

Research on Innovation of Fair Competition Review System in Shenzhen

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The Shenzhen Fair Competition Review System has experienced internal review and cross-examination since its inception. However, it is still dominated by the self-review of policy-making organs, with a lack of effective control and restraint mechanisms. In addition, insufficient compensatory effect of the external review has led to weak effectiveness of social supervision. Shenzhen is currently the pilot of an independent fair competition review system. The Fair Competition Commission can be set up as an independent review body. Then, the operational mechanism should be improved and the constraints and incentives should be set up scientifically. Last but not the least, by strengthening the social supervision network for fair competition review, the legality and rationality of a wide range of local regulations, rules, and normative documents will be reviewed, thereby regulating the behavior of policy-making organs.

Keywords: independent review, review agency, restraint mechanisms

An Empirical Study on Fair Competition Review Implementation Mechanism in Shenzhen

As China's reform entering the deep-water zone where tough challenges must be met, there is a lack of endogenous mechanisms to drive economic growth. The substitution of administrative power for the benign and orderly mechanism of the market occurs from time to time, causing ecological deterioration of the orderly operation of the business environment. Both the Fifth Plenary Session of the 19th CPC Central Committee and the Report of the 20th CPC National Congress proposed to perfect China's fair competition review mechanism. A fair competition review system enables the control over government intervention in the economy (Wang, 2017). However, to achieve the goals of the review policy, it is not only necessary to design a reasonable and scientific system, with consistent rights and responsibilities, but also to carry out the legal review subject in accordance with its duties and the statutory procedures. The fair competition review system is an endogenous mechanism for the pursuit of fair competition in transition economies in the process of national economic governance. Externally, it is embodied in the working principle of fair competition review of the government's relevant economic

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governance behaviors, including the structure of the review body and the way the review operates. On the one hand, the working principle reflects the scientific nature of the procedure; on the other hand, the structure of the review body can effectively promote the allocation of rights between various review subjects and policy-making organs in fair competition review. Of course, other constraints and promotion measures implemented in conjunction with this system will jointly encourage governments at all levels to intervene in competition policies, improve government decision-making efficiency, while eliminating restrictive competition behaviors.

Fair Competition Review System at the National Level

In June 2016 the State Council released Opinions on Establishing a Fair Competition Review System in Building a Market System (No. 34 [2016]) (hereinafter referred to as “No. 34”), requiring the establishment of a fair competition review system in the building of the market system. Consequently, the Central Government, at the top-level design level, established the fair competition review system as the fundamental position of competition policy. It reflects the value choice of prioritizing competition in the market policy system (Xiang & Yu, 2017) as well as the regulation of administrative legislation. In July, 2021, Circular of Five Authorities Including the State Administration for Market Regulation, the National Development and Reform Commission, the Ministry of Finance, the Ministry of Commerce and the Ministry of Justice on Issuing the Detailed Rules for the Implementation of the Fair Competition Review System (hereinafter referred to as “Detailed Rules”) was released. Specifically, it detailed the review methods, review standards, and supervision means, added a joint examination system for major measures, and incorporated a third-party assessment mechanism (State Administration for Market Regulation, 2021). After the promulgation of the two major documents, a new pattern of fair competition review was formed in China, that is, self-reviews as the mainstay, supplemented by a joint examination system for major measures, and assisted by a third-party assessment. That being said, the effectiveness of No. 34 and the Detailed Rules was not enough. “The State shall establish a sound fair competition review system” was formally incorporated into the Anti-Monopoly Law (Draft Amendments) in October 2021. A year later, the newly revised Anti-Monopoly Law clarified the legal subject and legal status of the fair competition review system (Wu, 2022). Legally speaking, the status of the fair competition review was literally established to provide a national unified market and rigidly constrain the fair competition review system.

The fair competition review system, as a governance system to harmonize competition policy with industrial policy, has been implemented in China for six years. A couple of provinces, cities, and counties issued their own competition review regulations in the light of the local competitive environment, shaping typical review models and mechanisms. For instance, Heilongjiang province, as a model role, formed “a specific body of the policymaker uniformly conducting reviews”; the Hainan Free Trade Port Fair Competition Commission took the initiative in China to roll out “Implementation Measures for the Fair Competition Review System in the Hainan Free Trade Port (for Interim Implementation)” in 2022. It intended to implement a unified review mechanism for specific government departments and strengthen the rigid constraints of fair competition review system; relying on a database, Hebei province achieved the integration of provincial, municipal, and county coordination; Sichuan and Chongqing introduced a third-party assessment mechanism for cross-evaluation; as a leading demonstration city, it was of practical significance for Shenzhen to study how to scientifically design the implementation mechanism to ensure the effectiveness of the review as the logical starting point for the operation of the system.

