

# *Legal Regulation of Monopoly Behaviour of Internet Platforms*

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**Abstract:** There are many problems in the application of existing laws on monopolistic behaviour in the field of Internet platforms. It is necessary to analyse the defects of the antitrust law in regulating the monopolistic behaviour of Internet platforms in combination with the characteristics of Internet platforms that are different from traditional industries, such as bilaterality, innovation, and dynamism. The identification of Internet platform monopolistic behaviour can be optimised by introducing special factors such as data and improving the calculation method of market share. The existing legal regulations can be further enhanced by establishing a pre-emptive supervision mechanism and establishing diversified governance.

## **1. Introduction**

Internet platforms are the organizational centre of the digital economy era, and they are gradually changing our business models and lifestyles in a subtle way, and strengthening the governance of the monopolistic behaviour of Internet platforms is an important issue in the current development of the global digital economy. Due to the unique nature of Internet platforms, there are certain drawbacks to relying solely on legal regulation. More importantly, a pluralistic approach to governance is required.

## **2. Internet Platform**

### **2.1. Internet Platform and Its Characteristics**

#### **2.1.1. Internet Platform**

An Internet platform is defined as a form of business organization that provides intermediary services, enabling bilateral or multilateral entities to communicate through network information technology and according to specific rules, match transactions and jointly create value. Traditionally, typical Internet platforms are divided into two categories: user-based Internet platforms and industry-based Internet platforms, and scholars generally subdivide each category into many subcategories based on industry characteristics[1].

### **2.1.2. Characteristics of Internet Platform**

The most basic characteristic of an Internet platform is network externality. In short, network externality means that when a product adds new users, it can bring value to old users. The best example is Internet social platforms such as Weibo and WeChat. The value of such Internet platforms is closely related to the number of their users. As the number of users increases, the content of the platform is also enriched, and old users can continue to obtain value from new users without paying any fees. As the user scale expands, the value of the Internet platform will be maximized. Secondly, the Internet platform has the characteristics of disintermediation and forming a hub at the same time, which enables bilateral or multilateral users to trade on the platform. The larger the number of users on one side of the Internet platform, the more beneficial it is for the number of users on the other side to increase. As a medium between users and suppliers, the Internet platform provides services that meet the needs expressed by different groups of both parties and develops different business models based on the needs of both parties in terms of connection, interaction, pricing and response, and benefits from bilateral interactions. Therefore, the Internet platform needs to continuously expand its users to attract more providers. Taking Taobao as an example, as the number of consumers increases, the number of platform suppliers will also increase accordingly, which will increase the participation of consumers and suppliers in the platform, which in turn will increase the choice of consumers and suppliers for the platform. Thirdly, the Internet platform also has unilateral network externalities and cross-network externalities. Finally, the Internet platform is developed with solid data support. Data has replaced physical assets and plays an important role in resource allocation[2].

These characteristics of the Internet platform make the behaviour of Internet platform monopolists more complex and diverse, and it is increasingly powerless to define the relevant market share and market dominance of the Internet platform through traditional identification factors.

## **3. Monopolistic behaviour of Internet platforms**

### **3.1. The reasons for the monopolistic behaviour**

#### **3.1.1. Internal causes**

Internet platforms attack competitors out of short-term self-interest, even at the expense of the legitimate rights and interests of users and create problems to carry out a series of monopolistic behaviours. The monopolistic behaviour of Internet platforms is also related to the fierce competition between platforms. Based on the characteristics of the Internet platform, the Internet platform economy is more complex than the real economy, and there is a tripartite relationship: the platform, the supplier and the consumer. Platforms often act as intermediaries. However, internet platforms can act not only as a medium but also as a provider, so they have the dual role of manager and provider. Taking Taobao as an example, Taobao is an e-commerce platform operator that provides a trading platform, and at this time, its identity is the platform party, and at the same time, due to the reputation and protection enjoyed by the Taobao platform, some proprietary goods are better in the eyes of consumers than the rest of the merchants, thus forming more transaction opportunities. This obviously hinders fair competition between Internet platforms, and in serious cases, creates monopolies[3].

