

**Agility Over Stability:  
China's Great Reversal in Regulating the Platform Economy**

Angela Huyue Zhang\*

July 28, 2021

**Abstract**

This paper develops a new theoretical framework to analyze Chinese regulatory governance by considering the strategic interaction between four key players involved in the regulatory process: the top leadership, the regulators, the firms and the public. By focusing on China's great reversal in regulating the platform economy, I argue that China's volatile style of policymaking is deeply ingrained in its authoritarian governance, where power is centralized in the top leadership who also suffers from a chronic information deficit. This often leads to a policy control mechanism that fluctuates between very lax and very harsh enforcement. More specifically, I show how government support, firm lobbying and bureaucratic inertia together contributed to a lag in regulating online platforms. When a crisis loomed, the top leadership quickly mobilized all administrative resources and propaganda to initiate a law enforcement campaign against tech giants. However, without strong judicial oversight, aggressive agency interventions create the risk of over-enforcement and administrative abuse. Thus far, China's reorientation of its policy control has significantly bolstered its regulatory capacity across various fronts including financial, antitrust and data regulation. By exerting greater oversight over platform governance, the government has pressured tech firms to transfer their wealth to their users and the public to combat income inequality. The government's heavy-handed approach has also afforded it great leverage to nudge tech firms to prioritize on cutting-edge technologies, and to steer them away from foreign stock markets, thus reducing reliance on the West for both technologies and capital. Despite the campaign's immediate impact, it remains to be seen whether it will bring about lasting changes, especially in light of the persistent lobbying from tech firms and the risk of regulatory capture. At the same time, the volatile policy swing has itself generated risks and uncertainties for both social welfare and global investment, which in turn could cause turmoil to domestic social and financial stability.

Angela Huyue Zhang is Associate Professor of Law and Director of Center for Chinese Law at the University of Hong Kong. She is the author of *Chinese Antitrust Exceptionalism: How the Rise of China Challenges Global Regulation* (OUP, 2021). Angela would like to thank Alex Song Yang, Jin Li, Mark Cohen, Russell Pittman and Curtis Milhaupt for helpful comments on this article. Feedback is most welcome: [angelaz@hku.hk](mailto:angelaz@hku.hk). Suggested citation for this article is: Angela Huyue Zhang, *Agility Over Stability: China's Great Reversal in Regulating the Platform Economy* (July 28, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3892642](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3892642)

<b>I. Introduction</b> .....	3
<b>II. Authoritarian Regulatory Governance</b> .....	7
<b>III. Why Regulation Was Very Lax</b> .....	15
A. Government Support.....	16
B. Firm Lobbying .....	20
C. Bureaucratic Inertia.....	23
<b>IV. How the Pendulum is Swinging Towards Harshness</b> .....	26
A. Shifting Balance.....	26
B. The Tipping Point .....	29
C. Law Enforcement Campaign .....	32
<b>V. Impact from the Great Reversal</b> .....	36
A. Administrative Agencies.....	37
B. Technology and Innovations.....	40
C. Social Welfare.....	46
D. Global Investing.....	51
<b>VI. Conclusion</b> .....	54

## I. Introduction

China possesses one of the world's largest and most vibrant digital economies. Valued at \$6 trillion USD in 2020, the Chinese digital economy was second in size only to the United States', accounting for nearly 40% of China's GDP.<sup>1</sup> China also accounted for more than half of the world's e-retailing in that same year, and Chinese companies for more than 70% of the global valuation of fintech businesses in 2019.<sup>2</sup> Alibaba and Tencent, two of China's most valuable publicly-listed tech companies, have emerged as global leaders in e-commerce, social media and fintech. Many observers believe that these two firms owe their success not only to China's large consumer market but also to a supportive and nurturing environment created by the Chinese government.<sup>3</sup> The 'Great Firewall', which the Chinese government set up in the 2000s to block foreign rivals from accessing the Chinese market, shielded domestic players from foreign competition and facilitated the exponential growth of these Chinese national champions.<sup>4</sup>

Since October 2020, however, a regulatory storm has blown into the Chinese tech industry. Ant Group, the Chinese fintech company that was about to launch the world's largest initial public offering (IPO), was asked to cancel its IPO 48 hours before its debut.<sup>5</sup> Many western media outlets have framed this incident as an attack on Jack Ma, the flamboyant and outspoken Chinese entrepreneur who made a speech in Shanghai in late October 2020 criticizing Chinese financial regulation.<sup>6</sup> The speech, according to western media outlets, offended many senior Chinese leaders, leading to the eventual cancellation of Ant's IPO and a subsequent regulatory crackdown on Chinese tech firms.<sup>7</sup> This sudden regulatory shift gave the impression that the Chinese law

---

<sup>1</sup> Yujie Xue, *China's Digital Economy Surges in 2020 Amid Pandemic, Making up Nearly 40 Per Cent of Country's GDP*, SOUTH CHINA MORNING POST (Apr. 27, 2021), <https://www.scmp.com/tech/policy/article/3131286/chinas-digital-economy-surges-2020-amid-pandemic-making-nearly-40-cent>.

<sup>2</sup> Longmei Zhang & Sally Chen, *China's Digital Economy: Opportunities and Risks*, IMF Working Paper WP/19/16, <https://www.imf.org/en/Publications/WP/Issues/2019/01/17/Chinas-Digital-Economy-Opportunities-and-Risks-46459>.

<sup>3</sup> Id. See also McKinsey & Company, *China's Digital Economy: A Leading Global Force* (Aug. 2017) (hereinafter 'McKinsey Report'), <https://www.mckinsey.com/~media/mckinsey/featured%20insights/China/Chinas%20digital%20economy%20A%20leading%20global%20force/MGI-Chinas-digital-economy-A-leading-global-force.ashx>.

<sup>4</sup> Anirudh Kannan, *Here's Why the Great Firewall of China Has Benefited the Country*, YP WEEKLY (Oct. 12, 2017), <https://www.scmp.com/yp/discover/your-voice/opinion/article/3066603/heres-why-great-firewall-china-has-benefited-country>.

<sup>5</sup> Jing Yang & Lingling Wei, *China's President Xi Jinping Personally Scuttled Jack Ma's Ant IPO*, WALL ST. J. (Nov. 12, 2020), <https://www.wsj.com/articles/china-president-xi-jinping-halted-jack-ma-ant-ipo-11605203556>.

<sup>6</sup> Ryan McMorro & Sun Yu, *The Vanishing Billionaire: How Jack Ma Fell Foul of Xi Jinping*, FIN. TIMES (Apr. 15, 2021), <https://www.ft.com/content/1fe0559f-de6d-490e-b312-abba0181da1f>; Henry Sender, *Jack Ma vs. the Party: Inside the Collapse of the World's Biggest IPO*, NIKKEI ASIA (Nov. 18, 2020), <https://asia.nikkei.com/Spotlight/Most-read-in-2020/Jack-Ma-vs.-the-Party-Inside-the-collapse-of-the-world-s-biggest-IPO>

<sup>7</sup> Yang & Wei, *supra* note 5.

enforcement was arbitrary, fueling speculation about factional conflict among Chinese political elites.<sup>8</sup> Western commentators also viewed this incident as an example of the Chinese Communist Party's (CCP) intent to ramp up control and influence over private firms in China.<sup>9</sup>

This article aims to provide a more nuanced understanding of the driving forces behind China's great reversal in regulating its tech firms, particularly the underlying regulatory tensions. By targeting its superstar firms such as Alibaba and Tencent, China is actually following a global trend of reining in Big Tech. In the United States, public opinion is pressuring the authorities to tackle fake news and disinformation, fight infringements of privacy, and break up increasing concentration in the US digital economy.<sup>10</sup> After years of lax antitrust enforcement, US federal and state regulators recently brought a number of high-profile lawsuits against Google, Facebook and Amazon.<sup>11</sup> US lawmakers are also introducing bills that could reshape the largest US tech firms and force an overhaul of their business practices.<sup>12</sup> The European Commission, even more interventionist than its US counterparts, has launched investigations into major US tech giants such as Google, Facebook and Apple.<sup>13</sup> Unsatisfied with existing competition regulations, the Commission is introducing ex ante regulations to impose obligations on large platforms acting as digital gatekeepers.<sup>14</sup>

---

<sup>8</sup> Lingling Wei, *China Blocked Jack Ma's Ant IPO After Investigation Revealed Likely Beneficiaries*, WALL ST. J. (Feb. 16, 2021), <https://www.wsj.com/articles/china-blocked-jack-mas-ant-ipo-after-an-investigation-revealed-who-stood-to-gain-11613491292>.

<sup>9</sup> Lingling Wei, *China's Xi Ramps Up Control of Private Sector. 'We Have No Choice but to Follow the Party.'* WALL ST. J. (Dec. 10, 2020), <https://www.wsj.com/articles/china-xi-clampdown-private-sector-communist-party-11607612531>; Minxin Pei, *China's Pro-Monopoly Antitrust Crusade*, PROJECT SYNDICATE (Dec. 31, 2020), [China's Pro-Monopoly Antitrust Crusade by Minxin Pei - Project Syndicate \(project-syndicate.org\)](https://www.project-syndicate.org/china-pro-monopoly-antitrust-crusade-by-minxin-pei-2020-12); Li Yuan, *What China Expects from Businesses: Total Surrender*, NY TIMES (July 19, 2021), [What China Expects From Businesses: Total Surrender - The New York Times \(nytimes.com\)](https://www.nytimes.com/2021/07/19/opinion/china-businesses.html)

<sup>10</sup> See e.g., Danielle Keats Citron, *Extremist Speech, Compelled Conformity, and Censorship Creep*, 93 NOTRE DAME L. REV. 1035 (2018); see also generally Nir Grinberg et al., *Fake News on Twitter During the 2016 U.S. Presidential Election*, 363 SCIENCE 374 (2019); Dina Srinivasan, *The Antitrust Case Against Facebook: A Monopolist's Journey Towards Pervasive Surveillance In Spite of Consumers' Preference for Privacy*, 16 BERKELEY BUS. L. J. 39 (2019); Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUMBIA L. REV. 973 (2019).

<sup>11</sup> John D. McKinnon, *These Are the U.S. Antitrust Cases Facing Google, Facebook and Others*, WALL ST. J. (Dec. 17, 2020), <https://www.wsj.com/articles/these-are-the-u-s-antitrust-cases-facing-google-facebook-and-others-11608150564>.

<sup>12</sup> Dana Mattioli & Ryan Tracy, *House Bills Seek to Break Up Amazon and Other Big Tech Companies*, WALL ST. J. (June 11, 2021), <https://www.wsj.com/articles/amazon-other-tech-giants-could-be-forced-to-shed-assets-under-house-bill-11623423248>.

<sup>13</sup> Eleanor M. Fox, *Platforms, Power, and the Antitrust Challenge: A Modest Proposal to Narrow the U.S.-Europe Divide*, 98 NEB. L. REV. 297 (2019) (comparing the US and EU antitrust cases against the major US Big Tech).

<sup>14</sup> See Damien Geradin, *What Is A Digital Gatekeeper? Which Platforms Should Be Captured by the EC Proposal for A Digital Market Act?* (Feb. 18, 2021), [What Is a Digital Gatekeeper? Which Platforms Should Be Captured by the EC Proposal for a Digital Market Act? by Damien Geradin :: SSRN](https://www.ssrn.com/abstract=3892642); see also Giorgio Monti, *The Digital*

The pendulum of Big Tech regulation has been swinging even faster in China. In a short few months, China has shifted from taking a very lax and tolerant approach in regulating the tech sector to being very strict and aggressive, turning China into one of the most active and forceful jurisdictions in regulating the digital economy.<sup>15</sup> What makes China exceptional, however, is not *why* it regulates, but rather *how* it regulates its tech firms. Indeed, China's volatile style of policymaking is deeply ingrained in its authoritarian governance system, where regulatory authorities need to adhere to central policy initiatives and administrative power is subject to few institutional constraints. This often leads to a policy control mechanism that fluctuates between very lax and very harsh enforcement, akin to bang-bang control in control theory.<sup>16</sup>

To unravel the dynamics behind China's pendulum swing, I develop a theoretical framework that models Chinese regulatory governance as the outcome of the strategic interaction between four key players: the top leadership, the regulators, the firms and the public. Although the top Chinese leaders are very powerful, they are generalists who lack the knowledge and have limited attention to deal with specific regulatory issues. Therefore, most decision-making is delegated to the regulators who specialize in specific areas of regulation and have close proximity to information sources. Chinese tech companies are adept at seeking favorable regulatory treatment by lobbying the top leadership and by seeking regulatory arbitrage among the various regulatory authorities. Meanwhile, public discontent tends to be muted in China due to censorship and political control. Thus, when the national economic policy encourages innovation and entrepreneurship, Chinese regulators are averse to taking timely and vigorous enforcement actions. This discourages information transmission from the regulators to the top leadership, leading to a serious regulatory lag. When public discontent mounts and a regulatory crisis spirals out of control, the top leadership intervenes to avoid threats to social stability. In response to the call from the central top leadership, Chinese regulators at all levels then quickly react by taking an aggressive stance to tackle the regulatory problems.

To be sure, this volatile style of Chinese policymaking is neither unique to the regulation of the tech sector nor to the Xi Jinping administration, although arguably the centralization of power

---

*Markets Act-Institutional Design and Suggestions for Improvement* (Feb. 22, 2021), [The Digital Markets Act – Institutional Design and Suggestions for Improvement by Giorgio Monti :: SSRN](#)

<sup>15</sup> Sam Schechner, Liza Lin & Chong Koh Ping, *China Joins Global Push to Rein in Tech Companies*, WALL ST. J. (Jan. 24, 2021), <https://www.wsj.com/articles/china-is-joining-the-global-push-to-rein-in-tech-giants-11611484200>; see also Stephanie Yang, *China's Tech Clampdown Is Spreading Like Wildfire*, WALL ST. J. (June 6, 2021), <https://www.wsj.com/articles/chinas-tech-clampdown-is-spreading-like-wildfire-11622971802>.

<sup>16</sup> Bang-bang control is a mechanism in control theory where the feedback controller switches abruptly between two states, it is also called "on-and-off" control. See Seichi Suzuki *et al.*, *Management of Group Temperature by Bang-Bang Control Based on Finite Element Application*, INT'L J. FOR NUMERICAL METHODS IN ENGINEERING (1996).

under Xi may have exacerbated the volatility.<sup>17</sup> Instead, I argue that volatile Chinese policymaking is rooted in the revolutionary times of the CCP, when Mao Zedong and other leaders often needed to deal with a highly uncertain and threatening environment during guerrilla warfare.<sup>18</sup> The evolving, complex and large-scale features of the current platform economy present similar challenges to the CCP leadership, creating the demand for a fluid and flexible regulatory response. This authoritarian model of regulatory governance therefore has its distinct advantages and disadvantages. On the one hand, centralized political power without strong institutional constraints enables the Chinese top leadership to quickly mobilize various administrative resources and propaganda to rein in Big Tech. On the other hand, the bureaucratic constraints on professional autonomy undermines independent judgment at an early stage, resulting in a lax regulatory environment which could lead to a regulatory crisis. Furthermore, when the government finally decides to act, there is a risk of administrative power abuse and over-enforcement due to the absence of a transparent enforcement process subject to judicial oversight. Yet, such a volatile policy style is likely to persist as it is deeply seated in China's political governance.

Thus far, some of the biggest beneficiaries of China's great reversal in regulating the platform economy are the administrative authorities who have seen their power and prestige enhanced significantly.<sup>19</sup> The tightening of regulation over Chinese tech giants has given these agencies the perfect opportunity to expand both their policy control and institutional capacity. This new policy change also occurs in tandem with a gradual shift of the Chinese government's priority from fostering economic growth to addressing nationalism and maintaining social stability. Indeed, the Chinese government is cultivating mass support by exerting pressures on Chinese tech firms to lower prices for small merchants, drivers and courier workers, and to improve welfare for their employees and contractors. Amid the heated Sino-US tech war, the regulatory crackdown affords the Chinese government much greater leverage in steering its tech firms towards a more innovative path to stay competitive with the United States.<sup>20</sup> By imposing additional cybersecurity review requirements for data-rich Chinese tech firms seeking to tap overseas capital markets, the Chinese government is also enhancing the appeal of domestic stock exchanges.<sup>21</sup> Chinese tech firms have quickly adapted to the shifting policy winds. After all, the alignment of their business plans with

---

<sup>17</sup> Xueguang Zhou, *Organizational Response to Covid-19 Crisis: Reflections on the Chinese Bureaucracy and Its Resilience*, 16 *MANAGEMENT & ORG. REV.* 473, 480 (2020). (noting that since 2010, there has been an accelerated trend of recentralization where the Chinese bureaucracy shifted towards a tight-coupling mode. The Chinese Communist Party reasserted its commanding role by strengthening party committees in all institutions and there is a much greater emphasis on the political loyalty of the cadres and their adherence to the top leadership). *See also generally* XUEGUANG ZHOU, *THE INSTITUTIONAL LOGIC OF CHINESE GOVERNANCE: AN ORGANIZATIONAL APPROACH* (2017) (in Chinese).

<sup>18</sup> SEBASTIAN HEILMANN & ELIZABETH J. PERRY, *MAO'S INVISIBLE HAND: THE POLITICAL FOUNDATIONS OF ADAPTIVE GOVERNANCE IN CHINA* 11-12 (2011) (observing the legacy of Mao on the policymaking in contemporary China).

<sup>19</sup> *See infra* Part (V)(A).

<sup>20</sup> *See infra* Part (V)(B).

<sup>21</sup> *See infra* Part (V)(D).

the top leadership's policy agenda is an important means of self-protection for Chinese tech firms. Although it is far from clear whether China's reorientation of its regulatory policies will lead to fundamental changes in the Chinese tech industry's competitive landscape and bring about lasting improvement in social welfare, it does appear to have restored some of the balance between innovation and regulation which was lost during the years of rapid growth, at least in the short term.

This paper is organized as follows. Part II proposes a theoretical framework for analyzing volatility in Chinese policymaking. Specifically, I identify five elements of China's authoritarian regulatory governance and explain how they account for a particularly dramatic pendulum swing in the context of regulating the platform economy. Part III explores how government support, firm lobbying and bureaucratic inertia together contributed to a lax regulatory environment for Chinese tech firms in the past. Part IV discusses how the Chinese policy pendulum swings by first examining how regulatory crises arise, then by tracing how the central government launched its current law enforcement campaign to rein in tech firms. Part V explores the impact of China's great reversal in regulating the platform economy. Part VI concludes.

## II. Authoritarian Regulatory Governance

Sebastian Heilmann and Elizabeth Perry observe that policy volatility in China has its roots in the revolutionary past of the CCP, when it adopted a guerilla policy style and adaptive governance.<sup>22</sup> Even though the bureaucracy has gained a more prominent role after Mao, Heilmann and Perry argue that top-down initiatives, interventions and campaigns are still employed frequently to disrupt bureaucratic routines.<sup>23</sup> In this article, I seek to enrich Heilmann and Perry's analysis by proposing a new theoretical framework that includes not only the top leadership, but also the other important actors involved in the regulatory process: the administrative agencies that carry out the enforcement mandates, the firms that are targets for regulation, and the general public that engages with the firms. More specifically, I identify five main elements of China's authoritarian regulatory governance: *hierarchy*, *adaptability*, *parochialism*, *astuteness* and *muteness*; I call this the "HAPAM" model of governance. In particular, hierarchy is used to describe the regulatory decision-making process, whereas the other features are used to describe the characteristics of each of the four key players in the regulatory process. Notably, hierarchy is the dominating feature as the other four features are somewhat endogenous to this first feature.

The first, and by far the most important feature is that the Chinese regulatory process is very hierarchical. The policymaking process involves the interaction among players from three tiers of the Chinese polity. At the apex is the leadership in Beijing, which enjoys the highest authority and

---

<sup>22</sup> HEILMANN & PERRY, *supra* note 18, at 11

<sup>23</sup> *Id.* at 14.

wields tremendous power. At the same time, the top leadership lacks the expertise to make concrete decisions and has limited time to focus on specific regulatory issues. It thus delegates most of its decision-making power to the administrative agencies, which are filled with technocrats. Chinese regulatory authorities at all levels are nested within China's vast bureaucratic machine, and they derive their legitimacy from the delegation of power by the central authority.<sup>24</sup> Because officials are evaluated through a top-down nomenklatura process, the whole bureaucracy is organized based on an upward accountability system.<sup>25</sup> Chinese regulators thus need to carefully tread the lines laid down by the top when carrying out their enforcement duties. Chinese firms are located at the bottom of the hierarchy due to the strong power imbalances between government and businesses in China. Although in theory companies have the opportunity to challenge government actions in court, in practice few choose to do so.<sup>26</sup> Instead, businesses that are investigated tend to exhibit an unusual level of cooperation with the regulators.<sup>27</sup> Members of the Chinese public are similarly located at the bottom of the hierarchy and have very limited channels to voice their dissatisfaction due to the omnipresent censorship and suppression.<sup>28</sup> However, when regulatory failures become looming financial and social crises, Chinese regulators and the top leadership face pressures to act and intervene.

Second, the Chinese leadership is highly adaptable. Adaptability is part of the CCP's revolutionary tradition, which makes the Party highly resilient in meeting challenges in changed times.<sup>29</sup> The contemporary Chinese leadership derives its legitimacy from three main sources: economic growth, social stability and nationalism.<sup>30</sup> As such, Chinese policymaking has been flexible and pragmatic, constantly adjusting to changing domestic and international environments. After decades of rapid

---

<sup>24</sup> See Zhou, *supra* note 17, at 479.

<sup>25</sup> Id., at 480; see also Sebastian Heilmann, *Regulatory Innovation by Leninist Means: Communist Party Supervision in China's Financial Industry*, 181 CHINA Q. 4 (2005). SUSAN SHIRK, *THE POLITICAL LOGIC OF ECONOMIC REFORM IN CHINA* 348-49 (1993); YASHENG HUANG, *INFLATION AND INVESTMENT CONTROLS IN CHINA* 322-24 (1999).

<sup>26</sup> ANGELA HUYUE ZHANG, *CHINESE ANTITRUST EXCEPTIONALISM: HOW THE RISE OF CHINA CHALLENGES GLOBAL REGULATION* 68 (2021).

