

Analysis on the Determination of Internet Platform Abuse of Market Dominance

-- Based on Alibaba's "Two-Choice" Anti-monopoly Law Enforcement Case

Xin Zi*

Qingdao University of Science and Technology Law school, Qingdao, China

Abstract

My country's "Anti-monopoly Law" has been developed for 13 years, but in the face of today's emerging Internet platform economy, it appears weak in many aspects. Based on this, my country has successively promulgated relevant laws and regulations in the past two years to regulate the monopoly of Internet platforms. Among them, the abuse of market dominance has always been the focus of legislation and law enforcement. But for now, both legislation and law enforcement have many limitations, and they focus on how to correctly define the behavior of Internet platforms that abuse their dominant market position. On the basis of combing the relevant literature and judgments in my country, this article will make a detailed analysis of the defined behavior based on Alibaba Group's "two-choice" case, and finally propose the legislative level of the construction of a regulatory system for the abuse of market dominance by Internet platforms And regulatory recommendations, with a view to establishing clear competition rules and regulatory models, improving market economy efficiency and overall social welfare, so as to better adapt to the needs of market development under the new economic form.

Keywords

Antitrust; Internet Platform; Abuse of Market Dominance.

1. Legislation and Judgment Status Quo of Abuse of Dominant Market Position by Internet Platforms in China

My country's legislation on the abuse of market dominance by Internet platforms was relatively fragmented and not regulated by a relatively unified legislation before the "Anti-monopoly Guidelines" was issued. Therefore, the abuse of market dominance by Internet platforms was very important to a certain extent. It is difficult to implement effective regulations.

Specific laws and administrative regulations that can involve the abuse of market dominance by Internet platforms, including the Anti-monopoly Law, the E-Commerce Law of the People's Republic of China (hereinafter referred to as the E-Commerce Law), and the Interim Provisions on Prohibition of Abuse of Dominant Market Position "(Hereinafter referred to as "Interim Regulations") and the newly issued "Anti-monopoly Guidelines" in 2021.

Among them, Article 6 and Chapter 3 (Article 17, Article 18, Article 19) of the "Anti-monopoly Law" clearly stipulate the abuse of market dominance. Article 22 of the "E-commerce Law" stipulates that e-commerce operators have the advantages of their technical advantages, the number of users, their ability to control related industries, and the degree of dependence of other operators on the e-commerce operators' transactions. In the case of a dominant market position, the dominant market position shall not be abused to eliminate or restrict competition. In order to prevent and stop the abuse of market dominance, the "Interim Provisions" added

provisions to identify new areas of market dominance (Internet and other new economic formats) on the basis of absorbing previous experience in law enforcement and law enforcement, and supplemented "abuses." The regulations on market dominance also refine the "justification" for avoiding being identified as abusing market dominance. The "Anti-monopoly Guidelines" are departmental regulations issued specifically for Internet platforms. Chapter 3 (Articles 11 to 17) specifically regulates the abuse of market dominance by Internet platforms.

Based on the above legislation and other related laws and regulations, in the search results of "abuse of market dominance" in the previous article, the search condition "Internet" was added, and a total of 461 adjudication documents were searched. Because there are duplicate cases in the adjudication documents, the above should be checked first. In the judgment document, SPSS statistical analysis of duplicate cases and abnormal cases was tested. A total of 13 duplicate cases and 2 abnormal cases were identified. Therefore, the number of valid cases is 446. The following analysis will be based on 446 valid cases.

According to the analysis results, it is not difficult to find that most of the judgments involving abuse of market dominance in the Internet field in my country are still concentrated in the civil field (92.4%), but the cause of the case is concentrated in monopoly disputes [unfair competition, monopoly disputes] (70.6%) , and only a few directly identified the cause of the case as a dispute over abuse of market dominance (3.8%). It can be seen that the abuse of market dominance in the previous Internet field is rarely used as a sole cause for trial, but more often because of unfair competition and monopoly disputes.

