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Regulatory pathways for E-commerce Platforms' abuse of relative market power

Yibo Wang

School of Law, Tianjin University, Tianjin, China

1601830188@qq.com

Abstract. The development of Internet technologies has produced a large number of Internet enterprises, and competition among e-commerce platforms has become concentrated such that platforms hold clear advantages over the merchants operating within them. E-commerce platforms' abuse of relative market power has inflicted substantial harm on in-platform merchants, competing businesses, consumers, and the market environment as a whole—for example, by setting pricing thresholds, monopolizing industry benefits, and obstructing fair competition. In the absence of a complete legal framework, the E-commerce Law should be used as the entry point to improve legislation governing platforms' advantageous positions. The dependence theory should be promoted to precisely characterize platforms' abusive conduct; legislation and enforcement under the E-commerce Law should be effectively aligned with the Anti-Unfair Competition Law; and practical regulatory measures — such as integrating existing enforcement resources for coordinated supervision and issuing representative case rulings—should be employed to reasonably curb platforms' abuse of relative market power.

Keywords: e-commerce platforms, abuse of dominant/advantageous position, legal regulation

1. Introduction

In recent years, with the rapid development of Internet technologies, especially mobile Internet, a large number of Internet enterprises have emerged, extending into all aspects of daily life such as clothing, food, housing, and transportation, and bridging the gap between online and offline activities. This has enabled Internet enterprises to take full advantage of the national market, leverage economies of scale, and expand their own development.

During the process of competition and growth, Internet enterprises often see one player capturing a substantial share of the market, thereby forming a considerable advantageous position in business operations. If such an advantageous position is abused, it will inevitably impair fair market competition and ultimately infringe upon the lawful rights and interests of consumers.

E-commerce platforms, seeking to restrict the growth of competitors by exploiting their advantageous position, often resort to compelling or implicitly coercing in-platform merchants into making a "choose-one-of-two" decision or committing to specific pricing agreements. Merchants who refuse to comply are often subject to punitive traffic restrictions that clearly carry a sanctioning nature. Notably, however, although merchants on these platforms suffer unfair treatment, they rarely seek to resolve disputes through litigation. Instead, they tend to file complaints with market regulatory authorities or merely express grievances on online platforms. Several reasons may explain this phenomenon. Subjectively, merchants generally prioritize improving their sales performance and are reluctant to completely rupture relations with the "landlord" on whom they depend. On the eve of large-scale promotional campaigns, voicing criticism online can also generate public sympathy, attract traffic, and even serve as an effective marketing tactic. Objectively, however, "choose-one-of-two" practices are difficult to define legally, and merchants are not confident of prevailing in litigation. Setting aside possible marketing motivations, the more pressing issue is how to legally characterize platforms' demands that merchants "choose one of two," and how to effectively regulate such practices within the legal framework.

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2. Criteria for determining relative market power and its regulation

2.1. The connotation of relative market power

Compared with absolute market dominance, the connotation of relative market power is often more difficult to define precisely. Scholars generally believe that although enterprises holding relative market power have not yet achieved a dominant position in the market, they nevertheless possess, by virtue of their resources, industry share, degree of technological accumulation, and overall market scale, a certain degree of market control. This places them in a clear position of advantage over other enterprises that rely on their platforms for survival [1]. In practice, enterprises or organizations holding relative market power are often able to determine transaction counterparts, contents, and even prices. For counterparties in a weaker position, unreasonable trading conditions leave them subject to a “non-cooperation means elimination” rule, forcing them to comply [2]. This differs from absolute market dominance in that relative market power emphasizes the advantageous position formed in supply–demand relationships between upstream and downstream enterprises or operators. The notion of “relative” carries two implications. First, this advantage is exercised over downstream operators rather than in horizontal competition among peers. Second, this advantageous position is only “relative,” not absolutely unassailable; however, for any given downstream operator, the cost of breaking free from such dependence is usually very high.

Within the vast arena of the Internet, such advantageous positions become even more pronounced. The advantageous position of e-commerce platforms in the online environment refers to the asymmetric dependency that arises between two market actors engaged in Internet-related economic activities. In this relationship, the advantaged party occupies a comparatively stronger position over the dependent party, such that the latter is almost entirely reliant on the former and has no practical possibility of shifting to another similar platform. As a result, the relatively advantaged party can dictate or control the dependent party, or restrict its choices in multiple respects, thereby fostering unfair competition and disrupting the normal order of the market economy [3].

