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商品交易市场发展及 相关监管制度建设问题研究

王雪峰 等著

RESEARCH ON COMMODITY TRADING MARKET DEVELOPMENT
AND REGULATORY SYSTEM CONSTRUCTION

中国社会科学出版社

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摘要：经过 30 多年的建设和发展，我国商品交易市场已经形成了横向多元化、纵向多层次的立体式市场体系；与此同时，市场也已经由计划经济的补充地位和拾遗补缺功能提升到了主导地位和对资源配置起决定性作用的功能。特别是十八大以来，市场及商品交易市场受到政府决策部门的高度重视。在此背景下，受国家工商行政管理总局市场司的委托，中国社会科学院财经战略研究院课题组对《商品交易市场发展及相关监管制度建设问题》进行研究。在经过课题组多次激烈研讨和对全国十多个省市深入调研的基础上形成了本报告，报告主要内容及核心观点如下：

一是通过对市场基本概念的梳理，提出了市场的本质就是基于一定的场所或空间载体，由多主体为了交易进行聚集而形成的复合型经济组织形式。在理清市场概念的基础上，进一步梳理当前我国不同国家部门及地方政府对商品交易市场概念的理解及应用的混乱现状，进而提出商品交易市场由举办主体提供场所或平台载体和管理服务，经营主体和消费主体在场所或平台载体聚集、在遵守举办方的管理规则和享受其提供的服务的基础上，进行合法、自主交易的复合型经济组织形式。这样，为

市场各主体权责边界划分及政府监管奠定了理论及组织主体基础。

二是对我国商品交易市场的发展演进做了梳理，将我国商品交易市场的发展划分为，即无市场、集贸市场恢复、商品市场起步、商品市场分化、商品市场规范提升、商品市场结构调整和商品市场转型创新七个阶段。在掌握我国商品交易市场发展现状的基础上，提炼出其呈现的六大特点及五大趋势。六大特点分别是市场数量众多、多层次共存，投资运营主体多元、注册登记意愿不强，消费品市场比重大、综合市场占比高，东多西少、东强西弱，管理理念转变、服务规范提升，信息技术广泛应用、线下和线上融合发展。五大趋势分别是市场发展稳健、专业化趋势明显，市场规模化和高效化，市场综合功能提升强化，市场与产业相互促进、产业链竞争力提升，信息化进程加快、实体和网络市场融合。

三是在大量访谈、调研的基础上，从监管、市场举办主体及商户经营三个层面分别提炼出我国商品交易市场存在的问题。在监管层面，存在市场概念不清、属性不明，权力干预、规划无效，开办无标准、经营无资质，市场遍地开花、无证经营严重，法律地位不明、主体责

任不清，地方保护盛行、政企关系不顺，多头管理、推诿扯皮，配套服务不足、外迁压力大，国际商贸巨头竞争、新兴业态冲击，区域差异大、水平参差不起，以及中间组织涣散、行业自律不强等十一个主要问题。在举办方管理层面，存在产权混乱、统一管理困难，守法意识淡薄、履责意愿弱，管理能力不足、配套设施滞后，品牌意识不强、产业支撑不强，不掌握消费趋势、信息技术应用能力低五个主要问题。在商户经营层面，存在融资难、融资贵，经营规模小、抗风险能力低，新老交替困难、持续经营陷入困境，诚信水平不高、缺乏行业自律这四大问题。

四是通过对接监管、行政监管、工商行政监管的基本概念的梳理，明确了工商行政监管的五大职能，即市场主体准入与监管、市场秩序维护、市场维权、市场培育规范和市场服务。然后，依据工商部门在不同阶段履行的主要职责，将我国工商建制恢复后的职能依次分为五个阶段，即集贸市场培育、市场培育与建设管理，市场建设与管理拓展，管办脱钩与规范监管，规范监管与长效机制探索阶段。然后，依据国务院新“三定”方案，在掌握和梳理工商行政管理六大职能（市场规则制定、

