

Analysis of the Mechanism of Overseas Competition Assessment and the Implications for China

Mingyu Hu

The Law School of Hainan University, Haikou, China
Email: humingyu79@163.com

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Abstract

The overseas Competition Assessment mechanism mainly includes the external review system, specialized agency review system, internal review system led by policy-making agencies, and the internal-external combined review system led by competition authorities. Each review mechanism has its own characteristics, applicable conditions, and corresponding institutional measures. The current fair competition review mechanism in China has reasonable stages but still has considerable room for improvement. In the long run, establishing an independent professional institution to conduct external reviews is the development trend of fair competition review in China.

Keywords

Competition Assessment, Fair Competition Review, Competition Assessment Mechanism, External Review

1. Introduction

Driven by the wave of economic globalization, some economies would like to join global or regional trade agreements in order to integrate into the world economic system. They have actively or passively taken relevant measures to establish or improve their own competition policies, preventing and reducing the negative impact of government regulation on market¹, and establishing a unified, open, and orderly competitive market system, and promote the development of their own economies. In this context, Competition Assessment and re-

¹Government regulation has both positive and negative impacts on the development of industries. See Debapratim Purkayastha, Trilochan Tripathy, Biswajit Das, Effect of Competition and Regulation on MFIs Outcomes in India, *Theoretical Economics Letters* Vol. 8 No. 5, April 20, 2018.

view systems that focus on laws, regulations, or policy measures have gradually developed in different economies, as a constraint on administrative power for market entities and competition. For instance, the European Union conducts reviews on State Aid, Australia implements Legislation Review, and Japan employs Competition Assessment for regulatory measures. Combining their own competition culture, scale of professional talent, government structure, and rule of law, each economy has designed various institutional forms such as external review systems, specialized agency review systems, internal review systems led by policy-making agencies, and internal-external combined review systems led by competition authorities for Competition Assessment and review. Similarly, in transition economies, under the guidance of their competition laws and regulations, similar institutional arrangements are observed.

2. External Review Managed by the Competition Authority

A typical representative of such review mechanisms is the European Union. Since the inception of the Treaties of Rome, the EU has regulated state aid, with further refinements made in 2007. When the Treaties of Rome were signed in 1957, the European Community continued the goal of “building a common market” established by the European Coal and Steel Community. Under the guidance of the United States and in conjunction with the tradition of German competition law, it established a competition policy system with European characteristics. Thus, its policy of regulating state aid is rooted in a relatively mature competition culture. The EU’s review of state aid is primarily carried out by the European Commission (Directorate-General for Competition), which has the authority to veto and demand member states withdraw state aid policies. The EU’s vast economic size and complex economic structure result in a significant workload regarding state aid. Correspondingly, the Directorate-General for Competition has established specialized agencies and employs a considerable number of competition professionals to undertake related tasks². Given the universal consensus among member states on competition rules and the availability of sufficient professional talent to undertake related work, the EU has chosen the external review of state aid by competition authorities independent of the policymaking bodies of individual member states. As a regional joint organization of countries, although the EU has some supranational power in terms of economy based on the transfer of power from member states, it is not a sovereign state af-

²The European Commission’s Directorate-General for Competition has established a specialized office (Comp. H) responsible for the review and regulation of state aid, with officials assigned according to industry category. Additionally, the Directorate-General for Competition boasts a considerable number of professional competition enforcement personnel. According to OECD data, as of December 31, 2020, the Directorate-General for Competition of the European Commission had a total of 798 permanent staff, with 524 directly engaged in competition enforcement-related tasks. Among all permanent staff, 50% are lawyers, 30% are economists, and 10% have a combined background in economics and law. See OECD, Annual Report on Competition Policy Developments in the European Union 2020, 2021, p. 23, [https://one.oecd.org/document/DAF/COMP/AR\(2021\)37/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2021)37/en/pdf).

ter all. And each member state has independent interests and demands, coupled with imbalance of development among member states, the support and cooperation for the national aid are very different, which to some extent affects the effectiveness³.

