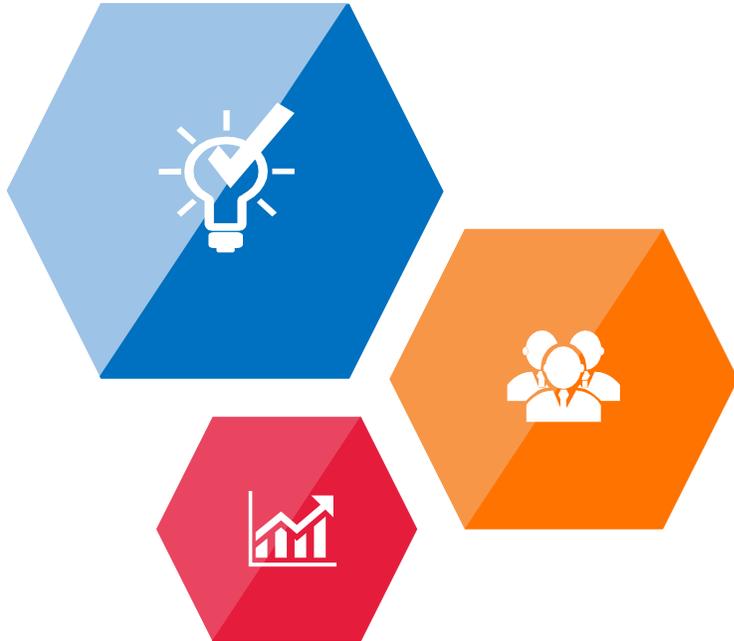




国家市场监督管理总局

State Administration for Market Regulation



# Concentration Review in Digital Markets

Anti-monopoly Bureau of the State  
Administration for Market Regulation  
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*Main  
Content*

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2. Challenges of Concentration Review in Digital Markets
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# 1. Status of Concentration Review in Digital Markets



Large platform enterprises are being active in investments, mergers and acquisitions, which causes the further concentration of resources and in markets. However, this type of disorderly expansion of capital brings risks.

The State Administration for Market ( SAMR ) has repeatedly emphasized that the same reporting requirements apply to concentrations both in the digital economy (including enterprises adopting the VIE structure) and in other fields, and that concentrations are not allowed without reporting.



# *Enforcement Practices for Concentration of Business Operators in the Digital Economy*

- In the first half of 2020, SAMR has reviewed and unconditionally approved cases of operator concentration reporting involving agreement control structures.
- On December 14, 2020, SAMR publicly imposed top penalties of RMB 500,000 on three cases of illegal implementation of concentration by enterprises adopting VIE structure in the digital economy, including the acquisition of equity interests in Yintai Commercial (Group) Co., Ltd. by Alibaba Investment Ltd, the acquisition of equity interests in New Classic Media Holding Co., Ltd. by Tencent's subsidiary, and the acquisition of equity interests in Zhong You Zhi Di Technology Co. Ltd. (Chengdu WoLaiLa Grid Information Technology Co., Ltd.) by Shenzhen Fengchao Network Technology Co., Ltd.
- On March 12, 2021, SAMR imposed top penalties of RMB 500,000 on 10 cases of illegal implementation of concentration of business operators in the digital economy.



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## 2.Challenges of Concentration Review in Digital Markets



*Compared to traditional economic sectors, the digital economy is featured by*

- ✓ (1) oligopolistic competition
- ✓ (2) dynamic competition
- ✓ (3) bilateral market
- ✓ (4) data-driven



In order to further clarify the principles of anti-monopoly enforcement in the digital economy, refine the analysis methods clearly, enforce laws properly, regulate scientifically, protect fair market competition and safeguard the legitimate interests of consumers, in February 2021, the "Anti-monopoly Guidelines on Platform Economy" were issued



## The Anti-monopoly Guidelines on Platform Economy cover four main areas

In consideration of the development status, business characteristics and operation rules of the digital economy, the Guidelines set out detailed provisions for concentrations, mainly including:

- ✓ (1) Reporting criteria
- ✓ (2) "Killer Acquisitions"
- ✓ (3) Considerations of competition analysis
- ✓ (4) Remedies



