



中华人民共和国国家发展和改革委员会  
National Development and Reform Commission

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# Background, Progress and Prospect of Fair Competition Review System

Bureau of Price Supervision and Anti-monopoly  
Wang Huowang

March, 2017

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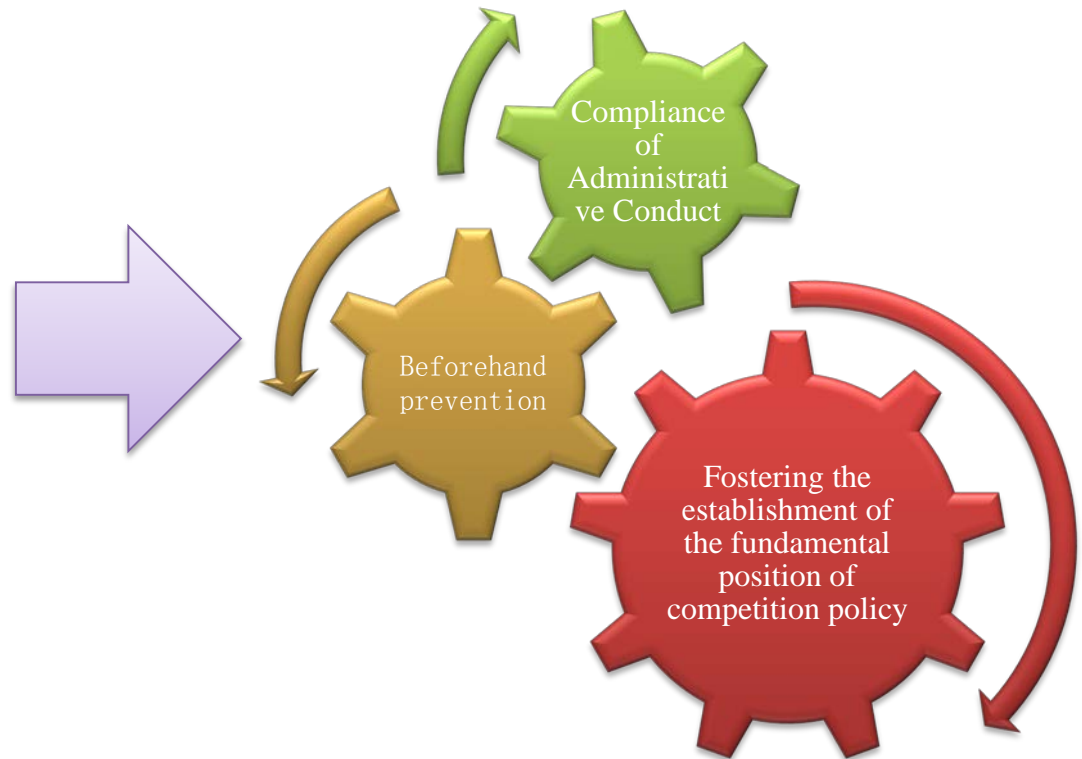
This PPT carries only my personal opinion and does not represent the view of the National Development and Reform Commission.

