

Antitrust Law Regulation on "Pick One of Two" Practice of E-commerce Platforms -- Discussion on the Inadequate Application of the Theory of Abusing the Relative Advantage

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Abstract. E-commerce has a strong development momentum in recent years, and the oligopoly structure trend of e-commerce platforms has become more and more obvious. At the same time, the "Pick One of Two" behavior of e-commerce platforms has been constantly performed in various fields. Although "Pick One of Two" behavior has existed for many years in China, it has not been effectively regulated so far. The "Pick One of Two" behavior of e-commerce platforms not only destroys the fair competition order between platforms, but also damages the legitimate rights and interests of operators and consumers. In view of this, this paper analyzes the dual nature of e-commerce platform "Pick One of Two" behavior and the inadequacy of the theory of abuse of comparative advantage.

Keywords: "Pick One of Two", E-commerce platform, Monopoly.

1. Introduction

If the e-commerce platform has a certain dominant position in a specific market, and uses this dominant position to require merchants to only operate on the platform, it is commonly known as "Pick One of Two", which not only substantially deprives merchants of their right to choose and infringes on their interests, but also may cause serious consequences of restricting fair competition in the market, destroying market order and damaging consumers' legitimate rights and interests. The frequent occurrence of this kind of behavior also reflects the deficiency of the regulation of "Pick One of Two" behavior in our country, which is an urgent problem to be solved in practice[1-2]. The "Pick One of Two" behavior of e-commerce platform is suspected of abusing the dominant market position to restrict transactions within the framework of the current Anti-Monopoly Law[3]. This behavior not only directly restricts the business freedom of merchants, but also indirectly affects the legitimate rights and interests of other e-commerce platform operators and consumers because of its externality, thus causing widespread concern of all parties[4].

In view of this, this paper, based on the dual effects of "Pick One of Two" behavior of e-commerce platform and the characteristics of China's current e-commerce market, analyzes the deficiency of "vertical dependence" standard, the core of the theory of abusing comparative advantage, and puts forward some suggestions on identifying the relevant market, market dominance and illegal behavior

of e-commerce platform, aiming at curbing the "Pick One of Two" behavior of large-scale e-commerce platform and maintaining fair and effective competition order of e-commerce market[5].

2. Overview of e-commerce platform "Pick One of Two" behavior

The overwhelming development trend of Internet technology has been particularly prominent in recent years. With the rapid development of Internet economy and digital economy, a large number of e-commerce platforms have appeared in the public's view[6]. The emergence of e-commerce platform has overturned people's understanding of the traditional market transaction mode. The transition from offline to online has broken through the time and space constraints of offline supply and demand, improved transaction efficiency, saved a lot of time, and boosted the exponential growth of the economy. However, there are some e-commerce platforms that seize the opportunity of the times and develop rapidly, so that their influence in the market is growing day by day[7]. In addition, these e-commerce platforms take advantage of their market position in the market to implement some behaviors that damage the orderly and healthy development of market competition, especially the "Pick One of Two" behavior. Figure 1 shows the specific structure of "Pick One of Two"[8].

