



**Whether New Thresholds Are Needed for Notification of
Concentration of Undertakings with High-Value Transactions**

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I. Thresholds for Notification of Concentration of Undertakings in China

(I) At present, turnover is used as the threshold for Notification.

➤The combined worldwide turnover of all the undertakings concerned in the preceding financial year is more than RMB 10 billion, and the nationwide turnover within China of each of at least two of the undertakings concerned in the preceding financial year is more than RMB 400 million;

➤The combined nationwide turnover within China of all the undertakings concerned in the preceding financial year is more than RMB 2 billion, and the nationwide turnover within China of each of at least two of the undertakings concerned in the preceding financial year is more than RMB 400 million.

➤In the calculation of turnover, the unique circumstances of such special industries or sectors as banking, insurance, securities and futures shall be taken into account, and the specific measures shall be subject to the *Measures for Accounts on Application Turnover of the Concentration of Undertakings of Finance Industry*.

Relevant regulations :

Provisions of the State Council on Thresholds for Notification of Concentration of Undertakings.

Measures on Notification of Concentration of Undertakings.

Measures for Accounts on Application Turnover of the Concentration of Undertakings of Finance Industry .

I. Thresholds for Notification of Concentration of Undertakings in China

(II) Investigation can be initiated on the concentration failing to meet threshold for Notification.

➤ Where a concentration of undertakings does not reach any of the specified thresholds, but facts and evidence collected in accordance with the prescribed procedures establish that such concentration effects, or is likely to effect the elimination or restriction of competition, relevant anti-monopoly law enforcement department shall initiate an investigation in accordance with law.

Relevant regulations :

Provisions of the State Council on Thresholds for Notification of Concentration of Undertakings.

I. Thresholds for Notification of Concentration of Undertakings in China

(III) Evaluation

On the one hand: clearly defined, with high operability.

On the other hand: new requirements for the threshold for Notification are put forward due to the development of new industries, new formats and new models.



II. Possible challenges when making turnover as a single prior-Notification threshold

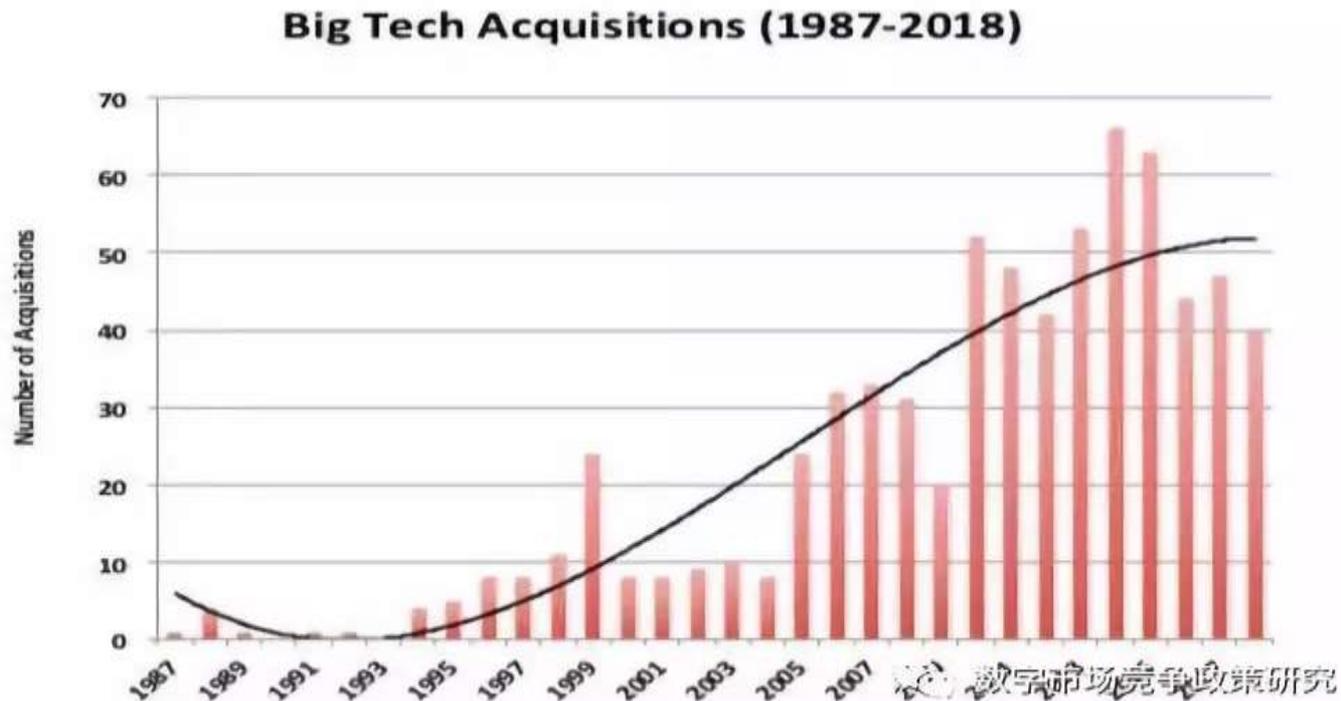
Taking the acquisition in digital economy sector as an example

