



国家市场监督管理总局
State Administration for Market Regulation

Procedures and Rules for Review of Concentration of Undertakings

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I. The Nature of Review of Concentration of Undertakings - Administrative Licensing

Administrative License Law

Article 2. The term “administrative licenses” as mentioned in the present Law refers to the acts that the administrative organs permit, upon examination according to law, the citizens, legal persons or other organizations to engage in special activities according to their applications.

Article 14. As to the matters listed in Article 12 of the present Law, administrative licenses may be established by means of law. Where there is no governing law, administrative licenses may be established by means of administrative regulations.

当前位置： 商务部行政权力运行公开 > 行政许可

经营者集中反垄断审查

项目编码	18012	事项类别	行政许可
项目子项	无		
设定依据	经营者集中反垄断审查依据《反垄断法》第二十条、第二十一条，以及《国务院关于经营者集中申报标准的规定》第二条、第三条、第四条设定。具体规定如下： 《反垄断法》第二十条规定：“经营者集中是指下列情形：（一）经营者合并；（二）经营者通过取得股权或者资产的方式取得对其他经营者的控制权；（三）经营者通过合同等方式取得对其他经营者的控制权或者能够对其他经营者施加决定性影响。” 《反垄断法》第二十一条规定：“经营者集中达到国务院规定的申报标准的，经营者应当事先向国务院反垄断执法机构申报，未申报的不得实施集中。” 《国务院关于经营者集中申报标准的规定》第二条内容与《反垄断法》第二十条相同。 《国务院关于经营者集中申报标准的规定》第三条规定：“经营者集中达到下列标准之一的，经营者应当事先向国务院商务主管部门申报，未申报的不得实施集中：（一）参与集中的所有经营者上一会计年度在全球范围内的营业额合计超过100亿元人民币，并且其中至少两个经营者上一会计年度在中国境内的营业额均超过4亿元人民币；（二）参与集中的所有经营者上一会计年度在中国境内的营业额合计超过20亿元人民币，并且其中至少两个经营者上一会计年度在中国境内的营业额均超过4亿元人民币。营业额的计算，应当考虑银行、保险、证券、期货等特殊行业、领域的实际情况，具体办法由国务院商务主管部门会同国务院有关部门制定。” 《国务院关于经营者集中申报标准的规定》第四条规定：“经营者集中未达到本规定第三条规定的申报标准，但按照规定程序收集的事实和证据表明该经营者集中具有或者可能具有排除、限制竞争效果的，国务院商务主管部门应当依法进行调查。”		
审批对象	达到申报标准的经营者		
审批部门	商务部 反垄断局	共同审批部门	无
监督电话	010-85093143	是否收费	不收费
收费标准	无	收费依据	无

I. The Nature of Review of Concentration of Undertakings - Administrative Licensing

Interim Provisions on the Procedure for Administrative License for Market Regulation

Paragraph 5 of Article 18: Where **other** laws, regulations or rules are provided for the **administrative licensing** review procedures for **concentration of undertakings** and pharmaceutical operations, such provisions shall be followed.

Paragraph 2 of Article 25: Where other laws, regulations or rules are provided for the procedures for changing the market regulator registered in a cross-jurisdictional residence, or changing or dissolving the restrictions imposed on **concentration of undertakings**, the provisions shall be followed.

The procedures for review of concentration of undertakings are governed by two laws:

- *Administrative License Law*
- *Anti-monopoly Law*

II. The Authority Responsible for Review of Concentration of Undertakings

1. The Authority Responsible for Review of Concentration of Undertakings —SAMR

Article 10 of *Anti-monopoly Law*

- Anti-monopoly authority under the State Council ---- central duties and responsibilities

Paragraph 1 of Article 10 of *Anti-monopoly Law*

The anti-monopoly authority designated by the State Council (hereinafter referred to as the Anti-monopoly Authority under the State Council) shall be in charge of anti-monopoly law enforcement in accordance with this Law.



