Private Antitrust Litigation in China

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A Practice Note providing guidance on the regulatory framework governing private antitrust litigation in the People's Republic of China (PRC). This Practice Note addresses the critical procedural and substantive issues encountered in civil disputes brought under the Anti-Monopoly Law (AML), including key updates from the 2024 Anti-Monopoly Judicial Interpretation. It explores essential practical considerations such as determining the proper litigation venue, navigating specialised intellectual property courts, and understanding the distinct burden of proof rules for monopoly agreements and abuse of market dominance claims. Additionally, this Practice Note examines the complex interplay between private antitrust actions and public enforcement procedures led by the State Administration for Market Regulation (SAMR). It also highlights the strategic implications of evidence collection and discovery limitations, the application of the statute of limitations, available remedies for anti-competitive conduct, and the arbitrability of antitrust claims under recent Supreme People's Court (SPC) rulings.

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China (PRC)'s Anti-Monopoly Law (AML) was first promulgated in 2007 and amended on 26 June 2022, with the *amendments* becoming effective from 1 August 2022 (2022 AML).

Since the entering into force of the 2007 AML on 1 August 2008, China has quickly established itself as one of the world's major competition regimes and become one of the main jurisdictions for antitrust enforcement, alongside the US and EU.

On 24 March 2023, to facilitate the implementation of the *2022 AML*, the *State Administration for Market Regulation* (SAMR) issued four AML implementing provisions. Among the four provisions, the *Provisions on Prohibiting Monopoly Agreements 2025* (2025 Monopoly Agreements Provisions) and the *Provisions on Prohibiting Abuses of Dominant Market Positions 2023* (2023 Abuse of Dominance Provisions) provide further guidance for civil antitrust litigation cases and enforcement procedures. Building on this administrative groundwork, the *Supreme People's Court* (SPC) issued *Provisions of the SPC on Certain Issues Relating to the Application of Law in Hearing Cases Involving Civil Disputes Arising out of Monopolistic Act 2024* (2024 Anti-Monopoly Judicial Interpretation), providing dedicated judicial rules for civil antitrust litigation.

Though public enforcement is the main driver of enforcement activities in China (see *Practice Note, Antitrust Investigations in China: Overview*), private parties also can enforce the AML. This Note discusses the regulatory framework governing private antitrust litigation in China. Specifically, it addresses some important issues frequently encountered in antitrust civil actions, including, for example, forum-shopping regarding litigation venues, special burden of proof rules in litigation of AML violations, the interplay between AML litigation and public enforcement procedures, and the arbitrability of AML claims.

The Note does not cover the general rules on typical court proceedings in China. For information of that regime, see *Managing Disputes (Litigation and Arbitration) Toolkit (China)*.

This Note forms part of the Practical Law China antitrust collection; for other resources within the suite, see Practice Notes:

- *Chinese Competition Law: Overview*.
- *Abuse of Market Dominance in China*.
- *Monopoly Agreements in China*.
- *Competition Issues for Distribution and Supply Agreements in China*.
- *Merger Control in China: a Practical Guide*.
- *Antitrust Investigations in China: Overview*.
- *Chinese Competition Law and IPR Licensing*.
- *Competition-IP Interface: Transactions, Collaboration, and Unilateral Conduct (China)*.
- *Key Antitrust Considerations for Digital Platforms in China*.

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Overview

In recent years, Chinese private antitrust litigation practice has undergone a vigorous period of development. This phenomenon is apparent from the heavier private antitrust case loads facing judges. From 2013 to 2024, it was reported by the SPC that Chinese courts heard 1145 first-instance civil antitrust cases. As of 2 June 2026, the IP tribunal of the SPC has heard 212 antitrust cases since it was established on 1 January 2019, finding antitrust violations in 69 of these matters. Notably, on 23 February 2024, the SPC announced the 100 typical cases to commemorate the fifth anniversary of the establishment of the SPC Intellectual Property Tribunal. Among these cases, at least 12 involve antitrust matters.

Based on recent judicial practice and practitioner observations, several emerging trends can be summarised in the field of private litigation concerning antitrust matters:

- Cases where the plaintiff wins are increasing.
- The proportion of SPC revising first-instance judgments through the appeal procedure is raising.
- The follow-on antitrust litigations with high amount of damages being ordered started to appear.
- Antitrust litigation challenging regulatory decisions or administrative monopolies is gaining momentum.
- Appellate review of jurisdictional objections has accelerated to curb dilatory tactics.

The above trends may further encourage and facilitate the developments of China's antitrust private litigation.

According to Article 60(2) of the 2022 AML, where an undertaking commits monopolistic acts to the detriment of public interest, the people's procuratorate at or above the municipal level may institute civil public interest litigations before the court in accordance with law. This provision for the first time clarifies the application of civil public interest litigation in the antitrust area.

Another observation is that increasingly, cases with complicated and challenging antitrust issues are emerging. These include cases concerning the applicability of the essential facility doctrine, platform dominance, buyer monopoly, and passing-on, hub-and-spoke agreements, among others. In addition, in the wake of 2026 state policy signals calling for zero tolerance against "cut-throat" competition and rigid fair competition review, the SPC has explicitly reaffirmed its intent to strengthen judicial antitrust practice.

China's legislative efforts over the last few years to further update and clarify its antitrust rules, for both substantive and procedural issues, are notable. On 24 June 2024, the SPC issued the 2024 Anti-Monopoly Judicial Interpretation, which took effect on 1 July 2024, replacing the *Provisions of the SPC on Certain Issues Relating to the Application of Law in Hearing Cases Involving Civil Disputes Arising out of Monopolistic Acts 2020*. The 2024 Anti-Monopoly Judicial Interpretation substantially impacts China's civil antitrust litigation practice.

In light of the above, a reasonable forecast is that going forward, the rules for private antitrust litigation in China will be articulated in further detail, and the motivation of Chinese courts to handle private antitrust litigation may encourage an increasing number of cases being filed, which has already been observed since the year of 2022. China's judicial antitrust practice is expected to become increasingly important for businesses that operate in China, and businesses should continue to carefully consider and monitor the emerging risks under China's evolving antitrust regime.

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Legislative Basis

The 2022 AML prohibits:

- Anti-competitive agreements. (For an overview of the regime regulating monopoly agreements in China, see *Practice Note, Monopoly Agreements in China*.)
- Abuses of a market dominant position. (For an overview of the regime regulating market dominant abusive conduct in China, see *Practice Note, Abuse of Market Dominance in China*.)
- Mergers that may have the effect of eliminating or restricting competition. (For detail on Chinese merger control reviews, see *Practice Note, Merger control in China: a Practical Guide*.)