(1) Characteristics of digital economy

1. Dynamic and innovative
2. Network effect and scale economy
3. Bilateral or multilateral markets
4. Big data and algorithms have become the core elements of enterprise competition.

II. Possible challenges when making turnover as a single prior-Notification threshold

(II) Frequent acquisitions in digital economy sector.



“Big Tech”: Five major multinational online service or computer companies - Amazon, Apple, Facebook, Google and Microsoft.

II. Possible challenges when making turnover as a single prior-Notification threshold

(III) Some concentrations cannot be effectively regulated because involved turnover does not meet the threshold for Notification.

➤ **1. Calculation of transaction:** Some Internet companies have high market share in market segment, but according to the current turnover calculation method, the threshold for Notification are not met, which makes it difficult to regulate the concentration of undertakings that such enterprisers are involved.

➤ **2. Merger and acquisition with disruptive innovation:** innovative technologies and business models have become the core elements of enterprise competition. Start-ups with disruptive technologies or innovative business models often become the target of acquisition by large enterprises, and such concentration may generate competition concerns.

➤ Because start-ups are short of funds and small in scale, and their turnover may not meet the threshold for prior notification. Therefore, it is difficult to regulate such concentration with current threshold for prior notification.

➤ Turnover reflects the historical situation of a company, and it cannot reflect the development potential of disruptive start-ups (For example, Facebook has acquired WhatsApp.)

III. Whether new thresholds are needed for Notification of concentration of undertakings with High-value transactions?

(I) The advantages and disadvantages of using transaction value as threshold for Notification.

1. Advantages.

- For traditional industries, transaction value is basically proportional to the turnover of an company to be acquired.
- For digital, medical, high-tech and other industries, transaction value can more fully reflect the competitive potential of a company to be acquired.

2. Existing Problems.

- Companies may reduce transaction value through complex payment mechanisms to circumvent review.
- M&A always takes place at an early stage of a company to be acquired , thus transaction value is lower than prescribed threshold for prior notification.
- The influencing factors of transaction value are more complicated. The addition of capital power (such as venture capital institutions) may lead to a high premium, and it is difficult for transaction value to accurately reflect the real situation of a company to be acquired.
- The value of turnover usually comes from audited financial reports, the data is relatively fair while the transaction value is relatively not so official.

III. Whether new thresholds are needed for Notification of concentration of undertakings with High-value transactions?

(I) The advantages and disadvantages of using transaction value as threshold for Notification.

In other countries:

- In 2017, Germany and Austria introduced supplement notification threshold based on transaction value.
- In November 2018, Korea submitted the revision of Monopoly Regulation and Fair Trade Act which adjusted the threshold for merger notification. In order to prevent anti-competitive behaviors by acquisition of startups, the antimonopoly notification should be performed even when the transaction value is high enough but doesn't reach the threshold.

III. Whether new thresholds are needed for Notification of concentration of undertakings with High-value transactions?

(II) Advantages and disadvantages of using market share as threshold for Notification.

- Advantages: market share is an important measure of a company's market power.
- Disadvantages: the determination of market share needs to be based on the definition of relevant market, with greater uncertainty and lower operability.

(III) Advantages and disadvantages of using total assets as threshold for Notification.

- Advantages: total assets can reflect the market power of a company to a certain extent.
- Disadvantages: total assets include all assets owned or controlled by a company. Investment income may come from non-operating business income such as real estate and securities investment, which varies greatly.

Although the threshold in China is currently based on turnover, investigations on cases that do not reach the threshold can still be performed.

IV. Recent Development

➤ We are currently conducting research on the notification threshold aiming to set a more scientific and reasonable threshold.

➤ The research needs to take macroeconomy, development of sectors and corporations, merger efficiency among other factors to reach a conclusion based on quantitative analysis.

Thank you!