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Innovative Practices and Future Directions of Antitrust in Online “Live Streaming Sales”

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Abstract

Online “live streaming sales”, as an emerging platform economic model, exhibits significant differences in economic characteristics compared to traditional industries. Therefore, unique strategies distinct from those applied to traditional industries should be adopted in antitrust governance within the realm of online “live streaming sales”. China has implemented innovative practices from multiple perspectives, including legislation and law enforcement. However, the rapid advancement of antitrust regulation in online “live streaming sales” through administrative means poses challenges related to high economic costs, necessitating the establishment of a long-term regulatory mechanism centered on innovation-driven development. The key to achieving long-term regulation lies in ensuring the legalization of antitrust supervision, specifically involving the construction of a scientific and stable policy framework for antitrust regulation, the improvement of a legalized antitrust law enforcement system, the enhancement of the systematic and effective guidance for antitrust compliance, and the promotion of innovative practices in antitrust law enforcement policies. These measures will effectively maintain a fair competition order in the market and promote the healthy and sustainable development of the digital economy.

Keywords

Online “live streaming sales”, live streaming e-commerce economy, platform economy, antitrust, innovative practices

1. Introduction

With the rise of the live-streaming e-commerce economy, it has not only provided consumers with a wide range of products at competitive prices but also facilitated flexible employment and promoted the healthy development of the macroeconomy (Junic, Nianwen & Ian, 2023, p. 959). However, unfair competition practices such as “monopoly low pricing” and “choose one of two” in online

“live-streaming sales” have gradually emerged, disrupting the order of fair market competition. In the digital economy system, large digital platforms, as market leaders, not only hold significant market shares but also demonstrate cross-market ecosystem integration and control capabilities leveraging data and algorithms. These platforms may rely on their strong market influence and data-driven, intelligent algorithm-based operating models to adopt a series of strategic behaviors that weaken fair market competition, posing challenges to the healthy development of the digital economy market (Wei, Hao & Zhong, 2023, p. 502). Therefore, in recent years, strengthening antitrust supervision over large digital platforms and enhancing the effectiveness of antitrust supervision targeting the emerging digital economy sector of “live-streaming sales” have become the strategic focus and development trend of digital economy governance in countries worldwide. China has also embarked on comprehensive and deep practical exploration in the field of antitrust in online “live-streaming sales”. In December 2020, China explicitly proposed, for the first time, strategic plans to strengthen antitrust policies and prevent unordered capital expansion, marking a new era in antitrust supervision of online “live-streaming sales” in China. This series of strategic initiatives covers multiple dimensions, from improving the antitrust legal and regulatory framework, strengthening law enforcement, to optimizing the antitrust law enforcement system, and innovating antitrust policy tools. In practice, China’s antitrust supervision in online “live-streaming sales” not only investigates and handles major illegal cases but also conducts deep governance of monopoly issues in large digital platforms through special rectification measures, aiming to reconstruct a fair and orderly competitive order in the digital market.

Therefore, systematically analyzing and evaluating China’s practical experience in antitrust enforcement in the realm of online “live streaming sales” and exploring future development paths for this sector’s antitrust regime hold significant theoretical and practical value in enhancing the effectiveness of antitrust regulation and advancing the modernization of China’s antitrust regulatory system and capabilities.

2. Innovative Practices in Antitrust Legislation

In response to the antitrust challenges posed by online “live streaming sales”, the Antimonopoly Law of the People’s Republic of China (hereinafter referred to as the “Antimonopoly Law”), enacted in 2007, has revealed limitations and inadequacies in its applicability, specificity, and consideration of the unique attributes of the live streaming e-commerce economy when addressing new forms and types of monopolistic behaviors in this sector. Consequently, amendments and enhancements are urgently needed to enhance the effectiveness and targeted nature of antitrust enforcement. As a typical manifestation of the platform economy, the live streaming e-commerce economy represented by online “live streaming sales” has prominently exposed monopoly issues. Therefore, in February 2021, the Anti-Monopoly Guidelines for the Platform Economy (hereinafter referred to as the “Platform Economy Anti-Monopoly Guidelines”) issued by the State Council Anti-Monopoly Commission addressed key difficulties encountered in antitrust practices in the live streaming e-commerce economy.

In June 2022, the newly revised Antimonopoly Law of the People's Republic of China (hereinafter referred to as the "New Antimonopoly Law") explicitly stipulated in Article 9 that "Business operators shall not use data, algorithms, technology, capital advantages, or platform rules to engage in monopolistic behaviors prohibited by this Law". This provision provides a principled framework and direction for addressing prominent legal issues in antitrust regulation for online "live streaming sales". Subsequently, the State Administration for Market Regulation revised and issued a series of supporting regulations, providing more detailed rules to unify antitrust enforcement standards and strengthen the operability and enforceability of laws and regulations. Overall, China's innovative practices in antitrust legislation for online "live streaming sales" are mainly manifested in the following aspects.