Private enforcement against AML violations is explicitly mentioned under:

- Article 60 of the 2022 AML, which requires an undertaking to bear civil liability for its monopolistic conduct that causes damage to others.
- Article 2 of the 2024 Anti-Monopoly Judicial Interpretation, which allows any individual or entity that is harmed by alleged monopolistic conduct to bring a civil action for AML violations. If the plaintiff files a lawsuit only requesting the people's court to declare that a specific act of the defendant constitutes a monopoly, without requesting the defendant to bear civil liabilities, the people's court should not accept the case.

Jurisdiction

China adopts a four-level court system, in ascending order:

- Primary people's courts.
- Intermediate people's courts.
- High people's courts.
- The SPC.

Level Jurisdiction

At first instance, civil antitrust cases are generally heard by:

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- Specialised intellectual property (IP) courts in Beijing, Shanghai, Guangzhou and Hainan. (See *Practice Note, Specialised IP Courts and Tribunals in China: Specialised Local IP Courts*.)

- The intermediate people's courts designated by the SPC.

(Article 4, 2024 Anti-Monopoly Judicial Interpretation.)

Moreover, high people's courts have first instance jurisdiction over civil antitrust cases that have a significant impact in their respective jurisdictions (Article 20, *Civil Procedure Law 2023* (2023 CPL, with effect from 1 January 2024)). The term "significant impact" is mainly determined by the claim amount or influence. For instance:

- According to the Jurisdiction of Guangzhou Intellectual Property Court, the Guangzhou IP Court has jurisdiction over antitrust cases where the amount at issue is less than RMB100 million, while cases involving more than RMB100 million fall within the jurisdiction of the Guangzhou High People's Court. When all parties are domiciled inside the Guangzhou IP Court's territorial district, the above threshold is RMB200 million. Notably, different provinces may have distinct provisions on the threshold claim amount that could trigger the jurisdiction of the respective high people's court.

- In the State Grid Shanghai Municipal Electric Power Company (SMEPC) and VISCAS Corporation (VISCAS) horizontal monopoly agreement case, the jurisdiction of the case has been moved from the original first-court Shanghai Intellectual Property Court (Shanghai IP Court) to the Shanghai High Court. It is the first follow-on antitrust litigation on horizontal monopoly agreement raised by a Chinese company based on the penalty decision of an overseas antitrust regulator, EC Commission, hence the complication and significant impact speak.

The SPC has sole jurisdiction to hear appeals of first-instance antitrust decisions from lower people's courts (Article 2, *Provisions of the SPC on Several Issues concerning the Intellectual Property Division 2023*). See also *Practice Note, Specialised IP Courts and Tribunals in China: SPC IP Court*.

Territorial Jurisdiction

The court's territorial jurisdiction is governed by the general jurisdictional provisions of the 2023 CPL and SPC interpretations for tort, contract and other disputes (Article 5, 2024 Anti-Monopoly Judicial Interpretation).

Accordingly, several options may exist in any specific case for the following reasons:

- The general principle under the 2023 CPL is that civil lawsuits brought against private undertakings may be brought before the court of the defendants' domicile (Article 22).

- Private monopolistic conduct (that is, monopoly agreements, abuses of dominant market position, and concentrations) may be characterised as tortious. In addition to the court of the defendant's domicile, tort claims also may be brought at the place where the infringing act took place, meaning either where the infringing act was performed or where the effect of the infringement took place (Article 29, 2023 CPL; Article 24, *Interpretations of the SPC on the Application of the Civil Procedure Law 2022*).

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- In some cases, contractual issues may arise in the context of an AML dispute, increasing the potential number of courts that have jurisdiction over the case. In particular, when a contract is alleged to be anti-competitive, AML-based defences to the validity or enforcement of said contract are governed by the AML, whereas disputes surrounding the contractual agreement itself would be governed by contract law. Depending on the issues at play, in determining jurisdiction, the court would need to consider not only the location of the defendant's domicile, but also the place where the contract is performed. Moreover, contracting parties may also elect to subject their contract to the jurisdiction of a particular court (Articles 24 and 35, 2023 CPL). In consequence, this means that when a defendant raises an AML defence before a court which does not have jurisdiction over private antitrust litigation, that court will have to decide whether to transfer the dispute to another forum.

- In contracts involving foreign elements, parties may agree to choose courts located in any place with actual connections to the dispute (Article 35, 2023 CPL), including both Chinese and foreign courts. Absent such agreement, contract actions against foreign defendants without Chinese domicile may be brought in the courts of any Chinese jurisdiction where:

    - the contract was signed or performed;
    - the subject matter of the action is located;
    - the defendant has detainable property;
    - the place of infringement; or
    - the defendant has a Chinese representative agency, branch, or business agent.

    (Article 276, 2023 CPL.)

For example, in *TCL v Ericsson*, the SPC found that a variety of Chinese courts should have jurisdiction. Specifically, the SPC held that the courts of the place where the infringement was committed, the place where the result of the infringement occurred, and the place where the defendant was domiciled all had jurisdiction over the case. In particular, the jurisdiction of monopoly dispute cases can be the point of jurisdiction link where the sued monopolistic behaviour has the result of eliminating or restricting the influence of competition.

In the 2024 Anti-Monopoly Judicial Interpretation, this approach of deciding territorial jurisdiction is affirmed by the SPC. Article 6 provides that:

> "If the plaintiff files a civil lawsuit in accordance with the Anti-Monopoly Law against a defendant who has no domicile within the territory of the People's Republic of China, claiming that the defendant's monopolistic conduct outside the territory of the People's Republic of China has an effect of eliminating or restricting competition within the domestic market, the competent court shall be determined in accordance with the provisions of Article 276 of the Civil Procedure Law."

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The wide array of courts with potential jurisdiction over a dispute occasionally allows for forum shopping by the plaintiff. When multiple (two or more) people's courts have jurisdiction over the same claim, the plaintiff may select a court from among those options. In the event that claims are brought before two or more courts with jurisdiction, the court that first accepted the case will handle the claim (Article 36, 2023 CPL). As a result, forum-shopping, especially for the plaintiff, is an important aspect of any AML litigation strategy. This is particularly the case given the highly specialised nature of AML disputes and the differing degrees of quality and experience among people's courts in handling such disputes.

Eligible Plaintiffs

Any victim of a violation of the AML can seek to obtain damages.

In practice, the typical plaintiffs can be broadly grouped into the following categories:

- Competitors. For instance, in *Huado v Netease*, the plaintiff was Huado and the defendant was Netease, both being influential internet companies competing in the internet market, such as the online game services market and voice software market.
- Direct business partners, including upstream and downstream partners. For instance, in *Xu Shuqing v Tencent*, the plaintiff Xu Shuqing was a platform user of the defendant. In *Shanghai Rijin Electric Co Ltd v Panasonic*, the plaintiff was one of the defendant's dealers.
- Indirect traders. In *Tian Junwei v Abbott*, the plaintiff Tian Junwei was an indirect trader of the defendant Abbott Trading (Shanghai) Co.
- People's Procuratorate. According to Article 60(2) of the 2022 AML, the people's procuratorate at or above the districted city level may institute civil public interest litigation before the court in accordance with the law. See more details in the next section.

