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Analysis of the Monopoly Risks of the "Lowest Price on the Internet" Clause

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Abstract: Development of e-commerce live streaming platforms, influencers attract a large number of consumers by selling products through live broadcasts, making these platforms popular for online shopping. However, the "lowest price on the internet" agreements between e-commerce platforms, top influencers, and suppliers have sparked widespread attention and discussion. This paper qualitatively analyzes the pricing issues between top influencers and manufacturers from a legal perspective, exploring the potential monopoly risks of the "lowest price on the internet" clause in e-commerce platforms. Through an in-depth analysis of these clause, this paper reveals their adverse effects on the online sales market and e-commerce live streaming platforms and provides relevant recommendations.

Keywords: E-commerce live streaming platforms, Lowest price on the internet clause, Monopoly risks, Anti-monopoly regulations

1. Introduction

In recent years, e-commerce live streaming influencers have become an indispensable part of China's e-commerce industry. By selling products through live broadcasts, they attract a large number of consumers and provide a new platform for online shopping. During the "Double Eleven" promotion in 2021, top influencers like Li Jiaqi and Wei Ya promised the "biggest discounts of the year" for products such as L'Oréal facial masks (i.e., the prices in their live streams were claimed to be the lowest on the internet). However, consumers discovered that L'Oréal offered substantial discount coupons on its own live streaming platform, rendering the influencers' "lowest price" claims empty. The incident concluded with the parties involved promising to compensate consumers for the price difference. The "lowest price on the internet" agreements between e-commerce live streaming platforms, top influencers, and suppliers have drawn significant industry attention. Some argue that these agreements are merely market behaviors, given the advertising relationship between brands and influencer teams. However, others believe that these clauses may constitute monopolies, significantly negatively impacting market competition and directly harming consumer interests. This paper aims to explore the motivations behind the "lowest price on the internet" agreements, assess whether there are monopoly risks, and examine the potential impacts on the market and consumers. Through an in-depth study of these issues, this paper offers suggestions for policymakers and market participants on handling these risks.

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2. Definition and Characteristics of the "Lowest Price on the Internet" Clause

A "lowest price on the internet" clause refers to a commitment between e-commerce live streaming platforms and suppliers to ensure an absolute price advantage. Simply put, the supplier promises that the product price promoted by the top influencer will be the lowest among all online sales channels. In the e-commerce market, such an agreement gives the product a significant price advantage among similar products, making it highly attractive to suppliers, e-commerce platforms, and top influencers. The lowest price set by the supplier and platform affects the prices consumers pay for the product and indirectly influences the retail prices of the supplier's products on other online sales channels (such as Taobao flagship stores, JD Shopping, etc.).

3. Negative Evaluation of the Lowest Price Clause

3.1. Theoretical Analysis

Some believe that the "lowest price on the internet" agreements between e-commerce live streaming platforms and brands are normal market behaviors, arguing that influencers are not sellers and thus cannot abuse dominant positions or exclude competition. However, it is insufficient to merely regard e-commerce platforms and top influencers as advertisers and endorsers without exploring their potential role as sellers in price monopolies.

In the author's view, top influencers like Li Jiaqi are not traditional endorsers as defined by China's advertising laws but rather a combination of advertiser, advertising operator, advertising publisher, and product seller. Therefore, it is essential to consider their significant interference in product pricing and the monopoly nature of their clause with brands.

The essence of influencer marketing is a sales model where live broadcasts serve as a medium for influencers to introduce product features, performances, etc., to promote sales. The promotional behavior in this model should be considered "commercial advertising" and regulated by China's advertising laws. Traditionally, advertising involves advertisers, advertising operators, advertising publishers, and endorsers. However, in the live streaming sales model, these roles overlap, leading to legal ambiguities regarding the influencer's role [1]. In addition to their overlapping roles as advertising operators, publishers, and endorsers, top influencers also hold a market position as sellers in live streaming sales.

The income of top influencers primarily comprises three components: traffic fees, placement fees, and commission. Traffic fees can be considered advertising fees, while the other two are analogous to modern counter fees. Firstly, placement fees are similar to counter fees in modern retail. In the retail model, a product must pay an entry or counter fee to be placed in a store or supermarket, and the fee varies depending on the size of the counter space. For example, some products occupy three shelves in a supermarket, while others only a small corner. Different store locations have different foot traffic, resulting in varying entry fees. Similarly, the amount of placement fees in a live stream determines the duration for which the influencer promotes the product. Secondly, commission is determined by sales volume. While placement fees could be equated to endorsement fees, no endorser has the right to extract additional income based on sales volume or the obligation to promote the product actively. Influencers in live streams strive to increase sales to earn higher commissions, similar to how total sales are controlled by supermarkets in the traditional retail model, though the method of sales statistics differs. This reflects the consistent role of sellers in both traditional and live streaming sales models.