<sup>27</sup> Id. A recent prominent example is Alibaba. Unlike US tech firms that are fighting tooth and nail with regulators in the United States and Europe, Alibaba thanked the regulators after receiving a record fine of almost \$2.8 billion and vowed to improve compliance. See Matthew Brooker, *It's Easy to Make Tech Titans Kneel. Just Ask China*, BLOOMBERG (Apr. 15, 2021), <https://www.bloomberg.com/opinion/articles/2021-04-14/china-brought-alibaba-to-heel-fast-can-the-u-s-take-a-lesson-versus-facebook>.

<sup>28</sup> Gary King *et al.*, *How Censorship in China Allows Government Criticism but Silences Collective Expression*, 107 AMERICAN POLITICAL SCIENCE REV. 1 (2013); Bei Qin *et al.*, *Why Does China Allow Freer Social Media? Protests Versus Surveillance and Propaganda*, 31 J. ECON. PERSPECTIVE 117 (2017).

<sup>29</sup> HEILMANN & PERRY, *supra* note 18; see also Andrew Nathan, *China's Changing of the Guard: Authoritarian Resilience*, 14 J. DEMOCRACY 6 (2003).

<sup>30</sup> Andre Laliberte & Marc Lanteigne, *The Issues of Challenges to the Legitimacy of the CCP Rules*, in *THE CHINESE PARTY-STATE IN THE 21<sup>ST</sup> CENTURY* 8 (2007).



economic growth, the Chinese economy has stalled since the financial recession in 2008.<sup>31</sup> The CCP then saw the development of the platform economy as a new engine for growth and an opportunity to rebalance the Chinese economy from an investment-led to a consumption-led model.<sup>32</sup> Burdened by high levels of debt and rising geopolitical tensions with the West, however, the Chinese government has been placing a greater emphasis on social stability and nationalism in recent years.<sup>33</sup> Aggressive US sanctions and restrictions on Chinese tech firms such as Huawei and ZTE have generated a ‘sputnik moment’ for China, spurring a wave of Chinese investment in foundational science and technologies to close the technological gap with the United States.<sup>34</sup>

Third, Chinese regulators tend to be very parochial. Power is fragmented within the Chinese bureaucracy.<sup>35</sup> Each regulatory agency is responsible for overseeing a specific area and officials are often deemed technocrats. Because there are often overlapping functions among agencies, Chinese regulators are in a relentless competition for policy control.<sup>36</sup> As such, Chinese regulators try to maximize their bureaucratic interests within their specific scope of responsibility by focusing on short-term and narrow objectives without considering the broader implications for the whole society. This principal-agent problem discourages information transmission from the regulatory authority to the top leadership, contributing to an information deficit at the top.<sup>37</sup> As a result, many regulatory problems do not receive adequate attention from the top leadership until they begin to spiral out of control. When the top leadership intervenes, it mobilizes the entire bureaucratic machine, which then reacts with swift and aggressive legislative and enforcement actions. In the absence of judicial oversight of administrative action, administrative agencies have the tendency to over-enforce in order to expand their policy control.

Fourth, Chinese companies subject to regulation are very astute. Despite power imbalances between government and businesses in China, Chinese businesses are not passive actors. Nurtured

---

<sup>31</sup> Christopher Balding, *What’s Causing China’s Economic Slowdown*, FOREIGN AFFAIRS (Mar. 11, 2019), <https://www.foreignaffairs.com/articles/china/2019-03-11/whats-causing-chinas-economic-slowdown>.

<sup>32</sup> Rebecca Arcesati *et al.*, *China’s Digital Platform Economy: Assessing Developments Towards Industry 4.0: Challenges and Opportunities for German Actors*, MERICS REPORT (June 2020), [MERICSReportDigitalPlatformEconomyEN02.pdf](https://www.merics.org/publications/2020/06/02/china-digital-platform-economy), at 13

<sup>33</sup> Susan Shirk, *Trump and China: Getting to Yes with Beijing*, FOREIGN AFFAIRS (Mar./Apr. 2017), <https://www.foreignaffairs.com/articles/2017-02-13/trump-and-china>.

<sup>34</sup> Li Yuan, *ZTE’s Near-Collapse May Be China’s Sputnik Moment*, N.Y. TIMES (June 10, 2018), <https://www.nytimes.com/2018/06/10/technology/china-technology-zte-sputnik-moment.html>.

<sup>35</sup> See generally KENNETH G. LIEBERTHAL & DAVID M. LAMPTON, BUREAUCRACY, POLITICS, AND DECISION MAKING IN POST-MAO CHINA (1992); Andrew C. Mertha, ‘Fragmented Authoritarianism 2.0’: *Political Pluralization in the Chinese Policy Process*, 200 CHINA Q 995, 995-96 (2009). see also Zhang, *supra* note 26, at 57-63.

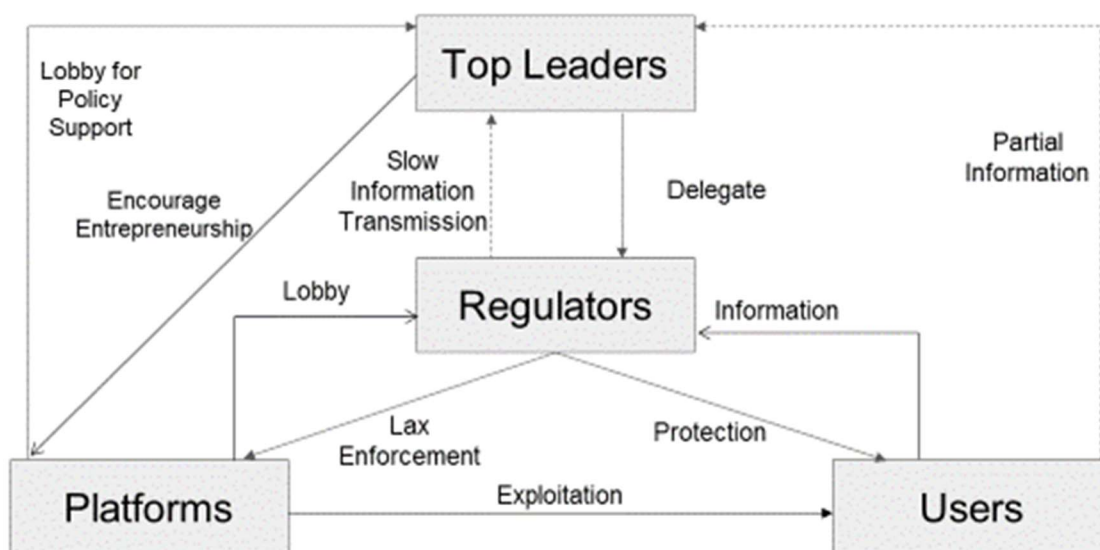
<sup>36</sup> *Id.*, see also Shirk, *supra* note 25, at 142.

<sup>37</sup> Zhou, *supra* note 17, at 481.



recognizes that nationalism is a double-edged sword as it could also reveal the weakness of the regime and poses a threat to political and social stability.<sup>45</sup> This explains why the central government limits its censoring of politically sensitive information, which partly helps the government stay responsive to public discontent before it erupts into crises.<sup>46</sup> As such, the top Chinese leadership must strike a delicate balance between allowing public grievances to air while suppressing those that might be viewed as a threat to its rule. The above five core features of Chinese regulatory governance affect and reinforce each other, resulting in regulatory outcomes that tend to favor agility over stability. (See Figures 1-2).

Figure 1: Lax Enforcement

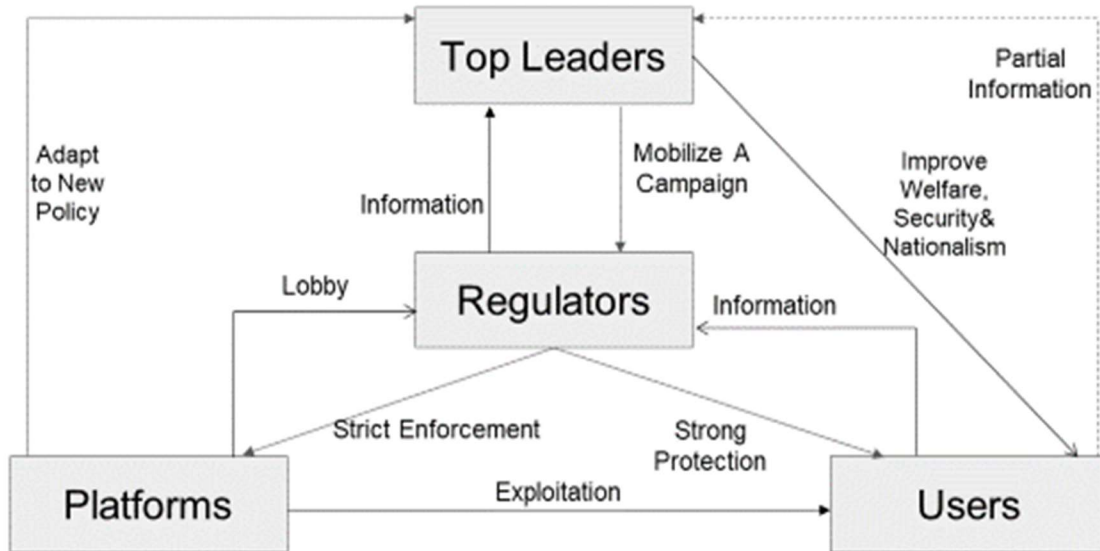


Nationalism, So Stop Trying – Foreign Policy (observing that nationalism is a powerful and persistent force in many countries including China).

<sup>45</sup> Suisheng Zhao, *China's Pragmatic Nationalism: Is It Manageable?* 29 THE WASHINGTON Q. 131, 130-142 (2005) (arguing that the CCP uses pragmatic populism to rally political support, while also restraining nationalist sentiments that could jeopardize the stability of the regime). See also Yinxian Zhang *et al.*, *Nationalism on Weibo, Towards A Multifaceted Understanding of Chinese Nationalism*, 235 CHINA Q. 758, 760 (2018). (conducting research on Sino Weibo and found that the majority of nationalists also profoundly criticized the government from a pro-democracy standpoint).

<sup>46</sup> See generally CHRISTOPHER HEURLIN, RESPONSIVE AUTHORITARIANISM IN CHINA: LAND, PROTESTS, AND POLICY MAKING (2016); DANIELA STOCKMANN, MEDIA COMMERCIALIZATION AND AUTHORITARIAN RULE IN CHINA (2013).

Figure 2: Strict Enforcement



Notably, this theoretical framework for studying volatility in Chinese policymaking is not only useful in explaining what has happened to the regulatory governance of the platform economy, but also potentially a wide range of governance issues in China.<sup>47</sup> China’s regulatory governance is therefore a departure from the western norm of regulation which places a greater emphasis on agency accountability, legal consistency, and due process.<sup>48</sup> A comparison with the United States is revealing. The Chinese bureaucracy is organized through a tightly coupled system in that different parts of the bureaucracy are connected and controlled through the nomenklatura system

<sup>47</sup> China’s handling of the Covid-19 crisis offers a case in point. Although China was able to successfully mobilize a national campaign to curb infections within months, it initially failed to control the virus before it spread widely within the country. In Wuhan, the initial epicenter of the outbreak, doctors’ early warnings about the infectious disease were ignored or suppressed for weeks largely because local officials who were highly sensitive to political pressures withheld information in an attempt to ensure social and political stability. This information lag resulted in a serious delay in controlling the virus before it became a global pandemic. It wasn’t until the central leadership decided to make the information public that the whole nation took drastic and draconian measures to conduct self-quarantine and lockdown. Prominent scholars attributed the contrasting organizational response during the two periods to China’s tightly coupled political governance structure under Xi. See Yuen Yuen Ang, *When Covid-19 Meets Centralized, Personalized Power*, 4 NATURE HUMAN BEHAVIOUR 445 (2020); see also Jin Li, *Cong Yiqing Kuasuan Kan Zhuzhi Kunjing [从疫情扩散看组织困境] (The Organizational Dilemma in the Spread of Covid-19)* (March 17, 2020), [【观点】李晋：从疫情扩散看组织困境 \(qq.com\)](#)

<sup>48</sup> HEILMANN & PERRY, *supra* note 18, at 14.

and are all held responsible to the top leadership in Beijing.<sup>49</sup> This contrasts with the United States, which is organized through a loosely coupled system with a clear delineation of authority between federal, state, and county governments.<sup>50</sup> As such, the US federal government wields less power and agencies tend to enjoy a higher level of independence, even if they remain susceptible to shifting policy winds in Washington. The freedom of the press in the United States also means that agencies are subject to more public scrutiny. Moreover, US regulatory authorities operate under close judicial oversight since their actions are frequently challenged in court, constraining their ability to over-enforce even when administrations try to tighten regulation.<sup>51</sup> Judicial review is therefore an important constraint in preventing the policy pendulum from swinging too quickly in the United States.

At the same time, several features of innovations have made the regulatory pendulum swing even more dramatically in the context of regulating the Chinese platform economy. First, digitalization and online platforms bring about tremendous efficiency for consumers by lowering transaction costs and reducing information asymmetry between buyers and sellers. It creates more employment opportunities for the Chinese labour forces, despite the loss of jobs amid the disruption from digitalization.<sup>52</sup> In China, innovative financial products also offer an appealing investment opportunity to the volatile Chinese stock market. As economic growth is of paramount importance to the performance legitimacy of the Chinese leadership, the Chinese government was very supportive of the digital economy with the hope of moving the country up the technological ladder.<sup>53</sup> Local governments also have strong incentives to prop up online platforms to foster local champions to boost their GDP and employment.<sup>54</sup>

Second, online platforms present unprecedented challenges for regulation since many new products and services created by online platforms do not fall within the realm of the existing laws and regulations. Similarly, it is not entirely clear which regulator has policy control over a particular area of regulation. This is not a phenomenon unique to China. However, the authoritarian regulatory model tends to exacerbate the situation. When the top leadership endorsed innovation and entrepreneurship, regulatory authorities carefully toed the line by employing a cautious and tolerant approach in regulating online platforms. Chinese tech firms have also been very adept at

---

<sup>49</sup> Zhou, *supra* note 17, at 474.

<sup>50</sup> *Id.*

<sup>51</sup> For instance, despite great public pressures to regulate Big Tech, a US federal judge decided to throw out the federal and state antitrust suits against Facebook in June 2021. See Cecilia Kang, *Judge Throws Out 2 Antitrust Cases Against Facebook*, N.Y. TIMES (June 29, 2021), <https://www.nytimes.com/2021/06/28/technology/facebook-ftc-lawsuit.html>.

<sup>52</sup> Zhang & Chen, *supra* note 2, at 9.

<sup>53</sup> See *infra* Part III.

<sup>54</sup> *Id.*



better disclosure and tougher audits of Chinese companies listed in the United States.<sup>59</sup> This prompted Chinese regulators to tighten restrictions on the export of Chinese technologies and cross-border data transfer.<sup>60</sup> Amid growing US antagonism toward China, rising Chinese nationalistic sentiments bolstered the legitimacy of the Chinese government's regulatory actions.<sup>61</sup>

Meanwhile, Chinese leadership places paramount importance on stability and is highly sensitive to regulatory failures.<sup>62</sup> When a regulatory crisis looms, the central leadership can quickly reverse policy initiatives by mobilizing the whole bureaucratic machine to launch a law enforcement campaign to tighten regulation. In the following discussion, I will apply the above framework to explain China's great reversal in regulating the platform economy and explore its likely consequences.

### III. Why Regulation Was Very Lax

Law is never complete as it cannot possibly anticipate all contingencies.<sup>63</sup> This is particularly the case for disruptive technologies such as online platforms, which have grown so rapidly that existing rules and regulations often fail to cover their innovative products or services.<sup>64</sup> Moreover, when a new product or service is introduced to the market, it takes time for industry participants and regulators to understand and assess its impact. Human beings have a cognitive limitation in foreseeing and estimating the risks that come with new products and services. As such, regulators often don't become aware of problems until they become serious. Even when the regulators become aware of problems, it still takes time for the legislature and law enforcers to formulate a unified and coherent response. This lag in regulating online platforms is certainly not unique to China as countries such as the United States are similarly ramping up scrutiny over their tech giants. In the following discussion, I particularly highlight three important factors—government support, regulatory arbitrage and bureaucratic inertia—that have contributed to the regulatory lag in China.

---

<sup>59</sup> Mark Maurer, *Audit Watchdog Proposes Framework to Help Implement New Trading Ban*, THE WALL ST. J. (May 13, 2021), [Audit Watchdog Proposes Framework to Help Implement New Trading Ban - WSJ](#)

<sup>60</sup> See *infra* Part (IV) (C). See also Eva Xiao & Liza Lin, *TikTok Talks Could Face Hurdle As China Tightens Tech Export Rules*, WALL ST. J. (Aug. 3, 2020), <https://www.economist.com/business/2021/07/10/china-seems-intent-on-decoupling-its-companies-from-western-markets>

<sup>61</sup> Brian Wong, *How Chinese Nationalism Is Changing*, THE DIPLOMAT (May 26, 2020), [How Chinese Nationalism Is Changing – The Diplomat](#); Shen Lu, *Chinese Nationalists Geared Up for A “Delete Didi Campaign”*, PROTOCOL (July 8, 2021), [Chinese nationalists are going after DiDi - Protocol — The people, power and politics of tech](#);

<sup>62</sup> One example is China's control of SARs. See Yanzhong Huang, *The SARS Epidemic and Its Aftermath in China: A Political Perspective* (2004), <https://www.ncbi.nlm.nih.gov/books/NBK92479/>. A more recent example is China's control of Covid-19. See *supra* note 47.

<sup>63</sup> AVINASH K. DIXIT, *LAWLESSNESS AND ECONOMICS: ALTERNATIVE MODES OF GOVERNANCE* (2007); See also Katharina Pistor & Chenggang Xu, *Incomplete Law*, 35 J. INT' L. & POLITICS 931, 931-32 (2004).

<sup>64</sup> See Elizabeth Pollman & Jordan M. Barry, *Regulatory Entrepreneurship*, 90 S. CAL. L. REV. 383 (2016). (explaining how US tech firms such as Uber and Airbnb try to take advantage of the legal grey area to lobby for favorable legal treatment).

### A. Government Support

After decades of phenomenal expansion with a GDP growth rate averaging 10 percent, the Chinese economy began to slow down after the financial recession in 2008.<sup>65</sup> To rebalance its economy from being export-driven and dependent on investment, the Chinese leadership placed innovation as a top priority in China's economic blueprint.<sup>66</sup> In 2015, the State Council unveiled the 'Internet Plus' initiative, a five-year plan to upgrade traditional manufacturing and service industries by integrating them with big data, cloud computing and other "internet of things" technologies.<sup>67</sup> The State Council also released five guidelines to implement the initiative, detailing policy support in various aspects such as cross-border e-commerce, commerce circulation, rural e-commerce, innovation and entrepreneurship.<sup>68</sup>

Various central ministries and local governments also followed up with concrete guidelines and implementation measures.<sup>69</sup> In 2015, the Ministry of Commerce formulated various action plans for implementing the "Internet Plus" initiative.<sup>70</sup> Sector regulators ranging from the Ministry of Agriculture to the financial regulators such as the People's Bank of China (PBOC) were also busy promoting this initiative in their relevant sectors.<sup>71</sup> The following year saw the National Development and Reform Commission (NDRC) announce a three-year plan with the goal of

---

<sup>65</sup> *China GDP Growth Rate 1961-2021*, MACRO TRENDS, <https://www.macrotrends.net/countries/CHN/china/gdp-growth-rate>.

<sup>66</sup> ELIZABETH ECONOMY, *THE THIRD REVOLUTION: XI JINPING AND THE NEW CHINESE STATE* 95-97 (2018). See also *Xi Sets Target for China's Innovation*, CHINA.ORG.CN (May 31, 2016), [http://www.china.org.cn/china/2016-05/31/content\\_38568066.htm](http://www.china.org.cn/china/2016-05/31/content_38568066.htm).

<sup>67</sup> *China Unveils 'Internet Plus' Action Plan to Fuel Growth*, The State Council of the People's Republic of China press release (July 4, 2015), [https://www.chinadaily.com.cn/bizchina/tech/2015-07/04/content\\_21181256.htm](https://www.chinadaily.com.cn/bizchina/tech/2015-07/04/content_21181256.htm).

<sup>68</sup> See 2015 REPORT ON E-COMMERCE IN CHINA 11 (2015) (hereinafter E-Commerce Report) (These guidelines include: The Opinions on Striving to Develop E-commerce to Speed up the Cultivation of New Economic Driving Force, the Guiding Opinions on Promoting the Healthy and Rapid Development of Cross-border E-commerce, the Opinions on Promoting Online and Offline Interaction to Accelerate the Innovative Development, Transformation and Upgrading of Commerce Circulation, the Guiding Opinions on the Promotion of the Development of Rural E-commerce and the Opinions on Several Policy Measures for Vigorously Promoting Public Entrepreneurship and Innovation. These documents not only clarify the strategic orientation for the development of e-commerce, but also put forward specific policies and measures from such aspects as cross-border trade, commerce circulation, rural area, innovation and entrepreneurship). To further stimulate entrepreneurship, the Chinese government established national venture capital funds for emerging industries, national development funds for small and medium-sized enterprises, as well as national funds for transforming technological achievements. Yongqi Hu, *Startups to Gain Government Funds*, CHINA DAILY.COM.CN (July 28, 2017), [https://www.chinadaily.com.cn/business/2017-07/28/content\\_30275307.htm](https://www.chinadaily.com.cn/business/2017-07/28/content_30275307.htm).

<sup>69</sup> Irene Zhou, *Digital Labour Platforms and Labour Protection in China* (2020), ILO WORKING PAPER 11 (Oct. 2020), [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/documents/publication/wcms\\_757923.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/documents/publication/wcms_757923.pdf) at 39 (summarizing a list of the government policies)

<sup>70</sup> See E-Commerce Report, *supra* note 68, at 11.

