China Proposes Draft of Regulations for Big Tech Platform Companies

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*[**Abstract**: The Chinese government has been at the forefront in providing extensive policy support for the development of the internet and technology sectors. Resultantly, its tech companies have achieved leadership goals internationally and obtained substantial control of the domestic market. The dominance of the giant platform companies has resulted in the continued rise of inequality, which in turn has resulted in market distortions and considerable unemployment. Since President Xi assumed power in 2013, his administration has been taking active measures to establish social harmony and financial stability. After a series of steps the Chinese Government has now turned its attention to keep checks on the growth of internet and technology-based operations with a view to maintaining the objectives of social harmony , financial stability and reviving employment opportunities. This discussion note, while assessing the impact of the proposed regulations on the intended objectives, stresses that the implementation of these regulations, when adopted, would continue to provide supporting policy framework to the international operations of these companies so that their competitive edge continues to be maintained.]*

When Mr Xi Jinping became President in 2013, he inherited a corporate system beset with fraud, inadequate regulatory framework, and surging debt which was becoming a threat to China's social and financial stability. Hence, keeping big business in check would be imperative for maintaining and restoring social and financial stability.

After the success of anti-corruption campaign that mostly targeted officials, Mr. Xi focused his attention on the groups of businessmen who were investing large sums into risky overseas investments such as amusement parks and hotels.[1] It was becoming apparent that many of these acquisitions were to divert capital out of China. A strong crackdown put an abrupt end to the boom in global spending by the Chinese firms. Foreign Investment from China globally shrunk by eighty per cent in 2019 from the level of $200 billion in 2016. Besides, there was flurry of disinvestments like in European football clubs and hotels. The National Development and Reforms

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[1] The Economist (2020), "Blown Off Course China Takes Aim at Its Entrepreneurs," November 14. Available at: https://outline.com/DCBBAf

Commission (NDRC) of China formalised the regulatory pathway for ODI transaction approval on August 18, 2017 to classify outward investment into three groups: encouraged, restricted, and prohibited transactions.[2]

President Xi sought to allay concerns that the state had declared war on the country's private sector while addressing China's richest entrepreneurs at a summit in late 2018 – following the year when officials in Beijing had spent the previous year bringing to heel "unruly" tycoons. President Xi insisted that rumours of a forced push for party influence in the private sector were untrue and advised the business leaders to 'take a pill of reassurance.' However, the pill has been a bitter one. Since then the Communist Party has sought a more active hand in recruitment and business decisions, subduing a brand of head strong bosses of the over-extended financial conglomerates. The Chinese state is now taking aim at China's tech billionaires, some of whom were becoming openly critical of state-owned banks, even though President Xi had made clear that no company is too big to be allowed to challenge the State.[3]

Post Covid-19 recession, China reckoned that its economy is running at two speeds: large technology companies are thriving, while storefront businesses continue to struggle. The share of e-commerce is accounting for 30 per cent compared to 25 per cent of retail business last year. The pandemic has exacerbated the differential between online and offline, and this widening inequality is not perceived well by Beijing. If offline sales of goods remain stagnant or decline, many jobs would remain threatened, thus affecting millions of workers.[4]

China's internet ecosystem has long been protected from competition from international giants like Google and Facebook, and is currently dominated by two companies – Alibaba and Tencent – through a complex investment network

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[2] Uang, B. and L. Xia (2018), "China/ODI from the Middle Kingdom: What's Next after the Big Turnaround?" BBVA Research, February 20. Available at: https://www.bbvaresearch.com/en/publicaciones/china-odi-from-the-middle-kingdom-whats-next-after-the-big-turnaround/

[3] *Op. cit.* 1

[4] Ren, S. (2020), "Why Is China Regulating Big Tech Now?" *The Washington Post*, November 13. Available at: https://www.washingtonpost.com/business/why-is-china-regulating-big-tech-now/2020/11/12/f6b03256-254a-11eb-9c4a-0dc6242c4814_story.html

encompassing country's startups in avenues from AI (Sense Time, and Megvii) to fresh vegetable deliveries (Meicai) and digital finance (Ant Group). Under the patronage of Alibaba and Tencent, a new generation of titans, including food and travel giant Meituan and DiDi Chuxing (China's Uber), have come up. Other noteworthy mentions would be Byte Dance owned TikTok. Alibaba and JD.Com dominate the online retail market in China, together accounting for three-quarters of Chinese e-commerce. More than half of China's population is an active user of the e-commerce services of China.[5]

While President Xi's government has been steadily tightening its grip on its economy, it has until recently taken a relatively hands-off approach toward businesses that dominate China's burgeoning internet, e-commerce, and digital finance industries. So far, China has showcased these companies as evidence of entrepreneurial success. Authorities in China are concerned that these companies have become powerful as Alibaba, Ant and Tencent command a combined market capitalisation of nearly $2 billion, surpassing the state-owned Bank of China Ltd.

