

**China's antitrust  
enforcer fines food  
delivery platform  
US\$534 million  
for exclusivity  
arrangements**

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On 8 October 2021, China's State Administration for Market Regulation ("**SAMR**") fined the food delivery platform provider Meituan RMB3.44 billion (about US\$534 million) for abusing its dominance in relation to exclusivity arrangements. This marks another landmark penalty decision against China's domestic tech giants since the release of the Antitrust Guidelines for the Platform Economy and the US\$2.8 billion penalty decision against Alibaba for engaging in similar conduct earlier this year.

The exclusivity arrangements, often referred to as the 'choose one from two' strategy in China, requires vendors and suppliers operating on platforms to exclusively operate on a single platform. The strategy adopted by Meituan was found to be abusive as it prevented food platform vendors from using rival platforms and limited the ability of those platforms to attract food vendors and grow their customer base.

## *1. Dominance in online food delivery platform services*

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SAMR defined the relevant market as the market for online food delivery platform services in China. SAMR considered various criteria in determining whether Meituan possessed dominance in online food delivery platform services, including Meituan's market share and concentration levels, its collection and use of data, and its app 'ecosystem' of related products and services.

- **Market share and concentration levels.** Businesses with a market share of 50% or more are presumed to be dominant under China's antitrust laws. SAMR found that Meituan had a market share of more than 60% over the period of 2018-2020 based on various metrics such as platform revenues, order volumes, and transaction volumes. HHI and CR2 levels also showed that the market for online food delivery platform services in China was highly concentrated.<sup>1</sup>
- **Data richness.** Following the introduction of the Antitrust Guidelines for the Platform Economy earlier this year, SAMR considered 'big data' issues to assess Meituan's dominance. However, the decision remains silent on whether the collection and use of data could itself constitute an abuse.
  - **Traffic control and promotion.** Meituan was found to have the ability to control traffic available to food platform vendors by determining their food delivery search rankings, display positions, algorithms and platform rules.
  - **Data processing.** The collection of food platform vendor and consumer data gave Meituan considerable insight on transactions, payments and user reviews through which it built a comprehensive delivery and scheduling system for orders. SAMR also highlighted Meituan's location-based algorithms to 'profile' users to provide targeted services and to monitor whether operators within the platform participated in competing platforms.
  - **Data migration.** SAMR also noted the high costs of switching between operators given the difficulties in migrating large amounts of transaction and user data collected on the Meituan platform to other platforms.

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1. The Herfindahl-Hirschman Index ("**HHI**") measures market concentration. The higher the HHI is, the more concentrated a market is. The maximum HHI is 10,000 and in 2018-2020, the HHI in the Chinese food delivery platform services market consistently exceeded 5,500, illustrating a high level of concentration. CR2 measures the combined market share of the top two competitors. In 2018-2020, the CR2 in the Chinese food delivery platform services market consistently remained above 99%, indicating that there were only two effective competitors.

- **Ecosystem.** SAMR reviewed Meituan's activities other than food delivery to confirm operators' dependence on the broader ecosystem of Meituan apps. Other activities include in-store food and beverage, lifestyle, and hotels and tourism services. SAMR considered that Meituan's ecosystem allowed it to leverage more transaction opportunities across different apps and enhance the dependency of vendors and suppliers, which further enhanced Meituan's market power.
- **Other factors.** SAMR also took into account Meituan's market control, financial resources and technical conditions, and barriers to entering online food delivery platform services.

## *2. Abusive conduct through 'choose one from two' exclusivity arrangements*

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In light of Meituan's dominance in online food delivery platform services, SAMR considered Meituan's 'choose one from two' strategy to be abusive having particular regard to its internal strategies in promoting and monitoring the exclusivity arrangements:

- **Meituan coerced food platform vendors into exclusivity.** Meituan offered significant benefits to food platform vendors that accepted the exclusivity terms under its 'choose one from two' model including additional traffic, subsidies, delivery priorities, and expansion of delivery scope, among other factors. Those food platform vendors that did not enter accept the terms of exclusivity were subject to higher commission rates and delays in the onboarding process. As a result, SAMR considered that many food platform vendors were left with no choice but to agree to exclusivity in exchange for better trading conditions.
- **Meituan adopted preemptive monitoring to prevent food operators from operating on rival platforms.** To prevent breaches of the 'choose one from two' obligations, Meituan relied on 'big data' to monitor the activities of food platform vendors. Meituan introduced a system in 2018 of monitoring registrations of food platform vendors on competing platforms. Food platform vendors that were found to have used rival platforms were penalized through a range of measures, including search demotions, forfeitures of registration deposits, store suspensions and closure, among others.
- **Meituan promoted the 'choose one from two' model through its company policy.** Employee performance appraisals and internal training were found to promote the use of exclusivity arrangements with food platform vendors, encouraged agents and business partners to adopt similar exclusivity terms, and aimed to exclude rival platforms from operating in the market.



### 3. Anticompetitive effects

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The penalty decision identified various underlying theories of harm associated with Meituan's 'choose one from two' practices:

- **Foreclosure effects of food platform vendors.** SAMR considered that Meituan unreasonably deprived exclusive food platform vendors the option to use rival platforms to reach a wider customer base and unfairly discriminated against non-exclusive food platform vendors.
- **Foreclosure effects of online food delivery platforms.** Meituan's 'choose one from two' strategy was found to restrict other rival online food delivery platforms from attracting food platform vendors and reinforced barriers to entry in the market.
- **Impact on innovation.** SAMR highlighted that the foreclosure of rival delivery platforms distorted the proper allocation of resources and weakened the innovation power of platforms in the market.

As a result, Meituan's practices reduced the uncertainty of competition in its favor and restricted pricing and consumer choice. SAMR collected a wide range of evidence to assess the effects of the exclusivity, including food supplier agreements, documents relating to Meituan's competitive strategy, employee performance appraisals, and training materials, as well as internal communications. SAMR also interviewed Meituan's employees, as well as its agents, food platform vendors and rival platforms.

### 4. Fines and rectification measures

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SAMR fined Meituan RMB3.44 billion (about US\$534 million), which is equivalent to 3% of its 2020 Chinese turnover. This is at the low end of the 1-10% fining scale for abuse of dominance under China's antitrust laws. In determining the level of fines, SAMR took into account Meituan's cooperation throughout the investigation and its willingness to conduct a comprehensive internal audit, cease all anticompetitive conduct, and commit to other rectification measures (e.g. refunding forfeited registration deposits to food operators; guaranteeing the income and improving the social security of food delivery workers).

In addition, Meituan was also required to engage with food platform vendors under fair, reasonable and non-discriminatory ('FRAND') principles, and refrain from charging unfairly high fees, imposing unreasonable conditions, or engaging in discriminatory treatment.

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