Background, Progress and Prospect of Fair Competition Review System

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Essential Requirements of Fair Competition Review System

Essential Requirements:

When formulating policies and measures that involve economic activities, the government departments should have a strict review on them against relevant standards and fully evaluate the impact of those policies and measures on market competition, so as to prevent the introduction of policies and measures that eliminate and restrict competition.
The Course of the Introduction of the Fair Competition Review System

The Opinions of the State Council on Several Policies and Measures for Vigorously Advancing the Popular Entrepreneurship and Innovation published by the State Council in June, 2015 explicitly proposes the introduction of a fair competition review system.

Several Opinions of the CPC Central Committee and the State Council on Advancing the Pricing Mechanism Reform issued by the CPC Central Committee and the State Council in October, 2015 proposes establishing a coordination mechanism between competition policy and other policies such as industry policy and investment policy, so as to implement a fair competition review system.

President Xi Jinping chaired the 23rd meeting of the Central Leading Group for Comprehensively Deepening Reform on April 18, 2016 where the fair competition review system was examined and passed.

The State Council published the Opinions on the Establishment of a Fair Competition Review System in the Development of Market System on June 1, 2016, which marks the formal establishment of the fair competition review system.
The fair competition review mechanism is a system launched in the general context of China's economic institutional reform.

The introduction of the fair competition review system is a result of the continuous deepening of China's anti-monopoly law enforcement over the last eight years.

The fair competition review system is a product drawing on international experience and combining with China's national conditions.
Position of the Fair Competition Review System

- It is the juncture for the organic connection of making the market play a decisive role and giving a better play to the role of government.

- It is a mechanism to coordinate the relationship between competition policy and other economic policies such as industry policy and investment policy.
Main Contents of the Fair Competition Review System

- Who to review
- How to review
- What to review
- Guarantee Mechanism
Progress in the Implementation of the Fair Competition Review System

Implementation of different departments

- **National Development and Reform Commission**
  - The National Development and Reform Commission has established an internal review mechanism to define the review procedure and introduce "Fair Competition Review" module in the official document processing system which serves as a compulsory procedure for the promulgation of policies and measures.

- **Other Departments**
  - The Ministry of Commerce, the State Administration of Industry and Commerce, the Ministry of Industry and Information Technology and the Ministry of Housing and Urban-Rural Development have specifically published notices to establish the internal review mechanism and other departments mostly incorporate the fair competition review into the legality review prior to promulgation.
Progress in the Implementation of the Fair Competition Review System

中华人民共和国国家发展和改革委员会

关于贯彻落实《关于在市场体系建设中建立公平竞争审查制度的意见》委内工作程序的通知

各司局、室、厅：

日前，国务院印发《关于在市场体系建设中建立公平竞争审查制度的意见》国发[2016]34号，以下简称《意见》），要求从今年7月起，国务院各有关部门、各省级人民政府及所属部门在有关政策措施制定过程中进行公平竞争审查。为贯彻落实《意见》精神，确保我委制定的有关政策措施符合公平竞争要求和相关法律法规，防止出现排除、限制竞争的情况，现就做好公平竞争审查工作相关事宜通知如下：

一、按照“谁起草、谁审查”的原则，各司局分别负责本司局拟出台政策措施的公平竞争审查工作，在起草过程中严格对照《意见》明确的审查对象、标准和要求进行自我审查，形成书面审查结论，随相关文件材料一并上报委领导。

二、各司局在审查中认为有必要的，可以征求价格局意见。价格局根据《反垄断法》关于禁止滥用行政权力排除、限制竞争的规定和《意见》明确的公平竞争审查标准，对各司局公平竞争审查结论。

抄报：主任、副主任、党组成员、秘书长、副秘书长

国家发展改革委办公厅
2016年7月27日
Progress in the Implementation of the Fair Competition Review System

The Information Office of the State Council held a routine briefing on government policies by the State Council at 10:00 am, December 30 (Friday), 2016 at the Information Office, and Ning Jizhe, the Deputy Director of the National Development and Reform Commission was invited to give some introduction about the Notice of the State Council on Several Measures to Increase Openness and Proactively Utilize Foreign Investment and answer the questions of journalists.

China News Service: Some foreign-funded enterprises reported that unfair competition problems might be encountered during operation. I noticed the document issued by the State Council which gives full attention to the issues regarding fair competition, so what concrete measures have been introduced?

Ning Jizhe: Your question is very important and also the principle to be reaffirmed and the issue to be addressed particularly by the Notice of the State Council on Several Measures to Increase Openness and Proactively Utilize Foreign Investment Foreign-funded enterprises are an important component of Chinese economy and the subject of our enterprises just like the state-owned enterprises and private enterprises. The Chinese government has always required the fair treatment to both domestic-funded enterprises and foreign-funded enterprises making no exception. The policy and measures introduced this time just focus on this, which not only stresses the investment environment prior to admittance but also attaches importance to the investment environment after admittance. Specifically, seven concrete measures have been introduced to ensure and promote the fair competition of both domestic-funded enterprises and foreign-funded enterprises.

