

Research on Product Blocking from an Antitrust Perspective

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Abstract. In the era of digital economy, risks and opportunities coexist. Business practice is constantly changing, and business strategies of Internet enterprises tend to be conservative. In order to maximize user traffic, Internet platform enterprises widely take product blocking measures against their competitors, such as restricting platform access and blocking network connection. These behaviors are profitable, technical and competitive, conducive to helping platforms create economic benefits. But at the same time, they should be regulated by law as they may damage consumers' rights and interests and hinder fair competition. From an antitrust perspective, relevant markets should be firstly defined to determine whether the platform with blocking behaviors has a dominant position. If the enterprise dominates the relevant markets, whether the dominance is abused ought to be evaluated according to the components of the rejection transaction. Finally, the effect of restricting competition is expected to be accessed with the principle of rationality. Through clarifying the evaluation framework of antitrust law, this paper aims to improve the legislative concept of antitrust law providing a more complete dispute resolution mechanism for China's judicial practice.

Keywords: Product Blocking Behavior; Platform Enterprise; Antitrust; Dominant Market Position; Regulation.

1. Problem Raising

As the current society has entered an era of digital economy, the vigorous development of emerging technologies related to the Internet has greatly affected the development of the real economy, gave birth to a large number of Internet platform enterprises and brought them new opportunities. However, behind the opportunity are also challenges. The major changes of the commercial ecology greatly aggravate the technical risks of platform operation and thus bring the ripple effect in the commercial competition. In this regard, platform enterprises adopt a conservative business strategy, producing a profit model with building an ecological closed loop as the main means and inhibiting the competitors as the business target.

Among them, one of the most popular competition methods adopted by platform enterprises is product blocking. As an emerging competitive behavior, product blocking refers to refusing to provide products or services to other operators and building an ecological closed loop through denying platform access and blocking links. It aims to inhibit competitors, protect the business and improve the profitability. From "2020 WeChat banning Lark" to "the antitrust lawsuit brought by Tik Tok against Tencent", product block not only affect the normal competition, also degrade the user experience. Therefore, it is necessary to discuss the legality of the product block and consider the legal regulation.

In fact, product blocking that belongs to Internet vicious competition has attracted the attention of experts in the legislation and law enforcement in recent years. In February 2017, Internet articles were added in *Law of the PRC against Unfair Competition* ("Law against Unfair Competition"), stipulating that operators should not use technical means to affect users' choice and other operators' operation. In February 2021, *the Antitrust Guidelines for the Platform Economic Industry* defines the refusal to deal in platform economy and regulates malicious and incompatible behaviors. In September 2021, the Ministry of Industry and Information Technology (MIIT) held an administrative conference on link block, requiring all platforms to remove the blocks according to relevant standards within a certain period of time, otherwise legal measures will be taken.

In line with the practice of legislation and law enforcement, from the perspective of economic law, current academic researches on product blocking in China are also centered around the anti-unfair competition law and the antitrust law. From the perspective of Anti-monopoly, Yin suggested that the provisions related to “the abuse of dominant market position” in *Anti-monopoly Law* can be used as a “regulation path”. The relevant market can be defined mainly through SSNIP test to identify whether platforms have dominant market position. [1] And the damage to market competition and operators’ defenses [2] should be examined to identify the abuse. Similarly, Chen and Zhao held that when identifying whether the blocking behavior constitutes an abuse of the dominant market position, the loss and gain of market players, including competitors, counterparties and consumers, should be reviewed, and non-price indicators such as quality should be involved in the evaluation of the market effect. [3] If the blocking behavior significantly lowers users’ self-determination ability and narrows their choice, the clauses regarding “exploitative abuse” in *Anti-monopoly Law* can be applied to regulate the abuse of dominant market position. [4] That view shares similarities with the Yin’s “regulation path”.

