

Research on Potential Competitive Legal Regulation in the Digital Economy: Theoretical Evolution and Applicable Boundaries*

Xinqian Zhou¹

Macau University of Science and Technology, Macao, China



[10.15408/jch.v14i1.50954](https://doi.org/10.15408/jch.v14i1.50954)

Abstract

With the deepening development of the global digital economy, the business operation models of enterprises have undergone fundamental changes. The core dimensions of market competition have shifted from traditional categories such as price regulation and scale expansion to technological innovation and market promotion capabilities. Against this backdrop, potential competition analysis, as a forward-looking anti-monopoly analysis tool, is increasingly highlighting its value. This article systematically reviews the origin and evolution of the theory of potential competition analysis, deeply explores the legal application disputes between "perceived potential competition" and "actual potential competition" in the judicial practice of the United States, and dissects the effect changes of this theory from price constraints to innovation suppression. Research findings show that the digital economy era offers new development opportunities for potential competition analysis, but there are still many challenges in terms of defining applicable standards and adapting to local conditions. Based on the structural characteristics of the Chinese market and the practical demands of anti-monopoly, this article proposes a Chinese solution of restricting the scope and prudent application, providing a theoretical reference for improving the review system of business concentration in our country.

Keywords: Potential Competition; Concentration of Business; Operators' Digital Economy; Innovation Competition; Anti-Monopoly Law

* Received: January 14, 2026; revised: February 24, 2026; accepted: March 19, 2026; published: March 30, 2026.

¹ **Xinqian Zhou.** Faculty of Law, Macau University of Science and Technology, Macao Special Administrative Region, 999078, China. Email: zxq202301@163.com. ORCID: <https://orcid.org/0009-0005-9168-8457>

**Corresponding Author: zxq202301@163.com

A. INTRODUCTION

Against the backdrop of the rapid development of the digital economy, the global market competition landscape is undergoing profound changes. The free service model has become the mainstream in the market. The innovation ability and user base are directly related to the profit prospects and market share of enterprises. The core dimensions of market competition have shifted from traditional categories such as price regulation and scale expansion to the contest of technological innovation and market promotion capabilities (Shapiro & Varian, 1999; Wu, 2018). During this transformation process, in order to maintain and enhance their core competitiveness and market position, enterprises, apart from relying on internal R&D to continuously break through technological bottlenecks, have become a key path to expand competitive advantages by integrating the technological achievements, user resources and innovation teams of external enterprises through mergers and acquisitions.

This trend has jointly given rise to a large-scale wave of mergers and acquisitions in both domestic and international markets. However, not all of these mergers and acquisitions are aimed at resource integration or efficiency improvement. The real motivation of some transactions lies in eliminating potential competitive threats in advance, thereby maintaining their own market position and avoiding future competitive pressure (Cunningham et al., 2021). As a core system for maintaining market competition order and safeguarding consumer welfare, the regulatory framework of the anti-monopoly law needs to be dynamically adapted to the evolution of economic forms.

Potential competition analysis, as a forward-looking analytical tool, breaks through the limitation of only focusing on actual competitive relationships and extends the review perspective to the dimension of potential competition that "has not actually occurred but is actually possible", providing important theoretical support for assessing the implicit impact of merger transactions on the future market competition pattern (Brodley, 1983). Since its germination in the judicial practice of the United States in the 1960s, this theory has gone through stages such as the rise in practice, theoretical questioning and the contraction of judicial application. In the era of digital economy, with the large-scale application of localized artificial intelligence technology breaking through traditional information barriers, the difficulty of providing evidence has been alleviated to a certain extent. However, whether it is the legal application disputes in the judicial practice of the United States regarding "perceived potential competition" and "actual potential competition", or the practical problems of ambiguous positioning and unclear application boundaries of this theory in the review of

business concentration in China, all indicate that there are still unsolved problems in the definition of applicable standards and localization adaptation of the potential competition analysis theory.

This article aims to systematically sort out the development context of potential competition analysis theory, deeply analyze its mechanism of action and effect changes under different economic forms, and based on the practice of the Chinese market, explore the specific application path and institutional construction direction of this theory under China's anti-monopoly legal system.

