

Original Paper

Views about Balance of Multiple Interests in the Regulation of Anti Unfair Competition Law on Enterprise Data Crawling

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Abstract

Rapid innovation and widespread application of information and digital technologies encourage the continual growth and reconstruction of classic business models and market operation behaviors. The Internet economy has induced many new sorts of unfair competition while stimulating entrepreneurship and unleashing technological innovation dividends. Data crawling consumes a significant amount of Internet traffic because it is a cost-effective data collection strategy. It not only encourages data sharing, but it also makes unfair competition regulation more difficult. We should pay attention to assessing difficulties from the standpoint of interest concerns in the regulation of data crawling under the Anti-Unfair Competition Law, and completely measure whether it harms the interests of operators, customers, and social public interests. We can also use the method of interest measurement to coordinate the interest relationship in order to keep the competitive order and balance multiple interests.

Keywords

Data crawling, Anti unfair competition, Interest measurement

1. The Origin of the Issue

Guidelines of the CPC Central Committee and the State Council on Improving a Market-oriented Allocation Mechanism of Factors identifies data as production factors. Data collecting and database construction underpin the growth of the digital economy, which is fueled by data circulation and the development of connected products. Data resources and their products carrying multiple interests have also become core assets of Internet enterprises, and their position in industrial upgrading and development has been raised to an unprecedented height as an innovative element that transcends the characteristics of the traditional industrial economy era (Chen, 2021). Widespread data circulation aids

in improving market efficiency, product innovation and the data circulation mechanism that realizes data reuse is a critical link in the data factor market's development (Zhang & Wu, 2022).

The data circulation mechanism has two paths: the first is data sharing via a "open application port" based on a contract agreement (LendIt Fintech, 2021); the second is data extraction from the other party's database via crawler software, which is expressed in the form of data crawling such as "web page crawling" and "screen crawling" (Jennings & Yates, 2009). Among them, data crawling is a very cost-effective data collection strategy that uses applicable technical means such as web crawlers to copy target object data from other web pages, websites, and other locations on a big scale at a lower cost and faster speed. As a result, latecomers or newbies can quickly access a huge number of high-quality data without having to build up a user base or find steady data sources (Chen, 2021). Despite the fact that data crawling accounts for a significant portion of Internet traffic, the prominence of personal rights, economic interests, and public security issues contained in data are leading to an increase in legal disputes over data crawling, particularly those relating to unfair competition in the field of competition law. The competitive pattern in the sphere of Internet commerce has shifted from simple product and factor competition to cross-border and aggregate competition centered on data resources. New unfair competition cases involving data capture occur frequently, resulting in varying degrees of infringement of relevant operators' interests, consumers' interests, and even social public interests, posing challenges to market economy regulation's current legal theory, legal system, and legal practice (Chen, 2019).

Given the ambiguity surrounding network users' data rights, the regulatory path of broadening and interpreting private law standards is commonly followed in practice. With a better knowledge of the illegality of data collection, the courts have begun to use the Anti Unfair Competition Law's "General Provisions" to resolve data collection cases (Shen & Liu, 2021). Some scholars summarized the judgment theory of this new sort of unfair competition in empirical study as two types--"private interest priority" and "multi interest balance" (Chen, 2019). Furthermore, others argue that the method of interest measurement should be used in the legitimacy identification of such new competitive conduct (Wu & Guo, 2020). The handling of data crawling disagreement instances has been studied from the perspective of interest measurement in recent years. Because of the diversity and complexity of the Internet economy and the new type of business, the anti-unfair competition law should seek to protect not only business operators, but also consumers and public interests. When using the anti-unfair competition statute to govern company data crawling conduct, the court should carefully consider the interests at stake, balancing market competition, operator profits and losses, consumer welfare, and industrial innovation and development. This paper takes the above as the focus to reflect on the traditional adjudication mode under the anti-illegitimate legal system of data crawling and discuss the multi-interest balance framework in a brief way.

