

Original Paper

Antitrust Regulation of Forced Exclusivity in China's
Food-Delivery Platform Sector: A Case Study of Sherpa's
Abuse of Dominance

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Abstract

The food-delivery economy has expanded rapidly with the development of platform-based services. Amid intensifying market competition, major platforms have engaged in disorderly and exclusionary practices driven by competitive pressure and profit-seeking, with adverse consequences for both merchants and consumers. Existing research in this field has rarely examined practical enforcement issues through case-based analysis. The Sherpa's Case is a pioneering precedent in China's anti-monopoly enforcement, comprehensively illustrating the typical analytical process of "defining the relevant market—determining dominant market position—identifying abusive conduct—analyzing competitive effects." Taking this case as a starting point, this paper first clarifies the characterization of "Er xuan yi," literally "choose one of two," in food-delivery platforms: in antitrust terms, it is better understood as platform-imposed forced exclusivity, while its legal characterization is closer to exclusive dealing or restrictive trading. It then analyzes China's current regulatory framework and practical challenges, and finally draws on comparative experience to propose pathways for improvement, with the aim of promoting more effective regulation and enforcement against forced exclusivity in China's food-delivery platform sector.

Keywords

food delivery platforms, forced exclusivity, abuse of dominant market position, antitrust regulation, Sherpa's case

1. Introduction

The digital economy has propelled the platform economy to become a key form of market organization. Food-delivery platforms leverage data, algorithms, traffic allocation, and on-demand delivery systems to connect restaurants, consumers, and delivery services. Competition has expanded beyond price to encompass merchant resources, user access points, delivery capacity, and platform rules. In the food-delivery platform sector, forced exclusivity is typically manifested in platforms requiring merchants not to cooperate with competing platforms, or forcing them to make exclusive choices through measures such as delisting, traffic throttling, raising commissions, or restricting eligibility for promotional activities. Although such conduct is often discussed in practice as “Er xuan yi,” this paper uses forced exclusivity as the principal analytical term, while treating exclusive dealing or restrictive trading as its legal characterization under antitrust law.

The *Anti-Monopoly Guidelines for Platform Economy* (hereinafter referred to as the “*Platform Economy Guidelines*”) classify this type of conduct as a key manifestation of restrictive trading. While setting cooperation conditions is not inherently illegal, when a platform with a dominant market position uses exclusive arrangements to restrict merchants from operating on multiple platforms, it may weaken competing platforms’ ability to supply services and match orders, thereby harming consumer choice. The Sherpa’s Case, which analyzes the relevant market, dominant market position, restrictive trading, and competitive effects, serves as a significant precedent.

The Sherpa’s abuse of dominant market position case is a classic illustration of this issue. In this case, the enforcement authority conducted an analysis focusing on the definition of the relevant market, the determination of dominant market position, restrictive trading practices, and competitive effects, thereby providing a relatively clear case study for antitrust regulation of forced exclusivity by food-delivery platforms.

2. Analysis of the Sherpa’s Case

2.1 Basic Facts of the Case

Shanghai Sherpa’s Trading Development Co., Ltd. provides online food-delivery platform services to users who prefer to use English through its website and the “Sherpa’s” app, and charges commissions to partner restaurants. In June 2019, based on a tip-off, the Shanghai Municipal Administration for Market Regulation launched an investigation into Sherpa’s alleged abuse of dominant market position and formally initiated the case on August 8 of the same year. The investigation found that Sherpa’s held significant market power in the Shanghai market for English-language online food-delivery platform services. Through exclusive delivery rights clauses in its contracts and its “Exclusive Delivery Rights Program,” Sherpa’s required partner restaurants not to list their services on competing platforms such as Jinshisong, EKD, and MEALBAY, warning that failure to comply could result in adverse consequences such as termination of cooperation or increased commission rates. These actions restricted partner restaurants’ options for multi-platform operations and weakened the merchant

resources and competitive capacity of rival platforms. The Shanghai Municipal Administration for Market Regulation determined that the conduct engaged in by Sherpa's between January 2017 and October 2019 constituted an abuse of dominant market position by restricting transaction counterparts to deal exclusively with it without justifiable grounds, in violation of Article 17, Paragraph 1, Item (4) of the then-current *Anti-Monopoly Law of the People's Republic of China* (hereinafter referred to as the "Anti-Monopoly Law"). Consequently, it issued the *Administrative Penalty Decision Hu Shi Jian Fan Long Chu [2020] No. 06201901001*, imposing a fine equivalent to 3% of Sherpa's 2018 sales revenue, totaling RMB 1,168,644.90.

