

合营企业经营者集中申报与审查

Joint Venture Regulation under Chinese Anti-Monopoly Law
Legislation and Practice

反垄断局审查二处 胡馨月
Hu Xinyue

- 新设合营企业

Establishing new JVs

- 通过取得股权或者资产的方式对其他经营者形成共同控制

Acquiring joint control over other undertakings through purchasing shares or assets

- 通过合同等方式对其他经营者形成共同控制

Acquiring joint control over other undertakings through contracts

合营企业经营者集中的范围

Concept of Joint Ventures in Terms of AML

- 新设合营企业：合营企业不是参与集中的经营者
Where A and B establish a new joint venture C, the undertakings concerned are A and B, C is not an undertaking concerned.
- 既有企业由单独控制变为共同控制：交易前有单独控制权的经营者在交易后仍有共同控制权的，既有企业不是参与集中的经营者
Where A and B acquire joint control over C, and C is solely controlled by A prior to the concentration, the undertakings concerned are A and B, C is not an undertaking concerned.

参与集中的经营者

Undertakings Concerned

- 从合营企业的业务出发界定相关市场

Market definition is based on the business of the JV.

- 通常无需考虑合营各方所从事的与合营企业无关的业务

Normally no need to take into consideration other business of the parents which has no relation with the business of the JV.

相关市场界定

Market Definition

- 合营各方的竞争关系

Relationship of the undertakings concerned

- 合营企业的地域范围和存续时间

Geographic scope and lasting period of the JV

- 非全功能（仅涉及某一业务环节）合营企业的特殊考虑因素

Special criteria in competition assessment of non-full-function JVs

竞争效果评估的考虑因素

Assessment of Competition Effects

- 如何区分垄断协议与企业合营经营者集中
Monopoly agreements & JV concentrations
- 合营企业经营者集中审查中的限制竞争协议问题
Contractual restrictions related to JV concentrations
- 不构成经营者集中的特殊情形
Changes in the quality of control which do not constitute concentrations
- 合营企业的最终控制人
Structure of control
- 特殊情形下如何认定参与集中经营者
Undertakings concerned under special circumstances

一些思考

Some Thinking

Thank You!