



国家市场监督管理总局

State Administration for Market Regulation

China's Initiatives to Identify and Address Competition Issues in the Digital Market

Anti-monopoly Bureau of State Administration for Market Regulation

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Emergence of Competition Issues

Economic characteristics
of digital platform

- "Winner Takes All", "The Strong Get Stronger"
- Dual attributes of "enterprise" and "market"
- Data, capital and technical advantages
- Market power
- Platform management status

- **Monopolistic conducts prevail**
- **Restricting and excluding competition**
- **Harming the interests of consumers**
- **Hindering the innovation and development of the industry**

Adverse influence on
competition

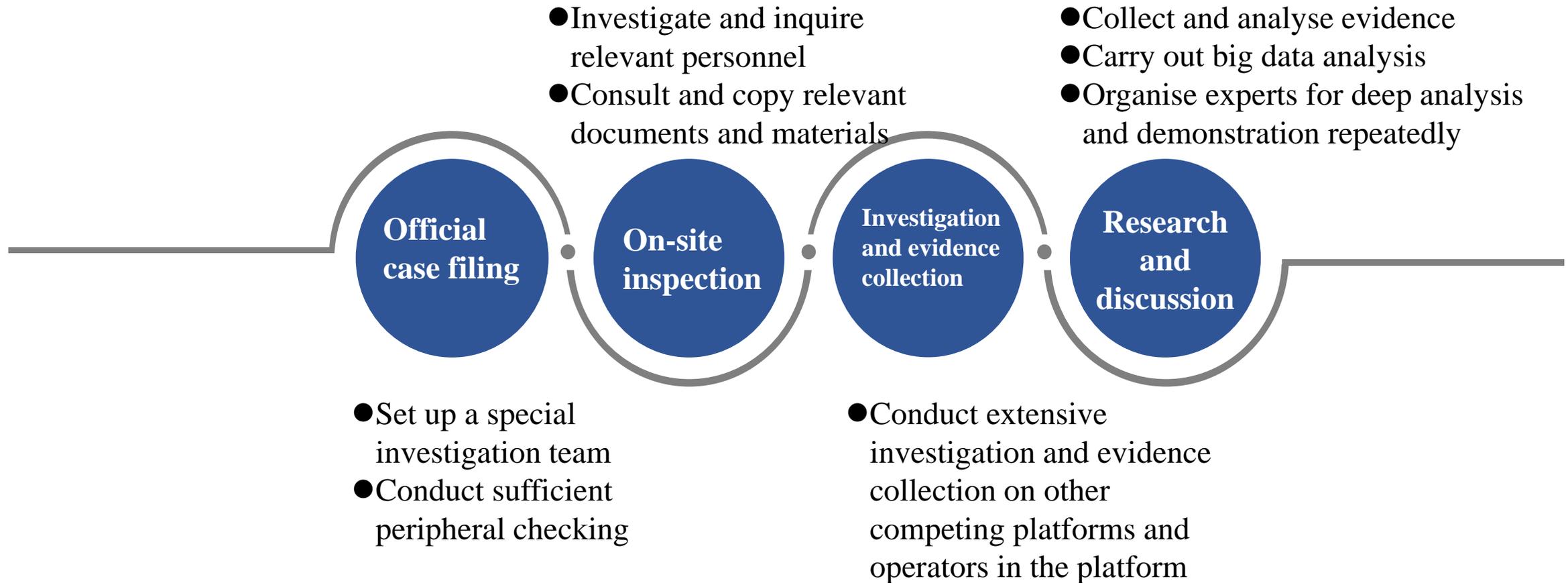
Enforcement Actions

- In December 2020, the State Administration for Market Regulation (SAMR), in accordance with the *Anti-Monopoly Law*, initiated the investigation of Alibaba Group Holdings Limited (hereinafter referred to as “Alibaba Group”) for abuse of dominant market position in the online retail platform service market within China.
- In April 2021, SAMR imposed an administrative penalty in accordance with the law for Alibaba Group.