<sup>71</sup> Id. See also China Issues Guidelines on Development of Internet Finance, HKTDC RESEARCH (Aug. 6, 2015), <https://hkmb.hktdc.com/en/1X0A34J5/hktdc-research/China-Issues-Guidelines-on-Development-of-Internet-Finance>.



building an artificial intelligence application market worth over RMB100 billion.<sup>72</sup> Chinese tax departments further offered preferential tax schemes to encourage mass entrepreneurship and innovation.<sup>73</sup> In July 2017, eight Chinese ministries jointly issued a guiding opinion to promote the sharing economy, which laid down comprehensive measures for market access, regulatory supervision and the creation of a nurturing environment.<sup>74</sup> Meanwhile, local governments responded to Beijing's call by issuing measures accelerating the development of e-commerce.<sup>75</sup> Local governments ran pilot programs to explore the implementation of the 'Internet Plus' initiative in various sectors such as logistics, social security, health care and other government services.<sup>76</sup> And government-sponsored incubators for startups mushroomed in large cities such as Beijing and Shenzhen.<sup>77</sup>

These favorable government initiatives created a very supportive and favorable policy environment for Chinese tech firms. When Premier Li Keqiang addressed the Summer Davos Forum in 2017, he touted that "an accommodating and prudent regulatory approach towards new industries, new business forms, and models" had facilitated the healthy development of China's tech companies.<sup>78</sup> Indeed, for three consecutive years between 2018 to 2020, the annual government reports by the State Council advocated for a "tolerant and cautious" approach in regulating the Chinese platform economy. Not surprisingly, Chinese regulators carefully toed the line by applying a relatively 'light-touch' approach in regulating the Chinese digital economy.

Alipay, created by Alibaba to offer consumer-to-merchant money transfers on its e-commerce platform Taobao, is one firm that thrived under a supportive policy environment. Alipay provides escrow services for Taobao consumers, only releasing payments to sellers after buyers have

---

<sup>72</sup> McKinsey Report, *supra* note 3, at 15-16.

<sup>73</sup> *Id.* at 16. State Taxation Administration of the People's Republic of China, *SAT Releases the Guidelines on Preferential Tax Policies for Mass Entrepreneurship and Innovation* (Apr. 26, 2016), <http://www.chinatax.gov.cn/eng/c101269/c2655318/content.html>.

<sup>74</sup> See Liyang Hou, *Sharing Economy in China: A National Report* (2018), <https://ssrn.com/abstract=3231976> at 2. (noting China's National Development and Reform Commission, Office of the Central Cyberspace Affairs, Ministry of Industry and Information, Ministry of Human Resource and Social Security, State Administration of Taxation, State Administration of Industry and Commerce, State Administration of Quality Supervision, Inspection and Quarantine, and National Bureau of Statistics (2017), 'Guiding Opinions on Accelerating the Development of Sharing Economy', NDRC High-Tech [2017] 1245)

<sup>75</sup> See *E-Commerce Report*, *supra* note 59, at 31-34 (observing the policy measures promulgated by Fujian, Shanghai, Shandong, Jiangxi, Anhui, Hebei, Jiangsu, Hainan, Hunan, Liaoning and Zhejiang provinces.)

<sup>76</sup> McKinsey Report, *supra* note 3, at 15-16.

<sup>77</sup> *Id.* at 16; See also *Top 50 Innovation and Startup Incubators Report: China Has the Most Incubators in the World*, SOHU (Sep. 18, 2016), [http://www.sohu.com/a/114536039\\_379992](http://www.sohu.com/a/114536039_379992).

<sup>78</sup> Premier Li's Address at Opening Ceremony of Summer Davos", XINHUA NEWS (June 28, 2017), [http://chinaplus.cri.cn/news/china/9/20170628/7117\\_2.html](http://chinaplus.cri.cn/news/china/9/20170628/7117_2.html).

received the goods they ordered. This important innovation resolved mistrust between transacting parties, facilitating Taobao's exponential growth. However, third-party payment was a legal grey area in China. Jack Ma, the founder of Alipay, was even prepared for the worse consequences of going to jail for launching this service.<sup>79</sup> But Ma's gamble paid off. Alipay became widely popular and ultimately won endorsement from regulators. In 2010, the People's Bank of China issued administrative measures on non-financial payment services and its implementing measures, retroactively recognizing the legal status of online payment platforms such as Alipay.<sup>80</sup> The following year, Alipay obtained a payment business license as one of the first non-financial institutions to conduct payment operations.<sup>81</sup>

Yu'e Bao, an online money market fund introduced by Alibaba in 2013 offers another example. Yu'e Bao allowed Alipay customers to deposit the money left in their accounts to earn interest rates higher than those offered by banks.<sup>82</sup> It soon became China's largest online market fund whose explosive growth surprised industry participants and stimulated new entrants from other tech firms such as Baidu and Tencent.<sup>83</sup> Although Chinese financial regulators were under pressure to impose regulatory restrictions on Yu'e Bao, it wasn't until 2017 that the PBOC started to impose limits to regulate the fund.<sup>84</sup> In fact, the central bank was supporting the growth of Yu'e Bao during its early days as a means to push forward financial market liberalization.<sup>85</sup> This "invest first, get approval later" business model was also prevalent in China's ride-hailing businesses. Despite their exponential growth in China, ride-hailing businesses such as Didi and Uber had operated in the legal grey area in their early years.<sup>86</sup> In 2016, the State Council issued a national policy on

---

<sup>79</sup> Lulu Yilun Chen & Coco Liu, *How China Lost Patience with Jack Ma, Its Loudest Billionaire*, BLOOMBERG NEWSWEEK, Jack Ma's Empire in Crisis After China Halts Ant Group IPO - Bloomberg (Ma was quoted saying the following: "If someone has to go to jail, I'll go.")

<sup>80</sup> Fei Jin Rong Ji Gou Zhi Fu Fu Wu Guan Li Ban Fa [非金融机构支付服务管理办法] (Rules on the Administration of Payment Services Provided by Non-Financial Institutions), promulgated by PBOC Decree No. 2 on 14 June 2010, effective on 1 September 2010. The Chinese official version of the rule is here: [http://www.gov.cn/flfg/2010-06/21/content\\_1632796.htm](http://www.gov.cn/flfg/2010-06/21/content_1632796.htm) and a translated version is available at: <http://www.lawinfochina.com/Display.aspx?lib=law&Cgid=134238>

<sup>81</sup> Alizila, *Alipay Receives PBOC License* (May 25, 2011), <https://www.alizila.com/alipay-receives-pboc-license/>

<sup>82</sup> For a good introduction of Yu'e Bao, see Moran Zhang, *Alibaba's Online Money Market Fund Yu'e Bao: 8 Things You Need To Know*, INTERNATIONAL BUSINESS TIMES (Mar. 11 2014), available at: <http://www.ibtimes.com/alibabasonline-money-market-fund-yue-bao-8-things-you-need-know-1560601>.

<sup>83</sup> Yue Zhang, *Wunian, 1.7 Wan Yi Yu'e Bao Weihe Ji Shache? [五年, 1.7 万亿 余额宝为何急刹车?]* (Why Did the Five-Year-Old, Worth 1.7 Trillion Yu'e Bao Slow Down Its Pace?), 21JINGJI.COM (May 18, 2018), <https://m.21jingji.com/article/20180518/herald/77243fe42af8b8ed803ea9335bee44b5.html>.

<sup>84</sup> Shailesh Jha, *How Alibaba's Yue Bao Unearthed 'Hidden Treasure' From Digital Wallets*, YOURSTROY (Aug. 2, 2018), <https://yourstory.com/2018/08/alibaba-yue-bao-unearthed-hidden-treasure-from-digital-wallets/amp>.

<sup>85</sup> Allen T. Cheng, *Yu'e Bao Wow! How Alibaba is Reshaping Chinese Finance*, INSTITUTIONAL INVESTOR (May 29, 2014), <https://www.institutionalinvestor.com/article/b14zbky543md42/yue-bao-wow-how-alibaba-is-reshaping-chinese-finance>.

<sup>86</sup> Paul Mozur, *Didi Chuxing and Uber, Popular in China, Are Now Legal, Too*, N.Y. TIMES (July 28, 2016), <https://www.nytimes.com/2016/07/29/business/international/china-uber-didi-chuxing.html>.

reforming and promoting the development of the taxi industry, offering favorable policy support for the ride-hailing platforms.<sup>87</sup> In the same year, seven Chinese central ministries including the Ministry of Transportation jointly issued interim measures regulating the ride-hailing businesses, effectively legitimizing their operations.<sup>88</sup>

The legislation of China's E-Commerce Law, a comprehensive legislation that regulates e-retailing, further illustrates the Chinese government's support for the tech industry. During the legislative process of the law, Chinese tech firms lobbied top Chinese leaders including President Xi Jinping, Premier Li Keqiang, and Chairman Zhang of the Standing Committee of the National People's Congress, all of whom endorsed an open and participatory approach in drafting the law.<sup>89</sup> This allowed the tech industry the opportunity to closely interact with academics and officials during the entire drafting process.<sup>90</sup> It is estimated that over 100 public conferences were held by the drafting entities, and the draft law went through an unprecedented four rounds of review by the NPC. The law was finally passed in August 2018, after five years' intensive debate among various stakeholders. The E-Commerce Law's polycentric, participatory and collaborative drafting process stands in contrast with other areas of law such as the Cyber Security law, whose drafting process took only one year and allowed only non-negotiated formalistic participation.<sup>91</sup> Scholars ascribed the short drafting process of the Cyber Security Law to directives from the top leadership, who viewed internet security as an important safeguard for national security and sovereignty and explicitly suggested a short drafting process.<sup>92</sup>

---

<sup>87</sup> General Office of the State Council, *Guowuyuan Bangong Ting Guanyu Shenhua Gaige Tuijin Chuzu Qiche Hangye Jiankang Fazhan de Zhidao Yijian* [国务院办公室关于深化改革推进出租汽车行业健康发展的指导意见] (*General Office of the State Council Guidance on 'Deepening Reform and Promotion of the Healthy Development of the Taxi Industry'*), Guo Ban Fa [2016] No. 58, [http://www.gov.cn/zhengce/content/2016-07/28/content\\_5095567.htm](http://www.gov.cn/zhengce/content/2016-07/28/content_5095567.htm).

<sup>88</sup> Interim Measures for the Administration of Online Taxi Booking Business Operations and Services (draft) (Oct. 10, 2015); see also Jianxue Wang, Junyu Chen & Chao Wang, *Xin Yetai Jianguan Xia de Wangyue Che: Jianguan Pian* [新业态监管下的网约车: 监管篇] (*Ride-hailing under Regulations for New Business Forms*), CHINA LAW INSIGHT (Mar. 4, 2019), <https://www.chinalawinsight.com/2019/06/articles/law-popularity/%E6%96%B0%E4%B8%9A%E6%80%81%E7%9B%91%E7%AE%A1%E4%B8%8B%E7%9A%84%E7%BD%91%E7%BA%A6%E8%BD%A6%EF%BC%9A%E4%B8%9A%E5%8A%A1%E8%BF%90%E8%90%A5%E7%AF%87/>.

<sup>89</sup> See Jingting Deng & Pinxin Liu, *Consultative Authoritarianism: The Drafting of China's Internet Security Law and E-Commerce Law*, 26 J. CONTEMPORARY CHINA 679, 686 (2017).

<sup>90</sup> Id. at 685.

<sup>91</sup> Id. at 683-4.

<sup>92</sup> Id. at 687.

## B. Firm Lobbying

In the United States, scholars have attributed weak law enforcement against Big Tech to political contributions and lobbying expenditures.<sup>93</sup> However, unlike US tech firms who can contribute campaign financing to influence political processes, the lobbying process is much opaquer in China. Moreover, unlike state-owned firms, which enjoy bureaucratic ranks, Chinese tech firms have less direct means to lobby China's internal bureaucracy. That said, Chinese tech entrepreneurs are able to participate in politics through a variety of alternative channels.<sup>94</sup> The most straightforward channel is to join the CCP. For instance, Jack Ma, the founder of Alibaba and Ant Group, has been a CCP member since the 1980s.<sup>95</sup> Some serve in the National People's Congress (NPC), China's top legislative body, or the Political Consultative Conference, the top advisory body (the two bodies are known collectively as the 'two sessions').

In recent years, bosses from large Chinese tech firms have actively participated in the "two sessions" and submitted proposals for the digital economy.<sup>96</sup> Pony Ma, the CEO and founder of Tencent, reportedly submitted over 50 proposals to the NPC in the past decade.<sup>97</sup> Commentators note, however, that these proposals serve more "as gestures of fealty to the Communist government than real policy initiatives" because the NPC is a toothless rubber stamp parliament.<sup>98</sup> Yet other scholars have suggested that legislative membership signals a tech company's political capital, which helps them receive preferential treatment and fend off property appropriation from the government bureaucracy.<sup>99</sup>

In addition to these moves towards formal political influence, tech companies rely heavily on intermediaries to exert influence from behind the scenes. The first type of intermediary is political elites, who either have strong family connections with the top leadership at the central or local governments (e.g., the princelings), or themselves enjoy high bureaucratic status such as the powerful Chinese SOEs or state sovereign funds. Because these politically connected investors can exert political influence over the legal process, I call them 'political intermediaries'. These political intermediaries, many of whom work in private equity or venture capital, are often offered

---

<sup>93</sup> PHILIPPON, *supra* note 56, at 151 & 261; *see also* Luigi Zingales, *Towards A Political Theory of the Firm*, 31 J. ECON. PERSPECTIVES 113, 119 (2017).

<sup>94</sup> BRUCE J. DICKSON, *RED CAPITALIST IN CHINA* (2009); *see also* Gilles Guiheux, *The Political "Participation" of Entrepreneurs: Challenge or Opportunity for the Chinese Communist Party?* 73 SOCIAL RESEARCH 219 (2006); YUE HOU, *THE PRIVATE SECTOR IN PUBLIC OFFICE: SELECTIVE PROPERTY RIGHTS IN CHINA* (2019).

<sup>95</sup> Arjun Kharpal, *Alibaba's Jack Ma Has Been Communist Party Member Since the 1980s*, CNBC (Nov. 27, 2018), <https://www.cnbc.com/2018/11/27/alibabas-jack-ma-has-been-communist-party-member-since-1980s.html>.

<sup>96</sup> Li Yuan, *The Uncomfortable Marriage Between China and Its Tech Giants*, WALL ST. J. (Mar. 8, 2018), <https://www.wsj.com/articles/the-godfathers-of-chinese-tech-get-an-offer-they-cant-refuse-1520510404>.

<sup>97</sup> Rita Liao, *What China's Big Tech CEOs Propose at the Annual Parliament Meeting*, TECHCRUNCH (Mar. 5, 2021), <https://techcrunch.com/2021/03/04/two-sessions-2021-china-tech/>.

<sup>98</sup> *See* Yuan, *supra* note 96.

<sup>99</sup> HOU, *supra* note 94, at 157.

the opportunity to invest in tech firms at an early stage, thus allowing them to reap a bonanza later when the tech firms become public. Investments by political intermediaries therefore offer an important form of protection for Chinese tech firms. Since any harsh regulatory interventions into tech firms will negatively impact investments made by political elites, regulatory authorities would be more reluctant to act against these firms, especially in the absence of a strong and clear policy signal from the top. This ‘ownership sharing scheme’ effectively aligns the interests of Chinese tech firms with those of the political elites who can exert influence on the bureaucracy.

Ant Group, China’s largest fintech giant, is a prime example. One of the reasons why the CCP leadership decided to suspend Ant’s IPO was reportedly a growing unease towards Ant’s complex ownership structure. A central government investigation revealed that a group of well-connected Chinese political elite entities have invested in Ant, as well as China’s national pension fund and several large state-owned banks and investment companies.<sup>100</sup> Alibaba is another example. When Alibaba first went public in 2014, the New York Times ran a sensational report about investment from Chinese political elites in the e-commerce giant.<sup>101</sup> As one analyst put it: “It would take, at this point, a seismic effort to topple an Alibaba. They’ve got so many different allies across so many different ministries.”<sup>102</sup>

The second type of intermediary is former government officials or academics, who are either hired as in-house staff, or are engaged or sponsored through academic or research organizations. As this type of intermediary mainly facilitates information exchange between firms and regulators, I call them ‘information intermediaries’. In the past few years, China’s largest tech firms, such as Tencent, Alibaba, Bytedance, Didi Chuxing and Meituan, have poached former regulatory officials and offered them generous payouts.<sup>103</sup> Seeing little prospect for career advancement in their existing departments, many officials either move to positions in research centers or government relations departments at Chinese tech giants.<sup>104</sup> Chinese academics, many of whom advise the government departments in drafting new laws or provide expert opinions for investigations, also play a very important role in facilitating this process.<sup>105</sup> Given the lack of transparency in China’s legislative and enforcement processes, it is critically important for Chinese tech firms to have

---

<sup>100</sup> See Wei, *supra* note 8.

<sup>101</sup> Michael Forsythe, *Alibaba’s I.P.O. Could Be a Bonanza for the Scions of Chinese Leaders*, N.Y. TIMES DEALBOOK (July 20, 2014), <https://dealbook.nytimes.com/2014/07/20/alibabas-i-p-o-could-be-a-bonanza-for-the-scions-of-chinese-leaders/> (noting Alibaba’s deep political connection with some of the most powerful members of the CCP).

<sup>102</sup> Id.

<sup>103</sup> Sun Yu, *China Tech Groups Hire Ex-regulators to Fend Off Beijing’s Crackdown*, FIN. TIMES (Apr. 21, 2021), <https://www.ft.com/content/71daa106-259e-4dc2-b267-b0289177de1f>.

<sup>104</sup> Id.

<sup>105</sup> Zhang, *supra* note 26, at 106-7. (observing the close-knit group formed among lawyers, academics and regulators in China).

access to valuable information so they can gain first-mover advantage in shaping their responses to new policy developments.<sup>106</sup> As information intermediaries are also legal experts in the relevant policy areas, they can help Chinese tech firms lobby against unfavorable legislative changes and obtain favorable treatment during ongoing investigations. However, it is also well-known that the revolving door can distort the incentives of regulators, resulting in regulatory capture.<sup>107</sup>

Thus far, information intermediaries have been particularly useful in helping Chinese Big Tech lobby for favorable laws. Scholars observed that Chinese tech firm representatives were heavily involved in the drafting of the E-Commerce Law and their opinions played a critical role in influencing the drafting process.<sup>108</sup> The initial draft of the law, which was drafted by agencies with authority to oversee various aspects of the digital economy, put more emphasis on regulation than development.<sup>109</sup> Internet companies lobbied aggressively against the early drafts and recruited support from academia by funding scholars' projects and conferences.<sup>110</sup> Representatives from Alibaba and Tencent were also able to take advantage of informal channels to submit their reports on the E-Commerce Law to the top leadership, including President Xi and Premier Li, who endorsed the companies' view that the regulations should facilitate development.<sup>111</sup> The law went through an unprecedented three rounds of public consultation. In the end, many rules that would have imposed stricter responsibilities on online platforms were either abandoned or significantly diluted in the final version.<sup>112</sup>

Firm lobbying was similarly observed in the ride-hailing business.<sup>113</sup> In response to public complaints and inconsistent judicial treatment of drivers' legal statuses, the original version of the 2015 Interim Measures regulating the ride-hailing businesses included a strict legal requirement that companies must enter into labour contracts with their drivers.<sup>114</sup> This provision, however, was

---

<sup>106</sup> Id. at 105-106.

<sup>107</sup> PHILIPPON, *supra* note 56, at 200-201; *see also* Haris Tabakovic & Thomas Wollmann, *From Revolving Doors to Regulatory Capture? Evidence from Patent Examiners*, NBER Working Paper (2018), <https://ssrn.com/abstract=3185893>; *see generally* Wentong Zheng, *The Revolving Door*, 90 NOTRE DAME L. REV. 1265, 1269 (2015).

<sup>108</sup> Deng & Liu, *supra* note 89, at 686.

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> Id. at 686 & 690.

<sup>112</sup> Michael Tan, *China's New E-Commerce Law – Good or Bad News for Business*, LEXOLOGY (Nov. 30, 2018), <https://www.lexology.com/library/detail.aspx?g=c872dc75-7e6d-49a6-ae31-fd8d5bba3a2e>; *see also* Deng & Liu, *supra* note 89 at 686.

<sup>113</sup> *See* Mozur, *supra* note 86.

<sup>114</sup> *See* Mimi Zou, *The Regulatory Challenges of 'Uberization' in China: Classifying Ride-Hailing Drivers*, 33 INT'L J. COMPARATIVE LABOUR L. & INDUSTRIAL RELATIONS, 269, 285 (2017).

significantly diluted in the final version, leaving the online platforms with great freedom to sign different types of contracts with drivers.<sup>115</sup> As a consequence, ride-hailing companies continue shedding their liabilities by avoiding formal labour contracts with their delivery drivers.<sup>116</sup>

Even during the current round of enforcement against Big Tech, Chinese tech companies appeared successful in fending off some unfavorable legislative proposals.<sup>117</sup> In November 2020, the Anti-Monopoly Bureau of the State Administration for Market Regulation (“SAMR”) released draft antitrust guidelines on online platforms.<sup>118</sup> The guidelines included several provisions which could have reduced the burden of proof for the antitrust regulator in proving online platforms dominance, making it easier for them to prosecute cases against the platforms.<sup>119</sup> For instance, the draft guidelines allowed regulators to avoid defining the relevant market in difficult cases.<sup>120</sup> The draft also indicated that the possession of data can be used as a consideration in deciding whether a platform constitutes an essential facility.<sup>121</sup> However, the final version of the guidelines removed all these controversial provisions, added many business justifications in considering abusive conduct, and gave more room for tech firms to defend themselves when they are subject to antitrust scrutiny.<sup>122</sup>

### C. Bureaucratic Inertia

As a result of strong government support and active lobbying from Chinese tech firms, Chinese regulatory authorities are averse to taking aggressive stances towards regulating Chinese tech giants. This inertia is deeply ingrained in the bureaucratic policymaking process.<sup>123</sup> All central

---

<sup>115</sup> Ministry of Transportation, *Wangluo Yuyue Chuzu Qiche Jingying Fuwu Guanli Zanxing Banfa (Zhengqiu Yijian Gao)*[网络预约出租汽车经营服务管理暂行办法] (*Interim Measures for the Administration of Online Taxi Booking Business Operations and Services*) (July 14, 2016) (hereinafter ‘Interim Measures’), Art. 18, [《网络预约出租汽车经营服务管理暂行办法》公布 国务院部门政务联播 中国政府网 \(www.gov.cn\)](http://www.gov.cn).

