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Using a Sledgehammer to Crack a Nut: Why China's Anti-Monopoly Law was Inappropriate for Renren v. Baidu

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Using a Sledgehammer to Crack a Nut: Why China's Anti-Monopoly Law was Inappropriate for *Renren v. Baidu*

By Angela Huyue Zhang*

On December 18, 2009, Beijing No. 1 Intermediate People's Court issued a ruling in favor of Baidu, Inc., a leading search engine provider in China, in an abuse of a dominant position case brought by Tangshan Renren Information Services Co., an operator of a medical information consulting website. Renren alleged that Baidu had downgraded its website in order to coerce it into using its search advertising services. The Court dismissed the case primarily on the grounds that Renren had failed to establish that Baidu had a dominant position in China's search engine service market.

Although the dismissal may have been the correct outcome, the Court's analysis was misguided. While the Court recognized certain two-sided features of Baidu's business model, it failed to further explore the impact of those features on the competition analysis. Crucially, the Court erred in defining the relevant product market as the search engine service market. Instead of using a one-sided approach, the Court should have adopted a two-sided approach in defining the relevant market.

Moreover, the Court readily accepted Baidu's defense without investigating whether the blockage was *solely* motivated by the existence of junk links. Indeed,

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the information asymmetry between Baidu and customers such as Renren made it difficult to discern whether Baidu had downgraded the websites with the legitimate reason of penalizing junk links or with the motive of coercing those websites into using its advertising services.

On the other hand, although there is a theoretical possibility that Baidu may have had an incentive to impose artificial switching costs in order to lock in existing customers, the reputational cost should have been sufficient to deter Baidu from committing such abuses. New customers who are informed about the switching cost would be unlikely to choose Baidu and existing customers who are locked in would be unlikely to choose Baidu again. As informed consumers would not be harmed, the application of the Anti-Monopoly Law to this case is like using a sledgehammer to crack a nut. Indeed, consumer protection law rather than antitrust law would have been a better tool to tackle abusive behaviors like those alleged by Renren.

I. Introduction

Since China's Anti-Monopoly Law ("AML") took effect in August 2008, the Ministry of Commerce ("MOFCOM"), the agency in charge of merger control in China, has made most of the headlines relating to the AML through its handling of several high-profile merger cases.¹ By contrast, the State Administration for Industry and Commerce ("SAIC") and the National Development and Reform Commission ("NDRC"), the competition authorities responsible for enforcement against agreements among competitors and the abuse of dominant positions, have been slow to prosecute cases.² As a result, an increasing number of complainants are resorting to private lawsuits in the Chinese courts for remedies. Under Article 50 of the AML, operators who implement monopolistic conduct and cause loss to others shall bear civil liability according to law. This provision thus provides a statutory basis for private parties to bring suits under the AML.

So far a few cases have been reported, and one of the most high-profile cases involves Baidu, Inc. ("Baidu"), a leading Chinese language internet search provider. Baidu provides a paid for performance service (hereinafter "paid search advertising service"), a web-based auction system that allows advertisers to bid for positions in the relevant keyword search.³ Tangshan Renren Information Services Co. ("Renren"), an operator of a medical information consulting website, started using Baidu's search advertising service to promote its website ("qmyyw.com") in March 2008. Three months later, when Renren began to reduce its spending on the search advertising service, it immediately noticed a significant decrease of visits to its website. Renren then alleged that Baidu had blocked internet users' access to Renren's website in order to coerce Renren to use more of Baidu's search advertising services. Beijing No. 1 Intermediate People's Court (the "Court") accepted the case on January 6, 2009 and it went to trial on April 22, 2009. On December 18, 2009, the Court issued a ruling in favor of Baidu on the grounds that Renren had failed to meet its burden of proof in establishing that Baidu held a dominant position in China's search engine service market.⁴

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This case has received a tremendous amount of attention, both by economists and lawyers.⁵ As the first detailed decision issued by a Chinese court, *Renren v. Baidu* provides important insights into how future private litigations may proceed in China. Commentators applauded the decision as the Court required the plaintiffs to satisfy a high evidentiary threshold, which was regarded as consistent with international standards.⁶ While the importance of the case has rightly been recognized, some of the most fascinating and thorny economic issues have not yet been researched or analyzed. This article provides an in-depth analysis of the case by focusing on the following questions: First, what were the unique features of

Baidu's search advertising services? Second, how did those features affect competition analysis in this case? In particular, why did the Court err in defining the relevant product market as the search engine service market? Third, what were the problems in the Court's assessment of the alleged abusive behavior? And finally, would consumer protection law rather than antitrust law have been a better tool to tackle abuses like those alleged by Renren in this case?

II. The Search Advertising Services

Like Google, Yahoo! and other internet search engine providers, Baidu realizes its profits through search advertising services, which create a platform for advertisers to bid for priority placement of their links in keyword searches. Prior to September 2006, advertisers' links were ranked solely based on the price bid of that keyword.⁷ Since then, links to advertisers' websites have been ranked according to a comprehensive ranking index based on both the quality factor of a keyword and the price bid of that keyword.⁸ The quality factor of a keyword is mainly based on the relevance of the keyword, which is determined by an analysis of past searches and click-through results.⁹ Each time a searcher clicks on an advertiser's link in the search results, Baidu recognizes revenue based on the amount of the bidding fee that the advertiser has agreed to pay and the quality factor of the keyword.¹⁰

While Baidu claims to be the first auction-based search advertising service provider in China,¹¹ Overture Services (formerly GoTo.com, now part of Yahoo!) was the first to introduce the auction system to sell sponsored search advertising and, since its introduction in 1998, this system has been used widely by worldwide search engine providers around the world.¹² One well-known example is Google, which uses a similar auction-based system called "Google Adwords" to sell advertising space. However, at the time of this case, there was a stark difference in the display of paid search results between Baidu and Google. Google's search advertising clearly segregates natural search results (also called "organic search results") from paid search results: The natural results appear on the left-hand side and the paid search results mainly appear on the right-hand side. Although the paid search results sometimes appear on top of the natural search results on the left-hand side, they are in shadow and thus are clearly separated from the natural search results.

