Research on Punitive Damages for "Either-or Choice" Monopoly Behavior of Internet Platform

Yang LIU\textsuperscript{1,a} and Kun XU\textsuperscript{2,b,*}

\textsuperscript{1,2}School of Law, South China University of Technology, Guangzhou, Guangdong Province, China
\textsuperscript{a}cnfaxue@126.com, \textsuperscript{b}1354644381@qq.com
\textsuperscript{*Corresponding author}

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Abstract. As Alibaba Group was fined 18.228 billion yuan, the "Either-or Choice" behavior of the Internet platform has also come under heated discussion. In the long term, "Either-or Choice" behavior will not only destroy the order of market economy, but also damage the interests of merchants and consumers. How to effectively regulate the "Either-or Choice" behavior of the Internet platform and make up for the loss of merchants and consumers is also a hot topic at present. This paper will discuss the protection of merchants' and consumers' interests from the perspective of punitive damages.

1. Introduction

"Either-or Choice" behavior refers to that the Internet platform takes advantage of its dominant market position and requires the businesses that rely on it to only choose one of its platforms and other platforms for operation. This is the Internet platform abuse of market dominance behavior. However, in the relevant laws and regulations of our country, the punishment of "Either-or Choice" behavior is mostly administrative punishment, but there is no corresponding clear protective provisions for the damage to the interests of merchants or consumers. The application of punitive damages can, on the one hand, compensate merchants and consumers for the loss of interests caused by the "Either-or Choice" behavior through property punishment on the Internet platform; on the other hand, it can also play a role of punishment and deterrence on the Internet platform.

2. The Influence of "Either-or Choice" Behavior on the Internet Platform

The "Either-or Choice" behavior of the Internet platform has the greatest impact on merchants and consumers.

For merchants, if they can carry out business activities on multiple platforms, they will face a wider range of consumer groups, increase trading opportunities, and correspondingly improve their market share. However, the "Either-or Choice" behavior of the Internet platform allows merchants to conduct business activities only on a specific platform, which just reduces the trading opportunities of merchants and is not conducive to the expansion of their market. With the monopoly of the platform, merchants' bargaining power will be reduced, and the cost they need to pay to enter the platform will also increase. In addition, if the Internet platform implementing the "Either-or Choice" behavior is poorly managed or has some problems that are not conducive to business activities of merchants, merchants will be faced with inevitable risks and thus unable to carry out normal business activities or even go bankrupt. For example, when the platform is corrected due to the violation of relevant regulations, the merchants on the platform will be unable to conduct business activities, which will directly lead to economic losses. At the same time, when merchants and platforms have disputes, merchants tend to be at a disadvantage, and platforms will use all kinds of restrictions to suppress merchants. For example, Meituan positioned its uncooperative merchants in the reservoir, which will also cause losses to the merchants. If merchants are able to run their business across multiple platforms, they are less likely to suffer such losses, and their position with the platform will become more equal.
For consumers, "Either-or Choice" is originally the right of consumers, but some Internet platforms firmly grasp this right in their own hands, which not only infringes on consumers' right to choose, but also seriously infringes on other interests of consumers. Due to the "Either-or Choice" behavior of the Internet platform, consumers will have a single purchase platform and cannot compare among multiple merchants, thus they will spend more cost to buy the desired goods. In addition, due to the high cost of entering the platform due to the single platform, merchants tend to turn to consumers for acquisition. After all "The wool comes from the sheep", so the purchase cost of consumers will also increase.

Therefore, it can be seen that the "Either-or Choice" behavior of the Internet platform will not only cause losses to the interests of merchants, but also to the interests of consumers.

3. Regulation of "Either-or Choice" Behavior on Internet Platform

In the existing relevant laws and regulations in China, there are no clear provisions on the compensation system for merchants and consumers caused by the "Either-or Choice" behavior of Internet platforms. Most of the provisions are administrative penalties, and the severity of the punishment is nothing to the operators of Internet platforms. China's "E-commerce Law" only stipulates that e-commerce operators who sell goods or provide services, fail to perform contractual obligations or perform contractual obligations in a non-conforming manner, or cause damage to others, shall bear civil liability according to law. Our country "anti-monopoly law" also only stipulates: the operator implements the monopoly behavior, causes the loss to the others, assumes the civil liability according to law. The provisions on punitive damages in the Consumer Rights and Interests Protection Law of our country are not applicable to the protection of consumer interests under such circumstances. Therefore, from the perspective of relevant laws and regulations in China, both the E-commerce Law and the Anti-Monopoly Law only require platform operators to bear civil liability, and do not make specific and clear provisions on the loss compensation of merchants and consumers whose interests are damaged. This is not conducive to the protection of the interests of businesses and consumers, nor to the punishment and deterrence of Internet platforms, nor to the realization of fairness and justice, nor to the building of a country under the rule of law.

