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Regulating "Pick One of Two" Practices in the Platform Economy: A Comparative Competition Law Analysis of Thailand and China

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Abstract

The rapid growth of food delivery platforms has made "Pick One of Two" practices a key issue in competition law enforcement. While both China and Thailand regulate "Pick One of Two" practices under their respective competition laws, the central challenge lies not in whether such practices should be regulated but in how competition authorities should determine whether they constitute competition law infringements. Drawing on the post-Chicago School as its theoretical perspective, this article examines the shortcomings of Thailand's competition law framework in determining the legality of "Pick One of Two" practices and explores how China's enforcement experience may inform improvements to Thailand's legal regime. The study adopts a doctrinal legal research method combining comparative legal analysis and case studies. It finds that Thailand's Trade Competition Act (TCA) suffers from deficiencies in determining market dominance, defining market power, distinguishing between the two concepts, and evaluating the competitive nature of "Pick One of Two" practices. In practice, the Trade Competition Commission of Thailand (TCCT) places excessive emphasis on market share while paying insufficient attention to network, lock-in, and competitive effects in the platform economy. This article proposes refining the legal criteria for determining market dominance, clarifying the relationship between market dominance and market power, and adopting an effects-based approach in enforcement.

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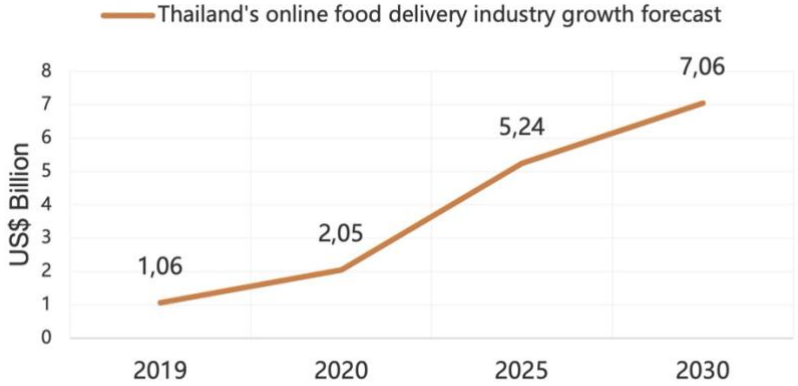
INTRODUCTION

In the context of competition law, the "Pick One of Two" practices of food delivery platforms refer to situations in which dominant platform operators leverage their market dominance or relatively advantageous position to require merchants, as platform users, to choose exclusively between them and their competitors. The "Pick One of Two" practices are in contradiction with the goals of competition law, which include promoting market competition, increasing efficiency,

and protecting consumer interests.[1] However, the imposition of “Pick One of Two” by food delivery platforms compels catering operators to forgo development opportunities on rival platforms, thereby restricting competitors’ growth. Platforms already holding dominant market positions can further consolidate their dominance and drive competitors out of the market. Ultimately, platforms may raise service fees, while restaurants, seeking to reduce costs, may compromise food quality, harming consumer interests.

Since 2017, Thailand’s online food delivery industry has maintained steady growth of 8% to 10% annually. The subsequent outbreak of the COVID-19 pandemic acted as a catalyst for the industry’s expansion[2] (See **Table 1**).

Table 1: *Thailand’s online food delivery industry growth forecast*



Source: *Made by author.*

In 2019, Thailand’s online food delivery market reached approximately 35 billion baht (about US$1.06 billion); following the onset of the pandemic, this figure surged to over 68 billion baht (about US$2.05 billion) in 2020.[3] Statista forecasts indicate that revenue in the online food delivery market is projected to reach US$5.24 billion in 2025 and US$7.65 billion by 2030.[4] The development of the online food delivery industry inevitably entails fierce market competition. Thailand’s Trade Competition Act (TCA) prohibits abuse of market dominance and anti-competitive agreements but provides limited guidance on assessing platform exclusivity practices such as “Pick One of Two.” In 2018, Thailand’s two leading food delivery platforms entered into exclusive agreements with restaurant merchants, requiring them to use only one platform for delivery services. Following an investigation initiated in 2020, the Trade Competition Commission of Thailand (TCCT) concluded in March 2022 that the conduct did not constitute an infringement under the TCA (2017), as the available evidence was insufficient to establish harm to competitors.[5]

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1 Raimundas Moisejevas and Ana Novosad, "Some Thoughts Concerning the Main Goals of Competition Law," Jurisprudence 20, no. 2 (2013): 627–642, https://doi.org/10.13165/JUR-13-20-2-14.

2 U.S. Department of Agriculture (USDA), Thailand Online Food Delivery Market, GAIN Report No. TH2020-0077 (Washington, DC: U.S. Department of Agriculture, May 29, 2020), https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Thailand%20Online%20Food%20Delivery%20Market_Bangkok_Thailand_05-28-2020.

3 ICONIC Research, "The Boom of Food Delivery Apps in Thailand: Market Analysis," ICONIC Research, accessed July 27, 2026, https://iconicthai.com/the-boom-of-food-delivery-apps-in-thailand-market-analysis/.

4 Statista, "Online Food Delivery – Thailand," Statista Market Insights, accessed July 27, 2026, https://www.statista.com/outlook/emo/online-food-delivery/thailand.

5 Trade Competition Commission (Thailand), คำวินิจฉัยคณะกรรมการการแข่งขันทางการค้ากรณีผู้ประกอบธุรกิจให้บริการดิจิทัลแพลตฟอร์มรับและส่งอาหารกำหนดเงื่อนไขทางการค้าที่เป็นการจำกัดสิทธิของผู้ประกอบธุรกิจร้านอาหารอย่างไม่เป็นธรรม [The Decision of the Trade Competition

China is the world's largest food delivery market. It is projected that by 2025, China's online food delivery market will generate US$499.14 billion in revenue, and US$715.39 billion by 2030.[6] In recent years, Chinese antitrust authorities and courts have addressed numerous anti-competitive practices in the food delivery industry. Among them, Meituan, China's largest online food delivery platform, attracted significant attention for abusing its dominant position through the "Pick One of Two" practice. Since 2018, Meituan has required merchants to sign exclusive cooperation agreements, thereby restricting competitors' access to merchant resources. Ultimately, the State Administration for Market Regulation (SAMR) determined that Meituan had abused its dominant market position and imposed a fine of 3.442 billion yuan.[7]

The rapid expansion of Thailand's digital platform economy has made platform exclusivity practices increasingly common. At the same time, the existing legal framework provides limited guidance on how such conduct should be assessed under competition law. As a result, uncertainty in determining whether "Pick One of Two" practices constitute competition law infringements may undermine effective competition law enforcement and the protection of fair competition. Against this background, it is both timely and necessary to examine China's experience in enforcement.

In addition, Thailand enacted its first TCA in 1999 and revised and enacted the TCA (2017) in 2017. China enacted its first Anti-Monopoly Law (AML) in 2007 and revised it in 2022. Despite significant differences in politics, economics, and legal systems, China and Thailand share the same legislative objectives: promoting market competition, enhancing efficiency, and protecting consumer interests. This provides a reasonable basis for Thailand to learn from China's experience in competition law enforcement. Rather than transplanting China's legal rules, this article draws on China's analytical approach to determining competition law infringements to explore how Thailand's competition law framework can be improved.

Therefore, this paper has two main objectives: first, to analyse the challenges faced by Thai competition law in establishing competition law violations arising from 'Pick One of Two' practices on food delivery platforms; second, to explore the implications of China's competition law enforcement experience for Thailand. This article adopts a doctrinal legal research method, combining comparative legal analysis with case studies. Drawing on the post-Chicago School as its theoretical perspective, it systematically examines the regulation of "Pick One of Two" practices in China and Thailand through a comparative analysis of representative cases. It finds that Thailand's TCA suffers from deficiencies in determining market dominance, defining market power, distinguishing between the two concepts, and evaluating the competitive nature of "Pick One of Two" practices. In enforcement practice, the TCCT places excessive emphasis on market

Commission in the Case of a Digital Food Delivery Platform Operator Setting Trade Conditions That Unfairly Restrict the Rights of Restaurant Operators], March 3, 2022, https://tcct.or.th/assets/portals/1/files/PlatformCase.pdf. (in Thai).

