

APPLYING COMPETITION LAW TO DIGITAL PLATFORMS IN CHINA

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Executive Summary

1. Digital platforms have raised challenges for competition policy regulators as they collect an unprecedented amount of user data. A platform can exclude its rivals and strengthens its market power by using algorithms and major platforms can extend their market power to adjacent markets.
2. China's internet industry has been supported by government policy since the late 1990s. Leading digital platforms including JD.com, Alibaba and Tencent were among China's top 25 companies in terms of total revenue in 2020.
3. These digital platforms have been accused of anticompetitive behaviours. Regular users and active users of platforms among others may suffer from price discriminations.
4. Leading digital platforms with market power sometimes force small and medium-sized businesses to "choose one out of two" or face restrictions to services access imposed by the platform if they also have businesses on a rival platform.
5. Antimonopoly law (AML) and Anti-Unfair Competition Law (AUCL) are two major laws for regulating anti-competitive behaviours such as exclusive dealing, collusive agreement, vertical restrictions and abuse of market dominance.
6. At a December 2020 politburo meeting, China officially declared that it would work to prevent "disorderly capital expansion" by intensifying "anti-monopoly supervision". Leading firms such as Alibaba and Tencent have been sanctioned.
7. However, the current legal code is still considered too general to identify competition-related strategies of digital platforms.
8. Platforms impose restrictions to access of other platforms' business, manipulate recommendations or the ranking of businesses, or collude with other platforms via algorithms.

9. China has started to reform its competition policy regime. Amendments to AML and AUCL were released for comments in 2020 and 2021 respectively. Big Data and algorithm-backed anti-competitive behaviours are among the major focuses of regulators.
10. In 2021, competition law enforcement guidelines for the Platform Economy Industry were enacted, taking into account features of digital platforms such as network externalities and lock-in effect among others.
11. Some major issues remain unaddressed. While the legal codes have been revised based on competition issues related to the digital platforms, whether the competition policy regulator has the capacity and right incentive to implement them is still uncertain.

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QIAN Jiwei*

Competition Law and Market Power of Digital Platforms

- 1.1 In recent years, regulating digital platforms with strong market power and engaging in anti-competitive practices has become salient. For example, a platform can exclude its rivals and strengthens its market power by using algorithms. Network effects¹ reinforce the market dominance of major platforms which can extend their market power to adjacent markets.
- 1.2 In China, government regulators, especially State Administration for Market Regulation (SAMR), have strengthened competition policy enforcement with the introduction of new rules for digital platforms since 2020. However, challenges such as capacity and incentive of regulators to implement these rules remain.
- 1.3 Competition law is an indispensable part of a regulatory framework to address market imperfections, and ensure effective and fair market competition in many countries.
- 1.4 The emergence of digital platforms has raised challenges for competition policy regulators. Platforms in general can be defined as “mechanisms bringing together a set of parties to interact”.² Digital platforms such as Google, Facebook and Amazon

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¹ A goods has network effects if “the demand of the good depends on how many other people purchase it”. Varian, R and Farreel and Shapiro, C. (2004), *The Economics of Information Technology*, Cambridge University Press, p. 33.

² UNCTAD. (2019). *Digital Economy Report 2019: Value creation and capture—Implications for developing countries*.

provide online infrastructure for the interactions between groups such as consumers and producers.³

- 1.5 In recent years, competition law enforcement with respect to digital platforms has been strengthened, particularly in the EU and the United States. In October 2020, the Department of Justice together with 11 states in the United States sued Google for abusing market dominance in the search market.⁴
- 1.6 In the EU, Google was fined a record €2.42 billion (or US\$2.7 billion) by the European Commission in 2017 for abuse of market dominance.⁵ In April 2021, the European Commission accused Apple of violating EU competition policy when it abused its market dominance in the music streaming market.⁶
- 1.7 In 2020, China's digital economy was second only to that of the United States⁷ and in 2019, China led the world in online retail sales (US\$1.26 trillion).⁸ Based on the size of the economy, it is now one of the major jurisdictions for competition law in the world, after the United States and EU.
- 1.8 After 2020, China has also strengthened competition law enforcement of major digital platforms. In April 2021, Alibaba was fined a record high RMB18.2 billion by China's competition policy authority, SAMR, for abusing market dominance.
- 1.9 Digital platform companies collect an unprecedented amount of user data such as individuals' detailed whereabouts together with personal characteristics and preferences generated by the large volume of transactions.

³ Ibid.

⁴ <https://www.justice.gov/opa/press-release/file/1328941/download>, accessed 11 October 2021.

