

中华人民共和国商务部

公 告

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为规范经营者集中反垄断审查的竞争影响评估，指导经营者做好经营者集中申报工作，根据《中华人民共和国反垄断法》、《经营者集中申报办法》和《经营者集中审查办法》，商务部制定了《关于评估经营者集中竞争影响的暂行规定》。现予公布，自 2011 年 9 月 5 日起施行。

To standardize the assessment of the effect of the concentration of business operators on competition, and guide business operators in their notification of concentration of business operators, in accordance with the *Anti-monopoly Law of the People's Republic of China*, *Measures for the Declaration of Concentration of Business Operators* and *Measures for the Review of Concentration of Business Operators*, the Ministry of Commerce formulated the *Interim Provisions for the Assessment of the Effects of Concentrations of Business Operators on Competition* which is hereby promulgated and shall come into force on September 5, 2011.

中华人民共和国商务部
二〇一一年八月二十九日
The Ministry of Commerce
August 29, 2011

关于评估经营者集中竞争影响的暂行规定

Interim Provisions for the Assessment of the Effect of the Concentration of Business Operators on Competition

<p>第一条 为规范经营者集中反垄断审查工作，评估经营者集中的竞争影响，指导经营者做好经营者集中申报工作，根据《中华人民共和国反垄断法》，制定本规定。</p>	<p>Article 1 These Provisions are formulated in accordance with the <i>Anti-monopoly Law of the People's Republic of China</i> to standardize the assessment of the effect of the concentration of business operators on competition, to assess the effect of the concentration of business operators on competition, and guide business operators in their notification of concentration of business operators.</p>
<p>第二条 商务部依法对经营者集中行为进行反垄断审查。</p>	<p>Article 2 The Ministry of Commerce conducts anti-monopoly review for concentrations of business operator in accordance with the law.</p>

<p>第三条 审查经营者集中，根据个案具体情况和特点，综合考虑下列因素：</p> <p>（一）参与集中的经营者在相关市场的市场份额及其对市场的控制力；</p> <p>（二）相关市场的市场集中度；</p> <p>（三）经营者集中对市场进入、技术进步的影响；</p> <p>（四）经营者集中对消费者和其他相关经营者的影响；</p> <p>（五）经营者集中对国民经济发展的影响；</p> <p>（六）应当考虑的影响市场竞争的其他因素。</p>	<p>Article 3 Depending on the specific circumstances and characteristics of a concentration of business operators, the following factors shall be taken into consideration comprehensively when review the concentration:</p> <p>(1) The market shares of the business operators participating in the concentration in the relevant market and their market power in the relevant market;</p> <p>(2) The degree of market concentration in the relevant market;</p> <p>(3) Impact of the concentration on market entry and technology progress;</p> <p>(4) Impact of the concentration on the consumers and other business operators;</p> <p>(5) Impact of the concentration on the national economic development; and</p> <p>(6) Other factors affecting market competition that shall be taken into consideration.</p>
<p>第四条 评估经营者集中对竞争产生不利影响的可能性时，首先考察集中是否产生或加强了某一经营者单独排除、限制竞争的能力、动机及其可能性。</p> <p>当集中所涉及的相关市场中有少数几家经营者时，还应考察集中是否产生或加强了相关经营者共同排除、限制竞争的能力、动机及其可能性。</p> <p>当参与集中的经营者不属于同一相关市场的实际或潜在竞争者时，重点考察集中在上下游市场或关联市场是否具有或可能具有排除、限制竞争效果。</p>	<p>Article 4 When assessing the possibility of negative impact on competition caused by a concentration of business operators, the initial factor to be considered is whether the concentration would generate or reinforce a single business operator's ability, motive or possibility to eliminate or restrict competition by itself.</p> <p>Where the relevant market is controlled by a small number of business operators, it shall also be considered whether the concentration would generate or reinforce the relevant business operators' ability, motive or possibility to eliminate or restrict competition jointly.</p> <p>Where the business operators participating in a concentration are not actual or potential competitors in the same relevant market, the review shall focus on whether the concentration will have or likely to have the</p>

