

China New Legal Approaches to E-Commerce: Prosperity and Challenge

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Abstract—This article mainly focuses on the new legal measures towards to electronic commerce industry in China and their potential impact to E-commerce industry. Through analyzing to three measures: Network behavior of commodity trading and related services Interim Measures, the Administrative measures for payment services provided by Non-financial institutions and E-credit Certification Rules with different aspects, it can conclude that the existed measure made a progress on this issue but still need a uniform measures for E-commerce industry.

Keywords—Chinese E-commerce; Regulation; The third party payment; Groupon; Small and middle E-commerce;

I. INTRODUCTION

China is the most active economy in the world, as it owns 1.3 billion people with an average annual growth rate of 9.6% in GDP. Such energy, also stimulate its online market and Electronic commerce developing. Statistics shows that until June, 2010, there are 20,700 registered websites in domain who run for E-commerce [1].

Though the circumstance seems to be a thriving to the E-commerce industry, it brings challenges to law and policies. The difficulty based on a series of factors. First is the geography and territory problem, from the east to the west of China, the distance is 5,000 kilometers, and China has 34 provinces, all contribute to a complex situation when a customer lives in Urumqi (A major city in west China) and buys something from Shanghai. The long physical distance and different jurisdictions (Shanghai and Urumqi) obstruct individual to remedy their loss through litigation. Secondly, new technologies and business models sometimes make it no law to regulate and there is a lack of a uniform regulation for various E-commerce.

Facing such challenge, Chinese government begins to enact law and regulations to set standards for E-commerce industry. It hopes to rein the wild horse and keep a health development for E-commerce. In 2005, the first law, PRC E-signature was released as an attempt to provide a uniform standard for E-commerce. Considering the long cycle of legislation failed to meet various conditions in E-commerce, China becomes more likely to set industry regulations by different agencies.

In 2010, three regulations have been released which related to E-commerce: Network behavior of commodity trading and related services Interim Measures, released by SAIC. Administrative Measures for the Payment Services Provided by Non-financial Institutions, released by People's

Bank of China. And the Electronic Commerce Credit Certification Rules, released by Ministry of Commerce, China International Electronic Commerce Center.

All these three regulations can bring a great impact to the small and middle enterprises engaging in E-commerce and Groupon Website. These two sorts of E-commerce own a large share in Chinese E-commerce market. And in the following it will analyze three regulations impact and show that China will set a uniform rule and a credit database in few years for E-commerce.

II. REGULATION FOR THE PROCESS AND QUALITY OF E-COMMERCE

The first released rule in 2010 is Network behavior of commodity trading and related services Interim Measures (Measures) in May by SAIC (State Administration of Industry and Commerce). SAIC is a government agency that plays a similar role as Federal Trade Council in United States. In the Measure, SAIC particular focus on four things: 1. Open a way for imposing duties on On-line business. 2. Make rules to keep the quality of product and service through Internet. 3. Ensure the Information Security and Privacy for Customers. 4. Set jurisdiction and proper way to governing E-commerce. With this rule, it is obviously that the government begins to pay attention to online trade.

In its section 2, article 10 [2], the regulation states that natural person who trade or provide service through Internet should submit their personal information to Online Trading Platform Providers. And if they satisfy requirements of law as business entity, they should acquire licenses from local Administration of Industry and Commerce. And in article 20, it impose that the online platform owns a duty to audit the information of entity who registered on it. That is the first time in China a requirement to all parties who engaging in online trading and service provider should register their detailed information to platform provider. Depend on such information, it can be inferred that by holding those reliable information, AIC could tax individual who doesn't register in AIC but registered in online platform. Recently, more people begin to concern the tax to individual E-commerce business despite most experts believe that it is still impossible in one or two years, since it is tough to estimate and audit accurate capital and trading amount for small E-commerce entities.

Besides the concern of tax, the main function of these two articles is to provide a transparent way for both customers and government access and monitor online trade

and service provider. According to rules, real-name authentication information including trading record, personal information and address, will be kept for two years by platform provider. And, in order to protect customer interest, the rule specifies that website should present its license from AIC by a conspicuous way on its main page. As a result, customer can easily choose those website with licenses and covered by which AIC. When dispute occurred, customer would complain to AIC for arbitration.