Enforcement Actions

(I) Organise investigations in an efficient and orderly manner



Enforcement Actions

(II) Define the relevant market in a scientific manner

Consumers



Merchants

The relevant market in this case is defined as the online retail platform service market within China.

- According to the general principles established under the *Anti-Monopoly Law of the People's Republic of China* and *Guide of the Anti-Monopoly Committee of the State Council for the Definition of the Relevant Market*
- Fully consider the cross-side network effect between the two groups of merchants and consumers
- Conduct demand and supply substitution analysis from the perspectives of merchants and consumers
- Comprehensive study and judgment based on platform service content, characteristics and geographical scope

Enforcement Actions

(III) Accurate determination of dominant market position

- Investigate the market share and relevant market competition with multiple indicators - service revenue share of the platform >70%, gross merchandise volume (GMV)>50%
- Determine the market control power from multiple dimensions- Formulate platform service rules and transaction agreements, control service prices, merchants' ability to obtain traffic, and merchants' sales channels
- Evaluate the financial and technical conditions from multiple aspects - sales amount, net profit, market value; master the data, algorithms, and computing power
- Study and judge the merchants' dependence on the platform - Number of active users, average user consumption, cross-year consumer retention rate, data portability, lock-in effect
- The difficulty of entering the relevant market - high entry costs, difficult to obtain critical scale
- Significant advantages of relevant market - Logistics, payment, and cloud computing

Enforcement Actions

(IV) Fully grasp the factual evidence of illegal acts

Since 2015, in order to hinder and restrict the development of other competing platforms and maintain and consolidate its market position, the Alibaba Group has signed various written or oral agreements with plenty of core merchants, imposing "choose one out of two" requirement

- No stores operating on other competing platforms
- Not participating in promotional activities on other competing platforms

Alibaba Group locks its core merchants on its own platform to gain an unfair competitive advantage by imposing the "choose one out of two" requirement

- Deviating from the idea of open, inclusive and shared development of the platform economy
- Excluding and restricting the competition from the relevant markets
- Harming the interests of operators and consumers in the platform
- Weakening the drive to innovation and development vitality of the platform economy

Enforcement Actions

(V) Administrative penalty in accordance with the law

The investigation showed that Alibaba Group's implementation of "choose one out of two" excluded and restricted competition in the market of online retail platform services in China, hindered the free flow of goods, services and resources, affected the innovative development of the platform economy, infringed on the legitimate rights and interests of merchants in the platform, and harmed the interests of consumers, which constituted an abuse of dominant market position prohibited by Article 17(1)(4) of the *Anti-monopoly Law*, "without justifiable reasons, restricting the counterparty to trade only with it".

On April 10, 2021, the State Administration for Market Regulation imposed an administrative penalty in accordance with the law:

- Ordering Alibaba Group to stop its illegal conduct and
- Imposing a **fine of 4% of its 2019 sales in China of RMB 455.712 billion, totaling RMB 18.228 billion.**
- Issuing an **Administrative Guidance Letter**, requiring it to carry out comprehensive rectification, and to submit **self-examination compliance reports** to the State Administration for Market Regulation for three consecutive years.

Constant Improvement in System and Rules

While actively carrying out anti-monopoly law enforcement activities, Chinese antimonopoly law enforcement agencies are accelerating the improvement of the digital economy regulatory system and rules.

➤ **Drafted the amendment to the Anti-Monopoly Law**

Actively cooperate with relevant departments to speed up the legislation, add special provisions for the digital economy, and strengthen the legal protection for supervision of digital economy.

➤ **Drafted and formulated the Anti-Monopoly Guidelines**

Summarize and learn from the experience in law enforcement, follow the international practices, and draft and formulate the *Anti-Monopoly Guidelines for the Internet Platform Economy* and *Anti-Monopoly Compliance Guidance for Business Operators* and other guidelines in a timely manner, which will be issued by the Anti-Monopoly Committee of the State Council for implementation.

