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Research on anti-monopoly regulation of platform "two choices" behavior

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Abstract

As a prominent restrictive competition practice in the platform economy, "forced exclusivity" (where platform companies require merchants to operate exclusively on one platform) has drawn widespread public attention. This paper systematically analyzes the characteristics, competitive effects, and antitrust regulatory challenges of such practices, drawing on China's enforcement prac-tices and comparative studies to propose pathways for improving antitrust reg-ulation. Research shows that forced exclusivity significantly restricts competi-tion, not only undermining merchants' multi-ownership rights and consumers' freedom of choice but also weakening market innovation incentives. Chinese antitrust authorities have developed distinctive regulatory approaches through cases involving Alibaba and Meituan, including innovative market definition methods, establishing a "punitive and incentivizing" analytical framework, and introducing flexible regulatory mechanisms like administrative guidance docu-ments. Future efforts should focus on optimizing market definition criteria by incorporating network externalities into illegal determination, building a "reg-ulatory sandbox" with compliance incentive mechanisms, and deepening mul-ti-stakeholder collaborative governance to achieve dynamic equilibrium be-tween platform economic innovation and regulation.

Keywords

Platform economy; "two choices" behavior; anti-monopoly regulation

1. The Core Characteristics of "Exclusive Choice" Behavior

"Exclusive choice" behavior, also known as exclusive dealing or restricted dealing in academic circles, is characterized by platform operators imposing exclusive cooperation requirements on merchants within the platform. According to Article 15 of the Anti-Monopoly Guidelines for the Platform Economy issued by the State Council's Anti-Monopoly Committee, "exclusive choice" refers to the behavior of platform operators restricting platform merchants to only conduct transactions with them or prohibiting them from conducting transactions with specific competitors through punitive or incentive measures. In essence, "exclusive choice" is not a new business practice but an evolved form of traditional exclusive dealing in the online environment. However, due to the characteristics of the platform economy, it has more complex competitive impacts.

In terms of manifestations, "exclusive choice" behavior can be divided into two major types: punitive and incentive measures. Punitive measures include direct means that harm the interests of merchants within the platform, such as blocking stores, lowering search rankings, restricting traffic, creating technical barriers, and deducting guarantees. In the "Alibaba case," the platform imposed search ranking demotion and traffic restrictions on merchants who refused to comply with "exclusive choice," resulting in a sharp decline in their exposure. Such measures, which directly harm market competition and consumer interests, are generally considered to constitute restricted trading behavior. Incentive measures include indirect guiding methods such as subsidies, discounts, preferential offers, and traffic resource support. In the "Meituan case," the platform exerted pressure by increasing commission rates and delaying service responses, compelling merchants to sign exclusive cooperation agreements. If there is evidence that such measures have a significant impact on excluding or restricting competition, they may also be considered as restricted trading behavio[1].

2. The practical dilemma of anti-monopoly regulation

2.1. Conflicts and gaps in the application of law

At present, our country's regulation of platform "choose one of two" mainly relies on the three major legal systems: the Anti Monopoly Law, the E-commerce Law and the Anti-Unfair Competition Law, but there are rule conflicts and gaps in the application of these laws, resulting in poor regulatory effects. The regulatory limitations of the E-Commerce Law are mainly reflected in Articles 22 and 35. Article 22 prohibits e-commerce operators from abusing their dominant market position to exclude or restrict competition, but this provision is only a simple repetition of the Anti Monopoly Law and lacks special consideration for the platform economy. Article 35 prohibits platform operators from imposing unreasonable restrictions or charging unreasonable fees on operators on the platform, but there are two shortcomings: first, it lacks the theoretical basis of "comparative advantage" and excessively interferes in market competition; Second, the criteria for judging "unreasonable" are vague and lack operability. In practice, since the relationship between platforms and merchants is essentially a contractual relationship, how to distinguish between reasonable commercial arrangements and unreasonable restrictions has become a problem for law enforcement.

The application dilemma of the Anti-Unfair Competition Law is concentrated in Articles 12 ("Internet Special Provisions") and Article 2 (Principles). Article 12 aims to regulate unfair competition carried out by technical means, but the "choose one of the two" behavior is often implemented through platform rules and protocol arrangements, rather than technical means, and does not necessarily involve elements such as "misleading, deception, and coercion". Article 2, as a general clause, has strict application conditions and requires behavior that violates the principle of good faith and business ethics, while platforms often defend themselves on the grounds of "platform autonomy" and "freedom of contract", complicating the judgment of business ethics.

