

The Dilemma of the Internet Platform for Anti-monopoly and the Optimization Path

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Abstract: This article systematically reviews the difficulties of current internet antitrust from the perspectives of theory, identification, and execution. It is believed that the current difficulties of internet antitrust mainly include the following aspects: (1) there are differences in antitrust targets; (2) Difficulty in identifying Relevant market and monopolistic behaviors; (3) Anti monopoly justice has high explicit and implicit costs; (4) Different antitrust objectives can lead to conflicting practices. Based on these difficulties, this article proposes corresponding optimization suggestions from the aspects of identification methods, law enforcement measures, and antitrust target ranking.

Key words: Internet platform; platform economy; antimonopoly

1 Introduction

Based on the continuous emergence of negative impacts from internet monopoly, it has become a global consensus to strengthen antitrust regulation on digital platforms. In 2020, the European Union introduced the "Digital Market Law" and "Digital Labor Law" to correct monopolistic behavior on internet platforms. At the same time, the United States also launched antitrust lawsuits against Google and Facebook and issued the "Competition and Anti Monopoly Enforcement Reform Act", indicating that antitrust work on the internet industry has become a key focus of its work. In the same year, the State Administration of Market Supervision issued the Anti monopoly Guide in the Field of Platform economy (Draft for Comments), and proposed for the first time at the meeting of the Political Bureau of the CPC Central Committee to "strengthen anti-monopoly and prevent disorderly expansion of capital". These signals mark the end of the era when the Chinese government was relatively tolerant and open to Internet oligarchs in order to protect the international competitiveness of Internet enterprises, and China has turned to a more inclusive and prudent attitude towards the development of Internet Platform economy.

However, due to the particularity of the Internet economy, the anti-monopoly work of the Platform economy is more complex than that of the Traditional economy, and both governments and academia are still in the exploration stage. Therefore, this paper systematically combs the theoretical and practical difficulties of the current Internet anti-monopoly. The theoretical divergence of Internet anti-monopoly in this paper has important practical reference significance for the improvement of the anti-monopoly work of the future Platform economy.

2 Internal Contradictions at the Theoretical Level of Internet Anti Monopoly

In different contexts, the term "monopoly" opposed by antitrust has different connotations. The Harvard School and the Chicago School respectively define monopoly in terms of structure and behavior. The Harvard School believes that monopoly refers to a market structure where a company occupies a high market share, while the Chicago School defines monopoly in terms of behavior, where a company with a "dominant market position" abuses its position. The Harvard School adheres to the belief that 'big is the original sin', that structural monopoly is a determining condition for it to have a dominant market position, as well as a prerequisite for its monopolistic behavior to unfold. Therefore, it advocates that the government avoid the formation and continuation of corporate monopolistic positions through intervention measures. ^[1]The Chicago School, on the other hand, believes that high market share cannot be a reason for punishment. For high market share enterprises, there are still various competitive constraints in the market, so they may not necessarily engage in monopolistic behavior that abuses their dominant market position. Moreover, structural monopolies also contribute to the improvement of efficiency to a certain extent.

There is also complexity in the anti monopoly issue of natural monopoly. Natural monopoly mainly refers to monopolies caused by industry scale effects and economies of scope, including industries such as electricity, telecommunications, civil aviation, railways, and natural gas. For industries with natural monopolies, the efficiency of producing products and services by one enterprise is superior to competition among multiple enterprises. While bringing efficiency economy, it can also increase overall social welfare, which has a certain rationality. Marshall believed that as companies grow bigger due to economies of scale, they will naturally take over the market and become monopolies. When these monopolies become too big, they block competition, make companies less active, and don't use resources in a smart way. Therefore, society faces a challenge: how to achieve an effective and reasonable balance between market competition and economies of scale, and achieve maximum production efficiency. Therefore, there are often significant differences in views on natural monopolies. In the Internet economy, knowledge is the main resource and production factor of related industries, and technological progress has become the decisive factor for the development of productivity. It is not constrained by the Scarcity of resources, which makes its Marginal cost approach zero and the average cost decreases. At the same time, because of the existence of network effects, digital products also have economies of scale on the demand side, making its Marginal revenue increase, Therefore, the range of its economies of scale tends to be infinite. The switching cost of digital products, the lock-in effect caused by path dependence, and the positive feedback that causes monopoly advantage to continuously self-reinforcement, thus leading to the Matthew effect of the strong getting stronger and the weak getting weaker will further strengthen the monopoly of the Internet platform. Due to the existence of economies of scale and economies of scope in the Internet Platform economy, natural monopoly is quite common, which leads to differences in the concept of Internet antitrust objects.

