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On the Macro Positioning Regarding Anti-Monopoly Considerations Relating to Internet Platform—An Analysis Based on Politics, Policies and Laws

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Abstract The positioning of anti-monopoly law depends on its unique value, goal and function. From the beginning, anti-monopoly law has had a great political and economic mission, and can become a "super law" with a grand value goal and a powerful function in economic adjustment. The uniqueness of the Internet, in capital, technology and business models, easily allows Internet platforms to grow anarchically, and to have a high correlation with anti-monopoly concerns. Internet anti-monopoly policy should first expand its thinking and elevate its stance in macro value, and seek appropriate legal and economic technical paths. China's Internet platform anti-monopoly policy cannot simply follow today's international and superficial trend, which does not contribute to positive experience and may conceal various interests. Instead, China's Internet platform anti-monopoly policy should actively follow, respect and serve the substantial development interests of China's digital economy, operating in a timely fashion and at the right location, in ways that are opportune, moderate and modest. It should always be committed to the innovation and development of China's Internet industry and to international competitiveness. Internet anti-monopoly policy should adhere to the rule of law, build a corresponding rule system, ensure objectivity, neutrality and rationality, and prevent irrationality and over-excitement.

Keywords anti-monopoly law, Internet platform, political orientation, policy analysis, the rule of law approach

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I. Introduction

The digital economy is in full swing, which presents anti-monopoly law with new challenges and problems. Many economies, such as those of the US and Europe, are working to address these. The Internet platform has presented an international frontier of anti-monopoly law. In December 2020, the Chinese government launched a decree for "strengthening anti-monopoly law and preventing anarchic expansion of capital." [1] The Anti-Monopoly Committee of the State Council issued the Anti-Monopoly Guidelines on Platform Economy (February 7, 2021), and the Alibaba Group was filed for investigation (February 2, 2020). In addition, Beijing Intellectual Property Court tried the case of Byte Dance Company suing the Tencent Company for abusing its dominant market

[1] On December 11, 2020, the meeting of the Communist Party of China (CPC) Political Bureau put forward "strengthening anti-monopoly and preventing the disorderly expansion of capital." The CPC Central Economic Work Conference held at the end of December 2020 listed "strengthening anti-monopoly and preventing disorderly expansion of capital" as the key task to be done well in 2021. The anti-monopoly problem has aroused widespread concern and heated discussion in the whole of China, and the anti-monopoly problem of Internet platforms has become the spotlight. After the central government put forward the task of "strengthening anti-monopoly," all relevant departments responded positively and made arrangements. At the beginning of 2021, the State Administration of Market Supervision issued the No.1 penalty decision, and Simcere Group Co., Ltd. was fined 100.7 million yuan for abusing its dominant market position. See the Decision of Administrative Punishment No.1 (2021) of the State Administration of Market Supervision and Administration.

position; this is recognized as the 1st anti-monopoly legal case in China.[2] These events are symbolic, indicating that the anti-monopoly law governing China's Internet platforms has made a significant beginning. Naturally, there are negative voices on issues of anti-monopoly.[3]

Whether it is a traditional or frontier field, anti-monopoly law always has two approaches, namely macro and micro. The macro approach reflects the analysis and judgment of politics and policies, while the micro approach focuses on the application of economic and legal technical methods. Anti-monopoly law naturally has macro value, which is dominated by politics and policies.[4] The macro-approach usually considers the multi-value goal of anti-monopoly law, pays attention to the general direction and trend, and decides the specific implementation path on this basis. For example, Joseph Eugene Stiglitz, from the United States, winner of the Nobel Prize in Economics, said when evaluating the process of American anti-monopoly law in the "classical period," [5] anti-monopoly law did play a role in the United States. Large-scale enterprises have been hit, and mergers aimed at monopolizing the market have been restricted. But in the following decades, the cause of law was handed over to a group of lawyers and conservative economists, who narrowed the scope of anti-monopoly power. These people do not care about the serious negative impact of market forces on the American economy and democratic society. They just want to let enterprises and commercial interests develop anarchically." [6] American anti-monopoly in the "classical period" paid more attention to

[2] See 北京知识产权法院民事案件受理通知书 (Notice of Acceptance of Civil Cases by Beijing Intellectual Property Court) (2021) No. 189, No. 73, Minchu, Feb. 7, 2021.

[3] Some scholars noted that "because monopoly in traditional economics is wrongly defined, anti-monopoly law targets many genuine most competitive behaviors." "The concept of 'monopoly' in the anti-monopoly law causes various confuses. For example, the monopoly position that is strongly protected and the dominant position formed in competition are all attributed to 'monopoly,' and the restriction on competition and competition are classified into the same category, which confuses competition and monopoly, leading to a wrong conclusion." ZHANG Weiying, 从 3Q 大战看反垄断法面临的难题 (Problems Faced by Anti-Monopoly Law from the 3Q War), WeChat official account 经济学原理 (*Principles of Economics*), Jan. 26, 2021.

[4] For example, "Throughout history, the concept of anti-trust has enjoyed broad political and public support, but the same consensus has never been reached on what specific policies should be." "At first, in this process, a formalistic interpretation of the law was born, ignoring the economics of companies and industries. Another force is the contradiction between the populism that produced the antitrust law and the strong belief that private enterprises should not be interfered. This contradiction runs through the whole history of anti-trust, which indirectly leads to the policy shifting with the current trend or the change of views on certain business practices. "However, in the decades after the 1960s, antitrust was introduced into the economic revolution. "Industrial organization economics has played an important role in almost all stages of antitrust policy making." See J. E. Kwuka & L. H. White, 反托拉斯革命——经济学、竞争与政策 (*The Antitrust Revolution Economics, Competition and Policy*) (5th edition), translated by LIN Pingping, Economic Science Press (Beijing), at 1–2 (2014).

[5] America's anti-monopoly before the 1970s was called "the classical period," and the anti-monopoly after the 1970s was called "the period of law and economic reform."

[6] Joseph E. Stiglitz, 美国真相 (*People, Power, and Profits*), translated by LIU Bin, et al., China Machine Press (Beijing), at 9 (2020).

the "ambitious goal" of multi-values,[7] but in recent decades, an economic analysis reform led by efficiency orientation has taken place. Based on the single goal of consumer welfare, economics has become the core of anti-monopoly policy, which is even regarded as an extension of economics.[8] Anti-monopoly has a technical aspect that weakens the enforcement of anti-monopoly law in the digital economy.[9] Macro positioning plays a critical role in any major change in the law. It is necessary to make an overall judgment first, to set a macro tone, and then to carry out directional concrete implementation. Economic and legal technical analysis is used to assist in the realization of macro goals. This general methodology is applicable to the digital economy and anti-monopoly law relating to Internet platforms.

Positioning is a basic issue of anti-monopoly relating to Internet platforms, determining its basic trend, space and implementation path. Positioning depends first on the value, function and uniqueness of anti-monopoly law. Based on the history and reality of anti-monopoly law, this paper intends to discuss the macro-positioning of the current anti-monopoly of Internet platforms from three directions: politics, policy and the rule of law.

II. Political Orientation of Anti-Monopoly Law

A. Historical Reflection on Anti-Monopoly

Born in the late 19th century and experiencing tortuous development in the 20th century, modern anti-monopoly law has faced the magnificent information revolution and has entered the 21st century Internet era. As American anti-monopoly scholars have said, "Every period has raised questions about dominating enterprises, mergers and acquisitions, collusion, vertical integration, predatory pricing, binding effects and other issues. Every period has an anti-trust policy that reflects the objectives and understanding of that period to answer the anti-trust question." [10] The network technology industry has ushered in the biggest change for decades, and anti-monopoly regulation of network platforms has become a new focus. Internet platform economy continues the historical challenge of anti-monopoly law and brings new problems. However, we cannot ignore history, and we should often review history. Historical problems often become current problems. For example, the Investigation of Competition in the Digital Market issued by

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[7] Alice Jones, William E. Kovacic & ZHOU Lixia, 反托拉斯法的实施盲区：美国竞争政策重大扩张面临的挑战 (Blind Area of Anti-Trust Law Enforcement: Challenges Faced by the Great Expansion of American Competition Policy), 6 竞争政策研究 (*Competition Policy Research*), 10 (2020).

[8] Kewuka & White, fn. 4 at 1.

[9] On October 6, 2020, the Investigation of Competition in Digital Markets of the Judiciary Committee of the U.S. House of Representatives made legislative recommendations on strengthening the anti-monopoly law.

[10] Kwuka & White, fn. 4 at 1.

the Judiciary Committee of the US House of Representatives suggested that Congress should first consider reaffirming the original intention and multiple objectives of anti-monopoly law to resolve the problem that the current law has a single implementation goal and is too soft.[11]

Internet industry and platform enterprises have the advantages of economies of scale, economies of scope and network externalities,[12] and they have obtained a lot of information about market participants' transactions and settlements. Market entities coordinate and trade through a platform, which can maximize the network effect and achieve extremely high market efficiency. However, the Internet industry is also an industry with "high fixed cost and low marginal cost," which naturally leads to "a winner takes all." For example, there is already a huge gap between existing platform enterprises" and potential entrants in terms of market share, customers and data, and the existing companies continue to rely on these advantages to invest in new enterprises and incubate new models by setting up Corporation Venture Capital (CVC). This "winner-take-all" and investment M&A advantages can easily evolve into "winner-take-all" and maintain a monopoly. Just like infrastructures such as a railway network or power grid in the traditional economy, once an enterprise occupies a dominant position in the market, it can experience a long-term monopoly, which is difficult for other companies to copy or bypass at a lower cost.[13] Today, the Internet industry is leading the development of all walks of life, and Internet platforms are close to owning monopoly.[14] As a result, the Internet platform industry has become the hottest field of anti-monopoly law, which naturally has attracted worldwide attention.

There are new elements in technology and economic behavior, which promote new thinking on anti-monopoly law and even create new terms and standards such as bilateral and multilateral markets and algorithm collusion. However, from the

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[11] The US Congress proposal of strengthening the anti-monopoly law contained in the Investigation of Competition in Digital Markets (Oct. 6, 2020) of the Judiciary Committee of the U.S. House of Representatives.

[12] Network and platform "have economies of scale, characterized by network effect and winner-take-all market." See Eleanor M. Fox, 平台、力量与反垄断挑战：对缩小美国与欧洲分歧的审慎建议 (Platform, Power and Anti-monopoly Challenge: Prudent Suggestions for Narrowing the Differences Between the United States and Europe), translated by ZHOU Lixia, 5 竞争法研究 (*Competition Law Research*), 37 (2020).

[13] WU Jinglian, 平台经济与公共政策 (Platform Economy and Public Policy), WeChat official account 比较微信 (*Comparative*), Jan. 2, 2019.