II. The Authority Responsible for Review of Concentration of Undertakings

2. Review of Concentration of Undertakings **is not authorized to** local authorities.

- Local anti-monopoly law enforcement authority

Paragraph 2 of Article 10 of *Anti-monopoly Law*

The Anti-monopoly Authority under the State Council may, when needed, **authorize** the corresponding authorities in the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government to take charge of anti-monopoly law enforcement in accordance with this Law.

- ◆ On December 28, 2018, *Notice of the State Administration for Market Regulation on Authorization for Anti-monopoly Law Enforcement* (GSJFLD [2018] No. 265) was issued.

“Market regulation authorities in the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government (hereinafter collectively referred to as the provincial market regulator) are hereby authorized to take charge of anti-monopoly law enforcement in respective jurisdiction.”

- In the Notice, the Review of Concentration of Undertakings is not mentioned

III. System for Review of Concentration of Undertakings

- Basic system ---- mandatory declaration in advance.

Article 21 of *Anti-monopoly Law*

Article 21. Where a concentration of undertakings **reaches the threshold for declaration** stipulated by the State Council, a declaration must be lodged in advance with the Anti-monopoly Authority under the State Council, or otherwise the concentration shall not be implemented.

III. System for Review of Concentration of Undertakings

□ Supplementary system

Supplementary system—initiative investigation

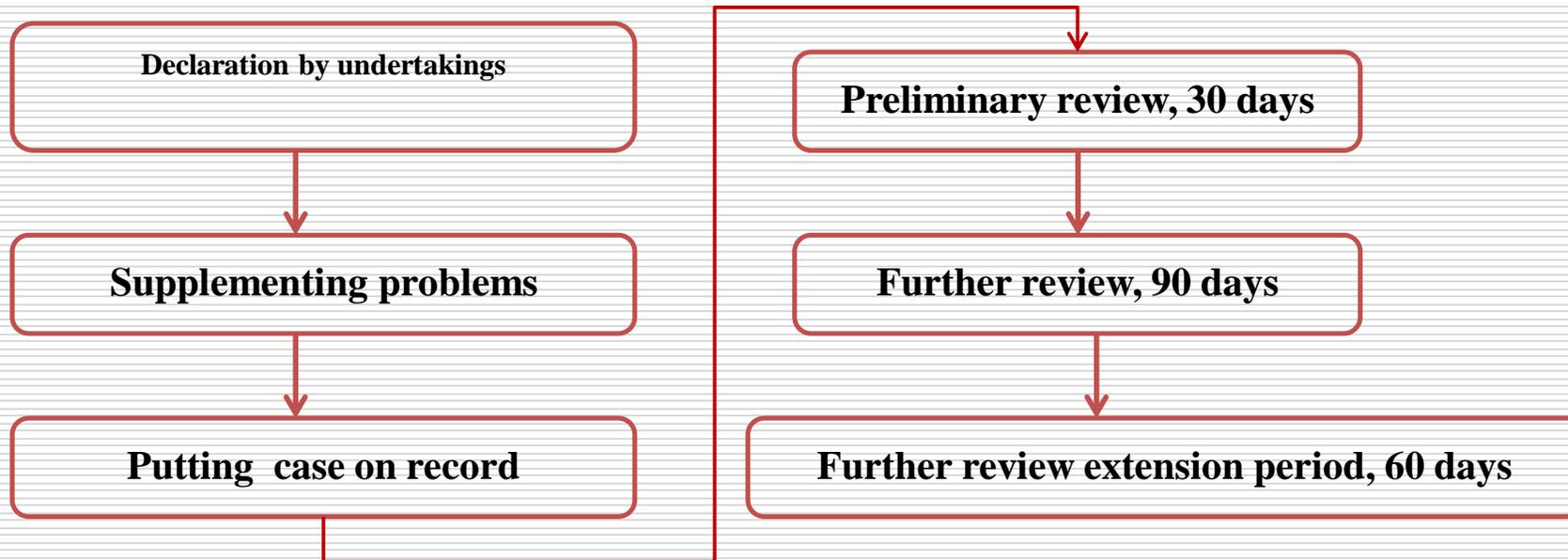
- *Provisions of the State Council on Thresholds for Declaration of Concentration of Undertakings*
- Article 4. Where a concentration of undertakings **does not reach** any of the **declaration thresholds** specified in Article 3 of these Provisions, but facts and evidence collected in accordance with the prescribed procedures establish that such concentration of undertakings effects, or is likely to effect, the elimination or restriction of competition, the competent commerce department of the State Council shall initiate an **investigation** in accordance with law.