Class Actions

The 2023 CPL leaves open the possibility for collective action. Chinese courts can consolidate cases where claims from several actions are related and similar, subject to the consent of all parties and approval by the court. However, the process is dissimilar to class actions in the US. Article 8 of the 2024 Anti-Monopoly Judicial Interpretation reaffirms that where two or more plaintiffs bring a case against the same defendant before the same court on the basis of the same conduct, the court may combine the cases together. This will be heard under the collective action mechanism according to Articles 55 to 57 of the 2023 CPL.

However, a Chinese "class action" may be an option where Article 47 of the *Law on the Protection of Consumer Rights and Interests 2013* (with effect from 15 March 2014) authorises the China Consumers Association (CCA) and its counterparts at the provincial level to bring lawsuits before the people's courts against conduct detrimental to the interests of groups of consumers. It is, however, unclear at this stage whether the CCA will have standing to act on behalf of consumers for violations of the AML since no collective antitrust action has been brought in China yet.

Further, in judicial practice, class-action lawsuits have already occurred. For instance, in *Kangmei Pharmaceutical v Investors*, the Guangzhou Intermediate People's Court ruled in favour of investors in a securities class-action suit, the first of its kind in China, against Kangmei Pharmaceutical, which had inflated its financial records. Although it is not an antitrust case, it still shows that there is, to a limited extent, a class action mechanism in China.

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The people's procuratorates at or above the level of a city divided into districts can as well initiate civil public interest litigations. The 2022 AML introduced a new provision in Article 60(2), clarifying for the first time the application of civil public interest litigation in anti-monopoly cases, stating that "if the undertaking implements monopolistic acts to the detriment of public interest, the procuratorates at or above the district level may institute civil public interest litigation in the people's court in accordance with law." On 1 August 2022, the SPP published the *Notice on Implementing the Anti-Monopoly Law of the PRC and Actively and Steadily Carrying Out Public Interest Litigation in the Anti-Monopoly Field*, which calls for the conscientious AML implementation and the active and steady implementation of public interest litigation in the anti-monopoly field, with emphasis placed on the internet, public utilities, medicine and other areas securing people's livelihood. This rule is reaffirmed in the 2024 Anti-Monopoly Judicial Interpretation, which further adds that the applicable law is *Interpretation of the SPC and the SPP on Several Issues concerning the Application of Law for Cases regarding Procuratorial Public Interest Litigation 2020* (with effect from 1 January 2021). In the meantime, as for individual consumers or small and medium-sized enterprises (SMEs) aggrieved by monopolistic acts, owing to the lack of sufficient resources, they thus very often cannot avail themselves of anti-monopoly litigation to effectively safeguard their rights and interests. The introduction of the public interest litigation system in the 2022 AML would afford ordinary consumers or SMEs infringed by antitrust practices the opportunity to secure improved judicial remedies. A notable practical illustration of this mechanism is Zhejiang Province's first antitrust public interest litigation, where procuratorial organs stepped in against a local gas operator for illegally forcing tie-in sales of accessories during service installation, directly safeguarding residential consumers in the public utility sector.

Burden of Proof

Generally speaking, in Chinese civil litigation, a party that asserts a fact must prove it to the satisfaction of the court (Article 67, 2023 CPL).

The 2024 Anti-Monopoly Judicial Interpretation provides, however, some specific rules for AML-related litigation.

Notably, the 2024 Anti-Monopoly Judicial Interpretation provides certain new rules in relation to burden of proof which may facilitate plaintiffs.

In Monopoly Agreement Litigation

Horizontal Monopoly Agreement

Some of the horizontal monopoly agreements enumerated in Article 17 are similar to those that are per se illegal in other jurisdictions, such as agreements among hard-core cartels. Also included in Article 17 are less egregious anti-competitive agreements, such as agreements to restrict the purchase and development of new technologies or products. In other jurisdictions, such arrangements (those that do not amount to hard-core cartels) are reviewed under the rule of reason, which means the plaintiff has to meet a higher burden of proof. (For more information, see *Practice Note, Monopoly Agreements in China: Horizontal Monopoly Agreements*.)

As for concerted practice, Article 16 of the 2022 AML provides:

> "For the purposes of this Law, monopoly agreement refers to agreement, decision or other concerted practice that excludes or restricts competition."

According to Article 5 of the 2025 Monopoly Agreements Provisions:

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> "[o]ther concerted practice refers to the practice carried out by undertakings in the absence of a definite agreement or decision between undertakings which nevertheless has been coordinated in substance."

Article 18(1) of the 2024 Anti-Monopoly Judicial Interpretation provides that the people's court should consider the following factors when determining other concerted practice under Article 16 of the AML:

- Whether there is consistency or relative consistency in the market conducts of undertakings.
- Whether there has been communication or exchange of information between undertakings.
- Market structure, competition status, market changes and other situations in the relevant market.
- Whether the undertakings can provide reasonable explanations on the consistency or relative consistency of their conducts.

According to the provisions on burden of proof set forth in Article 18(2)-(3) of the 2024 Anti-Monopoly Judicial Interpretation, after the plaintiff has provided preliminary evidence proving two items of either bullet (1) and (2), or bullet (1) and (3), of the above paragraph, the burden of proof should be shifted to the defendant, and the defendant bears the burden of proof for the reasonable explanation on the consistency or relative consistency of relevant conducts (that is, bullet (4) of the above paragraph).

Apart from the above, pursuant to Article 14 of the 2024 Anti-Monopoly Judicial Interpretation, where the alleged monopolistic conduct falls under the circumstances provided for in paragraphs 1 to 5 of Article 17 of the 2022 AML (that is, horizontal monopoly agreements), the plaintiff should not bear the burden of proof for the relevant market definition.

As for substantial assistance in reaching monopoly agreement, pursuant to Article 19 of the 2022 AML, the newly added provision explicitly identifies the undertaking's organisation and assistance in reaching a monopoly agreement as a statutory circumstance under which the undertaking is held liable, which impacts plaintiff's burden of proof. In previous antitrust litigations, the parties to the action were most often the direct parties to the relevant transactions and, as regards monopoly agreements, were usually parties to the corresponding agreements. However, the amended rule clearly stipulates that the undertaking should not organise other undertakings to reach a monopoly agreement and should not provide substantial assistance to other undertakings to reach a monopoly agreement. Thus, even if the undertaking is not cartel members with competing relationship, as long as it organises or substantially facilitates the monopoly agreement, then it still would be liable in antitrust litigations.

