



国家市场监督管理总局

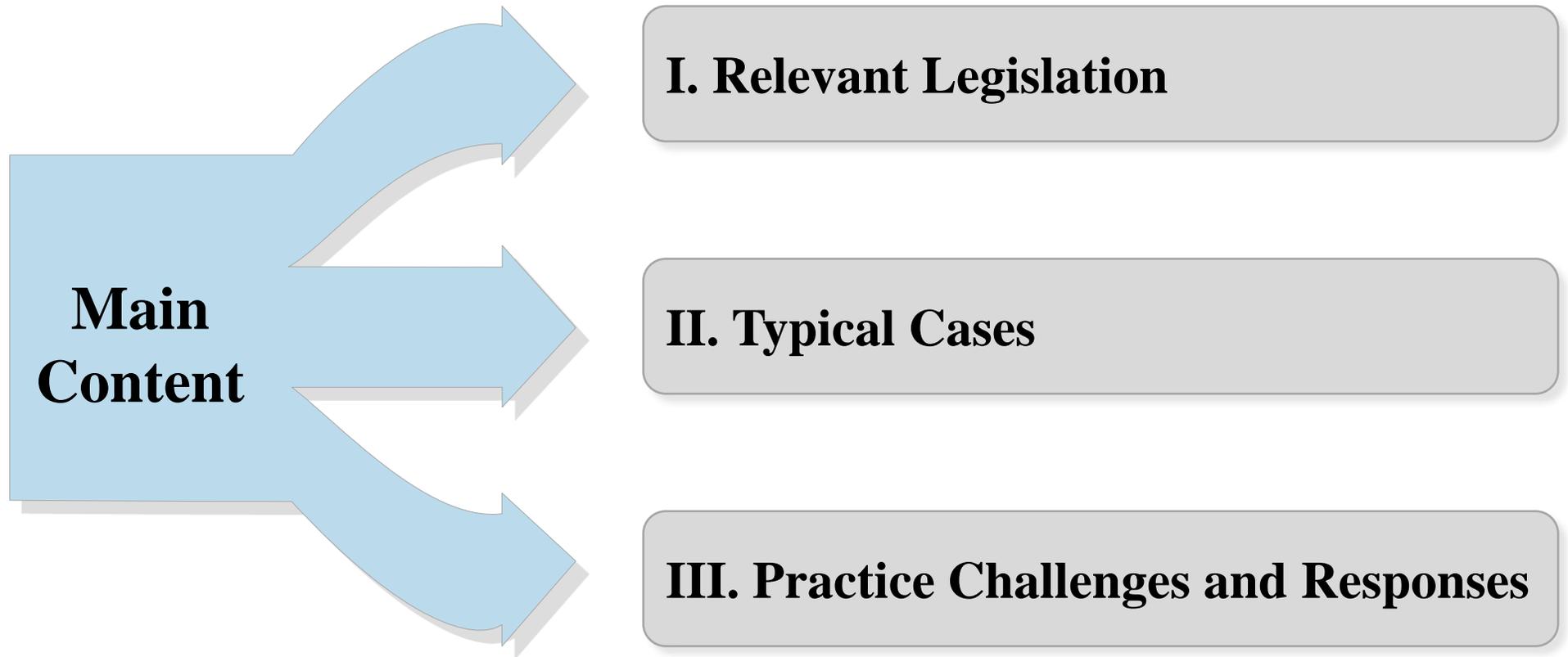
State Administration for Market Regulation

Anti-Monopoly Legislation and Enforcement Practice of Abuse of Dominant Market Position in Chinese Platform Economy

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December 1, 2021





I. Relevant Legislation

(i) Anti-Monopoly Law (adopted on August 30, 2007, effective August 1, 2008)

- Chapter 3 Abuse of Dominant Market Position
- Article 17 - Article 19
- The basic system, regulatory principles and analytical framework of the Anti-Monopoly Law remain applicable to business operators in the field of platform economy.
- At the same time, the business model and competition ecology of the platform economy are complex, extensive and professional, therefore, with respect of doing anti-monopoly work, this field is full of theoretical difficulties and practical challenges.

(ii) Provisional Regulations on the Prohibition of Abuse of Dominant Market Position (June 26, 2019)

- Article 11 When determining whether the business operator of the new economy business forms such as the Internet business has a dominant market position, factors such as the competitive characteristics of the relevant industry, business model, number of users, network effect, lock-in effect, technical characteristics, market innovation, ability to master and process relevant data and the business operator's market power in the relevant markets may be taken into account.