2.2 Case Analysis

2.2.1 Should the Relevant Market Be Defined As The "Market For English-Language Online Food-Delivery Platform Services in Shanghai"?

Article 15 of the *Anti-Monopoly Law* stipulates that the relevant market refers to the scope of goods or services and the geographic area within which operators compete for specific goods or services over a certain period of time. In the Sherpa's Case, the Shanghai Municipal Administration for Market Regulation did not broadly define the relevant market as the food and beverage market or the food delivery market. Instead, it conducted an analysis based on three dimensions—demand substitution, supply substitution, and the hypothetical monopolist test—and ultimately defined the relevant geographic market as Shanghai, China, and the relevant product market as the market for online food delivery platform services providing English-language services.

This definition is reasonable. Food delivery services focus on ready-to-eat meals and are constrained by delivery radius, food safety, city-specific limitations, and delivery efficiency; thus, Shanghai constitutes a relatively independent geographic competitive scope. English-language delivery platforms and Chinese-language delivery platforms differ in terms of user language proficiency, interface design, menu translation, customer service, restaurant types, and average order value; the two are not necessarily substitutes for one another. Regulating forced exclusivity on e-commerce platforms must first address the issue of defining the relevant market. While lock-in effects, spillover effects, and cross-network externalities within platform markets complicate traditional market definition, relevant market definition still serves the functions of clarifying competitive relationships, identifying market participants, and assessing market power (Jia & Wang, 2023).

2.2.2 Does Sherpa's Hold a Dominant Market Position?

Sherpa's dominant market position is not derived solely from its market share, but is supported by a combination of market share advantage, merchant dependence, delivery systems, brand recognition, and barriers to entry. In the platform economy, dominance manifests as the ability to control transaction terms and influence merchants' multi-platform choices; it cannot be assessed solely based on pricing power.

Article 23 of the *Anti-Monopoly Law* stipulates that the determination of a dominant market position shall take into account factors such as market share, competitive conditions, the ability to control the

market, financial and technical capabilities, the degree of reliance by transaction counterparts, and the difficulty of market entry. Article 24 further provides that where an operator holds a market share of one-half or more in a relevant market, it may be presumed to hold a dominant market position. In this case, Sherpa's metrics—including average daily orders, average monthly online merchants, sales revenue, and user numbers—were significantly higher than those of competitors such as Jinshisong, EKD, and MEALBAY, and exceeded the presumptive threshold of one-half under multiple metrics.

Beyond market share, Sherpa's also possessed strong non-price control capabilities. Having entered the English-language food-delivery market in Shanghai at an early stage, it accumulated a user base, a network of partner restaurants, a delivery system, commercial data, and brand recognition. For partner merchants—primarily high-end Western restaurants—Sherpa's controlled a key traffic gateway for users accustomed to using English; once merchants left the platform, they would have struggled to secure comparable order volumes through other English-language delivery platforms. Two-sided platforms not only provide online transaction services but also serve as virtual marketplaces where merchants conduct business and compete online. Due to insufficient interoperability and high switching costs, such platforms may possess strong lock-in capabilities (Ding, 2024).

2.2.3 Does the “Exclusive Delivery Rights Clause” Constitute Restrictive Trading?

This case applied Article 17, Paragraph 1, Item (4) of the then-current *Anti-Monopoly Law*, which prohibited operators with a dominant market position from restricting transaction counterparts to deal exclusively with them without justifiable grounds. Article 22(1)(iv) of the current *Anti-Monopoly Law* continues this rule, while Article 22, Paragraph 2 further addresses the abuse of data, algorithms, technology, and platform rules in the platform economy.

Sherpa's “exclusive delivery rights clause” was therefore not a standard exclusivity arrangement. It restricted merchants' freedom to operate on multiple platforms and, through contractual terms, continuous monitoring, and enforcement measures, amounted in substance to a practice of requiring transaction counterparts to deal exclusively with Sherpa's. Accordingly, the clause should be understood as a contractual mechanism through which Sherpa's implemented forced exclusivity, and legally characterized as restrictive trading under the *Anti-Monopoly Law*.

