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RESEARCH ARTICLE

On Market Regulation in Public Health Emergencies

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Abstract

In the setting of a public health emergency, social contradictions are readily sharpened, and problems proliferate in the pricing and quality of goods, in competition within a trade, in supervision, and in the protection of consumers' rights. The functions of macro-control and micro-regulation conferred by China's economic law are sufficient to provide an emergency guarantee in a public health emergency, and the existing market mechanisms are sufficient to secure the supply of daily necessities during such an event; yet the law of market regulation still lacks specific provision for the many problems that arise in these circumstances. Taking the law of market regulation as its perspective, this article argues that in a public health emergency that law must situate itself in the values of market fairness and market security, and must perfect the design of its legal institutions for market regulation under the impact of a major public health emergency.

Keywords: public health emergency; law of market regulation; emergency mechanism; measures of improvement

1 The problem and its background

In recent years international and domestic social order has stood at all times within uncertain public health risk. Under the impact of public health emergencies, the order of China's modern service industries — retail, logistics, information networks — has faced formidable challenge. Public health emergencies such as avian influenza are often complex, destructive and persistent, and they do a particular degree of harm to public health and to the order of the market economy: omissions in price control over civilian epidemic-prevention materials, disorder on online trading platforms, and other problems that disturb the order of the market economy. Before 2003, because the government, health administrative departments at every level and medical and health institutions understood too little of how serious such events are, the public health system had very conspicuous defects. To settle the question, the Standing Committee of the Tenth National People's Congress placed a unified law on emergencies and states of emergency on its legislative plan, other separate laws and regulations were drawn up or amended one after another, and new types of incident-response system took shape thereafter, such as the present *Emergency Response Law* and *Law on the Prevention and Control of Infectious Diseases*. On the whole, judged by the present legal framework, provision on these questions is scattered rather thinly across a number of statutes and documents.

2 The distinctive character of the law of market regulation

2.1 The position of the rights and obligations of market actors

As a very important component of the system of economic law, the law of market regulation has a distinctive adjusting mechanism of its own. In controlling, coordinating and maintaining market transactions and market competition, that mechanism shows itself as follows: in its norms, compulsion is the core and permissiveness the auxiliary. In the social relations so adjusted, one party is the state or an organ representing it, while the counterparty on the other side must comply with and effectively carry out what is required.

1. The rights and obligations of government. In matters of public concern the government plays the important role of manager and maintainer, and adopting a matching response plan for each kind of sudden problem is one of its key functions. In handling every kind of incident, governments at each level bear responsibility for rapidly establishing the relevant emergency organisation, ensuring that information goes up quickly and is disclosed transparently, and applying matching control measures to those who engage in illegal profiteering such as price gouging, so as to ensure the stability of social and economic order in an exceptional period; and the discharge of these functions appears all the harder, and all the more

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necessary, in such a period.

2. The rights and obligations of other market actors. Following the way the law of market regulation divides its subjects, this article groups medical staff in medical institutions, social assistance bodies, business entities such as enterprises and individual industrial and commercial households, and ordinary consumers together as other market actors; each enjoys statutory rights and each must bear the various statutory obligations. In a public health emergency, medical institutions must devote every effort to treating patients; other social bodies take on the corresponding duties and ensure that society runs in an orderly way; business operators such as enterprises observe the rules of the market and price regulation, and actively shoulder the social responsibility incumbent on them; and citizens, besides receiving the necessary medical safeguards and treatment to which their fundamental human rights entitle them, also enjoy the protection of every lawful right they hold in their capacity as consumers.

2.2 The distinctive response of the law of market regulation to public health emergencies

In the setting of a public health emergency, the various strata of society divide with great rapidity, forming a number of interest groups. The main constituents are the group centred on ordinary citizens, and the group of enterprises and others that see the situation as a business opportunity and hope for handsome profit. The specially advantaged group often seizes the chance to drive prices up and to make a fortune out of the country's misfortune; patients whose health is under conspicuous threat, the medical workers who confront the disease directly, and the general public unaffected by the event are all ordinary consumers, and they face not only a tight supply of medical materials and labour-protection goods but also the great anxiety and panic of buying counterfeit goods that endanger life and health. There thus arise particular contradictions between one group's interest and another's, and between group interests and the public interest. For every kind of incident, therefore, the value of the law of market regulation becomes apparent.