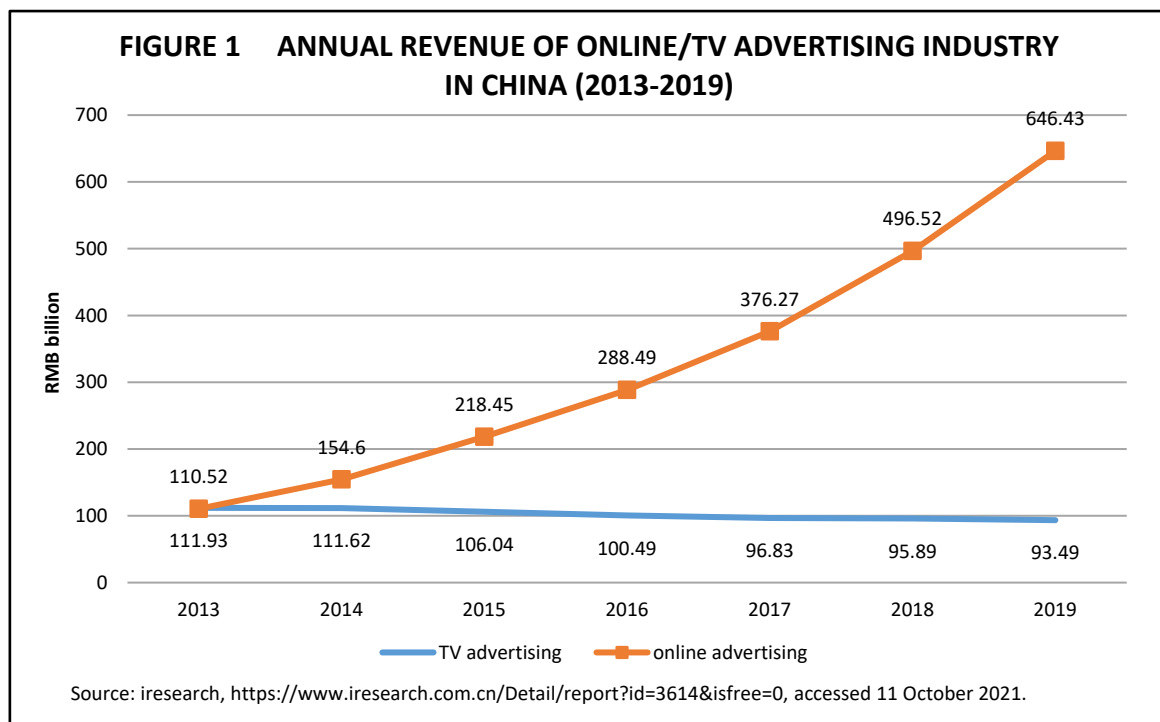
⁵ https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1784, accessed 11 October 2021.

⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2061, accessed 11 October 2021.

⁷ China Academy of Information and Communications Technology (2021) Global Digital Economy White Paper.

⁸ UNCTAD (2021), "Estimates of global e-commerce 2019 and preliminary assessment of COVID-19 impact on online retail 2020".

- 1.10 The huge volume of user data collected by the platforms is a byproduct of the rise in big-data analysis.⁹ Platforms use transaction-generated user data to perform big-data analytics, which contributes to operational efficiency enhancement, cost reduction and risk control, while also raising concerns of privacy and data security.
- 1.11 User data collected by digital platforms over time can be used in predictive algorithms,¹⁰ a platform's major competitive advantage. For platforms, algorithm-enabled analytics may include content generation and composition, individual-targeting notification, content selection and ranking, and search and filtered content.
- 1.12 One major example of the application of predictive algorithms is the emergence of online advertising industry. In China, online advertisement revenue (RMB111 billion) captured almost the same share as TV advertising revenue (RMB112 billion) in 2013. In 2019, however, the revenue of online advertisements (RMB646 billion) were almost seven times that of TV (RMB93 billion) (Figure 1).



⁹ Ezrachi, A and Stucke, M (2017). *Virtual competition*. Harvard University Press. p. 15.

¹⁰ Algorithm refers to “a well-defined computational procedure that takes some value, or set of values, as inputs and produces some value, or set of values, as output”. Cormen, T H et al. (2009). *Introduction to Algorithms*. MIT press: p. 5.

Competition-related Issues in China's Digital Platforms

- 2.1 As the government regards internet companies as productivity-enhancing, promoting their development has been a major industrial policy.¹¹
- 2.2 Since the release of the Ninth Five-Year Plan for developing information industry in 1997,¹² promoting internet-related industries has been given a high priority in the policy agenda of the central and lower-level governments in China.
- 2.3 Unlike other industries, there are no major state-owned players in the internet-related service industry in China, a possible reason for its different market structure.¹³ All major players including Alibaba, JD.com, Tencent and Baidu are private-owned.
- 2.4 Some of these digital platforms are dominant in many platforms. For example, Tmall under Alibaba accounted for over 50% of B2C retailers' share in China in 2019 (see Table 1).

