



反垄断案例中的证据评估

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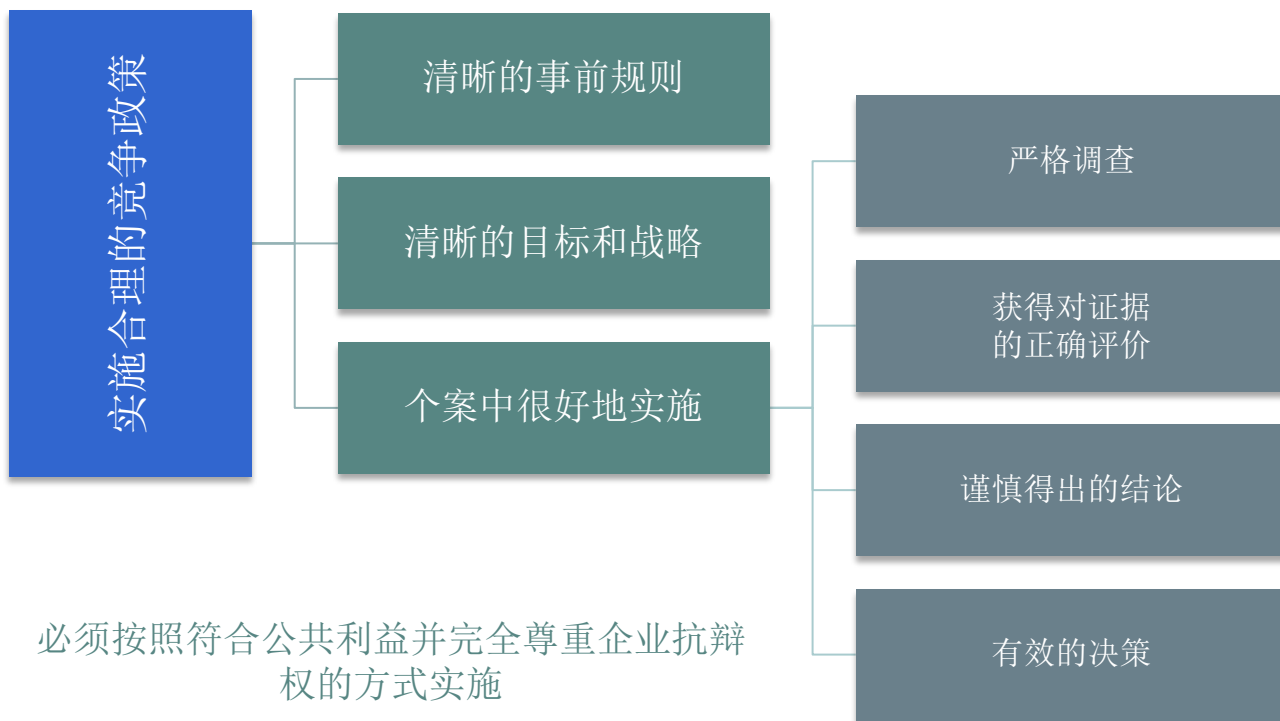
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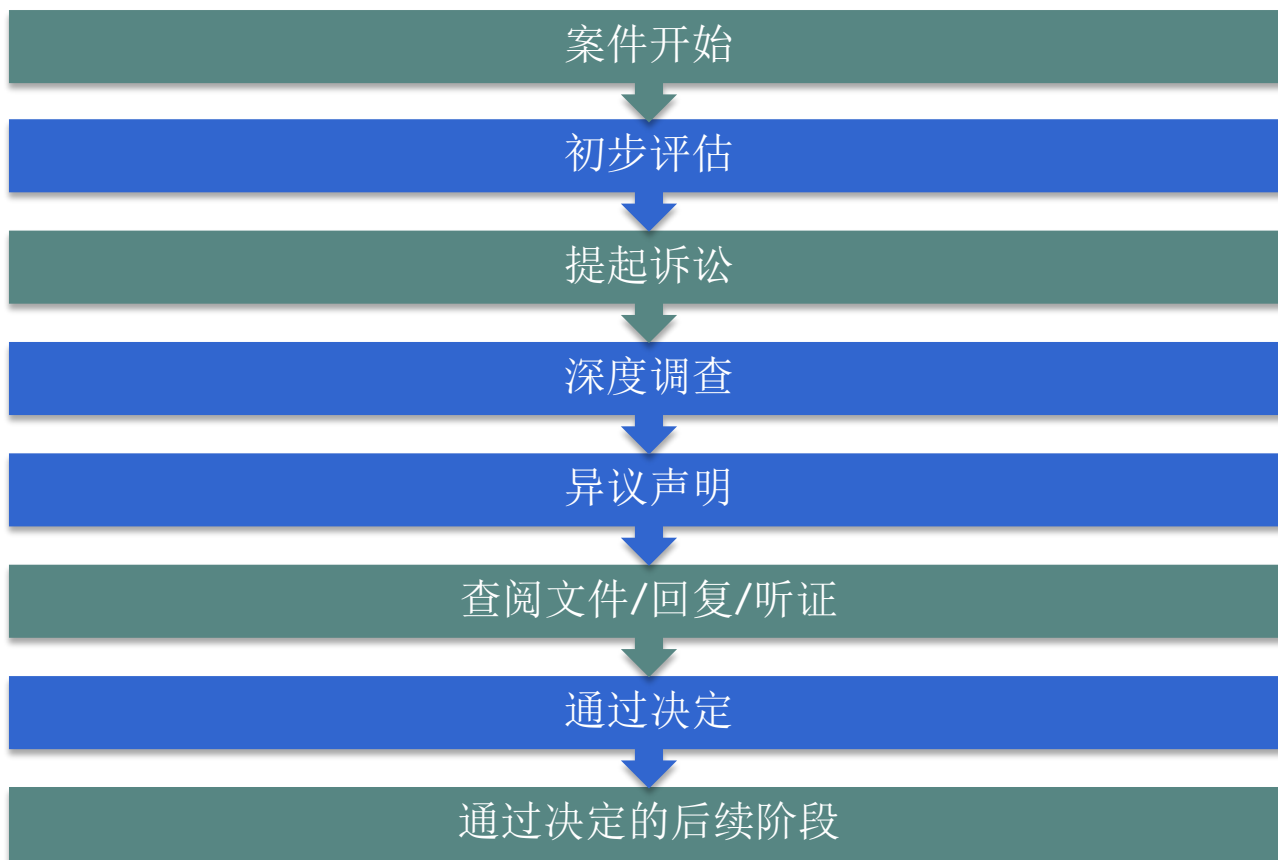
欧盟委员会竞争总司消费品、基础产业、农业及制造业监管处 (E2)

