

2014

BioTechnology

An Indian Journal

FULL PAPER

BTAIJ, 10(7), 2014 [1874-1880]

The internet enterprise innovation and antitrust control policies - get 360's complaints in tencent's abuse of domination in market position as an example

Jiang YanboLaw school in Jiangxi university of finance and economics, Nanchang, Jiangxi,
330013, (CHINA)

E-mail : jczjp@163.com

ABSTRACT

Innovation is the vitality for enterprises, especially for the Internet companies. In March 2013, the "Tencent" ruling from the high court in Guangdong province got Tencent's Market behavior for investigation. namely whether the "alternative" constitutes exclusive transaction and sell behavior have the anticompetitive effect, or have a competition to promote reasonable analysis of effect and efficiency to enhance effect. The conclusion on the basis of this unavoidably be questioned because of the lack of scientific nature. To determine whether a Internet enterprise's behavior constitutes an abuse of dominant market position, and whether we need to take responsibility of anti-monopoly law, the first thing you need to understand is whether the Internet business model is generally used to enterprise technology innovation, market competition and efficiency. Second, Tencent don't have the obligation to competition law on product line, so the "alternative" behavior without criticism. Although the antitrust issues of Internet industry will meet the new situation, but not enough to overturn all the logic to antitrust regulation. Have the exclusive controlling to the Internet enterprise behavior, we have to stick to the principle of prudent regulation.

KEYWORDS

The internet; Tencent's case; Business model; Leverage; Exclusive deal.



INTRODUCTION

The case of “360’s Complaints in Tencent’s Abuse of Domination in Market Position” (Hereinafter referred to as "Tencent Case") is famous as a third lawsuit in “3Q war”, was first antitrust case in the field of media as the Internet. In March 2013, Guangdong higher people's court rejected the plaintiff's claim by the plaintiff 360 evidence is insufficient to prove the defendant in the relevant product market with a monopoly. From the point of the verdict, the industry is generally said can accept this. But from the point of opinion, the court’s definition of the abuse of dominant market position behavior in the relevant market(mainly whether the "alternative" constitutes exclusive transaction and sell behavior), there is different views in the industry. To this end, this paper will on the basis of combing the main business model of Internet enterprises, get Tencent’s exclusive trading behavior cognizance as an example, make a panoramic interpretation of the trading behavior of the Internet enterprises, and have a further analysis to the choice of control measures in dynamic competitive business environment.

BUSINESS MODEL AND TECHNOLOGY INNOVATION OF INTERNET ENTERPRISES

To judge whether the behavior of the Tencent company constitute the behavior of the abuse of dominant market position, and whether to need to take responsibility of anti-monopoly law, the first thing we need to understand the industry environment and the business model that the Internet companies are generally used.

Porter's five forces model and product differentiation strategy

To help enterprises to understand the competitive environment and competitive strength, and ultimately take the right competitive strategy to cope with competition, economists and strategists created many effective models. Among them, Porter's Five Forces Model was proposed by Michael Porter, it was by praise and widely used. According to Porter's Five Forces Model, the decision of the state of competition within an industry are five basic competitive forces (competitive force) (see Figure 1). Namely, the supplier's bargaining power, buyers bargaining ability, potential competitors to enter the ability, ability to substitute for replacement, the competitive power of industry competitors. In the struggle with the five competitive forces, there are three basic competitive strategy of enterprise: total cost leadership strategy, differentiation strategy and goal gather strategy.

