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Antitrust Regulatory Pathways for "The Lowest Price Clauses" in China's E-Commerce Economy

Yujin Ma

Xi'an Jiaotong University, Shaanxi, Xi'an, 710049, China

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Abstract: In the context of China's rapidly developing e-commerce economy, live-streaming commerce has become a central segment of the platform economy. Leading influencers, capitalizing on their traffic advantages and bargaining power, lock in prices across various platforms using "lowest price" clauses. While superficially offering discounts, these clauses actually embed a Price-Most-Favored-Nation (PMFN) clause under an agency-like appearance, thereby solidifying market structures and eroding consumer autonomy. These clauses obstruct vertical price competition, raise horizontal entry barriers, and lead to a "commission-price" upward spiral, solidifying an oligopolistic market structure. At the same time, emotional manipulation and information asymmetry weaken consumers' ability to make rational choices. The current legal frameworks—monopoly agreements and abuse of market dominance—are inadequate due to exceptions for agents, delayed market definition, and rigid subject recognition. This paper proposes piercing through the formal agency relationships to use the "substantial control" standard to identify the independence of influencers, introduces the theory of joint market dominance, and complements this with price transparency and algorithm audit obligations, thereby enabling ex-ante intervention and competition-effect-driven dynamic regulation.

1. Introduction

With the rapid development of China's internet industry, e-commerce models continue to evolve, and live-streaming commerce has become one of its core business forms. Originally launched by Taobao in 2016, this model experienced explosive growth after 2020. By integrating entertainment and consumption across various settings, live-streaming commerce has significantly expanded its influence and market scale, gradually forming a consumer culture with Chinese characteristics.

Some leading influencers use the lowest price in whole market as a core competitive strategy to attract consumers.Leading influencers, refer to top-tier individuals or personalities in the live-streaming and social media space who possess a large, engaged following and significant influence over consumer behavior. These influencers often have millions of followers across platforms such as Douyin, Kuaishou, and Taobao Live. Their ability to drive massive sales during live-streaming events is a key feature of China's e-commerce economy. These influencers leverage their credibility, entertainment value, and persuasive power to create a direct connection between merchants and consumers.

It is undeniable that certain products in their live-streams are priced lower than on other online platforms. This price advantage arises from the dominant position these influencers hold in the live-streaming market. Leveraging their strong bargaining power, they often compel merchants to ensure that the price on other platforms does not exceed the live-stream price, thereby establishing a “Lowest Price Clause” that excludes competition. As a result, merchants, to avoid hefty penalties, refrain from offering lower prices on their own platforms or other channels, further solidifying the leading influencer's market position. Since these influencers serve as intermediaries connecting merchants and consumers, their live-streaming sessions exhibit clear platform attributes and can be considered a unique form of online platform. "The Lowest Price" clause is a typical example of a Platform Most-Favored-Nation (PMFN) clause under an agency distribution model. Most-Favored-Nation Treatment (MFN), as a fundamental non-discrimination principle in international trade law, has its legal origins in the principle of equal opportunity established by trade agreements among Mediterranean city-state nations in the 11th century[1]. This system requires contracting parties to provide each other with treatment no less favorable than that granted to any third country in areas such as trade, maritime affairs, customs, and the legal status of citizens. Market participants embed the MFN principle into platform operating agreements through contractual arrangements, forming the vertically restrictive Platform Most-Favored-Nation Clause[2].

In this model, the ownership and pricing rights of the goods lie with the seller, while the platform or influencer acts as an agent, selling the goods and earning commissions from the seller[3]. In substance, the platform or influencer may influence the pricing power through algorithms and traffic control.

2. The Dual Dimensions of Competitive Harm: From Platform Structure to Consumer Autonomy

"The Lowest Price" clause is not merely a price commitment; in fact, it integrates a price-locking mechanism into the underlying logic of the platform economy through the PMFN clause. The resulting competitive harm manifests in two dimensions: one affecting market structure and the other impacting long-term consumer welfare.

The first harm relates to the implicit solidification of market structure. Vertically, the platform and merchants form a community of interests through agency agreements, causing the platform to lose the incentive to attract low-price merchants by lowering commissions. Instead, costs are shifted onto consumers, creating a “commission-price” upward spiral. Horizontally, the network effect and user stickiness of leading influencers create entry barriers. Emerging platforms are unable to overcome the lock-in effect through price competition, leading to an oligopolistic market trend. Consumers become trapped in the “price-traffic” closed-loop controlled by leading influencers.

In the live-streaming context, short-term price illusions obscure the long-term degradation of consumer welfare. The contractual lock-in results in a failure of price competition, and consumers ultimately face the discrepancy between “low-price promises” and “high-price realities.” More covert harm lies in the systematic erosion of consumer autonomy. On one hand, marketing techniques like live-streaming scripts and time-limited promotions trigger emotional resonance and herd mentality, transforming rational decision-making into “impulse purchases.” Consumer freedom is thus transformed into “guided freedom.” On the other hand, influencers create information asymmetry by hiding their actual relationships with merchants or fabricating product scarcity, leading consumers to make irrational decisions under the illusion of informed choices[4].

3. Regulatory Status and Improvement Pathway for "The Lowest Price" Clause

Under Chinese current legal framework, leading influencers' " Lowest Price" clause is no longer just a commercial commitment. It has evolved into a complex anti-competitive practice that combines vertical price locking and horizontal market blocking effects. As such, antitrust enforcement faces two parallel regulatory paths: monopoly agreement regulation and abuse of market dominance regulation. However, both paths reveal two challenges: institutional lag and operational disconnection.