Vertical Monopoly Agreement

For vertical agreements, it should be the plaintiff's responsibility to prove that such agreements are anti-competitive. In the Yutai case, the SPC explicitly ruled that the standard of proof for administrative litigation (that is, challenging the antitrust authorities' decisions) differs from that for private litigation, noting that in the administrative enforcement context there is no need for the authority to prove actual or likely harm; as regards private actions, the people's courts have consistently taken a rule of reason approach towards resale price maintenance (RPM), whereby the legality of the arrangement is determined through a consideration of the effect on competition (see *Legal Update, SPC renders landmark decision on resale price maintenance case*).

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As shown in the *Yutai* case, for a long time, when it came to vertical monopoly agreements, it had been noted by commentators that the rules adopted by administrative enforcers and judges were somewhat different. However, this discrepancy should no longer exists with the implementation of the 2023 Monopoly Agreements Provisions, which adopt the rule of reason in law enforcement. Besides, according to Article 14 and Article 21 of the 2024 Anti-Monopoly Judicial Interpretation, when it comes to RPM under Article 18(1) of the 2022 AML, the plaintiff should not bear the burden of proof for the relevant market definition, and it should be the defendants who must prove that such agreement is not anti-competitive, but for other vertical agreements, the burden of proof remains on the plaintiffs.

Market Definition

As for relevant market definition, unlike the abuse of dominance case, monopoly agreement cases do not strictly be required to define the relevant market. According to Article 14 of the 2024 Anti-Monopoly Judicial Interpretation, the burden of proof in this scenario is on the plaintiff, but if the plaintiff can prove that the undertaking involved in monopoly agreement has significant market power, the undertaking which is alleged to abuse its market dominance has market dominance, or that the alleged monopolistic conduct has the effect of eliminating or restricting competition, the plaintiff may no longer be required to define a specific relevant market. Besides, for horizontal monopoly agreements under Article 17(1) to 17(5) of the 2022 AML and vertical agreements under Article 18(1)(a) and 18(1)(b), the plaintiffs do not have to provide evidence to define the specific relevant market.

"Safe Harbour" Rule

The "safe harbour" rule would serve as an integral part of the defendant's defence in vertical agreement litigation. Under Article 18(2)(3) of the 2022 AML, for those agreements otherwise prohibited by law, if the operator can prove that the agreements do not have the effect of eliminating or restricting competition, they would not be prohibited; if the operator is able to substantiate that its market share in the relevant market is below the threshold prescribed by the anti-monopoly enforcement agency and satisfies the other conditions provided by the anti-monopoly enforcement agency, the agreement should not be prohibited. Application of the new "safe harbour" rule to vertical monopoly agreements will ease the burden of proof on defendants and further improve the predictability of the litigation procedures. .Although numerical thresholds were omitted from the 2023 version of the Provisions on the Prohibition of Monopoly Agreements, leaving the rule temporarily ambiguous, the December 2025 amendments to the Provisions (effective 1 February 2026) have formally established explicit safe harbour criteria. For price-related vertical agreements, such as resale price maintenance, safe harbour protection requires satisfying cumulative quantitative thresholds: both the undertaking and its trading counterparty must maintain a market share below 5% in the relevant market, and their annual sales revenue in that market must not exceed RMB100 million. By contrast, for non-price vertical agreements, Article 17 of the amended Provisions applies a single quantitative test, clarifying that the safe harbour applies provided that the market share of both parties in the relevant market remains below 15% in each year throughout the agreement term.

In Abuse of Market Dominance Litigation

In cases alleging abuse of dominance under Article 22 of the 2022 AML, the plaintiff should bear the burden of proof for a number of elements. The plaintiff must prove that the defendant has a dominant position in the relevant market and that the defendant has abused its dominance; the defendant's actions had an anti-competitive effect, and that there is a causal link between the defendant's action and the plaintiff's loss where damages are claimed. If the defendant puts forward a defence, it should establish that the alleged conduct is justified (Article 28, 2024 Anti-Monopoly Judicial Interpretation).

Abuse of market dominance claims begin with defining the relevant market. The basic principles related to abuse of market dominance in the 2022 AML are similar to those in Article 102 of the *Treaty on the Functioning of the European Union* and *Section 2 of the Sherman Act*. Guidance for market definition is provided in the *Guidelines on the Definition of Relevant Markets 2009* (2009 Market Definition Guidelines). In accordance with the 2009 Market Definition Guidelines, the basic approaches for defining the relevant market are analysis of demand-side substitutability and supply-side substitutability.

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Market dominance under the Chinese antitrust regime is defined in Articles 23-24 of the 2022 AML and further elaborated by Article 6 of the 2023 Abuse of Dominance Provisions. Generally speaking, there are two approaches available to identify relevant market dominance: presumption and recognition.

A presumption of dominance is established in any of the following situations:

- The market share of one undertaking accounts for one-half or more of the market.
- The combined market share of two undertakings as a whole accounts for two-thirds or more of the market.
- The combined market share of three undertakings as a whole accounts for three-quarters or more of the market.

(Article 23, 2022 AML.)

A number of factors must be considered when recognising two or more undertakings as sharing a dominant market position. According to Article 13 of the 2023 Abuse of Dominance Provisions, these factors include market structure, the market's transparency, the degree of related commodity homogeneity, and the consistency of the undertakings' behaviour. However, if the preliminary evidence shows that among the said two or three undertakings, one of them has a market share of less than 10%, that undertaking will not be deemed to have a dominant position.

In judicial practice, the courts take a more active role in finding a dominant market position for public utility companies, Active Pharmaceutical Ingredient (API) companies, or other companies with a lawful monopoly position in abuse of dominance cases (Article 31, 2024 Anti-Monopoly Judicial Interpretation). The courts will not require the plaintiff to provide any evidence showing the defendant's dominance in such cases, and may find the defendant's dominance based on market structure and competitive conditions unless the defendant can prove otherwise.

The *Yangtze River* case was a typical case in the API field. A dominant position in the API industry was defined generally based on regulatory barriers to market entry and the irreplaceability of APIs.

In *Sinopec v Yunnan Yingding*, the Kun'ming Intermediate People's Court found that Sinopec Yunnan had a dominant position in the Yunnan refined petroleum products market, as it had half of that market's share.

In the early days of applying the AML to the internet sector, courts were reluctant to find that defendants held dominant positions, thereby foreclosing any possible finding of abuse of market dominance. Before the introduction of the Anti-Monopoly Judicial Interpretation in 2012, this phenomenon was typical of markets or sectors that are technically complex, rapidly evolving or otherwise difficult to delineate. Early cases also were marked by plaintiffs providing inadequate evidence in support of their claims. The 2012 Anti-Monopoly Judicial Interpretation clarified, under Article 10, that an entity's statements are relevant and that referring to them is an appropriate practice; accordingly, plaintiffs may introduce the defendant's own statements as evidence of dominance. This position remains the same under the 2024 Anti-Monopoly Judicial Interpretation (and its previous version adopted in 2020).

