

The Identification of Bundle Sales Between the US and China

Meng Qi^{1,a,*}

¹College of Arts and Science, Beijing Union University, Xueyuan Road, Beijing, China
a. 2023010310036@bnu.edu.cn

*corresponding author

Abstract: As a common monopoly means in the market in today's market, bundle sales is banned by many countries in the anti-monopoly law, but each country has different ways of identifying it. United States as the first country to establish an anti-monopoly law, it has undergone a process of shifting from structuralism to behaviorism, especially in the "Microsoft case", from the different determinations of bundle sales in the two judgments, it can be seen that the United States anti-monopoly law has gradually relaxed the sanctions on the monopoly of large enterprises. Instead, they hope to make use the technological advantages of large enterprises to complete its own innovation and development, and thus United States pay more attention to this component of technical talents in the consumer group. As far as China is concerned, through the determination of bundle sales in the "Qihoo case" and the "Huawei case", it is not difficult to see that China, as a rising star in the anti-monopoly law, has consistently implemented behaviorism, so that China's small and medium-sized enterprises can have more room to survive, Therefore, the rights and interests of its ordinary consumers will also be relatively better protected.

Keywords: Antitrust, Bundle sales, Microsoft case, Behaviorism, Structuralism.

1. Introduction

Antitrust as a country to maintain a balanced market economy, An important means of promoting innovative development, Get much attention in today's society, As far as China is concerned, According to the Annual Report on China's Anti-monopoly Law Enforcement (2023) issued by the State Administration of Regulation, Visible, in 2023, Market regulators investigated and dealt with 11 monopoly cases of abusing their dominant market position, There were five cases involving additional unreasonable transactions and bundle sales sales [1]. Two fewer overall numbers of cases compared to 2022, The number of cases involving additional unreasonable transactions and bundle sales was also reduced by two [2].

As a country that always implements behaviorism under the anti-monopoly system, China has a unique way of identifying monopolistic behaviors, especially the behaviors such as bundle sales. Around 2011, there were two famous anti-monopoly cases in China, one was "Qihoo v. Tencent case" (hereinafter referred to as "Qihoo case"), and the other was "Huawei v. Interactive Digital Case" (hereinafter referred to as "Huawei case"). In both cases, there are disputes about how to identify bundle sales, and it is not difficult to find that China has implemented the behavior model in the identification of bundle sales.

On the other side of the ocean, the United States, as the first country to establish an anti-monopoly system, has different ideas and systems from China. By relaxing the sanctions on large enterprises, the United States has driven the technological innovation in the market. The United States has experienced a change from structuralism to behaviorism in anti-monopoly thinking, and experienced a change from strict to loose in measures. In "Microsoft case" for the first time, the district court from the perspective of structuralism, in the process of the monopoly of behavior, first judge Microsoft market share, and its market control ability, on the verdict, the judge said Microsoft split sanctions, the Microsoft in two. The verdict has sparked a heated debate, with Microsoft filing a new round of appeals. In the second trial, the appeals court retained its determination of Microsoft's monopoly behavior, but its thinking clearly shifted from structuralism to behaviorism. On the one hand, in the process of hearing the case, the court paid more attention to whether the defendants also established the dominant market position, established the barriers to prevent competitors from entering the market, and paid more attention to the opinions of technical personnel in the consumer group. On the other hand, in the verdict, the appeals court judge decided that he would not seek to split Microsoft, but require Microsoft to pay \$1.8 billion settlement fee and prohibit Microsoft from engaging in any adverse behavior to competitors in the future.

The above three cases are all typical cases of anti-monopoly in China and the United States, and bundle sales are a typical form of anti-monopoly. So what is the difference between China and the United States? What exactly do these differences mean? Meanwhile why are these differences happening? An analysis of these three questions may help to understand the fundamental differences in antitrust thinking between China and the United States.

2. United States Case: Microsoft Case

2.1. Case Context

Founded in 1975 as a small software programming company, Microsoft in the 1980s shifted to network operating systems and gradually dominated the market. In fact, in the early 1990s, Microsoft's competitors began accusing Microsoft of bundle sales, but in 1994, the Justice Department reached a settlement with Microsoft includes no other conditions are attached when providing win95 to other computer manufacturers [3]. In 1995, Microsoft developed the "explorer" browser, and tied to the operating system for sales, a move directly lead to competitors such as netscape company in the browser market share decline, therefore, the U. S. The Justice Department has accused Microsoft of violating its first settlement agreement, in 1997 the federal court ruled, ordered Microsoft to dismantle the browser and its operating system. Microsoft apparently obeyed the ruling, but it accelerated the pace of development, developing a new generation of browser and operating systems in 1998, meaning that the 1995 ruling would not apply to Microsoft's new products. In the middle of 1998, the justice department united 20 states and appeal to the federal court, accused of Microsoft violated the "antitrust law", after a new round of mediation failed, the federal court judge Jackson that Microsoft has forced consumer choice and bundle sales behavior, he ordered Microsoft to be split in half, then Microsoft made a long appeal.

