

COMPETITION POLICY AND REGULATION IN CHINA'S DIGITAL ECONOMY



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Some believe that China is strictly supervising its digital economy. This text hopes to provide a different perspective. This article reviews the development process of China's digital economy, analyzes the regulatory system, rules and competition policy in the field of China's digital economy, and holds that when observing the regulation of China's digital economy, the needs of development and the constraints of the rule of law should not be ignored. As a young market economy and anti-monopoly jurisdiction, China needs to better clarify the boundaries of regulation and coordinate the functions and powers of different regulatory departments in order to achieve the established goal of developing digital economy.

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I. INTRODUCTION

With the maturity, popularization, application and expansion of communication, the Internet and other technologies, the digital economy is booming. Big data, cloud computing, artificial intelligence and the emerging “metaverse” are placing the world in a wave of industrial digitization. Meanwhile, how to implement competition regulation for the digital economy is also a common problem faced by many jurisdictions around the world in recent years. How to identify anticompetitive effects in the digital economy? How to design corresponding remedy measures? And the most important and essential issue is how to promote market competition through implementation of the AML? In order to solve these and other problems, many jurisdictions around the world have taken a series of actions, such as issuing antitrust fines for digital giants, investigating the digital market, issuing research reports, amending laws, issuing special bills, etc.

China is not only an antimonopoly jurisdiction with world influence, but also the second largest country in the global digital economy. Coupled with the characteristics of transition economies in China's market system, the regulation of China's digital economy is not the most representative in the world, but may be the most characteristic. Based on the thoughts above, this paper will first introduce the characteristics of China's digital economy regulation, and, on this basis, look forward to the future of China's digital economy from the perspective of competition policy and industrial development.

II. CHINA'S DIGITAL ECONOMY AND REGULATORY CHARACTERISTICS

A. Transformation, Opening and Conflict: Development of the Chinese Digital Economy

Before considering the competition policy of China's digital economy, this paper hopes to introduce a concept about the market and law of China's system. From a macro perspective, China is a transitional economy in the process of continuous improvement. The “improvement” mentioned here includes not only about the market, but also the system, rules, and law. The development of China's market can be summarized as a process of transferring space from the public sector to the private sector. In the era of planned economy, China's industries and systems were formed around state-owned enterprises and plans. Nowadays, the continuous expansion and opening of China's market will inevitably reshape China's industrial and institutional structure. In such a “one advance and one retreat,” various issues of interest balance naturally emerge.

At present, the digital economy takes the Internet industry as the main development carrier. Under the background of loose regulatory environment and lack of all-round competition at home and abroad and relying on the huge domestic market, China's Internet industry continues to give birth to new business models through follow-up innovation.² In the process of the rapid development of Chinese Internet enterprises, in addition to the problems of “nonstandard and insufficient development, shortcomings and risks,”³ “savage growth and disorderly expansion”⁴ pointed out by the CPC Central Committee Financial and Economic Commission and the Commission for Comprehensively Deepening Reform, they, like other fields in China that have gradually realized marketization after economic transformation, have great impact on some traditional industries. For example, social network app partially replaces traditional mobile phone calls and text messages, and electronic payment replaces traditional payment and settlement channels. And these fields were generally monopolized by state-owned enterprises in the past.

B. Multiple Laws & Departments: Regulatory Characteristics of China's Digital Economy

2021 is considered to be the year of “strict supervision” of China's digital economy.⁵ The administrative punishment decisions of Alibaba, Tencent, Meituan and other digital platform enterprises for violating China's antimonopoly law were released this year. Among them, Alibaba received fines of up to 18.228 billion yuan, which was more than the sum of China's antimonopoly administrative fines in the previous 12 years. The stock price shows that the capital market seems to lack confidence in China's platform economy - market value of Chinese Internet companies fell

2 China's Alibaba, Tencent and other Internet companies were founded before the 21st century. At that time, China had not promulgated Anti-monopoly Law, E-commerce Law, Personal Information Protection Law, and other regulatory laws, and also, corresponding regulatory authorities had not been established. In the early days, China's Internet industry mainly imitated emerging or mature Internet business models around the world, such as e-commerce, social networks, etc. As China's huge internal market continues to deliver new demand, there have been derivative innovations such as mobile payment, takeout and short video platforms in China.

