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.
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Point 1: Status of IP issues in antimonopoly review
Point 1 Status of IP issues in antimonopoly review

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
Point 2  IP issues and antimonopoly review principles

General principle

Specific Principle
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.
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
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 market. 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
**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. whether the incentive of the transaction is substantially related with the incentives.

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

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.

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.
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
- ......
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!