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Study on Antitrust Review of Concentration of Platform Operators

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Abstract

Currently, more and more platform companies are choosing to share data resources by way of mergers and acquisitions or operator concentration in order to consolidate and expand their position in the market. Among them, cross-sector mergers and acquisitions between platforms have reinforced the market power of the Internet's top platforms. Their complexity poses many difficulties for antitrust regulators in conducting operator concentration reviews, such as unreasonable reporting standards, inflexible traditional regulatory tools and low penalties. In order to meet these challenges, measures such as introducing transaction value standards at the institutional level, improving the idea of identifying innovative relevant markets and increasing the severity of penalties should be introduced, while the antitrust enforcement should standardize the examination of efficiency factors when identifying enterprises' implementation of concentration acts, so as to adapt to the development status of Internet platform enterprises and improve the regulation of the review of concentration of Internet platform operators.

Keywords

Internet Platforms; Operator Concentration Review; Filing Criteria; Platform Antitrust.

1. Introduction

With the advent of the digital economy and the increasing number of mergers and acquisitions by large platform operators, mergers and acquisitions seem to have become the most convenient method for the development of internet businesses, which are referred to as operator concentration in the anti-monopoly law. On 20 November 2021, on the third day after the listing of the National Anti-Monopoly Bureau, the State Administration of Market Supervision and Administration (hereinafter referred to as the General Administration of Market Supervision) announced 43 cases of failure to declare illegal lawful the penalty decisions of the cases of implementing operator concentration. [1] The notified cases were mainly focused on the Internet sector, involving 10 platform giants such as Tencent, Meituan, Baidu, Jingdong and 58 Group, all of which were imposed with top-tier fines. It is worth noting that the draft amendment to the Anti-Monopoly Law, which has just closed for public consultation on the 21st, proposes to increase the amount of fines for operators who illegally implement concentrations. [2] All this indicates that China will further strengthen the review of operator concentration in the platform economy. Platform giants have used their channel and financial advantages to massively annex and penetrate the influence of new online businesses, weakening the possibility of market forces to check and balance abusive practices and reducing the diversity of innovation. The operator concentration review system, which prevents excessive market concentration, has previously been invisible in the digital economy for many years. The unique characteristics of the digital economy make it difficult for threshold, trigger-happy M&A to reflect its regulatory characteristics. China's operator concentration review system needs to adapt and respond to these characteristics in a timely manner. [3] The network externalities and market bilaterality of the platform economy make antitrust regulation in this area more important and urgent on the one hand, and make it more complex

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on the other, from the definition of the relevant market and the determination of market dominance to the composition of and defences to abusive behaviour, which are being challenged. If it is allowed to develop uncontrollably without intervention, the situation of "the strong getting stronger and the weak getting weaker" will become a foregone conclusion. Therefore, it is necessary to pay close attention to the mergers and acquisitions of large internet platforms in the digital age, analyse their possible anti-competitive effects, and revamp China's operator concentration review system, which is of great importance for the healthy competition and development of the internet platform market.

2. Status of Platform Operator Concentration and Related Provisions of Antitrust Review

2.1. Current Status of Concentration of Internet Platform Operators

2.1.1. Development Characteristics and Trends in the Concentration of Platform Operators

M&A in China's digital economy industry is currently characterised by three main features.

First, horizontal, vertical and composite concentration are combined. At the early stage of the development of the digital economy industry, mergers and acquisitions were mainly horizontal mergers, which were characterised by the fact that the two parties to the transaction were basically competitive enterprises in the same market segment, with a high degree of consistency in business scope, and that the pre-merger enterprises were directly antagonistic in market competition, and the merger eliminated similar competitors in the market. For example, the merger between Tiger and Douyu in 2020 is a typical horizontal merger. Mature platform companies, on the other hand, focus on engaging in both vertical and compound mergers, where the merger helps to further integrate industrial resources, enrich the types of products and services under their umbrella, and achieve continuous traffic introduction and user lock-in for the platform. Examples of such mergers include the acquisition of Mobai by Meituan in 2018 and Ali's capital injection into NetEase Cloud Music in 2019.