B. METHODS

This research article employs a normative (doctrinal) legal research method grounded in a qualitative approach. Rather than focusing on empirical or field data testing, this study analyzes legal concepts, doctrines, statutory norms, and judicial practices concerning potential competition within digital economy antitrust regulations.

The literature approach is conducted by collecting, reviewing, and critically analyzing various secondary legal materials and academic literature. The researcher examines previous studies, books, journal articles, and competition law theories evolving from the early era of potential competition (such as perceived potential competition and actual potential competition theories) to its development in the digital economy era. Through this approach, the research systematically maps the theoretical evolution and the paradigm shift in competition from traditional price competition toward innovation competition and technological dominance.

The statutory and case approaches are utilized to analyze the legal basis and normative application. This study examines formal legal texts and rules, such as Section 7 of the Clayton Act in the United States along with its legislative history, merger control regulations under China's Anti-Monopoly Law, and relevant court rulings. The researcher investigates how positive legal norms address the challenges of killer acquisitions and the application of equitable legal boundaries.

All legal materials are synthesized using a descriptive-analytical and comparative framework. The researcher identifies discrepancies in legal application standards between U.S. and Chinese judicial practices. From this synthesis, the study articulates a new, prudent framework (a "Chinese solution")

aimed at proportionally reforming the review system for digital market acquisitions.

C. RESULTS AND DISCUSSION

1. The Theoretical Origin and Judicial Evolution of Potential Competition Analysis

a. The legal origin of the concept of potential competition

The legal basis of the theory of potential competition analysis originated from the amendment of Section 7 of the Clayton Act by the United States Congress in 1950. Prior to this, the prohibition on mergers under Section 7 of the Clayton Act only applied to horizontal mergers between direct competitors, and the static market model failed to cover merger behaviors that might weaken future market competition (Bok, 1960). With the dynamic changes in market boundaries, enterprises naturally expand into adjacent product markets. The boundaries between direct competition and potential competition gradually blur, and the probability of operators in adjacent markets evolving into actual competitors significantly increases.

When amending the Clayton Act, Congress focused on shaping a long-term competitive market structure and paid attention to the structural impact of mergers on the sustainable competitiveness of the market. For the dual goals of maintaining the efficiency of direct market competition and preventing excessive concentration of economic power, legislators have included market extension mergers and product expansion mergers with potential competitive nature within the enforcement scope of the Clayton Act (Brodley, 1977). This amendment reflects the shift of the Anti-monopoly Law from post-event relief to pre-event prevention, and demonstrates the emphasis on the dynamic competitive process of the market.

Although "eliminating potential competition" is commonly seen in competition analysis, it originated as an independent competition analysis theory in the Columbia Steel case in 1948. In this case, the government proposed for the first time that when assessing the impact of asset acquisitions on trade restrictions, the potential competition brought by current non-competitive product producers should be taken into account, as well as the possibility that the acquired facilities may be used in the future to produce new products to compete with other products. The Supreme Court acknowledged this view,

laying the foundation for the subsequent development of the theory of potential competition.

b. Theoretical Development in Judicial Practice

The modern development of potential competition analysis theory began with the Pen-Olin case in 1964. Pensol Company and Olin Company, as chemical enterprises not in a horizontal competitive relationship, plan to jointly build a sodium chlorate plant to enter the southeastern United States market. The District Court of Delaware held that the establishment of the joint venture did not constitute a horizontal or vertical merger and would not prevent other potential entrants from entering the market.

When the Supreme Court heard the case, it first clarified that the legislative intent of Section 7 of the Clayton Act was to avoid the initial threat to competition that the Sherman Act could not reach. Therefore, there was no need to prove the actual existence of restrictions. That is, Section 7 came into effect when the relevant market showed a monopolistic "tendency," or competition was "highly likely" to decrease significantly. The Supreme Court questioned the assumption of the local court that "one party builds a factory and enters the market while the other is in a wait-and-see state", pointing out that the competitive impact of Pensol Company or Olin Company entering the market alone is obviously different from that of the Pen-Olin joint venture entering the market. The difference in the competitive ability of the operators cannot be ignored just because the number of competitors is the same.