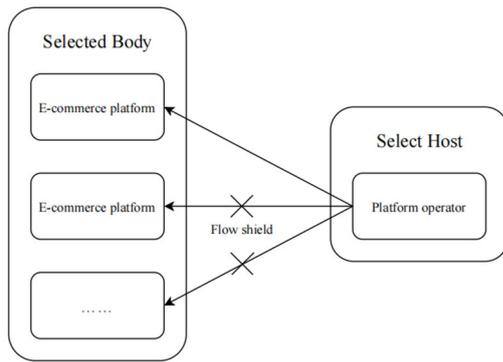


Figure 1 "Pick One of Two" structure diagram

2.1 "Pick One of Two" status quo

In the Spring Festival of 2021, the box office of the films was successful, and *Hi, Mom* even exceeded 5 billion, ranking second in China. The continuous increase of the box office of movies can't be separated from the promotion and publicity of movies by the distributors in the early stage, and behind this year's movie publicity activities, there are illegal acts suspected of anti-monopoly. The main body is Tik Tok APP, which has a certain market influence in the short video market. The behavior carried out by Tik Tok is the well-known "Pick One of Two" behavior. From the "Exclusive Cooperation Mail" signed by Tik Tok and film distributors revealed on the Internet, it shows that the signing company must promise that the film will not cooperate with any other platform that has a competitive relationship with Tik Tok in any form. That is to say, only the distributors who have signed the exclusive cooperation agreement can win the Tik Tok Challenge and short video contest and customize stickers. All of these are the main ways for movies to spontaneously spread traffic; The agreement also clearly informs all publishers that it is impossible to participate in any activities in Tik Tok without signing exclusivity, which also shows that this agreement is extremely exclusive. Tik Tok's operation caused the film side to encounter "Pick One of Two". As we all know, for film distributors, the more distribution channels, the better. Moreover, the investment of publishers in manpower, capital, etc. will be different according to the influence of publicity platforms in the market, such as setting up different teams to match different platforms, so as to achieve the purpose of high efficiency. However, the signing of the "exclusive agreement" of Tik Tok APP makes publishers not only unable to jointly promote it on multiple platforms, but also makes them fall into the situation of readjusting the company's staffing or even directly laying off employees. This practice of Tik Tok obviously damages the normal competition order of China's Internet short video market.

2.2 Abuse of comparative advantage theory to regulate the "Pick One of Two" behavior of e-commerce platform

The abuse of the theory of comparative advantage reflects the widespread phenomenon of "bullying the small with

the big" in the market, which is easy to obtain the recognition in the sense of experience[9]. However, the key "vertical dependence" identified by it is not workable because it violates the actual situation of the current e-commerce market[10]. In addition, it simply considers vertical dependence over market dominance, violates the concept of competition neutrality and alienates the Anti monopoly Law, which may excessively interfere in the market competition related to e-commerce platforms and dampen the competitive vitality.

The inadequacies of their actions include:

(1) Poor operability. It is doubtful to identify the core "relative dependence" of e-commerce platform's dominant position. It is difficult for e-commerce platform to abuse its unstable dominant position to implement "Pick One of Two" behavior, so as to achieve the purpose of "controlling the right to live or die" and limiting the market competition related to e-commerce platform. Instead, it may suffer from merchant diversion, consumer transfer and other backbites due to violating the user's wishes.

(2) It violates the concept of competition neutrality. Competition neutrality advocates restricting government measures that cause differences in the competitive advantages of market players... It reflects the common values of various market economic systems, and is also one of the ideas and principles that run through China's socialist market economic system. By abusing the theory of comparative advantage, we can solve the seemingly unfair "Pick One of Two" problem between vertical merchants and the "advantage" e-commerce platform, which may endanger the survival of the "advantage" but not the incumbent platform, resulting in differences in competitive advantage between horizontal e-commerce platform competitors, and violating the concept of competition neutrality.

(3) May lead to excessive intervention and alienation of the consequences of the Anti monopoly Law

The "Pick One of Two" behavior of e-commerce platforms with comparative advantage status should belong to the category of competitive privilege. If it is regulated according to the abuse of the theory of comparative advantage status, it will over protect a party and frustrate the market competition mechanism, form a negative incentive for the advantageous e-commerce platforms that "go first" because of innovation and other first mover advantages, reduce the competitive vitality of the relevant markets of e-commerce platforms, damage innovation, and cause the consequences of excessive intervention in the market competition related to e-commerce platforms. The application of this theory also violates the original intention of the Anti monopoly Law to focus on the public interest rather than the interests of individual competitors, and will alienate the legislative purpose of the Anti monopoly Law.

3. The dual nature of "Pick One of Two" behavior to market competition

The two sides of e-commerce platform's "choose one from two" behavior on market competition are shown in Figure 2.

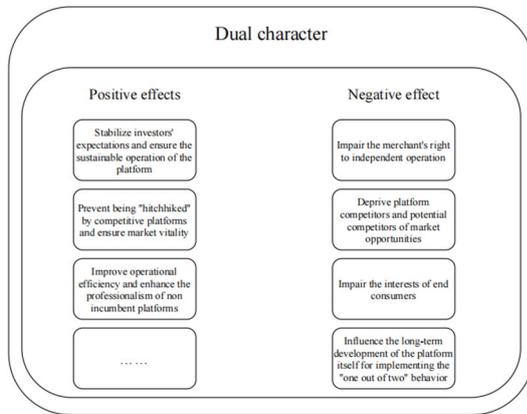


Figure 2 Two sides of "Pick One of Two" behavior

3.1 Positive effect

In the dynamic and competitive environment of e-commerce market, the "Pick One of Two" behavior of e-commerce platform has the following positive effects.

