

# Fair Competition Review Applying in Tobacco Monopoly of China: on the Practice of Administrative Self-Regulation

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**Objectives:** This article attempts to discuss the practice of China's fair competition review mechanism applying in China's tobacco monopoly administrative system as an administrative self-regulation act. **Methods:** by reviewing the literature, relevant website and applying the liberal interpretation in legal provisions of China, this paper reveals the important reasons behind the establishment of fair review system by the Chinese government—the existence of administrative monopoly and the problems caused by the deficiency of China's existing external regulation. **Results:** by combing the legal foundation of fair competition review mechanism, this paper responds to the rationality of China's adoption of self-regulation model. Furthermore, through the discussion of the applying of fair review in tobacco industry's administration, it responds to the practice of tobacco monopoly's self-regulation. **Conclusion:** the article concludes that China's fair review system can be partially applied to China's tobacco monopoly.

**Keywords:** tobacco monopoly, fair competition review, administrative monopoly, administrative self-regulation

**Tob Regul Sci.**<sup>™</sup> 2021;7(6): 5108-5117  
**DOI:** [doi.org/10.18001/TRS.7.6.5](https://doi.org/10.18001/TRS.7.6.5)

## INTRODUCTION

In the year 2021 is deem as the "meta year" of *the Anti-monopoly Law* enforcement of China, Chinese market regulatory authorities were enterprising. They not only investigated and punished the market monopoly behavior of private enterprises such as Alibaba corporation and Meituan corporation, but also made a decision to review the market monopoly conduct of non-Shenzhen City registered dump trucks excluded by Transportation Bureau and Traffic police of Shenzhen city.<sup>1,2</sup> Since 2016,

the Chinese government has continuously strengthened its efforts to maintain fair market competition through legal regulation, which reflects the Chinese government's determination protect the fair market competition, integrate into the world economic system and participate in global governance. However, it is undeniable that no matter in which country, the use of administrative power facing the risk and possibility of abuse. Therefore, the power control mechanism is particularly important. In the state of weak supervision, the administrative power boundary is

expanding which may causes *ultra vires*. Therefore, the legal system of many countries has developed a power control system suitable for their national traditions and customs. As China's market economy develops, there is an increasing demand for legal regulation of unfair competition that hinders market operation factors. Among them, some unfair competition behaviors based on administrative monopoly have existed in Chinese public agencies. Although China's *Anti-Monopoly Law* has established a mechanism of "case investigation and post regulation", this mechanism is not enough to solve the various institutional administrative monopolies formed by administrative normative documents (*Guifanxing Wenjian*) formulated by Chinese administrative agencies. Since 1989, China established administrative litigation through legislation and then developed the administrative reconsideration system in the year 1999 offering a set of judicial remedies and quasi-judicial remedies for the illegal and disproportionate administrative acts made by administrative agencies to citizens. However, judicial litigation is inefficient and costly. At the same time, in China, influenced by historical and traditional factors, 'people suing officials' has never been the preferred way to deal with it. People are not willing to solve disputes with administrative agencies through judicial remedies. Thus, this also makes the boundaries of administrative powers of local government agencies expand, and get inertial application through abstract administrative acts which is easy to form administrative monopoly. As a unitary country, the central government does not want to see that the local administrative power exceeds the authorization of the law, which will damage the national legal unity and then affect the legitimacy of the government.

China's tobacco industry is a tobacco administrative monopoly system which China's State Council has specially established the Tobacco Monopoly Bureau (company) as the administrative department of tobacco industry management<sup>3</sup>, as well as the tobacco sales enterprise, and formed a central and local administrative structure consistent with the government structure. In China, the phenomenon of local protectionism of tobacco industry existed in local tobacco administrative organs for a period of time, but this behavior was stopped

with the internal documents issued by China Tobacco Monopoly Bureau.<sup>4</sup> However, with the increasing countries have passed legislation to regulate cigarette packaging and warning signs in order to reduce cigarette consumption,<sup>5</sup> problems such as tobacco warning labels are difficult to be regulated by legislation in China, there are explicitly banded misreading descriptors on many Chinese cigarette packages.<sup>6</sup> This makes the public doubt whether the tobacco regulatory authorities can do an appropriate measures in tobacco control due to its unique constitution of government enterprise integration. As an administrative control mechanism, is China's fair competition review (FCR) aimed at the review of administrative monopoly applicable to the tobacco administration?

