



NEWSLETTER

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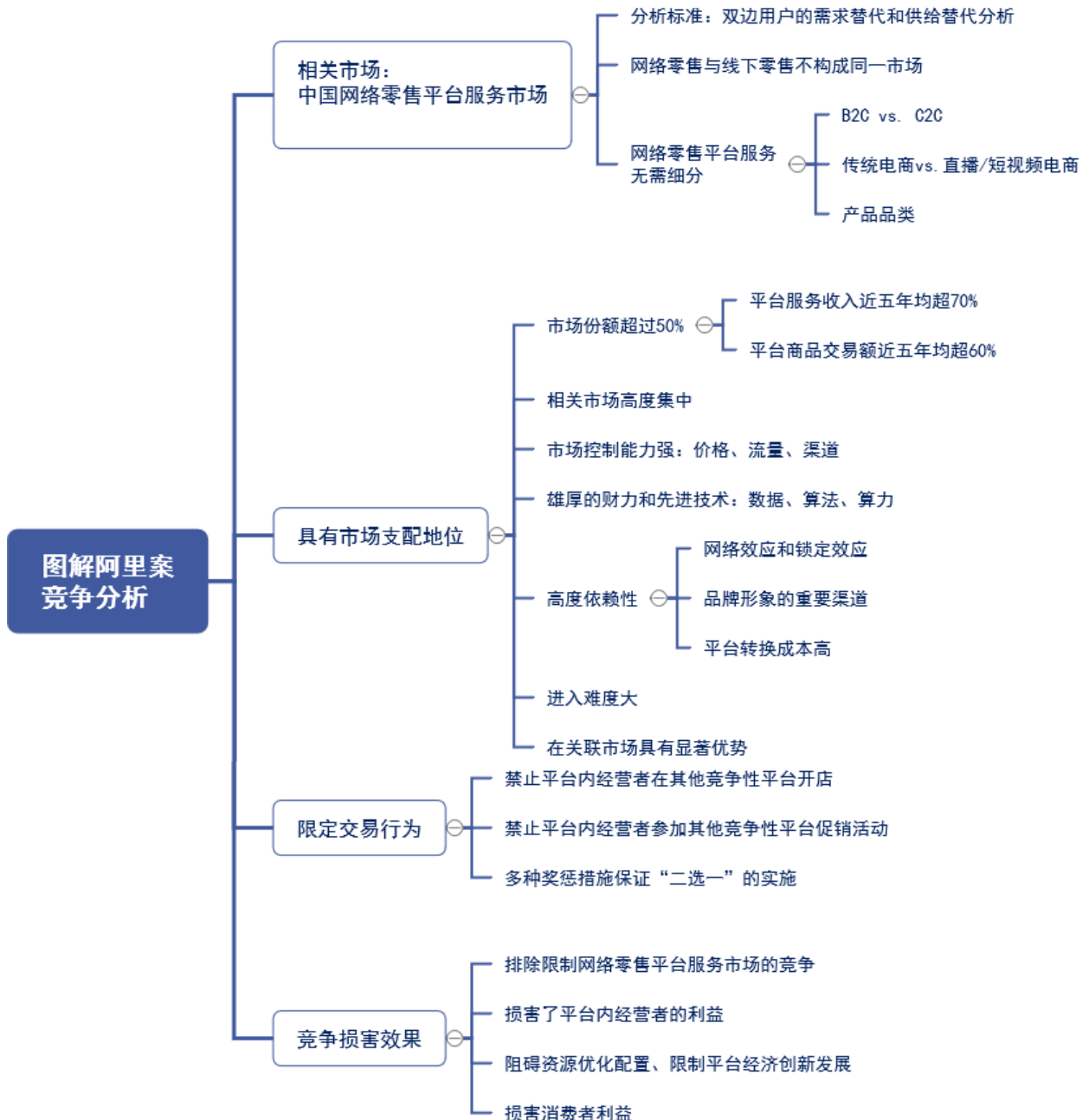
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互联网平台首例反垄断处罚：简析阿里案

文/立方反垄断团队

2021年4月10日，国家市场监督管理总局（以下简称“总局”）发布了对阿里巴巴集团控股有限公司（以下简称“阿里巴巴”）在中国境内网络零售平台服务市场垄断案《行政处罚决定书》和《行政指导书》。《行政处罚决定书》认定阿里巴巴滥用其在中国境内网络零售平台服务市场的支配地位，排除、限制了相关市场竞争，责令其停止违法行为并处以人民币182.28亿的罚款。《行政指导书》要求阿里巴巴制定整改方案，并且连续三年向总局报送年度自查合规报告。

