

Consumer Rights
in China

Policy Brief

Alibaba and the Threat to China's Banking Sector

How consumer protections are
providing Alibaba's 'Open Sesame' to
steal China's consumer market

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Consumer Rights in China

China's transition to a market economy has seen it become the world's second largest economy, yet consumer protection provisions in the country have thus far failed to match this rapid advance in economic development. The *Consumer Rights in China* programme provides a platform for China, the EU, and the rest of the world to address the urgent need to establish an effective consumer redress system in China, in order to help protect the rights of over one billion consumers.

A full version of this policy brief is forthcoming in the *Journal of Antitrust Enforcement*, Oxford University Press.



Executive Summary

- In 2014, the growth of the Chinese e-commerce behemoth Alibaba increased global scrutiny of China's economy. A firm that few in the West had heard of was suddenly thrust into the spotlight of being the world's biggest e-commerce bazaar platform with 307 million customers, bigger than Amazon and eBay combined, and the second largest internet company in the world, behind Google.
- The success of Alibaba can be attributed to the 'guarantee' it offers to consumers via its Alipay payment service: the 'Open Sesame' by which Alibaba unlocks the tremendous potential of the Chinese consumer marketplace. Thanks to Alipay, the Alibaba conglomerate not only positions itself as a vigorous opponent of international competitors in the internet industry, but also, most significantly, as the biggest threat to China's banks within the traditional state-dominated finance industry.
- By offering an escrow service, Alipay accounts for approximately half of the online payment transactions in China. This policy brief investigates how Alipay drives Alibaba's growth, analysing current consumer protection issues in China, Alipay's legal character, and its consumer redress.
- It also examines why the triple advantages enjoyed by Chinese banks — state support, public trust, and monopoly status — failed to help them secure their share in China's vast online market, with the result that Alibaba has become the biggest threat to China's banks in the state-backed financial services industry.

Alibaba and the Threat to China's Banking Sector

How consumer protections are providing Alibaba's 'Open Sesame' to steal China's consumer market

Introduction

In 2014, the development of the Chinese e-commerce behemoth Alibaba increased global scrutiny of China's economy. 'Alibaba's IPO was the world's biggest to date, raising US\$25 billion on the New York Stock Exchange.'¹ A firm that few in the West had heard of was suddenly thrust into the spotlight of being the world's biggest e-commerce bazaar platform, bigger than Amazon and eBay combined, and the second largest internet company in the world, behind Google.

While the media likes to personify this success in their portrayals of Alibaba's founder Jack Ma, this economic 'miracle' should in fact be attributed to the Chinese consumer. Ma's brilliance was in capitalizing on the treasure trove to be found in the pockets of over one billion Chinese consumers, of which Alibaba has secured a significant share — to date 307 million customers. Alibaba's China retail market has generated Gross Merchandise Volume (GMV) of RMB 1,833 billion (US\$ 296 billion) in the twelve months ending 30 June 2014.²

How can Alibaba attract so many loyal consumers? The answer can be found in Jack Ma's key weapon: Alipay. The 'guarantee' that Alipay offers to consumers serves as an 'Open Sesame' by which Alibaba unlocks the tremendous potential of the Chinese consumer marketplace. Armed with Alipay, the Alibaba conglomerate not only positions itself as a vigorous opponent of international competitors in the internet industry, but also, most significantly, as the biggest threat to China's banks within the traditional state-dominated finance industry.

Alipay: Key driver of Alibaba's success

Background of Alipay

The strength of the Alibaba Group lies in its e-commerce platform, Taobao³ and Tmall⁴ (separated from Taobao in 2010), which between them processed more transactions in 2013 than Amazon and eBay combined. However, what makes the two e-commerce platforms so powerful is the Alipay system. It is ironic that Alipay, which represents the height of modernity, is achieving its prominence by use of the escrow system, a third-party guarantee system that has been used for centuries in common law systems and which has been hitherto unknown on the Chinese market.