3 The ninth meeting of the Financial and Economic Committee of the CPC Central Committee. See at http://www.gov.cn/xinwen/2021-03/15/content_5593154.htm, in Chinese.

4 The 21st Meeting of the Central Committee for Comprehensively Deepening Reform. See at <https://www.12371.cn/2021/08/30/ART11630323508362885.shtml>, in Chinese.

5 Chen Yongwei, China's digital economy at the inflection point, economic observer, January 11, 2022. See at <http://www.eeo.com.cn/2022/01/11/518271.shtml>, in Chinese.

by 5.8 trillion yuan in 2021. Indeed, the regulation and punishment of antimonopoly law are very eye-catching, but if the study of China's digital economy regulation only focuses on the topic of antimonopoly, it will regret to lose a more comprehensive perspective.

China's supervision in the field of digital economy has the institutional characteristics of "multi law co governance and multi department co management." In addition to the Antimonopoly Law, Article 12 of the Unfair Competition Law specifically stipulates unfair competition conducts in the Internet field, and the E-commerce Law is a law regulating the field of e-commerce. At the same time, Consumer Protection Law, Price Law, Advertising Law, and corresponding departmental regulations also provide law enforcement basis for the supervision of China's digital economy. Similar behaviors may violate different regulatory regulations at the same time. The "one out of two" behavior⁶, which is being strictly regulated by China, is a good example. Alibaba's "one out of two" behavior is subject to the punishment of the Antimonopoly Law, while Vipshop's "one out of two" behavior is subject to the punishment of the Unfair Competition Law. Price collusion and dumping at low prices may not only violate the antimonopoly law, but also be suspected of violating the price law. Price collusion and low-price dumping may violate the Antimonopoly Law and the Price Law simultaneously. The advantage of this regulatory system is that the government can accurately regulate the platform economy from different angles. In order to achieve this effect, the boundaries of different regulatory rules should be clarified, and functions and powers of different regulatory authorities had to be straightened out. At present, there is still much work to be done in the coordination of regulatory rules and departments.

C. Compliance Systems: A Feasible New Model

In addition to the "confrontational" regulation, China's platform economy also has a "cooperative and interactive" compliance mechanism. April 13, 2021, the State Administration of Market Regulation, together with the Office of the Central Cyberspace Affairs Commission and the State Administration of Taxation, held an administrative guidance meeting for Internet platform enterprises, which was attended by representatives of 34 Internet platform enterprises. Afterwards, the 34 platform enterprises participated the meeting took their initiative to publicly publish the Compliance Operation Commitment, which is a very special approach on a global scale. In November, the China Association for standardization published the public draft of the "Anti-monopoly Compliance Management Rules for Platform Undertakings." This draft standard was proposed by dozens of platform enterprises such as Alibaba, Tencent and Baidu, and jointly drafted by the Association for Standardization and numbers of research institutes of colleges and universities.

III. COMPETITION POLICY OF CHINA'S DIGITAL ECONOMY

Strict supervision is not the whole picture of China's digital economy. China has a clear policy system to support the development of this industry.