In the second instance, the appeal court overturned most of the first instance judgment, the reasons mainly include, one is judge Jackson in privately published some hatred of Microsoft subjective speech, the second is the first instance of Microsoft "attempt to monopoly" behavior without any substantial evidence, three is Microsoft's monopoly behavior to a certain extent, is conducive to consumers and technological innovation of [4]. So the appeals court of the second trial reversed the two-part split against Microsoft. Although many states have refused to accept the ruling, Microsoft has only paid \$1.8 billion in damages and certain behavioral restrictions.

While Microsoft still pays a high price to deal with the crisis, it seems acceptable compared to being split in two. And two different judgment also reflects the antitrust ideas and system change, the federal district court of the United States judge Microsoft monopoly behavior mainly based on Microsoft and its competitors' market share, but also judge whether the consumer on products has a free choice, on the verdict also adopted the way of cutting enterprise structure, this is obvious structuralism thought. In the second trial, the appeals court began to judge whether Microsoft was abusing its dominant position, whether Microsoft's bundle sales practices had benefited consumers and technological innovation, and ultimately fined it and restricted its actions. From these considerations, it is not difficult to see that the American antitrust thinking gradually transition to behaviorism [4]. The shift can also be seen in the court's two different decisions of bundle sales.

2.2. Comparison of the Identification of Bundle Sales in the Two Judgments

First of all, we should make clear the concept of bundle sales, it also known as tying, refers to the two products bundled together, so that consumers must buy another bundled product at the same time. On the one hand, this behavior makes consumers lose the choice, on the other hand, it will make enterprises to use their market advantage in a certain field to occupy another market, causing damage to competitors and get improper profits.

In the first instance, Judge Jackson adopted a typical structuralist model for the whole case. First of all, he determined that Microsoft had monopoly ability through its market share, and at the same time, he determined that Microsoft had implemented monopoly behavior through the decline of its competitors such as Netscape, which is a prerequisite for the identification of monopoly. Second, Jackson believes that Microsoft's behavior of tying the browser with the operating system has caused Microsoft to improperly expand its position in the browser market. Finally, more importantly, Judge Jackson argued that the attitude of consumers towards Microsoft was crucial in the case, and that if consumers thought Microsoft deprived them of their option, this was an undeniable bundle sales.

In the second trial, the attitude of the appeal court is completely change, first it did not deny Microsoft's dominant market position, but it gives the opinion is that Microsoft has a dominant position in the operating system, but it does not mean that Microsoft will also establish monopoly barriers in the browser market, for this charges need sufficient evidence to support. Secondly, the appellate court believes that Microsoft's bundle sales of the two products can promote technological innovation, so the benefits brought to the society should be taken into account. Moreover, the appellate court also believes that such bundle sales is common in the industry. In addition, the meaning of Microsoft bundle sales may not be understood for ordinary consumers, but the court focused on the opinions of technical talent. All the above factors show that the court paid more attention to the benefits Microsoft can make for the society. It is not hard to see in the final decision, the court intentionally preserve the Microsoft, so that it to avoid be split, can make it in a complete enterprise to continue to contribute in the field of technology, it also reflects the antitrust thought from structuralism into behavior in the process of pay more attention to enterprise to create value, rather than destruction, it also makes the United States aware of monopoly behavior, especially in some key areas of bundle sales, is actually can promote competition and innovation.

In conclusion, it is not hard to see, the United States of Microsoft two trial results reflects the gradual change of antitrust ideas, both in the process judgment or the results, can reflect the United States has gradually abandoned the structuralism the "rigid direct" antitrust means, it is a shift into a "moderate and indirect" behaviorism.

