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# China

# COMPETITION LITIGATION


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This country-specific Q&A provides an overview of competition litigation laws and regulations applicable in China.

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# CHINA
# COMPETITION LITIGATION

## 1. What types of conduct and causes of action can be relied upon as the basis of a competition damages claim?

The Anti-Monopoly Law of the People's Republic of China ("**AML**") provides the ground for private actions by undertakings who have suffered losses caused by monopolistic conducts, and there are three types of monopolistic conducts stipulated: monopoly agreements, abuse of dominant market position, and concentration of undertakings that leads or may lead to anti-competitive effects. Under the Amended AML issued by the National People's Congress which will come into effect on August 1, 2022, no change was stipulated regarding the types of monopolistic conducts which can be the subject of claims.

These causes of actions have been listed in the Notice of the Supreme People's Court of PRC ("**SPC**") on the Promulgation of the Revised Regulations on Causes of Action for Civil Case as well. However, among the three types of conduct, private actions against concentration of undertakings that lead or may lead to anti-competitive effects still stays at the legislative and theoretical level, and no action has been commenced on this ground in practice.

## 2. What is required (e.g. in terms of procedural formalities and standard of pleading) in order to commence a competition damages claim?

The Civil Procedure Law of PRC ("CPL") provides the requirements for instituting a civil lawsuit and no additional or special provisions on competition damages claim. The requirements to commence a competition damage claim include:

- the plaintiff(s) must be a natural person(s), lead person(s), or other organization(s) with a direct stake in the case;
- there must be a specific defendant(s);
- there must be specific claim(s), facts, and reasons; and
- the lawsuit must fall within the scope of acceptance of civil lawsuits by the courts, and the jurisdiction of the court which accepts the lawsuit.

## 3. What remedies are available to claimants in competition damages claims?

Neither the current AML nor the Amended AML sets limitation on the types of remedies for injuries available to the claimants of competition damages claims. Nonetheless, competition damages claim is a kind of tort litigations in China, therefore all the rules of tort litigations are applicable to competition damages claims. In conjunction with damages claims, the claimants may bring declaratory or injunctive claims as well. The Amended AML specifically provides that the civil liabilities of the antitrust infringers include cessation of infringement, restitution of the original state, compensation for loss and others which the typical claims in the competition damages cases.

## 4. What is the measure of damages? To what extent is joint and several liability recognised in competition damages claims? Are there any exceptions (e.g. for leniency applicants)?

According to the Article 14 of AML Judicial Interpretation, the courts may, considering the plaintiff's claims and finding of facts, order the defendant to cease infringement, compensate for losses, and otherwise assume civil liability in accordance with law. Also, subject to the plaintiff's claims, the courts may also include the plaintiff's reasonable expenses on investigation and prevention of the monopolistic conduct in the scope of compensation for losses.

However, neither AML nor AML Judicial Interpretation provide any guidance on the calculation method of competition damages. In practice, the plaintiff shall

 

specify the amount of competition damages and prove that they were caused by the alleged monopolistic conduct, and the courts may determine a reasonable amount of damages at their discretion by considering factors such as the nature, extent and duration of the alleged monopolistic conduct. The SPC is currently drafting the Second Judicial Interpretation which may further clarify on the calculation method of competition damages.

Joint and several liabilities are recognized under the PRC law which means that if two or more defendants jointly commit an infringement that causes others to suffer damages, such as the cartel members, they shall bear the liabilities jointly and severally. In competition damages claims, a typical circumstance is where a plaintiff files a lawsuit against several undertakings entering a monopolistic agreement for raising the product price, dividing the markets, or conducting other monopolistic conducts. The amount of damages for which the defendants should be jointly and severally liable shall be determined pursuant to their respective degree of responsibility. The defendants shall bear the liability equally if it is impossible to make a reasonable allocation.

The current PRC antitrust rules do not provide any exceptions for leniency applicants or other circumstances. In practice, the common understanding is that whether the defendants applying for leniency is irrelevant to the civil damage compensation liability for the time being. However, as the Amended AML added to strengthen the interplay between private and public enforcement, the facts that defendants have applied for leniency in the investigation procedure might be took into consideration during the trial in the future. Also, In the Second Judicial Interpretation which the SPC is reportedly drafting might involve this issue.