[6] Statista, "Online Food Delivery – China," Statista Market Insights, accessed July 27, 2026, https://www.statista.com/outlook/emo/online-food-delivery/china.

[7] State Administration for Market Regulation (China), 市场监管总局依法对美团在中国境内网络餐饮外卖平台服务市场实施"二选一"垄断行为作出行政处罚 [The State Administration for Market Regulation Has Imposed Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly in the Online Food Delivery Platform Service Market in China], October 8, 2021, https://www.samr.gov.cn/xw/zj/art/2023/art_17f2f1d5246d481c96f4fd4a1d790b1f.html. (in Chinese).

share while paying insufficient attention to network, lock-in, and competitive effects in the platform economy. This article proposes refining the legal criteria for determining market dominance, clarifying the relationship between market dominance and market power, and adopting an effects-based approach in enforcement.

RESEARCH METHODS

This article's research methods include doctrinal legal research and comparative legal studies. Doctrinal legal research is a methodology used by legal researchers to determine legal principles, standards, and procedures.[8] A key component of the doctrinal approach is the critical analysis of primary sources. This analysis examines relevant legislation and provides a comprehensive understanding of law as a system of interconnected principles.[9] The doctrinal research method is typically a two-step process: first, identifying the legal sources, and then analysing the texts.[10] In addition, Comparative law is a research method that compares and evaluates entire legal systems or specific laws, regulations, judgments, and customs to reveal their similarities and differences.[11] Comparative law focuses on definition, classification, and research methods to construct an appropriate terminology system to define this new paradigm of legal research; at the same time, it also needs to break through the inherent thinking pattern of domestic scholars who are accustomed to thinking about issues from the perspective of their own country's law.[12]

A comparison between China and Thailand is warranted because both face similar challenges from "Pick One of Two" practices in digital platform markets. China has developed extensive enforcement experience, but Thailand's legal framework remains less mature. China's experience therefore offers useful guidance for improving Thailand's assessment of competition law infringements. In addition, the literature sources for this paper mainly include antitrust penalty rulings, laws, and academic literature. The cases in China and Thailand are from the official websites of SAMR and TCCT, respectively. English-language literature primarily comes from mainstream international academic databases such as SSCI, SCOPUS, and Google Scholar. Overall, the data and literature used in this article are all publicly available.

ANALYSIS AND DISCUSSION

Theoretical Basis: A Competitive Law Analysis of the "Pick One of Two" Practices of Food Delivery Platforms: Harvard, Chicago, and Post-Chicago Schools

Selection of Theoretical Framework

Under competition law, the "Pick One of Two" practices are generally regarded as exclusive dealing or as a vertical restraint with the characteristics of exclusive dealing. An exclusive deal requires a company to completely restrict or prohibit it from purchasing or using a competitor's service. Exclusive deals can be explicitly stipulated in a contract or achieved through various

[8] Jack Fox-Williams, Doctrinal Legal Research: What Does It Entail and Is It Still Relevant to Law? (January 2, 2016), SSRN, https://doi.org/10.2139/ssrn.3309266.
[9] Jack Fox-Williams.
[10] Dawn Watkins and Mandy Burton, Research Methods in Law (London: Routledge, 2013), 13–15.
[11] Sabrina Ragone and Guido Smorto, Comparative Law: A Very Short Introduction, Very Short Introductions (Oxford: Oxford University Press, 2023), https://doi.org/10.1093/actrade/9780192893390.001.0001.
[12] Sabrina Ragone and Guido Smorto.

implicit practices known as "de facto exclusive deals"; the latter includes direct coercion, as well as significant financial incentives or penalties.[13]

The question of whether exclusive dealing causes competitive harm has evolved through three major schools of competition law: the Harvard School, the Chicago School, and the Post-Chicago School. These theories offer different understandings of market power, competitive harm, and enforcement approaches, and have profoundly influenced competition law practice across jurisdictions. Accordingly, this article adopts these three schools as its theoretical framework to analyse the competitive effects of the "Pick One of Two" practice adopted by food delivery platforms.

Harvard School: the Structure-Conduct-Performance Paradigm

In the 1960s and 1970s, U.S. courts and enforcement agencies increasingly relied on the economic theories of the Harvard School, which viewed firms with market power as more likely to engage in anti-competitive conduct.[14] Emerging from concerns about the growing influence of large corporations, the Harvard School argues that market structure determines firms' conduct, which in turn shapes market performance—the Structure–Conduct–Performance (SCP) paradigm.[15] The Harvard School tends to assume that companies with market power will engage in anti-competitive behaviour. They believe that a highly concentrated market structure itself increases the possibility of coordinated behaviour among companies, leading to poor market performance.[16]

Within the Harvard School framework, the "Pick One of Two" practice poses an inherent risk to competition. Exclusive dealing restricts rival platforms' access to merchants, weakens their competitiveness, and raises barriers to market entry by locking key merchants into exclusive arrangements. In platform markets, network effects can amplify these foreclosure effects, further strengthening the incumbent platform's market power. Consistent with this approach, the Harvard School generally regards conduct that creates or reinforces market power—including mergers, joint ventures, and restrictive agreements—as presumptively unlawful, regardless of potential consumer benefits.[17] Accordingly, the Harvard School maintains that exclusive-dealing arrangements implemented by platforms with market power should be subject to scrutiny.

However, the SCP paradigm has also faced criticism, especially from the Chicago School, which challenges the Harvard School's approach. Critics from the Chicago School argue that the observed correlation between structure and performance does not necessarily indicate causation, suggesting instead that high profits may result from efficiency rather than market power.[18]

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[13] Daniel A. Hanley, "Per Se Illegality of Exclusive Deals and Tyings as Fair Competition," Berkeley Technology Law Journal 37, no. 3 (2023): 1057–1096, https://doi.org/10.15779/Z38F47GV5V.

[14] Thomas A. Piraino Jr., "Reconciling the Harvard and Chicago Schools: A New Antitrust Approach for the 21st Century," Indiana Law Journal 82, no. 2 (2007): 345–410, 346.

[15] Leonard W. Weiss, "The Structure-Conduct-Performance Paradigm and Antitrust," University of Pennsylvania Law Review 127, no. 4 (1979): 1104–1140, 1104, https://doi.org/10.2307/3311794.

[16] Frederic M. Scherer, "Structure-Performance Relationships and Antitrust Policy," Antitrust Law Journal 46, no. 3 (1977): 864–872, 864–866, http://www.jstor.org/stable/40842728.

[17] Thomas A. Piraino Jr., "Reconciling the Harvard and Chicago Schools: A New Antitrust Approach for the 21st Century," Indiana Law Journal 82, no. 2 (2007): 345–410, 346.

[18] Oliver E. Williamson, "Review of The Antitrust Paradox: A Policy at War with Itself, by Robert H. Bork," The University of Chicago Law Review 46, no. 2 (1979): 526–531, https://doi.org/10.2307/1599462.

The Chicago School: Efficiency Theory

In the mid-1970s, the Chicago School spearheaded an antitrust revolution, with the Supreme Court completely overturning the prevailing antitrust orthodoxy. Chicago School theorists argue that economic efficiency is the sole objective of competition law, with competition merely a byproduct. Therefore, this focus on efficiency leads them to utilise price theory as a tool to translate economic efficiency into quantifiable indicators.[19] Robert Bork defined economic efficiency as a state that maximises wealth creation and equated wealth maximisation with consumer welfare, namely, reduced production costs, lower prices, and increased output of goods and services demanded by consumers.[20]

Taking exclusive supply agreements as an example, the Chicago School argues that such agreements are incapable of effectively preventing firms from entering upstream markets and instead attributes them to efficiency considerations.[21] In United States v. United Shoe Machinery Corp., the U.S. Supreme Court held that United Shoe Machinery, which controlled 85% of the shoe machinery market, sought to prevent new entrants by inducing shoe manufacturers to enter into exclusive supply agreements.[22] The Chicago School criticisedcriticised this decision, arguing that "unless United's customers insisted upon compensation for the loss they suffered from being denied access to alternative and more economical sources of supply (made possible by competition), they would be unlikely to participate in conduct designed to strengthen United’s monopoly position”.[23]

Accordingly, the Chicago School does not regard exclusive dealing as per se unlawful, but assesses its legality by its actual effects on consumer welfare rather than on market structure alone. However, because this approach is based on assumptions of perfect competition, complete information, and low barriers to entry, it pays insufficient attention to network effects, data advantages, and switching costs in digital platform markets. Its explanatory power is therefore limited in the platform economy.