2.1 Diversified Legislative Objectives Facilitating Innovative Practices

The New Antimonopoly Law incorporates "encouraging innovation" into the core scope of its legislative objectives for the first time, further deepening and broadening the connotation of antitrust law's legislative goals. Academic circles hold divergent views on this matter. Some scholars advocate that antitrust laws should actively adapt to the dynamic evolution of competition patterns in the digital economy era, gradually shifting from traditional static efficiency and price regulation to a greater emphasis on dynamic efficiency optimization and the design and construction of innovation incentive mechanisms. Conversely, other scholars maintain a cautious stance regarding the explicit emphasis on "encouraging innovation" in the legislative objectives of antitrust laws, arguing that the fundamental purpose of antitrust laws is to curb market monopolies and maintain market competition order. Directly incorporating "encouraging innovation" as an antitrust legislative goal may lead to conflicts of priority between "maintaining competition" and "promoting innovation" in actual implementation (Mohammad, Masnun, Kabir & Shamim, 2024, p. 102497).

The controversy surrounding the inclusion of "encouraging innovation" in the legislative objectives of the New Antimonopoly Law essentially focuses on how to properly handle the relationship between competition and innovation. In the digital economy market environment, innovation is both the source of market competition and the embodiment of its outcomes. Competition in the digital economy market is inherently a dynamic process based on innovation, where innovation serves as a crucial driver for breaking down corporate monopoly barriers and empowering innovative participants to effectively participate in market competition. Innovation plays a vital role in shaping market competition patterns, and safeguarding innovation is synonymous with safeguarding the vitality of market competition itself. Innovation can significantly improve operators' production efficiency and enhance consumer welfare by offering more innovative and superior products (Jan & Maria, 2017, pp. 103-107). From a long-term strategic perspective, innovation will continuously drive the country's economy towards high-quality development, becoming a fundamental indicator for measuring market performance (Lage, Saiz & Zarzuelo, 2022, pp. 1707-1723).

Therefore, the explicit inclusion of “encouraging innovation” in the legislative objectives of the New Antimonopoly Law clearly expresses the country’s policy orientation towards encouraging innovation, which is conducive to maintaining and developing a dynamic competitive market environment based on innovation, effectively advancing the implementation of the innovation-driven development strategy, and ultimately promoting the grand blueprint of achieving high-quality economic development in China.

2.2 Strengthening the Legal Framework for Merger Control Policies

Firstly, refining the merger notification system. As the primary barrier to antitrust scrutiny in M&A activities, the merger notification system faces unique challenges in the live e-commerce sector. Given the sector’s distinctive characteristics, relying solely on traditional turnover thresholds as the basis for notification fails to fully capture the potential competitive risks arising from platform enterprise mergers, allowing some mergers to evade legal oversight by not meeting the turnover thresholds (First, 2023, pp. 334-367). To address this regulatory gap, Article 26(2) of the new Anti-Monopoly Law stipulates: “Where a concentration of business operators does not meet the notification criteria prescribed by the State Council, but there is evidence that it has or may have the effect of eliminating or restricting competition, the anti-monopoly law enforcement agency of the State Council may require the business operators to make a notification”. This move aims to enhance flexibility and precision in regulating potentially anticompetitive mergers. Furthermore, the State Council’s Provisions on the Notification Criteria for Concentrations of Business Operators (Draft for Solicitation of Comments for Revision) have adjusted the notification criteria in a timely manner, raising the thresholds for turnover within China, combined turnover within China of both parties, and global combined turnover. Notably, it mandates that mergers involving enterprises with domestic turnover exceeding RMB 100 billion be subject to antitrust review under certain conditions, effectively guarding against the potential threat of “killer acquisitions” by large digital platforms targeting startups and ensuring a fair and orderly market competition environment.

Secondly, including mergers involving Variable Interest Entities (VIEs) within the scope of antitrust review. A key challenge in enforcing antitrust laws against M&A activities by digital platform enterprises in China is the prevalent use of VIE structures by internet giants such as Tencent, Alibaba, and Baidu. These structures involve offshore-registered entities that do not directly hold equity in domestic operating companies but exert control and management through contractual arrangements, thereby circumventing legal oversight. To this end, Article 18 of the Guidelines for the Anti-Monopoly Regulation of the Platform Economy explicitly states that “concentrations of business operators involving VIE structures fall within the scope of antitrust review for concentrations of business operators”. This measure helps prevent platform enterprises from evading notification obligations through VIE structures.