(1) Stabilize investors' expectations and ensure the sustainable operation of the platform

In consideration of recovering sunk costs and stabilizing investors' expectations, e-commerce platform operators may lock in existing merchants through "Pick One of Two" behavior. In addition, the "Pick One of Two" behavior of non incumbent platforms can, to a certain extent, avoid their rapid death due to the network effect of "all or nothing", thus maintaining the stability of their operations and maintaining the effective competition structure of the market.

(2) Prevent being "hitchhiked" by competitive platforms and ensure market vitality

"Free riding" refers to the behavior of following others and using the results or popularity of their input or efforts. The lack of "free riding" to provide equal value will lead to excessive dependence on an e-commerce platform to provide merchant resources, which will reduce the vitality of the e-commerce market and cause the dilemma of "three monks have no water to eat". Therefore, the "Pick One of Two" behavior of non incumbent platforms is conducive to stimulating the fierce competition of platforms and ensuring market vitality.

(3) Improve operational efficiency and enhance the professionalism of non incumbent platforms

It invested resources to improve the installation, distribution, after-sales maintenance and other links of electrical appliances, improve business efficiency, and form a professional e-commerce platform brand, thus winning in the competition of e-commerce platforms with serious homogeneity.

3.2 Negative effect

The behavior of "Pick One of Two", an e-commerce platform without market dominance, often only harms the interests of specific subjects, while the behavior of "Pick One of Two", an e-commerce platform with market dominance, is in danger of destroying the competition mechanism.

(1) Damage the independent management rights of merchants.

The implementation of "Pick One of Two" in e-commerce platform is contrary to the idea that merchants want to open stores and operate on multiple platforms. On the surface, e-commerce platform requires merchants to make choices between themselves and other platforms, and even give corresponding discounts and discounts in return. However, in the long run, this behavior actually restricts the transactions of merchants, damages their independent management rights and infringes on their related economic interests. Although faced with "Pick One of Two" behavior.

(2) Depriving platform competitors and potential competitors of market opportunities.

Once the e-commerce platform with great influence in the market implements "Pick One of Two" behavior, its competitors will lose the existing or possible opportunities to cooperate with some merchants in the future. Due to the decrease of the number of merchants in the platform, the goods or services that the platform can provide obviously can't meet the vast demand of consumers, and the competitors will lose their customers at the same time. On this basis, they will no longer have competitive conditions in the market and will gradually be "eliminated" by the market. "Pick One of Two" behavior increases the cost of attracting customers to potential competitors of the platform, forms barriers to market entry, and eliminates the possibility that potential competitors will restrict the development of the e-commerce platform after entering the market.

(3) Impair the interests of end consumers

The "Pick One of Two" behavior of e-commerce platforms mainly damages consumers' free choice and other economic interests.

(4) Influence the long-term development of the platform itself for implementing "Pick One of Two" behavior

The "X inefficiency" in economics points out that under the market form other than perfect competition, low production efficiency will persist, because the lack of competition makes it possible to use inefficient production technologies and still maintain business status.

4. Conclusions

The operability of applying the theory of abuse of comparative advantage to regulate the "Pick One of Two" behavior of e-commerce platform is poor. And because the market mechanism has a certain ability of self adjustment, the implementation of this theory may violate the concept of competition neutrality, resulting in excessive intervention in the market competition related to e-commerce platforms and alienation of the legislative purpose of the Anti monopoly Law. For the "Pick One of

Two" behavior of e-commerce platform suspected of abusing the dominant market position, within the framework of the Anti monopoly Law, through the investigation of the relevant market characteristics of e-commerce platform and the dual characteristics of "Pick One of Two" behavior, the relevant market and the measurement factors for the determination of the dominant market position should be adjusted in a targeted way, and the positive and negative effects of the behavior should be measured by the principle of reasonableness to determine the illegality of the behavior, So as to balance the relationship between the economic efficiency value represented by the effective competition order in the e-commerce market and the interests of consumers, as well as the economic fair value represented by merchants operating through a single channel.

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