However, with the background of Anti-monopoly in the digital economy era, Duan proposed that it is difficult to identify the dominant market position and abuse of operators when regulating the link block from an Anti-monopoly perspective. On the one hand, technical determination based on standards of market share and price is hard to be applied to Internet platform enterprises in the digital competition. On the other hand, because enterprises focus on “attracting users” and blocking does not belong to traditional business, it is difficult to define the refusal to deal as an abuse of operators. [5] Therefore, more revisions of the *Anti-monopoly Law* should be done to build a precise and systematic legal regulation path. [6]

Meanwhile, in the process of regulation, more attention should be given to the specialty of Internet industry competition in the background of digital economy. Zhang Jiangli and Zhang Lei maintain that when investigating the illegality or rationality of the blocking behavior in accordance with *Anti-monopoly Law*, behavior types should be distinguished based on the characteristics of different market segments, and the new elements of Internet competition such as the digital market, user experience and the scale of competitors are especially expected to be considered. [7] In addition, in the regulation process, the market competition should be attached great importance to.

When the relevant policies of exclusive dealing and API are highly competitive in the market, it is difficult to violate *Anti-monopoly Law*. [8] But warnings should be given if the blocking behavior of larger platforms might constitute monopoly. [9] Similarly, Yin also proposed that with the rapid development of the digital economy, we should pay attention to the specialty of the big data market competition and its influence on the market position.

In conclusion, because the product blocking behavior is regarded as the emerging phenomenon of the digital economy era, the relevant academic discussion in the field of economic law still has a long way to go. From the perspective of Anti-monopoly, this paper discusses the product blocking behavior, analyzes its underlying logic and commercial value, and lists potential monopoly risks, aiming to build an law enforcement framework, provide better dispute resolution paradigms for judicial and law enforcement practice, and improve the operability.

2. Product Blocking Behaviors

2.1 Concept Interpretation

As a general term of a kind of behavior and phenomenon, product blocking refers to the blocking behavior of Internet platform enterprises that refuse to provide products or services to other operators. It can be further divided into “restricting platform access” and “network link block”.

Restricting platform access refers to the blocking behavior taken by Internet platform operators against market entities, including avoiding direct chains to other platforms or applications, forcing users to “choose one between the two options”, and closing others’ APIs.

Network link block refers to the behavior that Internet platform enterprises restrict or even completely block competitors' links, affecting users' identification, analysis, and normal access to the links. Such platforms often take discriminatory measures. They support one-click access to the affiliated enterprises, but restrict or exclude the links to competitors by forcing users to open the links with browsers, reporting system errors, and deliberately prolonging the audit. Platforms that are restricted can avoid the blocking through generating a password of QR code with algorithm.

2.2 Classical Cases

As one of the important means for Internet platform enterprises to use information technology to conduct commercial competition, the product blocking behavior has gone beyond normal commercial activities and entered the field of dispute resolution.

In February 2021, ByteDance filed a lawsuit against Tencent at the Beijing Intellectual Property Court, alleging that Tencent's restrictions on the sharing of TikTok content by users of the WeChat and QQ platforms is in breach of China's *Anti-monopoly Law* and requesting that the court order Tencent to immediately cease such behavior. This is the first anti-trust lawsuit involving Internet platforms in China. In this case, TikTok believes that WeChat and QQ, as "foundational" social communication softwares, have a dominant market position, whose restriction of TikTok link sharing constitutes an abuse of dominant market position. Tencent accused TikTok in response of illegal infringement including obtaining WeChat user information with anti-unfair competitive methods and violating platform rules. [10]

In fact, as early as February 2020, Lark's document link could not be directly opened in WeChat. Users who scan the QR code would see "the access is stopped due to induced sharing". Some people think that Tencent is using traffic to suppress its rivals, abusing its dominant market position, while some people argue that with the property of essential facility, Tencent has the obligation to allow other operators to enter the relevant market with their own tools. The *Anti-monopoly Law* focuses on whether the overall market competition mechanism is distorted or destroyed other than the individual interests of operators at the micro level. Therefore, the discussion of whether the controversial behavior violates China's *Anti-monopoly Law* should ultimately center around the competition effect. In accordance with the available evidence, WeChat's behavior cannot be determined as an abuse of the dominant market position. [11]