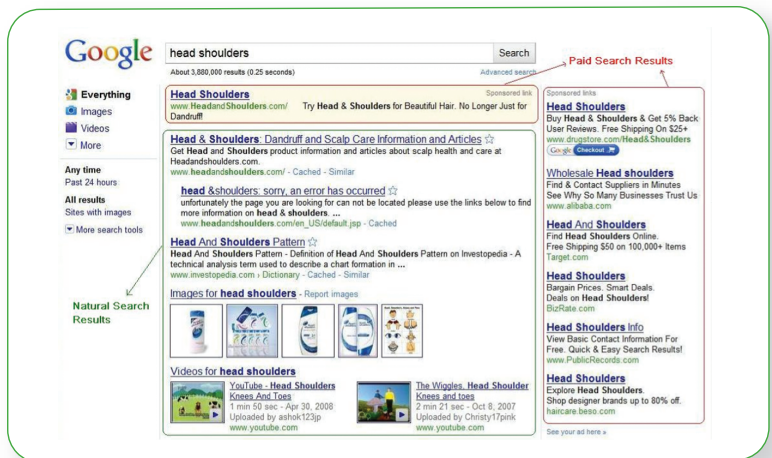
Notably, creating a clear distinction between paid search results and natural search results was recommended by the United States Federal Trade Commission (the "FTC"). In 2002, in response to a complaint that search engine providers were violating Section 5 of the FTC Act by failing to disclose that advertisements were inserted into search engine results lists, the FTC sent out a letter to all search engine providers recommending that their websites use clear

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and conspicuous disclosures to ensure that any paid ranking search results be distinguished from natural search results.¹³

In contrast to Google's and other U.S. search engine providers' practices, Baidu mixed its natural search and paid search results. Before the development of Phoenix Nest,¹⁴ a keyword auction system introduced by Baidu in November 2008, the natural search results were commingled with the paid search results, both appearing in the same search results list. The only distinction between the two was that natural search results were marked with "Baidu Quick Webshot," while paid search results were marked as "Promotion." (The comparison of Baidu and Google's display of search results is illustrated in Figure 1 below.)

Figure 1



By mixing natural search results with paid search results, Baidu, in effect, offered advertisers a means to manipulate search results through the search advertising services. Such a practice undermined the reliability of Baidu's search

engine service. Although the paid search results were marked differently from natural search results, less sophisticated internet users may not have readily discerned the significance of the meanings of “*Baidu Quick Webshot*” and “*Promotion*.” Some internet users may not even have noticed such a subtle distinction and may have been misled into believing that the paid search results were natural search results. Indeed, Baidu’s strategy of mixing paid search results with natural search results significantly contributed to Baidu’s rapid growth: The promotional links on the left-hand side generated many more click-throughs and thus brought in more revenue than promotional links on the right-hand side.¹⁵

The screen shot of Baidu’s website above illustrates this problem. Kaixin001.com is a highly successful social networking website (similar to Facebook) in China. A rival launched a competing service under a similar name of Kaixin.com and tried to clone Kaixin001. To attract more attention from internet users, Kaixin used Baidu’s paid search advertising services to boost its ranking on the search result list. As a result, less informed internet users may have been misled into believing that Kaixin was a popular website because it had a high ranking on the search result list and some may even have confused Kaixin with Kaixin001.

BY MIXING NATURAL SEARCH RESULTS WITH PAID SEARCH RESULTS, BAIDU, IN EFFECT, OFFERED ADVERTISERS A MEANS TO MANIPULATE SEARCH RESULTS THROUGH THE SEARCH ADVERTISING SERVICES.

Furthermore, since the ranking of the search results was not solely determined by relevance, even if internet users were informed about the distinction between paid search results and natural search results, this manipulation of search results increased the transaction costs incurred by internet users looking for relevant information. Unsurprisingly, although Baidu’s strategy was very successful, it was also very controversial in China.¹⁶

In the United States, there has been an intense academic debate on how to regulate search engines.¹⁷ As noted earlier, the FTC has recommended that search engines segregate paid search results from natural search results. However, Chinese regulators such as the Ministry of Industry and Information Technology (responsible for regulating the internet industry) and SAIC (responsible for consumer protection) have yet to initiate similar actions to limit the manipulation of search results.

III. The Court’s Opinion

Due to the importance of this case, the presiding judge, Tong Shu, read out the decision in a live broadcast. The transcripts of the live broadcast provide important insights into the Court’s application of the AML.¹⁸ Judge Shu later published an article on this case in an English journal in China, and her analysis in the article is substantially similar to that in the opinion.¹⁹

A. RENREN'S ARGUMENTS

Renren first argued that Baidu had gained a dominant position under the AML. It relied on two pieces of evidence: the first was an article from *China Securities Journal* reporting that a Beijing consulting firm had estimated that Baidu had a 65.8 percent market share in China's search engine market; the second was a news report on Baidu's own website claiming that Baidu had a market share of over 70 percent in China's search engine market. Applying Article 19 of the AML, which provides that an entity with a market share of 50 percent or more is presumed dominant, Renren argued that Baidu held a dominant position.

Renren then submitted a comparison of the results generated in searches for its website on both Google and Baidu's websites in September 2008. Upon entering a query for Renren's website, internet users were presented with 6,690 results on Google and 4 results²⁰ on Baidu. Renren thus accused Baidu of abusing its dominant position in violation of Article 17 (4) of the AML, which prohibits any "undertaking that requires a trading party to trade exclusively with itself or trade exclusively with a designated business operator without justifiable cause." Renren requested an award of RMB 1,106,000 (approximately \$162,000) for damages as well as the removal of the blockage of its website.

B. BAIDU'S RESPONSE

Baidu did not contest that it had blocked Renren's website. It argued, however, that it did so because Renren's website included a large amount of junk links, and that the search engine automatically penalized such a practice. Baidu alleged that the junk links were irrelevant to Renren's webpage and that Renren manually set up those links in order to boost its website's natural ranking. Baidu clarified that the blockage only applied to natural search results, and was not relevant to the amount of payment for the search advertising services.

Further, Baidu argued that Renren lacked substantive evidence in alleging that Baidu possessed market power. A search engine service provided free to internet users, Baidu claimed, could not be a "relevant market" under the AML. Besides, the argument continued, the evidence that Renren provided about Baidu's market share only related to a temporary, very short period; and, moreover, market share could not be used as the single standard in evaluating whether Baidu possessed market power.