[14] It is pointed out that "competition has almost disappeared from the Internet market" is the result of the interaction of the following reasons: the Internet market tends to rapidly concentrate on a few suppliers because of its structure; The five Chinese e-market companies have always been good at defeating competitors to reduce competition; American and European regulators have tried to coordinate, but they haven't found the right way to limit market power. "In the Internet age, monopoly is faster"; "The Internet has brought prosperity as well as destruction." See Achim Wambach & Hans Christian Mueller, 不安的变革：数字时代的市场竞争与大众福利 (*Uneasy Change: Market Competition and Public Welfare in the Digital Age*), translated by ZHONG Jiarui, Social Sciences Academic Press (Beijing), at 27–46 (2020).

perspective of the long history of anti-monopoly law, the anti-monopoly problems encountered by Internet platforms are nothing new. The basic anti-monopoly issues have historic continuity. For example, since the birth of the anti-monopoly law, there has been a debate on whether to protect competitors or consumer interests. Rockefeller Petroleum Trust, which provided an important reason for formulating anti-trust law in the United States, and was also the accusation target of this law, claimed that in the first 20 years of their company's business, Standard Oil actually reduced the kerosene price by cutting the production and sales costs. This drove out the smaller competitors that could be regarded as inefficient. Therefore, it is questioned whether the anti-monopoly law protects the interest of competitors or consumers when such conflicts of interest occur, and whether the anti-monopoly law can protect the competition process without protecting small competitors. At the beginning of the implementation of the American Anti-Trust Law, President Theodore Roosevelt clearly expressed his strong aversion to the monopolistic new industrial class, but he was a pragmatist rather than a radical. He believed that modern enterprises could improve productivity and social prosperity, and believed that industrial concentration could achieve economies of scale, thus he should tolerate trusts that could provide consumers with fair prices, and eliminate trusts that extort consumers in the market. "Roosevelt wanted to work with the business community rather than confront it, but those industrial capitalists should know who is the big boss. Big companies must obey the Federal government." [15] In fact, such considerations have accompanied the development of anti-monopoly law, but they are constantly changing and even today, regarding Internet platforms, we still have to answer basic questions. The specific objectives, values and standards of anti-monopoly law change with changes to political, economic and social conditions, but they keep their fundamental nature. Therefore, history is never far away, reviewing and reflecting on history can often provide useful enlightenment for resolving practical problems.

B. Political Mission of Anti-Monopoly Law

Anti-monopoly law and its litigation exist mainly for the implementation of public policies[16] and are tools for achieving economic ideals and political goals.[17]

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[15] Gary L. Reback, 美国的反省：如何从垄断中解放市场 (*Reflections on America: How to Free the Market from Monopoly*), translated by HE Hua, Oriental Publishing House (Beijing), at 8–9 (2011).

[16] David J. Gerber, 全球竞争：法律、市场和全球化 (*Global Competition: Law, Market and Globalization*), translated by CHEN Ruohong, China Legal Publishing House (Beijing), at 149 (2012).

[17] Some scholars said, "If some political values are abandoned in the interpretation of antitrust laws, it will be a bad history, a bad policy and a bad law." This sentence is aimed at some scholars trying to persuade the court to adopt exclusive economic methods. See Robert Pitofsky, *The Political Content of Antitrust*, 127 U. Pa. L. Rev. 1051 (1979).

The US is the birthplace of anti-monopoly.[18] The history of American capitalism is somewhat a history of a game between monopoly and anti-monopoly. American anti-monopoly laws come with a political mission.[19] "Parliament enacted the Sherman Act because of the people's political pressure." [20] "For most of a century, American anti-monopoly laws were similar to market economic democracy." [21] In the late 19th century, the US faced increasing market power and economic inequality. In response, Congress enacted a series of anti-monopoly laws such as the Sherman Act to limit the expansion of market power and to crack down on the abuse of market power by enterprises and institutions. These laws are based on the belief that "the concentration of economic power will inevitably lead to the concentration of political power. "Anti-monopoly policy is not based on fine economic analysis; it is actually a response to social and democratic requirements." [22] Moreover, "the United States has widely and highly recognized the basic value of competition. Because of this foundation of social and political values, they have always supported the concept of Competition Law and have made anti-trust practice enjoy a 'religious' status." [23] Evidently, the

[18] "American antitrust law has always been at the spotlight of competition law. It is often called the 'father' of anti-trust law, and is regarded by other countries as a model for imitation or at least research." "American anti-trust law is also the core of the evolution of transnational competition legal system. Under the unilateral jurisdiction system, it provides basic rules for global market competition." "It is the first law in the world that has played a prominent role in national laws and economic development. Compared with the competition laws in other parts of the world, the experience of American antitrust law is much richer." "The precedents of American antitrust law and the literature of American law and economics provide very valuable information, foresight and theory for competition law, which makes foreign scholars, officials and lawyers willing to learn from it." "American antitrust laws are often associated with the success of the American economy, which clearly increases its appeal for those countries that are trying to achieve the same success." David J. Gerber, 全球竞争：法律、市场和全球化 (*Global Competition: Law, Market and Globalization*), translated by CHEN Ruohong, China Legal Publishing House (Beijing), at 128–129 (2012).

[19] Jonathan B. Baker, *The Antitrust Paradigm: Restoring a Competitive Economy*, Harvard University Press (Cambridge, MA), at 35–42 (2019).

[20] William Letwin, *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act*, University of Chicago Press (Chicago), at 53–95 (1981). David J. Gobol, 全球竞争：法律、市场和全球化 (*Global Competition: Law, Market and Globalization*), translated by CHEN Ruohong, China Legal Publishing House (Beijing), at 131 (2012). As Senator Sherman said, "If we can't stand a king and become a political force, we shouldn't stand a king who rules the production, transportation and sale of any necessities of life. If we don't succumb to an emperor, we shouldn't succumb to a trade dictator who stops competition and set the price of any commodity." Quoted from LI Qing, ed., 中国反垄断十二年：回顾与展望 (*12 Years of Anti-Monopoly in China: Review and Prospect*), CITIC Press Group (Beijing), at 625–626 (2020).

[21] Quoted from Fox, fn. 12 at 35.

[22] Stiglitz, fn. 6 at 69. Sherman Act's "famous aim is to control the power of large trusts." The two major legislations in 1914 and 1950 "expanded the scope of the law to control the exclusive behavior that has become rampant, and to stop the rising tide of economic concentration that is considered to constitute democracy." See 95 Cong. Rec. 11486 (1949) (Statement of Rep. Emanuel Seiler on Article 7 of Clayton Act and Seiler-Kewell Amendment), quoted in Fox, fn. 12.

[23] Gerber, fn. 16 at 133. In fact, since the 1940s, the US Supreme Court has empowered the antitrust law with a clear position through a number of cases, and praised it as the steward of the most sacred American value. It is "the Magna Carta of free enterprise" and "the general charter of economic freedom aimed at maintaining the freedom of trade rules and unhindered competition."

overall goal of anti-monopoly law is clear and ambitious.

Anti-monopoly law was initially designed to resolve political and social problems. "Containing market forces is not only an economic issue, but also a series of other powerful forces involving in exploitation of consumers and workers." "Market forces can be transformed into political power. When a country's market power and wealth are highly concentrated, it is impossible for this country to achieve true democracy, which is the current situation in the United States." "When all this is reflected in the social reality, it presents another more well-known result: the opposite of power is the people's sense of powerlessness. Too many Americans are disappointed with their medical insurance companies, Internet providers, aviation companies, telecommunications companies and banking institutions. They are resentful but can do nothing about it. This negative influence pervades their personal lives and all aspects of American politics and society. People always feel that they have no choice." [24] Monopoly originates from market forces and produces many super-economic political and social problems, which have the potential to destroy the multiple goals and values of anti-monopoly law, including the protection of consumers, and the protection of producers, entrepreneurs, independent enterprises, open markets, a fair economy and democratic ideals.[25]

The Sherman Act originated from political needs. First of all, it needed to curb business giants politically. The US "has always had populist hostility towards big business." "Slogans such as 'industrial concentration' or 'big enterprises' have strong political power. These terms hardly provide any operatable rules, but they are reminiscent of something big, bad and strong, which the government should control." [26] Business magnates at that time were considered to have posed a threat to politics. ZHANG Weiying, an economics professor at Peking University, pointed out: "In the history of the United States, anti-monopoly law has been used to crack down on creative and successful companies, such as Standard Oil in 1911, Alcoa in 1945, IBM in the 1970s and Microsoft in the 1990s. These companies were all accused of monopolizing the market. In fact, from 1870 to 1897, Standard Oil reduced the kerosene price from 30 cents to 6 cents per liter. From 1880 to 1890, it reduced the petroleum price by 61%. It also developed more than 300 different by-products from petroleum. Alcoa reduced the price of aluminum ingots from $5 per pound in 1887 to 22 cents per pound in 1937. IBM and Microsoft were the most creative companies at that time and the main driving forces of the information

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[24] Stiglitz, fn. 6 at 79.

[25] On October 6, 2020, the U.S. House of Representatives Judiciary Committee made legislative recommendations on strengthening the anti-monopoly law in the Investigation of Competition in Digital Markets.

[26] Herbert Hovenkamp, "Whatever Did Happen to the Antitrust Movement?" 94 (2) *Notre Dame Law Review*, 2 (2018).

technology revolution." [27] Although the assertion that "Anti-monopoly law has been used to crack down on creative and successful companies" may not be fair, it may indicate that at least the anti-monopoly law at that time was not primarily based on economic efficiency, but on political considerations in curbing market forces.

The political mission of anti-monopoly law is realized through legal interpretation, and the interpretation of value goals is an important way to realize the political agenda of anti-monopoly law. The substantive law is shaped by value goals to a great extent. A key role of the US courts is to explain the value objectives of the anti-monopoly law and to explain it when making specific judgments. For more than a century, American Federal courts have responded to changing conditions and developed basic economic, social and political values. These goals are "aggregated in a broad and not so tightly structured mixture," including consumer price level, fairness (particularly for small businesses), fair opportunities for competitors and potential competitors, economic freedom, etc. Perhaps it is because of this mixture that "anti-trust law is usually very important in politics." In the classical period before the 1970s, "people usually used political rhetoric and emotional language to describe anti-trust law, which reflected the resonance between anti-trust law and politics." [28] Generally, although the anti-monopoly objectives in the classical period are a bit confusing in expression, they are remarkably diverse. The anti-trust economic revolution since the 1970s has brought new tools to the interpretation of anti-trust law, and these have been used to achieve value goals such as deregulation, economic freedom and efficiency. Their analysis method is more complicated and considers comprehensive effects, while their value goal has become clear.

American anti-monopoly laws have incorporated the political agenda, but the US is not the only country to have done so, particularly after World War II; American-style anti-monopoly laws have spread to Europe and Japan. For example, during the US occupation of Japan and Germany after World War II, anti-trust laws were implemented there. "People generally believe that cartels and high-level economic concentration had contributed to the rise of Japanese militarism and German fascism and militarism, and so competition has been hailed as a good way to get rid of these evil consequences. Therefore, in the period after the end of World War II, American officials demanded that competition laws be implemented in these two countries and that they must issue or maintain competition laws at the end of the occupation. The US also supported the nascent competition law

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[27] ZHANG Weiying, 从 3Q 大战看反垄断法面临的难题 (Problems Faced by Anti-Monopoly Law from the 3Q War), WeChat official account 经济学原理 (*Principles of Economics*), Jan. 26, 2021. Internet anti-monopoly policy has also questioned consumer welfare standards, that is, seemingly improving consumer welfare may not be the object of anti-monopoly. "Consumer interests include not only spending, but also product quality, variety and innovation." Lina Khan, "Amazon's Antitrust Paradox," 126 (3) *The Yale Law Journal*, 710–805 (2017).

