



上海交通大学
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KOGUAN LAW SCHOOL

Competition Policy Research Centre

New Competition Policy in Digital Economy

Exclusive Dealing in the Digital Era in China

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Osaka, Japan**

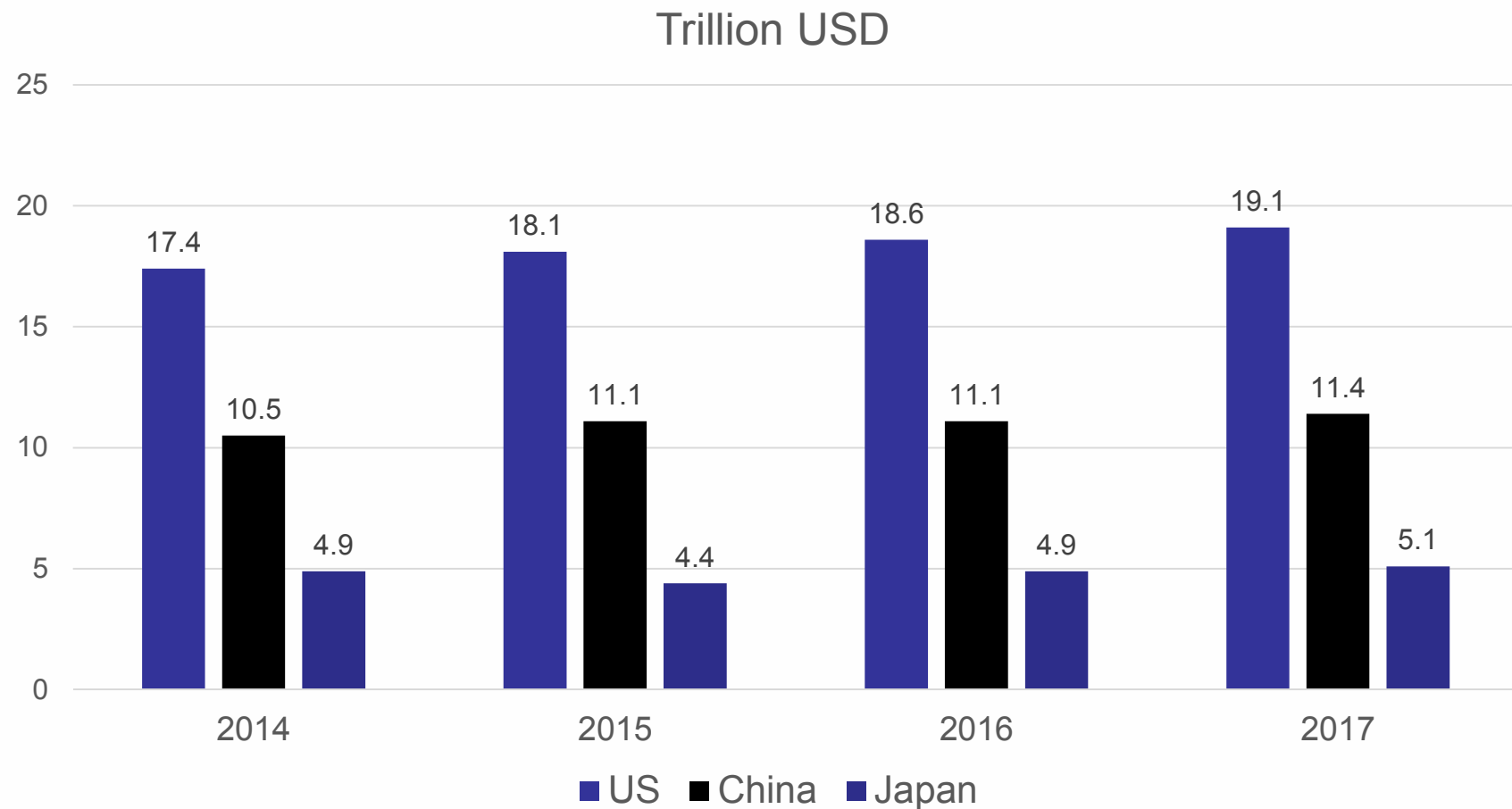
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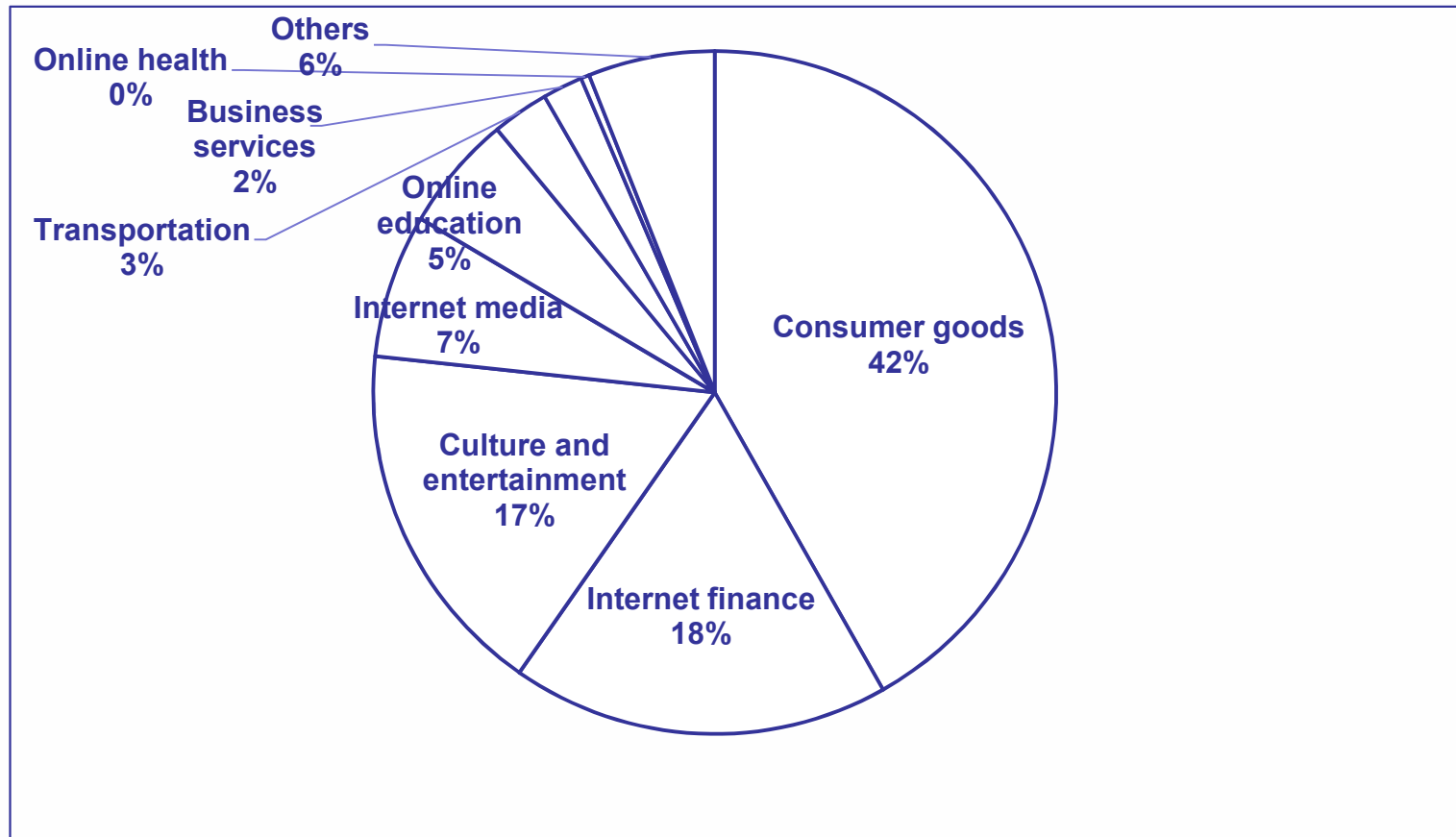
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Digital Economy in US, CN & JP