一图快读阿里巴巴案



案例简析

首张“百亿罚单”：刷新反垄断罚款最高记录

总局根据相关规定，以阿里巴巴2019年度中国境内销售额4557.12亿元为基础，以4%的罚款比例，处以182.28亿元罚款。本案是我国反垄断执法机构开出的首张“百亿罚单”，与备受瞩目的高通案和利乐案一同位列中国反垄断罚款记录前三位。此前我国反垄断罚款的最高记录是2015年的高通案，罚款金额为人民币60.88亿元。

结案周期远低于反垄断调查平均周期

总局于2020年12月立案调查，2021年4月10日公布处罚决定，仅历时4个月。根据笔者统计，2019年以来总局在反垄断行政调查案中所需平均周期约为16.3个月，此次针对阿里巴巴的反垄断调查的审查周期远低于总局反垄断调查的平均周期。本案结案速度也快于另外两起罚款金额较高的案件，在高通案中，发改委历时14个月才完成了调查；而在利乐案中，工商总局历时24个月才完成了调查。

首次针对具体企业同时做出行政处罚与行政指导

值得注意的是，与行政处罚决定书一同公布的还有《行政指导书》。其内容覆盖竞争行为自查、落实平台企业主体责任、完善内部反垄断合规制度、保护平台内经营者和消费者合法权益，以及积极维护公平竞争促进创新发展几大部分。总局要求阿里巴巴制定整改方案，并且连续三年向总局报送年度自查合规报告。此前，我国反垄断执法机构曾多次以电商行业为对象进行反垄断行政指导，包括2018年“6.18”前夕和2019年“双11”前夕针对平台电商“二选一”问题召开的行政指导座谈会，包括阿里巴巴在内的多家网络零售平台负责人也曾出席会议。但在反垄断调查案中与处罚决定一同发布《行政指导书》则是首次出现。



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执业领域：反垄断与竞争法

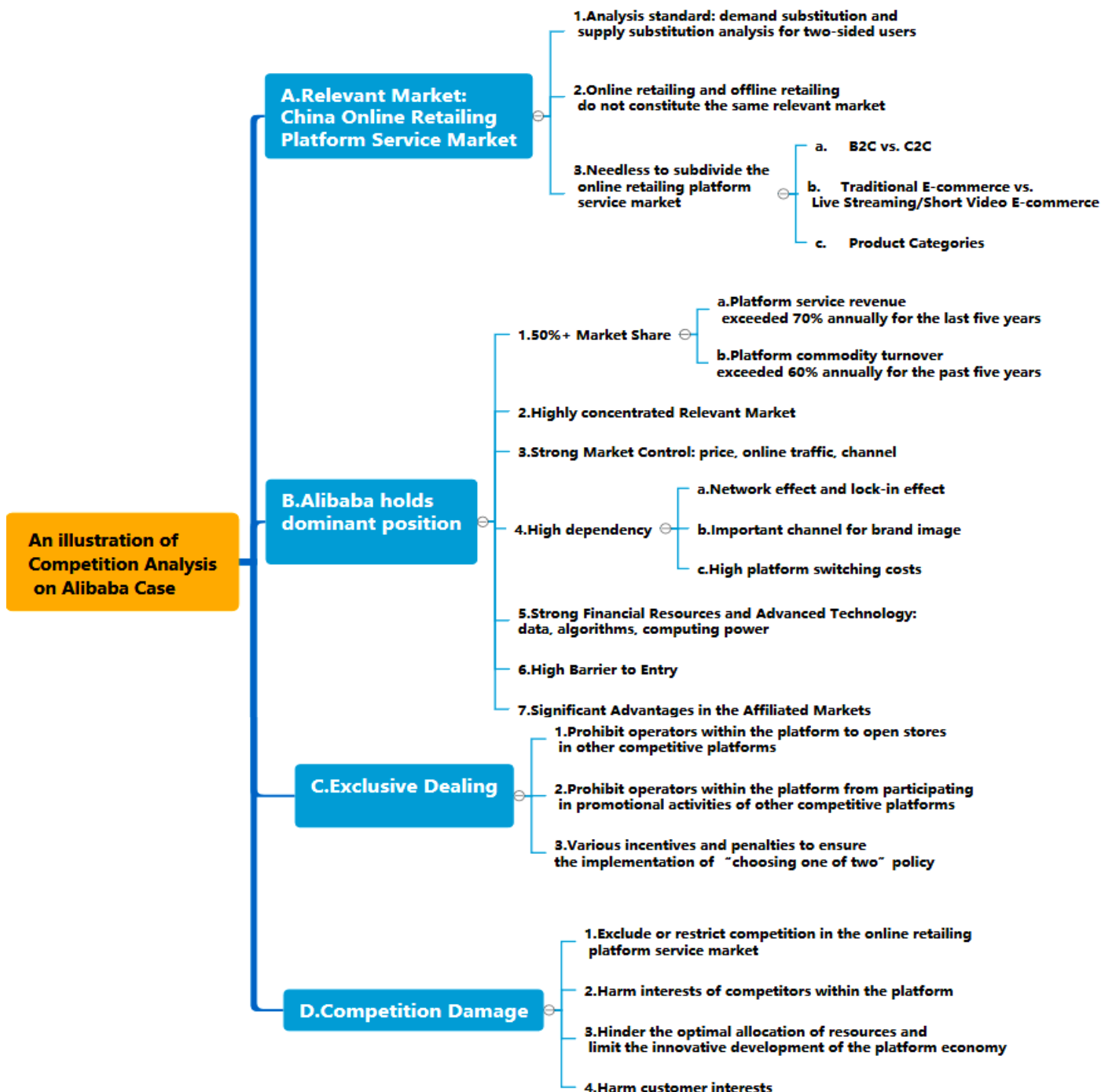
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First Anti-monopoly Penalty for Internet Platform Company: Alibaba Case Analysis