# Essential Requirements of Fair Competition Review System

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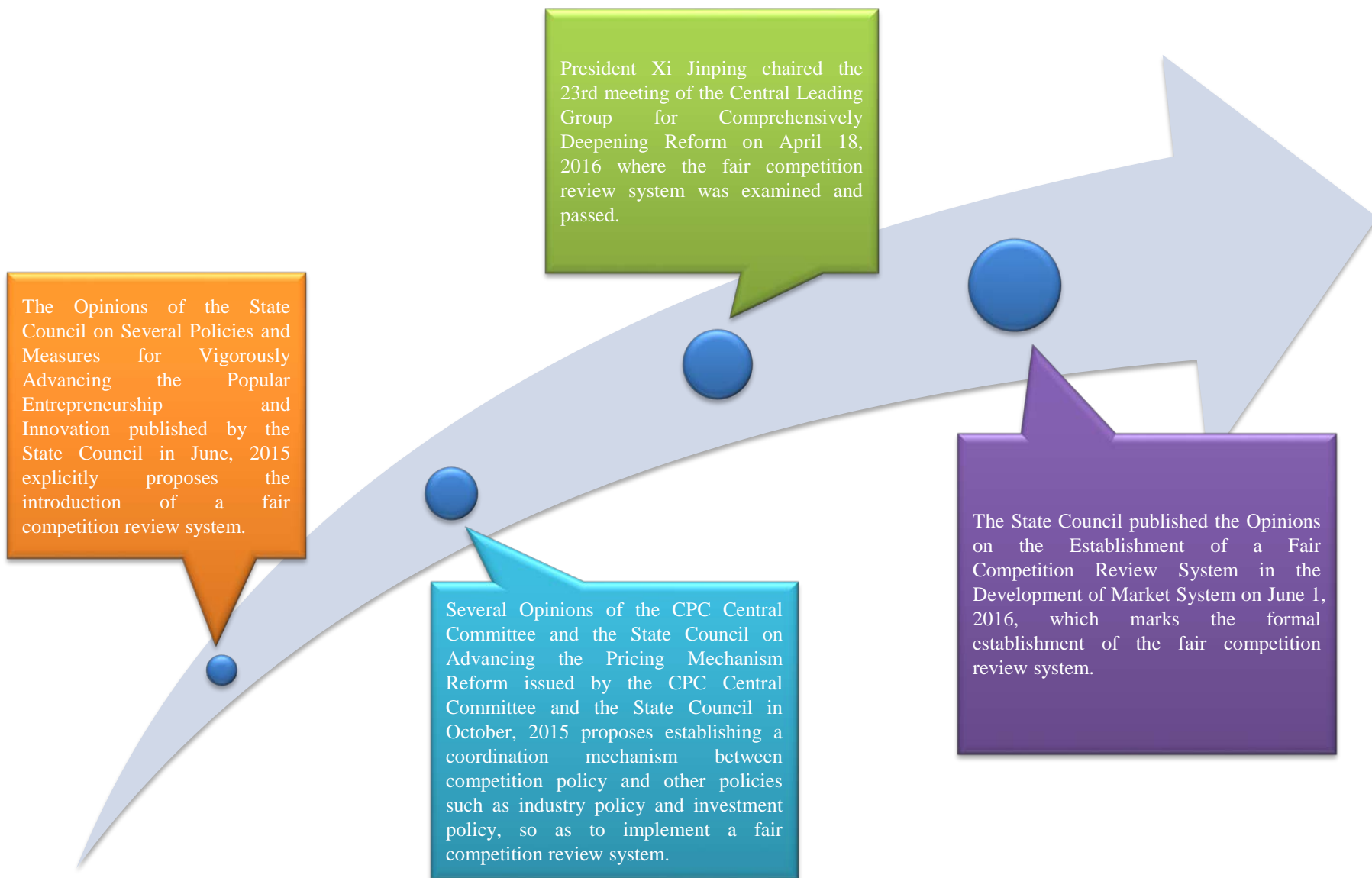
## Essential Requirements:

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

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# Opinions of the State Council on the Establishment of a Fair Competition Review System in the Development of Market System

000503

## 国务院文件

国发〔2016〕34号

### 国务院关于在市场体系建设中 建立公平竞争审查制度的意见

各省、自治区、直辖市人民政府，国务院各部委、各直属机构：

公平竞争是市场经济的基本原则，是市场机制高效运行的重要基础。随着经济体制改革不断深化，全国统一市场基本形成，公平竞争环境逐步建立。但同时也要看到，地方保护、区域封锁、行业壁垒、企业垄断，违法给予优惠政策或减损市场主体利益等不符合建设全国统一市场和公平竞争的现象仍然存在。为规范政府有关行为，防止出台排除、限制竞争的政策措施，逐步清理废除妨碍全国统一市场和公平竞争的规定及做法，现就市场体系建设中建设

