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The Monopoly and Governance of the Platform Economy in the Digital Era

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Abstract: The platform economy has become a new engine and leading force for China's economic development. With the rapid development of super internet platforms, this field has drawn growing attention from attention of anti-monopoly authorities. The technical attributes and business characteristics of the platform economy endow those platforms with a "natural" monopoly advantage, and the quasi-public attributes of the internet platforms require anti-monopoly authorities to bear more monopoly governance responsibilities. This paper analyzes the difficulties in monopoly governance of the platform economy from the perspectives of anti-monopoly legislation, government regulation and global monopoly governance, and proposes several solutions and suggestions to improve the effectiveness of anti-monopoly governance and promote healthy development of the digital economic ecology. The solutions and suggestions include: focusing on building up technology-based regulatory capabilities, accelerating the legislation on data protection of data, and developing an anti-monopoly system based on the principle of giving priority to innovation.

Keywords: platform economy, monopoly, governance

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The soaring internet platforms in the digital era have dramatically changed the social behavior patterns and the ecology of commerce and are reshaping social relationships and global economic growth models. The exponential growth of China's platform economy and ecosystem has already begun to hamper its scientific and technological innovation and the healthy development of its digital economic ecosystem. To prevent the disorderly capital expansion of internet platforms from hurting fair competition and thus hindering innovation in the market, it is a pressing concern for China to strengthen its anti-monopoly governance.

The Rapid Development of the Platform Economy is Posing Challenges to Monopoly Regulation

Internet platforms can, by facilitating bilateral or multilateral transactions through digital services, help build an economic system that contains a new set of values and new industrial developments (Rui, 2018). Within the platform economy, platform operators, consumers, and other service providers constitute a network of collaboration and a complex business ecosystem. This system is equal to a new mode of production, a new engine for economic development, and one of the three milestones of the "Digital Revolution," and is likely to be the most important business development of the 21st century^①.

The platform economy is expanding rapidly on a global scale. As of the end of 2019, there were 74 digital platform enterprises in the world, with each valued at more than US\$10 billion and at US\$8.98 trillion in total. Between 2018 and 2019, these 74 companies had a year-on-year 41.8 percent increase in value. In terms of the number of companies, there emerged 15 platform companies valued at over US\$10 billion in 2019. They turned out to be an important new impetus for the platform economy. Among them, there are some super platform companies which stay firmly at the top of the global market value list. The five internet behemoths—Facebook, Apple, Microsoft, Google, and Amazon, which are known as FAMGA, are all arguably super internet platforms^②. In China, Alibaba and Tencent, the two leading platforms, with a market value of RMB2 trillion, have already been listed among the world's 10 most valuable brands. Their prominence, combined with the rise of other Chinese platform giants such as JD.com, Didi, Toutiao, Meituan, and Xiaomi, contributes to a new stage in China's market, which is fully dominated by super online platforms. According to the ibaogao.com Research Group's report entitled *Market Competitiveness Analysis and Investment Prospect Forecast of China's Platform Economy from 2021 to 2027*, China's digital economy, mainly composed of internet platform enterprises, raked in RMB31.3 trillion in 2019, accounting for 34.8 percent of its Gross Domestic Product (GDP). The digital economy has become a new engine and a leading impetus for

① Three Major Topics for Collaborative Governance of Platform Economy. *Ali Research & Deloitte* (2017), from <https://i.aliresearch.com/img/20171010/20171010225005.pdf>

② The Rise of the Platform Enterprises, A World Survey. *The Center of Global Enterprise* (2016), from <https://www.thecge.net/category/research/the-emerging-platform-economy/>

China's economic development. The size of its platform economy is predicted to surpass RMB100 trillion in 2030 (Ali Research & Deloitte, 2017).

While the platform economy which is solidly supported by capital and technology generates great wealth for the society in general, it also raises a series of new concerns for the digital society, such as data security, privacy protection, labor rights and interests, and social equality. As the platform economy experiences exponential growth, its scale effect results in a negative externality and an incompatibility with public interests, which distort the process of fair competition within its ecosystem. This directly leads to regulators' investigations into several super platform companies across the world. Google, for example, has been fined billions of euros in total by the European Commission; the U.S. House Committee On The Judiciary has launched investigations into tech behemoths like Google, Apple, Facebook, and Amazon, issued anti-monopoly reports, and even filed an antitrust lawsuit against Google.