TABLE 1 B2C RETAILERS' SHARE OF SALES IN TOTAL RETAIL E-COMMERCE SALES IN CHINA IN 2019

Companies	Market Share
Tmall	50.10%
JD.com	26.51%
Pinduoduo	12.80%
Suning	3.04%
Vip.com	1.88%
Gome	1.78%
Yunji	0.45%
Mogujie	0.24%
Others	3.25%

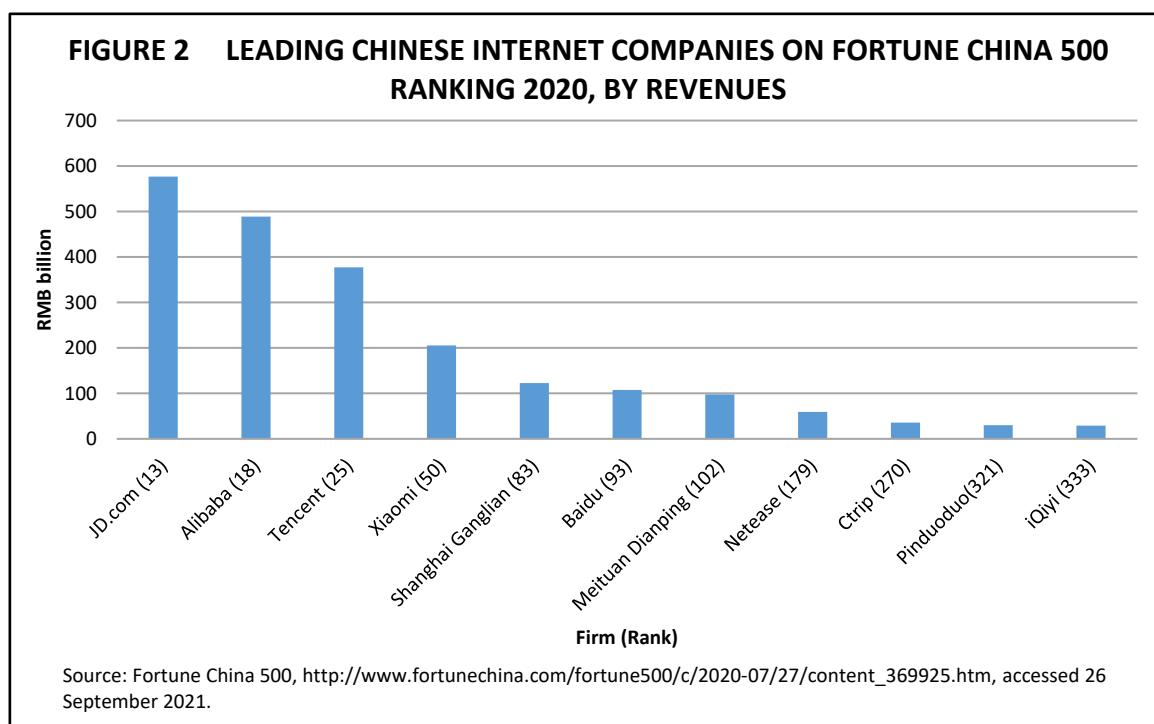
Source: https://www.sohu.com/a/400072770_322372, accessed 26 September 2021.

¹¹ Naughton, B (2021). *The Rise of China's Industrial Policy 1978 to 2020*, Mexico City: National Autonomous University of Mexico, 2021, 69.

¹² http://www.gov.cn/zwgc/2010-06/08/content_1622866.htm, accessed 26 September 2021.

¹³ Zhang, A H (2015). Antitrust Regulation of Chinese State-Owned Enterprises, in Benjamin L Liebman and Curtis J Milhaupt (eds) *Regulating the Visible Hand?: The Institutional Implications of Chinese State Capitalism*. New York: Oxford University Press.

2.5 Leading digital platforms including JD.com, Alibaba and Tencent were among China’s top 25 companies in terms of total revenue in 2020 (Figure 2).



2.6 Digital platforms in China have of late caught the attention of the authorities on several competition-related issues. First, the huge volume of user data can improve the digital platform’s profit by facilitating various forms of price discrimination. For example, there were cases in China that regular users and active users were charged by the platform at higher prices than other users (*da shu ju shashu*)¹⁴ given their higher willingness to pay.

2.7 Second, digital platforms’ exclusive dealing is another practice which could restrict competition. Leading digital platforms, which have market power, can force small and medium-sized businesses that also have businesses on a rival platform to “choose one out of two” (online platforms) if they want to access services.

2.8 Third, barriers for data portability across digital platforms has put competitors at a disadvantage. For example, in May 2017, *Cainiao*, the logistics company affiliate

¹⁴ <https://finance.sina.com.cn/tech/2021-07-02/doc-ikqcfnc4589012.shtml>, accessed 22 August 2021.

under Alibaba suspended data sharing with *Fengchao*, an associate of SF Express and a partner of Tencent.

- 2.9 Fourth, another controversial feature of digital platforms is “killer” acquisitions. This practice was highlighted in a recent study about the mergers conducted by Google, Amazon, Facebook, Apple and Microsoft; it was found that merger deals have a negative impact on R&D activities in start-ups.¹⁵
- 2.10 In China for instance, Tencent has investments in over 800 companies and among them, 180 are unicorn companies.¹⁶ These large-scale investments/acquisitions by leading digital platforms are another form of anti-competition.¹⁷
- 2.11 Fifth, digital platforms could also exploit their dominance in one market to give them an unfair advantage in adjacent markets. For example, major e-commerce/payment platforms can leverage data gathered in transactions to improve, develop, or offer new services. Alipay, part of the Ant Group, currently serves over 80 million businesses, one billion users and two million mobile apps.¹⁸ The Ant Group reportedly employ user data from Alipay to rate credit scores for its micro-lending and other consumer financial services.¹⁹

¹⁵ Gautier, A and Lamesch, J (2021). Mergers in the digital economy. *Information Economics and Policy*, 54, 100890.

