Briefing on the Implementation of the Fair Competition Review System

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1. Implementation of Fair Competition Review System
2. Implementation progress and outcome
3. Focus of Fair Competition Review in 2019
4. Example cases summarised from major inspections
Deepening the Implementation of the Fair Competition Review System

Major initiatives since 2018:

- **Restructured Inter-ministerial Joint Meeting**
  - Approved by the State Council
  - Led by Minister Zhang Mao; Office established within SAMR

- **Further improved rules**
  - Issued *Guidelines for the Implementation of Third-Party Assessment in Fair Competition Review*
  - Research on drafting supplementary documents e.g. rules on exceptions and accountability

- **Conduct key inspections**
  - Since 2017, randomly selected documents from 8 agencies and 5 provinces (district and city)
  - Oversaw the rectification of standard violations
  - Published the rectification outcomes

- **Weed out anti-competitive policies**
  - Call on all agencies across all regions to implement *The Work Plan for Cleaning up Current Policies that Exclude or Restrict Competition 2017-2018*

- **In-depth study of certain areas**
  - In-depth consultation with MIIT and CAAC to discuss fair competition review issues in the field of new energy, airports, airways, etc.

- **Awareness-raising training**
  - Organised three sessions of the national training workshop
  - Deepened the ‘China Fair Competition Review and EU State Aid Control’ dialogue
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(I) Thorough and all-round implementation initiated

Implementation outcome

<table>
<thead>
<tr>
<th>Administrative level</th>
<th>Ministry level</th>
<th>Provincial level</th>
<th>Municipal level</th>
<th>County level</th>
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<tbody>
<tr>
<td>Implementation rate</td>
<td>100%</td>
<td>100%</td>
<td>98%</td>
<td>85%</td>
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NB: Data from the end of 2018

The implementation rate of the municipal and county-level government increased by respectively 5% and 36% compared to the end of 2017.

Moreover, 17 provinces (districts and cities) including Beijing, Tianjin and Hebei achieved full implementation across all three levels (provincial, municipal, county).
II) Review in motion

Review undertaken by all agencies across all regions in 2018:

• Reviewed 310,000 new documents, an increase of 154% compared to 2017; revised some 1,700 files, an increase of 157%. Noticeable improvement in review performance.

• Examined 820,000 existing documents and cleaned up some 20,000 documents that contained regional protectionism, specified transactions and market barriers content; effectively prevented and corrected a series of conducts that either excluded or restricted competition, fostering an open and orderly market system.

——A Fair Competition Review System has essentially been established——
<table>
<thead>
<tr>
<th>Agency</th>
<th>Actions</th>
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</thead>
<tbody>
<tr>
<td>SAMR</td>
<td>Issued documents to establish a work mechanism including self-review, professional support and scrutinised review procedures. Optimised work system with fair competition review as the core procedure, enhancing the enforcement of procedures.</td>
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<td>MIIT</td>
<td>Established a review system where an initial examination is followed by a re-examination undertaken by the Department of Sectoral Policy.</td>
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<td>MOFCOM</td>
<td>Improved their document review procedure by adding a ‘Fair competition review’ option into their intranet document management system.</td>
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<td>Tianjin, Zhejiang</td>
<td>Included fair competition review as part of the administrative assessment. The joint meeting office evaluates the implementation outcome of all agencies.</td>
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<td>Jiangsu</td>
<td>Reinforced the assistive review mechanism, where the joint meeting office provides assistance to provincial agencies and county governments to review complex documents.</td>
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<td>Hunan</td>
<td>Explored a monitoring mechanism where the provincial joint meeting office monitors the relevant agencies that have violated the fair competition review system rules and urges them to rectify the mistakes.</td>
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<td>Fujian</td>
<td>Established a mechanism of bookkeeping and 'monthly reporting' where the joint meeting offices of all levels report on the work progress and copy in provincial government offices along with municipal and county governments.</td>
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<tr>
<td>Yuexiu District (Guangzhou)</td>
<td>Proactively explored the use of third-party evaluation. Entrusted legal consultants to assist in the review and present written review recommendations.</td>
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(IV) Effects start to show

- Through newly undertaken review efforts and clean-up of existing documents, a multitude of policies involving market entry, government procurement, tendering and bidding, and preferential subsidies, that hamper a unified market and fair competition were brought to an end or rectification. The review efforts effectively maintained fair market competition and fostered a healthy market environment for all market players.
(V) Concept of the review system took root

• Fair competition review plays a vital role in competition advocacy, raising awareness in the market and deepening the understanding of fair competition among governments.

