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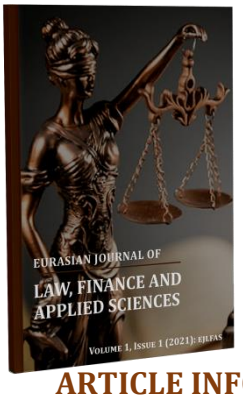

PROBLEMS IN RECOGNIZING A DIGITAL PLATFORM OPERATOR AS HAVING A DOMINANT POSITION

Davlatova Guliza Shavkat qizi
PhD student at Tashkent State University of Law
e-mail: gprimova97@gmail.com
ORCID: 0009-0003-7496-7628
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ABSTRACT

This article analyzes the concept of digital platforms, their types, cases recognized as having a dominant position, the distinctive features of recognizing a digital platform operator as holding a dominant position, and some associated challenges. The article also offers several suggestions to address these issues.

With the development of information technologies today, recognizing business entities as having a dominant position, along with determining the dominant position of digital platform operators, is becoming increasingly important. This is because there are currently many types of digital platforms, which engage in various forms of entrepreneurial activity, creating competitive relationships among them. In this context, it is necessary to briefly address the concepts of “digital platform” and “digital platform operator”.

A **digital platform** is considered an information system that provides access to digital products via the global Internet network, either for a fee or for free.

A **digital platform operator** is a legal or natural person who organizes the operation of the digital platform and sets the terms for its use by all interested parties.[1]

Digital platforms can take the following forms:

- Electronic commerce marketplaces (marketplaces);
- Public procurement and service platforms;
- Aggregators (intermediaries) that provide end-users with access to services from business users;
- General or targeted online search engines;
- Online maps;
- News aggregators;
- Platforms for streaming or exchanging video (including television and cinema) and audio (including music) content;
- Platforms for using or exchanging files in various formats;
- Social networks;

[1] Annex 2 to the Resolution of the Cabinet of Ministers No. 256 dated May 1, 2024. “Regulations on the Procedure for Recognizing the Dominant Position and Dominant Bargaining Power of a Digital Platform Operator and Identifying Actions Leading to Restriction of Competition and/or Infringement of the Rights and Legitimate Interests of Consumers or Other Business Entities”.

- Online freelance services aggregators;
- Online crowdfunding platforms;
- Online payment systems;
- Cryptocurrency exchange platforms;
- Peer-to-peer online communication services, including video communication software (mobile applications), without using telephone or mobile numbers;
- Cloud-based services;
- Operating systems;
- Mobile app stores;
- Online advertising services;
- Web browsers;
- Virtual assistants;
- Platforms based on artificial intelligence.[2]

Before discussing the specific features of recognizing a digital platform operator as having a dominant position, we need to analyze the concept of "dominant position".

A dominant position is the situation in which a business entity or a group of individuals in a goods or financial market can carry out its activities independently of competing business entities, exert a decisive influence on the competitive environment, or create a situation where it can significantly hinder the entry of other business entities into the relevant market or restrict the economic freedom of other entities in different ways.

In a goods or financial market, the following are recognized as dominant positions:

- If there are no competitors to the business entity or group of individuals;
- If the market share of the business entity or group of individuals is 40% or more;
- If the business entity or group of individuals is recognized as a natural monopoly subject;
- If the business entity or group of individuals is granted absolute and/or exclusive rights by law to produce or sell certain goods or to acquire them.

The dominant position in the goods or financial market is recognized if the business entity or group of individuals can carry out its activities independently of competing entities, influence the competitive environment, or create a situation where it can hinder the entry of other entities into the market or restrict their economic freedom in other ways.

In a goods or financial market, the following are considered as a dominant position:

- If the business entity or group of individuals has no competitors;
- If the market share of the business entity or group of individuals constitutes 40% or more;
- If the business entity or group of individuals is recognized as a natural monopoly subject;
- If the business entity or group of individuals is granted absolute and/or exclusive rights by law to produce or realize certain goods or acquire them.[3]

We will discuss the specific characteristics of recognizing a digital platform operator as having a dominant position. The dominant position of a digital platform operator, within the

[2] https://lex.uz/ru/docs/6907023
[3] Law of the Republic of Uzbekistan On Competition. LRU 850. July 3, 2023.

boundaries of the digital space, will be recognized based on an analysis of open data, as well as information obtained from requests sent to digital platform operators, entrepreneurs, end users, state bodies, and other organizations. This analysis will be carried out by the Antimonopoly Committee of the Republic of Uzbekistan and its regional bodies (hereinafter referred to as the antimonopoly body), regardless of the platform's location or state registration.

When recognizing the dominant position of a digital platform operator, the following factors will be determined by the antimonopoly body through analysis:

- The boundaries of the digital space;
- The digital platform operators operating within the digital space boundaries;
- The revenue of the digital platform operator in the last calendar year; if the digital platform operator has been operating in the digital space for less than a year, the analysis will be based on the revenue from the time it started its activity until the analysis time;
- The existence of direct and indirect network effects;
- The possibility for users to simultaneously use different digital platforms and the costs associated with switching between them;
- The availability of user personal and other data that could be used by the digital platform operator to influence or potentially influence the competitive environment.[4]

The antimonopoly body has the right to define the geographical boundaries of the digital space when recognizing the dominant position of a digital platform operator. These boundaries may be set at the global, regional, or specific national levels, such as for the Republic of Karakalpakstan, regions, or the city of Tashkent, either separately or through the unification of two or more commodity or financial market boundaries.

The antimonopoly body may cooperate with international organizations and antimonopoly bodies of foreign countries to gather information about digital platform operators located outside the territory of the Republic of Uzbekistan.