The scale of today's e-commerce market in China would be completely different if there were no Alipay. Launched at the end of 2003 on the Taobao platform, Alipay (also known by its Chinese name 'ZhiFuBao') was the first online payment intermediary introduced to China and is now China's most commonly used third-party online payment system.⁵ Alibaba offers the payment service to consumers purchasing on Alibaba's e-commerce platform, Taobao, on which Jack Ma has been reliant to forge today's Alibaba empire.⁶

By 2013, 39.7% of Chinese internet users were frequent users of third-party online payment. 44% of the users used third-party online payment, on average, one to four times per month. Among third-party online payment platforms, 83.8% of the users most often used Alipay.⁷ The 'Third-Party Payment Solution' has become the most trusted and reliable payment method for distance transactions in China.

What does Alipay do?

Alipay's specific mode of operation is as follows:

1. On the Taobao website, consumers select a commodity from a seller's webpage, click 'Purchase' to conclude a distance-purchase contract, and select to pay by Alipay;⁸
2. The consumer transfers the amount concerned to Alipay's account;
3. Following receipt of this payment, Alipay will inform the seller so that the goods can be prepared for shipment;
4. Thereafter, various situations may occur:
 - a. if the consumer receives the goods in a satisfactory condition at the agreed time, he will instruct Alipay to forward the payment to the vendor. Thus the transaction is successful;
 - b. if the consumer does not receive the goods at the agreed time, he will instruct Alipay to refuse payment to the vendor. Alipay will subsequently reimburse the consumer;
 - c. if the consumer is dissatisfied with the goods received, he can return the commodity to the vendor within seven days of receipt. Alipay will refund the consumer once the seller has received the goods.
 - d. If there is some dispute arising from the transaction between the consumer and the seller, both of them can submit a claim to Alipay. Alipay will start a dispute resolution process to solve the problem, by freezing the sum.

Alipay and PayPal

The similarities between Alipay and PayPal are noticeable. When Jack Ma set up Alipay, he followed the model established by eBay's use of PayPal, which accounts for the identical relation of Alipay to Alibaba's Taobao as that between PayPal and eBay.

It is noteworthy that the legal characteristics of Alipay differ significantly from payment via PayPal. The two methods may seem similar and offer similar guarantees to the transacting parties, in that there are three parties in the payment contract, namely seller, buyer, and payment intermediary. Both require the buyer initially to transfer appropriate sums to the account of the third party. The key difference is the

action of the party which holds the money during the period from the transfer of funds from the buyer's account to the buyer's receipt of the commodity. PayPal acts as an agent to collect the payment from the buyer⁹ by forwarding the money to the seller before delivering the commodity. By contrast, Alipay does not forward the funds to the seller until the buyer has received the satisfactory commodity, and given his approval. Accordingly, Alipay is acting as an escrow holder according to common law understanding.

Reluctant to be classified as an escrow holder or an escrow agent, PayPal has successfully escaped the application of the strict escrow rules in the United States. In contrast, this was not a concern for Alipay in China, as the escrow concept was not known there, and so the Chinese regulator was not aware of the risk of wrongdoing by escrow holders.¹⁰

Legal character of Alipay

The legal character of 'Third-Party Payment Solution' equates to the notion of 'escrow' in common law systems.¹¹ In other words, it constitutes,

*a legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee. The purpose of an escrow is to assure the carrying out of an obligation already contracted for.*¹²

Thus, the neutral third party plays the role of 'escrow holder' and its account is an 'escrow account'.

