



National Development and Reform Commission

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# Basic Situation of China's Fair Competition Review System

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Background & Process of Building Fair Competition Review System



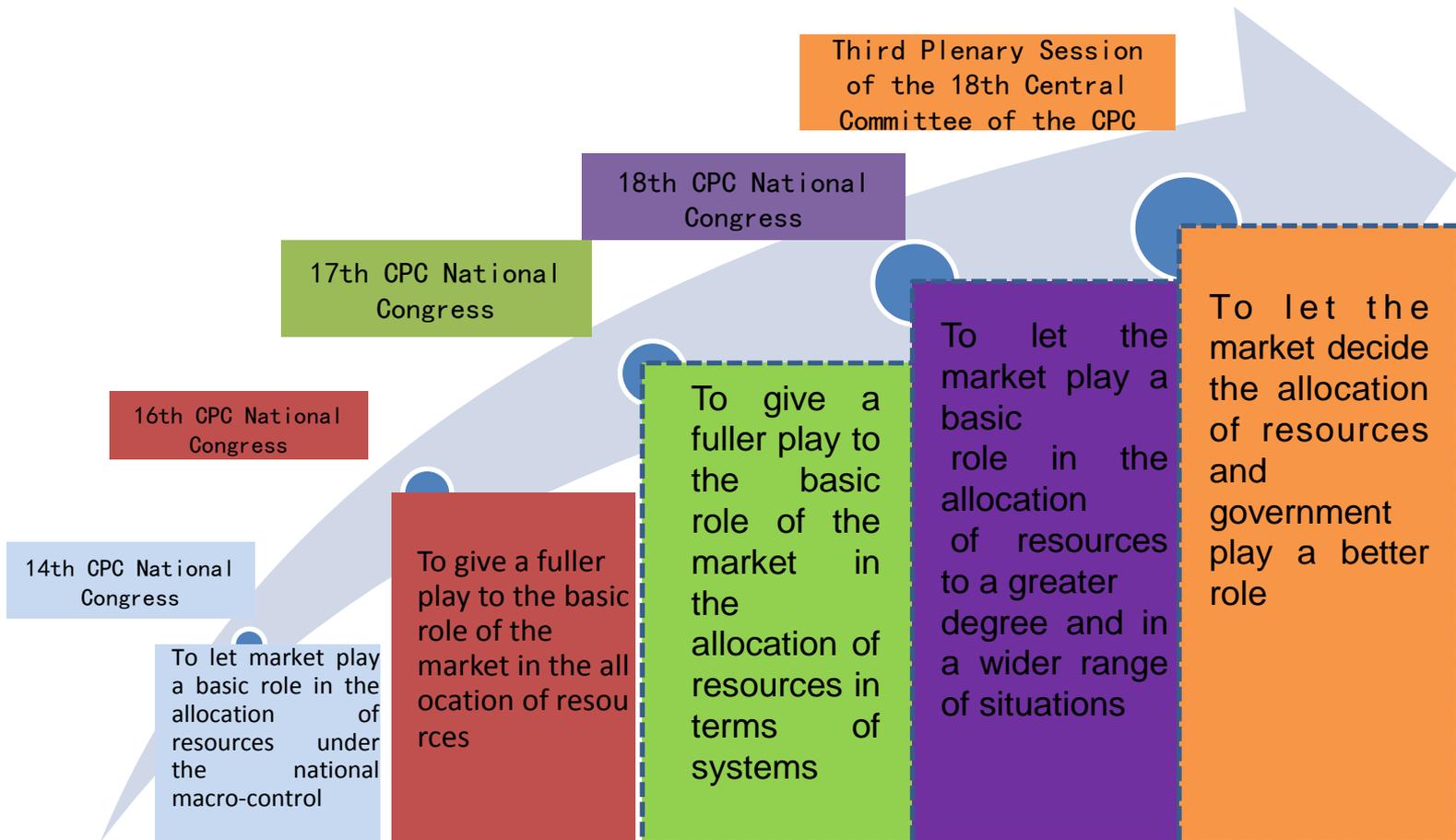
Design Ideas & Contents of Fair Competition Review System