Constant Improvement in System and Rules

The *Anti-Monopoly Guidelines for the Internet Platform Economy* was drafted by the State Administration for Market Regulation, and promulgated by the Anti-Monopoly Committee of the State Council in February 2021 for implementation.

Drafting Works

- Comprehensively evaluate the competition situation
- Conduct in-depth study of law enforcement practices
- Fully based on existing regulations
- Summarize China's experience in law enforcement
- Learn from advanced international practices
- Grasp the industry characteristics and laws
- Listen to the opinions of all parties

Main Features

- Support innovative development
- Highlight the problem orientation
- Focus on grasping the rule
- Draw upon the strengths of others

Specific Contents

It consists of six chapters and 24 articles in total, including:

- General provisions
- Monopoly agreement
- Abuse of dominant market position
- Concentration of business operators
- Abuse of administrative power to exclude or restrict competition
- Supplementary provisions

Constant Improvement in System and Rules

Contents of the Anti-Monopoly Guidelines for the Internet Platform Economy

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| <p>General provisions</p> | <ul style="list-style-type: none"> • It clarifies the purpose and basis of the Guide and defines the relevant basic concepts involved in the Guide. • It puts forward the principles of protecting fair market competition, regulating relevant parties in a lawful, scientific and efficient manner, stimulating innovation and creativity, and safeguarding the legitimate interests of all parties. • It explains in detail the definition of platform economy relevant commodity markets and relevant geographic markets, and adheres to the principle of case-specific analysis. |
| <p>Monopoly agreement</p> | <p>It provides specific explanations for cooperative behaviors, and stipulates detailed provisions on the collaborative behavior of the recognized operators by means of data, algorithm, platform rules, etc.</p> <p>It explains the specific ways and law enforcement considerations for operators to reach or implement monopoly agreements, It clarifies that operators may use technical means, data, algorithms, platform rules and other ways to reach agreements, It specifies the hub and spoke agreement and proposes the analysis ideas of relevant cases.</p> |
| <p>Abuse of dominant market position</p> | <ul style="list-style-type: none"> • It lists in detail the factors that determine or presume the dominant position of the operator, • It specifies the forms of abuse of market dominance behavior one by one, • It responds to the hot issues widely concerned by society, such as "choose one out of two", data monopoly, and big data-based price discrimination. |
| <p>Concentration of business operators</p> | <ul style="list-style-type: none"> • In terms of declaration standards, the calculation methods for turnover of different types of platform operators should be differentiated, • It clarifies that the concentration of business operators under the agreement control framework falls in the scope of anti-monopoly review. • It clarifies that if the concentration of business operators does not meet the declaration standards, but has or may have the effect of excluding or restricting competition, the antimonopoly law enforcement agency of the State Council will investigate and deal with it according to law. • It specifies the factors to be taken into account when conducting anti-monopoly review on the concentration of business operators involving platform economy. • It defines the additional conditions to attach restrictive conditions to the concentration of business operators in the field of platform economy. |
| <p>Abuse of administrative power to exclude or restrict competition</p> | <ul style="list-style-type: none"> • It details the forms of abuse of administrative power to exclude and restrict competition in the field of platform economy. • It requires conduct fair competition review on the rules and regulations, normative documents and other policies and measures concerning the economic activities of market subjects in the field of platform economy. |

