

Anti-Monopoly Guidelines on the Review of Concentrations of Undertakings of the PRC

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Part One — General Provisions

Article 1 — These Guidelines are formulated in accordance with the Anti-Monopoly Law of the People's Republic of China (hereinafter referred to as the "Anti-Monopoly Law") and other laws and regulations, for the purposes of regulating the review of concentrations of undertakings, providing clear guidance to undertakings on merger control compliance, and enhancing the transparency and predictability of enforcement.

Article 2 — The anti-monopoly enforcement authority under the State Council shall conduct the review of concentrations of undertakings in accordance with the Anti-Monopoly Law and these Guidelines. The review shall follow the principles of legality, openness, fairness, and efficiency, protect fair market competition, and

safeguard the lawful rights and interests of undertakings.

Article 3 — For the purposes of these Guidelines, "concentration of undertakings" means the circumstances set forth in Article 25 of the Anti-Monopoly Law, including merger of undertakings, acquisition of control over another undertaking through the acquisition of equity or assets, and acquisition of control or the ability to exercise decisive influence over another undertaking through contractual arrangements or other means.

Article 4 — The anti-monopoly enforcement authority may classify concentrations of undertakings into simple cases and non-simple cases for the purposes of carrying out categorized and graded review. Simple cases may be subject to a simplified review procedure.

Part Two — Notification Thresholds and Obligations

Article 5 — Where a concentration of undertakings reaches any of the following thresholds, the undertaking shall file a prior notification with the anti-monopoly enforcement authority, and the concentration shall not be implemented before the notification has been filed:

(1) The combined worldwide turnover of all undertakings participating in the concentration exceeds RMB 10 billion in the preceding fiscal year, and at least two of the undertakings each have a turnover within China exceeding RMB 400 million in the preceding fiscal year; or

(2) The combined turnover within China of all undertakings participating in the concentration exceeds RMB 2 billion in the preceding fiscal year, and at least two of the undertakings each have a turnover within China exceeding RMB 400 million in the preceding fiscal year.

Article 6 — Where a concentration of undertakings does not reach the notification thresholds described in Article 5 but falls under any of the following circumstances, the anti-monopoly enforcement authority may require the undertaking to file a notification:

(1) The concentration involves an emerging undertaking or a business model with significant development potential that is strategically important;

(2) The concentration involves an undertaking with a significant competitive position in the relevant market; or

(3) The concentration is likely to have the effect of excluding or restricting competition.

Article 7 — The turnover of an undertaking shall be calculated as the total revenue from the sale of products and provision of services during the preceding fiscal year, net of relevant taxes and surcharges. The turnover of undertakings within a group shall be calculated on a consolidated basis.

Part Three — Notification Procedures

Article 8 — Before formally filing a notification, an undertaking may consult with the anti-monopoly enforcement authority on issues such as whether the notification thresholds are met and the scope of materials required.

Article 9 — The anti-monopoly enforcement authority shall accept a notification where the filing undertaking has submitted the documents and materials specified in Article 28 of the Anti-Monopoly Law and the notification form is complete.

Article 10 — The review of a concentration of undertakings shall be conducted in two phases: the preliminary review phase and the further review phase. The preliminary review phase shall be completed within 30 days from the date of case acceptance. Where a decision is made to conduct a further review, the further review phase shall be completed within 90 days from the date of the decision.

Article 11 — The review period may be suspended under the circumstances set forth in Article 32 of the Anti-Monopoly Law. The anti-monopoly enforcement authority shall notify the filing undertaking in writing of

the suspension and resumption of the review period.

Part Four — Definition of the Relevant Market

Article 12 — The definition of the relevant market shall be based on the substitutability of products and geographic areas. The relevant market includes the relevant product market and the relevant geographic market.

Article 13 — In defining the relevant product market, demand-side substitution analysis shall be the primary approach, supplemented by supply-side substitution analysis where necessary. Factors to consider include the functions and uses of products, price differences, consumer preferences, and switching costs.

Article 14 — In defining the relevant geographic market, factors such as transportation costs, regional trading practices, consumer preferences, and regulatory barriers shall be taken into consideration.

Part Five — Competitive Effects Analysis

Article 15 — In assessing the competitive effects of a concentration of undertakings, the following horizontal effects shall be examined:

- (1) Whether the concentration will eliminate important competitive constraints between the parties;
- (2) Whether the concentration will increase the likelihood of coordinated effects among the remaining competitors; and
- (3) Whether the concentration will create or strengthen a dominant market position.

Article 16 — In assessing the competitive effects of a non-horizontal concentration of undertakings, the following shall be examined:

- (1) Whether the concentration will foreclose competitors' access to inputs or customers;
- (2) Whether the concentration will increase barriers to entry or expansion; and
- (3) Whether the concentration will facilitate coordinated effects.