[28] Gerber, fn. 16 at 132–134.

systems of these two countries by training officials and educators." [29] "In the early postwar period, the US put pressure on some European countries, particularly Britain, urging them to enact competition laws. American and some European officials believed that competition law acts as a tool to combat economic concentration and cartels, and it is these latter two things that contributed to the political and economic weakness of fascism in Germany, Italy and other regions." [30]

In the 1930s, a group of German lawyers and economists began to systematically explore the possibility of using law to protect the competition process, hoping that this could not only deal with the core weakness of the Weimar period (too little control over economic power), but also deal with the misfortune caused by Nazism (too much control over social and economic life by the government), thus forming what was later called "order liberalism" or the "Freiburg School." The Freiburg School sought to protect economic freedom and prevent competition from being harmed by state and private forces, and developed a more sophisticated concept of using law to achieve this goal, with competition law at its core. This was because such law provides the most direct means to protect the market process, thus re-constructing and orienting the developed centralized country. Its core principle is that the state should choose an economic order or system based on competition and economic freedom, and devote itself to protecting this economic order centered on competition. "This choice of the state can be regarded as the adoption of an 'economic constitution.' Just as the political constitution is protected by legal tools, the state should also use legal tools to protect this economic constitution. Competition law is regarded as the core tool to protect this economic constitution." [31] The German Anti-Restrictive Competition Law of 1957 resulted from promoting the ideas of the Freiburg School, and became the first "modern" competition law in Europe.[32] "The guiding goal of this law is to protect the competition process from being distorted by private economic forces. Its core idea is that the law should prevent the deviation from what the Freiburg School calls 'perfect competition' (such that no enterprise has enough power to manipulate prices or other competitive conditions)." [33] Certainly, in the 1960s, Germany faced severe international competition challenges. The original ideal

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[29] Id. at 61. After World War II, the US helped Japan to formulate anti-monopoly law, the goal of which was considered to be to weaken Japan's monopoly chaebol, promote economic democracy and curb Japan's economic foundation for waging war again. This idea is not a general legal goal, but a grand political goal.

[30] Id. at 186.

[31] After World War II, the Freiburg School returned to the spotlight of Germany. The American occupation authorities agreed with its ideas, and it had little to do with the Nazi Party. Therefore, many people of the Freiburg School were appointed to hold important positions in the German economic management system, and tried to develop a "new Germany" which was different from the pre-existing German political system. The key supporter of this School is Ludwig Erhard, who was the most influential figure in German economic policy-making for 20 years, until he became German Chancellor. Gobol, fn. 20 at 187–188.

[32] Gerber, fn. 16 at 198.

[33] Id. at 199.

model of pursuing "perfect competition" was hindered, and Germany was unable to create enterprises of sufficient scale to cope with international competition. It called for a new model to enhance the flexibility of competition law and reduce the concern for stability.[34] Therefore, the anti-monopoly law was inseparable from the macro political and economic goals. "The German competition law model has the deepest intellectual foundation and the strongest political support." Moreover, "it has been exerting a strong influence on the development of competition laws of EU and many European countries." [35]

After World War II, the issue of "economic fairness" was highly sensitive in Europe and became the core theme of European domestic politics. The call for domestic governments to crack down on attempts to maintain or aggravate unequal economic forces rose, and the concept of competition became more attractive. By promulgating the competition law, domestic politicians publicized their political ideas of reducing the exploitation of consumers and the damage to small businesses.[36] Later, the core European countries began to create the European Community, with the original intention of permanently avoiding war. The single market and free trade were selected as the path, but the leading enterprises of member countries, particularly state-owned enterprises, constituted market forces and market obstacles, and the competition clause of the European Community was given the function of preventing private forces and privileged enterprises from hindering the economic community plan. This was clearly a grand political mission.[37]

In short, politics is the concentrated embodiment of economy, and economy is the core content of politics, and both of them are external and internal. The anti-monopoly law is not a general departmental law, but first of all, it has a grand political mission and political goal, aiming at macro and basic adjustment of competition freedom, market structure and market operation, and even transmitting a more important political mission of leading to economic security and prosperity. This orientation of anti-monopoly law is not only its innate nature, duty and mission, but also holds expectations and potential. Even if anti-monopoly law does not play such a role realistically in a specific period, it is still a kind of "sleeping lion," and its natural potential is recognized. Once the conditions are met and the real needs are generated, this potential can be highly functional.

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[34] Id. at 195.

[35] Id. at 187.

[36] David J. Gobol, 二十世纪欧洲的法律与竞争 —— 捍卫普罗米修斯 (*Law and Competition in Europe in the 12th Century—Defending Prometheus*), translated by FENG Keli and WEI Zhimei, Social Sciences Academic Press (Beijing), at 211–213 (2004).

[37] Fox, fn. 12 at 35–36.

C. The "Super Law" Attribute of Anti-Monopoly Law

The anti-monopoly law is called the "economic constitution," which is a "super law" with great significance. For political or policy reasons, it can be idle, but once activated, it has huge power and can turn the tide. In the final analysis, this stems from its own political orientation.

For example, the US anti-monopoly law is considered similar to the Constitution, that is, "it has a similar extensive effect, has the same general development model, and involves unresolved basic issues," "extensive effect" means that anti-trust principles are applied to a wide range of economic activities, covering almost all kinds of transactions except special circumstances. "Like the Constitution, the anti-trust law strongly affects the daily affairs of citizens in this country." Anti-trust law is a federal law that contains extensive prohibitions and authorizations, like the Constitution. The Sherman Act was called the "Charter of economic freedom" by the Supreme Court of the United States, and it has been treated as a constitutional provision. The general goal of anti-trust law is to promote competition, but this is only a declaration of basic policy orientation, and it often fails to guide the specific application of legal provisions. The wording of anti-trust law is uncertain and constantly changing. Determining the meaning of "competition" requires answering those basic questions that have not been resolved, unless it is based on personal value.[38] "In the United States, the Sherman Act was interpreted by judges as an "economic constitution." Coupled with the American concept of the role of the Constitution, American judges have been trying to adapt their language to the changed social and economic conditions." "Federal court judges will be influenced in various ways when they create and elaborate substantive anti-trust laws. At least until recently, they thought that one of their functions was to represent the people's wishes, and tried to reflect their understanding of social values in anti-trust judgments." [39]

Anti-monopoly law affects the behavior of large enterprises. It involves grand narration, and can control the economic structure and market behavior. American anti-trust law has been developed by federal courts with economic, social and political value, which serves as the source of anti-trust judgment reasoning. "Throughout the classical period, people often used political rhetoric and emotional language to describe anti-trust law, and such grand statements reflected the resonance between anti-trust law

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[38] James R. McCall, *Sum & Substance of Antitrust*, 2nd edition, Josephson/Kluwer, at 3–4 (1984). "The law is so broad that it has no direct significance to the judgment. The language of the Sherman Act itself is just supportive." Gerber, fn. 16 at 135.

[39] Gobol, fn. 20 at 135. The wording of Sherman's antitrust law is too broad and vague to derive specific legislative intent from its book, but it leaves room for various interpretations of different people. Therefore, American courts and academic circles have various interpretations of its legislative purpose, which can serve various purposes. Herbert Hovenkamp, *Federal Antitrust Policy: The Law of Competition and Its Practice*, 5th edition, West Academic Publishing, at 72 (2016).

and politics." [40] For example, Justice Marshall wrote the following paragraph in 1972: "Generally, anti-trust law, particularly the Sherman Act, is the charter of free enterprise. For the protection of economic freedom and our free enterprise system, they are as important as the Bill of Rights which protects fundamental individual freedom." [41] "Decisions in the field of competition law often have far-reaching economic and even political consequences, often affecting the standards, conditions and modes of competition within a country, thus having a significant impact on many domestic enterprises and the overall economy." [42]

As the founding country of modern anti-monopoly laws, the US used the Sherman Act "to create something completely new." At that time, there were "no other templates or experiences for reference or comparison, and no academic articles to provide guidance or explain possible options and possible consequences." [43] The US was the first to define anti-monopoly law, and implanted its genes and framework of concepts and systems. After World War II, the US spread its anti-monopoly law concepts and system all over the world, through its extraterritorial jurisdiction based on its political and economic strength, academic exchanges and various international organizations and cooperation and not least be exerting post-war influence on Germany and Japan. Certainly, the American system has a unique national origin, and is impossible for other countries to completely copy its system and experience. However, as far as the basic orientation, basic structure and basic functions of the anti-monopoly law are concerned, there is a great degree of international commonality.

The "super-law" attribute of the anti-monopoly law enables it to have macro-control ability, becomes an important tool for the state and the government to control the economy, and influences the important trend of the national economy and people's livelihood.[44] The anti-monopoly law enforcement ability possessed by a government

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[40] Gobol, fn. 20 at 9.

[41] United States v. Topco Associates Inc, 405 U.S. 596, 610 (1972).

[42] "Competition law cases usually involve large and influential companies, and their interests are often linked with public interests and/or political interests. Therefore, competition law cases are different from contract law cases, which involve numerous public issues, including employment, health of various parts of the economy, prospects of political parties and ideology." Gobol, fn. 20 at 92. After the promulgation of the Sherman Act, people had doubts about whether it could curb the powerful market forces. In 1911, the Supreme Court of the United States split the then hated Standard Oil Company into 33 companies in the case of Standard Oil Co. v. United States (1911), which dispelled people's doubts about whether the Sherman Act could curb the spread of monopoly power of the most powerful enterprises. See Ernest Gellhorn et al., 反垄断法与经济学 (*Anti-Monopoly Law and Economics*), 5th edition, translated by REN Yong et al., Law Press (Beijing), at 26 (2009).

[43] Gobol, fn. 20 at 131.

[44] "Competition law has become a mainstay of regulation in the market economy." See Anu Bradford & Adam S. Chilton, "Competition Law around the World from 1889–2010: The Competition Law Index," 14 (3) *Journal of Competition Law & Economics*, 393, 432 (2018).

can make it have a clear goal and initiative, which can make the government even more powerful in regulating the economy and controlling market forces.

The positioning of China's anti-monopoly cannot be artificially elevated, and eventually will depend on the pursuit and understanding of the position of competition in China's market economy system, and on how to cultivate China's competition culture and belief. China's anti-monopoly law has been promulgated for more than 10 years, although it has initially demonstrated its power through investigation and punishment of major cases with huge fines. However, in terms of its adjustment domains or intensity, it is far from showing a grand political orientation or the appearance of "super law" systematically and macroscopically, and it is far from being an "economic constitution." However, this does not hinder the recognition of its orientation and potential. In recent years, China has faced drastic changes, in the environment of development, at home and abroad, and accordingly has implemented the double-market development strategy. This environment involves deep-seated requirements of building a high-standard and improved market system, particularly the gradual transformation from industrial policy to competition policy, as well as the surge of anti-monopoly public voices, China has outlined strategic positioning and has "strengthened anti-monopoly and prevented anarchic capital expansion." This positioning has demonstrated the Chinese government's determination and desires to regulate the economy and promote market-oriented reform through anti-monopoly law; this is not a case of the Chinese government to simply complete an economic task or a legal implementation. Therefore, the anti-monopoly policy is in an unprecedented political and economic position, involving the introduction of an essential measure related to the national economy and people's livelihood, and there is now a critical opportunity to understand the anti-monopoly law from a political and macro perspective.