Starting from this perspective, this paper will take the operation mechanism of the FCR system established by the Chinese central government as the object of discussion, demonstrate the self-regulation of executive power, and discuss the application of the fair competition review mechanism in China's tobacco industry.

## **ADMINISTRATIVE MONOPOLY, FAIR REVIEW SYSTEM AND ADMINISTRATIVE SELF-REGULATION**

### **Administrative monopoly**

In the territory of the *Anti-monopoly Law*, administrative monopoly generally discusses the behavior that administrative agencies misusing their administrative power to exclude, hinder, restrict and prohibit limiting market competition by interests.<sup>7,8</sup> Administrative monopoly is considered to be the product of the age of planned economy in China,<sup>9</sup> the planned economic system depends on mandatory plans, including production, resource distribution and product consumption. China carried out reform and opening-up in the late 1970s and implemented a market economy. In 1980, it recognized the existence of market competition for the first time in official documents.<sup>10</sup> The concepts of "unfair competition", "anti-monopoly" and "fair competition" were defined through legislative clauses in the *Anti-unfair Competition Law* which promulgated in 1993 and the *Anti-monopoly Law* of 2007. <sup>9</sup> Articles 8 and 37 of the *Anti-monopoly Law* explicitly prohibit

administrative monopoly formed by administrative agencies by excluding competition. *The anti-monopoly law* has no specific explanation for administrative monopoly of the administrative agencies. Therefore, theoretically, it should include all administrative bodies, including local governments and their administrative departments, central ministries and commissions, as well as the Central government.<sup>9</sup> Generally, the Central government authorizes the ministries and commissions to exercise specific part of administrative power. In combination with *Article 9 of the Anti-monopoly Law*. It can be seen from the provisions of "the State Council establishes an anti-monopoly commission", which excludes the central government from external mechanism as the regulatory object of anti-monopoly regulation. In the long-term operation process of China's administrative agencies, there has always been the phenomenon of administrative monopoly, mainly manifested in two categories: regional monopoly (regional blockade) and sectoral monopoly (industrial monopoly).<sup>7,9</sup> The most typical example of regional monopoly is that local governments in many places in China use government regulations (*Guizhang*) or normative documents (*Guifanxing Wenjian*) to designate or exclude cars not produced in the region. For example, in the early days, Shanghai City restricted the use of locally produced Volkswagen "Santana" cars, and in Wuhan City can only use Citroen 'ShenlongFukang' car for taxi,<sup>9</sup> Recently, Jinzhong City of Shaanxi Province forced local taxis to be replaced with Geely 'Geometry A' locally-produced electric vehicles with a local government policy.<sup>11</sup> Departmental monopoly (industrial monopoly) refers to the illegal acts of excluding and restricting enterprises from other departments to participate in the market competition of their own departments by abusing administrative power so as to protect the enterprises and economic benefits of the department of their own.<sup>7,8</sup> For instance, a specific threshold is specially set in bidding activities to exclude or directionally exclude the participation of some subjects in bidding. Sun Jin believes that since China's economic reform, the unreasonable government intervention in the market has not been stopped,

the tension between government regulation and market competition has not been alleviated, and has brought the 'by-product' administrative monopoly, the government's *ultra vires* and dislocation still exist.<sup>12</sup>