Secondly, acquisitions by agreement are the dominant method. The current predominance of M&A by agreement in the digital economy means that most of the companies being acquired are small and medium sized, and at the time of the acquisition are at an early and young stage of development. An important issue that remains to be considered is whether the purpose of the acquisition is to stifle innovation and competition, and whether it constitutes a "stifling acquisition". A dominant Internet company may acquire a small company when it is small in order to prevent it from being overtaken by an SME, not to acquire the advanced technology of the acquired company or to further develop its innovative products, but to stifle competitors in their cradle. [4]

Thirdly, capital and large online platform companies are driving M&A. Past M&A cases show that capital as well as large platforms are active in the digital economy merger space. Some experts point out that there is a high risk of anti-competitive effects in situations of high horizontal shareholding in concentrated product markets. For example, Japan's SoftBank Group has taken stakes in a large number of online car companies around the world and then exerted influence to consolidate their businesses, a move that has been criticized for increasing monopoly in the market to the detriment of consumers.

At present, China is developing faster in the fields of 5G and cloud computing, and the platforms are growing rapidly with an amazing market size. Cross-industry and multi-discipline development is the development trend of China's digital platform companies. For example, Tencent has taken advantage of its strengths in the social media sector and invested in domestic and international game companies to achieve a domestic market monopoly in the game sector.

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At the same time, relying on the huge consumer market in e-commerce, social networks and other aspects is already in the global leading position, Ali cloud, Tencent cloud is also fast catching up, overall China's digital trade development potential is huge. Quest Mobile 2021 China Mobile Internet Spring Report shows that [5]as of March 2021, the three major data-driven head of Baidu, Alibaba, Tencent companies (i.e., BAT) have all reached a penetration rate of over 90% in the mobile universe, covering a wide range of major industries and building cross-discipline layouts. At the same time, the newly emerging Internet giants expanded their dominant areas and expanded their business landscape through diversified model layouts. Byte Jump and Meituan are accelerating their market expansion based on their core areas, expanding the existing Internet landscape and building diversified business models through organic synergy of different segments.

2.1.2. Overview of the Centralised Review of Platform Operators

The number of platform operators concentrating in the digital economy is increasing tenfold or even a hundredfold, and in 2021, the General Administration of Market Supervision imposed more penalties on platform operators for illegal concentration of operators than in the previous decade combined. It can be seen that the antitrust enforcement agencies have previously been relatively friendly towards the vast majority of operator concentrations, and have not strictly followed the principle standard of "having or likely to have the effect of excluding or restricting competition" as stipulated in the antitrust law to prohibit all operators that have or are likely to have the effect of harming market competition to any extent. It is self-evident that the enforcement of the law has not been strictly in accordance with the principle standard of review of the anti-monopoly law of "having or likely to have the effect of excluding or restricting competition". It is self-evident that the enforcement agencies have unconditionally approved the majority of concentrations of operators, which shows that the current industrial policy of China is aimed at maintaining the vitality of the market economy, promoting free competition in the market and making enterprises bigger and stronger. Although the anti-monopoly enforcement agency has not launched a detailed description of the cases of unconditionally approved operator concentrations, the announcement of the cases with conditional approval, however, shows some of the analytical thoughts and methods used by the enforcement agency in conducting the anti-monopoly review of operator concentrations, which are generally in line with the provisions of the anti-monopoly law. The anti-monopoly authorities should continue to explore and fully combine theory and practice to build a comprehensive Internet platform monopoly review system. The antitrust authorities should continue to explore and fully combine theory and practice to build a sound centralized review system for Internet platform operators.

2.2. Relevant Provisions on Anti-monopoly Review of Platform Operator Concentration

2.2.1. Substantive Review System for Operator Concentration

The substantive review of operator concentrations can be considered the core of the entire antitrust review regime for operator concentrations, as the outcome of the review of this process directly affects whether the concentration can be approved by the antitrust enforcement agency. Apart from the two exceptions that the effect of the concentration on competition is more beneficial than detrimental or in the public interest, the criteria for substantive review are that it has, or is likely to have, the effect of excluding or restricting competition. [6]In accordance with this principle, the specific factors to be examined include: market share, market control, concentration in the relevant market, barriers to market entry, competitive influence, impact on consumers and the national economy, and other factors, as set out in Article 27 of the Antimonopoly Law.

