

Fair Competition Review Regulations

Dan Young Business Consultancy — www.danyoungcpa.com
Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Scope of Review	2
Chapter III — Review Standards	2
Chapter IV — Review Mechanism	4
Chapter V — Supervision and Safeguards	5
Chapter VI — Legal Liability	5
Chapter VII — Supplementary Provisions	5

Adopted at the 26th Executive Meeting of the State Council on December 26, 2023
Promulgated by Decree No. 783 of the State Council of the People's Republic of China on June 6, 2024
Effective: August 1, 2024

Table of Contents

- Chapter I — General Provisions
- Chapter II — Scope of Review
- Chapter III — Review Standards
- Chapter IV — Review Mechanism
- Chapter V — Supervision and Safeguards
- Chapter VI — Legal Liability
- Chapter VII — Supplementary Provisions

Chapter I — General Provisions

Article 1 — These Regulations are enacted in accordance with the Anti-Monopoly Law of the People's Republic of China and other relevant laws for the purposes of regulating the conduct of fair competition review, eliminating restrictions on competition, refining the unified, open, competitive and orderly market system, and optimizing the business environment.

Article 2 — When formulating policies and measures involving the economic activities of business operators, administrative organs and organizations authorized by laws and regulations with the function of managing public affairs (hereinafter collectively referred to as "drafting authorities") shall conduct fair competition review in accordance with the provisions of these Regulations.

Article 3 — Fair competition review shall adhere to the leadership of the Communist Party of China and implement the principles of the Party and the State on building a unified national market and eliminating restrictions on competition and local protectionism.

Article 4 — The State Council shall establish a coordination mechanism for fair competition review to coordinate and advance the implementation of the fair competition review system across the country, and to study and resolve major issues in the fair competition review work. The market regulatory department under the State Council shall be responsible for guiding and organizing the implementation of the fair competition review system and supervising the fair competition review work of various localities and departments.

Article 5 — People's governments at or above the county level shall strengthen their leadership over the fair competition review work within their respective administrative areas, ensure the allocation of working forces and funding for fair competition review, and incorporate the fair competition review work into the rule of law government construction and business environment evaluation systems.

Article 6 — Drafting authorities shall implement the fair competition review system. Where policies and measures are jointly formulated by multiple departments, the lead drafting department shall conduct the fair competition review; where the lead drafting department is unclear, the people's government at the corresponding level shall designate a lead drafting department.

Article 7 — When conducting fair competition review, drafting authorities shall listen to the opinions of interested parties or make the content of the policies and measures public to solicit opinions from the public. Provided that state secrets are not divulged, drafting authorities may solicit opinions from experts, scholars, legal professionals, and industry associations. The department conducting the fair competition review shall indicate its review opinions in the review conclusion.

Chapter II — Scope of Review

Article 8 — When drafting authorities formulate policies and measures involving the economic activities of business operators, including regulations, normative documents, and specific policies and measures (hereinafter collectively referred to as "policies and measures"), they shall conduct fair competition review in accordance with the provisions of these Regulations.

Article 9 — The fair competition review of administrative regulations and departmental rules formulated by departments under the State Council shall be conducted by the drafting department during the drafting process.

The fair competition review of local regulations, rules of local governments, and normative documents formulated by local people's governments shall be conducted by the drafting department during the drafting process.

Article 10 — Where policies and measures are not subject to fair competition review, they shall not be issued or, where required by applicable provisions, shall not be submitted for deliberation by the relevant decision-making organs.

Article 11 — Policies and measures formulated to safeguard national security and for other special purposes are not subject to fair competition review, provided that they do not restrict competition to a degree that is unnecessary or inappropriate for achieving such purposes. Where drafting authorities claim exemption from fair competition review, they shall explain the reasons in writing.

Chapter III — Review Standards

Article 12 — When drafting policies and measures, authorities shall not include the following content that restricts or impedes market access and exit:

- (1) Implementing discriminatory or unequal treatment against business operators not investing or establishing operations in the local area, such as requiring them to establish branches or other operational entities in the local area;
- (2) Setting unreasonable or discriminatory access or exit conditions for business operators other than through statutory requirements, such as franchising or specific operator designations;
- (3) Setting unreasonable or discriminatory conditions on the operations of business operators not established locally, such as restricting or designating the location of operations;
- (4) Setting catalogues, lists, or databases for business operator qualification outside the scope provided by laws, administrative regulations, or the State Council, thereby restricting or impeding market access or exit;
- (5) Setting approval procedures or adding approval conditions, procedures, or matters outside statutory requirements;
- (6) Illegal or ultra vires setting franchise rights or designating specific operators;
- (7) Illegally restricting or designating the purchase of goods and services from specific operators;
- (8) Illegally restricting business operators from providing goods and services to other regions or restricting business operators from other regions from providing goods and services locally;
- (9) Other content that restricts or impedes market access and exit.

Article 13 — When drafting policies and measures, authorities shall not include the following content that restricts the free flow of goods:

- (1) Implementing discriminatory fee items, fee standards, or pricing for goods originating from other regions;
- (2) Setting different technical requirements, inspection standards, or regulatory measures for goods originating from other regions;
- (3) Setting specialized permits, filing, or approval requirements for goods originating from other regions that are not imposed on locally produced goods;
- (4) Setting customs clearance, border checkpoints, or other impediments that obstruct the free flow of goods between regions;
- (5) Other content that restricts the free flow of goods between regions.

Article 14 — When drafting policies and measures, authorities shall not include the following content that restricts or impedes the free flow of production factors:

- (1) Restricting or designating the provision of capital, technology, data and other production factors externally or from external sources;
- (2) Setting discriminatory conditions on the acquisition of production factors such as capital, technology, data by business operators from other regions locally;
- (3) Setting discriminatory conditions on the transfer of talent between regions;
- (4) Other content that restricts the free flow of production factors.

