DISCUSSION PANEL:
Legal issues when using AI: strategies and solutions

Workshop 1:

Artificial Intelligence in distribution and franchise networks

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Panelist

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Session overview:

AI adoption raises legal challenges across compliance, liability, and regulatory frameworks.

Focusing on the risks involved for users of AI, the main concerns usually include liability for lack of compliance with the rules on AI applicable to products which integrate AI and implications on the application of other rules, such as data protection and privacy rules applicable to the management of data by using the AI; antitrust rules applicable to AI systems operating on product or service pricing; rules protecting consumers; etc.
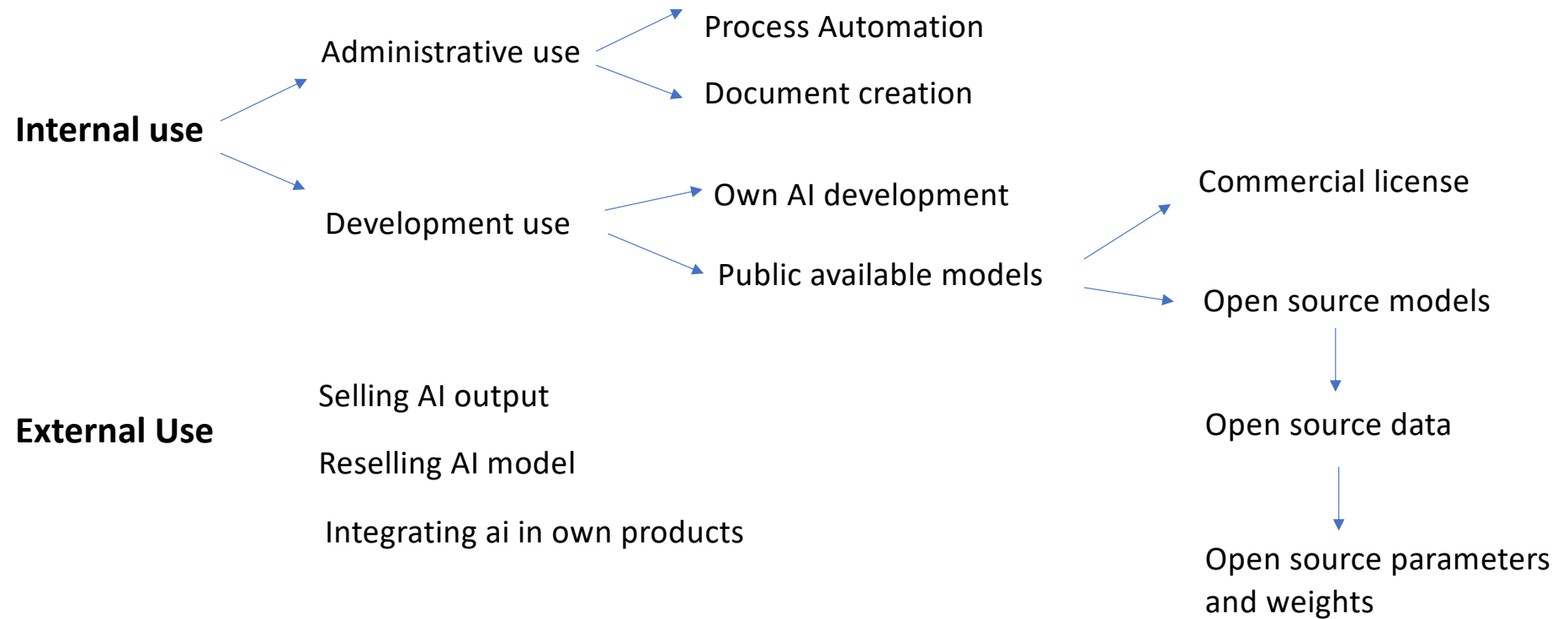
The panellists will address these typical critical issues and attempt to provide solutions in an ever-changing context.

Interconnected Acts

– AI Act (Regulation)

– AI Liability Act (Directive) (retired)

– Product Liability Act (Directive)

– Data Act (Regulation)

– Data Governance Act (Regulation)

– Data Privacy Act (GDPR Regulation)

– Digital Services Act (Regulation)

– Digital Markets Act (EU)

– Cybersecurity (Regulation)

– Cyberresiliance (Regulation)

– RED (directive)