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The basic assumption of the traditional operator concentration review system is that the enterprises under review carry out their production and business activities centered on market transactions, at which point the question of specifying the benchmarks for antitrust review in terms of market share, turnover, volume of transactions etc., is usually a practical and effective technical tool. [7] For this reason, the assessment of elements such as market share and market concentration is usually at the centre of the methodology in the review of operator concentration, while other elements, such as market control, the impact of concentration on market entry and technological progress, the impact of concentration on consumers, other operators, and the development of the national economy as a whole, are also usually based on an analysis of the market transaction behavior engaged in by the enterprises involved in the concentration The conclusions drawn from the analysis of the market transactions carried out by the firms involved in the concentration. This set of logics can hardly be applied to platform enterprises, which are removed from the central process of market transactions. In the case of platform companies, it is extremely difficult to identify and quantify the market power of giant platforms with hundreds of millions of users, as they may not have a large market share due to the widespread use of free strategies for ordinary users. In this case, the assessment of their market power should focus on more non-price competitive factors.[8]

2.2.2. The Public Interest Defence to Concentration of Operators

Article 28 of the Antimonopoly Law provides for two defences to the standard of review of concentration of operators, namely the efficiency defence and the public interest defence, and this article focuses on the public interest defence. With regard to the public interest defence rule, the Antimonopoly Law only literally mentions public interest and clarifies the existence of public interest defence in the review of concentration of operators, but does not clearly define the scope of public interest, let alone what matters belong to the scope of public interest, which brings considerable uncertainty to the enforcement activities of the review of concentration of operators.

3. The Regulatory Dilemma of Antitrust Review of Platform Operator Concentrations

3.1. The Turnover Standard is Difficult to Apply to the Internet Platform Economy Model

Article 3 of the Regulations of the State Council on the Reporting Criteria for Concentration of Operators sets out the general reporting criteria for concentration of operators. It can be seen from this article that the declaration standard for operator concentration in China adopts the standard of "turnover", while the Platform Antitrust Guidelines, which are specifically for Internet platforms, suggest that the declaration standard should be "calculated according to different industry practices, charging methods, business models, and the role of platform operators, etc. The calculation of turnover may differ." It can be seen from this article that the legislator wants the calculation of turnover to take into account the characteristics of the digital economy as far as possible, but there are still difficult issues to be resolved. [9] In the context of the digital economy, using turnover as the sole criterion and threshold for declaring an operator concentration will inevitably allow some operator concentrations that may have anti-competitive effects to escape the scrutiny of enforcement agencies. [10]

Firstly, for internet platforms, the calculation of turnover is a difficult task in itself. As the business forms of Internet platforms tend to be diversified, the services they provide and the rules of pricing charges are more specific, resulting in the traditional turnover standards being difficult to operate in practice. This is even more evident in the field of platform economy with bilateral market, and it is difficult to obtain a specific and stable declaration standard just by relying on the trivial words of the Platform Antitrust Guidelines on the calculation of turnover

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of Internet platforms, which may lead to a chaotic situation in the concentration of Internet platform operators.

Secondly, the turnover standard does not accurately reflect the competitive strength of internet platforms. One important way in which large digital platform companies have gained and maintained their market power is by engaging in significant M&A activity that has not been subject to antitrust scrutiny because it mostly involves new, start-up companies. For example, in August 2016, DDT, which enjoys a significant market share in China's online taxi market, began a full merger and acquisition of the entire business, assets and related data of Youbou China. The merger will reportedly result in 90% of China's online taxi market share being controlled by a single company, Drip. [11] As both Drip and Youbou China had not been able to turn a profit at that time, their turnover did not meet the declaration criteria set out in the Anti-Monopoly Law to be exempted from operator concentration review. Since the implementation of the Anti-Monopoly Law in 2008, there have also been a number of operator concentration events in China's internet industry, such as the M&A between Meituan and Vodafone, the M&A between Ctrip and Go.com, and various M&A penetrations by digital giants such as Alibaba and Tencent, most of whom did not file for operator concentration. One important reason for this is that, according to the current filing standards, many of the operators involved in the concentration are new, start-up companies whose turnover does not meet the required ones. Although the Platform Antitrust Guidelines and Chapter 3 of the Interim Provisions on the Review of Concentration of Operators provide numerous reference elements, the only criterion available for reference is ultimately "turnover". In addition, China's reporting criteria require that the total turnover of the merging parties in China in the previous fiscal year exceeds RMB 2 billion, and that at least two operators have a turnover of more than RMB 400 million each. The "both exceed" RMB400 million reporting criterion will create a "fish out of water". Platforms usually go through six successive phases of development, namely the vacuum, growth, explosion, saturation and multi-platform phases. At the beginning of the platform, the number of users on both sides of the platform is small and the platform needs to attract users through pricing strategies in order to develop as quickly as possible, so many platforms do not have large revenue figures and even show a loss. Obviously at this point in time, M&A using the turnover standard does not accurately reflect the true value of the internet platform, but the platform is able to quickly achieve market share concentration and monopoly in the new market through M&A. It is therefore debatable whether the specific provisions on turnover in Article 3 of the Regulations of the State Council on the Reporting Criteria for Concentration of Operators are reasonable enough for the M&A of internet platforms.