In arguing that a free engine service could not be a relevant market, Baidu mainly relied on *KinderStart.com, LLC v. Google, Inc.* ("KinderStart"),²¹ an unpublished decision by the district court in the Northern District of California.²² On March 13, 2006, KinderStart filed a class action lawsuit against Google, alleging that the search engine company had illegally blocked a multitude of websites, including that of KinderStart. KinderStart sought relief based on a wide range of legal theories under state and federal law, including, among others, attempted monopolization and monopolization in violation of the Sherman Act.²³

KinderStart identified two relevant markets for the attempted monopolization and monopolization claims: the search market and the search advertising market.²⁴ In dismissing KinderStart’s claims, the court held that KinderStart had failed to establish the search market and the search advertising market as relevant markets.²⁵ In particular, the court noted that KinderStart had “cited no authority indicating that antitrust law concerns itself with competition in the provision of free services,” and therefore concluded, “the search market is not a ‘market’ for purposes of antitrust law.”²⁶

C. THE COURT’S REASONING

The first issue confronting the Court was the definition of the relevant market. The Court relied on Article 12(2) of the AML, which provides that “relevant market” refers to “the commodity scope or territorial scope within which the business operators compete against each other during a certain period of time for specific commodities or services.” The Court then cited Article 3 of the Guidelines for the Definition of Relevant Market promulgated by the Anti-Monopoly Commission, which provides the definitions, among others, of relevant product market and relevant geographic market. After examining the substitutability of the search engine service with other types of internet services (such as internet news services, instant messenger services, and other internet services), the Court held that the search engine service constitutes an independent relevant market. In addition, considering cultural differences, language preferences, and other factors, the Court decided it was appropriate to define the relevant geographic market as China. The Court then concluded that the relevant market was “China’s search engine service market.”

THE COURT HELD THAT THE SEARCH ENGINE SERVICE CONSTITUTES AN INDEPENDENT RELEVANT MARKET.

Meanwhile, the Court rejected Baidu’s argument that the search engine service itself could not be a relevant market because the AML does not apply to free services. The Court was unpersuaded by *KinderStart* and reasoned that although the search engine service was free, the service was closely tied to other products and services for which Baidu did require payment.²⁷ Unlike free public internet services, search engine services generate actual or potential profits from advertising and marketing. Therefore, whether a service is free is an irrelevant factor in evaluating the relevant market.

After defining the relevant market, the next issue the Court considered was the question of whether Baidu held a dominant position. The Court mainly relied on two provisions under the AML: Article 18, which provides a list of factors for evaluating the existence of a dominant market position; and Article 19, which establishes a rebuttable presumption of dominance in cases where a firm’s market share exceeds 50 percent. After examining the two news articles submitted by Renren, the Court held that such evidence was insufficient to establish Baidu’s market power. First, it asserted, the two news articles did not clearly

define the market as it was not clear whether the search engine market referred to in the articles exactly matched the relevant market defined by the Court. Second, both articles failed to provide sufficient information regarding the underlying data and method used to calculate Baidu's market share. Therefore, the Court was not convinced that the articles were based on scientific and objective analysis. After rejecting this evidence, the Court did not proceed further to investigate Baidu's market power.

In addition, the Court found that Baidu had a pro-competitive justification for downgrading Renren's website as Renren had attempted to increase the natural ranking of its website by adding many unrelated junk links. As Baidu's policy of prohibiting junk links had been published on its website, Renren could have been aware of the policy. Moreover, the policy applied to all websites and did not specifically discriminate against Renren's website. Importantly, the Court reasoned that Baidu's policy had legitimate value because it increased the accuracy and reliability of search results to the benefit of internet users. Moreover, there was no evidence that Baidu's practice was discriminatory or coercive to Renren; in fact, Baidu had sufficient legitimate reasons to block Renren's website. For these reasons, the Court denied Renren's request for damages and the removal of blockage.

IV. Analysis of the Case

A. DEFINING THE RELEVANT MARKET

In defining the relevant market, the Court employed a one-sided approach and identified the relevant product market as the search engine service market. This was a crucial mistake. Baidu is a two-sided platform that simultaneously serves both advertisers and internet users. Instead of using a one-sided approach, the Court should have adopted a two-sided approach to identifying the relevant market in this case. In fact, even viewed from a one-sided perspective, the Court erred in defining the relevant market. Renren's main allegation was that Baidu had coerced it into using its search advertising services; therefore, the Court should have focused on the advertising side rather than the search engine side to evaluate Baidu's market power.

Interestingly, in rebutting Baidu's argument that antitrust law did not apply to the search engine service market (because its services are offered free of charge), the Court seemed to recognize certain two-sided features of Baidu's business model—the search engine, it noted, is closely tied to other products or services for which Baidu does requires payment. Regrettably, the Court did not explore further how the two-sided features have a significant impact on competition analysis in this case.

Studies on two-sided markets date back to 1983 when William Baxter developed certain foundational insights on two-sided platforms in his treatment of the

payment card system.²⁸ In 2003, Jean-Charles Rochet and Jean Triole provided the first formal analysis in their pioneering work on two-sided markets:

“A market is two-sided if the platform can affect the volume of transactions by charging more to one side of the market and reducing the price paid by the other side by an equal amount; in other words, the price structure matters, and platforms must design it so as to bring both sides on board.”²⁹

Rochet and Triole use the term “market” in a loose manner that does not agree with how it is used in competition policy.³⁰ Indeed, economists have suggested that firms that operate in two-sided markets are more aptly called “two-sided platforms.”³¹ Rochet and Triole’s findings were quickly followed by an abundance of theoretical and empirical studies on the subject.³²

Although theoretical accounts of two-sided platforms are relatively new, two-sided platforms themselves are not new phenomena. David S. Evans, a leading economist on the subject, has identified many industries that simultaneously serve two distinct groups of consumers, including magazines (readers and advertisers), dating clubs (men and women), the stock exchange (buyers and sellers of securities), credit card networks (merchants and consumers), shopping centers (manufacturers and consumers), video game consoles (gamers and developers), operating systems (application developers and internet users), and search engine businesses (internet users and advertisers).³³ Although there is a lack of consensus on how to define two-sided platforms, it has been generally recognized that two-sided platforms are characterized by several unique features.

First, two-sided platforms cater simultaneously to “two distinct group of customers who need each other in some way and who rely on the platform to intermediate transactions between them.”³⁴ Second, there are indirect network effects between the customer groups of two-sided platforms. Therefore, a business strategy that affects one customer group necessarily affects the second customer group which, in turn, affects the first customer group and so on.³⁵ The existence of these indirect network effects raises “chicken and egg” issues, as a platform will not be able to attract customers on one side of a market if it does not have sufficient customers on the other side of the market.³⁶ Third, because the network effects among the customer groups can be very imbalanced, two-sided platforms can have a pricing structure skewed to balance the interdependent demands of consumers from both sides of the market.³⁷

In the case of Baidu, there are indirect network effects between internet users and advertisers, although such effects are very asymmetric. Companies that use

Baidu's search advertising services to promote their products value the service according to the number of users it attracts: More internet users means more exposure and a greater chance of reaching potential consumers. Such network effects can be inferred from Baidu's pricing structure, as Baidu's revenue is determined by the level of bidding fees and the amount of click-throughs to advertisers' websites.

