Merger Control and Innovation in the Digital Economy
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In the age of digital economy, the high technology markets are characterized with the increasing monopoly of digital technology giants. They not only expand their frontiers through mergers of the big companies crossing different industries and branches but also eliminate the potential threat by acquisitions of the start-ups. As few overlaps of products and services in different industries are concerned in the former circumstances, the clearance of the acquisition has every reason to be made under the conventional antitrust law framework. For the latter, according to the size standards for declaration and review of concentrations in contemporary merger control regime, the acquisition of such small sized start-ups can be very easily approved or even can go ahead without any antitrust scrutiny for it may not reach the threshold of the declaration of concentrations. However, the mergers of this kind have stifled the innovation of existing and potential competitors, undermined the present and future competition in the innovation market, increasingly centralizing the data resource and intensifying the polarization of the Internet industry. The conventional regime of antitrust law fails to provide an effective regulation solution. This presentation focuses on the issue of the uniqueness the merger impact in the high-technology market competition. The characteristics of the digital economy raises new questions to the merger control regulation and the antitrust law must respond the challenges smart. Does the theory of harm in EU Dow/DuPont case give some inspiration to find one possible solution or it is a theoretical mistake? It is hot potato at moment. Chinese legislators have taken the lead in protecting and stimulating the innovation. Different from a great number of other countries, Article 27 Item 3 Chinese Antimonopoly Law (AML) rules explicitly that the influence of mergers on the technology progress shall be one of the factors to be reviewed in the comprehensive merger control. The real application of this regulation can probably cause value reappraisal of some mergers of the Chinese Internet giants BAT and give various start-ups competitor chance of survival and innovation. In this way the Chinese merger control regulation makes one step forward to keep pace with the digital economy, that not only the size of merger parties but also the real impact of mergers on the technology market competition should be considered as the criteria of merger control, and that the impact on both the existing and potential competition in the product markets as well as in the innovation markets should be taken account of.