Supplementary system—voluntary declaration

- *Measures for Declaration of Concentration of Undertakings*
- Article 16. Where a concentration of undertakings **does not reach** any of the **declaration thresholds** specified in Article 3 of these Provisions, the undertakings involved in the concentration shall **voluntarily** lodge a concentration declaration. Where the Ministry of Commerce decides that filing case is necessary by review after receiving declaration documents and materials, it shall conduct a case review and make a decision in accordance with the provisions of the *Anti-Monopoly Law*.

IV. Procedure for Review of Concentration of Undertakings

□ Basic procedures



IV. Procedure for Review of Concentration of Undertakings

□ Declaration by undertakings

Article 23 of *Anti-monopoly Law*

A undertaking shall, when lodging a concentration declaration with the Anti-monopoly Authority under the State Council, submit the following documents and materials:

- (1) a declaration request ;
- (2) explanations on the effect of the concentration on relevant market competition;
- (3) agreement of concentration;
- (4) financial statements and accounting reports of the previous accounting year audited by an accounting firm of the undertakings involved in the concentration; and
- (5) other documents and materials as stipulated by the Anti-monopoly Authority under the State Council.

Problem:
How to get a company's internal materials?
Internal e-mail/industry outlook forecast
/competitor analysis, etc.

Such items shall be embodied in the declaration request as the name, domicile and business scopes of the undertakings involved in the concentration as well as the date of the scheduled concentration and other items as stipulated by the Anti-monopoly Authority under the State Council.

IV. Procedure for Review of Concentration of Undertakings

□ Concentration declaration by undertakings——Simple/Regular Case

Guiding Opinions on Streamlined Declaration of Market Concentration for Simple Cases (MOC Announcement [2014] No. 12)

Article 2: A concentration meeting any of the following circumstances is a simple case, and streamlined procedure is applicable:

- The sum of market shares of all undertakings involved in concentration in same relevant market is less than 15%.
- The market shares of the undertakings involved in concentration who have upstream-downstream relations are less than 25% in both the upstream and downstream markets.
- The undertakings involved in concentration are not in the same relevant market and do not have upstream or downstream relations, and the share of the undertakings in each market related to the transaction is less than 25%.
- The undertakings involved in concentration set up joint ventures outside China, and the joint ventures do not engage in economic activities in China.
- The undertakings involved in concentration acquire the equity or assets of an overseas enterprise, and the overseas enterprise does not engage in economic activities in China.
- A joint venture jointly controlled by two or more undertakings is controlled by one or more of them through concentration.

IV. Procedure for Review of Concentration of Undertakings

- Issuing notification on supplementing documents and materials (if the documents and materials are incomplete)

- ***Administrative License Law***

- Article 32. The administrative authorities shall handle the application for administrative license submitted by the applicant according to the following conditions accordingly:
 - (4) Where the application materials are incomplete or do not meet statutory forms, the applicant shall be informed of all the contents that need to be supplemented or corrected on the spot or **within five days** at one time. If the applicant is not notified within specified time period, it shall be deemed that the application is accepted on the date of receipt of the application materials.
- Article 82. The time period for the handling of an administrative license by an administrative authority prescribed by this Law shall be calculated **on business-day basis** and shall not include statutory holidays.

- ***Interim Provisions on the Procedure for Administrative License for Market Regulation***

Article 15. Market authorities shall handle the application for administrative license submitted by the applicant according to the following conditions accordingly :

- (4) Where the application materials are incomplete or do not meet statutory forms, the applicant shall be informed of all the contents that need to be supplemented or corrected and the reasonable period for the supplement and correction in a timely manner or **within five days** at one time upon the date of receipt of the application materials. If it is necessary to return the application materials at the time of notification in accordance with the regulation, they shall be returned. If an applicant fails to make supplement and correction within specified time period without justified reasons, it shall be deemed that the applicant has waived the application for administrative license, and the market does not need to make a decision on rejection. If the market authority fails to inform the applicant of the supplement and correction within specified time period, it shall be deemed that the application is accepted on the date of receipt of the application materials.

