

Research on the Governance of Unfair Competition Among Internet Platform Enterprises

Zhiming Hu

School of Economics and Management, Chongqing University of Posts and Telecommunications, 400065, Chongqing, China

Abstract: With the rapid development of the digital economy, data has increasingly become a key factor for enterprises to gain competitive advantages in the market. While internet platform companies utilize data and algorithms to innovate business models and enhance operational efficiency, they also engage in unfair competitive practices such as forced "choose one out of two," data scraping, blocking and screening, and traffic hijacking, undermining fair competition and innovation in the industry. Therefore, this paper investigates the issue of unfair competition governance among internet platform companies, aiming to provide valuable suggestions for promoting the regulated, healthy, and sustainable development of the platform economy.

1. Introduction

As the digital economy increasingly drives global economic growth, the integration of digital technologies with traditional industries has spurred the rapid development of new business models and patterns. Accelerating the development of the digital economy is a key initiative in implementing national strategic objectives, with digital platforms, as the most significant organizational forms within the digital economy, emerging as key actors in new exchange relationships[1]. Centered around these major platforms, the platform economy, by harnessing advanced technologies such as big data, cloud computing, and artificial intelligence, plays a crucial strategic role in facilitating the smooth functioning of the national economy's circulation and in enhancing the efficiency of social resource allocation, thereby promoting the informatization, digitalization, and intelligentization of technology and industries.

At the same time, the rapid development of the digital economy is accompanied by numerous challenges. Significant capital inflows and market expansion by platform companies have led to a slowdown in user growth, and the gradual decline of the early platform economy's traffic dividend has made development models reliant on capital accumulation and business scale expansion unsustainable. Driven by digital technologies such as big data and algorithms, platforms have entered a "dynamic stalemate" phase, transitioning from "incremental competition" to "stock competition." As the platform economy continues to grow and strengthen, a multitude of new technologies, business models, and patterns emerge, enriching the essence of the platform economy. Data and algorithms, serving as the foundational support for these innovations, have increasingly become key elements for platform companies to maintain a competitive edge in the market. The determinants of market competition have shifted beyond just product prices, with changes in the methods and behaviors of competition between companies[2]. While data and algorithms have facilitated innovation in platform business models and improved the operational efficiency of the digital economy, they have also provided tools and means for platform companies to engage in unfair competition. In the fierce market competition, new forms of unfair competition, such as forced "choose one out of two," data scraping, blocking and screening, and traffic hijacking, which rely on data and algorithms, have potentially harmed

the fair competition and innovative development of the industry. Facing these new forms of competitive behavior, constructing an effective regulatory and governance system to regulate and guide them, in order to maintain fair competition among platform companies and promote the standardized and healthy development of the platform economy, has become an important issue.

Government departments have also taken notice of the changes in unfair competition behaviors among internet platform companies, paying high attention to monopolies and unfair competition in the platform economy, and steadily advancing the construction of related legislation and regulatory systems. For instance, the Chinese government pointed out in the "Provisions on Prohibiting Unfair Competition on the Internet (Draft for Public Comment)" that the use of technical means to implement interference and other unfair competitive behaviors, as well as other types of online unfair competition, is prohibited. On June 24, 2022, the Standing Committee of the National People's Congress officially passed the revised "Anti-Monopoly Law of the People's Republic of China" (hereinafter referred to as the "Anti-Monopoly Law (Amendment)"), which explicitly states, "Operators shall not engage in monopolistic behaviors using data and algorithms, technology, capital advantages, and platform rules." On November 22 of the same year, the "Anti-Unfair Competition Law of the People's Republic of China (Revised Draft for Comments)" drafted by the State Administration for Market Regulation stated that operators shall not use data and algorithms, technical means, and platform regulations to hinder or disrupt the normal operation of network products or services legally provided by other operators, disrupting the order of fair market competition. However, the modes and behaviors of competition conducted by platform companies have fundamentally changed, and the competitive landscape in the industry shows significant differences from traditional unfair competition behaviors in terms of competitors, objects, and elements[3]. The competitive behaviors in the digital platform domain are characterized by greater complexity, concealment, and dynamism, posing challenges to advancing platform governance. The "Several Opinions on Promoting the Standardized, Healthy, and Sustainable Development of the Platform Economy" in January 2022 highlighted "promoting industry collaborative governance, strengthening departmental coordination, promoting industry self-discipline,