A. Industrial Development Policy for China's Digital Economy

In China's "14th five-year plan" development plan announced in 2021, the word "digitization" appeared more than 20 times in the text, and the promotion of "digital industrialization" and "industrial digitization" has been highlighted.⁷ January 2022, the State Council of China issued the "14th five-year plan" for the development of digital economy, this document's objectives of industrial promotion include increasing the number of Gigabit broadband users from 6.4 million to 60 million within five years, and increasing the penetration rate of industrial Internet platform from 14.7 percent to 45 percent. Coincidentally, the regulatory policy requirements also take promoting development as an important goal. The 2020 economic work conference of the CPC Central Committee called for "strengthening antitrust and preventing disorderly expansion of capital." At the same time, it also made it clear that "the State supports the innovative development of platform enterprises and enhances international competitiveness."⁸

In March 2021, the ninth meeting of the financial and Economic Commission of the CPC Central Committee specially studied the topic of "promoting the standardized, healthy and sustainable development of platform economy," while affirming the positive role of the platform economy and insisting on continuing to develop the digital economy, the meeting also pointed out the existing problems of China's platform economy and the maladjustment of the regulatory system. In August 2021, the 21st meeting of the Comprehensive Deepening Reform Commission of the CPC Central Committee pointed out that through investigating monopoly and unfair competition of relevant platform enterprises according to law, competition in the market has steadily improved. At the same time, it stressed the need to pay equal attention to both regulation

⁶ This is a business practice that requires the opposite party of the transaction to only trade with the actor or the object designated by the actor, but not with others.

⁷ The 14th five-year plan for national economic and social development of the people's Republic of China and the outline of long-term objectives for 2035. See at http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm, in Chinese.

⁸ 2020 CPC Economic Work Conference. See at http://www.gov.cn/xinwen/2020-12/18/content_5571002.htm, in Chinese.

and development, and set up a "traffic light"⁹.¹⁰In October 2021, the Political Bureau of the CPC Central Committee conducted a collective study entitled "grasping the development trend and law of digital economy and promoting the healthy development of China's digital economy,"¹¹ The economic work conference of the CPC Central Committee in 2021 not only continued the expression of "preventing the barbaric growth of capital," but also made it clear that "fair supervision ensures fair competition."¹² This meeting also proposed to "correctly understand and grasp the characteristics and behavior laws of capital" and clarify that "the socialist market economy is a great creation, and there will be various forms of capital in the socialist market economy."

B. China's Regulation of the Digital Economy is Constrained by the Rule of Law

China's regulation and corresponding rules in the field of platform economy are not arbitrary, but are constrained by professionalism and the rule of law.

In February 2021, the Antimonopoly Commission of the State Council issued Antimonopoly Guidelines on Platform Economy. From the text, it can be seen that this guideline is not a product or tool of "campaign-style" law enforcement. The reason is that it not only lists the possible abuse of market dominant position by platform enterprises, but also stipulates the possible justifications for each kind of behavior. For instance, the possible justifications for platform enterprises to implement the "one out of two" limited trading behavior include "protecting the interests of trading counterparties and consumers," "maintaining a reasonable business model," etc.

It can also be noted that the expression "relevant markets may not be defined" once appeared in the exposure draft of the guide, which was deleted from the final published guide. This deletion means that "not defining the relevant market" has not been considered as a widely adopted part of law enforcement framework, indicating that China will continue to adhere to the traditional analysis and identification framework and standard in the implementation of the AML in the field of platform economy.

Last, but certainly not least, the implementation of regulation through the introduction of rules is also the embodiment of the restriction of regulation by the rule of law. Among these legislations have been or are being formed, some new concepts and methods emerged,

C. Perfecting China's Supervision of the Digital Economy

China's current performance in formulating regulatory laws for the digital economy may be relatively conservative, and this conservative trend may continue. While adhering to the tradition, China is also constantly strengthening its AML enforcement agencies, so as to provide more authority, resources, professionalism, and procedural guarantees for AML enforcement.

When dealing with the challenge of digital economy to traditional law, we can see that some jurisdictions are trying to make special legislation. Among these legislations that have been or are being formed, some new concepts and methods have emerged, such as "gatekeeper" in Digital Market Act ("DMA") in Europe and "covered platform" in American Innovation and Choice Online Act. In contrast, there seems to be no sign that China is making similar legislative attempts.

