Regulations on Fair Competition Review of the PRC

Dan Young Business Consultancy — www.danyoungcpa.com

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Adopted at the 32nd Executive Meeting of the State Council on May 11, 2024
Promulgated by Decree No. 783 of the State Council of the People's Republic of China on June 6, 2024
Effective: August 1, 2024

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Anti-Monopoly Law of the People's Republic of China and other laws, for the purposes of regulating fair competition review work, promoting fair market competition, improving the business environment, and building a unified national market.

Article 2 — When drafting laws, administrative regulations, local regulations, rules, normative documents, and specific policies and measures involving the economic activities of business operators (hereinafter collectively referred to as "policies and measures"), administrative organs and organizations authorized by laws and regulations to administer public affairs (hereinafter collectively referred to as "drafting units") shall conduct fair competition review in accordance with these Regulations.

Article 3 — Fair competition review work shall uphold the leadership of the Communist Party of China and implement the lines, principles, policies, and decisions and arrangements of the Party and the state.

The state shall strengthen fair competition review work and ensure that all types of business operators may, in accordance with the law, use factors of production on an equal footing and fairly participate in market competition.

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Article 4 — The State Council shall establish a coordination mechanism for fair competition review, to coordinate, plan, and guide fair competition review work nationwide, study and resolve major issues in fair competition review work, and assess the state of fair competition review work nationwide.

Article 5 — Local people's governments at or above the county level shall establish and improve fair competition review working mechanisms, guarantee the workforce for fair competition review work, and include funding for fair competition review work in the budget of the government at the corresponding level.

Article 6 — The market regulation department of the State Council shall be responsible for guiding the implementation of the fair competition review system and supervising and urging the relevant departments and localities to carry out fair competition review work.

The market regulation departments of local people's governments at or above the county level shall be responsible for organizing the implementation of the fair competition review system within their respective administrative areas.

Article 7 — People's governments at or above the county level shall include the state of fair competition review work in assessment and evaluation of matters such as building a law-based government and improving the business environment.

Chapter II — Review Standards

Article 8 — Policies and measures drafted by a drafting unit shall not contain any of the following content that restricts or covertly restricts market access and market exit:

(1) unlawfully establishing approval procedures for industries, fields, or businesses outside the negative list for market access;

(2) unlawfully establishing or granting franchise rights;

(3) restricting business operators to operating, purchasing, or using goods or services provided by specific business operators (hereinafter collectively referred to as "goods");

(4) establishing unreasonable or discriminatory access or exit conditions;

(5) other content that restricts or covertly restricts market access and market exit.

Article 9 — Policies and measures drafted by a drafting unit shall not contain any of the following content that restricts the free flow of goods and factors of production:

(1) restricting goods and factors of production from other regions or imported from entering the local market, or obstructing local business operators from relocating, or the outflow of goods and factors of production;

(2) excluding, restricting, compelling, or covertly compelling business operators from other regions to invest, operate, or establish branches in the local area;

(3) excluding, restricting, or covertly restricting business operators from other regions from participating in local government procurement, bidding, and tendering;

(4) establishing discriminatory fee items, fee standards, prices, or subsidies for goods and factors of production from other regions or imported;

(5) establishing discriminatory requirements for business operators from other regions investing and operating locally in respect of qualification standards, regulation, and law enforcement;

(6) other content that restricts the free flow of goods and factors of production.

Article 10 — Without a basis in laws or administrative regulations or approval from the State Council, policies and measures drafted by a drafting unit shall not contain any of the following content that affects production and operation costs:

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(1) granting tax preferences to specific business operators;

(2) granting selective or differentiated fiscal rewards or subsidies to specific business operators;

(3) granting preferences to specific business operators in respect of factor acquisition, administrative fees, government-managed funds, social insurance premiums, and the like;

(4) other content that affects production and operation costs.

Article 11 — Policies and measures drafted by a drafting unit shall not contain any of the following content that affects production and operation activities:

(1) compelling or covertly compelling business operators to engage in monopolistic conduct, or facilitating business operators in engaging in monopolistic conduct;

(2) setting government-guided prices or government-fixed prices beyond statutory authority, or providing preferential prices for specific business operators;

(3) unlawfully intervening in the price levels of goods and factors of production that are subject to market-regulated pricing;

(4) other content that affects production and operation activities.