3.2. Vague Expression of Substantive Review Criteria

The standard for substantive examination of operator concentrations in China is that they have, or may have, the effect of excluding or restricting competition. This formulation significantly broadens the scope of operator concentrations that should be investigated and punished. Once the anti-monopoly enforcement agencies strictly enforce this standard, it will result in any one of the operator concentrations may be investigated and punished. Moreover, this criterion is not absolutely applicable. According to Article 28 of the Antimonopoly Law, even if this criterion of substantive examination is met, the concentration may not be terminated if the operator can prove that the effects of the concentration outweigh the disadvantages, or if it is in the public interest. Thus, the standard is somewhat flexible in its application. The analysis shows that the anti-monopoly review is aimed at concentrations that severely restrict competition, while concentrations that are less severe and less harmful are permitted. In strict accordance with the current law, the anti-monopoly enforcement agency should make a decision to prohibit them, but most of the time the enforcement agency does not make a decision to prohibit them outright, but leaves room for negotiation and approves a

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concentration of operators as far as possible. It can be seen that the anti-monopoly enforcement agencies in China focus on those concentrations of operators that would actually cause serious harm to competition, and that there is a disconnect between the standard of review in the anti-monopoly law and enforcement practice, and that the provision does not correspond to the actual situation, is not reasonable, and does not provide clear guidelines. Since the antitrust enforcement agencies will only prohibit concentrations of operators that will cause substantial harm to competition, the legislative language should highlight the substantial and serious harm to competition caused by concentrations of operators, thus limiting the scope of the principle review standard to a more reasonable level.

3.3. Difficulties in Applying the Traditional Antitrust Review Approach

Traditional antitrust law's analysis of the effects of competition is mainly based on price theory, and thus focuses more on the price effects that may arise from transactions involving a concentration of operators, an approach that has limitations when analyzing concentrations of platform operators. In addition, market share is an important expression of market control, and market concentration is measured by market share. It can be seen that market share plays a key role in the analysis of market power and market competition in the traditional operator concentration review process. In the digital economy, however, the size of a firm's market share does not necessarily reflect its true market power. As mentioned above, many emerging, start-up companies are small in size, but due to their innovative business models or disruptive technology offerings, these companies have accumulated a large resource of high-value user data and have significant market potential. For example, in 2013, What's App's share of the US mobile messaging app market was 8.6%, while Facebook's market share was 13.7%, yet What's App sent a whopping 8.2 billion messages per day, while Facebook only sent 3.5 billion. [12] Therefore, insisting on the traditional market share as an indicator for assessing market power and competition when conducting antitrust reviews of platform operator concentrations would undermine the role of data resources and have significant limitations. In summary, the following difficulties apply to the traditional approach.

3.3.1. Relevant Markets are Difficult to Identify

Relevant market definition is the first step in a centralized review and there are many challenges in defining the relevant market for platform companies. An important competitive feature of platform enterprises is the multilateral market. In a multilateral market scenario, when defining the relevant market for an internet platform enterprise, can the platform be defined as a product, and how many relevant markets should be defined for the platform, and if each side of the platform's market is defined, then the revenue from one side alone will not fully reflect the competitive state of the platform. Moreover, in the business model of internet platform companies, free products or services are the most common means of doing business, and companies usually use data and traffic to obtain other forms of revenue. The SSNIP test would be completely ineffective if free products or services were to be included in the competitive assessment, as the relevant market is defined to clarify the scope of the competitive assessment. For platform companies, attention should be paid to how to address the issue of defining the relevant market in free prices, supported by the existing antitrust framework.

3.3.2. Market Forces are Difficult to Assess

Market share and market concentration are two important indicators in the assessment of market power in operator concentration. Traditional firms have relatively slow market entry and exit, the industry is relatively mature and market share reflects to some extent the market power of the firm at the time. Platform companies have a high degree of market openness and significant competitive dynamics in their competitive environment. At the same time, as market boundaries are difficult to determine, consumers can switch between different platforms at will. Therefore, it is debatable whether a firm has market power in a dynamic market judged by its

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market share. In competition among platform firms, technological innovations can easily cause market shares to change. When market power is assessed, market share has less and less power. Market entry barriers have become an important indicator of whether a firm has significant market power. The most direct practical experience comes from Microsoft and Tencent regarding MSN's overwhelming market share in the Chinese market, but QQ still wins the competition. This shows that there is a great deal of uncertainty as to whether barriers to entry exist in the competition of platform companies, or whether the strong market power of an Internet platform company can help to prevent other competitors from entering the market.