Thirdly, establishing a classified and tiered review mechanism for corporate mergers. Article 37 of the new Anti-Monopoly Law establishes a “classified and tiered review system for concentrations of business operators”, whereby the anti-monopoly law enforcement agency of the State Council authorizes local anti-monopoly law enforcement agencies to review M&A cases to optimize resource allocation and enhance review efficiency. However, supporting regulations have yet to be promulgated, and the specific content of classified review remains unclear. One view is that classified review might be based on industrial economic security, strengthening oversight over mergers in key industries. However, adhering to such industry importance criteria could increase uncertainty in merger reviews. Internationally, antitrust reviews of corporate mergers generally adhere to the core criterion of “substantially impeding market competition”, often relying primarily on market structure as the basis for review. Introducing additional considerations of industry importance on top of this could potentially challenge and undermine the core evaluation criteria of merger control policies.

2.3 Strengthening the Responsibility of Live Streaming Platforms

Enhancing proactive supervision and clarifying the legal liabilities and behavioral norms of live streaming platforms constitute effective strategies universally adopted by the international community to address monopoly issues among large digital platforms. Traditional antitrust enforcement primarily focuses on ex post intervention, but by then, the damage to market competition has already materialized, making it difficult to fully restore the original competitive landscape. Given the bilateral market characteristics of the live streaming platform economy and the self-reinforcing mechanisms within enterprises, a “winner-takes-all” scenario frequently emerges in the market (Hossain, Akter, Yanamandram & Strong, 2024). Relying solely on delayed ex post antitrust enforcement measures falls short of effectively repairing and safeguarding market competition order. Therefore, in October 2021, the State Administration for Market Regulation (SAMR) issued the “Guidelines for Internet Platforms to Fulfill Their Primary Responsibilities (Draft for Public Comments)” aimed at further regulating the business activities of internet platforms, shifting the focus of antitrust supervision from ex post correction to ex ante prevention, with the intention of containing potential monopolistic behaviors at their source. Simultaneously, local governments in Tianjin, Beijing, and other regions have successively issued guidelines or codes for the compliance operations of platform enterprises, such as the “Tianjin Guidelines for Antitrust Compliance of Business Operators” released by the Tianjin Market Regulatory Committee in August 2021, and the “Beijing Guidelines for Antitrust Compliance in the Platform Economy (2021 Edition)” jointly developed by the Beijing Market Supervision and Development Research Center and the Competition Law Research Center of China University of Political Science and Law in December 2021. By establishing a system of accountability lists for corporate primary responsibilities, these documents have strengthened the guidance for antitrust compliance and effectively guided the compliant operations of platform enterprises.

However, the “Guidelines for Internet Platforms to Fulfill Their Primary Responsibilities (Draft for Public Comments)” issued by the SAMR currently exhibits notable deficiencies and controversies, thus it has yet to be officially promulgated and implemented. Meanwhile, the relevant policies enacted by various regions differ significantly in content. Against the backdrop of nationwide operations by large digital platforms, the non-uniform requirements for platform primary responsibilities across regions have notably exacerbated the policy uncertainty faced by the development of the platform economy, thereby increasing the compliance cost burden for platform enterprises.

3. Innovative Practices in Antitrust Enforcement

3.1 Improving the Antitrust Enforcement Institution System

To address the complexity and challenges of antitrust governance in the field of online “live streaming with product sales”, the new Anti-Monopoly Law clarifies that the anti-monopoly enforcement agency under the State Council is responsible for unified antitrust enforcement, marking the establishment of a specialized antitrust enforcement system in China and elevating its status within the administrative hierarchy. In November 2021, the State Administration for Market Regulation (SAMR) established the “National Anti-Monopoly Bureau” and further refined its internal functions, signifying the upgrade of the antitrust enforcement agency to a deputy ministerial-level unit with two functional departments: the First Department of Antitrust Enforcement, primarily responsible for investigating and punishing monopolistic agreements and abuses of market dominance; and the Second Department of Antitrust Enforcement, focused on antitrust review and supervision of concentrations of undertakings. Additionally, the new Anti-Monopoly Law stipulates that the anti-monopoly enforcement agency under the State Council may, as required by work needs, authorize corresponding agencies of provincial, autonomous region, and municipality people’s governments to be responsible for relevant antitrust enforcement work. This hierarchical authorization enforcement mechanism represents a significant institutional innovation in the relationship between central and local antitrust enforcement authorities, aimed at optimizing the allocation and utilization of antitrust enforcement resources, promoting efficient coordination and unified execution of antitrust enforcement nationwide, ensuring consistent and robust implementation of antitrust policies across regions, and thereby effectively regulating emerging business forms such as online “live streaming with product sales” and maintaining a fair competition order.

