

Research on the Data Platform Supervision from the Perspective of Market Regulation Law

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Abstract—"This is the best era as well as the worst era." The arrival of the information age has brought joy and convenience to our lives and entertainment. However, various privacy issues have also begun to show drawbacks. For the market, it also exacerbates the complexity of regulation. The Wei Zexi incident, the Facebook data leakage incident, the murder of airline stewardess in online-hailing car, etc. all touched our hearts and sensationalized the society. This brought about the dual pressure of the new technological revolution and the immature market economy system. This article will explore how to monitor the data platform from the perspective of market regulation by focusing on hot events.

Keywords—market regulation; data platform; supervision

I. INTRODUCTION

The new technological revolution has brought new challenges to China's government regulation. Compared with the traditional market, information asymmetry is more obvious in the era of big data. The rapid development of information technology, the continuous reduction of information acquisition, transmission, recording and processing, and the explosion of information explosion, amplified the regulatory loopholes, making the regulatory issues more complicated and the infringement cases frequent occur. How to supervise the data platform and how the government should perform market supervision functions are questions that urgently need to be discussed.

II. HOT CASES

A. Wei Zexi Case

This sentence "Searching Baidu, you will know" is different from the slang that only hangs on the lips, but when people have a problem, they will search "Baidu." Search engines play an important guiding role in netizens and are important channels for netizens to obtain important information, which are often used as free encyclopedias. Out of the trust to "world's largest Chinese search engine" — Baidu, Wei Zexi searched for treatment programs online, and found "the biological immunotherapy of Beijing Second Hospital of Armed Police armed police" ranking the top of results, but died of delay in treatment due to the outsourced Putian hospital of this hospital. It can be seen that the search engine is not a free encyclopedia. Driven by huge commercial interests, it is even the tool murdering people

secretly. After the "Wei Zexi Case", the widely controversial bidding ranking was once again condemned. It is precisely because of the payment model of Baidu promotion that it cooperates with medical contractors such as Putian to help Baidu users find relevant medical care organizations by setting keywords, so that the advertising content of medical institutions was seen by Baidu users, and eventually led to such tragedies as Wei Zexi. As can be seen from this case, it is remarkable that "Baidu Promotion" doesn't belong to advertising promotion legally. Baidu promotion, which clearly enjoys the interests of the largest "advertiser", has never assumed the obligation of "advertiser." "Baidu Promotion" was put on file after two years since it was reported, which undoubtedly exposed the current lack of supervision. The real problem of the supervision faced by "Wei Zexi incident" is whether the paid promotion services of search engine should be regulated as advertisements.

B. Facebook Data Leakage Incident

As mentioned above, a series of new technological revolutions such as the Internet, big data, and artificial intelligence have made people overwhelmed. The role of data in science and technology applications is becoming increasingly important. "Cyber manhunt" has changed from an emerging vocabulary to a normal state, and Internet companies such as Alipay and WeChat have penetrated into every aspect of our lives. The most important thing in the information age is information, and the most easily leaked thing is information. In mid-March this year, the US "New York Times" and the British "Guardian" successively exposed Facebook data leakage incident: 50 million users' information was used by a Cambridge analysis company to create file analysis data to deliver personalized information such as accurate advertisements to users. It is even suspected of guiding political tendencies. The data breach dates back to four years earlier. A professor of psychology at the University of Cambridge in the United Kingdom has launched an app for providing users with personalized analysis tests. After being authorized by the user, this app collects personal information including the user's age, address, gender, etc., as well as the user's activities in the social network, and even the information posted by the user's friends. A total of 27,000 Facebook users downloaded the app. With this application, the professor has obtained a variety of personal information and likes from 27,000 people

and their friends, the total data of up to 50 million users. According to reports, the professor brought the data to Cambridge Analytical Inc., which get the user's behavior patterns, personality traits, values orientation and other information through big data analysis based on these data, and use this information to push campaign ads for specific users. Someone launched the "Delete Facebook" action and quickly formed a trend. However, our personal information is still floating in the cyberspace, and no one knows it will fall into whose hands. This make us can't help thinking: What is the boundary between companies' access to personal information data? Why is Facebook still widely criticized after receiving user authorization? How can the government regulate data leakage according to relevant laws?

C. Online Car-hailing

If you are a girl, especially a girl who looks good, it is undoubtedly the most unwise choice to take an online hailing car at night. Since the popularity of the online car-hailing, it has been frequently exposed on the network that the driver of online hailing car harasses the passengers, but they end up with nothing definite. In May, 2018, a flight attendant in Zhengzhou was killed by the driver of Didi hitchhiking car. This malignant event once again caused the Internet users to worry about cyber security. It is not difficult to find through the search that the cases where passengers are killed, sexual assaulted, and beaten when they are killed by the car drivers, but the right protections are always not in place. Looking at the promotion material of the Didi hitchhiking car and the labeling function of the driver, it is not difficult to imagine whether the hitchhiking car provides more spiritual possibilities for driver crime to a certain extent. Those who do bad things are always people, but untimely advertising and regulatory loopholes often provide opportunities for the bad guys. Why does a good vehicle sharing platform become a tool for providing criminal opportunities? Is this a disastrous consequence of the release of the platform developer's evil? Should we increase the approval and supervision of the online car-hailing?