3.3.3. Unclear Scope of Public Interest

The public interest defence is provided for in Article 28 of the Anti-Monopoly Law, i.e. if an anti-competitive assessment reveals that a concentration of operators does have the effect of excluding or restricting competition, but on the other hand is very beneficial to the public interest, then the enforcement agency may approve the concentration in accordance with the public interest defence. However, this provision only points out the existence of the public interest defence rule, but does not clarify the scope of the public interest, resulting in a large ambiguity in the scope of the public interest. The lack of clarity in the legislative provisions has led to uncertainty and opacity in the application of the public interest in practice. Specifically, among the cases of concentration of operators that were unconditionally approved in China, there were a number of cases in which the public interest was asserted as a defence. In particular, most of the mergers of state-owned enterprises in recent years have fallen within the scope of "in the public interest", and most of the mergers of state-owned enterprises would cause serious harm to market competition, and such concentrations of operators, which in principle should be prohibited, were ultimately approved unconditionally. In such cases, the notice of review only indicates the final outcome and does not explain the process of analysis and the basis for the decision, which obviously leaves considerable uncertainty and opacity in the application of the public interest defence to the enforcement review. It is therefore necessary to clarify the scope of application of the "public interest" defence in order to enhance the credibility of the outcome of the review.

3.4. Efficiency Factors Make Antitrust Review More Difficult

Concentration of platform operators can facilitate data consolidation and create scale effects, which will promote industry efficiency and industry innovation to a certain extent. Therefore, the trade-off between efficiency factors and factors that preclude restriction of competition is an important aspect of the antitrust review regime. It has been argued that markets are self-correcting and if enforcement agencies wrongly allow operator concentration, the market can correct it through its own forces, but if concentration is wrongly prohibited, the positive incentives for concentrated behavior will be lost forever, and therefore operator concentration should be prohibited as little as possible. For platform operator concentration, however, the dangers of over-measuring efficiency factors are even more far-reaching; the combination of network externality effects and platform operator concentration can lead to the emergence of highly concentrated markets, and efficiency factors must be measured in a disciplined manner.

3.4.1. Penalties for Concentration of Operators are too Low

Article 48 of the Antimonopoly Law provides for two types of sanctions for enterprises that violate the concentration system of operators: "fines" and "measures to restore to the pre-concentration state". On 12 March 2021, the General Administration of Market Supervision (GAMS) issued a decision on ten cases of violation of the Internet law, the General Administration of Market Supervision made a penalty decision in accordance with the law on ten cases of illegal implementation of operator concentration in the Internet sector, imposing fines of RMB 500,000 on each of the twelve companies. If we look at the provisions of the anti-monopoly law, 500,000 is already the maximum fine for violating the provisions on

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concentration of operators, but the targets of the penalties include large enterprises with strong capital, such as Yintai Department Store, Tencent and Alibaba, for which 500,000 is more like buying a "license" for their concentration, which is not worth the time cost of not declaring. For them, 500,000 is more like buying a "license" for their concentration, which is worth nothing compared to the time cost saved by not filing. The low cost of breaking the law even makes companies desperate to take the risk. In addition, the antitrust enforcement agencies in the above-mentioned penalty decisions ultimately concluded that "the infringement did not have the effect of excluding or restricting competition", which means that the concentration in violation of the procedures did not have the anticompetitive effect that the antitrust law is most concerned with, in other words, their behavior was not the most "egregious". In other words, their conduct was not the most "egregious", yet they were subject to the highest fines under the existing provisions. The $500,000 cap therefore makes the penalties lose their gradient and therefore, in terms of the amount of fines set, the current amount of fines simply does not achieve a sufficient deterrent effect.

4. The Way out of the Platform Operator Concentration Antitrust Review Dilemma

4.1. Introduction of Transaction Value Criteria

There are many different business models for platforms in the internet industry, but the ultimate aim is to attract consumers and lock in users to form traffic, so turnover is not a criterion for businesses to focus on. As mentioned earlier some companies have been in the no revenue or even loss stage, but this does not mean that the market is less competitive, its market value is still high and it is an important competitive force in the relevant market. Concentrations by such operators, when viewed solely in terms of the turnover criterion, are bound to exclude many concentrations that could be harmful to competition. Although China has a bottom-up clause for mergers and acquisitions that do not meet the criteria for declaration of a concentration of operators, the content of this clause is rather general and the criterion for judgement is only "has or may have the effect of excluding or restricting competition", which is highly uncertain. Therefore, it is possible to follow Germany's example and adopt the turnover criterion while referring to the "transaction value" to compensate for the problem of a single reporting criterion. On 2 January 2020, the General Administration of Market Supervision and Administration published the Draft Revision of the Antimonopoly Law (Draft for Public Comments) (hereinafter referred to as the "Draft for Public Comments"). The Exposure Draft then affirms the view that the value of the declaration standard should be dynamically adjusted.