IV. Procedure for Review of Concentration of Undertakings

- Undertakings supplement documents and materials

Article 24 of *Anti-monopoly Law*

- Where the documents or materials submitted by a undertaking are incomplete, it shall submit the rest of the documents and materials within the time limit stipulated by the Anti-monopoly Authority under the State Council; otherwise, the declaration shall be deemed as not being filed.
 - Simple Case——10 days.
 - Regular Case——15 days.

IV. Procedure for Review of Concentration of Undertakings

□ Putting case on record—Simple case

- ***Guiding Opinions on Streamlined Declaration of Market Concentration***
- **Article 8.** Applicants shall fill out the *Concentration of Undertaking Simple-Case Public Notice Form*” (hereinafter referred to as the “*Public Notice Form*”) at the time of declaration.
- After a simple case is put on record, the Anti-monopoly Bureau shall put the *Public Notice Form* on the website of the Anti-monopoly Bureau of the State Administration for Market Regulation (<http://www.samr.gov.cn/fldj/>), and the public notice period is 10 days.
- **Article 9.** During the public notice period, any unit or individual (third party) may submit written opinions to the Anti-monopoly Bureau on whether the case should be identified as a simple case. If any third party considers that the case should not be identified as a simple case, the third party shall file an objection to the Anti-monopoly Bureau during the notice period and provide relevant evidences and contact information.
- The Anti-monopoly Bureau shall verify the opinions and evidences of the third party. The Anti-monopoly Bureau will not accept objection if no contact information is provided or false contact information is provided and the situation makes verification of the opinion and evidences impossible.
- If finding that a case should not be identified as a simple case according to relevant regulation during the reviewing process, the Anti-monopoly Bureau shall **revoke the simple-case decision**, and require the applicant to conduct declaration according to regular-case declaration procedure.

IV. Procedure for Review of Concentration of Undertakings

- Putting case on record—Simple case
- ***Guiding Opinions on Streamlined Declaration of Market Concentration***
- Article 10: The Anti-monopoly Bureau shall listen to the opinions of a applicant when returning an application for a simple case before putting it on record or when **revoking simple-case decision** after putting it on record, and verify the facts, reasons and evidences submitted by the applicant.
- Article 11: Where an applicant **conceals important information** or **provides false materials or misleading information**, the Anti-monopoly Bureau may order the applicant to conduct declaration according to regular-case declaration procedure, and ascertains legal liabilities of relevant undertakings and individuals in accordance with Article 52 of the *Anti-monopoly Law*.

IV. Procedure for Review of Concentration of Undertakings

- Putting case on record—Simple case

Case :

	Company 1	Company 2	Others
China	Product A	Product A, Product B	Product A, Product B, Product C
Worldwide	Product A, Product C	Product A, Product B,	Product A, Product B, Product C

- Relevant commodity market is defined as : Product A + Product B + Product C **0.7%!**
- Relevant commodity market is defined as : Product A **70%!**

IV. Procedure for Review of Concentration of Undertakings

- Putting case on record—Regular case

Seek advice from competent industry authorities and relevant industry associations and enterprises

Q: How to deal with the case that the definition of relevant commodity market provided by an applicant is inconsistent with that of relevant commodity market provided by industry associations/other enterprises?

A: To hold symposium / field research / questionnaire, etc.

Q: How to deal with the case that the market share data provided by an applicant is very different from the market share data provided by industry associations/other companies.?

A: To get data from all undertakings in the industry / get data from downstream customers.