The Post-Chicago School: A Middle Path

The Chicago School gave rise to the post-Chicago School, a term introduced by Herbert Hovenkamp. The post-Chicago School preserves key values of the Chicago School, such as resisting populist influences in antitrust enforcement and prioritising economic and consumer welfare.[24] Its core distinction lies in analytical methods. The Chicago School largely overlooked the game-theoretic advances in 1970s microeconomics and industrial organisation, relying

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[19] Lauren Millington and Edward Willis, "Competition Law and Non-Economic Considerations: The Particular Case of Democracy," Journal of Competition Law & Economics 9, no. 1 (2022): 51–74, 56.

[20] Robert H. Bork, "Legislative Intent and the Policy of the Sherman Act," The Journal of Law & Economics 9 (1966): 7–48.

[21] Christodoulos Stefanadis, "Selective Contracts, Foreclosure, and the Chicago School View," The Journal of Law & Economics 41, no. 2 (1998): 429–450, 429, https://doi.org/10.1086/467396.

[22] United States v. United Shoe Machinery Corp., 347 U.S. 521 (1954).

[23] Christodoulos Stefanadis, "Selective Contracts, Foreclosure, and the Chicago School View," The Journal of Law & Economics 41, no. 2 (1998): 429–450, 430, https://doi.org/10.1086/467396.

[24] Christopher S. Yoo, "The Post-Chicago Antitrust Revolution: A Retrospective," University of Pennsylvania Law Review 168 (2020): 2145–2169, https://ssrn.com/abstract=3750218.

instead on simplified price theory. In contrast, the post-Chicago School embraces game theory and makes it central to its analysis of economic mechanisms.[25]

In academic discussions, the post-Chicago School is often linked to the Harvard School, yet their methods differ sharply.[26] The Harvard School relies on the SCP paradigm, emphasising how market structure shapes competition. By contrast, the post-Chicago School focuses on firm-level strategic behaviour, using game-theoretic models to probe competitive strategies across various markets.[27] Low prices and efficiency remain primary goals, but concerns about the acquisition of market power and its consequences are also taken into consideration.[28] Thus, the Post-Chicago School marks a distinct 'middle path': it diverges from the Harvard School's structural, empirical approach and the Chicago School's simplified price-centric models by centring strategic interactions.

Regarding exclusive deals, the post-Chicago School argues that they can both improve efficiency and serve as a significant tool for excluding competition; their competitive effects must be analysed in conjunction with the specific market environment. Particularly in the digital platform market, due to network effects, economies of scale, data advantages, multilateral markets, and higher switching costs, exclusive deals are more likely to create competitive exclusion effects than in traditional markets.

Comparison of the Three Schools of Thought and the Theoretical Stance of This Paper

The Harvard, Chicago, and post-Chicago Schools represent three major stages in the evolution of competition law theory. The Harvard School emphasises market structure and adopts a strict approach to exclusionary practices; the Chicago School focuses on economic efficiency and generally regards exclusive dealing as capable of producing legitimate business benefits; and the post-Chicago School integrates game theory to assess the competitive effects of exclusionary practices, particularly in digital platform markets.

Applied to platform "Pick One of Two" practices, the Harvard School explains the risks of market concentration and entry barriers; the Chicago School provides an efficiency-based perspective; and the post-Chicago School captures the roles of network effects, data advantages, and foreclosure mechanisms. Therefore, relying on a single theory is insufficient to comprehensively evaluate the competitive impact of platforms; "pick one of two" practices are insufficient.

Based on the research objectives, this paper uses the post -Chicago School as its core theoretical framework, while also incorporating the Harvard School's analytical perspective on market structure protection and the Chicago School's theoretical achievements on efficiency defences, to construct a comprehensive analytical framework that takes into account market structure, competitive effects, and efficiency benefits.

Types of "Pick One of Two" Practices on Food Delivery Platforms

[25] Christopher S. Yoo.
[26] Christopher S. Yoo.
[27] Christopher S. Yoo.
[28] Jay L. Levine and Porter Wright, "1990s to the Present: The Chicago School and Antitrust Enforcement," Antitrust Law Source, June 1, 2021, https://www.antitrustlawsource.com/2021/06/1990s-to-the-present-the-chicago-school-and-antitrust-enforcement/.

The “pick one of two” behaviour of food delivery platforms can be divided into two types: 1) “pick one of two” behaviour of platforms with a dominant market position, and 2) “pick one of two” behaviour of platforms with a relatively advantageous position.

“Pick One of Two” Practices of a Platform with a Dominant Market Position

In Research into the *Mathematical Principles of the Theory of Wealth*, Cournot analysed how market outcomes vary with the number of producers (n) and classified markets into four categories: monopoly (n=1), duopoly (n=2), oligopoly (n>2), and unlimited competition (n→∞).[29] The first three categories involve a limited number of producers, while the last represents a market with an infinite number of competitors. The “Pick One of Two” practice by food delivery platforms is most likely to occur under conditions of monopoly, duopoly, or oligopoly. In a monopoly market, a dominant platform can unilaterally impose contractual terms because merchants lack viable alternatives. In duopoly or oligopoly markets, collective adoption of similar exclusionary practices by multiple platforms may create a situation of collective dominance. By contrast, unlimited competition is unlikely to facilitate such practices, as merchants could easily switch to alternative platforms, reducing the effectiveness of exclusivity strategies.

“Pick One of Two” Practices of a Platform with a Relatively Advantageous Position

A relatively advantageous position refers to an enterprise that, although it has not reached the standard of a dominant market position, still holds a certain degree of market power and, through higher bargaining power, implements behaviours that exclude or restrict competition. Regulating the abuse of a relatively advantageous position remains controversial, owing to inherent contradictions in the competition law framework governing this practice. It aims to regulate the behaviour of large corporations, but it does not require the establishment of a monopoly or a dominant position; rather, it seeks to define the somewhat ambiguous concept of “dominant bargaining power”.[30] It is worth noting that the source of such market power is essentially different from the source of market dominance. The source of the relative advantage of large enterprises is mainly that small and medium-sized enterprises (SMEs) are unwilling or unable to give up this important channel. The concept of a “relatively advantageous position” was originally developed to regulate the exploitation of small and medium-sized manufacturers by large retailers, typically through practices such as lowering supply prices and charging shelf fees. While large retailers can readily replace suppliers after terminating a trading relationship, small and medium-sized manufacturers often lose key sales channels and bargaining power, leaving them in a relatively weak position. A similar imbalance exists between large food delivery platforms and restaurant merchants, making the concept equally applicable in the platform economy.

Regulating “Pick One of Two” Practices under the TCA (2017)

[29] Antoine Augustin Cournot, "Researches into the Mathematical Principles of the Theory of Wealth," in Forerunners of Realizable Values Accounting in Financial Reporting (London: Routledge, 2020), 3–13.

[30] Masako Wakui and Thomas K. Cheng, "Regulating Abuse of Superior Bargaining Position under the Japanese Competition Law: An Anomaly or a Necessity?," Journal of Antitrust Enforcement 3, no. 2 (2015): 302–33, https://doi.org/10.1093/jaenfo/jnv022.

The legislative model of Thailand's competition regime draws primarily from those of developed market economies, with particular reference to the antitrust frameworks of South Korea and the Taiwan region.[31] This legislative orientation reflects the structural characteristics of Thailand's own economy at the time. The enactment of the TCA (1999) was regarded as a milestone in the development of Thailand's competition law system. Unfortunately, although the TCA (1999) raised high expectations, its enforcement faced significant challenges. Since the law came into effect, it failed to achieve substantive enforcement against any anti-competitive conduct for nearly 18 years.[32] To address the numerous shortcomings of the previous law in practice, the TCA (1999) was officially repealed in 2017 and replaced by the comprehensively revised TCA (2017).