I. Relevant Legislation

(iii) Anti-Monopoly Guidelines of the Anti-Monopoly Committee of the State Council for Platform Economy (February 7, 2021)

- Chapter 3 Abuse of Dominant Market Position
- Combined with the characteristics of the platform economy, it lists in detail the factors to be considered in determining whether or presuming that the business operator in the platform economy has a dominant market position.
- It details the manifestations of the abuse of dominant market position in the platform economy, including the problems such as "forced exclusivity" and "big data discriminatory pricing", which have been complained very often by various social communities.



I. Relevant Legislation

(iv) Anti-Monopoly Law (draft amendment)

- One new article in General Provisions: "Business operators shall not abuse data and algorithms, technology, capital advantages, and platform rules to exclude or restrict competition."
- One new paragraph in Article 22 (formerly Article 17), Chapter 3: "The business operator with a dominant market position using data and algorithms, technology and platform rules to set barriers to other business operators to unreasonably restrict them, is the abuse of dominant market position under the preceding paragraph."



II. Typical Cases

(i) Alibaba Group Monopoly Case



- Relevant markets: e-retail platform service market in China
- Dominant market position determination: Alibaba's market share is over 60% in terms of platform service revenue and platform merchandise transactions, meanwhile, the relevant market competition situation, market control, financial strength and technical conditions are comprehensively taken into consideration.
- Abuse of dominant market position: Alibaba has imposed "forced exclusivity" requirements on the merchants on its platforms, that they are not allowed to open e-stores or participate in promotional activities on other competitive platforms, and adopted various incentives and penalties to ensure the implementation of the "forced exclusivity" requirements to maintain and enhance its market power and gain an unfair competitive advantage.



II. Typical Cases

(i) Alibaba Group Monopoly Case



- Handling results: On April 10, 2021, the State Administration for Market Regulation issued an administrative penalty decision in accordance with the law, ordering Alibaba to stop the illegal acts and imposing a fine of 4% of its 2019 sales in China (RMB 455.712 billion), totaling RMB 18.228 billion.
- At the same time, an "Administrative Guidance Letter" was issued to Alibaba, putting forward 16 comprehensive rectification requirements in five aspects.



II. Typical Cases

(ii) Meituan Monopoly Case



- Relevant markets: Market of online platform service for food and beverage delivery in China
- Dominant market position determination: The market share of Meituan is over 60% in terms of the platform service revenue and the volume of restaurant take-out orders on the platform, meanwhile, the relevant market competition situation, market control, financial strength and technical conditions are comprehensively taken into consideration.
- Abuse of dominant market position: Meituan has imposed "forced exclusivity" requirements on the merchants on its platforms, prompted merchants on its platforms to sign exclusive cooperation agreements with it by implementing differential rates and delaying the launch of merchants, and taken various punitive measures, such as collecting exclusive cooperation deposits and technical measures (such as data and algorithms) to ensure the implementation of "forced exclusivity", which has excluded and restricted the competition in the relevant market.



II. Typical Cases

(ii) Meituan Monopoly Case



- Handling results: On October 8, 2021, an administrative penalty decision was issued in accordance with the law, ordering Meituan to stop the illegal acts, and fully refund the exclusive cooperation deposits of RMB 1.289 billion, and imposing a fine of 3% of its 2020 sales in China (RMB 114.748 billion), totaling RMB 3.442 billion.
- At the same time, an "Administrative Guidance Letter" was issued to Meituan, putting forward 15 comprehensive rectification requirements in four aspects.



III. Practice Challenges and Responses

1

New technologies, new business forms and new models regarding platform economy are emerging all the time, and it is difficult for the existing legal provisions to completely cover or precisely regulate them.

Response

Promoting the revision of the anti-monopoly law, improving the supporting legislation, and studying and improving the more detailed systems and rules for the frequent violations.



III. Practice Challenges and Responses

2

The business model and competition ecology of the platform economy are complex, and the way of competition differs greatly from the traditional economy, which makes it more difficult to accurately define the relevant market and identify illegal acts.

Response

Strengthening analysis and research on key and difficult issues, giving full play to the role of external expert and think tanks, strengthening international exchange and cooperation, and learning from the beneficial experiences of other jurisdictions.



III. Practice Challenges and Responses

3

Platform enterprises implement monopolistic acts with the help of data, technology and platform rules, which are more technical and concealed, posing challenges to investigation and evidence collection, evidence analysis, etc.

Response

Strengthening the construction of regulatory infrastructure, enhancing the platform monitoring, early warning, evidence collection, big data analysis and other regulatory technology supports.



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THANKS!



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