## 5. What are the relevant limitation periods for competition damages claims? How can they be suspended or interrupted?

According to Article 188 of Civil Code of People's Republic of China ("Civil Code"), the statute limitation period for bringing a civil action is three years which commence from the date when the plaintiff knew or should have known the infringement, which also applies to competition damages claims.

The Civil Code provides circumstances where the limitation period shall be suspended or re-calculated.

- The limitation period shall be suspended, if during the last six months of the period, a claim cannot be filed for obstacles resulting in the plaintiff's failure to file a claim, such as the scenario of a force majeure. The limitation period expires six months after the day when the obstacle causing the suspension is eliminated.
- The limitation period interrupted under any of following circumstances shall be recalculated from the time of interruption or conclusion of the relevant procedure: 1) the obligee requests the obligor's performance; 2) the obligor agrees to perform; 3) the obligee institutes and action or applies for arbitration; 4) any other circumstances with equal effects as instituting an action or applying for arbitration.

The Article 16 of AML Judicial Interpretation further provides that where the plaintiff reports the alleged monopolistic conduct to the antitrust enforcement authority, the statute limitation period is interrupted from the date of such a report. If the antitrust enforcement authority decides not to open a case, to revoke a case, or to terminate the investigation, the statute limitation period shall be re-calculated from the day when the plaintiff knows or should have known such decisions. If the antitrust enforcement authority determines after investigation that the alleged monopolistic conduct exists, the statute limitation period shall be re-calculated from the day when the plaintiff knows or should have known that the decision of the antitrust enforcement authority affirming the existence of monopolistic conduct has come into force.

That said though, it is provided that the court shall not protect the rights more than twenty years from the date of the infringement.

## 6. Which local courts and/or tribunals deal with competition damages claims?

According to the Provisions on Jurisdiction of First Instance Civil and Administrative Intellectual Property Cases issued by the SPC on 20 April 2022, the competition damages claims shall be brought to the intellectual property courts or the intermediate people's courts at the provincial level or the intermediate people's courts designated by the SPC.

On 1 January 2019, a special IP Appellate Tribunal was established under the SPC. Appeals to all first instances' rulings over competition disputes issued thereafter, are heard by this special Tribunal.

Currently, China has set up four intellectual property courts (located in Beijing, Shanghai, Guangzhou and

 

Hainan) and more than twenty local intellectual property tribunals (located in Nanjing, Suzhou, Wuhan, Chengdu, Hangzhou, Ningbo, Hefei, Fuzhou, Jinan, Qingdao, Shenzhen, Tianjin, Zhengzhou, Changsha, Xi'an, Nanchang, Lanzhou, Changchun, Urumqi, Haikou and other cities).

## 7. How does the court determine whether it has jurisdiction over a competition damages claim?

Article 4 of the AML Judicial Interpretation specifies that the jurisdiction over a competition damages claim shall be determined considering the fact of a specific case.

- For claims over contractual disputes, courts at the places where the defendant is domiciled or where the contract is performed have the jurisdictions under Article 23 of the CPL. According to Article 34 of the CPL, if the parties of the contract have so agreed, courts at the places with an actual connection to the contract may also have the jurisdictions. These places could be, for example, where the contract is signed or where the claimant is domiciled.
- For claims over tort disputes, courts at the places where the defendant is domiciled or where the tort is committed or where the tortious consequence takes place have the jurisdictions under Article 28 of the CPL.
- In the case that a lawsuit has been brought by plaintiffs in multiple courts, the first court that accepts the case shall assume the jurisdiction.

## 8. How does the court determine what law will apply to the competition damages claim? What is the applicable standard of proof?

Besides the AML, which covers competition-specific matters, courts will also refer to the Civil Code for more general rules regarding contract and tort, CPL and relevant judicial interpretations.

