



国家市场监督管理总局反垄断局

State Administration for Market Regulation Antimonopoly Bureau



Interim Provisions on Review of Concentration of Business Operators (Draft)

October 20, 2020

Reasons for Legislation

- **Importance of anti-monopoly review system for the concentration of business operators**
- **The existing provisions are relatively decentralized, involving four departmental regulations and two normative documents.**
- **Certain provisions cannot meet the needs of current work.**

Drafting Principle

- **Further optimize and standardize the anti-monopoly review system for the concentration of business operators.**
- **Integrate the existing decentralized regulations and normative documents, and unify the review rules and standards to provide a clear guidance for law enforcement agencies to administer according to law.**
- **Summarize the experience on law enforcement, and make targeted responses and solutions to the problems reflected in law enforcement practice.**
- **Solicit opinions from all parties concerned, learn from the experience of mature market economies, and improve the quality of legislation.**

Drafting Process

- Integrate four departmental regulations (i.e. the *Measures for the Undertaking Concentration Declaration*, the *Measures for the Undertaking Concentration Examination*, the *Interim Measures for Investigating and Handling Failure to Legally Declare the Concentration of Business Operators*, and the *Provisions of the Ministry of Commerce on Additional Restrictive Conditions for the Concentration of Business Operators (for Trial Implementation)*) and two normative documents (i.e. the *Interim Provisions on Assessing the Impact of Concentration of Business Operators on Competition* and the *Interim Provisions on Standards Applicable to Simple Cases of Concentration of Undertakings*) of the Ministry of Commerce, and form an exposure draft.
- Solicit public opinion online, solicit opinions from relevant units in writing, and make repeated revisions and improvements on this basis.

System Design

- **Establish a systematic and complete review system for the concentration of business operators**
 - The content covers the declaration and review of the concentration of business operators, the supervision and implementation of restrictive conditions, the whole process of investigation of illegal concentration of business operators, the integration of common contents of various processes, and the unification of law enforcement standards and procedures.

System Design

- **Give full play to the power of local market regulatory authorities and promote the vertical integration of law enforcement agencies**
 - Make principled provisions on entrusting the provincial market regulatory authorities to undertake the work related to the anti-monopoly review of concentration of business operators

System Design

➤ Further clarify the substantive judgment criteria for the review of concentration of business operators

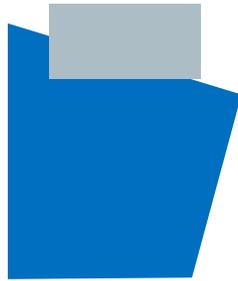
- Judgment factors of control right
- Turnover calculation standard
- Application of simple cases
- Factors to be considered in evaluating the competition impact of concentration of business operators
- Application of special systems (such as “buyer first” system)
- General requirements on the obligor's performance of its obligations, entrustee's qualification requirements, divestiture buyer's requirements, obligor's related obligations prior to completion of the divestiture, and entrustee's duties in the conditional supervision and execution procedure
- Main circumstances of illegal concentration of business operators, etc.

System Design

- **Further optimize and refine the review procedure for the concentration of business operators**
 - Make clear provisions on the declaration obligor
 - Specify the obligation to supplement documents and information during the review process
 - Specify the trustee selection and appointment procedure, the time limit and procedure of divestiture, and the modification and termination procedure of restrictive conditions
 - Significantly shorten the time for investigating the illegal concentration of business operators, and refine the requirements on the investigation procedure for the illegal concentration of business operators
 - Rationalize the relationship between the divestiture buyer evaluation and the divested business (as a new declaration of concentration)
 - Make principled provisions on the investigation procedure for the concentration of business operators failing to meet the declaration standard

System Design

- **Strengthen legal responsibility and enhance institutional deterrence**
 - Impose more administrative penalties for individual acts, strengthen legal constraints, and enhance the deterrent effect of laws within the scope of legal liability stipulated by regulations It mainly includes the following: the legal liabilities of the declarant for concealing the situation or providing false information; increasing the legal liability to impose fines on the trustees who fail to perform their duties as required; increasing the legal liability of the buyer of divested businesses.



Thank you!