and enhancing social supervision." The "14th Five-Year Plan for Digital Economy Development" stated, "Establish and perfect a new pattern of digital economy governance with the participation and effective collaboration of the government, platforms, enterprises, industry organizations, and the public, forming a governance synergy, encouraging healthy competition, and maintaining a fair and effective market." This provides direction for the governance of digital platform enterprises.

Through the review of existing literature, it is found that research on the governance of unfair competition by internet platform companies is relatively scattered, lacking a systematic study on the connotation of unfair competition by platform enterprises and the evolution of their behaviors. This article will elaborate in detail on the concept of unfair competition by internet platform enterprises, the evolution of their behaviors, characteristics, and possible governance directions.

2. Definition of the Concept of Unfair Competition

2.1. Defining Unfair Competition

The concept of unfair competition was first introduced by Western industrial countries in the 19th century to regulate certain competitive behaviors of individuals or enterprises. As early as 1883, the Paris Convention for the Protection of Industrial Property stated, "Any competition that contradicts honest practices in industrial or commercial matters constitutes an act of unfair competition[4]." The revised "Anti-Unfair Competition Law" of 2019 in China specifies that "operators, in the course of production and business activities, shall not violate the provisions of this law, disrupt the market competition order, or infringe upon the legal rights and interests of other operators or consumers."

The academic community has conducted extensive research on unfair competition. Scholar Zhao Jun defines unfair competition as behaviors that violate the commercial norms of honesty and fair competition in market transactions[5]. On the other hand, Huang Wushuang has proposed an analytical framework "Competition Interest—Competition Behavior—Competition Harm—Competition Evaluation," emphasizing that to determine whether a competitive behavior constitutes unfairness, it is necessary first to assess whether the plaintiff possesses a protectable interest in competition, whether there is a clear competitive relationship between the parties, and whether the plaintiff has indeed suffered damage due to the defendant's competitive behavior. This approach is used to define and analyze acts of unfair competition[6].

However, in the internet domain, the definition and assessment of unfair competition become more complex due to its uniqueness, involving factors such as network externalities, high technology, and concealment[7]. Scholars have explored and defined internet unfair competition from various perspectives. Some scholars view behaviors such as traffic interception and software disruption as unique unfair competition strategies of the internet, highlighting these as new competitive strategies that enhance the efficiency of information resources through network technology. Xie Lanfang has discussed internet unfair competition based on harm, from the perspectives of the interests of operators, consumers, and the public, evaluating the balance of interests[8]. Scholar Chen Bing examined whether certain

market behaviors among internet platform companies constitute unfair competition from the perspective of the existence of competitive relationships[9]. Additionally, some scholars have delved into this issue through legal and case studies, such as scholar Menell PS, who employed case analysis to investigate the specific connotations of internet unfair competition based on categories of unfair competitive behaviors[10]. Zheng Xiaojing defined internet industry unfair competition as actions that contravene the principles of fairness and honesty in market competition, such as malicious link redirection and software incompatibility, infringing upon the legitimate rights and interests of other participants[11].

2.2. Evolution of Unfair Competitive Practices

In the context of the digital economy, data has become the core engine for the sustained development of enterprises. Businesses vie for and analyze data to attract more users and traffic, thereby gaining unique competitive advantages and capturing greater market share to enhance their core competitiveness[12]. The price of goods is no longer the decisive factor in market competition, and the forms of competitive behavior among businesses have undergone numerous changes. New forms of unfair competition, such as data scraping, forced "choose one out of two," false traffic inflation, and blocking and screening, have emerged. Compared to traditional competitive behaviors, these activities differ in terms of technological means, specific forms, and competitive effects[13].