Escrow originated in common law¹³ and may not be familiar to those working in countries operating under civil law. Escrow has served as a convenient mechanism for secured transactions for more than five hundred years. It is strictly regulated in the USA, with special statutory laws regarding escrow in some states (e.g. California Escrow Law).¹⁴ Sixty years ago, a scholar alleged that the status of the escrow device is one of the most anomalous in the common law jurisprudence.¹⁵

However, there is no concept of escrow, nor associated rules in China's legal system; indeed, the Chinese language lacks even the special terminology

needed to classify and define this kind of legal nexus. The operation of Alipay was of questionable legality until 2011, according to the Law of the People's Republic of China on Commercial Banks,¹⁶ which confines payment transactions to China's commercial banks only. The regulator had thought Alipay was too small to be regulated.

Alipay has greatly facilitated transactions on Taobao, and it has acted as the backbone of China's e-commerce market. No rational consumer would choose to enter into a risky distance transaction without any payment protection, especially in China, where the quality of the product is unreliable, and effective redress is not easy to achieve. Alipay therefore represents a very useful tool for individual transactions, but collectively the total amount of transactions via Alipay represents a high risk to consumers unless it is properly regulated.¹⁷

Seven years after its introduction in 2003, the Chinese regulator first turned its attention to this type of payment system, which by that time dominated 80% of e-commerce payments, amounting to 5% of China's gross domestic product (GDP). Alipay and its later similar service suppliers were legitimated by an atypical phase, 'Third-Party Payment Solution' in an Administrative Rule,¹⁸ with qualification requirements consisting of licence and deposit.¹⁹

'Third-Party Payment Solution' was defined as escrow²⁰ and named by a new Chinese terminology, 'TuoFu'²¹ invented by two scholars²² in 2009. The definition was published officially by the Supreme Court Journal in 2012,²³ and then was borrowed by Alibaba to promote Alipay with the phrase 'ZhiFuBao, ZhiTuoFu' on its website.²⁴

The lack of effective consumer rights in China

Consumer Protection law in China was first adopted in 1993,²⁵ but was never revised during the following two decades. A few rules relevant to distance transaction were, for the first time, stipulated by the new amendment which came into force in March 2014.²⁶ For example, the Right of Withdrawal, which allows consumers who have made online purchases a seven-day cooling-off period (an idea adopted from European legislation²⁷), is a major reform.

The current consumer redress system comprises both the Court-based approach and the Alternative Dispute Resolution (ADR) (non-court-based) approach.²⁸ The Court-based approach acts as a last resort, but consumers do not generally use it. The principal reasons why the Court-based approach is not thought to be a practical solution are familiar: it is a costly, complicated, and lengthy procedure. The Chinese arbitration systems were designed and developed for resolving business-to-business (B2B), rather than business-to-consumer (B2C) disputes. The ambiguous nature of the division of responsibilities between individual administrative divisions deters consumers, as does the conduct of bureaucratic officials within the administration. The effectiveness of the B2B-based ADR system relies heavily on parties' autonomy, making it problematic to transfer to consumer redress, which is much more difficult to access in the event of non-cooperation by the sellers. Among all the five types of institutions for consumer redress recognized by the legislation, it is only the Chinese Consumers' Association (CCA) which is really in a position to do consumer dispute resolution (CDR) work.

CCA is a unique, large, quasi-government consumer organization in China, with 3296 branches all over the country.²⁹ CCA claims that it resolved 13,000 cases of e-commerce consumer dispute in 2013, and 8195 cases in the first half of 2014.³⁰ These are very small numbers compared to the size of the Chinese market. In contrast with the CCA, the annual total of cases resolved by Taobao and dealt with by Alipay's online dispute resolution (ODR) procedures amounts to at least fifty times the number dealt with by the CCA.³¹ Alipay not only guarantees secure transactions, but can deliver concrete outcomes to consumers when things go wrong.

It is a universal phenomenon that distance consumers experience great difficulty in securing effective redress for purchases that do not meet the agreed terms of the transaction. Under Chinese Consumer Protection Law, there are five routes for consumer redress, yet none of these is effective, particularly where the transaction occurs across national boundaries. As already noted, many moderately well off consumers have developed aspirations to gain access to consumer goods, and to experience the relatively recent access to free consumption. However, businesses generally disregard the rights of Chinese consumers, and the consumer redress system supplied by judicial channels is weak, and proves a frequent cause of frustration for Chinese consumers.