In terms of responding policies, the EU, the US, Germany, Britain, Japan, and Russia have all enacted laws to enhance the rule of law in the big data field, and also directed efforts to supervise and regulate specific big data application scenarios and related market behaviors. International organizations, such as the EU, Organisation for Economic Co-operation and Development (OECD), and BRICS (an acronym for Brazil, Russia, India, China and South Africa), have issued their research reports in turn, expounding on market abuse in the big data field and the measures against them (Liu, 2020). As of the end of 2020, the EU had published the drafts of *Digital Services Act* and *Digital Markets Act*, trying to re-formulate the *EU Competition Law* from the aspects of platform, data, and algorithm. The two acts, if they can come into force in the future, will create for Europe a special supervision system that targets giant internet platforms, and signifies bold steps to empower watchdogs and regulate digital service enterprises.

In China, platform enterprises' abuse of their market power is also arousing more and more disputes and controversies, for example, "Qihoo sued Tencent for its abuse of market dominance,"^① "Sina accused MOMO of illegally snatching users' data,"^② and "Huawei came into conflict with Tencent over data (Xinhuanet, 2017)."^③ Monopoly is looming large (Zhan, 2020) and it is beginning to take a toll on the sustainable development of China's digital economy and ecosystem, and restrain the international competence and technical innovations of its digital industry. The time has come for China to address monopoly within its platform economy.

Anti-monopoly regulation in China over platforms is making itself more conspicuous than before. Several Chinese tech giants like Alibaba and Tencent have been investigated by the State Administration for Market Regulation (SAMR) of China over monopoly complaints. However, the current Chinese anti-monopoly laws and institutions, which belong to the industrial era, fail to address

① The case is regarded as the "No.1 Internet monopoly case in China," see also at <https://www.chinacourt.org/article/detail/2017/03/id/2574869.shtml>

② Beijing Intellectual Property Court (2016) Beijing 73rd Minzhong No. 588 Civil Judgment

③ Tencent and Huawei's Dispute Over Data: Is Data Authorization Alone Enough? from http://www.xinhuanet.com/tech/2017-08/11/c_1121465577.htm

the real concerns about the regulation of the platform economy. However, as *the Anti-Monopoly Law of the People's Republic of China* (the “Anti-Monopoly Law”) is being revised, there might be special regulation norms for the internet economy.^① In December 2020, the Central Economic Work Conference put “efforts against business monopolies and disorderly capital expansion” among the country’s top priorities in 2021. At the beginning of 2021, the Anti-Monopoly Commission of the State Council of China issued the *Anti-monopoly Guidelines of the Anti-monopoly Commission of the State Council on Platform Economy* (hereinafter referred to as the “Guidelines”). The “Guidelines,” drawing on the basic principles of *the Anti-Monopoly Law*, specifies the anti-monopoly rules for the platform economy. It is indeed quite a targeted attempt for regulation, yet given the new problems that keep rising in the booming platform economy, the “Guidelines” still faces challenges in fitting platforms’ data, algorithm, technical features, and networks of transactions. These challenges are not only experienced in China, but also across the world.

Currently, however, China’s digital economy is still gaining momentum, and it is subject to all kinds of global, political, economic, and environmental tensions. Understanding the rules of the development of the platform economy, and analyzing the features of monopoly and regulation difficulties in this field will help make scientific and effective regulations for the platform economy, establish and improve a platform regulation system, clarify rules and boundaries, strengthen anti-monopoly regulations on platforms, maintain fair competition, build a dynamic and innovative system, invigorate innovation in the market, and boost the healthy development of private platform businesses and the sustainable development of the digital economy and ecosystem.

