

# The Legitimacy Boundary of Government Intervention in Price

## -- Based on the Tourism Hotel Price Regulation under Price Rule of Law and Unified National Market Perspectives.

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### ABSTRACT

The tourism market has become an important driving force for local economic growth, thus local governments have intentions to promote the development of local tourism industry by intervening in tourist hotel room prices during major holidays. Through four events, three modes of local government intervention in hotel prices can be summarized: first, the government takes administrating price replaces the market regulation price mechanisms; second, the government takes restrictions on the pricing rights of operators while maintaining market regulation price mechanisms; third, under the market regulation price mechanisms, the governments exhort operators to exercise price self-discipline. The second model contains potential risk of breaking price rule of law because price mechanism and pricing rights of operators are confirmed by constitution. The three modes have caused intuition chaos between regions and make a consequence in dividing the nationwide tourism hotel market into fragments. Under the requirement of constructing unified national market, the order of hotel price should be maintained from unified, legal, and diverse dimension.

### KEYWORDS

Price Rule of Law; Tourism Prices; National Unified Market; Freedom of Business.

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## 1. QUESTION RAISING

The strong recovery of the tourism market in 2023 has not only promoted tourism economic growth, but also become an important driving force for local economic growth. It connects tourism consumers, enterprises or operators, and local governments as a "community of shared future". On the one hand, local governments have an obligation to maintain the autonomy of management of tourism operators so that they can obtain economic and social benefits through receiving tourists. On the other hand, local governments need to attract tourists through creating a competitive and sustainable tourism market to promote local economic and cultural development. Under this situation, some governments are willing to use administrative measures to intervene the tourism market, including control the price of hotel rooms at low and stable level. However, it has raised questions about whether and how the government should intervene in tourism hotel room prices.

The real problem is local governments have their own intervention reasons individually. From the experience of administration practices in various regions, although the Price Law is used as their common superior basis, the measures and direct regulations for governments to intervene tourism hotel room prices are not the same. It means there are gaps in institution between different governments in managing hotel market. Difference from institutions may hinder the circulation of

economic factors under the requirements of constructing the unified national market. Because unified national market needs unified institution first. In addition, the Constitution of China confirms the management autonomy of market entities, which obviously includes autonomy in making price. That is to say, the pricing behavior of operators is a basic economic right recognized by the constitution and government intervention in prices will inevitably affect the exercise of citizens' economic rights. As a potential result, it may generate unconstitutional risks. In summary, the regulation differences in prices by local governments not only pose a risk of infringing on the autonomous pricing rights of operators, but also pose a hidden danger of market fragmentation in the system. Therefore, it is necessary to examine government intervention in hotel room prices from the dual perspectives of price rule of law and a unified national market, and provide suggestions.

## **2. THE REGULATING METHODS AND DIFFERENCES OF GOVERNMENT INTERVENTIONS IN TOURISM HOTEL PRICES**

In recent years, the unexpected surge in holiday's tourism market has shocked the price order, especially in hotel room, which is an indispensable part of tourism. In order to maintain the order of hotel room prices, local governments take various measures based on local conditions and positions. Through four typical events of government intervention in hotel room prices, it can be summarized main regulation methods that have occurred in recent years.

Event 1: In January 2024, the Development and Reform Commission of Sanya City, Hainan Province issued a notice on the management of standard room prices for tourism hotels in Sanya City during the Spring Festival period of 2024, requiring all types of tourism hotel rooms in the city to implement government guided price management during the Spring Festival period, that is, not to exceed the highest price level during the Spring Festival period of 2023. The direct basis for this notice comes from the Hainan Special Economic Zone Tourism Management Regulations, which belong to special zone legislation at the legislative level, and the superior basis comes from Articles 18, 19, and 20 of the Price Law. Provincial governments may implement government guided prices or government pricing for important commodities, when necessary, based on the pricing catalog.