Beijing has been increasingly concerned with the influence that a handful of its tech corporates wield over the vast swaths of the economy. Tencent's music arm's exclusive agreements with publishers in the year 2019 has recently modified regulations to rein in risk at fast-growing micro-lending entities such as Ant Group which derailed Ant's planned IPO.

Regulators from the anti-trust and Cyberspace authorities convened a meeting of representatives from Alibaba, Tencent, TikTok owner Byte Dance Ltd., and 24 other tech giants to discuss issues ranging from unfair competition to counterfeiting. It was brought home to the internet platforms that they were neither outside the reach of antitrust laws, nor were they breeding ground for unfair competition.

[5] Kaur, D. (2020), "Enough's Enough: China Looks to Rein in Tech Giants," *Techwire Asia*, November 13. Available at: https://techwireasia.com/2020/11/enoughs-enough-china-looks-to-rein-in-tech-giants/

The Chinese government would update its laws for internet era, to adapt to an industry where market dominance is not always easily quantifiable. China has been using revenue or market share to determine if a company held a monopoly, which principles may not apply to internet firms, which more often than not control valuable data that have not yet been monetised.

The Chinese government is faced with the conflicting desire, to empower domestic tech companies to be internationally competitive, while keeping their market activities firmly under control at home. The horizontal spread of Chinese big tech companies makes anti-monopoly regulation much more urgent for Chinese regulators.[6]

On 10th November 2020 China's regulators for the first time issued a draft of guidelines to combat anti-competitive practices of big tech companies stating that when the proposed rules take effect, some of the practices deployed by internal companies to gain users would stand outlawed.

Practices such as selling goods below cost, price discrimination based on customer data, and exclusive sales agreements would be in violation of the proposed regulations. The regulations also aim at achieving level playing field between the internet companies and the traditional players in new areas such as finance and entertainment. These regulations are a signal that Beijing will introduce more strong and meaningful policies that could put a brake on the internet companies' fast growth.

With the adoption of the proposed regulations, smaller platforms like JD.com may be benefitted. However, smaller players are too small to significantly shake up the landscape. Similarly, the gaming business arm of the internet companies like

[6] Huang, Z. and C. Liu (2020), "China Clampdown on Big Tech Puts More Billionaires on Notice," *Bloomberg Law*, November 11. Available at: https://news.bloomberglaw.com/antitrust/china-turns-up-heat-on-internet-giants-with-new-antitrust-rules

Tencent may not be impacted under the proposed regulations as theirs would be composed of individual products.[7]

The move directed at China's technology giants has parallel with the increasing global trend for regulators to take action against big tech companies. For example, the US and Europe have launched investigation into the business practices of Amazon, Google, etc. In March 2020, Google was fined 14.9 billion euros ($1.76 billion) by the European Commission for abusing its market dominance in online advertising. In 2019, Amazon was fined 4 million euros in France because some clauses in its contracts were determined to be unfair to smaller local companies using the platform.[8]

Regulatory developments in European Union and China would be of interest to Indian regulators as well. Technology platforms such as one created by Reliance Jio have a business model that is similar to the one created by global technology platforms. The tech platform business model has an enabling opportunity of diluting the level of competitiveness leading to distortions in the market.[9]

When Beijing decides to take regulatory action, it comes fast and companies have to comply. Technology companies are also fairly adept at pivoting quickly to incorporate shifting regulatory demands into their strategies. Even in Silicon Valley, companies are used to respond to new rules, and pre-empt others by taking action to address regulatory concerns.[10]

The proposed regulations are draft papers. Beijing does tweak its draft regulations. Beijing recognises the economic benefit of natural monopolies and would not mind Alibaba cross selling cloud services.[11] The Chinese government's policy of

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[7] Sun, N. (2020), "China Moves to Rein in Big Tech: Two Things," *Bloomberg Law*, November 11. Available at: https://news.bloomberglaw.com/antitrust/china-turns-up-heat-on-internet-giants-with-new-antitrust-rules

[8] *Op. cit.* 7

[9] Shankaran, S. (2020), "Regulatory Scrutiny of Technology Platforms Will Intensify in Future," *The Times of India* Blog, November 11. Available at: https://timesofindia.indiatimes.com/blogs/cash-flow/regulatory-scrutiny-of-technology-platforms-will-intensify-in-future/

[10] Kharpal, A. (2020), "China Faces the Challenge of Keeping its Big Tech in Check – Just Like the US Does," CNBC, November 13. Available at: https://www.cnbc.com/2020/11/13/china-faces-the-challenge-of-keeping-big-tech-in-check.html

[11] *Op. cit.* 4

providing extensive policy support for the internet and technology sectors will continue maintaining the requisite momentum. The implementation of the regulatory framework would be mindful of China's broader global ambition to be a technological superpower. The regulator in China would therefore keep in view that large Chinese companies in order to maintain their scale and scope of operations at the global level on the basis of the richness and quality of data they access and store.