国发〔2016〕34号  
公平竞争审查制度  
06-14

反垄断法》，制定含有排除、限制竞争内容的政策措施。

(四)例外规定。属于下列情形的政策措施，如果具有排除和限制竞争的效果，在符合规定的情况下可以实施：

1. 维护国家经济安全、文化安全或者涉及国防建设的；
2. 为实现扶贫开发、救灾救助等社会保障目的的；
3. 为实现节约能源资源、保护环境等社会公共利益目的；
4. 法律、行政法规规定的其他情形。

政策制定机关应当说明相关政策措施对实现政策目的不可或缺，且不会严重排除和限制市场竞争，并明确实施期限。

政策制定机关要逐年评价相关政策措施的实施效果。实施期限到期或未达到预期效果的政策措施，应当及时停止执行或者进行调整。

#### 四、推动公平竞争审查制度有序实施

(一)明确工作机制。从2016年7月起，国务院各部门、各直属机构及所属部门均应在有关政策制定过程中进行公平竞争审查。国家发展改革委、国务院法制办、商务部、工商总局要会同有关部门，建立健全工作机制，指导公平竞争审查制度实施工作，并及时总结成效和经验，推动制度不断完善。在条件成熟时组织开展第三方评估。各省级人民政府要抓紧研究制定本省工作措施和办法，落实制度要求，并从2017年起在本行政区域内逐步推

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充分激发市场主体活力。建立公平竞争审查制度，降低制度性交易成本，克服市场价格和行为扭曲，有利于调动各类市场主体的积极性和创造性，培育和催生经济发展新动能。

#### 二、明确建立公平竞争审查制度的总体要求和基本原则

建立公平竞争审查制度，要按照加快建设统一开放、竞争有序市场体系的要求，确保政府相关行为符合公平竞争要求和相关法律法规，维护公平竞争秩序，保障各类市场主体平等使用生产要素、公平参与市场竞争、同等受到法律保护，激发市场活力，提高资源配置效率，推动大众创业、万众创新，促进实现创新驱动发展和经济持续健康发展。

尊重市场，竞争优先。尊重市场经济规律，处理好政府与市场的关系，着力转变政府职能，最大限度减少对微观经济的干预，促进和保护市场主体公平竞争，保障市场配置资源的决定性作用得到充分发挥。

立足全局，统筹兼顾。着力打破地区封锁和行业垄断，清除市场壁垒，促进商品和要素在全国范围内自由流动。统筹协调维护国家利益和经济安全、促进区域协调发展，保持经济平稳健康发展等多重目标需要，稳妥推进制度实施。

科学谋划，分步实施。建立公平竞争审查制度是一项长期性、系统性、复杂性工程。要尊重国情，坚持从实际出发，研究制定具

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政策措施清理除工作方案，明确工作方式、工作步骤和时间节点，加强分类指导，确保本地区、本部门相关政策措施清理除工作稳妥推进。

(五)加强宣传培训。有关部门要切实加大宣传培训力度，加强政策解读和舆论引导，增进全社会对公平竞争审查制度的认识和理解，为公平竞争审查制度实施营造良好的舆论氛围和工作环境。

#### 五、健全公平竞争审查保障措施

(一)健全竞争政策。国务院反垄断委员会要发挥职能作用，组织、协调、指导反垄断工作，研究拟订有关竞争政策，组织调查、评估市场总体竞争状况，为推进和逐步完善公平竞争审查制度奠定坚实基础。各地区、各部门要按照确立竞争政策基础性地位的要求，有针对性地制定政策措施，及时研究新经济领域市场监管问题，不断完善市场竞争规则，加快形成统一开放、竞争有序的市场体系。

(二)完善政府守信机制。严格履行政府向社会作出的承诺，把政府履约和守诺服务纳入政府绩效考核评价体系，建立健全政务和行政承诺考核制度。各级人民政府对依法作出的政策承诺和签订的各类合同要认真履约和兑现。完善政务失信约束和问责机制。进一步推广重大决策事项公示和听证制度，拓宽公众参与政府决

