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Application of Anti-monopoly Act to Protect Personal Information in the Digital Economy Era

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Abstract

With the advent of the era of the digital economy, the competition and utilization of information have become the core of enterprise competition. At the same time, the behavior of digital platform companies infringing on users' personal information is becoming more and more serious. The security of consumers' personal information is seriously threatened, and the market structure is unbalanced. The application of the Anti-monopoly Act to protect personal information is of great significance at the moment. Adjusting the imbalance of market structure plays a complementary and strengthened indirect protection role, and can also play a better deterrent role for monopoly companies on some large digital platforms. The integration of the Anti-monopoly Act into the personal information protection system may face conflicts between legal applications and administrative law enforcement. It is necessary to establish a good connection system between the Anti-monopoly Act and other personal information protection systems to jointly promote the development of personal information protection.

Keywords

Antitrust, digital economy, personal information protection, competition

1. Status and analysis of personal information protection in the digital era

1.1 The value and significance of personal information data

With the deepening of the information revolution and the rapid integration and development of networking, digitalization, and intelligence, we have entered the era of a digital economy belonging to human beings. In the era of digital economy, data has undoubtedly become the most important competition point for enterprises. For enterprises, personal information data is like a resource-rich oil field, which has great value. In the process of competing for personal information, most of these platform companies adopt "zero-price service" and other methods to improve products and promote product innovation with personal information, and push personalized advertising services, so as to create considerable profit income for enterprises (Jiao Haitao, 2021). Secondly, the massive amount of personal information of users can help enterprises to expand their business outward. Through the collection of personal information data, algorithm analysis, multi-platform sharing, and use, they can gradually realize the extension of their own industry, realize multi-platform crossing gradually form a monopoly position and continuously strengthen their industrial foundation. There is no doubt that personal information data competition has become the most important form of competition in the field of the digital economy. However, the competition for personal information by companies often results in cases of property damage and moral damage to individuals. This not only puts the individual user at potential risk at all times but also seriously affects the good functioning of the entire economic and social

form.

1.2 The current situation and dilemma of personal information protection

How to solve the crisis faced by personal information in the context of the digital era and resolve the conflict between data competition of platform companies and personal information protection is an urgent and important practical problem facing China nowadays. According to the data of the White Paper on Governance of Personal Information Protection of Mobile Internet Applications released by the China Academy of Information and Communication Research in 2021, in the governance phase of in-depth notification of the rectification of non-compliant applications, the top 3 in the number of problems include illegal collection of personal information, mandatory, frequent and excessive requests for permissions by APPs, and illegal use of personal information, accounting for 36%, 24%, and 14%. In the notification stage, the problem of illegal collection of personal information accounted for 46%[1]. In a series of data analyses, we can easily see that the power of the market and free development alone cannot protect personal information. Based on this, China enacted the Personal Information Protection Law in 2021, with a view to protecting the rights and interests of personal information and promoting the rational use of personal information through strict regulation of the behavior of personal information handling.

However, in terms of the current situation of serious infringement of personal information, the situation of "digital platform monopoly" often arises in practice. Some huge digital platform enterprises often lead to the infringement of personal information in the process of implementing monopolistic behavior with the help of big data algorithms, cloud platforms, and other technologies (Ye Ming & Zhang Jie, 2023). The most typical case is Facebook's abuse of dominant position to violate personal privacy. In the investigation of the German Federal Cartel Investigation Agency, it is not difficult to find that those Internet platform enterprises that are in a dominant position themselves often use the way of providing free services to users, after acquiring and using a large amount of user data. The users do not know the impact of the collected data or know but in the end, they are forced to continue using the platform because of their dependence on it. Based on this, there has been extensive discussion in the academic community about whether or not to consider introducing antitrust laws to regulate the behavior of platforms to protect better personal information and how the rules should be applied.

2. The debate of whether the antitrust law can be applied to the protection of personal information

As to whether the antitrust law can be applied to regulate the protection of personal information, many scholars at home and abroad have discussed this issue in theoretical research, mainly focusing on whether personal information and antitrust have the same or similar objectives and whether the antitrust law should be applied to regulate the protection of personal information.

2.1 Supporters' views

The proponent believes that both the regulations on personal information protection and the relevant rules of the antitrust law share a common goal, which is to maintain fairness. The supporters believe that both anti-monopoly and personal information protection are centered on consumer welfare. The provisions of the anti-monopoly law are mainly aimed at maintaining a good order of market competition, which essentially means maintaining fairness. In contrast, the frequent infringement and reckless use of users' personal information by platform enterprises, which hold an absolute advantage and dominant position in the digital economy, is undoubtedly a manifestation of destroying fairness and should be regulated by the anti-monopoly law.