Article 17 — In assessing whether a concentration of undertakings has or is likely to have the effect of excluding or restricting competition, the following factors shall be taken into account in a comprehensive manner:

- (1) Market shares of the parties and the degree of market concentration;
- (2) Entry conditions in the relevant market;
- (3) The countervailing buyer power;
- (4) The efficiency gains from the concentration;
- (5) Whether one of the parties is a failing firm; and
- (6) Other relevant factors.

Part Six — Market Share and Concentration Thresholds

Article 18 — Where the combined market share of all undertakings participating in a horizontal concentration is less than 15 percent, the concentration shall generally be deemed not to have the effect of excluding or restricting competition, unless there is evidence to the contrary.

Article 19 — Where the market share of each of the undertakings participating in a non-horizontal concentration in each relevant market is less than 25 percent, the concentration shall generally be deemed not to have the effect of excluding or restricting competition, unless there is evidence to the contrary.

Part Seven — Restrictive Conditions

Article 20 — Where a concentration of undertakings has or is likely to have the effect of excluding or restricting competition, the filing undertaking may propose restrictive conditions to address the competition concerns. The anti-monopoly enforcement authority shall assess the effectiveness, feasibility, and timeliness of the proposed restrictive conditions.

Article 21 — Restrictive conditions may include the following types:

- (1) Structural conditions, such as divestiture of tangible assets, intangible assets such as intellectual property rights and related rights and interests;
- (2) Behavioral conditions, such as opening up networks or platforms and other infrastructure, licensing key technologies such as patents and proprietary know-how, and terminating exclusive agreements; and
- (3) A combination of structural and behavioral conditions.

Article 22 — The filing undertaking shall submit a proposal for restrictive conditions that is specific, feasible, and capable of being monitored. The anti-monopoly enforcement authority may engage in negotiations with the filing undertaking on the content and implementation of the restrictive conditions.

Part Eight — Simple Cases and Simplified Procedure

Article 23 — A concentration of undertakings that satisfies one of the following conditions may be filed and reviewed as a simple case:

- (1) The combined market share of all undertakings participating in a horizontal concentration is less than 15 percent in the same relevant market;
- (2) The market share of each of the undertakings participating in a vertical concentration or a conglomerate concentration is less than 25 percent in each relevant market;
- (3) A joint venture established outside the territory of China does not engage in economic activities within the territory of China;
- (4) A concentration arising from the acquisition of an overseas enterprise does not engage in economic activities within the territory of China; or
- (5) A joint venture jointly controlled by two or more undertakings changes to be controlled by one of them.

Article 24 — Simple cases shall be subject to a simplified review procedure. The anti-monopoly enforcement authority shall publish a public notice of the case acceptance and the basic information of the case within a specified time limit after case acceptance, with a public notice period of not less than 10 days.

Part Nine — Special Provisions on Platform Economy

Article 25 — In reviewing concentrations of undertakings in the platform economy, in addition to the general factors, the following shall also be taken into account in a comprehensive manner:

- (1) The characteristics of the platform economy, such as cross-side network effects, multi-homing, data-driven effects, and innovation competition;
- (2) The business models of the parties, the number of active users, click-through rates, usage duration, and other indicators; and
- (3) Whether the concentration has or is likely to have the effect of excluding or restricting competition in the platform market through the leveraging of data, algorithms, technologies, or other advantages.

Article 26 — Where the turnover of an undertaking participating in a concentration in the platform economy does not reach the notification thresholds but the concentration involves a nascent competitor or an

undertaking whose business model may develop into an important competitive force, the anti-monopoly enforcement authority may, in accordance with the law, require the undertaking to file a notification.

Part Ten — Legal Liability and Compliance

Article 27 — Where an undertaking implements a concentration in violation of the Anti-Monopoly Law, the anti-monopoly enforcement authority shall handle the matter in accordance with Article 58 of the Anti-Monopoly Law.

Article 28 — Undertakings are encouraged to establish and improve their internal merger control compliance management systems. They may conduct internal assessments before implementing a concentration to determine whether the notification thresholds are met, and shall retain relevant records.

Article 29 — The anti-monopoly enforcement authority shall strengthen the supervision and inspection of the implementation of restrictive conditions. A filing undertaking that violates its commitments regarding restrictive conditions shall be liable in accordance with the law.

Article 30 — Any entity or individual shall have the right to report to the anti-monopoly enforcement authority a concentration of undertakings that is suspected of having or being likely to have the effect of excluding or restricting competition. The anti-monopoly enforcement authority shall handle such reports in a timely manner.

Article 31 — These Guidelines shall serve as a reference for the anti-monopoly enforcement authority in reviewing concentrations of undertakings and for undertakings in making compliance assessments, and do not have legally binding force.

Article 32 — These Guidelines shall be interpreted by the Anti-Monopoly Commission under the State Council and shall take effect on the date of promulgation.

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