Thus, it is insufficient to negate the price monopoly nature of the "lowest price on the internet" agreements between e-commerce platforms and top influencers and brand parties based on their advertising roles alone. A negative evaluation of the lowest price clauses is warranted.

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3.2. Judicial Practice

According to the *Guidelines for Compliance in Online Live Streaming Marketing Activities* issued by the Shanghai Municipal Market Supervision and Administration Bureau on November 3, 2023, live stream operators, influencers, and platform operators are prohibited from requiring the signing of "lowest price clause" or other unreasonable exclusive mandatory clauses in their agreements [2]. This regulation reflects the official stance that such practices are inappropriate and demonstrates opposition to the "lowest price on the internet" clauses in e-commerce live streaming platforms. The issuance of this document aims to constrain such behaviors through specific provisions, protecting market competition order and consumer rights, and promoting the healthy development of the e-commerce industry.

4. Pricing Issues Among E-commerce Live Streaming Platforms, Top Influencers, and Suppliers

According to *China's Pricing Law*, unless prices are set or guided by the government, market entities have the right to set their prices. The primary entities responsible for pricing include producers and sellers, with producers setting ex-factory prices and sellers, who ultimately form the selling relationship with consumers, being the final price setters.

In the modern e-commerce live streaming business model, products entering a live streaming room for sale by influencers are often repriced based on the brand's market positioning, changes in broadcast styles, and consumers' psychological price points. The leading power in product pricing typically lies with the brand itself. However, for businesses looking to launch new products or increase exposure for niche brands, the pricing power often shifts more towards the live streaming teams. In the live streaming sales model, the larger the influencer’s audience, the greater their bargaining power. Top influencers may push for deeper discounts or demand greater promotional efforts [3].

Although e-commerce live streaming platforms and top influencers do not set retail prices, they share the profits based on the final sales figures. The higher the sales, the more profit the e-commerce platform and influencers earn. To secure a competitive price advantage and excess profits, platforms and suppliers may include "lowest price on the internet" clauses in their contracts [4]. In this context, influencers do not negotiate for consumers but rather aim to maximize their own profits by promoting products for manufacturers. This practice elevates the bargaining power of influencers, not consumers, leading to a situation where neither the merchants nor the consumers hold the pricing authority. Consequently, top influencers and their platforms wield substantial influence over pricing.

5. Potential Market Monopoly Risks of the "Lowest Price on the Internet" Clause

The "lowest price on the internet" clause can help influencers win consumer favor and attract significant traffic and demand to e-commerce live streaming platforms, substantially boosting suppliers' sales. However, underlying this clause are issues of market fairness and transparency. In the long run, this price war may lead to malicious competition among operators, adversely affecting both the online sales market and e-commerce live streaming platforms, significantly stifling market innovation and diversity.

5.1. Online Sales Market: Fixed Product Prices Leading to Price Monopoly

The online sales market encompasses channels for selling products through e-commerce live streaming platforms (such as major live streaming platforms) and other online sales channels of brands, like Taobao flagship stores, JD flagship stores, and Vipshop. Although all are part of the e-

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commerce industry, merchants can choose different channels to increase product exposure and sales opportunities. The main impact of the "lowest price on the internet" clause on competition is eliminating "internal brand competition," i.e., competition among different channel merchants selling the same producer's products [5].

In a market economy, prices should be formed by the supply and demand mechanism and competition mechanism. Any artificially set price should be deemed illegal. According to *Anti-Monopoly Law* and *Regulations on Anti-Price Monopoly*, monopolistic behavior in market pricing mainly involves operators reaching price monopoly agreements or using price means to exclude and restrict competition, as well as administrative agencies or institutions authorized by laws and regulations abusing administrative power. Price monopoly agreements are defined as agreements, decisions, or other concerted actions that eliminate or restrict competition in pricing [6].