However, in China's tobacco monopoly industry, it is another scene. China has started a tobacco monopoly system since 1981 and promulgated the *tobacco monopoly law* in 1991, which defined the monopoly position of the tobacco industry. There are two main considerations in implementing the tobacco monopoly system in China. First, tobacco consumption is prone to addiction. Therefore, the state restricts production, sales and import, which is conducive to the control of tobacco consumption. Second, as a heavy tax product, the state can obtain stable tax revenue in control. Through the improvement of the monopoly system through the State Council's regulation, the state has adopted a monopoly management mode for the production, sales, import and export trade of tobacco products.<sup>13</sup> At the same time, *Article 7 of the anti-monopoly law* also excludes and protects industries monopolized by the state, including 'tobacco monopoly'. The Tobacco Monopoly Bureau (company) exercise administrative functions, including market supervision, administrative licensing, administrative law enforcement, etc. As the exception of administrative monopoly, the tobacco monopoly system needs more regulatory power from the tobacco administrative agencies.

### Deficiency of external regulation

There are two main ways in which China's administrative agencies exercise administrative power. One is specific administrative act, which is unilateral act by administrative agency related to the rights and obligations of specific legal subjects on specific matters. For example, an administrative agency department initiates its own bidding activities and arbitrarily sets specific conditions or thresholds to exclude specific bidding objects. As the excluded object, its rights are affected by this rules or acts. The other is abstract administrative act, which refers to the activity of administrative organs in formulating generally applicable normative documents (*Guifanxing Wenjian*) for unspecified

persons and matters in administrative management. Chinese administrative agencies mainly adopt the formulation of normative documents (*GuifanxingWenjian*) abstract administrative act to regulate a specific matter such as government rules and policies. Normative documents (*Guifanxingwenjian*) can be applied uniformly and repeatedly to the same matter within a certain range.

The regulation of the administrative monopoly is mainly through external ways. China promulgated the *administrative procedure law* in 1989, established China's own judicial review system, and promulgated the *Administrative Reconsideration Law* in 1999 that has established a quasi-judicial review system in which the higher authority of the agency that has made the specific administrative act as the review agencies. At the same time, in a number of administrative regulations, it has defined the scope and ways of authorizing or establishing the administrative agency to exercise its power, and their remedies. China's judicial system is relatively weak due to the current power structure. At the same time, influenced by Chinese traditional culture, judicial power is reluctant to become the mainly maker of external regulation of the executive authority.<sup>14</sup> This factor influenced by the power structure and traditional culture also happens to the plaintiff. He Haibo after counting the statistics of 20 years of cases since the implementation of China's *administrative procedure law*. The statistical results show there are the low number of administrative litigation cases, low rate of administrative litigation judgment closure, low rate of plaintiff's success, high rate of withdrawal, high rate of rejection, high rate of appeal.<sup>15</sup> Therefore, it is concluded that the problem of "difficulty in filing, hearing and judgment of the plaintiff" in the operation of China's administrative litigation has not been solved at all.<sup>15</sup>

As mentioned above, normative documents (*GuifanxingWenjian*) regulate a certain kind of matters, and there are two possibilities of violation of laws. One is to exceed the authorization of the law, and the other is to set conditions and thresholds disproportionately to eliminate competition.

However,

it is precisely because it appears in the form of formal documents such as normative documents (*GuifanxingWenjian*) that it is easy to form power inertia and difficult to correct it through external forces. In 2015 before the *Administrative Procedure Law* had been amended, the plaintiff could not sue the abstract administrative acts like the normative document made by the administrative organs, which also hindered the plaintiff's rights protection and correction of illegal and disproportionate abstract administrative acts. There are a huge number of normative documents (*GuifanxingWenjian*) formulated by the administrative agencies became so called "historical legacy problems" and hardly remove.