Event 2: In September 2023, the Shanghai Government issued a notice on the implementation of temporary price intervention measures during the 6th China International Import Expo. The notice required that the actual transaction prices of various types of hotel rooms should not exceed the maximum price limit for rooms of the same room type and service conditions during the implementation of the temporary price intervention measures in 2022, that is, should not exceed the prices approved by relevant departments. The upper legal basis of the Notice is Article 30 of the Price Law, which stipulates that provincial governments may implement intervention measures on the prices of important commodities and services that have significantly increased or are likely to significantly increase, and report to the State Council.

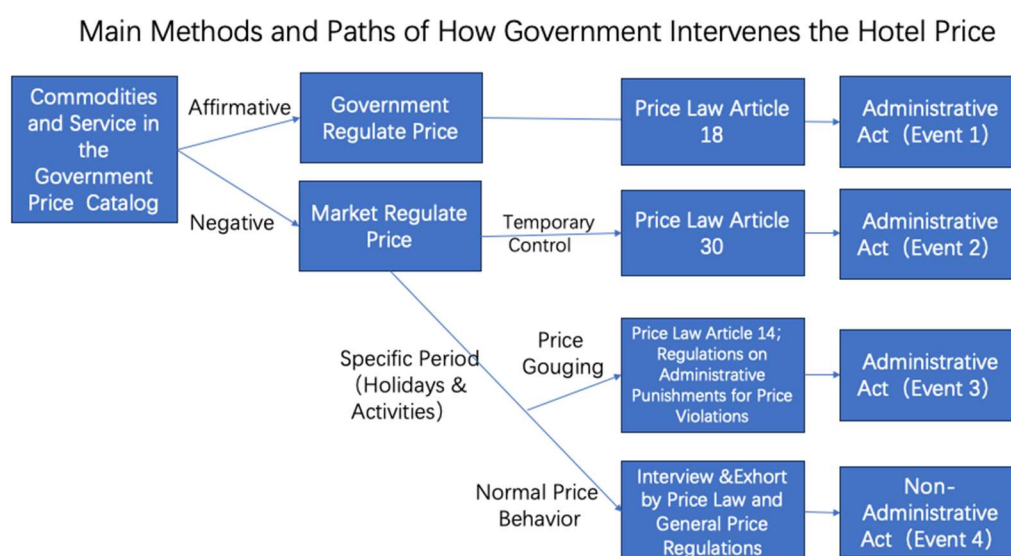
Event 3: In April 2023, Zibo City, Shandong Province, issued a notice on the identification of phased price gouging behavior in hotel rooms requiring that before and after the May Day holiday. If the average actual transaction price of each types of hotel rooms rises by more than 50% from March 1 to March 31, it will be investigated and punished as price gouging. The Notice shows that its upper basis comes from the "Guideline on Defining the Range of Price Increase Behavior Involving Price Boosting" issued by the Shandong Provincial Price Bureau in 2005. The upper basis of this guideline comes from Article 2 of the "Administrative Penalty Measures for Price Violations" formulated by the National Development and Reform Commission in 2004, which states that provincial price regulatory authorities have the right to impose penalties on violations of Article 14 of the Price Law in accordance with the "Administrative Penalty Regulations for Price Violations".

Event 4: In December 2023, Harbin City, Heilongjiang Province, urged hotel operators to comply with laws and regulations such as the Price Law during New Year's Day, Ice and Snow Festival, and

Spring Festival, exercise their independent pricing rights, consciously maintain the order of tourism price, and strengthen price self-discipline through administrative interviews and issuance of administrative guidance letters.