#### **3.1.2. External factors**

At the same time, the lag of relevant laws is also the reason for the emergence of monopolistic

behaviour. There are deficiencies in the governance of monopolistic behaviours of Internet platforms in terms of legal regulation, such as identification and punishment, which makes Internet platforms ignore the consequences of their monopolistic behaviours. In addition, data is the foundation of the Internet economy, and data is naturally valued by Internet platforms. Data collection itself is a normal manipulation of information technology developments. However, when an internet platform uses the collected data for a specific commercial purpose, it may adversely affect other competitors within the platform, leading to monopolistic behaviour and hindering fair competition.

#### **4. Monopolistic conduct by internet platforms**

Monopolistic acts stipulated in the Anti-Monopoly Law include entering into monopoly agreements, abusing a dominant market position, and concentrating on undertakings that have or may have the effect of eliminating or restricting competition. The Anti-Monopoly Law focuses on monopolistic behaviours, which are common on internet platforms, including but not limited to abuse of dominant market position, excessive mergers or acquisitions, data monopoly, cross-border competition, e-commerce either-or, blocking or incompatible behaviours, etc.

##### **4.1. Abuse of dominant market position**

Judging from the anti-monopoly cases in the Internet sector that China is handling or has already concluded, Internet platforms are the most likely to engage in monopolistic behaviour, especially abuse of dominant position. The Anti-Monopoly Law establishes a special chapter and adopts enumeration and catch-all clauses to regulate the abuse of market dominance, including monopolizing high or low prices, refusing or forcing transactions, tying in the sale of goods without justifiable reasons, and differential price treatment. However, not all types of abuse are prevalent among Internet platforms, and common abuses of market dominance by Internet platforms include predatory pricing, bundling of other goods, and refusal to conduct normal transactions[4-5].

Abuse of a dominant position can be said to be an act by an internet platform with a dominant market position that illegally excludes or restricts competition in the relevant market, thereby harming the interests of the public or platform users. Internet platforms' abuse of market dominance may be divided into obstructive abuse and exploitative abuse based on the target or purpose of the conduct. Obstructive abuse of Internet platforms refers to the conduct of Internet platforms with a dominant market position to restrict competition to exclude competitors or unreasonably extend market power to other markets. The most important legal feature of obstructive abuse by an internet platform is that its immediate purpose or ultimate effect is to replace a competitor. Exploitative abuse of internet platforms refers to the imposition of unreasonable trading conditions, especially unreasonable prices, on counterparties by internet platforms with a dominant market position without being influenced by competition, and directly siphoning out monopoly profits from counterparties to obtain excess monopoly profits. In the era of the digital economy, due to the mutual integration of networks and data, data such as the number of users has become the basis for judging market dominance. At the same time, the power of the internet platform in the relevant market, the switching cost caused by the network effect, and the conductivity of its market power should also be considered in determining the market position[6].

##### **4.2. Excessive mergers and acquisitions**

To consolidate their dominance, internet platforms often choose mergers or acquisitions. The so-called excessive merger or acquisition refers to the concentration of undertakings, that is, the

number of other undertakings is reduced through mergers and acquisitions of capital, and after the concentration, the Internet platform operators gain control and expand their power. Mergers and acquisitions seem to be the most convenient way for Internet platforms to develop, which is a seemingly normal business activity, however, in practice, its purpose is to enhance its competitive strength. The actions of internet platforms have attracted the attention of antitrust authorities. M&A itself is part of the integration of market resources, which can reduce the waste of resources to a certain extent, therefore, reasonable M&A is not a monopolistic behaviour. However, due to the characteristics of Internet platforms, excessive mergers or acquisitions are essentially independent Internet platforms that occur or strengthen planned or connected relationships, which may lead to the elimination of competition at an early stage. At the same time, such mergers and acquisitions not only have the effect of eliminating potential competition but also strengthen one's dominant position, which is more damaging than the simple abuse of a dominant market position, because it may eliminate competition at its root[7-9].