As far as the distribution of trial dates is concerned, it is basically consistent with the trend of abuse of market dominance. Therefore, I think that the stage and development of Internet platform abuse of market dominance basically coincide with the stage of abuse of market dominance in the previous article. It can be divided into the above three stages, namely the initial stage from 2007 to 2015; the development stage from 2016 to 2019 and the compliance guidance stage from 2020 to present.

2. The Origin of the Identification of China's Internet Platform Abuse of Market

Regarding my country's determination of Internet abuse of dominant market position, it can basically be traced back to the 2008 Tangshan Renren Information Service Co., Ltd. and Beijing Baidu Netcom Technology Co., Ltd. Appeals for a dispute over abuse of dominant market position (hereinafter referred to as the Renren v. Baidu case) Some people call it the first case of China's Internet Anti-monopoly. In this case, the Court of Appeal was unable to provide evidence based on the calculation of market share in the "relevant market", that is, the plaintiff failed to provide evidence to prove that Baidu Company dominates the "Chinese search engine service market", nor did it prove that Baidu Company abused the market. Therefore, Tangshan Renren Company's litigation request was rejected and the original verdict was upheld.

Although the Renren v. Baidu case can be regarded as China's first Internet Anti-monopoly case, its impact is very limited. It can be said that the real concern of the academic and practical circles on the abuse of Internet dominance can be said to originate from another case, namely Beijing Qihoo Technology Co., Ltd. v. Tencent Technology (Shenzhen) Co., Ltd. and Shenzhen Tencent Computer System Co., Ltd. (hereinafter referred to as 360 v. Tencent).

In this case, the Supreme Court responded accordingly to the three major controversies: how to define the relevant market in this case; whether it has a dominant market position and whether it constitutes an abuse of market dominance prohibited by the antitrust law. Evidence is not sufficient to support the conclusion that the appellee has a dominant market position to dismiss the appeal and maintain the original judgment. Although the above two cases were both

ended by the plaintiff's loss, they have had a profound impact on the research and adjudication of my country's Internet abuse of market dominance. It is also after the 360 v. Tencent case that the abuse of market dominance by Internet platforms can be continuously studied by scholars, thereby promoting the development of legislation and trials.

3. Analysis of Internet Platform Abuse of Market Dominance based on Ali's "Two-Choice-One" Case

On April 10, 2021, the State Administration for Market Regulation announced the penalties and administrative instructions against the monopoly of Alibaba Group Holdings Co., Ltd. (hereinafter referred to as Alibaba Group) in the online retail platform service market in China. The State Administration for Market Regulation made an administrative penalty decision in accordance with the law, ordering Alibaba Group to stop illegal activities and imposing a fine of 4% of its domestic sales of 455.712 billion yuan in 2019, totaling 18.228 billion yuan. At the same time, in accordance with the "Administrative Punishment Law" that adheres to the principle of combining punishment and education, an administrative guidance letter was issued to Alibaba Group, requiring it to strictly implement the main responsibility of platform enterprises, strengthen internal control and compliance management, maintain fair competition, and protect merchants and businesses on the platform. The legal rights and interests of consumers have been comprehensively rectified, and self-examination and compliance reports have been submitted to the State Administration for Market Regulation for three consecutive years.

The following will be based on the decision of the State Administration for Market Regulation (hereinafter referred to as the SAIC) on the punishment of Alibaba Group's "choice of two" behavior, and will specifically analyze and determine the rationality and legitimacy of Alibaba Group's abuse of its dominant market position. As mentioned above, for the identification of persons who abuse a dominant market position, a relatively standardized identification paradigm has been formed in China, that is, defining the relevant market, identifying the dominant position, confirming the abuse, and whether there is a legitimate reason. At present, these four steps are a step-by-step relationship. In the determination of this case, this determination logic was also followed.

