

ASSESSMENT OF CO-ORDINATED EFFECTS IN MERGER REVIEW

经营者集中反垄断审查中的协调效应评估

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1. 概述

INTRODUCTION

- ◆ 《反垄断法》没有明确规定协调效应
- ◆ Coordinated effects is not defined in AML
- ◆ 《关于评估经营者集中竞争影响的暂行规定》第4条规定了对协同效应的考量
- ◆ It is specified in Art. 4 of the Interim Provisions for the Assessment of the Effect of the Concentration of Business Operators on Competition
- ◆ 实践中在西部数据/日立案和希捷/三星两个硬盘案中分析了协同效应
- ◆ Coordinated effects was analyzed in Western Digital/Hatachi and Seagate/Samsung cases.

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- ◆ 第4条规定：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。
- ◆ Article 4: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.

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2. 基本理论

BASIC THEORIES

用以描述寡头垄断不当行为的术语包括：共谋行为、竞争行为的协调、积极或消极共谋、明示或默示共谋、有意识或无意识的协调平行行为。

There are many terms describing oligopolistic anti-competitive acts: collusion, tacit collusion, active or passive coordination etc. It is a difficult area with many uncertainties.

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•寡头结构的基本理论：经营者意识到他的行为对其他经营者的决策都会有影响，反之亦然，在形成其最佳商业策略时需要考虑其他经营者的战略。这种相互影响使他们倾向于共谋而不是竞争。

Basic oligopoly theory: each firm realises that its actions have an impact on its rivals' decisions and vice versa. Each oligopolist must take the strategic behaviour of the other oligopolists into account in shaping its own best business strategy. This interdependence can make aggressive competitive behaviour little attractive and can, in particular, lead to collusive market outcomes.

•大部分现代寡头模型都基于博弈论，假定经营者为实现经营利润最大化而制定商业战略。

Most modern oligopoly models are based on non-cooperative game theory and view firms as players who have to take strategic decisions (on price or output) to individually maximise their payoffs, i.e. profit.

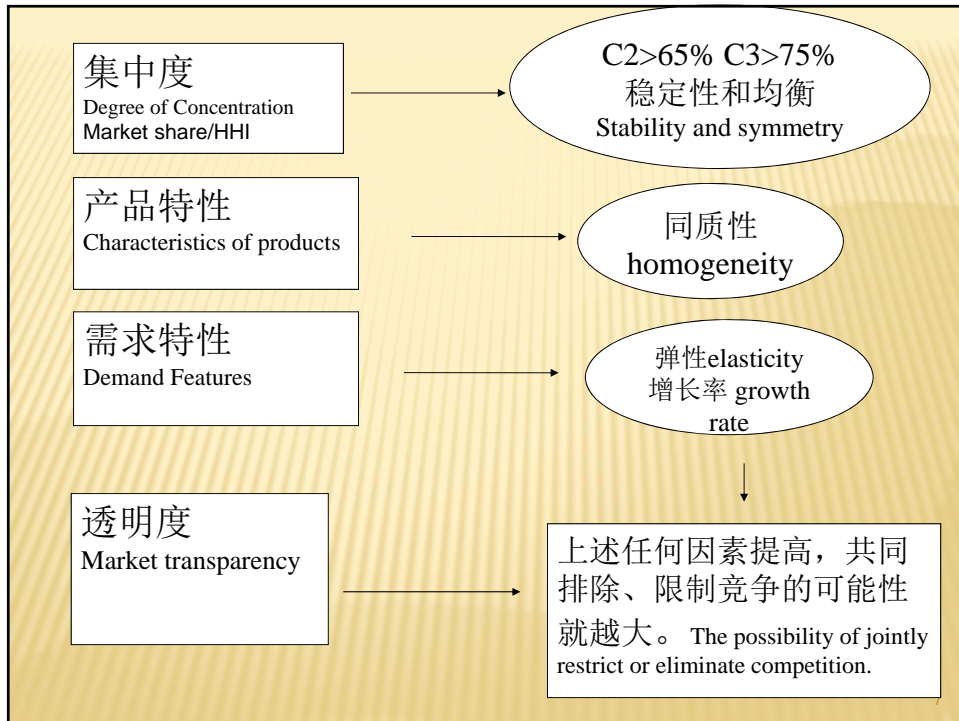
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•对寡头垄断进行经济分析的根本目标，是要证明集中后，市场供应结构是否会变得鼓励竞争者共同实施反竞争行为。The aim of economic analysis in oligopolistic market is to prove that the concentration will lead to a market structure that is encouraging competitors to jointly restrict or eliminate competition.

•根据法律规定和寡头垄断原理，在审查一项集中产生的协同效时应考虑的具体因素包括（Key elements in analysis of coordinated effects）：

- 少数竞争者 Few significant firms
- 市场进入障碍高 High barriers to entry
- 市场透明度 Market transparency
- 产品同质 Homogeneous goods
- 市场结构 market environment
- 其他促进协同的因素（other facilitating factors）

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3. 案例 CASE ANALYSIS

- **第一步：集中是否产生或加强了集体支配地位。集中度变化、产品的总体特征；相关产品的需求情况；以及产业的成熟度。 Step 1: Whether the concentration create or strengthen collective dominance.**
- **第二步：分析当事方在合并之后从事共同反竞争行为的动机和可能性。市场透明度、市场份额的均衡性、纵向整合的程度、相关市场内整体的成本情况等。 Step2: whether the oligopolists could jointly eliminate or restrict competition**
- **第三步：外部竞争是否构成对共谋行为的充分约束。（市场进入、潜在竞争约束。） Step 3: outside competition restriction**

西部数据/日立案 希捷/三星案
**Western Digital/Hatachi (2012) and
Seagate/Samsung cases(2011)**

1. **硬盘市场总体状况 Market environment of HDD**
市场集中度较高 (Few competitors (5 to 3))
硬盘产品同质化明显(Homogeneous products)
市场透明度较高 (transparent market)
2. **采购模式(sale and purchase model)**
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。(usually maintain 2-4
**HDD suppliers, reduction of competitors will change the
current purchase model and further lead to reduction of
competition)**

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3. **产品创新 innovation of products**
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。
。 **The innovation of HDDs are driven by competition. Thus the reduction of competition will hinder innovation.**
4. **产能利用 capacity utilization**
产能利用率约90%， 剩余产能有限 **The utilized capacity was amount to 90% of the total capacity.**
5. **买方议价能力 purchasers' countervailing power**
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。**HDDS' distribution prices were decided by the suppliers. The distributors had no countervailing buyer power.**

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6. 市场进入 market entry

知识产权及其他专有知识对硬盘行业至关重要。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。近十年来，没有新的竞争者进入相关市场。**Technology knowhow and Economies of scale are crucial to HDD market entry. There was no newcomer in 10 years**

7. 结论：

此项集中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。

Conclusion:

The transaction will strengthen the possibility of competitions jointly restrict or eliminate market competition by collusion.

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Thank you!

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