Constant Improvement in System and Rules

Anti-Monopoly Guidelines for the Internet Platform Economy: General Provisions

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| <p>Purpose and basis</p> | <ul style="list-style-type: none"> • Purpose: To prevent and stop the monopolistic conducts in the field of platform economy, protect fair competition in the market, promote the standardized, orderly, innovative and healthy development of platform economy, and safeguard the interests of consumers and social public interests. • Basis: <i>Anti-monopoly Law of the People's Republic of China</i> and other legal regulations |
| <p>Relevant Concepts</p> | <p>Platform, platform operators and operators within the platform, operators in the field of platform economy</p> |
| <p>Basic Principles</p> | <p>Protect fair market competition, regulate the market in a lawful, scientific and efficient manner, stimulate innovation and creativity, and safeguard the legitimate interests of all parties.</p> |
| <p>Definition of Relevant Market</p> | <ul style="list-style-type: none"> • General Principle - <i>Anti-Monopoly Law of the People's Republic of China</i> and <i>Guide of the Anti-Monopoly Committee of the State Council for the Definition of the Relevant Market</i> • Relevant commodity market - Demand substitution analysis can be conducted based on factors such as platform functions, business models, application scenarios, user groups, multilateral markets, and offline transactions. <ul style="list-style-type: none"> - Supply substitution analysis can be considered based on factors such as market entry, technical barriers, network effects, lock-in effects, transfer costs, and cross-border competition. - Multi-side market: It can be defined according to the commodities on one side of the platform or multilateral commodities involved in the platform, or according to the platform as a whole when the cross-platform network effect is considered. • Relevant regional markets - When defining the relevant regional market in a case, it is possible to comprehensively evaluate and consider factors such as the actual region where most users choose the product, the user's language preference and consumption habits, the provisions of relevant laws and regulations, the degree of competition in different regions, and online and offline integration. <ul style="list-style-type: none"> - The relevant regional market is usually defined as the Chinese market or a specific regional market, and it can also be defined as a global market based on individual circumstances. |
| <p>Case Analysis</p> | <ul style="list-style-type: none"> • Adhering to the principle of case analysis, different types of monopoly cases have different actual needs for the relevant market definition. • It is usually necessary to define the relevant market when investigating monopoly agreements in platform economy, cases of abusing market dominant position and conducting anti-monopoly review on concentration of business operators. |

Constant Improvement in System and Rules

Contents of the *Anti-Monopoly Guidelines for the Internet Platform Economy*: **Monopoly Agreement**

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| Form of Monopoly Agreement | <ul style="list-style-type: none"> • Monopoly agreements in the field of platform economy refer to agreements, decisions, or other collaborative behaviors to exclude or restrict competition. • Collaborative behavior refers to the behavior that the operator has not clearly entered into an agreement or decision, but is essentially coordinated through data, algorithm, platform rules or other means, <ul style="list-style-type: none"> - Except for the parallel behaviors such as price following made by the operator based on independent expression of will. |
| Horizontal Monopoly Agreement | <ul style="list-style-type: none"> • Using the platform to collect and exchange sensitive information such as price, sales volume, cost, and customers; • Making use of technical means to communicate with each other; • Using data, algorithms, platform rules to achieve consistent behavior; |
| Vertical Monopoly Agreement | <ul style="list-style-type: none"> • Using technical means to set the price automatically; • Using platform rules to unify prices; • Using data and algorithms to directly or indirectly limit prices; • Using technical means, platform rules, data and algorithms to limit other trading conditions, and exclude or restrict market competition. |
| Special Form | <p>Most-favored-nation treatment, hub and spoke agreement</p> |
| Identification of Collaborative Behavior | <ul style="list-style-type: none"> • Identification through direct evidence • Identification through logical consistency of indirect evidence |
| Leniency System | <ul style="list-style-type: none"> • The system encourages operators to proactively report the relevant situation of monopoly agreements. |

Constant Improvement in System and Rules

Contents of the Anti-Monopoly Guidelines for the Internet Platform Economy : Abuse of Dominant Market Position

