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Regulating Self-Preferencing in China: Towards a Lenient Approach

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Abstract. This article examines the regulatory approach to self-preferencing by digital platforms in China, arguing for a lenient rather than stringent framework. Through comparative analysis of international cases—such as the EU' s structural interventions and the behavioral remedies adopted in South Korea and the United States—the study highlights the risks of strict regulation in stifling innovation, disrupting ecosystem synergies, and undermining data-driven efficiency gains. It further explores how consumer heterogeneity, particularly between loyal and switching consumers, naturally constrains abusive self-preferencing. The article concludes that China should embrace conduct-based regulatory tools such as algorithmic transparency and cross-platform comparability to foster fair competition while preserving platform dynamism, aligning with both domestic market conditions and global digital governance trends.

Keywords: Self-Preferencing, Antitrust Law, Platform Economy, Lenient Regulation, Behavioral Remedies

1. Introduction

Self-preferencing is an exclusionary conduct in which a company shows a preference for its own products over those of competitors [1]. Although not called self-preferencing back then, an early example of self-preferencing involves Standard Oil Company of the United States which controlled major national oil pipelines, forcing gas stations to exclusively sell its gasoline exclusively [2]. As the platform economy evolves, self-preferencing has transformed from a traditional supplementary strategy into a systemic competitive tool. In the digital era, self-preferencing often involves platform enterprises acting in multi-sided markets leveraging their control over data, algorithms, and rule-setting to provide preferential treatment to their own goods or services, thereby distorting competition in relevant markets. Common manifestations include platform blocking, tying, data misappropriation and preferential treatment in search rankings and display positions [3].

One major concern of self-preferencing is that, similar to tying, companies with substantial power in one market might leverage such power to monopolize another market. Scholars' attitude towards such a theory of harm has switched over time. On the one hand, in the early 20th century, the Chicago School regarded the extension of market power as a "natural selection for efficiency optimization" and proposed the "Single Monopoly Profit Theory." This theory argued that a monopolist could not gain additional monopoly profits by leveraging into relevant markets and

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platform infrastructure investments deserved to enjoy autonomy in resource allocation. This theory essentially denied the monopolist's motivation to exclude or restrict competition in relevant markets [4]. On the other hand, in the early 21st century, the Post-Chicago School revealed the essence of self-preferencing as "monopoly leveraging across markets" , challenging the validity of the Single Monopoly Profit Theory and introducing concepts like the "Raising Rivals' Cost" theory. The post-Chicago School's redefinition of self-preferencing no longer presumed it to be legal. The evolution from the Chicago School's "Single Monopoly Profit" to the Post-Chicago School's "Raising Rivals' Cost" frameworks marked a growing concern towards both tying and self-preferencing. In more recent years, Hovenkamp proposed the "Dual Monopoly Model" to analyze the novel characteristics of self-preferencing in the digital era. This model views the platform as both a market creator and a market participant in the same ecosystem. It serves to analyze the mechanisms and welfare consequences of self-preferencing [5].

Academic research on self-preferencing in China started relatively late but has also yielded many results. Over the past five years, the literature has progressed along three main lines.

Firstly, the concept of self-preferencing and its content have been basically defined. Some Scholars, through text mining of judicial documents and administrative guidance cases, have categorized platform self-preferencing into search ranking bias, leveraging third-party data, pre-installation, and rule design bias [6]. Crucially, research indicates that the same behavior can exhibit both "offensive leveraging" and "defensive leveraging" properties under different market structures, challenging the early simplistic equation of self-preferencing with mere "vertical integration."

Secondly, the complexity between self-preferencing and consumer welfare has made the measurement of competitive harm remains the biggest enforcement bottleneck. Studies analyzing search logs from platforms like Tmall and JD.com found that when platforms increased the proportion of their own products in the top 20 search results, the GMV of third-party merchants declined, while short-term consumer prices also decreased. This phenomenon reflects self-preferencing "may" benefit short-term consumer welfare in specific instances [7]. Scholars have further proposed new quantitative tools like the "Intertemporal Welfare Model," but these often remain at an academic level due to the high barriers to data accessibility [8].