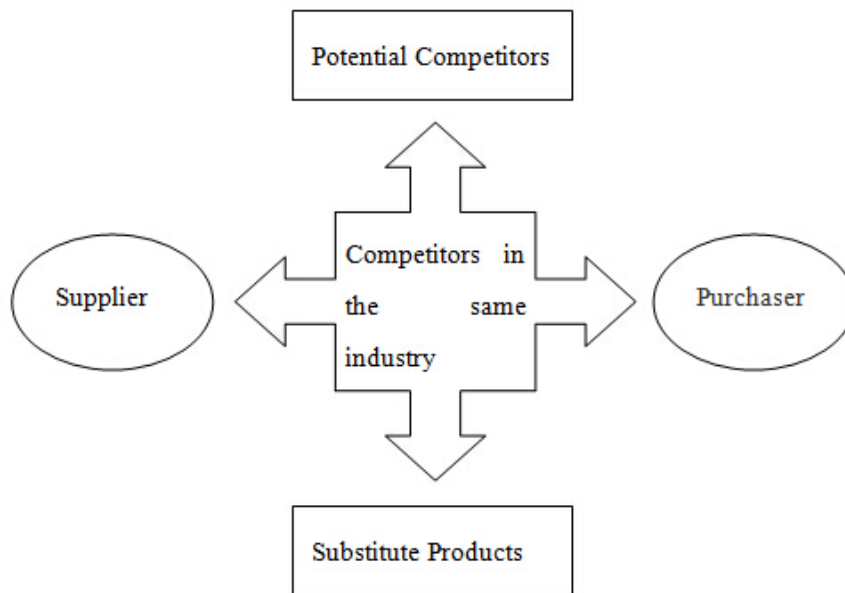


Figure 1 : Porter's Five Forces Model

How to understand the enterprise competition behavior of the Internet industry, Porter (2002) said, "an industry internal competition is intense, this is not a coincidence, also cannot be blamed on 'bad luck'. On the contrary, the internal industry competition is rooted in its basic economic structure, and far beyond the scope of the behavior of current competitors"^[1]."

At the beginning of the development of the Internet enterprises, they generally adopt the differentiation strategy. The so-called differentiation strategy, means to make the enterprise products, services, corporate image with rivals such as a significant difference between the competitors, to gain a competitive advantage and strategy. This strategy focuses on the creation of the unique products and services by the industry and customers. The implementation of differentiation strategy to help the enterprises to build their own core competitiveness, has won the customer loyalty. Due to customer loyalty, customer's sensitivity to the price dropped, enterprise won the supernormal profits, which was not only eliminate the supplier's bargaining power and the bargaining power of the buyer, and when the superior enterprises face the substitute threat, its position also is more advantageous than other rivals, superior enterprises deal with the five competitive defensive thus established.

Internet enterprise's technology innovation

In the Internet industry that upgrading rapidly, product life cycles are getting shorter. If the company can pre-emptive, first in the market place, no matter how high is the price of this kind of practice, the company will be profitable. To take advantage in the market for Internet companies, there are two paths: (1) The disruptive technology revolution, the new technology will change everything. This strategy is the opportunity cost of research and development costs are high, the implementation of product differentiation at the expense of the cost of enterprise status. (2) Concentric diversification. That is, companies take full advantage of oneself in the advantage of the technology and platforms, with a main product as the center of the circle, actively explore nearby market, to constantly enrich and improve the enterprise's product range. Most of the Internet companies choose this business model. For example, Tencent users use "one-stop online life service" as the strategic target, and centered on instant messenger QQ developed Chinese leading network platform such as Tencent, Tencent games, QQ space, Tencent weibo, search, clap, Choi Tenpay to satisfy the Internet user communication, information, entertainment and e-commerce, etc. Product diversification can let companies have a larger operation basis, may also have greater room for development, and also protect against future economic downturn. Although product diversification may not often be able to bring enormous technological progress, but it's not hinder its brings the innovation for the enterprise. Practice has proved that the technology content is very low or even zero technology of social innovation, not only more opportunities, and greater benefit^[2].

