

Legal Regulation Research on Internet Platform Blocking Behavior

Jiale Wang

Anhui University of Finance and Economics, Bengbu, China

Abstract

With the rapid expansion of internet platforms in recent years and the escalating fierce competition among major players, the prevalence of mutual blocking behaviors between platforms has increased. Some super internet platforms' actions of blocking API interfaces and links of other platforms violate the core principle of "interconnectivity" on the internet. Such behavior damages market competition, impacts the user experience of a vast number of users, and raises concerns about monopolistic practices. However, traditional approaches to determining market dominance and related market elements have shown inadequacies. To address these issues, this paper proposes the introduction of the "essential facilities" and "gatekeeper" principles, combining specific case analyses of platform blocking behaviors. This approach aims to ensure that internet platforms adhere to fair competition principles, maintain market competition order, and safeguard user rights.

Keywords

Internet Platforms; Blocking Behavior; Gatekeeper Regime; Anti-monopoly Regulation; Legal Research.

1. Platform Blocking Behavior Overview

1.1. Entities Involved in Blocking Behavior

Platform blocking behavior mainly occurs between large internet companies. These companies possess significant resources and technical capabilities to support such blocking actions. On the other hand, the targets of blocking actions also need to have a certain level of strength to pose a significant threat to the blocking entities. The essence of blocking behavior lies in the operator's action of closing the connection channel between the platform and users, allowing only their own products to enter, thus preventing user loss due to the entry of competitors.

In the internet era, platforms not only connect different client points but also integrate various product combinations. Large internet companies, in order to expand their business domain and increase user reliance on the company, aggregate other types of sub-platforms around their core business platforms, creating a vast internet ecosystem. The vitality of this ecosystem depends on the flow of users from various businesses within the platform. Stable user flow sustains the ecosystem's prosperity. Therefore, different platforms adopt blocking behavior to prevent their users from diverting attention to competitors' platforms, safeguarding their position and interests. For the foundation of the internet ecosystem, blocking actions taken by core business platforms are considered the most effective strategy.

1.2. Characteristics of Blocking Behavior

The mutual blocking phenomenon between platforms is not uncommon in the development of China's internet industry. For instance, the dispute between 360 and QQ in late 2010 led to a "farce" of mutual blocking, causing significant inconvenience to users. With the improvement

of China's laws and the development of the internet economy, more severe blocking behavior has been appropriately resolved.

However, with the development of platform economy, a new type of blocking behavior emerged internet platforms blocking links to other platforms and not displaying their content within their own platforms. This paper focuses on exploring this form of blocking behavior, which can be characterized as follows: 1.The blocker is a large internet enterprise, usually having its internet ecosystem and occupying a certain position in the internet market; 2.The blocker and the blocked party generally have a hierarchical relationship in their main business, but many blockers also engage in businesses similar to those of the blocked party; 3.The blocked party needs to utilize the blocker's platform resources to conduct business more conveniently; 4.The normal operation of the blocked party's business is hindered due to the blocking action, which violates the principle of "interconnectivity" in the internet; 5.The blocking behavior causes inconvenience to users who use both platforms simultaneously; 6.The blocker takes an active position and decides the reasons, scope, and methods of blocking, making it difficult for the blocked party to seek effective private remedies.

These blocking behaviors have certain negative impacts on the internet ecosystem and user rights, necessitating further research and exploration of corresponding legal and regulatory measures to maintain a fair competitive environment in the internet market.

1.3. Reasons for Adopting Blocking Behavior

With the integration of various types of sub-platforms on comprehensive platforms, the relationship between major comprehensive platforms has shifted from mutual cooperation to a state of both cooperation and competition. In the internet era, platforms face a dilemma in handling external links.

On the one hand, platforms cannot ignore the fact that external content contains certain security risks, such as trojan programs, fraudulent links, and explicit videos. To protect user and platform security interests, platforms must exercise due diligence in limiting the spread of external content. On the other hand, external links often serve the purpose of redirecting users to other platforms' pages, which allows other enterprises to quickly promote their services by leveraging the traffic advantage of the platform. This is akin to providing free traffic for others. In the digital economy era, major internet enterprises have their own product ecosystems. When users flow into one product, they may also flow into other products within the ecosystem. This is unfavorable for any internet company. To consolidate their traffic advantage and prevent other enterprises from "freeloading," platforms adopt blocking measures, i.e., blocking links to other platforms and not displaying their content within their own platform. This ensures platform and user security and also safeguards their position and competitive advantage in the internet market.

Overall, platform blocking behavior is to some extent aimed at balancing security and competitive interests. However, such behavior needs to be carefully balanced within the framework of laws and regulations to maintain a fair competitive environment in the internet market and protect user rights.