As to the effect of divided governance that a public health emergency produces: the most recently amended *Anti-Unfair Competition Law* relies on setting corresponding rights and obligations to deal effectively with the various problems of irregular competition that appear in an exceptional period; the *Law on the Protection of Consumers' Rights and Interests* works in the market environment to protect the interests of the weaker side centred on the consumer, and to prevent consumers from being harmed by counterfeit and shoddy goods of daily necessity; and the *Price Law* can regulate price conduct in an exceptional period in medical materials and equipment and in the necessities of daily life on which residents depend. Moreover, in the specialised statutes of market regulation, the supervisory systems for key industries such as finance can regulate the market conduct of the bodies and enterprises concerned and ensure the lawful rights and interests of every participant. In short, lawful and scientific market regulation can effectively restrain the government's own conduct in market management, promote healthy competition among other market actors, and in an emergency state play its part in maintaining the order of the market economy.

3 Public health emergencies seen from the standpoint of the market economy

3.1 The impact of a public health emergency on the market economy

Generally speaking, the early stage of a public health emergency may be said to have an enormous impact, readily placing ordinary industries and micro-level individuals in great difficulty of survival and development. Retail sales fall sharply in the short term, rail and civil aviation passenger volumes fall greatly, and the closed-loop management measures applied in regions where the event recurs indirectly affect the main engine that drives the economy, so that the overall negative effect continues to widen along the production-chain system. Once the middle and later stages of prevention and control are reached, that negative effect is gradually weakened as state control is strengthened: the central authorities and the relevant functional departments in each locality actively issue countermeasures for market supervision and management, tighten supervision over key financial and livelihood industries, strictly implement the responsibility of market actors and safeguard good market order, so that the market economy warms up step by step.

3.2 The many problems that market regulation has exposed in public health emergencies

1. Market access and unfair competition. During a public health emergency the market supply of labour-protection goods becomes an urgent problem, and a series of unlawful acts that violate the law of market regulation and disturb market order come gradually to light — non-specialist medical-device enterprises selling masks, protective goggles and other labour-protection goods on e-commerce platforms with a medical-device conformity certificate attached; individuals posting information on chat and social platforms about buying masks on others' behalf; and enterprises that manufacture large quantities of counterfeit and shoddy masks to turn a commercial profit. These are all acts of unfair competition by market actors. Moreover, the relevant departments are insufficiently vigorous in carrying out urgent recalls of products with

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quality defects and flaws that pose a great threat to consumers' life and health. Finally, whether epidemic-prevention materials entering through overseas donation channels are to be given special handling for market access, and whether a green channel is to be opened, are questions that show that state policy and provision on market access still await improvement.

2. The absence of protection for consumers' rights and interests. In a public health emergency consumers cannot obtain effective protection of their right to personal and property safety, their right to be informed and their right to fair dealing in respect of epidemic-prevention materials. The risks they face on online trading platforms include merchants who can neither guarantee supply of the goods nor agree to a full refund, together with the risk of uncertainty over product quality, as large quantities of goods that pass off the fake as genuine and the shoddy as good are traded online. Although the *Law on the Protection of Consumers' Rights and Interests* offers corresponding solutions on consumers' rights, their obligations and the handling of disputes, and consumers whose rights are infringed are entitled to demand a full refund or compensation for loss from the merchant, the deadlock met with in present practice shows itself mainly as follows: first, requests made by consumers on e-commerce platforms receive no timely or effective feedback and handling; second, when consumers turn to social organisations or judicial organs for help, out of consideration for social resources and judicial efficiency — especially in an emergency state — their requests cannot be settled in good time and their rights cannot be fully safeguarded.

