

# The Path of Legal Regulation of "Two for One" on Large Internet Platforms

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## Abstract

While the platform economy has become a driving force for China's economic and social development, it has also brought certain challenges to the order of competition in China's Internet market, with the issue of "second-choice" digital platforms being particularly prominent. However, the relevant legislation in China faces great difficulties in determining the dominant market position of large platforms and in analyzing the competitive effects of "second-choice". Therefore, it is necessary to realize the effective connection between the Anti-monopoly Law and the Anti-unfair Competition Law and to use the E-commerce Law to assist in the legal regulation of the "second-choice" behavior of the platform, and to make use of the effective practices of foreign countries, so as to form a clear legal system for the Internet platform. The effective regulation of "second choice" under a clear legal system.

## Keywords

Limited Transaction; "Two-for-One"; Anti-trust.

## 1. Introduction

With the development of digital technology and the popularity of the Internet, the Internet platform economy has become more dynamic, and China has gradually become the most active country in the Internet platform economy. The rapid development of the Internet platform economy has, to a certain extent, solved the problem of inefficient resource allocation, while bringing shopping convenience to consumers, improving the consumer experience, realizing the transformation of old and new dynamics, and promoting the development of production. The booming development of internet platforms and the promotion of economic growth has also been accompanied by the emergence of a large number of bundled transactions and the negative benefits of "winner takes all", and in recent years the "Two-for-One" behavior of platforms has been repeatedly prohibited.

In April 2021, Alibaba was fined RMB 18.228 billion by the State Administration of Supervision and Administration for its "Two-for-One" conduct that restricted multiple choices for merchants in a manner that excluded competition, infringing on the legitimate interests of merchants within the platform built by Ali and the interests of consumers associated with it. The SAIC found that Ali Group's conduct had undermined the order of the online retail platform services market in China and violated the relevant provisions of China's Anti-monopoly Law.

However, the existing provisions of China's Anti-monopoly Law cannot effectively prevent and regulate the "Two-for-One" practices of Internet platforms. At present, there is no clear legal concept in China's legal system for the "Two-for-One" behaviour of large Internet platforms, and there are no specifically applicable standards for the determination of the relevant markets of large Internet platforms and the dominant position of the relevant markets, and no reasonable regulatory path has been constructed.

## 2. The Large Internet Platform "Two-for-One " Limited Transaction Behavior Identified Key

Against the backdrop of a growing virtual network, a growing digital economy, the growing power of platforms, the initial accumulation of capital and the acquisition of a dominant position in the relevant market and the use of this advantage to hinder dependent competitors and exclude future competitors. In general, the key to the determination of a "Two-for-One" limited transaction on a large internet platform lies in the relevant market, the dominant position and the effect of the "Two-for-One" behavior.

### 2.1. Relevant Market Definition for Internet Platforms

According to the Anti-monopoly Guidelines on the Platform Economy issued by the Anti-monopoly Committee of the State Council, it is clearly stated that the relevant market refers to the range of goods and geographical scope of competition among operators for specific goods or services within a certain period of time, including three markets: time, product and geographical. However, the relevant product market of these three in the Internet platform needs to take into account the substitutability, and at the same time consider the consumer consumption trend to a certain extent. Referring to the data direction of the consumption of each platform in the same time period, the relevant market can be more clearly identified. As the digital economy develops in depth, the limitations of existing methodologies are becoming apparent, and as new industries and models emerge in the digital economy, the dilemma of their application is becoming increasingly apparent. [1]

### 2.2. Determination of Market Dominance

The determination of whether an internet platform has a dominant market position is a prerequisite for the characterization and regulation of its "Two-for-One" behavior. Articles 17, 18 and 19 of the Anti-monopoly Law, which came into force in 2008, stipulate that the criteria for determining market dominance are mainly applicable to the determination of market dominance in relation to the traditional real economy in China. However, the determination of a platform's ability to control can also be made in terms of the amount of its transactions in similar substitutable commodities, its volume, its sales, its ability to control upstream and downstream markets or other related markets extended therefrom, etc.

### 2.3. Analysis of the Competitive Effects of "Two-for-One" Behavior

Internet platforms require their operators to "choose between competing platforms" and not to sell or participate in promotions on their competing platforms, which directly reduces the supply of businesses on their competing platforms, reduces the choice of consumers on their platforms, and increases the supply and demand on their own platforms. The large internet platforms are able to increase their market share through their own market share. Large internet platforms, through their dominance of market share, use agreements or verbal agreements to restrict the free and varied choices of merchants, essentially Monopolistic the supply of and demand for a large proportion of the relevant market, directly limiting the orderly development of competition and the potential for competition.