1.4. Impact of Blocking Behavior

The fundamental function of the internet is point-to-point and end-to-end connection. "Interconnectivity" is the core concept of the internet industry, and platform blocking behavior contradicts this principle. From the perspective of freedom of contract, internet platforms have the right to restrict third-party actions in accordance with the rules to protect their resources, incentivize investment and innovation, and promote a healthy market development. However, under the rapid expansion of internet giants, the harmful effects of link blocking behavior have become evident. Due to technical factors, the internet market is akin to an undeveloped vein.

Early entrants face markets that are of superior quality, large in size, easy to exploit, and without competition, allowing them to rapidly accumulate users and market share. Following the principle of "first come, first served," early entrants can easily control the relevant market and obstruct competitors from entering. Under these circumstances, the cost of entry into the relevant market for latecomers becomes prohibitively high. If they encounter platform blocking behavior, it becomes challenging to promote their products, thereby further enhancing the monopolistic position of super platforms. Additionally, platform blocking behavior also harms consumer rights, diminishes consumer autonomy, and reduces user experience. Therefore, effective limitations on platform blocking behavior are required.

2. The Dilemma of Identifying Platform Blocking as Monopolistic Behavior

The Anti-Monopoly Law of China (AML) stipulates that monopolistic behaviors include monopolistic agreements and operator concentrations. Monopolistic agreements refer to agreements reached by two or more operators to exclude or restrict competition. Operator concentrations refer to operators gaining control over other operators through mergers, share acquisitions, and other means. These two types of behaviors do not fully correspond to platform blocking behavior. Therefore, from the perspective of the AML, the key analysis of platform blocking behavior is whether it constitutes an abuse of market dominance. In the "Douyin vs. Tencent" case, Douyin argued that Tencent's exclusion and restrictive behavior lacked a valid reason, abused its market dominance, and violated the AML. According to the "Interim Provisions on Prohibiting Abuse of Market Dominance," published by the State Administration for Market Regulation, abusive market dominance should simultaneously meet the following conditions: 1. Possessing market dominance; 2. Engaging in exclusionary or restrictive behaviors without valid reasons; 3. Generating negative impacts on market operations. This article will analyze the "Tencent blocking Douyin" case according to these criteria.

2.1. Difficulty in Defining Market Dominance

To judge whether Tencent constitutes a monopoly, the first step is to determine whether it possesses market dominance. According to Article 17 of the AML, to identify market dominance, relevant markets need to be defined first. However, traditional methods of defining relevant markets are no longer applicable to the characteristics of the internet industry. We can refer to the judgment made by the Supreme People's Court in the "360 vs. QQ," which defined the relevant market as the instant messaging market. In the "Tencent blocking Douyin" case, the relevant market for WeChat should also be the instant messaging market, while Douyin belongs to the short video market, and the two do not belong to the same market. This illustrates the complexity of business areas in the internet platform, where cross-platform network effects exist among platforms.

Cross-platform network effects refer to the effects of cooperation, complementarity, and enhancement between different platforms or sub-platforms within a platform. For example, in WeChat, the chat function is a basic sub-platform, while other functions such as payment, gaming, and short videos are value-added sub-platforms. They depend on and promote each other, forming a comprehensive platform. Externally, there are also cross-platform network effects between WeChat and other platforms like Douyin. These cross-platform network effects benefit all parties involved but also make it difficult to define relevant markets. The "Guidelines on Antitrust in the Field of Platform Economy," developed by the State Council's Anti-Monopoly Commission, mentioned in the definition of relevant markets that when there are cross-platform network effects, and the platform can impose sufficient competitive constraints on other platforms, the platform can be defined as the relevant product market as a whole. This means that merely having cross-platform network effects cannot be the sole criterion for

judgment. The platform's influence and the dependence between its sub-platforms must also be considered. For example, although external sub-platforms in WeChat, such as Didi and Meituan delivery, rely on the instant messaging function, their level of dependence is not high, and WeChat cannot sufficiently constrain them. In this case, WeChat as a whole cannot be defined as the relevant market.

In the relationship between WeChat and Douyin, Douyin, as a value-added sub-platform, needs to rely on WeChat as a portal for promotion. It can be considered that WeChat has cross-platform network effects. However, whether WeChat can be recognized as the relevant market as a whole still depends on the degree of Douyin's reliance on WeChat. In determining market dominance, it is also necessary to consider the dependence level of other operators, i.e., whether the platform can genuinely affect the normal operation of other operators. After WeChat blocked Douyin, Douyin users could not directly share video links on WeChat, but they could share through other means or communicate within Douyin. This shows that sharing links on WeChat is not "essential" to the process. Nowadays, most internet companies have their own independent platforms or alternative solutions, so the actual dependence level between platforms is much lower than the level required to reach market dominance.