¹⁶ <https://www.bjnews.com.cn/detail/157948750615750.html>, accessed 11 October 2021.

¹⁷ <http://finance.people.com.cn/n1/2021/0906/c1004-32218488.html>, accessed 11 October 2021 . See also Zhang, A (2021). “Agility over Stability: China’s great reversal in regulating the platform economy”. Working paper.

¹⁸ <http://static.sse.com.cn/stock/information/c/202008/e731ee980f5247529ea824d20fcdb293.pdf>, accessed 28 October 2020.

¹⁹ <https://www.ithome.com/0/500/681.htm>, accessed 12 October 2021.

Law and Institutions Governing Market Competition

- 3.1 Competition law is the major policy instrument for addressing the aforementioned issues and implementing the competition policy²⁰ in more than 100 countries.²¹ Competition policy refers to “government policy to preserve or promote competition among market players and to promote other government policies and processes that enable a competitive environment to develop”.²²
- 3.2 Since the 1980s, the Chinese government has recognised the negative effects of monopolistic behaviour and promulgated a series of laws and regulations to address the problem.
- 3.3 An Anti-Unfair Competition Law (AUCL) was enacted in 1993 to prohibit administrative monopoly, below-cost sales, tying sales and bid-rigging. In 2019, the AUCL was amended. However, for AUCL, anti-monopoly is not the major focus and did not incorporate international best practices for anti-monopoly.
- 3.4 China’s Anti-Monopoly Law (AML), the core competition policy, was introduced in 2008 to correct market imperfection and protect consumers’ interests. The law defines monopolistic behaviours including collusive agreement, vertical restrictions, abuse of market dominance and administrative monopoly and specifies sanctions for these behaviours.
- 3.5 Currently, the structure of public enforcement of competition policy (AML and AUCL) in China is two-tiered, the first of which is the Anti-Monopoly Commission under the State Council. The Anti-Monopoly Commission reports directly to the State Council and is responsible for promulgating guidelines and coordinating the work of anti-monopoly enforcement authorities.

²⁰ UNCTAD (2009), “The relationship between competition and industrial policies in promoting economic development”.

²¹ Heimler, A and Mehta, K (2014), “Monopolization in Developing Countries”, In Blair, R D and Sokol, D D (eds.), (2014), *The Oxford Handbook of International Antitrust Economics*, vol. 2, Oxford University Press.

²² UNCTAD (2009), “The relationship between competition and industrial policies in promoting economic development”.

- 3.6 Between 2008 and 2018, the second tier was the three anti-monopoly enforcement government departments: The National Development and Reform Commission (NDRC), The State Administration for Industry and Commerce (SAIC) and The Ministry of Commerce (MOFCOM). In March 2018, all the bureaus under NDRC, MOFCOM and SAIC were merged into the SAMR and established as the single government agency responsible for enforcing competition laws.²³
- 3.7 The Anti-Monopoly Commission reports directly to the State Council and is responsible for promulgating guidelines and coordinating the work of the three anti-monopoly enforcement authorities. The Anti-Monopoly Commission consists of representatives from more than a dozen ministries. When the Anti-Monopoly Commission of the State Council was established in 2008, then Vice Premier Wang Qishan was appointed as the director. In July 2018, Wang Yong, the state councillor, was appointed as the director of the commission.²⁴
- 3.8 Both the AML and AUCL have articles that regulate digital platforms' practices. Article 17 in the AML deals with exclusive dealing and prohibits firms from abusing their dominant position to eliminate or restrict competition such as unfair pricing, below-cost sales, refusals to deal, exclusive or designated dealings, imposing other unreasonable transactional terms and discriminatory dealing. Fines of between 1% and 10% of firms' turnover in the preceding financial year can be imposed. The AML fines are similar to those imposed by the EU competition law that sets a maximum fine of 10% of worldwide turnover.²⁵
- 3.9 Article 20 of the AML addresses "killer acquisitions". The concept of "concentration of undertakings" includes mergers, control of other undertakings through the purchase of shares or assets, and contract or other means.
- 3.10 Under Article 28 of AML, a concentration of undertakings may be prohibited if it has or is likely to have the effect of eliminating or restricting competition, unless the

²³ http://www.gov.cn/zhengce/2018-08/02/content_5311172.htm, accessed 12 September 2021.

²⁴ http://www.gov.cn/zhengce/content/2018-07/19/content_5307747.htm, accessed 12 September 2021.

²⁵ Ginsburg, D H and Wright, J D (2010). Antitrust sanctions. *Competition Policy International*, 6(2), 3-39.

parties can prove that it will lead to improvement in competition that significantly outweighs its adverse effects on competition, or that the concentration is in public interest.