2.3. Analyze the Reasons for the Final Judgment

In the second trial, the reason that appeal court gives is simple, most important is to see whether Microsoft's bundle sales has expanded its position in the browser market. In the first instance, Judge Jackson, both out of personal interest and by reason, apparently decided that Microsoft's bundle sales was "trying" to monopolize the browser market. However, in the second instance, the appeal court said that if it wants to determine that Microsoft will have a monopoly in the browser market, it needs to be confirmed. First, the scope of the browser market, Microsoft has the purpose of monopoly, and third, Microsoft's monopoly has the possibility of success [5]. There are only a few pieces of evidence, but it shows the problem that Microsoft cannot assume in the form of bundle sales that an improper monopoly and the improper extension of market dominance.

In addition, the final decision also considered the additional impact of Microsoft bundle sales on society, which is also one of the key factors for Microsoft to avoid the split. The appeal court is first implicitly denied in the first instance of about consumer rights and interests, in the second instance the appeal court that if you want to recognize Microsoft bundle sales belongs to a kind of innovation and development, then need professional technical personnel to judge, ordinary consumers may not be able to understand the true meaning of such products bundle sales. Second, the appeals court held that Microsoft's bundle sales is actually beneficial to consumers to some extent, because the bundle sales of browser and operating system makes consumers cheaper to enter the Internet, and the bundle sales can also promote the quality of each other [5].

Therefore, it is not difficult to see from the above reasons that in the second instance of this case, the court actually relaxed the constraints on monopolistic behavior, paying more attention to not only whether the enterprise has monopoly behavior itself, but also whether the monopolistic behavior of the enterprise produces benefits to the society and whether it promotes technological innovation. The transformation of the verdict from structuralism to behaviouralism also shows that the United States is deliberately preserving large enterprises, allowing them to drive technological innovation. The antitrust in the United States has shifted from strict to loose, which actually gives companies like Microsoft a chance. If it can drive the development of society and technology with their own value, then monopoly is not a question worth investigating.

3. The Cases of China: Qihoo Case and Huawei Case

3.1. Context

China issued the anti-monopoly law in 2008. In the past 16 years, China's anti-monopoly system has been relatively fully developed, and many cases have also provided valuable experience for this reason. It is not difficult to find the Chinese anti-monopoly thought contained in the identification of bundled sales in two cases. One is the "Qihoo case", which began in 2011 as "China's first anti-monopoly case". And the other is the "Huawei case", which can also reflects China's anti-monopoly thinking.

First is "Qihoo" case, the case refers to the company in 2011 Qihoo accused tencent monopoly behavior, violated the antitrust law, Qihoo pointed out that tencent through bundle sales its QQ software products, forcing users to choose QQ software and coercion users ban the use of 360 series software (Qihoo products), these behaviors caused damage to Qihoo. Finally the court believes that the defendant's behavior belongs to self relief, the plaintiff has no evidence to prove that because the defendant's bundle sales behavior they suffered substantial damage, and that the defendant's bundle sales behavior gave consumers a reasonable option, and told, so there is no forced users to choose, and the court that the defendant's bundle sales behavior is beneficial to consumers, therefore has "economic rationality". The most important point is that the court found that the plaintiff's judgment

of the market position was wrong, and that the defendant did not have a dominant market position in certain areas, so there is no abuse of the dominant market position [6].

The second is the "Huawei case", which Huawei in 2011 accused Interactive Digital Corporation and its subsidiaries to set unreasonable prices, attach unreasonable conditions and conduct bundle sales, and that Interactive Digital Corporation abused its dominant market position and disturbed the order of market competition. In the judgment, the court held that first of all, the defendant gave the plaintiff the overpricing of the pricing of the patent license. In the second instance, the court pointed out in the second judgment that because of the irreplaceable and uniqueness of the patent, the use of bundle sales is conducive to reducing the cost, easy for consumers to use, and in line with the efficiency. Finally, the court found that there was no substantial evidence of the defendants' claims on appeal. Therefore, all the appeals of both sides were rejected.

The above two cases are typical of China's antitrust case, from the recognition process of bundle sales and the final verdict is not hard to see, China is a strict behaviorism, it judges the monopolistic behavior of an enterprise simply from the perspective of whether it abuses its dominant market position, whether there is substantive evidence, whether it infringes the rights and interests of consumers and whether it is involved in patents. Although the judgment result is loose, the trial process before making the judgment is obviously extremely strict.

3.2. The Anti-monopoly Legislative Logic of China Reflected in Two Cases

The first is the "Qihoo case". In the final decision, the court fully considered the rights of consumers, such as their choice and the benefits that consumers may obtain. Through the judgment document, on the other hand, it is not hard to find that China's determination of the dominant market position has a strict heavy and complicated procedures, including the market share, the control of raw materials, the competitors into the market difficulty, etc., that a lot of premise makes the court in the case directly denied the charges about the defendant's dominant market position.

