

MOFCOM Announcement [2012] No. 9 regarding the Conditional Approval of the Acquisition of Hitachi Global Storage Technologies by Western Digital Corp
商务部公告2012年第9号
关于附加限制性条件批准西部数据收购日立存储经营者集中反垄断审查决定的公告
2012-03-02

Upon receipt and review of the anti-monopoly notification of a concentration between business operators submitted in connection with the acquisition of Hitachi Global Storage Technologies (hereinafter referred to as “Hitachi Storage”) by Western Digital Corp (hereinafter referred to as “Western Digital”), the Ministry of Commerce of the People’s Republic of China (“MOFCOM”) decides to conditionally approve such concentration of business operators. In accordance with Article 30 of the *Anti-Monopoly Law of the People’s Republic of China* (hereinafter referred to as the “*Anti-Monopoly Law*”), it is hereby announced as follows:

中华人民共和国商务部收到西部数据收购日立存储的经营者集中反垄断申报。经审查，商务部决定附加限制性条件批准此项经营者集中。根据《中华人民共和国反垄断法》（以下简称《反垄断法》）第三十条，现公告如下：

一、立案和审查程序	1 Case Acceptance and Review Process
<p>2011年4月2日，商务部收到西部数据收购日立存储的经营者集中申报。经审核，商务部认为该申报文件、材料不完备，要求申报方予以补充。5月10日，商务部确认经补充的申报文件、资料符合《反垄断法》第二十三条的要求，对该项经营者集中申报予以立案审查。</p> <p>经初步审查，商务部认为此项集中对硬盘驱动器（以下简称硬盘）市场可能具有排除、限制竞争效果。6月8日，商务部决定对此项集中实施进一步审查。9月7日，经申报方同意，商务部决定延长进一步审查期限，截止时间为11月6日。11月1日，西部数据以案件事实产生重大变更为由申请撤回申报，商务部审查后予以同意，审查程序终止。11月7日，商务部对西部数据重新申报的经营者集中予以立案审查。12月7日，商务部决定对此项集中实施进一步审查，截止日期为2012年3月6日。</p> <p>审查过程中，商务部对申报方提交的文件、资料的真实性、完整性和准确性进行了审核，书</p>	<p>On April 2, 2011, MOFCOM received the notification of a concentration between business operators concerning the acquisition of Hitachi Storage by Western Digital. Through review and verification, MOFCOM believed that the notification documents and materials were incomplete and requested the notifying party to supplement. On May 10, MOFCOM confirmed that the supplemented notification documents and materials satisfied the requirements of Article 23 of the <i>Anti-Monopoly Law</i>, and accepted such case for review.</p> <p>After its first phase review, MOFCOM believed that such concentration may cause an impact of eliminating or restricting competition in the market of hard disk drives (hereinafter referred to as “Hard Disk”). On June 8, MOFCOM decided to conduct a further review. On September 7, with the consent of the notifying party, MOFCOM decided to extend the period of further review to November 6. On November 1, Western Digital applied to withdraw the</p>

<p>面征求了相关政府部门、行业协会和下游企业等方面的意见，实地调研了生产企业，向客户、行业专家了解了相关产品、相关市场界定、市场结构、交易模式、市场发展前景等方面的信息，委托专家对此项集中的竞争影响进行了分析评估。</p>	<p>notification for the reason that the case facts had materially changed, and MOFCOM agreed to such withdrawal after review, and the review procedure was terminated. On November 7, MOFCOM accepted the notification of a concentration between business operators re-notified by Western Digital. On December 7, MOFCOM decided to conduct a further review on such concentration and the deadline would be March 6, 2012.</p> <p>During the review, MOFCOM reviewed and verified the authenticity, entirety and accuracy of the documents and materials submitted by the notifying party, solicited comments in writing from relevant governmental authorities, heard the opinions of industrial associations and downstream enterprises, conducted on-site investigations on the manufacturers, learned the information concerning the relevant products, the relevant market definition, market structure, transaction modes and market development prospect from clients and industrial experts, and entrusted experts to analyze and assess the impact of such concentration on competition.</p>
<p>二、竞争分析</p> <p>根据《反垄断法》及其相关规定，商务部对此项集中涉及的硬盘行业市场状况、采购模式、产能利用、产品创新、买方议价能力、市场进入和集中对消费者影响等内容进行了审查，考虑了在上述相关商品市场中此前发生的交易、特定期限市场价格变化等情况，综合评估了此项经营者集中对市场竞争等方面的影响。</p> <p>(一) 集中交易和相关市场。</p> <p>根据西部数据、西部数据爱尔兰公司（西部数据全资子公司）、日立公司和Viviti Technologies Ltd.（日立公司全资子公司，以下简称Viviti公司）签署的《股权购买协议》，西部数据将收购Viviti公司全部股权。西部数据是从事硬盘等</p>	<p>2 Competition Analysis</p> <p>According to the <i>Anti-Monopoly Law</i> and the relevant regulations, MOFCOM reviewed the market situation of the hard disk industry involved in such concentration, the purchase modes, capacity utilization, product innovation, buyers' bargaining ability, market entry and the impact of concentration on consumers, took into consideration of the previous transactions occurred in the above relevant product market and the changes of the market prices during certain periods, and comprehensively assessed the impact of such concentration of business operators on market competition.</p> <p>(I) The concentration and the relevant market</p> <p>According to the <i>Equity Purchase Agreement</i></p>