• Recently, when formulating policies such as free trade zone development, excess capacity reduction in the steel industry, cross-region coordination and centralised procurement of medicines, relevant authorities set requirements in their own initiatives from the viewpoint of fair competition review, emphasising a market-oriented and rule-of-law approach in advancing reform and regulating industries. The policies led to more effective coordination between competition policy and other economic policies such as sectoral and investment policies.

• This fully demonstrated that the concept of the fair competition review system has taken deeper root and its influence has reached further and wider.
The system is not without imperfections

Imbalanced implementation

- 2% of municipal governments and 15% of county-level governments have yet to start the implementation of the system
- Huge gap in review quality and results between different agencies in regions that have implemented the review system

The scope of review to be expanded

- Neglected review is common. Some local areas limit the subjects of review to rules, regulations and normative documents while casting aside other policy measures.

The implementation to be better regulated

- Fair competition review was conducted as part of a legitimacy review and lost its individuality
- Only solicited comments from relevant authorities without asking the interested parties or the public for opinions

Review quality to be improved

- Some documents still contain content that excludes or restricts competition after their review. This was caused by ineffective review procedures and undue focus on formalities.
- Some government agencies abuse exception rules, frivolously applying them to policies where they obviously should not have been applied.
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(I) Further improve the rules of FCR system

- Issued *Guidelines for the Implementation of Third-Party Assessment in Fair Competition Review*
- Revised *Implementing Rules for Fair Competition Review System (Interim)*
- Researched drafting supplementary documents e.g. rules on exceptions, accountability rules
- Explored how to set up a FCRS assessment mechanism where fair competition review work is incorporated into the performance review of the government agencies

(Undertaken by SAMR, NDRC, MOF, MOFCOM and other member agencies of inter-ministerial joint meeting)
(II) Ensure review of future policies and measures

• Thoroughly follow the requirements set out in *The State Council Opinions on the Establishment of a Fair Competition Review System in the Development of Market-oriented Systems (Guofa [2016] No.34)*.

• Optimise internal review mechanisms and strictly follow the review procedures.

• Effectively improve the review quality and prevent the issuance of policies and measures that exclude or restrict competition.

(Followed through by all agencies across all regions)
(III) Carry out special inspections on FCR

- Carry out special inspections on fair competition review in key industries and regions based on information provided by all parties.
- Urge the relevant departments to swiftly rectify the problems detected during the inspections.
- Establish an open mechanism that makes the results of inspections public in order to augment the binding effect of inspections.

(Led by SAMR and cooperated on by all member agencies)
(IV) In-depth study of problems in specific industries

- Collaborate with supervisory departments of relevant industries to analyse and evaluate the impact of relevant policies on fair competition through special study projects and joint research.
- Release an evaluation report and typical cases in order to effectively materialise the fair competition review system to a deeper extent.

(Led by SAMR and cooperated on by all member agencies)
(V) Continue the clean-up of rules that hamper the unified market and fair competition

- Thoroughly implement the 19th CPC report regarding the *Requirement to clean up rules and abolish practices that hamper the unified market and fair competition*.
- Building on the clean-up efforts undertaken during 2017-2018, all agencies should further weed out all policy measures that contain contents that exclude or restrict competition as per the requirement of the State Council, in order to advance the development of a unified, open and orderly market system.

(Followed through by all agencies across all regions)
(VI) Intensify fair competition review training

• Organise fair competition review training at all levels and across all industries, where experts, scholars, legal counsels and specialist organisations are invited to discuss example cases. The training aims to be practical and targets specific areas to improve the quality and capacity of review work.

• Moreover, all agencies should fully utilise all forms of media to advocate the significance of the fair competition review system along with its progress and outcome. Reinforced advocacy would raise the awareness of fair competition of government agencies at all levels, creating a conducive environment for the comprehensive implementation of the fair competition review system.