There are two types of prices under China's pricing system. One is government administrating prices or government regulating price which is based on government pricing catalogs, and the other is market regulated prices. In special circumstances, the government can implement temporary regulatory measures on market regulated price and impose administrative penalties on illegal pricing behavior. Besides, according to the documents above, the tourism golden week and major holidays belong to specific periods that tourism price regulation can be taken. According to the given information and four events above, current regulation methods that local governments take in tourism hotel room prices can be summarized as follows:

**Table 1.** Main Methods and Paths of How Government Intervenes the Hotel Price



In general, there are three modes of government intervention in hotel room prices: first, the government takes administrating price replaces the market regulation price mechanisms; second, the government takes direct restrictions on the pricing rights of operators while maintaining market regulation price mechanisms; third, under the market regulation price mechanisms, the governments exhort operators to exercise price self-discipline through negotiation and warning. Specifically, three models have common manifestation and show uniqueness. The general manifestation is that each price intervention model essentially restricts the price rights of operators. The uniqueness lies in the difficulty of replicating some intervention measures, such as the granting of special zone with its special legislative power and the uniqueness also lies in different values they purser.

In fact, the premise of intervention has different legitimate reasons, such as the public welfare or respect of market rules. In other words, it is reasonable that there are some differences in the intervention models of room prices, as the situations faced by local governments are different. Besides, the factors that cause price order fluctuations are complex, and the public values involved are also diverse.

However, the key problem is, there are two different intervention models for hotel room prices under same situation which not only showing the difference of legitimacy, but also resulting in institutional fragmentation. In events 3&4, governments interventions were established on the premise of market and price mechanism works, but the two showed different intervention models. The former believed

that a specific period of hotel room price increase may constitute an unfair price behavior of inflating prices, so it is necessary to correct and restore the order to the market price mechanism, while the latter believed that a specific period of hotel room price increase is a legitimate price behavior. This also brings new practical and theoretical issues that whether the increase in hotel room prices during specific periods such as major holidays is a legal price behavior, and what is the legitimacy boundary between government intervention in controlling price order and in restricting the operator's pricing right.

In summary, intervening the hotel room price during a specific period is not a simple local economic issue. It needs to be explained by price system in China with the characteristics of the tourism market in order to promote unified national market for the tourism hotel industry. This article will start from the changes in China's market economy system and price rule of law and clarify the relationship between the government and the tourism market, as well as the relationship between the government and the order of hotel room price.

### **3. PRICE RULE OF LAW AND THE ORDER OF TOURISM HOTEL PRICE**

#### **3.1. The Historical Background and Reform Direction of China's Price Mechanism**

Affected by the transformation of the economic system, the price mechanism in China has changed from administrative management to market regulation. Price is not only a tool for resource allocation, but also an important factor for social stability. Due to its unique historical background, in the early days since the foundation of China, in order to ensure national and social stability, price regulation was used by administration management. At this time, the price mechanism was subject to administrative control. And then, the Party and the state gradually liberated their minds and began exploring the socialist market economy system, determined the reform principle of "planned economy as the mainstay and market regulation as the supplement". In this period, the nation tried to establish a commodity economy system, enabling the price mechanism to transforming and reshaping. Next, the Decision of the Central Committee of the Communist Party of China on Economic System Reform in 1984 confirmed that price is an effective mean of regulation, and the reform of the price system is the key to the whole system reforming. During this period, the market price mechanism developed to include government pricing, national guidance pricing, and market regulated pricing work together (Chen Bing, 2019). As the economic system reform enters a new stage of comprehensively establishing a socialist market economy system, the market price mechanism has become the key to market development and economic system reform. The promulgation of the Price Law in 1997 marked the establishment of a socialist market economy price legal system in China, and also marked the transformation of China's price mechanism from administrative management to market regulation. In 2013, the state had repeatedly emphasized the decisive role of the market in resource allocation in multiple political documents, emphasizing that the price mechanism is the core of the market mechanism. In 2017, the National Development and Reform Commission's "Guideline on Comprehensively Deepening Price Mechanism Reform" pointed out that the requirements for price mechanism reform are to accelerate price marketization reform, improve the price supervision system, make prices flexibly reflect market supply and demand, truly guide resource allocation through price mechanisms, and standardize and orderly price behavior.

