

Research on the Legal Mechanism of Equal Protection of Private Economy under the Principle of Competitive Neutrality

Yiwei Li

Gansu University of Political Science and Law, Lanzhou 730000, Gansu, China

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Abstract: Currently, the private economy is facing institutional difficulties in market access, financing channels, judicial enforcement, and other aspects, which stem from the legal contradictions and structural imbalances between public interests and private interests. The promulgation of laws and regulations such as the “Regulations on Fair Competition Review” and the “Law on the Promotion of Private Economy” has provided an institutional basis for the localized implementation of the principle of competition neutrality. However, there are still many implementation difficulties in practice. We should construct a multi-level regulatory system led by the “Regulations on Fair Competition Review” at the legislative level, establish a dynamically updated negative list and an effective complaint feedback mechanism at the administrative implementation level, improve the relief procedures at the judicial level, and explore the mode of handling commercial cases in different regions. Only by achieving institutional transformation from formal equality to substantive fairness can we build a legal environment for the healthy development of the private economy.

Keywords: Competitive neutrality principle; Private sector economy; Equal protection; Market economy

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1. Introduction

With the maturity of the market economy, the private economy has become a key force in the national economy, playing a prominent role in promoting growth, expanding employment, and stimulating innovation. However, in reality, it still faces institutional barriers and differentiated treatment, and its development potential has not been fully unleashed. The principle of competitive neutrality provides important theoretical perspectives and institutional resources in explaining and addressing the differentiation challenges of the private economy

[1,2]

2. The origin of a competitive neutral system and the normative dilemma of equal protection for the private economy

2.1. Competitive neutral international origins and value orientation

The essence of the principle of competitive neutrality lies in eliminating competition distortions caused by property rights attributes, and striving for similar starting points between state-owned enterprises and private enterprises in areas such as taxation, financing, regulation, and procurement. This principle was first proposed by Australia in the 1990s. In 1996, the Federal Neutrality Policy Statement explicitly stated that government commercial activities should not enjoy advantages that private enterprises cannot obtain due to their official status, and should be accompanied by indicators such as corporate restructuring, tax and credit neutrality, and regulatory neutrality. In 2012, the OECD further summarized eight standard dimensions, covering business form, cost recognition, rate of return, tax and regulatory neutrality, etc. The EU has also strengthened the financial disclosure of state-owned enterprises through the Transparency Directive. In 2017, China introduced the concept of “competitive neutrality” for the first time in the “13th Five-Year Plan” for market supervision. Article 12 of the “Regulations on Optimizing the Business Environment” reflects the concept of equal application of policies, and local authorities such as Zhejiang’s “mixed ownership matching platform” are also attempting to implement it.

2.2. Normative expressions in the Constitution and Market Regulation Law

The socialist market economy established in Article 15 of the Constitution provides fundamental legal support for competitive neutrality. The fair competition review system established in Article 5 of the Anti-Monopoly Law has become a core tool for regulating administrative monopolies and maintaining fair competition. The “Opinions on Accelerating the Construction of a Unified National Market” in 2022 will elevate it to a national strategy, requiring the establishment of a dual-track model of “internal audit + external supervision” and expanding the scope of review. The Law on the Promotion of Private Economy was passed in April 2025, which for the first time confirmed the “two unwavering” principles in legislative form, with a special chapter on fair competition and investment and financing promotion, becoming the fundamental law for the private economy^[3].

2.3. Legal coordination of equal protection of public and private property rights

Article 206 of the Civil Code establishes equal rights, equal opportunities, and equal rules, while Article 8 of the Enterprise State-Owned Assets Law focuses on the preservation and appreciation of state-owned assets. The two have different orientations and need to be bridged through legal interpretation techniques, such as purposefully expanding the interpretation of state-owned property regulations and strengthening judicial protection for private enterprises. Some argue that the review of legality and reasonableness should progress to constitutional review to enhance the effectiveness of the fair competition review system. The practice of clearing discriminatory documents in Qianhai, Shenzhen is a beneficial exploration.

3. The implementation dilemma of legal protection for the private economy

To implement competition neutrality and safeguard the rights and interests of private enterprises, it is necessary to address the deficiencies in the operation of legislation, administration, and the judiciary. At present, in legal form, private enterprises and the public-ownership economy have equal status, but in actual operation, the difficulties in access, financing, supervision, and judicial processes are intertwined, constituting a de facto

institutional bias.

3.1. Institutional barriers to market access

The reform of “streamlining administration, delegating powers, and improving services” continues to advance, and the negative list items in the 2025 version have been reduced to 106. But there are still difficulties in entering the market in reality. According to data from the Ministry of Finance in 2025, the average proportion of private capital in 28 key areas is less than 35%, and even less than 12% in industries such as oil and power supply. This shows that nominal openness and substantive restrictions coexist: firstly, the qualification threshold is implicitly raised. For example, in PPP projects, most private enterprises are excluded based on past large performance as the standard. Secondly, there are significant differences in approval cycles, with private enterprises taking an average of about 40–60% longer than state-owned enterprises and requiring more frequent supplementary materials, such as a typical case of a courier company suing the post office; Thirdly, the industrial policy still leans towards certain provinces, such as maintaining the exclusive wholesale pattern of state-owned enterprises after the salt reform; Fourthly, the bidding system includes ownership and sub-items. According to data from 2025, the independent winning rate of private enterprises for key projects exceeding 50 million yuan is only 17.3%.