- 3.11 Price discrimination in the internet industry was also underlined in the 2019 amendment of AUCL. In Article 12, it addresses the issues related to price discrimination in digital platforms. For example, business operators must not use technological methods to influence user choices or other methods, such as inserting links or imposing forced transfers in other business operators' lawfully provided network of products and services, without their consent.
- 3.12 In the same article in this amendment, platforms are banned from maliciously causing incompatibility with network products or services lawfully provided by other business operators, or mislead, deceive, or compel users to modify, close, or uninstall network products or services lawfully provided by other business operators.²⁶

Strengthening Competition Law Enforcement in China

- 4.1 The government's promotion of the internet industry was one of the main reasons for the lack of enforcement with respect to digital platforms between 2008 and 2019.²⁷ The sole case for competition law enforcement during this period related to digital platforms concerned Google's acquisition of Motorola in 2012. MOFCOM eventually approved the acquisition, subject to certain restrictive conditions.²⁸
- 4.2 The fragmented structure of the competition policy authority before 2018 was another factor. The coordination among different government departments in enforcing AML was not effective. For example, price-related cases come under the NDRC and non-price related cases fall under the jurisdiction of the SAIC. As some

²⁶ <https://www.chinalawtranslate.com/en/8879-2/>, accessed 11 October 2021.

²⁷ Zhang, A (2021). "Agility over Stability".

²⁸ Google was requested to continue to provide a free and open Android platform (at least for five years). See <https://www.wsj.com/articles/SB10001424052702303360504577414280414923956>, accessed 2 September 2021.

cases concerned both price and non-price issues, coordination problems arose among government enforcement agencies.

- 4.3 Since 2019, however, the outbreak of the US-China trade war has led the government to change tack. US-China tension has exposed China's vulnerability due to its heavy reliance on foreign technology and imports of high-tech products.²⁹
- 4.4 Market competition is considered the major stimulus for innovation and monopoly an impediment to further economic growth.³⁰
- 4.5 In recent years, the Chinese government has worked hard to steer resources to develop "hard" and "core" technologies (e.g. semiconductor industry). In November 2019, Chinese President Xi Jinping made a speech to encourage the capital market to support enterprises in the area of "hard" technology.³¹
- 4.6 A recent government announcement suggested that one major motivation for strengthening regulation of digital platforms is to enhance market competitiveness and to direct resources to the "hard and core" industries.
- 4.7 In September 2021, the Cyberspace Administration of China together with other regulators met representatives from live-stream platforms mainly Tencent and NetEase. In the meeting, platforms are urged "to use their own initiative to resist unfair competition, prevent excessive market concentration or even monopolies" and "place their focus on promoting technological innovation".³²
- 4.8 At a politburo meeting in December 2020, a major regulatory change was announced: China would work to prevent "disorderly capital expansion" by

²⁹ See a discussion on this topic from Baark, E, Hofman, B and Qian, J (ed) (2021). *Innovation and China's Global Emergence*, NUS Press.

³⁰ Qian, J (2020). Chinese Economy in 2019: Structural Reforms and Firms' Behaviour amid Growing Uncertainties. *East Asian Policy*, 12(01), 5-18 and Gilbert, R J (2020). *Innovation matters: competition policy for the high-technology economy*. MIT Press.

³¹ <https://finance.sina.com.cn/stock/kechuangban/2019-11-04/doc-iicezuev6940716.shtml>, accessed 11 October 2021.

³² <http://politics.people.com.cn/n1/2021/0909/c1001-32221841.html>, accessed 11 October 2021.

intensifying “anti-monopoly supervision”.³³ In a top-level meeting in August 2021, Xi Jinping highlighted the importance of competition law enforcement.³⁴

- 4.9 Since 2020, digital platforms such as Ant, Alibaba, Meituan and Tencent were slapped with hefty fines for infringement.
- 4.10 In December 2020, SAMR conducted an on-site investigation of Alibaba for the practice of “choosing one out of two” or “exclusive dealing”.³⁵
- 4.11 Alibaba and its affiliated platforms have long been accused of forcing merchants to sell their products and services exclusively on their platforms. In 2018, JD.com filed a lawsuit against Alibaba for abusing its dominance of the online marketplace and forcing merchants to make exclusionary choices between the two companies.
- 4.12 In the worst-case scenario, SAMR may impose a fine of up to 10% of an offender’s overall revenue, apart from confiscating illicit gains. In April 2021, based on article 17 of AML, Alibaba was fined a record high RMB18.2 billion by SAMR for abuses of market dominance (4% of Alibaba’s turnover in China in 2019).³⁶ In the penalty decision for the case of Alibaba, SAMR declared that the online E-commerce platform is considered as a separate market from the retail market. Alibaba has dominated E-commerce with more than 50% of the market share in China in recent years.³⁷
- 4.13 In a similar case, the on-demand local service provider Meituan, another major platform in China, was fined RMB3.44 billion in October 2021 for abusing its

³³ <https://www.bloomberg.com/news/articles/2020-12-11/china-s-politburo-vows-to-strengthen-anti-monopoly-efforts>, accessed 1 September 2021.

³⁴ <https://www.bloomberg.com/news/articles/2021-08-31/xi-approves-action-on-everything-from-monopolies-to-pollution>, accessed 1 September 2021.

³⁵ “Choosing one of two” refers to an Alibaba practice of forcing merchants to distribute their goods exclusively on a single platform.