The external review by competition authorities represents a typical centralized review model: the authority, independence, and professionalism of the reviewing body are crucial in ensuring the independence, impartiality, and uniformity of competition review (Zhu, 2015; Wang, 2018), thereby guaranteeing the quality and effectiveness of the review. In theory, this is an ideal review model. However, this review model is limited by many factors, and the applicable threshold is relatively high: a considerable number of specialized personnel with professional competence are required; a mature market economy system and competitive cultural background are needed; moderate scale of review objects is required. In view of this, in economies with a large number of professional competition enforcement practitioners and a mature competition culture, the quantity of economic policies that do not comply with competition principles is relatively small, thus competition regulatory authorities under the external review system face relatively little pressure. However, for economies lacking sufficient competition enforcement practitioners and with a dearth of competition culture, coupled with a large number and wide variety of economic policies that run counter to competition principles, having competition regulatory authorities centrally conduct external reviews presents a daunting challenge.

3. Review System by Specialized Agency

A representative economy utilizing this review mechanism is Australia. In the 1990s, Australia was characterized by economic regulation, regional blockades, and significant internal market fragmentation, with administrative monopolies. Its competition policy was relatively weak, with low levels of competition culture and limited understanding of competition policy among policy-making bodies. According to the comprehensive agreements implementing the “National Competition Policy” signed between the Australian federal government and state and territory governments (Corden, 2009), whether formulating new regulations or amending existing regulatory systems, the initiation of Regulatory Impact Assessment (RIA) is required⁴. This indicates a significant assessment workload. Australia places great emphasis on the independence and transparency of assessment agencies, mandating that Competition Assessment be carried out by specialized agencies. While local governments can decide whether existing agen-

³Some member states tend to breach national aid rules more than observance them. In 1997, 21% of national aid was not notified to the committee for review. In many cases, firms retain aid even after discovering that it does not consistent with the common market: almost 10% of aid has not been recovered or restored. See Stephen Martin and Paola Valbonesi, *State Aid in Context*, Chapter 5, edited by Giampaolo Galli and Jacques Pelkamans, *Regulatory Reform and Competitiveness in Europe*, Cheltenham, UK: Edward Elgar 1 (2000): 176-201.

⁴Government South Australia, *Better Regulation Handbook: How to Design and Review Regulation, and Prepare a Regulatory Impact Statement*, 2011, p. 3-4.

cies or newly established ones undertake the relevant work, but they must be separate from the policy-making bodies (Harper et al., 2015). However, there is a relative shortage of professional personnel in the competition enforcement team, resulting in technical challenges and insufficient willingness for local governments to conduct competition assessments.

Corresponding to the level of competition culture dissemination, the number of professionals, and the review objectives, Australia has adopted the specialized agency review system. At the national level, Australia has established the National Competition Council (NCC), an independent body (OECD, 2019), responsible for monitoring, evaluating, and guiding the implementation of competition policies at the national, state, or territorial levels. At the local level, review methods are independently determined by government, with the NCC ensuring that each jurisdiction has its robust “gatekeeping” mechanism (Zhou, 2016). For instance, under the guidance of the NCC, the state of Victoria has adopted a tiered approach to policy review based on policy scope and has involved individuals from diverse backgrounds in different levels of policy review. This approach provides various market entities with the opportunity to participate in grassroots policy review while expanding the scale of personnel involved in Regulatory Impact Assessment (RIA). To incentivize local governments to implement the National Competition Policy actively, the Australian federal government provides financial rewards based on the implementation of the National Competition Policy by states and territories (Corden, 2009). The competition payment system significantly enhances the enthusiasm of local governments for competition policy reform (Zheng & Li, 2017).

