

# State Council Released Opinions on Promoting Fair Competition and Maintaining Regular Order in the Market

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China Law Practice

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The **State Council** has released the **Several Opinions on Promoting Fair Competition and Maintaining Regular Order in the Market** (the “Opinions”) (in Chinese, “????????????????????”) on July 8, 2014.

## Introduction

The Opinions put forward nine articles of guidelines: general requirements; broadening market access; strengthening market supervision; establishing credit basis for market supervision; improving supervision and enforcement; innovating enforcement systems; complete social supervision mechanism; complete security for supervision and enforcement and improving leadership. The purpose of the Opinions is to establish a more mature and fixed market supervision system by 2020.

## Opinions

The brief contents of the Opinions are as follows:

### I. General Requirements

The Opinions also set forth five basic principles for promoting fair competition and maintaining regular order in the market: simplifying policies and delegating power to the lower levels; supervision according to the law; equity and transparency; integration of power and responsibility; and coordinating governance and social power.

### II. Broadening Market Access

The Opinions prohibit governments from restricting market operators to investment in commercial sectors, which are not prohibited by laws or regulations, and such investment or operation shall not cause damages to third party, public interests and national security.

The Opinions point out, specifically, that market access should be broadened in five aspects: innovating the market access system; making more effort to reduce administrative examination and approval items; prohibiting examination and approval in disguised form; breaking regional protections

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and trade monopolies; and improving the market exit mechanism.

A. Innovating the Market Access System. (i) All kinds of market operators shall have the right to enter into any industries, sectors or businesses which are not prohibited by the State Council explicitly. Local governments may adjust the law to allow entry into such prohibited industries, sectors or business, but such adjustment shall be approved by the State Council through provincial governments.

(ii) MOFCOM shall reform the registration system to make it more simplified. The number of items requiring government approvals in advance shall be reduced.

(iii) The local governments above county level may implement new methods to shorten the registration period and issue a comprehensive certificate instead of Business Licenses, Organization Code Certificates and Tax Registration Certificates individually.

(iv) NDRC and MOFCOM shall complete the market access standard for environmental, technical and security sectors. It is encouraged to establish a new management model for foreign investment. The foreign investment may obtain national treatment before accessing relevant markets.

B. Reducing Administrative Examination and Approval Items. (i) The interim administrative permissions of provincial governments shall be established as a means of efficiently controlling danger, allocating limited public resources and providing specific credit, identity and certification.

(ii) State Commission Office of Public Sectors Reform (the "SCOPSR"), NDRC and Ministry of Finance (the "MOF") shall work together to review the paid intermediary services regarding technical review, evaluation, authentication and consultation before administrative examinations and issuing approvals. Unnecessary paid intermediary services will be cancelled. The remaining paid intermediary services shall be publicly displayed, and the price and period of such paid intermediary services shall be supervised by the government authorities mentioned above.

(iii) The local governments above county level shall establish government administration centers and online services to implement administrative examinations and approvals more efficiently.

C. Prohibiting Examination and Approval in Disguised Form. SCOPSR, NDRC, MOF and Legal Affairs Office of the State Council (the "LAO") shall prohibit illegal administrative fees examinations and approvals.

D. Breaking Regional Protections and Trade Monopolies. (i) NDRC, MOF and MOFCOM shall review local regulations regarding market access, abolish the local regulations which eliminate fair competition and undermine a united national market, and correct illegal preferential policies for attracting investment. Other discriminatory treatment against products and services from other areas will be corrected

(ii) NDRC shall break monopolies in natural monopoly sectors, and introduce competition into public utilities and key public infrastructure sectors through franchising.

E. Improving the Market Exit Mechanism. (i) The market operators which cannot meet the mandatory standards regarding environmental protection, or safety and quality in their products, especially food and medicine, shall exit the relevant market and be deregistered.

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(ii) CSRC and LAO shall implement delisting mechanism for listing companies, complete bankruptcy system and improve rules and procedures with respect to restructuring, reconciliation, trusteeship and liquidation. CSRC and LAO shall also develop simplified bankruptcy procedures for enterprises which have few assets and limited business scope, as well as certain micro-enterprises.

(iii) SAIC shall simplify and complete implementation of deregistration procedures for individual businesses, as well as enterprises without credit and debt and enterprises which fail to start business.

### **III. Strengthening Market Supervision**

Government authorities shall strengthen the legal liability of market operators. Relevant government authorities shall devise systems for administering product recalls, assigning liability for environmental damage and supervising the quality of products and services offered by companies.

According to PRC Anti-Monopoly Law, Anti-Unfair Competition Law and Price Law, relevant government authorities shall punish monopoly behaviors and unfair competition severely, and reform supervision rules in natural monopoly sectors to strengthen supervision in such sectors.

Government authorities shall broaden the supervision methods with advanced science and technology. MIIT and LAO shall improve the mechanism for confirming the validity of electronic signatures.

### **IV. Establishing Credit Basis for Market Supervision**

NDRC and People's Bank of China (the "PBC") shall improve the records system of credit information of market operators, and establish credit information files and sharing mechanisms. NDRC and PBC shall also improve the transparency of administrative information to the public, regulate credit service markets and assist in the promulgation of regulations with respect to the protection of individual information and privacy.

### **V. Improving Supervision and Enforcement**

SCOPSR and General Administration of Quality Supervision, Inspection and Quarantine (the "AQSIQ") shall impel the separation of enforcement and technical testing functions of the technical testing institutions. The technical testing institutions shall not undertake enforcement functions any more.

Relevant market regulators shall establish and complete disclosure mechanisms for administrative information to improve the transparency of administrative enforcement.

### **VI. Innovating Enforcement Systems**

SCOPSR shall concentrate the enforcement power to market regulators, and such market regulators shall integrate internally similar departments to establish comprehensive enforcement authorities.

The administrative examination regarding anti-trust, merchandise exports and imports and national security of foreign investment shall be supervised by the central government.

### **VII. Complete Social Supervision Mechanisms**

The Ministry of Civil Affairs (the “MCA”) shall encourage the trade associations to establish and complete industrial self-discipline rules. NDRC and MCA shall separate the trade associations from government authorities. MCA may permit the existence of more than one trade associations in one industry to introduce competition into trade associations.

MOF shall assist specialized service organizations in supervising relevant markets or industries, especially accounting and law firms, to provide professional opinions on company finance, taxation, capital verification and truthfulness of transactions.

Market regulators shall complete the incentive mechanism for public supervision, especially whistle-blowing mechanisms. State Administration of Press, Publication, Radio, Film and Television (the “SARFT”) shall disclose key cases regularly.

### **VIII. Complete Security for Supervision and Enforcement**

LAO shall (i) revise and abolish laws and regulations according to the market situation; (ii) complete trial mechanisms for administrative reconsideration and broaden the jurisdictional scope of administrative litigation; (iii) enlarge the applicable scope of punitive damages; and (iv) strengthen the joint liability of specialized service organizations.

### **IX. Improving Leadership**

Government authorities shall clarify the assignment of responsibility among internal departments, focus on the key issues which concern the public most, and implement this Opinion in combination with local practices.

*This post was written with contributions from Xiao Xu.*

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