Mechanism & Measures for Implementation of Fair Competition Review System

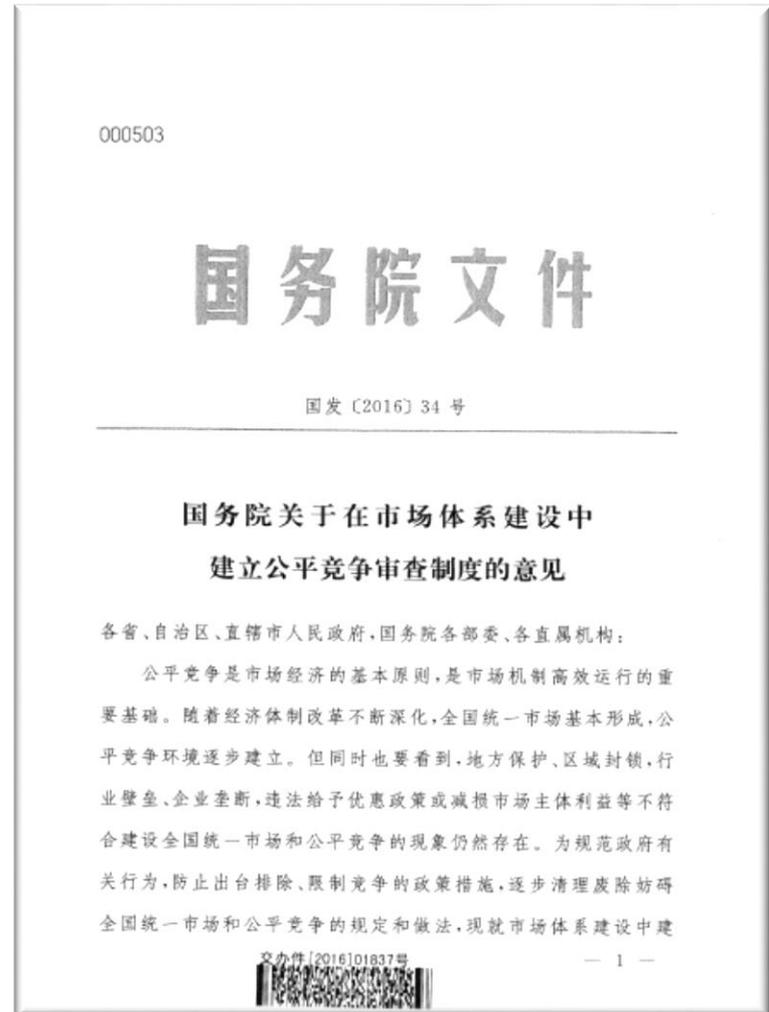
# 1. Background & Process of Building Fair Competition Review System

Our key issue of the reform of economic system in the past 40 years lies in balancing the relationship between the government and the market.



# Fair Competition Review System formally unveiled on 1st June 2016

The State Council issued *Options of the State Council on Establishing a Fair Competition Review System in the Development of the Market System* (Guofa[ 2016]No.34), which deployed the fair competition review to regulate the behaviors of government and promote the construction of a unified and open market with orderly competition.



## 2.Design Ideas & Contents of Fair Competition Review System

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# 1.What: comprehensive review

Policy and measures involving market players' economic activities shall all be reviewed.

## ■ In contents : involving market players' economic activities

- ✓ The regulated, ruled or restricted events are defined as economic events
- ✓ To be effective externally and affect the interests of market entities directly or indirectly
- ✓ Key issues: market entry, industry development, business invitation and investment attraction, tendering and bidding, government purchase, procurement, operation activities norms, and qualifications standards.

## ■ In form :

- ✓ Rules and normative documents
- ✓ Other policy measures: contract, agreement and memorandum signed with business operators, approval in form of one project one discussion, other provisions and practices involving economic activities of market entities
- ✓ Administrative regulations formulated by the State Council and local regulations.
- ✓ Draft of local decrees drafted by government sectors

