

并购审查中的证据识别与收集

Developing reliable evidence in merger cases

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● 一、证据信息收集方法

- 征求意见函：政府部门、行业协会
- 实地调研
- 行业问卷
- 专家座谈会
- 经济学分析
- 第三方举报

● **I. Tools of gathering evidence**

- Comment- soliciting from related government bodies, industrial association
- Questionnaire to competitors and customers
- Symposium
- Economic analysis
- Complaint by third party

- 二、确定证据信息收集方法的影响因素

- 集中性质：横向、纵向、混合
- 市场集中度
- 所涉行业

- **II. Factors to determine tools of information gathering**

- Type of concentration: horizontal, vertical, conglomerate
- Market concentration
- Relevant industry

- **三、证据信息来源**

- 征求意见回函
- 市场参与方陈述
- 行业专家陈述
- 第三方研究报告
- 经济学分析报告

- **III. Tools of gathering evidence**

- Comment from related government bodies, industrial association
- Statement from market participants
- Statement from industrial experts
- Third party report
- Economic analysis report



- 四、证据种类甄别



- IV. Identifying types of evidence





- **四、证据种类甄别**

- **间接证据**

- - 市场份额及市场集中度
- - 参与集中经营者对上游原材料的控制力
- - 下游客户的购买力及转换供应商的能力
- - 知识产权、专有技术
- - 市场进入条件

- **IV. Tools of gathering evidence**

- **Indirect evidence**

- - market share and concentration
- - notifying party's capability of controlling raw materials
- - customer's purchasing power and its capability of changing supplier
- - intellectual property, know – how
- - market entry conditions



- 四、证据种类甄别

- 直接证据

- - 基于经验的直接比较
- - 过往类似集中对市场竞争的影响

- **IV. Identifying types of evidence**

- **Direct evidence**

- - empirical comparision
- - impact of similar concentration in history



- **四、证据种类甄别**

- **肯定性证据**

- - 市场份额和市场集中度
- - 参与集中经营者对上游原材料的控制力
- - 知识产权、专有技术

- **IV. Identifying types of evidence**

- **affirmative evidence**

- - market share and concentration
- - notifying party's capability of controlling raw materials
- - intellectual property, know – how



- 四、证据种类甄别

- 否定性证据

- - 市场进入条件
- - 买方力量

- **IV. Identifying types of evidence**

- **negative evidence**

- - market entry conditions
- - customer's purchasing power



- 谢谢!
- **Thank you!**