数字存储产品的生产和销售企业。Viviti公司作为控股公司直接持有Hitachi Global Storage Technologies Netherlands B.V.公司，并通过该公司间接持有Hitachi Global Storage Technologies Singapore Pte.Ltd.等公司从事硬盘业务。

硬盘是以磁存储技术为基础的存储设备，通常作为计算机和其他消费电子产品中最重要的辅助存储介质使用。硬盘与固态硬盘、闪存等其他辅助存储设备在容量、价格、用途等方面差异明显，硬盘市场构成单独的相关商品市场。按终端应用不同，硬盘市场可以分为企业级应用、台式电脑应用、便携式电脑应用和消费电子产品应用等细分的相关商品市场。硬盘的采购和供应在全球市场范围内展开，本项集中的相关地域市场为全球市场。

(二) 市场状况。

经调查，商务部发现硬盘市场呈现以下特征：

第一，市场集中度较高。近二十年来，硬盘市场集中度不断提高。目前，在硬盘市场上仅存希捷、西部数据、日立存储、东芝和三星5家生产商（2011年12月，商务部批准希捷收购三星硬盘业务，但要求三星硬盘作为独立的竞争者继续存在）。2010年，上述5家生产商在全球市场的份额分别约为33%、29%、18%、10%和10%，在中国市场的份额与此类似。

第二，硬盘产品同质化明显。各硬盘厂商的硬盘产品之间差异不大，下游用户能在较短时间内转换供应商，且成本很低。

第三，硬盘市场透明度较高。硬盘厂商和主要买家数量均较少，产品同质化明显，竞争者对相互之间的技术、成本、生产和销售状况等情况均比较了解。硬盘厂商能凭借相关事实和经验确定竞争对手的产品价格或价格区间。同时，硬盘厂商经常共用相同的分销商，通过分销

signed by Western Digital, Western Digital Ireland Company (the wholly-funded subsidiary of Western Digital), Hitachi Company and Viviti Technologies Ltd. (the wholly-funded subsidiary of Hitachi (hereinafter referred to as "Viviti")), Western Digital shall acquire all equity of Viviti. Western Digital is an enterprise engaged in manufacturing and selling digital storage products such as hard disks. As a holding company, Viviti directly holds Hitachi Global Storage Technologies Netherlands B.V, and, through such company, indirectly holds Hitachi Global Storage Technologies Singapore Pte.Ltd. to conduct hard disk business.

Hard disk is a kind of storage device based on magnetic storage technology, and usually used as the most important secondary storage media of computers and other consumer electronics. Hard disk is quite distinctive from solid-state disk, flash memory and other secondary storage devices in the aspects of volume, price and use, and so the hard disk market constitutes a separate product market. According to the different end uses, the hard disk market could be classified into relevant product markets for enterprise use, desktop use, notebook computer use and consumer electronics use. The purchase and supply of hard disks are conducted globally. The relevant regional market of such concentration is global.

