

Fair Competition Review Practices in Jiangsu

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(Personal opinions.
Comments are welcomed)

Achievements

Provincial-wide coverage

In August 2016, the provincial administration issued a document with implementation opinions. Since January 2017, 13 cities and 99 counties (cities, districts) in the province have issued their local implementation opinions and established a joint meeting system. By November 2018, the joint meeting system had covered the whole province.

Limited Effect

In 2018, a total of 36,000 new cases were reviewed, 57 were revised; 66,000 existing cases were cleared, and 657 documents were made ineffective.

Why is the effect limited?

1. Local administrators: should not be too progressive
 - Impact on attracting investments; lower level administrators have more concerns in this regards
 - Worry about losing advantages; practicing fair competition internally; taking more advantages externally
 - Not willing to be the pioneer; always comparing with “neighbors”
 - Knowledge of “fair competition”

Why is the effect limited?

2. Big and influential enterprises cannot afford to lose advantages
 - Companies in underdeveloped areas contribute a lot to the local fiscal revenue, therefore benefit more from preferential policies
 - Companies that have more social influence (providing more employments or public enterprises) including foreign-capital enterprises
 - State-owned companies have their pride and want more resources
 - “We don’t need preferential policies. We want fair competition environment instead.”

Why is the effect limited?

3. Practitioners: fail to fulfil the responsibilities

- Lack of knowledge in competition policies and lack of experience in making good judgements
- Afraid to investigate; higher requirement compared to legitimacy investigation
- Unwilling to investigate and take the responsibilities

The problems have existed in a long time. The Fair Competition Review System will help with solving the problems

Major measures

Implement at different levels
Progress as a whole

A more proactive approach:
Make sure all provincial documents are reviewed

Assistive investigation:
Provincial government plays an exemplary role

Supervision: All cities and counties are covered

A proactive approach to ensure all documents are reviewed

The government is the key and the most difficult part:

- Take the initiative to report, answer questions that the hierarchy cares about, and address the hierarchy's concerns.
 - How is this related to legitimacy investigation?
 - How does it affect us?
 - How are things done in other places?

Fair Competition Review System included in the *Procedure for Setting the Provincial Government*

A proactive approach to ensure all documents are reviewed

江苏省人民政府令

第 123 号

《江苏省规章制定程序规定》已于2018年12月23日经省人民政府第22次常务会议讨论通过，现予发布，自2019年3月1日起施行。

省长：吴政隆

2018年12月27日

第十六条 起草的规章涉及市场准入、产业发展、招商引资、招标投标、政府采购、经营行为规范、资质标准等市场主体经济活动的，应当按照国家和省有关规定开展公平竞争审查，听取市场主体意见；涉及妇女、未成年人、老年人、残疾人等法律特殊保护群体权益的，应当专门听取有关群体和组织的咨询意见；涉及重大利益调整或者重大法律、专业技术等问题的，应当组织有关机关、人民团体、专家学者、基层工作者、行业协会、商会等方面的代表进行论证；有较大争议的，可以委托有关专家、教学科研单位、社会组织就争议事项开展评估。

A proactive approach to ensure all documents are reviewed

- Take the initiative to communicate and coordinate with the Communication Division to make sure un-reviewed documents will not be released.

(To prevent un-reviewed documents from being released by improving the work procedure)

- Take the responsibility to archive and classify stock documents, and hand them over to relevant authorities for clean-up.

(In 2018, a total of 467 provincial government documents were cleaned up, 5 were revised, and 2 were made ineffective)

- Take the responsibility to control and check with the Legal Affairs Office and intercept un-reviewed documents. (Case studies)

Assistive investigation: provincial government departments play an exemplary role

Assistive investigation is a temporary measure. It is a compromised solution to the inactivity in self-review and varying standards.

- **Set up an assistive investigation team.**

(Select practitioners from the Fair Competition Review Department as fixed personnel; invite professionals for support. Joint meetings and fixed personnel serve as the primary measures.)

- **Flexible approaches**

(Group discussions, seminars, conferences, consultations, etc. We successfully prevented the issuance of the Implementation Directive of Agricultural Insurance)

Assistive investigation: provincial government departments play an exemplary role

- **Standardised investigations**

(Issued the regulations for assistive investigation: primarily self-review supported by assistive investigation; avoiding bypassing direct hierarchy)

- **Explore third-party assessments**

(Explored third-party assessments in the self-review process of policy-making bodies and a third-party evaluation system for joint meetings)

Establish an OA module to ensure procedural feasibility

Supervision: Full coverage of cities and counties

Cities and counties are the “worst affected areas” of eliminating restrictive competition measures, where Fair Competition Review is opposed the most. It is very common to see unwillingness, inability and fear of review, which hinders the full implementation of the system.

- **Special supervision**

(In 2018, six inspection teams led by the joint meeting office launched supervision on 44 provincial government agencies and 13 cities, addressing unfair competition in the bidding process for construction projects, photovoltaic industry, market access and government procurement, etc.)

Supervision: Full coverage of cities and counties

- **“Anatomical” research**
 - Coordinated reinforced research in problematic areas
 - Dissect each and every detail of randomly selected documents;
 - Corrected several documents on local protectionism

Supervision: Full coverage of cities and counties

- **Anti-administrative monopoly enforcement**
 - Strengthened self-review, corrected illegitimate administrative conducts and deepened the implementation of the Fair Competition Review System
 - Currently most cases are derived from informants (bidding in pharmaceutical sector case and specified delivery case)
- **Exemplary cities**
 - Selected cities and counties to serve as good examples
 - Established review and filing system for the Gaochun District of Nanjing
 - Nantong City is listed in the Measures for Administrative Assessment in accordance with Law.

Thank You !