Features of Monopoly in the Platform Economy

Dependence on Digital Technologies is the Basis of Monopoly in the Platform Economy

Compared with industrial technologies, digital technologies are more inclined to generate monopolies and are the source power of platform companies for their monopolies. This makes anti-monopoly regulation in the digital economy a long-term task. The reason why digital technologies breed monopoly is that the AI technology that is commonly adopted is self-iterative and self-optimizing. On the other hand, wider and more applications generate higher productivity and a higher threshold, thus helping platform companies gain a head start in the market. Once these companies are well positioned in the market, it will be difficult for other companies to compete with them. Research has shown that this technical feature of the platform economy enables early comers in the market to grab a considerable share and makes it harder for potential contestants outside the market to enter. Even when they finally enter the market, they can rarely rival the early comers (Xu et al., 2020).

① The draft specifies that “In determining whether an undertaking in the internet sector holds a dominant market position, factors such as network effects, economies of scale, lock-in effects, and its ability to acquire and process the relevant data shall also be considered.”

However, some researchers objected by saying that the technical features of the platform economy, as mentioned above, not only strengthen monopolies but also intensifies competition (Ju, 2003). Though the effect of positive feedback may lead users to gather at a few platforms and give these platforms the power equivalent to that of an oligarch, monopolies do not exist in the majority of multilateral markets. Such markets are currently dominated by oligarchs, but there are still a diversity of contestants in the markets (Si, 2010). Monopolies may exist on the surface, but competition is at the core of the digital economy (Fu et al., 2014).

Currently, the consensus is that platforms, because of their technical features, have an advantage in becoming monopolies. It is not realistic to expect the platform companies that have already gained a head start through monopoly to restrain their advantages in the market or to discipline themselves to protect fair competition and consumers' rights and interests. Therefore, it is necessary for the government to take appropriate anti-monopoly measures to rectify the malfunctioning markets to protect fair competition, maintain market vitality, guard consumers' rights, and maximize social welfare (Xu et al., 2020). However, it is worth noting that the causes for monopoly in the digital economy are also the momentums for its prosperity. If anti-monopoly governance of platforms only focuses on how to avoid monopolies and uses the traditional static efficiency as a measure to judge whether there is an abuse of advantages, the digital economy will also be deprived of its growth engine.

Platform Companies' Business Features Strengthen Their Power to Monopolize

The business of platform companies is often characterized by scale, network and externality effects (Yu, 2021). The scale effect keeps their cost favorably low; the network effect maintains their competitive strength, and helps them overcome high barriers and gain lasting advantages; the strong externality effect enables them to expand at a lower cost and a higher efficiency, thereby further enhancing scale and network effects, and giving both growth peaks and market dominance to these platform companies.

Platform companies' business components can be summarized as producing and storing data. Therefore, they naturally acquire a key input element—control of data—that can decide their competence in the digital economy. When these internet platforms try to build barriers to protect their data from intrusion, there come wars over data (Liu, 2020). Platform companies often tend to be exclusive owners of data, so they can strengthen user attachment, further “track” users, and lock down the start-ups that are threatening them. At other times, they opt to take advantage of their power as a “doorkeeper” (Lynskey, 2017) or use monopoly to counter against innovators from other fields. Thus, as their business grows, their place in the market is solidified and the threshold for new entrants to the market is raised even higher. Sometimes in a certain business field of the digital economy, one company may even have the potential to serve the entire market. For example, in the search engine and the social networking service markets, a company may occupy 80 to 90 percent of the share. A winner-takes-all market enhances these companies' monopoly power and effectively

excludes newcomers (Yu, 2021). The ecosystem of the platform economy has created a whole new challenge to fair competition: platform companies, armed with data and effective networks, perpetuate their dominance in the market. What is more, since their data can be used for securing their competitiveness in diverse markets, they can expand their dominance from one market to other markets.^①

Internet Platforms' Quasi-Public Property Makes Regulation Against Their Monopoly More Important

In the digital era, the role of platforms is no longer limited to facilitating transactions. It has already gone far beyond economy to social life, public opinions, and ideology. By virtue of their technical tools and communication methods, internet platforms have risen to become a key organizational form in the information society (Cohen, 2017). The ecosystem of the platform economy, which centers around platform companies and connects suppliers, users, and all the other supportive participants like logistics, finance, and consulting companies, generally obeys the rules made by the platforms that have grown to dominate a particular market. Platforms, by working inside a transaction system they themselves have created, decide the conditions for entry into the market, transaction rules, resource allocations, and the mechanism for online dispute settlements.^② What is more, as governance goes digital, China is increasingly depending on internet platforms for its public governance work, including urban planning, judicial enforcement, and community management. Internet platforms have come to resemble a new non-state actor that is profoundly influencing politics, economics, societies, and cultures in and outside China, as well as the fulfillment of citizens' basic rights.^③ In this sense, internet platforms are becoming more and more public in nature so that they are beginning to be seen as the “infrastructure of social production and life” (Lipsky & Sidak, 1999).