Public enforcement cannot deal properly with major incidents, let alone resolve issues relating to the millions of minor online transactions. The confidence of Chinese consumers in public enforcement has been shaken by several scandals.³² There is a common attitude among Chinese consumers that private institutions are more trustworthy than the public sector, as private institutions can help to deliver refunds when the transaction fails to meet expectations.

Alipay's virtual world: The source of Alibaba's market power

Transaction guarantees

Alipay is a useful payment platform which can efficiently deliver against rising consumer expectations, without charging consumers an additional penny. China's consumers have been engaging in e-commerce transactions since 2000 when online payment became possible, and this new form of purchase has been booming since Alipay was adopted for online payment transactions in 2003. What Alipay offers consumers does not merely constitute a new payment method; of far greater importance is its unprecedented operation as a safeguard when buying from an unknown vendor.

The fundamental role that Alipay plays is to guarantee the transaction against the risks the consumer runs regarding non-delivery or faulty goods, or the risk of non-payment experienced by the vendor. The most valuable function of escrow is thus to protect the transaction from falling through. By acting as an escrow holder, Alipay removes the uncertainties between the seller³³ and buyer, and encourages them to enter into transactions on the Taobao platform launched in 2003 by Alibaba. In just two years, armed by Alipay, Taobao became the main consumer e-commerce platform in China with 59% market share, an increase from just 8% in its first year of operation.³⁴

Dispute resolution

Alipay acts not only as a payment intermediary and guarantor of the right of both parties but also as an effective ODR service, available to both parties.

Compared to other ADR(ODR) bodies, Alipay ODR has many advantages in terms of its ability to deliver

effective evidence-gathering, enforcement, and funding. To overcome the difficulty that consumers encounter in presenting evidence of the dispute in question, Alipay is linked with the Taobao website to facilitate the easy submission, collection, and verification of evidence. The frustrations experienced by consumers under a system of weak enforcement and non-binding decisions by ADR(ODR) bodies are circumvented by Alipay's system of holding monies from transactions until the consumer expresses their satisfaction with the purchase; moreover, Alipay can be relied upon to deliver the money as per the agreement, following the result of the ODR procedure. A further major problem for many ADR systems is the financing of the system itself. Alipay does not face this problem because it is not an ADR specialist body but a financial institution that supports its ODR function through its cash reserves, held in escrow. Essentially, the ODR process is an accessory and not the central function, and its costs are met by charges made to the seller.

The shifting domination of the consumer market

Alipay and the monopoly of China's banks

Traditionally, all Chinese banks are supported by central or local government, and this has resulted in a monopolistic banking system. The triple advantages held by the banks were state support, public trust, and monopoly status. These equated to the 'open sesame' of the banks, the formula that attracted the consumer. Indeed, as noted earlier, Alipay was, in theory, illegal until 2011 because the banks alone had the exclusive right to conduct payment transactions, both payments and receipts and the operation of payment cards. But the banks were reluctant to deal with small transactions involving distance-selling, as they considered them to be both too risky and too small to yield sufficient revenue. In this they were seriously mistaken, given the huge increase in recent consumer transactions, which are frequently small in unit size but undoubtedly massive in aggregate across the market. The banks have paid for their complacency, as Alipay has thrived, in legal breach of the banks' exclusivity, by serving the demands of the market (i.e., consumers) which the banks had singularly failed to do. In practice, Alipay has broken the transaction monopoly.

China's banks set up a payment card network named UnionPay in 2002, which was intended to become the 'Chinese Visa and Master',³⁵ but which has been severely diminished by competition from Alipay in recent years, as consumers switch to Alipay (although Chinese consumers mostly use cash or UnionPay cards for face-to-face transactions because it is endorsed by the Chinese government).