Although data and algorithms are inherently neutral in terms of application and value, operators, who possess characteristics of both "economic man" and "rational man," may misuse these technological means. They might overstep legal and ethical boundaries, engaging in new forms of unfair business models, formats, and behaviors such as traffic hijacking and malicious incompatibility. The use of intelligent algorithms is highly covert, making it easy for such technological applications to navigate the gray area between reasonable legality and fair competition. As the competition for data among enterprises intensifies, the frequency of unfair acquisition and use of data also increases[14]. The technological tool of intelligent algorithms gradually becomes a breeding ground for new forms of unfair competition on platforms, such as excessive data scraping, forced "choose one out of two," and malicious algorithmic price comparison behaviors.

Scholars generally agree that data has become a "gold mine" for enhancing corporate competitive advantage, leading to widespread concern over unfair competition surrounding data. Han Shipeng believes that the issue of data unfair competition primarily manifests as malicious incompatibility, data scraping, traffic hijacking, and ad blocking behaviors. Some scholars have pointed out that to prevent other platform companies from accessing vast user resources and data, certain internet platform enterprises may engage in exclusionary practices such as maliciously blocking external links or restricting external access, forcing users to make a "choose one out of two" decision. These practices increase the difficulty for competitors to acquire users and related data, raise data barriers to market competition, and disrupt the market environment for free industry competition[15]. At the same time, these unfair competition behaviors regarding data also threaten consumer privacy and security. Wang Chunying and others argue that platforms may abuse user data and engage in unfair competition, excluding

new market entrants and leading to data monopolization phenomena[16].

3. Research on the Current State of Governance for Unfair Competition Among Internet Platform Enterprises

3.1. Causes of Unfair Competition

In the digital market environment, data and algorithms are the core factors driving strategic decisions of platform enterprises, which significantly differ from the factors driving strategic behaviors in traditional markets. In the traditional industrial economy, behaviors such as unfair competition and monopolies were rare occurrences. However, in the digital economy domain, these corporate behaviors have become more covert and automated due to the application of data and algorithms. This means that unfair competitive behaviors, such as forced "choose one out of two," data scraping, traffic hijacking, and blocking competitors, are closely associated with the application of data and algorithms.

Users of internet platform companies are the primary sources of data generation, playing a crucial role in data output. Their browsing, interaction, and clicking behaviors on the platform, along with the user preferences and habits revealed by these actions, constitute the raw data collected by the platform. By de-identifying, processing, and analyzing these data, platforms can transform data into valuable assets, thereby becoming a new element of production. Platforms that possess key user data can gain a strategic competitive advantage; hence, they often attempt to collect as much user information as possible through various means, which may have adverse effects on individuals and society. When platforms use these collected user data for deep analysis, they can accurately construct "data portraits" of users, thereby providing customized e-commerce, finance, medical, education, and news services. Although these services can bring convenience to users, they may also lead to issues such as privacy breaches, information silos, and decision-making difficulties.

Both established market-leading digital giants and emerging small and medium-sized digital enterprises may engage in the aforementioned unfair competitive behaviors through their unique data collection and algorithmic models[17]. In the digital society, the application scope of data and algorithms is continuously expanding, opening new avenues for various services and products. However, for the majority of the public and businesses, the internal workings of data collection and algorithms often resemble a black box, making it difficult to comprehend their impact on themselves and the external environment. Therefore, regulating the use of data and algorithms, strengthening the regulation of data collection, circulation, and utilization activities, as well as the application of algorithms and artificial intelligence by dominant digital platform companies, and studying the characteristics of these activities and their impact on the economy and society should become an important task.