3 Difficulties in Identifying Internet Antitrust

3.1 Difficulties in identifying Relevant market

Compared with the Wet market, the Internet platform, as a Two-sided market, increases the difficulty of defining Relevant market. Specifically, internet platforms typically accumulate a large amount of user traffic by providing free services, and then use a large amount of user resources to operate value-added and advertising businesses. Products such as search engines, short videos, and WeChat operate based on this production logic. In the Two-sided market, the free market is the market that brings monopoly advantages, but the market where Internet enterprises really gain benefits is not necessarily a monopoly market. This causes significant fluctuations in the definition of monopolistic markets in antitrust law enforcement. Market definition is the foundation of antitrust review, and the results of definition often have a significant impact on the confirmation of market dominance. Take the search engine Google as an example, if the Relevant market is defined as "search engine", Google's market share will reach 88% in 2020, and its monopoly position will be quite stable; However, if the Relevant market is defined as the digital advertising market, Google will occupy only 29% of the market in 2020.

At the same time, the Two-sided market structure of the Internet makes it difficult to effectively apply the definition of Relevant market in traditional industries. The relevant market definition methodology, which is now widely used around the world, is the hypothetical monopolist test (SSNIP).

The hypothetical monopolist test is a defining method that assumes that monopolists, starting from the smallest market, continuously increase prices by a small margin and not temporarily, so as to observe consumers' purchase behavior of alternative goods, and then bring alternative products into the Relevant market category after consumers' purchase behavior becomes stable. However, its essence is still based on the logic of unilateral market, and the mode in the Internet Two-sided market will seriously affect its application effect.^[2] First, the free pricing model of the Internet based on the Two-sided market will directly cause difficulties in the selection of benchmark prices. When the pricing of goods or services provided on the Internet is zero, any significant price increase is meaningless. However, if we need to consider the service fees and advertising fees required by the other side, the complexity of the actual situation will increase the difficulty of selecting and calculating the benchmark price. Besides, internet platforms find it difficult to meet the data requirements of this method. The hypothetical monopolist test method is actually a simulation test based on the analysis of Market data and economic principles, so the requirements for the accuracy of relevant data are very high^[2], but it is very difficult to obtain accurate economic data of Internet enterprises in specific practice, and the dynamic competitiveness of the Internet industry also makes it difficult for its product prices to meet the non temporary requirements assumed by the method.

3.2 Difficulty in identifying monopolistic behavior

The common monopoly behaviors of the current Internet platform include Big data killing, forced "one out of two", algorithm collusion, restricted trading and other behaviors, which have significant technical characteristics. Their monopoly behaviors of abusing market dominance are often covert and confusing.^[3] Even when the monopoly position on internet

platforms has been established, the concealment of internet monopoly behavior will increase the difficulty of proof. Internet monopoly giants can often cause enterprises in Relevant market to reach monopoly agreements unconsciously through Big data, cloud computing, algorithms and other means. In addition, its powerful data holding and processing capabilities through backend technology have resulted in a huge information asymmetry between monopolistic platforms, other competitors, and consumers, posing more challenges to antitrust review and judicial litigation. In the overseas "Apple e-book price monopoly case", Apple once used information asymmetry caused by technology to use public opinion to cover up price restrictions and eliminate monopolistic behavior of competition.^[4] In China, there have also been several cases against Baidu for discriminatory sorting, but the plaintiff can hardly prove that Baidu's search Sorting algorithm is discriminatory, and the case has basically lost. For example, the Maple Leaf City website v. Baidu case ultimately lost due to the inability to prove that Baidu had adopted different ranking algorithm rules for it.^[5]