Legal Framework for "Pick One of Two" Practices in Food Delivery Platforms

Thailand's TCA primarily regulates four types of anti-competitive practices: abuse of market power, mergers and acquisitions, anticompetitive agreements, and unfair competition practices.[33] Article 50 of the TCA (2017) provides regulations on "Abuse of Market Power", explicitly listing four typical scenarios: (1) price manipulation; (2) improper trading restrictions; (3) unreasonable supply restrictions; and (4) improper business interference.[34] Article 57 of the *TCA (2017)* provides regulations on "unfair competition practices", which mainly include the following four categories: (1) obstructing the normal production or business operations of others by improper means; (2) improperly exploiting market dominance or bargaining power; (3) imposing unreasonable restrictions or obstacles on the normal production or business operations of others; (4) other illegal conduct (catch-all provision).[35]

In practice, TCCT first determines whether a food delivery digital platform has a dominant market position, and then decides whether to apply Article 50 or Article 57 of the TCA (2017). In addition, considering that antitrust enforcement in the food delivery platform sector is relatively new, the TCCT issued *the Trade Competition Commission Notice on Guidelines for the Assessment of Unfair Trade Practices between Food Delivery Digital Platforms and Restaurants (The Guidelines for FDDPR).*[36]

Furthermore, TCCT also issued the following supplementary legal documents related to the identification of "unfair competition practices", namely: 1) Notice on Guidelines for the Assessment of Market Definition and Market Shares B.E. 2561 (2018);[37] 2) Notice on Criteria

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[31] Sakda Thanitcul, "Competition Law in Thailand: A Preliminary Analysis," Washington University Global Studies Law Review 1 (2002): 171–183, https://openscholarship.wustl.edu/law_globalstudies/vol1/iss1/8.

[32] Pornchai Wisuttisak, "Law for SMEs Promotion and Protection in Vietnam and Thailand," Review of Integrative Business and Economics Research 6, no. s1 (2017): 60–67.; Pornchai Wisuttisak, "Ineffective Competition Law: A Case from Thailand," paper presented at the Annual General Meeting and the 7th Annual Asian Competition Law Conference, The Hong Kong Polytechnic University, December 5–6, 2011.

[33] Trade Competition Act B.E. 2560 (2017) (Thailand), Office of Trade Competition Commission, https://tcct.or.th/assets/portals/1/files/TRADE-COMPETITION-ACT-B_E_-2560-EN-article_20190221100346(1).pdf.

[34] Trade Competition Act B.E. 2560 (2017) (Thailand), sec. 50.

[35] Trade Competition Act B.E. 2560 (2017) (Thailand), sec. 57.

[36] Trade Competition Commission of Thailand, Notice on Guidelines for the Assessment of Unfair Trade Practices between Food Delivery Digital Platforms and Restaurants, B.E. 2563 (2020), October 22, 2020, https://www.tcct.or.th/assets/portals/1/files/NoticeonUnfairPracticesinFoodDelivery.pdf.

[37] Trade Competition Commission of Thailand, Notice on Guidelines for the Assessment of Market Definition and Market Shares B.E. 2561 (2018), https://www.tcct.or.th/assets/portals/1/files/2_NoticeOnMarketDef.pdf.

for being an Undertaking with Dominant Position (2020);[38] 3) Notice on Criteria for being an Undertaking with Dominant Position (2018);[39] and 4) Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018).[40]

The TCCT's logical approach in hearing cases involving abuse of dominant market position is: first, define the relevant market; second, determine whether the enterprise has a dominant market position based on its market share and sales; then analyse the anti-competitive effects of the behaviour; and finally, evaluate the efficiency effects it may bring.

TCCT defines "relevant market" as the relevant product market and the relevant geographic market. To determine the relevant market, Thai enforcement authorities conduct a comprehensive assessment based on demand substitutability, supply substitutability, and potential competition. When evaluating demand substitutability, TCCT also uses the SSNIP test, which simulates a 10% price increase on related products or services to assess consumer response.[41]

Any undertaking with market share and sales revenue as follows shall be deemed as an undertaking with dominant position: (1)An undertaking in a market of a particular product or service that has a market share in the preceding year of 50 percent or more and has sales revenue in the preceding year of one billion (1,000,000,000) baht or more, or (2)First largest three (3) undertakings in a market of a particular product or service that have combined market shares of 75 percent or more; The provision in Paragraph 1 (2) above shall not be applied to any undertaking having sale revenue in a preceding year of less than one billion (1,000,000,000) baht or with market share in the preceding year lower than 10 percent.[42]

If a company does not have a dominant market position, it will be further assessed for "Market Power". "Market Power" means the power and ability of an undertaking to influence the direction or conditions for doing business in a relevant market. To assess market power, it shall be presumed that an undertaking with a market share of 10 per cent or higher is deemed to have market power and shall consider other additional factors concurrently, such as the number of undertakings in a market, registered capital, access to factors of production, distribution channels, business networks, necessary infrastructure for doing business, and laws and regulations.[43]

Thailand's Food Delivery Platform "Pick One of Two" Case

1) Complaints

TCCT has learned that two food delivery platform operators, Company A and Company B, have signed contracts with restaurant merchants on their platforms, requiring them to exclusively use

[38] Trade Competition Commission of Thailand, Notice on Criteria for Being an Undertaking with Dominant Position B.E. 2563 (2020), https://www.tcct.or.th/assets/portals/1/files/NoticeonMarketDominance.pdf.

[39] Trade Competition Commission of Thailand, Notice on Criteria for Being an Undertaking with Dominant Position B.E. 2563 (2018), https://tcct.or.th/assets/portals/1/files/9_NoticeonMarketDominance.pdf.

[40] Trade Competition Commission of Thailand, Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018), https://www.tcct.or.th/assets/portals/1/files/5_NoticeOnUnfairPractices.pdf.

[41] Trade Competition Commission of Thailand, Notice on Guidelines for the Assessment of Market Definition and Market Shares B.E. 2561 (2018), https://tcct.or.th/assets/portals/1/files/2_NoticeOnMarketDef.pdf.

[42] Trade Competition Commission of Thailand, Notice on Criteria for Being an Undertaking with Dominant Position B.E. 2561 (2018), art. 3, https://tcct.or.th/assets/portals/1/files/9_NoticeonMarketDominance.pdf.

[43] Trade Competition Commission of Thailand, Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018), https://www.tcct.or.th/assets/portals/1/files/5_NoticeOnUnfairPractices.pdf.

the services of Company A or Company B. Failure to comply with these contractual terms will result in the restaurant merchants being denied a lower-than-usual special commission rate and being charged a 15% surcharge on the current rate. Under the TCA (2017), this may constitute unfair trade terms that restrict or hinder others' business operations.[44]

2) Issues

The disputes in this case are as follows: Did Companies A and B, both dominant business operators, engage in acts prohibited by Section 50 of the TCA (2017)? Did Companies A and B engage in acts that caused damage to other business operators, prohibited by Section 57 of the TCA (2017)?

3) Reasonings

Regarding the first question, TCCT determined market dominance by examining the relevant market, revenue, and market share. It defined the relevant product market as digital food delivery platform services and the geographic market as Thailand, as these services are available nationwide. TCCT then assessed the revenue and market shares of Companies A and B from 2017 to 2019. Although Company B's market share exceeded 50% in 2017 and their combined market share exceeded 75% between 2018 and 2019, neither company generated annual revenue exceeding 1 billion baht. TCCT therefore concluded that neither company held a dominant market position.[45]

Regarding the second question, TCCT found that Company A's service contract contained an exclusivity clause requiring partner merchants not to use competing food delivery platforms. In return, merchants received a preferential commission rate; if they breached the clause, the commission reverted to the standard rate without termination of the contract. The one-year contracts were accepted by 40 partner merchants, all of whom stated that they joined voluntarily to obtain lower commission rates, considered the arrangement beneficial, complied with the exclusivity requirement throughout the contract period, and declined offers from Companies C and D.[46]

Company B's contract also contained an exclusivity clause requiring partner merchants to use only its platform or other platforms designated by the company. Merchants who breached the clause were subject to a 15% increase in commission, and the contract term could be indefinite or mutually agreed upon. Although merchants stated that they accepted the clause to obtain the contractual commission rate, most later violated it, and Company B did not enforce the contractual penalty.[47]

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[44] Trade Competition Commission (Thailand), คำวินิจฉัยคณะกรรมการการแข่งขันทางการค้ากรณีผู้ประกอบธุรกิจให้บริการดิจิทัลแพลตฟอร์มรับและส่งอาหารกำหนดเงื่อนไขทางการค้าที่เป็นการจำกัดสิทธิของผู้ประกอบธุรกิจร้านอาหารอย่างไม่เป็นธรรม [The Decision of the Trade Competi-tion Commission in the Case of a Digital Food Delivery Platform Operator Setting Trade Conditions That Unfairly Restrict the Rights of Restaurant Operators], March 3, 2022, https://tcct.or.th/assets/portals/1/files/PlatformCase.pdf. (in Thai).