4.2. Enhancing the Guiding Nature of Principle-based Standards

Since the anti-monopoly enforcement agency only prohibits concentrations of operators that cause substantial harm to competition, the principle provisions of the review standard should give clear instructions on the objects of the prohibition, and by no means make all concentrations of operators liable to investigation and prosecution by the enforcement agency. The legislative language should highlight that the competition effects caused by the concentration are substantial and serious, thus limiting the scope of the principle review criteria to a more reasonable level. In this way, the principle criterion of "having or likely to have the effect of substantially excluding or restricting competition" will send a definite message to the general operators that the enforcement agency will not prohibit all concentrations of operators, thus eliminating the concerns of the proposed operators about the scope of review and facilitating the smooth implementation of concentrations of operators. With such an adjustment, the principle review standard will further meet the requirements of scientific legislation and be more guiding, while helping to achieve the purpose of China's anti-

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monopoly law to improve economic efficiency, as well as being more in line with the enforcement practice of operator concentration in China.

4.3. Innovative Approaches to Antitrust Review

4.3.1. Innovating Tools for Defining Relevant Markets

The SSNIP method has been used to determine the nature of the relevant market in old operator concentration filings, but because of the bilateral nature of the market between the parties to a platform merger, the SSNIP method is not effective in determining the nature of the market for a number of platform mergers. Therefore, to determine the nature of the market for platform mergers, a profit model analysis can be used to define the relevant market. The purpose of the company is to pursue profit maximisation, the so-called free product is based on platform cross-subsidisation and balanced pricing, and profitability is the essential characteristic of the business. Therefore, some scholars propose that platform operators should focus on defining the relevant market based on the profit-side market as the main basis for definition. [13] While the profitability model analysis method can simplify the analysis process and avoid stagnating the analysis of operator concentration competition due to the difficulty of defining the relevant market, there is no clear explanation as to why the free side market is chosen to be ignored. For example, Tencent Video, an online video site, sells membership to users, provides paid value-added services, and deals with advertisers to collect advertising fees, so the profit model analysis would need to define both relevant markets, which could lead to irreconcilable conflicts between the two relevant markets.

Secondly, the definition of the relevant market can be diluted in anti-monopoly enforcement. In Guidance Case No. 78 issued by the Supreme People's Court, it is stated that the definition of relevant market can be diluted in cases of abuse of market dominance. The Supreme People's Court held that the relevant market definition is not an end in itself, but a tool necessary for competition analysis, and that the competitive effects of the conduct complained of can be assessed through other evidence. The purpose of the relevant market definition is to clarify the competitive constraints faced by the operator, to reasonably identify the operator's market position and to correctly determine the effect of its conduct on competition in the market. Even if the characteristics of competition on internet platforms are not primarily considered at the relevant market definition stage, they can still be duly taken into account in identifying the operator's market position and market control in order to correctly identify the operator's market position. Therefore, not taking into account primarily the characteristics of competition on Internet platforms at the relevant market definition stage does not mean that this characteristic is ignored, but rather that it is taken into account in a more appropriate manner.

4.3.2. Improving the Criteria for Assessing Market Power

First, barriers to entry are used as the main identification criteria. For ad-supported platforms, the more user data one has, the more investment one can attract from online advertisers. With one side of the platform being free to users and the other side having to pay for it, such as social media and search engines, the network effect continues to amplify, creating a more sustainable market power for existing businesses. This is because the more user data collected, the more targeted the advertisements placed can be to individual users, leading to higher advertising rates and platform revenues, allowing the platform to further improve the quality of its services and attract more users, and the cycle repeats. Therefore, due to the network effect, the dominant company's advantage will become more and more obvious, and it will be more and more difficult for other companies to enter the industry to participate in the competition. In platforms, the barriers to switching are high for users due to the network effect or switching costs. As a result, competitive pressure from users is difficult to bring into play. Market entry barriers can then be used as an important evaluation criterion.