2. Reflections on the “Private Interest Priority” Adjudication Mode

Data capture conduct, as one of the most common new types of unfair competition on the Internet, is normally governed by the relevant provisions of the Anti Unfair Competition Law in reality. As previously indicated, some scholars have categorized the court’s judgment principles into two categories: “private interest priority” and “multi interest balance”. In most circumstances, these two identification modes are provided independently in the decision, but in a few cases, they will be intermingled in the same case.

The “private interest priority” paradigm begins with the parties’ competitive relationship, focuses on whether the operators’ interests have been infringed, and judges on the basis of a recognized trade secret and the principle of good faith (Chen, 2019). It is currently the mainstream in judicial decision-making. In judicial practice, judges are accustomed to applying the anti-unfair competition law in accordance with the reasoning and mode of tort law, i.e., by first identifying the protected legitimate rights and interests, and then deducing the illegality of the competition behavior from the resulting harm (Wu & Guo, 2020). In accordance with this concept of judgment, once a court has mastered the judgment basis “behavior harms the interests of operators”, it frequently simplifies the identification of the legitimacy of competitive behavior, thereby ignoring the balance and coordination of the interests of multiple subjects. Nonetheless, the compatibility between this model based on “civil trial reasoning” and the adjudication of new unfair competition cases on the Internet remains questionable. First, the concept of right protection does not represent the identification characteristics of unfair competition conduct, which makes it easier for the anti-unfair competition law to be misunderstood as merely protecting operators. The criticality of data capture behavior lies not only in the impairment of the interests of other operators, but also in the fact that the behavior goes beyond good faith and business ethics, or adopts unlawful deception or fraud at the level of objective behavior, ultimately distorting the market competition order and harming multiple interests (Cai, 2021). The certification of new Internet inappropriate behavior should include balancing many competing interests. It is insufficient to support the entire identification procedure by merely considering the influence of conduct on the interests of operators. Second, the “private interest priority” model’s basis for adjudication demonstrates a movement toward Pan-morality. Recognized corporate ethics provide a crucial foundation for identifying the new kind of unfair competition on the Internet. Nonetheless, some courts directly mention social ethics as the basis for their verdict and designate “Reaping Without Sowing” and “free riding” as unfair competition. The adjudication procedure is primarily dependent on the judge’s independent evaluation of the evidence and has a strong subjective hue (Chen & Zhang, 2021). Lastly, the “private interest priority” paradigm continues to highlight the rivalry between the two parties. Under the influence of the decentralized and unstructured development of the Internet economy, however, the market competition mode and behavior represent as traffic competition and data game under multi-dimensional competition and cross-border competition (Chen, 2019), and the competition relationship has broadened from the traditional and narrow horizontal competition relationship to the

broad competition relationship (Zhu, 2019). The traditional competitive connection in the sense of horizontal rivalry would limit the adjustment scope of anti-unfair competition law to a certain level, resulting in a large number of behaviors that must be regulated to avoid legal repercussions.

3. The Introduction of Multi Interest Balance Framework

In current judicial practice, the competition law governance of enterprise data crawling behavior continues to adhere to the traditional private law logic of tort protection, and insufficient attention is paid to the realization and balancing of the multiple interests that crawling behavior may bring (Chen, 2021).

However, interest measurement and value judgment are supposed to run through the regulation of new unfair competition on the Internet. The anti-unfair competition law should protect not only the overall market competition order and the long-term interests of market development, but also the contractual rights and interests of operators, property rights and interests, and consumer contractual rights and interests from deception or unfair treatment (Ding, 2021). When creating anti-unfair competition legislation and regulations pertaining to data crawling: Firstly, we should consider whether the purpose of enterprises crawling data is legitimate; Secondly, we can examine the necessity of data crawling by referring to the concept of minimum damage (to other operators and society) and the importance of behavior purpose; Lastly, from the standpoint of market competitive order, we can assess the significance of all parties' interests and whether there are any evident priorities (Ding, 2021). In order to determine the legality of a new form of competition, we must follow the value order, the weight of interests, and the amount of gains and losses (Kong, 2018), as well as coordinate and balance the interests based on the impact of the challenged competition behavior on all parties' interests.