3.1 Bottlenecks in the Monopoly-Agreement Pathway

The first challenge involves the applicability of the monopoly agreement path. Vertically, PMFN clauses under agency models are often exempted under the "agency exception."[5]. Because a monopoly agreement is a concerted practice that excludes or restricts competition, it requires at least two independent undertakings. In the context of a lowest-price clause, the platform is deemed merely the merchant's agent, so the two cannot be treated as separate economic entities; hence PMFN clauses in agency settings are commonly considered outside the scope of the vertical-monopoly-agreement rules. Yet leading influencers, by exercising traffic control, leveraging strong consumer trust, and assuming substantive risks—for example, voluntarily undertaking compensation for defective products—have transcended the role of a "true agent" who bears only negligible risk and now possess autonomous market will and independent economic judgment. Moreover, even when an agency relationship genuinely exists, exemption must be confined to what is "necessary for the execution of the agency." A PMFN clause constitutes an agent-imposed restriction on the principal—that is, the platform restricts the merchant's price or other trading conditions—whose content lies beyond the necessary ambit of agency duties. It therefore cannot invoke the agency exception and must be brought back within the ordinary framework for vertical-monopoly-agreement review.

Horizontally, the same PMFN clause, because of the actual substitutability between the platform's self-operated business and its suppliers, can directly amount to a concerted practice on price or other trading conditions among competitors and thus fall squarely within the traditional conception of a horizontal monopoly agreement. If the platform further exploits its position as an information hub to secure parallel alignment of prices among several upstream suppliers, a hub-and-spoke structure emerges: the platform acts as the hub, orchestrating horizontal collusion among the spokes, rendering the anticompetitive effects more covert and far-reaching.

Therefore, with respect to the antitrust regulation of such lowest-price clauses, enforcement authorities must pierce the formal veil of agency, apply a "substantial-control" test to determine the independence of the actors, and—guided by the scope of competitive harm—distinguish between intra-brand channel restraints and inter-brand supplier restraints so as to apply the vertical and horizontal agreement rules with precision, leaving no refuge for PMFN clauses in the platform economy.

3.2 Feasibility of the Abuse-of-Dominance Pathway

The second challenge concerns the feasibility of the abuse of market dominance path.

As the live-streaming e-commerce market becomes increasingly oligopolistic, leading influencers control a significant market share with a very small number of participants, creating a "winner-takes-all" pattern. For instance, in China, approximately 2.2% of leading influencers capture nearly 80% of the market share[6]. This structure provides the basis for recognizing joint market dominance in an oligopolistic market. According to EU practices, joint dominance requires both “economic links” and an “oligopolistic market structure.”

In the Chinese context, the second element is evidenced by persistent price parallelism among marquee influencers. Li Jiaqi and Viya, for example, routinely list identical products at indistinguishable prices over extended periods despite the absence of any substantiated cost justification. This sustained alignment, coupled with the absence of meaningful price rivalry, supports an inference of tacit coordination within the meaning of “economic links.”

On this basis, PMFN clauses can be characterised as exploitative or exclusionary conduct implemented through collective market power: (1) leveraging dominance to force suppliers to accept PMFN clauses under threat of “delisting” or “supply cut-off,” thereby imposing unreasonable trading conditions; (2) driving up retail prices and platform commission rates, causing consumers to pay supra-competitive monopoly prices; and (3) applying differentiated treatment to contracted and non-contracted suppliers (for example, priority in link display or differences in presentation time), resulting in discriminatory treatment. Consequently, the abuse of dominance route—specifically, the theory of collective dominance—offers a viable doctrinal vehicle for challenging PMFN clauses that entrenches oligopolistic coordination without resorting to the more rigid prerequisites of a formal monopoly agreement.

3.3 Coordination and Reinforcement of Regulatory Paths

Faced with the overlap of monopoly agreements and abuse of market dominance, enforcement agencies should adopt a competition-effect-driven approach and flexibly choose regulatory tools. If the PMFN clauses primarily suppress intra-brand channel competition (for example, price wars between different live-streaming rooms or self-operated channels), vertical monopoly agreement rules should be prioritized. If the platform, with or without joint dominance, leads the implementation of these clauses and the effect is to block competition or exploit consumers, the abuse of dominance path should be applied.

From an institutional perspective, two areas require reinforcement: first, introducing the “joint market dominance” theory to break the limitations of recognizing a single subject and bring parallel pricing among leading influencers under regulatory scrutiny; second, establishing obligations for live-streaming price transparency (for example, mandatory disclosure of price components and historical price comparison information) and reducing consumers’ evidentiary costs (for example, optimizing “price match guarantees”), which would help mitigate the “autonomy hollowing” caused by information asymmetry and prevent systemic exploitation of consumer welfare.

4. Conclusion

The oligopolistic trend in live-streaming e-commerce shows that "The Lowest Price" has evolved from a promotional slogan into a price constraint in the digital market. The key to regulating "The Lowest Price" clauses of leading influencers lies not in a formal choice between monopoly agreements and the abuse of dominance, but in piercing through the legal appearance of “agency” to accurately identify and assess the substantive market power behind these relationships. By applying dynamic, effects-oriented competitive analysis methods, rigid static doctrinal judgments can be replaced. Only through an innovative antitrust paradigm that adapts to the digital Chinese market can we break the closed-loop control behind "The Lowest Price" myth and safeguard fair competition and consumer sovereignty.

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