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Second, focus on the transmission of superior market power. Market power transmission, also known as the principle of leverage in antitrust law, is when a company uses its monopoly power in one market to gain monopoly power in another market. Internet giants are not content to operate in one area, and tend to enter multiple areas to create "super platforms". Because of the network effect, platform companies are more likely to generate market power transmission than other industries. Baidu, for example, has the largest search engine in China, which allows it to understand user preferences, while in the area of mobile navigation, there is now a duopoly market centred on Baidu Maps and Gaode Maps, which allow Baidu to understand where users work, live and shop, as well as their routes and schedules. If Baidu chooses to invest in an acquisition of a review app, it will have an advantage that startups don't have - having access to the consumer profile that Baidu has already developed, and pushing users precisely to offline businesses that match their interests and preferences and are easy for them to reach at key moments. The network effect allows platforms to easily bring market power from one area to another, creating a new advantage while feeding back into other areas and consolidating dominance in all of them. The concentration of platform operators will exacerbate and accelerate the transmission of market power from the network effect.

4.3.3. Clarifying the Scope of "Public Interest"

The public interest, which is one of the defences to the standard of review of an operator concentration, is an interest which, in certain circumstances, takes precedence over the competitive market mechanism and which must be protected even at the expense of market competition. The public interest defence can have a decisive impact on the outcome of a review of an operator concentration, as it can directly legitimise an otherwise prohibited operator concentration and thus obtain the approval of the enforcement authorities. In view of the importance of this defence, it is necessary to clarify the scope of the public interest defence in order to improve it, thereby increasing the transparency of the review of the concentration of operators and enhancing the persuasiveness of the review results. Firstly, it is necessary to safeguard national security. The importance of national security is reflected in Article 7 of the Antimonopoly Law, which emphasises the need to legally protect industries and operators that are related to national security. Only when national security is maintained can the country prosper and a good order of market competition can be formed. If a concentration of operators can, to a certain extent, better safeguard national security, then it should be covered by the public interest and should be approved by the anti-monopoly enforcement agency. Therefore, the scope of public interest should include national security.

The second reason is the need to enhance the international competitiveness of domestic enterprises. In the context of economic globalisation, the international environment is becoming more and more complex and competition in the international market is becoming increasingly fierce, and the competitive pressure faced by Chinese enterprises is not only from domestic but also from abroad. In order to promote the sustainable development of China's economy, an important task at present is to enhance the international competitiveness of domestic enterprises, therefore, the enhancement of the international competitiveness of enterprises should be included in the scope of consideration for the review of the concentration of operators.

Once again, it is about safeguarding employment. China has a huge population and the issue of employment is of great importance to the development of overall social production. It is also evident from various legislative and policy provisions that the State has always attached great importance to safeguarding employment. Therefore, in order to better achieve the goal of safeguarding employment in the field of anti-monopoly law, the scope of safeguarding employment as a matter of public interest should be further clarified in the legislation.

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Finally, it is due to the need for ecological and environmental protection. Article 15 of the Antimonopoly Law clearly stipulates environmental protection as one of the elements of public interest, which also illustrates the importance of environmental protection in the antimonopoly law. If a concentration of operators would harm competition but would clearly benefit environmental protection in China, the concentration of operators should be justified and therefore environmental protection should fall within the scope of public interest matters.

4.4. Normative Efficiency Measurement Factors

In the case of platform operator concentrations, the cost of errors passing concentration scrutiny is much higher than the cost of allowing concentrations in the interests of efficiency, and antitrust law should not assume that other social mechanisms can compensate for these errors. It is therefore crucial to regulate the measurement of efficiency factors. First and foremost efficiency should benefit consumers. Protecting competition and enhancing consumer welfare is the purpose of antitrust law. Concentration of platform operators may significantly improve the operational efficiency of firms, but antitrust law cannot ignore the potential impact on consumers because the new entity can improve its own efficiency. Consumers must benefit from the concentration of operators in order for efficiency considerations to be taken into account in the review process. Nor can platform efficiencies be achieved in a way that produces harm in non-price dimensions. Some ad-supported social networking sites and search engines, which require the collection of personal information and the creation of user profiles in order to target and accurately deliver advertisements, do not place enough emphasis on the privacy interests of their users, and even see technologies that enhance the level of privacy protection as a threat to their own business. Yet the level of privacy protection is an important part of competition in the non-price dimension. If price decreases at the expense of the level of user privacy protection, then it is not a factor of efficiency that should be considered. Secondly efficiency should be demonstrable. Licence agreements are sometimes not feasible as an alternative to concentration of platform operators. In some cases, operator pooling will be the only option for business-to-business data sharing when a licence agreement would raise legal or privacy concerns and cannot be entered, or when the parties to a licence agreement cannot be reconciled despite best efforts. In this case, it is important to judge that the so-called efficiencies are demonstrable rather than unreliable estimates. The validation of efficiency factors should be supported, justified and quantified by internal studies and documentation. This is because efficiency measured as an internal assessment is far more convincing than efficiency calculated after the fact to convince a review body.