Thirdly, the debate over regulatory approaches to self-preferencing swings between "structuralism" and "behaviorism" in China. The structuralist approach advocates drawing on the EU's Digital Markets Act to impose a prior obligations of "no self-preferencing" on enterprises that meet the quantitative threshold of "super platforms" [9]; the behavioralist approach insists on using the post-review of "abuse of dominant market position" under Article 22 of China's Anti-Monopoly Law, but it requires institutional innovation on the basis of tradition [10].

Despite the regulation of self-preferencing in foreign antitrust jurisdictions and the academic discussion within China, it remains unclear how self-preferencing is being regulated in China. Article 2 of the "Guidelines for Internet Platforms to Fulfill Primary Responsibilities" (Draft for Comments) issued by the State Administration for Market Regulation (SAMR) in 2021 proposed "Ultra-large platforms... shall treat platform operators (or affiliated enterprises) and platform business operators equally and shall not engage in self-preferencing." [11]. Furthermore, Article 20 of the "Provisions on Prohibiting Abuse of Dominant Market Position" (Draft for Comments) published by SAMR on June 27, 2022, explicitly prohibited two types of self-preferencing "giving priority display or ranking to one's own goods" and "using non-public data of platform business operators to develop one's own goods or assist in one's own decision-making." Notably, this specific article prohibiting self-preferencing was removed from the final version of the Provisions enacted in

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2023. In light of the above, this article aims to examine whether self-preferencing behaviors need to be regulated and what regulatory measures should be taken in China.

2. The necessity of regulating self-preferencing in China

Although there is no precedent concerning self-preferencing in China, numerous international typical cases are associated with self-preferencing behavior. The six most typical cases are the EU Google Shopping case (Google Shopping v. Commission, 2017), the EU Amazon Buy Box case (AT.40462), the US Apple App Store case (Epic v. Apple), the US Google Search Defaults case (DOJ v. Google, 2023), the German Facebook Data Merging case (Facebook/FCO, 2019), and the Korean Naver Search case (KFTC Decision 2023-12). Judging from the outcomes of these international cases, the results fall broadly into two categories: cases adopting a strict regulatory approach or a lenient regulatory approach.

Cases that adopted a stringent approach includes the EU Google Shopping case (2017) and the German Facebook case (2019). In the Google Shopping case [12], Google promoted its own price-comparison service (Google Shopping) to the top of general search results, demoting competing services (like Foundem) to page 4 or beyond. The European Commission found this conduct illegal, reasoning that Google leveraging of its dominant position in the search market (90% share) to gain an advantage in the relevant price comparison market constituted abuse of dominance via leveraging. By relegating rival services such as Foundem to page four and beyond, Google reduced their click-through rates by 85 % (2006–2016 data), thereby distorting competition. Google failed to provide evidence justifying the preferential treatment as objectively superior quality at the same time. The ruling imposed a €2.42 billion fine and required Google to provide equal treatment to competing comparison services in its search results. However, subsequent studies found the remedy failed to significantly increase competitor traffic (Foundem's clicks remained below expectations) and deterred Google's innovation in shopping features. The European Commission's official ex-post assessment noted "The decision may have reduced Google's incentive to innovate in its comparison shopping services... Post-decision, Google shifted resources toward compliance rather than product improvement, leading to slower feature updates. For example, in the German Facebook case, the German Federal Cartel Office prohibited Facebook from bundling the use of its core social services with consent to cross-platform data processing (WhatsApp, Instagram data). The Federal Supreme Court ruled this an abuse of market dominance, forcing users to agree to such bundling. As a result, Facebook suspended the launch of new features in Germany, which actually worsened the user experience. These cases in the EU and Germany are considered representative of "strict regulation" because they adopt a structuralist intervention approach—believing that the platform's market dominance is the root of the problem, and therefore relying on strong external means such as hefty fines, bans, or even breaking up the company to directly correct market distortions. In the Google Shopping case, the European Commission not only imposed a huge fine but also required Google to change how it displays search results to treat competitors equally [13]. The German Cartel Office directly prohibited Facebook from merging data, effectively depriving it of its ability to gain an advantage through its monopoly position. This approach can indeed quickly restore competition and achieve superficial fairness, but the cost is also obvious [14].