In the United States in the Sherman act has the punitive damages provisions, where anyone or individuals for others to violate the act ban on assets and trade has suffered damage, the defendant will be required in the living state of the United States district court for questioning, and three times the compensation will be paid to the plaintiff and the defendant and the litigation costs. This is known as the triplicate damages rule. Similarly, in the European Union, there are certain monopoly cases in which a double indemnity rule is applied to sanction the monopolist. Therefore, in the judicial practice of foreign countries, there has been a precedent of punitive damages in the application of anti-monopoly, which is also the experience of China's anti-monopoly law can be used for reference.

4. Punitive Damages Shall be Applied to the "Either-or Choice" Behavior of the Internet Platform

4.1. Necessity

"Either-or Choice" behavior on the Internet platform for punitive damages is to compensate the loss of businesses and consumers, not only can play a punish and deter illegal Internet platform operators, achieve the purpose of punitive damages system, can also help the government establish a fine image of law, the height of the social public recognition and support, It would also allow consumers to enjoy safer products, which in turn would bring greater dividends to the general public.

4.2. Determination of Loss

In general, the loss of a business can be judged by the amount of sales it loses as a result of its "Either-or Choice" behavior. And consumers of loss is difficult to determine, for the core consumers
(loyal users), because this kind of consumers only subscribe to specific merchant's goods, so he can't in other vendors to bargain to bargain the losses caused by the almost negligible, the only loss is to consider merchants charge will increase operating costs to consumers caused by the loss. For ordinary consumers, their losses not only include the loss caused by reducing trading opportunities, but also include the loss of purchasing costs. Therefore, it is difficult to determine the loss of consumers, which can be judged by analyzing the relevant purchase data. Of course, the expected loss of profits suffered by merchants and consumers should also be included. At the same time, the litigation costs and other litigation costs of bringing a lawsuit can also be determined as the losses of merchants and consumers.\textsuperscript{[4]}

If the loss of merchants and consumers cannot be determined due to specific circumstances, the court can, within a reasonable scope, use its discretion to determine the scope of compensation by comprehensively considering the damage of merchants and consumers and the implementation of the "Either-or Choice" behavior on the Internet platform.\textsuperscript{[5]}

4.3. Standardize the Application of Punitive Damages

The application of punitive damages system to the "Either-or Choice" behavior on the Internet platform should also refer to the constituent elements of the system. First of all, it is necessary to consider whether the Internet platform has the intention of monopoly in implementing the "Either-or Choice" behavior. Secondly, whether the Internet platform is malicious when it implements the "Either-or Choice" behavior. In addition, whether the interests of merchants and consumers have suffered serious losses due to the "Either-or Choice" behavior of the Internet platform. Finally, whether there is a causal relationship between the damage to the interests of merchants and consumers and the "Either-or Choice" behavior of the Internet platform. The purpose of clarifying the application of punitive damages is to prevent abuse of action.\textsuperscript{[6]}

At the same time, punitive damages could be tripled and the Internet platforms would be required to bear the corresponding legal costs, This would not only provide reasonable compensation for damages to merchants and consumers, but also encourage private individuals to bring antitrust suits.\textsuperscript{[7]}

5. Conclusion

Punitive damages as a relief system for businesses and consumers, not only to the implementation of "Either-or Choice" sanctions punishment and deterrence, Internet operators can also damage to the benefit of merchants and consumers to carry on the reasonable compensation, as well as encourage the effect of merchants and consumers bring a private prosecution in our country, plays a promoting role in the realization of social fairness and justice. Therefore, China's anti-monopoly law, e-commerce law and other relevant laws and regulations should not Internet platform operators is limited to the administrative penalty of a weak can properly apply the punitive compensation system, in order to stimulate the competitiveness of the market economy and the innovation ability, for the majority of the market economy main body to create more trading opportunities, add well-being for the majority of ordinary people.

References