Another typical case is *Qihoo v Tencent*. In that case, the court held that, in the internet sector, market shares are only a rough and potentially misleading indicator for determining the existence of a dominant position, and the existence of a dominant position cannot be inferred from market shares alone where:

- Market entry is easy.

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- Market shares are the result of high efficiency or better products.
- There are constraints from products outside the relevant market.

A more significant case is *Four Ningbo Rare Earth Companies v Proterial*, of which the final judgment was made by the SPC on 14 December 2023. In this case, the SPC's ruling overturned the first instance judgement made by the Ningbo Intermediate Court by dismissing all claims made by the plaintiff. The complex issues involved in this case, such as the approach of defining the relevant technology market, the applicability of essential facilities doctrine in the IP regime, the distinction between refusal to deal and refusal to license, meaning that the case does not only bear academic significance within the antitrust domain but also wield a guiding influence on economic and innovative activities within the industry.

Article 1 of the 2022 AML introduces an additional legislative objective of "encouraging innovation," which will be of principle guidance in determining whether the proof object constitutes an abuse of dominant position. It may become the basis of attribution of liability for large-scale enterprises to hinder competitors' entry into the market and influence market innovation, as well as the basis of defence for undertakings to prove the reasonableness of certain technical means and product characteristics.

Article 14 of the 2024 Anti-Monopoly Judicial Interpretation proposes that where the evidence provided by the plaintiff is sufficient to directly prove that the undertaking which is alleged to abuse its market dominance has market dominance, or the alleged monopolistic conduct has the effect of exclusion or restriction of competition, the plaintiff may no longer bear the burden of proof for the definition of the relevant market.

Additionally, it is worth noting that Article 22 of the 2022 AML introduces an additional paragraph that lays particular emphasis on the regulation of abuse of market position in the platform economy, stating that an undertaking with a dominant market position should not employ data and algorithms, technology and platform rules to commit the abuse of market dominance specified in the preceding paragraph. Similar cases have been addressed in previous judicial practice, as exemplified by the price discrimination cases of certain online platforms, yet a large volume of these cases have not been dealt with as antitrust cases. The 2022 AML, which explicitly incorporates technology and platform rules as vehicles for undertakings to commit abuse of dominant market position, should undoubtedly exert a direct impact on enterprises involved in advancing transactions through certain technology and involving platform-based business. Attentions should be given to monitor if there is a shift in the court's attitude towards the determination of market dominance related to the platform economy industry.

For more information on market dominance issues, see *Practice Note, Abuse of Market Dominance in China: Dominant Market Position*.

Evidence and Discovery

In China, each party bears the responsibility to collect and present its own evidence (Article 67, 2023 CPL).

Evidence formed outside of China must be notarised, and in addition be certified if involving identity relationships (Article 16, *Provisions of the SPC on Evidence in Civil Proceedings 2019* (SPC Interpretation 19/2019)).

There is no US-style discovery in China, and parties to Chinese actions are not compelled to disclose evidence to opposing parties. Since a well-founded AML claim typically requires documents in the defendant's possession, this limitation makes it difficult for private parties to obtain the evidence they need to support a claim under the AML. Instead, judicial assistance and reliance on the inquisitorial powers of the court may be necessary for the plaintiff to obtain necessary evidence.

Originally, and in recognition of the evidentiary obstacles facing plaintiffs, the 2012 Anti-Monopoly Judicial Interpretation (first draft) provided for court-assisted evidence gathering. The first draft gave plaintiffs standing to request orders from courts

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compelling defendants to produce documents necessary to prove the plaintiff's case. However, this applied only to information for which the defendant was the sole possessor. Moreover, this provision was not included in the final version of the 2012 Anti-Monopoly Judicial Interpretation. The 2024 Anti-Monopoly Judicial Interpretation remains silent on this issue either. This left evidence gathering and production procedures under the AML unchanged and consistent with normal procedures, which provide only limited recourse to judicial assistance, namely:

- The parties may apply to the courts to investigate. Where a party is unable to obtain specific evidence, it may request the courts to assist in collecting evidence and to examine its veracity (Article 67, 2023 CPL). Such an application must be made before the expiry of the time limit for evidence submission (Article 20, SPC Interpretation 19/2019).

  For example, in *Xu Shuqing v Tencent*, Xu Shuqing applied to the court for an evaluation of Tencent's market share in the emoticon market. However, that application was not supported because the plaintiff failed to meet their burden to prove Tencent's anti-competitive behaviour in that market. Moreover, the court ruled that, because market share was not an essential factor in the case (because anti-competitive behaviour had not been established), dismissing the application for an investigation would not affect the substantive merits of the judgment.

- The court can also investigate ex officio. If the court deems it necessary, it will also investigate and collect evidence on its own initiative without the parties' application. For example, in the *Mlily's* case, the Ningbo Intermediate People's Court took the initiative to investigate the evidence on where the defendants met.

  Also, in the *Hankook Tire* case, the Shanghai IP Court collected a total of three pieces of evidence on its own, one from the Shanghai Price Bureau, and the other two from the China National Knowledge Infrastructure website.

- The plaintiff may rely on the information released by the defendant. The annual report of a listed company, its publicly acknowledged market share and any other information released by the defendant can be used as evidence to prove its market position. If the evidence can prove that defendant has a dominant position in the relevant market, the court may determine based on it, unless there is sufficient evidence to the contrary to rebut it (Article 29, 2024 Anti-Monopoly Judicial Interpretation).

- Parties may rely on expert opinion to prove their case. There is a possibility for the parties to ask the court to have one or two professionals with relevant knowledge explain specific questions of the case in court (Article 11, 2024 Anti-Monopoly Judicial Interpretation). The parties may apply to the court to have a professional institution or individual to conduct a market survey or economic analysis (Article 11, 2024 Anti-Monopoly Judicial Interpretation). Especially in cases involving the platform economy, both parties in almost every high-profile case engage economic experts to provide reports, appear in court and be cross-examined. The opinions put forward by the expert witnesses on professional issues in court should be regarded as statements by the parties. Evidence in a foreign language must have a Chinese translation (Article 73, 2023 CPL).

Disclosure of Leniency Materials

It is unclear at this stage whether courts will allow the disclosure of leniency materials provided to, previously the *National Development and Reform Commission* (NDRC) or the *State Administration for Industry and Commerce* under their respective leniency programs, and now SAMR after its being formed as the single antitrust regulator.

Whether courts would allow the disclosure of leniency materials provided to the antitrust enforcement authority is one of the significant issues that have not been addressed by the 2024 Anti-Monopoly Judicial Interpretation.