2.2. Judgment criteria: dependence

The theory of dependence is the core element of the doctrine of relative market power. Without establishing the existence of dependence, there is no basis for challenging the legitimacy of restrictive measures imposed by platforms. Dependence refers to a situation in which, within a specific transaction relationship, one party relies to a significant extent on the other, with no realistic possibility of turning to alternative trading partners. Even if such alternatives exist, switching would require disproportionately high costs, making it unreasonable. The constitutive elements of dependence are twofold: (1) the degree of reliance on the advantaged party; and (2) the possibility of replacing the trading counterpart. To determine whether the degree of dependence is met, one must comprehensively assess such factors as the amount invested by merchants on the platform, the length of time they have operated on the platform, the reputation they have accumulated, and the proportion of their total income derived from the platform [4]. To assess the feasibility of switching trading counterparts, one must consider the costs and expected benefits of switching, the customer base that may be lost due to such a switch, and other potential losses.

Dependence can be classified differently according to varying standards. Based on its manifestations, dependence may be divided into dependence on a specific enterprise, dependence on a particular type of product, dependence arising from scarcity of specific products, and dependence within the production–sales chain. Dependence on a specific enterprise often stems from the enterprise’s market share, accumulated reputation, or longstanding trading habits, and thus carries a certain “personalized” nature. Dependence on a particular type of product generally arises from technological advantage: an upstream enterprise, owing to its accumulated technology, may be able to supply downstream operators with exclusive technical products, resulting in very strong reliance. Once supply is cut off, downstream enterprises may even face bankruptcy [5]. Dependence stemming from scarcity of specific products is dictated by resource limitations, which may be natural or capacity-based. Dependence within the production–sales chain arises from supply–demand relationships, where one party requires sources of goods and the other requires sales channels. Key supply sources and distribution channels are often irreplaceable, thus giving rise to dependence.

From the perspective of supply–demand relations, dependence may be further categorized into supply-side dependence and demand-side dependence. E-commerce platforms generally play the role of product distributors. For large enterprises entering a platform, it is difficult to argue that they are dependent on any particular platform for distribution, since they typically possess the ability to conduct offline sales or distribute through other platforms. Conversely, because certain large enterprises occupy market shares that are temporarily unshakable and control extensive distribution channels, platforms often cannot resist their presence and may, in turn, become dependent on them—this constitutes demand-side dependence. By contrast, small enterprises with relatively low market share often rely heavily on e-commerce platforms as their primary sales channels. If the platform restricts this channel, the enterprise’s sales will be directly affected. In such cases, platforms hold the lifeline of smaller operators, giving rise to supply-side dependence [6].

By distinguishing between supply-side and demand-side dependence, it becomes evident that e-commerce platforms are not always in a position of relative market power. Large enterprises are typically welcomed with open arms. However, for small enterprises, the massive traffic and broad sales channels offered by platforms are irresistible. The dependence that results can become inescapable, making small enterprises especially vulnerable. Thus, platforms' abuse of relative market power primarily harms small enterprises. The key to resolving this dilemma lies in preventing platforms from exploiting the dependence of small businesses to act arbitrarily.

2.3. The necessity of regulating the abuse of relative market power

Competition is the core element that sustains the vitality of markets, and resource allocation in the market is realized through competition. A market in which competition is eliminated or restricted becomes stagnant. The abuse of relative market power by advantaged parties undoubtedly disrupts the competitive order of the market. When advantaged parties exploit the dependence of in-platform merchants and prohibit them from transacting with competitors, these downstream merchants effectively become appendages of the platform. Competitors, in turn, may retaliate using the same tactics. As a result, the order of competition among platforms is undermined. At the same time, downstream enterprises that are located on different platforms may become completely opposed to one another, creating a state of division that impedes the efficient circulation and allocation of resources, and ultimately hinders the development of the market economy.

The first victims of platforms' abuse of relative market power are the merchants operating within them. Their losses are not measured in immediate financial terms but rather in heightened business risks and restrictions on scale. For example, if an e-commerce platform compels merchants to "choose one of two," the merchants are forced to bear risks that should not rightfully fall upon them, while also being prevented from attracting new customer groups and expanding their operations. Constrained merchants are left with no choice but to "put all their eggs in one basket." Once that basket breaks, all the eggs will be lost—"one prospers, all prosper; one suffers, all suffer." In effect, the platform transfers its own operational risks downstream to merchants, which is profoundly unfair to them. Moreover, from the perspective of downstream merchants' business operations, each e-commerce platform usually possesses a sizeable group of loyal customers who have developed consumption habits on that platform. Within a mature platform, this customer base tends to become saturated, making it difficult to tap new sources of customers. For merchants seeking to expand their business scale, the key lies in diversifying their channels to reach more customers, especially new ones. If such avenues are restricted, the growth of in-platform merchants is naturally curtailed, thereby infringing upon their developmental interests.