3. Theoretical Foundation

3.1 The Concept of Forced Exclusivity by Food-Delivery Platforms

Forced exclusivity by food-delivery platforms refers to practices in which such platforms leverage their market power, platform rules, technological control, traffic allocation, or contractual arrangements to require merchants to transact exclusively with that platform and prohibit them from operating on competing platforms. In the context of China's platform economy, this conduct is often discussed in practice as “Er xuan yi.” It is not a strictly defined legal concept, but rather a practical summary of situations where a platform restricts merchants' freedom to choose their trading partners, thereby creating fixed, restricted, or exclusive trading relationships. Its core purpose is to exclude, restrict, or

deprive competing platforms of trading opportunities with merchants on the platform.

Under the *Anti-Monopoly Law*, the legal nature of such conduct is closer to exclusive dealing or restrictive trading than to an ordinary commercial contractual arrangement. Article 22 of the *Anti-Monopoly Law* prohibits operators with a dominant market position from, without justifiable grounds, restricting transaction counterparts to conducting business solely with them or with operators designated by them. Article 9 of the *Anti-Monopoly Law* further provides that operators shall not engage in monopolistic conduct prohibited by the law by leveraging data, algorithms, technological advantages, capital advantages, or platform rules. Article 15 of the *Platform Economy Guidelines* further provides that operators in the platform economy sector holding a dominant market position may constitute restrictive trading where, without justifiable grounds, they require on-platform operators to make exclusive choices between competing platforms or restrict transaction counterparts to exclusive dealings with them. Such restrictions may be implemented through written agreements, telephone calls, or verbal communications, or through practical limitations or barriers established via platform rules, data, algorithms, or technology.

It should be noted that exclusive dealing may also exist as a standard commercial contract and may possess a certain degree of rationality based on channel investment, service stability, the protection of specific resource inputs, or the reduction of transaction costs. Exclusive arrangements may take the form of exclusive agreements, exclusive distribution, exclusive licensing, or exclusive cooperation agreements, and their economic function may lie in reducing transaction costs associated with monitoring channel investment and usage (Zhou et al., 2023). The central antitrust concern is that platforms with market power may transform exclusive arrangements from consensual cooperative mechanisms into coercive exclusionary tools, thereby blocking competing platforms, undermining merchants' operational autonomy, and distorting the competitive order among platforms.

Food-delivery platforms give forced exclusivity a more distinctive structure, and the nature of two-sided platform markets further reinforces the coercive nature of such conduct. The "choice" in forced exclusivity appears formally as a contractual choice but is substantively constrained by merchants' dependence on the platform. Food-delivery platforms connect consumers with food service merchants while simultaneously organizing delivery capacity, ordering interfaces, search rankings, traffic allocation, payment mechanisms, and user data. Merchants' dependence on the platform extends beyond online visibility to include order acquisition, delivery integration, user reviews, promotional traffic, and algorithmic exposure. Operators within the platform rely on its support for both product promotion and sales; the platform may employ measures such as traffic blocking, search ranking demotion, or even direct removal to prevent operators from conducting business on other platforms (Xu, 2022).

3.2 Current Status and Shortcomings of Antitrust Regulation Regarding Forced Exclusivity by Food-Delivery Platforms

3.2.1 Lack of Platform Accountability

Article 22, Paragraph 1, Item (4) of the *Anti-Monopoly Law* prohibits operators with a dominant market position from, without justifiable grounds, restricting transaction counterparts to dealing exclusively with them. Paragraph 2 further prohibits operators with a dominant market position from abusing such position through data, algorithms, technology, platform rules, or other means. However, these provisions still place greater emphasis on ex post determinations of violations and lack sufficient accountability constraints regarding the formation, enforcement, and modification of platform rules.

The situation discussed in this paper is more complex. The self-regulatory rules of super-platforms serve not only internal governance functions but also, to a certain extent, public management functions. Platforms may exploit these self-regulatory rules to exclude or restrict competition; therefore, a full-chain regulatory framework should be established, encompassing ex ante filing and review, ongoing compliance supervision, and ex post coordination between law enforcement and judicial proceedings (Zhang & Sun, 2024). The current regulatory framework has not yet designated food-delivery platform rules themselves as subjects of stable regulation, allowing platforms to circumvent explicit forced exclusivity through means such as search ranking demotion, traffic restrictions, exclusion from promotions, and adjustments to delivery coverage areas.