## 3. Analysis of the Regulation of "Two-for-One" Behavior by the Antitrust Law

### 3.1. The Provisions of China's Anti-monopoly Law on "Two-for-One" Conduct and its Inadequacies

The "Two-for-One" platform is an abuse of its dominant market position to prevent, exclude or hinder the full and effective exercise of competition, in accordance with Article 17(1)(4) of

China's Anti-monopoly Law. The platform operator prohibits the operator from selling and participating in promotional activities on platforms other than its own platform with which it has a competitive relationship, or else it takes specific punitive measures against the merchant. However, Article 17 of the Anti-monopoly Law is too simplified to effectively reflect the characteristics of the platform economy, and the specific circumstances are difficult to identify, requiring consideration not only of the application of the underwriting provisions, but also of the subject matter of application and the positives of application. China's current Anti-monopoly Law was formally implemented in 2008, and the law was applied at a time when China's internet platform economy was in its initial stage of development and internet platforms had not yet been formed on a large scale. The main purpose of the legislation was therefore to regulate the traditional economy. The platform economy has obvious characteristics such as network effect, winner-takes-all, multilateral market, big data matching effect, dynamic innovation and cross-market, which makes the Anti-monopoly in the platform economy face a series of new problems and challenges. [2] Therefore, it is urgent to amend and improve the Antimonopoly Law to achieve effective regulation of the platform economy.

### **3.2. Exploring the Path of Regulating "Two-for-One" Behavior on Platforms**

#### **3.2.1. The Anti-monopoly Law and the Anti-unfair Competition Law Complement Each Other**

Anti-monopoly legislation and Anti-unfair competition legislation have the same purpose, their legal origins are closely related and there is a certain overlap in the scope of adjustment. In essence, the relationship between the two is one of inclusion and inclusion, i.e. monopolistic behavior is a special kind of unfair competition.

The Anti-monopoly Law is no longer able to accurately apply to the monopoly of "Two-for-One" Internet platforms, and therefore needs to be effectively linked to the Anti-unfair Competition Law. Article 12 of the new Anti-unfair Competition Law, which was amended in 2019, can be applied to the "Two-for-One" practices practiced by internet platforms, without allowing "Two-for-One" to escape the sanction of the law. Although the corresponding standard of proof is reduced, the relevant regulatory authorities are not yet sound in terms of regulatory procedures, regulatory basis and regulatory measures. The legal liability for violations of the Anti-unfair Competition Law is relatively light, resulting in a phenomenon where the cost of breaking the law is too low and the benefits are greater, especially for large platforms where the penalty is not a substantial deterrent, such as Ali being fined 18.228 billion yuan, which seems to be an astronomical figure, but for Ali is only 4% of its sales in 2019. Underwriting regulation through the Anti-unfair Competition Law can play a part in regulating the effect, but such a docking effect is not a long-term solution and needs to be promoted as soon as possible to amend and improve the Anti-monopoly Law or introduce special legislation for monopolistic practices in the platform economy and improve the procedures for related enforcement.

#### **3.2.2. Regulation of Illegal Monopolies with the Aid of the E-commerce Act**

The digital economy continues to develop and the platform economy is becoming more and more active. Monopolistic practices such as "Two-for-One" and other unfair competition on platforms cannot be effectively regulated under the existing legal system, so China enacted the E-commerce Law in 2019 to deal with the current E-commerce sector. However, in terms of its specific provisions, the actual operability is weak when it comes to determining the market dominance of internet platforms. In other words, the E-commerce Law itself has certain difficulties in determining this, but it is still useful compared to the traditional Anti-monopoly rules.

Article 35 of the E-commerce Law does not limit market dominance and is applicable in a broader area. It is a provision that regulates unfair competition on E-commerce platforms and provides for the possibility of effective regulation of "Two-for-One" behavior on platforms.

Article 35 sets out the substantive and formal elements of the conduct of platform operators, and is clearer in its application than the relevant Anti-monopoly provisions. Firstly, Article 35 provides for rigid requirements on market dominance and market power, which to a certain extent can alleviate the problem of difficult proof for regulators; secondly, the way in which the provisions of the Article have been increased and the enumeration phase has been increased, providing reference to regulators is the idea. But in practice, the Internet platform often take more covert means to the operators within the platform restrictions, for example, through verbal warnings, which makes the administrative authorities in the investigation process can not in the difficult to obtain evidence more prominent. At the same time, because unreasonable restrictions, conditions and costs of the standard has not yet been clarified, the determination of the time remains ambiguous.

The current Anti-monopoly Law can complement the Anti-unfair Competition Law in regulating the "Two-for-One" behavior of large Internet platforms and provide necessary support through the E-commerce Law. This can temporarily solve the current problems, and at the same time achieve an organic triadic transformation when the existing Anti-monopoly technology is not applicable, so as not to make the "two choices" and other Internet monopoly behavior "impossible to follow".