<sup>116</sup> Zou, *supra* note 114, at 286.

<sup>117</sup> Raymond Zhong, *Alibaba Faces \$2.8 Billion Fine From Chinese Regulators*, N.Y. TIMES (Apr. 9, 2021), <https://www.nytimes.com/2021/04/09/technology/china-alibaba-monopoly-fine.html>.

<sup>118</sup> King & Wood Mallesons, *10 Highlights of the Antitrust Guidelines for Platform Economy* (Nov. 18, 2020), <https://www.chinalawinsight.com/2020/11/articles/compliance/10-highlights-of-the-antitrust-guidelines-for-platform-economy/>.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> Jane Zhang & Iris Deng, *China Issued Final Version of Anti-Monopoly Guidelines As Beijing Moves to Rein in Big Tech*, SOUTH CHINA MORNING POST (Feb. 8, 2021), <https://www.scmp.com/tech/policy/article/3120977/china-issues-final-version-anti-monopoly-guidelines-beijing-moves-rein>.

<sup>123</sup> See Zhang, *supra* note 26, at 57-59. See also generally KENNETH G. LIEBERTHAL & DAVID M. LAMPTON, BUREAUCRACY, POLITICS, AND DECISION MAKING IN POST-MAO CHINA (1992);

ministries and local governments are part of China's vast bureaucracy who derive their legitimacy from the delegation of power by the top leadership in Beijing.<sup>124</sup> Because officials are evaluated through a Leninist-style nomenklatura process, the whole bureaucracy is organized on an upward accountability system.<sup>125</sup> This tightly coupled organizational structure undermines the effectiveness and authority of local governance, discouraging information transmission from the local to the central authorities.<sup>126</sup> In the face of an overall national economic agenda of fostering innovation and entrepreneurship, high uncertainty about the consequences of regulating innovation, and noisy signals from other advanced jurisdictions such as the United States and the EU about how to regulate Big Tech, Chinese regulatory authorities treaded cautiously by adopting lax rather than drastic actions against tech firms.

A good example can be found in the regulation of peer-to-peer (P2P) platforms, which connect borrowers and lenders without the intermediation of banks. P2P platforms act as information intermediaries by gathering information, evaluating credit and facilitating information exchange between borrowers and lenders.<sup>127</sup> As the Chinese banking industry is dominated by state banks which prefer to lend to large state-owned firms, this form of business garnered strong demand from small private businesses that cannot get credit from big banks.<sup>128</sup> At the same time, because P2P platforms only facilitate lending but do not provide credit themselves, they are normally not viewed as commercial lenders.<sup>129</sup> Indeed, P2P activities weren't covered in pre-existing financial regulations, nor was it clear which regulator had the authority to oversee this sector.<sup>130</sup> Instead, they were subject to piecemeal rules scattered in different areas of commercial laws such as the Criminal Law, the Consumer Protection Law, the Securities Law, and the Supreme People's Court's judicial interpretation.<sup>131</sup> This regulatory vacuum, however, enabled the P2P industry to grow exponentially.<sup>132</sup> It wasn't until 2015 that the State Council issued guiding opinions which

---

<sup>124</sup> Zhou, *supra* note 17, at 479.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 481.

<sup>127</sup> Chuanman You, *Recent Developments of FinTech Regulation in China: A Focus on the New Regulatory Regime for the P2P Lending (Loan-based Crowdfunding) Market*, 13 CAPITAL MARKET L. J. 85, 86 (2018).

<sup>128</sup> Shen Wei, *Internet Lending in China: Status Quo, Potential Risks and Regulatory Options*, 31 COMPUTER L. SECURITY REV. 793, 795 (2015).

<sup>129</sup> *Id.* at 800. *See also* You, *supra* note 127, at 93-94.

<sup>130</sup> *Id.* *See also* You, *supra* note 127, at 95-96.

<sup>131</sup> *See* You, *supra* note 127, at 88.

<sup>132</sup> Cheng Ding *et al.*, *Lessons from the Rise and Fall of Peer-to-Peer Lending in China*, 22 J. BANKING REGULATION 133, 136 (2021) (observing that between 2011 and 2015, the number of P2P lenders grew from 50 to 2595). *See also* Chao Deng & Xie Yu, *China's Once-Hot Peer-to-Peer Lending Business Is Withering*, WALL ST. J. (Feb. 2, 2020), [https://www.wsj.com/articles/chinas-once-hot-peer-to-peer-lending-business-is-withering-11580644804?mod=article\\_inline](https://www.wsj.com/articles/chinas-once-hot-peer-to-peer-lending-business-is-withering-11580644804?mod=article_inline) (noting that the total volume of lending totaled almost \$100 billion in 2015, compared to \$34 billion in the United States).



laid down the regulatory blueprint to regulate internet finance.<sup>133</sup> And China Banking Regulatory Commission finally tightened regulation by setting up a comprehensive legal regime to oversee the P2P industry in 2016.<sup>134</sup>

Another example is China's regulation of the variable interest entity (VIE) structure.<sup>135</sup> A large number of Chinese tech firms has adopted a VIE structure to circumvent a government restriction on foreign investment in the internet sector. Because VIEs operate in a legal grey area, none of the Chinese bureaucratic departments want to regulate VIEs for fear of legitimizing them.<sup>136</sup> As a result, tech giants such as Alibaba and Tencent have made hundreds of acquisitions without needing to notify the Chinese antitrust authority at all.<sup>137</sup> In fact, Alibaba and Tencent have become two of the largest investors in the Chinese digital economy, together owning most of the unicorns in the industry.<sup>138</sup> At the moment, Tencent has only lagged behind Sequoia Capital, a Silicon Valley investment fund, in terms of the unicorns it has invested in.<sup>139</sup> It wasn't until late 2020 that the Chinese antitrust authority started to actively intervene in merger cases involving a VIE structure.

Over the past decade, there have been numerous complaints about anticompetitive behavior in Chinese e-commerce. For example, JD.com, a fierce rival to Alibaba, filed a complaint to the Chinese antitrust regulator about the 'choose one from two' exclusionary practices of Alibaba from 2015.<sup>140</sup> The Chinese antitrust authority did not initiate any formal antitrust investigations, but

---

<sup>133</sup> People's Bank of China, Renmin Yinhang Deng Shi Bumen Fabu Guanyu Cujin Hulianwang Jinrong Jiankang Fazhan de Zhidao Yijian [人民银行等十部门发布《关于促进互联网金融健康发展的指导意见》] (*Ten Ministries Including the People's Bank of China Published Guiding Opinions on Promoting the Healthy Development of Internet Finance*), Yin Fa (2015) No. 221, [http://www.gov.cn/zhengce/2015-12/14/content\\_5055119.htm](http://www.gov.cn/zhengce/2015-12/14/content_5055119.htm).

<sup>134</sup> China Banking Regulatory Commission, *Wangluo Jiedai Xinxi Zhongjie Jigou Yewu Huodong Guanli Zanxing Banfa Da Jizhe Wen* [《网络借贷信息中介机构业务活动管理暂行办法》答记者问] (*The State Council of Peoples' Republic of China, Press Release on the Interim Administrative Measures for the Business Activities of P2P Lending Information Intermediaries*), Aug. 24, 2016, [http://www.gov.cn/xinwen/2016-08/24/content\\_5102030.htm](http://www.gov.cn/xinwen/2016-08/24/content_5102030.htm).

<sup>135</sup> For a comprehensive overview of the VIE structure, see Marcia Ellis *et al.*, *The VIE Structure: Past, Present and Future-Part I*, HONG KONG LAWYER (June 5, 2020), [The VIE Structure: Past, Present and Future – Part I | Hong Kong Lawyer \(hk-lawyer.org\)](http://www.hk-lawyer.org)

<sup>136</sup> *Id.* This is also confirmed by my interview with a former government official from a central ministry (Dec. 2020).

<sup>137</sup> Zhang, *supra* note 123.

<sup>138</sup> *Id.* (unicorns refer to startups valued over \$1 billion in China).

<sup>139</sup> Li Yuan, *How China's Most-Hated Internet Company Decided to Play Nice*, N.Y. TIMES (June 2, 2021), <https://www.nytimes.com/2021/06/02/technology/china-tencent-monopoly.html>. (noting that Tencent has invested in more than 800 companies as of 2019).

<sup>140</sup> Zhang, *supra* note 123.

opted for more lenient regulatory tools such as the Anti-Unfair Competition Law or the E-Commerce Law to deal with these complaints.<sup>141</sup> These laws lack teeth, as the maximum fines that can be imposed are rather low.<sup>142</sup> Firms therefore ignored regulatory demands and treated the penalties as a cost of doing business—they paid fines and continued with their exclusionary practices. Similar to serious lag in intervening in mergers with a VIE structure, the Chinese antitrust regulator only began to escalate its actions by launching an antitrust investigation into Alibaba in late 2020.

#### IV. How the Pendulum is Swinging Towards Harshness

This lax regulatory environment described above nurtured domestic tech giants to become tech goliaths, commanding attention and loyalty from a large population of Chinese users. Armed with troves of data, deep coffers and an influence that spans many aspects of people’s lives, these internet giants have become an important target for regulation in China.

##### A. Shifting Balance

The policy debate about regulating tech companies has been shifting in China in the past few years. There are four major reasons that account for this change. First, serious cases involving personal safety and financial stability issues started to emerge soon after the introduction of new platform products and services, posing a threat to social stability. Given the outsized influence of Big Tech, even a seemingly small probability of operational failures can generate strong regulatory repercussions. Take Didi Chuxing, for example. In 2015, Didi launched Shunfengche, a ‘hitchhiking’ service which matched car owners who were willing to offer a free ride to those needing a lift.<sup>143</sup> In a few years, problems started to emerge when a few female passengers using the Shunfengche service were raped and murdered by their drivers.<sup>144</sup> Although these incidents were low-probability events, they triggered a massive public uproar, leading Didi to shut down the Shunfengche service.<sup>145</sup> Regulators from various major cities also tightened regulation, ordering Didi to overhaul its screening mechanisms for drivers and improve safety protection for passengers.<sup>146</sup> The series of scandals that erupted in the P2P industry offer another example. In 2015, Ezubao, one of China’s largest P2P lenders, was found to be engaging in a Ponzi scheme.

---

<sup>141</sup> Id.

<sup>142</sup> Id.

<sup>143</sup> Si Ma, *Didi Helps Migrant Workers Go Home*, CHINA DAILY.COM.CN, (Jan. 19, 2017), [http://www.chinadaily.com.cn/newsrepublic/2017-01/19/content\\_28004907.htm](http://www.chinadaily.com.cn/newsrepublic/2017-01/19/content_28004907.htm).

<sup>144</sup> Sui-Lee Wee, *Didi Suspends Carpooling in China After 2<sup>nd</sup> Passenger Is Killed*, N.Y. TIMES (Aug. 26, 2018), <https://www.nytimes.com/2018/08/26/business/didi-chuxing-murder-rape-women.html>

<sup>145</sup> Id.

<sup>146</sup> Yue Wang & Robert Olsen, *China’s Didi Chuxing Faces Intense Pressure Amid Public Anger Over Second Passenger Death*, FORBES (Sep. 1, 2018), <https://www.forbes.com/sites/ywang/2018/09/01/chinas-didi-chuxing-faces-intense-pressure-amid-public-anger-over-second-passenger-death/?sh=237b08b97a6d>.

<sup>147</sup> As of January 2016, Ezubao had defrauded over 900,000 users who lost almost RMB 50 billion.<sup>148</sup> Angry protests erupted in 34 Chinese cities.<sup>149</sup> The collapse of Ezubao generated a domino effect, with 50% of the P2P platforms being identified as ‘problematic’ with serious operational difficulties in 2016.<sup>150</sup> A series of subsequent regulatory crackdowns gave rise to another wave of scandals and defaults in 2018.<sup>151</sup> By late 2020, Chinese banking regulators had all but shut down P2P platforms.<sup>152</sup>

Second, Chinese regulators have grown increasingly wary of the risks of moral hazards associated with platform operation. As online platforms serve as intermediaries connecting buyers and sellers, it is often not entirely clear what their legal responsibilities are with respect to conflicts arising from their platforms. As such, online platforms have the incentive to engage in excessively risky transactions without bearing any liabilities. Consider an example in the food-delivery industry. Meituan and Ele.me, two major food delivery companies, have been criticized for using smart algorithms to set up routes and impose tight deadlines on delivery drivers, leading to many traffic accidents.<sup>153</sup> As most of these drivers are crowdsourced couriers rather than full-time employees, they cannot receive social security or compensation for work-related injuries.<sup>154</sup> The absence of formal legal protection for drivers resulted in many labour disputes, some of which escalated into strikes.<sup>155</sup> In one tragic instance, a driver who was not able to receive compensation protested by setting himself on fire.<sup>156</sup> These incidents generated a public outcry and heated debate in China about the liabilities of online platforms. Another example is micro-lending, a popular financial service introduced by Chinese fintech companies. For instance, Ant Group, China’s largest fintech

---

<sup>147</sup> Ponzis to Punters, THE ECONOMIST (Feb. 6, 2016), <https://www.economist.com/china/2016/02/06/ponzis-to-punters>.

<sup>148</sup> Id.

<sup>149</sup> Id.

<sup>150</sup> See You, *supra* note 127, at 96.

<sup>151</sup> Chong Koh Ping & Xie Yu, *China Hails Victory in Crackdown on Peer-to-Peer Lending*, WALL ST. J. (Dec. 9, 2020), <https://www.wsj.com/articles/china-hails-victory-in-crackdown-on-peer-to-peer-lending-11607515547>.

<sup>152</sup> Frank Tang, *China’s P2P Purge Leaves Millions of Victims Out In the Cold, With Losses In the Billions, As Concerns of Social Unrest Swirl*, SOUTH CHINA MORNING POST (Dec. 29, 2020), <https://www.scmp.com/economy/china-economy/article/3115580/chinas-p2p-purge-leaves-millions-victims-out-cold-losses>.

<sup>153</sup> Carol Huang, *Driven to Death? China Food-Delivery Services Criticised for Pressuring Drivers*, CAMPAIGN ASIA (Sep. 10, 2020), <https://www.campaignasia.com/article/driven-to-death-china-food-delivery-services-criticised-for-pressuring-drivers/463537>.

<sup>154</sup> Yuan Yang & Ryan McMorrow, *Chinese Courier Sets Fire to Himself In Protest Over Unpaid Alibaba Wages*, FIN. TIMES (Jan. 12, 2021), <https://www.ft.com/content/d6189ee8-9aea-41dd-a412-b8daba9cacf2>; see also Zou, *supra* note 114, at 286.

<sup>155</sup> Zixu Wang, *In China, Delivery Workers Struggle Against a Rigged System*, SUPCHINA (Apr. 20, 2021), <https://supchina.com/2021/04/20/in-china-delivery-workers-struggle-against-a-rigged-system/>.

<sup>156</sup> See Yang & McMorrow, *supra* note 154.

company, partnered with Chinese state banks to extend microloans to hundreds of millions of small businesses and individuals.<sup>157</sup> According to Ant's IPO filing, banks extend almost 98% of the loans and Ant does not need to bear the risk of default.<sup>158</sup> As Ant has no skin in the game, this generates concerns that Alibaba might engage in excessively risky lending. Indeed, Ant has been found employing deceptive tactics to induce young students to spend money on Taobao by conveniently borrowing through its microlending channels.<sup>159</sup>

Third, the Chinese digital economy has grown to be highly concentrated, giving rise to a whole host of antitrust and competition issues. In the past few years, Tencent and Alibaba have become China's most formidable competitors, operating like a duopoly in the Chinese digital economy.<sup>160</sup> Tencent is a mega entertainment firm with strong market positions that span across social media, music and gaming. Alibaba is a conglomerate with its core business in e-commerce but also invests heavily in social media, entertainment, logistics and cloud computing. Each of these two tech giants own a few super-apps, which are highly popular apps that are not only used by vast user populations, but also provide access to countless 'mini-programs' that can be launched instantly.<sup>161</sup> Over the years, the intense rivalry between Alibaba and Tencent has carved up China's tech sector into two competing ecosystems, each side blocking users from sharing content to the other's ecosystem.<sup>162</sup> For instance, users of WeChat cannot open a link to a product from Taobao, and have to copy and paste the URL in a browser to access the content. Taobao, on the other hand, does not allow Tencent's WeChat Pay as a payment service. Because of the lack of interoperability between these two ecosystems, most new start-ups have no choice but to join either the Alibaba or the Tencent camp in order to survive.<sup>163</sup> In order to further entrench their own dominant positions, leading e-commerce firms such as Alibaba and Meituan also imposed restrictive conditions to force merchants to stay on their platforms.

---

<sup>157</sup> Nan Li & John Darwin Van Fleet, *Ant's Road to Redemption: How the Fintech Giant Can Save Itself*, SUPCHINA (Apr. 20, 2021), <https://supchina.com/2021/05/18/ants-road-to-redemption-how-the-fintech-giant-can-save-itself/>.

<sup>158</sup> Id.

<sup>159</sup> Id.

<sup>160</sup> Alibaba and Tencent Have Become China's Most Formidable Investors, THE ECONOMIST (Aug. 4, 2018), <https://www.economist.com/business/2018/08/02/alibaba-and-tencent-have-become-chinas-most-formidable-investors>.

<sup>161</sup> Caleb Foote & Robert D. Atkinson, *Chinese Competitiveness in the International Digital Economy*, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION (Nov. 23, 2020), <https://itif.org/publications/2020/11/23/chinese-competitiveness-international-digital-economy> at 4. ("WeChat owned by Tencent currently has an active monthly user base of over 1 billion users with over 2.3 million mini-programs. In 2019 alone, WeChat's mini programs facilitated transactions worth \$115 billion, processed through WeChat pay, which is Tencent's digital payment platform. Alipay, owned by Alibaba's affiliate Ant Group, has over 600 million monthly users in 2019, among which over 400 million used mini programs.")

<sup>162</sup> Louise Lucas, *Long Freeze Between Tencent and Alibaba Thaws*, FIN. TIMES (Apr. 30, 2019), <https://www.ft.com/content/c3402462-6728-11e9-a79d-04f350474d62>;

<sup>163</sup> Wee, *supra* note 144.

Last but not least, increasing concentration in the tech sector has generated growing concerns about income inequality. China is among the world's most unequal countries.<sup>164</sup> Yet China's tech boom appears to have further widened the chasm between the rich and the poor.<sup>165</sup> By leveraging the vast amount of data collected from their consumers, Chinese e-commerce platforms employ smart algorithms in order to price discriminate and extract more surplus from Chinese consumers. Meanwhile, Chinese tech giants have taken advantage of cheap labour in China to aggressively expand their businesses. Due to the high concentration of the Chinese tech industry, large online platforms can behave like a monopsony by exploiting their suppliers, contractors and employees. Indeed, top executives and engineers in Chinese Big Tech are rewarded with generous paychecks and lucrative options while the vast population of frontline workers such as delivery workers and ride-hailing drivers earn little.<sup>166</sup> In 2020, the Guangdong Restaurant Association publicly accused Meituan, a top food delivery app for significantly increasing the commission for restaurants since the outbreak of the pandemic.<sup>167</sup> In response to the public uproar, Meituan made some concessions and negotiated a deal with the association to lower its commission.<sup>168</sup>

## B. The Tipping Point

Although regulatory tensions in the tech sector had been building up for many years, they had yet to tip the balance between innovation and regulation till early 2020. In fact, the State Council's annual work report released in May 2020 continued to put an emphasis on applying a 'cautious and tolerant' approach in regulating the platform economy.<sup>169</sup> Yet things changed overnight. On

---

<sup>164</sup> Sonali Jain-Chandra *et al.*, *Inequality in China – Trends, Drivers and Policy Remedies (IMF Working Paper WP18/27)*, <https://www.imf.org/en/Publications/WP/Issues/2018/06/05/Inequality-in-China-Trends-Drivers-and-Policy-Remedies-45878>. (noting that China is now home to 878 billionaires, the highest number in the world.)

<sup>165</sup> Nikki Sun, *China's Tech Boom Leaves Wide Rich-Poor Chasm*, NIKKEI ASIA (Sep. 18, 2018), <https://asia.nikkei.com/Spotlight/Asia-Insight/China-s-tech-boom-leaves-wide-rich-poor-chasm>. (According to a 2016 study from Peking University, the top 1% of the population controls one-third of the country's wealth while the bottom 25% holds less than 1%). See also Branko Milanovic, *China's Inequality Will Lead It to a Stark Choice*, FOREIGN AFFAIRS (Feb. 11, 2021), <https://www.foreignaffairs.com/articles/china/2021-02-11/chinas-inequality-will-lead-it-stark-choice> (China's Gini coefficient, which measures wealth and income distribution, was 0.47 in 2019, compared with 0.41 in the United States).

<sup>166</sup> Yang & McMorrow, *supra* note 150.

<sup>167</sup> Minghe Hu, *Meituan Refutes Claims Its Delivery Fees Are Hurting Restaurants Amid Coronavirus Downturn*, SOUTH CHINA MORNING POST (Apr. 13, 2020), <https://www.scmp.com/tech/apps-social/article/3079644/meituan-refutes-claims-its-delivery-fees-are-hurting-restaurants>.

<sup>168</sup> Yuan Yang, *Should Super-Apps Share the Spoils With Restaurants?* FIN. TIMES (May 5, 2020), <https://www.ft.com/content/44ad94b0-8e08-11ea-9e12-0d4655dbd44f>.

<sup>169</sup> Li Keqiang, Report on the Work of the Government (May 22, 2020) (“To further unleash the creativity of various sectors, we will launch a new round of pilot reforms for making innovations across the board, build more innovation and entrepreneurship demo centers, continue *accommodative and prudential* regulation, and develop the platform economy and the sharing economy.”); see also Full Text: Report on the Work of the Government, XINHUA NEWS (May 30, 2020), [http://english.www.gov.cn/premier/news/202005/30/content\\_WS5ed197f3c6d0b3f0e94990da.html](http://english.www.gov.cn/premier/news/202005/30/content_WS5ed197f3c6d0b3f0e94990da.html).

