

# Research on Anti-Monopoly Regulation of E-Commerce Market——based on the Abuse of Market Dominance

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**Abstract:** Nowadays the competition in e-commerce industry is becoming fierce. Due to characteristics of e-commerce industry, the current law regulation has become more complex. Analyze the current provisions, and combined with the traditional three-stage theory, to the current electricity market abuse dominant position type of anti-monopoly regulation challenge, put forward the electricity industry anti-monopoly related system.

**Keywords:** E-Commerce; Anti-Monopoly; Dominant Market Position

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## Introduction

With the rapid development of network economy, the competition in e-commerce industry is also fierce. Its network externality, bilateral market feature and attention economy make it easy for e-commerce market to form a dominant situation, thus forming a special "competitive monopoly structure". In view of this feature, how to regulate it has become an important subject.

The most important form of monopolistic behavior in e-commerce industry is the abuse of dominant market position. Due to the network economic characteristics, the traditional three-stage identification standard is not completely applicable, it needs to be identified with other factors. How to correctly identify and regulate it in e-commerce industry is the key. Anti-monopoly law in China not only needs the improvement and progress of traditional theory, rigorous economic support is vital, and so is judicial practice test and reaction. So as to better promote the benign competition of electricity industry, and improve the welfare level of consumers at the same time.

## 1. Preventing the formation of monopolies in the e-commerce industry is imminent

With the improvement of network information technology and the progress of related industries, e-commerce has been integrated with society. The public's dependence on trading on Internet platforms is gradually increasing. At the same time, e-commerce platform has been blocked, which has become a hot topic of attention. E-commerce is based on the high development of network. The progress of science and technology is an important factor to promote the high development of e-commerce platform. However, as a highly developed operation mode, e-commerce, even if it has a technical and unique nature, must also abide by the corresponding regulations. As one scholar said: "the principle of anti-monopoly law is flexible enough, and economic theory can provide enough basis, can completely and effectively solve the new economy under the seemingly special anti-monopoly problem, the thorny problem lies in the institutional framework of law enforcement, namely in the network economy, due to the technical complexity of products and services and make cases become difficult to determine". Compared with traditional commodity trading methods, e-commerce mainly highlights in four aspects: borders, virtualization, high credit and electronic payment. These differences make the academic judgment of the necessity of the anti-monopoly in e-commerce industry somewhat controversial.

According to market practice results, it is necessary for anti-monopoly regulation in emerging industries such as

e-commerce industry. Compared with monopoly agreements and centralized monopoly behaviors, enterprises' abuse their dominant market position is more common in e-commerce industry. Internet platform improved by leaps and bounds also created greater economic value and social benefits, but on the other hand, many enterprises with its control in the market, abuse of price behavior or non-price behavior, damage that has been or will be caused to the stability of market competition order and welfare of consumers. In the period of the rapid development of the Internet, anti-monopoly cases related to e-commerce enterprises are common, but the vast majority of the courts are basically ruled that the alleged monopoly behavior is not established. This is greatly related to the current anti-monopoly law on the imperfect regulation of e-commerce industry, it is difficult to find an accurate legal basis.

## **2. Current status of legal regulation related to e-commerce market**

### **2.1 Relevant provisions of Anti-Monopoly Law**

The Anti-Monopoly Law of the People's Republic of China, which has been in force in China since 2008, is based on the background of the industrial era. In response to the phenomenon of individual enterprises attempting to achieve market domination by means of monopolies, it adopts the traditional "three-stage theory" to determine the monopolistic nature of transactions. The first step is to define the relevant market; in the second step, it determines whether the enterprise's product has a dominant position in the relevant market that meets standards; and in the third step, it determines whether an enterprise has an attempt to monopolise the market economy. However, with the advent of the Internet era, changes beyond the assumptions of the legislative premises have occurred, and the traditional approach to anti-monopoly practice has not taken into account the special characteristics of e-commerce industry, which has led to outstanding contradictions in judicial practice with regard to the anti-monopoly regulation of e-commerce industry.