It is worth mentioning that the Internet under the enterprises to carry out the strategy of product differentiation of concentric diversification business model has a natural advantage. The reason is that the Internet industry has obvious network effect, namely the value of a product to the user will increase with the use of other users. In industry with network effects "first - mover advantage" and "winner - take - all" is the important characteristic of the Internet market competition. So for Internet companies, with the help of a "brand extension strategy" (by using the same brand name to name different categories of products, improving the brand loyalty of the users) and the strategy of "lock" (when faced with high switching costs or switching costs more than the price difference between the two products, rational consumers won't easily to lower prices of products), the implementation of the can more easily to satisfy diversified customers' needs, and complete the promotion of new products.

WHETHER THE TENCENT EXCLUSIVE TRADING BEHAVIOR CONSTITUTES ABUSE ON THE ANTI-MONOPOLY LAW

After the higher people's court of Guangdong province investigated the case involved in relevant market definition and Tencent to decided whether to have dominant market position in the relevant market, it points out: "the defendant forcing users a choice, to give the user the option on the surface, but

if the defendant is a operators have a dominant market status, the user is likely to be given up to 360 for QQ. The purpose of the defendant to take 'a choice' not to refuse to deal with users, and is to force a user only to trade with and not deal with 360. The behavior of the defendant is still essentially belongs to limit trading behavior." So in the court's opinion, "alternative" behavior of which is prohibited by "anti-monopoly law" article 17 limit trading behavior, the court to Tencent's "choose" have no legal responsibility because "due to the plaintiff for the related products to the case definition of error, the evidence is insufficient to prove the defendant has a monopoly position in the relevant product market".

The anti-monopoly law of the "alternative one from two" behavior

Tencent's "alternative" behavior is essentially "products are not compatible" problems, and to determine whether the product is not compatible with violated the competition legal obligation, the first thing to determine whether Tencent products compatible has the obligation. In general, implement access and connectivity in the Internet industry is the basic requirement of services they offer, it is also an important path to achieve competition. Access and connectivity is beneficial to consumer welfare improvement, but also to promote the market competition. In the European Union Microsoft complaint case, the commission believes that the interface information is a necessary equipment (essential facility), Microsoft refused to supply block is a kind of monopoly and market behavior. This kind of behavior not only damages the software innovation and damaged the market competition of the market, but also harm the interests of consumers. So, the commission ordered Microsoft to compulsory licensing of relief measures, requirements of Microsoft's release of full and accurate code within 120 days, to ensure that the operating system Interoperability (Interoperability), and a competitor's software can be compatible with Windows operating system. At the same time, in view of these products compatible with Microsoft company code has also been the protection of intellectual property rights, the European commission that Microsoft in the information they provide this code shall have the right to charge a reasonable licensing fees.

To control the Microsoft operating system, due to its domination of the relationship between application software interface, communication is the key of land. If the one not in Microsoft's interests of market entry, it was kicked out of the market may be trouble at any time or even the start can not through the door and its treatment. Also is application software, there is no compatible by QQ, 360 software can quickly gain ground, become outstanding security software. Not 360 product of the necessary equipment, so QQ is not compatible on competition law obligation, should accord with the contract, Tencent may require consumers to either/or choice.

Tying behavior of antitrust law

The leverage of extending market power does not need - Microsoft case

The attention to Tencent exclusive trading behavior also from court ongoing of using Tencent QQ product integration, it may lead to the concerns of the adjacent market blockade. This fear is not unfounded. In the existence of anti-monopoly law about dealing with monopoly into the second market on is "Leverage" Theory (Leverage and found), Rubinfeld (1998) said, "Leverage" Theory is "enterprise with its power in a monopoly on the market for another market monopoly power"^[3]. In recent years, this theory is one of the most high-profile use Microsoft case. In 1998 by the U.S. justice department in conjunction with 20 states together against Microsoft monopoly case, the plaintiff leverage theory as the basis, accused of Microsoft "use the lever in the operating system market, obtain competitive advantage in the browser market, which will be most of the browser market share. " From Netscape to Microsoft. Washington, D.C., the court's judge (Thomas Penfield Jackson) said: " For 20 years, the academic circles have been critical of leverage theory, and many, including Washington, D.C., circuit court, the court of appeal to this theory have been skeptical ". Accordingly, Jackson rejected the claims. Based on the theory of the leverage, Microsoft's incentives from the operating system/browser combination squeeze all can get in the market monopoly profits, and Microsoft has been in the form of monopoly profit maximization to the prices of its operating system. Considering the consumers' willing to pay the entire

knot to sell products, even Microsoft monopoly in the whole of the browser market, the profit maximization is the combination of the price will not change. As a result, the Microsoft monopoly on the browser market cannot get extra monopoly profits^[4].