October 24, 2020, Jack Ma made a highly controversial speech at the Bund Financial summit in Shanghai. Ma scathingly criticized Chinese financial regulation, chiding state banks for operating with a ‘pawn shop’ mentality and referred to the Basel Accords as a ‘club for the elderly’.<sup>170</sup> Ma’s speech violated the taboo of directly challenging the authority and legitimacy of existing financial regulations. This reportedly infuriated financial regulators, who stepped out and voiced their displeasure with Jack Ma and Ant Group.<sup>171</sup> On November 3, 2020, the Shanghai Stock Exchange halted the IPO of Ant, citing changes in the regulatory environment.<sup>172</sup> The balance was then tipped decisively towards regulation. So how did Jack Ma’s speech and Ant’s mega IPO, which would have brought China tremendous pride, become the tipping point in regulating the Chinese platform economy?

I propose that there are four major reasons. First is that the Chinese top leadership is very sensitive to any perceived risk to financial stability. In recent years, the Chinese financial regulators have grown increasingly wary of opaque ownership structures and the regulatory arbitrage of non-financial institutions providing financial services.<sup>173</sup> In the aftermath of the financial fallouts involving HNA Group and Anbang Insurance Corp Co., as well as the frauds that have erupted in P2P lending, the central leadership implemented a series of organizational shakeups to exercise comprehensive oversight. In 2017, the central government created the Financial Stability and Development Commission headed by Vice Premier Liu He to coordinate the various financial regulators in order to ensure that new financial innovations do not fall through the cracks of traditional regulation.<sup>174</sup> The next year saw a massive new government overhaul which further consolidated financial regulatory power by merging the banking and insurance regulators.<sup>175</sup> Meanwhile, the PBOC took over the banking regulator’s legislative functions, further solidifying its leading role in maintaining financial stability.<sup>176</sup> As such, the balance was already tilting towards more regulation since 2018, well before Ant’s IPO.

---

<sup>170</sup> Yang & Wei, *supra* note 5.

<sup>171</sup> Id.

<sup>172</sup> Id.

<sup>173</sup> Id. See also Angela Huyue Zhang, *China’s Regulatory War on Ant*, PROJECT SYNDICATE (Mar. 12, 2021), <https://www.project-syndicate.org/commentary/china-bureaucracy-regulatory-war-on-ant-group-by-angela-huyue-zhang-2021-03#:~:text=The%20Shanghai%20Stock%20Exchange%20suspended,crackdown%20on%20Chinese%20Big%20Tech>.

<sup>174</sup> Barry Naughton, *Xi’s System, Xi’s Men: After the March 2018 National People’s Congress*, 56 CHINA LEADERSHIP MONITOR (Spring 2018), <https://www.hoover.org/research/xis-system-xis-men-after-march-2018-national-peoples-congress>.

<sup>175</sup> Id.

<sup>176</sup> Id.

Second is strong opposition from vested interest groups. The Chinese financial sector has traditionally been dominated by state-owned banks, a very large vested interest group. This contrasts with the e-commerce and social media sector where there is no existing and organized interest group and consumers are highly dispersed and heterogenous. As Ant Group expanded from online payments to other financial services including investment, credit and insurance, it started to encroach upon the services that have traditionally been serviced by Chinese state banks.<sup>177</sup> Although Ant tried to enlist the support from state banks by partnering with them to extend microloans, some banks felt that they had been dealt a bad hand – they were the ones who extended the loans and had to bear the risk of default, while Ant would keep a big chunk of the profits from interest payments.<sup>178</sup> Yet individual banks had little leverage in bargaining with Ant due to the latter’s unrivaled position in online payment and microlending.<sup>179</sup>

Third is the aggressive regulatory arbitrage sought by firms such as Ant. Since its establishment in 2014, Ant has created many new financial products in microlending, insurance, and wealth management, none of which seem to fall within the existing regulatory framework. This allowed Ant to seek arbitrage among different regulatory authorities and find room to grow and expand very quickly. Although almost 90% of Ant’s revenue is derived from financial services, Ant has been trying hard to label itself as a technology company.<sup>180</sup> Ant saw a good opportunity when the Trump Administration threatened to delist many Chinese companies from US stock exchanges.<sup>181</sup> To lure Chinese tech firms back home to trade in China, China launched the Technology and Innovation Board (the STAR market), a new Chinese technology stock market similar to NASDAQ.<sup>182</sup> As Ant’s IPO debut could give a significant boost to the STAR market, China Securities Regulatory Commission fast-tracked the listing process for Ant.<sup>183</sup> Ant’s IPO was highly oversubscribed, gaining the firm a high valuation as a technology company rather than as a bank.<sup>184</sup> Indeed, Jack Ma’s controversial speech in Shanghai appears to have been the entrepreneur’s last attempt to lobby for favorable regulatory treatment in anticipation of tightening regulation over his business.

---

<sup>177</sup> See Zhang, *supra* note 121.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> See Li & Van Fleet, *supra* note 157. (Six months before the IPO, Ant changed its name from Ant Financial to Ant Group to avoid regulatory scrutiny).

<sup>181</sup> Sun Yu & Tom Mitchell, *The Man Taking on Jack Ma Cements His Status as A Rising Star*, FIN. TIMES (Feb. 3, 2021), <https://www.ft.com/content/f44fae66-21c0-48ff-9dd7-bb85ec0e9cf2>.

<sup>182</sup> Lingling Wei, *Ant IPO-Approval Process under Investigation by Beijing*, WALL ST. J. (Apr. 27, 2021), <https://www.wsj.com/articles/ant-ipo-approval-process-under-investigation-by-beijing-11619532022>.

<sup>183</sup> See Yu & Mitchell, *supra* note 181.

<sup>184</sup> See Li & Van Fleet, *supra* note 157 (noting that the price-to earning ratio of tech firms are four times of that of banks).

Last is the presence of a persistent regulator. Unlike other regulatory authorities who do not need to bear much consequence from their regulatory failures, the PBOC is the lender of last resort and needs to bear the residual risk of bailing out troubled banks.<sup>185</sup> Concerned about the risk of moral hazards, the PBOC has long been pressing for legislation to regulate Ant as a financial holding company. In 2018, the PBOC was already drafting regulations that proposed increased regulation of fintech companies via stricter capital-reserve requirements and risk management rules.<sup>186</sup> During the summer of 2020, the PBOC issued a spate of regulations, guidelines and notices to try to curb excessive risk from digital finance.<sup>187</sup> Even after Ant filed for IPO, the PBOC issued draft guidelines indicating that it would regulate Ant and other fintech companies as financial holding companies.<sup>188</sup> During Ant's IPO process, the PBOC and other financial regulators grew more alarmed as Ant's high valuation as a tech firm rather than as a bank stoked fears of a bubble.<sup>189</sup> This explains the regulator's relentless efforts to tighten regulation over Ant.

### C. Law Enforcement Campaign

Since the debacle of Ant Group's IPO, the Chinese central leadership has resorted to a law enforcement campaign, which mobilized various legislative and administrative resources and propaganda to tighten regulation over Chinese tech firms. Campaigns are a very powerful governance tool in the pocket of the CCP to overcome bureaucratic resistance and rigidity.<sup>190</sup> They trace their roots to the revolutionary period, when mass mobilization ("yundong") was a defining feature of Mao's governance strategy.<sup>191</sup> Although mass campaigns have largely vanished after Mao, scholars observe that the Chinese government continued to employ campaign techniques by mobilizing grassroot party networks along with a propaganda blitz that was intended to enlist mass

---

<sup>185</sup> See generally Logan Wright & Daniel Rosen, *Credit and Credibility: Risks to China's Economic Resilience*, CSIS (Oct. 3, 2018), <https://www.csis.org/analysis/credit-and-credibility-risks-chinas-economic-resilience>.

<sup>186</sup> Stella Yifan Xie & Chao Deng, *China to Tighten Rules on Five Financial Giants*, WALL ST. J. (Nov. 3, 2018), <https://www.wsj.com/articles/china-to-tighten-rules-on-five-financial-giants-1541246489>.

<sup>187</sup> Yang & Wei, *supra* note 5.

<sup>188</sup> Stella Yifan Xie, *China's New Financial Rules to Cover Jack Ma's Ant Group*, WALL ST. J. (Sep. 13, 2020), <https://www.wsj.com/articles/chinas-new-financial-rules-to-cover-jack-mas-ant-group-11600013259>.

<sup>189</sup> See Zhang, *supra* note 173.

<sup>190</sup> See e.g., Nicole Ning Liu *et al.*, *Campaign-style Enforcement and Regulatory Compliance*, 75 PUBLIC ADMINISTRATION REV. 85 (2015); Benjamin van Rooij, *The Campaign Enforcement Style: Chinese Practice in Context and Comparison*, in *COMPARATIVE LAW AND REGULATION: UNDERSTANDING THE GLOBAL REGULATORY PROCESS* 217–37 (Bignami F, Zaring D eds. 2016).

<sup>191</sup> Xin Frank He, *Sporadic Law Enforcement Campaigns As A Means of Social Control: A Case Study From A Rural-Urban Migrant Enclave in Beijing*, 17 *Columbia J. Asian L.* 121, 134 (2003) ("during the revolutionary period, the CCP had to rely on mass movements and campaigns to implement its policies because it had no state institutions."); see also SHIPING ZHENG, *PARTY V. STATE IN POST-1949 CHINA: THE INSTITUTIONAL DILEMMA* 154 (1996).



support.<sup>192</sup> Campaigns have been deployed in a wide range of legal areas such as crime and punishment, anti-corruption, environmental protection and financial regulation.<sup>193</sup> Campaigns usually involve imposing legal sanctions swiftly and severely to create strong deterrent effects.<sup>194</sup>

In the current campaign to regulate Big Tech, the PBOC was the first to express its criticisms of Ant. A few days after Jack Ma's controversial speech in Shanghai, *Finance News*, a newspaper affiliated with the PBOC, published three days of commentaries which rebutted Ma's Shanghai speech argument by argument.<sup>195</sup> These commentaries elaborated on the systematic financial risks posed by Ant and other fintech companies.<sup>196</sup> They also chided Ant for seeking regulatory arbitrage by trying to disguise itself as a technology firm, encouraging wanton consumption among young students, collecting excessive amounts of consumer data and infringing personal privacy.<sup>197</sup> They called for tightened control of market access, enhancement of consumer and data protection, and regulatory improvement.<sup>198</sup> These three commentaries represent a strong rebuttal to Jack Ma's speech; in having them published, the PBOC appeared to take first mover advantage to shape the rhetoric for public discussion of the case. The fact that the PBOC took such a high-profile approach in voicing dissent also demonstrates the resolution and determination of the central bank in trying to rein in Ant Group. It further provides strong evidence that the fundamental trigger of the law enforcement campaign was regulatory tensions between Ant Group and the financial regulators. On October 31, 2020, the Financial Stability and Development Committee headed by Liu He

---

<sup>192</sup> Elizabeth J. Perry, *Mass Campaigns to Managed Campaigns: "Constructing A New Socialist Countryside"*, in MAO'S INVISIBLE HAND 50 (Elizabeth J. Perry & Sebastian Heilmann, eds. 2011). (quoting Zhao Ziyang, the former general secretary of the CCP: "I specifically stated that The Third Plenum resolved that there would be no more mass campaigns. However, people are accustomed to the old ways, so whenever we attack anything, these methods are still used.")

<sup>193</sup> See e.g., Suan Trevaskes, *Severe and Swift Justice in China*, 47 BRIT. J. CRIMINOLOGY 23 (2007); Peng Wang, *Politics of Crime Control: How Campaign-Style Law Enforcement Sustains Authoritarian Rule in China*, 60 BRITISH J. CRIMINOLOGY 422 (2019); BENJAMIN VAN ROOIJ, REGULATING LAND AND POLLUTION IN CHINA: LAWMAKING, COMPLIANCE AND ENFORCEMENT; THEORY AND CASES (2006); Duoqi Xu et al., *China's Campaign-Style Internet Finance Governance: Causes, Effects, and Lessons Learned for New Information-based Approaches to Governance*, 35 COMPUTER L. & SECURITY REV. 3 (2019).

<sup>194</sup> See e.g., Van Rooij, *supra* note 190; see also Trevaskes, *supra* note 193.

<sup>195</sup> Feiyu Zhang, *Guanyu Jinrong Chuangxin yu Jianguan de Ji Dian Renshi [关于金融创新与监管的几点认识] (A Few Points Regarding Financial Innovation and Regulation)*, CHINA BUSINESS NETWORK [第一财经] (Oct. 31, 2020), [https://www.financialnews.com.cn/hg/202010/t20201031\\_204309.html](https://www.financialnews.com.cn/hg/202010/t20201031_204309.html); Yu Shi, *Zai Jinrong Keji Fazhan Zhong Xuyao Sikao He Liqing de Jige Wenti [在金融科技发展中需要思考和厘清的几个问题] (A Few Questions That Deserves Clarification in the Course of FinTech Development)*, CAIXIN (Nov. 2, 2020), <https://opinion.caixin.com/2020-11-02/101622131.html>; Jueshou Zhou, *Daxing Hulianwang Qiye Jinru Jinrong Lingyu de Qianzai Fengxian yu Jianguan [大型互联网企业进入金融领域的潜在风险与监管] (Potential Risks for Big Tech to Enter Financial Industry and the Regulations)*, FINANCIALNEWS.COM.CN (Nov. 2, 2020), [https://www.financialnews.com.cn/gc/gz/202011/t20201102\\_204376.html](https://www.financialnews.com.cn/gc/gz/202011/t20201102_204376.html).

<sup>196</sup> Id.

<sup>197</sup> Id.

<sup>198</sup> Id.

decided that all kinds of financial activities and similar businesses should be regulated in the same way, clearing the way for regulators to tighten their scrutiny of Ant.<sup>199</sup> This message was further reiterated by the Politburo on December 11, 2020, when it declared “strengthening antitrust regulation and preventing the excessive expansion of capital” to be a work priority.<sup>200</sup>

A flurry of legislative and enforcement activities followed. On November 2, 2020, four financial regulators jointly released draft rules on micro-lending which required microlenders, among other things, to contribute at least 30% of the loans they fund jointly with their partner bank.<sup>201</sup> This new rule was aimed at ensuring that microlenders such as Ant would have skin in the game, thus reducing the risk of moral hazards. On the same day, Jack Ma and a few executives of Ant were summoned for a meeting with four financial regulators.<sup>202</sup> About a week later, the antitrust authority of the SAMR released draft antitrust guidelines on the platform economy, which aimed to tighten the antitrust regulation of online platforms.<sup>203</sup> On December 26, 2020, four Chinese financial regulators invited Ant for an administrative interview.<sup>204</sup> Seeing that Ant appeared “too slow or too recalcitrant” to follow these directives, Chinese financial regulators invited 13 fintech businesses including Ant for a second administrative interview in April 2021 and imposed more specific and stringent requirements.<sup>205</sup>

In the meantime, the antitrust bureau at the SAMR began vetting a large number of past mergers and acquisitions involving VIE structures and penalized many that failed to notify it about their transactions.<sup>206</sup> However, the fines that were imposed were relatively low as the statutory limit is

---

<sup>199</sup> Yang & Wei, *supra* note 5.

<sup>200</sup> Zhongyang Yizhou Liang Ti Qianghua Fan Longduan he Fangzhi Ziben Wuxu Kuozhang Dui Ziben Shichang 27 Zi Yaoqiu [中央一周两提强化反垄断和防止资本无序扩张 对资本市场 27 字要求] (The Central Government Emphasized Reinforcing Antitrust Efforts and Preventing Capital From Expanding in a Disorderly Fashion Twice in a Week and Made a 27-word Request), SINA NEWS (Dec. 18, 2020), <https://finance.sina.com.cn/stock/stockptd/2020-12-18/doc-iiiznctke7264478.shtml>.

<sup>201</sup> UPDATE 1-China Issues Draft Rules to Regulate Online Micro-Lending Business, REUTERS (Nov. 3, 2020), <https://www.reuters.com/article/china-lending-idUSL1N2HP035>.

<sup>202</sup> Yang & Wei, *supra* note 5.

<sup>203</sup> See *supra* note 118.

<sup>204</sup> John Liu *et al.*, *China Tells Ant to Return to Its Payment Roots, Places Curbs*, BLOOMBERG (Dec. 27, 2020), <https://www.bloomberg.com/news/articles/2020-12-27/china-asks-ant-to-return-to-origin-of-payments-service>. (The regulators imposed several directives on Ant: first, Ant was to disconnect its payment services from its microlending business; second, all of Ant’s financial services were to be subject to strict capital requirements; and third, Ant should restructure as a financial holding company with Chinese walls to separate its payment services, banking, insurance and investment services to prevent conflicts of interest.)

<sup>205</sup> See Li & Van Fleet, *supra* note 157.

<sup>206</sup> Freshfields Bruckhaus Deringer, *The Coming Wave of Stringent Enforcement Actions in China* (Mar. 19, 2021), <https://www.freshfields.com/en-gb/our-thinking/knowledge/briefing/2021/03/the-coming-wave-of-stringent-enforcement-actions-in-china-4425/>.

only RMB500,000; the authority also did not unwind any of the past deals.<sup>207</sup> In July 2021, SAMR blocked a merger between Huya and Douyu, the two largest live-streaming video game platforms in China.<sup>208</sup> It also imposed remedies on the 2016 merger between Tencent Music and China Music Corporation, requiring Tencent Music to end exclusivity arrangements with global record label companies.<sup>209</sup> In addition to active merger enforcement, the SAMR also initiated a few high-profile conduct investigation. On Christmas Eve of 2020, the SAMR announced an investigation into Alibaba for conducting a “choose one from two” business practice.<sup>210</sup> The regulator concluded its investigation in four months and imposed a fine of almost USD2.8 billion on Alibaba.<sup>211</sup> The lightning speed of the investigation was a sharp departure from previous practice in large dominance cases, which could take years to conclude.<sup>212</sup> After the record fine on Alibaba, four central ministries including the SAMR summoned 34 tech firms for an administrative interview, requesting these firms to rectify their exclusionary conduct within a month.<sup>213</sup> All these firms vowed to adhere to the regulatory demand by issuing public statements promising to improve legal compliance. In late April 2021, the SAMR launched another antitrust investigation into Meituan, an online delivery company for conducting exclusionary practices similar to Alibaba.<sup>214</sup>

Cybersecurity also became a flash point during this round of the enforcement campaign. On July 2, 2021, the Cyberspace Administration of China (CAC) announced a cybersecurity investigation into Didi Chuxing, two days after the ride-hailing giant’s debut on New York Stock Exchanges.<sup>215</sup> This action appears to be a deliberate and strategic tactic to inflict a reputation sanction on the firm

---

<sup>207</sup> Id.

<sup>208</sup> Iris Deng, *China’s Antitrust Regulator Blocks Tencent’s US \$5.3 Billion Merger of Game Streamers Huya and Douyu in Landmark Antimonopoly Case*, South China Morning Post (July 10, 2021), [China’s antitrust regulator blocks Tencent’s US\\$5.3 billion merger of game streamers Huya and Douyu in landmark anti-monopoly case | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/antitrust/article/3131121/china-antitrust-fury-drops-upon-meituan-after-record-fine-alibaba)

<sup>209</sup> Yujie Xue & Iris Deng, *China Antitrust: Beijing Orders Tencent to End Exclusive Music Licensing Deals in A First for the Country*, SOUTH CHINA MORNING POST (July 24, 2021), [China antitrust: Beijing orders Tencent to end exclusive music licensing deals in a first for the country | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/antitrust/article/3131121/china-antitrust-fury-drops-upon-meituan-after-record-fine-alibaba)

<sup>210</sup> Raymond Zhong, *With Alibaba Investigation, China Gets Tougher on Tech*, N.Y. TIMES (Dec. 23, 2020), <https://www.nytimes.com/2020/12/23/business/alibaba-antitrust-jack-ma.html>

<sup>211</sup> Coco Liu et al., *China Fines Alibaba Record \$2.8 Billion After Monopoly Probe*, BLOOMBERG (Apr. 10, 2021), <https://www.bloomberg.com/news/articles/2021-04-10/china-fines-alibaba-group-2-8-billion-in-monopoly-probe>.

<sup>212</sup> Eustance Huang, *China’s Antitrust Push Won’t Bring an ‘Explosion of Cases’ Against Online Campaigns, Professor Says*, CNBC (Nov. 23, 2020), <https://www.cnbc.com/2020/11/24/dont-expect-an-explosion-of-cases-from-chinas-antitrust-push-professor.html>.

<sup>213</sup> Stephanie Yang, *China’s Tech Giants Vow, in Unison, to Play by Regulator’s Rules*, WALL ST. J. (Apr. 14, 2021), <https://www.wsj.com/articles/chinas-tech-giants-vow-in-unison-to-play-by-regulators-rules-11618402448>.

<sup>214</sup> Minghe Hu, *Meituan Becomes the Focus of China’s Antitrust Investigation as Government’s Scrutiny of Business Practice Shifts*, SOUTH CHINA MORNING POST (Apr. 26, 2021), <https://www.scmp.com/tech/policy/article/3131121/china-antitrust-fury-drops-upon-meituan-after-record-fine-alibaba>.