In the traditional "three-stage theory", the judgment of related markets is mainly divided into product related market judgment and geographical related market judgment, but e-commerce platform is an obvious semi-system, and the product related market is difficult to be accurately defined, which needs to be analyzed according to specific cases. Under the premise of globalization, it is difficult to find geography boundaries. For the determination of the dominant position of enterprises, the Anti-monopoly Law mainly stipulates two judgment methods, one is the comprehensive factors to judge whether the operator market share, technical conditions, other operator dependence and market barriers; the second is the presumption of share judgment, according to the proportion of one or several operators in the relevant market, when the market proportion reaches a certain number. For e-commerce industry, it is less difficult to enter or exit the market, the market structure is unstable, and there are no targeted new analysis standards in the Anti-monopoly Law. At the same time, the wide network externality in e-commerce market, which makes it naturally have a certain monopoly tendency. According to the Anti-monopoly Law, the market has met the standards of anti-monopoly and must accept anti-monopoly sanctions. One of the most critical steps is to evaluate and define the scale of each platform, but the proportion of the platform alone cannot accurately determine the existence of dominant position. In view of the judgment of the phenomenon that individual enterprises are trying to dominate the market through monopoly, the Anti-monopoly Law does not stipulate the new monopoly behaviors in e-commerce industry, and there will be disputes over whether they can be regulated and how they should be regulated.

### **2.1 Relevant provisions of E-Commerce Law**

China's E-commerce Law has made clear provisions on the monopoly mode of e-commerce platforms that the operators of e-commerce platforms have a certain dominant role in the whole platform, and can reduce and eliminate competition to a certain extent.

On the basis of the Anti-monopoly Law, this article further regulates the specific factors to be considered when analyzing the dominant market position under the background of e-commerce market, but the above four considerations do not really summarize the characteristics of e-commerce industry. In addition, the law also clearly stipulates that electricity market operators must strictly abide by certain rules and regulations, shall not use illegal ways to other operators market business and business contacts interference or adverse impact. This regulation is not involved in our country anti-monopoly

law and anti-unfair competition law, which largely impacted the logical premise of the anti-monopoly law, and not even for the relative advantage to set any conditions. From the relevant elaboration, those who reduce the geographical location and sales groups should be stopped in time. In the face of this scenario, if the operator is not clear enough about the dominant role of the platform, it cannot play an effective role in suppressing the competition.

To sum up, there is still a lack of anti-monopoly legal regulation of e-commerce market in China, and the regulation is not improved in the existing legal framework. Due to the rapid development of electricity industry, the focus of competition also turns to differences between products, product quality difference, customer satisfaction and other material competition, imagination competition, attention competition, market competition and competition between industries, the relevant market boundaries in electricity market field is getting blurred, which directly makes the basis of the platform dominance more fixed, people cannot according to the common basis of evaluation platform. Therefore, the anti-monopoly regulation for e-commerce market will face greater challenges compared with the traditional market.

### **3. The challenge of regulating abuse of a dominant position in e-commerce**

#### **3.1 Unclear criteria for defining the relevant market**

##### **3.1.1 General framework for the relevant market definition**

The Anti-monopoly Law makes the following definition of the relevant market: "It refers to the scope or region in which operators compete for certain goods or services, mainly including two elements of goods and region". The evaluation of the monopoly degree of e-commerce platforms is mainly based on restrictions on the relevant markets, and competition often appears in the market within a certain range. Therefore, stipulating the clear position of enterprises in the market, establishing the scope of the operator, these are the contents that must be improved.

In 1997, the EC Commission issued the Notice on defining the Market in the EC Competition Law and the Guidelines on the Definition of the Related Market issued by the Anti-Monopoly Commission of the State Council in 2009 all made detailed provisions on the methods and steps of the relevant market definition. According to China's regulations, the judgment of relevant platforms must be made first by defining the fixed commodity trading market and the relevant regional market, and by considering time, intellectual property rights and innovation under special circumstances.

##### **3.1.2 Challenges of market definition of e-commerce industry**

As an innovative Internet product, e-commerce industry has strong substitutability. Nowadays, different industries, especially technology, develop very rapidly, far beyond what people can meet, which means that we have higher requirements for new commodities. The requirements will also vary in both time and space. At present, the means used by the traditional industrial era may not be applied to e-commerce platforms.

The particularity of the bilateral markets. Compared with the traditional industrial market, e-commerce market has the biggest feature, which is that it has significant bilateral market attributes. From the economic point of view, electricity platform market need to have two groups of participants to use the platform to trade, and one party in the electricity market gains, should be determined by the other party in the user number in the platform, but compared with the original ordinary platform, electricity platform, in the process of operation has a certain cross role. That is to words to say, the increase in the number of participants on one side will promote the profit of the other side, and in order to balance the needs of two types of users, the management of the market will choose to subsidize businesses with small fluctuations, which is stable on the whole. Due to the special operation mechanism, traditional monopoly judgment logic established for the unilateral market is difficult to apply to it. Treat the platform as an independent product to define the relevant market, or to define the single market, or take other definition method, the current law is not specified, different cases in judicial practice also have big differences.

