggestions. *Competition Law and Policy Review*, 16-20 (2021).
11. Zhike Xiao.: A Preliminary Study on Risk Prevention and Control and Compliance Construction of Platform Enterprises. *Journal of Shanghai Legal Studies* (04), 38-44 (2021).
12. Lin Yu.: The Establishment Path of Corporate Antitrust Compliance System. *Social Science* (05), 81-89 (2015).
13. OFT, How your business can achieve compliance with competition law guidance (OFT1341), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284402/oft1341.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284402/oft1341.pdf), June. last accessed 2023/2/21.
14. Qiang Chen.: A Review of the Antitrust Compliance Regulatory System. *Journal of Taiyuan College (Social Science Edition)* 22(04), 34-40 (2022).
15. Xiang Fang.: Theoretical Explanation of Competition Compliance and Chinese Solutions. *Journal of Anhui Normal University (Humanities and Social Sciences Edition)* (04), 48-59 (2020).
16. Damien Geradin.: Antitrust compliance programmes and optimal antitrust enforcement: a replay to Wouter Wils. *Journal* 2(5), 99-110 (2016).

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