2014年3月14日

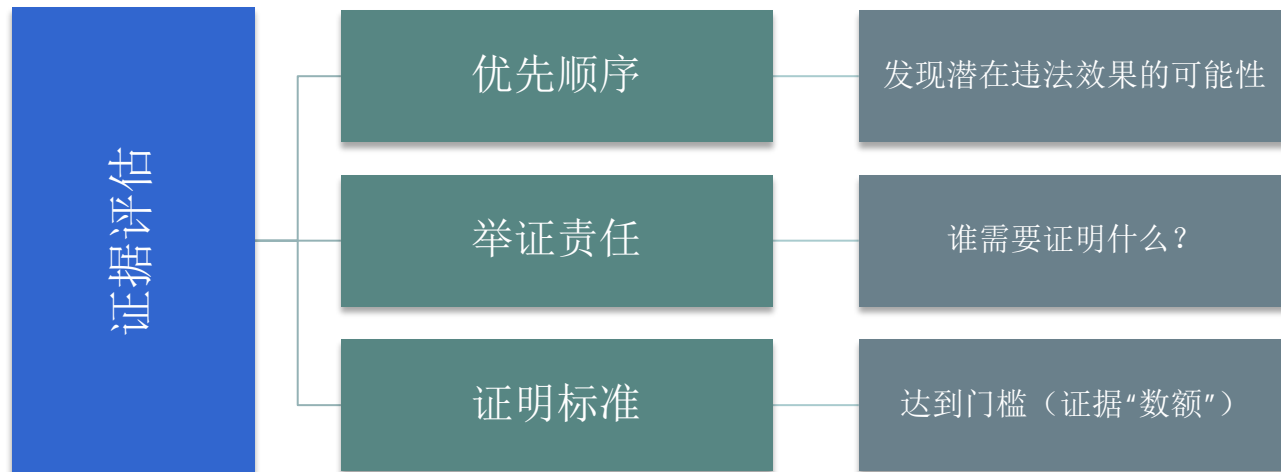
概述

1. 实施健全的竞争政策
2. 按照欧盟反垄断程序进行证据评估
3. 按照可用证据做出正确决策
4. 证据评估：一些评论
5. 证据处理方面的程序和法律规则影响
6. 证明标准
7. 竞争执法中经济学的作用逐渐增强