Establishing specialized agencies at various levels of local government for review is a proactive and valuable institutional experiment. This model selects specialized agencies for external review, incorporating entities with diverse backgrounds to facilitate communication and unity of demands between market and government entities within the review agency, thus avoiding the principal-agent problem to a certain extent. In this model they set up dedicated institutions at the central level to lead and coordinate the national review work, and allow multiple entities to participate in related work at the local level. This theoretically can reduce the review burden of a single institution while ensuring consistency in review principles, and promote the popularization of a competitive culture. However, in practical operation, the review work at the local level relies heavily on the enthusiasm of local governments themselves. Therefore, direct financial incentives from the central government and strengthened supervision on local governments are necessary to ensure the effectiveness and quality. Thus, for economic entities with complex government organizational structures, the specialized agency review system has important reference value. However, this system requires comprehensive measures in terms of professional talent scale, negotiation mechanisms, supervision mechanism, and incentive mechanisms. Any shortcomings in these aspects could lead to the failure of the entire institutional

system.

4. Internal Review System and Competition Consultation

A typical representative adopting this review model is Singapore. According to the Competition Commission of Singapore's "Government Department Competition Assessment Guidelines" issued in 2008, during the process of formulating relevant policies, government departments conduct self-review, but may seek opinions or consultations from the Competition Commission. The opinions of the Competition Commission cannot be used as a reason for the policy-making agency to monopolize exemptions, and the Commission can still conduct anti-trust investigations into relevant policy measures thereafter (Zhu, 2015). There is a certain rationality in having policy-making agencies lead internal reviews. Policy-making agencies have a better understanding of the overall operation of the economic policy areas and have access to more information and data needed for evaluation. Therefore, self-review conducted by policy-making agencies can better balance the needs of macroeconomic regulation.

The internal review system led by policy-making agencies in Singapore operates well, mainly due to Singapore's strong competition culture, professional antitrust law enforcement supervision teams, comprehensive legal system, and strict legal culture foundation. On the one hand, Singapore's government structure is relatively simple, with a higher proportion of competition policy professionals within the government. It is easier for government departments to form unified opinions on competition principles, and the existing talent pool is sufficient to undertake national-level competition review tasks. On the other hand, Singapore's legal system is comprehensive, with well-established incentive and punishment mechanisms. This can provide high-quality incentives for the competition review work of policy-making agencies and effectively deter improper behavior by policy-making agencies. Therefore, Singapore's use of internal review led by policy-making agencies can effectively avoid potential principal-agent problems and insufficient review enthusiasm in the review process.

5. Combined Internal and External Review System Led by Competition Authorities

The typical economies employing this type of review model are South Korea and Japan. Before establishing Competition Assessment, both Japan and South Korea had long adopted government-led industrial policies in the history. The government's adjustment and intervention in industrial development and structure played an important role in the economic growth of both countries (Lin, 2018). Therefore, in the process of implementing competition policies, the economic policy-making agencies of both countries faced a fundamental shift in regulatory ideas and methods, with an urgent need to deepen their understanding of competition culture. In terms of the difficulty of Competition Assessment, both economies have relatively large economic scales and numerous economic sec-

tors, requiring consensus on competition principles among various departments. Given this background, both countries chose to adopt a combined internal and external review system led by competition authorities.

Regarding Competition Assessment work, both Japan and South Korea's combined review systems are initially evaluated by policy-making agencies, with competition authorities then playing a role as "reviewers" of the evaluation results. The difference lies in South Korea's competition regulatory authority, the Korea Fair Trade Commission (KFTC), which needs to conduct a recheck or in-depth evaluation of the preliminary evaluation results of policy-making agencies (Zhang, 2015). In contrast, Japan's competition regulatory authority, the Japan Fair Trade Commission (JFTC), mainly provides professional guidance on Competition Assessment to various departmental agencies and retains reports on the evaluation of policy-making agencies submitted by the internal affairs department (Hamada, 2011). For incremental policies, both Japan and South Korea attach great importance to pre-intervention mechanisms. South Korea has established a legislative consultation mechanism, requiring policy-making agencies to consult the KFTC during the legislative stage, which is a "mandatory step."⁵ According to statistics, the proportion of opinions raised by the KFTC that are reflected in legislation has reached 80%, with a rising trend⁶. In Japan, for industries where antitrust exemptions cannot be abolished, the JFTC strives to introduce pre-consultation mechanisms. In Japan, all policy-making agencies are required to conduct Competition Assessment before formulating or revising regulations, urging regulatory agencies to adopt more competition-friendly measures in the process of drafting laws and regulations. Corresponding to these functions, both Japan and South Korea have established large-scale competition authorities⁷.