On the other hand, it is not entirely clear whether internet users like or dislike the paid search results on Baidu's website. While those internet users specifically looking for advertising-related information might find Baidu less useful if there were fewer paid search results, others may care very little about paid search results. Moreover, in the case where natural search results are not clearly segregated from the paid search results (i.e. Baidu's previous practice), some internet users may find that the decrease of paid search results could even enhance their search experience.

Because the network effects among Baidu's customer groups were very imbalanced, Baidu adopted a pricing structure skewed to balance the interdependent demands of consumers from both sides of the market. The search engine service had been provided to users free of charge³⁸ and Baidu only charged advertisers for the marketing services. Indeed, according to its public filings, Baidu generated approximately 99.8 percent, 99.9 percent, and 99.9 percent of its total revenue from online marketing services in 2007, 2008, and 2009 respectively, and a substantial majority of this revenue was generated from the search advertising services.³⁹

DUE TO THE COMPLEXITY OF THE INTERRELATIONSHIPS AMONG CUSTOMERS GROUPS OF TWO-SIDED PLATFORMS, THE COMPETITION ANALYSIS OF SUCH PLATFORMS HAS PRESENTED SIGNIFICANT CHALLENGES TO ENFORCEMENT AGENCIES AROUND THE WORLD.

Due to the complexity of the interrelationships among customers groups of two-sided platforms, the competition analysis of such platforms has presented significant challenges to enforcement agencies around the world.⁴⁰

While there is no settled formula for assessing the market power of two-sided platforms, there is general agreement among competition authorities that accounting for the linkages between the two sides of the market is very important.⁴¹ Indeed, studies have shown that where indirect network effects are significant and are relevant for assessing the practices at issue, competition analyses that focus on one side of a business in isolation from the other side usually lead to errors.⁴² For instance, the fact that search engine providers set the price above marginal cost for the search advertising services does not really provide any useful indication of pricing to exploit market power. Otherwise, it would lead to the distorting conclusion that all search engine providers have market power over the search advertising services.

Because two-sided platforms have to coordinate demand between two interdependent customer groups, the analysis of market power must consider feedback

effects in order to determine the overall effect of a price change on profits.⁴³ Significantly, the capacity for two-sided platforms to exercise market power on one side can depend on the competitive restraints faced on the other.⁴⁴ Accordingly, a more sensible approach to evaluate Baidu's market power in this case would have been to adopt a two-sided approach that considered the feedback effects from both sides in order to determine the overall effect of a price change of the advertising services on the overall profits. As it is not entirely clear whether the feedback effects from the search engine side were positive or negative, rigorous economic analysis was needed to assess whether they were a meaningful constraint on Baidu's market power over the search advertising services.

Moreover, the difficulties of evaluating Baidu's market power are compounded by the limitations of the hypothetical monopolist test (also known as the "small significant non-transitory increase in price" test), a standard tool for defining the relevant market.⁴⁵ The first limitation is the well-known cellophane fallacy.⁴⁶ In cases involving abuse of dominant firm conduct, because the firm is already charging a supra-competitive price, the hypothetical monopolist test may apply too broadly by including products that would not have been close substitutes at a lower competitive price. China's guidelines on relevant market definition correctly recognizes this limitation: "[i]n such a circumstance, an adjustment to the competitive price is necessary for selecting a price that is more competitive."⁴⁷ In practice, however, it may be extremely difficult if not impossible to determine the competitive price level.⁴⁸ In fact, if one knows the competitive price, there is no need to define the market in the first place as it is obvious whether the current price exceeds the competitive price.⁴⁹

The second limitation, which is often overlooked, is that it can be misleading to apply the hypothetical monopolist test to high-tech companies because innovation can make it extremely difficult to identify substitute products.⁵⁰ Indeed, if one is to favor dynamic competition rather than static competition, a firm's monopoly power today may reveal very little about its future. As asserted by Teece and Coleman:

THE SECOND LIMITATION, WHICH IS OFTEN OVERLOOKED, IS THAT IT CAN BE MISLEADING TO APPLY THE HYPOTHETICAL MONOPOLIST TEST TO HIGH-TECH COMPANIES BECAUSE INNOVATION CAN MAKE IT EXTREMELY DIFFICULT TO IDENTIFY SUBSTITUTE PRODUCTS.

"Simply analyzing the market from a static perspective will almost always lead to the identification of markets that are too narrow. Because market power is often quite transitory, standard entry barrier analysis—with its 1-to 2-year fuse for entry—will often find that an innovator has power over price when its position is in fact extremely fragile."⁵¹

For example, Google, a dominant player in the search engine business, now faces a serious threat from new rivals such as Groupon, Facebook, Twitter, LinkedIn, and a few other companies that also provide platforms for online advertising. Analyzing Baidu's market power in this dynamic sense would have added an extra layer of complexity.

Given the above uncertainties, a court should be extremely cautious in applying the protocols of standard competition analysis to evaluate the market power of firms like Baidu. Indeed, while courts often begin the assessment of a monopolization case with the analysis of market definition, they should recognize that the assessment of the economic effects of alleged abuses is also an important screen for dismissing frivolous suits.⁵² If the pro-competitive effects of an abusive behavior clearly outweigh the exclusionary effects, or if the abusive behavior could be remedied quickly by competition, then there is no need to go through the strenuous exercise of evaluating the market power of a firm like Baidu.

B. INCENTIVES TO IMPOSE SWITCHING COSTS

Baidu claimed that it had blocked Renren's natural search results solely on account of the existence of junk links on Renren's website. According to the transcripts of the case, the Court did find many junk links on Renren's website and, moreover, Renren did not contest their existence. The Court therefore held that Baidu was justified in blocking Renren's website as doing so enhanced the reliability and accuracy of Baidu's search engine service.

However, the Court seemed to readily accept Baidu's defense without investigating further whether the blockage was solely motivated by the existence of junk links. Notably, prior to the adoption of the AML, the Court dealt with a similar case involving Baidu.⁵³ Beijing Land of Maple Travel and Cultural Exchange Ltd. ("LOM"), an operator of a travelling network (www.canada-travel.cn) began to use Baidu's paid search advertising services in July 2004. In March 2006, LOM noticed a sharp decline in its rankings in the natural search results of relevant key words. It then submitted a letter to Baidu complaining of unfair treatment. Baidu restored LOM's rankings in less than ten days.