<sup>215</sup> Id.

in retaliation of its failure to heed the CAC's earlier advice to postpone its IPO.<sup>216</sup> In response to growing pressures on US-listed Chinese companies to turn over audit papers to American securities regulators, Chinese regulators have been tightening scrutiny over cross-border data transfer in recent years.<sup>217</sup> The CAC reportedly urged Didi to conduct a thorough cybersecurity review before its US listing but the firm went ahead with its listing at a lightning speed.<sup>218</sup> This prompted the regulator to escalate its action by publicly announcing the investigation and ordered the removal of the Didi app from Chinese app stores.<sup>219</sup> Fueled by nationalistic fervor and speculation about Didi's transfer of critical and sensitive data to the US government, Chinese policymakers rushed to fill in a regulatory loophole with overseas listings.<sup>220</sup> Shortly thereafter, the State Council released a guidance opinion, calling for relevant government departments to increase oversight of overseas listing rules.<sup>221</sup> The CAC immediately followed up with detailed measures requiring data rich tech firms to undergo cybersecurity review before listing overseas.<sup>222</sup>

## V. Impact from the Great Reversal

As I have shown above, China's authoritarian regulatory governance comes with significant strengths but also with fundamental flaws. The vast discretion possessed by China's administrative authorities allows them to adapt and experiment with different policy initiatives, but also generates problems such as lack of political accountability and undue administrative discretion.<sup>223</sup> In the past, law enforcement campaigns induced 'policy overshooting' during their intensive phases, but ended up with few long-term deterrent effects as the market expected these campaigns to be temporary.<sup>224</sup> This makes it hard to predict the impact that the current law enforcement campaign will have. In the following discussion, I will examine some impacts that the current campaign has had on

---

<sup>216</sup> Angela Huyue Zhang, *Didi's Failure to Listen Forces Rewrite of Chinese Tech Listing Rules*, NIKKEI ASIA (July 9, 2021), [Didi's failure to listen forces rewrite of Chinese tech listing rules - Nikkei Asia](#)

<sup>217</sup> Lingling Wei & Keith Zhai, *Chinese Regulators Suggested Didi Delay Its U.S. IPO*, WALL ST. J. (July 5, 2021), [Chinese Regulators Suggested Didi Delay Its U.S. IPO - WSJ](#); *See also* Yuan Yang & Sun Yu, *Chinese Companies Face Uncertainty As Data Security Hawks Gain Power*, FIN. TIMES (July 17, 2021), [Chinese companies face uncertainty as data security hawks gain power | Financial Times \(ft.com\)](#)

<sup>218</sup> Wei & Zhai, *supra* note 217.

<sup>219</sup> David Wertime & Shen Lu, *Didi's Humbling Is the End of An Era for Chinese Cross-Border IPOs*, PROTOCOL (July 7, 2021), [What DiDi's regulatory trouble means for Chinese cross-border IPOs - Protocol — The people, power and politics of tech](#)

<sup>220</sup> Editorial, *Why Didi's Removal from App Win Public Support*, GLOBAL TIMES (July 5, 2021), [Why Didi's removal from app win public support: Global Times editorial - Global Times](#); *see also* Lu, *supra* note 61.

<sup>221</sup> Wertime & Lu, *supra* note 219.

<sup>222</sup> Keith Zhai & Frances Yoon, *Beijing Blocks Merger, Tightens Data Rules As Post-Didi Crackdown Speeds Up*, WALL ST. J. (July 10, 2021), [Beijing Blocks Merger, Tightens Data Rules as Post-Didi Crackdown Speeds Up - WSJ](#)

<sup>223</sup> HEILMANN & PERRY, *supra* note 18, at 24.

<sup>224</sup> Chen Li *et al*, *The Hybrid Regulatory Regime in Turbulent Times: The Role of the State in China's Stock Market Crisis in 2015-2016*, REGULATION & GOVERNANCE (forthcoming), at 13. *See also* references in 193.

administrative agencies, Chinese technology and innovation, the societal welfare, and the global investment community.

#### A. Administrative Agencies

Chinese administrative enforcement agencies who exercise policy control over the tech sector appear to be some of the biggest beneficiaries from the law enforcement campaign. The top Chinese leadership's endorsement of the campaign cleared the political hurdles and bureaucratic resistance for these regulators and enhanced the legitimacy of their actions. Meanwhile, increased influence and prestige enables an agency to request a larger budget and more personnel. The expansion of agencies also allows individual case handlers more opportunities to advance their careers within the bureaucracy, while enhancing their exit options when they leave the government to work for the private sector.<sup>225</sup> This is particularly the case for the PBOC, the SAMR and the CAC, the three most active enforcers during this enforcement campaign.

The PBOC, China's central bank, is not only in charge of monetary policy but also macroprudential regulation. It had been concerned about Ant Group's ability to extend its dominance from the online payments sector into other financial services, which would infringe on the interests of its competitors including the state banks.<sup>226</sup> To create a level-playing field between Ant and other fintech companies, the regulator asked Ant to decouple inappropriate links between Alipay and its other financial products.<sup>227</sup> To further enhance the legitimacy of its actions, the agency announced new draft guidelines in January 2021 to regulate the online payment industry.<sup>228</sup> The guidelines include antitrust provisions such as the definition of the relevant market in the online payment industry, as well as the consequences if online payment firms are found to have abused their dominant positions.<sup>229</sup> Strikingly, the PBOC's guidelines also indicate breaking up an online payment platform as a form of remedy.<sup>230</sup> Despite being a very powerful financial regulator, however, the PBOC has no authority to enforce the AML, which is a prerogative of the SAMR. Moreover, under China's AML, there is no legal basis to break up a firm for abuse of dominance.<sup>231</sup> The most the regulators can do is impose a fine, confiscate illegal gains, and ask the firm to desist

---

<sup>225</sup> ZHANG, *supra* note 26, at 34. *See also generally* JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT (1991).

<sup>226</sup> *See* Zhang, *supra* note 173.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Tom Mitchell, Ryan McMorro & Sun Yu, *Crackdown on Jack Ma's Empire Gathers Pace Despite Reappearance*, FIN. TIMES (Jan. 21, 2021), <https://www.ft.com/content/3a7438c5-9fe4-4b8e-94c5-6cf454c38cb4>.

<sup>230</sup> *Id.*

<sup>231</sup> *See* Art. 48 of the Anti-Monopoly Law.

from anticompetitive conduct.<sup>232</sup> Indeed, as the PBOC's guidelines are departmental rules, they have no authority to contravene the AML, which is a national law. It thus appears that the PBOC is trying to expand its turf so that it can have more policy control over Ant and other Chinese fintech companies.

We can observe similar cases of policy spillover in recent Chinese antitrust enforcement. Along with the record fine on Alibaba in April 2021, the SAMR released administrative guidance on the firm.<sup>233</sup> Administrative guidance is not legally binding and has no legal effect. It does, however, set out the regulator's expectations for the e-commerce giant. The guidance note made sixteen compliance requests, encompassing areas such as antitrust compliance, platform self-governance, data protection, fair competition, consumer protection, dispute resolution and improvement of experience for online merchants.<sup>234</sup> Not coincidentally, these areas of compliance also fall within the broader mandates of the SAMR, a vast conglomerate that oversees various aspects of market regulation.<sup>235</sup> It thus appears that the SAMR is trying to leverage its antitrust functions to enhance its authority in other areas of market regulation. The SAMR and other regulators also applied similar tactics to 33 other Chinese tech firms, who were required to conduct self-examinations and submit rectification plans within a month. As revealed in the public statements released by these tech firms, the agencies ordered them to improve compliance in a wide range of areas that go far beyond antitrust obligations.<sup>236</sup> For instance, the public statement by JD.com vowed to improve compliance with the Consumer Protection Law, the E-Commerce Law, the Anti-Monopoly Law, the Advertising Law and the Price Law, all of which fall within the broader mandate of SAMR.<sup>237</sup>

The CAC, a relatively new government department set up in 2014 to coordinate a fragmented regulatory structure to govern China's cyberspace, also gained significant clout during this

---

<sup>232</sup> Id.

<sup>233</sup> *Chinese Regulator Fines Alibaba, Sends Policy Signal to Ensure Development and Fairness of Online Economy*, GLOBAL TIMES (Apr. 10, 2021), <https://www.globaltimes.cn/page/202104/1220682.shtml>.

<sup>234</sup> State Administration for Market Regulation, *Shichang Jianguan Zongju Yifa Dui Ali Baba Jituan Konggu Youxian Gongsi Zai Zhongguo Jingnei Wangluo Lingshou Pingtai Fuwu Shichang Shishi "Er Xuan Yi" Longduan Xingwei Zuochu Xingzheng Chufa* [市场监管总局依法对阿里巴巴集团控股有限公司在中国境内网络零售平台服务市场实施"二选一"垄断行为作出行政处罚] (*The State Administration for Market Regulation Imposed Administrative Penalty against Alibaba Group Holdings Limited For Its Choosing One From Two Behavior in Domestic Internet Retail Services Platform Industry*) (Apr. 10, 2021) [http://www.samr.gov.cn/xw/zj/202104/t20210410\\_327702.html](http://www.samr.gov.cn/xw/zj/202104/t20210410_327702.html).

<sup>235</sup> State Administration for Market Regulation, Jigou [机构] (Organization), <http://www.samr.gov.cn/jg/>.

<sup>236</sup> Baidu, Jingdong, Meituan, 360, Zijie Tiaodong Deng Fabu Hegui Jingying Chengnuo Shu [百度、京东、美团、360、字节跳动等发布合规经营承诺书] (Baidu, JD.com, Meituan, 360 and ByteDance Published Commitment Letter for Compliance), SINA NEWS (Apr. 14, 2021), <https://finance.sina.com.cn/tech/2021-04-14/doc-ikmxzfmk6691431.shtml>.

<sup>237</sup> Id.

enforcement campaign.<sup>238</sup> Prior to Didi's US listing, China already passed an array of cybersecurity laws and data protection laws that govern cross-border data transfer.<sup>239</sup> However, there were few investigations and no publicly available precedents. The CAC's investigation into Didi represents the first major cybersecurity review of Chinese tech firms, setting up an important precedent for future compliance. By issuing new draft guidelines on cybersecurity reviews, the CAC gained an indispensable regulatory role in vetting overseas listings of data-rich Chinese firms.<sup>240</sup> Meanwhile, the Cyber Security Review Office under the CAC, once an obscure bureau created in 2020 as a joint task force by twelve central ministries to assess cybersecurity risks, rose to become the key gatekeeper in overseeing cross-border data transfer issues.<sup>241</sup>

In addition to expanding regulatory turf, this enforcement campaign has also led to institutional changes. Although enforcement campaigns can be short-lived, the institutional changes they bring about can have long-lasting impact. The antitrust bureau at the SAMR, founded in 2018 after the consolidation of the three former antitrust authorities, will reportedly expand by 20 to 30 staff members, in addition to the current 45.<sup>242</sup> The budget for the antitrust bureau will also increase, with more funding for daily operations and research projects.<sup>243</sup> This will be an important boost to this small bureau.<sup>244</sup> The empowerment of the Chinese antitrust regulator, however, also comes with a further risk of abuse of administrative power, given that agency actions are seldom challenged in court. Indeed, scholars have observed that agencies have incentive to over-enforce in order to broaden their turf and expand their influence.<sup>245</sup> On the other hand, Chinese tech firms are likely to increase efforts to lobby these regulators given so much is at stake.<sup>246</sup> So when the

---

<sup>238</sup> Nabil Alsabah, *Information Control 2.0: The Cyberspace Administration of China Tames the Internet*, MERICS CHINA MONITOR (Sep. 15, 2016), [Information control 2.0 | Merics](#)

<sup>239</sup> The main laws include the National Security Law of the People's Republic of China, the Cybersecurity Law of 2017, the Measures for Cybersecurity Review promulgated in April 2020, as well as China's Data Security Law, promulgated in June 2021.

<sup>240</sup> Lingling Wei, *China's Cyber Watchdog to Police Chinese Overseas Listing*, WALL ST. J. (July 8, 2021), [China's Cyber Watchdog to Police Chinese Overseas Listings - WSJ](#)

<sup>241</sup> Minghe Hu & Coco Feng, *China's Big Tech Crackdown: How An Obscure Office in Beijing's Cybersecurity Administration Has Struck Fear into the Country's Tech Giants*, SOUTH CHINA MORNING POST (July 9, 2021), [China's Big Tech crackdown: How an obscure office in Beijing's cybersecurity administration has struck fear into the country's tech giants | South China Morning Post \(scmp.com\)](#); see also Coco Feng, *Why Does Ride-Hailing Giant Didi's Cybersecurity Review Involve So Many Chinese Government Agencies and Who Is Absent?* SOUTH CHINA MORNING POST (July 19, 2021), [Why does ride-hailing giant Didi's cybersecurity review involve so many Chinese government agencies and who is absent? | South China Morning Post \(scmp.com\)](#)

<sup>242</sup> Cheng Leng, Julie Zhu, Pei Li, Kane Wu & Josh Horwitz, *Exclusive: China's Antitrust Regulator Bulking Up as Crackdown on Behemoths Widens*, REUTERS (Apr. 11, 2021), <https://www.reuters.com/world/china/exclusive-chinas-antitrust-regulator-bulking-up-crackdown-behemoths-widens-2021-04-11/>.

<sup>243</sup> Id.

<sup>244</sup> Jing Yang, *China Beefs Up Antimonopoly Body Amid Regulatory Push*, WALL ST. J. (Apr. 30, 2021), <https://www.wsj.com/articles/china-beefs-up-antimonopoly-body-amid-regulatory-push-11619791132>.

<sup>245</sup> Zheng, *supra* note 107, at 1269.

<sup>246</sup> See Yu, *supra* note 103.

enforcement campaign is over and the top leadership loosens up its control, the pendulum might swing back to underenforcement given the risk of regulatory capture of the antitrust authority.

## B. Technology and Innovations

Daron Acemoglu argued that the most pernicious effects of Big Tech firms stem from their ability to direct technological changes as these companies only have incentives to fund research that is compatible with their own interests and business models.<sup>247</sup> Due to the gargantuan size of Big Tech, smaller players have few options but to make their products and services interoperable and subordinate to the major platforms, resulting in less diversity in research and development.<sup>248</sup> Acemoglu envisages a best-case scenario in which the government chooses a more diverse research portfolio that would induce a higher growth rate.<sup>249</sup> To some extent, the Chinese government is heading in the direction suggested by Acemoglu by diversifying the innovation portfolios of Chinese tech firms. In fact, the Chinese government appears to be leveraging antitrust enforcement to steer Chinese tech giants towards a more innovative path.<sup>250</sup>

Since the intensification of the US-China tech war, moving China up the technological ladder has become the top priority of the Chinese leadership.<sup>251</sup> In March 2021, Premier Li Keqiang outlined key areas where major breakthroughs in core technologies are needed, including semiconductors, operating systems, computer processors and cloud computing.<sup>252</sup> Unlike US tech giants such as Google and Facebook which have gained a strong foothold all over the world, China's largest tech firms such as Alibaba and Tencent have yet to become internationally competitive.<sup>253</sup> Although they stand at the forefront of mobile payment and e-commerce, their success is largely owed to China's vast consumer market and cheap labour.<sup>254</sup> Indeed, a recent commentary from the People's Daily criticized Chinese tech firms for their excessive competition in community group buying

---

<sup>247</sup> Daron Acemoglu, *Antitrust Alone Won't Fix the Innovation Problem*, PROJECT SYNDICATE (Oct. 30, 2020), <https://www.project-syndicate.org/commentary/google-antitrust-big-tech-hurdle-to-innovation-by-daron-acemoglu-2020-10#:~:text=CAMBRIDGE%20%E2%80%93%20The%20US%20Department%20of,bipartisan%20support%20on%20Capitol%20Hill>.

<sup>248</sup> Daron Acemoglu, *Diversity and Technological Progress*, in *THE RATE AND DIRECTION OF INVENTIVE ACTIVITY REVISITED* 319, 345 (Josh Learner & Scott Stern eds. 2012).

<sup>249</sup> *Id.*

<sup>250</sup> Angela Huyue Zhang, *China Is Leaning Into Antitrust Regulation to Stay Competitive with the U.S.*, FORTUNE (Feb. 9, 2021), <https://fortune.com/2021/02/08/china-antitrust-tech-alibaba-tencent-billionaires/>.

<sup>251</sup> Yuan, *supra* note 34.

<sup>252</sup> Colum Murphy *et al.*, *China to Pour More Money Into Chips, AI and 5G to Catch U.S.*, BLOOMBERG (Mar. 5, 2021), <https://www.bloomberg.com/news/articles/2021-03-05/chinese-premier-calls-for-major-breakthroughs-in-core-tech>.

<sup>253</sup> Zhang, *supra* note 250.

<sup>254</sup> *Id.*



businesses, and urged them to forge ahead with higher ambitions to advance China's technological innovations.<sup>255</sup>

On the other hand, Chinese tech firms' vulnerability to regulatory challenges incentivizes them to adhere to government's objective by investing in foundational sciences and technology. The more useful these firms are to the government, the more protection they can seek, and the more room they will have to lobby for favorable policy treatment. In some ways, Chinese Big Tech has been heading in this direction for a while. Tencent has promised to invest \$70 billion in new digital infrastructure.<sup>256</sup> Alibaba has invested in semiconductors and, in 2019, unveiled its first chip designed to power artificial intelligence.<sup>257</sup> Baidu is betting heavily on driverless cars.<sup>258</sup> Since the recent law enforcement campaign, Chinese Big Tech has kicked off a new investment spree in innovation.<sup>259</sup> Alibaba has pledged \$1 billion to nurture 100,000 developers and tech startups over the next three years, and another \$28 billion to boost its cloud computing division to invest in technologies relating to operating systems, servers, chips and networks.<sup>260</sup> Notably, Alibaba is also a major contributor to China's Digital Silk Road, which provides technology to support China's Belt and Road Initiative.<sup>261</sup> Very recently, Meituan raised a record \$10 billion to develop autonomous delivery vehicles and robotics.<sup>262</sup>

---

<sup>255</sup> People's Daily Editorial, *Renmin Ribao Ping Shequ Tuangou: Bie Zhi Dianji zhe Ji Kun Baicai, Keji Chuangxin de Xingchen Dahai Geng Lingren Xinchaoengpai*, [人民日报评社区团购: 别只惦记着几捆白菜, 科技创新的星辰大海更令人心潮澎湃] (*People's Daily Commenting on Community Group Buying: Don't Just Focus on Selling Cabbages, Technology and Innovation Are More Exciting*), WALLSTREETCN.COM (Dec. 11, 2020), <https://wallstreetcn.com/articles/3613229>.

<sup>256</sup> Iris Deng & Celia Chen, *Tencent to Invest US\$70 Billion in New Digital Infrastructure, Backing Beijing's Economic Stimulus Efforts*, SOUTH CHINA MORNING POST (May 26, 2020), <https://www.scmp.com/tech/big-tech/article/3086162/tencent-invest-us70-billion-new-digital-infrastructure-backing>.

<sup>257</sup> Coco Liu & Cheng Ting-Fang, *Alibaba Unveils AI Chip to Boost Cloud Plans and Cut Reliance on US*, NIKKEI ASIA (Sep. 25, 2019), <https://asia.nikkei.com/Business/China-tech/Alibaba-unveils-AI-chip-to-boost-cloud-plans-and-cut-reliance-on-US>.

<sup>258</sup> Arjun Kharpal, *Baidu Pushes to Put Driverless Taxis on China's Roads, Pledging to Build 1000 in 3 Years*, CNBC (June 17, 2021), [Baidu pushes to put driverless taxis on China roads with BAIC tie-up \(cnbc.com\)](https://www.cnbc.com/2021/06/17/baidu-pushes-to-put-driverless-taxis-on-china-roads-with-baic-tie-up.html)

<sup>259</sup> Coco Liu, *Alibaba Kicks Off Spending Spree With \$1 Billion for Cloud*, BLOOMBERG (June 8, 2021), <https://www.bloomberg.com/news/articles/2021-06-08/alibaba-kicks-off-spending-spree-with-1-billion-for-cloud>.

<sup>260</sup> Arjun Kharpal, *China's Alibaba to Invest \$28.2 Billion in Cloud Infrastructure as It Battles Amazon, Microsoft*, CNBC (Apr. 20, 2020), <https://www.cnbc.com/2020/04/20/alibaba-to-invest-28-billion-in-cloud-as-it-battles-amazon-microsoft.html#:~:text=Alibaba%20said%20Monday%20it%20would,%2C%20servers%2C%20chips%20and%20networks>.

<sup>261</sup> Paul Triolo *et al.*, *Digital Silk Road: Expanding China's Digital Footprint*, EURASIA GROUP (Apr. 8, 2020), <https://www.eurasiagroup.net/files/upload/Digital-Silk-Road-Expanding-China-Digital-Footprint-1.pdf>.

<sup>262</sup> Coco Liu *et al.*, *China Tech Giants Spend Billions to Fuel Growth After Crackdown*, BLOOMBERG (May 27, 2021), <https://www.bloomberg.com/news/articles/2021-05-26/china-tech-giants-spend-billions-to-fuel-growth-after-crackdown>.

Meanwhile, tough antitrust sanctions against Chinese Big Tech have given smaller Chinese tech firms opportunities to grow and succeed outside of the Tencent or Alibaba ecosystem. However, the enforcement campaign has yet to address the three most fundamental issues in the Chinese tech sector. The first is data monopolization.<sup>263</sup> Both Tencent and Alibaba have amassed troves of consumer data over the years, which has created barriers of entry for smaller rivals. This is particularly the case in the area of fintech businesses, where big data analysis plays a crucial role in supporting lending services. This explains why the PBOC has been trying to break the two companies' data monopolies and has been aggressively pushing them to share their data with the government and other tech firms. There are limits, however, to what the PBOC can do: although the central bank is a powerful institution, it is not an antitrust regulator. Moreover, government mandates to share data may face significant obstacles as consumer consent is usually required for data sharing, especially for commercial purposes.<sup>264</sup>

In the past, Alibaba and Tencent refused the PBOC's request to transfer data, citing a lack of consumer consent.<sup>265</sup> Given that the PBOC has gained much more leverage over Ant and other fintech giants now, it remains to be seen whether it can successfully enforce data sharing this time. Instead of a direct transfer of data, it appears that the PBOC is pressuring Ant to create a credit scoring company with a few other shareholders (including two state-owned firms) that would oversee Ant's vast amount of data.<sup>266</sup> One major obstacle for the PBOC in breaking up data monopolies, however, is regulations that protect consumer privacy. Consumer could be reluctant to share their data with online platforms other than those they use.<sup>267</sup> As such, there is an inherent tension between consumer privacy protection and competition law concerns.<sup>268</sup> China is currently drafting a Personal Information Protection Law expected to be promulgated in late 2021, which will impose obligations on online platforms to obtain consent from consumers if there is any data

---

<sup>263</sup> Similar issues are also debated the US context. See PHILIPPON, *supra* note 56, at 275.