III. Analysis of Current Anti-Monopoly Policy on Internet Platforms

A. Anti-Monopoly Law: Mediator of Politics, Policy and Law

Anti-monopoly law is an excellent mediator between politics, policy and law, and can integrate these fields. It has a grand ideal, which is its soul. Furthermore, it translates this ideal into reality through a specific path. Politics and policies shoulder this ideal, which is "Tao" ; the path is the tool to implement the ideal, which is the "technique" and "device." For example, in the classical period of American anti-monopoly laws, the ideal was to make it play the role of an economic constitution, particularly to pursue economic freedom and oppose market forces, while in the reform period of law and economics, more attention was paid to non-interventionism and market efficiency. Certainly, the ideals of each period cannot be divorced from the politics, economic and social conditions at that time. Anti-monopoly law "provides managers and political leaders with tools that can not only influence the behavior of enterprises, but also be consistent with the theory

and logic of the market." [45]

Anti-monopoly can be based on a macro conception of politics and policy, but can also find an appropriate, solid and rigorous legal path. Anti-monopoly law is "first and foremost a law," but is different from general law.[46] It has a profound connection with politics and policies, and to a great extent, it is the implementation of political and economic policies. There is an interactive relationship between politics and policy orientation and law enforcement. After all, anti-monopoly law is a law, which can be defined by politics and policies, but it must be implemented by the rule of law. Perhaps some would consider it to be a law completely divorced from politics and policy, or politics and policy completely divorced from law, but both of these views would be unrealistic. Certainly, the extent and manner of showing politics and policies in the implementation of anti-monopoly law change with the times, and politics and policies shuttle between options in the implementation of anti-monopoly law either explicitly or implicitly, or strongly or weakly. Europe once had a bias towards politics and policy, but later turned more to law.[47] American law enforcement has swung, with politics and policies determining the extent of the swing, but eventually unification has come from the law. Now, China has positioned and launched anti-monopoly in politics and policies, and the next step is to concretely implement anti-monopoly law. Politics and policy represent the method of choice and direction, which is more fundamental, while the law is the implementation, carrier and path of politics and policy. Once the direction is set and a law is identified, anti-monopoly should be operated according to the law.

For example, as Stiglitz said, in the "classical period" of American anti-monopoly laws, their action was such that "large enterprises suffered a shock, and mergers for monopolizing the market were restricted." But in the following decades, technicism gradually gained the upper hand, and "a group of lawyers and conservative economists," "narrowed the scope of anti-monopoly power" and "wanted to let enterprises and commercial interests develop without restrictions." [48] Clearly, "reducing the anti-monopoly power" is realized through the reform of law and economics, but the reform reflects changes in thinking in macro-politics and policy. What technicism carries is the ideal of a non-interventionist market economy, and technicism is only a phased strategy for this ideal.

The economic movement of anti-monopoly law, which began in the 1970s, became popular, first of all, not because of academic promotion and method change but because of changes of domestic and foreign situations at that time. The change of the competitive environment was the cause, and the change of theory and method was the result. Such

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[45] Gobol, fn. 20 at 87.

[46] As Bork, a famous American antitrust scholar, said: "Antitrust is first and foremost a law; It is also a set of evolving economic theories about industrial organization." Quoted from Kewuka & White, fn. 4 at 1.

[47] Gobol, fn. 20 at 221–222.

[48] Stiglitz, fn. 6 at 9.

change of academic and analytical methods serves to realize economic changes and political demands, while the method of law and economics is only a policy tool that is regarded as an appropriate service goal change. First of all, the anti-monopoly reform results from huge international competition pressure on American enterprises. Previously, American anti-monopoly focused on domestic affairs, but the oil crisis in the 1970s stimulated the connection between the American economy and the outside world, and shattered the dream that American anti-monopoly laws and policies could only care about their own domestic affairs. At that time, the changed US dollar exchange rate made American companies sweepingly successful in overseas investment, and opened up American market so that European and Japanese companies invested in the United States. The result was that American automobile and other industries face increased competition in American international markets, while European and Japanese companies showed increasing competitiveness and made American companies more sensitive to international competition. The American industry complained that the anti-monopoly law added costs to American enterprises, and put American enterprises in an unfavorable international competitive position. At that time, the anti-monopoly law was enforced variably and elusively, while the law terms and conditions were strict, and very often the law was abused, forcing the enterprises to bear significant anti-monopoly costs. In contrast, most foreign competitors (such as Japanese) either did not have such a burden created by competition law, or they had their own burden (such as Germany) unknown to Americans. Some American enterprises bitterly complained that the anti-monopoly law adversely affected their global position, and they felt this to be unfair. These complaints promoted a change of American economic policy, gradually shifting the perspective from domestic to global market competition, and raised questions about American anti-monopoly laws and their impact. Moreover, further study of law and economics came at the right time. At that time, an academic school that studied the relationship between economy and law appeared in the United States. It has studied for decades in several universities and think tanks, and has developed a relatively mature academic system that can provide alternative sets of ideas for anti-monopoly objectives and methods. With the increasing threat of foreign competition, this theoretical system and method have been gradually accepted and put into practice in the United States. This is the reason and origin why the anti-monopoly revolution of law and economics gradually came to occupy a central position. Its purpose and result were to "loosen" the anti-monopoly law for American enterprises, relax the law enforcement standards, and minimize allegedly illegal acts and instability, thus reducing the pressure and cost of anti-monopoly regulation and making American companies develop with reduced burden in international competition.[49] A further political factor arose during Ronald Reagan's presidency; he launched a political wave of "non-

[49] Gobol, fn. 20 at 152–155.

interference in business" and expressed disgust at the government's "intervention" in the economy, which coincided with conservative neoclassical economics. Ronald Reagan appointed many conservative federal judges, who basically supported the non-interventionist approach to law and economics.[50] The reform of law and economics has significantly compromised law enforcement and competition.[51] For example, as indicated in the Investigation of Competition in the Digital Market by the Committee on the Judiciary of the US House of Representatives, the courts have taken a narrow view of "consumer welfare" in recent decades as the sole objective of the anti-monopoly law. They have limited the analysis of competition damage to price and output rather than to competition process, and have insisted that ineffective enforcement of anti-monopoly law is better than excessive reinforcement. The US Department of Justice and the Federal Trade Commission have a narrow view of their own legal authority, and have issued highly tolerant guidelines for market forces and their abuse, which has aggravated this situation.[52]

With the changed circumstances, this situation has sparked growing criticism and reflection in recent years. As Senator Warren said, "Competition is dying out in the US today. And mergers and acquisitions are concentrated in various industries. It threatens our market, our economy and our democracy."[53] "The growing concern expressed in contemporary criticism is that the development since the mid-1970s has exhausted the power of anti-trust law." Law enforcement agencies and courts have been accused of failing to protect competition and of seriously damaging the economy, resulting in policy mistakes. Critics attribute the reasons for this mistake to the following four factors: the egalitarian goal pursued by the US in formulating anti-trust laws and supporting the efficiency-based goal framework has been ignored; the backward viewpoint of industrial economics is prevalent in the judicature; federal law enforcement agencies have been dominated by potential law enforcement targets, resulting in weak law enforcement and lax anti-trust enforcement; judicial decisions have narrowed the scope of anti-trust laws.

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[50] In the 1970s, the Supreme Court of the United States changed its direction in the name of efficiency and freedom. Fox, fn. 12 at 35.

[51] American scholars still differ in opinions. See Seth B Sacher & John M. Yun, "12 Fallacies of the 'Neo-Antitrust' Movement," 26 Geo. Mason L. Rev. 5, 5 (2019). For the induction of the core ideas of Chicago School, see Hovenkamp, fn. 39 at 85–88.

[52] On October 6, 2020, the Investigation of Competition in Digital Markets by the Judiciary Committee of the U.S. House of Representatives, recommended strengthening anti-monopoly law. "For decades, most economists have belittled antitrust actions, arguing that antitrust is superfluous as long as consumers are not victims of higher prices. However, we are slowly waking up to the fact that monopoly capitalism is back-even if its core products (such as those of Google and Facebook) are free, they may be harmful." See Jonathan Tepper, *The Myth of Capitalism*, Wiley, at 7 (2018).

[53] In 2016, Senator Elizabeth Warren's keynote speech at the Open Market Planning Conference of New America: "Reingning om Petition in the American Economy." Quoted from Jones, Kovacic & ZHOU, fn. 7 at 7.

These dissatisfactions triggered a wide range of discussions, which have amplified the voices calling for the repositioning of anti-monopoly policies and the adoption of other policies to enhance competition. In particular, these voices advocated strict control of behaviors of major technology companies (technology giants) and of dominant enterprises in agriculture and pharmaceuticals. Facing such criticism and pressure, law enforcement agencies turned the next 20 years into an era of sustained and effective anti-trust actions against digital platforms.[54] Now, the anti-monopoly law in the digital market has been aggressive, indicating that the objectives and methods of anti-monopoly are changing.

China's anti-monopoly law is also based on ideals, such as establishing a high-standard and perfect market economy system implemented through the pathway of law. Now, China is deepening market-oriented reform and, to this end, improving anti-monopoly is clearly important for creating a perfect market system. In the era of big data, the platform economy has become the biggest driver of global economic development. It is penetrating into all aspects of economic and social life, changing and reshaping people's behaviors, business models of enterprises, industry and market formats, and even changing the nature of many traditional products and services and the principles of economic resource allocation. The platform economy has an unprecedented impact on the whole of human social and economic life. Now, monopoly, particularly the monopoly of Internet platforms, is a major concern, which has a significant impact on the normal operation of the market economy. With the capital expansion of super Internet platforms and even the penetration into wider walks of life, monopoly has given rise to concerns about national security, economic security and livelihood security. Now, there is an opportunity for anti-monopoly law to show its prowess in curbing market forces and the anarchic expansion of capital. Anti-monopoly law can transmit and achieve political goals, and move monopolistic enterprises onto a legal track, in order to achieve a better combination of politics, policy and law. The objectives of China's anti-monopoly law should be diverse; limitation to a single objective is unlikely. The combination of politics, policy and law is crucial.

B. China's Internet Platform Anti-Monopoly Policy Positioning

On December 11, 2020, the meeting of the Political Bureau of the Communist Party of China (CPC) Central Committee first proposed "strengthening anti-monopoly law and preventing anarchic expansion of capital." The anti-monopoly issue caused general concern and heated discussion, and various voices were heard, but no consensus was reached. The anti-monopoly problem of the Internet became the focus. The CPC Central Economic Working Conference held at the end of 2020 re-mentioned this issue, listing

[54] Id. at 29.

it as one of the key tasks for 2021, and highlighting this task's goal, direction and work requirements. In particular, the Conference presented the general attitude and requirements of "strengthening regulation, improving regulatory capacity and resolutely opposing monopoly and unfair competition," and explicitly indicated that "the state supports the innovation and development of platform enterprises and enhances their international competitiveness." This shows that China still "supports the innovation and development of platform enterprises" and requires "standardizing the development according to law." Clearly, "perfecting the monopoly identification of platform enterprises" is the focus of anti-monopoly work relating to platform enterprises.