### **Fair competition review system and self-regulation**

As mentioned above, this phenomenon is not consistent with China's goal of building an open economy. The second meeting of the comprehensive rule of Law Committee that the deeper the reform and opening up<sup>11</sup>, the more emphasis should be placed on the rule of law. The rule of law is the best for the business environment. The property rights and legitimate rights and interests of all kinds of market subjects should be equally protected according to law. The rule of law should be used to regulate the boundary between the government and the market and respect the laws of the market economy. In order to solve this problem, the CCP and the Chinese government jointly issued a guiding document since March 2015,<sup>16</sup> explored the implementation of the FCR, and put forward it for the first time in the document of China's 13th five-year plan (2016-2020) issued "improve competition policy, improve market competition rules and implement fair competition review system" in March 2016. In 2016, the State Council issued *the opinions on establishing fair competition review system in the construction of market system*.<sup>17</sup> In 2017, China's administrative agencies related to anti-monopoly work jointly issued *the detailed rules for the implementation of fair competition review system (Interim)*. (*The detailed rules Interim*). In 2019, the State Administration of Market Supervision issued the announcement of *the State Administration of market supervision on Issuing the implementation*

*guidelines for third-party evaluation of fair competition review and the opinions of the State Council on creating a better development environment and supporting the reform and development of private enterprises* strengthen the rigid constraints of the fair competition review system, continue to clean up and abolish various regulations and practices that hinder the unified market and fair competition, and accelerate the cleaning up of regulations and practices related to the nature of enterprises, such as industry access, qualification standards and industrial subsidies", which strengthened the enforceability of the FCR at the institutional level. In 2021, the five ministries and commissions jointly issued *the detailed rules for the implementation of the fair competition review system(the detailed rules)*<sup>18</sup>, which makes the fair review system more operable, marks the formation of China's FCR.

To sum up, fair competition review which is an anti-monopoly administrative mechanism developed in Chinese central government. The administrative agencies through policy making organizations to review whether the regulations and policy measures are involved in market entry, industrial development, foreign investment, attraction, bidding and bidding, government procurement and business code of conduct, fall into one of four sponsored categories.<sup>19</sup>

Fair competition review is a kind of "self-regulation" conduct of the Chinese government on administrative power. The "self-regulation" studied by scholars mainly focuses on the control of discretion in administration and the internal control of administrative agencies. Magill 's paper puts forward a new angle, and holds that the previous research focuses on the restriction of the discretion of the administrative organ and ignores the self-regulation of the administrative agency.<sup>20</sup>The author analyzes the boundary and purpose of the self-regulation of the administrative organ, which is different from the traditional "ultra vires - control" through the judicial power of administrative law Different from the external control theory, administrative self-regulation is an internal control, including self-limitation and self-correction. However, why are administrative organs willing to regulate

the exercise of their own power, and what is the driving force? Focus on China's national conditions, Shen Kui believed that the dynamics of this regulation mainly comes from four aspects: 1. Demand for rational legal authority; 2. Soil for ideas of democracy and the rule of law; 3. Pressure of democratic legislation; 4. Structure of bureau.<sup>14</sup> Indeed, he also believes that without enough time and supervision resources, the State Council, as the main driving force of administrative self-regulation, has limited achievements due to the huge number of the subordinate administrative organs.<sup>14</sup> But observing the power operation mode in China, the central government formulates the implementation plan and detailed rules, which not only responds to the requirements of ruling legitimacy, but also reflects the characteristics of bureaucratic structure.

At present, China's FCR is realized by formulating rules and regulations, and correcting the *ultra vires* and improper contents in the normative documents (*Guifanxing Wenjian*) formulated by administrative agencies by specifying specific procedures and steps. However, the establishment of FCR itself also needs legitimacy. In China's legal system, the exercise of administrative power must have the Constitution and laws authorization, and self-regulation of administrative power also need to follow this principle.

## CONSTITUTIONAL AND LEGAL BASIS OF FAIR REVIEW SYSTEM

China's legal system which the sources consist of the constitution, laws, administrative regulations, government rules and local rules and regulations.<sup>21</sup> The Constitution and laws are the basis for the establishment of the fair competition review system. The interpretation method of the Constitution and legal provisions should dominantly adopt the literal approach, so as to obtain the legislator's real ideas and apply the law by understanding the meaning of the clauses.