Subsequently, LOM filed a suit against Baidu, alleging that Baidu had purposefully downgraded its natural search results because LOM had repeatedly refused requests from Baidu's to expand its usage of the search engine's paid search advertising services. LOM argued that Baidu's action was unfair competition and had infringed its reputation and property rights. The defense Baidu adopted was almost identical to the one later used in the Renren case—namely, that a large amount of junk links on LOM's website had caused Baidu's search engine system to automatically downgrade its natural search results. The Court in the LOM case was convinced by Baidu's reasoning and ultimately dismissed the case for lack of evidence.

A curious difference, however, is that Baidu restored LOM's rankings after receiving the letter of complaint, but it never did so in the *Renren* case. Baidu's contrasting reactions in these two cases reveal the enormous discretion it had in deciding how to penalize websites with junk links. Indeed, the information asymmetry between Baidu and customers such as LOM and Renren made it difficult to discern whether Baidu had downgraded the websites with the legitimate reason of penalizing junk links or with the motive of coercing those websites into using its advertising services.

Renren's lawyer argued that Baidu's behavior violated the exclusive dealing provision under Article 17(4). At first sight, this is not a typical exclusive dealing case. Baidu did not require Renren to deal exclusively with it, and Renren was free to use the search advertising services of other search engine providers. Nonetheless, it is possible to interpret the blocking of Renren's website as indication of a coercive scheme—one taking the form of an artificial switching cost imposed by Baidu on its existing customers. Under such a scheme, any customer who decides to stop using (or to use less of) the search advertising services risks losing the natural search results originally provided for free. Such a switching cost (if it in fact exists) can arise whenever an advertiser opts to use less service from Baidu, as in *Renren v. Baidu*: Renren didn't switch to another competing search engine provider, it simply reduced payment to Baidu for the search advertising services.

Artificial switching costs are not uncommon. They are sometimes purposely created by firms to lock in customers. The problem with such costs is that, after the initial purchase of a product, the consumer is locked in and cannot readily switch to another seller unless he or she is willing to pay the costs.⁵⁴ The existence of the switching costs thus makes it much harder for rivals to compete with Baidu: Even if such rivals could provide completely identical service, Baidu's existing customers would be reluctant to switch unless they were compensated for the loss of natural search results on Baidu's website. Accordingly, even though Baidu's practice fell short of outright exclusivity, it may still be treated as a weak form of exclusive dealing characterized by a high switching cost. Loyalty discounts (sometimes called "loyalty rebates"), for instance, have been argued to be weak forms of exclusive dealing because they are also characterized by high switching costs.⁵⁵

The reason Baidu has incentives to impose switching costs on its existing customers is closely related to its pricing structure. Baidu does not directly set the price for its advertising service; rather, it uses a generalized second-price auction system to sell the sponsored slots.⁵⁶ In a second-price auction, advertisers who pay the highest bid win the auction and pay the next highest bid. This may give

IT IS POSSIBLE TO INTERPRET THE BLOCKING OF RENREN'S WEBSITE AS INDICATION OF A COERCIVE SCHEME—ONE TAKING THE FORM OF AN ARTIFICIAL SWITCHING COST IMPOSED BY BAIDU ON ITS EXISTING CUSTOMERS.

incentives to Baidu to lock in existing customers in order to maximize the revenue derived from the search advertising services.

A simple example of a second-price auction can illustrate this point. Assume there are currently three bidders competing for the same key word: "Peking Duck." For the first slot, Bidder 1's willingness to pay is RMB 500; Bidder 2's willingness to pay is RMB 400; and Bidder 3's willingness to pay is RMB 300. For the second slot, Bidder 1's willingness to pay is RMB 400; Bidder 2's willingness to pay is RMB 300; and Bidder 3's willingness to pay is RMB 200. For the third slot, Bidder 1's willingness to pay is RMB 300; Bidder 2's willingness to pay is RMB 200; and Bidder 3's willingness to pay is RMB 100.

Assuming (a) each bidder is only interested in getting one slot for its website and (b) each bidder is interested in getting the highest possible slot, then Bidder 1 will be able to win the auction for the first slot with a bidding price at RMB 400 and Bidder 2 will be able to win the second slot with a price at RMB 300. As both Bidder 1 and Bidder 2 have received their highest possible slots, Bidder 3 has no competitors and only needs to bid above the minimum bidding price (let's assume it is zero for the simplicity of discussion).⁵⁷ Thus the final price for the first, second, and third slots will be RMB 400, RMB 300, and slightly above zero, respectively, and the auction generates approximately RMB 700 revenue.

Now, suppose Bidder 1 stops using the search advertising services, leaving only Bidder 2 and Bidder 3. The final price for the first and second slot would be RMB 300 and slightly above zero, respectively, ultimately generating revenue of approximately RMB 300. From this it can be seen that the loss of Bidder 1 would have ripple effects: Not only would Baidu lose the revenue for the payment for the second slot, but the revenue from the first slot would decrease as well.

C. REPUTATIONAL COSTS TO BAIDU

Assuming Baidu did try to coerce Renren into using its website by imposing an artificial switching cost, Baidu still faces a significant constraint—reputational costs. Economists have long considered the importance of reputation to be a private device that could help eliminate information asymmetries between buyers and sellers.⁵⁸ As noted by George A. Akerlof in his brilliant study on used car sales, brand name is an example of an institution that counteracts the effects of quality uncertainty by giving consumers the power to retaliate against firms by curtailing future purchases.⁵⁹ Indeed, Baidu is a leading search engine provider and one of most successful brand names in China.⁶⁰ Baidu's management would do well to remember the old Chinese saying "The water that bears the boat can also swallow it up"—that is, it should be well aware of the salient consequences of any potential damages to the firm's reputation.

To some extent, this case is similar to *Eastman Kodak v. Image Technical Services, Inc.* ("Eastman Kodak"),⁶¹ a case decided by the United States Supreme

Court in 1992. Kodak manufactures and sells high-volume photocopiers and micrographic equipment. At the time of the sale, Kodak sold repair parts, enabling users to repair their copiers or hire independent service organizations (“ISOs”) to do so. Kodak later changed its policy of supplying repair parts to ISOs and confined sales of repair parts to Kodak copier owners who contracted to have their copiers serviced by Kodak. The ISOs then accused Kodak of unlawfully tying the sale of service to the sale of parts and unlawfully monopolizing and attempting to monopolize the sale of service.