The Roadmap of Establishing Shenzhen’s Fair Competition Review System

Initial establishment of the system. The Fair Competition Review System was implemented in Shenzhen in

2016. The landmark case at this stage was the illegal procurement case of Health and Family Planning Commission of Shenzhen Municipality (SZHFC), published on the official website of National Development and Reform Commission (NDRC) in April 2017 (*Guangzhou Daily*, 2017). In this case, the SZHFC abused its administrative power to exclude and restrict competition in the pilot reform of drug procurement in public hospitals. In July 2016, SZHFC formulated the “Pilot Program for the Group Procurement Reform of Drug Purchasing in Public Hospitals”, a system designed to address existing problems in pharmaceutical procurement. According to the State Council’s regulations, the implementation program should have been subject to a fair competition review but was not substantively reviewed. What’s more, it failed to consider the impact on the order of competition in Shenzhen’s pharmaceutical procurement market at the outset of its policy formulation, leaving hidden dangers for later notice of criticism by the NDRC. At that time, the SZHFC allowed the only drug group purchasing organization (GPO) it had selected, quanyaowang.com (Shenzhen Quanyaowang Technology Co., Ltd.), to serve as the provider of drug group purchasing services, thereby excluding other GPOs from entering the Shenzhen public hospital drug group purchasing market on an equal footing. At the same time, it undermined the competitive order of the market where the drug market determined itself in procurement and sales. To be more specific, SZHFC restricted public hospitals and drug manufacturers in Shenzhen to using only the procurement services provided exclusively by quanyaowang.com as determined by the government, rather than purchasing and selling through the provincial centralized drug purchasing platforms in accordance with the Guangdong Provincial Government Procurement Documents. On top of that, the list of drug distributors was also designated by quanyaowang.com, instead of allowing the purchasing entity to independently select the distributors. Ultimately, SZHFC recognized that it had violated the provisions of the Anti-monopoly Law and proposed specific corrective measures.

Shenzhen Municipal Government incorporated fair competition review performance into the scope of the annual evaluation of administration in accordance with the law and completed the building of the fair competition review system in 2018. At this stage, Shenzhen administrative departments at all levels were required to establish internal self-review mechanisms, develop procedures for self-review, and implement fair competition review as a constraint on government administrative rights. The General Office of the Shenzhen Municipal People’s Government proposed in the Implementing Opinions on Establishing a Fair Competition Review System in Building Market System (Shenzhen Municipal People’s Government, 2018) that a fair competition examination system be promoted and implemented in an all-round way. The construction of the system was mainly accomplished through the establishment of a joint meeting at city and district levels, and the incorporation of the review into a law-based government assessment mechanism. The first joint meeting on fair competition review was convened by the person-in-charge of the former Market and Quality Supervision Commission of Shenzhen Municipality, with a total of 33 member organizations and 70 liaison officers. In 2019, in conjunction with Shenzhen’s institutional reform, the city established an inter-departmental joint meeting for fair competition review involving the legislature and administrative organs. Meanwhile, provisions relating to the review of fair competition were added to both the Rules for the Legislative Work of Shenzhen Municipal People’s Government (Trial) and Administrative Rules of Shenzhen Municipality on the Making of Normative Documents of Administrative Organization, requiring that newly formulated normative documents of special economic zones be subjected to an interlocutory examination. By doing this, Shenzhen achieved the initial rule of law of a fair competition review system.

In the phase of combining internal review and cross-review to optimize the business environment, fair

competition review in Shenzhen focused on incremental self-review. Internal reviews were conducted in all departments and district governments in accordance with the principle of “who drafts, who reviews”. In 2019, the city reviewed a total of six documents of the municipal government, 115 documents of the departments under the municipal government, 92 documents of the district governments (new district management committees), and 51 documents of the departments under the district governments, ensuring that newly introduced policies and measures did not violate the principles of market prioritization and fair competition. It also completed cross-review of 326 normative documents among 33 departments (Shenzhen Municipal Administration of Market Supervision, 2019).