In Japan and South Korea, the combined review system led by competition authorities is a system design undertaken by based on their respective economic

⁵According to Article 63 of the Monopoly Regulation and Fair Trade Act of South Korea, any department or institution intending to formulate new regulations should notify the Korea Fair Trade Commission (KFTC). If the KFTC finds that such regulations restrict competition, it should propose amendments during the legislative consultation stage and reach an agreement with the relevant departments or institutions. Additionally, the Chairperson or Vice Chairperson of the KFTC attends meetings of the Regulatory Reform Committee, Cabinet meetings, and Deputy Ministerial meetings to ensure that the opinions proposed by the KFTC during the legislative consultation stage are reflected in the legislation as agreed upon. For further reference, see Li Qing and Zhu Zhongliang, "Investigation Report on Participating in Competition Policy and Antitrust Exchange in South Korea," *China Price Regulation and Antitrust*, 2017, Issue 3.

⁶Korea Fair Trade Commission, "Competition advocacy", 2020, <http://www.ftc.go.kr/eng/contents.do?key=503>.

⁷Corresponding to these functions, both Japan and South Korea have established large-scale competition regulatory authorities. According to OECD data, as of 2019, the KFTC in South Korea had a total of 655 employees, with 37 responsible for advocacy efforts; the JFTC in Japan had a total of 839 employees, with 35 responsible for advocacy efforts. Refer to OECD: Annual Report on Competition Policy Developments in Korea 2019, 2020, [https://one.oecd.org/document/DAF/COMP/AR\(2020\)19/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2020)19/en/pdf) September 26, 2021. Annual Report on Competition Policy Developments in Japan 2019, 2020, [https://one.oecd.org/document/DAF/COMP/AR\(2020\)18/en/pdf](https://one.oecd.org/document/DAF/COMP/AR(2020)18/en/pdf).

policy foundations, reflecting the division of labor and cooperation between competition enforcement agencies and policy-making agencies. Firstly, with policy-making agencies responsible for initial evaluations, they can utilize their information resource advantages to align policy objectives with competition principles. Simultaneously, it can exclude some policy measures that have obvious restrictive effects on competition, greatly reducing the workload of competition authorities, allowing them to focus their main resources and efforts on more important in-depth evaluations. Secondly, with competition authorities acting as external entities responsible for in-depth evaluations, they can ensure consistency in review standards among different departments and serve as effective external monitors under the supervision of market economic laws and policy systems. The relatively simple government organizational structures of both countries enable competition authorities to conduct in-depth evaluations of major policy-making agencies. Therefore, the combined review system led by competition authorities can leverage the initiative of policy-making agencies, avoid the shortcomings of internal review systems, and ensure the quality and effectiveness of the review.

6. Competition Consultation and Enforcement in Transitional Economies

In various transition economies of Eastern Europe, establishing a competition regulatory system and creating antitrust enforcement agencies with high authority within the bureaucratic system to provide competition consultation to other administrative agencies is a commonly used method for preventing administrative monopolistic behavior in advance. For example, in Hungary, according to the “Prohibition of Unfair and Restrictive Market Practices Act,” all laws or draft regulations affecting or influencing market competition must seek the opinion of the Hungarian Competition Authority (Wang, 2009). In Ukraine, the “Antimonopoly Committee Law” grants its Antimonopoly Committee higher legal status, stipulating that any (policy) documents that may affect market competition, especially those involving corporate restructuring and concessions for certain economic activities, must obtain prior approval from the Antimonopoly Committee (Wang, 1998). In Ukraine’s weak judicial system, this administrative governance system plays a certain positive role (Bona & Kovacic, 2005). In Russia, through the “Competition Protection Law,” substantial administrative powers are granted to its Federal Anti Monopoly Agency, deterring administrative monopolistic behavior through strict antitrust enforcement (Wang, 2019).

