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# Competitive Neutrality in China: Current Practices, Future Directions

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**Future Directions**

### **No debate on CN in China until around 2011**

- ◆ 2011 UNCTAD Competitive Neutrality Project
- ◆ Malaysia, China, India and Paraguay

### **Competitive neutrality in academia from 2011**

- ◆ CN rules at the international level, e.g, OECD, TPP (CPTPP) and USMCA;
- ◆ The exploration of CN in China, e.g, SOEs reforms, Free Trade Zones.

## Competitive neutrality accepted by the authorities in recent years

### ◆ 2017:

*“To implement a CN system”*

— The 13th Five-Year Plan for Market Supervision by the State Council

### ◆ 2018:

*“To treat state-owned enterprises with the principle of CN”*

— Governor of China’s central bank

*“State-owned enterprises and other enterprises ... are equally protected by law, which is in line with the principle of CN”*

— Deputy Director of the State-owned Assets Supervision and Administration Commission (SASAC)

*“A CN policy will be adopted ... to create a fair market environment for competition”*

— Director of the State Administration for Market Regulation (SAMR)

### ◆ 2019

*“All kinds of enterprises should be treated equally ... in accordance with the principle of CN”*

*“We should implement the principle of CN to speed up the clean-up and revision of relevant laws and regulations, to change and abolish policies and measures that hinder fair competition, restrict the development of private enterprises and violate the tenet of equal treatment of domestic and foreign capital...”*

— Premier of the State Council

### Fair Competition Review System

On June 14, 2016, the State Council issued *Opinions on Establishing the **Fair Competition Review System** in the Development of Market System*

#### **Aims:**

- ◆ To regulate anti-competitive government activity
- ◆ To ensure the decisive role of the market in resource allocation

#### **Targets:**

- ◆ All policies and measures concerning the economic activities of market players

## Fair Competition Review System

### Methods:

- ◆ Self-review by policy-making authorities
- ◆ whomever formulates a policy is responsible for its revision

### Standards:

#### ◆ 4 major standards:

- Standard of Market Entry and Exit
- Standard of Free Flow of Goods and Factors
- Standard of Affecting Manufacturing and Operating Costs
- Standard of Affecting Manufacturing and Operating Acts

#### ◆ 18 “not-to-do” items.

## Fair Competition Review System

### Exceptions:

#### ◆ 4 exceptions:

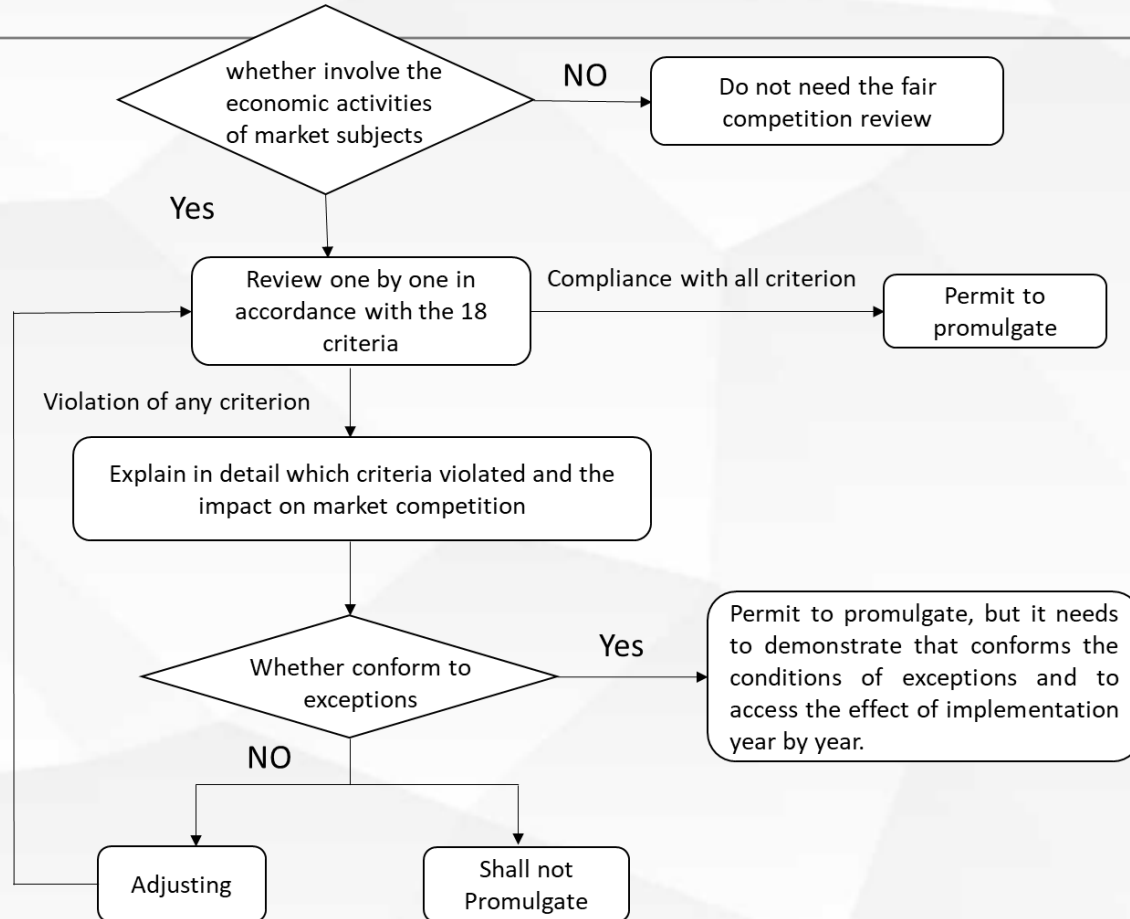
- National safety
- Social security
- Public interest
- Other circumstances provided by laws and regulations