The subsequent Federal Trade Commission v. Procter & Gamble case further deepened the theory of potential competition. Procter & Gamble, the largest producer of soaps, detergents, and cleaning agents in the United States, is planning to acquire Clorox, the largest producer of bleach in the country. The Supreme Court analyzed the anti-competitive effects of this product-expansion merger and acquisition from two aspects. First, Procter & Gamble, as a powerful acquirer, is likely to replace the smaller but already market-dominant Clorox and become the price leader in the bleaching agent market, solidifying the oligopolistic structure. Meanwhile, Procter & Gamble's advantages in advertising and promotion can make up for Clorox's shortcomings and promote Clorox's products by taking advantage of scale discounts, making potential market entrants more cautious and raising the industry entry threshold. Secondly, Procter & Gamble, as the most likely entrant on the fringes of the industry, has directly eliminated the potential competitive threats it originally had through its acquisition.

The Ocean Bank case of 1974 is the last case where the Supreme Court explicitly applied the theory of potential competition. The Supreme Court has summarized the key points of application of the theory of potential competition: Under the premise of a highly concentrated target market, and when the acquirer possesses the characteristics, capabilities, and economic motivations to be regarded as a potential new entrant, and the existence of the enterprise on the periphery of the target market actually supposes the oligopolistic behavior of existing market participants, the market extension merger and acquisition may constitute an illegal act (Posner, 1975). However, due to the unique regulatory restrictions of the banking industry, the Supreme Court ultimately ruled that national commercial banks could not be potential competitors and thus upheld the ruling allowing the merger.

Since the case of Ocean Bank, the US Supreme Court has no longer invoked a potential competition analysis to make a judicial ruling prohibiting mergers. This transformation reflects a shift in judicial attitude from the early positive optimism to prudence and skepticism, mainly due to the difficulty in presenting evidence caused by the significant reduction in competition (Alper, 1984).

c. Normative Evolution: From 1982 to 2023

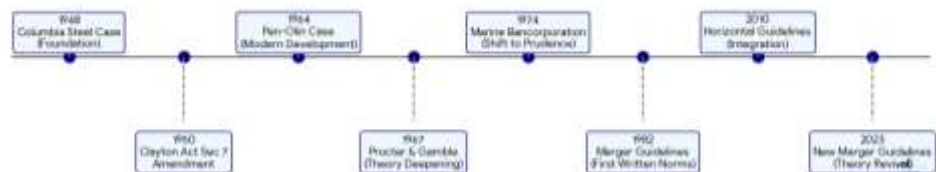
Although the practical application of the Supreme Court tends to be conservative, the theory of potential competition continues to evolve in written norms. In 1982, the "Merger Guidelines" issued by the United States Department of Justice first established the theory of potential competition in written norms (U.S. Department of Justice, 1982). Based on the differences in damage mechanisms, this guideline divides the theory of potential competition into two branches: "perceived potential competition" and "actual potential competition". Perceiving potential competition focuses on the strategic behavioral adjustments of incumbent enterprises, that is, existing enterprises, on the premise of perceiving the threat of potential entrants on the market edge, set restrictive prices lower than the monopoly price level to limit the profit space of potential entrants. Actual potential competition takes into account the reduction of dynamic competitive opportunities, that is, after potential entrants enter the market through means other than mergers, the structural optimization benefits that could have been generated are eliminated due to the mergers.

In 2010, the United States Department of Justice and the Federal Trade Commission jointly issued the "Guidelines for Horizontal Mergers" (U.S. Department of Justice & Federal Trade Commission, 2010). This guide does not set up a separate chapter for potential competition theory but integrates it into a chapter on "Market Concentration", pointing out that mergers between existing

enterprises and potential entrants may raise significant competition concerns. At the analytical and enforcement levels, the Federal Trade Commission abandoned the binary distinction between "perceived potential competition" and "actual potential competition" adopted in the 1982 Consolidation Guide and instead adopted a unified and more flexible analytical framework.

To address the challenges of the digital market, in December 2023, the U.S. Department of Justice and the Federal Trade Commission jointly released a new version of the "Merger Guidelines" (U.S. Department of Justice & Federal Trade Commission, 2023). Among them, Criterion Four explicitly regards "mergers that exclude potential entrants to the centralized market" as potentially illegal. This guideline revives and develops the classification framework of actual potential competition and perceived potential competition in the 1982 guideline by identifying that merger behavior may eliminate the reasonable possibility of future entry or weaken existing competitive pressure. The innovation of the new guideline lies in clarifying that the burden of proof for identifying potential competition is different from that for defending against it. The standard for identifying potential competition is lower than that for defending against proven actual acts that undermine competition.