This widely adopted administrative monopoly regulatory system in transition countries is a system formed by these countries based on their long-term use of planned economic systems and the absorption of policy recommendations from the European Union (Guo & Li, 2007). It somewhat reflects the characteristics of the EU’s state aid regulation policies. Moreover, in the process of the development and evolution of such systems, various economies tend to restrict the use

of advisory rights. For instance, Russia gradually incorporates advisory rights for various industries into the general scope of antitrust regulation, deterring administrative monopolistic behavior through strengthened licensing and pre-competition consultation, as well as post-regulation and accountability mechanisms (Wang, 2019). In transition economies where competition culture is generally lacking and competition policy systems are not yet fully developed, this regulatory system to some extent concentrates the country's resources of antitrust and competition policy talents, exerting a positive influence on restraining administrative monopolistic behavior. The key to the implementation of this policy system lies in the fact that relevant economies emphasize the independence and high-ranking authority of antitrust enforcement agencies to strengthen the deterrent effect on administrative monopolistic behavior within the framework of bureaucratic systems.

Brief Summary: The operational effectiveness of the various review mechanisms in this economy is commendable, each having its own advantages and disadvantages. However, their successful operation in this economy is attributed to the way these review mechanisms are constructed, which aligns with the economy's size, the number of competition law enforcement professionals, and the development history of market economy, competition culture, and economic thought.

7. Analysis of the Current Situation and Development Trends of China's Fair Competition Review Mechanism

7.1. Current Situation of China's Fair Competition Review Mechanism

Similar to the Competition Assessment system in other countries, China's fair competition review mechanism aims to review "regulations, normative documents, and other policy measures related to economic activities of market entities" formulated by government policy-making agencies to "regulate government behavior, prevent the issuance of policies that exclude or restrict competition, and gradually clean up provisions and practices that hinder the unified market and fair competition."⁸ Through fair competition review, the potential or actual competitive impact of policy measures is assessed, seeking alternative solutions that minimize the impact on competition while still achieving specific policy objectives, aiming to prevent excessive government intervention from negatively affecting competition (Wang, 2015). The promulgation of the State Council's "Opinions on Establishing a Fair Competition Review Mechanism in the Market System" in 2016 marked the formal establishment of China's fair competition review mechanism (Xu, 2017). This file explicitly stipulated that China's fair competition review is internal self-examination by policy-making agencies. The "Interim Measures for the Implementation of the Fair Competition Review Mechanism" issued in 2017 reaffirmed the review mechanism, while the "Im-

⁸State council, *Opinions on Establishing the fair competition review system in market system construction*, Document No. 34 of 2016 issued by the State Council.

plementation Measures for the Fair Competition Review Mechanism” issued in June 2021 enriched it by adding a significant measures review system and refining the third-party evaluation system. The “Antimonopoly Law” (amendment) passed in 2022 legally clarified the requirement to strengthen the legal status of competition policy foundation, explicitly stating the legal status of the fair competition review mechanism. The “Fair Competition Review Regulations” just passed by the State Council in 2024 once again reiterated the internal self-review mechanism in the form of administrative regulations, which advances the review stage to the drafting stage.

