



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

Introduction to the Practical Operation of Fair Competition Review System

Bureau of Price Supervision
and Anti-Monopoly

March 22, 2017

Major issues to address in the review process

Review procedure

Conclusion of review

Objects of review

Standards of review

Review mechanism

Fair competition review system

Exceptions

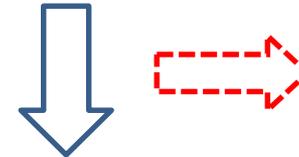
I How to establish the review mechanism

The establishment of an internal mechanism is the premise of conducting the review.
The key is to allocate the review responsibility.

- 1 Individual review by the drafting institution
- 2 Unified review by a specific institution
- 3 Initial review by the drafting institution + re-check by specific institution
- 4 Review by an entrusting third party in the form of government purchase of services

National Development
and Reform Commission
(NDRC)

The drafting Bureaus
conduct self-reviews; is
responsible for the review.



The Department of Laws and
Regulations checks the
procedure in the review of
legality.

If deemed necessary,
the departments and
bureaus, they can
consult the Bureau of
Price Supervision and
Anti-Monopoly
(BPSAM).

II How to determine the objects of review

All policies and measures related to the economic activities of the market entities shall be reviewed.

■ In content: related to the economic activities of the market entities

☐ The object of the rules and regulations, or restraint imposed are economic matters.

☐ Having external effects, and directly or indirectly influencing the interests of the market entities.

☐ Key points: market access, industrial development, investment promotion, tendering and bidding, government procurement, code of business practices, qualification criterion

■ In form:

☐ Regulations and normative documents

☐ Other policies and measures: contracts, agreements and memorandums signed with undertakings, administrative replies in the form of "One Discussion for One Case" and other stipulations and practices that have effect on the economic activities of the market entities

☐ Department regulations drafted by government departments and normative documents drafted by the State Council

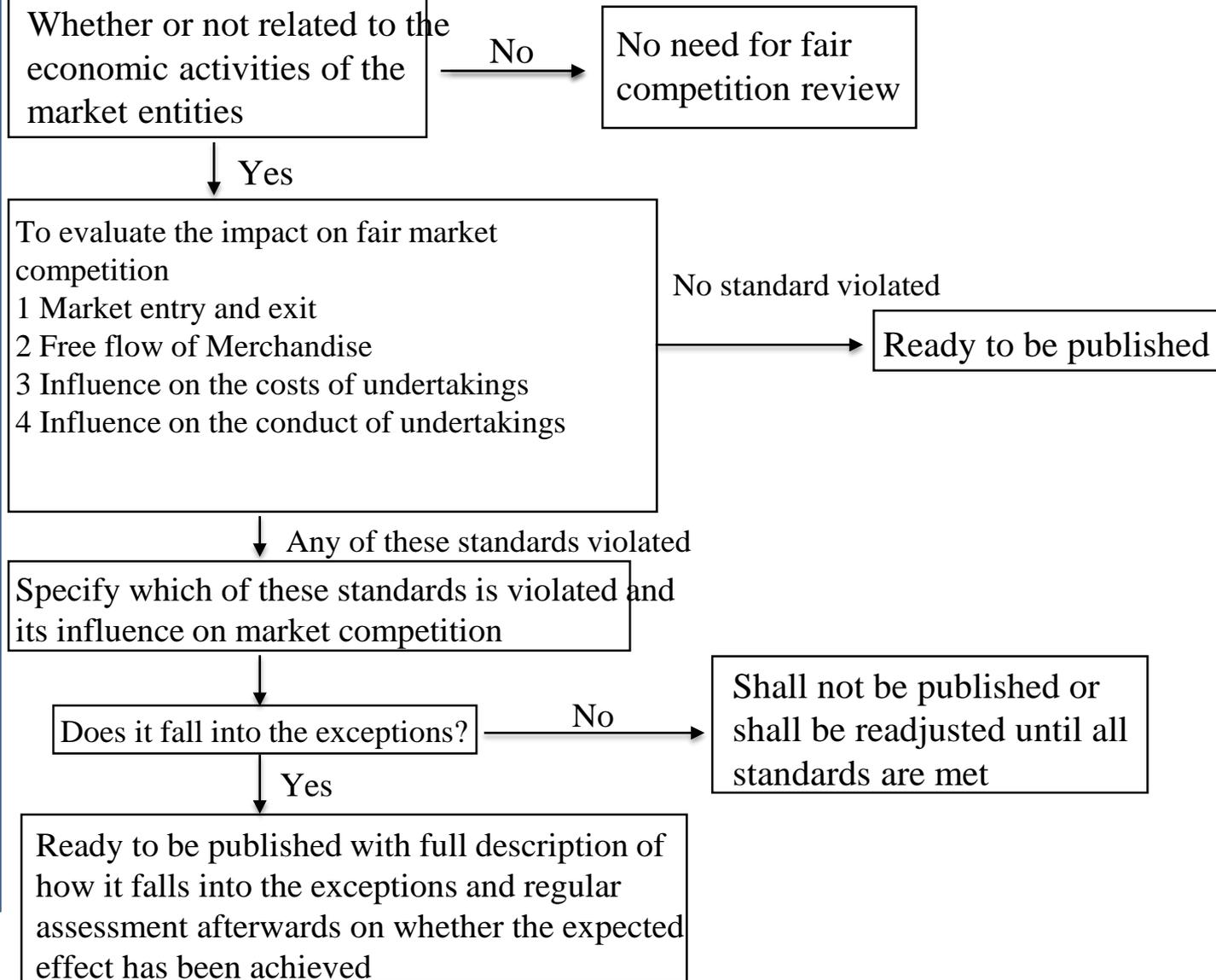
☐ Local regulations drafted by government departments