³⁶ <https://www.bloomberg.com/news/articles/2021-04-10/china-fines-alibaba-group-2-8-billion-in-monopoly-probe>, accessed 3 September 2021.

³⁷ <http://www.samr.gov.cn/xw/zj/202104/P020210410285606356273.docx>, accessed 3 September 2021.

dominant market position through its “choosing one out of two” practice. The fine was equivalent to about 3% of Meituan’s total domestic revenue in 2020.³⁸

- 4.14 Another interesting competition law enforcement case involved Tencent. In July 2021, a merger between two major platforms in the livestream gaming market, *Huya* and *Douyu*, has been prohibited SAMR. The merger was notified by Tencent as Tencent owns large stakes in both companies. Tencent has sole control of *Huya* and joint control of *Douyu*. SAMR announced that the deal could or possibly would eliminate or restrict competition in Chinese domestic markets for video game live-streaming and online-game operation services.³⁹
- 4.15 *Huya* and *DouYu* horizontally overlap in the market for video game live-streaming. Tencent provides online game operation services, which are upstream from video game live-streaming. It dominates the online gaming market, with a market share in 2019 of over 50% (Table 2). *Huya* and *Douyu* are major players in video game live-streaming market. Figure 3 shows that *Huya* and *Douyu* were respectively ranked first and third in terms of monthly active users of mobile live streaming.

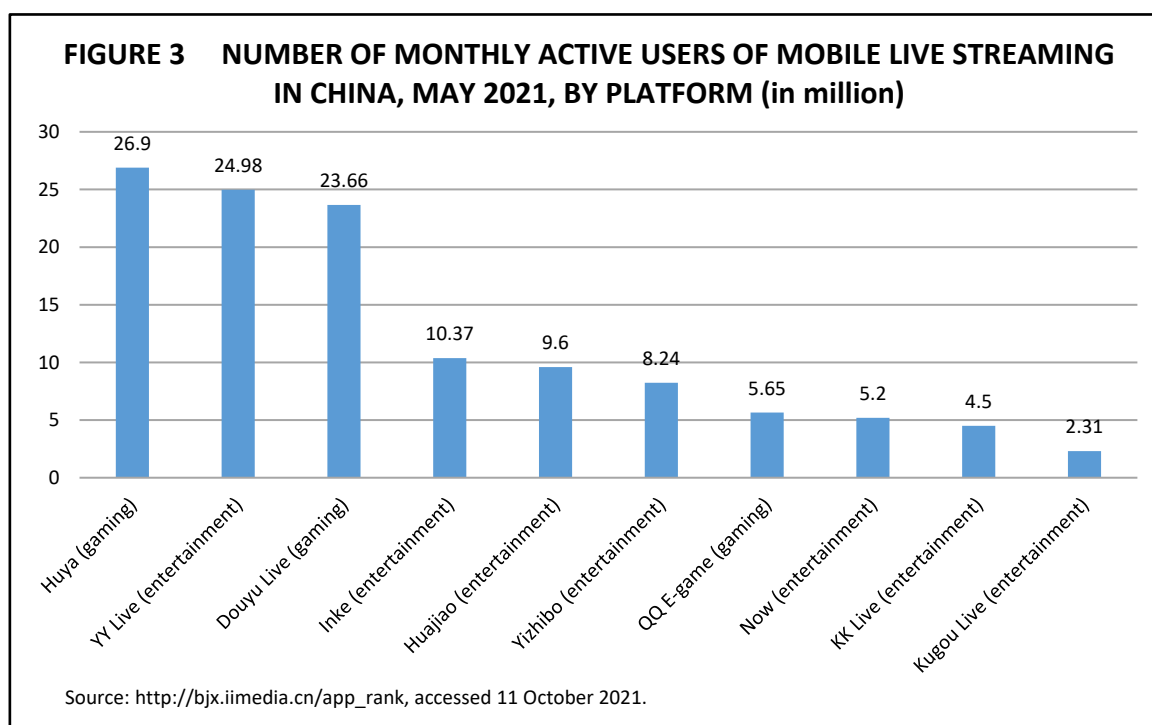
**TABLE 2 LEADING ONLINE GAMING COMPANIES’ MARKET SHARE
CHINA, Q1 2019**

Companies	Market Share
Tencent	51.53%
NetEase	17.45%
37 Interactive Entertainment	3.30%
Perfect World	1.98%
Bilibili	1.29%
Yoozoo	1.18%
Kunlun	1.09%
Sohu	0.98%
Elex	0.97%
Giant Interactive	0.96%
Others	19.27%

Source: http://report.iresearch.cn/report_pdf.aspx?id=3385, accessed 11 October 2021.

³⁸ http://www.samr.gov.cn/xw/zj/202110/t20211008_335364.html, accessed 11 October 2021.

³⁹ <https://www.zaobao.com.sg/realtime/china/story20210710-1167140>, accessed 11 October 2021.