3.2 Enhancing the Enforcement Capabilities of Antitrust Agencies

In the face of increasingly complex antitrust tasks in the field of online “live streaming with product sales”, ensuring efficient enforcement necessitates the construction of a commensurate enforcement capability system. Insufficient antitrust enforcement capabilities can lead to difficulties in timely identifying and effectively punishing corporate violations, inability to efficiently and accurately review a large number of mergers and acquisitions within statutory deadlines, and potential obstacles to in-depth exploration and systematic construction of the antitrust enforcement policy framework.

Therefore, Article 11 of the new Anti-Monopoly Law explicitly states: “The state shall improve the anti-monopoly rules and regulations, strengthen anti-monopoly supervision forces, enhance the modernization level of supervision capabilities and systems, strengthen anti-monopoly enforcement and judicial proceedings, fairly and efficiently adjudicate monopoly cases in accordance with the law, improve the mechanism for the connection between administrative law enforcement and judicial proceedings, and maintain a fair competition order”. The SAMR and local antitrust enforcement agencies at all levels have taken substantive measures such as expanding professional staffing and increasing special financial budgets to comprehensively enhance the effectiveness of antitrust administrative enforcement and effectively address the growing pressure of enforcement. In actual enforcement, market regulatory authorities actively integrate and utilize various innovative enforcement means, including compliance guidance, administrative interviews, notification and warnings, administrative penalties, and credit supervision, to improve the efficiency and effectiveness of antitrust enforcement work. Meanwhile, for acts that hinder antitrust enforcement, regulatory authorities have further clarified specific punishment rules and procedures, thereby effectively safeguarding the effective implementation and enforcement of antitrust laws and ensuring the healthy and orderly development of online “live streaming with product sales” within the framework of the rule of law.

3.3 Empowering Antitrust Regulation with Big Data

In July 2015, the General Office of the State Council issued the “Several Opinions on Strengthening the Service and Supervision of Market Entities Using Big Data”, which explicitly outlined the establishment of a big data-driven regulatory model to enhance in-process and post-event supervision of market entities. Integrating big data technology into the antitrust regulatory system can effectively prevent and combat “hidden” monopolistic behaviors, significantly enhancing the efficiency and precision of antitrust regulatory efforts. In December 2021, China established the Competition Policy and Big Data Center under the State Administration for Market Regulation (SAMR), a department-level public institution directly under SAMR. Its core functions encompass conducting cutting-edge research on antitrust policy theories, providing robust technical support for antitrust enforcement, and undertaking crucial tasks such as market dynamic monitoring, electronic evidence preservation, and deep big data analysis. This strategic move signifies a significant breakthrough in China's pursuit of intelligent regulation and digital transformation, marking a milestone in further refining its antitrust governance system.

3.4 Strengthening the Synergistic Connection between Antitrust Administration and Judiciary

For a long time, antitrust administrative enforcement has dominated the enforcement of antitrust laws. However, the new Antitrust Law further underscores the vital role of antitrust judiciary and aims to establish an efficient and collaborative framework for the implementation of antitrust laws, integrating administrative enforcement and judicial adjudication. Article 11 of the new Antitrust Law explicitly stipulates the improvement of the connection mechanism between administrative enforcement and the

judiciary to uphold a fair competition order. In November 2022, the Supreme People's Court issued the "Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Monopoly Disputes (Exposure Draft for Public Consultation)", which provides more detailed and comprehensive regulations on specific issues related to antitrust judicial review. The introduction of the civil public interest litigation mechanism alleviates, to a certain extent, the high costs and difficulties in evidence presentation faced by individual operators or consumers when initiating antitrust lawsuits, thereby vigorously promoting a dual-track implementation pattern where antitrust administrative enforcement and judicial review run parallel, complement each other, and reinforce each other's effectiveness, ensuring the effective implementation of antitrust laws and the just maintenance of the market competition environment.

4. The Future Path of Antitrust Regulation

In January 2023, the National Market Supervision and Regulation Work Conference emphasized enhancing routine supervision standards, aiming to foster a normative, healthy, and sustainable development of the platform economy. By striking a balance between regulation and development, routine supervision has been established as the new benchmark for antitrust oversight in the platform economy. However, the pressing challenge remains in constructing effective institutional safeguards to ensure the effective implementation of routine supervision. Consequently, achieving routine antitrust regulation is paramount in the modernization of platform economy antitrust supervision. This necessitates safeguarding market competition order through scientific and reasonable means, fostering innovation and healthy development in the live-streaming e-commerce economy, preventing undue interference in innovative activities, and mitigating socio-economic costs stemming from inadequate or excessive regulation. By reducing the risk of policy missteps, the modernization of regulatory transformation can be achieved. Fundamentally, routine supervision embodies the concept of legalizing antitrust regulation (Khan, Zeng, Knight, Rajwani & Pattnaik, 2023). On this basis, it becomes imperative to explore the future path of antitrust regulation for China's online "live-streaming e-commerce" sector.