3.2.2 Lack of Operational Standards for Damages and Inadequate Administrative Oversight

Although Article 60 of the *Anti-Monopoly Law* stipulates that operators engaging in monopolistic conduct shall bear civil liability in accordance with the law for losses caused to others, and Article 57 provides for administrative liability for the abuse of dominant market position, damages remain subject to proof of the amount of loss, causation, and the counterfactual competitive state. In the Sherpa's Case, the Shanghai Municipal Administration for Market Regulation explained in its penalty decision that, due to the difficulty of determining the fair market price of delivery fees and the fair commission rate under conditions of sufficient competition, it was impossible to calculate the illegal gains; consequently, a fine equivalent to 3% of Sherpa's 2018 sales revenue was imposed. Civil claims by ordinary merchants are even more difficult, as key data such as orders, exposure, conversion rates, commissions, subsidies, rankings, and delivery coverage are all controlled by the platform.

Forced exclusivity by food-delivery platforms is primarily addressed through administrative enforcement, which entails high regulatory costs and weak long-term deterrence. In the Sherpa's Case, the process from the June 2019 investigation and August 2019 case filing to the December 2020 penalty involved on-site inspections, interviews, collection of documentary evidence, third-party economic analysis, and market surveys, resulting in high costs for individual case handling. If the government relies solely on sustained, high-intensity regulation, it risks incurring significant enforcement costs and becoming involved in prolonged regulatory confrontation with monopolistic firms (Zhang et al., 2023).

3.2.3 Insufficient Oversight of E-Commerce Platforms and Difficulties in Identifying Monopolistic Practices

Article 35 of the *Electronic Commerce Law of the People's Republic of China* (hereinafter referred to as the “*Electronic Commerce Law*”) stipulates that operators of e-commerce platforms shall not use service agreements, transaction rules, or technical means to impose unreasonable restrictions or attach unreasonable conditions on on-platform operators regarding their transactions on the platform, transaction prices, or transactions with other operators. Article 82 further provides that violations of this provision, where the circumstances are serious, shall be subject to a maximum fine of RMB 2 million. This provision may face challenges such as the concealment of technical means, the difficulty of proving causation, the highly subjective nature of “unreasonable restrictions,” the limited deterrent effect of the maximum fine of RMB 2 million, and the unclear definition of dominant and dependent entities (Xu, 2022).

Article 15 of the *Platform Economy Guidelines* includes punitive measures such as blocking stores, search demotion, traffic restrictions, technical barriers, and withholding security deposits within the scope of restrictive trading analysis. It also acknowledges that incentive-based restrictions, such as subsidies, discounts, preferential offers, and traffic resource support, may also constitute restrictive trading. Such nuanced treatment is difficult to replicate at low cost in every food-delivery platform case. Competition in the internet industry is complex, and business strategies are constantly evolving; traditional typological regulations on monopolistic conduct struggle to fully encompass these dynamics. The difficulties associated with applying market-share presumptions and the SSNIP test both reflect the challenges of identifying such conduct in platform markets (Ding, 2024). The Sherpa's Case was successfully handled because the enforcement authority conducted a detailed analysis of the substitution relationships between online food delivery and dine-in services, platform-based delivery and restaurant-operated delivery, and English-language service platforms and Chinese-language service platforms, and defined the relevant market by combining demand substitution, supply substitution, and the hypothetical monopolist test.

4. Comparative Analysis of International Experience

4.1 The U.S. Experience

U.S. law does not provide a food-delivery-platform-specific rule for forced exclusivity. Similar arrangements are usually examined under general antitrust doctrines governing vertical restraints, including Section 1 and Section 2 of the *Sherman Act* and Section 5 of the *Federal Trade Commission Act*. Exclusive dealing is not treated as unlawful per se. The Federal Trade Commission applies the rule of reason to exclusive dealing and exclusive distribution arrangements, with the central inquiry being whether the arrangement harms competition, raises rivals' costs, forecloses access to necessary trading opportunities, or strengthens the firm's power over price.