The first measure is to conduct fair competition review on the foreign investment policy. Considering that our foreign investment management involves many departments, the State Council requires all the departments must conduct a fair competition review and seek public opinion before the introduction of foreign investment-related policies, thus providing a guarantee from the system. And also the State Council requires all the departments and all the regions must strictly implement the national policies and regulations to ensure the consistency of those policies and regulations with no additional limit to be added on foreign-funded enterprise in discretion, thus ensuring the stability, predictability and transparency of policies.

The second is to examine and verify the business license and qualification application of foreign-funded enterprises in a fair manner. The examination shall be made according to a unified standard and in a period of unified time for both domestic-funded enterprises and foreign-funded enterprises. The third is fair participation in standardized work. The fourth is fair participation in government procurement. The fifth is fair protection of intellectual property rights. The six is fair financing environment, channels and conditions. The seven is fair registered capital system.
The National Development and Reform Commission takes the lead. The Director of the National Development and Reform Commission acts as the Convener and the other responsible persons from the National Development and Reform Commission, the Ministry of Finance, the Ministry of Commerce, and the State Administration of Industry and Commerce act as the Deputy Convener. The office is located in the National Development and Reform Commission (The Anti-monopoly Bureau).

Participating departments: 28.

Key responsibilities: Studying FCRS implementation-related major issues, conducting supervision and inspection, making reports, summarizing the results, studying and formulating detailed rules and regulations.

Working mechanism: Plenary session; Liaisons meeting

The first liaisons meeting of the joint conference of fair competition review was held on March 7, at the National Development and Reform Commission.
Progress in the implementation of the fair competition review system

Implementation in local level

1. **Document issuance**
   - 25 provinces (regions and municipalities) have already forwarded the Document No.34 or introduced the suggestions on the implementation and 6 provinces and regions have drafted the suggestions on the implementation and are waiting for review by the provincial government.

2. **Work Coordination Mechanism**
   - 6 provinces have officially established the joint conference mechanism and other provinces (regions and municipalities) are actively promoting the establishment of the joint conference system or relevant work coordination mechanism.

3. **Establishment of Review Mechanism by Different Regions**
   - All the 25 provinces (regions and municipalities) who have forwarded the document or introduced the suggestions on the implementation have specified the review mechanism according to the requirement of Document No.34 for self review.

4. **Actual Implementation**
   - 12 province have started the fair competition review on the government documents, and 19 local development and reform (price) departments have started the review work.

5. **Implementation at City and County Levels**
   - City-level and county-level governments just started the implementation. 6 provinces instruct 26 prefecture-level cities to publish the suggestions on the implementation, and the city-level and county-level governments of some provinces follow their provincial policies on the implementation and do not issue documents separately.
Distinguish the increment and the inventory so as to apply the policies on correct categories and promote the implementation of the system.

For the increment, we should strengthen the procedure constraint and supervision to strictly control the policy outlet.

For the inventory, we should clear it annually in an orderly manner.

Meanwhile, we should strengthen our efforts in the investigation of administrative monopoly cases to promote the increment review and inventory clearance.
Prospect on the Implementation of the Fair Competition Review System

Hold the first plenary meeting of the ministerial joint conference to start the work coordination mechanism.

Introduce the detailed rules and regulations of the fair competition review system.

Conduct supervision and provide guidance to ensure the implementation of review on the increment policies. Give a play to the role of the ministerial joint conference, instructing and urging each region and department to effectively implement the fair competition review job.

Organize the work to clear the inventory policies. According to the requirement of Document No.34, the people's governments of various levels and different departments of the State Council are the first responsible subject for the clearance of the inventory. Work out an overall working plan for the clearance of inventory to urge each province and department to get the assigned responsibility implemented.

Strengthen the efforts to investigate the administrative monopoly cases. Directly investigate and disclose some cases involving the abuse of administrative power to expel and limit competition and use the typical cases to propagandize the fair competition review system. Fully motivate the provincial anti-monopoly law enforcement agencies.

Organize and carry out special supervisions and guidance. Select key industries and regions to carry out the supervision and guidance in the name of the ministerial joint conference, summarizing the results, promoting the experiences and reporting the observations.

Explore and establish the examination system. Promote the incorporation of the fair competition review into the comprehensive examination and evaluation system so as to raise the enthusiasm of each region and department in the implementation of the system. Study and improve the accountability mechanism.
Formulating Detailed Rules and Regulations for Implementation

◆ After a period of implementation, summarize the implementation status and problems observed, study and formulate the detailed rules and regulations for implementation, further specify the procedure and detail the standard, so as to promote constant improvement of the fair competition review system.

◆ Reflection:
  ✓ Summarize the self-review mechanism and procedure of all the departments and regions, find out and popularize the good experience and best practice, so as to finally establish a unified self-review mechanism.
  ✓ Study and establish a unified competition review form to achieve a standardized, normalized and unified fair competition review.
  ✓ Further detail the review standard for the convenience of operation.
  ✓ Further specify the accountability mechanism, including the investigating authority, the responsible subject, the form of responsibility, the form of punishment and the standard of responsibility confirmation.
Thanks!

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