## 2. Who: self-review

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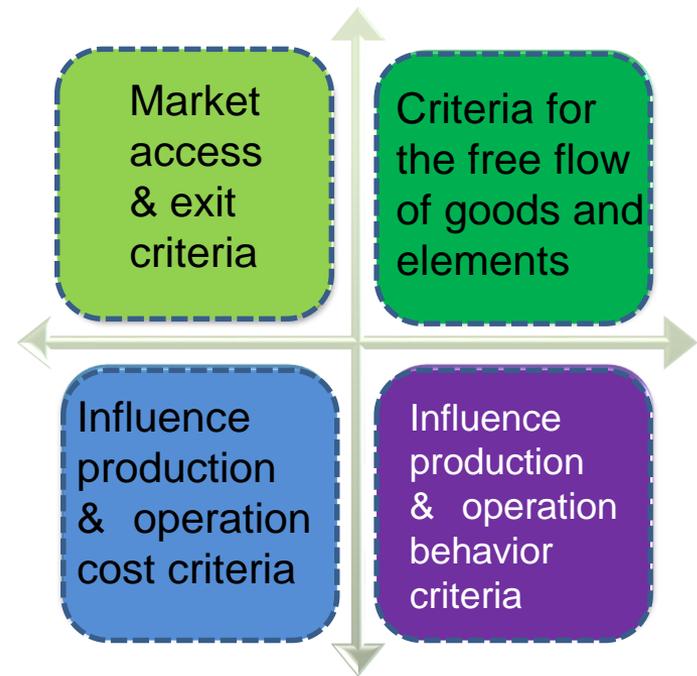
Taking the stage of national economic development, requirements of existing laws and regulations and administrative management system into consideration comprehensively, self-review mechanism is adopted, that is, the review will be carried out in accordance with the principle of who formulates, who reviews or who drafts, who reviews.

### Why self-review:

- Basis : external review will make huge adjustment to existing system
- Efficiency: unified review is unrealistic for enormous quantity of policies
- Responsibility: who formulates, who reviews and who accounts for it
- Effect: better combination of policy purpose realization and competition protection
- International practice: most countries use self-review

### 3. How: review one by one in accordance with standards

Specifying 18 prohibitive standards which fall under four categories from the two dimensions of national unified market and fair competition. Policy measures which violate these standards can not be issued in principle.



Miscellaneous Provisions

- ✓ No policy measures to derogate the lawful interests or increase the obligations of market entities
- ✓ No policy measures to eliminate and restrict competition that violate *Anti-monopoly Law*

# Exceptions

For some special areas and issues, the restriction of competition to a certain extent may bring about higher efficiency and the existing systems leave space for such policy measures.



To safeguard national economic security, cultural security or to be related to national defence construction



To realize the social security purpose of development-oriented poverty reduction and disaster relief assistance



To realize public interests of energy conservation and environment protection



Any other circumstances prescribed by laws and administrative regulations



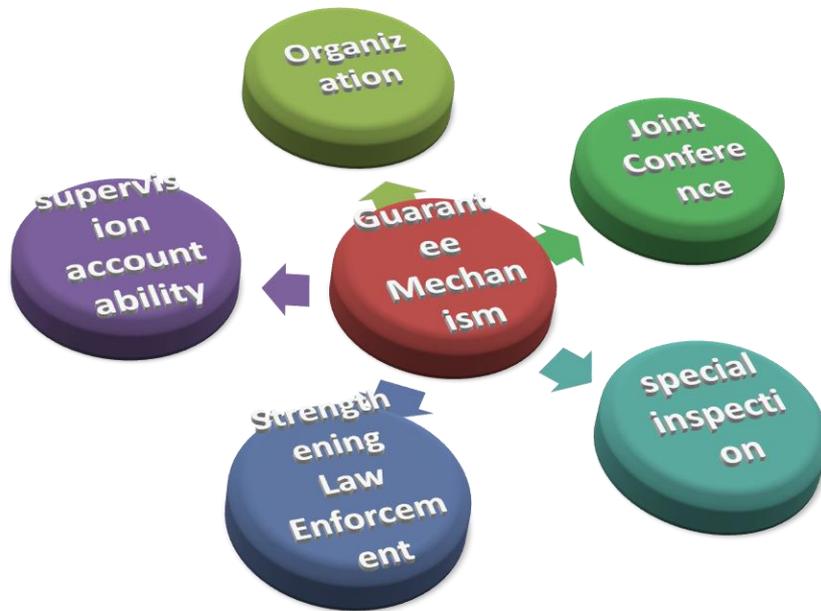
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Conditions

- ✓Indispensable to realizing the purpose of the policy
- ✓No serious elimination and restriction of market competition
- ✓Clear enforcement period

★ Evaluate the policy effect year by year and stop or adjust those that fall flat

### 3. Mechanism & Measures for Implementation of Fair Competition Review System

To guarantee the effective implementation of the system from organization, joint conference, special inspection, supervision accountability and strengthening law enforcement