Food-delivery platform disputes in the United States have focused less on classic forced exclusivity and more on contractual restrictions affecting restaurants' pricing autonomy and multi-channel operations. *Davitashvili v. Grubhub* is not a typical forced exclusivity case. The dispute concerned no-price competition clauses, under which restaurants allegedly could not offer lower prices for dine-in, takeout, direct delivery, or sales through rival platforms. In 2022, the U.S. District Court for the Southern District of New York allowed the antitrust claims to proceed. The court considered it reasonable to infer that requiring restaurants to accept these clauses left them with "no choice" but to raise prices regardless of where consumers placed their orders. This case is relevant to China not because it mirrors platform-imposed forced exclusivity, but because it shows how contractual restraints imposed by food-delivery platforms may restrict restaurants' pricing autonomy and transmit platform costs to consumers through higher menu prices.

The FTC and Illinois Attorney General's action against Grubhub should also be positioned carefully. This matter was not a standard antitrust case concerning forced exclusivity. It involved platform governance, consumer protection, unfair or deceptive practices, and the interests of restaurants and delivery workers. The authorities alleged that Grubhub misled consumers about delivery costs, misrepresented driver earnings, blocked access to certain customer accounts and funds, and listed restaurants on its platform without permission. The settlement required Grubhub to pay \$25 million, disclose the full cost of delivery, advertise driver earnings truthfully, and list restaurants only with their consent. This case is useful for this paper because it shows that food-delivery platform regulation may require tools beyond antitrust enforcement when platform conduct harms consumers, merchants, and riders at the same time.

The U.S. experience therefore should not be described as direct regulation of China-style forced exclusivity. Its value lies in three narrower points. First, exclusive arrangements are assessed by their concrete competitive effects rather than by their contractual form alone. Relevant factors include the proportion of merchants affected, the duration of the restraint, the availability of alternative channels, the platform's market power, and possible efficiency justifications. Second, platform restraints on restaurants may affect consumers through menu prices, delivery fees, commissions, and restrictions on multi-channel pricing. Third, private litigation and injunctive relief can supplement administrative enforcement by giving affected consumers, merchants, and competing platforms a procedural channel to challenge restrictive platform practices.

4.2 *The German Experience*

German law provides a comparatively detailed framework for assessing market power in digital platform markets. Section 18 of the *Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB)* requires the assessment of market dominance to take account of factors such as market share, financial strength, access to competition-relevant data, access to supply or sales markets, barriers to entry, and the ability of the opposite market side to switch to other undertakings. For multi-sided markets and networks, Section 18 further requires consideration of direct

and indirect network effects, parallel use of several services, switching costs, economies of scale arising from network effects, access to competition-relevant data, and innovation-driven competitive pressure. This approach is relevant to food-delivery platforms because market power in such markets often derives not only from price control, but also from access to restaurants, users, delivery networks, transaction data, and platform traffic.

Section 19a of the GWB introduces special rules for undertakings of paramount significance for competition across markets. Once the Bundeskartellamt has made such a designation, it may prohibit conduct such as self-preferencing, impeding other undertakings in supply or sales markets, making it harder for business users to reach buyers through other channels, creating barriers to market entry through competition-relevant data, or refusing interoperability and data portability. The undertaking bears the burden of demonstrating and proving objective justification. Section 20 of the GWB also addresses relative market power. It applies where other undertakings depend on a platform's intermediary services to access supply or sales markets and lack sufficient and reasonable alternatives. This design is useful for analysing platform restraints that arise from merchant dependence rather than from market share alone.

German food-delivery platform enforcement provides a narrower but relevant reference point. The Bundeskartellamt reviewed a price parity clause in Lieferando's general terms and conditions with restaurants. The clause required prices charged on Lieferando to correspond to prices charged through the restaurants' own distribution channels. The Bundeskartellamt terminated the proceeding in 2023 for discretionary reasons and did not make a finding of infringement. The case therefore should not be described as a German penalty against forced exclusivity in food-delivery platforms. Its significance is more limited: restaurant pricing clauses used by food-delivery platforms have entered the field of competition law scrutiny, especially where platform rules restrict restaurants' pricing autonomy and direct sales channels.

The *Booking.com case* offers a stronger example of German scrutiny of platform price parity clauses, although it concerns hotel booking rather than food delivery. The Bundeskartellamt prohibited Booking.com's best-price clause in 2015. The German Federal Court of Justice later held that Booking.com's narrow price parity clause did not satisfy the conditions for exemption under Article 101(3) TFEU. The clause restricted hotels from offering lower prices through their own websites and could weaken competition between hotel booking platforms. This case is relevant by analogy only. It shows how a platform may use contractual terms to limit merchants' direct sales channels and price autonomy, but it should not be treated as direct authority for food-delivery forced exclusivity.