2.2. Difficulty in Defining Exclusionary or Restrictive Effects

To judge whether platform blocking constitutes a monopoly, it is also necessary to examine whether the platform abuses its market dominance and unreasonably excludes or restricts market competition. Article 17 of the AML lists seven abusive behaviors of market dominance, one of which is "refusing transactions without a valid reason." The "Guidelines on Antitrust in the Field of Platform Economy" also considers setting unreasonable barriers in platform rules, algorithms, technologies, and traffic as a refusal to trade. Therefore, limiting users from sharing Douyin content on WeChat can be preliminarily identified as a refusal to trade behavior by Tencent, suggesting that Tencent may be suspected of abusing its market dominance. However, this can only indicate Tencent's potential abuse of market dominance, and it does not directly determine its legality. An analysis of the exclusionary or restrictive effects of the "blocking" behavior is still required.

As the markets involved in "blocking" behaviors vary, specific cases need to be analyzed individually. In the "Tencent blocking Douyin" case, although WeChat has numerous users and people cannot do without it in their daily lives, this does not necessarily mean that Douyin's usage and promotion rely entirely on WeChat. On the one hand, Douyin users can download videos and then upload them to WeChat, achieving the purpose of sharing. On the other hand, the purpose of a monopolist refusing to trade is to exclude or restrict competition and occupy downstream markets. However, in reality, after Tencent blocked Douyin, Douyin still maintained its advantage in the short video market, and Tencent's Weishi and Shi Pin Hao did not significantly impact Douyin, let alone replace it. Therefore, overall, Tencent's blocking of Douyin did not result in substantial exclusion or restriction of competition.

2.3. Difficulty in Defining Valid Reasons

Internet platforms cannot unconditionally open all external links; this is a necessary requirement for their normal operations and market competition. Platform refusals to trade are sometimes to protect platform security and user privacy, and sometimes to safeguard their own business interests and prevent competitors from occupying their resources. Blindly denying such refusal to trade behavior may affect platform operations and development, reduce their innovation and market development motivation, and ultimately harm consumer interests. However, platform blocking indeed restricts other platforms and brings inconvenience to users. Therefore, it is necessary to examine whether there are valid reasons and whether the behavior is necessary, and compare the positive effects of the behavior with the negative effects of restricting competition. Some argue that if the behavior does not have

the effect of excluding or restricting competition, it should not be considered an abuse of market dominance, and there must be sufficient reasonability in valid reasons, with comprehensive benefits outweighing competitive harm. The "Interim Provisions on Prohibiting Abuse of Market Dominance" lists factors to consider in judging "valid reasons," such as social public interests, future innovation, and consumer benefits. However, in practice, due to the various areas and scales of internet platforms, their blocking behaviors have varying impacts on public interests and consumer interests, making it difficult to make judgments in specific cases.

3. Regulatory Paths for Internet Platform Blocking Behavior

3.1. Introduction of the Essential Facilities Doctrine

The "Essential Facilities Doctrine" originated from the U.S. "Terminal Railroad" case, where multiple companies jointly monopolized the railroad crossing the Mississippi River, affecting the normal operation of trains along the line. The court ruled this behavior as monopolistic. The "Essential Facilities Doctrine" requires that in the same market or upstream and downstream markets, if a core enterprise controls facilities necessary for other enterprises' production and operations, it should allow other enterprises to use those facilities under appropriate conditions. Analyzing the elements of determining essential facilities in Article 14 of China's "Anti-Monopoly Guidelines," it can be seen that the essential facilities principle mainly examines the platform's irreplaceability in the corresponding market. However, in the era of highly developed internet technology, it is challenging for a single platform to truly become irreplaceable.