A further review of the "war" between Alibaba and WeChat is as follows. In July 2013, Alibaba announced that it would suspend the third-party application services related to WeChat and close all WeChat data interfaces. In November 2013, WeChat users found that Taobao store links they shared could not directly open the store, but jumped to the download page of Taobao's mobile application which was later blocked by Tencent. Clicking the link, a page shows with "the Taobao address has been blocked, which can be copied by long pressing to open with a browser." However, signs show that the two giants have been working for reconciliation in recent years. In September, WeChat announced that based on the premise of information security, the latest version of WeChat allows users to access external links in one-to-one chats, with no need to copy the password to the Taobao application. [12]

2.3 Behavior Characteristics

2.3.1 Profitability

The fact that blocking can bring benefits drives Internet platform enterprises to implement product blocking. By hindering the access of other platforms, enterprises can suppress their competitors' product and service expansion, enhance stickiness, and generate direct or indirect profits like advertising fees.

2.3.2 Technicality

The success of product blocking behavior depends on certain techniques. First of all, Internet platform enterprises take the computer system as the operation carrier, mass data the key elements,

and use complex algorithms to accurately extract information, gain positions and draw personas, so as to know the basic characteristics and preferences of their users. Then, by blocking the application program interface (API) and other means, platforms can intercept the normal access of some websites and the normal jump of external chains, which affect users' choice. Moreover, platforms can take the "free ride" of network links to increase the traffic and indirectly generate profits. Therefore, every part of the product blocking behavior depends on big data and network technologies.

2.3.3 Competitiveness

From the perspective of competition law, the product shielding behavior is significantly competitive. Platforms with dominant market position tend to impose targeted discriminatory treatment on other platforms: for competitors, enterprises often cover up their malicious purposes with just causes and retain users and block traffic transfer through exclusive means, whereas for cooperative platforms, they support one-click access and direct chain or form a network monopoly organization with joint efforts to combat other market entities. Considering the interest, these business games fully reflect the competition between enterprises through product link.

3. Value Analysis of Link Blocking Behaviors

3.1 Cause: Profits

From the perspective of ecological management, platform enterprises are not only operators of the Internet ecology, but also managers of the specific operation platform ecosystem. Practices including carrying out ecological management and building platform access threshold are conducive to screening manufacturers, avoiding the risk of information asymmetry, and maintaining market order and network environment security.

In terms of business layout, the refusal of Internet giants to other platforms can better protect their opportunities to expand and develop in the future maintaining the business condition integrity and business expansion potential. For example, in order to protect the short video business, a platform bans others' product links driving users to its own "video channel".

In addition, the platform economy has a strong network externality. The increase of users can help enterprises to share costs and form economies of scale, so that the value created by the network increases exponentially.

3.2 Risk of Damage: Fair Competition

From the perspective of competition order, blocking links may impair the fairness of market competition. First of all, the platform enterprises' product blocking links will only damage the competition order. By denying access to other platforms, they suppress other players in the Internet ecosystem and hinder horizontal competition with other players. Moreover, through "unequal agreements" and network technology means, these enterprises enclose the vast number of user groups and the traffic generated by them as their own private property. They monetize for themselves with an unequal way because they damage the user experience, limit user choice and also exclude the vertical competition between upstream producers and downstream consumers. At the same time, by damaging the horizontal and the vertical competition relationship, they also destroy overall competition environment and market order indirectly. Thus it can be seen that the blocking hinders both horizontal and vertical competition, violates the basic principles of interconnection and intercommunication in the Internet world, prevents information circulation and resource sharing, and finally damages the overall market competition order.

From the perspective of innovation and development, in order to safeguard their commercial interests, Internet giants refuse to access other platforms and block legal links, which is actually a process of gradually moving towards self-closure. Enterprises that block other products may indulge in their complacent and do not move on after obtaining rich monopoly benefits. Their being too sluggish to conduct long-term technological research and development will gradually make them lose

their endogenous power of innovation and progress. From this perspective, link blocking is a risk preventing from promoting innovation collapse for technological innovators.