3. Current measures: regulation of the abuse of relative market power

Existing laws cannot directly provide a pathway to resolve the problem, which makes it necessary to seek theoretical solutions to regulatory gaps. The emergence of e-commerce platforms as dominant players is an inevitable outcome of market economy development. Similarly, leveraging relative market power to expand their advantages is also an unavoidable part of platform growth. However, the boundary between "use" and "abuse" of such advantages is easily blurred. The abusive conduct of platforms is becoming increasingly widespread, and thus urgently requires regulation. Although merchants may rely on the Civil Code to safeguard their rights against the abuse of market power by dominant parties, such protection does not effectively safeguard the interests of downstream enterprises. This is because civil and commercial law emphasizes freedom of contract. The development of downstream enterprises often depends heavily on upstream platforms. While downstream businesses in theory retain the right to reject unfavorable trading conditions, in practice the cost of refusal is prohibitively high. As a result, few merchants are willing to initiate litigation to resist such pressures—the logic of profit prevails. Mere reliance on free transaction principles cannot create a fair competitive environment; additional legal tools must be invoked to find viable regulatory pathways.

3.1. Anti-Unfair Competition Law

Although the Anti-Unfair Competition Law does not explicitly categorize the abuse of relative market power as a typical form of unfair competition, Article 2 provides a general principle: "In their production and business operations, operators shall follow the principles of voluntariness, equality, fairness, and good faith, and comply with laws and business ethics." This provision eliminates any legal barriers to applying the Anti-Unfair Competition Law to regulate the abuse of relative market power; however, its practical enforceability remains weak. Under this framework, only competitors in the same industry can challenge dominant parties. Yet this requires presenting sufficient evidence to prove that the dominant party's conduct violates the principles of voluntariness, equality, fairness, and good faith, and that such conduct has indeed resulted in significant harm to market competition. The difficulty lies in the fact that abusive conduct is often highly covert: dominant platforms rarely impose pressure on downstream enterprises through publicly documented measures. Instead, merchants' "choices" appear voluntary, making it extremely difficult to establish that they were not made autonomously.

For competitors, proving that the dominant party's business practices restrict market competition and undermine the competitive order is even more challenging. Relative market power exists primarily in the vertical relationship between upstream platforms and downstream in-platform merchants, and it is not comprehensive or universal. Competitors, within different business segments, may also enjoy advantages over their own downstream merchants. Thus, it becomes difficult to demonstrate that the competitor's concrete interests have been harmed or that competition has been substantially obstructed. More likely, both sides are leveraging their respective advantages and may even attempt to maintain their superior positions through methods that amount to an abuse of market power.

3.2. Anti-Monopoly Law

From the perspective of the Anti-Monopoly Law, in order to determine that a dominant party has engaged in monopolistic conduct within a relevant market, reference must be made to Article 17, Item 4 of the Anti-Monopoly Law. This requires, first, a clear definition of the relevant market, and second, proof that the dominant party has already achieved a market-dominant position, thereby establishing the illegality of its abuse of market power.

To define the relevant market, one must analyze the business model and operational characteristics of e-commerce platforms. Given the interconnected nature of the internet, cross-border e-commerce allows products to be sold worldwide. However, this does not mean that the relevant market should automatically be extended to the global scale. It is necessary to distinguish whether an overseas subsidiary is responsible for foreign markets, or whether the domestic headquarters directly sells to international consumers. Regardless of the model, the global market cannot be considered the relevant market because the competitive strength of the same company differs significantly between domestic and overseas markets. In fact, products sold abroad often constitute only sporadic exports and do not reach the scale of an industry-wide market.

As for market dominance, e-commerce platforms holding relative market power generally do not qualify as possessing a dominant market position. For example, Tmall's market share falls far short of constituting dominance. It faces not only strong competition from JD.com and Pinduoduo, but also from numerous other online retail platforms. These competitors also maintain their own stable customer bases and distribution channels. From the perspective of dominance, therefore, it is difficult to invoke the Anti-Monopoly Law to regulate the abuse of relative market power [7].

As discussed above, seeking a regulatory pathway through the Anti-Monopoly Law encounters inherent obstacles, since platforms with relative market power do not hold market-dominant positions. Nevertheless, some scholars argue that relative market power represents a special manifestation of market dominance—essentially a form of "relative dominance." Both relative market power and market dominance can leave consumers with no real alternatives, enabling enterprises to exclude competition. From this standpoint, applying the Anti-Monopoly Law to regulate the abuse of relative market power is not without justification [8].