It is clear that the price mechanism reforming has two directions : marketization and legalization. Marketization means price mechanism reform has transferred the price making from government administrative decision to market competition regulation. The government only retains the pricing power of important public utilities, natural monopolies and other projects (Chen Bing, 2019). Legalization means the price mechanisms has shift from policy-making to protecting market rules, including government limitation in formulating the price catalog in both content and procedures. Most

importantly, it requires the government accord to rule of law principle to restricting price rights of market entities.

### **3.2. The Price Rule of Law and the Legitimacy Boundary of Price Regulation**

As mentioned earlier, the reason why price mechanism is called the core of market mechanism is that the free fluctuation of prices can effectively transmit signals of the scarcity of market resources, thereby achieving a balance between supply and demand of resources. There are two prerequisites for free price fluctuations. Firstly, there is a free competitive market that can accurately reflect price changes under supply and demand relationships. Secondly, operators have the right to do business independently and rationally according to their will, including the right to make price independently. The relationship between the two lies in the effective transmission of price information through free pricing of products, thereby creating a competitive market (Liu Kai, 2023).

In other words, the premise for the effective operation of market mechanisms and price mechanisms is that market entities can fully enjoy and exercise their operational autonomy, including independent pricing rights. The autonomy of business operations originates from the freedom of business as a human right. Although there is no direct provision for freedom of business in China's constitutional text, the space for freedom of business can be inferred from the changes and connotations of the constitutional text, which has become a consensus in China's constitutional academic community (Chen Zheng et al., 2018; Zhou Lei, 2020). The autonomy of business operations is a specific constitutional expression of freedom of business. In this sense, price behavior is the exercise of human rights so that the regulation of price behavior needs to be cautious. Based on the principles of the rule of law and protection of human rights, it is necessary to respect the price rights of market entities. Government can only intervene market prices under necessary situations.

How to determine the necessity of government intervention in market price mechanisms? Professor Chen Zheng pointed out that an important purpose of the state is to balance the conflicts of interests between individuals in society. "When the state intervenes in the basic rights of citizens, the purpose of the state's task must be to protect the interests of other individuals or achieve public interests" (Chen Zheng, 2010). However, there is an economic dilemma in intervening in price behavior on the grounds of interest conflict: there is a game theory in a free competitive market, where one benefits while the other suffers. so it needs to definite the conflicts of interest into different situation.

Professor Liu Kai abstracts 3 situations from Price law which forbidden 7 unfair pricing behaviors that operators cannot do. The professor believes that in these three specific situations price mechanism is failed and need government intervention. The first is in an emergency legal situation, including war and accidental situations; The second is monopolistic situations, such as non-real competitive price behavior caused by collusion; The third is the situation of information asymmetry, including price fraud and other price behaviors that cannot reflect the real supply and demand relationship. The three situations correspond to three different forms of public interest. The first is the economic security and order under abnormal conditions, the second is the fair competition order in monopolies, and the third is the fair transaction in information asymmetry (Liu Kai, 2023). In these three specific situations, the government can adopt certain price regulation measures, while in other situations, the market mechanism can repair the price order. This view should be support because in a free market, prices reflect the resource allocation between supply and demand. Therefore, drastic changes in prices do not necessarily reflect the failure of price mechanisms or the infringement of public interests. Only infringement of specific public interests can be considered as unfair pricing behavior, leading to government intervention measures.

In a word, the price behavior of market entities is not only a fundamental element of the market economy, but also involves the exercise of a basic right. Therefore, the regulation of price behavior must have sufficient legitimacy. Only when the price behavior of market entities infringes on specific public interests can it be regulated, or the government could not intervene the price mechanism. The

government's regulation of price behavior is not to replace the market's price regulation mechanism with administrative power, but to restore the price mechanism. In addition, as pricing rights originates from fundamental rights, this right is bound by the principle of legal reservation, and the restrictions on the operator's autonomous pricing rights must be stipulated by law in narrow sense, rather than other regulations or rules and ordinance.