A digital platform operator will be recognized as having a dominant position if any of the following conditions are met and direct or indirect network effects exist:

- If the revenue of the digital platform operator within the boundaries of the digital space in the last calendar year, or for the period from the beginning of its activity until the time of the analysis (if the operator has been operating for less than a year), is equal to or exceeds one hundred thousand times the basic calculation amount;
- If the average number of active end users of the digital platform per month is at least fifty thousand, or the average number of active business users per month is at least three thousand.

The provision of free access to a digital platform does not exclude the recognition of its operator as having a dominant position.

The recognition of a digital platform operator as having a dominant position is formalized by an order from the head of the antimonopoly body.

[4] Annex 2 to the Resolution of the Cabinet of Ministers No. 256 dated May 1, 2024. "Regulations on the Procedure for Recognizing the Dominant Position and Dominant Bargaining Power of a Digital Platform Operator and Identifying Actions Leading to Restriction of Competition and/or Infringement of the Rights and Legitimate Interests of Consumers or Other Business Entities".

Within three days from the recognition of a digital platform operator's dominant position, the antimonopoly body will send a notification to the operator about this decision.

The antimonopoly body will publish a list of digital platform operators recognized as having a dominant position on its official website.

A digital platform operator recognized as having a dominant position or superior bargaining power has the following rights:

- To access information related to its recognition as having a dominant position or superior bargaining power, excluding state secrets, commercial secrets, and other legally protected confidential information;
- To file a complaint in accordance with the established procedure with a court or, through a subordination system, with a higher authority or official regarding the recognition of its dominant position or superior bargaining power.[5]

Recognizing digital platform operators as having a dominant position in the market presents several complex challenges due to the unique characteristics of the digital economy. Here are some issues with identifying dominant position:

Challenges in Establishing Market Boundaries. It is challenging to identify a distinct market where dominance can be evaluated because digital platforms frequently function across several interrelated industries (such as advertising, data, and e-commerce). Platforms like Google and Amazon dominate several facets of the digital economy, including search engines, e-commerce, and cloud computing, rather than only competing in one area.[6] This multifaceted nature makes it more difficult to define "dominance" in the conventional sense.

Network impacts and entry barriers. Network effects, in which the value of a service rises with the number of users, are advantageous to many digital platforms (e.g. Facebook, LinkedIn). Because of this, platforms with a larger user base are more appealing to new users, creating a "winner-takes-all" situation. As a result, the market may seem to be controlled by one company, even though this may be the product of platform design rather than anti-competitive action.

Issues with the global market and jurisdiction. Global operations are common for digital platforms, and many nations have varying laws and regulations regarding market dominance and anti-competitive conduct. This makes it difficult to identify worldwide dominating companies and coordinate cross-border regulatory activities. Effective action by regulators is hampered by the absence of worldwide harmonization.

Alternative revenue models. Rather than selling goods or services directly, the main ways that many digital platforms, such as Facebook and Google, make money are through data collection and advertising. It might be challenging to determine whether a business is abusing its position because this revenue model doesn't always reflect the conventional markers of dominance, such as market share or pricing power.[7]

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[5] Annex 2 to the Resolution of the Cabinet of Ministers No. 256 dated May 1, 2024. "Regulations on the Procedure for Recognizing the Dominant Position and Dominant Bargaining Power of a Digital Platform Operator and Identifying Actions Leading to Restriction of Competition and/or Infringement of the Rights and Legitimate Interests of Consumers or Other Business Entities".

[6] *Fuchs, C., & Sandoval, M.,* "Digital Platforms and Market Power: How Antitrust Law Should Address Platforms' Multi-Market Impact", *Journal of Antitrust Enforcement,* 2021.

[7] *Caffarra, C., & Scott Morton, F. M.,* "The Competitive Effects of Big Tech Mergers", in *The Antitrust Revolution,* ed. John E. Kwoka, 2020.

Quick development of technology. The digital economy is changing swiftly, and new platforms and technologies are appearing all the time. A platform that dominates today can lose its dominance tomorrow as a result of shifting consumer preferences or technological advancements. Because of this, it is challenging for regulators to implement long-term dominance criteria, which might swiftly become obsolete.

The intricacy of demonstrating anti-competitive behavior. Platforms can participate in subtle types of anti-competitive behavior in digital markets, such as using user data, bundling services, or favoring their own services in search results. Particularly when the harm to competition is not immediately evident or quantifiable in the short term, these behaviors can be challenging to identify and establish.

To solve some issues regulators ought to modify their approaches to identifying pertinent markets. Regulators could evaluate the larger ecosystem that platforms function in, taking into account elements like user engagement, data control, cross-platform influence, and entrance obstacles, rather than concentrating only on traditional market share. This would provide us a more sophisticated picture of the true nature of power.

In summary, the distinct characteristics of digital platforms necessitate a more adaptable, creative, and multifaceted regulatory strategy to identify and combat dominance. Regulators may better control the competitive dynamics in digital markets and avoid harm to consumers and innovation by improving transparency, modifying antitrust laws, strengthening international collaboration, and improving market definitions.

References:

1. Law of the Republic of Uzbekistan On Competition. LRU 850. July 3, 2023.
2. Annex 2 to the Resolution of the Cabinet of Ministers No. 256 dated May 1, 2024. “Regulations on the Procedure for Recognizing the Dominant Position and Dominant Bargaining Power of a Digital Platform Operator and Identifying Actions Leading to Restriction of Competition and/or Infringement of the Rights and Legitimate Interests of Consumers or Other Business Entities”.
3. *Caffarra, C., & Scott Morton, F. M.,* “The Competitive Effects of Big Tech Mergers”, in *The Antitrust Revolution,* ed. John E. Kwoka, 2020.
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5. https://lex.uz/ru/docs/6907023