– Machine Regulation (Regulation) and other product legislations

– New Legislative Framework

FHP image

Different AI use scenarios

Internal use

Administrative use → Process Automation

Administrative use → Document creation

Development use → Own AI development

Development use → Public available models

Public available models → Commercial license

Public available models → Open source models

Open source models → Open source data

Open source data → Open source parameters and weights

External Use

Selling AI output

Reselling AI model

Integrating ai in own products

Providing license through prompts? Case Study 3

Samsung Data Leak

- **Sharing of information on a public available model**

- **Confidential information**

- **IP disclosure**

- **Are prompts IP?**

- **ChatGPT capability to enhance coding**

- **Samsung sharing of source code**

- **OpenAI prompt license terms and conditions**

- **Can employees license codes to ChatGPT?**

FHP image

Data Protection & Privacy Regulations

- GDPR, CCPA, and other data protection laws

- Managing AI's data collection & processing

- Consent, transparency, and security

Data Protection & Privacy Regulations

AI as a Social Force

- The use of AI by respondents in China has surged to 83 percent, with generative AI use seeing the largest increases.

- The market for AI-generated content in e-commerce is projected to triple to 1.2 billion yuan in 2024.

- AI-powered algorithms shape and determine outcomes across far broader avenues of social life than we might think...

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Data Protection & Privacy Regulations

Core laws (control data processing)

- Personal Information Protection Law of the People's Republic of China (PIPL), Article 6, Paragraph 2: "*The collection of personal information shall be limited to the minimum necessary to achieve the purpose of processing and shall not be excessively collected.*"

- Data security law (DSL) , Cyber security law (CSL)

Other laws and regulations (protect data processing)

- "Notice on the Scope of Necessary Personal Information for Common Types of Mobile Internet Applications" provides further clarification as to the meaning of "minimum necessary" in different senarios.

- Law of the People's Republic of China on Protection of Consumer Rights and Interests (PCRI) Article 29, Paragraph 1: " *In collecting and using the personal information of consumers, business operators shall adhere to the principles of legality, rationality and necessity, explicitly state the purposes, methods and scope of collection or use of information, and obtain the consent of consumers. Business operators collecting or using the personal information of consumers shall disclose their rules for the collection or use of information, and may not collect or use information in violation of laws and regulations or agreements with consumers.* "

- The challenge for the consumers lies in proving that the apps/platform have collected information beyond the necessary scope/ in accordance with the principles. The big data, composed of users' browsing records, consumption preferences, price range, and historical transaction information, is generated during the use of the platform, and it is difficult to regulate through the PIPL or PCRI.

Antitrust Concerns in AI-Driven Pricing

- AI's role in price-fixing and market manipulation

- Ensuring fair competition and regulatory compliance

- Avoiding algorithmic collusion
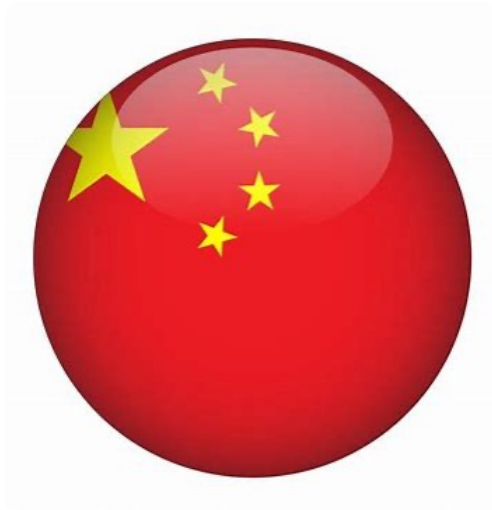
Antitrust Concerns in AI-Driven Pricing

AI-Enabled Price Discrimination as a Growing Concern

- The rise of business models based on the collection and processing of consumer data allows undertakings to charge business customers and final consumers different prices for the same goods or services, offered at precisely the same time.

- In 2019, revealed that 88% of the Chinese consumers believe that online shopping platforms, including those for travel bookings and ride-hailing, leverage user data they collect for personalized pricing to make users pay as much as possible. Around 57% of consumers believed that they have experienced this phenomenon.

Antitrust Concerns in AI-Driven Pricing: U.S. perspective

- Rising Use of AI in Pricing has prompted growing antitrust scrutiny under the Sherman Act, Clayton Act, and FTC Act.

- Section 1 of the Sherman Act is most commonly invoked, especially where multiple firms use a shared pricing algorithm or vendor (e.g., RealPage, Cendyn).

- Courts diverge on how to assess algorithmic coordination: some dismiss complaints for lack of proof of agreement, others allow rule-of-reason claims based on data sharing or parallel adoption.

