International Journal of Trend in Scientific Research and Development (IJTSRD)
Volume 9 Issue 2, Mar-Apr 2025 Available Online: www.ijtsrd.com e-ISSN: 2456 – 6470

Research on Anti - monopoly Regulation of Platform Economy

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ABSTRACT

In the context of the digital age, while the platform economy is booming, there are also monopolistic situations such as monopolistic agreements among operators, abuse of market - dominant positions, excessive concentration of operators, and data monopolies. There are also many difficulties in determining platform monopolistic behaviors. At the regulatory level, there are dilemmas such as an imperfect legal and regulatory system, fragmented supervision, and insufficient technical capabilities of regulatory authorities. In response to this, this paper proposes corresponding countermeasures from four aspects: updating legislative concepts, optimizing relevant determination methods, promoting dynamic and coordinated supervision, and achieving digital supervision through technological empowerment. The aim is to effectively regulate monopolistic behaviors in the platform economy and promote the sustainable and healthy development of the economic society.

KEYWORDS: *platform economy, anti - monopoly regulation, difficulties in determination, regulatory dilemmas*

How to cite this paper: Guo Zimo "Research on Anti - monopoly Regulation of Platform Economy" Published in International Journal of Trend in Scientific Research and Development (ijtsrd), ISSN: 2456-6470, Volume-9 | Issue-2, April 2025, pp.369-375, URL: www.ijtsrd.com/papers/ijtsrd76304.pdf

IJTSRD76304

I. Monopoly Situations in the Platform Economy

A. Monopoly Agreements

Traditional monopoly agreements involve controlling the quantity and price of goods, as well as coordinated exclusion of transactions, etc. The key to their determination lies in the intention communication among operators. In the digital economy era, however, operators are more likely to conspire when using algorithms. They not only do not need real-life communication but also do not require the participation of the operators themselves in cases of agency-like conspiracy [Agency-like conspiracy refers to the process in the dynamically changing digital market where algorithms directly act as agents, monitor the pricing of competitors, automatically adjust the pricing at any time according to market data, and automatically send signals to competitors to achieve price coordination.] and autonomous conspiracy [Autonomous conspiracy, also known as "virtual conspiracy", mainly refers to the process based on artificial intelligence and machine deep learning technology. Algorithms can not only process massive amounts of data in the digital market in real time but also establish their own market view through advanced neural networks, conduct self-learning and autonomous decision-making, and form optimal pricing strategies to help operators maximize profits.]. In the platform economy field, horizontal monopoly agreements are manifested as agreements reached between platforms or operators within platforms to fix or change the prices of goods or services, restrict the production or sales quantity of goods, divide the sales market or raw material procurement market, and jointly boycott transactions with specific operators. Taking e-commerce platforms as an example, some brand owners reach monopoly agreements to restrict the sales quantity of a certain popular product within a specific period, thus creating an illusion of product scarcity and increasing the product price. Vertical monopoly agreements in the platform economy field are mainly manifested as operators fixing the price at which goods are resold to third parties and restricting the minimum price at which goods are resold to third parties. Regarding the hub-and-spoke agreements in the platform economy field, Article 8 of the *Anti-Monopoly Guidelines for the Platform Economy Field* [Article 8 of the Anti-Monopoly Guidelines for the Platform Economy Field issued by the Anti-Monopoly Commission of the State Council: Competitor operators within a platform may, by

virtue of the vertical relationship with the platform operator or through the organization and coordination of the platform operator, reach hub-and-spoke agreements with the effect of horizontal monopoly agreements. When analyzing whether such agreements are monopoly agreements regulated by Articles 13 and 14 of the Anti-Monopoly Law, factors such as whether competitor operators within a platform use technical means, platform rules, data, algorithms, etc. to reach and implement monopoly agreements and exclude or restrict competition in the relevant market may be considered.] stipulates the factors for their determination.

Due to the influence of technology such as big data-driven and algorithm mechanisms, the platform economy market has a multilateral nature. The monopoly agreements reached by platform operators are often more concealed and complex than traditional monopoly agreements. For example, operators may use technical means such as algorithms for price coordination, making price changes seem to be based on market factors, but in fact, they are collusions among platform operators, which not only damages the legitimate rights and interests of consumers but also hinders innovation to a certain extent, disrupts the normal market competition order, and is not conducive to the healthy and sustainable development of the platform economy.