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In 2016, the NDRC circulated the *Solicitation of Public Comments on the Guidelines for Application of the Leniency Regime to Cases of Horizontal Monopoly Agreements (Draft for Comments) 2016*, which sought to provide more clarity on the application of leniency rules, including requiring the enforcement agency to keep leniency materials confidential and prohibiting the materials from being used as evidence in civil proceedings.

The *final version* of the guidelines was approved on 4 January 2019 (2019 Leniency Guidelines). Although the 2019 Leniency Guidelines provide that the reports submitted and files formulated during the leniency application should remain confidential, they do not retain the rule proposed in the 2016 draft that such materials should not be used as evidence in civil litigations. It thus remains to be seen to what extent submissions by leniency applicants may later be used against them in follow-on private litigations. (For a detailed discussion on leniency mechanisms, see *Practice Note, Monopoly Agreements in China: Leniency*.)

No Legal Privilege

Another important issue to bear in mind is that in China there is no legal privilege. This means, in practice, that if a court orders the disclosure of documents, this may include any documents prepared by the parties' counsels. Therefore, information considered privileged in other jurisdictions could in principle be requested to be disclosed in litigation in China (see *Practice Note, Conducting Cross-Border Investigations in China: Attorney-Client Privilege*).

Statute of Limitations

Since 2017, the general statute of limitations for civil cases has been increased from two years to three years, from the time when the entitled person knew or should have known that their rights were infringed and who is the infringer (Article 188, *Civil Code of the PRC 2020* (2020 Civil Code, effective from 1 January 2021)).

The revised statute of limitations period applies to antitrust litigation as well.

The 2024 Anti-Monopoly Judicial Interpretation provide more details on the statute of limitations period for AML violations.

The statute of limitations is discontinued once a lawsuit is brought or when one party makes a claim for, or agrees to perform, the obligations claimed (Article 195, 2020 Civil Code). A new limitations period then begins to run from the date of the discontinuance or the termination of a relevant procedure.

Consistent with this general principle, the 2024 Anti-Monopoly Judicial Interpretation provides that if the plaintiff reports potential monopoly conduct to an enforcement agency, the statute of limitations will be discontinued from the date of that report, and where the enforcement agency:

- Decides not to accept the case, to revoke the case, or decides to terminate the investigation, the statute of limitations will be calculated anew from the date that the plaintiff knows or should have known the administrative decision.

- Makes a finding of monopoly conduct after investigation, the statute of limitations will be calculated anew from the date the plaintiff knew or should have known the effective date of the agency's decision.

(Article 49, 2024 Anti-Monopoly Judicial Interpretation.)

Since the entry into force of the 2022 AML, the determination of law application for illegal acts during the period of transition from the old to the new law has led to theoretical and practical discussion in the proceedings of antitrust litigation. Pursuant to Article 104 of the *Legislation Law 2023*, "laws, administrative regulations, local regulations, autonomous regulations, separate regulations, and rules should not be retroactive, except for the special provisions developed for the better protection of the

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rights and interests of citizens, legal persons, and other organisations." In principle, the law has no retroactive effect. Therefore, cases that occurred before the effectiveness of the 2022 AML theoretically should be enforced in accordance with the principle of observing old laws, and the new laws only apply when it is with a lighter punishment. Given the substantial increase in legal liability for violations under the 2022 AML, the defendants would naturally seek application of the old law. Nonetheless, despite this principle, the old law is not universally applied in all cases involving continuing monopolistic conduct that occurred prior to the new law, for the reasons stated below.

For continuing violations, this statute of limitations period will be extended. If the plaintiff files the lawsuit after the period but the alleged monopoly conduct still continues at that time, the court will not dismiss the case over the defendant's defence of the expiry of the statute of limitations. The court, however, will calculate the amount of damages only from the preceding three years before the date when the plaintiff files the lawsuit (Article 49, 2024 Anti-Monopoly Judicial Interpretation). This is similar to the treatment in the context of patent and other IP property infringement, where the SPC has provided for extension of the statute of limitations for continuing violations.

Violations occurring before the 2007 AML, and continuing after 2008, would still be actionable under the AML. For example, the *auto parts cartel* case happened between January 2000 and February 2010, but the NDRC ruled that orders relating to China, which was the subject of the collusion, continued until the end of 2013 and so still fined the 12 companies subject to the collusion totalling at RMB1.24 billion (see also *Practice Note, Monopoly Agreements in China: Prohibitions Against Price Monopoly Agreements*).

For the time being, the SPC IP court and the anti-monopoly enforcement agencies have not yet released further interpretations to clarify the law application during the transition period in the above-mentioned litigation, and guidance on the application of the law in the relevant cases is still awaited for enforcement practice in specific cases after the new law entering into force.

Interplay with Administrative Procedures

The 2018 State Council re-organisation mandates an on-going project to consolidate the enforcement powers of China's antitrust regulators into SAMR. Furthermore, China's new national anti-monopoly administration was officially established in Beijing on 18 November 2021, which further reflects the state's attention to strengthen antitrust law enforcement. For more information on antitrust enforcement merger, see *Article, Understanding the 2018 Government Institutional Reform: China: Single Antitrust Regulator*.

Generally, the interplay between litigation and administrative procedures appears on two levels:

- Parallel. The law enforcement agency opens an antitrust investigation against an undertaking, and at the same time that undertaking's competitors, customers, or other relevant parties bring a civil antitrust litigation against it. For instance, in *Ele.me v. Meituan*, Ele.me brought civil lawsuits complaining that Meituan abused its dominant market position through its "pick one of two" (exclusive dealing) practice, and at around the same time, the SAMR initiated an antitrust investigation against Meituan for the same conduct.

- In succession. The undertaking is unsatisfied with punishment decision made by the antitrust law enforcement agency and thus brings an administrative litigation accordingly to challenge the enforcement decision. For instance, in *Puyunhui Pharmaceutical's* investigation, one of the undertakings was fined more than RMB50 million for its conduct of abuse of dominant market position by the SAMR, and it brought an administrative litigation against the SAMR to overturn the penalty result.

In the 2024 Anti-Monopoly Judicial Interpretation, more rules are proposed about the interaction between judicial and administrative procedures. Specifically:

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- The plaintiff in a civil antitrust litigation do not have to prove the monopolistic conduct where the handling decision by an Anti-Monopoly Law Enforcement Agency on ascertaining establishment of a monopolistic conduct has not been subject to any administrative litigation within the statutory period, or has been confirmed by a people's court's effective ruling, unless there is sufficient evidence to the contrary to overturn it (Article 10).

- Where an Anti-monopoly Law Enforcement Agency is conducting an investigation into the alleged monopolistic conduct, the court may rule to suspend the lawsuit based on the specific circumstances (Article 13).