[45] Trade Competition Commission (Thailand).

[46] Trade Competition Commission (Thailand), คำวินิจฉัยคณะกรรมการการแข่งขันทางการค้ากรณีผู้ประกอบธุรกิจให้บริการดิจิทัลแพลตฟอร์มรับและส่งอาหารกำหนดเงื่อนไขทางการค้าที่เป็นการจำกัดสิทธิของผู้ประกอบธุรกิจร้านอาหารอย่างไม่เป็นธรรม [The Decision of the Trade Competi-tion Commission in the Case of a Digital Food Delivery Platform Operator Setting Trade Conditions That Unfairly Restrict the Rights of Restaurant Operators], March 3, 2022, https://tcct.or.th/assets/portals/1/files/PlatformCase.pdf. (in Thai).

[47] Trade Competition Commission (Thailand).

Companies C and D alleged that the exclusivity clauses adopted by Companies A and B caused them to lose revenue, market opportunities, and partner merchants, as some existing and potential merchants chose to cooperate with their competitors to obtain preferential commissions. However, they failed to provide sufficient evidence, such as service contracts, financial statements, or revenue records, to substantiate these claims. TCCT therefore concluded that the alleged losses could not be verified. It also noted that both companies continued to grow between 2018 and 2019, and that Company E's entry into the Thai market in 2020 further indicated that competition in the digital food delivery platform market remained active.[48]

4) Decision

In summary, TCCT found that the conduct of Companies A and B constituted exclusive dealing, restricting market entry by competing platforms, limiting merchants’ platform choices, and reducing competitors’ ability to attract merchants. However, it concluded that merchants voluntarily accepted these agreements in exchange for lower commission rates, and there was no evidence that either company enforced penalties for breaches. As the arrangements caused no proven actual harm or unfair injury to competing platforms, the conduct did not satisfy the “loss caused to other businesses” requirement under Article 5 of the *Trade Competition Commission Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018)*.[49] However, given that Company A and Company B have experienced continuous increases in revenue growth and market share since commencing operations, they may qualify as “operators with a dominant market position” as defined in Article 5 of the TCA (2017).[50] Furthermore, such conduct may fall within the categories prohibited under Article 50 of the TCA (2017) in the future. Therefore, the commission has instructed the Office of the Trade Competition Commission to continue closely monitoring the market conduct of Company A and Company B.

Case Analysis from the Perspective of the Post-Chicago School

The post-Chicago School builds upon the Chicago School's emphasis on efficiency analysis by incorporating insights from game theory, information economics, and industrial organisation theory. It emphasises the dynamic nature of market competition. It argues that anticompetitive conduct may not only harm current competition but also weaken future competition by raising rivals' costs, creating barriers to entry, and reinforcing network effects. Therefore, compared with the TCCT's approach, which primarily focuses on market dominance and actual harm, the post-Chicago School places greater emphasis on whether exclusive dealing has the potential to strategically foreclose competition.

First, the post-Chicago School would characterise the exclusive dealing arrangements as a form of strategic foreclosure. By offering preferential commission rates in exchange for exclusivity, Companies A and B adopted what appeared to be price discounts but were in fact loyalty rebates. According to Salop's Raising Rivals' Costs theory[51], such arrangements do not directly exclude competitors; rather, they increase the costs of attracting merchants for rival

[48] Trade Competition Commission (Thailand).

[49] Trade Competition Commission of Thailand. Notice on Guidelines for the Assessment of Harmful Practices B.E. 2561 (2018). art. 3, https://www.tcct.or.th/assets/portals/1/files/5_NoticeOnUnfairPractices.pdf.

[50] Trade Competition Act B.E. 2560 (2017) (Thailand), sec. 5.

[51] Steven C. Salop and David T. Scheffman, "Raising Rivals’ Costs," The American Economic Review 73, no. 2 (1983): 267–71, http://www.jstor.org/stable/1816853.

platforms, thereby reducing their ability to enter the market and expand their scale. Rival platforms must not only offer lower commission rates but also offset the benefits merchants lose, thereby substantially increasing their competitive costs. These anticompetitive effects are not eliminated merely because the agreements were formally entered into on a "voluntary" basis.

Second, the post-Chicago School would argue that TCCT's reliance on market dominance as a prerequisite for finding an infringement has certain limitations. Although Company B's market share exceeded 50% and the combined share of Companies A and B exceeded 75%, TCCT found that neither company was dominant because their annual revenues fell below the statutory threshold under the TCA. From a post-Chicago perspective, however, market power in digital platform markets depends not only on revenue but also on network effects, economies of scale, and data accumulation. As platforms attract more merchants, consumers, and delivery riders, positive feedback loops reinforce their competitive advantages. Accordingly, relying solely on revenue to assess market power may underestimate competitive realities in digital platform markets.

Third, TCCT concluded that no unfair competition existed because merchants voluntarily accepted the exclusive dealing arrangements. The post-Chicago School, however, argues that voluntary agreement does not preclude competitive harm. Merchants accepted the exclusivity clauses primarily to obtain lower commission rates rather than because they possessed meaningful bargaining power. In two-sided platform markets, the imbalance in bargaining power often leaves merchants with little practical alternative but to accept exclusivity to reduce operating costs.

Furthermore, the TCCT found that although the agreements stipulated that merchants who breached the exclusivity clauses would be subject to higher commission rates, in practice most merchants who violated the agreements were not penalised. Consequently, the TCCT concluded that no actual harm had occurred. From a post-Chicago perspective, however, competition law should focus not only on the enforcement of contractual sanctions but also on the deterrent effect of the agreements themselves. Even without actual penalties, merchants could reasonably anticipate the costs of breach, discouraging them from cooperating with rival platforms. Accordingly, the exclusivity clauses may have produced exclusionary effects regardless of whether the contractual sanctions were enforced.

In addition, the TCCT held that Companies C and D had failed to provide sufficient evidence of declining revenue, reduced profits, or lost business opportunities, and therefore concluded that no harm had been inflicted on competing businesses. Like the Chicago School, the post-Chicago School recognises that competition law protects the competitive process rather than individual competitors. Continued revenue growth by rival platforms does not necessarily negate competitive harm, as they might have grown even more absent the exclusive dealing arrangements. Accordingly, the proper assessment should apply counterfactual analysis by comparing market conditions with and without the exclusivity agreements. If rival platforms would likely have attracted more merchants and consumers in the absence of the agreements, the arrangements should be regarded as restricting competition, even without proof of actual financial loss.

Finally, the TCCT relied on Platform E's successful entry into the Thai market in 2020 to conclude that the online food delivery market remained competitive and that the exclusive

dealing arrangements had not produced anticompetitive effects. From the perspective of the post-Chicago School, however, the mere entry of a new competitor does not necessarily indicate the absence of barriers to entry. A proper competition analysis should examine whether the exclusive arrangements increased the costs of market enterprises, for example, by requiring new entrants to offer greater subsidies to attract merchants, making it more difficult to achieve network effects, or increasing the time and resources needed to establish a viable market presence.

In conclusion, from a post-Chicago perspective, although the exclusive dealing arrangements adopted by Companies A and B did not produce the actual harm required by TCCT, they exhibited clear characteristics of strategic foreclosure. In digital platform markets, network effects, two-sided market structures, and economies of scale can amplify the foreclosure effects of exclusivity by increasing rivals’ costs of attracting merchants and reinforcing incumbent platforms’ market power. Accordingly, competition enforcement should not rely solely on market dominance, revenue thresholds, or proof of actual harm. Still, it should also incorporate dynamic competition analysis, the Raising Rivals’ Costs theory, and counterfactual analysis to assess the competitive effects of exclusive dealing. From this perspective, although the TCCT ultimately found no infringement, the arrangements still posed a significant risk of anticompetitive harm by undermining the competitive process and restricting future competition.