III How to control the review procedure (three steps)

Three steps:

- 1 To identify document's connection to the economic activities of the market entities;
- 2 To review the document item by item referring to the standards listed and explain relevant situations;
- 3 To decide if the exceptions should be applied

Basic procedure of the fair competition review



IV How to draw a review conclusion

■ Formal requirements

□ Presented in written form

□ Signed by a responsible officer
of the review institution

□ Used in relevant procedures
along with other material and

kept on file for reference

■ Content requirements

The whole review process shall
be reflected as a whole, including
conclusions, reasons and the
details of the consultation

Fair Competition Review Form			
Name of the policy measure			
Industries involved			
Nature			
Drafting institution		Responsible person	
Review institution		Responsible person	
Details of consultation	Time, object and details of feedbacks and adoption of advice (relevant reports can be attached)		
Details of consultation with experts and law enforcement antimonopoly institutions (optional)	Time, object and details of feedbacks and adoption of advice (relevant reports can be attached)		
Review conclusion	Is there any violation of relevant standards? (Specify if any)		
Do exceptions apply?	If they do, specify in what situations or conditions they apply		
Other necessary declaration			
Opinion of the mainly responsible person of the review institution	Signature Seal Date		

V How to interpret the standards of review

18 prohibitive standards divided in four general categories shall be made clear from perspectives of unified national market and fair competition. No policies and measures in violation of these standards shall be published in principle.



Market entry and exit standard

Free flow of Merchandise standard

Influence on the costs of undertakings Standard

Influence on the conduct of undertakings Standard

Miscellaneous Provisions

Policies and measures that can reduce or damage the legitimate rights and interests, or increase the obligation of the market entities shall not be established.
 Policies and measures in violation of the *Anti-monopoly Law of the People's Republic of China*, containing contents of eliminating or restricting competition, shall not be established.

businesses that are not included in the negative list of market access.

1. No discriminative price or subsidy policies shall be implemented on non-local and import commodities and services. ★

2. The access of non-local and import commodities and services into the local market shall not be restricted, nor the local commodities outwards. ★

3. non-local undertakings shall not be restricted in or excluded from local tendering and bidding activities. ★

4. non-local undertakings shall not be rejected, restricted or compelled to invest or establish branches in the local market. ★

5. Local investments and branches of non-local undertakings shall not be treated discriminately.

1. No preferential treatment shall be given to specific undertakings.

2. Fiscal expenditure arrangements shall not be linked up with tax and non-tax revenues from enterprises.

3. No specific undertakings shall be exempt from payable social insurance expenditures.

4. undertakings shall not be required to provide collateral, nor undertakings' collateral shall be detained.

1. undertakings shall not be forced to perform monopolistic conducts as stipulated in the Anti-monopoly Law. ★

2. The sensitive information of production and management shall not be disclosed, nor undertakings shall be forced to disclose such information.

3. Government pricing shall not be conducted beyond the pricing

Free flow of
Merchandise
and factor
standard
(5)

Influence on
the costs of
undertakings
Standard
(4)

Influence on
the conducts
of
undertakings

① Market entry and exit standard

1. No unreasonable or discriminatory entry and exit conditions shall be set.
2. Undertakings shall not be granted franchise without fair competition.
3. No restriction shall be imposed on the management, purchase and use of merchandises and services provided by specific undertakings.
4. Review or ex ante filing procedures without legal basis shall not be set up.
5. Review procedures shall not be set up for industries, areas and businesses that are not included in the negative list of market access.

Typical case A

Government departments of 12 provinces issued documents requiring a unified construction in the “Xinju Pei” of their power supply enterprises

- Power supply enterprises were required to construct the power supply and distribution facilities in newly-built residence communities (Xinju Pei) in a unified way, and to charge a flat rate according to the standards established by pricing department.
- Competition in the Xinju Pei construction market was restricted and eliminated. And the flat rate was higher than the market level. Burdens on real estate enterprises were increased and finally shifted to consumers.