3.3 Value Orientation: Regulation

As market subjects, Internet platform enterprises have natural and inherent "private rights" to participate in production and operation, market competition and gain profits. Meanwhile, enterprises should exercise their independent management rights on the premise of not damaging the rights of other market subjects. Therefore, it is quite necessary to explore effective legal regulations on the exercise of "private rights" by platform enterprises.

In addition, Internet platform enterprises also enjoy a "public power" to some extent. Firstly, as providers of public infrastructure, Internet platform enterprises own a huge user base and stress in the sociability; secondly, these platforms will carry out a series of management actions, such as maintaining the network environment and order, protecting users' privacy and data security, etc., which to some extent assume some of the functions of the government and become an important part of the social pluralistic governance system. Also, platform enterprises have strong influence and control over the merchants accessing the platform, and have also established "power relations" with the vast number of user groups. Considering its publicity and power, platform enterprises also share "public power". Thus, it is necessary to bring in the value requirements in the field of public law, and regulate these large enterprises through legal channels. The enterprises are required not to touch the legal red line of monopoly and vicious competition, and to fulfill their social responsibilities.

4. Analytical Thinking of Anti-monopoly Law

Based on the Anti-monopoly perspective, this paper explores whether blocking in the Internet economy is illegal, and then makes proposals on the enforcement framework under the Anti-monopoly legislative concept. Article 3 of the Anti-monopoly Law of the People's Republic of China defines three kinds of monopoly acts.(Article 3 of the Anti-monopoly Law of the People's Republic of China: For the purposes of this Law, "monopolistic conducts" are defined as the following: (1) monopolistic agreements among business operators; (2) abuse of dominant market positions by business operators; and (3) concentration of business operators that eliminates or restricts competition or might be eliminating or restricting competition.) Firstly, this paper analyzes whether the product blocking behavior meets the description of Article 3. Obviously, the refusal of Internet platform enterprises to access the platform or the implementation of link blocking does not meet the description of Chapter II of this Law. It is neither part of the concentration of operators in Chapter IV. Therefore, it is only necessary to judge whether the blocking behavior belongs to the situation of "abuse of market dominance" in Chapter III. Further, to define an abuse of a dominant market position, two legal elements should be satisfied: first, the operator has a dominant market position, and second, such position has been abused.

4.1 Identification of Market Dominance

The item 2 of Article 17 of the Anti-monopoly Law gives the definition of market dominance. (For the purposes of this Law, "dominant market position" refers to a market position held by a business operator having the capacity to control the price, quantity or other trading conditions of commodities in relevant market, or to hinder or affect any other business operator to enter the relevant market.) Accordingly, to determine whether a particular Internet platform operator has a dominant position in the operator's market as stipulated in Article 18 of the Law, it is needed first to determine the scope of the "relevant market". Based on the product blocking behavior described in this paper, it should be clarified first. The relevant market, i.e., the range of goods and geographical area in which operators compete for specific goods or services over a certain period of time. In the case of Douyin suing Tencent, for example, the former is a short video platform while the latter is an instant messaging platform. The two have different attributes and main business, and there is no significant substitution

of products, which cannot be defined as two platforms in the same relevant market in the traditional sense. However, in terms of product link sharing, the two companies have highly overlapping user groups, and they both engage in revenue competition by denying platform access and link sharing. At the same time, the product link sharing behavior itself can bring changes in user stickiness and traffic revenue transfer to the platform companies, so the product link sharing behavior has the property of being recognized as an independent market interaction activity.