### **3.3. Intervention in Hotel Prices under Price Rule of Law**

After confirming the legitimacy of government intervention in market price regulation, it is necessary to confirm the nature of hotel room prices and whether the means and purposes of government intervention in hotel room prices are legitimate in specific period.

The document shows that, in 2004, the Shandong Provincial Price Bureau issued the "Guideline on Defining the Range of Price Increase in the Behavior of Price gouging", which for the first time proposed to regulate the prices of tourism hotel rooms. The second article of this guideline proposes that for the prices of commodities and services that are subject to market regulation but are related to national economy and people's livelihood, the provincial price regulatory department has authority to determine the specific price inflation or price inflation range to define price gouging behavior based on actual circumstances. And the article specifically pointed out that it includes the tourism service price during specific period such as the golden week of tourism or important holidays and festivals. Although the guideline does not specifically indicate that hotel room prices during a specific period belong to tourism service price, the subsequent regulations on hotel price have cited this article and been approved by the Provincial Price Bureau. Therefore, it can be inferred that this guideline includes hotel room prices.

On a nationwide scale, the National Development and Reform Commission issued the "Guideline on Regulating the Market Prices of Hotel Rooms" in 2010, which also pointed out that the prices of hotel rooms during major holidays and large-scale activities are increasingly becoming closely related to the people's livelihood. It also required the government price regulatory department to implement temporary price intervention measures such as maximum price limitation on hotel room prices in tourist hotspots and surrounding areas of large-scale activities in accordance with the relevant provisions of the Price Law in order to ensure the basic stability of hotel room prices. Both documents regard hotel room prices during specific period as a public interest related to people's livelihoods and that provides legitimacy for government regulation of price behavior. However, based on the pricing mechanism and the scientific nature of tourism, it is unreasonable in both the means and purposes of this regulation.

Firstly, the statement that hotel room prices during major holidays are related to national economy and people's livelihood is controversial. In the early stages of reform and opening up, the State Council clearly did pointed out that tourism is a comprehensive economic undertaking that is related to the national economy and people's livelihood. So far, tourism is still an important driving force for economic growth and industrial restructuring, even urban civilization. There's no doubt that tourism is important for nation. However, tourism industry involves with national economy and people's livelihood does not mean that all aspects of the tourism industry have the same importance so that government should protect it out of market rules. Besides, tourism activities and the tourism market itself have seasonality, that means price fluctuations driven by specific periods of demand is a normal phenomenon in the free market (Li Tianyuan, 2014). In China, paid vacation is not implemented as expected, as a result, the demand for tourism during major holidays is bound to expand. Besides, the supply of hotel rooms during a specific period cannot change with the growth of demand, so price inflation is a true reflection of the supply and demand relationship of the service. Acceptingly, price regulation cannot suppress the surge in demand and may cause the negative effect. In addition, the guideline also pointed out that tourism is the pursuit and longing of the people for a better life. However, traveling during major holidays is not the only option for a better life. Moreover, China's

tourism resources are widely distributed and diversified, thus market rules can help to find alternative destinations to pursue a better life.

Secondly, the legitimacy of the regulatory purpose of hotel room prices during major holidays is weak. As mentioned above, only by satisfying the infringement of three specific public interests can the government take market price regulation. According to this logic, it can be found that the demand and price increase of hotel rooms during major holidays have not been affected by emergency situations such as wars and diseases, nor have they caused economic security risks similar to those in emergency situations. Secondly, they have not caused monopolistic and competitive behavior that renders the market competition mechanism ineffective. Thirdly, it is not sufficient to prove the existence of overall price discrimination and price fraud. Therefore, there is a risk of insufficient legitimacy in restricting market prices in a standardized form.