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On 10 April 2021, the State Administration for Market Regulation (“SAMR”) issued the *Administrative Penalty Decision* and *Administrative Guidance Opinions* against Alibaba Group Holding Limited (“Alibaba”) for monopolizing the China online retailing platform service market. The *Administrative Penalty Decision* found that Alibaba had abused its dominant position in the China online retailing platform service market to eliminate and restrict competition in the relevant market, and ordered Alibaba to stop the illegal conduct and imposed a fine of RMB 18.228 billion. The *Administrative Guidance Opinions* required Alibaba to formulate a rectification plan and to submit annual self-inspection compliance reports to SAMR for three consecutive years.

An illustration of Competition Analysis on Alibaba Case



Case Analysis

The First “10 Billion Fine”: Renew Record for the Highest Fine in Anti-monopoly Cases

In accordance with the relevant provisions, SAMR imposed a fine of RMB 18.228 billion on the basis of Alibaba’s domestic sales revenue of RMB 45.712 billion in 2019, at a ratio of 4%. This case becomes the first case with 10 billion-class fine issued by China’s anti-monopoly enforcement agency and ranks among the top three anti-monopoly fine records in China, along with the Qualcomm case and the Tetra Pak case. The former highest record for China’s anti-monopoly fine was that in the Qualcomm case in 2015, with a fine of RMB 6.088 billion.

The Investigation Period is Far Below the Average Anti-monopoly Investigation Period

SAMR initiated the investigation in December 2020 and announced the penalty decision on April 10, 2021, which took only **four** months to close the case. According to the author’s statistics, the average time cost by SAMR for anti-monopoly administrative investigations from 2019 was about 16.3 months. The investigation period of this case is far below the average period. And the speed of investigation in this case is also faster than that in the other two cases with significant fines. In the Qualcomm case, it took 14 months for the National Development and Reform Commission (“NDRC”) to complete its investigation, while in the Tetra Pak case, it took 24 months for the State Administration for Industry and Commerce (“SAIC”) to close the case.

Administrative Penalty and Administrative Guidance are Issued Simultaneously for a Specific Company for the First Time

It is worth noting that the *Administrative Guidance Opinions* was published together with the *Administrative Penalty Decision*. The contents of later cover several parts including self-examination of competition practices, implementation of the responsibilities of platform enterprises, improvement of the internal antitrust compliance system, protection of the legitimate rights and interests of operators and consumers within the platform, and active maintenance of fair competition for the innovative development. SAMR required Alibaba to formulate a rectification plan and to submit the annual self-inspection compliance report for three consecutive years. Previously, China’s anti-monopoly enforcement agencies have given anti-monopoly administrative guidance to the E-commerce industry on many occasions, including the administrative guidance forum held on “6.18” Sales-eve of 2018 and “11.11” Sales-eve of 2019, to address the issue of “choosing one of two” for e-commerce platforms. The heads of several online retailing platforms, including Alibaba, have attended the forum. However, this is the first time that the administrative guidance opinions have been issued along with a penalty decision in an anti-monopoly investigation.



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