The legitimacy of competitive activity is typically evaluated based on the conflict and coordination of the interests of operators, consumers, and the general public, which indicates the tension between multiple interests. First, the question of whether operators' interests are harmed is a fundamental requirement for the validity of Internet competition. The damage that data crawling behavior causes to the interests of operators is primarily reflected in the damage that data acquisition behavior causes to the interests of the crawled party, reducing the innovation return that the crawled party can obtain, limiting its innovation power, and diminishing the positive value of the existing property right system (Chen, 2021). However, "trading off and taking turns" and "profiting at the expense of others" are fundamental characteristics of interest competition in market competition. The harm caused by competition to other businesses falls under the category of competitive damage, which is typical of market competition. And the law supports competition among operators to some extent. In addition, the damage itself has no moral hue and is not a subjective criterion for assessing the legality of competitive conduct (Kong, 2018). It is one-sided to conclude that it constitutes unfair competition only because it harms the operators' interests. Consequently, the determination of the legitimacy of Internet competition behavior must demonstrate that the operator's behavior is illegitimate, i.e., that the

behavior itself is accountable, and that the behavior's accountability is reflected by whether the competitor's freedom of competition is sufficient to cause significant harm to the market competition order (Zhang, 2019). Second, by engaging in data crawling behavior, network operators can fully utilize and integrate information, improve the effectiveness of data feeding algorithms, supply consumers with refined and individualized goods and services, and enhance users' feeling of experience. However, given the technicality, secrecy, and dynamics of data crawling, it is highly likely to violate customers' rights to know, choice, and security, particularly their privacy rights (Chen, 2021). As a result, it is self-evident that incorporating consumer interest criteria into the identification of unfair competition is both legitimate and necessary. Third, in the framework of competition law, the social public interest is mainly reflected in the undistorted competition order. In a broader sense, the anti-unfair competition law safeguards the entire market competitive system, which reflects a form of social public interest. To determine whether operators' interests are worthy of protection, we must use the test of "whether they are helpful to competition and meet the requirements of market competition order" to preserve a fair market competition order (Wu & Guo, 2020).

At present, some courts have begun to embrace the adjudication framework of "multi interest balance", although the majority of them are just mentioned symbolically and have not been fully implemented. The application of the "multi interest balance" model has space for improvement. We should uphold the concept of three benefits superposition, comprehensively evaluate the impact of behavior on other operators, consumers, and the public, and protect the interests of operators and consumers to maintain the normal competitive environment and protect the public interests on this basis. Furthermore, the dynamic nature of Internet competition necessitates dynamic interest assessment and value judgment. In individual circumstances, the assessment of influencing elements and weight should be reconfigured (Chen & Zhang, 2021), in order to achieve a balance between data competitiveness and data protection. It's worth pointing out that scholars have begun to focus on the application of the theory of interest weighing (Note 1) in the field of competition law and investigate the impact of behavior on various interests related to competition in ways to further embody the standard of multi-interest balance. Compared to conceptual law, the interpretation technique of interest measurement facilitates the modification of the limiting way of thought.

4. Conclusion

In order to meet the new challenges of unfair competition disputes arising from data crawling around data competition and protection in the context of the digital economy, we should utilize the characteristics of the data market platform that are distinct from the traditional mode of product trading, as well as the dynamic and cross-border nature of Internet competition, to get rid of the limitations of "civil trial thinking." In addition, we should focus on the balance of multiple interests, develop a dynamic analysis framework for the balance of multiple interests based on the legitimacy of competitive behavior, and establish the thinking behind the new unfair competition behavior on the

Internet within the context of competition law.

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Note

Note 1. Interest weighing is a sociological approach of law that considers societal impacts, as well as a thorough comparison of multiple interests. It was initially a significant theory in the hermeneutics of civil law, but it has been applied to criminal law, administrative law, civil procedure law, evidence law and other domains.