Since Kodak had little market share in the original equipment market, the court held that no unlawful tie could exist between Kodak original equipment and Kodak parts-servicing. The court focused instead on whether an unlawful tie-in existed between Kodak parts and Kodak servicing. The court conceded that customers who had anticipated the change of policy could not have been exploited; they would have shopped around and purchased copiers based on full lifecycle costs. However, the court found that, because the information required was so difficult and costly to come by, a substantial number of consumers did not enjoy cost-efficient access to the pricing information needed to evaluate such life-cycle cost. Moreover, the court found that a current Kodak-copier owner might tolerate even uncompetitive price increases in Kodak parts and services so long as the increases did not exceed the cost of abandoning his or her original investment in a Kodak copier and switching to another copier. For these reasons, the court denied Kodak’s motion for summary judgment.

This case sparked tremendous controversy among economists and legal practitioners.⁶² Dennis W. Carlton, for example, criticized the decision for the failure to recognize that *ex ante* competition completely protects consumers.⁶³ Judge Posner also questioned the decision—even if Kodak had monopoly power in the original equipment market, the reputational cost to Kodak would have been likely to deter any exploitative behavior that would make new entry into the market attractive.⁶⁴ Some economists, on the other hand, pointed out that declining profits in the equipment market or a significant base of equipment owners may induce a profit-maximizing firm to engage in *ex post* exploitation of consumers, also called installed-based opportunism.⁶⁵ However, such installed-base opportunism is less attractive to any firm that has a desire to increase its market size—the loss of future profits due to the damage to its reputation would outweigh the gains from short-term profits derived through exploiting the aftermarket.⁶⁶

As in *Eastman Kodak*, if Baidu imposes (or, for that matter, continues to impose) an artificial switching cost on its existing customers, it may well enjoy increased market power over its existing customers. However, with the exposure of such abusive behavior come fully informed customers. Existing customers who are locked in would be unlikely to choose Baidu again and new customers would be less willing to choose Baidu for fear that they would be locked in later. This would make new entry into the market more likely.

Further, the reputational harm to Baidu would mean that it would need to compete more aggressively for new customers and, thus, *ex ante* competition would benefit new customers. When price discrimination is possible, firms will price more aggressively in the first period to attract new customers, as the first-period market share (or customer base) has a positive impact on the second-period profit.⁶⁷ However, in this case, as the search advertising services is auction-based, Baidu does not have direct control over its price. In order to attract more new customers, Baidu needs to provide better marketing services to advertisers and better search engine service to users (which, in turn, makes marketing services more attractive to advertisers). Overall, it is not clear whether the net effect on competitiveness due to switching costs would result in higher or lower total consumer welfare.

FURTHER, THE REPUTATIONAL HARM TO BAIDU WOULD MEAN THAT IT WOULD NEED TO COMPETE MORE AGGRESSIVELY FOR NEW CUSTOMERS AND, THUS, EX ANTE COMPETITION WOULD BENEFIT NEW CUSTOMERS.

Overall, it is not clear whether the net effect on competitiveness due to switching costs would result in higher or lower total consumer welfare.

More importantly, as Baidu has experienced a tremendous amount of growth in the past few years,⁶⁸ any fly-by-night strategy to gain temporary profits (such as the alleged abusive behavior) would not be profit maximizing for Baidu.

In a recent interview with the *Wall Street Journal*, Baidu's chief executive officer Robin Li emphasized that he ran the company based on a vision of long-term growth rather than one of short-term investor expectations.⁶⁹ Mr. Li also touted Baidu's tremendous growth potential, noting that two-thirds of the Chinese population has yet to learn how to use the internet.⁷⁰ This reveals that the management of Baidu may have little incentive to gain short-term profits at the expense of future growth. In fact, since the media exposed the *Renren v. Baidu* case, Baidu immediately posted a statement on its website declaring that it had never and would never use any coercive measures to force companies to use its promotional service. Baidu claimed, furthermore, that it would investigate and penalize any salesperson using such methods to promote sales.⁷¹

From this perspective, consumer protection law, or even widespread media disclosure of a scandal that could jeopardize Baidu's reputation, would be sufficient to deter the alleged abusive behavior. Since informed consumers would not be harmed by such abusive behavior, the application of the AML to this case is like using a sledgehammer to crack a nut. Even if Baidu is found to have market power, the free market corrects such alleged abusive behavior much faster than antitrust law does.

V. Conclusion

As the first abuse of a dominant position case involving a two-sided platform in China, *Renren v. Baidu* presented significant challenges to the Court, which had almost no precedent to rely on when deciding it. Although the Court recognized certain two-sided features of Baidu's business model, it failed to explore further

the impact of those features on competition analysis. Crucially, the Court erred in defining the relevant product market as the search engine service market. Instead of using a one-sided approach, the Court should have adopted a two-sided approach in defining the relevant market. Moreover, the problems confronted in attempting to identify the relevant market in this case were compounded by the difficulties entailed in applying the hypothetical monopolist test, which is vulnerable to the cellophane fallacy. Finally, the hypothetical monopolist test does not function very well when analyzing the relevant market for high-tech companies as innovation can make it extremely difficult to identify substitute products.

Given the complexities of identifying the relevant market and assessing the market power of Baidu, the evaluation of the economic effects of allegedly abusive behavior becomes a very important screen for dismissing frivolous lawsuits. Although the Court did find the existence of junk links on Renren's website, the information asymmetry between Baidu and customers such as Renren made it difficult to discern whether Baidu had downgraded the websites with the legitimate reason of penalizing junk links or with the motive of coercing those websites into using its advertising services. As Baidu's business model is based on an auction system, there is a theoretical possibility that Baidu may have an incentive to impose artificial switching costs in order to lock in existing customers. The existence of the switching costs could raise rivals' costs as Baidu's existing customers would be reluctant to switch unless they were compensated for the loss of natural search results on Baidu's website.

However, the reputational costs to Baidu should be sufficient to deter such alleged abusive behavior. New customers who are informed about the switching cost would be unlikely to choose Baidu, and existing customers who are locked in would be unlikely to choose Baidu again. Besides, Baidu would need to compete more aggressively for new customers by improving its search engine and search advertising services. Therefore, it is not clear whether the net effect on competitiveness due to switching costs would result in higher or lower total consumer welfare. More importantly, as Baidu expects to have a great potential for future growth, it would not find it profit maximizing to adopt a fly-by-night strategy to gain temporary profits at the expense of future growth. As informed consumers would not be harmed, consumer protection law rather than antitrust law would have been a better tool for tackling abuses like those alleged by Renren in this case. ▼

GIVEN THE COMPLEXITIES OF IDENTIFYING THE RELEVANT MARKET AND ASSESSING THE MARKET POWER OF BAIDU, THE EVALUATION OF THE ECONOMIC EFFECTS OF ALLEGEDLY ABUSIVE BEHAVIOR BECOMES A VERY IMPORTANT SCREEN FOR DISMISSING FRIVOLOUS LAWSUITS.