### The Constitution of PRC

*The Constitution* of PRC stipulates China's basic economic system. *Article 15 of the Constitution* stipulates: "the State implements a socialist market economy."The constitution is China's fundamental

law and supremacy where the laws and regulations cannot conflict with the constitution. The core of the market economy is to ensure that market subjects participate in market competition equally. The connotation of fair competition is reflected in the market economy in paragraph 1 institutional provisions. However, it needs to be implemented through the macro-control provisions in paragraph 2 and the market regulation provisions in paragraph 3. Paragraph 2 of Article 15 is the macro-control clause. Paragraph 3 set up the principle of prohibiting disturbing the order of the market economy was established. Paragraph 1 of this article is the purpose, and paragraphs 2 and 3 are the means to achieve the purpose of paragraph 1. In general, it is the most powerful ways to protect the market economy through legislation. At the same time, it directly excludes the main bodies, including administrative agencies, from interfering and disturbing the market economy through prohibitive provisions.

### Legislation Law

Articles 96 and 97 of the legislative law provide for the handling of inappropriate departmental and local regulations, which are divided into central and provinces levels. At the central level, the State Council has the right to change or revoke the departmental rules formulated by its departments and the rules formulated by local governments. The government at the provincial level has the right to change or revoke inappropriate regulations drew by the government at the lower rank. This clause gives the administrative organ the right to review departmental and local government regulations. In combination with *constitution of article 15* when departmental and local government regulations (*Guizhang*) cause unfair competition for the activities of market subjects, the normative document (*Guifanxing Wenjian*) conflicts with the constitution, it may be changed or revoked in accordance with the provisions and procedures of the legislative law.

### Administrative License Law

The administrative license law clearly stipulates three kinds of matters without administrative license: the parties can decide independently;

Market competition mechanism can adjust itself; Industry organizations can manage themselves. If the administrative agency can solve the problem by other administrative management methods such as post supervision, it has made strict restrictions on the legal level of setting administrative license only laws, administrative regulations (*Guizhang*) and local regulations (*Guizhang*) can set administrative license, and if the upper law does not set administrative license, the lower law shall not add license. The establishment of an administrative license must go through a hearing and demonstration, listen to opinions, and explain the necessity of the establishment of the administrative license and the possible impact on the economy and society. (*Article 19 of administrative licensed law*)

### Anti-Unfair Competition Law & Anti-monopoly Law

The anti-unfair competition law first clarified the principle that the government shall not abuse executive power and limit competition. Article 7 of the law prohibits the government and its subordinate departments from abusing administrative power, designate buying and typing, exclusive distribution etc.

Chapter V of the *Anti-monopoly Law* specifically establishes a chapter on "abusing administrative power to exclude and restrict competition". Article 37 of the *Anti-monopoly Law* provides that administrative agency shall not abuse executive power to excluding and limiting competition. Article 51 Of the *Anti-monopoly Law* provides that agencies with public management functions authorized by law and regulations abuses its power to eliminate or restrict competition, the higher authorities shall order it to make corrections. The *Anti-monopoly Law* enforcement agency may put forward suggestions to the relevant higher authorities to deal with it according to law.

### CHARACTERISTICS OF FAIR COMPETITION REVIEW SYSTEM

In 2021, *the detailed rules* was jointly issued by the China's five ministry and ministries and commissions<sup>18</sup> and it was repealed *the detailed rules Interimin* 2017. According to the Constitution and laws which discussed above, *the detailed rules*

mainly aim to build a review mechanism in the following aspects:

### The review objects and methods

*The detailed rules* systematically include all government actions affecting fair competition in the market into the scope of review for the first time, and make the review procedural. Whether the policies and measures related to the economic activities of market subjects affect the specific administrative acts and abstract administrative acts of fair competition. In addition to the specific policy measures in the form of "one case, one discussion" of specific administrative acts, it also includes abstract administrative act especially the government regulations and normative documents (*Guifanxing Wenjia*) related to the economic activities of market subjects, such as market access and exit, industrial development, investment attraction, bidding, government procurement, business behavior norms and qualification standards. (*The detailed rules, article 2*) Administrative regulations, rules of the State Council and provincial regulations other specific regulations shall also be reviewed by their drafting department during the drafting process. *The detailed rules* establish a mechanism of "who formulates, who reviews". The formulation of the provisions mainly involves three aspects. Firstly, it avoids the provisions on the authority of *the detailed rules* as rules to review administrative regulations, provincial regulations, specific regulations and other laws. As an active self-regulation conduct of the drafting department, it avoids the provisions on the legal status of *the legislative law*, and it does not violate the theory of legal hierarchy. Secondly, China has a large number of regulations, policy documents and even specific policy measures, which cannot be realized through the mode of external review, thus greatly affecting administrative efficiency. Thirdly, specific administrative departments or local administrative agencies have a better understanding of the background of formulating a specific normative document (*Guifanxing Wenjian*) and policy. Their self-examination can have better results, and determine the responsibility of the subject of self-examination, so as to have better results in

management.

### Establish substantive review criteria and exception rules

The second major change in *the detailed rules* establishes the substantive review standard. By setting quantitative indicators, the substantive review is divided into five aspects: market access and exit criteria, free flow standards of commodities and elements, standards affecting production and operation costs, and standards affecting production and operation behavior. It is clear that there is no basis for laws, administrative regulations or provisions of the State Council, unequal market access and exit conditions shall be set, and preferential policies shall not be given to specific operators in violation of the laws. A total of 18 specific indicators shall be refined. The review subject shall check one by one against 18 standards, check "yes or no", and judge the legitimacy and proportionality of the review object through quantitative analysis.<sup>18</sup> (*The detail rules, article 13-15*)

At the same time, *the detailed rules* may introduce and implement policies and measures that restrict competition to a certain extent but can bring greater benefits under specific circumstances and conditions, but they must meet three conditions. The first purpose is legitimate: maintaining national economic security, cultural security, scientific and technological security or involving national defense construction; To achieve social security purposes like poverty alleviation and development and disaster relief; To realize social and public interests such as saving energy and resources, protecting ecological environment and maintaining public health, health and safety; Other circumstances stipulated by laws and administrative regulations. Second, the implementation is necessary and indispensable to the realization of policy objectives, that is, to achieve policy objectives, competition must be restricted to a certain extent. Third, the means meet the proportion and will not seriously exclude or restrict market competition. Adopt the scheme with the least damage to competition and have time to implement it.<sup>18</sup> (*The detail rules, Article 17-19*)

### **Strengthen supervision and explicit legal responsibilities**

*The detailed rules* have established a number of mechanisms to enhance the institutional rigidity of regulations. First, strengthen the functions and roles of inter-ministerial joint meetings, local governments at all levels and joint meetings, make it clear that in principle, the leaders of the governments at the corresponding level shall act as the convener of local joint meetings at all levels, establish a joint review mechanism for major measures, and put into great play to the government's functions of information collection, coordination and decision-making.<sup>18</sup> (*The detailed rules, Article 10-12*)

*The detailed rules* provide for the third-party evaluation of fair competition review in the form of a special chapter, which is well connected with the implementation guide for the third-party evaluation of fair competition review issued in 2019. Clarify the stages and links of introducing third-party evaluation, refine the specific circumstances of giving priority to introducing third-party evaluation, and make provisions on the application of third-party evaluation results and fund guarantee.<sup>18</sup> (*The detail rules, Article 20-24*)

*The detailed rules* also further improve the rule mechanism and strengthen supervision and guarantee. It has created the reporting and accountability mechanism, increased reporting channels, clarified the accountability of violations of review standards, and made a good connection with the handling of the breach of the *Anti-monopoly Law*, and, establish a regular spot check mechanism for policies and measures, and clarify the organization, content and results of spot check. Strengthen the review and assessment. *The detailed rules* can be better implemented through this mechanism of fair competition and improve the authority and efficiency of the system.<sup>18</sup> (*The detail rules, Article 25-29*)