3.1. Identification of the Relevant Market

In this case, the SAIC defined the relevant commodity market as the online retail platform service market, and the relevant geographic market as the territory of China. In the specific identification process, the SAIC started from the characteristics of the cross-border network effect of the bilateral platform, and considered the related influence and substitution analysis between the two bilateral user groups of the operator and the consumer on the platform. Time, operator's operating cost composition, ability to match potential consumers, market demand feedback efficiency, as well as differences in the range of products consumers can choose, the convenience of shopping, the efficiency of comparing and matching products, etc., believe that the services of online retail platforms are different from those of online retail platforms. There are differences between offline retail business services and they do not belong to the same related commodity market. Therefore, online retail platform services constitute a separate related commodity market. Similarly, when determining the relevant geographic markets, the SAIC still uses the analysis method of demand substitution and supply substitution, and believes that the domestic market in China does not have a close substitution relationship with the overseas market. Therefore, it is deemed that the relevant geographic market is within China.

At the same time, while identifying relevant commodity markets, the State Administration clearly stated that in the definition of relevant markets for online retail platforms, different types of platform operators are identified as the same relevant commodity market (B2C online retail and C2C online retail); different commodities The online retail platform services provided by the sales method belong to the same related commodity market (live streaming, short video drainage, traditional graphics, etc.); the online retail platform services provided by different commodity categories belong to the same related commodity market (food, clothing, electronic products, etc.)). This is consistent with the spirit of defining the relevant market based on the attributes of the products or services on each side of the platform established in Article 4 of the Anti-monopoly Guidelines.

In the determination of relevant markets in this section, new understandings have been made on the definition of Internet platform-related commodity markets. For example, in the previous consistent recognition, Internet platform operators often refer to operators with the same or similar offline businesses Think of it as a competitor. For example, when Didi previously acquired Uber China, it described the private car business as an alternative business to the taxi business in order to expand the relevant market and dilute its market share. According to the "Anti-monopoly Guidelines", in view of the obvious difference in market access between the private car business and the taxi business, the service form and price structure and the degree of control are also significantly different, and the possibility of being identified as an alternative business is greatly reduced. When enterprises define their own relevant markets, they should pay attention to the lock-in effect, transfer costs, and whether the enterprise has a cross-platform network. However, with the development of the Internet economy, the previous traditional cognitions are constantly being broken. This also means that law enforcement on Internet platforms will be more stringent in the future.

3.2. Recognition of Market Dominance

In the determination of this case, the SAIC still considers Alibaba Group's abuse of market dominance based on the traditional market share and market concentration. Based on the Alibaba Group's market share of more than 50%, the relevant market is highly concentrated, the parties have strong market control capabilities, the parties have strong financial resources and advanced technical conditions, other operators are highly dependent on the parties in transactions, and the relevant market is the market. Seven reasons for the difficulty of entry and the significant advantages of the parties in the related market, the Alibaba Group is determined to have a dominant market position.

When determining market dominance, the General Administration has already fully considered the new characteristics of the platform economy. For example, when it determines that it has market control capabilities, it clearly includes the ability to control the platform operators' ability to obtain traffic, and specifically emphasizes the Internet The company's ability to control the price of services, these are factors that have not been considered in previous law enforcement. In addition, due to the network effect and lock-in effect of the Internet platform economy, Alibaba Group has obvious advantages for the upstream and downstream industry chain supply (payment, logistics, cloud computing, etc.) undertaken by the Internet retail platform. Confirm that Alibaba Group has a dominant market position.

Although the substantive law adopted in this case is the "Anti-monopoly Law", it is obvious that the new "Anti-monopoly Guidelines" can be seen in the determination process of the General Administration. It just means that according to Article 18 and Article 19 of the Anti-monopoly Law, the parties are determined to have a dominant position in the online retail platform service market in China. It can be clearly seen that Articles 18 and 19 are only broad and general provisions. Although the market dominance of the Internet platform should also be determined in accordance with this article, how to consider the new Internet platform in detail

can only be Rely on its bottom-up clause. However, in the "Anti-monopoly Guidelines", it is clear that in accordance with the provisions of Articles 18 and 19 of the "Anti-monopoly Law", when it is determined or presumed that an operator has a dominant market position, the law enforcement agencies shall give priority to factors other than market share. It also includes the number of existing competitors (including the number of competitors who have exited the market), the difficulty of market entry, market control, switching costs, etc. In addition, on the basis of following the original analysis framework, further refine and add some consideration factors such as innovation and technological changes (such as social e-commerce's disruptive innovation of traditional e-commerce), the difficulty of data acquisition, and the control of related markets. Ability (indicating that law enforcement agencies attach great importance to the mixed effects and tying of adjacent markets in the platform economy), etc.