In practice, the courts have piloted to explore the co-operation mechanism with antitrust enforcement agencies to implement the above rules. For instance, it is notable that SAMR has established a mechanism for antitrust law administrative enforcement and judicial co-ordination with the Beijing Intellectual Property Court, under which both agencies agree to establish a routine communication liaison mechanism. This entails strengthening data and information sharing, exploring the establishment of mechanisms for reporting case leads and co-ordinating investigations, facilitating exchanges of typical cases, enhancing discussions and training, mutually providing professional technical support, and jointly promoting the convergence of anti-monopoly administrative law enforcement and civil judicial proceedings to enhance the quality and effectiveness of anti-monopoly efforts.

Administrative Actions and Private Antitrust Actions

In China, administrative enforcement by an antitrust enforcement agency is not a precondition for initiating a private anti-monopoly claim. Article 2 of the 2024 Anti-Monopoly Judicial Interpretation provides that:

> "[n]o matter whether the plaintiff brings a civil suit directly to the court, or brings a civil suit to the court after the anti-monopoly law enforcement agency's effective decision that the action constitutes a monopoly act, if other requisite requirements for acceptance stipulated by law have been fulfilled, the court should accept the case."

At this juncture, it is noteworthy to highlight a distinction between private and public actions in China. With regard to civil litigation, according to the 2023 CPL and other relevant laws of China, as long as the plaintiff meets the conditions for initiating a claim, the court is required to file a case. However, SAMR is not obliged to start an investigation after receiving tip-off materials from a natural person or private entity and retains full discretion on whether or not to initiate an action.

However, in practice complaining to the antitrust authority and lodging a civil antitrust claim in parallel has become a "strategy" that plaintiffs increasingly use in China. The plaintiff may bring a civil action before a court and also report the suspected antitrust violation to SAMR. This can lead to multiple, simultaneous proceedings involving the same or related facts. In the case of *Huawei v InterDigital Technology Corporation* (IDC), Huawei sued IDC for abusing its dominant position in March 2013 before the Shenzhen Intermediate People's Court and obtained a favourable judgment. IDC appealed. The judgement from the Guangdong High People's Court was entered in October 2013. Meanwhile, in June 2013, the NDRC (which prior to SAMR's formation in 2018 had antitrust authority) launched an antitrust investigation against IDC. This case was suspended and ultimately terminated after IDC made commitments that the NDRC accepted.

Overall, strictly speaking, the court has no legal obligation to wait for the outcome of the parallel proceedings. Therefore, a court is likely to determine applications for a stay of proceedings pending regulatory proceedings on a case-by-case basis. A

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defendant can seek to stay an action as part of its overall litigation strategy, for example, by pursuing a court-led settlement discussion with the plaintiff.

In addition, except the procedure, there is also no need to refer to the decisions of law enforcement agencies in making a judgement. For example, in the *Hankook Tire* case, Guangming Trading demanded a court verdict to stop Hankook Tire from conducting RPM, as well as several behaviours amounting to an abuse of market dominance. Although Hankook had previously been fined by antitrust enforcement agencies because of its monopolistic behaviours, the court held that the prerequisite for applying Article 50 of the then effective 2007 AML was not met since the alleged act did not constitute monopolistic conduct.

Article 11 of the 2022 AML explicitly calls for better co-ordinating antitrust enforcement with antitrust litigation, to strengthen AML's enforcement and judicial activities, improve the mechanism of administrative law enforcement and judicial convergence, and maintain a fair competition order. With this amendment, it can be reasonably expected that the administrative law enforcement and the judicial mechanism will be better co-ordinated, which will undoubtedly reinforce the anti-monopoly efficiency, and the infringing enterprises are bound to face more grave consequences.

Thus, it can be expected that in the future, China's AML enforcement and judicial processes will be more closely connected, and the likelihood of conflicting or inconsistent decisions would be further reduced.

Administrative Actions and Administrative Litigations

According to Article 65 of the 2022 AML and the *Administrative Reconsideration Law 2023* (with effect from 1 January 2024), parties dissatisfied with a decision made by an enforcement agency pursuant to Articles 34 or 35 of the 2022 AML (review decision on merger filings) must first apply for administrative review (that is, to ask the relevant enforcement agency to reconsider its decision) within 60 days from the day the decision was issued. The enforcement agency then has 60 days (which can be extended to 90 days) to reconsider its decision. In case the parties still find the result of the administrative review unsatisfactory, they may then submit the case to a competent intermediate people's court within 15 days of the review decision for judicial review (see *Jurisdiction* and also Practice Note, Protecting Commercial Rights and Interests in China: Administrative Litigation). If a party is dissatisfied with a decision made by enforcement agency other than those specified in the Articles 34 or 35 of the 2022 AML (punishment decision on monopoly agreements, abuse of dominance, illicit undertaking concentration, and other decisions), it may apply for administrative reconsideration or initiate administrative litigation.

The mandatory pre-litigation reconsideration procedure was put to its first real-world test in the *Tobishi Corporation* case, which stands as China's inaugural administrative litigation challenging a merger control decision. On 22 September 2023, SAMR issued a conditional clearance decision regarding Simcere Pharmaceutical Group's acquisition of Beijing Tobishi Pharmaceutical Co., Ltd. (Tobishi). Dissatisfied with the conditional approval, Tobishi applied to SAMR for administrative reconsideration, but SAMR rendered a ruling upholding its original review decision. Tobishi subsequently initiated an administrative lawsuit before the Beijing Intellectual Property Court to challenge both the conditional clearance and the reconsideration ruling. On 30 December 2024, the court rendered a historic judgment dismissing all of Tobishi's claims and maintaining SAMR's decisions, completing the statutory cycle for the first judicial review of merger control in PRC antitrust history.

By contrast, where administrative reconsideration is optional, such as in administrative penalty decisions for monopoly conduct, undertakings have more direct access to judicial review without first exhausting administrative remedies. For example, on 14 April 2020, SAMR published an enforcement decision against three injectable calcium gluconate API distribution companies for abusive conduct. They are Shandong Kanghui Medicine Company Limited (Kanghui), Weifang Puyunhui Pharmaceutical Company Limited (Puyunhui) and Weifang Taiyangshen Company Limited Pharmaceutical (Taiyangshen, jointly the Companies). The decision against the Companies featured a sky-high total fine of RMB325.5 million for abuse of dominance.

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However, Kanghui and Puyunhui brought an action against SAMR's antitrust penalty decisions before the Beijing No.1 Intermediate People's Court, seeking judicial review of the decision. Kanghui and Puyunhui alleged SAMR had insufficient evidence to prove charges of market dominance and abusive conduct and also made procedural errors in the probe that led to the antitrust penalties. This case is the first antitrust administrative litigation against SAMR since the implementation of the 2007 AML. Due to its complexity, the case has been taken over by the Beijing High People's Court.