Lina Khan argues that "the current antitrust framework's targeting of consumer welfare standards related to short-term price effects is insufficient and should look more closely at the competitive process itself" (Lina M. Khan, 2017). Personal information should be defined today as an element that is more attractive and competitive than price, and its expansion can be understood as part of consumer welfare. Both personal information protection and antitrust are dedicated to better protecting consumer welfare, and through the antitrust law to protect an excellent competitive market atmosphere so that consumers' personal information can be better protected. As people's personal information is fully protected, they can make more correct and favorable choices based on it, thus further promoting the excellent

[1] 2021 China Academy of Information and Communication Research *White Paper on Governance of Personal Information Protection of Mobile Internet Applications*.

development of the market. Therefore, the two can be said to be complementary to each other.

2.2 Opposing views

The main opposing view is that from the viewpoint of the legal division of labor, personal information protection and antitrust law belong to different systems and institutional rules, and each should be responsible for its own. According to foreign scholar Alfonso Lamadrid, the scope of competition law should focus on economic issues, the protection of competition to achieve economic efficiency, and other issues in the public sphere should not be within its jurisdiction. Other scholars argue that the antitrust law focuses on macro-level competition harm, while the personal information protection law aims to make every specific transaction as fair as possible, and that there are differences in the values and focus of these two laws (Zhang Zhanjiang, 2022). In short, the opposing scholars believe that the antitrust law mainly pursues economic efficiency and that using it to protect personal information will destroy its professionalism and institutional rule systemization. This is not only inconsistent with the traditional analysis of antitrust law but also may destroy the certainty and professionalism of antitrust law, make antitrust law a "universal law" and lose the boundary with other laws.

Second, the opposing side argues that "zero prices do not produce the competitive harm that antitrust seeks to prevent" (John M. Newman, 2015). This "price-only theory" is the traditional theory of the Chicago School, whose representatives, such as Posner, believe that "the most appropriate tool for looking at antitrust issues is price theory". The Chicago School is one of the few proponents of modern antitrust law. Its established price theory has undoubtedly been influential and fundamental in antitrust law, and the price analysis model it advocates has ruled antitrust enforcement in recent decades. However, in the digital economy, this view has excessively limited the protection of antitrust law against competition, fixing it on users' concerns about prices, ignoring the potential dangers posed by non-price aspects, and instead indulging the problem of personal information infringement by large monopolistic digital platform companies, thus entering into a vicious circle of development.

3. The necessity of applying the anti-monopoly law to protect personal information

3.1 Serious market structure imbalance problem

Because there is a severe imbalance between individuals as consumers and corporate platforms as information processors, it is often difficult for individuals to make decisions that are more favorable to them, both in terms of access to information and informed processing. On the one hand, most consumers are unable to distinguish whether the vast and complicated privacy protection regulations violate their legitimate rights and interests; on the other hand, there is a severe information asymmetry in this transaction, as the platform always has easy access to their information, while they are unable to grasp the corresponding information, after tasting the sweetness of zero-price services, they often ignore the potential risk of information leakage behind and cost loss behind.

At the same time, there is also a horizontal structural imbalance among information processors, and some platforms dominate the market with the help of algorithms big data, etc., gradually forming a monopolistic position, resulting in a highly tilted market situation (Zeng Xiong, 2022). On the other hand, continuous mergers and acquisitions of potential emerging small businesses, so that the personal information subjects as consumers have a narrowing range of options available to them. They are eventually forced to accept some services and products. For example, the acquisition of WhatsApp by Facebook and other cases not only makes individuals lose their freedom of choice of corresponding products and services but also leads to the loss of competitive vitality in the market in the long run. The reduction of competitors and the formation of monopolistic positions will prompt those platform enterprises that occupy the absolute dominant position in the market to gradually form a conspiracy to reduce the level of personal information protection continuously, and the danger of personal information protection will increase day by day.

3.2 Limitations under the protection of special laws

China's Personal Information Protection Law stipulates that the consent of individuals is required to handle personal information. In contrast, the current rule on handling personal information is the "notice-consent" rule widely adopted by countries worldwide. This rule is to manage and protect personal data through industry self-regulation, but it is often ineffective in practice. Because the privacy policy is often obscure and complicated, most users do not have the patience to read it before clicking the "Accept and Agree" button. Although the problems have improved

with the introduction of the Personal Information Protection Law, there are still limitations.