It will undoubtedly be easier to determine the dominance of the Internet platform in the future, but it is indeed an improvement to clarify the corresponding factors, but the distinction between the various factors and the specific calculation methods have not yet been worked out. It may be more in accordance with the subjective discretion of the specific law enforcement agency. So how to balance the identification of individual cases and existing precedents in law enforcement, or how to balance the discretion of law enforcement officials and the protection of the rights and interests of related parties are issues worthy of consideration and exploration.

3.3. Recognize the Party's Abuse of Dominant Market Position

The General Administration believes that since 2015, Alibaba Group has abused its dominant position in the online retail platform service market in China and implemented "choose one" behavior by prohibiting platform operators from opening stores on other competitive platforms and participating in other competitive platforms. Platform promotion activities, etc., restrict the operators on the platform to only trade with the parties, and use a variety of rewards and punishments to ensure the implementation of the behavior, which violates Article 17 (1) (4) of the Anti-monopoly Law regarding "unjustified. The reason is that the stipulation that the counterparty of the transaction can only conduct transactions with it constitutes an abuse of market dominance.

According to the penalty decision of the General Administration, Alibaba Group uses a variety of different incentives and penalties in order to ensure the implementation of the "choose one out of two" behaviors. On the one hand, it is to provide traffic support incentive measures for operators on the platform that comply with its requirements. On the other hand, it is to monitor the platform operators to open stores or participate in promotions on other competitive platforms through manual inspection and Internet technology monitoring. Activities, and relying on market forces, platform rules, data, algorithms and other technical means to impose penalties on platform operators who do not implement the relevant "two-choice-one" policy, including reducing resources support for promotional activities, canceling qualifications for participating in promotional activities, and searching Downgrade rights, cancel other major rights and interests on the platform, etc.

It is worth thinking about that, compared with the traditional "choose one of two" behaviors, the implementation of the "choose one of two" behavior on the Internet may be more concealed, so there will be ways and methods to determine the behavior of "choose one of two" on the Internet platform. The difference. According to the provisions of Article 15 Paragraph 3 of the "Anti-monopoly Guidelines" on restricted transactions, it is believed that choosing one of the two includes not only requiring merchants (ie operators on the platform) to "choose one" of competing platforms in the form of contracts, but also Take punitive measures such as search power reduction, traffic restriction, technical obstacles, and deduction of deposits, or use incentives such as subsidies, discounts, discounts, and traffic resource support to achieve the effect of "choosing one of two".

In this article of legislation, law enforcement agencies reasonably distinguished the level of illegal risk of punishment-restricted limited transactions and incentive-based restrictions. However, in the above two kinds of behaviors specifically about whether they constitute restricted transactions, especially for the determination of incentive-type restrictive behaviors, there is still a large space for determination and refereeing. For example, in this case, Alibaba Group claimed that it would give unique resources to the operators on the platform as consideration, which is an incentive measure and has legitimate reasons. The restrictive measures taken by the parties are aimed at situations where the operators on the platform fail to comply with the agreement, and the implementation of relevant acts is necessary to protect specific inputs for the transaction. In its determination, the SAIC denied that the agreement was not voluntarily signed by the operator to deny that Alibaba Group imposed penalties on the operator based on the violation of the agreement, and to take incentive measures and not to deny the incentive restrictions based on the "choice of two" behavior as a necessary prerequisite. legality. It can be seen that this case did not follow the requirements of the "Anti-monopoly Guidelines" in the determination of incentive restrictions, but took a different approach, analyzed the necessity of the behavior, and provided a new reference for subsequent law enforcement.

3.4. Determine that the Party's Conduct Excludes or Restricts Market Competition

The "Anti-monopoly Law" has been regarded as an "economic constitution" on many occasions and even in the eyes of many jurists, which is enough to show its importance in the economic field. The "Anti-monopoly Law" is a legal system that regulates market behavior and maintains market competition. Its ultimate goal is still to protect the interests of the people and the overall welfare of the country.