Therefore, it has become more important to supervise these platform companies, especially those that are becoming increasingly quasi-public. On the one hand, more supervision can prevent an internet platform from becoming a monopoly, maintain an open and equitable platform ecosystem and better satisfy the needs of downstream companies for development. On the other hand, given the internet platforms' role as the infrastructure in our current society, it is necessary to rectify the platforms' abuses of their market power, such as “refusing to supply an interface message or denying access permission to user” to protect consumers' interests and social welfare. However, relevant anti-monopoly measures here must be aimed at protecting “competition” rather than “competitors.”

① A New Competition Framework for the Digital Economy, Report by the Commission “Competition Law 4.0”, 2019.

② Take Taobao rules as an example: the new version of Taobao rules (revised in October of 2016), contains six articles and 82 sections, which specify all possible issues concerning the process from registration to the completion of transactions, including punitive measures like deducting points, blocking the online stores concerned, and limiting transactions.

③ There are heated debates over whether internet platforms are private market entities or infrastructure with a social function, but the development of its social function has become a universally recognized trend. The International Trend of Anti-monopoly Against Internet Platforms and China's Response. *Tribune of Political Science and Law*, 6.

Meanwhile, during the formulation of anti-monopoly measures, attention must also go to the application of infrastructure theories. Rules must be made to “support new competitors” to give the public more access to the resources on these quasi-public platforms. However, it is yet to be decided on how much this kind of deviation can be allowed from a free market system (Xu et al., 2020).

Difficulties for Anti-Monopoly Governance of the Platform Economy

Due to these features of monopolies in the platform economy, regulation and governance has encountered prominent difficulties, which are listed below.

The Current Legal System Cannot Satisfy the Supervision Needs of the Platform Economy

A platform company’s monopoly in the digital economy is different from its counterpart in the industrial era in terms of how it gains, applies, and exerts its influence. The ownership regulations, anti-monopoly legislative ideas and institutions of the industrial era are not fit for the current platform economy. Nor can the traditional anti-monopoly system for the unilateral and simple bilateral markets solve the problems regarding competition in the multilateral platform-based market. The most notable aspect of the incompatibility lies in the measure of monopoly. The current anti-monopoly examination focuses on “harming competition or not,” which is based on the traditional static efficiency. However, in the digital economy, the measure should be around innovation rather than competition, for the dynamic efficiency brought about by innovation will be the most important element to decide the total social welfare. Since the platform economy is a business pattern with a higher frequency of technical innovation, and since its multilateral market is free to consumers, the old ways of defining competition in the market is no longer valid. It thus becomes important to face up to the digital era, reshape the present anti-monopoly system, and review and adjust peoples’ understanding of monopoly as well as the legal structure (Zhang, 2018).

The Government Is Absent from Platform Construction, Operation, and Supervision

The construction, operation, and supervision of platforms, especially those providing the key infrastructure for information services, are basically performed by market players. The super platforms around the world all operate as enterprises. When capital is combined with technology, data becomes a private right. This makes it impossible for the government to directly get access to and provide daily services for internet users. On the contrary, platform companies have already integrated with daily internet supervision, content censorship, illegal information blockage, user information protection, as well as the formulation and enforcement of all kinds of service regulations. They are in charge of the online world. Ever since the beginning of the platform economy, the government has been absent. Then it will be difficult for the government to effectively supervise platforms if it is excluded from platform construction and operation.