Multi-channel of the commodity market. Electricity platform to further expand the output of products, however, for the same kind of goods, from different ways to output products may not come from the same trading platform, Bertelsmann and Mondadori joint venture is a typical case, the EU organizing committee in the project operating in Italy in the evaluation

process of platform, the platform will often be judged as long-distance output channel, rather than retail channel. The committee gave the rationale: "Another way of output makes customers not need to choose goods in the presence of the seller, that is, customers can buy products online at any time and can evaluate or even refund the goods after receiving goods. And for people in remote rural areas, they have no choice but this way of buying books. "It can be seen that the definition of commodity-related markets should not only take into account the types of commodities, but also the convenience and price of commodities in different channels will have a greater impact.

The vastness of the regional market. Goods with low freight and convenient transportation will naturally have a broader geographical market. For traditional life consumer products, the judgment of geographical market needs to consider the transportation cost occupies the proportion of product price. At the same time, regional trade barriers should also be taken into account. If there is no regional trade barrier, under the premise of the full development of e-commerce and logistics, its regional market can completely reach the global scope. In general, the development of e-commerce market has expanded the sales scope of commodities, and greatly enhanced the commodity liquidity compared with the traditional market, which correspondingly expands the regional market. It is difficult to have unified and specific standards for different products to define the geographical market.

## **3.2 Mismatch of methods for determining market dominance in e-commerce**

The Anti-monopoly Law judges the functions of e-commerce platforms from two aspects, namely, the comprehensive factor analysis method and the market share presumption method. In addition, the E-monopoly Law based on e-commerce Law refines the factors in the comprehensive factor analysis based on the characteristics of e-commerce industry.

### **3.2.1 Comprehensive factor analysis method**

In China's E-commerce Law, in view of the relevant factors involved in the anti-monopoly system of e-commerce platforms, it points out the influencing factors, including scientific and technological means and the advantages of e-commerce platforms. First, the progress in technological means. Thanks to the continuous development of human society and the attention to the cultivation of creative ability. But from the perspective of technology alone, we should pay more attention to the research results and the cost of technology, rather than the benefits that technological progress creates for us. Secondly, in terms of number advantage, electricity platform is very different, unique characteristics of commodity business concept and number advantage and other factors should be combined, and as the specific basis of electricity platform, rather than only by the number of people to judge the quality of the model. Moreover, once the degree of control of the operator over the e-commerce platform is regarded as the basis for determining the business model, which not only ignores the basis of the relevant platform, but also separates the operation model from the goods and location.

### **3.2.2 The presumption of market share method**

In e-commerce market, due to attention economic characteristics and bilateral platform effect, makes its natural monopoly tendency. In fact, the judgment of dominant market position should not be judged only based on market share. This concept is called "market force" in the West, that is, the ability of e-commerce operators to change market prices and deviate from the price level of full market competition. It emphasizes a dynamic strength. Therefore, when relying on market share to infer the market dominance, time and other factors should be comprehensively considered.

## **3.3 Hidden monopoly under Internet technology**

The Anti-Monopoly Law clearly stipulates that three categories of random play to the role of the platform: price, trading and tie-up behavior. With the development of technology, new behavior modes have been derived, such as "exclusive trading" and big data killing. As a new market that relies on the Internet operation, the algorithm has become an indispensable part, and the application of the algorithm makes the monopoly behavior have highly concealment and technical. In this context, the judgment of the abuse of dominant market position using the algorithm will face great challenges: first, how to determine

whether the responsible agent is the algorithm designer, the trial, or the harvest; and second, how the algorithm works behind the scenes to confirm the existence of the abuse and how the abuse should be discussed.