In the determination of this case, the General Administration held that Alibaba Group restricted the platform operators from opening stores on other competitive platforms or participating in other competitive platform promotion activities, forming a lock-in effect to reduce its own competitive pressure, improperly maintaining and consolidating its own market position, and deviating from it. The open, inclusive, and shared development concept of the platform economy eliminates and restricts relevant market competition, harms the interests of operators and consumers on the platform, weakens the innovation power and development vitality of platform operators, and hinders the orderly regulation of the platform economy Innovation and healthy development. It is believed that its behavior is first to exclude and limit the competitiveness and competitive potential of other competitive platforms; secondly, it damages the interests of operators in the platform, hinders the optimal allocation of resources, and restricts the innovation and development of the platform economy. It also focuses on the analysis of monopolistic behavior that restricts consumers' right to choose freely and fair trading rights, harms consumers' interests, and in the long run will bring potential damage to the overall level of social welfare, which fully reflects the legislative purpose of the Anti-monopoly law. And the core value of competition law.

3.5. Summary

Since the end of 2020, Anti-monopoly in the Internet field has become a hot issue. On November 10, 2020, the State Administration for Market Regulation issued the "Guidelines for Anti-monopoly in the Field of Platform Economy (Draft for Comment)." On February 7, 2021, the Anti-monopoly Commission of the State Council released the official version of the guidelines. On December 11, 2020, the Politburo meeting clearly requested "strengthening Anti-monopoly and preventing the disorderly expansion of capital"[1]. In the two sessions of 2021, the government work report emphasized once again, "We must strengthen Anti-monopoly and prevent the disorderly expansion of capital, and resolutely maintain a fair competitive market

environment." The work reports of the Standing Committee of the National People's Congress and the Supreme People's Court also emphasized again. "Anti-monopoly Law" revision and "Judicial Anti-monopoly" content. The People's Bank of China, the Ministry of Communications, and the Civil Aviation Administration of China and other industry regulatory agencies have also clearly proposed to strengthen Anti-monopoly work in their respective industries, which will also involve the supervision of Internet business.

It can be seen that the current Anti-monopoly concern in my country has reached unprecedented heights, and the Anti-monopoly investigation on Alibaba Group starting at the end of 2020 can only be regarded as the beginning of an Anti-monopoly investigation on China's Internet industry. In this penalty, Alibaba Group was fined 18.228 billion yuan, which has exceeded the fines in the high-profile Qualcomm and Tetra Pak cases, and has become the largest fine issued by my country's Anti-monopoly law enforcement agencies so far. The first "Ten Billion Ticket". Although this has a certain relationship with Alibaba's higher turnover, it is enough to show that my country's Anti-monopoly agencies are increasingly strict in Anti-monopoly law enforcement in the Internet field. On April 26, 2021, the official website of the State Administration of Market Supervision issued a notice on "According to the report, the State Administration of Market Supervision shall file an investigation into the suspected monopolistic conduct of Meituan for the implementation of the "two elections one" according to the law." Regarding the rapid and centralized review of the largest online retail platform and online food delivery platform in the Chinese market, it can also be seen that the current round of law enforcement agencies is determined to Anti-monopoly on the Internet platform.

In addition, the Anti-monopoly investigation of Alibaba Group took only four months from the filing of the case to the final announcement of the penalty decision, which was significantly shorter than the 14 months in the previous Qualcomm case and the 24 months in the Tetra Pak case. Time for investigation and evidence collection. This means that the SAIC may have formed a relatively complete and rapid identification system for Anti-monopoly investigations. In subsequent Anti-monopoly investigations, it may continue to continue the rapid identification style in order to identify relevant actions as soon as possible, stop losses in time, and more. To protect the rights and interests of relevant competitors and consumers.