- Enforcement agencies (e.g., DOJ, FTC) increasingly treat algorithmic price recommendations and sensitive data aggregation as potential hubs for collusion.
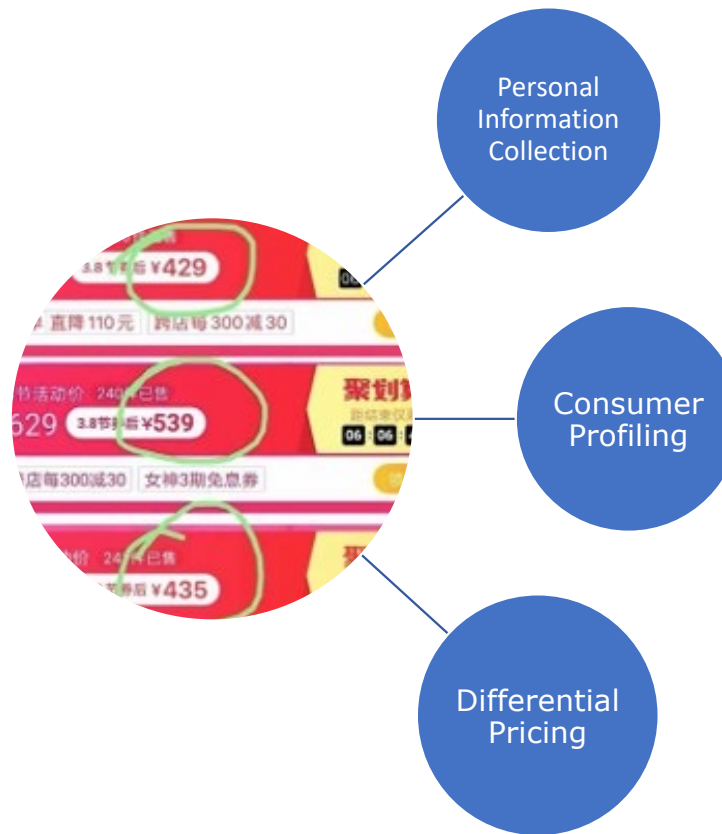
Antitrust Concerns in AI-Driven Pricing

大数据杀熟
"[using] big data [to] kill existing [consumers]"

Algorithmic price discrimination has gradually attracted national attention.

The Chinese government regulates this conduct from different levels.

Personal Information Collection

Consumer Profiling

Differential Pricing

Antitrust Concerns in AI-Driven Pricing

Administrative scrutiny

- In 2021, Chinese e-commerce giant Alibaba was fined 18.2 billion yuan (approximately $2.8 billion) for abusing its dominant market position, which included practices related to unfair pricing and discriminatory treatment. While this case did not exclusively focus on AI-driven price discrimination, it highlighted the regulatory scrutiny on digital platforms and their pricing practices

China's First Case on AI-Enabled Price Discrimination

- *Ms. HU vs. CTRIP, 2021*

A woman surnamed Hu, a membership user of Ctrip, sued the online travel platform for price discrimination. She had reserved a hotel room for RMB 2,889 a night in July 2020 but, on checking out, she discovered the price of the room was only RMB 1,377. A court in Zhejiang province ruled in favor of Hu, requiring Ctrip to pay RMB 4,777 in compensation.

Antitrust Concerns in AI-Driven Pricing

Differential Pricing

PIPL

- Article 24: "*Personal information processors using personal information for automated decision making shall ensure the transparency of the decision making and the fairness and impartiality of the results, and may not apply unreasonable differential treatment to individuals in terms of transaction prices and other transaction conditions.*"

Provisions on the Management of Algorithmic Recommendations in Internet Information Services

- Article 21: "*Where algorithmic recommendation service providers sell products or provide services to consumers, they shall protect consumers' fair trading rights, they may not use algorithms to commit acts of extending unreasonably differentiated treatment in trading conditions such as trading prices, etc., and other such unlawful activities, on the basis of consumers' tendencies, trading habits and other such characteristics.*"

Regulations of Shenzhen Special Economic Zone on Data

- Article 69: "*Article 69 Market entities shall not use data analysis to accord differential treatment to counterparties with the same trading conditions, except in one of the following circumstances: 1. Market entities set different trading terms according to the actual needs of trading counterparties and in compliance with the legitimate trading habits and industry practices; 2. Market entities carry out promotions towards new users within a reasonable period; 3. Market entities carry on random trades based on fair, reasonable and non-discriminatory rules; 4. Other circumstances stipulated by laws and regulations. // The term "same trading conditions" as referred to in the preceding paragraph means that there is no substantial difference between the trading counterparties in terms of trading security, trading costs, credit status, trade links and trading duration.*"

Antitrust Concerns in AI-Driven Pricing

- **Anti-monopoly Law of the People's Republic of China effective on August 1, 2008**