(II) Market Situation

Through investigation, MOFCOM found that the hard disk market had the following features:

1. The market concentration is high. In recent 20 years, the market concentration of hard disk keeps increasing. At present, only five manufacturers are active on the market, that is, Seagate, Western Digital, Hitachi Storage, Toshiba and Samsung (in December 2011, MOFCOM approved the acquisition of the hard

<p>渠道了解其他品牌硬盘产品信息较容易。</p> <p>第四，大型电脑生产商是硬盘产品的主要下游客户。硬盘产品销售主要包括对大型电脑生产商的销售和经过分销商向下游用户的销售，其中大型电脑生产商是硬盘的主要客户，其与硬盘生产商之间的交易价格决定了硬盘的市场价格。</p> <p>(三) 采购模式。</p> <p>为获得并保持竞争性价格，大型电脑生产商在硬盘采购中通常采用不公开竞标方式，按季度同多个硬盘生产商进行双边谈判。为保证供应的连续性和安全性，大型电脑生产商最终将总需求按照价格等因素在2至4家硬盘生产商之间按一定比例分配。在单次竞标中，最具竞争力的要约一般会获得较大订单份额，次之会获得较小订单份额，再次的可能拿不到订单。这种采购模式促使硬盘生产商为了获得订单和获得更大的订单份额而竞争。因此，维持大型电脑生产商目前的采购模式对保持硬盘市场的竞争非常重要。</p> <p>(四) 产能利用。</p> <p>调查发现，硬盘行业产能利用率较高。2008年第四季度以来，随着市场需求的增加，所有硬盘生产商的产能利用率均持续上升。2010年第四季度全部5家硬盘生产商的平均产能利用率约90%，剩余产能有限。2011年的泰国洪灾导致部分产能暂时无法利用，市场供应进一步紧张。</p> <p>(五) 产品创新。</p> <p>调查发现，创新对硬盘行业影响重大。率先推出创新产品可以获得较高的市场份额和利润，在其他竞争者推出同类产品后，该产品利润率即显著降低。硬盘生产商需要通过不断创新降低成本，创新是硬盘生产商的重要竞争手段。</p>	<p>disk business of Samsung by Seagate, but requested to still keep Samsung hard disk as an independent competitor). In 2010, the shares of the above five manufacturers in global market are respectively 33%, 29%, 18%, 10% and 10%, and the shares in China market are similar.</p> <p>2. The homogenization of hard disk products is obvious. There are few differences between the hard disk products of the manufacturers, and so the downstream users could change the suppliers within a short time at a low cost.</p> <p>3. The transparency of the hard disk market is relatively high. There are a few hard disk manufacturers and a small number of main purchasers, the products are identical, and each competitor has a clear knowledge about the technologies, costs, manufacturing and sales status of the other competitors. The hard disk manufacturers could rely on the relevant facts and experiences to estimate the product prices or price ranges of the competitors. Meanwhile, the hard disk manufacturers often share the same distributors and so it is easy to learn the information on the hard disk products of other brands through distribution channel.</p> <p>4. Those large computer manufacturing enterprises are the main downstream clients of hard disk products. The hard disk products are mainly sold to large computer manufacturing enterprises and to downstream users through distributors. The former are the main clients of hard disks and the prices for the transactions between such enterprises and the hard disk manufacturers would determine the market price of hard disks.</p> <p>(III) Purchase Modes</p> <p>In order to obtain and keep a competitive price, a large computer manufacturing enterprise usually adopts private bidding to purchase hard disks and</p>
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调查还发现，硬盘市场的竞争是维持产品创新的重要前提，排除或限制竞争行为将显著降低硬盘生产商的创新意愿和创新速度。

(六) 买方议价能力和对消费者影响。

调查发现，硬盘厂商主导下游分销商的销售价格，分销商对硬盘厂商不具有抵消性的购买力量。对于大型电脑生产商，硬盘厂商的涨价如不是针对特定企业，一般不会遭到大型电脑生产商的反对。大型电脑生产商有能力通过提高电脑产品的价格，将硬盘价格的上涨转嫁给最终消费者，因此，缺乏行使抵消性购买力量的意愿。最终消费者高度分散，对硬盘和电脑价格的上涨没有议价能力。