Like anything new, Internet enterprises also develop first and standardize second. Generally, various problems are not understood initially, so we need to observe and think, and to be tolerant and prudent. A few years ago, the Chinese government was tolerant and prudent in the supervision of Internet enterprises, and provided a relaxed environment for them to develop. Thus, the Internet industry grew by leaps and bounds. Today, Internet enterprises grow stronger and stronger, and the digital economy is rapidly improving; various problems such as monopoly in development are becoming increasingly prominent, which also shows that the Internet industry is entering a new stage. After assessing the overall situation, the Chinese government decided to strengthen supervision, and the platform economy has since moved into a new stage in which both development and standardization are emphasized. As pointed out by the CPC Central Committee, "Anti-monopoly and anti-unfair competition are the inherent requirements for perfecting the socialist market economic system and promoting high-quality development." [55]

More often than not, industries develop first and standardize second; the environment should be tolerant first and strict second, and it may be that the market is chaotic first and orderly second. For example, the US is a leader in the Internet industry. Today's US Internet giants initially benefited directly from the US anti-monopoly against Microsoft, so that monopolists like Microsoft dared not kill innovative enterprises in the cradle. They also directly benefited from legal changes in the early development of the Internet industry in the US, such as the reformed labor contract law, relaxed privacy protection, and the "safe haven" system created in the Telecommunications Law and the Millennium Copyright Law. These relaxed and tolerant legal atmospheres directly contributed to the surge of the Internet industry and Internet giants.[56] However, today, when Internet giants frequently behave anarchically, the US has strengthened anti-monopoly law, has simultaneously introduced multiple measures, and has enforced anti-monopoly law on

[55] 中央经济工作会议在北京举行 (The CPC Central Economic Work Conference Held in Beijing), *Xinhuanet*, Dec. 18, 2020.

[56] Anupam Chander, "How the Law Achieves Silicon Valley," *New Media of Zhihe Law*, Dec. 20, 2015.

platform enterprises.[57]

In the early days of Internet entrepreneurship in China, supervision was generally very loose. For example, Internet companies engaged in search business were the representatives of the Internet industry in the PC era. To a great extent, these companies leveraged abundant free-of-charge works and loose copyright protection, established internet-streams at low cost, and quickly achieved their accumulation of market share. At that time, the judicial interpretation and administrative regulations supported the rise of the Internet industry by innovating provisions such as "safe haven," by limiting responsibilities and risks, etc. In the era of mobile internet, copyright trading and protection have become an important industry, and e-commerce has developed by leaps and bounds. Both copyright protection and e-commerce legislation have gradually changed from a "safe haven" to a "tight corner," which is increasing the platform's responsibility. Today, the Internet industry is becoming increasingly powerful, its coverage is becoming growingly extensive, and the problem of monopoly has attracted much attention. Should it not be comprehensively regulated, it may move into anarchic development. Therefore, the central government issued an order for strengthening anti-monopoly and stopping the disorderly expansion of capital. This is a timely request for comprehensively standardizing the Internet industry and strengthening supervision.

At this stage, supervising the Internet industry inevitably faces the following four situations: evolution from more "anarchic" growth and self-disciplined growth to more orderly growth; a movement away from passive supervision to more active regulation; change from a single norm to systematic governance; the progression from inclusive and tolerant development to equal emphasis on supervision and development. Moreover, anti-monopoly law is applicable to any industry, and the Internet industry has never been a place outside the law. A few years ago, China's Supreme People's Court adjudicated in monopoly cases involving the "3Q War" according to the anti-monopoly law.[58] However, the Internet industry presents a special anti-monopoly challenge. Since it is a case of

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[57] In mid-2019, the U.S. House of Representatives began to investigate the monopolistic behavior of the four major technology companies. From mid-2019 to July 2020, the Congress held several small-scale hearings. On July 29, 2020, the Congress convened the four technology giants of Amazon, Apple, Facebook and Google for an anti-monopoly hearing, also the first time that CEOs of the four companies attended the hearing at the same time. On October 6, 2020, the Judiciary Committee of the House of Representatives officially released the Investigation of Competition in Digital Market Markets, directly referring to the monopolistic behaviors of the four Internet giants. This report is regarded as the beginning of anti-monopoly in the Internet field of the US Congress. The U.S. Department of Justice, the Federal Trade Commission (FTC) and 48 state attorneys general have taken antitrust actions against Internet giants.

[58] For the case of Beijing Qihoo Technology Co., Ltd. v. Tencent Technology (Shenzhen) Co., Ltd. and Shenzhen Tencent Computer System Co., Ltd. abusing market dominance, please refer to ZHU Li, 奇虎 360 诉腾讯滥用市场支配地位纠纷案 (Qihoo 360 v. Tencent Abusing Market Dominance Dispute Case), in LI Qing, ed., 中国反垄断十二年：回顾与展望 (*12 Years of Anti-monopoly in China: Review and Prospect*), CITIC Press Group (Beijing), at 392–403 (2020).

great anti-monopoly significance, targeted and systematic regulations can be established specifically for "tailor-made" and systematic supervision of the Internet industry.

C. Regulation and Development in the Anti-Monopoly of the Internet Platform

From an international perspective, China's Internet industry has unique features and even goes hand in hand with the US industry in some aspects, becoming China's dominant industry. However, the international competition in the Internet industry is still fierce, and still needs stronger domestic development support for participation in international competition. Domestically, the rise of the Internet industry is the product of innovation and development of technology and industry, and it constantly promotes the innovation of technology, format and business model, and is even becoming the engine of a new industrial revolution.[59] Internationally and domestically, the development of the Internet industry is still in progress; it is still a sunrise industry. Moreover, in the era of the digital economy, the anti-monopoly regulations governing network platforms have become a new focus. The huge market and development potential have increased fierce competition among Internet operators. The controversial competition and management methods such as "choosing one from the other," "killing by big data," algorithm collusion, killing acquisition, etc., have aroused widespread concern and discussion. The Internet industry has developed to a certain stage, a certain degree and a certain scale, and platform enterprises have appeared to curb innovation and competition and harm consumer welfare, and this should be resolutely curbed. However, we should be clear that monopoly in the Internet industry is still a problem affecting one stage of development, and still needs to be effectively solved by means including strengthening supervision according to the development needs and stage characteristics. However, in the final analysis, the issues still need to be solved with a development perspective and method, seeking solutions in better development, rather than curbing development. The central government has clearly pointed out that anti-monopoly serves to "improve the socialist market economy system and promote high-quality development." The clarity of attitude of the central government is timely and crucial for correcting some over-responses to anti-monopoly.

Anti-monopoly law is the "economic constitution" to safeguard the freedom of competition, improve the market structure and guarantee the competition order. It has unique functions and adjustment characteristics, and the positioning and orientation of anti-monopoly law always need to be based on China's development reality. Now, it seems that both the US and the European Union are wielding anti-monopoly sticks against Internet platform giants, and many countries are carrying out the anti-monopoly

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[59] 2021 China Strategic Emerging Industry Development Report shows that the scale of China's digital economy has reached 31.3 trillion yuan, accounting for 34.8% of GDP. The Internet has become an important force and support for China to develop its new economy.

agenda relating to the digital economy.[60] However, beneath the surface, there may well be different agendas and desires. The background and causes of the current international anti-monopoly trend should be analyzed in depth, and the differences in the substantive orientation under the overall trend should be watched. Watching for the essence is more meaningful than watching for the surface. We should avoid rashly following any specific trend.

For example, US anti-monopoly law enforcement is often wavering, sometimes loose and sometimes tight, and often full of controversy, but still effectively guaranteeing the overall freedom of competition. Looking at the history of American anti-monopoly laws, one may have a general impression that it is like a high-hanging sword, as the rules are very strict but their implementation is still loose. Particularly today, it often has much thunder but little rain; it is often held high but gently put down. It starts with a pressing demand and ends with a compromise. Moreover, the US has rarely stopped monopoly through the extreme process of splitting a company. However, the result of compromise is that the monopoly behavior is stopped at a moderate cost, consumer welfare is protected, the balance of interests of all parties is achieved, and the final result is the promotion of the healthy development of the industry.[61] The US Congress's recent high-profile

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[60] For example, the competition law enforcement departments of Canada, France, Germany, the United Kingdom, the Netherlands, Spain, Italy, Portugal, Australia, Japan and other countries, as well as the joint organization of competition law enforcement departments among BRICS countries and Nordic countries, are all conducting research on the platform economy anti-monopoly issues and have published a series of specialized reports.

[61] America's anti-monopoly often starts vigorously, ends with compromise, and finally reaches a balance of interests, giving the industry room for development, making competition more adequate, and providing a relaxed environment for innovation. In May 1998, the U.S. Federal Department of Justice and the attorneys general of 20 states initiated an anti-monopoly lawsuit against Microsoft, the most powerful technology giant in society at that time. This lawsuit, which attracts worldwide attention, is protracted and costly, spanning the two administrations of Clinton and George W. Bush. Microsoft once faced the risk of being split up like AT&T did that year. In the end, the Court of Appeals for the Federal Circuit reached a settlement with Microsoft on the punishment without overturning the trial court's determination of monopoly fact: Microsoft was forced to open the application program interface (API) of the Windows operating system to third-party software developers, and at the same time, Microsoft was not allowed to set any obstacles to installing Java on Windows. When the Ministry of Justice reached a settlement with Microsoft, which made Microsoft escape the fate of being split, many people thought that the government had compromised in front of the technological power. But this statement underestimates the historical significance of this cross-century lawsuit. Since then, Microsoft has restrained its actions such as droving competitors out of market. If it didn't deal with Google with Netscape and Java in those days, the reason is precisely because of its fear of anti-monopoly law. Gary Reback, an antitrust lawyer representing Netscape, once said, "It is because of this antitrust lawsuit that Google now exists. There is no other reason. "After Microsoft drove Netscape out of market, Microsoft IE browser once occupied 98% market share. Google, the start-up, was very worried that the bad luck of Netscape would happen to itself. Because anyone who wants to log on to Google's website must first enter www.google.com in the address bar of the browser, Microsoft can have various ways to terminate Google. For example, when you press enter, Microsoft can completely pop up a red window, claiming that "this is a dangerous website, which will take your personal data without your consent and use it for profit."

anti-monopoly action relating to the digital market is more like a high anti-monopoly pressure, which does not have a direct legal effect. In view of the judicial independence of anti-monopoly law enforcement, the specific impact of congressional actions on the implementation trend of anti-monopoly law remains to be seen. Even if it changes the direction of law enforcement, there will be a time delay in the effect, but finally, a result can be achieved in which multiple objectives can be reconciled. The US has always been in the leading position of scientific and technological innovation and industrial development. The relevant US laws and law enforcement have always considered the promotion of industrial innovation and development as an important task, and the development process of the Internet industry is such a case.

On the contrary, EU countries do not have the natural advantage of developing the Internet industry, and EU countries are more like users of the Internet industry than producers. Therefore, the EU's anti-monopoly law enforcement gives people the impression that although it spares no effort in imposing heavy penalties, it usually focuses on curbing American Internet giants such as Google.[62] Heavy penalties will not harm the EU's Internet industry, but may seek appropriate development space for its local industry.[63] Certainly, this is only one analysis of the EU's anti-monopoly motivation. From the legal point of view, EU competition law has a lower threshold for abuse in the form of market dominance, and it is easier to identify monopolistic behavior than is the case in the US.[64]

The Internet industry structure, industrial interests and development needs of different countries are different. There is an appearance that the digital economy anti-monopoly law has become an important international trend, but different national interests may be hidden, and these should be identified. We should not blindly follow the international trend, but should pay more attention to the substantial national development interests that accompany it, and make policy choices and law enforcement positioning accordingly. As far as the interests of the Internet industry are concerned, China's situation is similar to that of the US.[65] More consideration should be given to how to

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[62] The European Commission has taken anti-monopoly actions against Google, Amazon, Facebook and Apple (commonly known as GAFA).