- Article 22: "*An undertaking with a dominant market position shall be prohibited from engaging in the following conduct of abusing a dominant market position:(6) Applying differential treatments in terms of transaction prices and other transaction conditions to the other transactional parties on an equal footing without any justifiable causes.*"

- **Guidelines of Anti-Monopoly in the Domain of the Platform Economy effective on 7 February 2021**

- Article 17: "*An operator in the platform economy with a dominant position in the market may abuse its dominant position in the market and, without justifiable reasons, apply differential treatment to counterparties with the same trading conditions, so as to exclude or restrict competition in the market. To analyze whether it constitutes differential treatment, the following factors may be taken into account: (a) based on big data and algorithms, applying differentiated transaction prices or other transaction conditions based on the counterparties' ability to pay, consumption preferences, usage habits, etc.; ...... The same conditions mean that there are no substantial differences between transaction counterparties in terms of transaction security, transaction costs, credit status, the transaction link they are in, and the duration of the transaction that materially affect the transaction. Differences in the privacy information, transaction history, individual preferences, consumption habits and other aspects of the transaction counterparties obtained by the platform during the transaction do not affect the determination that the conditions of the transaction counterparties are the same.*"

Consumer Protection Challenges

- AI-driven decision-making and fairness

- Preventing deceptive AI practices

- Regulatory oversight and enforcement

Consumer Protection Challenges : United States Perspective

- **Opportunities**: AI can improve fraud detection, energy efficiency, personalized services, and consumer access (e.g., legal or healthcare tools).

- **Risks**: AI systems may exploit cognitive biases, deliver biased results, or mislead through opaque personalization and manipulation.

- **Information Asymmetry**: Consumers face "black box" AI logic, hidden personalization, and lack of transparency, impairing informed decision-making.

- **Behavioral Targeting**: AI-powered "choice architecture" can manipulate decisions (e.g., pricing, defaults, urgency cues) in ways consumers do not recognize or control.

Consumer Protection Challenges

Regulations of Shenzhen Special Economic Zone on Data effective on 1 Jan. 2022

- Article 29: "*If data processors create the user portrait of natural persons for the purpose of improving the quality of products or services, the specific use and main rules of the user portrait shall be stated clearly to the natural persons. The natural persons may refuse to allow the data processors to make the user portrait as provided by the preceding paragraph or to recommend personalized products or services based on the user portrait. The data processors shall provide the natural persons with an effective way of refusal in an easily accessible manner.*"

Consumer Protection Challenges

Provisions on the Management of Algorithmic Recommendations in Internet Information Services effective on March 1, 2022

- Article 17: " *Algorithmic recommendation service providers shall provide users with a choice to not target their individual characteristics, or provide users with a convenient option to switch off algorithmic recommendation services. Where users choose to switch off algorithmic recommendation services, the algorithmic recommendation service provider shall immediately cease providing related services. // Algorithmic recommendation service providers shall provide users with functions to choose or delete user tags used for algorithmic recommendation services aimed at their personal characteristics. //Where algorithmic recommendation service providers use algorithms in a manner creating a major influence on users' rights and interests, they shall give an explanation and bear related liability according to the law."*

Consumer Protection Challenges

Regulations on Prohibiting Unfair Competition on the Internet effective on 1 September 2024

- *Article 20 Operators shall not use technical means to unreasonably provide different trading conditions for counterparties with the same conditions, infringe upon the counterparties' right of choice and right of fair trade, obstruct or destroy the normal operation of network products or services legally provided by other operators, and disturb the order of fair trade in the market.*
    - *The following circumstances do not fall into the unfair competition behavior stipulated in the preceding provision:*
    - *(i) Implementing different trading conditions according to the actual needs of the trading counterparty and in line with legitimate trading habits and industry practices;*
    - *(ii) Preferential activities for new users within a reasonable period of time;*
    - *(iii) Randomized transactions based on fair, reasonable and non-discriminatory rules. »*

Consumer Protection Challenges

Measures for labeling of AI generated synthetic Content effective on 1 September 2025

to "put an end to the misuse of AI generative technologies and the spread of false information."

➢ For service providers: explicit labels must be added to content generated or synthesized using AI technologies,

➢ For internet application distribution platforms: must request explanation of whether service providers offer generative AI services and check materials related to the labeling.

➢ Users who use online information content transmission services to publish generated synthetic content must proactively declare it and use the labeling function.

Strategies & Solutions for Compliance

- Implementing ethical AI frameworks

- Regular audits and impact assessments

- Cross-disciplinary legal and technical teams

Future Trends & Evolving Legal Landscape

- Emerging AI regulations

- The role of international legal frameworks

- Preparing for legal developments in AI governance

Thank you for your attention.

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