(Led by SAMR and cooperated on by all member agencies)
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In order to further promote the Implementation of the Fair Competition Review System, SAMR, together with relevant departments, between June and October 2018 randomly selected five provinces and autonomous regions including Liaoning, Heilongjiang, Guangdong, Guangxi and Xinjiang for inspection in the name of the Inter-Ministerial Joint Meeting on Fair Competition Review.

The inspection team conducted an on-the-spot inspection, received reports on the latest progress on the implementation in the five provinces and randomly selected 175 documents from 2017 onwards. The inspection team gave feedback on the problems identified during the inspection and answered questions raised by local authorities about the implementation of the system and specific review standards.
Example cases summarised from major inspections

In December 2018, SAMR sent letters to the governments of the five provinces and autonomous regions to urge the rectification of the identified problems and requested timely feedback. The above-mentioned provinces attached great importance to this and immediately instructed relevant departments to take up their responsibilities and address the problems identified.

On January 25, 2019, SAMR reported on how things have been improved in the document titled "Five Provinces and Regions Rectify the Typical Problems Found in the Inspection of the 2018 Fair Competition Review".
Main Problems

A total of 175 documents from 35 organisations in 5 provinces and autonomous regions were randomly selected.

It was found that 30 documents violated fair competition review standards or procedures, accounting for 17% of the total.
## Market Access

### Unreasonable market access threshold

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Foshan, Guangdong Province</td>
<td>Implementation Opinions on Further Improving Distribution Transportation in cities and Vehicle Management&quot; ([2017] No. 8)</td>
<td>Third, the conditions and procedures to apply for pilot enterprises of city distribution and vehicle passes: 0 2. Should have 30 or more trucks with a rated load of less than 2 tons (included)</td>
<td>The conditions to apply for a permit and the market entry threshold are too high, and no feasibility test was done. It violated the following rule: “forbidden to set unreasonable or discriminatory market access and exit criteria”.</td>
<td>After inspection, the responsible department will abolish the document, which will be released to the public after the procedural approval.</td>
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## Market Access

Limit the operations, purchases and use of goods and services from specific operators

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<td>Heilongjiang Tourism Development Commission</td>
<td>Notice on the Renewal of Liability Insurance of Travel Agencies in 2018 ([2017] No. 194)</td>
<td>Tourism departments at all levels are advised to choose the Jiangtai Company as an insurance broker for the “Jiangtai Travel Accident Insurance”</td>
<td>The restriction on travel agencies to purchase products from specific insurance brokers violates the provisions of the market access and exit criteria which state “forbidden to limit the operation, purchase, and use of goods and services from specific operators”.</td>
<td>The relevant department has eliminated the provision and has released revised ones to the public.</td>
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## Support for Local Enterprises

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<td>Tieling City Government, Liaoning Province</td>
<td>Notice on Prioritising the Procurement of Products from the Liaoning Special Purpose Vehicle Production Base ([2017] No. 13)</td>
<td>To further develop the Liaoning special-purpose vehicle production base, create a better business environment and revitalise the economic development of Tieling, government departments at all levels should, when conducting government procurement (based on market rules and relevant laws and regulations), <em>give priority to Liaoning special vehicle production base products when other conditions are the same.</em> At the same time, it calls on private enterprises and organisations in the city to <em>give priority to the products of Liaoning special-purpose vehicle production base when purchasing special-purpose vehicle products.</em></td>
<td>Selective procurement of specific products is a policy supporting specific entities, which will adversely affect the fair participation of other market players in competition. It is an violation of the market access and exit criteria that &quot;forbids to limit the operation, purchase, use of goods and services provided by specific operators&quot;.</td>
<td>The relevant department will delete the statement and re-issue the document after submitting the application according to the relevant procedures.</td>
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<td>Guangdong Provincial Economic and Information Technology Commission</td>
<td>Three-Year Action Plan for Technical Transformation of Industrial Enterprises in the Guangdong Province (2018-2020)&quot; ( [2018] No. 8)</td>
<td>Support enterprises to preferentially purchase and use the complete sets of equipment or core components independently developed and produced in Guangdong. Encourage enterprises to use Guangdong brand robots. These enterprises will be supported by subsidies and awards.</td>
<td>Selective procurement of specific products is a policy supporting specific entities, which will adversely affect the fair participation of other market players in competition. It is an violation of the market access and exit criteria that &quot;forbids to limit the operation, purchase, use of goods and services provided by specific operators&quot;.</td>
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## Preferential policies that harm fair competition