According to the Article 18 of the Anti-monopoly Law, whether an operator has a dominant position in the market should be determined according to the market share, financial resources and technical conditions of the operator in the relevant market and the degree of dependence of other operators on the operator in transactions. (Article 18 of the Anti-monopoly Law of the People's Republic of China: The dominant market status shall be determined according to the following factors: (1) the market share of a business operator in relevant market, and the competition situation of the relevant market; (2) the capacity of a business operator to control the sales markets or the raw material procurement market; (3) the financial and technical conditions of the business operator; (4) the degree of dependence of other business operators upon of the business operator in transactions; (5) the degree of difficulty for other business operators to enter the relevant market; and (6) other factors related to determine a dominant market position of the said business operator.) Internet giants generally account for a high market share in their respective markets, and have strong financial resources and advanced technical conditions. For example, as the sixth place in the list of "China's top 500 private enterprises", Tencent, the company holding WeChat, has a revenue of more than 480 billion yuan in 2020, undoubtedly providing a strong financial guarantee for WeChat's operation. Within the past few years, Tencent and other Internet companies have also continued to promote the development of key technologies such as artificial intelligence, big data and cloud computing, and used such underlying key technologies as technical support for platform operations. These already well-established companies have a strong first-mover advantage, and with the presence of high sunk costs, other operators intending to enter the relevant market will face a higher degree of difficulty.

In addition to the specificity of the first five items, the sixth item of this article provides a "bottom-up" provision, that is, the determination process may also take into account other factors in addition to those mentioned in the first five. Article 11 (Article 11 of the Interim Provisions on the Prohibition of Abusing Market Dominance: According to Article 18 of the Anti-monopoly Law and Articles 6 to 10 of the Interim Provisions, operator of the new economy such as the Internet has a dominant position in the market. Factors such as competitive characteristics of relevant industries, business model, number of users, network effect, lock-in effect, technical characteristics, market innovation, ability to master and process relevant data and market power of operators in related markets can be considered.) of the Interim Provisions on the Prohibition of Abuse of Market Dominance issued by the State Administration for Market Regulation in 2019 and Article 21 (The Article 21 of the Interim Provisions, on the basis of Article 18 of the Anti-monopoly Law, added the expression that "network effect, scale economy, locking effect, ability to master and process relevant data and other factors shall also be considered in determining that operators in the Internet field have a dominant position in the market".) of the Draft Revision of the Anti-monopoly Law (Draft for Public Comments) published in January 2020 both include "the ability to grasp and process relevant data" as an important basis for determining an operator's market dominance. Internet platform enterprises have a large domestic and international user base, mastering massive amounts of data and analyzing and processing the data through technical means to draw user portraits, conduct targeted marketing, etc., so they have a strong ability to master and process relevant data. This capability provides important power support for Internet platform companies to gain market dominance.

To sum up, the operator of product blocking has a dominant market position according to Article 18.

4.2 Identification of Abuse

In the previous part, the identification of the market dominance of Internet giants has been completed. However, a large market size and a dominant market position do not automatically mean that the law is broken, and the ability of the company is not to blame. The Anti-monopoly Law sanctions the behavior of monopoly instead of the state of monopoly. Therefore, the key to the analysis is to identify the abuse of market dominant position by operators.

Article 17(1) of the Anti-monopoly Law lists a series of types of acts that constitute abuse of a dominant position in the market. Item 1 is an "exploitative" abuse; Items 2 to 5 are "exclusionary" abuses; item 6 is a "mixed" abuse; and item 7 is a bottom-up provision. (Article 17 of the Anti-monopoly Law of the People's Republic of China: A business operator with a dominant market position shall not abuse its dominant market position to conduct following acts: (1) selling commodities at unfairly high prices or buying commodities at unfairly low prices; (2) selling products at prices below cost without any justifiable cause; (3) refusing to trade with a trading party without any justifiable cause; (4) requiring a trading party to trade exclusively with itself or trade exclusively with a designated business operator(s) without any justifiable cause; (5) tying products or imposing unreasonable trading conditions at the time of trading without any justifiable cause; (6) applying dissimilar prices or other transaction terms to counterparties with equal standing; (7) other conducts determined as abuse of a dominant position by the Anti-monopoly Authority under the State Council.) The product blocking behavior described in this paper is most consistent with the "refusal to trade" in item 3. Whether it is denying access to the platform or blocking links, the existence of "refusal" is obvious, but the key is whether such behavior belongs to the scope of the trade. The essence of trading activity is the existence of consideration, that is, interest exchange. The consideration price in Internet product sharing is invisible user traffic, that is, the time and attention paid by consumers. Although it is not a traditional monetary form, based on the consideration of economic "opportunity cost", it undoubtedly indicates a vast opportunity space. Newman, a judge from the the United States, once pointed out that the transaction carried out by paying attention and information belongs to 'trade' or 'commerce' as referred to in the Sherman Act and the Clayton Acts, which also provides authoritative support for the determination that the act belongs to the transaction. It should be noted that the opposite party of the operator's refusal to trade here is not the consumers in the vast number of user groups, but other internet platforms. (Op. Cit. 4, Yin, P. 75.)

