

The Legal Regulation of the Behavior of "Big Data Discriminatory Pricing"

Xiaohan Wang, Cheng Li, Ruibin Zhang*

School of Law, Shandong University of Technology, China

*Correspondence Author

Abstract

In the process of the rise of new technology, the use value of data is also expanding, and it is difficult to avoid the further profit-seeking behavior of enterprises using big data under the background of big data era. Nowadays, the Internet business platform using the algorithm model to achieve dynamic pricing violates the legitimate rights and interests of consumers, and this kind of behavior is quite hidden so that it is difficult for consumers to detect, so it is difficult to regulate it effectively. Based on the analysis of the recent frequent exposure of "big data discriminatory pricing" behavior, this paper describes the harm of "big data discriminatory pricing" in terms of market order, consumer rights and interests and the development of Internet platform. In order to find a legal way to solve the current dilemma which is suitable for the actual situation of our country.

Keywords

Big data discriminatory pricing; Consumer; Monopoly; Market economy.

1. Introduction

Under the background of the universal popularization of intelligent terminal equipment in the 21st century, Internet operators are trying to create an information environment of the Internet of everything. With the background of vast customer resources, operators obtain residents' preferences and data on "food, clothing, housing and transportation" through various channels that can collect information, and integrate these data to form the so-called "big data". However, due to the rapid development of social economy and the lag of the law on the norms of emerging industries, the phenomenon of "big data discriminatory pricing" can not be effectively regulated for the time being, which contributes to the occurrence of this kind of behavior. In order to make higher profits, merchants choose to cooperate with big data platform, and they form "user portraits" according to customers' data and preferences and then provide them with services that do not match the market price. This phenomenon not only reduces customer service satisfaction but also disturbs the management order of the market economy. This paper will try to analyze the phenomenon of "big data discriminatory pricing" from three aspects: cause of formation, harm and legal regulation.

2. A Probe into the Phenomenon of "Big Data Discriminatory Pricing".

2.1. The Emergence of the Phenomenon of "Big Data Discriminatory Pricing"

Under the background of big data era, the phenomenon of using big data to "kill familiar" in the Internet market economy emerges one after another. Nowadays, "big data discriminatory pricing familiar" is no longer a label for specific behavior. According to its literal meaning, "big data discriminatory pricing familiar" behavior means that old customers pay higher prices than new customers when buying the same goods. However, the expression of "big data Kill" is

various. In the process of consumers' long-term use of an Internet commercial platform for shopping, big data server analyzes the consumer behavior of consumers, and according to the needs of developers, it automatically produces unique marketing programs for different consumers. It will also include differential pricing due to the non-use of equipment by users, and so on. For example, Apple users sometimes receive higher quotations than Android users.

2.2. The Causes of the Phenomenon of "Big Data Discriminatory Pricing"

First of all, in the process of consumers' trading on the Internet platform, for consumers, the operators of each Internet trading platform have mastered a lot of market information that they cannot understand, and the operators make use of the advantages of technology to analyze the consumers who participate in the transaction. However, consumers are unable to get all the information of the goods because of their own objective reasons. Operators make use of this information asymmetry to obtain the benefits brought by information asymmetry after consumers understand the limited information to make a transaction.

Secondly, in the face of fragmentary data, consumers often do not think of the economic value when they are collected, so they do not get much attention in protecting their own privacy. However, the operators of the Internet trading platform collect these consumption data to form a systematic information network, and the value of these fragmented data becomes huge, and the operators can easily obtain the transaction information of users. With the gradual development of information technology, the price of data transactions has also declined, which has led to the increasing intensity of "big data discriminatory pricing" behavior.

Not only that, in order to develop in this fierce competitive environment, the Internet business platform often uses various marketing methods without profit or even loss to attract customers in the early stage of operation, and then customers naturally have to spend high to make up for the loss of the platform. and Internet search provides convenience for the "big data discriminatory pricing" behavior. When implementing the above actions, the Internet platform does not have the supervision and management of the government and its departments, and the relevant laws are not perfect. Not only that, the Internet industry itself does not have a perfect and systematic ethical construction. As a result, some Internet business platforms just blindly pursue the maximization of economic value, ignore ethics and morality, and damage the rights of consumers by immoral means.