Article 12 — Policies and measures drafted by a drafting unit that have or may have the effect of excluding or restricting competition, but that satisfy one of the following circumstances, where there is no alternative with a lesser impact on fair competition, and a reasonable implementation period or termination condition can be determined, may be issued:

(1) those for safeguarding national security and development interests;

(2) those for promoting scientific and technological progress and enhancing the state's capacity for independent innovation;

(3) those for realizing public interests such as energy conservation, environmental protection, disaster relief, and rescue;

(4) other circumstances provided for by laws and administrative regulations.

Chapter III — Review Mechanism

Article 13 — Policies and measures to be issued by a department shall be subject to fair competition review by the drafting unit at the drafting stage.

Policies and measures to be jointly issued by multiple departments shall be subject to fair competition review by the lead drafting unit at the drafting stage.

Article 14 — Policies and measures to be issued by a local people's government at or above the county level, or submitted to the people's congress at the corresponding level and its standing committee for deliberation, shall be subject to fair competition review by the market regulation department of the people's government at the corresponding level together with the drafting unit at the drafting stage. The drafting unit shall conduct a preliminary review and send the draft policies and measures and its preliminary review opinions to the market regulation department for review.

Article 15 — The state encourages regions with the necessary conditions to explore the establishment of cross-regional and cross-departmental fair competition review working mechanisms.

Article 16 — In conducting fair competition review, the opinions of relevant business operators, industry associations, chambers of commerce, and other interested parties concerning the impact on fair competition shall be heard. Where public interests are involved, public opinions shall be heard.

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Article 17 — In conducting fair competition review, a review conclusion shall be made after assessing the impact on fair competition in accordance with the review standards set out in these Regulations.

Where Article 12 of these Regulations is applied, this shall be explained in detail in the review conclusion.

Article 18 — Policies and measures that have not undergone fair competition review, or that, upon fair competition review, are found to violate the provisions of Articles 8 through 11 of these Regulations and do not satisfy the circumstances set out in Article 12, shall not be issued.

Article 19 — Relevant departments, units, and individuals shall, in accordance with the law, keep confidential state secrets, trade secrets, and personal privacy that come to their knowledge in the course of fair competition review.

Chapter IV — Supervision and Safeguards

Article 20 — The market regulation department of the State Council shall strengthen supervision and safeguards for fair competition review work and establish and improve mechanisms for random inspection, handling of reports, and inspection of fair competition review.

Article 21 — Market regulation departments shall establish and improve mechanisms for random inspection of fair competition review, organize random inspections of relevant policies and measures, and, upon verification that the provisions of these Regulations have been violated, urge the drafting units to make rectifications.

Market regulation departments shall report the results of random inspections to the people's governments at the corresponding levels; the random inspection results may be disclosed to the public.

Article 22 — With respect to policies and measures that violate the provisions of these Regulations, any unit or individual may report them to the market regulation departments. Upon receiving a report, the market regulation departments shall handle it in a timely manner or forward it to the relevant departments for handling.

Market regulation departments shall disclose to the public the telephone numbers, mailboxes, or email addresses for accepting reports.

Article 23 — The State Council shall regularly carry out inspections of the establishment of fair competition review working mechanisms, the carrying out of fair competition review work, and the handling of reports by local people's governments at or above the county level. The market regulation department of the State Council shall be responsible for the specific implementation.

Article 24 — Where a drafting unit fails to conduct fair competition review in accordance with these Regulations and, after being urged by the market regulation department, still fails to make rectifications within the prescribed time limit, the market regulation department at the next higher level may conduct an interview with its person in charge.

Article 25 — Where failure to conduct fair competition review in accordance with these Regulations causes serious adverse effects, the directly responsible persons in charge and other directly responsible personnel of the drafting unit shall be given sanctions in accordance with the law.

Chapter V — Supplementary Provisions

Article 26 — The market regulation department of the State Council shall, in accordance with these Regulations, formulate specific implementation measures for fair competition review.

Article 27 — These Regulations shall come into force on August 1, 2024.

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