Determination of Dominant Market Position

- Market Share - To determine the market share of operators in the field of platform economy, one can consider the proportion of transaction amount, number of transactions, sales, number of active users, clicks, duration of use, or other indicators in the relevant market, as well as the duration of the market share.
- Relevant market competition situation - Consider the development status of the relevant platform market, the number and market share of existing competitors, the characteristics of platform competition, the degree of platform differentiation, economies of scale, the situation of potential competitors, innovation and technological changes, etc.
- The operator's ability to control the market - The ability to control the upstream and downstream markets or other relevant markets, hinder or affect other operators' entry into the relevant market, the ability to influence relevant platform business models, network effects, and the ability to influence or determine prices, flows or other transaction conditions, etc.
- The financial resources and technical conditions of the operators. - Consider the operator's investor profile, asset size, capital source, profitability, financing capacity, technological innovation and application capabilities, intellectual property rights, the ability to master and process relevant data,
 - The extent to which the financial and technical conditions can promote the business expansion or consolidate and maintain the market position of the operator,
- The degree of dependence of other business operators on the business. - The transaction relationship, transaction volume, transaction duration, lock-in effect, user stickiness.
 - The possibility and cost for other operators switching to other platforms
- The degree of difficulty for other operators to enter the relevant market. - Market access, platform scale effect, capital investment scale, technical barriers, user diversity, user switching cost, data acquisition difficulty, user habits, etc.

Clarification of the behavior identification conditions

- "Choose one out of two"- It can be considered to constitute the restricted transaction if the platform operator requires operators on the platform to "choose one out of two" or has other behaviors with the same effect among the competing platforms.
 - Punitive measures: They can generally be considered as a restricted transaction.
 - Incentive measures: If there is evidence to prove that it has an obvious effect of excluding or restricting market competition, it may also be considered as a restricted transaction.
- "Data Monopoly" - To determine whether the relevant platform constitutes a necessary facility, it is generally necessary to comprehensively consider such factors as the data occupied by the platform
 - Restricted transactions, refusal to trade, bundle sales and other behaviors may hinder the transactions by setting up unreasonable restrictions and obstacles in terms of platform rules, algorithms, and technology.
- "Big Data-Based Price Discrimination" - It constitutes differential treatment if different transaction prices or other transaction conditions are implemented according to the payment ability, consumption preference and usage habits of the opposite party based on big data and algorithms.

Response to the hot issues

Constant Improvement in System and Rules

Contents of the Anti-Monopoly Guidelines for the Internet Platform Economy : Concentration of Business Operators

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| <p>Declaration Standard</p> | <ul style="list-style-type: none"> • The calculation of turnover may vary depending on different industry practices, charging methods, business models and the role of platform operators. • For the platform operators who only provide information matching, commission and other service fees, the turnover can be calculated according to the service fees and other income of the platform; • If the platform operators specifically participate in the market competition on one side of the platform or play a leading role, the transaction amount involved in the platform can also be calculated. • The concentration of business operators involving the agreement control structure falls in the scope of anti-monopoly examination of concentration of business operators. |
| <p>Take the initiative to investigate</p> | <ul style="list-style-type: none"> • If the concentration of business operators does not meet the declaration standards, but the facts and evidence show that the concentration of business operators has or may have the effect of excluding or restricting competition, the antimonopoly law enforcement agency of the State Council will investigate and deal with it according to law. • Business operators can take the initiative to report to the antimonopoly law enforcement agency of the State Council for business concentration that does not meet the declaration standards. • High attention is paid to the types of concentration of business operators in the platform economy field where the operators participating in the concentration are start-ups or emerging platforms, the operators participating in the concentration adopt free or low price mode, resulting in low turnover, high concentration of relevant markets, and small number of competitors. |
| <p>Considerations</p> | <ul style="list-style-type: none"> • The market share of the operator in the relevant market. • The control of the operator over the market. • Concentration of relevant markets. • The impact of concentration on market entry. • The impact of concentration on technological progress. • The impact of concentration on consumers. • For the concentration of business operators involving two-side or multi-side platforms, it may be necessary to comprehensively consider the two-side or multi-side business of the platform, as well as other businesses engaged by operators, and evaluate the direct and indirect network externalities. |
| <p>Remedy measures</p> | <ul style="list-style-type: none"> • Structural conditions - Divestiture of tangible assets, intellectual property, technology, data and other intangible assets, or divestiture of related rights and interests. • Behavioral conditions - Open network, data or platform infrastructure, license key technology, terminate exclusive agreement, modify platform rules or algorithms, promise of compatibility or no compromise on interoperability level • Comprehensive condition - Combining structural condition with behavioral condition. |

Thank you!