

UNCTAD Intergovernmental Group of Experts on Competition Law and Policy

“Competition Law, Policy and Regulation in the Digital Age” Roundtable

Speech Material

(17:00-19:00, Beijing time, July 8, 2021)

Dear delegates:

It is a great pleasure to attend the “Competition Law, Policy and Regulation in the Digital Age” Roundtable. Inspired by the addresses delivered by the delegates of Nigeria and Brazil on anti-monopoly regulation in the digital economy, I’d like to briefly introduce the experience and practices of China on this regard.

China attaches great importance to anti-monopoly regulation in the digital economy, and recently the Chinese government has repeatedly called for strengthening antitrust efforts and emphasized promoting the development of a normative and healthy platform economy. At present, China is witnessing generally sound development of its digital economy, which has played a key role in ensuring smooth economic circulation, optimizing resources allocation, triggering innovation and serving the provision of public welfare assurances. However, the digital economy has also encountered prominent monopoly problems, such as forcing vendors to accept “exclusive dealing”, blocking competitors, conducting illegal M&As and pursuing M&As that focus on top enterprises, which harm fair competition in the market and consumers’ rights and interests, and prejudice innovation-driven development. The digital economy is not a place out of reach of anti-monopoly law, and the State Administration for Market Regulation of China (SAMR) continues to strengthen anti-monopoly legislation and enforcement, with significant regulatory results yielded.

First of all, China is improving fair competition rules in the digital economy. Currently, China is actively promoting the revision of the Anti-Monopoly Law, which focuses on three areas: first, “encouraging innovation”, “strengthening the position of competition policy as the foundation of regulation” and the “fair competition censorship” have been included in the Anti-Monopoly Law and special provisions on fair competition in the platform economy have been laid down. Second, prominent problems facing anti-monopoly enforcement have been settled by, for example, explicitly prohibiting relevant organizations from assisting the conclusion of monopoly agreements, adding the “Safe Harbor” clause, establishing a stop-the-clock system for concentration of undertakings censorship, and increasing the operability and predictability of the legal system. Third, the deterrence of the Anti-Monopoly Law has been enhanced by pooling law enforcement resources, guaranteeing unified anti-monopoly enforcement, stipulating the power of anti-monopoly enforcement agencies to investigate and handle the conduct of excluding and restricting competition by abusing administrative power and the obligation of the investigated to cooperate with the investigation, strengthening the legal liability of some monopoly acts and increasing penalties for refusal and obstruction of censorship and investigation. It should be noted that the draft amendment contains provisions on anti-monopoly regulation in the platform economy, which clarify the

principles and ideas of regulation and stipulate that platform operators shall not exclude or restrict competition by using data, technologies, algorithms, capital advantages or platform rules. In February 2021, the Anti-Monopoly Bureau of the State Council of China unveiled Anti-monopoly Guidelines on Platform Economy Sectors (the Guidelines), which, based on the Anti-Monopoly Law, stresses that monopoly acts in the platform economy should be governed by the Anti-Monopoly Law and relevant supporting legislation. The Guidelines, composed of six chapters, namely General Provisions, Monopoly Agreements, Abuse of Market Ascendancy, Concentration of Undertakings, Abuse of Administrative Power to Exclude and Restrict Competition, and Supplementary Provisions, and 24 articles, contains detailed rules on the application of the Anti-Monopoly Law to the platform economy, criteria for judging monopoly acts in the platform economy and special provisions on prominent problems reported by stakeholders, including “either-or” choice, “collusion through algorithm” and “various prices for same products based on different customers”. The development and implementation of the Guidelines provides science-based and targeted rules for strengthening anti-monopoly regulation in the platform economy, which can help anti-monopoly enforcement agencies unify enforcement standards and increase enforcement transparency, and allow market players such as platform operators and operators on these platforms to deepen their understanding of the Anti-Monopoly Law, thus effectively preventing and reducing legal risks and creating a market environment of fair competition.

