

The Effectiveness of Current Competition Law Framework on Resolving Platform Competition¹

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I. The current status of platform competition in China

The competition on platform economy in China can be observed from three perspectives:

(A) A relation of competition and integration between online and offline economy

1. There still exists a relation of competition between online and offline economy. Take e-commerce retail for example. The data released by China's National Bureau of Statistics showed that, in 2019, offline retail still accounted for 4/5 of the total retail amount, and online retail only accounted for 1/5, indicating that offline retail exerted a significant check and balance on online retail.

2. There emerges a re-integration between online and offline economy, making the competition relationship between them more complicated.

(B) The features of platform competition at this stage are as follows:

First, users are the key of competition between platforms, and such competition is intensified by users' access to multiple platforms. This paper believes that the academia has not paid enough attention to such question.

Second, eco-systematic competition has become a trend because of the emergence of diversified empowerment and cross-border competition between platforms.

Third, oligarch structure and full competition co-exists on the online market.

(C) The highly controversial issues on competition at present:

First, exclusive dealing;

Second, essential facilities;

Third, the division of responsibilities between platforms and governmental departments;

Fourth, platform competition and protection for consumers' right.

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II. Means to resolve these questions in China

Regulatory background: first, because China is still, in its entirety, on the way towards an improvement in its market economy system, its industrial departments in charge of data focus on industrial development, regional industrial layout, social governance, security, and privacy; second, competition law enforcement agencies face bigger technical challenges, including but not limited to: (a) How to define relevant market? (b) How to determine market dominance? (c) How to determine ~~an~~ abuses of market dominance?

The academia has summarized some features of platform economy, which include dynamic competition, zero marginal cost, bilateral market and cross-network externality. However, there has been no complete theoretical system in this regard. That is to say, there are still some disagreements and controversies. Meanwhile, it is difficult for competition law enforcement agencies to be positively encouraged in this field.

The consensus in this regard may be summarized as follows:

1. Lack of consensus. It is appropriate to be cautious on highly controversial issues. However, there should be an attempt to resolve the questions on which there is a basic consensus.

2. Respect for market mechanism. After a further development of platform economy, some hot questions at present may not exist or become less important in the future.

3. Work cooperation and labor division between departments. Industrial regulators and competition law enforcement agencies should work together in harmony by performing their own functions and cannot be replaced by each other.

4. Interaction between administrative and judicial departments and enterprises.

III. Challenges and Solutions to Current Legal Framework in China

(A) The laws and regulations such as the Antimonopoly Law, the Law against Unfair Competition, the E-Commerce Law and the Fair Competition Review Systems can be applied and served as the legal framework and the path dependence for the resolution to the questions arising from platform competition.

(B) China should continuously improve its current laws and policies in response to the complex competition and challenges from new technologies and new business

models.

(C) Law enforcement administrative agencies and people's courts in China will handle more cases involving platform competition according to the Law against Unfair Competition than before.

(D) Competition law enforcement agencies and people's courts in China can resolve these challenges and disputes in a prudent and progressive way.

1. China's State Administration for Market Regulation is responsible for enforcing the Antimonopoly Law, the Law against Unfair Competition, and the E-Commerce Law, making it possible to make overall plans for resolving the questions. Furthermore, the four-level structures of China's market regulation system provide rooms for trial and error on a smaller scale.

2. When handling the disputes and challenges, the people's courts can reveal the inherent features of platform competition. Thus, they can grasp the rules of such completion and render appropriate judgments.

3. The Anti-Monopoly Committee of the State Council can coordinate different policy goals among different ministries with competition promotion as the bottom line.

IV. Learning from international jurisdictions

In the world, the EU Directorate-General for Competition has no large platform enterprises to regulate, the U.S. has both large platform enterprises to regulate and application practice in technologies and model innovation. China is different from them because it has large platform enterprises focusing on application and lacking enough innovation in technologies and models. Therefore, there are more similarities between China and the U.S., and China can focus on learning regulatory technologies, theories and experience from the U.S. for improvement.