3. Analysis on the Harm of "Big Data Discriminatory Pricing"

3.1. "Big Data Discriminatory Pricing" Destroys the Order of Market Economy.

As the core resource of the information age, the collection, analysis and use of data rely on strong technical support and a large number of users. Internet commercial platform enterprises, as profit-making organizations, they have the right to reasonably and legally use data to pursue the realization of interests, and consumers are willing to pay for it when they know the inside story. However, the Internet platform enterprises which account for a large share of the market in the industry, with the absolute advantages of their technology and user base, are often easy to adopt "killing familiar" behavior in order to maximize the interests of their own enterprises. This kind of profit-seeking behavior is obviously unfair to other enterprises with a small market share. New entrants and small enterprises, due to their own lack of strength, are difficult to attract customers by selling at low prices. This also forms a hidden price collusion in the invisible rather than traditional written agreements or face-to-face discussions. In the past, it raised the threshold of market access and restricted the expansion of other enterprises, thus indirectly increasing their market share, which in the long run will inevitably change the competition structure of the market, resulting in the monopoly of their industries and destroying the normal order of market competition.

3.2. "Big Data Discriminatory Pricing" Infringes Upon the Legitimate Rights and Interests of Consumers.

The Law on the Protection of consumers' Rights and interests stipulates that consumers have the right to know the true state of the goods they buy, use or receive, and have the right to fair trade. When consumers buy goods on the Internet business platform, out of trust in the platform, they naturally believe that the price of the goods they buy is reasonable and show the same price as other consumers who buy the same goods on this platform. But in fact, because the platform merchants have their data, they have already made differential pricing, and what consumers know is only what they see from their own clients, so it is difficult to implement the right to know the real price.

Merchants use this kind of information asymmetry to trade, in the face of different customer groups, the target goods needed by consumers are sold at a higher price, in order to maximize their economic profits, and even increase the commodity price beyond the normal price; in the face of old users who know their original prices, they issue a variety of fancy coupons and make use of full-deduction activities to promote transactions and increase their own profits. For Internet platform merchants, their production costs have not increased, and price increases are obviously an unfair trade for consumers. Consumers' right to fair trade has been seriously violated.

The infringement of consumers' rights by the act of "big data discriminatory pricing" is not only reflected in the commodity trading, but also the citizens' right to privacy may have been virtually violated when the transaction is not carried out. When consumers apply the platform for the first time, they basically have to sign their terms of service, which generally include the option of obtaining user data, and if the user does not agree to obtain it, then the platform cannot be used. Big data's behavior is to deceive consumers by using their own information, against the subjective wishes of their users, and infringes upon consumers' right to privacy. What is more serious is that some immoral Internet business platform subjects resell their data and information without consumer authorization in order to seek personal gain, resulting in the leakage of consumer-related data and bringing more trouble and trouble to consumers.

3.3. "Big Data Discriminatory Pricing" Affects the Long-term Development of the Internet Business Platform.

In the current situation of the rapid development of the media and the Internet, people can obtain information through various channels. Now all kinds of "big data" cases have been exposed, which will naturally lead to a crisis of trust in the Internet business platform. The trust between consumers and the Internet business platform is mutual. Enterprises only see the short-term interests and ignore the long-term interests, ignoring the brand image and even the whole business image, they will lose consumers' trust in them and lose customers forever. this Internet business platform will also disappear with its credit.

4. The Legal Regulation Path of "Big Data Discriminatory Pricing Ripe".

Big data's technology is a double-edged sword. Rational use of big data can help consumers improve their own welfare level and make Internet business platforms gain greater benefits. however, once abused, "Internet killing" not only violates the values of business ethics, but also directly infringes on a series of rights such as the right to fair trade, privacy and the right to know that consumers must be protected.