Agreements between suppliers and e-commerce platforms that stipulate the influencer-promoted product prices will be the lowest among all online sales channels can restrict suppliers from flexibly pricing their products based on market demand and competition, limiting their pricing power outside the influencer's live streaming room. By excluding and restricting competition through price mechanisms to pursue monopoly profits, a price monopoly is formed, harming other market competitors and eroding consumer rights.

Firstly, the "lowest price on the internet" clause requires suppliers to give the contracted platform the lowest price compared to other platforms, which can easily lead to anti-competitive effects. Without the "lowest price on the internet" clause, platforms might proactively reduce commissions or find other ways to lower supplier pricing to enhance their live streaming room's competitive advantage. Conversely, with the clause in place, top influencers do not need to lower commissions to gain suppliers' low-price advantages but can leverage their significant traffic and fan base to "negotiate" with suppliers [7] —only suppliers guaranteeing the "lowest price on the internet" can enter the top influencer's live streaming room. For suppliers, having competing products in the top influencer's live streaming room will cause significant consumer demand loss in a short period, forcing them to accept the e-commerce platform and top influencer's pricing demands. Consequently, suppliers cannot set their prices in their sales channels (e.g., Taobao flagship stores, offline stores), resulting in uniform high prices that cannot be lower than the agreed "lowest price." This vertical price-fixing monopoly risk leads to market price rigidity and elevated influencer pricing power, restricting competition.

Secondly, there may be collusion among different suppliers. For example, in the Apple e-book price-fixing case, Apple and five major publishers signed vertical agency agreements while the publishers were suspected of horizontal collusion in manipulating e-book prices [8]. Similarly, different operators of similar products might engage in horizontal collusion, secretly manipulating price negotiations with e-commerce platforms. Although the "lowest price on the internet" agreement may appear to offer consumers superficial price benefits, attracting their purchasing desire, it may lead to price manipulation and deception, ultimately raising overall market prices and serving as a means for e-commerce platforms and competitors to reach market-dividing horizontal monopoly agreements [9], directly harming consumer interests.

In conclusion, top influencers and their e-commerce platforms can use their strong influence to control product pricing and manipulate market prices. The rise in influencer pricing power reduces market competition, decreasing consumer purchasing options and preventing consumers from obtaining more favorable prices, thus impacting market efficiency and consumer welfare.

5.2. E-commerce Live Streaming Platform Market: Restricting Industry Competition

The e-commerce live streaming platform market includes various platforms offering product sales and live streaming services, such as Taobao Live, JD Live, and Douyin Live. These platforms provide channels for merchants to interact with and sell to consumers through live streaming, product displays, and order management. Typically, these platforms have large user bases and high user retention, attracting numerous influencers and consumers. The market focuses on competition among e-commerce live streaming platforms.

In the presence of "lowest price on the internet" agreements, the cooperation between top influencers and the e-commerce platform becomes crucial for market competition. This agreement restricts suppliers' pricing with competing platforms, limiting product prices within a low range. This lowest price effectively sets a pricing norm for competitors, weakening their pricing power and creating a monopolistic price structure. Suppose a small or medium-sized enterprise wishes to attract consumers through low prices and is willing to negotiate lower commissions with suppliers to secure lower prices for higher sales. However, these suppliers also have "lowest price on the internet" agreements with top influencers, preventing them from offering lower retail prices to other enterprises. This situation hinders small and medium-sized e-commerce businesses from providing attractive, reasonable low prices to consumers, limiting competition.

6. Conclusion

China is a major internet power today, with rapidly developing new commercial models and technological means. This progress has exposed the difficulty of applying existing competition rules to emerging industries. In the context of China's anti-monopoly laws, this contradiction is even more pronounced. This paper analyzes the monopoly risks of "lowest price on the internet" agreements between top influencers and platforms, concluding the following key findings: such agreements can disrupt market pricing mechanisms and foster industry collusion, leading to price monopolies. Additionally, these agreements restrict the development opportunities of emerging platforms, excluding new e-commerce platform competitors and harming market diversity and innovation. Agreements between competing operators to eliminate or weaken competition are challenging to prove due to the mutual concealment of evidence by the parties involved [10]. Therefore, regulatory authorities should first strengthen the supervision of price agreements between top influencers and platforms to prevent the abuse of market dominance that restricts competition. Secondly, they should encourage a fairer competitive market environment, providing more opportunities for emerging platforms and small influencers to promote industry diversity and innovation. Finally, regulatory authorities should improve relevant anti-monopoly laws and regulations, enhancing oversight of the internet industry to prevent monopolistic behavior and maintain fair competition in the market.

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