EU platform regulation also reinforces the relevance of multi-channel autonomy. Article 5(3) of the *Digital Markets Act* provides that gatekeepers shall not prevent business users from offering the same products or services through third-party online intermediation services or through their own direct online sales channels at prices or conditions different from those offered through the gatekeeper's service. This rule does not replace antitrust analysis, but it shows a regulatory movement toward

protecting business users' ability to reach customers outside the dominant platform.

The German and EU experience supports three specific points for China's regulation of food-delivery platforms. First, the assessment of platform power should include network effects, switching costs, access to data, intermediary dependence, and the platform's role in connecting restaurants with consumers. Second, platform rules affecting restaurants' direct sales channels, pricing autonomy, ranking exposure, and access to users should be treated as objects of competition scrutiny. Third, enforcement should not rely only on ex post fines. Food-delivery platforms with significant market power should be subject to ongoing compliance review of platform rules, data use, ranking mechanisms, commission structures, and restrictions on merchants' multi-channel operations.

5. Policy Recommendations for Improving Antitrust Regulation of China's Food-Delivery Platforms

5.1 Clarifying a Regulatory Approach Centered on the Anti-Monopoly Law

A regulatory approach centered on the *Anti-Monopoly Law* should be clearly established. Forced exclusivity by two-sided platforms is more closely aligned with conduct that restricts or excludes competition under the *Anti-Monopoly Law* than with ordinary contractual governance. The *Anti-Monopoly Law* should not be understood as intervening in every exclusive arrangement; its function is triggered where a platform's market power transforms an exclusive arrangement into a mechanism that excludes or restricts competition (Ding, 2024).

Article 35 of the *Electronic Commerce Law* can address unreasonable restrictions imposed by e-commerce platform operators through service agreements, transaction rules, or technical means, but it does not provide a sufficiently clear analytical standard for identifying forced exclusivity in antitrust terms. If such conduct is regulated only through the *Electronic Commerce Law*, the *Anti-Unfair Competition Law*, or scattered platform governance rules, the legal basis may become fragmented and inconsistent. The regulation of food-delivery platform forced exclusivity should therefore follow a hierarchy in which the *Anti-Monopoly Law* serves as the central framework, while the *Electronic Commerce Law* and the *Anti-Unfair Competition Law* operate as supplementary rules for protecting on-platform operators and maintaining fair competition (Zeng, 2021).

5.2 Refining the Methodology for Defining the Relevant Market for Food-Delivery Platforms

Relevant market definition for food-delivery platforms should focus on actual user demand and merchants' customer-acquisition channels, and should not be directly equated with the food-service market, the food-delivery market, or the local lifestyle services market. Qualitative demand-substitution analysis should be combined with quantitative hypothetical monopolist testing where necessary. Relevant market definition for online service platforms should still be based on demand substitutability: it should clarify the specific consumer or user needs involved, identify the relevant user groups, and assess competitive relationships by considering user sources, network lock-in effects, business models, sources of revenue, and transaction counterparts (Zeng, 2021).

Relevant market definition for food-delivery platforms may adopt a three-layered approach. The first layer is the geographic scope, which should be determined by delivery radius, city lock-in, and the ready-to-eat nature of food delivery. The second layer is demand-side substitutability, which should be assessed by reference to ordering convenience, delivery efficiency, price sensitivity, language services, food categories, and user habits. The third layer is supply-side substitutability, which should be examined from the merchant's perspective by considering platform order sources, commission rates, delivery capabilities, user demographics, and switching costs. Narrower markets may be recognized for regional food-delivery platforms, campus food-delivery platforms, English-language food-delivery platforms, and on-demand food retail platforms where their user groups, service functions, and merchant acquisition channels are sufficiently distinct. Where platforms have highly overlapping service functions and low user switching costs, however, the relevant market should not be artificially fragmented.

5.3 Refining the Criteria for Determining Dominant Market Position

The determination of dominant market position for food-delivery platforms should not be limited to market share alone. It may be further refined into four categories of indicators: first, transaction-scale indicators, including order volume, the number of active users, the number of active merchants, sales revenue, and delivery order volume; second, market-control indicators, including the ability to adjust commissions, determine search rankings, approve participation in promotional activities, set delivery coverage areas, and allocate traffic; third, merchant-dependence indicators, including the proportion of a merchant's orders originating from the platform, order losses after withdrawal from the platform, and the order volume obtainable through alternative platforms; fourth, entry-barrier indicators, including the costs of building a delivery network, user-side subsidies, merchant-side cold-start costs, data accumulation, and brand recognition. Market share remains an important starting point, but it cannot substitute for a substantive assessment of the platform's control over merchants, traffic, data, and delivery resources.