III. THEORETICAL ANALYSIS

A. Market Regulation Content

The market is one of many systems, institutions, procedures, legal strengthening and infrastructure involving the exchange of various parties. The meanings related to market regulation have the following aspects: (1) Market entities: The market entity is the basis of the market. Without the market entity, there is no market. The kind of market entity decides the kind of market. Therefore, market supervision must supervise the market entity. From the decisive role of the market entity, the good supervision of the market entity can make market supervision get double results with half the work. Therefore, the core content of market supervision lies in the regulation and supervision of market entities. (2) Goods or services: There is market because there is transaction. If there is a transaction, "traded thing" is essential. In the market, "traded thing" is mainly expressed as goods or services. When a market entity enters the market,

it must carry the goods or provide services. Markets regulation is often implemented in the regulation of goods and service providers which is the extension of the markets regulation. Only after the quality problems and potential safety hazards of the goods or services of the market entity is discovered can the market entity be supervised. (3) Market behavior: There is market because there is transaction. Trading activity is a specific act. The market is made up of a series of exchange behaviors or exchange relations. Since the market economy is essentially a competitive economy, the fundamental value of the market economy lies in its competitive mechanism. Therefore, the market regulation must regulate market competition behavior and relationships.

Supervision is also called regulation, control or governance. A representative definition is proposed by the American scholar Daniel F. Spabo, "the general rule or special behavior developed and implemented by administrative organization to direct intervene in the market and indirect change the supply and demand decisions of enterprises and consumers", and Japanese scholar Zhicao Yi explains it as "behavior restricting the activities of individuals who constitute a particular society and the economic entities that constitute a particular economy in accordance with certain rules by private or social public institutions."¹ Based on the similarities and differences of regulatory content, supervision can be divided into economic regulation and social supervision. Economic regulation mainly refers to the field of natural monopoly and information asymmetry. In order to prevent the inefficient allocation of resources and ensure the fair use of users, government agencies use laws, licenses and other means to regulate the entry and exit of enterprises, price, quality, investment, financial accounting and other related activities of products and services. The main means include entering and exiting market supervision, price supervision, investment supervision, quality supervision and so on. Social supervision is a regulation aimed at protecting public interests such as health, safety, environment and social cohesion, and mainly includes means for prohibiting specific activities, limiting specific activities, qualification authentication, administrative inspections and appraisals. Based on the similarities and differences of regulatory method, it can be divided into direct supervision and indirect supervision. It is mainly distinguished by whether the government directly intervenes in the economic behavior of the market subject. Direct supervision is characterized by command and control supervision, and indirect supervision is based on market incentives.

B. Market Supervision Under Information Asymmetry

The information explosion has profoundly affected our lives and has a profound impact on the government's regulatory activities. On the one hand, the development of information technology has facilitated government governance; on the other hand, the same as the information asymmetry in market transactions, the traditional government governance activities of market supervision also

¹ Qiu Ben. On the basic issues of market supervision law [J]. *Social Science Research*, 2012 (03): 70-76.

face the challenge of information asymmetry. The arrival of the information age has made information more and more worthless, and the cost of information products have been reduced to very low. At the same time, the government has to increase regulatory costs.

In market supervision, information asymmetry is mainly reflected in the fact that in the process of market supervision, because of the differences in position of the market supervision legal subjects, the desire for information exchange, the resources and knowledge, etc., the information that is hoped to be understood or should be understood cannot be obtained, thus forming a phenomenon of information asymmetry in the market supervision process.² The essence of the information asymmetry is that the information is unevenly distributed among the legal subjects, which is reflected in the fact that one party is in the dominant position of information while the other party is in an disadvantage position of information. In market regulation, there are mainly two types of information: regulatory normative information and regulatory implementation information. Regulatory normative information mainly refers to a series of laws, regulations, rules, standards and other regulatory documents based on market supervision and various types of regulatory information derived from the application of these normative documents by the regulatory body. The regulatory implementation information mainly refers to various types of information formed by the regulatory objects in the market operation process.

Promoting information exchange is the fundamental way to solve the problem of information asymmetry, which is the basic work of market supervision. Introducing enterprise self-discipline and social supervision in the market supervision system can make up for the shortcomings of the single government supervision mode and maximize the effectiveness of market supervision. The formation of self-discipline culture of enterprises is conducive to reducing the pressure of government supervision, reducing the cost of government supervision, and improving the efficiency of supervision. Since the cost of self-regulatory supervision is mostly borne by the supervisor, the cost has been internalized in the process of balancing the regulatory costs with the regulatory benefits, which is conducive to the implementation of the most regulatory benefits.

