

The Legal Regulation of Exclusive Dealing in E-commerce Platform

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Abstract

With the development of Internet, E-commerce platforms are becoming more and more popular, and there is a "exclusive dealing" behavior in this field. Some E-commerce platforms use this method to consolidate their platform users, which has a negative impact on other E-commerce platforms, operators and consumers. At present, China has four regulatory ideas for such acts, such as exclusive agreement, unfair competition, abuse of market dominant position and regulation through the E-commerce law, At present, China has four regulatory ideas for this kind of behavior, such as exclusive agreement, unfair competition, abuse of market dominant position and regulation through the E-commerce law. These four regulatory ideas seem to be feasible, but in fact there are some difficulties and lack of operability. Therefore, in the face of this situation, China should have an inclusive and prudent attitude, refine the corresponding legal provisions, and establish a collaborative governance system.

Keywords

E-commerce Platform; Exclusive Dealing; Anti-unfair Competition Law; Anti-monopoly Law; Unfair Competition.

1. Introduction

"Exclusive dealing" means that the E-commerce platform requires sellers to choose only one trading platform for cooperation. With the vigorous development of Internet economy and E-commerce in recent years, E-commerce platforms have frequently appeared "one out of two" behaviors, such as the 3Q war in 2010.

Moreover, on April 10, 2021, the General Administration of market supervision determined that Alibaba group had implemented "exclusive dealing", and excluded and restricted the competition in China's E-commerce platform market. Alibaba violated the provisions on abuse of market dominant position in Article 17, paragraph 1 (4), of the anti monopoly law, and imposed a fine of RMB 18.228 billion according to law. This is the first administrative case against this behavior in China. Before, most administration department interviewed relevant E-commerce platforms.

This approach plays a warning role for other platforms in the E-commerce market and promotes benign competition in the E-commerce market.

2. The Concept of "Exclusive Dealing"

"Exclusive dealing" behavior refers to the behavior that the E-commerce platform requires sellers to only trade with themselves and not with other platforms at the same time, so it can restrict the business activities of sellers in the platform. The purpose of "exclusive dealing" is to hope that businesses in the platform will always choose this E-commerce platform and avoid being separated by other platforms. The essence of this behavior is to maintain the core interests of the platform itself, so it can consolidate its competitive advantage and enhance its dominant position in the market.

Exclusive dealing has many characteristics. First, exclusive dealing is mandatory “exclusive dealing” The mandatory behavior of "exclusive dealing" is unilaterally proposed by the E-commerce platform. Although the businesses in the platform seem to be able to refuse, but the E-commerce platform will use technical means such as shielding merchants' stores, reducing search ranking and reducing user access to restrict the operators' business activities on the platform. As a result, businesses must follow the "exclusive dealing" conditions proposed by the platform and stop their business activities on other platforms. Therefore, "exclusive dealing" is mandatory. In addition, the means of “exclusive dealing” are diverse. The platform can not only give preferential policies to merchants who comply with "exclusive dealing" to suspend the business activities of other platforms, but also use technical means to crack down on merchants' business activities to force them to comply with the "exclusive dealing" requirements of the platform.

3. Negative Effects of “Exclusive Dealing”

“exclusive dealing” not only brings great positive effects to the E-commerce platform, but also has negative impact, so it is controversial.

For other E-commerce platforms, E-commerce platforms involve two types of users: sellers and consumers, and high-quality sellers can attract a large number of consumer users. Therefore, the seller is the key for the platform to expand users. However, the "exclusive dealing" behavior breaks the situation of fair competition between platforms and increases the difficulty for small and medium-sized E-commerce platforms to obtain high-quality merchants. Therefore, it has a negative impact on the survival of small and medium-sized E-commerce platforms[1]. This "exclusive dealing" behavior unreasonably affects the fair competition of other E-commerce platforms. At the same time, large E-commerce platforms have a large number of business resources through "exclusive dealing", consolidating their advantageous position, which is easy to cause monopoly and difficult to form a healthy competitive market. For large E-commerce platforms, once the merchant resources are consolidated, it is not conducive to the innovation of large platforms.