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策至符合相关要求后出台。没有进行公平竞争审查的，不得出台。制定政策措施及开展公平竞争审查应当听取利害关系人的意见，或者向社会公开征求意见。有关政策措施出台后，要按照《中华人民共和国政府信息公开条例》要求向社会公开。

(三)审查标准。要从维护全国统一市场和公平竞争的角度，按照以下标准进行审查：

1. 市场准入和退出标准。  
(1)不得设置不合理和歧视性的准入和退出条件；  
(2)公布特许经营权目录清单，且未经公平竞争，不得授予经营者特许经营权；  
(3)不得限定经营、购买、使用特定经营者提供的商品和服务；  
(4)不得设置没有法律法规依据的审批或者事前备案程序；  
(5)不得对市场准入负面清单以外的行业、领域、业务等设置审批程序。

#### 2. 商品和要素自由流动标准。

- (1)不得对外地和进口商品、服务实行歧视性价格和歧视性补贴政策；  
(2)不得限制外地和进口商品、服务进入本地市场或者阻碍本地商品运出、服务输出；  
(3)不得排斥或者限制外地经营者参加本地招标投标活动；

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抄送：党中央各部门，各计划单列市人民政府，中央军委办公厅，  
全国人大常委会办公厅，全国政协办公厅，高法院，高检院，  
各民主党派中央，全国工商联。

国务院办公厅秘书局

2016年6月8日印发



# Background of the Introduction

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- ✓ 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

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# Progress in the Implementation of the Fair Competition Review System

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## 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 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

各厅、司、局、室：

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，可以征求价监局意见。价监局根据《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

论进行把关。

三、各司局应在相关政策措施提交法规司进行合法性审查时，一并提交公平竞争审查结论。法规司在合法性审查中，对各司局是否已履行公平竞争审查程序进行把关。

请各司局高度重视，深入学习《意见》精神和要求，切实做好公平竞争审查工作，防止出台排除、限制竞争的政策措施。



抄报：主任、副主任、党组成员、秘书长、副秘书长

# Progress in the Implementation of the Fair Competition Review System

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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.

# Letter of the General Office of the State Council on the Agreement with the Establishment of Ministerial Joint Conference System for Fair Competition Review

## 中华人民共和国国务院办公厅

国办函〔2016〕109号

### 国务院办公厅关于同意建立公平竞争审查工作部际联席会议制度的函

发展改革委：

你委关于建立公平竞争审查工作部际联席会议制度的请示收悉。经国务院同意，现函复如下：

国务院同意建立由发展改革委牵头的公平竞争审查工作部际联席会议制度。联席会议不刻制印章，不正式行文，请按照国务院有关文件精神认真组织开展工作。

附件：公平竞争审查工作部际联席会议制度



2016年12月26日

（此件公开发布）



文档号〔2017〕00220号  
二维码  
12126

附件

#### 公平竞争审查工作部际联席会议制度

为贯彻落实《国务院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），切实加强公平竞争审查工作的协调指导，推进公平竞争审查制度有效落实，经国务院同意，建立公平竞争审查工作部际联席会议（以下简称联席会议）制度。

##### 一、主要职责

（一）在国务院领导下，统筹协调推进公平竞争审查相关工作，对公平竞争审查制度实施进行宏观指导，协调解决制度实施过程中的重大问题；

（二）加强各地区、各部门在公平竞争审查制度实施方面的信息沟通和相互协作，及时总结各地区、各部门实施成效，推广先进做法和经验；

（三）研究制定公平竞争审查制度实施细则，进一步细化审查标准，明确审查程序，推动工作不断完善；

（四）完成国务院交办的其他事项。

##### 二、成员单位

联席会议由发展改革委、教育部、科技部、工业和信息化部

师、民政部、财政部、国土资源部、环境保护部、住房城乡建设部、交通运输部、水利部、农业部、商务部、文化部、卫生计生委、人民银行、国资委、税务总局、工商总局、质检总局、新闻出版广电总局、食品药品监管总局、知识产权局、法制办、证监会、证监会、保监会、能源局等28个部门和单位组成。