## **4. Countermeasures and Suggestions for Antitrust Regulation in the**

### **E-Commerce Market**

#### **4.1 Refinement of relevant market definition**

Do not overly require a definition of the relevant market. There are many lawsuits related to anti-monopoly, but they often result in a series of requirements that impose a certain burden on the plaintiff regarding market definition and require the plaintiff to be able to clearly define the scope of what the product encompasses, failing which the case risks being dismissed, which is a major dilemma for the plaintiff. The FTC has also argued that, in analyzing cases, the market definition is not required as a necessary condition if the damage is very direct. Compared with traditional markets, e-commerce platforms want to draw a clear boundary. It is not an easy thing. Because of this, in e-commerce platform, people connect the relevant platforms together and form a flexible system to help create new goods, provide more help for people's lives, and focus on the direct adverse effects of behavior.

It is too one-sided to judge the level of the relevant platform with the income as the reference standard. For the e-commerce industry, which has the typical characteristics of a bilateral market, the traditional approach of defining the relevant market from a demand perspective on the consumer side or from the operator side will lead to different results. In contrast, determining the relevant platform on the basis of income generated allows for simple and accurate conclusions to be drawn with certainty. For example, platform-based e-commerce and self-operated e-commerce, although both fall into the category of electronic transactions, are very different sources of profit.

#### **4.2 Refinement of market dominance determination**

##### **4.2.1 Improving the criteria for determining market share**

Due to the natural monopoly tendency of e-commerce industry, the traditional method of relying on a one-half share of market share to presume dominance may not actually have the effect of excluding or limiting competition. At the same time, in the e-commerce industry, there are often cases where multiple people use the same account, and in response to this phenomenon, it is possible to take reference from foreign practices and use the number of visits to a product or similar factors as a factor in determining market share. The "swiping" behavior that has emerged in recent years can be judged in relation to actual sales.

##### **4.2.2 Take full account of network economic effects**

Network economic effects are a range of phenomena in the network economy, including network externality and positive feedback effects. The impact of such effects in the relevant market is often more important than market share. For example, although a firm occupies a large share of the market, the consumer lock-in effect is weak and it is easy to switch to other firms due to factors such as price fluctuations, in which case consideration of the impact of the consumer lock-in effect factor should play a large part.

##### **4.2.3 Reinforcing the importance of the time dimension**

E-commerce industry is in a highly innovative and changing state of development, where competition is not just about price and quality, but more importantly about knowledge, technology and the level of innovation. Innovation and flexibility are the lifeblood of the business, and at this point the dominant position in the market is judged not only by the current state of affairs, but also by future developments. As technology innovates, the scope of the market will change and an operator

who occupies a dominant position in the sector for a short period of time is likely to lose its dominant position as a result once the technology in the sector becomes innovative and more sophisticated.

### 4.3 Refinement of abuse of dominance

In the e-commerce market, anti-monopoly enforcement is inefficient and unable to conduct timely investigations and regulation of relevant abuses. On the basis of maintaining the stability of the current anti-monopoly enforcement system, the Ministry of Industry and Information Technology can be authorized to monitor and conduct preliminary investigations into monopolistic practices in the e-commerce market with its network monitoring and investigation powers.

Abusive behaviour in e-commerce market often manifests itself as non-price fixing behaviour and should be regulated by the market supervision and management authorities. However, the technical and professional nature of e-commerce market differs from that of general market in that the review stage of the technology is not as stringent as that required by the previous market, thus creating a situation where it is entitled but not effectively exercised. Therefore, the law or the relevant judicial interpretation can authorize it to conduct preliminary investigations of anti-monopoly in the e-commerce industry and submit the results and data to the anti-monopoly enforcement agency. This mechanism can improve the efficiency of anti-monopoly enforcement in the e-commerce industry on the basis of maintaining the stability of the existing anti-monopoly enforcement system, and better safeguard the order of Internet competition and the rights and interests of users.

## 5. Conclusion

The most important manifestation of monopolistic behaviour in the e-commerce industry is the abuse of a dominant market position by the operator. Due to the nature of the e-commerce industry's network economy, the traditional three-stage determination criteria are not fully applicable and need to be combined with other factors to determine it. The basic jurisprudence of China's anti-monopoly law is basically applicable to the anti-monopoly regulation of the e-commerce industry, as the provisions of the anti-monopoly law are more flexible. The problem lies in the specific institutional framework of enforcement, i.e. how to correctly identify and regulate it in the e-commerce industry. The development of anti-monopoly law in China requires not only the improvement and progress of traditional theory, but also the support of rigorous economics, as well as the testing and counterproductive advancement of judicial practice, so as to better promote healthy competition in the e-commerce industry and improve the welfare level of consumers while the e-commerce industry continues to develop and grow.

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