However, according to the item 3, even if an operator with a dominant market position refuses to trade, to define whether or not it constitutes "abuse", it is important to identify whether it has a legitimate reason or not. The consideration of the legitimate reason will affect the outcome of the determination of the legality of the enterprise's behavior.

4.3 Legitimate Reasons

Legitimate reasons can be used as the defense content of the enterprise's behavior legality, including "objective rationality" reasons and "efficiency" reasons. The following paragraphs will discuss the legitimacy of Internet enterprises' blocking behaviors in detail.

4.3.1 Objective Rationality

The primary consideration for Internet platform companies to implement blocking behavior is data security. If the link access interface is freely opened, it is likely to increase the risk of invasion of the user's phone system or computer system, resulting in the leakage of personal information and violation of the consumer's privacy. Therefore, it is "objectively necessary" for platform enterprises to implement blocking to fulfill their duties to protect user data security and privacy, reduce the damage of data leakage, and avoid relevant legal responsibilities.

4.3.2 Efficiency Improvement

If all external links have to be reviewed by this platform one by one, the enterprise will not be able to bear this huge operating cost, so this act lacks commercial feasibility. Therefore, enterprises can

implement different levels of link blocking and raise the access threshold through technical means, which is conducive to improving the internal operational efficiency and optimizing the allocation of market resources. At the same time, blocking is, to a certain extent, beneficial for maintaining the data security and privacy of consumers and protecting the public interest of society. It is a common consideration to maintain commercial profits and safeguard the security of the network environment. It is a defence if the enterprise can prove that its conduct has achieved or is likely to achieve those efficiencies, or that the act is a measure necessary to achieve those efficiencies.

4.4 Comprehensive Evaluation of Competition Effects

In judicial practice, the court often considers the competitive effect of the operator's behavior comprehensively, and then determines the "quasi-monopoly" behavior of the enterprise. The implementation of product blocking behavior will inhibit competition with other operators and disrupt the market order. Moreover, these acts will affect the user experience, damage the legitimate rights and interests of consumers, resulting in adverse consequences. However, if the enterprise can fully demonstrate the objective rationality of its behavior, or the final positive effect is greater than the negative effect, it can be exempted from the sanctions of the Anti-monopoly Law.

5. Conclusion

In the era of digital economy, product blocking is a new type of competitive behavior among Internet platform enterprises, which has its own underlying business logic, but it is also prone to induce monopoly risks harmful to consumers' rights and interests and market competition environment. Therefore, it needs to be regulated by law.

Based on the perspective of Anti-monopoly law, the first step is to determine whether the platform enterprise that implements the blocking behavior has a dominant market position in the product link sharing market. Then, focusing on the elements of "refusal to deal" to determine whether it constitutes an abuse of dominant position. Next, to apply the principle of reasonableness to conduct a comprehensive assessment of the effects of the abusive behavior, and finally to implement the specific legal responsibilities in the Anti-monopoly law to complete the entire regulatory path.

With the vigorous development of the Internet economy and the continuous changes in business practices, the regulatory path of the antitrust law should be further clarified and the legislative concept of the antitrust law should be improved, so as to promote the construction of the antitrust enforcement framework and provide a more complete dispute resolution mechanism for the judicial practice in China.

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