China is revising its AML and has entered the stage of deliberation by the Standing Committee of the National People's Congress at which there would seldom be structural changes to the bill. The current draft has not formulated specific provisions for digital economy, instead, it only stipulates that "Undertakings shall not exclude or restrict competition through data and algorithms, technology, capital advantages and platform rules," which is only declarative in nature. Therefore, it can be predicted that the antitrust supervision in the field of platform economy in China still follows the traditional professional analysis framework, which is consistent with the suggestions and predictions of many Chinese scholars. China has not only formulated antimonopoly guidelines for platform economy according to the current AML, but also issued fines for some platform enterprises. Therefore, China's regulatory rules and law enforcement team have considerable adaptability to supervise platform economy.

9 "Traffic light" is a metaphor, which means that supervision is not to blindly prohibit, but to set clear behavior boundaries and enhance certainty through rules, so as to effectively guide market expectations and behavior.

10 Xi Jinping presided over the 21st meeting of the Comprehensive Deepening Reform Commission of the CPC Central Committee. See at <https://www.12371.cn/2021/08/30/ART1630323508362885.shtml>, in Chinese.

11 Xi Jinping presided over the 34th collective study of the Political Bureau of the CPC Central Committee. See at http://www.gov.cn/xinwen/2021-10/19/content_5643653.htm, in Chinese.

12 See at <https://www.12371.cn/2021/12/10/ART1639136209677195.shtml>, in Chinese.

In November 2021, China's National Antimonopoly Bureau was officially established, which marks the new strengthening of China's antimonopoly law enforcement agency after the reform of state institutions in 2018. China's AML was implemented in 2008. In the first 10 years, the National Development and Reform Commission ("NDRC"), the Ministry of Commerce and the former State Administration for Industry and Commerce respectively enjoyed some AML enforcement power. After the reform of state institutions in 2018, the State Administration of Market Regulation ("SAMR") uniformly exercised the power of antimonopoly law enforcement. However, only one bureau actually undertakes the AML enforcement function, and China's AML enforcement resources were insufficient. The establishment of the National Antimonopoly Bureau has increased the number of bureaus under SAMR to undertake AML enforcement from one to three, and the staffing has been greatly expanded accordingly. And, China will have a more normalized AML enforcement system in the future, which will bring more professional and procedural guarantee to China's AML, and make China, a young antimonopoly jurisdiction, move forward and grow towards maturity.

IV. CONCLUSION AND PROSPECT

When it comes to China's digital economy, many people will think of the increasing and upgrading strict supervision, and this paper hopes to provide a different perspective and view. There are two backgrounds that cannot be ignored in the development of China's digital economy. One is that the basic legal rules are imperfect – in many countries and regions, there have been rules and corresponding practices in antimonopoly, personal information, and privacy before the emergence of digital economy; Second, the special problems of the development of emerging industries in transition economies – the improvement of the market, the opening of regulated industries and the impact of emerging industries. China's policy on digital economy is not strict supervision, but to promote the healthy development of norms through fair supervision. The former may reduce professional requirements and eventually deviate from the track of the rule of law, while the latter adheres to professionalism and is always on the track of the rule of law.

The main task of China's digital economy competition regulation in the future is to further concretize the competition policy proposed by the state in the field of digital economy and implement it in the cases, which requires that regulatory and law enforcement actions should not only comply with the law of innovation and development of platform economy, but also produce practical effects of promoting development. In the meantime, the shrinking confidence of the capital market in China's digital economy may change. With the enrichment of capital China's digital economy will have more resources to achieve innovation. With the continuous expansion, opening up and improvement of the Chinese market, supervision and reform will be more adaptable to the future.

The digital economy is entering the era of the "metaverse," followed by significant changes in the combination of resources and elements of digital platform. Accordingly, antitrust analysis and regulation should evolve with the industry. In addition to continuing to pay attention to multilateral markets, algorithms and data, the future antitrust analysis and research of digital economy may also pay more attention to topics such as digital economy and XR, digital economy and standards, etc.



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