① Building joint conference system

② Strengthening organizational guarantee

③ Launching special inspection

④ Strengthening enforcement of Anti-monopoly Law

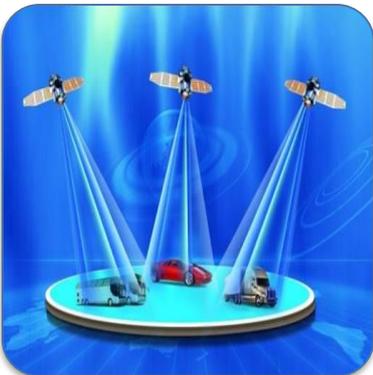
⑤ Launching accountability timely

# Typical Cases I



## **12 departments of provincial government issued documents to specify power supply enterprises to distribute power for newly built residential community**

- Specified power supply enterprises to construct power supply and distribution equipments for newly built residential community and charged at a flat fee in accordance with the standard set by the pricing department
- Eliminated and restricted the competition for construction market of newly built residential community and the unified charging standard was generally higher than the market standard, which increased the burden of real estate enterprises and transferred to consumers eventually.



## **Department of Communications of Shandong issued documents to specify an enterprise to establish and operate vehicle monitoring platform**

- Specified an enterprise to establish and operate vehicle dynamic monitoring platform and vehicles that require installation of positioning terminal must be connected to the platform directly, which makes other monitoring platforms who meet the technical requirements unable to enter Shandong market.(425 platforms approved by Ministry of Transport)
- Vehicle positioning terminal can enter Shandong market only after commission by this enterprise, which made 95% of vehicle positioning terminals unable to be sold on Shandong market (22 models passed the commission while 444 are approved by Ministry of Transport)

# Typical Cases II



## Health and Family Planning Commission of Bengbu, Anhui set discriminatory conditions in drug bidding

- Set different qualification requirements for local and non-local operators in a competitive consultation announcement for drug purchase in 2015. The sales volume of enterprises from other cities shall be no less than 2 billion Yuan in 2014, while that of the local enterprises shall be no less than 40 million Yuan. The former is 50 times as much as the latter.



## Sichuan Health and Family Planning Commission gave special assistance to local enterprises in drug bidding

- Issued the *Interim Measures on Drug Sunshine Purchase for Sichuan Medical Institutions* in 2013, which would examine the medical institutions about the proportion of drug purchased in Sichuan Province and would take certain punitive measures for those fail to meet the requirements.
- Gave special assistance to local enterprises in drug double envelope bidding in 2015, in form of giving local enterprises extra boost in the review of economic and technical bid and leaving quota for entry to commercial bid for local enterprises.

# Typical Cases III

## Hebei Provincial Communications Department's illegal implementation of preferential policy applicable only to local operators

➤ Issued *Notice on Unification of Classification Standard for Passenger Vehicle Toll Fees on Provincial Toll Road* and carried out the preferential policy of highway toll fees for passenger vehicles in Hebei and favored by 50% of the charging fees.

➤ The preferential policy is applicable only to passenger vehicles with fixed operation lines which are approved by road transportation authorities in Hebei.

➤ The policy makes the toll fees of passenger vehicle operators in Hebei much lower than business operators of other provinces, who were placed at a disadvantageous position in the competition. Take Tianjin-Hebei line as the example, Tianjin enterprises would spend 1.3 million Yuan more than their counterparts in Hebei.



# Typical Cases IV



## Shanghai Municipal Transportation Commission organized and guided cruise enterprises to reach price monopoly agreement

- Issued documents in 2009 to support business cooperation of unified price, scheduling and management between cruise operators and, whereafter, guided operators to establish a public platform of unified price.
- Organized and guided cruise enterprises to unify the prices of tourism products in the form of self-discipline pacts, meetings and price filing.



## Yunnan Communications Administration organized telecommunications enterprises to reach price monopoly agreement

Led and organized Yunnan branches of China Mobile, China Telecom, China Unicom and China Tietong to reach the *Agreement on Regulation of Complimentary Activities*, which coordinated the contents, amount and frequency of related complimentary activities.

Other telecom operators could appeal to Yunnan Communications Administration for the complimentary practices that violated the *Agreement* of the telecom operators. The Administration would issue rectification notice after confirmation and order related enterprises to make amends.



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**Thank you !**

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