IV. Procedure for Review of Concentration of Undertakings

□ Discussion - EU Penalty Case 1

- ◆ On April 8, 2019, the European Commission issued a fine of 52 million Euros for GE for its providing false information for merging with LM Wind.
- ◆ On January 11, 2017, GE notified relevant authority of its proposal to acquire LM Wind. In the notice, GE stated that it had not had any wind turbines with higher power output for offshore application under development except for existing 6 MW turbines. However, through information gathered by third party, the Commission found that GE provided potential customers with 12 MW offshore wind turbines then. Therefore, on February 2, 2017, GE withdrew the notice to acquire LM Wind.
- ◆ On February 13, 2017, GE re-notified relevant authority of the same transaction. This time, complete information about its future projects was included. On March 20, 2017, the Committee approved the proposed acquisition.
- ◆ Four months later, EU competition law enforcement organ began to investigate GE's first notice and misleading data provided by GE. On July 6, 2017, the Commission issued an objection statement to GE, stating that GE had violated the procedural obligations under the “Merger Regulation”.

IV. Procedure for Review of Concentration of Undertakings

□ Discussion - EU Penalty Case 2

- ◆ In 2017, the European Commission imposed a fine of 110 million Euros on Facebook, the US social media giant, because the company provided misleading information to the EU when it acquired WhatsApp in 2014.
- ◆ The fine is much lower than the EU's maximum penalty, which is 1% of Facebook's turnover in 2016 (248 million Euros), and the EU has not overturned its previous decision of approving the acquisition.
- ◆ In 2014, Facebook acquired WhatsApp with \$21.8 billion.

IV. Procedure for Review of Concentration of Undertakings

Anti-Monopoly Law Article 52

- ◆ As for the examination and investigation implemented by the Anti-monopoly Law Enforcement Agency, if business operators refuse to submit related materials and information, submit fraudulent materials or information, conceal, destroy or remove evidence, or refuse or obstruct investigation in other ways, the Anti-monopoly Law Enforcement Agency shall order them to make rectification;
- ◆ Impose a fine of less than 20,000 yuan on individuals, and a fine of less than 200,000 yuan on entities;
- ◆ Where the circumstances are serious, the Anti-monopoly Law Enforcement Agency may impose a fine of 20,000 yuan or up to 100,000 yuan on an individual, and a fine of 200,000 yuan or up to one million yuan on an entity;
- ◆ Where a crime is constituted, the relevant business operators shall be investigated for the criminal liabilities.

IV. Procedure for Review of Concentration of Undertakings

□ Preliminary review (Phase 1)——30 Days

Article 25 of Anti-monopoly Law

The Anti-monopoly Authority under the State Council shall conduct a preliminary review of the declared concentration of undertakings, make a decision whether to conduct further review and notify the undertakings in written form within **30 days** upon receipt of the documents and materials submitted by the undertakings pursuant to Article 23 of this Law. Before such a decision is made by the Anti-monopoly Authority under the State Council, the concentration may be not implemented by undertakings.

Where the Anti-monopoly Authority under the State Council decides not to conduct further review or fails to make a decision at expiry of the stipulated period, the concentration may be implemented by undertakings.

IV. Procedure for Review of Concentration of Undertakings

□ Further review (Phase 2)——90 days

Paragraph 1 of Article 26 of *Anti-monopoly Law*

Where the Anti-monopoly Authority under the State Council decides to conduct further review, they shall, within **90 days** upon the date of decision, complete the review, make a decision on whether to prohibit the concentration of undertakings, and notify the undertakings concerned of the decision in written form. A decision of prohibition shall be attached with relevant reasons . Within the review period, the concentration may not be implemented by undertakings.

IV. Procedure for Review of Concentration of Undertakings

- Further review extension period (Phase 3)——60 days

Paragraph 2 of Article 26 of *Anti-monopoly Law*

Under any of the following circumstances, the Anti-monopoly Authority under the State Council shall notify the undertakings in written form that the review time limit as stipulated in the preceding paragraph may be extended to no more than **60 days**:

- (1) undertakings concerned agree to extend the review time limit;
- (2) the documents and materials submitted by undertakings are inaccurate and need further verification;
- (3) things have significantly changed after a declaration is made by an undertaking.



Thanks.

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