3. Loopholes in the emergency price mechanism. In a sudden public event prices often move abnormally: besides rises in the price of the relevant labour-protection and medical goods, the prices of vegetables, grain and other staples also show a tendency to soar, which shows that the foundation of market price stability is not yet firm. In this article's view the root cause is that China's emergency price mechanism still has gaps, which may be summarised roughly as follows. First, the relevant departments attach too little value to emergency price management in some particular circumstances and begin to apply emergency management only when the trend of price increase is very great or external pressure is great enough, and this has to date not been effectively resolved. Second, the price authorities have not grasped the initiative in responding on price, which bears directly on whether emergency measures take real effect. Third, emergency price regulation faces many barriers in the course of enforcement: rises and fluctuations in the price of goods in a region are hard to predict and wide in their reach, so that enforcement officers find it hard to judge in the concrete stage of implementation, traditional enforcement methods often fail to achieve the desired result, and the overall response of society is relatively weak, so that the actual needs of an emergency state cannot be met.

4. The imperfect emergency mechanism of market supervision.

First, both research and practice in this field in China today have conspicuous defects and have not accumulated enough experience; when a large-scale public health problem arises, the law of market regulation and the related statutes leave gaps on how administrative departments are to be authorised and how they are to handle matters in an emergency in particular circumstances. Take price as an example: administrative departments generally act on emergency price regulation only after unreasonable price fluctuation has appeared, and often adopt measures passively once a certain negative effect has been produced.

Second, the supervisory system in an emergency state is not yet sound, and both the general law of market regulation and the specialised systems are deficient in their understanding of, and measures on, the key questions of the supervisory subject, supervisory measures and supervisory effect. On the one hand this prevents administrative departments from applying administrative guidance and other means in a timely and flexible way; on the other it means that unlawful conduct by enterprises disturbing the order of the market economy is investigated and dealt with too weakly. In an emergency state, for instance, market supervision departments cannot grasp the situation clearly, and supervision over prices in the sale of masks and other epidemic-prevention materials, and over the supply of production equipment and raw materials, is not strong enough, with the result that materials are in short supply on the market and prices are pushed up, and the stable order of the regional market economy is shaken. Particularly where prevention and control have become routine, market actors lack a sense of responsibility, and in some regions and some enterprises there are such phenomena as an absence of supervision over imported cold-chain food, and lax management of food traceability, delivery epidemic prevention and collective dining, which shows that law enforcement in market supervision still awaits strengthening.

4 Perfecting the legal institutions of market regulation in public health emergencies

On "regulation" in economic law, Professor Zhang Shouwen has offered a broad definition. He holds that "regulation" in the law of market regulation, like "control" in the law of macro-control, may be regarded as a kind of "modulation" requiring a mode of adjustment that combines the lenient with the strict, so as to achieve stability and balance of order as a whole. It is in this sense that this article offers the following tentative proposals on how to perfect the legal institutions of market regulation in a sudden public health emergency.

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4.1 Strengthening legal regulation by trade

In a public health emergency, conflict of interest among market parties very readily leaves consumers in a weak position as operators seize business opportunities and seek improper commercial gain, destabilising market order. This article analyses the question through two trades: taxis and ride-hailing, and online trading platforms.

First, out of the need for prevention and control, traffic controls imposed by government departments make ride-hailing vehicles and private cars the main means of travel, and malicious price rises in the taxi and ride-hailing trade follow from this, while not a few unlicensed cabs also seize the chance to enter the market and charge exorbitant fares. This article holds that the following should be done. First, the legislature must make clear the rights and obligations of operators and consumers in a public health emergency, clarify the principal responsibility of taxis and ride-hailing vehicles, and prevent excessive competition among them. Transport management departments must set price standards that fit the realities of the city, and draw up statements of responsibility for taxis and ride-hailing vehicles during the period of prevention and control of a public health event, so that they honour their price undertakings. Second, the relevant trade departments must attend to the safety and pay of taxi and ride-hailing drivers, and in particular give appropriate fiscal subsidies to taxi and ride-hailing enterprises that provide special services to groups in difficulty in an emergency state. Third, fully implement the power of inspection and the related power of penalty: the state legislature must, in the light of the effect of a public health event on the economies of each locality and of the level of local economic development, lay down principles for penalties, while leaving the specific standards of penalty to be set locally.