[63] This attitude of the EU has already existed. For example, in the early 2000s, in order to avoid Microsoft being split, the US government reached a settlement with Microsoft. However, the European Union made a heavy blow, issuing its largest fine of 497 million euros at that time on the grounds that Microsoft abused its dominant position in the Windows operating system market, and asking it to modify the Windows operating system. It is quite different from the attitude of the European Union and the United States in dealing with the same behavior of Microsoft. Clearly, it is hard to deny that the European Union will inevitably have the mentality of punishing American enterprises without being distressed or soft.

[64] Fox, fn. 12 at 37–38.

[65] "China and the United States are the two largest IT consumers in the world and the two largest IT suppliers to the rest of the world." Brad Smith & Carol Ann Brown, *Tool or Weapon?*, translated by YANG Jingxian & ZHAO Lei, CITIC Publishing Group (Beijing), at 240 (2020).

promote industrial development in the field of anti-monopoly in the Internet, so as to not only strengthen anti-monopoly law but also prevent it from hurting people's well-being and from compromising industrial vitality. The inevitable trend and ultimate goal of anti-monopoly law are to promote sound, rapid and high-quality development. For example, at the end of 2020, the Central Economic Working Conference strongly emphasized economic development as the main task and the fundamental purpose of meeting the people's growing needs for a better life. That was the principled tone of the development conference, and the whole conference ran through the idea of developing and developing well. We should "ground our efforts in the new development stage, apply the new development philosophy, and create a new pattern of development; we should also pursue high-quality development as the general aim, advance supply-side structural reform as the main task, and harness reform and innovation as the key source of momentum," taking development in the new period and new stage as the ultimate goal and starting point. The overall planning, and deployment of the work of the conference, depend on development. The meeting particularly emphasized that "we should vigorously develop the digital economy and increase investment in new infrastructure." To build a new development pattern, "we must build a high-level socialist market economy system," "promote fair competition, protect intellectual property rights, build a unified market, and create a market-oriented, legal and international business environment." [66] Anti-monopoly law should work for better development, and also for better service development.

IV. The Rule of Law Approach to Anti-Monopoly of Internet Platforms

Politics and policies in the implementation of anti-monopoly law should be limited to macro judgment, macro guidance and macro promotion. Specific law implementation and anti-monopoly actions still need to be left to legal analysis, so as to keep the implementation of law complete, objective, neutral and following due process as much as possible.

A. Trend of Anti-Monopoly Rule of Law

The trend of anti-monopoly rule of law cannot be empty talk, but must be guaranteed by the system and method of implementation. The implementation system and method are also the touchstone for testing the scope of anti-monopoly rule of law.

Anti-monopoly law "first and foremost is the law." This is a clear and unobtrusive basic legal position of anti-monopoly law. "Competition law is 'law' rather than 'regulation.' The general objectivity, stability and methodological characteristics of law

[66] See fn. 55.

are inherent in competition law. With it, officials can avoid the accusation that they are subjectively using their powers or acting for their own interests. The extent to which this happens depends on two points: firstly, the characteristics of the government itself; secondly, how much weighting the 'rule of law' principle has in this society." [67]In the scenario that economics seems to occupy the core of anti-monopoly law, emphasizing the assertion that "antitrust law first and foremost is law," has important recognition and positioning value. This shows that no matter how great the influence of economics is, economic analysis is the specific path and tool to implement the law, and still runs according to the law. What has changed is only the implementation path and specific results. Even if it subverts the trend and result of law enforcement, it still presents a change of law enforcement, still operating within the framework of the rule of law, and has not changed the attribute of law enforcement itself. Different countries have different paths of anti-monopoly rule of law, but they are all moving closer to the rule of law.

For example, American anti-trust has two basic paths: public enforcement and private enforcement. Anti-monopoly law enforcement officials are politically appointed, so they are expected to follow the policy objectives of the current government, and their anti-monopoly law enforcement is inevitably influenced by political influences to varying degrees. For example, in the Microsoft monopoly case, which can be regarded as the precursor of Internet anti-monopoly law, in 2000, the U.S. Federal District Court ruled to split Microsoft into two independent companies in order to prevent it from using its monopoly position relating to computer systems to harm competition. Later, due to the arrival of the new US president, Microsoft reached a settlement with the Ministry of Justice, and Microsoft made a promise to stop abuse in exchange for avoiding being split. This change of political factors led to the change of Microsoft's anti-trust results. However, the influence of political factors is not regarded as a serious problem, because people expect the federal court to limit the influence of political factors on the formation of laws, and expect the court to protect the integrity and technicality of anti-trust laws.[68] Certainly, the success of the economic revolution in anti-monopoly has also contributed to people's confidence in the neutral implementation of anti-monopoly supported by economic analysis.[69] Besides, private anti-trust litigation occupies an important position in American anti-trust law. Whether it is an anti-monopoly lawsuit brought about by a public institution or a private entity, it is ultimately the court that plays a key role in the American legal system, so it is considered an anti-monopoly action

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[67] Gobol, fn. 20 at 87.

[68] For example, although public opinion in the United States called for more radical anti-monopoly law to tame large-scale technology platforms, its conservative attitude was strengthened in the 2018 ruling of the U.S. Supreme Court on Ohio v. American Express. See Fox, fn. 12 at 34.

[69] Gobol, fn. 20 at 102.

under the rule of law.[70]

Economic movements such as Harvard School, Chicago School and Post-Chicago School all have their theoretical goals and systematic identities, and provide near-dominant economic language and tools for anti-trust analysis. Some American anti-trust scholars even regard the economic theory as supreme (such as Professor Hovenkamp).[71] However, as some scholars have said, anti-trust is based on "the supremacy of justice, that is, the supremacy of law, particularly the higher constitution, and the law ranks in the forefront of economics," "It is the court that shapes the competition policy (whether it is government litigation or private litigation)." [72] Moreover, as Justice Kennedy said,[73] "the realities of the market" and its realization of justice are complex. "It is judicial theory, not economic theory, that has a stronger ability to deal with these complexities." [74] The logic of law and justice is, after all, different from the theoretical logic of doctrine. For example, in the Eastman Kodak case, the argumentative principle of judicial procedure and the pragmatic, evidence-based and argument-based structure of the rule of reason analysis led the judges to adopt an economic interpretation different from that of the Chicago School.[75]

Germany's anti-monopoly system design deliberately strengthens the rule of law mechanism and influences the system design of EU competition law. German Anti-Restrictive Competition Law in 1957 was based on the work of the Freiburg School, and

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[70] When the US Anti-trust Law of 1890 was enacted, legislators thought that it was establishing a brand-new "system" or a type of law. However, at that time, the size of the US federal government was very small, and its functions were very limited, so it was unlikely to completely rely on a new institution. Therefore, the task was given to existing institutions. This means that the court has the responsibility to apply and develop this law, thus laying a foundation for the central position of the court in the development of anti-trust law, and forming a unique American anti-monopoly judicial system and rule of law." The Sherman Act is not long, the language is unusually sparse, and it doesn't provide any guidance on how to interpret this new law, and the parliament has not created new institutions, procedures and methods to apply this law. The implementation of this law relies on litigation, which is accepted by ordinary federal courts. The prosecutor should be the federal government. Later, private individuals are allowed to file lawsuits as plaintiffs. "Judges have to be clear about the goal of the law, create standards and build a system." See Gobol, fn. 20 at 131. The leading role of judges in specific cases, as some commentators have said: "A more complicated case is likely to require expert testimony from economists. However, the proper solution of anti-monopoly cases mainly depends on what Philip Arida, an anti-monopoly professor at Harvard University, called "estimation and judgment of reality" and the application of "policy matters." Judges, not economists, are the best qualified to make these decisions. Economists played an appropriate role in Apple's mail-order sales case. The opinions provided by economists can only be applied after being identified. The presiding judge makes the final decision. Economists only inspired the analysis of the case, but did not play a decisive role in the result. See Reback, fn. 15 at 57.

[71] Herbert Hovenkamp, *The Antitrust Enterprise: Principle and Execution*, Harvard University Press (Cambridge, MA), at 39 (2005).

[72] D. Daniel Sokol, "Antitrust's 'Curse of Bigness' Problem," 118 (6) *Michigan Law Review*, 1 (2020).

[73] (Kennedy, J. Opinion of the Court) Brooke Group v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 263 (1993).

[74] David Ramsey, *Antitrust and the Supreme Court*, LFB Scholarly Publishing LLC El Paso, at 159–160 (2012).

[75] Id. at 161.

became the first "modern" competition law in Europe. Although the law is implemented by administrative organs, the most important thing is the adoption of the "legal system" ; that is, the procedure of administrative decision-making is "development of more mature judicial methods and procedures," instead of "making decisions based on national economic policy considerations." "Competition law is a stable 'law'-not just a policy." [76] "The basic duty of the Federal Cartel Office is to interpret and apply legal norms, not to decide or implement specific policies. This feature is also reflected in the internal procedures. To a large extent, the decision-making procedure of the 'decision-making department' adopts the judicial mode. They must use the long-established legal reasoning methods of the court to demonstrate the legitimacy of the decision. To emphasize the judicial nature of the operation of the Federal Cartel Office and its special position outside the ordinary administrative system, the law stipulates that the decisions made by the office are subject to judicial review by ordinary courts (instead of being reviewed by administrative courts as is the case for usual administrative actions). The standard of judicial review is based on whether the Federal Cartel Office has properly interpreted and applied the statute law, instead of whether the administrative agency abused its discretion as the standard of review (as in ordinary administrative review). Generally, the actions of the Federal Cartel Office can be appealed to a special federal appellate court, and the decisions of the appellate court can be appealed to the Federal Supreme Court. Usually, judges who handle competition law cases are important figures in the competition law field." [77]

German competition law is the core component of the social market economy concept advocated by Germany after World War II. Its basic idea is that the market is a part of society and should serve the needs of society, but society also has the responsibility to support competition. Competition law is the key to achieving this mission. "The language and structure of written law are designed to adapt to this 'mission.' The language used in the competition law is abstract enough to provide a broad guide for behavior, and is specific enough that the Federal Cartel Office and the courts can successfully explain them." [78] "German law is different from some competition laws of the same period in Europe (such as UK law). It focuses on the economic effect of behavior rather than its formal characteristics. This minimizes the formalism in the analysis, and also reduces the situation in which enterprises evade the application of the law by manipulating legislation." [79]

After World War II, other European countries began to pay attention to competition, but in the first few decades, they generally adopted the administrative control model of

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[76] Gobol, fn. 20 at 198–199.
[77] Id. at 190–191.
[78] Id. at 192.
[79] Gobol, fn. 20 at 192.

competition; that is, competition norms emphasized the consequences of behaviors over the characteristics of behaviors, administrative discretion over legal procedures, political and policy intentions over legal effects, instrumental competition over legal rationality, and "soft" law enforcement. After the 1980s and 1990s, people gradually paid attention to "judicialization" and legalization.[80]

The prominent embodiment of rule of law is that anti-monopoly must be carried out in accordance with the law, anti-monopoly procedures are justified, administrative decisions are subject to judicial review, and courts play a central role in legal interpretation. China's anti-monopoly law can be used to achieve macro political and policy goals, but its implementation should follow the path of rule of law, should strengthen the concept of rule of law and legal methods, and should particularly respect substantive and procedural values such as stability, predictability and due process of anti-monopoly law enforcement. The Central Economic Working Conference put forward an aim to "standardize development according to law, to improve digital rules" and to "improve the legal norms of platform enterprises' monopoly determination, data collection and use management, consumer rights protection, etc." [81] This clearly and fully embodies the spirit, thinking and path of the rule of law. Now, society has a prominent public sentiment with a specious or vague understanding of the anti-monopoly laws as applied to the Internet platforms, so it is valuable to strengthen the rule of law.