The Dilemma of Thailand’s TCA in Regulating “Pick One of Two” Practices

1) The TCCT’s Definition of “Dominant Market Position” Is Erroneous

The TCCT considers an undertaking to hold market dominance if its market share reached 50% or above in the previous year and its annual sales reached 1 billion baht or above in the current year. However, sales should not be treated as the decisive factor. A market share exceeding 50% may indicate a strong likelihood of dominance, while the subsequent assessment should consider existing competitors, potential entrants, and entry conditions rather than relying solely on sales. For example, a company with a 99% market share, low competitive pressure, and high barriers to entry may still possess market dominance despite sales below the statutory threshold. Similarly, where the top three firms collectively hold 75% or more of the market, further reliance on sales figures may be unnecessary.

2) TCCT’s Definition of “Market Power” Is Unclear

TCCT’s definition of “market power” refers to an undertaking's power and ability to influence the direction or conditions of doing business in a relevant market. This concept essentially reflects the notion of a relatively advantageous position, in which an undertaking, although not meeting the threshold for market dominance, possesses some market power and uses superior bargaining power to engage in conduct that excludes or restricts competition. However, TCCT fails to recognise the nature and implications of this concept fully. Furthermore, TCCT’s approach to determining “market power” is problematic. Currently, TCCT primarily considers market share (above 10%) and other relevant factors. However, this threshold lacks a clear rationale. A company with only an 11% market share, even if the largest firm in the market, may still face substantial competitive constraints and provide consumers with sufficient alternatives.

3) The Distinction between “Dominant Market Position” and “Market Power” Is Unclear in TCA

The TCCT's unclear definition of the two concepts has blurred the boundary between "dominant

market position" and "market power". The TCCT generally assumes that companies with a market share of 10% or more possess "market power", and those with a market share of 50% or more possess market dominance. So, does a company with a 49.9% market share, the largest in the market, possess market dominance?

4) TCCT Overlooked the Importance of Network Effects and Lock-In Effects

Compared with traditional offline businesses, the biggest feature of food delivery platforms is their strong network effects and lock-in effects. Network effects mean that larger platforms attract more users, creating a self-reinforcing cycle and lock-in.[52] The lock-in effects mean that users switch from one internet platform to another, and high switching costs for various reasons lead to dependence on the original platform. In this case, TCCT argues that merchants voluntarily sign "pick one of two" agreements.

Regulating "Pick One of Two" Practices under the Competition Law of China

China began implementing reform and opening up in the late 1970s, a historic shift from a centrally planned economy to a market economy, and gradually realised that a good competition policy is crucial to economic growth. Before the enactment of the Anti-Monopoly Law (AML), market competition was primarily regulated by the Anti-Unfair Competition Law (AUCL) of 1993, which prohibited practices such as tie-in sales, price fixing, and bid rigging.[53] However, some observers do not consider the AUCL (1993) to be true competition legislation, describing it instead as a combination of consumer law and intellectual property law.[54] Because it fails to address other anti-competitive behaviour, including the formation of monopolies, it is not difficult to find that the AUCL (1993) is distinctly transitional. China enacted the AML in 2007, which came into force on 1 January 2008, establishing its first comprehensive antitrust framework. In response to the rapid growth of the digital economy and increasing concerns over the market power of large platforms, the AML underwent its first major revision in 2022. Meanwhile, the AUCL was amended in 2017 and 2019, and revised again in 2025, to strengthen regulation of unfair competition.

Legal Framework for "Pick One of Two" Practices in Food Delivery Platforms

As mentioned above, there are two main laws in China's competition law system: the AML and the AUCL. With the implementation of the AML and the revision of the AUCL, the boundaries between the two laws in terms of regulatory objects and scope of application have become increasingly clear. The difference between the two is that the AML regulates operators who use market power to engage in behaviours that exclude or restrict competition. In contrast, the AUCL does not require reliance on market power; instead, it targets disorderly competition in the market, such as false propaganda and commercial bribery.

Articles 17-19 of AML (2007) (now Articles 22-24 of AML2022) set out the relevant

[52] Kenneth Khoo, Sinchit Lai, and Chuyue Tian, "The Impact of Antitrust Enforcement on China's Digital Platforms: Evidence from SAMR v. Alibaba," International Review of Law & Economics 83 (2024), Article 106268, https://ssrn.com/abstract=4850728 or https://doi.org/10.2139/ssrn.4850728.

[53] Bruce M. Owen, Su Sun, and Wentong Zheng, "China's Competition Policy Reforms: The Anti-Monopoly Law and Beyond," Antitrust Law Journal 75 (2008): 231–65, 232.

[54] Thomas Brook, "China's Anti-Monopoly Law: History, Application, and Enforcement," Appeal: Review of Current Law and Law Reform 16, no. 1 (2011): 33–43, 33.

provisions on the abuse of dominant market position. Article 22 of AML (2022) stipulates seven types of abuses that operators with dominant market position shall not engage in, among which item (4) explicitly prohibits "restricting its trading counterparties to trade exclusively with the said undertaking or trade exclusively with the designated undertakings without justifiable reasons". Compared with AML (2007), AML (2022) also adds "operators with dominant market position shall not use data and algorithms, technology and platform rules to engage in the abuse of dominant market position as provided for in the preceding paragraph”.[55] Article 23 of the AML (2022) stipulates six factors to be considered when determining whether an operator has a dominant market position.[56] Article 24 provides for three situations in which it can be presumed that an operator has a dominant market position: (1) one operator's market share in the relevant market reaches one-half; (2) two operators’ market share in the relevant market reaches two-thirds; (3) three operators’ market share in the relevant market reaches three-quarters. However, in the situations provided for in (2) and (3), if the market share of one of the operators is less than one-tenth, it should not be presumed that the operator has a dominant market position.[57]

Articles 2 and 13 of the AUCL, revised in 2025, can regulate the “pick one of two” behaviour of internet platforms. However, the concepts defined in Article 2 are highly abstract,[58] and Article 13 does not specifically adopt a typological legislative structure for “pick one of two” behaviour on internet platforms, but instead disperses its behavioural characteristics or methods throughout the various provisions of the article.[59]

Prior to the first revision of the AUCL, the Legislative Affairs Office of the State Council issued the Anti-Unfair Competition Law (Draft for Comment) in February 2016.[60] The drafters of the Draft for Comments proposed a “relatively advantageous position” to target dependence and difficulty in switching, prohibiting practices such as exclusive dealing and mandatory charging. Due to its broad scope and vague definition, it easily conflicted with or was confused with the “abuse of dominant market position” in the AML. Therefore, the concept was not included in the 2017 revision of the AUCL. The 2022 Anti-Unfair Competition Law of the People’s Republic of China (Draft for Comments) reintroduced the concept. However, the concept still does not appear in the 2025 AUCL. Instead, the term “relatively” was deleted and replaced with “advantageous position”, and the scope was narrowed to large enterprises.[61]To mitigate the issue of unfair market conditions in the platform, the SAMR issued the *“Guidelines for the Platform Economy Industries, promulgated on 7 February 2021”*.[62] The *guidelines* take

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55 Anti-Monopoly Law of the People’s Republic of China (2022), art. 22.
56 Anti-Monopoly Law of the People’s Republic of China (2022), art. 23.
57 Anti-Monopoly Law of the People’s Republic of China (2022), art. 24.
58 Anti-Unfair Competition Law of the People’s Republic of China (2025), art. 2.
59 Anti-Unfair Competition Law of the People’s Republic of China (2025), art. 13.
60 Ministry of Commerce of the People’s Republic of China, Anti-Unfair Competition Law of the People’s Republic of China (Draft for Review) [《中华人民共和国反不正当竞争法（修订草案送审稿）》], February 25, 2016, https://www.mofcom.gov.cn/zcfb/zgdwjjmywg/art/2016/art_f8c32330e82d45169a7b368999485b38.html. (in Chinese).
61 Anti-Unfair Competition Law of the People’s Republic of China (2025), art. 15.
62 Anti-Monopoly Commission of the State Council, Guidelines of the Anti-Monopoly Commission of the State Council for Anti-Monopoly in the Field of Platform Economy [《国务院反垄断委员会关于平台经济领域的反垄断指南》], February 7, 2021,

the protection of fair market competition and the promotion of innovation in the platform economy as their legislative starting point and focus on addressing pressing issues of public concern, such as "pick one of two", data monopoly, and price discrimination based on big data. It is worth noting that the *Guidelines* further refine the standards for judging whether "pick one of two" behaviour constitutes restricted transactions from the perspectives of punitive and incentive measures.[63]

Meituan's "Pick One of Two" Abuse of Market Dominance Case

1) Complaints

Since April 2021, SAMR has been investigating Meituan for suspected abuse of its dominant market position.[64] Based on demand and supply substitution analyses, the SAMR defined the relevant market as the online food delivery platform service market in China.

