

Mobile commerce in China: Alibaba says no to WeChat

Recently, controversy arose in China's m-commerce market when Alibaba, the company behind the online shopping website Taobao, blocked the instant chat mobile app WeChat, the latest version of which had the potential to be utilised during transactions by Taobao sellers in such a way that transactions would thus take place outside of Taobao. Kevin Wang of CMS China discusses the block and whether it constitutes abuse of a dominant market position under Chinese anti-monopoly law.

The explosive growth of the mobile e-commerce market in China has led to fierce competition between the companies in the relevant industry sector. Such competition recently escalated with the block of WeChat by Alibaba on Taobao (which is similar to eBay).

WeChat, the hit mobile instant chat app provided by internet giant Tencent, has enjoyed fast-growing popularity in China and had more than 200 million users two years after its launch. Due to its popularity, Taobao sellers also began to use WeChat to promote their products. A seller on Taobao could post on his/her Taobao webpage a Quick Response Code ('QR Code') and a buyer who has a smartphone could scan this QR Code and be directed to WeChat and have instant communication with the seller. However, any transaction between the seller and the buyer was still made through Taobao and the online payment service provider owned by Alibaba, Alipay (similar to PayPal).

On 5 August 2013, Tencent released version 5.0 of WeChat featuring a mobile payment service, which illustrated Tencent's ambition to enter into the mobile

payments industry by taking advantage of the popularity of WeChat. With this new function of WeChat version 5.0, after a buyer browses the product information of the seller on Taobao and scans the QR Code of the seller on the Taobao website, he/she would be directed to WeChat and be able to make a deal with the seller and pay the seller through WeChat. In other words, the whole transaction is done outside of Taobao and Alipay, with Taobao only serving as an online platform for product exhibition, which helps buyers research and understand products. Obviously, this meant that WeChat became a big threat to Taobao and Alipay, taking into consideration that it has more than 200 million users and the number of users is still growing.

Shortly after the release of WeChat version 5.0 by Tencent, Alibaba announced its decision to block WeChat on Taobao, i.e. a buyer who scans a WeChat QR Code from a seller on Taobao will not be directed to WeChat, but instead will be directed to the download page of the Taobao app. Alibaba defended its move as being for the protection of buyers from advertising and fraud by ensuring that all transactions are carried out on its secure payment platform. Obviously, safety control is not the main reason for Alibaba to confront Tencent publicly. Given its increasing popularity, Alibaba's fear is that WeChat's involvement will, in the long run, eat into the market shares of Taobao and Alipay.

Is there a monopoly issue?

Concerns were raised by critics that the above acts of Alibaba towards WeChat have constituted a monopoly. Under the PRC Anti-Monopoly Law, a monopoly act is constituted if a business operator abuses its dominant market position. To judge whether a

business operator has abused its dominant market position, the key issues lie with a) whether the parties involved and affected are in the same relevant market; b) whether the business operator has achieved a dominant market position; and c) whether the business operator has abused such a dominant market position. Only when each and all the aforesaid criteria are met can the concerned business operator be deemed to have abused its dominant market position, and thus violated the PRC Anti-Monopoly Law.

a) How to define the relevant market

All competitive behaviours occur within a particular market scope. To define the relevant market is to make clear the market scope within which the business operators compete with each other. To define a relevant market is usually the focal point for the analysis of competition behaviours and an important step towards anti-monopoly law enforcement.

According to the Guidance of the Anti-Monopoly Committee of the State Council for the Definition of the Relevant Market (the 'Relevant Market Guidance') issued on 24 May 2009, a relevant market refers to a product/service scope and a geographical scope within which business operators participate in competition with respect to a specific product or service. In other words, the Relevant Market Guidance considers both the relevant product/service market and the geographical market.

As far as the geographical market is concerned, users anywhere who can get access to the internet may use Taobao, Alipay and WeChat. Therefore, any place with access to the internet can be defined as their geographical market. In practice, the core market of Taobao, Alipay and WeChat is mainland China.

Therefore, Taobao, Alipay and WeChat have the same geographical market.

In respect of the product or service market, Taobao is the leading e-commerce platform (both PC and mobile) and Alipay is the leading online/mobile payment service provider in China. In its version 5.0, WeChat is not only an instant chat app, but also has the mobile payment feature. We consider that Alipay and WeChat may be deemed as being in the same relevant market.

b) Have Taobao and Alipay achieved a dominant position in the relevant market?

Article 17 of the PRC Anti-Monopoly Law provides that if a business operator is able to control the prices, quantities or other transaction conditions in the relevant market or is able to obstruct and affect the entry of other business operators into the relevant market, it shall be deemed as having a dominant market position in the relevant market.

To identify whether a business operator has achieved a dominant market position, various factors have to be taken into consideration, such as its market shares, financial and technology conditions, ability in controlling the sales market and raw material purchase market, influence on other operators in the relevant market as well as the degree of difficulty for other business operators to enter into the relevant market. According to the reports of a Chinese market research company, Iresearch, the market shares of Alipay in the mobile payment market reached 75% in the first half of 2013 and the market shares of Taobao in the mobile e-commerce market reached 76.6% in Q3 of 2013. Although the market share is not the only factor to decide the

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dominant position, it cannot be excluded that Taobao and Alipay might be regarded as having dominant positions in the mobile e-commerce and mobile payment market.

c) Has Alibaba abused the dominant positions of Taobao and Alipay in the relevant market?

Assuming that Taobao and Alipay have dominant market positions in the relevant markets, the question is whether Alibaba has abused the dominant market positions of Taobao and Alipay to block WeChat. Article 17 of the PRC Anti-Monopoly Law sets out the following seven acts which are considered to be an abuse of a dominant market position:

- sell products at unfairly high prices or purchase products at unfairly low prices;
- sell products at below-cost prices without a valid reason;
- refuse to transact with trading counterparts without a valid reason;
- restrict trading counterparts to transact only with the business operator itself or only with designated business operators without a valid reason;
- bundle sale of products without a valid reason or impose any other unreasonable terms during a transaction;
- implement differential treatment for terms of transaction such as the transaction price for similar trading counterparts without a valid reason; or
- perform any other acts of abuse of the dominant market position as defined by the anti-monopoly enforcement agency of the State Council.

Most of the above-mentioned acts are irrelevant to this case. The only act which might be argued to be relevant is that which reads 'restrict trading counterparts to

transact only with the business operator itself or only with designated business operators without a valid reason.' However, we consider that the blocking of WeChat on Taobao by Alibaba is not regarded as such a restrictive act. This is because Alibaba only blocked the link between Taobao and WeChat, i.e. a buyer can no longer be directed to WeChat by scanning the QR Code of the seller on Taobao to make the deal with the seller through WeChat. Alibaba did not restrict the buyer and the seller to trade on Taobao and to make the payment by Alipay. The sellers and the buyers can still make the transactions through WeChat or other platforms as long as the transactions do not rely on the information on Taobao and are not triggered through scanning the QR Code of the seller on Taobao webpages. In other words, the aim of Alibaba is to avoid Taobao becoming just an online platform for product exhibition that helps customers learn about products.

d) Conclusion

Given the above, we consider that Alibaba did not abuse the dominant market positions of Taobao and Alipay and the block is more a case of measures taken to protect its normal operation and interest rather than a monopoly under PRC law.

The future

The competition between China's market players will continue and become fiercer. An open and cooperative business environment is expected to create an innovative ecosystem and bring a win-win situation for the market players.

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