According to the Article 108 of the Interpretations of the Supreme People's Court on Application of the Civil Procedural Law of China ("**CPL Judicial Interpretation**"), the party bearing the burden of proof must prove the existence of facts on a balance of probabilities. As a general principle in the civil procedure, the burden of proof shall be borne by the party that raises the claim, but the AML and the AML Judicial Interpretation established some special rules to alleviate the burden of proof on the claimant.

- In a private cartel case, the claimant shall prove the existence of a cartel, damages and the causal relationship between the cartel and damages. The burden of proof is transferred to the defendant to demonstrate that the alleged agreement does not have any anticompetitive effect on the relevant market if the content of alleged agreement is core cartel.
- In a private case of vertical monopoly agreement, based on the previous judgement rendered by courts, the claimant shall prove not only the existence of a vertical monopoly agreement, damages and the causal relationship between the agreement and damages but the anticompetitive effect on the relevant market as well. The Amended AML added that if an undertaking can prove that vertical price monopoly agreement has no anticompetitive effects, prohibition shall not be imposed, which can be construed as further clarifying the litigant's burden of proof at the legislation level.
- In a private case of abuse of dominance, the claimant shall prove that the defendant owns and uses the dominant power in the relevant market and the causal relationship between the abuse conduct and damages. The plaintiff may use information externally released by a defendant as evidence that the defendant has a dominant market position. Where the information externally released by the defendant is sufficient to prove that the defendant has a dominant market position in the relevant market, the court may decide on this basis, unless such a determination can be overturned by contrary evidence.

## 9. To what extent are local courts bound by the infringement decisions of (domestic or foreign) competition authorities?

Under the current PRC antitrust rules and precedents, the findings of antitrust authorities are not strictly binding in follow-on or parallel private competition dispute cases, but such findings do have certain evidentiary values. Article 114 of the CPL Judicial Interpretation emphasises that the facts stated in the official documents issued by the public authorities within their powers shall be presumed to be true unless otherwise rebutted. However, the above-mentioned rules apply only to domestic decisions and rulings; foreign enforcers' decisions, therefore, can only serve as a

 

reference.

## 10. To what extent can a private damages action proceed while related public enforcement action is pending? Is there a procedure permitting enforcers to stay a private action while the public enforcement action is pending?

The current PRC antitrust laws do not provide explicit rules on the extent a private damages action can proceed while related public enforcement action is pending. At law, the courts do have discretion to stay a private antitrust claim pending resolution of an administrative action to avoid potential conflicts. However, the courts are not obliged to do so. In practice, complaining to the antitrust authority and filing 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 report the suspected antitrust violation to antitrust authority. This can lead to multiple and 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 Intermediate People's Court of Shenzhen and obtained a favorable judgment. IDC appealed. The judgement from the High People's Court of Guangdong was entered in October 2013. Meanwhile, in June 2013, the National Development and Reform Commission ("**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 NDRC accepted.

The Amended AML added to strengthen the interplay between private and public enforcement which may bring up further measures on the coordination between the court and the antitrust enforcement authorities in the next few years and solve the current practice issues.

## 11. What, if any, mechanisms are available to aggregate competition damages claims (e.g. class actions, assignment/claims vehicles, or consolidation)? What, if any, threshold criteria have to be met?

Under PRC laws, if plaintiffs have a common subject matter or if their subject matters are of the same type, they may jointly file a lawsuit before a court. Such kind of collective and representative action has not occurred in any antitrust cases so far, but it may be expected to happen in the near future with the evolving antitrust practices.

The standard for initiating a joint action is that either (i) the subject matter for each claim is the same ("**Necessary Joint Action**"), or (ii) the subject matters for each claim are of the same type which the court deems that may be consolidated, and all the parties agree to consolidate their disputes ("**Unnecessary Joint Action**").

The other type of mechanism that worth mentioning here is the public interest action, which has been established by Article 55 of the CPL and other laws. Also, pursuant to the Amended AML, if an undertaking injures the public interests by committing a monopolistic act, the people's procuratorate may file a civil public interest action. However, currently it is still unclear how this mechanism would be implemented in practice, especially in the competition area.

## 12. Are there any defences (e.g. pass on) which are unique to competition damages cases? Which party bears the burden of proof?