2) Determination of Market Dominance

SAMR identified seven factors supporting its finding that Meituan abused its dominant market position.[65] First, Meituan's market share exceeded 50% from 2018 to 2020, giving rise to a presumption of dominance. Second, the HHI (5543, 5753, and 5854) and CR2 (99.16%, 99.92%, and 99.98%) indices indicated an extremely high level of market concentration. Third, Meituan exercised substantial market power through its pricing power and control over platform traffic and merchants' sales channels. Fourth, its strong financial and technological capabilities, combined with significant network and lock-in effects, increased merchants' dependence on the platform. Fifth, Meituan's average of 22.3 million daily active users in 2020, together with the non-transferability of transaction, payment, and review data, further strengthened merchant dependence. Sixth, high entry costs created substantial barriers to market entry. Seventh, Meituan's ecosystem, spanning food delivery, in-store dining, lifestyle services, hotel and tourism, and travel, further reinforced its market power. Based on these factors, SAMR concluded, pursuant to Articles 18 and 19 of the AML (2007), that Meituan held a dominant position in China's online food delivery platform market.[66]

3) The Fact that Meituan Abused Its Dominant Market Position

The investigation found that Meituan used multiple measures to induce platform operators to enter exclusive partnership agreements. Non-exclusive partners were generally charged commission rates 5–7% higher than those of exclusive partners, along with higher guaranteed

https://www.samr.gov.cn/zt/ndzt/2025n/sqxzjcgs/jcbz/art/2025/art_27c2be1ca40b42a9949c12dbd213ba8e.html. (in Chinese).

63 Guidelines of the Anti-Monopoly Commission of the State Council for Anti-Monopoly in the Field of Platform Economy, art. 15.

64 State Administration for Market Regulation of the People's Republic of China, The State Administration for Market Regulation Imposes Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly Conduct in China's Online Food Delivery Platform Service Market [《市场监管总局依法对美团在中国境内网络餐饮外卖平台服务市场实施"二选一"垄断行为作出行政处罚》], October 8, 2021, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.samr.gov.cn%2Fcms_files%2Ffilemanager%2F1647978232%2Fattach%2F20233%2FP020211008544052967491.docx&wdOrigin=BROWSELINK. (in Chinese).

65 State Administration for Market Regulation, Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly Conduct.

66 State Administration for Market Regulation, Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly Conduct.

commissions, while exclusive partners received preferential traffic allocation and platform subsidies. To promote the “pick one of two” policy, Meituan incorporated the signing and performance of exclusive agreements into employee performance evaluations. It also adopted several enforcement measures, including a big data system to detect merchants operating on competing platforms, punitive measures such as lower search rankings, cancellation of promotional benefits, higher minimum delivery prices, and removal of menu items, as well as security deposits that could be forfeited if merchants breached the exclusivity agreement.[67]

Meituan argued that merchants voluntarily entered exclusive agreements and that its conduct constituted legitimate competitive practices. SAMR rejected both defences, finding that merchants, particularly small catering operators, were in a weak bargaining position and were effectively compelled to accept exclusivity, with many later being penalised for non-compliance. It concluded that Meituan's conduct excluded and restricted competition in the relevant market. According to SAMR, online food delivery platforms should compete through technological and business model innovation, better services, and lower fees, rather than by exploiting market dominance to obtain an unfair competitive advantage.[68]

4) The Parties’ Actions Excluded and Restricted Market Competition

SAMR concluded that Meituan’s conduct excluded and restricted competition for four reasons. First, by abusing its dominant position in China’s online food delivery platform market, Meituan prevented merchants from cooperating with competing platforms, creating lock-in effects and weakening competitors’ access to merchant resources. Second, it unreasonably restricted merchants’ business autonomy and reduced their opportunities to generate revenue through competing platforms. Third, the conduct harmed consumers by limiting their access to merchants and reducing consumer choice. Fourth, it reduced market efficiency and hindered innovation in the platform economy.[69]

5) Penalty Decision

SAMR believes that Meituan’s actions constitute an abuse of its dominant market position, as prohibited by Article 17, Paragraph 1, Item (4) of the AML: “without justifiable reasons, restricting a counterparty to transactions with Meituan”. SAMR ordered Meituan to cease its illegal activities and imposed a fine of 3% of its 2020 domestic sales of 114.748 billion yuan, totalling 3.442 billion yuan.[70]

A Comparison between China and Thailand in determining violations of the "pick one of two” practice

As shown above, both Chinese and Thai competition laws prohibit "pick one of two" practice and recognise that, under certain legal conditions, such practices may constitute an abuse of market dominance. Therefore, both jurisdictions provide a legal basis for addressing "pick one

[67] State Administration for Market Regulation, Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly Conduct.

[68] State Administration for Market Regulation, Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly Conduct.

[69] State Administration for Market Regulation, Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly Conduct.

[70] State Administration for Market Regulation, Administrative Penalties on Meituan for Its "Pick One of Two" Monopoly Conduct.

of two" practice on food delivery platforms. However, their methods for determining the illegality of such practices differ. See Table 2 for details.

Table 2: ***A comparison between China and Thailand in determining the illegality of "pick one of two" practices***

Comparison Criteria	China	Thailand
Legal basis	Anti-Monopoly Law Anti-Unfair Competition Law	Trade Competition Act
Nature of 'Pick One of Two'	Abuse of dominant power advantageous position	Abuse of dominant power Market power
Market definition	demand and supply substitution analyses	demand substitutability, supply substitutability, and potential competition
Criteria for being an Undertaking with Dominant Position	Market Share	Market Share and Sales Revenue
Criteria for being an Undertaking with advantageous position (Market Power)	--	A company is considered to have a dominant market position if it has a market share of 10% or more, and other additional factors should also be considered
Representative cases	Meituan (2021)	Company A and B (2022)

Source: *Made by author.*

At the legal level, China and Thailand share a high degree of similarity in their understanding of the nature of "Pick One of Two" practices and in the definition of the relevant market. However, they differ significantly in both the terminology and the legal framework concerning relatively advantageous position. Specifically, China adopts the concept of "advantageous position", whereas Thailand employs the concept of "market power". More importantly, the two jurisdictions differ substantially in their approaches to determining dominant position. In addition, China has not established specific criteria for determining an "advantageous position". By contrast, Thailand presumes that an undertaking with a market share of 10% or more possesses "market power", while emphasising that this presumption should be assessed alongside other relevant factors.

Competition Law Analysis of Meituan's "Pick One of Two" Case from a Post-Chicago School Perspective

From the perspective of the post-Chicago School, the Meituan "Pick One of Two" case represents a typical example of exclusive dealing in the digital platform economy. Moreover, SAMR's assessment of Meituan's conduct is largely consistent with the post-Chicago School analytical framework.

First, the post-Chicago School would characterise Meituan's "Pick One of Two" policy as strategic exclusivity rather than an ordinary commercial arrangement. Meituan required merchants to enter exclusive agreements and provided exclusive partners with preferential commission rates, greater traffic exposure, and platform subsidies, while imposing higher commissions and other penalties on non-exclusive partners. These measures increased merchants' switching costs and raised rivals' costs of acquiring merchant resources, consistent with Salop's Raising Rivals' Costs theory.[71] To compete, rival platforms had to offer lower commissions and compensate merchants for the loss of Meituan's traffic, subsidies, and other resources, thereby

[71] Steven C. Salop and David T. Scheffman.

significantly increasing competitive costs.