What is more noteworthy is that in this case, the State Administration for Market Regulation issued an "Administrative Guidance Letter" in addition to the "Administrative Penalty Decision". This is the first time in the history of Anti-monopoly law enforcement in our country. The "Administrative Instruction" mainly provides guidance for Alibaba Group to regulate its own business behaviors, carry out centralized declarations of operators, prohibit the implementation of monopoly agreements and abuse of market dominance. On the whole, it is still consistent with the guiding spirit of the "compliance and guidance" stage of Internet platform antitrust that the author believes is currently in. In sharp contrast with the previous method of only penalizing and not guiding, it may also become the "standard configuration" for Anti-monopoly law enforcement on Internet platforms in the future.

4. Analysis of Internet Platform Abuse of Market Dominance based on Ali's "Two-Choice-One" Case

4.1. Current Problems Build a System

My country's "Anti-monopoly Law" has been implemented since 2008, and it has only experienced 13 years of development. The Anti-monopoly on traditional industries is not enough to form a complete system mechanism, and the law enforcement in the emerging Internet field is even more inadequate. In order to accumulate sufficient law enforcement and judicial experience. This further makes it difficult for the market supervision administration or courts at all levels to effectively respond to Anti-monopoly in the Internet field. On November

10, 2020, the State Administration for Market Regulation issued the "Anti-monopoly Guidelines on the Platform Economy Field (Consultation Draft)" (hereinafter referred to as the "Anti-monopoly Guidelines (Consultation Draft)"); only three months later On February 7, 2021, the Anti-monopoly Commission of the State Council issued the Anti-monopoly Guidelines of the Anti-monopoly Commission of the State Council on the Platform Economy (ie the "Anti-monopoly Guidelines"). China has responded to the two-choice, algorithmic collusion and other issues concerned in China, and also officially included the two-choice and big data acquaintance behaviors into the scope of antitrust, and these behaviors are to a large extent an abuse of the market. A manifestation of dominance. However, through the above case analysis, it can be found that the "Anti-monopoly Guide" for abuse of market dominance only refines or concretizes the relevant provisions of the "Anti-monopoly Law", and still has not escaped from the traditional analysis framework and determination. Paradigm, and the specific types of abuse of market dominance and the distribution of legal responsibilities are all inadequate, and there is no relevant supporting identification standard and identification system for the identification of abuse of market dominance. It may also be the future Internet The identification of platform abuse of market dominance brings new problems. At present, whether it is the "Anti-monopoly Law" or the "Anti-monopoly Guidelines", the regulations on the abuse of market dominance are very general and general, so that there is a lack of legal and effective standards for guidance in the judicial and law enforcement process. For example, according to Article 17 of the Anti-monopoly Law, an operator with a dominant market position may constitute an illegal act only if he conducts a tie-in sale under the premise of "no legitimate reason". However, my country's Anti-monopoly law does not treat "Justified reasons" make specific explanations, lack of uniform application standards, and subjectiveness when applying them, which may largely depend on the attitude of law enforcement officials. On the other hand, the abuse of dominance on the Internet platform will involve a series of types of legal benefits that are relatively new to traditional legal benefits, such as big data, personal information, and private data. Then, in the determination of Internet abuse of market dominance, How to connect these legal interests and abusive behaviors that are not completely clear in other legal norms, or how to recognize abusive behaviors based on these legal interests, is also a problem to be faced in the future.

4.2. Build Systems

As analyzed in the previous article, the rapid development of Internet platforms in recent years has brought tremendous changes to the entire society. Taobao has changed the way people shop; Alipay and WeChat Pay almost make cash disappear from our lives; WeChat makes communication with people simple and efficient; DingTalk and Tencent Conferences provide online lessons for hundreds of millions of people every day during the epidemic And conference services; Meituan and Ele.me allow people to taste delicious food without leaving home... Each of us is a part of this era, and we are forced to cater to this era, no matter what we see. The so-called anxiety in society is still invisible to the data and algorithms of the Internet age.

With the tremendous social changes brought about by the Internet economy, the Anti-monopoly Law, which was originally built on the traditional real economy, has gradually become weak. How to balance the problems arising from the alternation of the old and the new in this new era will naturally It falls on the society and the country at this time. Of course, every one of us who grew up in this era should also be obliged to do so. I personally believe that the current regulatory system for the construction of my country's Internet platform abuse of market dominance should mainly be considered from the legislative level and the regulatory level.