In contrast, the Naver search case in South Korea (2023) [15] and the Apple App Store case in the United States (Epic v. Apple, 2021) took a different approach. The Korea Fair Trade Commission found that Naver's practice of prioritizing its own content in search results was indeed illegal, but it did not prohibit this practice; it only required Naver to make its algorithm rules transparent. Later, Naver implemented a third-party content ranking system, which improved the quality of its partners'

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content, creating a virtuous cycle. The South Korean case applied the principle of proportionality, finding that Naver used its 75% search market share to engage in structural discrimination and block relevant content markets [16]. Therefore, it adopted behavioral remedies (requiring algorithm transparency) rather than structural dismantling. Crucially, this "strictness" was reflected in the precision of enforcement actions, not the severity of the judgment—preserving the space for corporate innovation while quickly correcting illegal behavior. The Apple case in the United States was similar [17]. Although the court ruled that Apple's 30% commission was legal, it required that it allow access to third-party payment systems. The federal court emphasized that this targeted remedy (rather than a blanket ban) both preserved the security of Apple's ecosystem and promoted competition in the payments sector, demonstrating the flexibility of the reasonableness principle. The court acknowledged that Apple's app download model did improve security and user experience and promote competition, but its practice of forcing users to use its own payment system went too far and constituted anti-competitive tying.

The cases in South Korea and the United States exemplify the characteristics of "lenient regulation": the core idea is to take a behavioral remedy approach, not directly affecting a company's market position or business model structure, but rather taking more targeted and appropriate measures against specific misconduct. For example, South Korea did not prohibit "self-preferential treatment" itself, but only required algorithm transparency, guiding platforms to build a fairer ecosystem; US courts did not support radical demands such as breaking up the Apple ecosystem or eliminating commissions, but only required opening payment interfaces and introducing competition while ensuring security and user experience [18]. This regulatory approach flexibly applies the principles of proportionality and reasonableness, and its "strictness" is reflected in the precision and efficiency of enforcement, rather than the severity of the judgment. Relaxed regulation pursues a dynamic balance: correcting illegal behavior without harming innovation and efficiency.

These international cases reflect the latest wave of global platform antitrust enforcement—five out of six cases (excluding Apple's partial victory) found the behavior illegal. This indicates a growing awareness of the illegality of "self-preferential treatment" itself, and increasingly frequent enforcement. Essentially, self-preferential treatment is the expansion of a platform's "private power," causing substantial harm to competitors on the platform. Leveraging a monopolistic position to extend into other markets is the core theoretical basis for regulating self-preferential treatment—platforms gain an advantage in one market (such as search or social media) by virtue of their dominant position in another (such as e-commerce or payments) [19]. The 85% drop in clicks for Foundem in the EU's Google Shopping case is a typical example. Self-preferential treatment also implicitly exploits consumer welfare and restricts consumer choice. China's State Administration for Market Regulation (SAMR) removed provisions concerning self-preferencing from the formally enacted Provisions on Prohibiting Abuse of Dominant Market Position by Internet Platforms (2023), leaving a regulatory gap for such behavior under current Chinese law. Although there has not been enforcement against self-preferencing in China yet, it does not mean that China is immune from such conduct. A domestic example is Meituan prioritizing delivery for its own service "Meituan Preferred," increasing delivery times for third-party fresh goods merchants by 22 minutes and raising spoilage rates by 15% [7]. The absence of relevant laws in China risks creating vulnerabilities in regulating digital platform monopolization. As the country with the world's largest digital ecosystem, regulating this conduct is a necessary step aligned with international trends.

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3. Reasons why China should adopt a lenient approach to regulating self-preferencing

China's regulation of self-preferencing behavior represents not only a necessary response to the global wave of antitrust legislation and an obligation under international competition policy coordination, but also addresses the structural gap in the Anti-Monopoly Law concerning the digital platform economy. However, some questions regarding whether to adopt a strict or lenient regulatory approach still require consideration and discussion. Part II of this article analyzes relevant international cases and reveals the differences in regulatory methods across different jurisdictions. The author suggests that China adopt a lenient regulatory approach for three reasons:

Firstly, the complexity of consumer welfare also supports China adopting a lenient regulatory approach towards self-preferencing. Existing literature primarily focuses on distinguishing between self-preferencing's impact on short-term and long-term consumer welfare, concluding that while self-preferencing might reduce prices in the short-term, they could lead to market concentration and reduced product variety in the long run [20]. The author argues that instead of making a distinction between short run and long run effects, we should pay attention to the impact on two major types of consumers: loyal consumers and switching consumers. However, the author would like to emphasize the distinction between "loyal consumers" and "switching consumers" within consumer welfare analysis and their impact on self-preferencing's effects [8]. Loyal consumers exhibit loyalty to the platform operator, trust in the quality of a particular platform brand, are less price-sensitive, and provide the platform with high-quality, stable demand data. On the contrary, switching consumers who lack fixed preferences within product categories are more influenced by price and self-preferencing, and readily switch between platform-owned products and third-party offerings. The crucial analysis lies in the proportion these two consumer groups constitute within the platform ecosystem and the competitive dynamics this shapes. These two consumer types influence self-preferencing through different mechanisms. The loyal consumer group objectively acts as a built-in market regulatory mechanism: When this group represents a relatively high proportion, the platform, despite having a stable user base, remains constrained in its market behavior. If the platform excessively promotes its own products or raises prices through self-preferencing, it risks losing loyal consumers whose expectations are not met. Therefore, even under such conditions, the platform finds it difficult to abuse self-preferencing. When the proportion of loyal consumers is low, switching consumers dominate. This group actively compares prices and readily shifts to alternatives, while also being more susceptible to self-preferencing behavior—often opting for products displayed prominently by the platform. Hence, when switching consumers make up a larger share, it would be easier for platforms to abuse their dominance through self-preferencing successfully, and closer attention should be paid to the platform's self-preferencing practices. From the operation of the above mechanisms, a higher proportion of loyal consumers can play a balancing role in the platform economy. This mechanism can partially substitute for structural interventions under traditional antitrust law, enabling market self-regulation and reducing the need for stringent oversight—though regulatory attention remains necessary when switching consumers dominate. Consider the example of corn sales on Douyin E-commerce: Douyin prioritizes displaying its self-operated corn, priced at 5 RMB/ear from "Dongfang Zhenxuan", while third-party merchants offer similar products at 3 RMB/ear. Loyal consumers may choose the self-operated product based on trust, and their proportional size directly determines the feasibility of the 5 RMB pricing—when their share is high, the platform can maintain higher prices yet remains constrained by this group's stable expectations; when their share is low, switching consumers whose defining trait is a lack of loyalty to the platform or brand may be influenced by self-preferencing to choose the prominently

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displayed self-operated product, or may opt for lower-priced third-party alternatives, leading to uncertainty in their selection behavior, and their price welfare is not locked in. This may call for regulatory attention regarding self-preferencing practices [21]. In short, when there are more switching consumers in a market, the government may need to adopt a more stringent approach towards self-preferencing, and vice versa. Since there is currently no clear research on the consumer conversion rate in China's platform economy, my suggestion is that, under such circumstances, the regulation of self-preferential treatment should be approached with caution.

The platform, consumers, and merchants are mutually beneficial: the platform attracts merchants by serving consumers, and more merchants attract more consumers, which is the cross-side network effect. At the same time, the platform collects feedback data from merchants to identify which products sell well, and then focuses on promoting these high-quality products that have been validated by the market, forming a data-driven feedback loop. These two mechanisms combined constitute the platform's ecosystem effect. Self-preservation can actually promote innovation. The platform can transform the data advantage accumulated in information matching into a competitive advantage for its own products [22]. If platforms are prohibited from using data to identify and promote high-quality products, they will not be able to optimize product mix, accurately match demand, and improve supply chain efficiency. For example, Amazon relies on looking at the non-public sales data of third-party sellers to find out which products sell well, and then uses this information to promote its own brands. If this mechanism is cut off, the platform may reduce its investment in efficient promotion systems, and the operating efficiency of the entire ecosystem will be affected. Strict regulation will not only hinder this data-driven product promotion, but also destroy ecosystem collaboration. The value of the platform economy largely depends on the cross-side network effect—the platform enhances the value of the entire ecosystem by integrating various services such as logistics and payment. For example, e-commerce platforms investing in their own logistics and prioritizing their own delivery services can ensure faster delivery and a better experience, attracting more users and merchants, thus creating a virtuous cycle of innovative growth. Prohibiting this integration would fragment the ecosystem, damaging overall efficiency and user experience.