B. Abuse of Market Dominance

Firstly, based on the characteristics of the two-sided market and network externality of the platform economy, users at both ends of the platform will have the characteristic of cross-influence. The more users access at one end, the more it will attract an increase in the number of users at the other end. Under the influence of the "snowball effect", if a platform obtains a large user base in the market, its network externality will attract more users to join, further expanding its market share and ultimately resulting in a "winner-takes-all" situation. In order to continue to consolidate their monopoly position in the platform economy field and achieve the goal of eliminating competition, some large platform enterprises will, by virtue of their market power, user stickiness, and path dependence, restrict the "multi-homing" rights of platform users, damage consumers' rights to know, independent choice, and fair trade, and hinder the normal development of other platform enterprises. A typical case in practice is that platforms abuse their market dominance to force users to "choose one from two" and so on.

In addition, the monopoly behavior of the platform economy through the abuse of market dominance is also manifested in specific forms such as data abuse, predatory pricing, and self-preference. Platforms use algorithm technology to collect and analyze massive amounts of user data, and damage the legitimate rights and interests of consumers and other competitors through unreasonable pricing, improving their own ranking, etc., or through cross-subsidization, quickly lock in a large number of users and occupy a large market space in the early stage of development, exclude relevant competitors, and then quickly recover costs and increase economic profits by canceling subsidies and other means in the later stage.

C. Excessive Concentration of Operators

The concentration of operators that excludes and restricts competition is mainly manifested as excessive mergers and acquisitions, and even killer acquisitions. Platforms that enter the platform economy field first have already attracted a large amount of user data, traffic, and resources in the early stage. When subsequent platforms enter, in order to reduce the competitiveness of other platforms and further consolidate their monopoly position in the market, large platforms that entered first will merge and acquire later-entering platforms and continue to occupy a large market share to maintain their competitive advantage. When Uber, the originator of ride-hailing, entered the Chinese market in early 2014, it did not have an obvious competitive advantage due to the merger of Didi Chuxing and Kuaidi Dache. In 2016, Didi Chuxing and Uber China announced their merger, and after the merger, they occupied 85.3% of the share in the premium car service market [2].

It is not difficult to see that excessive mergers or acquisitions will make market entities and contents tend to be homogeneous, which will have an adverse impact on the long-term development and safe operation of the market economy. On the one hand, excessive concentration of operators will intensify the monopoly behavior of platforms abusing their market dominance, stifle the innovation initiative of some small and medium-sized enterprises, affect the quality of products or services and subsequent research and development, and is not conducive to the construction of a fair and orderly market competition order. On the other hand, it will strengthen users' dependence on specific platforms, reduce consumption choices, increase transfer costs, and reduce bargaining power, which is not conducive to the protection of the rights and interests of the user group.

D. Data Monopoly

Data is the core asset of platform operation. The data analysis and processing capabilities composed of the Internet, big data, and artificial intelligence are

important technical foundations for the operation and value creation of the platform economy system. Large digital platforms represented by Google, Facebook, Amazon, Tencent, Alibaba, Meituan, etc. are typical data-driven multilateral market business models. Digital platforms achieve supply-demand matching at the fastest speed and higher efficiency by collecting and processing big data, and continuously carry out business model innovation based on big data mining and algorithm optimization, obtain value through data commercialization, and build a larger platform industry ecosystem [3]. The user data, behavioral data, geographical location data, etc. mastered by the platform are interrelated and jointly depict a complete user profile. The platform uses technical means such as algorithms to accurately analyze these massive amounts of data, thereby forming its own unique competitive advantage, better understanding users' personalized needs, mastering the laws of the platform economy market, and timely adjusting its business strategy to stand out in the competition with other platforms.

However, the application of big data by platforms is extremely likely to produce the effect of data monopoly in practice. For example, platform enterprises may be reluctant to provide data resources to other enterprises or third-party developers, may sign exclusive data collection agreements with users or partners, and technically block their own data. Through complex encryption technology and access control mechanisms, it is difficult for external enterprises to obtain their data. Even when data sharing is required by laws and regulations, they will set many obstacles. After mastering a large amount of data information, platforms may take targeted business measures such as dumping at low prices to suppress competitors, or, without the consent of users, illegally obtain, provide, or sell user information, which violates the privacy rights and personal information protection rights of platform users and seriously disrupts the market competition order of the platform economy.

