Challenges to the antitrust laws presented by the digital market

Ministry of Commerce
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I. Digital market overview

- Cloud Computing
- Internet of Things
- Mobile Internet
- Big Data
• Blockchain
• Bitcoin
• Virtual Reality
• Artificial Intelligence
• Digital Market consists of markets based on digital technologies that facilitate the circulation of products and services through e-commerce. The digital market is based on digital technology and is implemented by using the Internet.

• Digital Economy is a term used to describe a centralized market for digital technology, including the trade of information products or information services through e-commerce. **OECD report**
Digital market competition characteristics

- **Rapid change and revolution**: Driven by the wave of investment and innovation, the digital ecosystem is highly dynamic. Specifically, at the demand level, the products that consumers can use alternately change rapidly. In the future, the market may be very different from the existing market. At the supply side, computers and digitization have become necessary tools for operators to reduce costs and expand market share.

- **Winner take-all**: Competition between business models or platforms is more important than competition within business model or platform, because platform competition often results in winners taking all of the benefits.

- **Network effect**: The digital market has strong network effects and economies of scale, and this feature reinforces the trend of obtaining market dominance through competition.

- **Multi-sided markets**: Two or more user groups benefit from the digital platform.
The characteristics of the competition in the digital market

• High level investment: The digital market is characterized by high investment and high innovation, which promotes rapid technological progress in this area.

• The importance of quality and Innovation: Competition mainly focuses on evolving technologies that compete with innovative products.

• The development and importance of big data: The collection and analysis of large-scale data is an important feature of the digital market and data may become a strategic asset.

• The role of mobile services: The digital ecosystem brings benefits to stakeholders and the economy as a whole, partly due to the large investments made by mobile operators in network quality.
The Development of China's Digital Economy

Only in 2016, China’s digital economy scale is 22 trillion and 400 billion.

Digital economy contributes 30.1% to national GDP.

Number of netizens
The popularity of smart phones
Wireless LAN Development (WIFI and Others)
Internet Business Development (BAT)
Online shopping ("Double 11")
Internet Finance (Alipay, etc.)
Social Network (WeChat, Weibo)
II. Challenges brought by the digital economy to antitrust law enforcement

• The application of competition law to the digital economy requires the support of technical experts. However, competition law enforcement agencies often lack such technical experts, and the digital economy itself is rapidly changing. The relevant professional knowledge temporarily held by law enforcement agencies may not keep up with the development of the industry.

• As the digital market may be transnational and cross-regional, it may create jurisdictional disputes.

• Some concepts of competition law may be difficult to apply effectively to the digital economy, such as cross-subsidies in the digital economy, platform competition, and innovation cycles. These concepts make definition of the relevant markets extremely complex. In the field of the digital economy, to determine whether an action is anti-competitive, technical issues of product design or coding need to be considered frequently.
The Challenges of Traditional Market Defined Tools in the Digital Market

I. The dynamic development and rapid evolution of the digital market

1. From the perspective of demand side substitution, changes in consumer preferences make it more difficult to evaluate substitution between different products or services than traditional or more stable industries.

2. From the perspective of supply side substitution, the rapid development of innovation in the digital ecosystem has made the assessment of supply-side substitution more uncertain than traditional industries.

3. From the point of view of potential market entrants, it is difficult to predict the future dynamics of competition and potential market entry itself.

4. There is usually a time dimension in the definition of traditional markets, but this model may not apply to the dynamic digital market because the time dimension in the digital market should be sufficiently forward-looking.

5. As more and more traditional markets are digitized, previously unrelated product markets may become relevant, and further application of past legal practices (such as cases) will have limitations.
The Challenges of Traditional Market Defined Tools in the Digital Market

II. Many products in the digital market are potentially substitutable

1. In the traditional industry, the definition of relevant market usually revolves around physical products with similar characteristics. The market in the digital ecosystem includes a wider range of services/products with different performances and consumers consider it as substitutable.

2. The traditional boundary between products/services defined by the production or supply of products/services has already begun to disappear, and the unstable market boundary is continuously reshaped by emerging technologies.

3. Functional substitution and supply flexibility may become more important in rapidly changing technologies. One issue related to functional substitution is whether the bundles can constitute an independent market. More and more competition starts around product sets rather than individual products.
The Challenges of Traditional Market Defined Tools in the Digital Market

III. The digital market often has the characteristics of the multilateral market

1. A hypothetical monopolist undertaking in the multilateral market will consider the overall profit (i.e., the sum of profits obtained from each side). In order to fully understand the competition constraints faced by the hypothetical monopolist, law enforcement agencies need to consider the cross-externalities and the nature of the demand of customer groups on each side of the platform.

2. It is sometimes appropriate to define each side of the platform as an independent single market, and to consider the relevance of each side in the subsequent competitive evaluation phase.

3. In the digital market, it is more important to clarify the bilateral links than to accurately define the market. The complexity of the relationship between customer groups should be taken into account in the market definition phase or in the follow-up competition evaluation phase.

4. When assessing market power, a direct result of the bilateral nature of digital ecosystems is that competition constraints on one side of the platform may also limit the market power that a firm may have on the other side of the platform.

5. The pricing rules for maximizing profit in bilateral markets are significantly different from unilateral markets. A highly skewed pricing structure in bilateral markets may be highly efficient.
The Challenges of Traditional Market Defined Tools in the Digital Market

IV. Consumers may not need to pay counter-performance in cash

1. Consumers often do not have to pay for the use of digital products/services. This is a business strategy in markets where technology is rapidly changing and network effects are significant.

2. Companies may use free (or lower than the short-term profit-maximizing price) to gain market share, and rush to establish a huge user base before the potential market entrants.

3. One side of the bilateral market may be free, while the other side bears full responsibility for obtaining profits.

4. In the digital market, differences in product features or functions (rather than price levels) may be more relevant to the reasons for determining consumer conversions.

5. The traditional SSNIP test is no longer applicable, and its improvement needs to consider whether the hypothetical monopolist can lower the quality of its service or increase the amount of data it collects (indirect price paid by consumers).
Market Power Assessment in the Digital Market

1. In a highly dynamic and innovative market, high market share does not necessarily mean that the company has a market dominant position, nor can it assume that the market share will remain high.

2. If the market price is zero (or the competition starts around quality), the calculation of market share is also a problem.

3. In dynamic markets and markets characterized by endogenous sunk costs, prices and high profit margins above the competitive level have limited reference value for judging market dominance.

4. The impact of data on market power. The importance of data size and scope for market competitiveness.

5. A careful assessment of the potential impact of a transaction on quality, product diversity, and innovation is critical to understanding how consolidation in the digital market affects competition.
III. Competition Law Enforcement in the Digital Market

- Competition law plays an important role in the digital economy. Especially when these markets mature, competition law can support the healthy and orderly development of the market. In certain circumstances, it is clear that digital markets must compete for law enforcement.

- It is necessary to protect and promote innovative competitive structures through competition and law enforcement, prohibit anti-competitive behaviors that hinder the process of dynamic competition and prevent exclusive behaviors that hinder legitimate competition.

- Interventions in the digital market need to take into account the dynamic characteristics of the digital economy and seek a balance between premature interventions, which may hinder the risk of further development that promotes competition, and dominance, which constitutes a barrier to market development.
Thanks!