4.1 Establishing a Scientific and Stable Antitrust Regulatory Policy Framework

Firstly, strengthen legislation to enhance the predictability and certainty of antitrust laws. Given that the new Antitrust Law's provisions on online "live-streaming e-commerce" antitrust are relatively abstract and principled, it is imperative to gradually formulate detailed legal implementation rules to ensure that platform enterprises can clearly distinguish between legitimate competitive behaviors and illegal restrictive competitive practices. Specifically, this requires clarifying methods for assessing the competitive effects of monopolistic behaviors leveraging data, algorithms, and technology, establishing standards for quantifying the impact of innovation harm and intellectual property abuse, and outlining guidelines for reviewing the competitive damage caused by digital platform mergers and acquisitions. Therefore, it is necessary to issue normative documents that explicitly define basic principles, market

structure control standards, review procedures, and theoretical bases for competitive harm, thereby enhancing enterprises' ability to self-assess compliance risks and ensuring strict adherence to laws and regulations in M&A activities.

Secondly, clarify the boundaries between the new Antitrust Law and other relevant laws to avoid potential conflicts. As online "live-streaming e-commerce" antitrust involves multiple intersecting fields, it is crucial to scientifically position the functions of antitrust supervision, prioritize balance and coordination among multiple objectives, and prevent conflicts between different regulatory goals. For behaviors such as "monopoly pricing" and "exclusive choice" driven by big data, antitrust enforcement typically relies on case-by-case analysis and the principle of reasonable presumption, exercising prudent judgment against enterprises with market dominance. To eliminate legal risks, increased compliance costs, and diminished authority of the Antitrust Law arising from regulatory inconsistencies, it is imperative to strengthen the integrity and coordination of legislation. This includes establishing a dedicated department for comprehensive review of antitrust legislation related to online "live-streaming e-commerce", systematically sorting out and integrating relevant legal provisions, effectively resolving consistency issues among regulations, and ensuring organic cohesion and synergistic effects between the Antitrust Law and other relevant laws in regulating digital economic activities.

Thirdly, establish the core position of antitrust enforcement agencies in the antitrust supervision of online "live-streaming e-commerce". Given that antitrust enforcement heavily relies on detailed economic fact analysis and rigorous economic theory in individual cases, requiring independent and impartial application of professional enforcement rules to adjudicate cases, China's antitrust supervision in the live-streaming e-commerce economy should emphasize the professional authority and central functional role of antitrust enforcement agencies. The current phenomenon of multiple departments participating in platform economy antitrust supervision, such as the joint issuance of the "Opinions on Promoting the Normative, Healthy, and Sustainable Development of the Platform Economy" by nine departments including the National Development and Reform Commission, as well as the People's Bank of China's involvement in payment market antitrust and the Ministry of Industry and Information Technology's rectification of platform blocking behaviors, may to some extent undermine the authority and unity of supervision, thereby affecting the consistent implementation and enforcement of the basic principles of the new Antitrust Law. Therefore, it is urgent to establish a routine single antitrust administrative enforcement mechanism, granting independent regulatory authority to antitrust enforcement agencies. Other relevant departments should promptly report illegal clues and actively cooperate with antitrust enforcement investigations, forming a coordinated and interconnected regulatory system.

Fourthly, it is essential to highlight the professional nature of antitrust supervision in the context of live e-commerce streaming. The rationalization of antitrust enforcement is a crucial condition for ensuring its scientificity and predictability. As a highly specialized enforcement activity, antitrust lawmaking

and enforcement must adhere to the same core principles and fair, scientific procedures, ensuring consistency in the internal logic of antitrust enforcement and embodying the spirit of “rationalism”. Antitrust supervision must maintain its professionalism and independence, remaining unaffected by irrational factors in public opinion and steadfastly upholding the fundamental goal of safeguarding market competition mechanisms. Antitrust enforcement agencies should focus on the fundamental task of preserving market competition, strictly exercising their antitrust regulatory functions within the scope authorized by national laws, and preventing the expansion and overreach of responsibilities. For instance, the State Administration for Market Regulation should reasonably delineate the relationship between market supervision and antitrust supervision, avoiding the direct application of general market supervision methods to antitrust enforcement work, which is inherently professional, thereby ensuring the precision and effectiveness of antitrust enforcement.

4.2 Perfecting the Legalized Antitrust Enforcement System

To ensure the scientificity and fairness of antitrust enforcement, procedural justice stands as an indispensable core element. Given that antitrust administrative enforcement essentially entails the exercise of administrative discretion, which carries the potential for abuse, due process serves as a crucial institutional design aimed at preventing arbitrary exercise of administrative power through explicit rule constraints and checks and balances mechanisms. This, in turn, effectively safeguards the legitimate rights and interests of the parties involved and strives to foster a fair and orderly competitive environment. Procedural justice not only plays a fundamental role in fully protecting the rights and interests of parties but also profoundly embodies the fundamental value orientation and spiritual connotation of antitrust law. Furthermore, it is instrumental in effectively advocating competition policies and promoting corporate compliance. Consequently, adhering to the principle of legalization, it is imperative to systematically standardize and improve the administrative procedures for antitrust supervision, with the goal of establishing an antitrust administrative procedure system that conforms to international standards while accommodating China’s national conditions. This endeavor seeks to maximize transparency, participation, and predictability in the process of antitrust enforcement, thereby vigorously safeguarding market competition order and promoting the healthy development of the economy.