As a main responsibility of AIC is to keep the fairness trade, in this Measure, many articles related to fair trade and customer protection. For instance, the fairness of contract emphasized in article 13, as 'ensure the both parties right and duty according to fairness principle, and adopts reasonable measures to specify clauses which have vital interest with customer'. Furthermore, stated in additional articles, an electronic-contract owns same effective as paper-contract, which stress the fairness principle and contract law should also apply to electronic contract. What's more, E-commerce provider couldn't set any clause or preference to benefit company side other than customer side, as taking the advantage of technology or using sophisticated words.

An early case [3] in this year may present such a necessary call for fairness principle. Joyo, or called Amazon.cn, misrepresent the price of a 320GB hard disk with 118 Yuan (18USD, a normal price would be 89 USD). After saw such a low price, thousands of customers ordered it, and only after a day, customer found their order were removed by Amazon.cn with an explanation that the price had been set as technical error. When angry customers want to find a way to protect their interests, they failed because one of the clauses says the contract is establish only after goods are delivered. Those kind clauses named 'imparity clause' in Chinese, means such a clause give company power as an emperor to interpret clause as they like. It isn't the sole story happened in Online-trading world, before the hard disk case, an error of books' price (Thousand Yuan book priced as 25 Yuan) made by Amazon.cn met a same end. The increasing number of disputes forces AIC to regulate electronic-contract for fairness principle in case to protect customers.

Another significant factor related to customer protection in this rule is information security, which is the first time an official rule refers to the customer's privacy and information security. In article 16, the product seller and service provider own a duty to store, reasonable use, holding for limited time and careful data destruction. And in article 25, the platform operator should take reasonable measures to keep security of trader's trade secret and customers' personal data, and shall not disclose these data to the third party without consent or lawful require. If they violate such rule, they would be fined with maximum amount 10,000 RMB¹. Although this article still needs some practice in real case, at least it shows that government begins to aware to protect customers' information security.

¹See Article 41

In order to keep all these articles effective on E-commerce, Measures states a series of articles² to illustrate the jurisdiction of AIC. According to these articles, the first level who is in charge of governing the E-commerce entities is the platform provider. They should take adequate rules and mechanism to solve the dispute between entities and customers. Second, AICs (include and beyond country level) record the credit of E-commerce entities and monitor them according to different level of credit. Meanwhile, AICs hold the right to order the ISP blocking or closing down a website if it violated the Measures' requirement. Such a punishment makes it possible for AICs to effectively govern online trade and service provider.

Above all, Network behavior of commodity trading and related services Interim Measures is an executable way for agencies to supervise E-commerce market. With the new approaches of Measure, more adequate rules were set for small and individual businesses that depend on the third parity E-commerce platform. Real-name authentication and credit record try to deal with the anonymity and distributed structure of E-commerce in China, and it can be hopeful to settle the disputes between customers and E-commerce entities. Though, a great deal of problem such as how the credit practice and what to judge the fairness of clauses still leave to further rule or regulations. It is a good signal for Chinese E-commerce regulation to meet the international standard.

III. NEW POLICY FOR THIRD PARTY PAYMENT

Third Party Payment, an essential tool for small and individual business who isn't able to establish their own payment system (main reason is that their size don't meet the requirement of payment system or their business too small to build an independent payment system, while credit cards are not widely accepted). Under this circumstance, many third party payments such as Alipay³ play as a necessary bridge between customers and business entities. A recently data shows that till to June, 2010, turnover of Online payment reached to 450 billion Yuan (671,534,945 USD) and increase of 71.1% than the same time of last year [4]. It can be expected that this industry would be rapidly developing.

Experienced a few years that there no law or regulation for administrating the third party payment, with a concern that such large amount of cash flow out of regulation may use for illegal trade (such as gambling or money laundry). Finally People's Bank of China released the Administrative Measures for the Payment Services Provided by Non-financial Institutions (Measures) [5] to regulate these third party payment institutions. Measures will list the legal requirement for who want to run third party payment, and only when an entity could meet such requirement, it

²See Article 32-37 of the measures

³The most famous third party payment run by Taobao.com, see a reference page:
<http://market.alipay.com/ospay/aboutAlipay/alibabaGroupCompetitiveEdge.html>

could get a license from PBC and continue online payment service after September, 2011.