## 1. Reporting criteria

- Considering the special nature of the platform economy, the Guidelines also specify that the calculation of turnover may differ according to industry practices, methods of charging, business models, the role of the platform operator, etc.
- For the platform operators only providing information matching services and charging commissions and other service fees, their turnover could be calculated in accordance with the service fees charged by the platforms and other income of the platforms; for the platform operators specifically involved in the platform side of the market competition or playing a leading role in markets, the amount of transactions involved in the platform could be included in their turnover calculation.
- The Guidelines provide a clearer explanation of the criteria for concentration reporting, which is conducive to operators in the platform economy to judge whether the relevant concentrations need to be reported, and could further reduce the legal risk of illegal concentration by operators.



## 2. "Killer Acquisitions"

- Some operators have less turnover due to their business model, preliminary investment and development stage, but the concentrations that they engage in may have a greater impact on market competition and require review by the anti-monopoly enforcement agencies of the State Council to prevent the exclusion and restriction of competition in relevant markets.
- Concentrations in the platform economy may be more prone to such situations due to the characteristics of new business models, new modes, or involving start-ups, emerging platforms, etc. The anti-monopoly enforcement agencies of the State Council will investigate such concentrations in accordance with the law, if "the facts and evidence collected in accordance with the prescribed procedures indicate that the concentrations have or may have the effect of excluding or restricting competition".
- Based on practical experience and theoretical research, the Guidelines provide guidance on the types of concentration in the platform economy that are of key concern to the anti-monopoly enforcement agencies of the State Council.



### 3. Considerations of competition analysis

The Guidelines list a number of considerations relevant to the platform economy sector.

- In terms of the market share of operators in the platform economy, it may be necessary to consider the amount of transactions, quantity of transactions, quantity of active users, number of clicks, time of use or other indicators, and to assess the dynamic trends in the operator's market share over a longer period of time.
- In assessing the operator's control over the market in the platform economy sector, it may be necessary to consider factors such as whether the operator has exclusive rights to critical and/or scarce resources as well as the duration of such exclusive rights.
- In terms of the impact on market entry, factors such as market access, operator's access to technology, intellectual property, data, channels, and users may need to be considered.
- In terms of the impact on technological progress, it may be necessary to consider whether acquisitions of startups, emerging platforms, etc. will affect innovation, or other similar factors.
- In terms of the impact on consumers, particular attention may need to be paid to whether the post-concentration operator has the ability and incentive to treat different groups of consumers differently, use consumer data inappropriately, etc.
- Some cases may also require a comprehensive consideration of bilateral or multilateral operations of the platform, as well as other operations engaged in by the operator, and an assessment of direct and indirect network externalities.



## 4. Remedies

- ✓ The Guidelines enumerates some types of remedies in light of the characteristics of the digital economy, such as divesting intangible assets (such as intellectual property, technology, data), divesting related interests or other structural conditions.
- ✓ Examples include opening up infrastructure such as networks, data or platforms, licensing key technologies, terminating exclusive agreements, modifying platform rules or algorithms, committing to compatibility or not reducing the level of interoperability and other behavioral conditions.



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# 3. Thoughts on Regulating Concentration in Digital Markets



## Thoughts on Regulating Concentrations of Business Operators in the Digital Market mainly cover three areas:

- ✓ **1. Continue to pay equal attention to encouragement and standardization.** On the one hand, unwaveringly support the development of the digital economy and innovation economy, support the standardized and healthy development of Internet platforms; on the other hand, pay close attention to the risks accumulated during the rapid development of the online and offline economy, and resolutely prevent the disorderly expansion of capital.
- ✓ **2. Always take current and long-term into consideration.** Concentration reviews shall be based on the current situations, in combination with the specific circumstances of the case in order to enhance the competition analysis and legal argumentation and solve the existing or potential competition damage; meanwhile, shall focus on the long term by studying and researching the development rules that accord with the online economy, and competition rules with strong operability and predictability, to create fair market competition based on rule of law.
- ✓ **3. Mutual improvement of governance and research.** Improve theoretical research with practical governance experience, improve governance prowess with theoretical research results, and further enhance concentration regulation in a scientific and relevant manner.



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Thank you!