Table 1. Timeline of Potential Competition Theory Evolution



2. Disputes Over the Application and Effect Analysis of Potential Competition Analysis

a. Criteria for determining a significant reduction in competition: From static equilibrium to dynamic assessment

The core task of Section 7 of the Clayton Act is to determine whether a merger has a reasonable possibility of significantly weakening competition in the foreseeable future. Potential competition is a theoretical concept derived from judicial practice, referring to the competitive force composed of market entities

that have not yet entered the relevant market but already possess the ability and conditions to do so. Potential entrants usually already hold a favorable position in adjacent markets or related fields and have a relatively high possibility of entering the relevant markets. Since its entry behavior has not yet actually occurred, potential competition does not directly act on the incumbent enterprises. Instead, it influences the strategic decisions of the incumbent enterprises through indirect means such as exerting expected pressure and releasing entry signals.

Unlike actual competition, potential competition is based on predicted and inferred competitive impacts rather than legal facts that have already occurred. Therefore, eliminating potential competition essentially means eliminating some subjective expectations or guesses rather than actual competitive behaviors. In anti-monopoly analysis, the single reason of "eliminating potential competition" is not sufficient to constitute an independent element for determining the illegality of a merger. When the US court stated that "eliminating potential competition violates the Clayton Act", its true meaning was that the elimination of potential competition led to a substantial reduction in the competitive connotations, such as market structure and consumer welfare.

From a logical perspective, potential competition is an extended form of the concept of competition in the temporal dimension and at the level of possibility. According to the static equilibrium analysis mechanism of neoclassical economics, which centers on price regulation to balance supply and demand, competition is a fixed state after reaching its limit (Tirole, 1988). Taking the occurrence of the merger as the dividing point in time, "competition is significantly reduced" assesses the changes in the competitive situation of the relevant market before and after the merger, that is, the decline in the competitive level of the relevant market due to the merger.

However, although the model of neoclassical economics is accurate and specific, it faces challenges in practical application. When law enforcement agencies decide whether to prohibit a merger, if they rely solely on economic models to predict the new market equilibrium point after the merger, it is very likely that due to assumptions such as complete information and rational expectations being difficult to meet in the real environment, the equilibrium point deduced by the model will deviate from the actual market conditions after the merger occurs. For instance, potential entrants may enhance the market competitiveness of the original incumbent enterprises through merger activities, but instead disperse the market concentration. If the merger is wrongly prohibited, a "false positive" error may occur.

In contrast, classical economics emphasizes the attributes of freedom and dynamics in its understanding of competition, regarding it as a market behavior (Hayek, 1948). The core of free competition lies in ensuring that business operators enjoy an independent market position and the right to choose their actions independently. In the context of potential competition, this is manifested as potential entrants not only having the right to freely enter the relevant market, but also having the freedom to choose the way of entry. Judging from the precedents of the United States over the years, courts tend to encourage potential entrants to participate in competition through the "new entry" approach and view such entry as a competitive opportunity to change the existing market structure. In contrast, "merger entry" eliminates such competitive opportunities.

Anti-monopoly requires law enforcers not only to closely monitor the current market competition situation, but also to take a forward-looking perspective to assess the potential impact of merger behaviors on the future market competition pattern. Especially in the digital economy era, the market structure tends to be fixed, and potential competition often becomes the only competitive constraint that monopolists may face. In terms of actual potential competition, when the number of potential entrants is limited, eliminating one of them may mean losing the opportunity to change the existing market structure. In the perception of potential competition, once potential entrants are eliminated, their price constraint effect is lifted due to the merger, and the competition-promoting effect that could have been brought to the relevant market disappears accordingly.

b. Analysis of the Effects of Eliminating Potential Competition: From Price Constraints to Innovation Inhibition

Potential competition has multiple regulatory values from the perspective of anti-monopoly law, and its role is mainly reflected in the two-way restraint mechanism on the pricing power and innovation drive of incumbent enterprises. At the pricing level, the existence of potential competition prompts incumbent enterprises to maintain prices near competitive levels, as any attempt to raise prices to hyper-competitive levels may trigger market entry. In the dimension of innovation, the existence of potential competition forces incumbent enterprises to build market barriers through continuous technological innovation and efficiency improvement, thereby objectively promoting technological progress and the enhancement of dynamic efficiency (Gilbert & Sunshine, 1995).