3.3. E-Commerce Law

According to the E-Commerce Law, which came into effect on January 1, 2019, Article 35 provides: "E-commerce platform operators shall not, through service agreements, transaction rules, or technical means, impose unreasonable restrictions or add unreasonable conditions on transactions, transaction prices, or transactions with other operators conducted by businesses on the platform, nor shall they charge unreasonable fees to platform businesses." Service agreements and transaction rules are generally unilaterally drafted by the platform, without undergoing a negotiation process. By choosing to join the platform, businesses are deemed to voluntarily accept the binding force of such agreements and rules [9]—this, in itself, reflects the platform's relative market power. In addition, the technical tools at the disposal of platforms both represent their advantage and serve as a means to maintain that advantage. Consequently, the abuse of service agreements, transaction rules, or technical means constitutes a form of abusing relative market power. Specifically, imposing unreasonable restrictions or conditions on platform transactions, transaction prices, or dealings with other operators, as well as charging unreasonable fees, exemplifies such abusive conduct.

The prohibition of unreasonable restrictions on transactions, transaction prices, and dealings with other operators is intended to regulate the abuse of market power by platform operators. However, during the second reading by the Standing Committee of the National People's Congress, only the vague wording of Article 35 was retained, while provisions explicitly addressing unfair competition were deleted. Although the law does not classify such practices as acts of unfair competition, it explicitly prohibits them as unlawful conduct. Therefore, the "choose one of two" practice—which restricts businesses on the platform from transacting with operators on other platforms—should fall under the scope of legal prohibition. Nevertheless, Article 35 does not explicitly reference the market power of platform operators, nor does it clarify the meaning of "unreasonable." While the legislative intent is commendable, the outcomes of such vague drafting may be less than ideal [10]. Without a solid theoretical foundation for legal intervention and without effective mechanisms for public enforcement, law enforcement agencies may either fail to act or engage in arbitrary intervention, both of which can disrupt normal market operations. It is thus evident that the operability of Article 35 in curbing the abuse of relative market power by platform operators is weak. Merely offering a broad and abstract definition, without accompanying enforcement guarantees or remedies, cannot effectively restrain platform operators' abusive conduct.

4. Pathways for regulating the abuse of relative market power by e-commerce platforms

How to effectively regulate e-commerce platforms, prevent the abuse of relative market power, and improve the legislative framework governing platform conduct is a pressing question. Strengthening legislation, accurately defining the concept of abuse, and ensuring rigorous enforcement by administrative authorities are undoubtedly effective choices. Through a clear legal framework, precise standards, effective enforcement, and constructive cooperation with platforms, fair competition in the e-commerce market can be safeguarded, consumer rights protected, and the healthy development of the digital economy promoted. Governments, regulatory agencies, and market participants should work together toward this goal, ensuring that the economic ecosystem in the digital age becomes fairer and more sustainable.

4.1. Improving legislation on the abuse of market power by e-commerce platforms

First, judicial interpretations should be further developed to clarify the application of Article 35 of the E-Commerce Law, introducing the theory of dependency into the legal framework. Platforms should be prohibited from imposing unreasonable restrictions or attaching unreasonable conditions on the transactions, transaction prices, or dealings of merchants that rely on them, as well as from charging unreasonable fees. The introduction of dependency theory helps delineate the boundary between "use" and "abuse" of relative market power, while at the same time narrowing the scope of legal intervention and preserving platform operators' autonomy in business management—thereby avoiding excessive administrative interference.

Second, greater alignment with the Anti-Unfair Competition Law should be pursued by explicitly defining the abuse of relative market power as an act of unfair competition and clarifying the corresponding legal liabilities. Only by doing so can the E-Commerce Law effectively rely on the enforcement tools of the Anti-Unfair Competition Law to safeguard market order, rather than becoming an outlier detached from the broader system of legal governance.

Finally, administrative regulations and detailed implementing rules should be promulgated to clarify the division of responsibilities among different regulatory bodies, ensuring that such measures remain applicable to the rapidly evolving digital economy. Clear designation of enforcement authorities in regulating the abuse of relative market power by e-commerce platforms will not only help maintain fair trading and competition order, but also reduce enforcement and supervision costs through procedural standardization, thereby enhancing regulatory efficiency. By combining industry self-regulation, departmental oversight, and legal supervision, a comprehensive, multi-layered system can be established to both promote the development of e-commerce and provide effective regulation.