联席会议由发展改革委主要负责同志担任召集人，发展改革委、财政部、商务部、工商总局分管负责同志担任副召集人，其他成员单位分管负责同志为联席会议成员（名单附后）。联席会议成员因工作变动需要调整的，由所在单位提出，报联席会议确定。联席会议可根据工作需要，增补相关部门为成员单位。

联席会议办公室设在发展改革委，承担联席会议日常工作，完成召集人、副召集人交办的其他工作。联席会议设联络员，由各成员单位有关司局负责同志担任。

##### 三、工作规则

联席会议根据工作需要定期或不定期召开全体会议，由召集人或召集人委托副召集人主持。成员单位可以提出召开全体会议的建议。研究具体工作事项时，召集人或召集人委托的副召集人可召集部分成员单位参加会议，也可邀请其他部门和专家参加会议。联席会议以纪要形式明确议定事项，经与会单位同意后印发有关方面并抄报国务院。重大事项应及时向国务院报告。在联席

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会议召开之前，由联席会议办公室组织召开联络员会议，研究讨论联席会议议题和需提交联席会议议定的事项及其他有关事项。

##### 四、工作要求

发展改革委要会同财政部、商务部、工商总局等部门切实抓好联席会议各项工作。各成员单位要密切配合，相互支持、形成合力，认真落实联席会议议定事项，充分发挥联席会议作用，形成高效运行的长效工作机制，推动公平竞争审查制度平稳有效实施。联席会议办公室要及时向各成员单位通报情况。

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#### 公平竞争审查工作部际联席会议成员名单

召集人：徐绍史 发展改革委主任  
副召集人：胡怀杰 发展改革委副主任  
史耀斌 财政部副部长  
张 勇 商务部部长助理  
王江平 工商总局副局长  
成 员：沈晓明 教育部副部长  
李 蔚 科技部副部长  
辛国斌 工业和信息化部副部长  
高晓兵 民族事务部部长  
王广华 国土资源部副部长  
黄国秋 环境保护部副部长  
黄 艳 住房城乡建设部副部长  
戴东昌 交通运输部副部长  
田学斌 水利部副部长  
屈冬玉 农业部副部长  
项亮伦 文化部副部长  
刘 谦 卫生计生委副主任

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刘国恩 人民银行行长助理  
张喜武 国资委副主任  
孙瑜松 税务总局副局长  
梅克保 质检总局副局长  
孙寿山 新闻出版广电总局副局长  
焦 红 食品药品监管总局副局长  
贺 化 知识产权局副局长  
甘藏春 法制办副主任  
曹 宇 证监会副主席  
黄 坤 证监会主席助理  
廖 涛 保监会副主席  
薛健治 能源局副局长

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抄送：党中央各部门、各省委、自治区、直辖市及计划单列市人民政府，国务院各部委、各直属机构，解放军各大单位、中央军委机关各部门，全国人大常委会办公厅、全国政协办公厅，高法院、高检院，各民主党派中央、全国工商联。



# Inter-Ministerial Joint Conference Mechanism for Fair Competition Review

◆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

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## Implementation in local level

### 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.

### 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.

### 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.

### 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.

### 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.

# Prospect on the Implementation of the Fair Competition Review System

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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

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

Introduce the detailed rules and regulations of 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 inventor 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.

Enhancing policy propaganda and training. Organize and carry out the training on the fair competition review with focus specifically given to the high and middle-level leading cadres and the staff members of each departments.

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

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- ◆ 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.



中华人民共和国国家发展和改革委员会  
National Development and Reform Commission

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Thanks !

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This PPT carries only my personal opinion and does not represent the view of the National Development and Reform Commission.