II. Difficulties in Anti-Monopoly Determination and Regulatory Dilemmas in the Platform Economy

A. Difficulties in Anti-Monopoly Determination in the Platform Economy

1. Difficulties in Determining Monopoly Agreements

In the determination of monopoly agreements in the platform economy, there are no obvious monopoly agreements among operators, nor are there obvious intention communications. Their conspiracies are more often carried out through complex and concealed digital means, and monopoly agreements are reached by using encrypted communication, big data analysis, algorithm coordination, etc. It is very difficult to judge from both subjective and objective aspects whether there is a monopoly conspiracy among operators and whether they have implemented monopoly behaviors. Due to the ambiguity of the platform's role and the concealment of algorithm technology, it is often difficult to distinguish between the platform's normal management and organized monopoly behavior. It is difficult to define whether technical manipulation is a manifestation of normal business optimization or a reflection of monopoly intention. Based on merchants' multiple interpretations and responses to platform rules, it is also difficult to determine whether the behavior of platform merchants is an independent decision made by themselves or a monopoly behavior carried out under the organization and coordination of the platform. For example, during e-commerce promotion activities, platform enterprises may make independent price reduction decisions after analyzing market demand and competition conditions respectively, or the platform may organize platform merchants to reach a coordinated price reduction monopoly behavior through suggestive price guidance, rewarding merchants who comply with the price strategy, etc.

2. Difficulties in Determining the Relevant Market, Market Dominance, and Monopoly Ability

Driven by economic interests, the expansion in the platform field is relatively complex. It is not a regular horizontal or vertical expansion but an unordered expansion extending to a two-sided or multi-sided market. The linkage and integration of multiple business markets require regulatory authorities, when defining the relevant market of the platform, to consider whether all the expanded fields of the platform need to be included. Even when determining the relevant market for only one business market among them, attention should be paid to the impact on other markets and users, which increases the difficulty of defining the relevant market of the platform. In the traditional method of judging market dominance, the Lerner Index of Monopoly Power [The Lerner Index, also known as the Lerner Index of Monopoly Power, measures the degree of deviation between price and marginal cost and reflects the strength of monopoly power in the market.] is generally an important indicator for measuring the market dominance and monopoly ability of operators. In the platform economy, given its two-sided market characteristics, it is necessary to measure the Lerner Index for users at both ends of the platform, which is

not easy to implement. In the Internet industry, when adding a user, the marginal cost that the platform needs to increase may be zero. At the same time, due to the cross-network externality of platform enterprises, the platform may adopt a free access policy for one end of users to attract their access and adopt a charging access policy for the other end of users to make up for the pricing loss at the other end [2].

3. Difficulties in Determining Killer Acquisitions

First, it is difficult to judge the acquisition intention because platform enterprises usually do not explicitly state that their acquisition of other operators is to eliminate potential competitive threats. They may package the acquisition as positive business strategies such as synergy effects and resource integration. To determine whether it is a killer acquisition, it is necessary to conduct an in-depth analysis of the internal strategic plans and other materials of the acquirer, but such information is often difficult to obtain, and platform enterprises will refuse to provide it on the grounds of trade secrets. Second, for traditional enterprises, their market power can be evaluated through factors such as market share and entry barriers. However, in the platform economy, the market power of platform enterprises depends not only on the number of users but also is closely related to factors such as network effects and data advantages, and it is always in a dynamic change process, making it difficult to determine specific and fixed killer acquisition behaviors.

B. Anti-Monopoly Regulatory Dilemmas in the Platform Economy

1. Incomplete Legal and Regulatory System

At present, the laws, regulations, and policy documents on anti-monopoly regulation in the platform economy field in China mainly include the *Anti-Monopoly Law of the People's Republic of China* revised in 2022, the *Guiding Opinions of the General Office of the State Council on Promoting the Standardized and Healthy Development of the Platform Economy* in 2019, and the *Anti-Monopoly Guidelines for the Platform Economy Field* issued by the Anti-Monopoly Commission of the State Council in 2021, etc. The newly revised *Anti-Monopoly Law* has responded to the anti-monopoly regulation of the platform economy. For example, it stipulates that operators shall not use data and algorithms, technology, capital advantages, and platform rules to engage in monopoly behaviors, and clearly includes "coordinated behaviors" within the definition scope of "monopoly agreements". The *Anti-Monopoly Guidelines for the Platform Economy Field* also provides important operation guidelines for anti-monopoly law enforcement and enterprise compliance in the platform economy field. However, the governance of the platform economy field often involves multiple fields such as market supervision, finance, commerce, and publicity. Its cross-border nature leads to the fact that for a monopoly behavior of a platform, multiple regulatory departments will regulate it. For issues such as different review standards and unclear division of responsibilities among various departments, there are no specific targeted rules in laws and regulations, and there is a lack of a linkage regulatory mechanism among government departments. The regulatory concept is not updated enough, and there is not enough attention paid to the competitive order, the rights of operators, and the legitimate rights and interests of consumers infringed by platform economy monopolies.