In terms of the deepening of the fair competition review system in Shenzhen, specialized inspections for fair competition review were fully implemented. Five inspection teams carried out on-site inspections of selected units, and the results of the inspections were submitted to an independent third-party subject for assessment. The setup of the special inspections solved the persistent problems of insufficient review capacity and lack of supervision in the internal review, which was generated by the review of the policy-making organs. It was also an external review implementation established by the Shenzhen Municipal Government when conducting the Guide for the Implementation of Third-Party Evaluation in Fair Competition Review. On the one hand, the special supervision was carried out by the inspection team to supervise the review of the Shenzhen Municipal Government and the district governments; on the other hand, the special supervision was coordinated with the supervision of independent third-party assessment organizations and public supervision, which were all ex post facto supervision of the policy-making organs. In August 2020, the Central Committee of the Communist Party of China (CCCPC) and the State Council issued the Opinions on Supporting the Building of Shenzhen into the Pilot Demonstration Area of Socialism with Chinese Characteristics (the “Opinions”). “Fostering a market-oriented, legalized and internationalized business environment” was proposed in the section of “reforming and perfecting the fair competition review system”. In February 2021, the Guangdong provincial government published plans to pioneer the promotion of competition policies in the Guangdong-Hong Kong-Macao Greater Bay Area. It was proposed to support the establishment of an independent fair competition review system in Shenzhen. In 2022, the Shenzhen Municipal Market Supervision Administration, the Legal Affairs Committee of the Standing Committee of the Shenzhen Municipal People’s Congress, and others issued the “Shenzhen Fair Competition Review Random Inspection Measures (Interim)” and “Shenzhen Fair Competition Review Joint Meeting Review Measures (Interim)”, further enhancing the rigidity and constraints of the random inspection and joint meeting mechanisms. Undoubtedly, the optimization of the business environment in the pilot demonstration zone requires the building of a unified, open, and competitive market system. As such, it is worth studying whether it is possible to make use of special authorization and local legislative power to break through the self-review model and attempt mechanism innovation and reconstruction.

The Dilemma of Fair Competition Review System in Shenzhen

Ineffectiveness of the Self-review Control and Constraint Mechanisms

Despite the fact that Shenzhen has set up a mechanism for monitoring and reviewing by means of random checks and joint meetings, it still adopts an internal self-review model, with the policy-making organs as the main reviewing body. We have to admit that, as a “top-down” institutional innovation, the self-review mechanism has insurmountable limitations from the very beginning. In short, it can easily degenerate into a strategy for the internal operation of power, leading to the erosion of the efficiency of the fair competition review system. Policy-

making organs are stakeholders in abstract administrative actions. Considering the loss of local economic interests, the review subject's own competence and role make it difficult for it to spontaneously generate incentives for self-review. No wonder "the allocation of the review power of the formulation organs is not scientific so that some regions are not highly motivated to implement the fair competition review system" (Zhang, 2017). In view of the wide variety of policies related to market economic activities, internal institutional review manages to facilitate the implementation of the system, save time and costs, and enhance the effectiveness of implementation. However, the identity of the policy maker determines the bias of the results of self-review. Second, the review process is not disclosed to the media or the public; it is prone to form a supervisory paradox, due to the non-standardized review process. Needless to mention, the review body is of insufficient professionalism and unrefined review standards. When conducting fairness reviews based on the unified review standards and review procedures established by the State Council's Detailed Rules, the main body of the review fails to balance the value of generating policy rationality with the promotion of competition policy. It is precisely such cognitive bias that leads to uneven review quality and exacerbates the uncertainty of review results. As a result, self-review is highly susceptible to evolving into an *ex ante* preventive mechanism. But in fact, self-review should have been an obligation for the policy-making organ to review the reasonableness/legality of the abstract administrative actions. It is an obligation that should be fulfilled before the policy is formulated to ensure that it does not cause unreasonable harm to the market economy. Therefore, this obligation should not be transformed from *ex ante* to *ex post*, nor should it be activated by external incentives; as a matter of fact, it should be a conscious act of the Government and its policymaking organs. In other words, the self-review model can play a very limited role, only a transitional option.