Chinese banks had issued 4.2 billion cards by the end of 2013, which means that for every Chinese citizen, 3.11 bank cards have been issued.³⁶ The enormous network offers banks considerable advantages, yet the trust that consumers have traditionally held in banks as a result of their state-backing and public investment has been eroded as the banks have failed to respond to consumer demand and the private institution of Alipay stole in to capture the market from under the noses of the bank bosses.

The implications of Alipay's threat to China's banks

The banks' collective failure to offer guarantees to consumers, both online and offline, to protect them against criminal activity in the form of fraud and deception, or simply against the risk of unresolved disputes, has led to the significant erosion of their market share. The failure of the banks to operate a chargeback system, following the model of international card networks such as Mastercard and Visa, has left them vulnerable to competition from Alipay. Unfortunately, banks do not even inform consumers of the existence of chargeback in international transactions, even when using international cards. This means that Chinese consumers are denied the chargeback protection that is available to holders of credit cards in other jurisdictions. Only by offering a chargeback protection can the banks hope to compete with Alipay, equipped as it is with the escrow system of guarantee.

The question remains: Will Alibaba's success simply replace the monopoly of the banking sector with another, corporate monopoly? Over the past decade, Alipay is not only used by Chinese consumers for online transactions, but for offline transactions as well. As Alibaba accumulates fortunes from Alipay, it attracts non-escrow deposits from several hundred million Alipay users in the form of 'dormant deposits', set aside for potential future use. The aggregate of

these often small sums is huge and gives Alibaba more bargaining power than the banks in terms of placement of accounts.

As the Shanghai Bureau Chief of the *New York Times* wrote last year, 'The fund of Alibaba, established by Alipay, now has \$40 billion in assets under management, making it the country's biggest monetary fund.'³⁷ Alibaba is gradually exploring other financial products, such as lending to small businesses and using consumer deposits as a source for investment, with the promise of some return by way of interest. Consumers are likely to trust Alipay more and more, and will thus retreat from the traditional banking market and turn to Alibaba and its increasing portfolio of services.

Alipay, acknowledged as the key driver of the group's growth, processes 80 million transactions per day, accounting for roughly half of all online payment transaction within China,³⁸ more than all of the Chinese banks and the payment network UnionPay, the traditional state-dominated finance industry. Apart from providing payment transaction services, Alipay's business has expanded to wealth management by operation of Yuebao, meaning 'extra treasure' in Chinese, which allows Alibaba users to invest online cash directly in money market products. AliFinance, Alibaba's small-loan company which offer loans to vendors on its online platform, also showed huge growth in 2013, with a 50% increase year-on-year in the first quarter of 2013 and a valuation of RMB 12 billion.³⁹

Conclusion

The lack of effective consumer protection law and the unwillingness of China's banks to offer payment protection for online transactions has led to Alipay's dominance of the online payment industry. This, in turn, helped Alibaba dominate China's e-commerce market. Alipay not only enables Alibaba to accumulate a tremendous fortune, but also attracts increasing deposits from Chinese consumers. In recent years, Alibaba's financial institutions have started to offer loans and interest from accounts generated by investments, which were traditionally the exclusive privilege of the banks. The addition of holding deposits and lending activities to the portfolio of services offered by Alibaba serve to

underline the similarities between its operations and those of the banks.

The promise that China made to the World Trade Organization (WTO) to offer National Treatment to investment by foreign financial institutions leads to greater pressure on the government and the banking sector. The government had expected local financial institutions to mature during the transitional period before full WTO compliance, such that they would be able to compete with the foreign institutions when the financial market was opened to foreign institutions.

However, the poor market decision-making engendered in the banks by the privileged monopoly they have enjoyed over the Chinese consumer for decades has left them exposed to the whims of a more free and discriminating market. The risk is that local banks may fail to compete in this new marketplace and fall into bankruptcy, which may lead the Chinese government to postpone the passing of a rule allowing China's commercial banks going to bankruptcy for two decades.