#### ◆ 2 limitations on exceptions:

- Explain the goals and necessity, ensure the policies will not significantly eliminate or restrict market competition, as well as the duration of such policies.
- Evaluate every year.



## Basic Procedure of Fair Competition Review





## Fair Competition Review System

### Implementation:

- ◆ Step by step
- ◆ Periodic evaluation
- ◆ Inter-ministerial Joint Meeting System

### Performance:

- ◆ By the end of 2018, all departments of the State Council, all provincial governments, 98% municipal governments and 85% county governments had deployed and actualize the fair competition review system.
- ◆ In 2018, a total of 310,000 **incremental documents** were reviewed, up 154% from 2017. More than 1,700 documents were revised and improved, up 157% from 2017. Besides, 820,000 **existing documents** were sorted out and more than 20,000 documents were cleared up.

### Fair Competition Review System

#### Shortcomings:

- ◆ The cost and benefit of self-review are not matched
- ◆ Sometimes fair competition review is only a formality
- ◆ Exceptional conditions is vague and general
- ◆ Advisory mechanism and third-party evaluation mechanism are not fully applied

## Fair Competition Review System

### Relationship with the Anti-monopoly Law:

- ◆ Both are important components of China's competition policy.
- ◆ "ex post " vs "ex ante"
- ◆ The scope of the fair competition review system is wider than AML

### Relationship with CN:

	Fair competition review	Competitive neutrality
Scope	Mainly domestic	Domestic plus international (multilateral, regional and bilateral)
Object	Governments	State-owned enterprises and designated monopolies
Content	Rules on review standards and procedures	Rules on rights and obligations

***We should implement the principle of competitive neutrality ... to achieve full coverage of the fair competition review system at the national, provincial, municipal and county levels by the end of the year. In the future, rules and regulations concerning enterprises shall be subject to fair competition review, and mechanisms such as complaint and third-party evaluation should be established to resolutely prevent and correct exclusion or restriction of competition, so as not to protect backwardness.”***

— Premier Li Keqiang in the executive meeting of the State Council on March 26, 2019

### **Adapted to China's legal background**

- ◆ Rules on "socialist public ownership" and "state-owned economy" in the Constitution.
- ◆ Legalization of CN and Fair competition review.

### **Consistent with China's stage of development**

- ◆ Reforms on state-owned enterprises, monopoly industries and government management system are still ongoing
- ◆ Exceptions or exemptions for public interest

### CN System Building

#### ◆ Scope

- Market entities engaged in "major commercial activities"
- Exceptions
- Cost-benefit analysis

#### ◆ Standards

- Neutrality in enterprise operation, market access, tax, subsidy, debt, government procurement, regulation, social responsibility, legal liability, etc.

### CN System Building

#### ◆ Implementation

- Complaint mechanism
- Information disclosure mechanism
- Reward mechanism

#### ◆ Combination with SOEs Reforms

- Classification reform (commercial vs public welfare)
- Mixed ownership reform
- Reform of state-owned assets management system
- Reform of SOEs governance structure

# Thanks

