

Anti-Monopoly Guidelines for the Platform Economy of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

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Chapter I — General Provisions

Article 1 — These Guidelines are formulated for the purpose of preventing and restraining monopolistic conduct in the platform economy, protecting fair market competition, encouraging innovation, safeguarding the lawful rights and interests of consumers, and promoting the healthy, regulated, and orderly development of the platform economy.

Article 2 — These Guidelines apply to all industries in the platform economy. For purposes of these Guidelines, "platform" means a form of business organization that connects persons and goods at multiple ends based on network information technology and carries out resource sharing through mutual dependence between such persons and goods, providing trading venues, trading matching, information release, and other services to two or more parties involved in the trading under the rules formulated by it or through other means.

Article 3 — The Anti-Monopoly Law of the People's Republic of China shall be the basic law applicable to monopolistic conduct in the platform economy. The Anti-Monopoly Law Enforcement Agency of the State Council shall, in accordance with the Anti-Monopoly Law and these Guidelines, strengthen anti-monopoly supervision in the platform economy.

Article 4 — When defining the relevant market in the platform economy, factors such as the characteristics of the platform economy, business models, the multiplicity of application scenarios, user groups, and geographic regions shall be comprehensively taken into account. Where the type of monopolistic conduct involved makes it feasible not to define the relevant market with precision, the relevant market may not be precisely defined.

Chapter II — Monopoly Agreements in the Platform Economy

Article 5 — Competing undertakings in the platform economy are prohibited from entering into the following horizontal monopoly agreements: (1) fixing or changing prices through data, algorithms, platform rules, or other means; (2) restricting output or sales volumes; (3) dividing sales markets or raw material procurement markets; (4) restricting the purchase or development of new technology or new equipment; (5) jointly boycotting transactions; and (6) other horizontal monopoly agreements determined by the Anti-Monopoly Law Enforcement Agency.

Article 6 — Where an undertaking uses technologies such as big data and algorithms or platform rules to reach a monopoly agreement through concerted practices such as exchange of price-sensitive information, the Anti-Monopoly Law Enforcement Agency may determine that a horizontal monopoly agreement has been reached.

Article 7 — The most-favored-nation (MFN) clauses adopted by platform undertakings may constitute vertical monopoly agreements. When analyzing MFN clauses, the Anti-Monopoly Law Enforcement Agency shall comprehensively consider factors such as the business model of the platform operator, the number of market players, the market share of the platform undertaking, and the nature of the relevant product or service.

Chapter III — Abuse of Market Dominance in the Platform Economy

Article 8 — In determining a dominant market position of a platform undertaking, the following factors shall be taken into account in addition to the factors specified in the Anti-Monopoly Law: (1) the market share of the platform undertaking and the competitive conditions of the relevant market; (2) the scale of the platform's user base, network effects, lock-in effects, and data processing capabilities; (3) the ability of the platform undertaking to control the market; (4) the financial strength and technological conditions of the platform undertaking; (5) the degree of reliance of other undertakings on the platform undertaking in their transactions; and (6) the ease of market entry.

Article 9 — Platform undertakings with a dominant market position may abuse their market dominance by engaging in any of the following conduct: (1) selling goods at unfairly high prices or purchasing goods at unfairly low prices; (2) selling goods at prices below cost without justification; (3) refusing to deal with trading counterparts without justification; (4) requiring trading counterparts to deal exclusively with them ("either-or choice") without justification; (5) tying or imposing unreasonable trading conditions; (6) applying differential treatment to trading counterparts in equivalent conditions; and (7) other conduct constituting abuse of dominant market position.

Article 10 — In determining the abuse of market dominance by a platform undertaking, factors such as the characteristics of the platform economy, the platform undertaking's business model, technology, algorithms, and platform rules shall be comprehensively considered. Differential treatment of trading counterparts based on big data and algorithms that applies different transaction prices or other trading conditions to trading counterparts in equivalent conditions may constitute abuse of dominant market position.

Chapter IV — Concentration of Undertakings in the Platform Economy

Article 11 — In reviewing concentrations of undertakings in the platform economy, the Anti-Monopoly Law Enforcement Agency shall take into account the characteristics of platform enterprises such as the bilateral

or multilateral nature of the platform economy business model, network effects, economy of scale, and the role of big data. Where the turnover of the undertakings involved in the concentration meets the declaration threshold, the concentration shall be declared to the Anti-Monopoly Law Enforcement Agency in advance.

Article 12 — When examining the competition impact of a concentration of undertakings in the platform economy, the Anti-Monopoly Law Enforcement Agency may assess whether the concentration will lead to the elimination or restriction of competition in the relevant market from aspects such as the market share of the undertakings involved, the degree of market concentration, and the impact on consumers and innovation.

Chapter V — Supplementary Provisions

Article 13 — These Guidelines are promulgated by the Anti-Monopoly Commission of the State Council and shall take effect from the date of promulgation. The Anti-Monopoly Commission of the State Council shall be responsible for the interpretation of these Guidelines.

Article 14 — Where the Anti-Monopoly Law or other relevant laws and regulations provide otherwise, such provisions shall prevail.

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