1 See e.g., Xinzhu Zhang & Vanessa Zhang, *Chinese Merger Control: Pattern and Implications*, 6 (2) J. COMPETITION L. & ECON.477(2010); Huyue (Angela) Zhang, *Problems in Following EU Competition Law*:

- A Case Study of Coca-Cola/Huyuan*, PEKING U. J. LEGAL STUDIES (forthcoming), available at: <http://ssrn.com/abstract=1569836>
- 2 For a discussion on the latest development of China's antitrust enforcement and the problems in the enforcement system, see Huyue (Angela) Zhang, *The Enforcement of China's Anti-Monopoly Law, An Institutional Design Perspective*, ANTITRUST BULL. (forthcoming), available at: <http://ssrn.com/abstract=1783037>.
 - 3 See Baidu. Inc.'s annual report for the year ended December 31, 2009.
 - 4 See Opinion by Beijing No. 1 Intermediate People's Court, Civil Case No. Yizhongminchuzi 845/2009. The transcripts of the case are available (in Chinese) at: http://www.chinacourt.org/zhibo/zhibo.php?zhibo_id=1865.
 - 5 See, e.g., Dr. R. Ian McEwan, *China- the Baidu Decision*, COMPETITION POLICY INT'L 6(2) (2010); Fei Deng, Dr. Gregory K. Leonard, & Wenfeng Tang, *How Private Antitrust Litigation May Proceed in China*, LAW 360, January 5, 2010; Cleary Gottlieb Steen & Hamilton, ASIAN COMPETITION REPORT, October to December 2009, available at www.cgsh.com.
 - 6 *Id.*
 - 7 See Baidu Inc.'s annual report, *supra* note 3.
 - 8 *Id.*
 - 9 *Id.*
 - 10 Baidu's pricing information is available at its promotional website (in Chinese): <http://e.baidu.com/fwjs/cjwjt/2009-01-04/170548209216.html>.
 - 11 See Baidu Inc.'s annual report, *supra* note 3.
 - 12 See Daniel F. Spulber, *The Map of Commerce: Internet Search, Competition, and the Circular Flow of Information*, 5(4) J. COMPETITION L. & ECON. 633(2009).
 - 13 See Letter from Heather Hipsley, Acting Assoc. Dir., Div. of Adver. Practices, FTC to Gary Ruskin, Executive Dir., Commercial Alert (June 27, 2002), available at <http://www.ftc.gov/os/closings/staff/commercialalertletter.shtml>
 - 14 After the exposure to several advertising scandals, Baidu attempted to recover its reputation by introducing the Phoenix Nest system, which provides a better distinction between paid search results and natural search results. More information is available at Baidu's official website: <http://e.baidu.com/>. Note the dispute between Renren and Baidu occurred prior to the introduction of this new system.
 - 15 See Ming Shuliang & Zhang Poling, *Baidu: the Transmutation of the Bid for Ranking System* (in Chinese), CAIJING, Issue 5, December 8, 2008.
 - 16 *Id.*
 - 17 See generally Viva R. Moffat, *Regulating Search*, 22(2) HARV. J. L. & TECH. 475(2009) (tracing the contours of the academic debate on search engine regulation); See also Oren Bracha & Frank Pasquale, *Federal Search Commission? Access, Fairness and Accountability in the Law of Search*, 93 CORNELL L. REV. 1149, 1178-88 (2008) (arguing that a Federal Search Commission could be created to regulate search engines); Eric Goldman, *Search Engine Bias and the Demise of Search Engine Utopianism*, 8 YALE J. L. & TECH. 188, 195-198 (2006) (advocating a free market approach in the regulation of search engines).

- 18 Unless otherwise specified, the information discussed in this section is based on the transcripts of this case, see *supra* note 4.
- 19 See Tong Shu, *Reflections on Baidu Monopoly Litigation: Comments on Renren v. Baidu*, 1 CHINA PATENTS & TRADEMARKS 66 (2010).
- 20 According to Renren, Baidu posted four results of its website search because Renren was still using the search advertising services. So it appears that those four results were paid search results and that Renren's natural search results had all been blocked.
- 21 2007 WL 831806 (N. D. Cal.).
- 22 Shu, *supra* note 19.
- 23 2007 WL 831806, at *1.
- 24 *Id.*, at *4-12.
- 25 *Id.*, at *5-6.
- 26 *Id.*, at *5.
- 27 See Shu, *supra* note 19.
- 28 See William F. Baxter, *Bank Exchange of Transactional Paper: Legal and Economic Perspective*, 26 J. L. & Econ. 541 (1983).
- 29 See Jaen-Charles Rochet & Jean Tirole, *Platform Competition in Two-Sided Market*, 1 J. EUR. ECON. ASS'N 990 (2003).
- 30 See Organization for Economic Co-operation and Development ("OECD"), *Two-Sided Markets*, DAF/COMP (2009) 20, 28.
- 31 *Id.*, at 11.
- 32 See e.g. Mark Armstrong, *Competition in Two-Sided Markets*, 37(3) RAND J. ECON., 668(2006); Bernard Caillaud & Bruno Jullien, *Chicken and Egg: Competition among Intermediation Service Providers*, 34(2) RAND J. ECON., 521(2003); David S. Evans, *The Antitrust Economics of Multi-Sided Platform Markets*, 20 YALE J. ON REG., 325(2003); Geoffrey Parker & Marshall Van Alstyne, *Two-Sided Network Effects: A Theory of Information Product Design*, 51(10) MGMT. SCI. 1494(2005).
- 33 See Evans, *id.*
- 34 *Id.*
- 35 See David S. Evans & Michael D. Noel, *The Analysis of Mergers that Involve Multi-Sided Platform Businesses*, 4(3) J. COMPETITION L. & ECON. 663(2008).
- 36 See Rochet & Tirole, *supra* note 29.
- 37 See OECD, *supra* note 30, at 11-12.
- 38 As economists often put it, there is no such thing as a free lunch. Although the search engine service has been provided to internet users free of charge, users pay for the service by revealing personal information about themselves through their online activities, viewing advertisements, and ultimately patronizing online advertisers. See Spulber, *supra* note 12.

