

The online business
platform as rule
maker and rule
enforcer :
problems and
responses, the
Chinese experience

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Outline of the presentation

This report will focus on the development of relevant legislation and practices related to online business digital platforms in China



The “Law of the People’s Republic of China on Electronic Commerce,” which was enacted on August 31, 2018, and came into effect on January 1, 2019, places great emphasis on regulating the establishment and implementation of platform rules made by operators of “e-commerce platforms,” which are considered as a specific type of digital platform in China.

The main articles of the Chinese E- commerce law on the platform rule related activities

- Article 32
- An e-commerce platform business shall abide by the principles of openness, equity and impartiality, develop a platform service agreement and transaction rules, and specify the rights and obligations in the aspects, such as joining and leaving the platform, assurance of the quality of commodities and services, protection of consumer rights and interests, and protection of individual information.
- Article 33
- An e-commerce platform business shall continuously publish the information regarding its platform service agreement and transaction rules, or the mark of the link to the aforesaid information, at a conspicuous place of its homepage to ensure the easy and complete reading and download by businesses and consumer

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- Article 34: An e-commerce platform business shall, when amending its platform service agreement or transaction rules, request public comments at a conspicuous place of its homepage and take reasonable measures to ensure that each side is able to express opinions in a timely manner. The amendment shall be published at least seven days prior to its entry into force.
- Where an in-platform business does not accept the amendment and requests leaving the platform, the e-commerce platform business shall not preclude it and shall assume relevant responsibility according to the service agreement and transaction rules prior to the amendment.
- Article 35 : An e-commerce platform business shall not, by means such as using service agreement, transaction rules, and technology, unreasonably restrict, additionally set unreasonable conditions against the transactions and trading prices of an in-platform business in the platform, or its transactions with other businesses, or collect unreasonable fees from an in-platform business.

The main methods of regulation adopted by Chinese legislation

1. openness, fairness, and justice. These are the fundamental principles that should be followed.

2. the publicity or openness of the platform rules should be sufficient to ensure the related parties can know the content of the rules.

3. when modifying platform rules, a special procedures must be followed: hearing public opinions.

4. ensure the freedom to retreat from the platform in case of disagree of the revision of the platform rules

5. the legitimate rights and interests of in-platform operators, consumers and related entities must not be infringed by the platform rule related activities.

Notice: China has a well-established legal framework for protecting consumer rights and interests, so the issue of consumer protection is not particularly prominent. What receives more attention is the protection of the rights and interests of the in-platform operator.

the practical
results of the
rules set by the
E-commerce law
after years of
application:
observation and
reflections

- 1、 The request of the publicity/ openness of the digital platform rules is fully fulfilled. But some practical problems remain.
- 2、 There are some issues with the fairness of platform rules. The primary reason for this is that, under competition pressure, platforms excessively compromise the interests of in-platform operator in order to cater to consumer demands. A typical example of this is the so-called “only refund rule.”
- 3、 The “public solicitation of opinions” procedure for modifying platform rules has become mere formality. Platform operators frequently and arbitrarily modify the rules, with little constraints. ◦
- 4、 There are significant issues of lack of openness and transparency in the way platform operators enforce their rules. In particular, when charging penalties from in-platform operator or implementing restrictive measures, they often fail to adequately inform the related parties of the factual basis for these actions. The procedural remedies available to in-platform operator, particularly the right to appeal, are not adequately safeguarded.
- 5、 There have been instances of exploitation of platform rules to infringe upon the autonomy of in-platform operators. For example: the right of autonomous pricing.

the reactions of
the Chinese
legislation to
these problems

- 1、 China has recently enacted the “Measures for the Supervision and Administration of online Trading Platform Rules.” This legislative document has come into effect as of February 1, 2026. 。
- This document is a departmental regulation, jointly issued by the State Administration for Market Regulation of China and the National Cyberspace Administration of China.
- The primary objective of this regulation is to address a range of issues that arise when digital platforms act as both rule-makers and enforcers in the development and enforcement of platform rules.

The methods adopted by “the measures”

- 1、 Regarding the transparency of platform rules, the requirement to “provide access to specific content search” has been added. Given the extensive nature of platform rule content, which can make it difficult for users to comprehend, the inclusion of a search function ensures that users can easily and efficiently access relevant information.
- Article 9 An online trading platform operator shall adopt technical measures to provide a search function on pages displaying platform rules, to facilitate the retrieval and browsing of specific content within the platform rules by businesses and consumer

2、 Reinforce the procedural significance of the “open public consultation” process within the platform rule amendment procedure.

- Article 10 Before formulating or amending platform rules, an online trading platform operator shall publicly solicit opinions in a conspicuous position on the homepage of its website or application.
- The operator shall allow sufficient time and provide necessary technical support to ensure that relevant parties are able to submit opinions adequately and in a timely manner.
- Article 11 An online trading platform operator shall comprehensively and truthfully collate and summarize opinions received during the solicitation of opinions on platform rules. Reasonable opinions shall be fully taken into account and adopted as appropriate, and reasonable reasons shall be provided with respect to opinions not adopted. Relevant materials shall be kept on file for inspection and retained for not less than three years from the end of the solicitation period.