Varieties of Digital Economy in China



Online Shopping

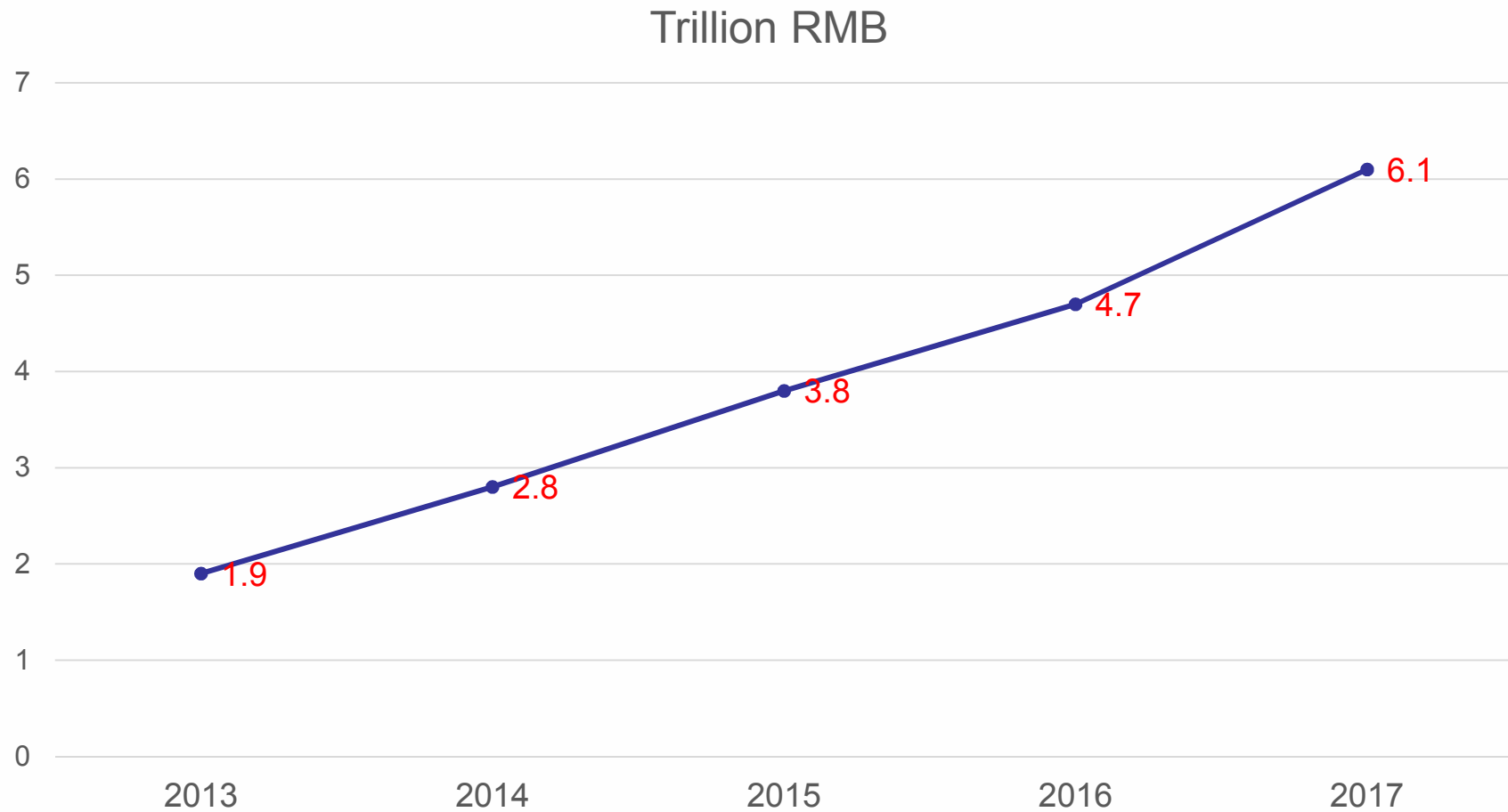


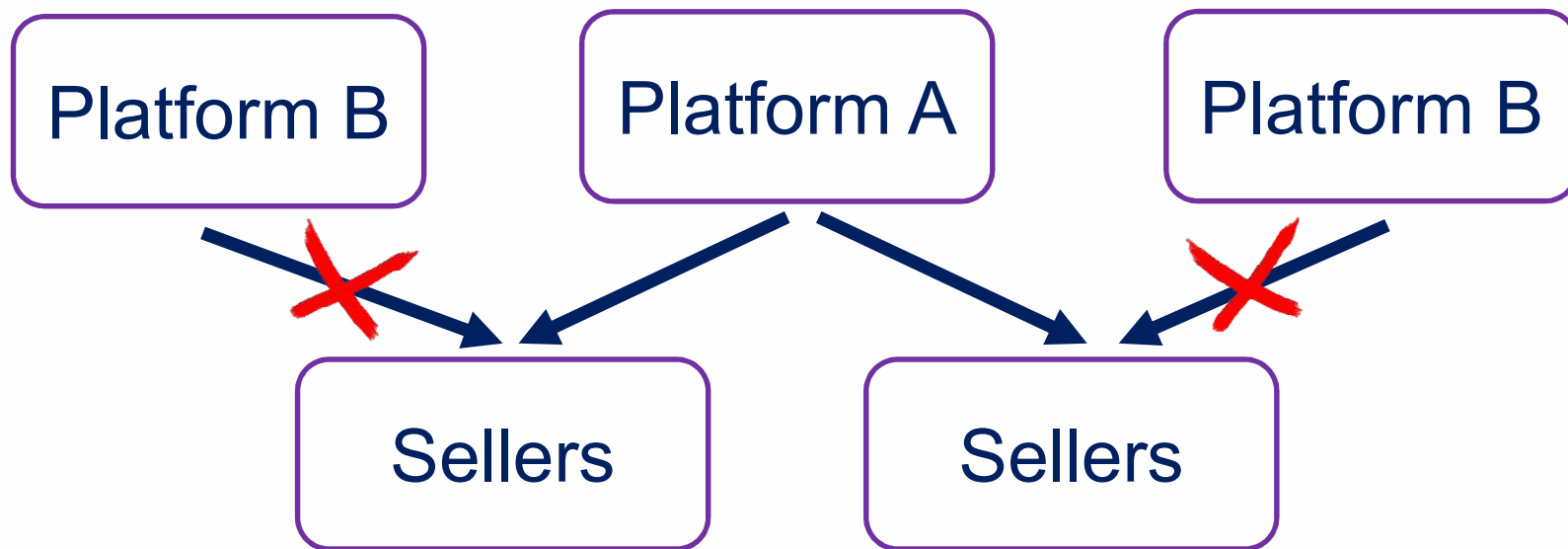
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“Either me or others, but not both”

- In the last years, platforms began to extensively impose the so-called single-platform requirement
 - require operators to choose only one platform, in particular when they would like to initiate sales campaigns.

Economic Rationale: Multi-Homing



Duopolistic Online Markets



Failed Attempt 1

- Abusing dominance under the context of anti-monopoly law (*Qihu vs Tencent 2013*)
 - Whether the product concerned is sufficiently substitutable;
 - Whether the dominant undertaking has the intention to exclude competitors;
 - Whether the conduct substantially limits competition.

Failed Attempt 2

- The 2016 proposal about abusing relative market power or economic dependence
 - This was proposed during the process of amending the Anti-unfair Competition law.
 - However, the proposal was not accepted in the end due to controversy.

Uncertain Attempt 3

- Art. 12 of Anti-unfair Competition Law (2017) prohibits Internet companies from
 - Maliciously making others' products or services *incompatible* with their own; or
 - Impeding or interrupting the normal operation of other companies' products or services
- So far, this rule has yet been enforced.

Attempt 4: final solution?

- Art. 35 of E-Commerce Law (2018) prohibits e-commerce platforms from
 - imposing on on-platform operators *unreasonable* restrictions or conditions on transactions, prices and transactions on other platforms within their service agreements, transaction rules or based on technologies.

SAMR's attitude

- On June 4 2018, the State Administration for Market Regulation published the Notice on Monitoring Internet Market
 - Calling for a particular attention on the single-platform requirement during sales campaigns.
- Administrative Recommendation
 - Wuxi Administration for Market Regulation talked with some sales platforms last summer;
 - The SAMR underlined issues of exclusive dealing on October 30 before platform operators after the adoption of E-commerce law and before the “double-11 festival”.

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Effects of Exclusive Dealing

- Pro-competitive effect:
 - Making own products unique and appealing
 - Avoiding free-riders
- Anti-competitive effect:
 - Setting strategic entry barrier
 - Leading to foreclosure effects

A proposal

- The Chinese authority should better follow the *Qihu vs. Tencent* formula:
 - Whether dominant undertakings' products are sufficiently substitutable;
 - Whether the exclusive dealing is only temporary or long term;
 - Whether the dominant undertaking obtains beyond-competition benefits; and
 - Efficiency-based justifications.

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谢谢

THANKS!

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