4 Difficulties in Internet Anti Monopoly Enforcement

4.1 The cost issue of antitrust judicial practice

It is precisely due to the various characteristics of the Internet that antitrust litigation often incurs high explicit judicial costs. The trial of JD v. Alibaba's "one out of two" case in 2017 did not begin until November 2020, and the entire process of obtaining evidence was very long. The anti monopoly cases against large enterprises such as IBM in foreign countries often last for more than ten years, and the investigation, proof, and trial processes consume high costs.

In addition to the explicit costs in the antitrust judicial process, there are also hidden socio-economic costs brought about by the "error costs". The error cost is a framework for analyzing antitrust policy decisions proposed by Frank Easterbrook (1984) based on modern decision-making theory. He believes that the possible cost of only false positive errors (i.e. claiming to have a monopoly problem but not actually having one) is lower than the possible cost of false negative costs (misjudging unreasonable economic behavior as reasonable). Only then should antitrust lawsuits be filed against suspected anti-competitive business practices.^[6] The contradiction lies in the fact that intense competition may seem very similar to disruptive behavior. If the court prohibits it without distinction, it is highly likely that the actual normal competition behavior will be judged as disrupting competition. Anti monopoly justice, which should have protected competition, instead undermines the normal competition order, causing the "wrong cost" of judicial practice and the hidden cost of suppressing social innovation potential.^[7] In the process of applying the Antitrust Act in the U.S. A&P case, the government and the court failed to draw a clear line between "predatory" and "competitive" price cuts. They simply believed that A&P's Gross margin cut was destroying competition, and ultimately protected other competitors with relatively low efficiency. And it leads to the destruction of the efficiency of resource allocation and consumer welfare, which is a social hidden cost.^{[8]-[9]} Until now, the development of the internet is still in a rapidly changing and iterative industry cycle, and many innovative business models have failed to achieve stable profitability. Excessive or imprudent antitrust enforcement will stifle innovation in the internet industry, slow down efficiency gains, and increase social hidden costs.

4.2 Different antitrust economic purposes can also lead to contradictions in antitrust practices

The economic goals of internet antitrust mainly include promoting and protecting fair competition, promoting innovation and technological progress, and improving consumer welfare. Although under the Traditional economy, promoting competition to limit the excessive concentration of market share often helps to improve the efficiency of resource allocation, the particularity of the Internet economy determines that it has formed a new unique competitive monopoly market. The increasing effect of Returns to scale brought by the particularity of Internet production factors is bound to lead to the emergence of monopoly enterprises. However, the technological incompatibility brought about by its technological characteristics also causes the monopoly position of Internet monopoly enterprises to be fragile, phased and temporary. New enterprises can still rely on new technologies and new products to keep the market highly competitive. The existence of monopoly in the competitive monopoly market does not necessarily hinder competition but will promote effective competition in the industry. This kind of monopoly does not reduce Economic efficiency, but can more effectively allocate resources and promote the overall social welfare level than the Perfect competition market.

Overall, the internet economy still maintains high competitiveness in a monopolistic state, but this does not mean that the goal of fair competition is meaningless in internet antitrust. The monopolistic behavior of internet monopoly giants, such as forcing a choice between two, monopolizing agreements, self preferential treatment, and suppressing the acquisition of potential competitors with new technologies or products, still seriously disrupts the normal competitive order and hinders industrial innovation. Therefore, different levels of emphasis on different antitrust objectives often lead to completely different approaches. If the goal of fair competition is considered more important, antitrust practices tend to lean more towards the Harvard School's advocacy of limiting market share and M&A behavior of internet companies. If more emphasis is placed on innovation and technological progress, it is necessary to have moderate inclusiveness towards structural monopolies. The focus of antitrust measures will be more on correcting monopolistic behavior, and the regulation of market structure will be relatively relaxed. At this point, if excessive emphasis is placed on competition in the field of the internet economy, which imposes strict restrictions on market structure, it may pose a risk of stifling innovation. Innovation is an investment activity with high risks and positive external. Obtaining temporary monopoly rights and excess profits through innovation is the excess profits brought by reasonable monopoly, which improves the risk tolerance and capital strength of enterprises for innovation investment. Schumpeter believes that the temptation to temporarily monopolize profits is an important driving force for the introduction of new products and technologies. In terms of technological innovation, large enterprises are more efficient than small enterprises.