3.2. Differentiated treatment of financing mechanisms

The difficulty and high cost of financing have long plagued private enterprises, reflecting structural deviations in the allocation of financial resources. The 2025 central bank report shows that the loan interest rates for private enterprises are 2.1 percentage points higher than those for state-owned enterprises, and the credit loan ratio is only 48% of that for state-owned enterprises. In practice, the cost of bank loans for private enterprises is nearly 2 percentage points higher than that for foreign enterprises, and bond and equity financing is also about 1 percentage point higher. In terms of government subsidies, the median subsidy for A-share central enterprises in 2017 was about 20 million yuan, for local state-owned enterprises it was about 16 million yuan, and for private enterprises it was less than 10 million yuan. Since then, the gap has not significantly narrowed. In 2024, research showed that under the same conditions, the probability of state-owned enterprises receiving subsidies is still about 30% higher than that of private enterprises. In terms of guarantee requirements, state-owned enterprises usually obtain credit loans, while private enterprises require property mortgages or third-party guarantees; In risk pricing, banks tend to view private enterprises as high-risk with additional implicit costs. The typical case of the Supreme People’s Court in 2025 explicitly denies financing fees that indirectly increase burdens. However, as of the end of June 2025, although the balance of private enterprise loans reached 70.9 trillion yuan, some enterprises still face prominent financing difficulties.

3.3. Selective differences in regulatory enforcement

The ownership differences in law enforcement are quite prominent. In terms of inspection frequency, the 2024 market supervision data shows that the average annual inspection frequency of private enterprises is 2.3 times that of state-owned enterprises. In terms of punishment standards, state-owned enterprises are more likely to receive “no punishment for the first violation” or alternative punishment for rectification in similar illegal situations, while private enterprises are often directly fined or even shut down. According to data from a chemical enterprise in a northern province, the average fine for private enterprises is 35% higher when

the degree of exceeding the standard is similar. In the field of anti-monopoly, there is a contrast between fines imposed on private and foreign enterprises and interviews and rectification of state-owned enterprises. Although the new law introduced the interview system in 2022, there is still a gap in the actual effectiveness between state-owned and private enterprises. In the credit repair process, state-owned enterprises rely on their coordination advantages to repair quickly, while private enterprises have cumbersome procedures and longer cycles. In discretionary decision-making, the good credit record of state-owned enterprises is often considered, which affects the severity of punishment. In 2025, the State Administration for Market Regulation will introduce 37 measures, but the actual effects still need to be observed. The Law on the Promotion of Private Economy explicitly prohibits illegal fees and levies, and requires hierarchical and classified supervision, providing a basis for standardized law enforcement.

3.4. Structural obstacles to judicial relief

Private enterprises also face structural problems in judicial remedies, which make it difficult for them to obtain effective protection after suffering from differential treatment. Firstly, the allocation of the burden of proof is unreasonable. In anti-monopoly or administrative monopoly litigation, private enterprises find it difficult to obtain internal documents from the defendant, and according to the principle of “whoever asserts, who provides evidence,” they often lose due to insufficient evidence. Secondly, litigation costs are high, and the cycle is long. Administrative or antitrust litigation often takes several years, and even if successful, the loss of market opportunities and commercial interests is difficult to make up for. Once again, cross-regional judicial protectionism has led to the phenomenon of “subject and object,” where local courts may favor local state-owned enterprises in jurisdiction, preservation, and trial. Finally, the problem of difficulty in enforcement is prominent, and successful judgments often fall through due to passive cooperation from local governments or concealment of state-owned enterprise assets, weakening the confidence of private enterprises in protecting their rights through judicial means. The four dilemmas of access, financing, law enforcement, and justice are interrelated and constitute systemic constraints. To solve the dilemma, it is necessary to reconstruct the system at the three levels of legislation, law enforcement, and the judiciary, and establish a mechanism for equal protection throughout the entire process.

4. The systematic reconstruction path of legal mechanisms

We should establish a full chain approach of “source prevention process control post remedy,” reshape the system in the fields of legislation, law enforcement, and judiciary, and transform the principle of competitive neutrality from a declaration of principles to an operable, supervised, and accountable mechanism.