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<td>Guangxi Zhuang Autonomous Region Transportation Department</td>
<td>Notice on Cutting the Vehicle Tolls by Half for Dongfeng Liuzhou Automobile Co., Ltd Finished Vehicles Passing through the Qinzhou Bonded Port Area ( [2017] No. 209)</td>
<td>The transportation vehicles of <strong>Dongfeng Liuzhou Automobile Co., Ltd</strong>, which are used for the delivery of finished vehicles through the Qinzhou Bonded Port Area shall enjoy half toll fees.</td>
<td>Only the vehicle tolls for Dongfeng Liuqi passing through the Qinzhou Bonded Port Area for the delivery of finished vehicles will be halved, which violates the provisions that “forbids to give preferential policies to specific operators” that will adversely affect the production and operation cost standards.</td>
<td>The relevant department has abolished the document and re-examined the reduction and exemption policy in line with fair competition requirements.</td>
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<td>Liuzhou Municipal Government of Guangxi Zhuang Autonomous Region</td>
<td>13th Five-Year Plan for the Development of Strategic Emerging Industries in Liuzhou City ( [2018] No. 48)</td>
<td>Focus on cultivating a number of strategic emerging industry backbone enterprises such as Guangxi Jinsangzi Co., Ltd. and Angel Yeast (Liuzhou) Co., Ltd. Focus on promoting cooperation between Liuzhou and China Railway Corporation, China Southern Power Grid, Guangxi Construction Engineering Group, China Construction Steel Corporation, Xijiang Group and other leading enterprises.</td>
<td>The document, which lists the specific enterprises that are directly supported by the government, is in violation of the provision that affects the production and operation cost standards which says &quot;no preferential policies for specific operators&quot;.</td>
<td>The relevant department will delete the statement and re-issue the document after submitting the application according to the relevant procedures.</td>
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Modification of National Level Documents

Notice of the former National Health and Family Planning Commission on Issuing the Basic Standards and Management Regulations for Hemodialysis Centers (Trial) ( [2016] No. 67). Requirements: To apply for setting up a hemodialysis center, "at least 10-20 sets of blood Dialyzers should be provided."

The former Xinjiang Uygur Autonomous Region Health Planning Commission issued “Basic Standards and Management Regulations for Hemodialysis Center of Xinjiang Uygur Autonomous Region” ( [2017] No. 66) stipulates: We support the national hemodialysis center group to set up dialysis centers in the same or different parts of the autonomous region. The number of dialysis centers for a single application to set-up a dialysis center must be five or more. (1) Basic equipment. At least 20 hemodialysis machines (including hemofiltration machines)

Violation of the requirement “forbidden to set unreasonable or discriminatory market access and exit criteria”

Notice of the Xinjiang Uygur Autonomous Region Health and Family Planning Commission on Amending the Relevant Provisions of the Basic Standards and Management Regulations of Hemodialysis Center of Xinjiang Uygur Autonomous Region ([2017] No. 68), deleted the statement “single application to set-up a blood dialysis center must be five or more" , and the number “20” in the latter provision is changed to “10-20” units, which is consistent with the requirements of the National Health and Family Planning Commission.
Why do these problems come up

1. Mindset and management method is outdated
2. Failure to thoroughly understand policies
3. Discipline must be strengthened
4. Other areas of reform and improvement must be made
The State Administration for Market Regulation announced the example cases discovered through inspection to the public, which attracted a lot of public attention and received high appraisal. These cases involve prominent issues, such as strong geographical protection, restricted access, designated transactions and selective subsidies. The inspection exposed the issues in some localities: the review result is not effective, the procedures are not perfect and the review quality is not high. Some documents violate the legitimate rights and interests of enterprises and undermine the market environment of fair competition.

The five provinces and autonomous regions attached great importance to the inspection results and instructed relevant departments to refine their responsibilities, rectify, standardise the review procedures, and promptly revise documents to achieve better results. The State Administration for Market Regulation will continue to work with relevant departments to increase supervision and guidance, comprehensively promote fair competition review, create a fair competitive institutional environment for all types of enterprises and promote high-quality economic development in the new era.
Thank you!