PRC antitrust rules do not include any specific rules regarding the defenses for competition damages actions yet. However, according to Article 1 of the AML Judicial Interpretation, both direct purchasers and indirect purchasers (e.g., end-consumers) who have suffered loss from monopolistic behaviors have the standing to bring a lawsuit. Therefore, the theory of passing-on defense should be applicable, although not clearly articulated in the written rules. Also, the plaintiff should bear the burden of proof.

## 13. Is expert evidence permitted in competition litigation, and, if so, how is it used? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is permitted in competition litigations. According to Article 122 of CPL Judicial Interpretation and Article 12 of AML Judicial Interpretation, the litigation parties may apply to the courts to have individuals with relevant expertise attend the trial to explain relevant professional issues. The opinions presented by the expert will be deemed the statements of the litigation parties by its nature.

As a lot of antitrust cases involve complex economic

 

issues, increasing numbers of litigants (no matter the plaintiff or defendant) are observed to have considered engaging economic experts to provide opinions during the trial.

Experts can be appointed by the court or the litigants, though, most of times appointed by the litigants. And there are no explicit rules regarding their duties in competition damage cases, but they may be expected to owe the same obligations as the appraisers which include (1) respect science and abide by professional ethics, (2) keep confidential the secrets disclosed in the case, (3) issue the conclusion in a timely manner, and (4) attend the trial to present the opinions and answer questions related to that.

## 14. Describe the trial process. Who is the decision-maker at trial? How is evidence dealt with? Is it written or oral, and what are the rules on cross-examination?

Pursuant to the CPL, the trial for competition damages claims is mainly conducted in three parts, including court investigation, court debate and closing statement.

**Court Investigation**: The court investigation usually follows the below sequence, subject to minor adjustments in the individual case:

the plaintiff states the claims;

- the defendant states the defenses;
- the plaintiff presents evidence (including the expert's statement), and the defendant conducts the cross-examination on those evidence (including inquiring about the Individuals with Expertise or the witness appointed by the plaintiff);
- the defendant presents rebuttal evidence (including the expert's statement), and the plaintiff conducts cross-examination on those evidence (including inquiring the experts or witness appointed by the defendant);
- the experts (if any) present their survey or professional report and both the plaintiff and defendant conduct cross-examination on those surveys or reports, including inquiring about the expert;
- the court presents evidence collected by itself (if any) and both the plaintiff and defendant conduct cross-examination on such evidence
the plaintiff inquires the defendant about the facts of the case;
- the defendant inquires the plaintiff about the facts of the case; and
- the judges inquire both parties about the facts of the case.

**Court Debate**: After the court investigation stage ends, court debate will be conducted in the following order:

oral statements by the plaintiff;

defense by the defendant; and

debate between the two sides.

After the court debate, judges frequently ask both parties about their intention to mediate. If both parties agree on mediation, the court will organize the mediation discussion/negotiation immediately after trial or set up other mediate sessions.

**Closing Statement**: Both parties briefly present their closing statement respectively.

## 15. How long does it typically take from commencing proceedings to get to trial? Is there an appeal process? How many levels of appeal are possible?

There are no rules specifically stipulating any time requirements from commencing proceedings to get to trial, and the period varies case by case, depending on the number of cases simultaneously proceeded by the court and other factors. The Article 152 of the CPL provides that when handling a case to which ordinary procedure is applicable, courts shall conclude the case within six months from the date of placing the case on file, for the first instance. A six-month extension may be given as necessary, subject to the approval by the president of the court. Any further extension, if applicable, shall be reported to the courts of higher level for approval.

The Article 183 of CPL provides that when handling an appeal case against a judgment, the courts shall conclude the case within three months after the appeal from the date of placing the case on file. Any extension of the aforesaid period under special circumstances shall be subject to the approval of the president of that court. For appeal case against an adjudication, the courts shall conclude the case within 30 days after the appeal from the date of placing the case on file.