However, the existence of potential competition is not omnipotent. The indirect pressure it exerts on incumbent enterprises in the market cannot be

compared with actual competition, and its impact on pricing and innovation is also limited. The promoting effects of perceived potential competition and actual potential competition are different. The constraint effect of perceiving potential competition on the relevant market price mechanism is mainly achieved through the "competitive threat transmission mechanism", which is manifested as restricting the pricing of incumbent enterprises by imposing competitive threats on them. Actual potential competition, on the other hand, alters the competitive structure of the market through actual entry, enhancing market dispersion and competitiveness.

When Posner analyzed the price impact of potential competition on the relevant market, he pointed out that when incumbent enterprises charge ultra-competitive prices, potential entrants can then enter the market and become alternative supply sources for consumers. Therefore, the existence of potential entrants enhances the demand elasticity of the relevant market. However, he also pointed out that due to the inability to accurately calculate the entry costs of different enterprises or reliably determine the cognitive status of enterprises within the market, it has become a difficult problem to require the government to prove that the elimination of specific potential competitors has actually changed the market competition structure (Posner, 1975).

The number of potential entrants is a key factor influencing demand elasticity and, in turn, product pricing. When there are a large number of potential entrants, existing enterprises in the market find it difficult to accurately grasp the entry conditions of all potential competitors. However, in a specific industry where there are only a few potential entrants, enterprises within the market have a clear understanding of the entry costs of the limited potential entrants, and thus are more likely to implement targeted deterrence strategies or maintain hyper-competitive price levels through coordinated behavior.

There are various theories about how competition affects innovation. Schumpeter (1942) argued that when the market is highly concentrated, low competitive pressure will prompt enterprises to participate in innovation activities. According to Schumpeter's hypothesis, a highly concentrated market is conducive to the generation of innovation. Potential entrants will reduce market concentration and hinder the development of economies of scale through new entry methods. However, for enterprises that have already held a dominant position in the market, a stable market structure and relatively fixed consumer demand have already determined their profits. Compared with the R&D costs they need to invest, the returns generated by innovation are far from sufficient to motivate enterprises to innovate.

At this point, potential entrants have to innovate in order to capture market share. If entering through merger, eliminating potential competition means that the market operator has a stronger monopolistic power, which in turn continuously weakens the innovation capacity of the relevant market (Baker, 2007; Katz & Shelanski, 2007). However, we should view the innovative impact brought about by eliminating potential competition dialectically. If the competitiveness of the original small enterprises is enhanced due to the merger, then the overall market innovation capacity is improved compared to before the merger.

Hayek (1948) opposed competition as a static "equilibrium" and advocated that competition should be a dynamic process of "exploration and discovery". Potential competition, as an indispensable dynamic component of the competitive system, does not mean that potential entrants are passive market onlookers. Instead, they are an important force that participates equally with existing operators and jointly promotes the process of "exploration and discovery" (Tirole, 1988). When potential competition is eliminated through mergers, the dynamic interactive relationship originally constructed by "existing operators + potential entrants" is disrupted. In the long term, this will lead to a static pattern dominated by a few entities, restricting the innovation and discovery of new technologies, new organizations and other new productive forces.

3. Reconstruction of Potential Competition Analysis in the Digital Economy Era and China's Solution

a. Development Opportunities for Potential Competitive Analysis in the Digital Economy Era

The digital economy has broken the traditional industrial economy's business model of "production explosion", and high-intensity technological innovation has driven the rapid growth of the digital market. High network externalities and economies of scale and scope have constructed a high concentration in the digital market (Shapiro & Varian, 1999). The rapid iteration of technological updates and the diversification of user demands exhibit extremely strong dynamic competitive characteristics. The large-scale application of localized artificial intelligence has broken the information gap in the traditional economy, reduced the cost of information acquisition, and further strengthened the dynamic competitiveness of the high-tech industry.