C. Analyzing Market Regulation from Living Example

In the "Wei Zexi incident", the core question is whether it is necessary to regulate the search engine paid promotion service as an advertisement. The bidding ranking system in Baidu search engine is actually the basic principle of Internet advertising display. This kind of paid promotion service is currently only regulated as a general Internet information service. However, as the name suggests, promotion means wide advertising. From the perspective of the industry model followed by advertising, "Baidu Promotion" has actually met the requirements of the main body of advertising law. The

² Liu Heng, Li Guanzhao. Legal Regulation of Information Asymmetry in Market Regulation [J]. *Administrative Law Review*, 2017 (01): 21-30.

new "Advertising Law" revised in April 2015 clearly stipulates that in the territory of the People's Republic of China, commercial advertising activities by commodity operators or service providers to directly or indirectly introduce the goods or services they promote through certain media and forms apply to advertising law. Compared to new "Advertising Law", it can be seen that the nature of advertising in the bidding ranking model is very obvious. "Baidu Promotion" was put on file after two years since it was reported, which fully exposed the current lack of supervision. The regulation in the information age is different from the regulation of the traditional market. The current rapid information is often presented in a "spurt" manner. For example, in 2015, Google removed 780 million advertisements that violated the policy, an increase of about 50% comparing to 524 million in 2014, but there are still escaped criminal. Sensitive information grows as wild grass on the Internet. "The identification of information is not a single behavior of the enterprise itself, but a comprehensive system in which the whole society needs to coordinate and participate. It needs to be based on its own business system and government system."³ Although information is very complicated, we can also "respond to it in the same way". The government can make full use of the advantages and convenience brought by information technology to "complement" the original lacking part of the market supervision function. In addition to the government's own transformation, the construction of a multi-subject regulatory system is also of great importance for government regulation. Nowadays, the government does not need to strictly control all the objects in the market. In the market supervision that emphasizes overall integrity, the government can better play the role of "meta-regulation", grasp the market macroscopically, and play a good role of coordination of the subject.

In the case of Facebook data leakage, it can better deal with this issue to build a market governance system with multiple governances. In the past, the regulatory power was concentrated within the government, forming a one-way, closed, and centralized power structure, and the boundary of government regulatory power was vague.⁴ This aspect leads to the arbitrary expansion of regulatory power, which makes it highly prone to result in collusion between government and enterprises, and is not conducive to achieving maximum regulatory effects. If the government's regulatory power is transferred to the society and part of the right is delegated to government, it will help promote the enterprises to establish a "data sharing mechanism" with sufficient control. Network supervision "should be unchoked but is unsuitable for blocking", so encouraging enterprise autonomy can help strengthen the internal supervision of enterprises. For enterprise autonomy, enterprises should independently inform users of situations that may cause third parties to

³ Wang Jing. Regulatory Quandary and its Solutions of Internet Chauffeured Car in China [J]. *Administrative Law Review*, 2016 (02): 49-59.

⁴ Yu Jianxing, Zhu Xinyi. The Market Supervision Function of the "Internet +" Era and Its Implementation [J]. *Chinese Public Administration*, 2017(06): 11-17.

share data to obtain explicit consent from users. They can actively set hierarchical interface permissions, set different interfaces according to shared data levels, and apply for separate authorization of individual sensitive data; conduct “personal information security impact assessment” on third-party application software before sharing, and monitor and track the subsequent application of shared data by third-party application software; establish early warning mechanism, and take effective measures in a timely manner when personal data without permission is contacted and accessed by third-party application. In this way, data leakage can be remedied to a certain extent, which is conducive to improving the privacy of information and ensuring information security.

In the online car-hailing event, industry associations can be used to undertake the government's supervisory functions. Today, with the development of the sharing economy, the sharing economy nature of online car-hailing determines its nature of economies of scale, which makes the traditional method of quantity control no longer applicable to the online car-hailing. However, the entry criteria for the online car-hailing market are more lenient than the traditional entry criteria for taxi, making government supervision more difficult. For effective and timely supervision, it can be supervised by the platform in cooperation with industry associations.⁵ The industry association has developed a unified standard requiring an online car-hailing platform to transfer the supervision of the online car-hailing platform to the industry association. Industry associations can formulate evaluation and punishment mechanisms such as evaluation mechanisms and complaint mechanisms, so that the pressure of government supervision can be effectively reduced to a certain extent, and the online car-hailing can be regulated more efficiently and accurately.

IV. CONCLUSION

The transformation of emerging technologies is a challenge but an opportunity. Every technological innovation also means the establishment and improvement of the corresponding system. Nowadays, the government does not need to strictly control all the objects in the market, but can pay more attention to the role of “meta-regulation”, grasp the market macroscopically, play the role of coordinating various entities, and form market supervision pattern of enterprise autonomy, industry supervision and government supervision and governance.

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