The difficulty in the application of the Anti monopoly Law mainly lies in the application of the abuse of market dominance system. Article 17 of the Law prohibits operators with dominant market positions from carrying out restricted transactions without justifiable reasons, provided that the operators have a dominant market position. In the context of the platform economy, the determination of market dominance faces three major challenges: first, it is difficult to define the relevant market, and the multilaterality and cross-border competition of the platform make the traditional SSNIP test method (small but significant non-temporary price increase test) fail; second, the market share calculation standards are different, and indicators such as the number of users, transaction volume, and visits may point to different conclusions; Third, the dynamic competitive characteristics of the platform economy make the market structure unstable, and today's market dominants may lose their advantages tomorrow due to technological innovation[2].

2.2. Constraints of technical problems

In addition to conflicts of law, the characteristics of the platform economy also bring a series of technical problems, which restrict the effective implementation of antitrust regulations. The relevant market definition dilemma bears the brunt of it. In traditional industries, the definition of relevant markets is mainly based on the analysis of demand substitution and supply substitution, but the multilateral market characteristics of the platform economy complicate this analysis. In the "Meituan case", the State Administration for Market Regulation innovatively constructed a three-dimensional analysis framework of "platform function-market type-user group": first, distinguish between transactional and non-transactional platforms; secondly, to verify the substitution relationship between online and offline markets; Finally, the demand substitution analysis is carried out from both the consumer and the merchant end. Although this method is innovative, it still has problems such as strong subjectivity and insufficient economic evidence. The cross-network externality of bilateral markets (i.e., an increase in the number of users on one side increases the utility of users on the other) further adds to the complexity of market definition.

The problem of determining market dominance is also prominent. According to Article 18 of the Anti Monopoly Law, determining market dominance requires a comprehensive review of multiple factors such as market share, market control, and technical conditions.[3]

2.3. The illegal framework theory of the "choose one of the two" behavior of e-commerce platforms in sufficient foundation

First, the theory of market dominance is affected by the characteristics of the Internet economy, and it is difficult for law enforcers to determine that e-commerce platforms abuse their dominant market position to commit improper "choose one of the two" behavior. The Internet economy is typically bilateral and interoperable, and there are actually two markets in the bilateral market: enterprises as platforms and merchants and consumers who settle on the platform.

As a market, the geographical boundaries of the pure Internet service market have become very blurred, the bilaterality or multilaterality of the market has been strengthened, and the compatibility of the Internet has made the original different types of products overlap and overlap in terms of functions and roles, and it is difficult for law enforcement agencies to determine the relevant product market only from demand substitution,[4] product performance, and price. In addition, special factors such as network effects and user lock-in effects of e-commerce platforms in the platform economy also make it much more difficult to define relevant markets than traditional markets.

Secondly, China lacks a theoretical foundation for the abuse of relative advantageous positions.Looking at the platform economy market as a whole, due to the particularity of the market economy in the Internet field, platforms' maintenance of market dominant positions is characterized by technicality and the fragility of monopoly structures. Most e-commerce platforms do not possess market dominant positions; instead, they leverage their own platform advantages, based on the data resources they hold and the network lock-in effects with merchants settled on the platforms, to implement improper "choose one from two" behaviors[5].

3. International anti-monopoly governance trends

3.1. EU: Change to pre-event regulation

The vigorous development of the digital economy has made the EU's traditional antitrust legal system increasingly uncomfortable, and the core problem lies in the lag of supervision. In 2017, the European Commission ruled that Google abused its dominance in the search engine space to conduct illegal shopping ad searches in 13 countries of the European Economic Area. In November 2021, the General Court of Justice of the European Union ruled in the case of Google's abuse of market dominance, upholding the previous decision to fine 2.42 billion euros. The case took about four years, the investigation cycle was long, and it was difficult to achieve the efficiency of antitrust supervision and remedies by case handling alone. Therefore, it is necessary to break the obstacles to punishing unfair competition through legal self-innovation.

In order to adapt to the development of the modern market and create a level playing field, the European Commission promulgated the Digital Markets Act and the Digital

Services Act in 2020, incorporating the digital gatekeeper rule into legal regulation . These two laws reflect the EU's determination to strengthen antitrust and rectify the disorderly expansion of the digital field, and are also important symbols of the shift from antitrust punishment to preemptive prevention. In response to the monopoly problem in the field of digital economy, Germany took the lead in improving the antitrust law, becoming the first country in the world to explicitly stipulate the "anti-monopoly law on the digital market", and promulgated the "Tenth Amendment to the Anti-Restrictive Competition Law (Draft)" in October 2020 to solve new problems in the digital economy era.