The current fair competition review mechanism in China, which primarily adopts a self-review mechanism, has certain rationality in its stages. First, the self-review mechanism is in line with the administrative monopoly regulatory model in the Anti Monopoly Law, strengthening the rectification responsibility of policy-making agencies. Secondly, policy-making agencies are most familiar with the background, objectives, and content of policy formulation, and the self-review mechanism can exert their administrative advantages in carrying out work. Thirdly, the self-review mechanism can enhance the awareness of fair competition among policy-making agencies, prompting them to transform their administrative regulatory concepts and consciously maintain a market environment conducive to fair competition. Finally, the self-review mechanism can drive policy-making agencies to actively enhance their administrative capabilities, ensuring the steady implementation of fair competition review work and achieving multiple objectives such as protecting market competition and realizing policy goals.

However, the self-review mechanism has significant room for optimization. In order to adapt to the current administrative monopoly regulation model, the design concept of self-review method is consistent with the concept of administrative behavior regulation, which may lead to its institutional rigidity. Policy-making agencies, as stakeholders, lack motivation to conduct self-review, which may not meet the expected goals. Based on the rational economic man hypothesis of public choice theory, the government seeks to maximize its own interests, pursuing profit and avoiding harm. Due to the lack of a reward and punishment mechanism, the efficiency and enthusiasm of policy making agencies in self-review are limited, which is somewhat related to the insufficient multi-dimensional assessment mechanism for officials’ promotion in China. Some local policy-making agencies in China have limited understanding of the new economy, and new business formats, lack relevant knowledge of analyzing competitive behavior, lack professional talents for self-review, and lack sufficient capacity to identify whether the review objects contain competition-restricting behaviors (Sun & Abdulkayum, 2020).

7.2. Development Trends of China’s Fair Competition Review Mechanism

In the context of consensus on optimizing the business environment and

“strengthening the foundational status of competition policy,” how to promote the implementation of competition policy and ensure the effective implementation of the fair competition review mechanism has become one of the key issues of concern for governments at all levels. The review mode of the fair competition review mechanism is one of the key points. Some governments, in order to enhance the effectiveness of local fair competition review systems, plan to make breakthroughs at the local level. For example, Shenzhen proposes to establish an independent fair competition review agency to implement independent, centralized, and professional fair competition reviews. Similarly, the Zhejiang Provincial Market Supervision Administration has proposed to explore pilot reforms in fair competition review, aiming for transition from a decentralized self-review to a relatively centralized independent review.

The design of the competition review mechanism is actually based on the scale of professional talents, designing the review system and the regulatory system that are consistent with the level of competition culture and economic volume. It is important to provide appropriate incentives for the effective operation of these two systems, seeking a balance between the basic status of competition policy and the professionalism of economic policy. In China, there are a large number of economic policies, a shortage of professional talents, and a culture of competition that has not yet been popularized. In this context, the implementation of internal self-review is a practical choice. In the long run, establishing independent professional institutions responsible for fair competition review is the development trend of China’s fair competition review (Shi, 2017).

Of course, establishing an external review mechanism is not something that can be achieved overnight. It puts higher demands on China’s national governance system and modern governance capabilities. First, the external review mechanism puts higher understanding of the economic policies for the competition authority. The competition authority evaluates various economic policies based on competition policy, not only need to avoid falling into the so-called “professional trap” by neglecting the original objectives of the policies, but also need to pay attention to the coordination among different policies. Secondly, the external review mechanism places higher demands on the competition authority to mobilize resources. China has a vast number of policies, and the number of new policies added each year is considerable. If the external fair competition review is entirely the responsibility of the competition authority, it will require professional personnel and supporting mechanisms. Lastly, the external review mechanism has high requirements for the popularization of competition policy, market competition system, and competition legal system. It can be seen that establishing a specialized external agency responsible for independent review nationwide is extremely difficult. We can explore and try locally first, form beneficial experiences, and gradually promote them.

8. Conclusion

Various review mechanisms have their own advantages and disadvantages. The

construction of the review mechanism should be in line with its own economic size, the number of competition law enforcement professionals, and the development history of market economy, competition culture, and economic thinking. China's self-review model for fair competition is a reasonable choice at the current stage, but in order to promote the implementation of this system, external independent review mechanisms should be gradually introduced.

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