Thus, in order to make up for the persistent problem of poor self-review, a third-party assessment institution has been added to conduct an in-depth assessment of the results of the fair competition review, which is considered to be the supplement and perfection of self-review. Both the Opinions and the Detailed Rules require policymaking organs to periodically assess the policy measures they have formulated, and encourage the operation from independent third parties. Nevertheless, the Detailed Rules just specifies that periodic assessments may be conducted every three years. Such a long period of time will inevitably lead to the policy documents for assessment unrelated to the real needs of the market economy. Moreover, in the actual operation of the assessment process, the subject of the assessment remains the policy-making organs, rather than other supervisory institutions with real authority. Hence, periodic third-party assessment fails to overcome the fundamental limitations of self-review. It, by nature, remains a self-review of abstract legislative actions by the policymaking organs themselves. The supervision of administrative power is still out of order, unable to generate the drive to objectively utilize the results of assessments (Chen & Li, 2022).

The Unfixable Implementation Effect of the Combined Internal and External Review System

The General Office of the State Council issued the "Circular on Approval of the Establishment of the Inter-ministerial Joint Meeting for Fair Competition Review", agreeing that a joint meeting led by the NDRC can be established in the process of fair competition review. The joint meeting system was the first to be set up in the Shenzhen fair competition review system, making it clear that over the specific problems encountered in a fair competition review, the policymaker may request a joint meeting of the fair competition review at the same level to conduct coordination, so that opinions from all sides can be widely requested and heard. It can be seen that the characterization of the joint meeting is to coordinate and harmonize the review work, which will help to

strengthen the exchange of information and collaboration among various departments, and will help to make the conclusions made by the policymaking organs more objective. That is to say, the coordination mechanism enables to compensate for the criticism of the low review capacity of policy-making organs in internal review. Of course, the joint meeting is only a system for coordinating, implementing, drafting, and improving the relevant system at the request of the policymaking organs. Only when a relatively considerable disputes arises, or it is difficult to reach a consensus in the review will macro-guidance be given or advisory opinions be provided, or a third-party assessment be contacted to carry out the review. However, even if the joint meeting considers that relevant policies and measures jeopardize fair competition, it can only coordinate and communicate within or across departments through meetings, while cannot directly make legally binding conclusions on the review. In the event that no consensus can be reached through departmental coordination, it is not the joint meeting but the policy-making organ that submits the policy to its superiors for reconsideration of the rationality. The truth of the matter is: the joint meeting does not have the power to require policymaking organs to implement the review resolution. As a result, the responsibilities of the joint meeting are not clear enough, and the convening of the meeting may even become a mere formality. Such a meeting coordination process determines that the joint meeting is essentially closer to a kind of working communication or reporting system established between government departments based on policy formulation.

Ineffectiveness of Social Monitoring

Supervision of the system implementation consists of self-supervision and social supervision. Self-supervision mainly involves the policymaking organ's periodic assessment of fair competition by third-party institutions. Since the implementation of the assessment system has already been reviewed in the previous section, it will not be repeated. Monitoring in this context refers specifically to social supervision.

The prerequisite for social supervision of fair competition is the disclosure of review information to the public, but, literally, the current review information and case information are not fully publicized. In the official documents of fair competition review cases in Shenzhen, inadequate disclosure of key information resulted in insufficient public understanding of the cases. Existing fair competition review documents have more clean-up reviews of stock policies, while little information on the review of incremental policy documents is covered. For example, the public lacks access to information such as the status of the review of incremental documents, the status of the periodic assessment of the policymaking organs, the yearly assessment reports, the resolutions of the joint meetings, the resolutions of the cross-consideration process, and whether or not there are any exception provisions. The disclosure of incremental normative documents can monitor the self-review of the policymaking organs and enhance their capacity and effectiveness of self-review; more importantly, the policymaking organs should explain the specific application of the exception provisions to the community at large. The application of exception provisions is the focus of the fair competition review. The objective of the establishment of the fair competition review system is to exclude and restrict the introduction of competition policies and to regulate administrative monopolies. That being said, the exception provisions are to coordinate competition policy with other public policies and balance other social values. The exception provisions stipulate that for "other circumstances stipulated by laws and administrative regulations", even if they violate the standards of fair competition review, the exclusion and restriction of market competition can still be enforced. These public policies, which include national security, poverty alleviation, energy conservation, and environmental protection (Zhang, 2017), are exemptions from fair competition review that the policy-making organs may conduct on its