In some cases, it can be considered as consumer fraud. The law should regulate the legitimate use of big data, establish the principle of minimizing the amount of data, reduce the opportunities for consumers' personal information obtained by the Internet commercial platform, and curb the occurrence of "big data discriminatory pricing" behavior from the source;

consumers, as a weak party, should also give preferential protection to ensure that their rights to know and fair trading are not illegally violated. However, there is a lag in the law, and what is needed to regulate the occurrence of "big data discriminatory pricing" is the joint efforts of legislation, judicature, law enforcement and the whole society.

4.1. Perfecting the System of Legal Norms.

In offline trading, the face-to-face trading mode gives consumers a full understanding of the price of the goods. however, when trading on the Internet business platform, consumers do not know whether merchants sell the goods at a different price at other users, which obviously violates the "clearly marked price".

Therefore, the differential pricing behavior of the operators of the Internet commercial platform should be further clarified in the Consumer Rights Protection Law. If the merchant violates the explicit pricing behavior, the legal liability demanded by the merchant should also be specific and clear.

In addition, in our country, the law only protects some valuable personal privacy information of citizens, and the personal data information of some citizens is not protected if they are not taken seriously. However, in order to achieve its "big data discriminatory pricing" behavior, Internet business platforms often take advantage of legal loopholes to collect personal data information that citizens are not protected, but not all personal data. Therefore, in order to regulate the occurrence of "big data discriminatory pricing" behavior, the first task is to legislate to protect the personal data information of citizens.

4.2. Innovating the Judicial System.

In real life, the direct loss suffered by most consumers as independent individuals is too small, and it is not easy to detect or difficult to collect evidence after detection, so the loss of giving up safeguarding rights is relatively small. However, the cost of individual civil litigation is high, and it is difficult to obtain evidence for personal protection, so most consumers choose to give up safeguarding their rights. In the civil action of our country, the requirement for the determination of civil tort is generally the principle of fault liability, which requires a high ability of proof for consumers. We can learn from the practices of other countries and adopt the way caused by the burden of proof, requiring the defendant's Internet business platform to prove that his use of big data is justified and necessary. If he cannot prove it, he should bear the responsibility of punitive damages.

4.3. Strengthen Administrative Law Enforcement.

In the face of the phenomenon that "big data discriminatory pricing" is frequently exposed by the media, government departments should not only pay attention to its legislative level, but also severely punish the Internet business platform that does exist after it has been identified, and strengthen administrative law enforcement. to warn other illegal businesses. Moreover, the government should carry out innovative reforms in the existing regulatory methods, make use of the advantages of its own resources, in the face of the Internet business platform, should adopt certain special technical means for supervision, and establish an open online supervision platform. Citizens are encouraged to actively participate in supervision and protect their legitimate rights and interests.

In the face of large-scale Internet business platforms, in order to avoid monopoly caused by the abuse of their dominant market position, government departments should assume the responsibility of maintaining market order and ensure fair competition among Internet business platforms. strengthen market supervision, establish a healthy Internet market economy, and promote sustainable development.

References

- [1] Weihua Liu, Shangsong Long, Dong Xie, Yanjie Liang, Jinkun Wang. How to govern the big data discriminatory pricing behavior in the platform service supply chain? An examination with a three-party evolutionary game model[J]. International Journal of Production Economics, 2020.
- [2] Liu Zixi, He Wendai, Chen Weicong, Zhu Zhaorui, Zhou Yuan. Legal Dilemma and Way Out in the Environment of "Big Data Discriminatory Pricing"[P]. 2021 International Conference on Social Development and Media Communication (SDMC 2021), 2022.
- [3] Jingxuan Fang, Dong Xu. How the Internet Influences the Development of Modern Market Economy[J]. American Journal of Industrial and Business Management, 2020, 10(05).
- [4] Andreasyan A.A., Balyakin A.A., Nurbina M.V.. Some Features of the Legal Regulation of Big Data[P]. 2nd International Scientific and Practical Conference on Digital Economy (ISCDE 2020), 2020.