For small and medium-sized sellers, they do not have a stable consumer group, so they are more dependent on the platform. Choosing a larger platform is good to survive and develop, and it is hard to raise objections to various rules proposed by the platform. If it does not agree with the "exclusive dealing" requirements proposed by the platform, it will be limited by various technical means, which will affect the normal development of its business activities. Then the large amount of human, material and financial resources invested by the seller in the early stage have been lost, resulting in huge economic pressure. If the seller obeys the "exclusive dealing" of the platform, the seller will lose other trading channels. It will damage the autonomy of businesses and reduce turnover. At the same time, sellers binding all their consumer groups to one E-commerce platform will also increase their own business risks. Once the seller chooses to accept "exclusive dealing", it seems to be an unimportant choice, but under the continuous accumulation of costs and the continuous formation of habits, it will change their bargaining and negotiation ability.[2]

For consumers, consumers have the right to consider various factors to choose the appropriate trading platform. consumers choose the right E-commerce platform for transactions, not only to consider the number of sellers in the platform, but also consider the factors such as refund services, logistics services, customer service and other factors provided by the platform. However, "exclusive dealing" controls the seller in one E-commerce platform, making it impossible for consumers to compare other services provided by E-commerce platforms. Therefore, the requirement of "exclusive dealing" actually indirectly restricts consumers' right of choice. at the same time, “exclusive dealing” At the same time, sellers can

only sell goods through one platform, losing some potential consumers. Sellers are likely to make up for the decline in sales by raising the selling price, and finally transfer the cost to consumers.

4. Theoretical Basis for Regulating "Exclusive Dealing" Behavior

China also has relevant laws to regulate "exclusive dealing", such as Article 17 of the anti monopoly law, Article 12 of the Anti-unfair competition law, Articles 22 and 35 of the E-commerce law, and Article 32 of the measures for the supervision and administration of online transactions. Because E-commerce is a little special, it is different from the regulation path of traditional competition. There is no suitable regulation scheme under the framework of the current law. Although there are many solutions for such acts, there is a lack of basis in the specific supervision process.

At present, the behavior of "exclusive dealing" has roughly three theoretical bases for regulation. These three regulations have both appropriate and inappropriate places, such as exclusive agreement, unfair competition and abuse of market dominant position.

4.1. Exclusive Agreement

Exclusive agreement means that the operator requires the trader to only trade with himself instead of trading with other competitors. The "exclusive dealing" behavior is an exclusive agreement between the E-commerce platform and the seller. The E-commerce platform obtains stable seller resources through exclusive agreements to attract more consumers to buy in the platform. Therefore, the platform can take advantage of its advantageous position to further enhance its competitiveness.

If the "exclusive dealing" behavior is regarded as an exclusive agreement for regulation, the government has great difficulties. First of all, the agreement is relative and difficult to interfere. Both parties can reach an agreement through negotiation. Moreover, it is difficult for regulators to know the specific contents of exclusive agreements, so it is difficult to achieve timely supervision. Secondly, it is difficult to identify the subjective intention. The exclusive agreement is generally reached voluntarily, and it is difficult to prove that one is not voluntary. Therefore, it is difficult to prove the psychological status of both parties.

4.2. Unfair Competition

The purpose of the Anti-unfair competition law is mainly to protect competition. Therefore, it is necessary to consider whether the "exclusive dealing" behavior affects the fair competition of other platforms. Although the "exclusive dealing" behavior obviously reduces the number of sellers on other platforms, resulting in the decline of the competitiveness of other platforms, it will not affect the normal operation of other platforms. Therefore, it is difficult to regulate "exclusive dealing" with the Anti-unfair competition law. However, in practice, Article 2 of the anti unfair competition law can still regulate "exclusive dealing". "Exclusive dealing" violates business ethics. Article 2 can regulate such acts.

