

Tying in Digital Platforms under the Competition Legal Framework in China and the EU

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TYING IN DIGITAL PLATFORMS UNDER THE COMPETITION LEGAL FRAMEWORK IN CHINA AND THE EU

A Comparative Law and Economics Perspective

Qian Wu

1. Tying in digital platforms is as controversial as tying practices in “traditional” markets, except when it is implemented by statutory dominant firms.
2. The anti-competitive effects and pro-competitive effects of tying in digital platforms often coexist and are non-separable.
3. Conducting trade-offs between the anti-competitive effects and pro-competitive effects of tying in digital platforms is essential in distinguishing illegal tying from legal practices.
4. Conducting trade-offs between the anti-competitive effects and pro-competitive effects of tying in digital platforms is not an easy task as it may generate legal uncertainties and induce high information costs.
5. China has remained cautious not to wrongly punish pro-competitive tying in digital platforms while most illegal tying cases are about tying by statutory dominant firms.
6. The EU has continuously maintained a rigorous level of public enforcement to deter the anti-competitive effects of tying in digital platforms; however, pro-competitive effects may have been overlooked.
7. China and the EU face common challenges of striking a balance between pragmatism (considering both error costs and information costs) and proportionality (to ensure that a trade-off analysis of the anti-competitive effects and pro-competitive effects is possible).
8. The differing preferences between China and the EU may result from their different situations and there are no “best” rules to address tying in digital platforms that are suitable for all jurisdictions.
9. China and the EU can learn valuable lessons from each other to address their challenges and improve the effectiveness of enforcement.
10. Competition can take place in various ways. One way of competition grounded in Chinese culture is self-competition, following the heaven’s maintenance of vigor through constant movements to strive for self-improvement and the earth’s receptive devotion to bearing everything with virtue (天行健，君子以自强不息；地势坤，君子以厚德载物).