Unexpectedly, the explosive growth of Alibaba in the domestic market has pushed the banks into a

dilemma such as that between Scylla and Charybdis. China's banks must respond with a real competitive offering to consumers, rather than relying on the central bank to grant them a competitive advantage, through restrictive rules on their competitors.

Along with the financial regulator, the State Administration for Industry and Commerce of the People's Republic of China (SAIC), the marketing regulator very recently published a report⁴⁰ that was highly critical of Alibaba, accusing the company of accommodating illegal businesses which were selling fake products on its platform. Fake products have pervaded the Chinese marketplace for many years, both online and offline, so the fact that the report has been released now Alibaba poses such a threat to the banking system prompts questions about the motives of the state regulator. Through its ingenuity in the market, Alibaba has realized that providing consumer protection through its payment mechanisms can be a source of enormous profit. The situation is changing day by day. Time will tell whether Alibaba's 'open sesame' will remain open to them, or if it will be forced to find new means to maintain its market domination.

Notes

¹ 'The World This Year', *The Economist*, 20 December 2014.

<<http://www.economist.com/news/world-week/21636799-world-year>> accessed 1 January 2015.

² Prospectus of Alibaba Group Holding Limited, Securities and Exchange Commission, Washington, DC: 20549, <<http://www.sec.gov/Archives/edgar/data/1577552/000119312514322604/d709111df1a.htm>> accessed 1 January 2015.

³ Founded in 2003, Taobao is China's largest consumer-to-consumer online shopping platform. It offers a variety of products for retail sale, free registration, and commission-free transactions using a free third-party payment platform (Alipay). Alibaba Group announced that GMV transacted on Taobao Marketplace in the quarter ended 30 September 2014 reached RMB 379,832 million (US\$ 61,882 million), an increase of 38.2% compared to the same quarter of 2013. See 'Alibaba Group Announces September Quarter 2014 Results' <http://www.alibabagroup.com/en/news/press_pdf/p141104.pdf> accessed 1 January 2015.

⁴ Tmall was launched in 2010 by Taobao as an independent business-to-consumer platform. According to iResearch, Tmall occupied nearly 60% B2C market share in the second quarter of 2014. See 'Alibaba Group Announces September Quarter 2014 Results', <http://www.alibabagroup.com/en/news/press_pdf/p141104.pdf> accessed 1 January 2015.

⁵ In the Chinese context, Alipay offers 'third-party payment', meaning payment services provided by non-financial institutions. The procedure for this method is that the parties to the distance contract choose the 'Third-Party Payment Solution', as a payment method. The cost of the purchase is deposited by the consumer with a third party, to be held until s/he gives approval for the payment to be passed to the merchant, once the goods have been received in a satisfactory condition. See Art. 2 of Order of the People's Bank of China (No.2 [2010]), Administrative Measures for the Payment Services Provided by Non-financial Institutions, <http://www.pbc.gov.cn/publish/tiaofasi/274/2010/20100621164122767397231/20100621164122767397231_.html> accessed 1 January 2015.

⁶ There was zero revenue from the first three years of Alibaba, when there was no payment system employed on the platform, according to Jack Ma's Davos talk, 'An Insight, An Idea with Jack Ma', <<http://www.weforum.org/sessions/summary/insight-idea-jack-ma>> accessed 1 January 2015.

⁷ iResearch 2014 China Online Payment User Report, <<http://www.iresearchchina.com/samplerereports/5897.html>> accessed 1 January 2015.

⁸ After a distance-purchase contract is concluded on an e-commerce platform, usually there are four payment options available to the buyer, including bank card payment, third-party payment (e.g. Alipay), bank transfer, and cash on delivery. The majority of Taobao sellers only provide the first two options for a fast, convenient, and secure transaction. In China, the concern of most consumers is that by choosing bank card payment, the funds reach the seller immediately and the buyer's interests and rights are at risk. Most consumers on Taobao choose Alipay to protect their rights.