An early estimated result of the Measures is it will exclude at least half of the third party payment on the market now. The first requirement of the Measures stated any entity want to acquire the license need to hold a registered capital at least 30,000,000 Yuan (4,479,300 USD), and if one want to operate service in national level, the minimum registered capital reaches to 100,000,000 Yuan (14,931,000 USD). As such a high amount register capital, most small and middle third party payment providers have to leave.

Besides the minimum registered capital requirement, a clear historical record is another barrier for many third party payments. A clear historical record means the entity must profit for at least two consecutive years and without any criminal record for illegal payment action in three years. The first requirement stopped many little and middle third party payment who struggling in the fierce competence with nearly non-profit or even deficit. Even though companies meet the first requirement, some of them failed to proves their innocent like 99bill's case. 99bill⁴ is the top 5 third party payment service provider in China, it owns 37 million registered users and have a widely cooperation with VISA and PCI verification. The only blemish of 99bill is that one of its senior managers has been involved with money laundry for an overseas gambling group [6], and it may contradict with the criminal record requirement. With such fact, some experts and media suspected 99bill may fail to get the license.

After a third party payment acquired license, they are still under the supervision of PBC, meanwhile the PBC could keep eye on them for anti-illegal action and customer protection. As a matter of fact, a large number of the third party payment service providers who only have a few millions RMB as register capital are very likely to meet finance crisis, because of capital chain broken or risk investment. Before Measures releasing, a lot of companies profited by using the reserve payment (the money customer saved in the third party payment before pay to the other side) for investment and short-term loans. In Measures, it stated that reserve payment isn't belong to any service provider's property, and using or transporting reserve payment must accord to customer order⁵, which largely reduce the risk of customer loss their reserve payment. And Measures also mentioned that PBC and other agencies would check the circumstance of the institution for anti-money laundry, business conduct and internal control etc. Clearly, in the future, the third party payment service provider will have a same level supervision as bank.

⁴99bill is a famous third party payment provider in China, here is it introduction page:

<http://www.99bill.com/seashell/html/corp/aboutus.html>

⁵Article 24, Administrative Measures for the Payment Services Provided by Non-financial Institutions

A further consideration of Measures may indicate PBC's new plan--'super online banking system', a platform integrated all kinds of banks [7] in China for users to inquire balance, transfer money through various banks through Internet. In order to keep all E-commerce payments have a uniform interface, the Measures can be seen as a preparation for the horizontal integration between bank and third party payment. By a uniform supervision, PBC can easily monitor cash flow in online trade.

As a summary, the Administrative Measures for the Payment Services Provided by Non-financial Institutions brings pressure to many small and middle third party payment service providers. And with the Measures, many unqualified service provider may be forced to leave the market, while those large and well-known service provider will keep on their business. A higher entrance requirement would help customer ensure their finance security, in a national level, make it easier for administration to supervise the online trade. For those small and middle E-commerce entities, it may increase their cost for service fee and bring a stricter monitor for their online cash flow.

IV. Groupon WEBSITE AND E-CREDIT CERTIFICATION RULES

Groupon⁶ initially is a name of website which first founded in Unite States, it provide a specific service (such as a meal in restaurant, a SPA or a concert) to user with a much lower price each day. The special points are, first, its service is localized so only people lived in special region can enjoy the service, and itself wouldn't have any cost on logistic or storage. Secondly, service price is based on a large amount of order for this service, if the final number below the estimated amount of order, the deal will be cancelled. Thirdly, Groupon only choose the best and suitable service for its user. With a good reputation, users soon advocate Groupon through Twitter and Facebook. For such strategy, this website could profit by commission as 40%-50% [8] of sales with millions of users, as a successful business model of Web 2.0.

Having Seen Groupon's success overseas, Chinese Website operators began to copy such a model in China, as there are three reasons for them to believe that Groupon model will be successful in China too. First, China owns the largest number of Internet users in the world (400 billion). In Chinese E-commerce market, price plays the most important factor for customer preference. Last but not the least, Chinese culture and custom gives people inclination to collective behavior, as an essential factor for Groupon model success.