4.2. Accurate determination of the abuse of relative market power

To identify specific regulatory pathways, it is necessary to precisely classify the abuse of relative market power, which can be analyzed through four key elements: the subject, the behavior, the outcome, and the purpose [11]. Subject: The platform must hold a transactional or economic advantage, with the main criterion being the dependency theory as previously discussed. Behavior: Types of abusive conduct include forcing the counterparty to provide money, services, or other economic benefits; restricting the counterparty's choice of trading partners; mandating that the counterparty purchase designated products; and imposing conditions on the counterparty's transactions with other operators. Outcome: The negative effects of the abuse must extend beyond the immediate transaction relationship, resulting in disruption of fair and free competition in the internet market or harm to consumer welfare. Administrative or judicial intervention is warranted only when this outcome criterion is met. This distinction clarifies the difference between ordinary breaches of contract and the abuse of relative market power, providing a critical basis for legal identification [12]. Purpose: This element examines whether the platform has a legitimate reason for implementing a restrictive practice. If such justification exists, the act is not deemed illegal; if not, the conduct, when considered alongside the above elements, constitutes abuse of relative market power [13].

It is important to distinguish between the abuse of relative market power by e-commerce platforms and vertical restraints on competition. While both may occur between upstream and downstream operators and often involve an apparent "agreement," leading to similar market disruptions, differences remain. Vertical restraints are based on agreements restricting competition, requiring at least two parties to act in concert, limiting each other's business freedom. In contrast, the abuse of relative market power is a unilateral act by the operator in a position of relative advantage, not a joint action between upstream and downstream operators. In some cases, platforms may coerce counterparties into choices favorable to the operator, disguising the conduct as mutually agreed market behavior. However, the coerced "agreement" is never the genuine choice of the counterparty; thus, such abuse fundamentally ignores the will of the counterparty and unilaterally restricts the business freedom of weaker parties, unlike vertical restraints where parties mutually restrict each other's freedom [14].

4.3. Rigorous enforcement to reduce the risk of abuse

First, existing enforcement resources must be integrated, and the boundaries of responsibilities among various regulatory departments clarified. Supervision should be implemented effectively, forming a comprehensive and coordinated enforcement mechanism. Blanket or campaign-style enforcement should be avoided in favor of a long-term, sustainable approach. Channels for dialogue between platform operators and regulatory authorities should be streamlined, allowing preemptive warnings for unlawful promotional activities during peak online sales periods. Proactive intervention reduces the risk of abuse of relative market power. Behaviors causing serious consequences—or ignoring risk warnings before such consequences occur—should be strictly punished.

From the judicial perspective, the guiding role of legal cases should be strengthened. Provincial-level high courts can issue illustrative cases to guide the adjudication of disputes involving abuse of platform power. The legitimate rights of plaintiffs should be fully protected, with a strict distinction maintained between monopolistic exclusion claims based on market dominance and claims of abuse of relative market power limiting competition on the platform. Burdens of proof should be allocated reasonably between plaintiff and defendant, avoiding imposing excessive evidentiary burdens on weaker platform operators. Considering the technological resources controlled by e-commerce platforms, requiring them to produce evidence they do not control does not violate principles of fairness and justice; adjustments to evidentiary responsibilities should be made appropriately.

5. Conclusion

The rapid development of e-commerce has brought about numerous new challenges, among which the abuse of relative market power by e-commerce platforms is particularly prominent. The emergence of many well-known internet enterprises has been accompanied by massive capital investments, allowing them to occupy the market early by deploying significant resources, ultimately leading to scenarios where a single dominant player, dual leaders, or a triopoly emerges. After gaining superior resources, technology, and the authority to set rules, it is understandable that these platforms seek to consolidate their market position through the use of their advantages. However, competition is the core element that maintains market vitality, and resource allocation in the market relies on competitive dynamics. Markets in which competition is excluded or restricted stagnate. Therefore, it is necessary to curb behaviors that abuse market power and attempt to eliminate or restrict market competition.

From the "choose one" disputes between Tmall and JD.com to live-streaming platforms restricting lower prices, the conduct of e-commerce platform operators harms not only competitors but also the interests of other platform operators, ultimately damaging consumer welfare. It is imperative to regulate the business practices of platform operators. In this context, the E-Commerce Law was expected to play a pivotal role; however, it has fallen short. The law does not directly recognize the abuse of relative market power, merely providing a vague prohibition against harming the interests of platform operators. The E-Commerce Law should pay greater attention to the operational behavior of internet enterprises and align more closely with the Anti-Unfair Competition Law. Legislative and judicial clarification should be pursued promptly to define penalties for abusive conduct and provide remedies for affected parties. Guided by dependency theory, the abuse of relative market power should be accurately characterized. Strict enforcement by administrative and judicial authorities is essential to maintain market competitiveness and protect the legitimate rights and interests of both platform operators and consumers.

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