3.2. The Current State of Unfair Competition Governance

Throughout the development of governance in the internet platform industry, China has witnessed a transition from a relatively lenient approach to "relatively strict and

standardized governance," and then to an emphasis on "balancing regulation and development." In terms of governance strategy, it is essential to harness the positive effects of the platform economy and enhance the international competitiveness of platform companies while mitigating their inherent negative impacts. Toward this goal, many scholars emphasize the importance of adopting collaborative governance and multi-stakeholder governance approaches to optimize governance pathways. For instance, Nie Hongtao and others have proposed establishing a data monopoly regulation framework involving multiple participants, advocating for the implementation of punitive compensation and the principle of reverse responsibility, promoting the openness and sharing of data, preventing data oligarchs from abusing their advantages, and timely controlling data monopolies to foster the healthy and stable development of the platform economy[18]. Chen Bing suggests further clarifying and refining the principles of honesty, business ethics, and criteria for malicious judgment in the Anti-Unfair Competition Law, specifying the scope of application for internet-specific and general rules, improving the mechanism for balancing interests of multiple parties, and forming an integrated legal framework and multi-stakeholder legal application strategy[19].

In the multi-layered complex network environment, research on the multi-stakeholder collaborative governance of internet platforms covers many aspects. In terms of internet platform governance and regulation, scholars have explored the behavioral motivations of various participating entities, proposing the establishment of a collaborative regulatory mechanism for the internet platform market and examining the impact of different regulatory approaches on platform governance. Regarding the governance of platform-derived underground industry chains, some scholars suggest embedding platform security systems and collaborative governance frameworks into the governance structure to achieve effective governance. It is evident that multi-stakeholder collaboration plays a positive role in addressing internet platform governance issues. However, there are also numerous challenges in implementing multi-stakeholder collaborative governance, such as difficulties in coordinating among multiple entities and unclear boundaries of authority and responsibility among governance subjects. Some scholars note that if government departments lack a clear understanding of the role conditions of industry associations and the public in the governance of internet information services, it is difficult to maximize the effectiveness of the multi-stakeholder governance model[20]. Due to the mutual influence of strategies among multiple entities, scholars often use evolutionary game theory to study related issues. For instance, Pan Ding and others have developed an evolutionary game model to study the key parameters influencing government regulatory strategies and corporate big data "price discrimination" strategy choices, concluding that the corporate loss rate, expected regulatory costs, penalty severity, and regulatory success rate are critical factors affecting the evolutionary game system[21]. Xing Genshang and others have addressed the issue of big data "price discrimination" from the platform users' perspective, constructing an evolutionary game model involving e-commerce platforms and consumers to study the evolutionarily stable strategies of both parties after introducing data portability rights, and analyzing the factors influencing the behavior strategies of both sides[22]. Some scholars also apply evolutionary game

theory to study collaborative governance issues between governments and platforms in the platform economy[23].

The literature analysis reveals that with the flourishing development of the digital economy, research on ongoing regulation and governance of the internet platform industry has become a focal point. As internet platform companies grow and expand, issues such as forced "choose one out of two," data scraping, and traffic hijacking—forms of data-driven unfair competition—may emerge. However, current research primarily reflects natural and macro-level studies, with less depth in exploring the governance of unfair competition, particularly in terms of data's impact on the competition among platform businesses. While multi-stakeholder collaborative governance has been widely accepted in the governance of the internet platform industry, the collaborative governance of unfair competition encompasses complex relationships among governments, businesses, the public, and industry associations. Therefore, the strategic choices of different entities within collaborative governance and their internal relationships represent a direction for future research and a key focus area.