<sup>264</sup> Angela Huyue Zhang, *Big Tech is the Regenerative Starfish of Our Times*, NIKKEI ASIA (May 7, 2021), [Big Tech is the regenerative starfish of our times - Nikkei Asia](https://www.nikkei.com/story/Big-Tech-is-the-regenerative-starfish-of-our-times/)

<sup>265</sup> Yuan Yang & Nian Liu, *Alibaba and Tencent Refuse to Hand Loans Data to Beijing*, FIN. TIMES (Sep. 19, 2019), <https://www.ft.com/content/93451b98-da12-11e9-8f9b-77216ebe1f17>.

<sup>266</sup> Jing Yang & Xie Yu, *Jack Ma's Ant in Talks to Share Data Trove with State Firms*, WALL ST. J. (June 23, 2021), <https://www.wsj.com/articles/jack-mas-ant-in-talks-to-share-data-trove-with-state-firms-11624442902>.

<sup>267</sup> Erika M. Douglas, *The New Antitrust/Data Privacy Law Interface*, YALE L. J. FORUM 647 (Jan. 18, 2021); see also Mark A. Lemley, *The Contradictions of Platform Regulation* (Feb. 3, 2021), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3778909](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3778909).

<sup>268</sup> Colum Murphy *et al.*, *Xi's Next Target in Tech Crackdown is China's Vast Reams of Data*, BLOOMBERG (Apr. 23, 2021), <https://www.bloomberg.com/news/articles/2021-04-23/xi-s-next-target-in-tech-crackdown-is-china-s-vast-reams-of-data>.

transfer in the case of mergers or divestiture.<sup>269</sup> It remains to be seen how the PBOC will be able to push forward its data sharing initiative under China's existing regulatory framework.

The second challenge is interoperability.<sup>270</sup> As noted earlier, Tencent and Alibaba have each created their own ecosystem, providing companies within their systems convenient access to super-apps such as WeChat, Taobao and Alipay. But outsiders have restricted access to these apps, creating high barriers of entry for smaller rivals. Without addressing these interoperability issues, the current antitrust enforcement actions are unlikely to bring about changes in the competitive landscape of the Chinese tech industry. For instance, ByteDance, the parent company of Douyin and TikTok, has long had tensions with Tencent in that the latter blocked WeChat users' access to Douyin's content. In early February 2021, ByteDance filed a lawsuit against Tencent in Beijing for its restrictive business practices in violation of China's AML.<sup>271</sup> Tencent countersued, claiming that Douyin was blocking links to WeChat and Tencent's messaging app QQ, and banning its influencers from redirecting content to these platforms.<sup>272</sup> Beijing's ruling on this case could be a game changer for the tech industry.<sup>273</sup> Meituan, the largest food-delivery company in China was also challenged by a Chinese consumer in December 2020, accusing it of abusing its dominance by temporarily removing Alipay as a payment option.<sup>274</sup> Unlike speedy and hectic administrative enforcement, however, the litigation process is very protracted in China. In the past, tech firms have been able to fend off unfavorable lawsuits by raising jurisdictional issues, which further prolong the battle and complicate cases.<sup>275</sup>

---

<sup>269</sup> Rogier Creemers *et al.*, *China's Draft 'Personal Information Protection Law'*, NEW AMERICA (Oct. 21, 2020) <https://www.newamerica.org/cybersecurity-initiative/digichina/blog/chinas-draft-personal-information-protection-law-full-translation/>, Arts. 22 to 23.

<sup>270</sup> Similar antitrust problems exist in the United States. See Herbert J. Hovenkamp, *Antitrust and Platform Monopoly*, 130 Y. L. J. (2021); see also Randy Picker, *Forcing Interoperability on Tech Platforms Would Be Difficult to Do*, PROMARKET (Mar. 11, 2021), <https://promarket.org/2021/03/11/interoperability-tech-platforms-1996-telecommunications-act/>.

<sup>271</sup> Coco Feng & Tracy Qiu, *China Antitrust: ByteDance and Tencent Legal Battle Seen as Potential Landmark Case*, SOUTH CHINA MORNING POST (Feb. 3, 2021), <https://www.scmp.com/tech/apps-social/article/3120377/china-antitrust-bytedance-and-tencent-legal-battle-seen-potential>.

<sup>272</sup> Coco Feng, *TikTok owner ByteDance Sues Tencent Over Alleged Monopolistic Practices, WeChat Owner Vows to Countersue*, SOUTH CHINA MORNING POST (Feb. 2, 2021), <https://www.scmp.com/tech/big-tech/article/3120266/tiktok-owner-bytedance-sues-tencent-over-alleged-monopolistic>.

<sup>273</sup> *Id.*

<sup>274</sup> Tracy Qu, *Meituan Faces Customer Lawsuit For Alleged Abuse of Market Power Amid China's Ongoing Antitrust Crackdown*, SOUTH CHINA MORNING POST (Dec. 30, 2020), [Meituan faces customer lawsuit for alleged abuse of market power amid China's ongoing antitrust crackdown | South China Morning Post \(scmp.com\)](https://www.scmp.com/tech/big-tech/article/3120266/tiktok-owner-bytedance-sues-tencent-over-alleged-monopolistic) Notably, Meituan is partially owned by Tencent, so it belonged to the Tencent camp.

<sup>275</sup> Cao Yanjun, *Douyin Zai Gao Tengxun, Zhechang Guansi Zhishao San Wu Nian [抖音再告腾讯, 这场官司至少三五年] (ByteDance Sues Tencent Again, And This Lawsuit May Sustain for 3 to 5 Years)*, 21<sup>ST</sup> CENTURY BUSINESS HERALD (Feb. 4, 2021), [https://m.21jingji.com/article/20210204/herald/5187e125b12bb196d60f5521aa49966a\\_zaker](https://m.21jingji.com/article/20210204/herald/5187e125b12bb196d60f5521aa49966a_zaker); see also Shen Lu, *China's Big Tech Legal Teams Are Unbeatable on Their Home Courts, Literally*, PROTOCOL (Apr. 30, 2021),

In July 2021, Alibaba and Tencent reportedly considered gradually opening up services to one another, although it remains to be seen how far these two firms will go in removing the virtual barriers they have built around their own ecosystems.<sup>276</sup> A few days later, the Ministry of Industry and Information Technology (MIIT), China's telecom regulator, initiated a six-month rectification program aimed at tackling a whole host of consumer protection and unfair competition violations, including the interoperability issues.<sup>277</sup> Notably, although the MIIT lacks the power to enforce the AML, it can rely on its own departmental guidelines to request firms to rectify their behavior.

Last but not least, is the challenge of dealing with the aggressive acquisitions of startups by incumbent monopolies.<sup>278</sup> As noted in Section IV (A), Alibaba and Tencent have invested in hundreds of start-ups in the past decade. Although some of these investments are only minority interests, the two tech giants' common ownership over a large portfolio of start-ups poses anti-competitive concerns as it facilitates coordination among these companies.<sup>279</sup> Although the antitrust agency started to retroactively review these past acquisitions, it has only levied small fines on the firms for their procedural failures to notify.<sup>280</sup> The agency has not imposed any structural remedies, even in cases where the transaction parties have significant direct overlaps in the market. Tencent Music's acquisition of China Music Corporation offers a prime example. According to the SAMR's analysis, the two firms respectively possess 30% and 40% of the market shares in the relevant market of online music broadcasting.<sup>281</sup> Instead of directly addressing the horizontal

---

<https://www.protocol.com/china/china-big-tech-unbeatable-lawyers> (noting that Douyin dropped an unfair competition case against Tencent after the latter successfully transferred the case to its home jurisdiction Shenzhen).

<sup>276</sup> Jing Yang & Keith Zhai, *Alibaba and Tencent Consider Opening Up Their "Walled Gardens"*, WALL ST. J. (July 14, 2021), [Alibaba and Tencent Consider Opening Up Their 'Walled Gardens' - WSJ](#)

<sup>277</sup> Stephanie Yang, *China's Tech Regulator Orders Companies to Fix Anticompetitive, Security Issues*, WALL ST. J. (July 26, 2021), [China's Tech Regulator Orders Companies to Fix Anticompetitive, Security Issues - WSJ](#); *see also* Gongxin Weibao [工信微报] (Ministry of Industry and Information Technology News), *Gongxin Bu Qidong Hulianwang Hangye Zhuanxiang Zhengzhi Xingdong* [工信部启动互联网行业专项整治行动] (Ministry of Industry and Information Technology Launched Special Rectification Campaign for Internet Industry) (July 26, 2021), [https://mp.weixin.qq.com/s/GZkFr4DVxPPRvp0\\_RP8mAQ](https://mp.weixin.qq.com/s/GZkFr4DVxPPRvp0_RP8mAQ).

<sup>278</sup> The harm for incumbents to acquire start-ups has caught a lot of scholarly attention, *see generally* C. Scott Hemphill & Tim Wu, *Nascent Competitors*, 168 U. PENN. L. REV. 1879 (2020); Hovenkamp, *supra* note 270, at 106-119; William P. Rogerson & Howard Shelanski, *Antitrust Enforcement, Regulation and Digital Platforms*, 168 U. Penn. L. Rev. 1911, 1937-38 (2020) (noting the challenges for antitrust enforcement in dealing with the acquisition of nascent competitors).

<sup>279</sup> Scholars have long identified the potential anticompetitive harm resulting from common ownership even in circumstances of passive investment of minority interests. *See generally* Einer Elhauge, *Horizontal Shareholding*, 109 HARV. L. REV. 1267 (2016), Eric A. Posner, *Policy Implications of the Common Ownership Debate*, 66 ANTITRUST BULLETIN 140 (2021).

<sup>280</sup> Celia Chen & Iris Deng, *Tencent, Didi Chuxing, Other Internet Firms Slapped with Fine by Antitrust Authorities for Failing to Disclose Deals*, SOUTH CHINA MORNING POST (April 30, 2021), [Tencent, Didi Chuxing, other internet firms slapped with fine by antitrust authorities for failing to disclose deals | South China Morning Post \(scmp.com\)](#)

<sup>281</sup> SAMR, *Shichang Jianju Zongju Yifa Dui Tengxun Konggu Youxian Gongsu Zuochu Zeling Jiechu Wangluo Yingyue Dujia Bangquan Deng Chufa* [市场监管总局依法对腾讯控股有限公司作出责令解除网络音乐独家版

overlap concern in the merger review, the SAMR imposed behavioral remedies on the firm to end its exclusive dealings with leading record label companies.<sup>282</sup> Notably, the SAMR launched an investigation into the exclusive arrangement between Tencent Music and a few leading record label companies in 2019, but the case was suspended in 2020.<sup>283</sup> So it appears that the SAMR tried to avoid directly addressing the concentration issue by imposing remedies that seemingly aim to tackle another abuse of dominance case.

Another example is the SAMR's investigation into the merger between Huya and Douyu, which respectively possess 40% and 30% market shares in the livestream gaming market.<sup>284</sup> A close look at this case reveals that Tencent actually already possessed sole control over Huya and joint control over Douyu, so this proposed transaction would only change Tencent's control in Douyu from joint control to sole control.<sup>285</sup> In the end, the SAMR prohibited the merger transaction.<sup>286</sup> However, no further remedies were imposed on either transaction party, despite Tencent's common ownership over these two companies and the risk of coordination.

Thus far, in cases where the incumbent tech giants acquired a competitor in an adjacent market, the SAMR has cleared all such cases without imposing any remedies. For instance, the SAMR unconditionally approved Tencent Holding's acquisition of Sogou, the second-largest search engine in China in July 2021.<sup>287</sup> As Tencent is mostly active in social media and gaming, it has few direct overlaps with Sogou. However, Sogou has a user base of over 700 million that could pose a competitive threat to Tencent.<sup>288</sup> Instead of preemptively banning the incumbent's acquisitions of adjacent firms, the SAMR appears to have taken a rather conservative approach by

---

权等处罚] (SAMR Decided to Impose Penalty and Requested Tencent Holdings to End Exclusive Music Deals) (July 24, 2021), [市场监管总局依法对腾讯控股有限公司作出责令解除网络音乐独家版权等处罚 \(samr.gov.cn\)](http://samr.gov.cn)

<sup>282</sup> Id.

<sup>283</sup> Xue & Deng, *supra* note 209.

<sup>284</sup> SAMR, *Shichang Jianguan Zongju Yifa Jingzhi Huya Gongsu Yu Douyu Guoji Konggu Youxian Gongsu Hebing* [市场监管总局依法禁止虎牙公司与斗鱼国际控股有限公司合并] (SAMR Decided to Prohibit the Merger Between Huya and Douyu International Corporation) (July 10, 2021), [市场监管总局依法禁止虎牙公司与斗鱼国际控股有限公司合并 \(samr.gov.cn\)](http://samr.gov.cn)

<sup>285</sup> Id.

<sup>286</sup> Id.

<sup>287</sup> Iris Deng, *China Antitrust: Beijing Approves Tencent's Acquisition of Search Engine Sogou after Vetoing Huya-Douyu Merger*, SOUTH CHINA MORNING POST (July 13, 2021), [China antitrust: Beijing approves Tencent's acquisition of search engine Sogou after vetoing Huya-Douyu merger | South China Morning Post \(scmp.com\)](http://scmp.com)

<sup>288</sup> Top 5 Chinese Search Engines You Should Know About, [Top 5 Chinese search engines you should know about - AdChina.io](http://AdChina.io)

focusing on the direct competition between transaction parties. This could further entrench the dominance of the incumbents and increase concentration in the Chinese digital economy.<sup>289</sup>

### C. Social Welfare

A lingering question for the great reversal in regulating Chinese tech giants is whether it will ultimately benefit the hundreds of millions of Chinese consumers, small merchants, delivery workers and ride-hailing drivers who are connected by these behemoth online platforms, as well as the employees and contractors of those platforms. In the West, Big Tech has been accused of exacerbating societal inequality and there has been heated academic debate regarding whether antitrust is the right tool to deal with income inequality issues.<sup>290</sup> Similar concerns about income inequality loom large in China. During the ongoing law enforcement campaign, however, it appears that Chinese central administrative authorities have leveraged antitrust law enforcement, one of its most potent legal weapons against Big Tech, to achieve welfare redistribution goals.

The case against Alibaba serves as a good example. After receiving its record fine, Alibaba promised to invest billions of dollars to reduce access fees for merchants and to enhance merchant experience.<sup>291</sup> While this commitment is not legally required, it does echo some of the requirements laid out in the administrative guidance issued by the SAMR. Among other things, the administrative guidance stipulates that Alibaba cannot charge unreasonably high service fees and that the firm should provide small and medium-sized merchants more convenient and high-quality services.<sup>292</sup> In past antitrust investigations, especially in cases investigated by the former agency the National Development and Reform Commission (NDRC), firms under antitrust investigation were pressured to lower prices as part of their settlements with the agency.<sup>293</sup> For instance, Qualcomm, which was fined by the NDRC in 2015 for abusing its dominant position in China, offered to reduce 35% of its royalty rates for its licensees in China.<sup>294</sup> This important

---

<sup>289</sup> Mark M. Lemley & Andrew McCreary, *Exit Strategy*, 101 BOSTON. U. L. REV. 1, 85 (2021) (calling on antitrust agencies to pay more attention to acquisitions by incumbent monopolists even if the target firms are not direct competitors). See also references in *supra* note 278.

<sup>290</sup> See Jonathan B. Baker & Steven C. Salop, *Antitrust, Competition Policy, and Inequality*, 104 GEO. L.J. 1 (2015) (arguing tackling income inequality could be an implicit goal of antitrust); Carol Shapiro, *Antitrust In a Time of Populism*, 61 INTL. J. OF INDUSTRIAL ORG. 714 (2018) (arguing that antitrust should not be the primary mean to reduce income inequality).

<sup>291</sup> Raymond Zhong, *Alibaba Will Lower Merchant Fees After Antitrust Fines*, N.Y. TIMES (Apr. 11, 2021), <https://www.nytimes.com/2021/04/11/business/alibaba-fees-antitrust-case.html>.

<sup>292</sup> See State Administration for Market Regulation, *supra* note 234.

<sup>293</sup> Zhang, *supra* note 26, at 41-44.

<sup>294</sup> *Id.* at 31.

remedy was curiously omitted in the final penalty decision, so it appears that Qualcomm offered an extralegal remedy to please the NDRC.<sup>295</sup>

That Chinese antitrust enforcement is being used to address income inequality and redistribute wealth was also evident in a recent central enforcement action against Chinese online food delivery and ride-hailing platforms. In May 2021, eight central ministries summoned ten delivery and ride-hailing businesses, urging them to reduce fees charged to merchants and drivers, enhance driver benefits and improve their security. One major public complaint about these firms is that Didi, the largest ride-hailing business in China, had been charging unfairly high commissions on drivers. Didi explained that it charged more than 30% commission in only 2.7% of all orders, operating overall on a thin margin of 3.1%.<sup>296</sup> Didi and other food delivery companies have also been criticized for the opaque mechanisms they use to distribute orders and the lack of labour and safety protection for their drivers.<sup>297</sup> After the meeting, all ten companies concerned promised to conduct a comprehensive review of their operations and rectify their business practices to improve conditions for their drivers. In late July 2021, the SAMR and six other central ministries issued guidelines to protect labour rights for delivery drivers, setting out requirements on minimum wage, improvements of work conditions and welfare benefits.<sup>298</sup> It thus appears that the central administrative agencies are leveraging the ongoing enforcement campaign to negotiate better conditions for merchants and workers of big platforms.

In addition to the various ‘soft’ regulatory tools such as administrative guidance and administrative interviews, the Chinese government also tries to influence the tech firms through propaganda. A recent commentary from an affiliated newspaper of China’s top political advisory body criticized the infamous ‘996 working culture’, which refers to the unwritten rules in the Chinese tech sector

---

<sup>295</sup> Id.

<sup>296</sup> Yujie Xue & Minghe Hu, *Beijing Orders Meituan, Didi Chuxing and Other Ride-Hailing Providers to Give Drivers a Fair Share of Revenue*, SOUTH CHINA MORNING POST (May 15, 2021), <https://www.scmp.com/tech/big-tech/article/3133614/beijing-orders-meituan-didi-chuxing-and-other-ride-hailing-providers>.

<sup>297</sup> Didi Chuxing, Meituan Chuxing Deng 10 Jia Jiaotong Yunshu Xin Yetai Pingtai Bei 8 Bumen Lianhe Yuetan, [滴滴出行、美团出行等 10 家交通运输新业态平台被 8 部门联合约谈] (Ten Online Transportation Companies including Didi Chuxing and Meituan Were Summoned for Regulatory Talks by 8 Ministries), SINA NEWS (May 14, 2021), <https://finance.sina.com.cn/chanjing/gsnews/2021-05-14/doc-ikmxzfm2427766.shtml>.

<sup>298</sup> Josh Ye, *China Moves to Protect Food Delivery Drivers from Digital Exploitation, Knocking Stocks such as Services Giant Meituan*, SOUTH CHINA MORNING POST (July 26, 2021), [China moves to protect food delivery drivers from digital exploitation, knocking stocks such as services giant Meituan | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/article/3133614/china-moves-to-protect-food-delivery-drivers-from-digital-exploitation-knocking-stocks-such-as-services-giant-meituan); see also State Administration for Market Regulation, *Guanyu Luoshi Wangluo Canyin Pingtai Zeren Qieshi Weihu Waimai Songcanyuan De Quanyi De Zhidao Yijian* [关于落实网络餐饮平台责任 切实维护外卖送餐员权益的指导意见] (*Guidance Opinion on Implementing Internet Catering Platforms’ Responsibilities and Strengthening Protection for Delivery Workers’ Rights*) (July 26, 2021), [http://www.samr.gov.cn/xw/zj/202107/t20210726\\_333061.html](http://www.samr.gov.cn/xw/zj/202107/t20210726_333061.html).

that push employees to toil from 9am to 9pm six days a week.<sup>299</sup> Using terms from Karl Marx's influential critique of capitalism, the author called for the tech giants to refrain from "limitless exploitation of surplus labour for high surplus value."<sup>300</sup> Amid the heightened public scrutiny, firms such as ByteDance and Kuaishou announced plans to reform their controversial working culture.<sup>301</sup> In an effort to reduce employees' work hours and to answer Beijing's call to boost employment, tech firms such as Alibaba, ByteDance, Tencent and Meituan are also hiring more college graduates during the regulatory crackdown.<sup>302</sup>

Meanwhile, Chinese tech bosses appeared to curry favor with the Chinese public by donating more of their personal wealth to charities. Wang Xing, the CEO of Meituan, promised to donate \$2.27 billion shares for environmental and social initiatives.<sup>303</sup> Pony Ma, the founder of Tencent, pledged \$2 billion of his shares to charity, while Tencent promised to spend around \$7.7 billion in social and environmental initiatives.<sup>304</sup> Colin Huang, who just departed Pinduoduo, promised to devote more time to basic research, while Zhang Yiming at ByteDance was recently quoted saying he is "giving back to society."<sup>305</sup> It thus appears that the current enforcement campaign is redistributing income from platform shareholders to the users and the general public. Such economic redistribution helps the government accrue popular support, aligning the interests of the masses and the government.<sup>306</sup> Again, these redistributive policies are reminiscent of the mass mobilization and populist strategies during the Mao Era.<sup>307</sup> This phenomenon echoes what scholars

---

<sup>299</sup> Coco Feng, *China's Big Tech Sector Urged to Abide by Karl Marx's ideals, Do Away with 996 Work Culture*, SOUTH CHINA MORNING POST (July 14, 2021), [China's Big Tech sector urged to abide by Karl Marx's ideals, do away with 996 work culture | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/article/2021-07-14/china-big-tech-sector-urged-to-abide-by-karl-marx-s-ideals-do-away-with-996-work-culture)

<sup>300</sup> Id.