Firstly, it is crucial to establish an ex ante regulatory impact assessment mechanism. Regulatory Impact Assessment (RIA) serves as a vital policy tool for governments to implement high-quality regulation. It systematically quantifies and analyzes the economic costs and social benefits of existing or proposed regulatory policies, comprehensively evaluates their potential positive and negative impacts, and compares alternative options through cost-benefit analysis to provide a scientific basis for decision-making. This assessment mechanism not only plays an analytical role in delving into the internal mechanisms of regulatory effects but also serves as an essential strategic means to achieve the integration and optimization of the policy process and coordinate diverse interest demands. Experience from OECD member countries suggests that conducting RIA within an appropriate institutional

framework can significantly enhance the effectiveness of government regulation, ensuring that the regulatory system maintains the timeliness, effectiveness, and relevance of policies amidst complex and ever-changing socio-economic environments. To this end, China should, through legislative channels, explicitly stipulate that the formulation and implementation of all antitrust regulatory policies must strictly follow the RIA process. Simultaneously, it should actively promote and establish public participation mechanisms, with the aim of realizing the scientific, democratic, and legalized formulation of antitrust regulatory policies by fully drawing on the wisdom of all parties.

Secondly, it is imperative to improve the ex post regulatory performance evaluation system. As a core component of modern government regulatory systems, government regulatory performance evaluation holds profound significance for ensuring regulatory effectiveness, advancing the construction of a government under the rule of law, and promoting the modernization of national governance systems and capabilities. Currently, China's government regulatory performance evaluation system has yet to undergo institutional and legal transformation, lacking specialized laws and regulations that explicitly define regulatory performance evaluation. This has led to significant arbitrariness and inadequate continuity in the evaluation process, thereby weakening the incentive and restraint effects of regulatory performance evaluation on regulatory agencies. In light of this, the country urgently needs to introduce relevant laws to clarify the legal status of government regulatory performance evaluation, promote its institutionalization and legalization, establish a diversified evaluation subject system that suits China's national conditions, construct a sound evaluation index system for regulatory performance, strengthen the accountability application mechanism for evaluation results, enhance evaluation transparency, and facilitate effective public participation.

Thirdly, establish an antitrust defense procedure. As an indispensable procedural regulation in the antitrust legal system, the antitrust defense system's core purpose lies in safeguarding the defense rights of enterprises involved in cases, standardizing the review procedures of antitrust enforcement agencies, ensuring the fairness of antitrust rulings, and effectively reducing the risk of misjudgment. Internationally, defense procedures are widely regarded as a crucial institutional design and are explicitly guaranteed through antitrust-related laws and regulations. Although China's "Antimonopoly Law" and related supporting regulations require consideration of the element of "without justifiable reasons" when determining abuse of market dominance and mergers and acquisitions, due to the lack of an institutional safeguard mechanism, this requirement remains at the discretion of enforcement agencies rather than being formally established as a defense procedure. Since the implementation of the "Antimonopoly Law", antitrust rulings often exhibit finality, leading to inadequate protection of the defense rights of enterprises involved. Therefore, to uphold procedural justice in antitrust enforcement, it is imperative to establish, through legislative means, an antitrust defense system with Chinese characteristics that effectively safeguards the rights of enterprises involved to raise objections and mount reasonable defenses, thereby enhancing the overall fairness of antitrust enforcement.

4.3 Enhancing the Systematic and Effective Guidance of Antitrust Compliance

Firstly, strengthen the guiding role of the Antitrust Law. Reinforcing the leadership of the Antitrust Law is vital for preserving market competition mechanisms, which not only concerns consumer welfare but also profoundly impacts society's overall wellbeing. The implementation of the Antitrust Law does not merely focus on subsequent punishment for violations but aims to deter and warn enterprises through clear legal norms and enforcement of typical cases, thereby guiding them towards compliant operations. Given the limited administrative resources for antitrust enforcement, the number of enforcement cases and fines are not the sole criteria for assessing effectiveness. Rather, whether enterprises fully achieve compliant operations serves as the core indicator. To enhance the guiding role of the Antitrust Law, promote enterprise compliance, and standardize market competition order, modernizing antitrust regulation is paramount. Strategies such as market analysis, issuing legal and compliance guidelines, and implementing competition advocacy should be leveraged to more effectively guide corporate behavior. Currently, administrative interviews and guidance meetings, due to their uncertainty and potential for excessive discretion by enforcement agencies, should not serve as routine regulatory tools or enforceable measures, but rather require rigorous administrative legislation for standardization. Drawing on international successes, China should gradually shift from a punishment-centric enforcement model to one that emphasizes the compliance service functions of antitrust authorities, particularly for emerging live-streaming e-commerce digital platforms, by providing necessary guidance on compliant operations and establishing cooperative regulatory mechanisms between antitrust authorities and such platforms.