3、strengthen procedural safeguards for relevant parties

- Article 19
- Where an online trading platform operator, in accordance with the platform rules, takes measures that adversely affect the rights and interests of a business or consumer on the platform, it shall inform the relevant party of the facts of the violation of laws, regulations, rules, or the platform rules, and the reasons and basis for taking the measures, and shall establish convenient channels for filing complaints. Where laws or regulations provide otherwise, such provisions shall prevail.
- Where a business or consumer on the platform files a complaint, the online trading platform operator shall, in a timely manner, review the matters raised in the complaint and render an objective and impartial decision. Where the complaint is handled solely through artificial intelligence or other technical means, and the complainant requests a manual determination, the complaint shall be handled by means of manual determination. After making a decision, the online trading platform operator shall, in a timely manner, notify the complainant of the handling results.

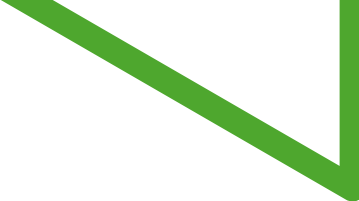

4、 Certain platform rules are strictly forbidden.

- Article 27 An online trading platform operator shall not use its platform rules to engage in any of
- the following acts that impose unreasonable restrictions or conditions on the autonomous business
- operations of businesses on its platform:
- (1) Compelling, directly or indirectly, businesses on its platform to assume after-sales
- responsibilities, such as providing refunds without requiring the return of goods, thereby infringing
- upon their lawful rights and interests.
- (2) Compelling, directly or indirectly, businesses on its platform to subscribe to value-added
- services that are not necessary for their business operations, thereby increasing their operating
- costs.
- (3) Compelling, directly or indirectly, businesses on its platform to participate in promotional or
- marketing activities.
- (4) Compelling, directly or indirectly, businesses on its platform to conduct business operations
- exclusively on specific platforms.
- (5) Other acts that impose unreasonable restrictions or conditions on the autonomous business
- operations of businesses on its platform.
- An online trading platform operator shall not compel, directly or indirectly, businesses on its
- platform, by applying its pricing rules, to sell goods or provide services at prices below cost,
- thereby disrupting the order of market competition.




5、 In response to the regulations governing the platform rule-maker-applier power, a series of “soft law” regulatory measures have been devised.

- The so called mechanism of “communication and consultation mechanism for major matters concerning platform rules.”
- Art.17: An online trading platform operator shall establish and improve a communication and consultation mechanism for major matters concerning platform rules. Through means such as regular consultations, meetings, and questionnaire-based surveys, the operator shall, on a regular basis, conduct communication and consultation on matters relating to the formulation, amendment, and implementation of platform rules that involve the material interests of relevant parties, comprehensively and truthfully collate and summarize opinions collected in the course of such communication and consultation, fully take into account and adopt reasonable opinions as appropriate, and provide reasonable reasons with respect to opinions not adopted.



Other
regulatory
methods with
character of
“soft law”.

- Article 34 An online trading platform operator is encouraged to establish a social co-governance mechanism for platform rules, under which opinions on platform rules are fully solicited from relevant parties through such means as consumer organizations, third-party institutions, and expert consultation and review.
 - Article 35 An online trading platform operator is encouraged to publish an annual compliance report on platform rules, conduct self-assessments of the formulation, amendment, and implementation of platform rules, and be subject to public oversight.
 - An online trading platform operator is further encouraged to invite or engage a third-party institution to issue an external compliance assessment report on platform rules.
 - Article 36 Market regulation departments and cyberspace administrations at or above the provincial level may, through such means as organizing expert reviews, provide opinions on the formulation, amendment, and implementation of platform rules by online trading platform operators within their respective jurisdictions, and shall, in a timely manner, provide feedback to the relevant online trading platform operators, to guide the optimization of mechanisms for the formulation, amendment, and implementation of platform rules.
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Conclusion: The implications of China's legal practices with regard to digital platforms for the development of international trade law in digital ages

- 1、 There is a urgent need for close attention to the rise of digital platforms and their profound impact on the system of rules governing transactions in international trade law.
- 2、 The development and enforcement of rules by digital platforms will become the primary “living law” in the field of international trade law, and the law with the greatest practical impact and importance.
- 3、 The regulatory frameworks governing the establishment and enforcement of digital platform rules in the countries where major digital platforms operate, have significant cross-border implications.
- 4、 The convergence of public and private law, as well as domestic law and international law, is particularly prominent in this area. For instance, when Chinese courts review the validity of relevant platform rules, they may take into account certain specific public law regulations in China (antitrust, anti-unfair competition) and corresponding public policies. Without an understanding of China's legal context, it may be very difficulty to comprehend the rules set by Chinese law governed digital platforms.
- 5、 In an era where digital platforms are gaining prominence, harmonizing and coordinating laws governing cross-border transactions presents an entirely new challenge.