References

- [1] Sun Jin, Cai Qianmeng. Rule Correction for Digital Platform Governance under the Principle of Fair Competition. *Journal of Finance and Law*, 2023, (01): 48-60.
- [2] Cai Lin, Wu Ruoyu. Legal Regulation of Platform Algorithms from the Perspective of the Anti-Unfair Competition Law. *Science Decision Making*, 2022, (12): 137-154.
- [3] Yang Dong, Li Zishuo. On the Reconstruction of the Anti-Unfair Competition Law: Centering on the Regulatory System of Data Elements. *Application of Law*, 2022, (11): 15-25.
- [4] Li Gexia. Analysis of Internet Unfair Competitive Behaviors - A Review of the "Internet Unfair Competition Behaviors" Clause in the Anti-Unfair Competition Law. *Intellectual Property*, 2018, (02): 20-30.
- [5] Zhao Jun. Legal Regulation of Unfair Competition Behaviors in the Online Market. *Special Zone Economy*, 2010, (06): 230-231.
- [6] Huang Wushuang, Tan Yuhang. Study on the Judgment Standards of Unfair Competition. *Intellectual Property*, 2020, (10): 23-40.
- [7] Stecher M W. *Webvertising: Unfair Competition and Trademarks on the Internet*[M]. Kluwer Law Intl, 1999.
- [8] Xie Lanfang, Huang Xijiang. The Recognition Concept of Unfair Competition Behaviors on the Internet. *Intellectual Property*, 2018, (05): 15-28.
- [9] Chen Bing. Reinterpreting the Significance of "Competitive Relationships" in the Anti-Unfair Competition Law in the Internet Economy - Citing Relevant Cases from Courts in Beijing, Shanghai, and Guangdong from 2000 to 2018. *Jurisprudence*, 2019, (07): 18-37.
- [10] Menell P S. Regulating 'Spyware': The Limitations of State 'Laboratories' and the Case for Federal Preemption of State Unfair Competition Laws[J]. *Social Science Electronic Publishing*, 2005.
- [11] Zheng Xiaojing. Research on the Definition of Unfair Competitive Behaviors in the Internet Industry - With Comments on Article 2 and Article 12 of the New Anti-Unfair Competition Law. *Journal of Jilin Provincial Institute of Education*, 2019, 35(03): 157-160.
- [12] Huang Bingrong. *Legal Empirical Study on Disputes over Unfair Competition of Data by Internet Enterprises*. Nanchang University, 2022.
- [13] Zhang Wenkui. Regulation of Data and Algorithms in the Digital Economy. *Journal of Chongqing University of Technology (Social Science)*, 2022, 36(10): 8-13.
- [14] He Min, Ma Shiya. Analysis on the Application Logic of General Provisions on Data Unfair Competition by Internet Enterprises. *Science Technology and Law*, 2022(2): 54-62.
- [15] Ni Fei. Competition Law Intervention in Consumer Privacy Protection under Data Competition. *Northern Legal Science*, 2022, 16(1): 117-131.
- [16] Wang Chunying, Chen Hongmin, Yang Yunpeng. Study on the Monopoly Issues of Platform Economy in the Digital Economy Era and Supervision Suggestions. *E-Government*, 2021, (05): 2-11.
- [17] Zhang Yunping, Luan Jing. Research on Monopoly Governance Strategies for Digital Economy Platforms. *Economic Issues*, 2021(12): 9-15.
- [18] [21] Nie Hongtao, Han Xinyue. The Dilemmas and Solutions of Legal Regulation on Internet Platform Data Monopoly. *Changbai Journal*, 2021, (04): 93-100.
- [19] Chen Bing. Difficulties in the Legal Application of New Types of Unfair Competition on the Internet and Its Perfection. *Studies in Law and Business*, 2021(6): 100-114.
- [20] Lu Anwen, He Hongyang. Study on the Mechanism of Multi-Stakeholder Governance Model in Internet Information Service Industry - From the Perspective of Evolutionary Game with Multiple Parameters Influence. *Chinese Management Science*, 2021, 29(03): 210-218.
- [21] Pan Ding, Xie Han. Evolutionary Game of Government Regulation and E-commerce Enterprises' Price Discrimination Behavior in the Digital Economy. *Economy and Management*, 2021, 35(1): 77-84.
- [22] Xing Genshang, Lu Fang, Zhou Zhongbao, Ye Jinlong. Can Data Portability Govern "Big Data Killing"? *Chinese Management Science*, 2022, 30(3): 85-95.
- [23] Kirpalani, R.and Philippon, T., 2020, "Data Sharing and Market Power with Two-Sided Platforms", NBER Working Paper, No.28023.