B. Anti-Monopoly Objectivism and Technicism

The macro value goal of anti-monopoly law is decisive, and the technical methods, no matter how sophisticated, are all based on the effective realization of the value goal, so we cannot fish in the air. As Stiglitz said, "Anti-monopoly policy is not based on fine economic analysis; it is actually a response to the demands of society and democracy." [82] In the whole process of anti-monopoly law implementation in the US, political interests and economic interests are intertwined, and the enforcement of anti-monopoly law changes accordingly. However, as long as economic forces threaten political and economic security, the US government will wield the big stick of anti-monopoly law. For example, the spin-off from the actions of giants such as petroleum companies in the early 20th century and the anti-monopoly containment of Internet giants in recent years all had profound political and economic backgrounds. Even after the revolution of law economics and economic analysis targeting the goals of efficiency and consumer welfare, law in the US serves conservative political and economic ideals.

China's anti-monopoly law has its macro value goal, and also is implemented through

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[80] Id. at 213–222.
[81] fn. 55.
[82] Stiglitz, fn. 6 at 69.

specific methods. First of all, anti-monopoly law should realize the macro function, fulfill the mission of controlling economic power, pay attention to the politics and policy factors, and attach importance to the macro understanding and judgment of politics and policy, aiming at maintaining political security, economic security and protecting major national interests. These factors should determine the balance of leniency and strictness of phased anti-monopoly law development. Anti-monopoly law functions by legal and economic means, and achieves specific political and economic goals. Technicism is just a strategy and approach of anti-monopoly, and does not eliminate the functional attributes of anti-monopoly law. Macro-orientation determines the specific trend of anti-monopoly law, and technical methods ensure the effective realization of the target value. Certainly, macro positioning is not arbitrary and willful, but a "climate" with relative stability and predictability, not a changeable and unpredictable "weather."

The US scholars are divided into the movement anti-trust law and the technical anti-trust law. They believe that the current US antitrust law is caught in a dilemma between the pursuit of the two. Some of them pursue technical rules for defining and implementing reasonable economic objectives. Moreover, the political voice of a new anti-monopoly "movement" is rising, and their objectives have many different definitions, such as opposing industrial concentration, restricting the economic or political power of large enterprises, correcting the uneven distribution of wealth, controlling high profits, raising wages or protecting small enterprises. The "movement" anti-monopoly approach is manifested by politicians and mass media calling for a set of stronger and more extensive anti-monopoly law rules to better serve all voters in the American economy. Participants in the "movement" often lack a deep understanding of economics, have extremely unrealistic expectations for the goals that competition policies can achieve, and hold mutually inconsistent goals. However, quite serious distrust and paranoia exist, most of which are aimed at large enterprises. Technical anti-monopoly law focuses on the problems of due process, economic efficiency, operability and verifiability behind anti-monopoly, and aims at the best social state that can be reasonably achieved by anti-monopoly law. Under the realistic framework of constraining anti-monopoly policy-making institutions, evidence and experts are necessary for developing methods to achieve these ideal states. These methods may be controversial, but their goals are consistent. For example, the most important goals pursued by American anti-trust are a specific concept of efficiency (including allocation efficiency and production efficiency), procedural due process and federalism. In some cases, efficiency needs to be weighed against due process or federalism.[83] Clearly, "movement" and "technical" are two parallel types of anti-monopoly law enforcement with different concepts and methods, which are different from the objectivism and technicism mentioned in this article. Goal and technicism are not two

[83] Hovenkamp, fn. 26 at 2.

parallel types of anti-monopoly law enforcement, but different levels and sequences of the same anti-monopoly law enforcement, which reflect the relationship between value goal and implementation path.

The anti-monopoly goal is the direction-pointer and technique methodology is the path. Throughout the history of anti-monopoly law, the objectives may be diverse and changeable, and the paths are constantly developing and changing. The development and development of technical methodology are firstly in response to the need of achieving the goal, which needs to be matched with the goal, and there should be no purely technical path of development that deviates from the goal. First of all, there is no absolute right or wrong way to anti-monopoly technical methodology. In the historical process of anti-monopoly law, anti-monopoly technical approaches in different periods reflected the knowledge and experience at that time, but they were always closely related to the realization of anti-monopoly goals at that time. The technical approach that was chosen was based on the knowledge and experience at that time and so may be the best for the goal at that time. Secondly, refinement usually symbolizes the gradual development of anti-monopoly technical methodology. For example, in the classical period of American anti-monopoly law, the objectives and technical paths of anti-monopoly were relatively mixed, which also made the analysis methods and results of anti-monopoly confusing and changeable. After the revolution of law and economics, the technical approach to anti-monopoly has gradually become unified and pure, and the predictability of the results is stronger. However, the journey is not the destination, and the technical path is always tested by whether it meets the purpose. Certainly, the technical path is also relatively independent, and it needs to constantly reflect the new knowledge brought about by academic research and practical experience.

Implementation of anti-monopoly law cannot simply adopt a specific theory. There is a very close relationship between economics and anti-monopoly law, and theoretical approaches can provide analytical tools for anti-monopoly technical pathways. However, anti-monopoly law enforcement should not simply take specific theories, but should pay more attention to the pursuit of results consistent with the objectives. For example, in the 1970s and 1980s, the US anti-monopoly policy changed, the intervention of the anti-monopoly law decreased, and it became more sensitive to the prevailing economic theory at that time. The theoretical support for technical anti-monopoly law at that time primarily came from Harvard School and Chicago School. Initially, they had different positions, but began to converge in the late 1960s and 1970s.[84] On the whole, the Chicago School advocated a more laissez-faire approach than did the Harvard

[84] See Richard A. Posner, "The Chicago School of Antitrust Analysis," 127 U. Pa. L. Rev. 925, 933–936 (1979); see also William E. Kovacic, "The Intellectual DNA of Modern U.S. Competition Law for Dominant Firm Conduct: The Chicago/Harvard Double Helix," Colum. Bus. L. Rev. 1, 74–75 (Jan. 2007).

School, and called for less anti-monopoly intervention. The specific suggestions of the Chicago School have been widely accepted in academic literature, more so than in case law. When there are differences of opinion between the two schools, the Federal Supreme Court usually adopts the method of the Harvard School. However, the US Supreme Court under the leadership of three consecutive Chief Justices (Warren Burger, William Rehnquist and John Roberts) did not show much closeness either to the Chicago School or to the Harvard School.[85] "Anti-trust can adopt other economic methods instead of accepting every kind of explanation of commercial behavior by the Chicago School." [86] Moreover, as far as economic theory is concerned, the Harvard School and the Chicago School only intervened in anti-monopoly implementation at a specific historical stage, and they were neither the first nor the last intervention theory.[87] Their approaches will weaken and exit with the passage of time, and be replaced by new analytical tools.

"With the development of economic theory, new empirical tools are created, and anti-trust interpretation will go beyond the Chicago School theory." [88] Therefore, after all, the judiciary has judicial logic, which can be influenced by theories and accepted by theoretical tools, but does not deliberately pursue theories or simply adopt specific theories.

In short, the goal of anti-monopoly can be ambitious, but it by no means offers only a broad political slogan or lax argument. Instead, it is necessary to continuously develop additional, serious and testable technical methods that better match the target value. This is the only way to develop and progress anti-monopoly law.

C. Legal Construction of Anti-Monopoly of Internet Platform

Internet anti-monopoly law must be supported by the concept, system and method of the rule of law. First of all, we should hold high the banner of law and the rule of law, make good use of various analytical tools under the guidance of law, and properly realize the anti-monopoly goal. The following aspects require special attention:

1. Building an Anti-Monopoly Rule System for Internet Platforms. The anti-monopoly law relating to online platforms applies the general rules of anti-monopoly, but needs to define some unique phenomena and behaviors produced by Internet technology and business models. In order to enhance the pertinence, accuracy and

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[85] Hovenkamp, fn. 26 at 2.

[86] Baker, "Recent Development," 655, quoted from David Ramsey, Antitrust and the Supreme Court 161 (LFB Scholarly Publishing LLC El Paso 2012).

[87] In the decades before the Chicago School came into being, federal judges practiced their own antitrust policies and applied the most effective economic theories at that time. Herbert Hovenkamp, *Federal Antitrust Policy: The Law of Competition and Its Practice*, 5th edition, West Academic Publishing, at 83–84 (2016).

[88] Baker, fn. 86.

certainty of anti-monopoly, and reduce the difficulty of connecting with general rules, we can build anti-monopoly rules and standards in the Internet field, and build a corresponding discourse system. China is now revising its anti-monopoly law, and the author of this paper believes the country will make an appropriate response to the anti-monopoly problem in the Internet field. However, since anti-monopoly law only resolves important legal boundaries and standards, it is impossible to be too specific, and some problems have not been fully developed, so it is unlikely that the revision of anti-monopoly law can provide systematic special anti-monopoly norms in the Internet field. Therefore, the specific legal standards and discourse system of Internet platform anti-monopoly law are mainly constructed by administrative law enforcement and judicature.

Various monopoly phenomena exist in the field of the Internet. They either need to be considered separately because they cannot be analyzed in terms of existing monopolistic behaviors, or they just find their place in the existing rules and create subsumption. The former is remarkably rare. The construction of platform anti-monopoly rules must be constrained by the framework of anti-monopoly law, mainly to solve the problem of "correlation," which cannot be self-contained. The "Anti-Monopoly Guidelines on Platform Economy" (hereinafter referred to as "Guidelines") clearly concretize anti-monopoly rules in the Internet field, and the rules and standards that the Guidelines provides adhere to traditional anti-monopoly standards, but also make targeted innovations in combination with the characteristics of the Internet field. However, the Guidelines are more concerned with the direction, thinking and judgment factors of legal standards and behavior determination, and their specific application is still vague, flexible and discretionary. The anti-monopoly curtain in the field of Internet has just been opened, and the understanding of Internet monopoly is still deepening. The construction of rules and discourses can only keep pace with the times step by step. Seeking truth from evidence should proceed from reality, and it is impossible to be greedy and seek perfection blindly. Moreover, it is not necessary to deliberately pursue a leading role in the international trend or to be eager to contribute China's experience in the construction of anti-monopoly rules for Internet platforms. It is even more inappropriate to hastily accept immature or controversial views in pursuit of these goals. The international effect is more a natural spillover effect, and should not be the goal of active pursuit.