own (Huang, 2020). Government intervention in the market, as established by the exception provisions, is appropriate. Therefore, the specific application of such exemptions should be subject to certain limitations. Only in the above-mentioned cases of national security interests, social security, and social public interests can they be applied in a limited extent. That is to say, it can only be applied if the laws, regulations, and policy texts issued reflect that “the relevant policies and measures are indispensable for achieving the policy objectives” and “will not seriously exclude or restrict market competition”. Moreover, in terms of duration, the period of implementation can be specified, or the exception provisions application system can be appropriately adjusted ex post facto after third-party assessment. Of course, it can even be ceased if it is not in line with the policy objectives. It can be inferred that, for policy-making organs, the applicable exception provisions have great discretion, i.e., the balance between economic efficiency and the value of fairness and justice. It is therefore difficult to apply justification and assessment information of the exception provisions that should have been made available to market entities and the public.

Social supervision is mainly initiated through clues provided by insiders regarding competition violations. Of the 59 fair competition review cases published by the NDRC, 28 were initiated by public reports (Zhu, 2018). Market competition subjects or the general public most often file a report to provincial or national-level NDRCs, rather than to the policy-making organs or anti-monopoly law enforcement authorities at the same level. As we all known, evidence of relevant exclusion and restriction of competition shall be provided when filing a report. However, the Detailed Rules does not specify the relevant facts and evidence conditions provided by the whistleblower. In doing so, on the one hand, there will be invalid reporting information. At the same time, this unclear provision will lead the institution receiving the reported information to list it as invalid report information obviously lacking factual basis in the review of the information form, thus neglecting to deal with it, and even directly handing it over to the policy-making body without technical processing. On the other hand, the imperfect feedback mechanism on the review information platform makes the platform fail to provide feedback information to the whistleblower within a specific time limit, thus discouraging the whistleblower’s enthusiasm to follow up the fair competition review results. The reason for such a poor feedback mechanism is that the Detailed Rules does not make clear requirements for feedback, but only stipulates that the relevant subjects have the obligation to verify the facts and evidence reported. As to whether the obligation has been fulfilled, whether the relevant subject has given feedback and verification on the information platform or through other channels, and whether there is any follow-up investigation result, no clear time limit requirement has been made. In addition, information feedback is in fact a multi-level feedback mechanism. The policy-making organ involved should provide timely feedback both to the whistleblower and its superiors on the conclusion of the self-review and the reasons for handling it. If the informer is not satisfied with the review result, he/she may request re-examination through the information platform. In case of dissatisfaction with the re-examination opinion, the informer can request another re-examination from the competition enforcement agency. The timely making of the pre-feedback information has clout both on the multi-level feedback and the multi-level authorities to implement the re-examination. That’s why specific time limits for feedback and review by institutions at all levels should be clearly stipulated in the document to enhance the effectiveness of fair competition review.

Reference of Fair Competition External Review System at Abroad

The bottleneck encountered in the implementation of the fair competition review has forced the Shenzhen Municipal Government to set up an independent fair competition review system, breaking away from the typical

hierarchical institutional characteristics of the existing system and abandoning the purely administrative governance model in favor of exploring, on a pilot basis, the independent review by an external specialized institution. Foreign countries with mature centralized and unified review systems are the European Union and Australia. It is particularly necessary to explore whether China has the rule of law soil to establish an independent, centralized and unified review through comparative analysis.