### **4.3. Data monopoly**

In the era of big data, data no longer stays at the technical level, data is the core of competition between Internet platforms, and it plays an important role in enhancing its competitiveness as a strategic resource. By analysing and integrating the data generated by their users, Internet platforms can grasp the needs of users and carry out targeted business strategies.

The misuse of data by Internet companies to implement data monopoly will harm the interests of the public, users and other platforms. Because the possession and collection of data depend on the resources of Internet platforms, when large Internet platforms have financial and material resources, data can easily become a resource controlled by these platforms, and platforms with a large amount of data will have a greater advantage in the competition. When the content of data continues to increase, a data monopoly is formed, which will hinder the development of various Internet platforms and restrict normal competition. After the Internet platform tastes the sweetness of data information, it will tend to monopolize the data to consolidate its operating profits, so if other Internet platforms cannot accurately identify the authenticity of the data, it is easy to fall into the trap, make wrong decisions, and lose the initiative in competition.

### **4.4. Blocking or Incompatible Behaviour**

The issue of blocking and incompatibility of internet platforms is a hotly debated topic. Some Internet platforms often block or are incompatible with competing applications on their platforms due to competitive and operational considerations. For example, the blocking of other software and platforms, and the incompatibility of applications from other platforms, have attracted great concern from society. From an antitrust perspective, blockade and incompatibility can be broadly categorized as refusal to trade, which is inconsistent with the open spirit of the Internet and can also harm the user experience[10].

## **5. Deficiencies in the current legal system**

### **5.1. There are shortcomings in the provisions of the law**

The law is the key to determining the monopolistic behaviour of Internet platforms, but most of the current legal provisions are based on traditional industries and do not have specific provisions for Internet platforms. In cases in the Internet field, they are not practical, which in turn leads to the failure to investigate the factors that are relevant when determining the monopolistic behaviour of

the Internet platform, which makes some monopolistic behaviours of the Internet platform take advantage of loopholes.

## **5.2. There is a lack of criteria for determining the abuse of market dominance**

An accurate determination of market dominance can effectively define whether an internet platform's conduct constitutes a monopoly. Therefore, the criteria for determining the abuse of market dominance are particularly important. However, the existing legal regulations do not have detailed and clear criteria for judging. In addition, the characteristics of Internet platforms are different from the markets of traditional industries, and the factors affecting the market dominance of Internet platforms are complex and diverse, and specific criteria such as user data need to be considered[11].

## **5.3. The actual punishment is relatively light**

The existing laws lack clarity on the legal liability for the monopolistic acts of Internet platforms, the punishment is too light, and the means of punishment are single, which does not have a deterrent and preventive effect. For example, imposing a fine of between 1% and 10% of the sales of the previous year on an internet platform is insignificant to a large internet platform and far less than the economic benefits it obtains through monopolistic behaviour. Therefore, this kind of punishment is difficult for Internet platforms to play a role in punishment.

## **5.4. The provisions about responsibility and the assumption of specific responsibilities are vague**

According to the provisions of the law, the entity that bears the legal responsibility arising from the monopolistic acts of an internet platform is its actual operator. As a result, the scope of the responsible entity is too broad, and only the Internet platform that implements the monopolistic behaviour is regulated, but not the specific natural person, so that the perpetrator of the Internet monopolistic behaviour has no fear of carrying out the monopolistic behaviour. However, the monopolistic behaviour of the Internet platform will bring huge benefits to the actual manager of the platform and other natural persons. Only by precisely stipulating the responsible subjects can the deterrent effect of the law be demonstrated[12].