Secondly, China has strengthened anti-monopoly enforcement in the digital economy. In April 2021, the SAMR imposed an administrative penalty on Alibaba Group for the conduct of implementing an “either-or” choice by abusing its dominant position in China’s online retail platform service market in accordance with the law. The investigation showed that Alibaba Group’s “either-or” choice constituted an abuse of market ascendancy as it excluded and restricted competition in the online retail platform service market in China, hindered the free flow of goods, services and resource factors, affected the innovative development of the platform economy and infringed on the legitimate rights and interests of vendors on the platform. The SAMR ordered the cessation of the illegal act and imposed a fine of RMB 18,228 million. Meanwhile, it issued an Administrative Instruction to Alibaba Group, requiring the latter to carry out comprehensive rectification, including strictly performing the responsibilities of a platform enterprise, strengthening internal control and compliance management, maintaining fair competition and protecting the lawful rights and interests of vendors and consumers on the platform, and to submit a self-inspection and compliance report to the SAMR for three consecutive years. This is the first monopoly case concerning online retail platform services in China and abroad, which serves as a deterrent and warning to others in the industry. In April 2021, the SAMR responded to “either-or” choice on takeaway platforms, which is of great public concern, by filing a case against Meituan for alleged monopoly conduct such as implementing an “either-or” choice, further demonstrating China’s determination to strictly regulate “either-or” choice on Internet platforms. Since 2020, the SAMR has imposed administrative penalties on 22 cases of illegal implementation of concentration of undertakings by platform enterprises, such as Alibaba’s investment in Yintai and the acquisition of New Classics Media by Tencent’s China Literature limited, released its penalty decisions to the public, and strictly censored major cases of concentration of undertakings committed by platform enterprises, for example, the Huya and

Douyu merger, in accordance with the law to prevent “M&As that focus on top enterprises”. By investigating and handling typical anti-monopoly cases in the platform economy, the SAMR has played a critical role in regulating the competition order in the platform economy.

Thirdly, China has stepped up its efforts to advocate competition in the digital economy.

In June 2020, the SAMR held a symposium on maintaining a good market order in the platform economy and promoting healthy development of the industry, where it organized 20 Internet platform enterprises to sign the Commitment to Maintaining a Good Market Order and Promoting the Healthy Development of the Industry, urging platform enterprises to maintain fair competition in the market. In April 2021, the SAMR, in partnership with the Office of the Central Cyberspace Affairs Commission and the State Taxation Administration, convened an administrative guidance meeting for platform enterprises, where it analyzed and pointed out a range of problems with platform enterprises, such as implementing an “exclusive dealing agreement”, and required platform enterprises concerned to conduct comprehensive self-inspection and complete rectification.

Next, the SAMR will continue to intensify anti-monopoly regulation in the digital economy by placing equal emphasis on regulating the digital economy according to law and supporting healthy development of the same, on regulation and law enforcement and institutional improvement, and on addressing “causes” and “effects”, so as to drive sound development of the platform economy. To be specific, **in the first place, the system of laws and rules will be improved.** The SAMR will actively advance the revision of the Anti-Monopoly Law to enhance anti-monopoly regulation in the platform economy, clarify principles of regulation and illegal acts, and increase the cost of violations. It will further the publicity and interpretation of the Anti-Monopoly Guidelines on Platform Economy to provide compliance guidance for enterprises. In addition, it will actively cooperate with regulators in the industry to improve relevant regulatory rules such as the Digital Security Law and the Personal Information Protection Law. **Second, anti-monopoly enforcement will be reinforced.** The SAMR will investigate and deal with monopoly agreements, abuse of market ascendancy and other monopoly acts in accordance with the law, strictly censor concentration of undertakings, and further investigate failures to notify concentration of undertakings according to law. Meanwhile, it will actively advocate competition, and urge enterprises engaged in the digital economy to operate in accordance with relevant laws and regulations through publicity and administrative guidance measures. **Third, international exchanges and cooperation on regulation of the digital economy will be enhanced.** Anti-monopoly in the digital platform economy is a brand new area that is being studied and explored by all countries around the world. We have noted that some jurisdictions are studying and developing relevant laws. For example, the EU is working on the Digital Markets Act, while the U.S. House of Representatives Judiciary Committee has brought forward six legislative proposals on digital platform economy. We have recognized that different countries and regions have common ground in the development of the digital economy, but vary from each other in terms of development stage, market structure and competition model. China hopes to strengthen exchanges and cooperation with different countries and regions, learn from each other’s useful experience in anti-monopoly regulation legislation and enforcement, and foster a sound business environment for the healthy development of the digital economy.

Thank you!

[\(P.S. You would be promptly informed if there is any amendment.\)](#)