Sure enough, Groupon E-commerce model win a great success in China. From January to August, 2010, there are 1210 Groupon Websites in E-commerce market, mainly located to several major cities such as Beijing, Shanghai and Guangzhou. One of the most successful websites, Lashou (in

⁶"Groupon." Wikipedia, the Free Encyclopedia. 30 Oct. 2010.

Web. 30 Oct. 2010. <<http://en.wikipedia.org/wiki/Groupon>>. Its main page: <http://www.groupon.com/>

English mean hand in hand) operates business in 10 major cities and trading volume reach to 4 million Yuan for each day. Until the end of this year, the number of Groupon websites would keep rapidly increasing.

Behind such a success, many problems raised up. Because setting up a Groupon Website only need some servers and a few off-line marketing staff, low barrier to entry made it possible for unqualified even defraud group to engage in Groupon. Different from transparent payment and easy compliant channel in U.S, in China, sometimes a Groupon website gathered money from customers and failed to provide service, it is really difficult for customer to retrieve their money, especially when fishing websites that cloned famous website play bad role. Beyond the legal bottom line, a more common situation is that customer found their service shrink (less content, unfriendly serving face...) than original price. And, in a few case, customer purchased a service from the website but was refused by the service provider. All of these become big challenges to Groupon industry for further developing.

To regulate chaos and illegal actions in Groupon websites, China International Electronic Commerce Centre (CIEEC, an affiliate of Ministry of Commerce of the People's Republic of China) presented E-credit Certification Rules (Rules) for hundred Groupon websites. According to Rules, a third party organization will assess each website's credit level. Depend on site scale, the circumstance of business, the business ability to provide adequate service for customer and protection policy to customer, and the credit record as punishment from administrator and customer complaints [9], the rule will finally give a website credit certification from A to E. And the certification will present in each website main page for customer to easy check.

The first round of certification finished in 29th October, 2010. As a result, 29 websites passed the certification while 300 Groupon websites participated in. Although there are some criticisms from Groupon websites said it lacked transparent and charged a high fee for certification, most websites think it is necessary for them to acquire a good credit from customers. Besides, some third party payment providers run credit certification for Groupon websites too. It can be expected in the future, more unqualified Groupon websites will be kick out as the market force and government administrator.

V. CONCLUSION

2010 is a special year for E-commerce. Up to 2010, the first E-commerce law has been put into practices for five years. And in one year, SAIC, PBC and MOFCOM, three different official departments enacted their regulation to a same industry, indicated there might be a strict and detailed administration for E-commerce in the future.

That isn't a surprise thing, in fact, after the Economic Crisis happened in 2009, E-commerce win more attractive from both individual and enterprises than traditional business model. E-commerce can largely reduce the cost and improve effective of business, while inflation forced customer to find a cheaper way to get things. As a result, E-commerce

enjoyed thrift in this period, particular in China, who suffered less impact of the economic crisis.

But light and dark are nature twins, and it is same for the prosperity of E-commerce. After a rapid developing of E-commerce in China, both the increasing turnover of traditional E-commerce and new model of E-commerce bring challenges to a health and good industry development. So, SAIC released regulation to supervise the process of traditional E-business, PBC focus on the cash flow through online trade and CIEEC try to settle down the issue of a new business model. All of these efforts show that Internet really changed people live style, and compel official agencies to find a suitable way to face such problem.

A key word in all the three regulations is 'credit', like a panacea for problem occurred in China E-commerce industry. Because of the large number of websites in China, customers found it really difficult for them to get a good website with satisfied quality, price and delivering service. Long distance makes it nearly impossible for an individual to sue a website for remedy. And, many websites may be charged by different departments, which bring a problem from bureaucracy.

So it is necessary for a uniform credit database for online trade and service provider. In SAIC, it says the credit record will be kept by local AICs. In PBC, the license itself play same role as a credit guarantee and E-credit rules aimed to credit directly. In two or three years, China may built a more uniform credit database for all kinds of online trade, in such time, different rules and regulation will integrated into one credit regulation. At that time, customers can easily search such record and find a dependable website for their needs.

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