4.5. Increasing Anti-trust Reviews and Penalties

4.5.1. Establishing an Anti-monopoly Big Data Review Platform

With regard to the anti-monopoly review of operator concentration, an analysis procedure can be established, whereby the law enforcement agency will enter into the platform the relevant concepts, declaration criteria, review contents, review methods, review procedures, legal liabilities and remedial measures and other anti-monopoly regulations related to operator concentration, construct an analysis model and require operators to enter all large and small concentration transactions into the system, or set a standard for entry. The system will then fill in information on anti-monopoly-related transactions and generate an assessment report through analysis, which is of great reference value to enterprises that do not meet the declaration threshold but are not sure whether they will exclude or restrict competition, so that they can take corresponding measures or specify solutions in a timely manner. At the same time, concentrations monitored by the big data platform that may need to be reviewed will be fed back to the enforcement agency, facilitating the efficiency of enforcement, while at the same time monitoring illegal transactions through the platform. The use of the Big Data platform is not limited to operator concentrations. Apart from information that needs to be kept

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confidential, all publicly available content related to anti-monopoly work can be generated in the Big Data platform in separate ports. Public participation and monitoring can also be fed into the platform. The establishment of a big data antitrust analysis platform with the help of technology will not only help operators to understand the policies and regulations relating to antitrust, but also innovate working methods and improve the efficiency of law enforcement agencies, and fit in with the national big data development strategy.

4.5.2. Increase the Cost of Illegal Implementation of Operator Concentration

In the newly established National Anti-Monopoly Bureau, the Second Department of Anti-Monopoly Enforcement focuses on reviewing operator concentration cases, i.e., investigating and punishing illegal implementation, which means that its enforcement power will be more enriched in the relevant enforcement in the future. Due to the limited deterrent effect of the $500,000 top-level fine on the platform giants, the penalty for illegal implementation of operator concentration was significantly increased during the amendment process of the Anti-Monopoly Law. According to Article 59 of the draft amendment to the Anti-Monopoly Law, an operator who implements a concentration that has the effect of excluding or restricting competition shall be fined not more than ten percent of the previous year's sales; if it does not have the effect of excluding or restricting competition, a fine of not more than five million yuan shall be imposed. This change has increased the strength and deterrent effect of the fine, while also giving the penalty a gradient that is more scientific and reasonable.

5. Conclusion

With the development of the digital economy, the current anti-monopoly law appears to be inadequate in reviewing platform operator concentrations, revealing the shortcomings and inadequacies of the system. The platform enterprises involved in the concentration, especially the new and start-up enterprises, whose value and growth are mainly achieved through user data and network effects, have a very limited scale of turnover, which leads to the concentration of operators with possible competition potential becoming a leaky fish for antitrust review because they do not meet the declaration threshold. At the same time, the traditional anti-monopoly law review analysis based on price theory has limitations in dealing with platform operator concentrations and fails to take into account the special characteristics of the digital economy, resulting in an inability to accurately and effectively analyses the competitive effects of such concentrations. And the $500,000 cap on fines for unlawful implementation of operator concentrations does not create sufficient deterrence to ensure compliance with the operator concentration regime by market participants. Therefore, the operator concentration regime should be improved to meet the challenges posed by the digital economy. Firstly, on the basis of the turnover standard and in accordance with the characteristics and development of the relevant industry, a transaction value standard should be added as the threshold for declaration of concentration of operators, so that concentration of platform operators that may have the effect of excluding or restricting competition can be included in the scope of review of the anti-monopoly law as far as possible. Secondly, in the analysis of the competitive effect of the concentration of platform operators, the assessment index of market entry barriers should be added. Thirdly, the scope of "justification" should be clarified and the efficiency factor should be taken into account. Finally, in order to ensure the effective implementation of the operator concentration system, the amount of fines for illegal operator concentration should be set in a gradient, so that the penalties are more targeted and effective and achieve sufficient deterrent effect to effectively prevent and stop illegal acts.

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