- 4.16 Based on Article 28 of AML, SAMR banned the merger as it has an anticompetition effect and would have solidified Tencent’s dominant position in the Chinese domestic market for video game live-streaming.⁴⁰

Strengthening Competition Law Enforcement of Digital Platforms

- 5.1 The focus of competition law enforcement of digital platforms is on whether the platform excludes its rivals and strengthens its market power, and whether the platform has extended its market power to adjacent markets.⁴¹
- 5.2 However, the competition policy authority faces huge challenge as many products and services do not fall under the realm of the current version of AML and AUCL.⁴² The current version of legal code is still considered too general to allow for identification of competition-related strategies of digital platforms.

⁴⁰ http://www.samr.gov.cn/fldj/tzgg/fjzp/202107/t20210708_332421.html, accessed 11 October 2021.

⁴¹ Shapiro, C (2019). Protecting competition in the American economy: Merger control, tech titans, labor markets. *Journal of Economic Perspectives*, 33(3), 69-93.

⁴² Zhang, A (2021). “Agility over Stability”.

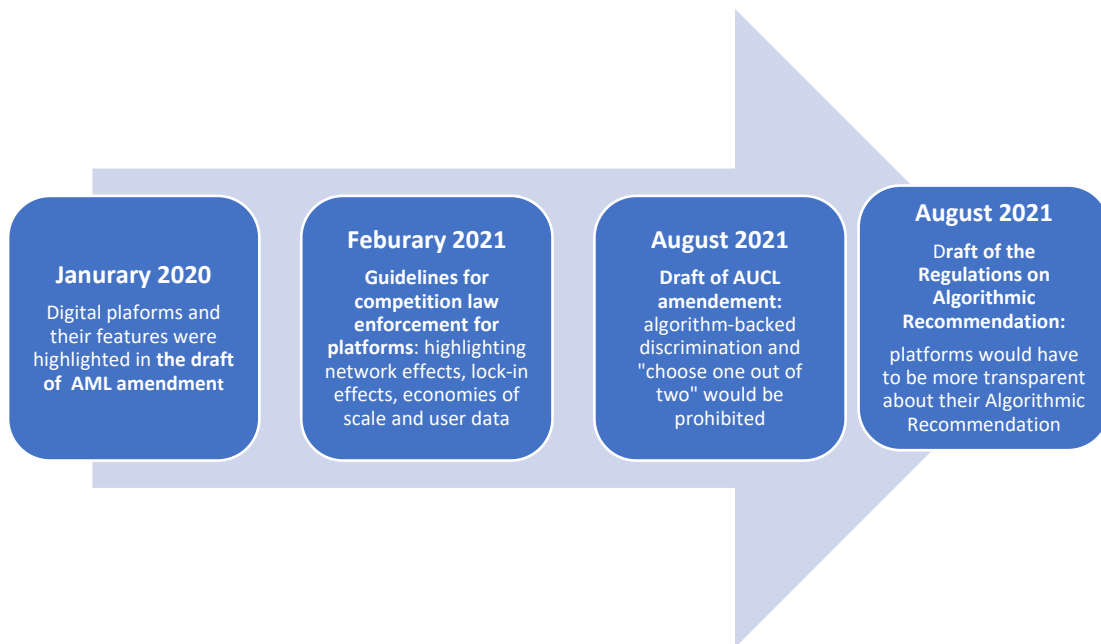
- 5.3 For instance, the collusion behaviour of platforms might be done via algorithms⁴³ and not via meeting, telephone call or email. Under the current competition law, the regulatory response to algorithms-based collusive behaviour is not clearly specified.
- 5.4 To maintain market share, platforms use technologies to impose restrictions to access other platforms' business by manipulating recommendations or the ranking of businesses for instance. These practices are not clearly defined in the current competition law.
- 5.5 As Alibaba and Tencent have created their own ecosystem including e-commerce, social media, payment, logistics and cloud computing, defining market boundaries is a problem. Digital platforms may also take advantage of the huge volume of data they have acquired to enjoy market power in adjacent markets. A case in point is Ant Group, a company affiliated with Alibaba, one of the world's most integrated fintech platforms that provides services including payment, consumer lending, asset management and insurance, and in particular, use data collected from its payment arm for adjacent markets such as microlending.
- 5.6 In a meeting with Ant in April 2021, People's Bank of China and other regulators⁴⁴ required Ant to break the "inappropriate link" between its micro-lending and payment services (i.e. Alipay). This "inappropriate link" is however not addressed in the current version of the AML.
- 5.7 To accommodate the challenge of digital platforms, China has started to reform its competition policy regime (Figure 4). In January 2020, a draft for the amendment of AML was released for comments and the legislation of the new amendment was included in the agenda of the 2021 session of the National People's Congress.⁴⁵

⁴³ Ezrachi, A and Stucke, M (2017). *Virtual competition*. Harvard University Press. p. 56.

⁴⁴ Among these were the Banking and Insurance Regulatory Commission, which regulates consumer financial services.

⁴⁵ http://czt.hebei.gov.cn/szzt/xfxc/202107/t20210712_1438319.html, accessed 3 September 2021.

FIGURE 4 RECENT CHANGES OF THE COMPETITION LAW ENFORCEMENT REGIME



Source: Compiled by the author.