Finally, constrained by the principle of legal reservation, there is a constitutional risk of restricting market prices. If it is sure that the rights of autonomous pricing originate from the fundamental economic rights in the Constitution, then the limitation of this right can only be achieved through legal means. In other words, the law stipulates that operators are not allowed to engage in unfair pricing behavior, which does not mean that subprime regulations and local legal documents can set specific price increases to determine it as unfair pricing behavior, it is suspected of exceeding the legal scope to reduce the rights of operators (Song Hualin, 2008).

In summary, the government's regulation of hotel room prices in tourism period poses legal risks in both means and purposes. Market economy needs to be governed by the rule of law, and it is necessary to regulate and reduce government intervention in the market (Qian Yingyi, 2000). At the same time, with the improvement of China's market mechanism, some stereotype economic concepts need to be changed. Making huge profits through price inflation may be the result of the normal operation of the market mechanism rather than necessarily hurt public interests and requiring government intervention (Liu Kai, 2023). If it is sure that there is indeed a need for intervention in the prices of hotels during major holidays, the government can either implement strong administrative intervention by modifying the government pricing catalog according to the price law, or advocate for non-administrative intervention through administrative interviews and guidance letters to exhort price self-discipline among operators.

## **4. PROBLEM AND SUGGESTIONS OF THE TOURISM HOTEL PRICE ORDER UNDER CONSTRUCTING UNIFIED NATIONAL MARKET**

### **4.1. Theoretical Logic and Practical Requirements of Unified National Market**

Constructing a unified national market is a new understanding and practice of the decisive role of the socialist market economy system in China. In theory, the theoretical logic of a unified national market comes from Adam Smith's model of division of labor and market size. The economist pointed out that the larger the market size, the more refined and specialized the division of labor, thereby driving the improvement of productivity and ultimately driving economic growth. Moreover, the socialist scholars further pointed out that market size can increase production efficiency, while connecting consumer demands, not only making supply-demand relationships more effectively matched, but also promoting competition and the flow of production factors. (Du Liqun, 2023) From a practical perspective, China has a great population and great producers and consumers, with the economic foundation of a unified national market.

However, the establishment of a unified national market requires both economic foundation and institutional foundation. Unified market rules are the key elements in building a unified national market (Ran Jingfei et al., 2023). Basic institutions such as property rights protection, market access, transaction order, and fair competition could affect the "unity" of the market, even determine the

"existence" of the market (Zhang Shouwen, 2023). As a high-level requirement of the market economy, the construction of unified national market must achieve the unity of the rule of law. It can be seen that the first step in constructing unified national market is to establish unified market institutions and rules system.

However, China has a vast territory with complex administrative divisions and large disparities in the distribution of natural resources and large population and ethnic groups. These factors cause unbalance developing in China and increase competition between administrative regions and finally making the nationwide market into fragments. Therefore, there are still practical obstacles to unified market rules. Professor Hu Jiayong directly pointed out that the excessive and unreasonable interventions from different local governments have hindered the formation of a unified national market. Specifically, the unreasonable intervention of local governments has hindered the development and improvement of production factor markets, resulting in regional blockades and market segmentation, leading to abnormally high institutional transaction costs (Hu Jiayong, 2023). Therefore, the establishment of unified national market must eliminate unreasonable intervention by local governments in the market in order to establish unified market rules.

#### **4.2. Order of Tourism Hotel Price in the Unified National Market**

It is obviously that the government's intervention in the pricing rights of operators is a kind of market intervention. The government's recognition that hotel room price increases in holidays should be regarded as an unfair pricing behavior had a negative impact on the unified tourism market nationwide.