The difference in antitrust goals between the European Union and the United States is a good reflection of this situation. The EU's antitrust law enforcement focuses more on fairness, believing that fair competition is beneficial to consumer interests. Therefore, stricter scrutiny is adopted for mergers and acquisitions of internet companies. In contrast, the United States focuses more on efficiency and is committed to promoting innovation and technological progress. It believes that moderate monopolies at the level of internet structure are beneficial

to consumer interests and focuses on regulating the abuse of monopolistic positions by enterprises, rather than directly limiting their scale.

5 Conclusions

This article systematically reviews the difficulties faced by the current Internet antitrust system from three levels: theory, identification, and implementation. The main conclusions are as follows:

Traditional antitrust theories and methods are difficult to apply to the internet economy, leading to differences and difficulties in defining antitrust targets, behaviors, and markets.

Internet anti-monopoly needs to seek a reasonable equilibrium between fair competition and efficiency innovation, in some cases, moderate monopoly may be beneficial to consumer and social welfare, so it's necessary to avoid excessive or careless anti-monopoly law enforcement to inhibit or damage the innovation vitality of the Internet industry.

Due to the technical characteristics of the Internet Platform economy, its monopoly behavior of abusing the dominant market position is often covert and confusing, which brings more challenges to anti-monopoly law enforcement.

6 Optimization Measures for Anti Monopoly

Based on the analysis of the difficulties in internet antitrust in this article, it is believed that future internet antitrust practices need to be improved in terms of identification methods, reducing judicial costs, and resolving contradictions in antitrust practices caused by different objectives:

(a) Improve the identification methods of Relevant market and monopolistic behaviors. For the definition of relevant commodity markets, the network effect of Platform economy needs to be considered. Yi Fang (2021) proposed that while ensuring the sample time span, the actual elasticity of internet platform products or services can be measured through changes in actual prices, sales, or user numbers, and network effects are already included in this.^[11] In addition, if the hypothetical monopolist test method is difficult to apply to the identification of the Relevant market of Internet free products, other costs of one user can be used instead of price variables for measurement.^[12]

(b) Prudent use of legal means, primarily administrative means, to reduce judicial costs.

Due to the dynamic competitiveness of the internet industry, its monopoly position may also be short-lived. If the monopoly position of the respondent has disappeared in an antitrust investigation, antitrust may lose its significance after consuming high judicial costs. Corresponding examples include the loss of the monopoly position of shared bicycles on Youku, Sohu, Yahoo and OFO. In antitrust judicial practice, the efficiency of administrative means review is higher. Prudent use of legal means with administrative means as the main focus can reduce the high costs of judicial litigation, improve the enforcement efficiency of antitrust agencies, and to some extent avoid the "wrong costs" of judicial practice.

(c) Prioritize the objectives of anti-monopoly, taking consumer welfare and Economic efficiency as priority objectives.

The emphasis on different objectives in antitrust practice may lead to contradictory approaches, so balancing multiple objectives without focusing will inevitably lead to confusion in the antitrust execution process. Therefore, it is necessary to prioritize the economic objectives of antitrust. It should be clear that the purpose of antitrust protection for fair competition is to protect consumer welfare and Economic efficiency, and competition is only a tool to maximize the efficiency of resource allocation, not the ultimate goal. Therefore, if the increase in concentration of a certain market in the internet economy does not reduce consumer welfare, or even promote an increase in consumer welfare, there is no sufficient reason to impose antitrust regulations on it.

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