5.8 In this amendment, features of digital platforms including network externalities and lock-in effect⁴⁶ have been taken into account.⁴⁷ Details however have not been revealed.

5.9 A draft of competition law enforcement guidelines for the Platform Economy Industry was released for comments in November 2020. In the draft, market dominance of digital platforms covered network effects, lock-in effects, economies of scale and volumes of data resources. In February 2021, the guidelines were approved and enacted by the State Council.⁴⁸

5.10 In August 2021, a draft regulation addressing unfair competition in the internet industry was released by SAMR,⁴⁹ detailing how AUCL's Article 12 in the internet

⁴⁶ Lock-in refers to the situation where the switching cost across platforms is very high. Varian, R and Farreel and Shapiro, C (2004), *The Economics of Information Technology*, Cambridge University Press. p. 21.

⁴⁷ See Article 21 in the draft of the amendment, http://www.samr.gov.cn/hd/zjdc/202001/t20200102_310120.html, accessed 3 September 2021.

⁴⁸ http://gkml.samr.gov.cn/nsjg/fldj/202102/t20210207_325967.html, accessed 1 September 2021.

⁴⁹ http://www.samr.gov.cn/hd/zjdc/202108/t20210817_333683.html, accessed 11 October 2021.

sector is to be enforced. SAMR lists Big Data and algorithm-backed discrimination among its supervision areas and forbids algorithm-backed discrimination.⁵⁰

- 5.11 The issue of “choose one out of two” is also addressed. Platforms are prohibited from using technology to limit users’ choice and traffic volumes, block or remove commodities, limit trading targets and sales regions to impede the sale of internet products and services by other operators.
- 5.12 In August 2021, the Cyberspace Administration of China published a draft of the Regulations on Algorithmic Recommendation by Internet Information Services to invite public comments.⁵¹ In this draft, platforms are required to be more transparent with the way Algorithmic Recommendations are generated by the user data.
- 5.13 According to this draft, algorithms should not engage in discriminatory or biased user profiling, and should prominently display items, such as the trending list and information that conforms with mainstream values. Algorithms which lead users to “addiction or high-value consumption” will be banned.
- 5.14 In August 2021, a five-year blueprint on building a “rule-of-law” government (2021-2025) was jointly released by the Communist Party Central Committee and State Council. The guideline highlighted legislation in “key areas” including competition policy and the aim to strengthen enforcement in the following five years.⁵²

Challenges and Prospects

- 6.1 China’s competition law enforcement has made significant progress in recent years. By July 2021, three years after the establishment of SAMR, China’s competition

⁵⁰ <https://www.reuters.com/business/media-telecom/china-issues-draft-rules-banning-unfair-competition-internet-sector-2021-08-17/>, accessed 1 September 2021.

⁵¹ http://www.cac.gov.cn/2021-08/27/c_1631652502874117.htm, accessed 11 October 2021.

⁵² http://www.xinhuanet.com/english/2021-08/11/c_1310121694.htm, accessed 1 September 2021.

policy-related fines amounted to a historical high of RMB20 billion (or US\$3.08 billion), involving mostly digital platforms.⁵³

- 6.2 Despite the progress, some issues remain. First, while laws have been put in place, the enforcement capacity of the competition policy regulator is still uncertain. Staff on the payroll of the competition policy division in SAMR was reported to be fewer than 50, much smaller than its counterparts in the United States and EU.⁵⁴
- 6.3 Due to constraints in capacity, platforms are often requested to self-review and engage in self-rectification. For example, in April 2021, 34 digital platforms were required to self-review on their compliance with regulations in relation to “choose one out of two”.⁵⁵
- 6.4 While self-review and self-rectification could be a substitute for law enforcement in the short run, it is not sustainable in the long run.
- 6.5 Second, local regulators may not have the incentives for competition law enforcement. In many cases, local governments rely on digital platforms to support local economic and social policy initiatives. For example, Alibaba, headquartered in Zhejiang province, has a history of cooperation with Zhejiang government in providing cloud services to local governments and, during the COVID-19 pandemic, in servicing the QR health code.⁵⁶
- 6.6 Third, one of the major motivations of enhancing competition law enforcement is to change platforms’ innovation rate and direction. Indeed, major platforms start to redirect their resources from developing consumer-oriented technology to “hard” and “core” technologies. For example, both Alibaba and Tencent have established

⁵³ <https://finance.sina.com.cn/chanjing/gsnews/2021-07-07/doc-ikqcfnc5518951.shtml>, accessed 1 September 2021.

⁵⁴ Zhang, A (2021). “Agility over Stability”.

⁵⁵ <https://www.zaobao.com.sg/realtime/china/story20210413-1139111>, accessed 11 October 2021.

⁵⁶ <http://it.people.com.cn/n1/2020/1124/c1009-31942977.html> and http://www.xinhuanet.com/enterprise/2020-02/19/c_1125596647.htm, all accessed 2 September 2021.

semiconductor businesses in recent years (“t-head” under Alibaba and Enflame Technology invested by Tencent).

- 6.7 However, as the chipmaker business is not a traditional core business of these platforms, whether these long-term projects will be successful or not is highly uncertain.