

# The Determination of the Market Dominant Position of the Internet Platform

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## Abstract

With the development of the Internet economy, the economic model of the Internet platform has emerged. However, while the growth and development of the Internet platform economy industry has brought convenience to consumers, it has also brought many economic problems, such as "choose one out of two" and "big data kill familiarity" and so on. In this context, on February 7, 2021, the Anti-Monopoly Committee of the State Council of China issued the "Anti-Monopoly Guidelines on the Platform Economy", which improved the relevant provisions of the Anti-Monopoly Law of the People's Republic of China in the platform economy. However, the relevant laws lack effective and targeted provisions for the complex and changeable Internet platform market, and there is a practical obstacle of insufficient applicability when determining whether an Internet platform has a dominant market position. On the basis of focusing on examining relevant issues, the specific criteria for determining the market dominance of Internet platforms should be further improved.

## Keywords

Internet Platform; Determination of Market Dominance; Anti-monopoly Law.

## 1. Introduction

With the popularization of the Internet, all Internet platforms want to occupy a place in the market, and the number of Internet platforms is also increasing. Internet platform companies cover more and more fields and provide more and more products. At the same time, the new economic form has also brought challenges to anti-monopoly work. In the context of the digital economy, determining whether Internet platform companies have a dominant market position is a major problem in anti-monopoly work.

## 2. The Connotation and Profit Model of the Internet Platform

### 2.1. The Connotation of the Internet Platform

Internet platforms are not only a bilateral market structure, but will involve the structure of multilateral markets. A platform is a real or virtual space in which customers can trade. The development of Internet platforms has played a positive role in activating the consumer market and expanding employment. The deep integration of Internet platform enterprises and various fields of society is conducive to improving the productivity of the real economy and the efficiency of social resource allocation to a certain extent.

### 2.2. The Profit Model of the Internet Platform

The revenue source of Internet platforms is mainly online advertising business, sales commissions or other value-added services. The profitability of Internet platform enterprises is often related to the number of network users they attract. The more users they attract, the stronger the profitability they will be. Generally speaking, Internet platform enterprises will attract consumers through various services or products. When the number of consumers

reaches a certain extent, merchants will be attracted by the platform, and the more merchants, consumers may get better services. Internet platforms can make profits by charging advertising service fees. The profit models of Internet platform enterprises are diverse. In addition to advertising revenue, they also make profits through value-added services, information payment, knowledge payment, commission, channel profit, sharing services and other ways.

### **3. Legal Norms for Market Dominance of Internet Platforms**

In China, Article 18 of the current Anti-Monopoly Law of the People's Republic of China takes market share as the benchmark for determining whether an operator has a dominant market position. This provision applies not only to traditional industries, but also to Internet platform companies. The Interim Provisions on the Prohibition of the Abuse of Dominant Market Position stipulate that the number of users in relevant industries, network effect, locking effect, technical characteristics, market innovation, the ability to master and process relevant data and the market forces of operators in related markets can be taken into account when determining the dominant market position. The E-Commerce Law of the People's Republic of China focuses on the regulation of e-commerce platforms. The "Anti-Monopoly Guidelines in the Field of Platform Economy" focuses on the business model under the Internet platform economy.

The Anti-Monopoly Guidelines in the Field of Platform Economy issued by the Anti-Monopoly Committee of the State Council of China is the world's first systematic anti-monopoly regulation specifically targeting the Internet platform economy. The Interim Provisions on Prohibiting Abuse of Dominant Market Position is a refinement of the application of the Anti-Monopoly Law of the People's Republic of China in the context of the platform economy. The Anti-Monopoly Law of the People's Republic of China, the Anti-monopoly Guidelines in the Field of Platform Economy, the E-Commerce Law of the People's Republic of China, and the Interim Provisions on Prohibiting Abuse of Market Dominant Positions become the main basis for the relevant departments to determine whether the Internet platform operators have a dominant market position in the relevant markets.

## **4. Internet Platform Market Dominance**

### **4.1. Determination of Traditional Market Dominance**

In the anti-monopoly law of the People's Republic of China, the concept of dominant market position plays a very important role. Only when the operators have a dominant market position, the relevant behaviors may constitute the so-called "abuse". The anti-monopoly Law of the People's Republic of China stipulates that in determining whether business operators have a dominant market position, the market share and competition in the relevant markets should be considered.

### **4.2. The Predicament of Determining the Market Dominance of Internet Platform**

Compared with the identification of traditional market dominance, the Internet platform market has its own characteristics. In 2014, after Qihoo 360 sued Tencent QQ, how to determine the market dominance of Internet platform companies has attracted more and more attention. Due to the strong dynamic characteristics of the platform economy and the existence of cross-subsidy models, traditional Anti-monopoly analysis to determine the dominant market position of the platform will inevitably encounter great challenges, and there are practical obstacles in application. Because of the dynamic characteristics of the Internet industry, even if an Internet company currently occupies a large market share, it cannot be considered that it will have continuous market influence in the future.