⁹ PayPal declares in the "PayPal Service Agreement" Art.13.2 that PayPal is not acting as a trustee, fiduciary, or escrow with respect to your funds, but

- is acting only as an agent and custodian. See PayPal User Agreement for PayPal Services, <https://cms.PayPal.com/c2/cgi-bin/marketingweb?cmd=_render-content&content_ID=ua/UserAgreement_popup&locale.x=zh_XC> accessed 1 January 2015.
- ¹⁰ The first time that the Chinese regulator attempted to regulate Alipay was in 2010, see 'Detailed Rules for the Implementation of the Administrative Measures for the Payment Services Provided by Non-financial Institutions', Announcement No.17 [2010] of the People's Bank of China, <http://www.pbc.gov.cn/publish/tiaofasi/274/2010/20100621164122767397231/20100621164122767397231_.html> accessed 1 January 2015.
- ¹¹ Ying Yu, 'Characterization of Third-party Payment Mode: Escrow in Distance Consumer Protection', *Journal of Law Application* 6 (2012), 51–5.
- ¹² Gary A. Hughes, 28. Am. Jur. 2d Escrow §2, 2010.
- ¹³ Ying Yu, 'Establishing Internet Escrow Legal System in China', *Journal of Law Application* 3 (2009), 36–9.
- ¹⁴ Cal. Fin. Code Division 6. 'Escrow Agents'.
- ¹⁵ Ollie Jr Blan, 'A survey of Escrow - A Legal Adolescent', *Arkansas Law Review* 8 (1953/54), 164.
- ¹⁶ Law of the People's Republic of China on Commercial Banks (2003), <http://www.pbc.gov.cn/publish/zhengwugongkai/501/1809/18098/18098_.html> accessed 1 January 2015.
- ¹⁷ Ying Yu, 'Establishing Internet Escrow Legal System in China', *Journal of Law Application* 3 (2009), 36–9.
- ¹⁸ 'Detailed Rules for the Implementation of the Administrative Measures for the Payment Services Provided by Non-financial Institutions', Announcement No. 17 (2010) of the People's Bank of China, <http://www.pbc.gov.cn/publish/tiaofasi/274/2010/20100621164122767397231/20100621164122767397231_.html> accessed 1 January 2015.
- ¹⁹ This Rule at the time provided licence application guidelines only for domestic Chinese entities and stated that any payment company that failed to obtain a licence had to fold their business by 1 September 2011. As Alibaba is technically a foreign-invested entity incorporated in the Cayman Islands, it had to separate Alipay from its group and restructured it as a company wholly owned by Chinese nationals, in order to apply for the payment business licence based on the available guidelines for domestic Chinese entities. Since the separation, Alibaba offers payment and escrow services through contractual arrangements with Alipay. Prospectus of Alibaba Group Holding Limited, Securities and Exchange Commission, Washington, DC: 20549, <<http://www.sec.gov/Archives/edgar/data/1577552/000119312514322604/d709111df1a.htm>> accessed 1 January 2015.
- ²⁰ Ying Yu, 'Characterization of Third-Party Payment Mode', 51–5.
- ²¹ 'TuoFu' combines the Chinese word for trust which is 'Tuo' and the Chinese word for payment which is 'Fu'. See *Ibid.*, 51–5.
- ²² Ying Yu and her PhD supervisor Professor Jin Huang. See Ying Yu, *Hybrid Approach to Protect Distance Consumers* (Beijing: China Legal Press, 2013), p. 46.
- ²³ Ying Yu, 'Establishing Internet Escrow Legal System in China', 36–9; Ying Yu, 'Characterization of Third-party Payment Mode', 51–5. <<https://www.alipay.com/>>
- ²⁴ <<https://www.alipay.com/>>
- ²⁵ Law of the People's Republic of China on the Protection of Consumers' Rights and Interests, 1993.
- ²⁶ *Ibid.*, 2013.
- ²⁷ Directive on Consumer Rights (2011/83/EC).