4.2.1. Legislative Level

The current Anti-monopoly legal system was born and developed in the traditional industrial economy. In the context of the platform economy, the three-dimensional market competition structure around platforms[2], data, and algorithms, and the cross-platform cross-network effect displayed by the platform have profoundly changed the digital market competition[3]. Order and internal logic, the traditional Anti-monopoly competition concept with price as the core cannot adapt to the new market competition in the increasingly developed science and technology and platform markets. It is precisely because of this different way of competition that traditional legislative ideas do not match the existing legal issues. Therefore, if you want to start from the legislative level, the first problem to be solved is the issue of legislative guiding ideology and legislative ideas.

As mentioned in the previous article, the "Anti-monopoly Law" is known as the "economic constitution", but I personally think that the legislative purpose of this "constitution" is to maintain stability, and the "stability" of the market economy lies in the market. The "stability" of competition ultimately leads to the openness and fairness of the competitive environment. Therefore, in the spirit of legislative guidance, the key is to properly handle the boundary between market enthusiasm and government macro-control, focusing on establishing an open and transparent market competition environment, which is not only conducive to the state's supervision of enterprises, but also beneficial to small and medium-sized enterprises and large enterprises. Competition, thereby stimulating the vitality of innovation.

Second, it is necessary to improve the legislative model. I have mentioned many times in the previous article that there are many imperfections in the current Anti-monopoly law system in my country. Although the "Draft of the Anti-monopoly Law" has been announced, the amendment of the "Anti-monopoly Law" has also been put on the legislative agenda, but at present Judging from the content of the Draft, it is only a partial refinement, and its role in determining the abuse of market dominance by Internet platforms is still limited. Therefore, which legislative model can be adopted to keep up with the pace of the times under the increasingly developed Internet platform economy to supervise related behaviors has also become an issue that needs to be paid attention to.

Judging from the current experience outside the territory, the Anti-monopoly regulation of Internet platforms mainly includes a separate legislative model represented by the European Union; a legal modification model represented by the United States and Germany; and a separate regulation of certain types of behavior represented by South Korea[4]. The above three models have their own advantages and disadvantages. For example, the content of the separate legislative model is full and complete, but the system is too complex; the legal modification model maintains the stability of the law, but it is difficult to introduce new models and concepts; separate regulation and pertinence of certain behaviors Strong but may lead to arbitrary legislation and easily lead to conflicts between laws.

Based on the current legislation on platform economy in our country, I think we should learn from the US and German law modification models. The main reason is that my country, as a country with a civil law system, has always pursued the stability of the law very strongly, and as far as the current status of my country's legislation is concerned, it is relatively compatible with this situation. For example, in the process of advancing the "Anti-monopoly Law", my country is actively promoting special "Anti-monopoly Guidelines" and "Compliance Guidelines". Under such a system, whether the determination of more detailed issues such as abuse of dominant market position, concentration of operators, and monopoly agreements can be accompanied by relevant regulations or measures is also one of the issues that needs to be considered later.

4.2.2. Regulatory Level

As mentioned in the article before, according to the current status of law enforcement and legislation in my country, my country's regulatory development for Internet platforms abusing market dominance has moved from the development stage to the compliance guidance stage. I think the most important and significant change at this stage is that supervision should be strengthened.

In today's Internet platform economy, it is full of uncertainty and unpredictability, as well as easier to produce the "butterfly effect", which makes it difficult to control the damage caused by the supervision or punishment after the fact. The damage is estimated and compensated. Especially in the "Anti-monopoly Guidelines", the "Guiding Opinions of the General Office of the State Council on Promoting the Standardized and Healthy Development of Platform Economy" (Guobanfa [2019] No. 38) has changed the "inclusive and prudential" supervision principle to "scientific and efficient". Enable the whole society to share the technological progress of the platform and the fruits of economic development".