Second, as to the problems in online trading platforms already mentioned above, the provider of an online trading platform is a network service provider. This article holds that provision on the rights and obligations of operators of and publishers on online trading platforms during a public emergency — obligations of information protection, and of prohibiting trade in particular goods and services, for example — should be set up separately in China's *E-Commerce Law* and its *Law on the Protection of Consumers' Rights and Interests*, and that the social responsibility borne by the provider of an online trading platform in an exceptional period should be made clear, so as to bring about a sound coordination of platform management with the rule of law.

4.2 Improving the emergency price mechanism

As to the shortage of materials and the defects in the price mechanism that arise in a public health problem, as described above, this article holds as follows. First, a more complete mechanism of legal regulation for price intervention should be created. A public health emergency is urgent and unknown in character; to respond flexibly and effectively to abnormal rises in market prices in an exceptional period, the specific procedures and requirements of the *Price Law* on pricing and profit margins may be qualified, and the content of temporary government price intervention should be incorporated when a price contingency plan is drawn up, so that temporary price intervention may be applied to the prices of important related goods as early as possible. Governments at each level, for instance, should give full play to the functions of the local price monitoring bodies so as to be sure of obtaining news of abnormal price movement at the first moment; and at a later stage they should actively organise experts to make a comprehensive assessment of the current price situation and its influencing factors, and decide whether price control measures need to continue. Second, the information-disclosure system of emergency price regulation should be improved. In the early stage of a public health emergency the departments of the State Council issue a large number of announcements on tax preferences for enterprises and individuals, medical workers above all, together with notices on the adjustment of market prices; but judged by the speed and timeliness required in an emergency, these are still not enough to settle efficiently the problems that exist in the market at present. A mechanism for disclosing information on emergency price regulation should therefore be explored step by step and put into effect, steadying market order through a highly transparent system of information disclosure. Third, a penalty mechanism for emergency price regulation should be issued. The state should, on the basis of current policy and in the light of the characteristics of sudden abnormal price events, issue laws and regulations on emergency price regulation having the force of superior law, and see that the penalty measures are carried into effect.

4.3 Perfecting the overall emergency mechanism of market regulation

Once a public health emergency breaks out, information asymmetry appears first in society, the pursuit of interest by the various market actors shakes and damages the market order of the modern service industries, market mechanisms then fail, and finally the whole market is affected. To prevent an untoward turn of events, the following two things should be done.

1. Establish a comprehensive system of law on emergency market regulation. On the basis of the existing laws and regulations, the legislature should issue a more precisely targeted *Law on Market Regulation in Public Emergencies*, which must set out in detail the emergency work of central and local governments at every level, of the General Administration of Supervision and Administration, and of market actors of every kind — operators and consumers among them — before a

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public health emergency occurs, and must construct monitoring and early-warning mechanisms together with the work of rebuilding market order after the event has passed. It is especially important to use the distinctive adjusting mechanism of the law of market regulation itself to clarify the responsibilities and obligations of the different actors, and to build flexible internal and external supervisory mechanisms for the subject of market supervision. Moreover, regulations and rules that are scientifically sound and highly operable should be constructed for the market response of different fields in a public health emergency.

2. Build an early-warning mechanism for market order. China has created a crisis early-warning system for public health emergencies that is led by administrative departments and operated in coordination among several departmental bodies, but the capacity for crisis response in different regions still needs to be raised as quickly as possible. First, a more complete platform for monitoring information networks should be established, and the monitoring of public opinion well carried out; news on the internet is hard to distinguish as true or false, and screening and analysing information is particularly necessary. Second, professional personnel should be well trained, a more complete tiering and structure of the workforce set, and a technical and professional team for crisis early warning and monitoring established. Finally, as the level of socialisation continues to rise, the participation of third-party forces and of the general public should be strengthened, so that the actors concerned may reduce the degree of risk to their expectations of lawful rights and interests in a public health emergency. The Chinese government must also draw on advanced experience from abroad, and through the deep participation of government, market and civic forces strengthen the public's capacity to respond to a public health emergency and form a more satisfactory early-warning system.

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