4.1. Legislative level: Building a three-level normative system

Firstly, implement the Regulations on Fair Competition Review and improve procedural safeguards. The regulation has been implemented since August 2024, and the next step should be to ensure strict implementation and incorporate it into the assessment of the rule-of-law government and business environment. An intelligent evaluation platform can be explored to achieve the principles of “necessary items, necessary preparations for review, and necessary corrections for mistakes.” Secondly, revise the Anti-Unfair Competition Law, add a special provision prohibiting discrimination based on ownership, incorporate differentiated admission, procurement, and financing standards into regulations, and introduce punitive damages and cross-departmental

joint punishment mechanisms for dishonesty. Thirdly, promote the construction of supporting systems for the Private Economy Promotion Law. The law has come into effect in May 2025, and we should accelerate the formulation of supporting regulations, establish a rigid supervision and evaluation mechanism, and require governments at or above the county level to release an annual “Evaluation Report on the Development Environment of the Private Economy,” introduce third-party evaluations, incorporate indicators such as fair competition review, negative list implementation, complaint resolution rate, and case review cycle, and provide accompanying talks and disciplinary measures to refine equal protection into quantifiable and assessable institutional norms.

4.2. Enforcement level: Establishing a dynamic adjustment mechanism for negative lists

Firstly, deepen the management of negative lists and improve the mechanism for responding to hidden barriers and complaints. Strictly implement the 2025 version of the list, establish a complaint and report response platform based on the national integrated government platform, implement unified acceptance, classified transfer, time-limited completion, full traceability, and accountability, and publicly report typical cases. Secondly, promote regulatory standardization and transparency improvement. Implement the digital upgrade of “double random, one public” to ensure that the entire inspection process is traceable and tamper-proof, substantially reduce the frequency of spot checks for private enterprises with good credit, focus on supervising high-risk enterprises in accordance with the law, and promote cross-departmental joint inspections to reduce duplicate law enforcement. Thirdly, establish a dynamic adjustment mechanism for the inventory list. Implement “annual comprehensive evaluation + real-time dynamic adjustment,” independently evaluated by third-party institutions, and the results serve as the basis for revision; For the restrictive measures that need to be retained, the formulating authority is required to submit a necessity demonstration and accept inquiries every year. In 2025, the National Development and Reform Commission will explicitly encourage private equity participation in fields such as railways and nuclear power, with the shareholding ratio exceeding 10%. This quantitative approach is worth promoting. Fourthly, strengthen the neutral supervision of government procurement and bidding. Establish a fair competition review system for bidding documents, focusing on examining differences in ownership, local protection, and unreasonable performance thresholds, promoting the popularization of electronic bidding, and reducing human intervention.

4.3. Judicial level: Improving the procedures for property rights protection and relief

Firstly, establish a special procedure for neutral disputes in competition. In cases involving differences in ownership, the reasonable allocation of the burden of proof can be based on the reversal of the burden of proof or third-party professional opinions as a reference. Simultaneously establish preventive remedies and allow for judicial intervention to be applied for before harm occurs. Secondly, establish a cross-regional specialized commercial court system. Establish provincial-level “private enterprise courts” and cross-provincial “regional economic courts” in stages, and explore the establishment of a “national competition court” at the highest legal level to unify legal application standards. Thirdly, improve the supporting system for judicial relief. For those who intentionally engage in ownership differences and cause losses, compensation shall be awarded in accordance with the law, and for serious cases, compensation may be increased; Establish a special enforcement guarantee mechanism to address difficulties in enforcement, and impose fines, inclusion in the dishonesty list, and consumption restrictions on local governments or state-owned enterprises that refuse to comply. Judicial

recommendations can also be issued to supervisory authorities; Establish a system of advance execution, and for administrative restrictions that are clearly illegal and may cause irreparable losses, the court may rule to suspend execution before final appeal. Fourth, promote the application of public interest litigation mechanisms. Given that ownership differentiation harms the interests of an unspecified majority of private enterprises, it is recommended that the procuratorate or the Federation of Industry and Commerce file public interest lawsuits against universal and sustained differentiation policies to reduce individual rights protection costs and create pressure. The Standing Committee of the National People's Congress may revise laws or make legislative interpretations in a timely manner, incorporating ownership differentiation into the scope of public interest litigation and opening up new paths for equal protection.

5. Conclusion

The principle of competitive neutrality is an important institutional guarantee for promoting the development of the private economy and advancing equal protection. The promulgation of the “Regulations on Fair Competition Review” and the “Law on the Promotion of Private Economy” marks important progress, but difficulties such as hidden barriers to entry, misallocation of financial resources, and selective enforcement still exist, rooted in the different emphasis on protecting public and private property rights. In the future, we should adhere to problem-oriented and systematic thinking, and promote coordinated efforts from the three levels of legislation, law enforcement, and judiciary: strict fair competition review, refinement of equal protection norms; Deepen the management of negative lists and promote regulatory transparency; Reform the rules of evidence presentation, establish a cross-regional trial mechanism, and improve enforcement and public interest litigation. Only by establishing a comprehensive legal guarantee system before, during, and after the event can we achieve fair competition among various entities and safeguard the high-quality development of the private economy.

Disclosure statement

The author declares no conflict of interest.

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