In this pre-supervision model, the different roles of the supervisor and the supervised should be considered, so as to carry out different institutional arrangements. Regarding the supervision of regulators, the biggest difficulty is that it is difficult to fully and effectively supervise. Therefore, in this regard, the supervisory authority can make full use of the current related technologies (big data, artificial intelligence, blockchain, etc.) to establish corresponding high-tech The intelligent supervision system and supervision model can not only reduce labor costs, but also better judge illegal acts. Especially in the behavior of abuse of market dominance, there are often a series of behaviors that require data analysis, such as data comparison, profitability, and impact. Therefore, how law enforcement agencies or regulators can fully apply the current situation Technology responds to the current monopolistic behavior due to technology, which is also worth looking forward to.

Regarding the supervision of the regulated person, excessive government supervision and frequent law enforcement may have an adverse effect on the development of enterprises and fair competition in the market, so can we seek some industry autonomy treaties or use inter-platform agreements to control the platform Constrain yourself. Especially in the current wave of corporate "big compliance", various compliance guidelines are frequently issued. The issue of the boundary between strengthening the supervision of the competent authority and allowing the autonomy of enterprises and industries is also an urgent problem to be solved.

4.3. Future Outlook

In recent years, the behavior of Internet companies using their dominant position to seek monopoly benefits is attracting eager attention from countries all over the world. For example, in 2010, the European Union conducted an antitrust investigation into Google for abuse of its dominant position in the online search market, and on June 27, 2017, the European Commission made a decision to impose a fine of 2.42 billion euros on Google's parent company Alphabet[5]. On October 6, 2020, after a 16-month investigation, the Antitrust Subcommittee of the U.S. House of Representatives Judiciary Committee released a nearly 450-page report on monopoly investigations by companies such as Google, Amazon, Facebook, and Apple. The report detailed the monopoly and anti-competitive behavior of each company, and proposed reforms to revive market competition in the digital economy and restore and strengthen the Anti-monopoly law. Among them, in the part of reviving the market competition in the digital economy, the report proposes to prohibit platforms from using discriminatory means to achieve Egoistic purpose[6]. Later, the U.S. Department of Justice and the state attorneys general of 11 states formally filed an antitrust lawsuit against Google, accusing the Internet giant of illegal business operations to expand its dominant advantage in the search and advertising market, hinder competition and

stifle rivals. India and the European Union have also launched antitrust investigations against Google and Amazon.

It is not difficult to find that the current Internet platform economy is still developing rapidly, but the regulation of its behavior is also continuously enhanced. However, there will be endless behaviors due to monopoly or abuse of market dominance. This requires the country to be timely. Propose an update to the current Anti-monopoly law system. Abuse of market dominance is one of the illegal acts widely existing in the Anti-monopoly law. In today's Internet economy, the abuse of market dominance will be easier and more concealed, considering its behavior from multiple angles and levels. Identifying, and then guiding or penalizing, to better adapt to the needs of the market economy development under the current new economy and new business conditions is the greatest expectation for the construction of the Anti-monopoly law system and Anti-monopoly enforcement in the future.

References

- [1] Administrative Penalty Decision of the State Administration of Market Supervision-State Supervision Office (2021) No. 28.
- [2] D. Yang, J.H. Zan: Antitrust Regulation of Digital Platforms, Journal of Wuhan University (Philosophy and Social Sciences Edition), Vol. 74(2021) No.2, p.160-171.
- [3] Peking University Law School/School of Intellectual Property, Peking University Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Development Research Institute, China Law Exchange Foundation, Beijing Peking University Yinghua Technology Co., Ltd. Dazhi Report: Global Internet Law Observation (2020-2021).
- [4] Peking University Law School/School of Intellectual Property, Peking University Guangdong-Hong Kong-Macao Greater Bay Area Intellectual Property Development Research Institute, China Law Exchange Foundation, Beijing Peking University Yinghua Technology Co., Ltd. Dazhi Report: Global Internet Law Observation (2020-2021).
- [5] Information on https://ec.europa.eu/cyprus/news/20170627_en <http://www.weld.labs.gov.cn>.
- [6] The House Judiciary Committee's Antitrust Subcommittee .Investigation of Competition In Digital Markets.