



IP Issues in Antimonopoly Review of Undertaking Concentration



Unconditionally Cleared Cases that involved IP Rights Issues

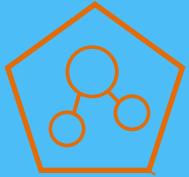
**For example, Google's acquisition of Motorola;
Microsoft's acquisition of Nokia;
Nokia's acquisition of Alcatel-Lucent;
Merger between Dow Chemicals and
DuPont.**



Cleared
Subject to
Commitments

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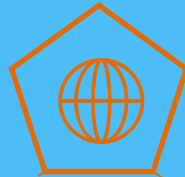
1. Status of IP issues in antimonopoly review



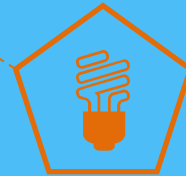
2. IP issues and antimonopoly review principles



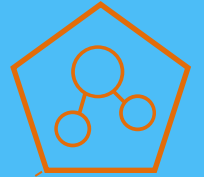
3. IP issues in market definition



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Point 1 **Status of IP issues in antimonopoly review**

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IP constitutes an important part in antimonopoly review.

It plays role in every aspect of undertaking concentration control regulations.

The identification of a concentration, the calculation of turnover, the definition of relevant markets, the analysis and evaluation of competition effects and the assessment of remedies are all likely to bring up IP problems.

Point 1

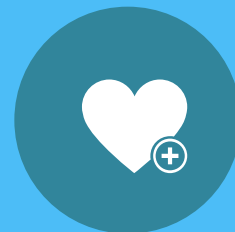
Status of IP issues in antimonopoly review

Examples:



1. The transfer or licensing of IP rights

2. Pooling arrangements

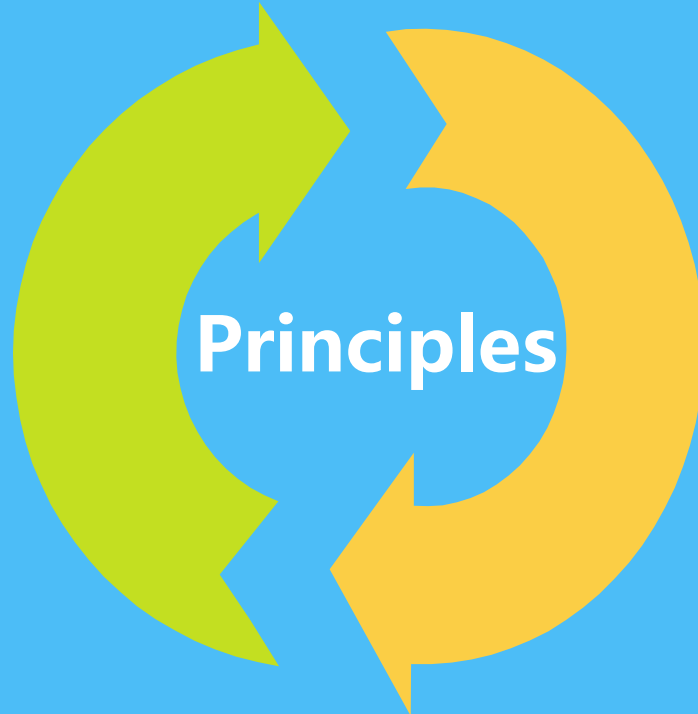




Point 2 IP issues and antimonopoly review principles

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**General
principle**



**Specific
Principle**

Point 2 IP issues and antimonopoly review principles

- General Principle

The core of general principle lies in balance.

We are always devoted to balancing innovation protection and competition promotion.

We hold a prudent attitude towards conduct that uses antimonopoly law to challenge or intervene legitimate exercise of IP rights.



Point 2 IP issues and antimonopoly review principles

- Specific principle.

The specific principle is observing the basic structure of *Antimonopoly Law* while taking into account the specific characteristics of IP.

There is no need to create a special path for undertaking concentration involving IP issues. The appraisal criteria stipulated in Article 27 of Antimonopoly Law apply in the same way to cases involving IP issues.

On basis of that, we weigh carefully the characteristics of the IP rights concerned in a specific case.



Point 3

IP issues
in market definition

Point 3

IP issues in market definition

Under Chinese law, antitrust analysis of technology transactions, licensing arrangements and other IP-related conduct might be required to define technology markets.

It is not rare that we define a technology markets.



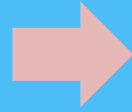
However, it is not always necessary to do so. Normally, it is when mere defining relevant goods markets is not enough to capture competitive effects that we need to define a separate technology market.



Point 4 IP issues in competition substantive analysis

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the incentive and intention of the transaction



e.g. whether the incentive of the transaction is substantially related with the incentives.



the mode of the transaction



Different modes, such as merger, acquisition of shares, joint ventures, might differ in their influence on IP rights problems



the involved IP right itself

Point 4 IP issues in competition substantive analysis

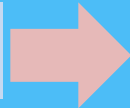
the incentive and intention of the transaction



the mode of the transaction



the involved IP right itself



e.g. the patents' impact on upstream and downstream products, the undertaking's usual patent strategy, the impact on market entry, the licensee's countervailing power.

SEPs might diminish the competition among technologies that existed before SEPs become the standard. Non-SEPs generally do not represent technical barriers unless otherwise indicated.



Point 5 IP issues in remedies

Point 5 IP issues in remedies

Remedies ought to reduce or remove the possibility of IP rights abuse, while need take care of the protection of IP rights.

Under certain circumstances IP rights do not always aim at a specific product market but are applicable to several markets.

In such case, it is more appropriate to adopt behavioral remedies that impose compulsory license on fair reasonable and non-discriminatory terms, so that the notifying parties won't be burdened too much.



Point 5 IP issues in remedies

Behavioral Remedies

Obligation to grant IP license



Setting terms and conditions for the granting



Keeping the relevant business operating on a stand-alone-basis



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Point 5 IP issues in remedies

Furthermore, we have made many useful attempts in the assessment of behavioral conditions, such as the determination of good-faith licensee in Microsoft's acquisition of Nokia and Nokia's acquisition of Alcatel-Lucent, which also exhibits the general principle of balance.



Thank you!