## **6. The development and optimization of the legal regulation of monopolistic behaviour on Internet platforms**

### **6.1. Formulate separate legal provisions for monopolistic acts of internet platforms**

Existing laws may need to amend specific provisions separately to the characteristics of internet platforms. For example, by improving the method of identifying the relevant market, it is possible to weaken the proportion of traditional factors such as market share and price monopoly and to adopt a comprehensive model to define the monopolistic behaviour of the Internet platform.

### **6.2. Establish ex-ante anti-monopoly tools such as market research**

The government or regulatory authorities may need to conduct continuous supervision and investigation of the Internet market and platforms' operation and use ex-ante supervision to promptly discover and control relevant monopolistic behaviours. Based on the authority of administrative agencies and market research, the monopoly of many Internet platforms can be

nipped in the bud and the social cost of anti-monopoly can be minimized. Anti-monopoly tools should not be used in isolation but should be used comprehensively to detect and intervene in the monopolistic behaviour of Internet platforms. Monopoly problems can only be minimized if different tools are used effectively.

### **6.3. Establish comprehensive reporting standards**

There are many different business models for internet platforms, and their essential purpose is to attract more users and thus generate greater traffic, so revenue is not the criterion that internet platforms focus on. Some Internet platforms may be in a stage of low revenue or even loss, but this does not mean that their market competitiveness will decline accordingly, but it means that their market value is still very high. Using only turnover as a criterion, many anti-competitive behaviours can be excluded. Therefore, the application of the original turnover threshold can be supplemented by the reference to "transaction value" to compensate for the problem of a single reporting standard. The higher the transaction amount, the more likely it is that the merger will increase the market power of the internet platform, thereby achieving the fundamental purpose of consolidating its dominant market position, and thus undermining fair competition in the market. The use of transaction volume as the standard can eliminate the difficulty of calculating the turnover of Internet platforms and is also conducive to the attention of large Internet platforms to mergers and acquisitions of newer platforms and make the declaration criteria more comprehensive and easier to understand[13].

### **6.4. A model of pluralistic governance should be constructed**

With the rapid development of the Internet, the original business model has gradually been replaced by a new model. Based on the bilateral or volatile market in which the Internet platform is located, there will be entities in various fields involved in the transaction, so it is necessary to recognize the limitations of national capabilities, let non-state entities truly participate in the governance system, recognize the value of non-state entities, and believe that the interaction and cooperation between the two are more important to order. Under the pluralistic governance model, the monopolistic behaviour of controlling the Internet platform does not require the continuous use of legal coercion, and a multi-subject dialogue can be conducted, which will lead to more acceptable regulatory results. The coordination of the Anti-Monopoly Law with other legal and policy tools should be strengthened, and more policy or legal tools should be used comprehensively to deal with the problems caused by the monopolistic behaviour of Internet platforms. Perhaps other relevant methods may be more effective than antitrust measures.

## **7. Conclusion**

When optimizing the existing legal rules, it is necessary to first clarify the objectives of platform anti-monopoly, combine it with case analysis, and further refine the various factors for determining the monopolistic behaviour of Internet platforms as mentioned above. Of course, blindly relying on the governance of external laws and regulations, there will still be complex and changeable monopolistic behaviours hidden in regulatory blind spots and there is a certain degree of lag, perhaps we should change our perspective and try to put supervision before the monopolistic behaviour of Internet platforms occurs. However, pre-act supervision still needs to be established on the premise of a complete anti-monopoly system, and the combination of the two to govern the monopolistic behaviour of Internet platforms will achieve twice the result with half the effort. At the same time, when refined and reformed legal regulation encounters a bottleneck, we need to



rethink the problem from the perspective of the internal perspective of the Internet platform. This requires mobilizing internet platforms to participate in platform governance, forming a multi-subject collaborative governance model, standardizing the distribution of responsibilities among different governance entities, and giving full play to the capabilities of each governance entity. Only when internet platforms genuinely engage in governance, create synergy in management, and clearly define specific responsibilities and penalties can they better regulate platform behavior. This approach can uphold a fair and free competitive environment while maximizing the innovative vitality of the platforms.

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