Having said that though, for civil cases involving foreign litigation parties, the above provisions of the period limitation are not applicable, which means that the period of concluding a foreign-related civil case is not clearly limited. In practice, this leads to the substantial difference of conclusion period in some foreign-related

 

civil cases. For example, in the antitrust case brought by four Ningo-based companies against Hitachi Metals, the first-instance trial took as long as around six years, while the courts concluded the antitrust action against InterDigital by Huawei, including both the first instance and the second instance, took only around two years. The extension of trial schedule may be caused by various reasons, such like complexity of the action and the number of cases simultaneously proceeded by the court. The conclusion period could also be greatly extended in some non-foreign cases, such as Mlily vs. Four TDI Companies.

## 16. Do leniency recipients receive any benefit in the damages litigation context?

As pointed out under Question 4, the current PRC antitrust rules do not provide any exceptions for leniency applicants or other circumstances. In practice, the common understanding is that whether the defendants applying for leniency is irrelevant to the civil damage compensation liability. In the Second Judicial Interpretation which the SPC is reported, this issue may be involved.

## 17. How does the court approach the assessment of loss in competition damages cases? Are “umbrella effects” recognised? Is any particular economic methodology favoured by the court? How is interest calculated?

As explained under Question 4, the plaintiff shall specify the amount of competition damages and prove that they were caused by the alleged monopolistic conduct, and the courts may determine the reasonable amount of damages at their discretion by considering factors such as the nature, extent and duration of the alleged monopolistic conduct. In practice, due to the difficulty of proving the amount of competition damages and other reasons, the rate of claims being supported by the court is relatively low in competition damage actions. Even for those actions that damage claims are supported by the court, the compensation amount ordered is usually low and is calculated at the court’s discretion.

The PRC laws do not explicitly provide whether damages arising from “umbrella effects” can be recovered and no precedents made involving the definition or theory of “umbrella effects” as well. As such, it should continue to look at the future developments in this regard.

Since the competition damages lawsuits in China are relatively limited so far, the PRC courts have not yet shown any preference on the economic methodology. While submitting economic reports becomes a common practice, the PRC courts have broad discretion in choosing the economic methodology in a specific case and may explore their preference in the future.

In competition damages cases, the plaintiff is entitled to claim statutory interest for loss suffered, which may be calculated from the date such loss is suffered until damages are compensated, but it still depends on the specific factors to be considered in individual cases.

## 18. Can a defendant seek contribution or indemnity from other defendants? On what basis is liability allocated between defendants?

As explained under Question 4, joint and several liabilities are recognized under the PRC law which means that if two or more defendants jointly commit an infringement that causes others to suffer damages, they shall bear the liabilities jointly and severally. The amount of damages for which the defendants should be jointly and severally liable shall be determined pursuant to their respective degree of responsibility. The defendants shall bear the liability equally if it is impossible to allocate the liability.

If the courts determined the joint and several liabilities among the defendants, the plaintiffs could resort to any one of the defendants to claim the full award. The defendant who pays more than its share of the liability can seek contribution or indemnity from other defendants.

## 19. In what circumstances, if any, can a competition damages claim be disposed of (in whole or in part) without a full trial?

Firstly, after receiving the documents submitted by the claimant for filing a case, the courts will review whether the claims and documents satisfy the standards of trial. The court will dismiss those which do not satisfy the standards without even initiating a trial.

Secondly, the plaintiffs have the rights to withdraw the claims before the court releases a ruling. If the plaintiff applies to withdraw all the competition damages claims which has been approved by the court, the claims would be disposed of without a full trial accordingly. For example, in the anti-unfair competition lawsuit brought by Douyin against Tencent in September 2019, the court concluded the case without a full trial after the plaintiff filed a motion to dismiss the case in March 2021.

 

Besides, where a plaintiff refuses to appear in court without justifiable reasons even after being summonsed or leaves the courtroom during a court session without permission, the court may deem that the plaintiff has withdrawn the claims.

Thirdly, the competition damages claim may be disposed of without a full trial by settling down between the parties. The litigation parties may reach a settlement agreement themselves after which the plaintiff may apply to withdraw all claims and could also reach a settlement under the court's mediation after which the court may issue a mediation ruling. In either situation, the competition damages claim would be closed without a full trial. For instance, in the antitrust dispute between Jianruian Pharmaceutical and Jinkanyuan Pharmaceutical concerning monopolistic agreement, after the litigants reached a settlement during the trial period, the plaintiff filed a motion with the court to withdraw the case which was upheld by the court.