### **3.2.3. Inspiration from Foreign Antitrust Laws on the Regulation of Monopolistic Behavior on Internet Platforms**

The digital economy is growing rapidly not only in China, but also in other countries around the world. The governance means and strategies of countries for Internet platforms and the Anti-monopoly practices for Internet platforms are different from the original Anti-monopoly practices for regulating the traditional economy, following the footsteps of the development of the Internet and constantly improving the intensity and timeliness of the regulation of the Internet platform economy to ensure that the Internet platform economy can become an important part of its advantage in international economic competition. The path of legal regulation of large Internet platforms in China at this stage is still imperfect, and therefore draws on effective foreign Anti-monopoly practices for platforms.

#### **3.2.3.1. EU**

The EU is a world leader in economic development, with a well-developed digital economy and the internet platform economy has brought significant benefits as well as a great deal of competitive bias. Therefore, the EU is trying to prevent "pinch point" mergers and acquisitions from undermining innovation and technological progress in the platform economy, and to keep the platform economy developing in an efficient and dynamic way. At the same time, the EU has adopted reasonable market definition criteria for the determination of market dominance in the platform economy through the development of [3], distinguishing between trading platforms and non-trading platforms for Internet platforms, and adopting a dynamic assessment of the market power of the platform economy, and adopting ex ante regulation of platforms to ensure antitrust enforcement.

In 2020, the EU proposed the Digital Services Act and the Digital Marketplace Act, which establish a uniform regulatory system for the regulation of digital economy platforms in the EU and will effectively regulate monopolistic practices in the platform economy. The Digital Marketplace Bill also makes up for the failure of traditional antitrust law in relation to platform-based business models by defining the "gatekeeper" standard. [4]

#### **3.2.3.2. Germany**

Although Germany's antitrust regulation of the traditional market economy is not as advanced as that of countries such as the United States, its antitrust regulation of Internet platforms is at the forefront of the world. Germany has taken the lead in the digital market by conducting studies and reports on the Internet market, filling legal gaps in a timely manner, and enforcing

the law against industry giants in a timely manner to deal with monopolistic and unfair competition on Internet platforms. The timely updating of German laws in unregulated areas has facilitated law enforcement and the administration of justice, while platform operators are able to foresee the consequences of their actions in a timely manner and do not endanger the platform economy under the banner of "nothing is allowed without the law". In addition, the Digital Competition Act adopted by the German Federal Assembly so that the Cartel Office can specifically deal with competition issues of digital platform enterprises has a basis, and its use of "unreasonable data or transfer of rights" as a factor to consider for monopolistic behavior of internet platforms is also innovative and applicable.

### 3.2.3.3. United States

The United States was the first country to introduce the Sherman Act in 1980 to regulate antitrust in its economy. However, because of its negative regulation of the digital market, it has led to lower and lower competition in its market and oligopoly and other phenomena continue to appear in various industries, causing the country's economy to wither and seriously harming the domestic economic order and the legitimate interests of consumers, and this has driven the course of the US in the field of digital economy to develop monopoly legislation. Of course, it is still worthwhile for China to learn from the regulation of digital economy platforms in the United States. The United States has adopted four major bills, namely the Enhancing Compatibility and Competition by Allowing Service Conversion Act, the Platform Competition and Opportunity Act, the Ending Platform Monopoly Act and the American Choice and Online Innovation Act, to identify the relevant market and market dominance of the Internet platform, and to strictly and effectively identify and regulate the monopolistic behavior of the platform operators, so as to realize that there are laws to follow and to be followed, which is conducive to the smooth operation and orderly development of its Internet market, safeguarding the legitimate rights and interests of Internet platform operators, merchants and consumers, and achieving a win-win situation for society as a whole.

## 4. Conclusion

In the Internet era, the platform economy is becoming increasingly important in a country's economic structure. The massification of Internet platforms is conducive to the formation of platform economies of scale, optimizing the allocation of resources, promoting the diversification of economic markets and enabling China to achieve a dominant position in the international Internet platform market. However, at present, China's prior supervision of the "Two-for-One" behavior of Internet platforms, the identification of the market related to the platform economy and the identification system of the dominant market position of platforms are not sound, and the monopolistic behavior of large Internet platforms, such as "Two-for-One", has seriously jeopardized the development and benign development of the Internet economy. This has seriously jeopardized the development of the Internet economy and healthy competition. Although the effective interface between the Anti-monopoly Law and the Anti-unfair Competition Law, and the E-commerce Law's assistance in determining the market dominance of platform operators can, to a certain extent, achieve Anti-monopoly regulation of the "Two-for-One" behavior of large Internet platforms, it is still difficult to apply. Therefore, it is urgent to continuously improve China's legislation and law enforcement, and learn from advanced foreign practices to improve the regulation and supervision of Internet platforms in China as soon as possible.



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