- 39 See Baidu's Inc.'s annual report, *supra* note 3. Other than search advertising, Baidu also provides other forms of online marketing services such as graphical advertisements.
- 40 See OECD, *supra* note 30, at 11.
- 41 *Id.*
- 42 See Evans & Noel, *supra* note 35.
- 43 See OECD, *supra* note 30, at 24.
- 44 *Id.*, at 79.
- 45 Although the Court in this case seemed to have considered the substitutability of the search engine service with other types of internet service, it is not entirely clear whether the Court had applied the hypothetical monopolist test in assessing the relevant market.
- 46 The concept of the cellphone fallacy is derived from *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377 (1956), in which the court defined the market too broadly by using the current market price (which was above the competitive level) to assess the cellophane producer's market power.
- 47 See Article 11 of the Guidelines on Relevant Market Definition promulgated by the Anti-Monopoly Committee of the State Council on May 24, 2009.
- 48 See Office of Fair Trading, *The Role of Market Definition in Monopoly and Dominance Inquiries*, Economic Discussion Paper 2, July 2001; see also American Bar Associations, *Joint Comments of the American Bar Association Section of Antitrust Law and Section of International Law of the MOFCOM Draft Guidelines for Definition of Relevant Market*, January 30, 2009.
- 49 See Dennis W. Carlton, *Does Antitrust Need to Be Modernized?* 21 J. ECON. PERSPECTIVE 164 (2007).
- 50 See e.g., J. Gregory Sidak & David J. Teece, *Dynamic Competition in Antitrust Law*, 5(4) J. COMPETITION L. & ECON 581 (2009); Christopher Pleatsikas & David Teece, *The Analysis of Market Definition and Market Power in the Context of Rapid Innovation*, 19 INT'L J. INDUS. ORG. 665 (2001); David J. Teece & Mary Coleman, *The Meaning of Monopoly: Antitrust Analysis in High-Technology Industries*, 43 ANTITRUST BULL. 801 (1998); Raymond Hartman, David Teece, Will Mitchell, & Thomas Jorde, *Assessing Market Power in Regimes of Rapid Technological Change*, 2(1) INDUS. & CORP. CHANGE 317 (1993).
- 51 See Teece & Coleman, *supra* note 50.
- 52 See Carlton, *supra* note 49.
- 53 See Opinion by Beijing No. 1 Intermediate People's Court, Civil Case No. Yizhongminchuzi 12408/2006.
- 54 See Alan Beggs & Paul Klempere, *Multi-Period Competition with Switching Costs*, 60(3) ECONOMETRICA, 651-666 (1992).
- 55 ROBERT O' DONOGHUE & A. JORGE PADILLA, *THE LAW AND ECONOMICS OF ARTICLE 82 EC*, 374 (2006).
- 56 Baidu's pricing model is based on a generalized second price auction system but it also takes into account the quality factor of the key words, thus its pricing is not as transparent as a standard generalized second price auction. However, this does not affect the analysis here. See Michael Ostrovsky, Benjamin G. Edelman, & Michael Schwarz, *Internet Advertising and the Generalized Second Price*

- Auction: Selling Billions of Dollars Worth of Keywords*, 97(1) AM. ECON. REV. 242 (2007) (explaining the mechanism of generalized second price auction); see also Renato Gomes, *Sponsored Search Auctions: Simple Economics and Implications for Antitrust Policy*, 6(2) COMPETITION POL'Y INT'L (2010).
- 57 Since June 2006, Baidu introduced a dynamic mechanism for the determination of the minimum bidding price for each keyword. See Baidu, Inc.'s annual report for the year ended December 31, 2007.
- 58 See e.g., Friedrich A. Hayek, *The Meaning of Competition*, in INDIVIDUALISM AND ECONOMIC ORDER (1948).
- 59 See George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 QUART. J. ECON. 488 (1970); see also Benjamin Klein & Keith B. Leffler, *The Role of Market Forces in Assuring Contractual Performance*, 89 J. POL. ECON. 615 (1981).
- 60 See Jez Frampton, *China: Brand is A Missed Opportunity*, Forbes.com, July 28, 2010, available at: http://www.forbes.com/2010/07/28/china-marketing-brands-baidu-haier-lenovo-cmo-network-inter-brand_print.html; see also Interbrand and Forbes Release Best Chinese Brand 2010, July 6, 2010, available at http://www.interbrand.com/press_release.aspx?pressid=328&langid=1000 (According to this article, Baidu was ranked as the 17th most valuable brand in China and the compound annual growth rate of its brand was 85 percent in 2010).
- 61 See *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451 (1992).
- 62 See e.g., Carl Shapiro, *Aftermarkets and Consumer Welfare: Making Sense of Kodak*, 63 ANTITRUST L.J. 483 (1995); Severin Borenstein, Jeffery K. MacKie-Mason, & Janet S. Netz, *Antitrust Policy in Aftermarkets*, 63 ANTITRUST L. J. 655 (1995); Dennis W. Carlton, *A General Analysis of Exclusionary Conduct and Refusal to Deal—Why Aspen and Kodak Are Misguided*, 68 ANTITRUST L. J. 659 (2001).
- 63 See Carlton, *id.*
- 64 See RICHARD A. POSNER, ANTITRUST LAW 237 (2d ed. 2001).
- 65 See Jeffery K. MacKie-Mason & Janet S. Netz, *Antitrust Policy in Aftermarkets*, 63 ANTITRUST L. J. 655 (1995).
- 66 See Carl Shapiro, *Aftermarkets and Consumer Welfare: Making Sense of Kodak*, 63 ANTITRUST L.J. 483 (1995).
- 67 MASSIMO MOTTA, COMPETITION POLICY: THEORY AND PRACTICE 80 (2004).
- 68 Baidu's online marketing revenue increased by 83.5 percent and 39.2 percent in 2008 and 2009, respectively. See Baidu Inc.'s annual report for the year ended December 31, 2008 and 2009, respectively. Baidu's performance was also remarkable in 2010, with online marketing revenue increased by 59.6 percent and 74.5 percent in the first and second quarter, respectively. See Baidu Inc.'s Form 6-K filed on April 29, 2010 and July 23, 2010, respectively.
- 69 Owen Fletcher, *Baidu's CEO Pursues Long-Term Growth*, WALL ST. J., August 4, 2010, B8. ("I don't run the company based on investor expectations. I run the company based on our own vision of the future of Internet computing and the future of the Chinese market. I'm the founder. I will stay here for a very long time. I don't need to please those short term investors for next quarter. I need to make sure the company is healthy and strong and will continue to grow for many, many years.")
- 70 *Id.*
- 71 Baidu's statement (in Chinese) is available at <http://e.baidu.com/fwjs/cjwtt/>.