The possibility to succeed of the use of lever extension market forces

Based on the theory of "leverage", the use of its monopoly power in one market to another in the market for the arrangement of the monopoly power to a certain extent, reduced the rival product distribution channels, is the exclusive trading arrangement. On the one hand, enterprises to select the product the user is not easy to get (or sell), and tying together with the tying product for sale, the purpose is to make the competition products unable to access certain supply, sales or marketing channels, which may increase the cost of competitors, make them at a competitive disadvantage and exit the market^[5]; On the other hand, for the potential competitors, it will increasing capital requirements and risk, because they must also enter the two market pressure, thus and thus reduce to attend. Beside this, the monopolist can also enjoy accordingly promote collusion with competitors, profit increase barriers to entry, the use of information asymmetry and convenient implementation of predatory pricing. There are two forces in the use of the lever of welfare in general: one is revenue – maximizing; The second is monopoly – extending^[6]. The theory and practice in the early American antitrust law enforcement, the using of the lever extension market forces was understood as a market monopoly power transfer to a different market, so the enterprise has the monopoly of the two markets. Two monopoly will create more benefit than a monopoly, and the economic losses caused by more than when only a monopoly on the market. Based on the above reasons, before the 1980 s, with a lever principle of many behaviors are considered to violate the antitrust laws, some American court, on the basis of theory of leverage user condemned^[7].

Prudential regulation: internet companies exclusive trading behavior control policy choice

Technical progress is closely connected with the Internet development and the information explosion. The emergence of the hardware, software, shareware, and so on and update time challenges the traditional legal protection and implementation of tools, for the dynamic changes of the industry, regulators, law enforcement agencies, lawyers, judges and legislators are always chasing, and are doomed to transcend^[8].

Exclusive trading behavior analysis of competition effect to the case processing

Exclusive trading refers to the trading arrangements of "the buyer agrees that the demand for one or several kinds of products, only from a certain seller buy"^[9]. Before the 1960s, the economics profession is generally believed that framed, exclusive fair market if the market is framed, then an exclusive deal substantially reduced competition, is a kind of means of unfair competition. At the same time, the anti-monopoly enforcement authority is often based on the theory of the simple spot market, roughly determine the exclusive contract between the producers and retailers are "illegal" itself^[10]. On exclusive deal for network behavior, Posner (2001) pointed out: "the new economy industry enterprises in order to achieve network effect, often with favorable conditions to attract users. In the process of its into the monopoly, not only consumer welfare increase, and the technological innovation speed is accelerated, the market competition. In the new economy, while in the innovation process might appear a series of maximize the profit of the temporary monopolies, but the resulting social benefits is far more than the short-term social costs resulting from monopoly pricing^[11]." In the 1980s, economists controversies surrounding exclusivity deal or a lot. The discussion and debate, prompting the antitrust authorities tend to rules of "debate" is used to assess the exclusive trading contracts, allowing producers to defend the exclusive contract, to prove that they improve the management efficiency, promote the competitive ability^[12]. Today, exclusive trade impact on the efficiency of the not yet completely unified opinions, but on the whole, the existing economic theory studies have made a consensus in the following three aspects: Firstly, the exclusive trading is a common enterprise strategic behavior, it is harmless to the competition, under the condition of many exclusive deals not only stifle competition, indeed promote

the competition, improve the social welfare^[13]. As a result, the exclusive trading contract strictly prohibit traditional antitrust policy is likely to be anti-competitive. Secondly, exclusive deals to produce prerequisite to limit the effects of competition is required strictly. Thirdly, exclusive deal either for efficiency reasons, and may be for strategic reasons.