市场主体准入与监管、市场秩序维护、市场维权、市场服务及市场主体培育)的基础上,通过进一步分析指出,工商行政管理是我国特有的行政监管形式,它除了具有一般行政监管的“权力法定”、“机构独立”、“自由裁量”、“法律控制”、“维护公利”外,还具有体现我国特色的行政管理性、职能综合性、监管复杂性、执法权威性、任务多重性的市场监管特点。

五是在客观认识工商行政管理部门在培育市场、规范市场和维护市场秩序方面做出了历史性贡献的基础上,指出当前工商部门在履行市场监管职能时面临的十大问题,即市场概念不清、主体职责不明,立规建制能力不足、法律法规滞后,市场准入弱化、举办主体职责缺失,职能交叉、协调不畅、无照经营查处难,执法环境差、依法监管难,执法权力弱化、执法手段落后,队伍内人才匮乏、业务能力偏低,监管任务重、监管力量不足,经费不足、履责困难,职能错位、本末倒置。基于此,提出我国工商监管调整六大方向和趋势,即完善法规、依法监管,市场约束、信用监管,多方参与、社会监管,搭建信息平台、推进信息化监管,统一市场、联合监管,正面引导、激励监管。

六是分析了我国市场监管面临的强调“市场在资源配置中的决定性作用”和“全面推进依法治国”的政治新形势；市场发展呈立体化、主体复杂化、技术支撑信息化、线上线下融合化的市场新形势；以及工商监管面临简政放权、统一监管，完善规则、依法监管，信息公示、市场自律，信息技术应用、网络化监管，部门联合、综合监管新形势。在此基础上，对工商市场监管提出了十二条建议，即明确概念、主体分类，分类监管、突出重点，完善法规、厘清边界，废除《办法》、依法履责，转变观念、创新监管，细化准入、执照监管，信用激励、市场自律，改善信用分类、增强市场激励，统一平台、一体化监管，培育中介、行业自律，成立市场协会、促进行业自律，强化政府责任、约束政府权力。

Abstract: After more than 30 years' construction and development, Chinese commodity trading market has already formed horizontal diversification and vertical multi-level market system. At the same time, the market function has diverged from supplement of planned economy to the dominant position which is decisive in resource management. Especially since the 18th CPC National Congress, the government department lays great emphasis on market and commodity trading market. Under such circumstance, by the commission of market division from State Administration for Industry and Commerce, the research group from National Academy of Economic Strategy of CASS conducted study on commodity trading market development and regulatory system construction. On the basis of intense discussion and the research on more than 10 provinces, the research group presents this report. The main contents and core views are as follows.

Firstly, through the analysis on basic market concept, it puts forward that the nature of market is compound economic organization on which various agents gather at a certain place and space carrier for the transaction. On the basis of clarifying

the concept of the market, the paper further sorts out the current situation of the confusion and misunderstanding of the concept of commodity trading market in different national departments and local governments. Then it proposes that the hosting entity and consuming entity gather at platform in order to transaction legally and freely on the basis of following management rules regulated by hosting entity and enjoying services it provided. In this way, it provides the theoretical and organizational main foundations for the main market entities on the market division of powers and responsibilities and government regulations.

Secondly, after working on the development of Chinese commodity trading market, the paper divides the development of commodity trading market into 7 stages: market default, the resumption of market trading, start-up of commodity market, commodity market differentiation, the improvement of commodity market regulation, structural reform of commodity market and commodity market transformation and innovation. After mastering status quo of commodity trading market, the paper concludes six major characteristics and five main trends.

Six major characteristics are the large scale of markets, multi-level coexistence, diversified investment entities, weak desire for registration, large market share of consumer goods, the popularity of integrated market, east more and west less, east stronger and west weaker, improvement of service standardization, diversion of management thinking, the large-scale application of information technology, the integration of online and offline commerce. The main five trends include: stable development of market, clear trends of specialization, large scale and high efficiency of market, intensification of market integrated functions, mutual promotion of market and industry, enhancement of industrial chains, acceleration of information technology, integration of online market and entities.