4.3. Abuse of Market Ascendancy

From the perspective of the constituent elements of abusing market dominant position, the key to the application of the Anti-monopoly law is to demonstrate that the E-commerce platform has an industry dominant position. Traditional judgment methods can not solve the problems in the Internet field. Therefore, Article 22 of the E-commerce law proposes to investigate new factors to determine whether it has a dominant market position.

5. Suggestions for Regulating “Exclusive Dealing” Behavior

At the present stage, China seems to have a variety of regulatory ideas for the regulation of "exclusive dealing" behavior, but there are many obstacles in the actual implementation process, and the theoretical support is not comprehensive enough. Therefore, it is necessary to find an appropriate regulatory path and make up for the corresponding defects.

5.1. Adopt an Inclusive and Prudent Regulatory Attitude

First of all, different industries have different characteristics, and the impact of using comparative advantages is also different, so it is necessary to carry out analysis combined with specific industries [3]. The administrative department should correctly understand the nature and necessity of "exclusive dealing" behavior, look at problems from the perspective of development and analyze specific problems. Secondly, do not over tolerate the bad competitive behavior of the platform economy, create a healthy competitive market environment and promote the healthy development of E-commerce platforms. And set the corresponding disciplinary mechanism for bad competitive behavior. In addition, the regulatory authorities should establish a scientific supervision system, improve the supervision system before, during and after the event, and ensure that the "exclusive dealing" behavior is stopped in time.

5.2. Establish a Collaborative Governance System

Article 7 of the E-commerce law establishes the collaborative governance mode of E-commerce, which requires changing the supervision mode of a single subject, and all subjects in E-commerce activities jointly manage E-commerce activities. First of all, the "exclusive dealing" behavior of E-commerce platform involves multi-party interest conflicts. If the relevant interest subjects are transformed into governance forces, it will improve the enthusiasm to solve the conflicts. Secondly, there is a serious information gap between the administrative department and the electronic platform. The E-commerce platform directly occupies the corresponding information technology resources. It is difficult for the administrative department to realize the effective supervision of behavior. The participation of multiple subjects in governance can make up for the information weak position of the administrative department.

Therefore, the administrative department can absorb E-commerce platforms and sellers as common supervision subjects to continuously improve the governance efficiency.

5.3. Refine Relevant Laws

Although China has a variety of regulatory ideas on this behavior, they are not specific. Although China has a variety of regulatory ideas on this behavior, they are not specific.

For example, Article 35 of China's E-commerce law stipulates that E-commerce platform operators shall not use service agreements, transaction regulations, technology and other means to impose unreasonable restrictions or additional unreasonable conditions on the transactions and transaction prices of platform operators and other operators, or charge unreasonable fees from platform operators. "Exclusive dealing" behavior can belong to the regulation scope of this clause, but the starting point of this clause is not "exclusive dealing" behavior, but it still provides a regulation idea. First of all, the definition standard of "unreasonable" should be clearly stipulated. The judgment standard of "unreasonable" in Article 35 is uncertain, so the administrative department has greater discretion. Second, the applicable subject of Article 35 is all E-commerce platforms, regardless of whether the E-commerce platform has an advantageous position or not. The scope of application of this provision is too large. Third, Article 82 of the E-commerce law stipulates that if the E-commerce platform violates Article 35, it shall bear a fine of 50000-2 million Yuan. For large

E-commerce platforms, the illegal cost is too low compared with the benefits obtained, resulting in many E-commerce platforms preferring to take risks to implement unreasonable behaviors.

6. Conclusion

In China, although there are many regulatory ideas for some "exclusive dealing" behaviors of E-commerce platforms, there are many difficulties in practical operation. China should further improve the corresponding theoretical support, and provide a more perfect scheme for the regulation of such behavior to avoid some large E-commerce platforms from using their dominant position to implement unreasonable behavior.

References

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