As mentioned earlier, whether it is blocking Douyin or Taobao, WeChat is not indispensable for platforms like Douyin and Taobao, and there are many alternative solutions available. Therefore, it is difficult to establish that WeChat has market dominance. Traditional essential facilities theory argues that the essential facilities principle should be applied with caution as it may hinder market investment and innovation. However, laws need to adapt to the current social development, and the conditions for applying the essential facilities principle need to be continuously adjusted with the development of internet technology. Currently, the digital economy is thriving, and emerging technologies and concepts such as "blockchain" and "metaverse" are rising rapidly. Major internet platforms are becoming increasingly integrated into our daily lives and are becoming an obvious trend towards becoming "essential facilities." If we continue to adopt a tolerant and cautious regulatory attitude, allowing some monopolistic behaviors of internet platforms to go unchecked, it will eventually cause significant harm to consumers and disrupt the order of the internet market. At this juncture, although irreplaceability is still a necessary condition for constituting essential facilities, very few super platforms meet this requirement. Therefore, it may be worth considering lowering the threshold for the use of essential facilities and taking "significant impact on competition" and "consumer welfare" as factors to determine essential facilities. The requirement for "significant impact on competition" no longer necessitates that the platform is irreplaceable. As long as the platform's behavior significantly affects the competition between upstream and downstream platforms, it can be considered as an essential facility. Introducing "consumer welfare" as a judgment criterion can effectively protect the rights and interests of the general public while improving the application effectiveness of the essential facilities principle in judicial practice.

3.2. Introduction of the Gatekeeper Principle

The EU's "Digital Markets Act" aims to regulate large internet companies and ensure the orderly development of the internet market. It defines internet companies that meet the following conditions as "gatekeepers": 1. Engaging in internet core businesses directly related to users' daily use; 2. Having sufficient strength and influence to influence the order of the internet

market; 3. Controlling the ports connecting other platforms and users; 4. Expecting their strength and influence to continue to grow in the future.

These "gatekeeper" platforms control the lifeline of the internet, the flow of entry. Their immense market power determines whether users can access information from other platforms. Therefore, this legislation requires "gatekeeper" companies to provide users with channels to access information and services from other platforms without setting any technical barriers. The "gatekeeper" principle is similar to the "essential facilities" principle but makes it easier to judge the platform's irreplaceability. Furthermore, the "essential facilities" may exist between the same market or upstream and downstream markets, requiring the definition of relevant markets and other premises when applied. In comparison, the "gatekeeper" principle directly stipulates the types of platform companies to which the principle applies, making it more suitable for the current situation of internet platform blocking. For example, in a series of blocking cases involving WeChat, WeChat, as China's most popular chat app, holds a dominant position in the instant messaging sector. Apart from chat functions, it also integrates payment, mini-programs, and Moments, among others, which connect other platforms and users. Especially during the pandemic, WeChat has provided essential functions such as health codes and travel codes and has become an indispensable tool for Chinese people, assuming significant social responsibilities. Furthermore, WeChat's strength and market influence are expected to steadily rise in the future. According to the "gatekeeper" principle, in a series of blocking cases, WeChat can be regarded as a "gatekeeper" and should fulfill its duty of interconnection by opening up its platform.

3.3. Improvement of the Credit Value System in the E-commerce Industry

Firstly, scientific entry standards should be established, and e-commerce companies should be actively encouraged to join the association. The alliance is not only a collection of platform merchants but also an entity that can exert influence and create a favorable market environment. Therefore, before companies join the alliance, their credit levels should be assessed. For companies with malicious blocking behavior, they should be guided to correct their actions and be reassessed after improvement. Setting the entry threshold for e-commerce platforms can effectively convey the value signal of interconnection and orderly competition, making it an important step in reshaping the competitive environment in the e-commerce industry.

Secondly, the educational function of the e-commerce industry should be utilized. Blocking behavior is the unrestrained pursuit of interests, so it is essential to help companies establish a correct view of righteousness and interests, fundamentally reducing malicious competitive behavior. Through regular organization of learning activities, promoting fair competition, and developing inclusive operating concepts, the quality of operators can be improved, prompting e-commerce entities to consciously abandon all kinds of unreasonable blocking methods and purifying the e-commerce platform trading environment in practical actions.

Finally, the industry association's code of conduct should be improved. To restrict unreasonable blocking behavior, it is necessary to raise industry self-discipline awareness and improve the norms and execution of the industry association's code of conduct. To address the monopoly of cross-border flow of blocked data and its control over user data, corresponding regulatory clauses should be continuously improved, promoting the standardization of competitive behavior and the transparency of data and algorithm application methods on e-commerce platforms, effectively regulating their operations while safeguarding the interests of e-commerce platforms.

4. Conclusion

With the adjustment of the "WeChat External Link Content Management Specification," WeChat has gradually relaxed the blocking of external links, greatly improving the convenience for users and marking an important step for China's internet platform anti-monopoly efforts. However, China's internet platform anti-monopoly work still has a long way to go. Although this article proposes using the "essential facilities" or "gatekeeper" principles to determine platform responsibilities and advocates for internet platforms to maintain greater tolerance towards external links from competitors, it does not mean that platforms cannot implement any blocking behavior. In practice, it is still necessary to comprehensively evaluate factors such as fairness, efficiency, network security, and the market environment.

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