2. Keeping Legality and Rationality of Law Enforcement of Discourse System. With the rapid development of the Internet industry represented by platforms, and the increasingly fierce competition among Internet operators, the industry has gradually summarized the phenomenon of Internet monopoly, such as platform "choosing one from the other," "big data killing," "self-preferential treatment" and "Most Favored

Nation treatment." [89] The introduction of these phenomena is valuable for understanding the essence behind the behavior. Media terms and social sayings such as "choosing one from the other" are highly misleading and inflammatory, and easily arouse social emotions. However, after all, there is still a gap or even a "divide" between phenomena and nature, and observation of a phenomenon is only the first step to understanding the essence. Particularly when it comes to legal characterization, it is more important to define essential behavior and legal implications based on phenomena, and it is more important to follow legal logic and legal rationality. We could use the economic life proverbs such as "choosing one from the other" and the image statements such as "most favored nation clause" to summarize and express the monopoly phenomenon, and it is easy to connect the phenomenon with its essence, but to do so clearly has the risk of losing accuracy, so we should always pay attention to the return of legal standards.

The legal governance of anti-monopoly law is rational governance, which needs to rely on rules and procedures, and to always be vigilant. In particular, the specific composition of platform monopoly behavior has a corresponding legal threshold, which needs to be determined according to law, and cannot be influenced by dazzling appearances and divergent opinions. For example, the Guidelines systematically summarize current common Internet monopolistic behaviors. These phenomena do exist, and some of them are still serious, but phenomena are only the starting points. Whether an action can actually constitute monopolistic behavior still needs rigorous and in-depth legal determination, which does not depend on general concepts and needs to be measured by legal elements. The monopolistic phenomenon may be extensive, but it may not be a substantive monopoly. On the whole, even if these phenomena exist, it does not mean that the Internet industry has been "collapsed" by monopolistic behaviors. The overall competitive situation of the Internet industry is good, but only by curbing some monopolistic behaviors can it move towards a healthier track. Therefore, we should not be confused by the phenomena, but also look at the essence so as to be lenient, strict or moderate subject to the real situation.

3. Maintaining Objective Neutrality of Anti-Monopoly Law Concerning Internet Platforms. Throughout the history of anti-monopoly legislation and implementation, anti-monopoly has usually been related to surging public opinion. For example, the Sherman Act was enacted under the pressure of the people. At that time, several large trusts used economic power to force competitors to withdraw from the market, imposed unfair terms

[89] There are also various types of generalizations, such as blocking competitors or refusing to open API interfaces, robbing customers from competitor platforms through cash incentives, using poor rating in search engines as a tool to attack competitors or asking merchants for bundle sales of products or services by setting pop-up windows and operating necessary steps. These terminologies and generalization are applied widely in the media.

on suppliers, and raised prices for consumers, which made the people strongly resentful, forming the voice of legislation and political impetus.[90] The anti-monopoly wave affecting the digital market in the US today is also related to surging public opinion. Now, the strengthening of anti-monopoly in China is first of all a decision made by policy makers after judging the situation, and there is also an objective voice of anti-monopoly public opinion. However, neither the political call nor public opinion can replace the rational and objective implementation of the law; that is, the implementation level of anti-monopoly law must not be kidnapped by the limelight and slogans, and it is even more necessary to apply the law neutrally and stably, and neither to arbitrarily lower the anti-monopoly law enforcement standards nor likewise to expand the scope of anti-monopoly law. After all, the rule of law is a long-term solution and the solid foundation of anti-monopoly policy.

4. Anti-Monopoly Policy Relating to Internet Platforms Needs to Keep Proper Law Enforcement Modesty. The digital economy based on data operation and the application of Internet technology is the most dynamic economic field today, and the Internet platform is developing rapidly. The volume and strength of Internet enterprises continue to surge, and the development of the Internet industry has entered the most difficult field, with a wide range of tentacles, showing the trend of "the stronger the strongest" and "the winner takes all." The industry is rising with unlimited prospects. However, it is still very young, the Internet is upgrading very quickly, and the phased problems are likely to be fleeting. The existing theories and practices often fail to provide systematic answers, and the understanding of regulation is still developing in depth and accuracy: it is still impossible to have a complete grasp. The current legal framework of anti-monopoly policy is generally applicable to the Internet industry, but the Internet industry also puts forward a new topic for anti-monopoly rules, which leads to difficulties in understanding.[91] If we do not understand its anti-competitive behavior correctly and so that we sanction the behaviors that have the potential to promote competition, we will stifle competition and harm the welfare of consumers.[92] For a considerable period of time, the anti-monopoly policy in this field can be active, but also moderate and not aggressive. After all, innovation and development are still the top priority, and it is necessary to

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[90] Gobol, fn. 20 at 131.

[91] Chinese scholars believe that in the past 40 years, the dominant consumer welfare standards have been controversial, but the Internet platform has brought a real impact to the anti-monopoly system. The intensive publication of digital market reports by the US Congress, government and academic circles may be the important rhythm of anti-monopoly reform. See John M. Yun, "Does Antitrust Have Digital Blind Sport?," 5 *George Mason University Law & Economics Research Paper Series*, 20 (2020).

[92] Id.

ensure development space and stamina.[93] We should not only believe in the wisdom and ability of law enforcers to keep pace with the times, but also hope that law enforcers will maintain necessary awe of the unknown and uncertainties. Therefore, anti-monopoly law enforcement relating to the Internet platform should keep necessary and appropriate modesty.

5. Constructing a Benign Interaction Between Anti-Monopoly and Anti-Unfair Competition. The competition law consists of anti-monopoly law and anti-unfair competition law, which complement each other under the common goal of maintaining competition order. Anti-monopoly law is extremely powerful, and it is more aimed at deterrence and prevention, and plays its role only at the critical time, rather than being frequently used, so that it does not easily damage the development vitality of enterprises. The anti-unfair competition law, however, can adjust market competition behavior frequently, anytime and anywhere. Maximizing its role can constantly improve and adjust the competition order on the strength of scales, and can prevent the formation of monopoly. Under the mission of "strengthening anti-monopoly," the central government has twice highlighted the issue of anti-unfair competition, and this clearly conforms to the functional orientation of both laws, attaching great importance to the synergy between them.

Anti-monopoly and anti-unfair competition generally have clear legal adjustment boundaries, but there may still be overlapping points. For example, Article 12 of the Anti-Unfair Competition Law prohibits "malicious incompatibility" and Article 35 of the E-Commerce Law prohibits operators of e-commerce platforms from unreasonably restricting transactions, all of which may coincide with the adjustment of the anti-monopoly law. However, their respective adjustment concepts, legal consequences and market results are different, particularly in terms of the differences in the size of free space for competition. In short, it is appropriate to curb such acts with great influence by anti-monopoly law, but those acts which are not too serious and whose consequences and influence are not too significant should not be included in the anti-monopoly law for deterrent punishment, so as to allow more freedom of competition and avoid excessive sanctions.

D. Rule of Law and Politics in the Extraterritorial Application of Anti-Monopoly Law

The extraterritorial effect of anti-monopoly involves legal issues, and political and economic issues such as national interests. After World War II, American courts

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[93] Too demanding anti-monopoly supervision may inhibit innovation. According to Schumpeter's innovation theory, monopoly and innovation are naturally linked, and without a certain monopoly income, there will be no motivation for innovation. The market influence or industry concentration brought by technological progress and innovation increases innovators excess returns, but they are related to the efficiency improvement. Each anti-monopoly supervision of China's digital market is being examined and explored. See Wambach & Mueller, fn. 14 at 6.

frequently used extraterritorial jurisdiction and relaxed jurisdiction to safeguard American interests and expand the extraterritorial influence of American anti-monopoly law. Moreover, they were constantly questioned and opposed by the international community. However, no matter how much controversy there is, extraterritorial jurisdiction is an unavoidable issue of anti-monopoly, and it is also a field of law enforcement with strong political relevance, focused on national interests. In the same circumstances involving multi-country competition law enforcement, anti-monopoly institutions of various countries usually evaluate competition law and make decisions, but the conclusions of different countries are often different or even completely opposite. In addition to the conventional differences in the discretionary factors of laws and law enforcement in various countries, it is inevitable that national interests and other factors are mixed in.[94] Therefore, in the extraterritorial application of the anti-monopoly law, no matter whether each country recognizes it or not, political issues such as national interests are prominent, and legal issues may be only rhetoric or appearance. Although China's anti-monopoly policies started late, the country is backed by a huge domestic market and thereby has natural advantages and influence in the extraterritorial jurisdiction of anti-monopoly. While insisting on carrying out extraterritorial law enforcement according to law, it is necessary to be good at using and fully considering the national interests and other factors, and to grasp the jurisdiction standards flexibly.

Conclusion

Anti-monopoly law exists to manage capital expansion and market forces and protect public welfare. Since its birth, it has had a lofty ideal and a grand political and economic mission. Being the birthplace of anti-monopoly laws, the US has been the clear leader for a long time. After World War II, the US made the most of its political and economic strength, extraterritorial jurisdiction of anti-monopoly, and developed the rule of law and various international channels. It has achieved wide international influence in anti-monopoly law, and has promoted anti-monopoly legislation and implementation in major countries intentionally or unintentionally. The development of anti-monopoly law is closely related to the country's market belief, market demand and market importance. Although anti-monopoly law varies from country to country, important market economies usually attach great importance to anti-monopoly and endow it with the status of a major mission. China aims to build a high-standard and ideal market economy system, and has a broad and open domestic market and a deep industrial market. Anti-monopoly

[94] In 2014, American Chamber of Commerce published "Interest Game in the Enforcement of China's Competition Law: Application of China's Anti-monopoly Law and the Role of Industrial Policy," which accused China's anti-monopoly law enforcement of discriminatory application scope, industrial protection, Chinese brands protection, procedural defects, secret role of third parties and lack of right to choose lawyers.

law inevitably has a broad function and space for development, and it also bears a grand political and economic purpose. Now, the central government has put forward policies of "strengthening anti-monopoly" and "curbing the disorderly expansion of capital," which indicates that the anti-monopoly law will maximize its unique mission.

The Internet economy is unique and has become a significant engine for a new round of industrial revolution. The uniqueness of Internet technology and industry makes it easy for it to expand widely and in a disorderly way, so the anti-monopoly issues of Internet platforms are concerning. The scale benefit, network effect and winner-takes-all of the network platforms make it seem that the industry has both inherent anti-competitiveness and pronounced advantages in promoting competition. This is a multi-faceted contradiction, and it is at the forefront of science and technology and industry. Therefore, it is necessary to deepen the understanding of its competitive and anti-competitive characteristics.[95] Application of anti-monopoly regulation to Internet platforms should be timely, active and down-to-earth, as well as opportune, moderate and modest. Certainly, we should first have a grand political and economic position, and properly handle the relationship between anti-monopoly law and commitment to innovation and development. We should not only moderately curb Internet monopoly and disorderly expansion of capital, but should also always take innovation and development as the standard of overall work strategy. After all, Internet anti-monopoly is an essential of the rule of law, so it must be brought onto the track of the rule of law, governed by the rule of law, and always sure to walk on the track of the rule of law.

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[95] "High-tech/big data platforms have always been branded as BAADD, that is, 'big, anticompetitive, addictive and destructive to democracy.'" "They dominate our lives, 'steal' and sell our data, and use the power of their platforms to destroy or suppress competitors." But the platform has another set of rhetoric: they are the creators of new systems; Popular services are often provided free of charge; It is the result of invention and creation and a sign of success; Any antitrust challenge will inhibit innovation. In addition, these are the areas of data and consumer protection. And the network effect of Internet platform not only pleases users (users get more "friends," suppliers or buyers), but also establishes a very high entry barrier and strengthens their own market power. See Fox, fn. 12 at 34 & 37.