- ²⁸ Consumer Protection Law 2013, Art 39: 'In case of disputes with business operators over consumer rights and interests, consumers may settle the disputes through the following approaches:
(1) to consult and conciliate with business operators;
(2) to request to consumer associations (or other ADR body) for mediation;
(3) to appeal to relevant administrative departments;
(4) to apply to arbitral organs for arbitration according to the arbitral agreements with business operators;
(5) to institute legal proceedings in the people's court.'
- ²⁹ The network of Chinese consumer protection organizations was composed of 3296 consumers' associations at or above county level across the country. See 'Introduction of Chinese Consumers' Association' <<http://www.cca.org.cn/>> accessed 1 January 2015.
- ³⁰ CCA Reports of Dispute Resolution of 2013 and First Half of 2014, <<http://www.cca.org.cn/tsdh/detail/20552.html>> accessed 1 January 2015.
- ³¹ Ying Yu, *Hybrid Approach to Protect Distance Consumers*, p.147.
- ³² Most notably the 2008 Chinese milk scandal in which milk powder adulterated with melamine affected an estimated 300,000 people. Six infants died from kidney stones and other kidney damage, and 60,000 babies were hospitalized. Initially, the local governments tried to cover up the problem and sentenced a few producers to jail. When the scandal was exposed on the internet, the local governments asked the producers to build a fund for victims' compensation. However, the disbursement of the fund remains a mystery, and suspicions have been raised that the fund became just another instance of fraudulent appropriation by officials.
- ³³ Even though Taobao is technically described as a C2C platform, in reality it is a B2C service. The reasons for this misdescription are associated with tax avoidance on the part of business, which enables businesses to avoid the registration process and thus to avoid paying taxes. See Ying Yu, *Hybrid Approach to Protect Distance Consumers*, p.20.
- ³⁴ 'Face value, China's pied piper: Jack Ma is attracting a following among entrepreneurs in China and internet companies worldwide', *The Economist*, 21 September 2006, <http://www.economist.com/node/7942225?story_id=7942225> accessed 1 January 2015.
- ³⁵ Overview of UnionPay, <http://en.unionpay.com/comInstr/aboutUs/file_4912292.html> accessed 1 January 2015.
- ³⁶ Finance Service Report of the People's Bank of China: 2013 China Payment System Development Report, P147, <http://www.pbc.gov.cn/image_public/UserFiles/zhifujiesuansi/upload/File/中国支付体系发展报告2013英文.pdf> accessed 1 January 2015.
- ³⁷ David Barboza, 'High-Interest Web Banks on the Rise in China', *New York Times*, 2 March 2014, <http://www.nytimes.com/2014/03/03/business/international/web-banks-offering-high-interest-rates-rise-in-china.html?_r=0> accessed 1 January 2015.
- ³⁸ 'Alibaba: The world's greatest bazaar', *The Economist*, 23 March 2013, <<http://www.economist.com/news/briefing/21573980-alibaba-trailblazing-chinese-internet-giant-will-soon-go-public-worlds-greatest-bazaar>> accessed 27 January 2015.
- ³⁹ Tracey Xiang, 'Alibaba's Financial Arm Made 1.1 million Loans to Online Retailers in Q1 2013', TechNode, 21 May 2013, <<http://technode.com/2013/05/21/Alibas-financial-arm-made-1-1-million-loans-to-online-retailers-in-q1-2013/>> accessed 1 January 2015.
- ⁴⁰ SAIC Report of Inspecting Results of E-commerce Commodities of the Second Year of 2014' (Beijing, 23 January 2015) <http://www.saic.gov.cn/zwgk/zyfb/qt/xxzx/201501/t20150123_151599.html> accessed 28 January 2015.



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