Analysis on the External Review System of EU Competition Authority

After more than half a century of development, the EU State aid mechanism is a mature and well-established fair competition review system in the world. State aid is a preferential treatment given by a government to enterprises, involving finance, taxation, finance, and other aspects (Kong, 2006). In the Treaty Establishing the European Economic Community, “fair competition” was explicitly added to the basic principles for the operation of the European Common Market, with the purpose of coordinating the conflicts of interest between member countries and the European Community, maintaining the unity of the Common Market, ensuring that fair competition and free trade are not interfered by the governments of member countries in the European Union, so as to ultimately provide fair competition opportunities for operators and promote competition in the Common Market. Thus, State aid is essentially a competition policy, which is consistent with the purpose of the fair competition review system currently established in China. Since the financial crisis, the aid measures implemented by EU member states have been subject to prior approval from the European Commission (Zhou, 2016). Among them, 88% of State aid in industry and services does not require separate review. Rather, they are all subject to the Directorate-General (DG) for Competition, a specialized body for fair competition review, responsible for State aid declarations, investigations and have the power to decide on penalties. As an authoritative fair competition review body, more than two thirds of the DG staff are directly engaged in the approval, supervision, and enforcement of State aid, while its branches are responsible for studying State aid regimes in specialized areas and drafting specific review guidelines. The European Union has also improved its procedures by stipulating that aid measures enacted by some countries can be exempted if they do not comply with internal market supervision; if a block exemption is not met, it will be assessed on a case-by-case basis, and guidelines will be issued to guide Member States in policymaking. The development of the guidelines gives the EC practical discretion to determine the effectiveness in balancing the internal market, which should be strengthened in terms of promoting public expenditure, identifying whether market failures are corrected, and reviewing the positive effects of policy measures (Quigley, 2013). As an instrument to maintain competition in the unified market of the European Union, the DG does not aim at economic efficiency alone, but also at providing a legal institutional framework that ensures competition among member states and maximizes the overall welfare of society.

Of course, the EU State aid system also faces practical difficulties in its implementation. First, the Commission’s regulatory certainty needs to be improved. The lack of clear principles for the Committee’s review has led to the review evolving into a disguised form of lobbying. Second, although more than two thirds of the DG staff is engaged in aid authorization, supervision, and enforcement, the number of State aid cases dismissed is in fact not high. Not to mention that the dismissals are not always the most disruptive to domestic competitive markets. However, a great deal of resources and effort has been expended, which shows that the DG’s regulatory capacity is insufficient, leading to inefficiency in State aid. Last but not the least, in cases of State aid complaints, the Committee often fails to protect the legitimate rights and interests of the complainant due to the lack of willingness to investigate because they are sensitive cases of member States, causing delays in reaching an

outcome of the case.

Analysis of the Review Mechanism of Specialized Institutions in Australian Legislative Review

Australia established its fair competition review system in the last century. In the course of its implementation, it has become a role model for many countries to follow because of the thoroughness of its enforcement review. Australia Commonwealth and state governments compiled a review list of thousands of laws and then conducted independent reviews over a six-year period to assess whether they impeded competition or not. These laws and regulations covered nine areas, including agricultural products, fisheries, forestry, transportation and insurance¹, thus establishing principles of review and public interest considerations. Australia's fair competition enforcement authority is Australian Competition and Consumer Commission (ACCC), which was established by merging the Trade Practices Commission (TPC) and Prices Surveillance Authority (PSA), with jurisdiction over and investigation for anti-competitive behaviors by all entities. Its subject of review includes the government, and the review items cover price supervision and the suppression of unfair competition. That's why it owns absolute authority. The effective implementation of Australia's competition policy is premised on the financial incentives it has developed. To encourage states to agree to review their laws and regulations, the Commonwealth government spent hundreds of thousands of dollars to ensure that the reviews were comprehensive. As to whether state government laws and regulations comply with the principle of review, it is determined by the National Competition Council (NCC), a statutory policy advisory body, appointed by the Governor-General of Australia and accountable to the Government. Its main role is to review the laws and regulations related to competition policy of state governments and to assess the performance of the review by the states. Financial resources from the Commonwealth government are available only to properly performing state governments. In addition to financial resources, the Agreement to Implement the National Competition Policy and Related Reforms stipulates competition payments for state and territory competition reforms. This financial sharing by the Commonwealth government allows for the effective implementation of complementary policies. At the same time, the system of legislative scrutiny of the fair competition review is well developed, as the Australian Government provides clear information, set out in the Legislative Inspection Outline, for each legislative scrutiny. The Outline also specifies the participation in the legislative program, the method of identifying whether laws and regulations constitute competition restrictions, and the assessment of the costs and benefits of restricting competition. Independent enforcement institutions, sound financial incentives, and a detailed inspection and guidance system have contributed to Australia's highly competitive market.

The Optimization Path of Shenzhen's Fair Competition Review System

Achieving fair competition and preventing administrative monopolies are the basic requirements for optimizing the business environment. The Detailed Rules clearly stipulates 18 review standards that shall not be implemented, which have a certain degree of interactivity with the indicators for assessing the business environment. The State Council's Regulations on Optimizing the Business Environment requires the full implementation of fair competition review. How to break through the independent fair competition review system in Shenzhen in terms of audit subjects, audit standards, audit procedures, and audit supervision is an urgent practical proposition that needs to be addressed.