	effect of eliminating or restricting competition in the upstream and downstream markets or associated markets.
<p>第五条 市场份额是分析相关市场结构、经营者及其竞争者在相关市场中地位的重要因素。市场份额直接反映了相关市场结构、经营者及其竞争者在相关市场中的地位。</p> <p>判断参与集中的经营者是否取得或增加市场控制力时，综合考虑下列因素：</p> <p>（一）参与集中的经营者在相关市场的市场份额，以及相关市场的竞争状况；</p> <p>（二）参与集中的经营者产品或服务的替代程度；</p> <p>（三）集中所涉相关市场内未参与集中的经营者的生产能力，及其产品或服务与参与集中经营者产品或服务的替代程度；</p> <p>（四）参与集中的经营者控制销售市场或者原材料采购市场的能力；</p> <p>（五）参与集中的经营者商品购买方转换供应商的能力；</p> <p>（六）参与集中的经营者的财力和技术条件；</p> <p>（七）参与集中的经营者的下游客户的购买能力；</p> <p>（八）应当考虑的其他因素。</p>	<p>Article 5</p> <p>Market share is a major factor in analyzing the market structure and the market status of a business operator and its competitors in the relevant market. Market share directly reflects the market structure of the relevant market, and market status of the business operator and its competitors in the relevant market.</p> <p>The following factors shall be taken into consideration comprehensively when assessing whether the business operators participating in the concentration would obtain or reinforce its market power:</p> <p>(1) The market share of business operators participating in the concentration in the relevant market and the competition status of the related market;</p> <p>(2) The substitution level of the products or services of the business operators participating in the concentration;</p> <p>(3) Production capacities of the business operators in the relevant market that are not participating the concentration, and the substitution level between the products or services of the non-participating business operators and those of the participating business operators;</p> <p>(4) The ability of the business operators participating the concentration to control the sales market or the raw material procurement market;</p> <p>(5) The ability of the customers of the business operators participating the concentration to switch suppliers;</p> <p>(6) The financial strength and technical capabilities of the business operators participating the concentration;</p> <p>(7) Purchasing power of the downstream</p>

	<p>customers of business operators participating the concentration; and</p> <p>(8) Other factors that shall be taken into consideration.</p>
<p>第六条 市场集中度是对相关市场的结构所作的一种描述，体现相关市场内经营者的集中程度，通常可用赫芬达尔-赫希曼指数（HHI 指数，以下简称赫氏指数）和行业前 N 家企业联合市场份额（CRn 指数，以下简称行业集中度指数）来衡量。赫氏指数等于集中所涉相关市场中每个经营者市场份额的平方之和。行业集中度指数等于集中所涉相关市场中前 N 家经营者市场份额之和。</p> <p>市场集中度是评估经营者集中竞争影响时应考虑的重要因素之一。通常情况下，相关市场的市场集中度越高，集中后市场集中度的增量越大，集中产生排除、限制竞争效果的可能性越大。</p>	<p>Article 6 Market concentration is a description of the structure of the relevant market, reflecting the level of concentration of business operators in the relevant market, and generally can be measured by Herfindahl-Hirschman Index (hereinafter referred to as "HHI") and the combined market share of N-largest companies in the industry (CRn Ratio, hereinafter referred to as "Industry Concentration Ratio"). HHI equals to the sum of squared market shares of each individual business operator in the relevant market concerning the concentration. Industry Concentration Ratio equals to the combined market share of the N-largest business operators in the relevant market concerning the concentration.</p> <p>Market concentration shall be one of the major factors when assessing the effect of the concentration of business operators on competition. Generally, the higher the concentration of the relevant market is, and the greater the increment of the market concentration after the concentration will be, the more likely the concentration will have the effect of eliminating or restricting competition.</p>
<p>第七条 经营者集中可能提高相关市场的进入壁垒，集中后经营者可行使其通过集中而取得或增强的市场控制力，通过控制生产要素、销售渠道、技术优势、关键设施等方式，使其他经营者进入相关市场更加困难。</p> <p>评估经营者集中竞争影响时，可考察潜在竞争者进入的抵消效果。</p> <p>如果集中所涉及的相关市场进入非常容易，未参与集中的经营者能够对集中交易方的排除、限制竞争行为作出反应，并发挥遏制作用。</p>	<p>Article 7 Concentration of business operators may elevate the market entry barrier of the relevant market. After the concentration, a business operator may exercise its market power obtained or reinforced through the concentration, and make it harder for other business operators to enter the market by controlling production factors, sales channels, technology superiorities, key facilities and others.</p> <p>The offsetting effect created by potential competitors entering the market may be taken into consideration when assessing the effect of the concentration of business operators on</p>