受2011年泰国洪灾影响，西部数据硬盘产能受损并率先提高硬盘价格。此后，包括交易双方在内的其他硬盘厂商也提高了产品价格，部分硬盘产品涨价幅度超过100%。调查发现，在其他条件未见明显变化的情况下，个人电脑的销售价格相应上涨，电脑生产商将硬盘价格上涨转嫁给了最终消费者。

(七) 市场进入。

调查发现，知识产权及其他专有知识对硬盘行业至关重要，特别是非知识产权的核心技术、工艺流程和技术队伍构成进入该市场的实质性障碍。规模经济在相关市场中同样重要，新进入者如无法达到一定的生产和销售则无法生存，而要达到相应规模则需要高额的生产、研发和市场开拓投资，潜在风险巨大。近十年来，没有新的竞争者进入相关市场。据此，商务部认为硬盘市场进入难度很大。

(八) 此项集中对相关商品市场和消费者的影响。

在硬盘市场，交易双方都是重要的生产商。鉴于前述大型电脑生产商的采购模式，此项集中将减少一个重要的竞争者，加大了剩余硬盘生

conducts bilateral negotiation with several hard disk manufacturers on a quarterly basis. To ensure the continuous and safe supply of hard disks, the large computer manufacturing enterprise shall finally proportionally allocate its total demand among 2 to 4 hard disk manufacturers based on price and other elements. During any single bidding, the most competitive offer shall obtain a larger order share, while the less competitive offer may get a smaller share or even could not get any order. Such purchase mode shall urge the hard disk manufacturers to compete for getting more orders and obtaining a large order share. Therefore, to keep the present purchase mode of the large computer manufacturing enterprises is critical to the maintenance of the competition in the hard disk market.

(IV) Production capacity utilization

It is found through investigation that the production capacity utilization rate is high for hard disk industry. Since the fourth quarter of 2008, with the increase of market demand, the production capacity utilization rates of all hard disk manufacturers have kept increasing. In the fourth quarter of 2010, the average production capacity utilization rate of all five hard disk manufacturers was around 90%, and the remaining capacity was limited. The flood in Thailand in 2011 led to the temporary failure in using part of the production capacity and so caused the further shortage of market supply.

(V) Product innovation

Through investigation, it is found that the influence of innovation on the hard disk industry is significant. Any manufacturer who first introduces an innovative product shall obtain a larger market share and more profits. After other competitors also introduce similar products, the profit margin of such product shall decrease

产商均获得订单的机会，削弱了采购过程中硬盘生产商之间的竞争压力。西部数据和日立存储均是相关市场内的重要创新者，此项集中将增强交易双方通过推迟新产品投入市场时间、延长原有产品生命周期等方式放缓创新速度的可能性。同时，由于硬盘市场透明度较高，硬盘厂商有能力预判其他竞争者的行为，此项集中也将进一步增加市场竞争者通过协调从事排除、限制竞争行为的可能性。目前，中国是全球最大的个人电脑消费国之一，此项集中将对中国消费者利益造成不利影响。

(九) 审查结论。

综上，商务部认为此项集中将对硬盘市场产生排除、限制竞争的效果。

significantly. The hard disk manufacturers need to keep innovating to lower costs. Innovation is an important competition means for hard disk manufacturers. It is also found that the competition in hard disk market is the important premise of product innovation. The act of eliminating or restricting competition shall obviously undermine the innovation aspiration of the hard disk manufacturers and also slow down the innovation.

(VI) Buyers' bargaining ability and the impact on consumers

Through investigation, it is found that the hard disk manufacturers have significant influence in determining the selling prices of hard disks by the downstream distributors, and the distributors have no countervailing buyer power against hard disk manufacturers. For large computer manufacturing enterprises, if the price increase made by any hard disk manufacturer is not against certain enterprises, they shall not object to such raise. The large computer manufacturers shall have the power to pass on such increase in the prices of hard disks to the end consumers by raising the prices of computer products. Therefore, they do not have the aspiration to exercise countervailing buyer power. The end consumers are highly scattered, and have no bargaining ability against the increase of prices of hard disks and computer products.

Due to the Thailand flood 2011, the production capacity of Western Digital hard disk was influenced and Western Digital first raised the prices of hard disks. Following it, other hard disk manufacturers including the parties to such transaction also raised the prices of their products, and some even raised the price by over 100%. It is found through investigation that the sales prices of personal computers were raised accordingly with other conditions unchanged and the computer manufacturing enterprises passed

on the increase of hard disk prices to the end consumers.