Secondly, establish a scientific preemptive antitrust regulatory system. Strengthening preemptive antitrust regulation is a core measure to enhance the effectiveness of antitrust in the digital economy, with a focus on clarifying the primary responsibilities of gatekeeper platforms. Firstly, the allocation of platform responsibilities should adhere to the principle of proportionality to avoid excessive compliance costs. Secondly, differentiated and tiered regulation should be implemented for the core businesses of gatekeeper platforms, with relevant regulatory details expedited to clarify identification criteria and tiered responsibilities. Thirdly, drawing on EU and US experiences, the fundamental objective of preemptive antitrust regulation is to maintain market competition, with the primary focus on establishing behavioral rules for platforms, clearly defining prohibited and mandatory actions. However, the "Draft Guidelines on Implementing the Principal Responsibilities of Internet Platforms" imposes a series of responsibilities on live-streaming e-commerce platforms that exceed the basic positioning and authority of antitrust enforcement agencies, leading to unclear positioning, ambiguous responsibilities, and lack of operability. This exacerbates policy uncertainty, increases compliance costs for live-streaming e-commerce platforms, and contradicts the need for a stable and predictable policy environment conducive to their innovative development.

Thirdly, reasonably set the duration of antitrust enforcement to provide sufficient time for enterprises to undertake compliance rectifications. Antitrust regulatory policies should grant live-streaming e-commerce enterprises ample buffer periods for compliance rectifications. For instance, the EU's Digital Markets Act offers gatekeeper platforms a four-year compliance transition period. In contrast, China's antitrust regulation of "live-streaming e-commerce" primarily adopts special rectification measures, requiring enterprises to meet rectification requirements within a relatively short timeframe. For example, in April 2021, the State Administration for Market Regulation, in conjunction with the Cyberspace Administration of China and the State Taxation Administration, convened an administrative guidance meeting for internet platform enterprises, mandating comprehensive rectifications within one month. Given that the business ecosystem of live-streaming e-commerce digital platforms is a complex system formed through years of investment and development by numerous entities, core platforms often need to make significant adjustments to their strategic plans, business layouts, and ecosystem rules to meet government rectification requirements. The short rectification deadlines set by the aforementioned regulatory authorities fail to provide sufficient self-rectification buffer periods for live-streaming e-commerce enterprises, resulting in substantial rectification costs and hindering the stable development of the live-streaming e-commerce economy. Therefore, it is imperative to genuinely alter this approach of mandatory short-term compliance and instead establish clear rules in advance, granting live-streaming e-commerce enterprises reasonable rectification timelines. This will encourage enterprises to gradually achieve compliance through dynamic rectification processes.

4.4 Promoting Innovative Practices in Antitrust Enforcement Policies

Firstly, establish a new paradigm for antitrust competition harm theories in the context of online "live-streaming e-commerce". Given the unique competitive dynamics of the digital economy, traditional theoretical frameworks for assessing the illegality and competitive harm of specific monopolistic behaviors exhibit limitations in the current context, leading to significant uncertainty in the enforcement and review of antitrust cases involving online "live-streaming e-commerce". Consequently, the primary task is to rigorously define the concept of "harm to innovation". In light of the dynamic nature of the innovation process, it is crucial to accurately quantify and assess the impact of specific monopolistic behaviors on competition, particularly when they may create market blockades for potential innovative competitors. This necessitates precise judgments of competitive harm to avoid mischaracterizing behaviors that benefit innovation as those that stifle it. Secondly, establish review standards for data monopoly harm. Strategic actions by digital platforms in live-streaming e-commerce are often closely tied to big data analysis. While data concentration may yield significant efficiency gains, it can also exacerbate market entry barriers or lead to privacy violations. Therefore, it is essential to clearly distinguish the legal boundaries of data monopolies and determine whether privacy violations should serve as a crucial basis for judging illegal activities. Furthermore, systematically articulate the theoretical foundations of ecological monopoly harm. Faced with the prevalent phenomenon of

cross-border operations among live-streaming e-commerce platforms, accurately identifying their multi-market ecological control and balancing efficiency effects with anti-competitive effects require further clarification. Lastly, improve the review rules system for “killer acquisitions”. These acquisitions often target innovative startups or potential competitors rather than direct rivals, posing challenges in accurately assessing their significant harm to innovation and increasing uncertainty in merger review policies. In summary, addressing these complex issues necessitates not only delving into the frontiers of antitrust theory in the digital economy but also actively drawing on international best practices, while integrating them with China’s domestic antitrust enforcement context to achieve dual breakthroughs in theoretical innovation and practical optimization.