Second, the post-Chicago School emphasises the role of network effects and lock-in effects in creating and reinforcing market power. This perspective is reflected in SAMR's assessment of Meituan's dominant position, which considered not only its market share exceeding 50% but also factors such as market concentration, market control, technological capabilities, user base, data resources, entry barriers, and platform ecosystem. This approach aligns with the post-Chicago view that market power in digital markets arises not only from market share but also from network effects and data advantages. There is also a strong indirect network effect in multilateral markets, meaning that a platform's value to a specific group can increase as another group's size expands.[72]

Third, the post-Chicago School views competitive harm in digital platform markets as dynamic and emphasises protecting the competitive process rather than requiring proof of actual harm. SAMR's finding that Meituan's "Pick One of Two" policy restricted rivals' access to merchants, weakened their competitiveness, and hindered platform innovation reflects this approach. From a post-Chicago perspective, competition law should protect not only existing competition but also potential future competition. Even if rival platforms remain viable, exclusive dealing may restrict competition by increasing rivals' expansion costs, limiting merchant acquisition, and slowing the development of network effects. Therefore, SAMR focused not on whether competitors had suffered actual losses, but on whether Meituan's conduct was likely to undermine future competition, consistent with the post-Chicago emphasis on counterfactual analysis.

Furthermore, Meituan argued that merchants voluntarily entered exclusive agreements and that its conduct constituted legitimate commercial competition. From a post-Chicago perspective, however, voluntary agreements do not necessarily exclude competitive harm in markets characterised by significant platform power. Due to Meituan's large user base and traffic advantages, merchants were highly dependent on the platform for customer acquisition, creating a substantial imbalance in bargaining power. For many small and medium-sized restaurants, rejecting exclusivity meant losing access to traffic, subsidies, and consumers, making their "voluntary" choice a commercially constrained decision.

Finally, the post-Chicago School places particular emphasis on competition in innovation. The SAMR concluded that Meituan’s “Pick One of Two” policy not only harmed the interests of merchants and consumers but also impeded innovation in the platform economy by restricting the development of competing platforms. From a post-Chicago perspective, innovation in digital platform markets is often driven by the entry and expansion of potential competitors. When dominant platforms reinforce network effects and user lock-in through exclusive dealing, new entrants may struggle to achieve sufficient scale, weakening incentives for entry and innovation.

In conclusion, SAMR’s analysis of Meituan’s “Pick One of Two” case reflects the post-Chicago approach to dynamic competition. Unlike the TCCT case, which relied primarily on actual harm and market dominance thresholds, SAMR considered not only Meituan’s dominant

[72] Uttiya Basu, Ranvijay Singh, Komal Krishan Mehta, Sachin Bhardwaj, Vivek Goyal, and Khushbu Chudasam, "Digital Platforms and Competition Law: Balancing Innovation with Market Regulation in International Commerce," Journal of International Commercial Law and Technology 7, no. 1 (2026): 333–339, https://doi.org/10.61336/Jiclt/26-01-31.

position but also the broader effects of exclusivity on market entry, network effects, and innovation. Therefore, SAMR's finding of abuse of dominance and the imposition of sanctions are consistent with the modern competition law approach that seeks to protect dynamic competition, promote innovation, and prevent market foreclosure.

What Can Thailand Learn from the Chinese Experience?

1) Reconstruct the Method of Identifying Market Dominance

When identifying market dominance, TCCT can adjust the original judgment standard based solely on "market share and sales" to an analytical framework that comprehensively considers multiple factors such as the company's market share, the status of existing competitors, and the difficulty of entering the relevant market. In addition, when presuming whether an enterprise has a dominant market position, the requirement for sales should be deleted and adjusted to: if one of the following circumstances exists, it can be presumed that the operator has a dominant market position: (1) the market share of one operator in the relevant market reaches one-half; (2) the market share of two operators in the relevant market reaches two-thirds; (3) the market share of three operators in the relevant market reaches three-quarters. However, in the circumstances specified in items (2) and (3), if the market share of one operator is less than one-tenth, the operator should not be presumed to have a dominant market position. At present, Thailand's presumption of market dominance only includes two categories (1) and (3), but lacks item (2).

2) The Concept of "Market Power" Should Be Redefined

Based on an analysis of relatively advantageous position and China's legislative experience, Thailand can define "market power" as "a situation in which one party holds a relatively advantageous position in terms of capital, technology, market access, sales channels, and industry influence during a specific transaction, resulting in the counterparty becoming dependent on that party and finding it difficult to switch to other operators". Furthermore, the inference method for "market power" should focus on the two scenarios proposed by Cournot: "duopoly, n=2" and "oligopoly, n>2".[73] However, the specific minimum market share is difficult to determine, and a comparison of the market share between the company and its competitors is necessary. Assuming there are only two companies in the market, the market share of the company with a relative advantage should be above 50%; if there are only three companies, the market share of the company with a relative advantage should be above 33.3%; and if there are only four companies, the market share of the company with a relative advantage should be above 25%. In these cases, the company's market share should still be the largest.

3) Pay Attention to the impact of "Pick One of Two" Practices on Innovation

Thai competition authorities should pay greater attention to the impact of "pick one of two" practices on innovation. In digital markets, competition is driven not only by price but also by innovation. Exclusive dealing may reduce rivals' incentives and ability to innovate by limiting their access to users and business partners. Furthermore, TCCT should strengthen dynamic competition analysis, rather than focusing solely on actual damage. In the "Pick One of Two" case, the TCCT did not deem the behaviour illegal for lack of evidence of actual losses to other

[73] Antoine Augustin Cournot, "Researches into the Mathematical Principles of the Theory of Wealth," in Forerunners of Realizable Values Accounting in Financial Reporting (London: Routledge, 2020), 3–13.

platforms. However, the post-Chicago School of thought argues that competition law should focus on whether exclusionary practices increase competitors' costs, create market blockades, and weaken future competition, rather than relying solely on actual harm as the criterion for judgment.

4) Greater Emphasis should be Placed on Network Effects and Lock-In Effects in the Platform Economy

When determining Meituan’s market dominance, SAMR China considered not only market share but also a comprehensive assessment of factors such as user scale, data resources, platform ecosystem, and barriers to entry. In contrast, TCCT relies more heavily on revenue and market share standards, potentially underestimating the market power of digital platforms.

5) The Focus should be on the Actual Competitive Effect of Exclusivity Agreements, rather than whether Merchants “Voluntarily” Signed Them

The Meituan case shows that even if merchants formally accept exclusive cooperation, this "voluntariness" is often influenced by the platform's bargaining power and network effects when the platform has strong market power. Therefore, competition enforcement should focus more on whether exclusive agreements substantially restrict market competition, rather than on the contract's form or the merchant's autonomy.

CONCLUSION

This article adopts the post-Chicago School as its theoretical perspective to conduct a comparative study of competition law regulation of the “Pick One of Two" practices adopted by food delivery platforms in China and Thailand. Drawing on representative cases handled by the SAMR and the TCCT, it examines and compares the legislative frameworks and enforcement practices of the two countries. The study found that the post-Chicago School of thought, which considers both market structure and market efficiency, is better suited to addressing the characteristics of the platform economy. Thailand's TCA and its enforcement still exhibit several shortcomings and do not conform to post-Chicago School practices. By comparison, China's AML and SAMR's enforcement approach are more consistent with the post-Chicago School’s competitive effects analysis. Therefore, this article suggests that at the legislative level, Thailand could draw on China's experience by improving the criteria for determining market dominance, providing a clearer legal definition of market power, and establishing a more appropriate distinction between market dominance and market power. At the enforcement level, the TCCT should strengthen dynamic competition analysis, rather than focusing solely on actual damage.

The main contribution of this paper is to enrich the theoretical and comparative law perspectives of anti-monopoly research on the platform economy. First, it applies the post-Chicago School as an analytical framework to examine “Pick One of Two” practices in the food delivery platform sector. Second, unlike existing comparative studies that mainly focus on European and US competition law regimes, this article provides a comparative analysis between China and Thailand. This study also has several limitations. First, the limited number of publicly available competition law cases in Thailand restricts the availability of enforcement materials, and some analysis therefore relies on publicly accessible information. Second, the study primarily relies on doctrinal and case-based analyses, without incorporating empirical data or economic analysis, thereby limiting its assessment of actual competitive effects. Future research

could extend the comparative scope to other ASEAN countries and integrate empirical methods and platform data to examine further the impact of exclusivity practices on competition and consumer welfare.

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