(VII) Market entry

It is found through investigation that intellectual properties and other know-how are critical to hard disk industry. Especially, the non-IP core technologies, manufacturing process and technology team constitute the material obstacles for market entry. Economies of scale are also important in the relevant market. The new entrants shall not survive if they could not reach a certain quantity in both production and sales. But in order to achieve such scale, they need to make huge investments in production, R&D and market expansion, and so shall potentially face great risks. In recent ten years, no new competitors enter the relevant market. Therefore, MOFCOM believes that it is difficult to enter the hard disk market.

(VIII) The influence of such concentration on the relevant commodity market and consumers

In the hard disk market, both parties to this transaction are important manufacturers. In consideration of the above-said purchase mode of the large computer manufacturers, such concentration shall cause one important competitor to leave such market, increase the chances of the remaining hard disk manufacturers to get orders, and so mitigate the competition between the hard disk manufacturers during the purchase. Both Western Digital and Hitachi Storage are important innovators in the relevant markets. Such concentration shall increase the possibility for the two parties to slow down innovations by postponing the launch of any new products and prolonging the life cycles of original products. Also, due to the high transparency of hard disk market, the hard disk manufacturers could predict the behavior of other

	<p>competitors, and such concentration shall further strengthen the possibility that the market competitors conduct acts of eliminating and restricting competition through coordination. Nowadays, China is one of the largest PC consumption countries in the world. Such concentration shall cause adverse influence on the interests of Chinese consumers.</p> <p>(IX) Review conclusion</p> <p>Based on the above elements, MOFCOM believes that such concentration shall eliminate or restrict competition in the hard disk market.</p>
<p>三、附加限制性条件的商谈</p> <p>在审查期间，商务部向申报人指出了本项集中将产生的排除、限制竞争效果，并就如何消除上述竞争问题进行了多轮商谈。申报人先后提出了多个解决方案，并向商务部提交了欧盟附加限制性条件批准此项集中的书面文件。经评估，商务部认为，申报人提交的最终解决方案，包括按照欧盟要求向独立第三方出售Viviti公司全部3.5英寸硬盘资产内容的解决方案，能够减少此项经营者集中对竞争产生的不利影响。</p>	<p>3 Negotiations concerning the Restrictive Conditions</p> <p>During the review, MOFCOM pointed out to the notifying party that such concentration shall eliminate or restrict competition and conducted several rounds of negotiations to discuss how to solve such competition problem. The notifying party worked out several solutions, and submitted the written document issued by EU to conditionally approve such concentration. Through evaluation, MOFCOM believes that the final solution submitted by the notifying party, including the solution containing the content of selling all 3.5-inch hard disk assets to the independent third party according to the requirements of EU, could mitigate the adverse impact of such concentration on competition.</p>
<p>四、审查决定</p> <p>审查认为，西部数据收购Viviti公司对硬盘市场具有排除、限制竞争影响，商务部决定附加限制性条件批准此项集中，西部数据（包括西部数据及其关联公司，下同）、日立公司和Viviti公司（包括Viviti公司及其关联公司，下同）应履行如下义务：</p> <p>（一）集中完成后，在相关市场上维持Viviti公司作为一个独立的竞争者存在，包括但不限于以下内容：</p>	<p>4 Review Decision</p> <p>Through review, it is believed that the acquisition of Viviti by Western Digital shall have an impact of eliminating or restricting competition in the market of hard disk. MOFCOM decides to conditionally approve such concentration and requires Western Digital (including Western Digital and its affiliates, hereinafter the same), Hitachi and Viviti (including Viviti and its affiliates, hereinafter the same) to fulfill the following obligations:</p>

第一，维持Viviti公司交易前的状态，确保Viviti公司维持独立的法人地位并独立开展业务，包括但不限于研发、生产、采购、营销、售后、行政、财务、投资、人事任命等方面。为确保上述独立性，西部数据和Viviti公司应事先制定保障措施，报告监督受托人并经商务部批准后实施，接受本决定项下的监督。