3.2. The United States: Actively strengthen antitrust supervision

The U.S. antitrust law has a long history, with different emphasis in different periods, and law enforcement has shown a contraction trend in the past two decades. The 1998 Microsoft lawsuit ended in a settlement, reflecting the lax U.S. antitrust regulation of digital markets at the time. Although this has promoted the development of the platform economy, it has caused many problems: large enterprises have monopolized the market for a long time, weakened competition, led to rising commodity prices, lower employee wages, and slowing economic development, especially in the digital market. Currently, Google, Microsoft, and Amazon monopolize the cloud computing market, while Apple and Google each account for half of the mobile app market.

The United States has launched antitrust investigations into giants such as Google, Amazon, and Apple, involving stifling corporate mergers and acquisitions, data abuse, and digital advertising. In 2020, the House of Representatives released the "Digital Market Competition Survey Report", which aims to deal with the unreasonable monopolistic behavior of Google, Amazon, Facebook, and Apple. In June of the following year,[6] the House Judiciary Committee passed six antitrust bills, showing a trend towards strict regulation of large digital platform companies.

4. Thoughts on the Regulation Path of the "Two Choices" Behavior of Internet Platforms

Regulating internet platforms' "choose-one-from-two" practice involves three steps: First, boost professional skills and evidence systems. Optimize burden of proof—shift to defendants when plaintiffs show initial evidence to protect litigant rights. Also, train more legal talent to strengthen anti-monopoly enforcement. Second, adopt foreign good practices: U.S. settlement mechanisms, EU's lower litigation thresholds for small platforms, Japan's commitment systems for mutual supervision. Refine fines by harm severity, add criminal penalties to raise violation costs. Third, promote tech innovation: urge large platforms to enhance social responsibility, guide smaller ones to focus on innovation. Strengthen oversight of big platforms and support smaller ones to maintain fair competition.

4.1. Improve Professional Capabilities and Perfect the Evidence Collection System

The knowledge reserve of law enforcement personnel is a key factor affecting the anti-monopoly power, which is directly related to the fairness of judgments. In anti-monopoly cases, on the basis of applying the principle of "who claims, who proves", the adjustment plan of the burden of proof should be further refined. For example, when the plaintiff can provide preliminary evidence of the platform's "second choice" monopoly behavior, such as communication records with the platform showing mandatory requirements, proofs of similar experiences from other merchants, etc., the inversion of the burden of proof can be initiated, shifting the burden of proof to the defendant. This measure can effectively protect the parties from being unable to fully exercise their litigation rights due to technical barriers of Internet platforms, such as data encryption and opaque algorithms.

To solve the problems of insufficient staff in anti-monopoly agencies and incomplete coverage of the review and law enforcement of the "second choice" monopoly behavior, we can proceed from various aspects. On the one hand, strengthen the training of existing legal talents, offer courses related to Internet technology and platform economic models, regularly organize case discussions and cross-departmental exchanges, so as to improve their ability to deal with complex anti-monopoly cases. On the other hand, actively promote the spirit of the rule of law, strengthen the publicity of legal knowledge through a combination of online and offline methods, and improve the public's awareness of anti-monopoly laws. At the same time, formulate preferential policies to attract outstanding legal talents to join the legal team, further integrate judicial and law enforcement forces, establish a cross-regional anti-monopoly cooperation mechanism, realize information sharing and joint law enforcement, so as to make the anti-monopoly power stronger and more extensive.[7]

4.2. Learn from Beneficial Foreign Experiences to Fill the Gaps in China's Anti-Monopoly

First, strengthen the protection of small and medium-sized Internet platforms. From the practice of the United States, the improvement of its anti-monopoly enforcement agencies and procedures has provided a guarantee for the strict implementation of relevant laws, and also enabled operators to fully participate in anti-monopoly litigation cases. China can learn from its experience, set up a special legal aid mechanism for small and medium-sized platforms, provide them with professional legal support and financial assistance, and reduce the threshold and cost for them to participate in litigation. At the same time, the settlement system tried by the United States in anti-monopoly cases has largely protected the rights of small and medium-sized Internet platforms and saved judicial resources. This system is worthy of exploration and application in specific cases in China, clarifying the conditions, procedures and effects of settlement, and balancing the interests of all parties.

The European Union has lowered the litigation threshold, enabling operators to file anti-monopoly lawsuits, which has fully protected and encouraged the exercise of their rights to maintain a fair market order. China can refer to this approach, further simplify the litigation process, shorten the trial cycle, reduce litigation costs, so that more operators affected by the "second choice" behavior can conveniently safeguard their legitimate rights and interests through legal channels.