Article 15 — When drafting policies and measures, authorities shall not include the following content that affects production and operation costs:

- (1) Providing tax incentives, fiscal awards or subsidies, land concessions, or other preferential treatment to specific business operators without legal or State Council basis;
- (2) Setting discriminatory conditions on government procurement and bidding activities, including illegal designation of suppliers, setting of unreasonable qualification requirements, or restriction on supplier

location;

- (3) Implementing differential regulatory standards or law enforcement measures for business operators in different regions or of different ownership;
- (4) Intervening in the independent pricing of business operators through administrative means without authorization;
- (5) Other content that affects production and operation costs in a manner that is contrary to fair competition.

Article 16 — Where policies and measures, although having the effect of restricting competition to some extent, meet one of the following conditions and serve to safeguard national security and development interests, promote scientific and technological progress, enhance national cultural influence, achieve social public interests, or are otherwise provided for by laws and administrative regulations, they may be issued:

- (1) Necessary for safeguarding national security;
- (2) Necessary for promoting scientific and technological progress and enhancing national independent innovation capacity;
- (3) Necessary for achieving purposes such as resource conservation and environmental protection, and disaster relief;
- (4) Necessary for protecting the legitimate rights and interests of specific groups such as minors and persons with disabilities;
- (5) Necessary for realizing social public interests such as public health and safety;
- (6) Otherwise provided for by laws and administrative regulations.

Where policies and measures meeting the conditions of the preceding paragraph are issued, the drafting authority shall explain in writing that the policies and measures have a limited impact on fair competition, are indispensable for achieving the policy objectives, and will be implemented for a definite period of time or with a definite termination date.

Chapter IV — Review Mechanism

Article 17 — Drafting authorities shall conduct fair competition review before the formulation of policies and measures, and shall issue review conclusions. Where review conclusions are not formed or the review conclusion indicates that the policies and measures do not comply with the provisions of these Regulations, the policies and measures shall not be issued.

Where fair competition review has been conducted during the drafting process and the review conclusion indicates compliance, no further review shall be required; provided that where the content of policies and measures is adjusted, the adjusted content shall be reviewed.

Article 18 — Where policies and measures are issued without fair competition review or after fair competition review finds non-compliance, any entity or individual may report such matter to the market regulatory department. The market regulatory department shall process the report in a timely manner and provide feedback.

Article 19 — The market regulatory departments of the State Council and of local people's governments at or above the county level shall conduct spot checks on fair competition review in accordance with their duties and powers. The results of spot checks shall be disclosed to the public in a timely manner.

Market regulatory departments may entrust third-party institutions to conduct assessments of the implementation of fair competition review.

Article 20 — Drafting authorities shall, in accordance with the requirements of the market regulatory departments, conduct periodic assessments of the impact of the policies and measures they have issued on the unified market and fair competition. Where, upon assessment, it is found that policies and measures hinder the construction of a unified national market and fair competition, they shall be promptly amended or annulled.

Article 21 — The market regulatory department under the State Council shall establish and improve a fair competition review reporting and public supervision mechanism, and accept reports from the public on policies and measures suspected of violating the provisions of these Regulations.

Chapter V — Supervision and Safeguards

Article 22 — The State Council shall periodically conduct supervision, inspection and assessment of the implementation of the fair competition review system by local people's governments at or above the county level and their relevant departments.

People's governments at or above the county level shall incorporate the fair competition review work into the performance assessment content.

Article 23 — Where market regulatory departments, in the course of spot checks, identify policies and measures that may violate the provisions of these Regulations, they shall send a written reminder letter to the relevant drafting authority urging verification and handling. The drafting authority shall verify whether the relevant policies and measures are consistent with fair competition requirements and provide written feedback on the handling results.

Where a drafting authority fails to conduct fair competition review as required, the market regulatory department may interview the responsible person of the drafting authority.

Article 24 — Market regulatory departments shall disclose the results of fair competition review spot checks and written reminders to the public in a timely manner through government websites and other channels, unless such disclosure is prohibited by law.

Article 25 — The market regulatory department under the State Council shall strengthen the capacity building for fair competition review, promote the professionalization and standardization of fair competition review work, and organize professional training for relevant personnel.

Chapter VI — Legal Liability

Article 26 — Where drafting authorities fail to conduct fair competition review in accordance with these Regulations, causing serious adverse effects, disciplinary sanctions shall be imposed on the directly responsible person in charge and other directly responsible personnel in accordance with law.

Article 27 — Where market regulatory departments and other relevant departments and their staff members fail to perform or improperly perform their duties in accordance with the provisions of these Regulations, disciplinary sanctions shall be imposed on the directly responsible person in charge and other directly responsible personnel in accordance with law.

Chapter VII — Supplementary Provisions

Article 28 — The market regulatory department under the State Council shall formulate specific implementation rules for fair competition review in accordance with these Regulations.

Article 29 — The fair competition review of policies and measures formulated by organizations and institutions other than administrative organs shall be governed by reference to these Regulations.

Article 30 — These Regulations shall come into effect on August 1, 2024.

Disclaimer: This English translation is provided for informational and reference purposes only. While every effort has been made to ensure accuracy and completeness, this translation is not an official version and has no legal force. For legal purposes, the original Chinese text published by the State Council of the People's Republic of China shall prevail. Users should consult qualified legal professionals for interpretation and application of any provisions. Dan Young Business Consultancy makes no warranties, express or implied, regarding the accuracy, reliability, or completeness of this translation, and assumes no liability for any loss or damage arising from its use.