In contemporary anti-monopoly analysis, the application field of potential competition theory has undergone significant evolution. Its value is no longer reflected in its universal application to all merger cases, but rather focuses on high-tech industries such as medicine, engineering, and materials, as well as the Internet industry, especially applicable to the acquisition of innovative start-ups by large enterprises (Gilbert & Sunshine, 1995; Motta & Peitz, 2021). In such mergers, the focus of review has shifted from the traditional price effect to the non-price competition dimension centered on "innovation". The fundamental issue is that enterprises that hold a dominant market position, in order to maintain their status, may directly eliminate potential challengers that are limited in scale but possess disruptive innovation capabilities through acquisitions.

Such emerging enterprises with innovative capabilities, relying on their new technologies, may challenge or even replace the existing market leaders. They often constitute the only way to introduce new competition and shake the established market structure. Due to their special analytical significance, they are regarded as "emerging competition". The review shift in focus directly leads to methodological changes. The potential competition analysis focuses on the damage that mergers cause to innovation and has independent instrumental value (Katz & Shelanski, 2007).

Innovation is not only directly related to economic profits and market forces, but also to consumer welfare. If the R&D plans of both enterprises aim to launch alternative products that should have formed substantial competitive constraints in the market, after the merger, these products will be placed under the same ownership and control, allowing the new entity to jointly dominate the future market where the products are located. Most of the existing court precedents in the United States address situations where the relevant products already exist, but the courts have always held a reserved attitude towards competition in markets where products do not yet exist.

Potential competition analysis, as a typical imported term, has not developed the branches of "perceived potential competition" and "actual potential competition" in the anti-monopoly review decisions of merger cases in China, remaining at the level of literal interpretation of "potential competition". For instance, in the case of Simcere Pharmaceutical's acquisition of Beijing Tobixi Pharmaceutical, the merger of Simcere and Tobixi not only enabled Simcere to control the raw materials in the upstream market but also eliminated potential competitors. Or, from the perspective of the blocking effect, analyze the increase

in market barriers and the blocking of the market by the merger, and prevent potential entrants from entering the relevant market.

Potential competitive analysis has not yet become an independent tool for analyzing competitive effects in the review of merger cases in China. On the one hand, the role of potential competition in innovation is essentially external and limited, and its effectiveness is far less than that of direct competition within the market. On the other hand, as potential competition is a form of competition that has not yet actually occurred, it is difficult for the law enforcement level to accurately predict the future competitive landscape that the merger behavior may trigger, resulting in frequent false negative or false positive judgments during the review.

b. Build a Chinese solution with limited scope and prudent application

The revival of potential competitive analysis is of great value. In the law enforcement practice of the United States, law enforcement agencies hope to apply potential competition analysis as a catch-all principle, with a focus on high-tech, pharmaceutical and Internet sectors that highly rely on innovation to enhance the competitiveness of enterprises (Wu, 2018). From the perspective of the Chinese market and the experience of the United States, China does not need to simply copy the classification model of potential competition of the United States. It can consider incorporating potential competition as a whole into the review framework: on the one hand, it can be used as an independent analytical tool to participate in the assessment of the competitive effects of special merger cases; On the other hand, it can also be taken as one of the core considerations when analyzing the possible lockdown effects of the merger.

Potential competition analysis, as an independent competitive assessment tool, does not apply its methods to add new restrictive conditions for horizontal or vertical mergers. Instead, it focuses on market concentration situations outside the scope of horizontal or vertical mergers that may substantially weaken the future competitive landscape of the relevant market. Therefore, the application of potential competitive analysis must meet the following prerequisite conditions:

First, the acquirer and the acquired party need to belong to different relevant markets, respectively. At the specific operational level, the relevant markets of each party are defined by the method of the assumed monopolist test, and it is further confirmed that the markets they are in have clear independence.

Second, the relevant market that potential entrants plan to enter must show a high degree of market concentration. From the perspective of market structure characteristics, this market usually presents an oligopolistic pattern. If the relevant market has already formed a fully competitive pattern, then the entry or exit behavior of potential entrants is usually unlikely to have a substantive impact on the existing market.