¹ Commission, Productivity, Review of National Competition Policy Reforms. Productivity Commission Inquiry Report, No. 33, February 2005. Available at SSRN: <http://ssrn.com/abstract=737883>.

Establishment of an Independent Fair Competition Review Institution

An independent fair competition review system should be incorporated into the entire rule of law system of the market economy in Shenzhen Special Economic Zone. For example, the Regulations on Fair Competition Review in the Shenzhen Special Economic Zone can be enacted, by the Shenzhen People's Congress or the Standing Committee of the National People's Congress, as the main legislative body, to elevate the legal status. The independent body and working mechanism of the fair competition review should be specified in the fair competition review regulations. Regarding whether the independent body is the Anti-Monopoly Committee or another separate body, the solution remains to examine the setup of administrative agencies. The Anti-Monopoly Committee of the State Council is a typical deliberative and coordinating body rather than an enforcement body, as it is responsible for formulating relevant competition policies, organizing investigations, and evaluating market competition, and then issuing relevant market evaluation reports and anti-monopoly guidelines on a regular basis. It is difficult for it to complete a large number of fair competition reviews. Whereas anti-monopoly enforcement power belongs to the central government as a unified matter, Shenzhen, as a sub-provincial city, has not been authorized to enforce Anti-monopoly Law. Consequently, it is not possible for Shenzhen to assume the responsibility of independent review. In that case, the Shenzhen Municipality can only refer to the practice of Australia and establish an independent fair competition review committee. Legislation is adopted to clarify the institutional positioning of the Commission, its work responsibilities, the workflow of the entrusted review, and the financial resources for the fair competition review. The Fair Competition Review Committee, as a standing governmental body, consists of staff members and assessment experts from the National People's Congress (NPC), the Administration for Market Regulation (AMR), the Antimonopoly Enforcement Agency, and the Consumer Rights Enforcement Agency. As an operational department specializing in fair competition review, it has high professional requirements to ensure the accuracy of the review conclusions. As an independent third-party review body, the Fair Competition Review Committee does not have direct interests with the policy-making organs and the enterprises involved in the relevant market, which can avoid the drawbacks of self-review mechanism. To fulfill the review responsibilities and assess the impact of competition, the members of the Committee need to balance the competitive value with other policy objectives as a whole, examine the development stage and situation of relevant markets and industries, as well as incentive measures such as government finance and taxation within the industry (Yin, 2020); Then, knowledge of economics and management is applied to conduct quantitative and qualitative analyses of the policy, as well as cost-benefit analyses. As such, it is necessary for a specialized agency to make conclusions on the contribution rate and benefit of the policy after a comprehensive assessment of the industry knowledge, the background of the policy formulation, and the content of the policy formulation, which can only be accomplished by a specialized review body, i.e. the Fair Competition Review Commission. The Fair Competition Review Commission, as the competition authority, is composed of competition law experts, academics in the economic field, and assessment experts. This permanent establishment can be set up at the municipal and district levels in Shenzhen to reduce the economic burden caused by the establishment of a new competition institution. It is also conducive to centralized review to ensure the objectivity, impartiality, and professionalism of the review opinions. At the same time, as a specialized agency, compared with special supervision and random supervision, it manages to take into account the efficiency of the review and improve the quality of the review. By doing so, it enables to focus on the impact of economic policies on the competition of innovation in Shenzhen, thus creating

a more facilitated business environment for the sustainable development of the economy.