The market power of Internet platforms will continue to increase due to the growth of users. Article 11 of the Anti-Monopoly Guidelines in the Field of Platform Economy stipulates that the number of users is a consideration for determining market dominance. Generally speaking, merchants need to pay a certain fee to enter the Internet platform and actually operate. Therefore, merchants will choose Internet platforms according to their own needs. In order to reduce costs, merchants will not choose to operate on multiple Internet platforms. If they do not continue to operate on Internet platforms, merchants may choose to cancel the account. The Internet platform offers great discounts for consumers who register and log in for the first time, and it is not ruled out that consumers may not use the platform after enjoying the discounts for newcomers. At the same time, platform users may use different platforms for transactions over a period of time. For example, a consumer user uses Tmall to buy disinfectant, and it will not prevent him from using JD.com to buy laundry detergent at the same time. Therefore, the fact that an Internet platform has a certain number of users within a certain period of time does not mean that it has market dominance, and the number of Internet platform user registrations cannot reflect the platform's market dominance. Therefore, when determining whether it has a dominant market position, considering the number of users, it is necessary to consider the active time of the user account, and also distinguish whether the main business of the platform is the same.

In determining the market dominance of Internet platform companies, other operators should also consider the relevant market conditions. According to the definition of market dominance, an enterprise with market dominance should be able to "obstruct and influence other operators to enter the relevant market". Therefore, when it is found that no new competitors have entered a relevant market for a long time, it should consider whether the enterprise has a dominant market position. Of course, it cannot be ruled out that the company is constantly innovating, so that no competitor can match it. Then, if other influencing factors can be excluded, it can be considered that this platform company has a dominant market position. It should be emphasized that once a platform company takes the lead in occupying a relatively high market share in the market, it is difficult for homogeneous platforms with similar technical conditions and business models to seize the market. For this reason, when analyzing the market entry situation, we should not only look at how many platform companies that are completely consistent with the incumbent companies choose to enter the market, but also pay attention to those who have certain differences from the incumbent platforms, but there is direct business competitive platform. For example, if we want to see whether there are new companies competing with Taobao in the market, our focus should not only be on those new platforms that have the exact same model as Taobao, but should also take into account JD and even Douyin, which can bring goods. See if they compete with Taobao. Due to the characteristics of dynamic competition among Internet platforms, other factors such as the data possessed by the Internet platform and its ability to process data, and the transfer cost of Internet products should also be considered when determining whether it has a dominant market position.

## 5. Improve the Legal Regulation of Internet Platform Market Dominance

At present, the relevant laws of the Anti-Monopoly Law are not very feasible to determine whether an Internet platform company has a dominant market position, and the anti-monopoly law enforcement and regulatory authorities cannot respond in a timely and effective manner to the abuse of market dominance by Internet platform companies. Therefore, it is necessary to revise and improve the relevant provisions of the Anti-Monopoly Law, to fill in the deficiencies of the current legislation in a targeted manner, and to avoid the lack of precise legal provisions for Internet platform companies to be in a state of not being effectively supervised. Establish a scientific and reasonable supervision system, strengthen anti-monopoly supervision, and

formulate targeted single-line laws and regulations, and improve and refine relevant laws and regulations according to the problems reflected in the actual development process, especially for difficult and complex problems in the field of Internet platforms. At the same time, the revision of the Anti-Monopoly Law should also focus on encouraging corporate innovation, properly handle the inherent logical relationship between innovation and monopoly, and ensure fair competition among Internet platform companies and the sustainable, healthy and stable development of the market economy.

Formulate and improve the self-discipline and regulation mechanism of industry associations, give play to the role of industry associations, and rely on industry associations to further regulate in detail the places where the determination of market dominance stipulated by law is not meticulous and in place. At the same time, give full play to the self-regulatory role of industry associations and effectively regulate the abuse of market dominance by Internet platform companies. Anti-monopoly law enforcement agencies should strengthen the publicity and education on compliance of Internet platform enterprises, and continuously improve the legal operation awareness of Internet platform enterprises through various forms such as holding symposiums. Internet platform enterprises should conduct comprehensive self-inspection and self-examination, and if there is a problem, they should make serious and thorough rectification. Improve the self-discipline and self-regulation capabilities of Internet platform enterprises.

With the in-depth development of Internet technology, Internet platform companies have become the most important economic entities in the market. The emergence and development of Internet platform companies have brought about many changes in the market competition pattern, and also brought new challenges to anti-monopoly law enforcement agencies. Due to the particularity of the Internet platform economy, we must change, improve and refine the traditional method of determining market dominance according to the platform environment, and clearly define the criteria for determining market dominance. At the same time, according to the practical development situation, it is determined whether the Internet platform enterprises have a dominant market position.

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