Although the number of administrative litigation cases reflecting a desire to overturn a decision of administrative punishment made by anti-monopoly law enforcement agencies is still small, one observation is that more and more enterprises have incentive to challenge the punishment decisions of anti-monopoly law enforcement agencies. It also means that enterprises are paying more attention to antitrust compliance and the issue of due process.

Available Remedies

The courts have wide powers to impose remedies, including issuing:

- An order to cease the illegal conduct.
- An award of damages. Losses suffered due to the alleged monopolistic conduct include direct losses and reduced profits compared to the conditions where the conduct did not occur. Based on the plaintiff's claims and the specific circumstances of the case, the people's court may include the plaintiff's reasonable costs for investigating and preventing the monopoly conduct in the amount of damages.
- Where an order to cease the alleged monopolistic conduct is insufficient to eliminate the effect of eliminating or restricting competition, the court may, based on the plaintiff's claims and the specific circumstances of the case, order the defendant to bear the legal liability of taking necessary actions to restore competition.

(Articles 43 and 44, 2024 Anti-Monopoly Judicial Interpretation; Article 60, 2022 AML.)

As regards anti-competitive agreements, the courts may determine the infringing provisions to be invalid.

In the 2024 Anti-Monopoly Judicial Interpretation, if ordering the defendant to cease the alleged monopolistic conduct is not sufficient to eliminate the effect of excluding or restricting competition, the court may order the defendant to make specific acts to restore competition (Article 43). These specific acts in judicial practice may include terminating the exclusive agreement, terminating the additional unreasonable transaction conditions, terminating the discriminative transaction clauses, guaranteeing the supply of products to the downstream enterprises, and so on.

The specific calculation method varies from case to case. In practice, the people's courts would usually only award damages on the basis of consequential economic loss, not pure economic loss. Similarly, relevant regulations have not stipulated funding rules; as it stands, the parties are entitled to secure third-party financial support at will.

For example, in *Beijing Ruibang Yonghe Medical Trading v Johnson & Johnson*, the court implied that plaintiff's pure economic loss as alleged in that case was directly related to the defendant's execution of the minimum resale price agreement in the case, and can be claimed under the AML. However, the plaintiff's other claims for loss, including performance bond, inventory backlog, and employee severance expenses which had no direct relationship with the AML were not supported.

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Another typical case is the *Yangtze River* case. The court claimed that the damages could only be those caused after the illegal abuse of dominant market position, and that the difference between the effective sales price and the reasonable sales price multiplied by the total number of sales was the undue benefit gained from the abuse of a dominant market position.

The 2024 Anti-Monopoly Judicial Interpretation clarifies the scope and factors for calculating monopoly losses (Articles 44 and 46):

- Losses include direct losses and reduced profits. When determining monopoly losses, the following factors may be considered:
    - commodity prices, operating costs, profits, market shares, and so on, in the relevant market before, during, or after the implementation of the alleged monopolistic conduct;
    - commodity prices, operating costs, profits, and so on, in comparable markets unaffected by the monopolistic conduct;
    - commodity prices, operating costs, profits, market shares, and so on, of comparable operators unaffected by the monopolistic conduct; and
    - other factors that may reasonably prove the losses suffered by the plaintiff due to the alleged monopolistic conduct.
- If the plaintiff has evidence proving that the alleged monopolistic conduct has caused losses but finds it difficult to determine the specific amount of losses under the preceding paragraph, the court may, based on the plaintiff's claims and case evidence, consider factors such as the nature, severity, duration, and benefits obtained from the monopolistic conduct, and determine a reasonable compensation amount at its discretion.
- Where multiple alleged monopolistic conducts are interrelated and cause indivisible aggregate losses to the plaintiff in the same relevant market, the court should consider the losses as a whole. Where multiple alleged monopolistic conducts are independent and cause losses to the plaintiff in different relevant markets, the court may consider the losses separately.

The 2024 Anti-Monopoly Judicial Interpretation clarifies that participants in monopoly agreements may not claim losses from the agreement (Article 47). However, based on Article 45 of 2024 Anti-Monopoly Judicial Interpretation and judicial practice, the court may support the plaintiff's claim for reasonable costs for investigating and preventing the monopoly conduct. In the *"No-Excitation Switch" Horizontal Monopoly Agreement* case, the SPC rejected the appellant's claim for economic loss compensation but supported its claim for reasonable expenses incurred in safeguarding rights.

Arbitrability of AML Claims

While both the current 2022 AML and the *Arbitration Law of the PRC 2025* are silent on this point, the SPC explicitly resolved this issue in the 2024 Anti-Monopoly Judicial Interpretation. Article 3 confirms that an arbitration clause cannot exclude a people's court's jurisdiction over an antitrust case.

This position is strongly aligned with recent judicial practice. For instance, in *Hebei Company v Shanghai Company & Huainan Company* on 28 August 2025, Hebei Company, a regional pharmaceutical distributor in China, alleged that Shanghai Company,

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a sole drug manufacturer, and Huainan Company, its national master distributor, jointly abused their market dominance by imposing restrictive contractual terms on sales territories, customer channels, and online e-commerce platforms. The defendants argued, and the court of first instance initially held, that the action was barred as duplicate litigation because the parties had agreed to arbitrate their disputes and a prior arbitral award had already upheld the contract's validity and penalised Hebei Company for breach.

On appeal, the SPC overturned the first-instance ruling and clearly articulated the boundary between contract arbitration and judicial jurisdiction in antitrust matters. The SPC held that lower courts retain statutory jurisdiction over civil antitrust claims under Article 3 of the 2024 Anti-Monopoly Judicial Interpretation regardless of any contractual arbitration agreement. Crucially, the SPC emphasised that an antitrust lawsuit and a prior contract performance arbitration do not constitute the "same dispute" under Article 9 of the PRC Arbitration Law (the "one-award-final" principle). Furthermore, the SPC clarified that the prohibition against duplicate litigation (res judicata) under Article 247 of the *Civil Procedure Law Interpretation 2022* applies strictly to prior court judgments rather than arbitral awards.

Consequently, the SPC confirmed that an existing arbitral award ruling on contractual validity or breach does not preclude a party from subsequently instituting a court action to challenge the underlying conduct or agreement under the AML. Ultimately, even where an arbitral tribunal has previously rendered a binding award upholding a contract's validity or penalizing a breach, a party remains entitled to bring a standalone civil antitrust lawsuit alleging that the contractual restrictions constitute an abuse of market dominance or a monopolistic agreement. From a practical perspective, including standard arbitration clauses in distribution, licensing, or supply agreements will not insulate contracting parties from court jurisdiction regarding antitrust claims in China.

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