Identifying a Platform's Monopolistic Behavior Is Complex and Difficult

The actions taken by platform companies to limit competition and assisted by internet technologies, are mostly complex and inconspicuous. This makes it difficult to judge whether they are lawful or not. For example, according to the current *Anti-Monopoly Law*, the basic information of an internet operator, such as its products, market, and market share, shall be clarified first to define whether and in what way it has abused its market power. It is not an easy job in the online virtual markets. The standards to define an internet operator's market and its market share are generally so vague and uncertain that more professional methods for economic analysis must be used. The bilateral market-based platform economy usually adopts a free pricing strategy, which subverts the traditional principle of setting prices based on the cost of products. Moreover, various kinds of professional and complex internet technologies and network externalities make the identification of illegal acts even more complicated. Evidence is even more difficult to collect and present. The plaintiffs are generally placed in a disadvantaged position while platform companies, with their mastery of internet technologies, can take advantage of their strengths, justify their market expansion, and deny their dominance in their segments (Song, 2017).

In terms of the abuse of the power to control data, platform companies opt to adopt technical and exclusive measures to hinder data sharing and compatibility, limit interoperability, or refuse to give data access to their rivals. For example, they may set their data formats incompatible with other platforms, or close their data interfaces so that data cannot be freely transferable between different enterprises or operating systems. It is also difficult to judge whether such a strategy is of technical necessity. In foreign countries, some monopoly cases,^① after a long legal battle, have been settled and such settlements have helped establish some standards. In China, a series of disputes over data interoperability have sparked heated debates but they still fall short of a clear settlement or judgment. Besides, the monopoly methods commonly seen in the platform economy are intertwined, highly efficient, and inconspicuous. These methods, such as profiteering on big data to the disadvantage of regular customers, or algorithmic collusion, are almost invisible and liable to result in a multilateral monopoly (Mu, 2021). This makes anti-monopoly evaluation and analysis more demanding.

Data Dependence Poses New Challenges to Global Digital Governance

Currently, a huge amount of data regarding the digital economy is in the hands of platform companies. Assisted by capital and technologies, super platforms are gaining more private power over such data, whereby the platforms might become a supranational system, thus leading to an imbalance between the private power of the platforms and the state power. In fact, against the backdrop of

① Such as the "PeopleBrowsr, Inc. v. Twitter, Inc." case and the "hiQ versus LinkedIn" case.

economic globalization, the market of the platform economy is no longer limited to one country. In economic terms, monopoly power arising from a cross-border platform in economic terms may reach the entire world and engage markets of different fields. Platforms can go far beyond economics and into politics and ideology. Economic globalization has strengthened interdependence and correlation between different countries. In the online world, the boundaries between countries are weakening, yet each country's legal autonomy still acts as a barrier to transactions via cross-border platforms. It is an arduous task for countries to agree on relevant rules. Therefore, current challenges to anti-monopoly governance are in fact a global issue.

Suggestions on How to Make Anti-monopoly Governance More Efficient and How to Promote the Healthy Development of the Digital Economic Ecosystem

A Technology-based Supervisory Ability Must Be Developed, and Technologies Must Be Used to Supervise the Market

The monopoly power of platform companies comes from digital technologies' iterative advantages and network effects. To avoid hindering innovation in the digital economy, it is not wise to simply forbid things. Meanwhile, given the immense, complex, and varied business scopes of platform companies, it is very difficult to identify monopoly behaviors. Since the platform economy runs on data and depends on big data technologies, attention shall be paid to supervisory technologies to resist and regulate potential and existing monopolies. Big data and AI tools must be used to enhance the supervisory ability and the predictability of monopolies, and to realize real-time and smart supervision.

To rise to the challenges posed by monopolies in the digital economy, regulators need to make more efforts to cultivate their ability to use supervisory technologies, foster a competitive and dynamic market with supervisory technologies, use digital technologies to smartly monitor platforms for any breach of rules, and prevent negative effects of monopoly behaviors.

Digital Legal System Must Be Strengthened and Digital Markets Must Be Regulated Against Dominance of Data by Platform Companies

Economic monopolies of platforms mainly result from exclusive control of data. On the other hand, mechanisms for data authorization, circulation, and usage, as well as punishment, and legislative management have lagged far behind. The essential task of enhancing anti-monopoly governance lies in establishing a digital legal system as soon as possible, and building a well-regulated and efficient data market.