5.4 Strengthening Filing Review and Compliance Oversight of Platform Rules

Forced exclusivity by food-delivery platforms has shifted from explicit exclusionary clauses to more systematic, technical, and incentive-based mechanisms. Regulatory oversight should therefore extend from individual violations to platform service agreements, transaction rules, commission policies, traffic allocation rules, delivery coverage rules, and eligibility criteria for promotional activities.

The self-regulatory rules of super platforms not only serve internal governance functions but also, to a certain extent, perform public management functions. When platforms leverage their monopolistic power to use self-regulatory rules to exclude or restrict competition, such practices are often covert and harmful. A comprehensive regulatory closed-loop system should therefore be established, encompassing ex ante filing and review, ongoing compliance supervision, and ex post coordination between law enforcement and judicial proceedings.

Regulation of platform self-governance rules may follow a three-pronged approach: establishing a pre-implementation filing and review system for platform rules, focusing on antitrust compliance during platform operations, and strengthening coordination between antitrust enforcement and judicial proceedings after implementation. Once formulated, platform self-governance rules should be proactively filed to ensure that all relevant rules are filed; rules that may implicitly exclude or restrict competition, or harm the rights and interests of transaction counterparts and consumers, should be subject to substantive review; rules that clearly impair fair competition should be amended or corrected. For food-delivery platforms, key review targets should include exclusive partnership clauses, lowest-price clauses, differential commission clauses, conditions for traffic support, restrictions on subsidy eligibility, search ranking rules, rules for adjusting delivery coverage areas, and merchant exit and disciplinary rules (Zhang & Sun, 2024).

5.5 Raising the Cost of Violations and Improving Remedial Mechanisms

Remedies for forced exclusivity by food-delivery platforms should not be limited to fines. A combined remedial system should be established, including administrative penalties, behavioral remedies, civil damages, whistleblower protection, and post-penalty compliance evaluation.

A dedicated reporting and complaint mechanism should be established, together with strict confidentiality measures to prevent retaliation against merchants. Once the allegations are verified, the platform should be required to cease forced exclusivity, restore business opportunities unfairly impaired by the conduct, and compensate affected merchants for losses (Ding, 2024). For food-delivery platform cases, three rules may be developed: first, the burden of proof on merchants may be reduced by allowing damage to be inferred from evidence such as an abnormal drop in orders, abnormal decreases in traffic, abnormal increases in commissions, or records of forced delisting; second, the platform should be required to provide key operational data, including orders, exposure, conversion rates, commissions, subsidies, ranking, and delivery coverage; third, remedial measures should include cessation of illegal conduct, reinstatement of listings, restoration of ranking and traffic support, refund of improper commissions, compensation for order losses, and publication of a rectification report. These measures would help prevent merchant harm and market lock-in effects from continuing after administrative penalties have been imposed.

6. Conclusion

On the surface, forced exclusivity by food-delivery platforms appears to be a matter of cooperation between platforms and merchants; in reality, it involves dominant platforms using traffic channels, delivery systems, platform rules, and merchants' dependence on them to exclude competition. The Sherpa's Case demonstrates that the antitrust assessment of such conduct cannot be limited to contractual terms themselves; instead, it should sequentially examine the relevant market, dominant market position, restrictive trading practices, harm to competition, and justifications. The current *Anti-Monopoly Law* already provides a basic legal basis for regulating forced exclusivity by

food-delivery platforms, but further refinement is needed regarding platform accountability, damages, administrative oversight, review of platform rules, and identification of such conduct. Future regulation should center on the *Anti-Monopoly Law*, in conjunction with the *Platform Economy Guidelines*, to refine standards for defining relevant markets and determining dominant market position, while strengthening mechanisms for filing and review of platform rules, behavioral remedies, and compensation for merchant damages. Competition among food-delivery platforms should return to the fundamentals of service quality, fulfillment efficiency, and innovation capabilities, rather than relying on exclusive arrangements to lock in merchant resources.

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