Secondly, explore innovative paths for antitrust remedies targeting new monopolistic behaviors involving data and algorithms. The most prominent challenge in antitrust enforcement for online “live-streaming e-commerce” stems from novel market dominance behaviors arising from the intertwining of data and algorithms. As live-streaming e-commerce platform enterprises widely employ big data and Artificial Intelligence (AI) for business decisions, often exhibiting high efficiency, traditional antitrust enforcement tools like direct injunctions and financial penalties may fall short when they leverage these technologies for potential monopolistic behaviors. Thus, it is imperative to explore and establish a new antitrust remedy policy system tailored to the characteristics of the data and algorithm era. The primary strategy is to strengthen antitrust regulation in the data and algorithm sectors, establish a “competition neutrality principle” for algorithm design and application, and create an authoritative algorithm certification mechanism to ensure that only rigorously certified algorithms proven not to have anti-competitive effects are put into operation. Simultaneously, clarify the primary responsibility of algorithm users to maintain market competition order during algorithm application and enhance the transparency of algorithm decision-making processes, effectively safeguarding consumers’ right to know and choose. Secondly, pioneer new modes of data antitrust remedies. To prevent the emergence of data-driven monopolies, antitrust enforcement agencies could consider innovative remedies such as data portability policies, data interoperability policies, mandatory data access, and data firewalls. However, in implementing these data and algorithm antitrust remedies, it is crucial to fully consider their impact on technological innovation and market vitality. Through thorough policy impact assessments, clarify the specific contexts for applying various policies and refine their design and execution based on specific cases, achieving a dual balance between antitrust objectives and fostering innovation and development.

5. Conclusion

In the face of emerging monopolistic behaviors in the digital economy era, China's antitrust regulatory mechanism urgently needs to adapt to the demands of the times, continuously innovating and improving. By establishing a scientific and stable antitrust regulatory policy framework, refining a legalized antitrust enforcement system, enhancing the systematicness and effectiveness of antitrust compliance guidance, and promoting innovative practices in antitrust enforcement policies, we can provide a solid legal safeguard for the healthy development of digital platform economies such as "live streaming e-commerce". In the future, as relevant laws, regulations, and regulatory practices continue to enrich and improve, China's antitrust regulation will become more scientific and rational, effectively promoting the healthy functioning of market competition mechanisms, safeguarding consumer rights, and driving comprehensive economic and social development.

References

- First, H. (2023). Merger Policy for a Platform Economy. *Zeitschrift für Wettbewerbsrecht*, (4), 334-367. <https://doi.org/10.15375/zwer-2023-0404>
- Hossain, M. A., Akter, S., Yanamandram, V., & Strong, C. (2024). Navigating the platform economy: Crafting a customer analytics capability instrument. *Journal of Business Research*. <https://doi.org/10.1016/j.jbusres.2023.114260>
- Jan, D., & Maria, J. (2017). The digital economy and its implications for labour. 1. The platform economy. *Transfer: European Review of Labour and Research*, (2), 103-107. <https://doi.org/10.1177/1024258917701380>
- Junic, K., Nianwen, H., & Ian, M. (2023). Live Commerce Platforms: A New Paradigm for E-Commerce Platform Economy. *Journal of Theoretical and Applied Electronic Commerce Research*, (2), 959. <https://doi.org/10.3390/jtaer18020049>
- Khan, Z., Zeng, J., Knight, G., Rajwani, T., & Pattnaik, C. (2023). Non-market strategies and disruptive innovation in the platform economy. *Journal of International Management*, (5). <https://doi.org/10.1016/j.intman.2023.101047>
- Lage, O., Saiz, S. M., & Zarzuelo, J. M. (2022). Decentralized platform economy: Emerging blockchain-based decentralized platform business models. *Electronic Markets*, (3), 1707-1723. <https://doi.org/10.1007/s12525-022-00586-4>
- Mohammad, Z., Masnun, A. M., Kabir, H., & Shamim, A. K. (2024). Platform economy deconstructed: Intellectual bases and emerging ethical issues. *Research in International Business and Finance*, 102497. <https://doi.org/10.1016/j.ribaf.2024.102497>
- Wei, Z., Hao, Q., & Zhong, J. L. (2023). Control of the Platform Reserve Army: The Roles of the State and Capital in China's Platform Economy. *Science & Society*, (4), 502. <https://doi.org/10.1521/siso.2023.87.4.502>