Second, encourage mutual supervision among various platforms in the market. The mild approach and commitment mechanism adopted by Japan have promoted mutual supervision among platforms while saving judicial resources, and promoted the healthy development of various platforms. China can introduce a similar mechanism, where anti-monopoly agencies guide platforms to sign self-discipline commitments, clearly prohibit "second choice" and other monopoly behaviors, and establish an information notification system among platforms. Through the commitment mechanism, each platform can self-discipline its own behavior, restrict the disorderly expansion of resources, and at the same time supervise each other. Once a violation is found, it will promptly report to the regulatory authorities. The regulatory authorities will give appropriate rewards to platforms that abide by their commitments and actively supervise, and severely punish those that violate their commitments in accordance with the law, so as to promote each platform to continuously improve its innovation ability, seek sound development, and jointly maintain a fair market competition environment.

Finally, refine the administrative fine system. At present, the main form of legal liability stipulated in China's Anti-Monopoly Law is administrative fines, but the division of administrative liability is not clear. The "second choice" behavior can be divided into three levels: minor, serious and particularly serious, according to the degree of damage to the market, such as the number of affected merchants, changes in market share, the degree of restriction on consumers' right to choose, etc., and the subjective maliciousness of the actor, such as whether it is intentionally implemented, whether it is repeatedly violated, etc. Set progressive fines according to the corresponding levels. For example, the minor level can be fined 1-3 times the illegal income, the serious level 3-5 times, and the particularly serious level 5-10 times.

At the same time, specify some mitigating or exempting circumstances in a targeted manner. For example, if a platform takes the initiative to correct its behavior after being investigated and dealt with, actively cooperates with the investigation and eliminates adverse effects, the fine can be appropriately reduced; if a platform can prove that its behavior is caused by force majeure or coercion, part or all of the liability can be exempted, giving enterprises an opportunity to reform. For particularly bad "second choice" monopoly behaviors, such as those causing serious chaos in the market order, seriously harming the interests of consumers and with particularly bad circumstances, criminal liability should be imposed, and relevant charges and sentencing standards should be clarified to increase the cost of violation and build a legal liability system that is both lenient and strict.

4.3. Encourage Internet Technological Innovation to Inhibit Monopoly Behavior from the Source

For large Internet platforms, we should strengthen publicity and education, enhance their sense of social responsibility through holding social responsibility forums and carrying out anti-monopoly training, and guide them to consciously refrain from implementing bad monopoly behaviors such as "second choice". At the same time, the government can increase support for Internet technological innovation, set up special funds, encourage platforms to invest in technological research and development, business model innovation, etc., so as to enhance their competitiveness through technological progress rather than relying on monopoly means.

In addition, establish a platform innovation incentive mechanism, give policy preferences and honorary awards to platforms that have outstanding performance in technological innovation and maintaining fair market competition, and create a good atmosphere for encouraging innovation. By promoting technological innovation, we can promote the formation of a diversified competition pattern in the Internet industry, inhibit the occurrence of monopoly behaviors from the source, and contribute to maintaining a fair market competition environment.As many operators as possible should be enabled to enter the relevant market for development, so that they can supervise and promote each other, jointly drive the innovative development of technologies, and ensure the orderly development of related industries. For small and medium-sized platforms that have just entered the market, on the one hand, they should actively exercise their rights and participate in anti-monopoly actions; on the other hand, they should focus their development on technological innovation, enhance their competitiveness from the core, maintain fair market competition, and promote industrial progress. At the same time, supervision over large Internet platforms should be strengthened to control their monopoly behaviors; policy support should be provided to small and medium-sized Internet platforms to encourage their development.[8]

4.4. Improve the Theory of Relative Advantage Status of E-commerce Platforms

The theory of relative advantage has great potential and implementation space in China. The bilateral or multilateral nature of the Internet market is constantly strengthening. The bilateral market of online platforms has the characteristics of price asymmetry, network externality, demand complementarity, etc., which increases the difficulty in analyzing the relevant markets. Due to the bilateral nature of the Internet market, as well as the technicality of the monopoly foundation in the field and the fragility of the monopoly structure, it is difficult to define the market dominant position. Once the theory of relative advantage status is formed, it means that China can establish a two-tier regulatory mechanism for abuse of market dominant position and abuse of relative advantage status, so as to fill the current regulatory loopholes. In the regulation of "abuse of relative advantage status", law enforcement agencies should list several specific situations of "abuse" to avoid excessive law enforcement and infringement on the freedom and fair competition rights of market entities. In addition to enumerating specific situations, a catch-all clause should also be set up to reflect a certain degree of openness, so as not to leave legal gaps.

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