2. Fragmented Supervision

At present, there are problems of "horizontal fragmentation" and "vertical fragmentation" in the supervision of the platform field in China. Horizontal fragmentation is mainly reflected in the supervision levels of different regions and different departments. The platform economy involves multiple regulatory subjects, including industry-specific and general regulatory departments. However, the responsibilities and powers of these departments are unclear, and the division of labor is not clear, resulting in fragmented management situations such as repeated law enforcement, multiple supervision, and inconsistent decrees at the intersection of responsibilities and powers. Moreover, as a cross-field and cross-regional diversified integrated economic form, the platform economy has different regulatory standards and specific measures in different industries. Due to the unsound coordination mechanism among departments and regions, the phenomenon of data silos occurs frequently, and the situation of multiple government departments asking the same platform for data occurs frequently. This not only reduces the regulatory efficiency and credibility of the government but also hinders the healthy development of the platform economy. Vertical fragmentation is mainly reflected in the supervision time level. The regulatory department has not achieved strict supervision throughout the whole process, lacks post-event tracking of platform illegal behaviors, and the traditional static law enforcement has not played a good warning and punishment role for illegal platforms, and the law enforcement concept and sustainability need to be updated and improved.

3. Insufficient Technical Capacity

With the rapid development of a new generation of information technologies such as artificial intelligence, blockchain, big data, and cloud computing, platform enterprises closely follow technological innovation and integrate advanced technologies with their own industrial development. However, regulatory departments still have limitations in obtaining and mastering new technologies, and there is an inequality in technical capacity between them and platform operators. The reasons behind this include not only the lag in technology research and development but also the shortage of talents and insufficient capital investment. Regulatory departments lack composite talents who are proficient in relevant businesses of the platform economy and big data algorithm technology. Traditional regulatory personnel do not have an in-depth understanding of emerging platform economy technologies and cannot effectively use technical means for supervision. For example, when supervising platform enterprises of the technology cross-border finance type, professional personnel with financial and computer knowledge are required, but the proportion of such talents in the regulatory team is relatively low. In addition, the research and development and application of regulatory technologies require a large amount of capital investment, which is used to build data monitoring systems, algorithm evaluation tools, etc. However, the capital budget of regulatory departments is limited, and there are not enough resources to support them in conducting anti-monopoly reviews of the platform economy.

III. Anti-Monopoly Regulation Strategies for the Platform Economy

A. Updating the Legislative Concept

Under the background of the information age, an open, inclusive, and prudent regulatory concept should be held for the development of the platform economy. By reducing the market access threshold, encouraging enterprises to comply with regulations, etc., a loose growth environment can be provided for platform enterprises, stimulating their enthusiasm and creativity. While bringing a good experience to users at both ends, it can also enhance the reputation and comprehensive competitiveness of the platform. In terms of legislation, the legal value concepts and legislative logic of fairness, justice, and integrity should be implemented, discriminatory and selective supervision of different platform enterprises and rent-seeking behaviors should be avoided, the review methods for platform monopoly behaviors such as algorithmic collusion using technical means should be refined, the regulatory linkage among different regions and departments and the feedback and evaluation mechanism for law enforcement effects should be explored, the division of responsibilities and regulatory time points of different departments should be clearly stipulated, and guidelines should be provided for how to apply different regulatory standards and specific measures when conflicts occur. While improving law enforcement efficiency, attention should also be paid to protecting the legitimate rights of platform enterprises.