Thirdly, the entry barriers of the relevant market are as important as the market entry capabilities of potential entrants. When there are barriers such as technical patents, channel resources, or brand recognition in the relevant market, the market will not be entered at will, and the "competitive threat" of potential entrants will have substantive significance. At the same time, potential entrants must have the resources and conditions to bear the corresponding sunk costs and quickly enter the market within a foreseeable period.

Fourth, the scale of the number of potential entrants directly affects the effectiveness of potential competition. Only when the number of potential entities capable of breaking through barriers and participating in competition in the market is relatively small, eliminating any of these potential entrants through mergers can significantly weaken the overall restrictive force exerted by potential competition on the relevant market.

In cases where the aforementioned conditions are met, a typical manifestation is the acquisition of start-ups by large enterprises, which is commonly seen in the high-tech and Internet sectors. The main party of such mergers is an incumbent enterprise that already has significant market power in the relevant market. To eliminate future competitive threats, it will maintain a sensitive perception of start-ups that may pose innovation challenges both inside and outside the market. Once it is found that its products or technologies may potentially replace or divert its existing business, it will promptly take merger and acquisition measures to directly incorporate potential competitors into its system.

While the competitive threat is eliminated, if the acquired party conducts research and development to enter the market, the innovative achievements that could have been produced will also be nipped in the bud. The core is to "terminate the innovation goal". This kind of merger and acquisition behavior, which aims to eliminate future competitive threats in advance and essentially suppresses original innovation, is called "strangle merger and acquisition" (Cunningham et al., 2021).

From the perspective of competitive effects, what stifling mergers and acquisitions directly protect is the dynamic evolution of future competition. When large enterprises perceive potential competitive threats from the outside, their preferred strategy is often direct mergers and acquisitions. Even if start-ups successfully enter the relevant market through technological innovation, they will find it difficult to shake the established enterprises with a huge user base, abundant cash flow, and a mature ecosystem in the short term. For incumbent enterprises, direct mergers and acquisitions are a more efficient and economical strategy than market suppression. Perceiving the existence of potential competition mostly exerts innovation pressure on the market.

Applying the potential competition analysis framework to such "stifling mergers and acquisitions" can prevent some merger behaviors that may weaken future market competition at the pre-review stage, but the number of potential entrants must be carefully considered. If the start-up is not one of the few key entrants, blocking the transaction will have limited effectiveness in maintaining market competition and may instead improperly restrict its operational autonomy. Therefore, not all stifling mergers and acquisitions are subject to potential competitive analysis. Instead, it can only be used as an independent analytical tool in merger cases that meet all the conditions mentioned above.

In such eligible cases, potential competition analysis can not only be used to assess the overall impact of the transaction on the competitive landscape of the market, but also to evaluate the possible suppression of innovation it may trigger (Baker, 2007). When the two merging parties are among the few core innovative forces in a certain key field, their merger will significantly slow down the R&D speed and innovation output in that field.

China's digital economy is currently in a crucial period of rapid development and innovation in models and technologies. At this stage, while protecting fair market competition is undoubtedly the core objective of anti-monopoly regulation, it is also necessary to take into account the vitality of the industry and the efficiency of economic development, and avoid excessive intervention that may suppress the momentum of innovation. Therefore, when applying potential competition analysis as an independent tool to review business concentration, the principle of prudence must be adhered to, and the scope of application must be strictly limited to avoid overcorrection that hinders the realization of investment and economies of scale.

Meanwhile, within the existing mature analytical framework, potential competitive analysis can also serve as a supplementary and reinforcing argument

to more comprehensively assess the possible competitive effects of the merger (Motta & Peitz, 2021). For instance, when demonstrating the potential market blockade effect that a merger may trigger, in addition to considering the blocking of raw materials, channels or data from existing competitors, a potential competitive perspective can also be introduced to analyze whether the merged entity will significantly increase market entry barriers by leveraging its integrated resources, synergy effects, network effects, etc. This makes it difficult for potential future entrants to enter the relevant market due to excessively high costs and risks, thereby weakening the market's competitive potential in both dynamic and long-term dimensions.

