Article

CHI. & WTO REV. 2016:2; 223-256
http://dx.doi.org/10.14330/cwr.2016.2.2.03
pISSN 2383-8221 • eISSN 2384-4388

CWR
China and WTO Review

Enforcing Chinese Antimonopoly Law in the Internet Industry: An Analysis with Special References to Baidu.com*

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Monopolistic mechanisms can be detected in China in many respects through Chinese internet monopolists would outperform their peers in the US or the EU by. The Chinese government endeavors to keep its Internet industry globally competitive and thus authorities involved in antitrust activities tend to tolerate the oligopolistic structure of the market. This is evidenced most obviously in the repression of competitors in certain fields, e.g., 'Baidu,' the 'Chinese Google,' in the field of IT-services – leading to a stricter regime of monopoly control in terms of substantial law. However, in the course of enforcement, various legal and practical challenges impede the efficiency of these measures. This paper analyses existing competition law enforcement and proposes effective application of antitrust law for its enforcement in the Internet industry under present Chinese law.

Keywords: Chinese Antimonopoly Law, Internet Industry, Enforcement, Search Engine, JEL Codes: K21; K42; L41; O3

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* This paper is the outcome of the scholarship project funded by Max-Planck Institute of Innovation and Competition in Munich, Germany. The authors would like to thank Professor Dr. Josef Drexl, Dr Peter Picht, and Dr. Gintare Surblyte. Views and errors, if any, are solely the authors' responsibility.

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I. Introduction

As of June 2014, there were 632 million Internet users in China. It means that the number of users has doubled in less than five years (Figure 1). In the forthcoming decade, China is anticipated to be the fastest growing market for IT-based services in the world, providing opportunities for profit to any company that gains a dominant position. According to the 34th CNNIC Survey of China Internet Development, there were 507 million users of web search engines in June 2014.[1] Further, the Chinese Internet service market is essentially different from other ones which constitutes a separate geographic features unique to Chinese language and culture.

Taking account of these facts the Chinese government listed the Internet industry among the seven "emerging industries of strategic importance" in 2010. These are entitled to special attention and support from central and local governments in China.[2] The Internet industry was listed in both the "Decision of the State Council on Speeding up the Cultivation and Development of Emerging Industries of Strategic Importance"[3] and "The Twelfth Five-year Plan for National Economic and Social Development of the People's Republic of China."[4]

Unlike the traditional manufacturing industry, the Internet industry is characterized by the network effect, "lock-in" and the "winner-takes-it-all" principle. Thus, monopoly is an object of controversy and ongoing debates across the world.[5] Monopolistic structures in the Internet industry have developed rapidly since 2010 by the three largest dominant companies - Baidu, Alibaba, and Tencent ("BAT"). They have yet to be seriously threatened or challenged.

Although public enforcement officials have maintained silence and tolerance towards the oligopolistic structure of this market (including industry strategy considerations), private enforcement of Antimonopoly Law in this field has become increasingly active, pacing itself with the rest of the world. Till date, however, there has been highly inefficient application and enforcement of these laws by Chinese authorities who are often not proficient with the specific features of this new industry. There are wide-spread practices of unlawful preferential treatment for local internet enterprises. Also, the rules of competition law have always been a highly contested issue in the field of internet services in China.