根据可用证据做出正确决定



收集并评估证据，以便得出结论，是否违反竞争法将成为竞争机构关注的中心

证据评估

在证据评估中总会存在解释性要素

评估证据意味着会考虑…

- … 从可用证据中能够得出什么样的结论
- … 通过手边的证据是否足以做出正确的决定，以支持司法检查

尽管需要得到坚定证据是非常必要的，但只能在“充分信息”情形下才能做出结论的想法也是不现实的

证据处理与控制 and 竞争总司工作的程序和规章是分不开的
主要因素：

可用资源

相关时间框架

调查力量

举证责任

证明标准（以及司法审查标准）



证明标准:

超出合理质疑...? 均衡可能...? 中间标准...?

一些一般性考虑:

无罪推定原则

委员会必须展示准确的、令人信服的和一致的证据来支持其决策

委员会必须提出准确的、可靠的、一致的证据，并包括对复杂情况进行评估时所要考虑的全部相关数据，且能够支持由此得出的结论（欧盟案例：微软、Tetra）

委员会在经济/技术问题上的评价空间

评估所依据的损害理论性质

所实施的干预类型



European
Commission

MICROSOFT v COMMISSION

JUDGMENT OF THE COURT OF FIRST INSTANCE (Grand Chamber)

17 September 2007*

In Case T-201/04,

Microsoft Corp., established in Redmond, Washington (United States), represented by J.-F. Bellis, lawyer, and I. Forrester QC,

applicant,

supported by

The Computing Technology Industry Association, Inc., established in Oakbrook Terrace, Illinois (United States), represented by G. van Gerven and T. Franchoo, lawyers, and B. Kilpatrick, Solicitor,

DMDsecure.com BV, established in Amsterdam (Netherlands),

MPS Broadband AB, established in Stockholm (Sweden),

Pace Micro Technology plc, established in Shipley, West Yorkshire (United Kingdom),

* Language of the case: English.

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MICROSOFT v COMMISSION

89 **However, while the Community Courts recognise that the Commission has a margin of appreciation in economic or technical matters, that does not mean that they must decline to review the Commission's interpretation of economic or technical data. The Community Courts must not only establish whether the evidence put forward is factually accurate, reliable and consistent but must also determine whether that evidence contains all the relevant data that must be taken into consideration in appraising a complex situation and whether it is capable of substantiating the conclusions drawn from it (see, to that effect, concerning merger control, Case C-12/03 P *Commission v Tetra Laval* [2005] ECR I-987, paragraph 39).**

90 It is in the light of those principles that the Court must examine the various pleas which Microsoft puts forward in support of its application for annulment of the contested decision.

2. Admissibility of the content of certain annexes

91 The Commission, supported on this point by SIIA, claims that in a number of annexes to the application and to the reply Microsoft relies on arguments not found in the actual body of those pleadings. On various occasions, moreover, Microsoft makes a general reference to reports annexed to its pleadings. The Commission further criticises the fact that certain expert opinions produced by Microsoft are based on information to which neither the Commission nor the Court had access, and contends that the Court cannot take account of those arguments, reports or expert opinions.

92 Microsoft asserts that the 'relevant passages of [the] application' contain the essential matters of fact and of law on which the action is based. According to the case-law, specific points in the text of the application can be supported and completed by references to specific passages in documents attached (order in

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案例 T-201/04, 微软/委员会
[2007] ECR II-3601, 第 89段



竞争执法中的经济分析作用在过去二十年中得到了明显增长：法律与经济的相互作用变得越来越显著

欧盟竞争执法已经从基于形式的方法向基于效果的方法转变

欧盟和欧洲法院不断强化对经济效果的关注。

最后，各种案件必须在法院按照相关法律标准进行证明：经济分析将用于支持对案件的法律分析。

竞争案件通常是由坚定的经济分析所支持的法律论据的复杂组合。