Thirdly, on the basis of a large number of interviews and surveys, the report concludes existing problems of our commodity trading market from three different aspects concerning regulation, main entities of market and the running of business. In the regulatory level, there exist 11 problems in terms of misunderstanding of market concept, unknown property, interference of power, inefficiency of regulation, lack of stand-

ards in running business, unqualified management, ambient market, running with no license, vagueness of legal status, unclear responsibility of major entities, prevalence of local protection, unsmooth relationship between government and enterprises, management of diverse divisions, buck-passing, lack of supporting services, relocation pressure, competition of international business giants, challenge of new industries, regional divergence, different level of development, lax middle organization and weak self-discipline industry. As to the management of hosting entities, there are five main loopholes which are property confusion, difficulty of unified management, weak awareness of law enforcement, lack of the sense of responsibility, lag of equipped facilities, weak brand awareness, lack of powerful industry support, ambiguous consuming trends, less capable application of information technology. For the entities who run business, there are four issues concerned. They are difficulty on financing, high cost of financing, small scale of business, weakness of resisting risks, difficulties in replacement between young and old, trouble of continuous operation, low level of probity and lack of self-discipline.

Fourthly, through the study of the basic concepts of supervision, administrative supervision, industrial and commercial administrative regulation, the paper clearly illustrates five major functions about commercial and administrative supervision with regard to the entrance of major market entities, protection of market orders, market right protection, Market cultivation norms and market services. Then, it divides responsibilities of industrial and commercial department after its establishment into 5 phases according to the main duties of commercial department at different stages. The five stages are all about market cultivation, construction management, market construction and management development, decoupling of administration and execution, regulatory supervision and long-term mechanism exploration. What's more, in line with "Three New Regulation" made by the State Council, the paper further notes that industrial and commercial administrative management is the special pattern of our country's administrative supervision after mastering and analyzing six major functions of industrial and commercial administrative management (draft of market regulation, the entrance and supervision of

market entities, protection of market order, market protection, market services, cultivation of market entities). The management not only possesses the characters like rights bound by law, independence of department, administrative discretion, regulation by law, protection of collective properties, but also embodies Chinese style administrative and integrated management, complicated supervision, authority of law enforcement and multiplicities of task.

Fifthly, after subjectively recognizing historical contribution made by industrial and commercial administrative management department on issues like market cultivation and regulation and protection of market order. It is pointed out that current industrial and commercial departments are facing ten problems in the market supervision function, namely, unclear market concept, vagueness of entities' responsibilities, lack of ability in establishing rules and regulations, lag of laws and regulations, weakness of market access, ambiguous duties of hosting entities, unclear responsibilities, poor coordination, hard investigation on unlicensed operation, poor environment of law enforcement, difficulty in legal supervision, weakening

of legal rights, backward law enforcement, shortage of talents within the team, low operational capacity, heavy burden of supervision, short of forces in supervision, shortage of fund, difficulty in responsibility fulfillment, dislocation of duties and taking the branch for the root. On the basis of them, the paper puts forward six directions and trends in adjustment of industrial and commercial supervision which include perfecting laws and regulations, supervising in accordance with law, constraining market, credit supervision, participation of multiple entities, supervision from community, building information platform, promoting information regulation, unifying market, joint supervision, positive guidance and incentive regulation.

Sixthly, our country's market regulation is facing new political trends, namely, "decisive position of market in resources management" and "comprehensively promoting the rule of law". The development of market reflects new circumstance which underlines three-dimensional development, complexity of main entities, informatization of supporting technologies and integration of online and offline market. Furthermore, industrial and commercial supervision departments also

confront new trends like decentralization, unified regulation and supervision, perfecting rules and regulations, supervision in the light of law, information disclosure, self-discipline of market, application of information technology, network supervision, joint efforts of different divisions and integrated supervision. On the basis of new trends, the paper recommends 12 advices covering clarification of concepts, division of main entities, classified supervision, highlighting of focal points, perfecting laws and regulations, figuring out borders, abolition of “methods”, fulfilling responsibilities in accordance with law, diversion of old thoughts, innovative supervision, specification of entrance regulation, licensed supervision, credit incentive, self-discipline of market, improving classification of credit, strengthening market incentives, unifying platform, integrating supervision, nurturing self-discipline of the intermediary and industry, establishing market association, promoting self-discipline of industry, strengthening government responsibility and constraining government power.