<p>判断市场进入的难易程度，需全面考虑进入的可能性、及时性和充分性。</p>	<p>competition.</p> <p>If it is quite easy to enter the relevant market concerning the concentration, then non-participating business operators are able to react to the conduct of the participating business operators that eliminates or restricts the competition, and to curb such effect.</p> <p>The possibility, timeliness and adequacy of the entry shall be considered comprehensively when assessing the difficulty of market entry.</p>
<p>第八条 经营者通过集中，可更好地整合技术研发的资源 and 力量，对技术进步产生积极影响，抵消集中对竞争产生的不利影响，并且技术进步所产生的积极影响有助于增进消费者利益。</p> <p>集中也可能通过以下方式对技术进步产生消极影响：减弱参与集中的经营者的竞争压力，降低其科技创新的动力和投入；参与集中的经营者也可通过集中提高其市场控制力，阻碍其他经营者对相关技术的投入、研发和利用。</p>	<p>Article 8</p> <p>Through concentration, a business operator may better integrate the resources and force of technology research and development, have positive impact on technological progress, and offset the negative impact caused by the concentration on competition. The positive impact of technological progress also helps to enhance the benefit to the consumer.</p> <p>Concentration may also have negative impact on technology advancement through the following ways: lower the competition pressure of the participating business operators and reduce their motive and investment in technology innovation; a participating business operator may also enhance its market power through the concentration, thereby hindering the investment, research and development, and utilization of the relevant technology by other business operators.</p>
<p>第九条 经营者集中可提高经济效率、实现规模经济效应和范围经济效应、降低产品成本和提高产品多样化，从而对消费者利益产生积极影响。</p> <p>集中也可能提高参与集中经营者的市场控制力，增强其采取排除、限制竞争行为的能力，使其更有可能通过提高价格、降低质量、限制产销量、减少科技研发投入等方式损害消费者利益。</p>	<p>Article 9</p> <p>Concentration of business operators may increase economic efficiency, achieve economies of scale and economies of scope, reduce product cost and enhance product diversification, and therefore has positive effect on consumer benefit.</p> <p>Concentration may also enhance the market power of the participating business operators, strengthen their ability to commit acts of eliminating or restricting competition, enabling them to harm consumer benefit by raising prices, lowering quality, restricting</p>

	production or sales quantity, reducing the investment in technology research and development or others means.
<p>第十条 经营者集中可能提高相关市场经营者的竞争压力，有利于促使其他经营者提高产品质量，降低产品价格，增进消费者利益。</p> <p>凭借通过集中而取得或增强的市场控制力，参与集中经营者可能通过实施某些经营策略或手段，限制未参与集中经营者扩大经营规模或削弱其竞争能力，从而减少相关市场的竞争，也可能对其上下游市场或关联市场竞争产生排除、限制竞争效果。</p>	<p>Article 10 Concentration of the business operators may increase the competitive pressure of the business operators in the relevant market, helps to promote other business operators to improve product quality, reduce product prices and enhance consumer benefit.</p> <p>With the market power obtained or reinforced through the concentration, the participating business operators may exercise certain business strategies or measures to restrict the ability of the non-participating business operators to expand their operation scale, or to weaken their competitiveness, thereby reducing the competition in the relevant market; such business strategies or measures may also have the effect of eliminating or restricting competition on upstream and downstream markets or associated markets.</p>
<p>第十一条 经营者集中有助于扩大经营规模，增强市场竞争力，从而提高经济效率，促进国民经济发展。</p> <p>在特定情况下，经营者集中也可能破坏相关市场的有效竞争和相关行业的健康发展，对国民经济造成不利影响。</p>	<p>Article 11 Concentration of business operators helps to expand business scale, strengthen market competitiveness, thereby improving economic efficiency and promote the development of national economy.</p> <p>Under certain circumstances, concentration of business operators may also damage the effective competition in the relevant market and the sound development of the relevant industry, and cause negative impact on the national economy.</p>
<p>第十二条 评估经营者集中时，除考虑上述因素，还需综合考虑集中对公共利益的影响、集中对经济效率的影响、参与集中的经营者是否为濒临破产的企业、是否存在抵消性买方力量等因素。</p>	<p>Article 12 When assessing a concentration of business operators, in addition to the above factors, consideration shall also be given to the impact of the concentration on the public interests and economy efficiency, and to whether the participating business operators are on the verge of bankruptcy, whether countervailing buyer power exists, and to other factors.</p>

<p>第十三条 经营者集中具有或者可能具有排除、限制竞争效果的，商务部应当作出禁止经营者集中的决定。但是，经营者能够证明该集中对竞争产生的有利影响明显大于不利影响，或者符合社会公共利益的，商务部可以作出对经营者集中不予禁止的决定。</p> <p>对于不予禁止的经营者集中，商务部可以决定附加减少集中对竞争产生不利影响的限制性条件。</p>	<p>Article 13 Where the concentration of business operators have or may have the effect of eliminating or restricting competition, the Ministry of Commerce shall make a decision to prohibit the concentration. However, if the business operators are able to prove that the positive effect of the concentration obviously outweighs its negative effect, or the concentration is in accordance with social and public interests, the Ministry of Commerce may make a decision not to prohibit the concentration.</p> <p>For a concentration of business operators that is not prohibited, the Ministry of Commerce may decide to impose restrictive conditions to reduce the negative impact of the concentration on competition.</p>
<p>第十四条 本暂行规定自 2011 年 9 月 5 日起施行。</p>	<p>Article 14 These Interim Provisions shall come into force on September 5, 2011.</p>