In charge of antimonopoly law in the law enforcement level, the implementation of the institutions of power, must be carefully started the exclusive trading case of litigation. In the United States, due to this behavior is prohibited by article 2 of the Sherman act, so this kind of case is called relevant clauses 2 cases. Court should how to actively use 2 terms to limit the behavior of enterprises? The answer depends on the market characteristics. When market entry occurs very fast, market power can only be short-term, so there is no need to mention the second clause litigation^[14].

In the judicial level, how to face with a "dual personality" exclusive transaction behavior, how it can be hurt competition part of the difference from the part of enhancing efficiency, is an important and difficult problem. The application of the principle of reasonable, of course, is the best choice. In other words, for the exclusive trading behavior should be according to specific economic environment carried out in accordance with the principle of reasonable judgment, rather than simply ban and indulgence.

The special considerations in recognition of internet companies exclusive trading behavior

Admittedly, the Internet industry has many different characteristics, but we still have reason to believe that antitrust law has enough flexibility, in charge of the antitrust laws agencies also have enough wisdom to identify and respond to these characteristics of the new economy, while maintaining the market competition, make the implementation of the anti-monopoly law is helpful to consumers. Firstly, the "new economy" in itself is not enough to constitute a waiver of reason, for those who would change the principle of the anti-monopoly law enforcement in the new economic policy of promoting should be resolutely opposed.

Secondly, pay close attention to dynamic competition. In the Internet industry, the essential of the competition is dynamic. In the "creative destruction", a series of temporary monopoly make innovation to maximize profits, and bring about huge benefit to the society. But the innovation ability competition for shorter product life cycle and product differentiation degree is higher and higher, the change of market structure is becoming more and more quickly. George and David (2002) pointed out that the dynamic competition is high strength and high speed competition, each competitor is in constant set up their own competitive advantage and the weakening of a rival competitive advantage, speeding up the strategic interaction between the rivals^[15].

Thirdly, keep competition neutral stance. In the Internet industry, in the manufacturer has been formed and continuously strengthen the network effect of reduced market demand elasticity and increase the market barriers to entry; Software enterprises, on the other hand, factors such as low cost, high profits, and technological innovation and help to overcome market access and network effect. Subjective hope to achieve and maintain a monopoly behavior, therefore, its actual effect is also tend to be neutral, it is necessary to measure the effect of two aspects. It is an important form of competition to obtain the monopoly.

Fourthly, focus on the blockade effect. Exclusive deal its biggest harm, is that it exclude the possibility of competitors and even potential competitors enter the market, thus constitutes the blockade to the market. Therefore, in the processing of similar cases, the law enforcers must limit the market barriers to entry to the lowest possible level. And, you can follow the lead of the European Union and the United States introduced exclusive deal "presumption" or "safe haven" standard, in order to increase predictability of exclusive deals that.

CONCLUSION

Facing the Internet industry technology innovation changes with each passing day, one might ask, "innovation is to promote the competition or competition to stimulate innovation?" It is a variation of "chicken and egg" problem, no one can give definite answer. In the Internet industry, in some cases,

because of the characteristics of technology innovation especially prominent, offset the bottleneck monopoly or the effects of the Internet in these cases can come to the conclusion that there is no need for antitrust. However, this either-or situation is not the norm of Internet industry antitrust case. The use of Internet technology, the enterprise management mode of traditional industry a revolutionary change, new business models are growing^[16]. this is only the beginning of the new economy era. Who can exactly predict the future technology development and the trend of the market and the evolution of social trends. So prematurely to the problem of monopoly and anti-monopoly under a general conclusion is not wise, to grasp the general logic of antimonopoly law implementation, and pay attention to the study of new problems and new analysis method, is the final home to return to solve the problem of the new.

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