Secondly, it is not uncommon for platform companies to use personal data for price discrimination with the help of big data algorithms, which is often referred to as "big data killing" (Zhang Xinbao, 2022). In recent years, such price discrimination has seriously infringed on the legitimate rights and interests of consumers. The Personal Information Protection Law alone cannot effectively control the above-mentioned behaviors. To curb these improper behaviors on the platform, it is necessary to regulate them with the help of anti-monopoly rules, that is, the "anti-monopoly properties of personal information" mentioned by some scholars, and the anti-monopoly law cannot regulate these behaviors just because they seem to be unrelated to personal information. The anti-monopoly law cannot fail to regulate these acts just because they do not seem to be related to personal information, because regulating these improper acts is to stop monopolistic acts and protect personal information.

4. The Path of Anti-monopoly Law to Protect Personal Information

4.1 Play the synergistic and complementary role of the Anti-monopoly Law

The Personal Information Protection Law, as a particular law, plays a direct role in the protection of personal information. However, the Antitrust Law can strengthen the protection of personal information and play a complementary role of indirect protection, and the two rules complement each other and work together. This recommendation is also reflected in extraterritorial practices, such as the EU, the US, and Germany, which attach great importance to the cross-complementarity of data protection and antitrust (Deng Lingbin, 2023). The investigation of Facebook by the German Federal Cartel Office (FCO), was the first case in the world in which damage to personal information was considered a monopoly. It has brought about a series of practices by the FCO that have a strong restraining and deterrent effect on Facebook, which is more effective than simply applying the data security law to punish it. Because the antitrust law is more punitive, the application of the antitrust law can undoubtedly play a better role in punishing crime and deterring such cases that seriously infringe on personal information and bring significant impact to society.

However, it is also important to note that the scope of application of the anti-monopoly law is rigorous and precise. The infringement of excessive collection and use of personal information by enterprises requires first determining whether the platform has abused its dominant market position, etc. If it is a general case, the Protection of Personal Information Law, the Protection of Consumer Rights and Interests Law, etc. should be applied normally. When there is a situation where the relevant rules of personal information protection can be applied and can be regulated by anti-monopoly, the choice of application should be made in accordance with the principle of the most favorable protection of consumer interests. In short, the antitrust law should play a supplementary and indirect role in the protection of personal information.

4.2 Conflict and Harmonization.

The Personal Information Protection Law is based on the protection of the right to self-determination of personal information and the complementary strengthening of the vulnerable position of individuals. It focuses on some issues at the micro level in the consumer's handling of personal information protection. It does not answer the question of whether consumers enjoy sufficient space for choice at the macro level, so it is doomed to fail to solve the problems related to the damage to personal information brought about by platform monopolies in the context of the digital era. The Anti-monopoly Law, on the other hand, is more oriented to the regulation of enterprises and platforms at the macro level. Through a series of strict examinations and restrictions on platform enterprises, the market can be guaranteed to operate effectively and well, and consumers can be protected from infringement of personal information rights and interests by having sufficient freedom of choice.

How to realize the two-way convergence of the two sectoral laws is a need for further study and refinement. In China's personal information protection, it is clearly stipulated that the same coordination by the State Internet Information Office and joint supervision by multiple departments, so the introduction of the anti-monopoly law into the work related to personal information protection will not cause significant conflicts (Mei Xiaying, 2022). However, clear and specific coordination mechanisms need to be continuously studied and refined to achieve effective communication and efficient handling between multiple departments, such as the establishment of a joint consultation and sharing mechanism, joint interdepartmental investigation mechanism, etc. With a view to solving cases in collaboration, the departments can continue to put forward more breakthrough and innovative ideas to better protect personal information from infringement.

5. Conclusion

Under the rapid development of the digital economy, it is necessary and justified to apply the antitrust law to the protection of personal information. Most importantly, as the Neo-Brandeis school insists, "the goal of antitrust should be not only economic efficiency but also market structure and competition". Personal information itself is beyond price and is something more worthy of protection and competition. The traditional price-only theory should give way to the development of the new era. The reality of personal information protection requires us to make changes and to strictly control those large platform enterprises with dominant market positions that wantonly exploit and violate consumers' personal information, which requires the addition of anti-monopoly law. Further research and innovative breakthroughs are needed to better realize the interface and conflict coordination between the antitrust law system and personal information protection, in order to protect personal information better and comply with the development trend of the digital economy.

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