第二，集中完成后，Viviti公司应当继续使用既有的生产线和相关生产团队生产硬盘产品，并由原销售团队以HGST生产商的名义（交易完成后，Viviti公司直接持有的Hitachi Global Storage Technologies Netherlands B.V.公司及项下的关联公司中的Hitachi Global Storage Technologies或日立环球存储科技将改为HGST），以交易前使用的TRAVELSTAR和ULTRASTAR品牌，以独立和合理的定价机制继续独立销售硬盘产品。西部数据和Viviti公司互不沟通或干预对方的生产、定价和销售等事宜。为确保实现上述目标，西部数据和Viviti公司应当事先制定保障措施，特别是双方应当建立防火墙，确保双方不会交换竞争性信息。竞争性信息是指任何可能导致竞争者之间协调彼此经营行为的信息，特别是任何有关产品成本、价格、产量、客户、竞标等方面的信息。上述措施报告监督受托人并经商务部批准后实施，接受本决定项下的监督。

第三，集中完成后，西部数据对Viviti公司行使股东权利履行股东义务不得损害两公司的独立性，不得排除或限制两公司之间的竞争。西部数据任何行使股东权利履行股东义务的事项均应事先报告监督受托人，其中涉嫌损害两公司独立性、排除或限制两公司间竞争的，应当事先报商务部批准。双方应当事先制定保障措施，特别是应当建立防火墙，报告监督受托人并经商务部批准后实施，接受本决定项下的监督。

第四，西部数据和Viviti公司应各自维持相互独立的研发机构。双方可在硬盘产品研发方面进

(I) After the concentration, Viviti shall be kept as an independent competitor in the relevant market, including but not limited to the following:

1. To keep Viviti in the same status as before the transaction, and ensure Viviti to have an independent legal person status and independently carries out businesses, including but not limited to the following aspects: R&D, manufacture, purchase, marketing, post-sale, administration, finance, investment and staffing. To ensure the above independence, Western Digital and Viviti shall stipulate the safeguard measures in advance, report such measures to the supervising trustee and implement them after being approved by MOFCOM, and accept the supervision under such Decision.

2. After the concentration, Viviti shall keep using the existed production line and the relevant production team to produce hard disk products, and such products shall be sold independently by the original sales team in the name of the manufacturer, HGST (after the transaction, the name of Hitachi Global Storage Technologies Netherlands B.V. directly held by Viviti, and the affiliate, Hitachi Global Storage Technologies, shall be changed into HGST), with the original brands TRAVELSTAR and ULTRASTAR, and under an independent and reasonable pricing mechanism. Western Digital or Viviti shall not communicate or intervene the issues concerning production, pricing and sales of the other party. To guarantee the realization of the above goals, Western Digital and Viviti shall stipulate certain safeguard measures in advance. In particular, the parties shall establish a firewall to ensure that the parties shall not exchange competitive information. Competitive information refers to any information which is likely to cause the competitors to coordinate their operating activities, especially any information concerning product cost, price, output, clients and bidding.

行合作，以提高双方的生产效率和竞争力，但不得以此沟通竞争性信息、损害两公司的独立性、排除或限制两公司之间的竞争。西部数据和Viviti公司应当就研发合作事项事先提交具体方案，报告监督受托人并经商务部批准后实施。实施过程中的任何信息及人员交流等事项均应事先向监督受托人报备，接受本决定项下的监督。

（二）西部数据和Viviti公司应当根据市场需求状况合理确定产能产量。西部数据和Viviti公司产品的产能和产量情况应当按月向监督受托人报告，接受本决定项下的监督。

（三）集中完成后，西部数据和Viviti公司不得实质性改变此前的商业模式，强制或变相强制客户从两公司排他性地采购其硬盘产品。

（四）西部数据和Viviti公司将以近年一贯的速度，继续和创新领域投入研发资金，以确保给客户带来更多创新性产品和解决方案。

（五）在满足（一）条件的基础上，西部数据承诺，在本审查决定公布之日起6个月内，向第三方剥离Viviti公司主要3.5英寸硬盘资产。剥离上述资产的交易，按照《反垄断法》、《关于实施经营者集中资产或业务剥离的暂行规定》等相关规定办理。

（六）根据商务部《关于实施经营者集中资产或业务剥离的暂行规定》，西部数据应委托独立的监督受托人对西部数据履行上述义务的情况进行监督。

本决定实施24个月后，西部数据可以向商务部提出解除上述第（一）、（二）项义务的申请。该申请应说明本决定项下附加限制性条件的实施情况和解除上述义务的理由并提供相关证

These measures shall be reported to the supervising trustee and implemented after being approved by MOFCOM, and they shall be under the supervision determined by such Decision.