B. Optimizing Relevant Determination Methods

When defining the relevant market, it is necessary to fully consider the two-sided or multi-sided market characteristics and expansion trends of the platform economy. Not only the sales market of goods should be considered, but also related markets such as logistics and distribution, payment services, etc. should be paid attention to. When determining market dominance, the calculation method of market share should be adjusted. On the basis of the traditional calculation of market share by sales amount or sales volume, multiple factors such as the number of active users, transaction amount, and order quantity of the platform should be comprehensively considered. Secondly, innovation indicators need to be introduced, that is, data and algorithm factors should be included in the determination scope. The market power should be determined by measuring the platform's data collection and analysis ability, data quality, and utilization efficiency and other indicators, and attention should be paid to the impact of platform search algorithms, recommendation algorithms, etc. on market competition. In addition to traditional entry barriers such as capital and technology, the entry barriers brought by the unique data and network effects of the platform economy, as well as user stickiness and conversion costs, should also be taken into account. Finally, a regular or irregular review and evaluation mechanism should be established. The platform economy market changes rapidly, and a dynamic supervision method must be adopted. Regulatory departments should, according to the platform's business expansion, new technology application, and other situations, timely adjust and determine its relevant market scope.

C. Dynamic and Collaborative Supervision

Dynamic and collaborative supervision can effectively address the issues of fragmented supervision in terms of time, region, and department. Dynamic supervision requires that the time span of supervision should cover the pre-event, in-event, and post-event stages. In pre-event supervision, a list management model for platform economy monopolies can be established, and the role of soft

law governance can be fully exerted. Through positive and negative lists, the rights and responsibilities of various entities in the platform economy market can be clarified. For the contents specified in the positive list, inclusive supervision can be carried out with appropriate relaxation, while for the contents specified in the negative list, a strict and cautious attitude should be maintained. [1] For post-event supervision, the follow-up review obligations of regulatory departments should be specified. Within a certain period after punishing platforms involved in monopolies, their business operations still need to be regularly inspected and evaluated, and the punishment intensity for platform enterprises that violate relevant regulations such as the *Anti-Monopoly Law* again should be increased.

Collaborative supervision requires delineating the boundaries of the rights and responsibilities of government departments, establishing and improving a collaborative supervision mechanism to ensure that the rights and responsibilities of the entire chain of supervision work are clear and definite. Adhere to the principle of "integrated online and offline supervision", establish an integrated online supervision platform for information exchange and communication, and construct a collaborative governance mechanism of "national regulation + industry self-governance + user participation". Actively invite experts to participate in the formulation of policy research to enhance the scientific nature of decision-making management; mobilize the enthusiasm of industry self-regulatory organizations to urge platforms to comply with regulations and self-govern; add a user participation system to guide social forces to join in the supervision. [4]

D. Empowering Digital Supervision with Technology

The *Guiding Opinions of the State Council on Strengthening the Construction of a Digital Government* mentions that intelligent supervision should be vigorously promoted, and digital technology should be fully utilized to support the construction of a new regulatory mechanism. It is necessary to accelerate the establishment of a comprehensive, multi-level, and three-dimensional regulatory system to achieve full-chain and full-domain supervision in the pre-event, in-event, and post-event stages. In the context of the platform economy, the role of big data algorithm technology in promoting competition should be brought into play through means such as establishing a data sharing mechanism, improving data standards and transaction systems, and promoting credit supervision and digital supervision, so as to effectively regulate the monopoly behaviors of platforms using technological means.

For example, Article 45 of the *Personal Information Protection Law of the People's Republic of China* [Article 45 of the *Personal Information Protection Law of the People's Republic of China*: An individual has the right to consult and copy his/her personal information from the personal information processor, except in the circumstances specified in Paragraph 1 of Article 18 and Article 35 of this Law. Where an individual requests to consult or copy his/her personal information, the personal information processor shall provide it in a timely manner. Where an individual requests to transfer his/her personal information to a personal information processor designated by him/her and meets the conditions specified by the cyber administration department of the state, the personal information processor shall provide the means for transfer.] stipulates the right to data portability of personal information. The right to data portability of platform users is a guarantee of their "multi-homing" rights, which can, to a certain extent, counteract the platform's control over data, and the specific rules should be further refined. Regulatory departments can encourage platform enterprises to carry out self-regulation, explore the establishment of a credit supervision mechanism, and adopt a two-pronged approach of punishment and reward. Support regions where conditions are ripe to carry out digital pilot innovation, empower the supervision of the platform economy with technology, and effectively improve the technical application level and ability of regulatory departments.

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