D. CONCLUSION

Since its inception, the theory of potential competition analysis has always been deeply bound to the evolution of market competition forms. The exploration of its theoretical value and practical path is not only a microcosm of the anti-monopoly law's response to economic environment changes, but also a key proposition for maintaining a dynamic competitive order. From the "flourishing - prudence - revival" process of this theory in the judicial practice of the United States, it can be seen that the core value of potential competition analysis lies in breaking through the limitations of traditional static competition review and extending the perspective to "potential competitive relationships that have not occurred but may reshape the market pattern". Especially in the era of the digital economy, as the core of market competition shifts to technological innovation and dynamic barriers, the role of potential competition analysis in preventing large platforms from eliminating innovation threats in advance through mergers and acquisitions and solidifying their monopolistic positions has become increasingly prominent.

China's digital economy is at a critical stage where innovation-driven development and scale expansion go hand in hand. The construction of the Internet ecosystem has a real demand for merger and acquisition transactions, and this demand is intertwined with the dynamic evolution of the potential competitive landscape. It not only has the positive effect of integrating resources and improving efficiency through mergers and acquisitions, but also hides the anti-competitive risk of suppressing original innovation and weakening market competition vitality. Based on China's anti-monopoly law enforcement practice and drawing on the experience of the United States, the application of potential competition analysis in the review of business concentration in China does not require a distinction between perceived potential competition and actual

potential competition. The applicable path should closely align with the structural characteristics of the local market and incorporate it into the overall framework of the review of business concentration. On the one hand, clearly define its applicable boundaries as an independent review tool, focus on scenarios such as highly concentrated markets, limited potential entrants, and significant entry barriers, and prudently assess the impact of mergers and acquisitions on innovation and future competition. On the other hand, it is necessary to clarify its attributes and scope of application as an auxiliary tool, give full play to its supplementary and supporting role, and when analyzing the possible blocking effect and innovation inhibition effect of the merger, expand the review dimension by introducing a potential competitive perspective, effectively reducing the probability of false positive or false negative review conclusions.

REFERENCES

- Alper, W. A. (1984). Potential competition: An idea whose time has passed. *Brooklyn Law Review*, 50(2), 407-465.
- Baker, J. B. (2007). Beyond Schumpeter vs. Arrow: How antitrust fosters innovation. *Antitrust Law Journal*, 74(3), 575-602.
- Bok, D. C. (1960). Section 7 of the Clayton Act and the merging of law and economics. *Harvard Law Review*, 74(2), 226-355.
- Brodley, J. F. (1977). Potential competition mergers: A structural synthesis. *Yale Law Journal*, 87(1), 1-78.
- Brodley, J. F. (1983). Potential competition under the merger guidelines. *California Law Review*, 71(2), 376-429.
- Cunningham, C., Ederer, F., & Ma, S. (2021). Killer acquisitions. *Journal of Political Economy*, 129(3), 649-702.
- Gilbert, R. J., & Sunshine, S. C. (1995). Incorporating dynamic efficiency concerns in merger analysis: The use of innovation markets. *Antitrust Law Journal*, 63(2), 569-601.
- Hayek, F. A. (1948). The meaning of competition. In *Individualism and economic order* (pp. 92-106). University of Chicago Press.
- Katz, M. L., & Shelanski, H. A. (2007). Mergers and innovation. *Antitrust Law Journal*, 74(1), 1-85.

- Motta, M., & Peitz, M. (2021). Big tech mergers. *Information Economics and Policy*, 54, 100868.
- Posner, R. A. (1975). Antitrust policy and the Supreme Court. *Columbia Law Review*, 75(2), 282-327.
- Schumpeter, J. A. (1942). *Capitalism, socialism and democracy*. Harper & Brothers.
- Shapiro, C., & Varian, H. R. (1999). *Information rules: A strategic guide to the network economy*. Harvard Business School Press.
- Tirole, J. (1988). *The theory of industrial organization*. MIT Press.
- U.S. Department of Justice & Federal Trade Commission. (2010). *Horizontal merger guidelines*.
- U.S. Department of Justice & Federal Trade Commission. (2023). *Merger guidelines*.
- U.S. Department of Justice. (1982). *Merger guidelines*.
- Wu, T. (2018). *The curse of bigness: Antitrust in the new gilded age*. Columbia Global Reports.