On the one hand, the unreasonable regulations of the government have increased the institutional costs of operators, causing hotel enterprises in the region to reduce their expected income and thus decrease their final profits. On the other hand, the government's unreasonable regulations have forcibly reduced the tourism costs of consumers, causing fragmentation in the tourism market and blocking the free flow of investment, production, and services. Currently, there is a trend of group development in the hotel industry. While expanding in scale, group hotels can bring their capital advantages, management advantages, and standardized product services to their chain hotels (Li Tianyuan, 2014). However, for the tourism hotel market under administrative control, due to the increase in operating costs and decrease in returns in the region, it may hinder advantageous enterprises pursuing profit from entering the market. On the surface, it appears to be a protection of public interests such as consumer interests, but deeply it constitutes a way to restrict the participation of non-local enterprises in competition. Over time, it will cause the hotel industry to become disconnected from the main industry, ultimately resulting in a loss of benefits for both consumers and operators.

Overall, the improper intervention of some local governments in tourist hotel room prices may have some short-term and partial benefits, but from a longer-term perspective, it has actually caused distortion in the nationwide market. Administrative Intervention in market mechanisms, price mechanisms, and economies of scale means not only limits the expansion of market size, but also makes it difficult to improve factor allocation efficiency (Ran Jingfei et al., 2023). Ultimately, it will still affect local economic development negatively.

#### **4.3. Suggestions for the Order of Tourist Hotel Price in the Unified National Market**

Currently, some governments and departments may be constrained by the inertia of economic system transformation or political considerations for maintaining stability or local protectionism so that they have intervened beyond necessary limits in regulating prices in the tourism hotel market. From the perspective of market mechanisms and the rule of law, there are unreasonable aspects that hinder the construction of unified national tourism market. However, as mentioned at the beginning, local governments bear the dual functions of local economic development and receiving tourists. While constructing unified national market, it doesn't mean local interest should be given up. Therefore, to



perfect the order of tourism hotel price in the unified national market, it is necessary to respond from different dimensions.

Firstly, the construction of unified national tourism market must adhere to the unity of the tourism pricing institutions and rules. Unified institutional of tourism hotel market can promote the free flow of tourism economic factors, reduce institutional transaction costs, make prices reflect the real tourism supply and demand relationship and promote free competition of tourism hotel rooms, and optimize market resource allocation.

Secondly, the construction of unified national tourism market must adhere to the rule of law in prices. Essentially intervention in hotel prices means government intervention in market mechanisms and individual business rights. Therefore, government power in price must be strictly limited according to the principle of the rule of law. To be specific, that means :

it is not allowed that government guided prices or government pricing intervention in tourism room prices without going through legal procedures; it is not allowed to intervene with the market regulated price of tourism hotels without legal reason; it is not allowed restricting tourism operators business right without law in narrow sense.

Thirdly, based on the unified institution and the rule of law in price, diversified monitoring methods should be taken, including social and the third-party monitoring. Under the requirements of unified national market system, it is difficult for local governments to attract tourists by intervening in tourism prices and utilizing the advantages of tourism prices because it may retard restructuring industries and protecting the sustainable development of the local economy. However, they can intervene price order by other means in non-administrative way. For example, industry associations have been regarded as a bridge that connecting the government and enterprises. The government can call on operators to exercise price self-discipline through industry associations through advocacy, discussions, and other means. Moreover, digital platforms also play a unique role in price supervision. With the increasing maturity of digital technology, more and more hotel transactions happen on the platform and it makes platforms the role of monitoring the price. By annotating the magnitude of price fluctuations, digital platforms can disclose to consumers whether operators have moral character and social responsibility while pursuing profits, which can be evaluated and chosen by consumers. In addition, the government can mobilize public opinion supervision, create a price culture that is conducive to urban development, and work with operators to build a good price trend in the city.

## 5. CONCLUSION

Under the current economic situation, the government has a strong motivation to intervene in the tourism market and price, including hotel market and price, in order to promote local economic development and industrial transformation. However, based on the principles of price rule of law and unified national market, the government interventions can only be allowed in situations involving specific public interests with sufficient legitimacy. Optimistically, modern governance indicates that social entities can participate by their non-administrative means. That means, the price order of tourism hotel can be maintained from the perspectives of unity, rule of law, and diverse perspectives.

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