Furthermore, regulation itself would dampen platforms' incentive to optimize products. Developing and maintaining advanced algorithms, data infrastructure, and new services requires significant investment. If platforms cannot promote their high-quality products through self-preferential treatment, their return on investment will decline, weakening their motivation to continuously optimize the ecosystem. Academic models also demonstrate [21] that platforms need to find a balance between the degree of self-preferential treatment and market space; excessive restrictions will compress the return on investment. Essentially, some forms of self-preferential treatment are actually the result of platforms identifying and promoting high-quality products. For example, Apple's pre-installation of mature services like Siri and iMessage effectively promotes its internal high-quality services and is not a fundamental innovation. Prohibiting even this promotion mechanism would damage the platform's system efficiency and continuous improvement capabilities.

Although Chinese e-commerce platforms started later than their foreign counterparts, they have grown rapidly. However, as a developing country, our innovation capabilities are not as advanced as those of developed countries. Therefore, protecting the innovation capabilities of platforms and fostering ecosystem collaboration is particularly important. JD.com is a case in point: it prioritizes "JD.com self-operated" products in search results, provides dedicated logistics for its self-operated products, and analyzes sales data from third-party merchants and its own products to optimize

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warehouse layout—for example, by establishing "pre-positioned warehouses" in key cities, significantly shortening delivery times. These innovations were later extended to third-party merchants, improving the overall fulfillment efficiency of the platform. This demonstrates that, given the national need to encourage innovation, regulation cannot be too rigid, and China's lenient approach to self-preferential treatment is justified.

The relaxed regulatory path has unique advantages and institutional superiority in global digital governance. For example, South Korea's "legislation-enforcement-judicial" design provides a model that emphasizes both flexibility and precision, and sets a benchmark for behavioral remedies: In 2021, South Korea passed the world's first amendment to the Telecommunications Business Act (commonly known as the "Anti-Google Act"), which directly defined self-preferential treatment as illegal behavior, listed the constituent elements, and filled the gap in the "behavioral typification" of traditional anti-monopoly law [23]. This provides a clear basis for judicial trials and greatly improves the efficiency of case determination—the Naver search case was completed in just one year and ten months, while the EU Google Shopping case dragged on for a full 11 years. At the same time, the Korea Fair Trade Commission (KFTC) requires rectification of behavior while imposing penalties, without resorting to structural dismantling, which not only speeds up the rectification of platforms but also avoids long litigation delays. Behavioral remedies (such as requiring algorithm transparency) not only give platforms flexibility but also quickly restore market fairness. South Korea adopts a strategy of gradually expanding the scope of regulation—first enacting legislation to address self-regulation in the payment system, and then extending it to the broader e-commerce sector. This approach avoids stifling innovation with a one-size-fits-all approach while providing market participants with predictable compliance strategies. South Korea's framework of coordinated legislation, enforcement, and judicial processes offers a valuable model for China's self-regulation, improving efficiency while preserving the innovative vitality of enterprises.

4. Conclusion

Self-preferencing as a vital competition issue in the platform economy era, essentially involves enterprises with market dominance systematically favoring their own businesses through data advantages, algorithmic biases, and rule-making authority, thereby distorting competition in relevant markets. Both theoretical evolution and case practices globally demonstrate its complex economic effects and legal attribute in antitrust contexts. Examining worldwide regulatory approaches, the EU's stringent "structuralist" prohibitions demonstrate antitrust resolve but risk stifling innovation investment and ecosystem synergies. Conversely, jurisdictions like the US and South Korea employ "the Rule of Reason" and "the principle of proportionality", balancing innovation incentives and fair competition through behavioral remedies, offering greater flexibility. As the world's largest digital ecosystem, China faces a regulatory void in legislation and must choose its regulatory path: On one hand, stringent bans could sever the "data-innovation" conversion chain, undermining domestic platforms' economies of scale and supply chain optimization capabilities. On the other hand, the complexity of consumer welfare reveals differentiated regulatory mechanisms between loyal consumers and switching consumers. Coupled with multi-platform competition dynamics and low switching costs, these factors naturally dilute the monopolistic effects of self-preferencing. Thus, China should adopt a lenient approach rather than replicating the EU's structural prohibitions.

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