3. After the transaction, Western Digital shall exercise shareholder rights and perform shareholder obligations against Viviti, but shall not prejudice the independence of the two companies, nor eliminate or restrict the competition between the two companies. The matters concerning exercising of shareholder rights or performing of shareholder obligations by Western Digital shall be reported to the supervising trustee in advance. Those suspected of prejudicing the independence of the two companies or eliminating or restricting the competition between the two companies shall be previously reported to MOFCOM for approval. The parties shall stipulate the safeguard measures in advance. Especially, a firewall is necessary. These measures shall be reported to the supervising trustee and implemented after being approved by MOFCOM, and shall be supervised under such Decision.

4. Western Digital and Viviti shall keep independent organization in R&D. The parties could cooperate in the research and development of hard disk products to improve the production efficiency and competitiveness, but shall not rely on this cooperation to exchange competitive information, prejudice the independence of the two companies, or eliminate or restrict the competition between the two companies. Western Digital and Viviti shall previously submit specific proposal on R&D cooperation, report to the supervising trustee and implement it after being approved by MOFCOM. Any matters concerning information or personnel exchange during the implementation of such proposal shall be submitted to the supervising trustee for record in advance and shall be supervised under this Decision.

<p>据。商务部将依申请并根据市场竞争状况作出是否解除的决定。</p> <p>为履行上述义务，西部数据应当在监督受托人确定一周内提交详细的操作方案并报商务部批准后实施。</p> <p>商务部有权通过监督受托人或自行监督检查西部数据履行上述义务的情况。西部数据未适当履行上述义务，商务部有权根据《反垄断法》相关规定作出处理。</p>	<p>(II) Western Digital and Viviti shall reasonably determine production capacity and output based on the market demand. The capacity and output of Western Digital and Viviti shall be reported to the supervising trustee on a monthly basis and shall accept supervision under this Decision.</p> <p>(III) After the concentration, Western Digital and Viviti shall not materially change the original business modes, nor force clients or force clients in a disguised form to exclusively purchase hard disk products from them.</p> <p>(IV) Western Digital and Viviti shall continue to make R&D investments in innovation at the consistent speed of recent years to ensure to bring more innovative products and solutions to clients.</p> <p>(V) Upon satisfying the conditions of Paragraph (I), Western Digital commits that it shall, within 6 months since the promulgation of this Review Decision, divest the main 3.5-inch hard disk assets of Viviti to a third party. Such asset divestiture shall be conducted according to the provisions of the <i>Anti-Monopoly Law</i>, and the <i>Interim Provisions on the Divestiture of Assets or Business in the Concentration of Business Operators</i>.</p> <p>(VI) According to <i>MOFCOM Interim Provisions on the Divestiture of Assets or Business in the Concentration of Business Operators</i>, Western Digital shall entrust an independent supervisor to supervise the fulfillment of the above obligations by Western Digital.</p> <p>After 24 months since the effectiveness of this Decision, Western Digital may apply to MOFCOM for cancelling the obligations in above Paragraphs (I) and (II). Such application shall specify the status on the fulfillment of the restrictive conditions under this Decision and the reasons for cancelling the above obligations, and</p>
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	<p>provide the relevant supporting documents. MOFCOM shall determine whether to cancel such obligations according to the application as well as the market competition status.</p> <p>In order to fulfill the above obligations, Western Digital shall submit a detailed proposal for fulfilling the above obligations within one week after the supervising trustee is determined, and implement such proposal after being approved by MOFCOM.</p> <p>MOFCOM shall have the right to inspect the fulfillment of the above obligations by Western Digital through the supervising trustee or through supervision by itself. If Western Digital fails to properly fulfill the above obligations, MOFCOM shall have the right to deal with it according to the provisions of the <i>Anti-Monopoly Law</i>.</p>
本決定自公告之日起生效。	This Decision shall come into effect on the date of announcement.