The second is the "Huawei case", What is special about the case is that the accusation is the patented product of Interactive Digital Corporation, and the patented products due to its irreplaceable and high technical barriers, make it is allowed to bundle sales within a certain limit, the final opinion of the court also rejected part of the plaintiff's appeal request. Similar to the "Qihoo case" is that although the bundle sales identification of this case mainly considers the particularity of patented products, it also considers whether it is conducive to the use of ordinary consumers as a factor. And for all appeals, the court requested more detailed evidence, such as evidence that the plaintiff suffered actual losses and the defendant's actions.

In conclusion, China in the trial of related monopoly cases, in the dominant market position is the most basic precondition, often very "cautious", in the Anti-monopoly Law Article 17,18 and 19 to make the corresponding regulation, article 18 lists the six may constitute a dominant market factors, and stipulated in article 19 can be directly according to the market share to infer whether the operator has a dominant market position, but the provision can according to the proof not to apply [7]. Therefore, it is not difficult to see that China has refined so many identification premises, and the purpose is obviously to achieve the development of market economy by relaxing the restrictions on enterprises, and on the other hand, it can directly warn enterprises of the possible monopoly behavior through the identification method of market share. In addition, in the process of the behavior of bundle sales, China also adopted a more "compatible", the side consider enterprise behavior is really good to consumers, such as like "Huawei" patent licensing, the bundle sales way for enterprises can reduce costs, for consumers can improve the efficiency. For another example, the bundle sales behavior of Tencent products in the "Qihoo case". The court finally believed that such behavior first respects the choice willingness of consumers, and then there is a certain "economic rationality".

Since the anti-monopoly legislation in 2008, China has always maintain the practice of behaviorism, which has made outstanding contributions to the rapid development of the market economy. However, the anti-monopoly law should also be adjusted to adapt to the changing situation, and try to fill the gaps and room left in the anti-monopoly law.

4. The Comparison between China and the US on Bundle Sales Identification

4.1. The Similarity and Difference

In comparing the "Microsoft case" in the United States with the above two cases in China, it is not difficult to find that there are some common and differences in the identification of bundle sales.

The first is the similarities. The most critical point in the Microsoft case was the shift to behaviorism in the second trial, which, like the verdict in the two cases in China, fined the companies involved and restricted their possible future behavior, which is one of the most typical features of the behaviorism model. In addition, in the precondition of the identification of bundle sales, the United States and China consider the same idea of whether the enterprises involved attempt to monopolize, which is a factor to consider whether their legitimacy from the perspective of behavioral purpose. In addition, for bundle sales, China and the United States also consider whether selling products in the form of bundle sales in cases damages competitors and consumers, and need complete and sufficient substantive evidence to judge whether they are not. China and the United States have done the same thing: to consider the rationality of the bundle sales, to judge whether the monopoly has legitimacy is an important factor, such as in the "Huawei" for patent products, the court considered its "economic rationality", that patent products to some extent is irreplaceability and uniqueness. Finally, China and the United States fully respect consumer opinions in the identification of the impact of bundle sales, but there are still obvious differences.

The second is the difference. Can be found in the case from the United States, the United States in the process of antitrust thought change gradually recognize the retained involved enterprise structure integrity can promote technological innovation, it is the reason, let the United States in the "Microsoft" to the attitude of consumers have some fuzzy changes, in the second trial of the us court deliberately focus on the technical talent for Microsoft bundle sales perception and cognition [5]. Instead, China still focuses in similar cases on whether ordinary consumers are lost or in their favor. From this aspect, we can find that the change of antitrust thinking in the United States is mainly to support the continuous innovation of its technology, while China is to consolidate the development of the market economy. On the other hand, in the preconditions of bundle sales, China's judgment of market dominance is more strict and complex, while the United States is relatively simple.

To sum up, the different identification of bundle sales sales between China and the US can reflect the differences in the anti-monopoly thinking of the two countries, and this difference also brings different effects to the two countries.