<sup>301</sup> Jane Zhang & Tracy Qu, *Kuaishou Ends Gruelling Overtime Policy As China's Big Tech Try to Reform Controversial 996 Working Culture*, SOUTH CHINA MORNING POST (June 25, 2021), [Kuaishou ends gruelling overtime policy as China's Big Tech try to reform controversial 996 working culture | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/article/2021-06-25/kuaishou-ends-gruelling-overtime-policy-as-china-s-big-tech-try-to-reform-controversial-996-working-culture)

<sup>302</sup> Josh Ye, *China's Tech Giants Go On Hiring Spree for Fresh Graduates Despite Beijing's Crackdown on the Sector*, SOUTH CHINA MORNING POST (July 26, 2021), [China's tech giants go on hiring spree for fresh graduates despite Beijing's crackdown on the sector | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/article/2021-07-26/china-tech-giants-go-on-hiring-spree-for-fresh-graduates-despite-beijing-s-crackdown-on-the-sector)

<sup>303</sup> Sophie Yu, Tony Munroe & Yingzhi Yang, *Meituan Founder Donates \$2.27 Billion Shares as Charity Grips Chinese Billionaires*, REUTERS (June 4, 2021), <https://www.reuters.com/technology/meituan-founder-donates-227-bl-shares-charity-grips-chinese-billionaires-2021-06-04/>.

<sup>304</sup> Yuan Yang, *How China is Targeting Big Tech*, FIN. TIMES (June 18, 2021), <https://www.ft.com/content/baad4a14-efac-4601-8ce4-406d5fd8f2a7>.

<sup>305</sup> Id.

<sup>306</sup> In the past, the Chinese Communist Party has employed similar welfare redistribution schemes to gain mass support. See Yueran Zhang, *The Chongqing Model One Decade On*, MADE IN CHINA JOURNAL (Jan. 11, 2021), <https://madeinchinajournal.com/2021/01/11/the-chongqing-model-one-decade-on/>; see also THE USE OF MAO AND THE CHONGQING MODEL (Joseph Y.S. Cheng ed., 2015)

<sup>307</sup> See e.g., MARY E. GALLAGHER, *AUTHORITARIAN LEGALITY IN CHINA: LAW, WORKERS, AND THE STATE* 45 (2017); WENFANG TANG, *POPULIST AUTHORITARIANISM: CHINESE POLITICAL CULTURE AND REGIME SUSTAINABILITY* (2016); Benjamin L. Liebman, *A Return to Populist Legality: Historical Legacies and Legal*



have long identified as a strategy of authoritarian rule: to survive and stay in power an authoritarian government not only “suppresses” but also “pleases” its citizens by rewarding them direct and tangible economic benefits.<sup>308</sup>

As I have shown above, Chinese central administrative agencies are employing a variety of informal legal tools such as guidance and interviews to pressure Chinese tech firms into reducing prices and improving conditions for their employees, contractors and suppliers. However, the existing antitrust legal framework does not appear to offer a clear and strong legal basis for the agencies to do so. The lack of a strong institutional basis for requesting these types of remedies thus casts doubt on their legitimacy and effectiveness. For instance, the administrative guidance issued on Alibaba will last three years, suggesting that the firm will be subject to close monitoring by the SAMR. Given the vagueness of the guidance’s language, it is not entirely clear what exactly Alibaba must fulfil in order to meet those “soft requirements” laid down in the guidance, nor is it clear what the administrative process is to ensure that the SAMR’s monitoring is adequate, transparent and fair, without being subject to potential interference from interest group lobbying. Above all, there are significant uncertainties with compliance when the administrative guidance expires in three years. Indeed, when this law enforcement campaign ends, it is highly uncertain whether these ‘voluntary’ commitments offered by Chinese tech firms and their bosses will last.

Besides leveraging antitrust law as a powerful instrument to combat income inequality, the Chinese government is also starting to initiate labour law reforms. As elaborated in Part (IV)(A), a longstanding concern is that delivery workers do not receive adequate labor protection due to their status as contractors rather than employees. In fact, many large platforms do not directly sign contracts with the delivery workers, but rather outsource this task to third party contractors. As such, there is no direct contractual relationship between the online platform and the gig workers, allowing the former to obviate the need to pay social security to the latter.<sup>309</sup> The 2016 administrative measures on ride-hailing businesses initially tried to afford drivers employee status by requiring firms to sign a labour contract, but that requirement was abolished in the final version. This appears to have undermined the bargaining power of delivery workers and worsened their predicament.

---

*Reform*, in MAO’S INVISIBLE HAND: THE POLITICAL FOUNDATIONS OF ADAPTATIVE GOVERNANCE IN CHINA 165-200 (2011).

<sup>308</sup> See MILAN SVOLIK, THE POLITICS OF AUTHORITARIAN RULE 9 (2012) (noting that repressions and co-optation are the two main instruments for the authoritarian control.)

<sup>309</sup> Minghe Hu, *China’s Left-Behind Gig Workers: As Big Tech Pushes for Profit, Labour Conditions Show Little Sign of Improvement*, SOUTH CHINA MORNING POST (June 8, 2021), [China’s left-behind gig workers: as Big Tech pushes for profit, labour conditions show little sign of improvement | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/article/2021/06/08/china-left-behind-gig-workers-as-big-tech-pushes-for-profit-labour-conditions-show-little-sign-of-improvement)

Moreover, these administrative measures are only departmental guidelines and they are not binding on the courts. Chinese courts have therefore continued to face challenges when deciding whether to classify courier workers as employees or contractors. In practice, Chinese judges are disinclined to recognize an employment relationship between drivers and the platforms except when the drivers have caused liabilities to third parties.<sup>310</sup> To enhance their bargaining position, delivery drivers tried to organize unions or strikes to collectively negotiate with the tech giants.<sup>311</sup> Yet, local governments often cracked down on such efforts for fear of social instability.<sup>312</sup> Moreover, unions have been of little help to courier workers because unions lack standing to represent independent contractors.<sup>313</sup> In July 2021, the All-China Federation of Trade Unions, the only legal labour union in China, issued opinions calling for the improvement of labour rights in China's digital economy.<sup>314</sup> A few days later, eight Chinese regulators including the SAMR, Ministry of Human Resources and Social Security and the Supreme People's Court issued guidance on safeguarding the basic rights of gig economy workers, suggesting platforms should sign labour contracts with a worker whenever there exists a clear labour relationship between them.<sup>315</sup> It remains to be seen how such requirements will be implemented in practice. Above all, it is not entirely clear whether the strengthening of labour protection for gig workers will necessarily benefit them. Indeed, if the regulation becomes too burdensome for tech firms, it could lead to the unintended consequences of unemployment and lower wages. So the regulators will need to strike a very delicate balance between labour protection and economic growth.

Meanwhile, tax reforms, the traditional tool to address income inequality, have yet to be introduced in China. In recent years, many countries have considered imposing a digital service tax on large platform businesses. China is closely watching this development; indeed, some Chinese government officials have suggested that China should follow this international trend.<sup>316</sup>

---

<sup>310</sup> Zou, *supra* note 114, at 279.

<sup>311</sup> Hong Kong Confederation of Trade Unions, *Report on Food Delivery Unrest (2017-2018)* (Oct. 22, 2019) [https://en.hkctu.org.hk/china\\_food\\_delivery\\_rider](https://en.hkctu.org.hk/china_food_delivery_rider); Zhou, *supra* note 69.

<sup>312</sup> The Gig Economy Challenges China's State-Run Labour Unions, THE ECONOMIST (Jan. 30, 2021), <https://www.economist.com/china/2021/01/27/the-gig-economy-challenges-chinas-state-run-labour-unions>.

<sup>313</sup> *Id.*

<sup>314</sup> Masha Borak, 'Gig Workers of All Trades, United!' China's State Trade Union Calls for Branches for Gig Economy Workers, SOUTH CHINA MORNING POST (July 21, 2021), '[Gig workers of all trades, unite! China's state trade union calls for branches for gig economy workers | South China Morning Post \(scmp.com\)](https://www.scmp.com/news/china/article/2021-07-21/gig-workers-of-all-trades-unite-china-state-trade-union-calls-for-branches-for-gig-economy-workers)

<sup>315</sup> Ministry of Human Resource and Social Welfare *et al.*, Guanyu Weihu Xing Jiuye Xingtai Laodongzhe Laodong Baozhang Quanyi De Zhidao Yijian [关于维护新就业形态劳动者劳动保障权益的指导意见] (Guidance Regarding Safeguarding The Labour Welfare of New Employment Formed Workers), Reshebu Fa [2021] 56 [人社部发〔2021〕56号], [人力资源社会保障部 国家发展改革委 交通运输部 应急部 市场监管总局 国家医保局 最高人民法院 全国总工会关于维护新就业形态劳动者劳动保障... 社会保障 中国政府网 \(www.gov.cn\)](http://www.gov.cn/jishi/2021/07/21/content_5616127.htm); *see also* Ye, *supra* note 302.

<sup>316</sup> Zoey Zhang, *China's Position on the Digital Service Tax*, CHINA BRIEFING (June 18, 2021), <https://www.china-briefing.com/news/chinas-position-on-the-digital-service-tax/>.

Proponents argue that because platforms are mining user data, citizens should be able to share in the revenues generated by their own data.<sup>317</sup> There is, however, a fierce debate among Chinese academics and policymakers over the ownership of user data and China has yet to come up with a detailed proposal to levy a digital tax on its domestic tech giants.<sup>318</sup>

#### D. Global Investing

China's dramatic policy swing in regulating Big Tech has imposed a negative externality on global investing. As the world's second largest economy with a vast lucrative market, China is a leading driver of growth.<sup>319</sup> Despite the tumultuous Sino-US relationship, Chinese companies have queued up to tap the US capital market,<sup>320</sup> while US investors flocked to invest in Chinese stocks and bonds.<sup>321</sup> However, the recent crackdown on Chinese tech giants has led to significant stock volatility, undermining investor confidence in these companies. Indeed, since their peak in February 2021, Chinese tech firms had experienced over \$800 billion loss of market capitalization within six months.<sup>322</sup> The spate of hectic enforcement has made investors highly sensitive to any sign of perceived negative news. A particularly dramatic example occurred recently when Meituan's CEO Wang Xing posted an ancient poem about a misguided Chinese emperor in order

---

<sup>317</sup> Id. See also Liang Zong, Tianhao Xu & Yindan Ye, *Pingtai Jingji: Quanguo Fanlongduan Xin Dongxiang Yu Zhongguo Jiankang Fazhan Lujing* [平台经济: 全球反垄断新动向与中国健康发展路径] (*Platform Economy: Global Antitrust Trend and China's Path to Healthy Development*), 3 EXPANDING HORIZONS 25 (2020); Similar arguments have been voiced in the United States. see ERIC A. POSNER & E. GLEN WEYL, RADICAL MARKETS: UPROOTING CAPITALISM AND DEMOCRACY FOR A JUST SOCIETY 205-249 (2018).

<sup>318</sup> Yanjing Zhu, *Shuzi Jingji Dailai Shuishou Xin Tiaozhan Xin Jiyu Shuishou Zhili Xiandaihua Shuiping Youdai Tisheng* [数字经济带来税收新挑战新机遇 税收治理现代化水平有待提升] (*Digital Economy Brings Challenges and Opportunities to the Taxation System Modernization of Taxation Governance Expects More Improvement*), CHINANEWS.COM (Apr. 10, 2021), <http://www.chinanews.com/cj/2021/04-10/9451725.shtml>; see also Junbin Zhang, *Shuzi Shui Dachao Laixi Zhongguo Ruhe Yingdui* [“数字税”大潮来袭 中国如何应对] (*Digital Tax is Trending, How Will China React to the Digital Tax*), XINHUA NEWS (Jan. 19, 2021), [http://www.xinhuanet.com/politics/2021-01/19/c\\_1126997630.htm](http://www.xinhuanet.com/politics/2021-01/19/c_1126997630.htm); see also Keqing Zhou & Xia Li, *Pingtai Jingji Xia de Shuishou Zhili Tixi Chuangxin* [平台经济下的税收治理体系创新] (*Taxation Governance Innovation under the Platform Economy*), 407 TAXATION RESEARCH 73 (2018).

<sup>319</sup> Tom Fairless & Stella Yifan Xie, *American's Hunger for the World's Goods Drive Global Recovery*, WALL ST. J. (June 28, 2021), [Americans' Hunger for the World's Goods Drives Global Recovery - WSJ](https://www.wsj.com/articles/americans-hunger-for-the-worlds-goods-drives-global-recovery-2021-06-28)

<sup>320</sup> Evelyn Cheng, *China-Based Companies Raised \$11.7 Billion through U.S. IPOs This Year, The Most Since 2014*, CNBC (Dec. 12, 2020), [China-based companies raise the most money via U.S. IPOs since 2014 \(cnbc.com\)](https://www.cnbc.com/2020/12/12/china-based-companies-raise-the-most-money-via-u.s.-ipos-since-2014.html); Jack Wong & Nathaniel Taplin, *The End of U.S.-China Tech Stock Bromance*, WALL ST. J. (July 8, 2021), [The End of the U.S.-China Tech Stock Bromance - WSJ](https://www.wsj.com/articles/the-end-of-the-u.s.-china-tech-stock-bromance-2021-07-08).

<sup>321</sup> Over the past year, global investors have also increased their holdings in Chinese stocks and bonds by almost 40% to over \$800 billion. See Hudson Lockett, *Global Investors' Exposure to Chinese Assets Surges to \$800 Billion*, FIN. TIMES (July 14, 2021), [Global investors' exposure to Chinese assets surges to \\$800bn | Financial Times \(ft.com\)](https://www.ft.com/content/2021-07-14/global-investors-exposure-to-chinese-assets-surges-to-800bn)

<sup>322</sup> Jeanny Yu & Abhishek Vishnoi, *Down \$831 Billion, China Tech Firm Selloff May Be Far From Over*, BLOOMBERG (July 7, 2021), [831 Billion Selloff in China Tech, Including Didi, May Not Be Over - Bloomberg](https://www.bloomberg.com/news/articles/2021-07-07/831-billion-selloff-in-china-tech-including-didi-may-not-be-over)



Escalating Sino-US tensions in recent years, however, have increased many uncertainties for Chinese companies listed in the United States. Following former US President Trump's executive order, the three largest Chinese state-owned telecom companies were delisted from the New York Stock Exchange in 2021, for their alleged links to the Chinese military.<sup>330</sup> Other US listed Chinese companies also face the threat of delisting as the US securities regulator is ratcheting up pressures on accounting firms to share auditing documents, a requirement that is in conflict with Chinese laws.<sup>331</sup> Thus far, this heightened US scrutiny has caused little financial distress to Chinese firms since they can list elsewhere and alternative financing abounds.<sup>332</sup> Nonetheless, it accelerated Chinese efforts to develop a domestic capital market. In 2018, President Xi Jinping unveiled a proposal to create a new science and technology innovation board—the STAR Market to invigorate science and technology, which started trading in July 2019.<sup>333</sup> Notably, Ant Group's scheduled debut at the STAR board last year was expected to give a significant boost to the new exchange.<sup>334</sup> However, Ant's IPO debacle and the Chinese regulator's subsequent tightening of IPO scrutiny prompted over 100 Chinese startups to withdraw their applications to list there, casting a long shadow over the future of China's technology exchange.<sup>335</sup>

Through its increased oversight over cross-border data transfer, the Chinese government has gained significant leverage in steering Chinese tech companies away from overseas exchanges. One notable example is ByteDance, which cautiously decided to shelve its IPO after being warned about the cybersecurity risks and other regulatory issues.<sup>336</sup> However, if overseas stock exchanges are off limits to certain data-rich Chinese tech firms, it could potentially affect their valuation and

---

<sup>330</sup> Alexander Osipovich, *NYSE Moves to Delist Chinese Oil Company*, WALL ST. J. (Feb. 26, 2021), [NYSE Moves to Delist Chinese Oil Company - WSJ](#)

<sup>331</sup> Chad Bray, *US Ratchets Up Pressure on Chinese Firms to Share Audits As Failure to Comply Could Lead to Delistings from American Bourses*, SOUTH CHINA MORNING POST (May 14, 2021), [US ratchets up pressure on Chinese firms to share audits as failure to comply could lead to delistings from American bourses | South China Morning Post \(scmp.com\)](#)

<sup>332</sup> Adam Lysenko, *Testimony before the U.S.-China Economic and Security Review Commission*, Hearing on U.S. Investment in China's Capital Markets and Military-Industrial Complex (March 19, 2021), [Adam Lysenko Testimony.pdf \(uscc.gov\)](#), at 16-7.

<sup>333</sup> Shi Jing, *Star Market Listings to Drive China's Technology Innovation Efforts*, CHINA DAILY (Dec. 25, 2020), [STAR Market listings to drive China's technology innovation efforts - Chinadaily.com.cn](#); see also Courtney Goldsmith, *STAR Market Offers Opportunities for Investment into China's Tech Industries*, WORLD FINANCE (Nov. 15, 2019), [STAR Market offers opportunities for investment into China's tech industries | World Finance](#)

<sup>334</sup> Alison Tudor-Ackroyd, *Ant Group Gets the Green Light for Mega IPO in Shanghai's Star Market As China Pulls Out All Stops to Help Tech Champions Raise Funds*, SOUTH CHINA MORNING POST (Sep. 18, 2020), [Ant Group gets the green light for mega IPO in Shanghai's Star Market as China pulls out all stops to help tech champions raise funds | South China Morning Post \(scmp.com\)](#)

<sup>335</sup> Joanne Chiu, *Ant's Halted IPO Takes the Shine Off China's STAR Market*, WALL ST. J. (May 5, 2021), [Ant's Halted IPO Takes the Shine off China's STAR Market - WSJ](#)

<sup>336</sup> Xie Yu & Liza Lin, *ByteDance Shelved IPO Intentions After Chinese Regulators Warned about Data Security*, WALL ST. J. (July 12, 2021), [ByteDance Shelved IPO Intentions After Chinese Regulators Warned About Data Security - WSJ](#)

liquidity if these firms have difficulty meeting the requirements from other listing venues.<sup>337</sup> For instance, Didi initially wanted to list in Hong Kong but was unable to fulfil the Hong Kong bourse's requirement of obtaining valid licenses to operate in many Chinese provinces.<sup>338</sup> At the same time, the fact that the Chinese government chose to ramp up control over its tech sector despite the anticipated adverse financial consequences also reveals the diminishing importance of foreign venture capital in China. Indeed, while foreign investors used to play an outsized role in funding the first generation of Chinese tech firms such as Alibaba, Baidu and Tencent,<sup>339</sup> they are now locked in fierce competition with home-grown funds, state-sponsored incubators, as well as Chinese internet giants to fund China's booming tech sector.<sup>340</sup> That said, foreign investors remain heavyweight players in China's private equity market, despite the stunning speed that China has been able to develop its onshore venture capital market.<sup>341</sup>

Above all, the recent developments provide a further illustration of a phenomenon I coined as "regulatory interdependence", that is, how China is regulated will affect how China regulates.<sup>342</sup> As the United States tightens securities regulation of Chinese companies listed in US stock exchanges, this has prompted China to accelerate its efforts to develop its own capital market to reduce its reliance on the United States, further exacerbating financial decoupling between the two largest economies.

## VI. Conclusion

In this article, I develop a new theoretical framework to analyze volatility in Chinese governance by considering the strategic interaction between four key players involved in the regulatory process: the top leadership, the regulators, the firms and the public. By focusing on China's great reversal in regulating the platform economy, I show that policy volatility in China stems from China's authoritarian political governance structure in which power is centralized in top leaders who also suffer from a chronic deficit of information. Because of the lag in information transmission from bottom to top, the top leadership often doesn't become aware of a regulatory issue until it becomes serious enough to threaten social stability. I particularly highlight how government support, firm

---

<sup>337</sup> Lin Lin, *Venture Capital Exits and the Structure of Stock Markets in China*, 12 ASIAN J. COMPARATIVE L. 1 (2017) (showing a close connection between stock market and venture capital market in China).

<sup>338</sup> Jing Yang *et al.*, *Didi Tried Balancing Pressure from China and Investors. It Satisfied Neither*, WALL ST. J. (July 9, 2021), [Didi Tried Balancing Pressure From China and Investors. It Satisfied Neither. - WSJ](#)

<sup>339</sup> Lysenko, *supra* note 332, at 6-7.

<sup>340</sup> Life is Getting Harder for Foreign VCs in China, THE ECONOMIST (Jan. 11, 2011), [Life is getting harder for foreign VCs in China | The Economist](#)

<sup>341</sup> Lysenko, *supra* note 332, at 6. ("In 2020, 54% of all transactions measured by total invested capital included at least one offshore investor, with the US participation rate at 29%").

<sup>342</sup> See Zhang, *supra* note 26, at 202 (explaining the close interdependence between the regulatory moves of the United States and China with regard to antitrust enforcement).

lobbying and bureaucratic inertia together contributed to a lag in regulating Chinese online platforms. On the other hand, centralized political power allows the Chinese government to quickly mobilize all administrative resources and propaganda to tackle serious regulatory problems. However, without strong institutional oversight, aggressive government agency interventions create the risk of over-enforcement and administrative abuse. Given that agency actions are subject to little judicial oversight and regulators now face fewer policy constraints, tech firms will likely exert greater efforts in lobbying agencies in the future. The revolving door between regulators and Chinese tech giants gives rise to concerns about regulatory capture, especially when the top leadership loosens up control and regulators return to routine enforcement.

Chinese administrative agencies in charge of regulating the digital economy are among the biggest beneficiaries of the current enforcement campaign, which has significantly enhanced their power and prestige. The campaign has also effected immediate welfare redistribution by pressuring Chinese tech giants to improve protection for consumers, lower access fees for merchants and delivery workers, and improve welfare for contractors and employees. Although Chinese tech firms have quickly offered remedies in response to both formal and informal regulatory demands, it is highly uncertain that these short-term commitments will lead to lasting changes. The enforcement campaign has also facilitated China's industrial policy by nudging Chinese tech firms to invest more in foundational science and technology to stay competitive with the United States. Meanwhile, the government's increased oversight of cross-border data transfer increases the transaction cost for Chinese tech firms to tap overseas capital markets, steering them toward raising capital from mainland and Hong Kong stock exchanges. China's great reversal in regulating its platform economy therefore appears to have the effects of safeguarding national security, cultivating mass support, and reducing the country's reliance on the West for both technologies and capital. At the same time, the volatile policy swing has itself generated risks and uncertainties for social welfare and global investment, which in turn could cause disruption and turmoil to domestic social and financial stability. The government's heavy-handed approach in regulating the tech sector therefore also comes with a dear price, which may cause the regulators to relax their harsh regulation to provide more breathing room for businesses. We are in a highly uncertain regulatory environment, and it is not yet clear what the equilibrium for China's authoritarian regulatory governance will eventually be.