Improving the Operating Mechanism of the Fair Competition Review Committee

Whether it is essential to continue the joint meeting after the establishment of the independent fair competition review body is a controversial issue. Shenzhen established a joint meeting in 2018, held regularly every year to review the documents of policy-making organs. It can be said that the joint meeting has fulfilled its function as an administrative coordination body in fair competition, coordination, and communication, promoting the smooth progress of the review. In the transition from the internal to the independent review model, such coordination mechanisms should not be withdrawn immediately, but the joint meeting function should be improved. After all, the fair competition review involves many policy-making organs, market supervision departments, and other administrative agencies, so it is important to revise the meeting system convened by the head of the market supervision department and to upgrade the level of the convener of the joint meeting. The joint meeting is a horizontal coordination mechanism of the administrative organs. If the municipal government leaders in charge of market supervision in Shenzhen serve as the convener of the meeting, the efficiency of the meeting will be improved. As a joint higher-level administrative body of the government's policy-making organs and the Fair Competition Review Commission, on the one hand, it can attract policy-making organs at all levels to participate in joint meetings, especially those that are not member units, increasing the coverage of administrative organs taking part in joint meetings; on the other hand, it can strengthen the role of the joint meeting to implement fair competition review, coordination, and harmonization. Besides, it is recommended that the joint meeting, which used to be held once a year, be changed to quarterly; in that case, a fair competition review of new policies will be conducted in a timely manner, and macro-guidance and coordination will be implemented to fulfill the responsibilities.

It is necessary to explore the digital reform of the fair competition review, develop the Fair Competition Review Manual as a guideline for the review process, and make a checklist to facilitate the Fair Competition Commission to conduct the review independently. It is suggested to develop "Intelligent Monitoring Application System of Administrative Monopoly Behavior", which takes fair competition review as a necessary procedure for policy adoption and brings it into the office automation system of government administration. It would be better to intelligently detect and review documents through monitoring system, categorize and collect review data, aggregate and compare review data, and issue clue assignment and tracking; meanwhile, the communication information between policy making organs and fair competition review institutions needs to be traced throughout the entire process and traceable management should be implemented.

Improving the Constraints and Incentives of Fair Competition Review

There is a need to clarify the evaluation mechanism for fair competition assessment indicators and the rating of work quality construction indicators. If fair competition review is incorporated into the performance appraisal of the government under the rule of law and becomes a measure of the effectiveness of government departments, it can influence the action preference of policy makers. The assessment and evaluation will constrain the policy-making organs and force them to carry out effective regulation beforehand when formulating relevant market competition policy documents. As such, the establishment of an independent and scientific fair competition sub-indicator system is a prerequisite. The Lingang Special Area in Shanghai has been aligned with the trade rules of the Comprehensive and Progressive Cross Pacific Partnership Agreement (CPTPP). In its government

procurement implementation opinions, if the domestic market is taken as the preferred procurement market, it is not in line with the requirements of trade rules. The indicator system of legal guarantee should be refined in the evaluation indicator system of business environment. Specifically, the fair competition review should be included as a tertiary indicator under the indicator system for legal system construction. Hainan also requires in the Fair Competition Regulations of the Hainan Free Trade Port that governments at or above the county level must incorporate the implementation of departmental fair competition reviews in the performance assessment of the business environment and the rule of law government. There is also a need to develop a system of accountability for major decisions. The administrative responsibility of those in charge and administrative leaders who inhibit the introduction of competition policies should be pursued in accordance with the law. For those who are ordered by the Fair Competition Commission to take corrective actions but refuse to do so or delay in doing so, disciplinary action shall be taken in accordance with the Civil Servants Law and the Civil Servants' Disciplinary Regulations. Parallel to the constraining mechanism is the establishment of an incentive mechanism, so the review cycle of the Fair Competition Commission can be shortened by drawing on the relevant provisions of Australia. A pool of funds for fair competition subsidies should be established by the Shenzhen Municipal Government to give special financial subsidies to the main bodies that formulate regulations and policies. The rules for reviewing key areas in Shenzhen should be improved. The market opening in Shenzhen is different from the market access restrictions in other regions of the country, so policy subsidies for key areas and industries should be the focus of fair competition review.

Improvement of the Social Supervision System for Fair Competition Review

As the right to know is the basis for social supervision, it is a must for Fair Competition Review Commission to establish an independent website with a special column. The Column will promptly publicize and feedback the review information to the society, clarify the time limit for openly soliciting competition opinions from the society, and safeguard the public's right to know about the fair competition review. Moreover, it is necessary to smooth the information tracking and feedback mechanism of social supervision, as stakeholders and the public are the main supervisory subjects. A free and fair competitive environment requires a certain degree of awareness of their participation, so the government should promote competition advocacy. Any individual and social organization can file a report to the higher authority of the policy-making organ or the Fair Competition Review Committee. Subjects who make positive suggestions for fair competition review shall be rewarded accordingly. On top of that, information on the subject of complaints and reports on policies that restrict and exclude competition shall be protected.

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