Transport department of Shandong province issued documents requiring an enterprise to establish a monitoring platform of operating vehicles

- One enterprise was required to establish a monitoring platform of operating vehicles. Vehicles with positioning terminals were asked to be directly connected to this platform. As a result, other (425 recognized by the Ministry of Transport of the PRC) monitoring platforms consistent with relevant technical provisions could not enter the market in Shandong.
- Only those positioning terminals passing the test of this platform were allowed into Shandong. As a result, 95% of the vehicle positioning terminals consistent with relevant technical provisions could not be sold in Shandong (22 passed the test, while 444 were recognized by the Ministry of Transport).

② Free flow of Merchandise and factor Standard

1. No discriminative price or subsidy policies shall be implemented on non-local and import commodities and services.
2. The access of non-local and import commodities and services into the local market shall not be restricted, nor the local commodities outwards.
3. non-local undertakings shall not be restricted in or excluded from local tendering and bidding activities.
4. non-local undertakings shall not be rejected, restricted or compelled to invest or establish branches in the local market.
5. Local investments and branches of non-local undertakings shall not be treated discriminately.

Typical case B

Health and Family Planning Commission of Bengbu, Anhui province set discriminative conditions in a medicine public bidding

- In the announcement of a competitive consultation for a drug purchase in 2015, different qualification requirements were set for non-local and local undertakings. The sales of non-local enterprises should not be lower than RMB two billion (USD 289 million) in 2014, while that number for local enterprises was RMB 40 million (USD 5.7 million), a 50 times difference.

Health and Family Planning Commission of Sichuan Province provided special support to local enterprises in medicine bidding

- According to the *Interim Procedures Management of Sunshine Medicine Purchase Sichuan Medical Institutions* issued in 2013, the proportion of local medicine in the medical institutions' total medicine purchase shall be checked, and those failing to reach the proportion requirement would receive certain punishment.
- In the double-envelop medicine bidding in 2015, local enterprises were given special support, including extra credit in economic and technical bid evaluation and special quota in business bid evaluation.

③ Influence on the costs of undertakings Standard

1. No preferential treatment shall be given to specific undertakings.
2. Fiscal expenditure arrangements shall not be linked up with tax and non-tax revenues from enterprises.
3. No specific undertakings shall be exempt from payable social insurance expenditures.
4. undertakings shall not be required to provide collateral, nor undertakings' collateral shall be detained.

✚ This standard focuses on normalizing preferential policies implemented by the government, preventing specific undertakings from obtaining unreasonable competitive advantage and minimizing the impact of government preferential policies on market competition.

Typical case C

Transport department of Hebei province implemented preferential policies only to local undertakings

○The department issued *Notice on the Unified Vehicle Classification for Toll of Regular Passenger Coach on Toll Roads in Hebei*. Hebei regular passenger coaches were give a 50% discount over their highway tolls.

○This policy only applied to Hebei regular passenger coaches with fixed operating routes and approval by the road transport authority.

○With this policy, the toll costs of Hebei regular passenger coach undertakings were significantly lower than those of other provinces, placing non-local undertakings in a disadvantageous position. Taking the route from Tianjin to Shijiazhuang (capital of Hebei province) as an example. Tianjin spent RMB 1.3



④ Influence on the conducts of undertakings Standard

1. undertakings shall not be forced to perform monopolistic conducts as stipulated in the Anti-monopoly Law.

2. The sensitive information of production and management shall not be disclosed, nor undertakings shall be forced to disclose such information.

3. Government pricing shall not be conducted beyond the pricing authority.

4. The prices of commodities and services adopting market-adjusted prices shall not be intervened.

Typical case D

Shanghai Municipal Transportation Commission organized and guided pleasure boat enterprises to reach a price monopoly agreement

- The commission issued documents to support pleasure boat undertakings to develop a cooperation with unified ticket price, dispatch and management. Then it guided the undertakings in establishing a public platform mainly to unify the ticket price.
- It organized and guided undertakings in unifying the prices of tourism products by organizing them to sign self-disciplinary convention, holding meetings and filing the prices.

Yunnan Communications Administration organized telecom enterprises to reach price monopoly agreement

- The administration lead and organized the Yunnan branches of China Mobile, China Telecom, China Unicom and China Tietong Telecom to reach the *Agreement on Standardization of Gifting Activities*, integrating the content, limit and frequency of relevant gifting activities.
- With regard to telecom operators' gifting behavior in violation of the agreement, other telecom operators can declare them to the administration. Once confirmed, the administration would issue rectification notices to relevant enterprises and order them to rectify.

VI How do exceptions apply

Restricting the competition to some certain extent might result in higher efficiency in some special areas and issues. There is enough room for such policies and measures in the current system.

- To maintain the national economic and cultural security or involving the construction of national defense
- To realize social insurance purposes including poverty alleviation and disaster relief and salvage
- To realize social public interests including saving energy and resources and ecological protection
- Other conditions as stipulated in laws and administrative regulations

Three
conditions



- Indispensable to the realization of policy objectives
- Do not severely eliminate and restrict market competition
- With clear period of implementation

★Effects of the policies shall be evaluated year by year. Those without expected effects shall be suspended or readjusted.



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Thank you !