### **APPLICATION OF FAIR COMPETITION REVIEW IN TOBACCO MONOPOLY**

The China Tobacco Monopoly Bureau obtains the market monopoly status in conformity with the *tobacco monopoly law*. Meanwhile, *Article 7 of the anti-monopoly law* protects legitimate business

activities of the monopoly industries operated according to law. In other words, China Tobacco Monopoly Bureau is also the business entity of the tobacco market. When the tobacco monopoly bureau is the business entity of the tobacco market, if it carries out nonexclusive activities, the *anti-monopoly law* shall apply. At the level of national monopoly, the State Tobacco Monopoly Bureau is the maker of macro plans for production and sales. As the policy maker, it has a low chance of violating *the anti-monopoly law*. However, because the administrative agency of the monopoly bureau is also the monopoly enterprise of Tobacco industry, it is possible for the provincial, municipal and county-level tobacco monopoly bureaus to implement specific production and sales plans based on local protectionism. Through the formulation of normative documents (*Guifanxing Wenjian*) or the implementation of specific administrative acts, it leads to the violation of the provisions of the *anti-monopoly law*.

In addition to the possible direct abuse of executive power by tobacco companies to eliminate competition, *Article 17 of the anti-monopoly Law* lists the situations of abuse of market ascendancy, and its core is to prohibit the main body with market dominant position from destroying the market order without justified reasons. Therefore, whether there are "legitimate reasons" is the key to determine whether the Tobacco Monopoly Bureau abuses its market dominant position. According to the administrative sanction cases<sup>22,23,24</sup> of abuse of market dominance by three local tobacco monopoly bureaus published by the China market supervision administration, the three local tobacco monopoly bureaus violated were mainly related to tying arrangement and unfair quota distribution for tobacco products, in violation of the abuse of market dominance listed in *Article 17 of the anti-monopoly law*. From the result of punishment, the monopoly behavior implemented by the tobacco monopoly bureau according to law is not the object regulated by the *anti-monopoly law*, but its behavior of participating in market activities is applicable to *the anti-monopoly law* without justified reasons. As the legal basis for the formulation of the detailed rules, the principles of the *anti-monopoly law* are also applicable to *the detailed rules*. Therefore, *Article 2 of the detailed*

*rules* stipulates those public authorities shall conduct the FCR, assess the influences on market competition, and prevent the excluding and restricting of the competition. It is necessary to distinguish the monopoly behavior and non-monopoly behavior of the Tobacco Monopoly Bureau, which should be applied to the non-monopoly behavior.

## CONCLUSION

To conclude, the FCR is objectively the self-discipline of China's administrative departments. From the power source of its operation, it mainly comes from the self-reform of administrative organs and the determination to pursue the unity of legal system. Through the establishment of administrative bureaucracy, it has formulated "rules in rules" to maintain the consistency of central government behavior and decision-making. By quantifying the detailed rules, it objectively restricts administrative organs, especially local administrative organs, from formulating and implementing policies contrary to the central government. Therefore, at present, the system more reflects the supervision of local administrative organs, so as to reduce local protectionism and realize that the policies of the central government can be implemented nationwide. The central government still needs full coverage of government departments to ensure that policies are reviewed. These measures should also be applied in the field of tobacco monopoly. Through the distinction between tobacco monopoly and non-monopoly, it could realize the restriction of non-statutory monopoly in tobacco monopoly and reduce the possibility of abuse of market dominant position by local tobacco administrative departments. After this mechanism has been effectively operated for a period of time, the legislative department should also, by establishing a clear exemption exception for tobacco monopoly administrative agencies, it will be included in the regulation of the *anti-monopoly law*.

## Author Declaration

This research is not funded by any organization related to tobacco production.

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18 The five ministries and Commission are: the market supervision administration, the national reform and Development Commission, the Ministry of finance, the Ministry of Commerce and the Ministry of justice.

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