4.2. The Different Impacts that Could be Had on the Two Countries

The United States in the "Microsoft" show not only from structuralism to behavior change, also reflects the deep concern about the development of science and technology, if follow the traditional way of structuralism, so will cause devastating blow to involved enterprises, so it will reduce the development of cutting-edge technology, also will hinder the development of domestic technology. In the second trial of the "Microsoft case", the United States clearly recognized this problem, so in the process of the trial, it focused on the advantages and disadvantages of technological innovation in the bundle sales behavior of Microsoft. This may make the future United States more comfortable with cases involving the technology sector, and may make the relevant companies more

"unscrupulous", but its technological innovation will not be blocked. This is both a risk and an opportunity for America.

After the anti-monopoly legislation in 2008, China has always maintained a cautious behavior doctrine. In these two cases, it is not difficult to find that this behavior doctrine is helpful to maintaining economic stability and the development of small and medium-sized enterprises. Behavior requires emphatically grasp the abuse of the dominant market position, but in the above two cases, the Chinese court in the process of determination, still consider many other factors, it also shows that China for bundle sales such monopoly behavior maintained a very rigorous attitude, China is intentionally or unintentionally to create opportunities for companies to drive innovation in the field of technology. In this way, it can drive the development of scale economy in China, and it can also promote the international competitiveness of enterprises [8]. Such anti-monopoly thinking has maintained stable economic development at the moment, and may create more opportunities for China in the technology field in the future.

5. Conclusion

Anti-monopoly has been the key means to maintain fair market competition and promote economic growth since ancient times. Since the "antitrust" legislation, the United States has embarked on the road of systematic antitrust. So far, the United States has changed a lot of traditional ideas, as mentioned above, from structuralism to behaviorism, and from strict to relatively loose. All these changes show that the United States has begun to adapt to the changes of The Times, and began to seek a "way to survive" in an era of the pursuit of technology and efficiency. From the changed judgment in the second trial, it is not difficult to find that the United States is already thinking about whether it can strike a balance between antitrust and promoting technological innovation around the 21st century. Eventually, the United States chose to change its antitrust thinking. Bundles are not necessarily disruptive, and in some cases they can even promote society, and the United States seems to have its own considerations. This directly leads to the stable survival of large technology enterprises in the United States, and it is not difficult to see that the United States is using the hands of these enterprises to drive the innovative development of the field of technology.

China, its anti-monopoly legislation also but 16 years, China's systematization is not perfect, but the above two cases can also be found in China into a new era of rapid growth, indeed established the corresponding legal protection, on the one hand, it guarantees the stable development of the enterprises, on the other hand it also balance the rights and interests of consumers. Although China does not have the long history of anti-monopoly development of the United States, it has maintained the behaviorism from beginning to end, which means that the maturity process of China's anti-monopoly system will be faster. From the determination of bundling in several cases, it can be concluded that China has actually formed a relatively strict anti-monopoly system in a relaxed environment, and whether the determination of market dominance in the preconditions or whether the patent license constitutes bundling reflects that even under the behaviorist model, China can still establish a set of legal systems applicable to the development of its own market economy in its own way. Therefore, more small and medium-sized enterprises can take this opportunity to survive.

However, no matter where the differences between China and the United States are, it is all the efforts made by various countries to adapt to the development of the times. For both China and the United States, the antitrust law still has a long way to go.

References

- [1] China Government Website. (2024) *The State Administration of State Regulation*.
- [2] China Government Website. (2023) *The State Administration of State Regulation*.
- [3] Hu Guocheng. (2000) *Microsoft Monopoly Case Analysis*. *American Study*, 3,21-41.

- [4] Hou Fuqiang. (2000) *The Orientation Selection of the Object of Anti-monopoly Regulations in China*. *Modern Law*, 6,55-58.
- [5] Liao Zhenzhong, Liang Yuanhang. *On the System Design and Value Orientation of Anti-monopoly Law in the Era of Knowledge Economy: Analysis of the Second Instance Judgment of "Microsoft Monopoly Case"*. *Social Science Research*, 1,71-76.
- [6] Wang Nini. (2015) *Anti-monopoly Regulation of Internet Tie-in Behavior: Comparison of "3Q Case" and "Microsoft Case"*. *Jiangxi Social Science*, 35(04),187-192.
- [7] Xu Na. (2015) *On the Regulation of China's Anti-monopoly Law in the Internet Field: From the Perspective of Qihoo Suing Tencent for Abusing its Dominant Market Position*. *Reference for Economic Research*, 65,102-104.
- [8] Li Jing, Yu Hongwei. (2003) *Behaviorism: The Orientation of the Object of Anti-monopoly Regulations in China*. *Modern Finance and Economics Journal of Tianjin University of Finance and Economics*, 12,9-12.