The most fundamental and effective measure, in the long run, would be to enact legislation regarding data authorization to balance the protection and usage of private data and information, and to regulate control of data by super platforms. Meanwhile, it is also necessary to factor in the pursuit

of innovation, distinguish all kinds of explicit and implicit barriers, and enhance user data mobility and interchangeability across different platforms. The legislation regarding data governance must emphasize transparency, and super platforms must promote open standards at all levels, such as data collection and protection, algorithms, policies, and business models. Data mobility must be enhanced, and the infrastructure nature of platforms must be prioritized, thereby helping create a dynamic and innovative platform business ecosystem.

Attention Must Be Paid to the Development of International Competition Laws to Build an Anti-monopoly System for the Digital Economy that Prioritizes Innovation

Currently, anti-monopoly efforts are gaining momentum within the international digital economic sector, wherein there are a plethora of advanced ideas and institutions that are worth learning from. However, it must be noted that anti-monopoly laws are in fact the economic legislation that is associated with the most obvious political connotations. The EU, a forefront champion of anti-monopoly laws, is home to very few super platforms. The targets of its anti-monopoly investigations are mostly internet platform enterprises from the US because they constrict opportunities and consumer markets of European local enterprises.

In China, the digital economy led by platform enterprises is the powerhouse for the country's development. The rising competition calls for an orderly business environment. However, anti-monopoly policies for the platform economy must be well balanced, enhance innovations, and promote equality. Anti-monopoly investigations in the digital economy must set "whether seriously harming innovation" as a standard and judge whether a company monopolizes or not primarily based on whether it is doing good to innovation. It means that the judgment on a platform's violation of the law shall mostly rely on the facts whether its certain acts reduce motivation for enterprise innovation, limit its rivals' ability to innovate, and cause a decrease of innovation input or output throughout the entire industry. Meanwhile, anti-monopoly legislation must focus on the development and sharing of data, and anti-monopoly regulations must combine institutional precautions beforehand with definitive behavioral punishments for infringements. Right now, *the Anti-Monopoly Law* is now under thorough revision. This provides the chance to establish an anti-monopoly system for the digital economy that prioritizes innovation and to reexamine and rectify the current rules and policies to facilitate the development of the digital economy.

The Government Must Play An Effective Role in Anti-monopoly Governance of the Platform Economy

As shown in the development history of the market-oriented internet, governance of the internet without the government is an impossible task, and responsible and anti-monopoly-oriented governance of the internet markets by platform companies is an unrealistic expectation. With China's economy entering a high-quality growth stage, the government ought to be the most legitimate and

pivotal candidate to lead the governance of the emerging data-driven economy. As problems escalate, the mindset that refuses governmental intervention in these markets must be changed. Especially under the circumstance of a digital economy running with a prominent externality, only when the government plays a leading role can there be a real legal system for fair competition in the digital economy, whereby global collaboration can be achieved, frameworks and industrial standards be agreed upon, and an efficient mechanism for anti-monopoly governance be solidly guaranteed.

Anti-monopoly Governance of the Platform Economy Must Be Internationalized

In the age of the internet, the market of platform companies has been highly internationalized. Regulation over the platform economy must be favorable to the growth of platform enterprises and aim at raising their international competence. Related regulatory institutions and measures must take into account both domestic and global market supervision and provide the means to balance the two. EU's digital economic legislation can be used to remind platform enterprises of the fact that the platform economy must consider transnational legal risks concerning competition legitimacy and regulatory arbitrage. In the context of ongoing economic globalization and internationalization of economic competition, anti-monopoly law enforcement agencies must strengthen international communication and cooperation in the sector, enhance global competition governance and protect fair competition in the global business environment. Guided by the goal of building a new and higher-level system of open economies, international communication and cooperation in the anti-monopoly sector must be further strengthened. Policies regarding competition or topics on anti-monopoly can be discussed on the agenda of the G20, BRICKS or other regional collaborative conferences. More efforts must be made to work out a framework for entry into the international competition networks and the processes of cooperation in the execution of competition laws. China can play an active role in these discussions and the formulation of cooperation rules on international anti-monopoly by making its voice heard and contributing its wisdom to global competition governance, and thus keep raising its position and influence on the the world stage concerned.

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