## 20. What, if any, mechanism is available for the collective settlement of competition damages claims? Can such settlements include parties outside of the jurisdiction?

As explained under Question 11, PRC laws provides two kinds of collective and representative actions in civil actions, i.e., Necessary Joint Action and Unnecessary Joint Action. Pursuant to CPL and CPL Judicial Interpretation, a collective settlement can be reached only if all the plaintiffs approve the settlement. Thus, the collective settlement in the joint action will be binding merely when all the plaintiffs, including foreign ones, approve the settlement. However, litigation parties who are domiciled outside of PRC and do not participate in the legal action as plaintiffs or approve the settlement, may not be covered in the collective settlement.

In addition, it should be clarified that for the litigation parties domiciled outside of PRC who are necessary joint parties in a Necessary Joint Action, if such parties clearly reject the request made by the PRC courts to attend the trial, it will be deemed having given up their rights either to claim or defense in this action.

## 21. What procedures, if any, are available to protect confidential or proprietary information disclosed during the court process? What are the rules for disclosure of documents (including documents from the competition authority file or from other third parties)? Are there any exceptions (e.g. on grounds of privilege or confidentiality, or in respect of leniency or settlement materials)?

According to the Article 11 of AML Judicial Interpretation, for evidence which involves State secrets, commercial secrets, personal privacy or any other contents which should be kept confidential pursuant to the law, the People's Court may, according to their discretional powers or the application of a party concerned, adopt protective measures such as private hearing, restriction or prohibition of replication, showing to attorneys only, being ordered to execute letter of confidentiality undertaking, redacting the confidential contents in the judgement to be published online.

The parties can not directly require the opposing parties to disclose relevant documents under PRC laws, but they can apply to the court to obtain evidence which they cannot collect by themselves due to statutory reasons. The court also has the judicial power to investigate and gather evidence ex officio if it thinks it necessary.

Although the AML Judicial Interpretation provides protective measures of state secrets, commercial secrets, personal privacy, or any other contents which should be kept confidential, there is no rule stipulating exception on grounds of privilege or confidentiality. However, according to the Article 107 of the CPL Judicial Interpretation, the facts recognized by the parties for reaching mediation agreement or settlement agreement in the litigation process shall not be used as a basis against them in subsequent litigation process, unless otherwise provided by law or agreed by the parties.

## 22. Can litigation costs (e.g. legal, expert and court fees) be recovered from the other party? If so, how are costs calculated, and are there any circumstances in which costs recovery can be limited?

Litigation costs generally include litigation fees that shall be paid to the court and reasonable expenses to sue the alleged conduct.

The standard of litigation fees varies for different kinds of cases, and in damages actions, the litigation fee is usually determined by the monetary value of claim. The court may rule that the litigation fee should be divided or that each party bears its expenses if each party succeeds on some claims and fails on others. If either the plaintiff or defendant fails on all the claims, the court

 

would rule that the defeated party shall bear all the litigation fee.

There are no specific rules limiting the expenses to sue the alleged conduct, but in judicial practice it shall not exceed a reasonable amount which would be judged by court at its discretion. Generally speaking, the expenses to sue the alleged conduct include attorney fee, notarization fee, investigation fee, fees for hiring economic experts and others.

### 23. Are third parties permitted to fund competition litigation? If so, are there any restrictions on this, and can third party funders be made liable for the other party's costs? Are lawyers permitted to act on a contingency or conditional fee basis?

Currently, PRC laws are silent on third-party funding in litigation, which means that there is no provision either clearly permitting or prohibiting this issue, and there is no legal basis for holding third-party litigation funders liable for the expenditures of the other party.

Under PRC laws, lawyers are permitted to act on contingency and conditional fee basis, but such fees shall not exceed certain ratio of the subject value of the litigation which is regulated by the Justice Department.

### 24. What, in your opinion, are the main obstacles to litigating competition damages claims?

Currently, the burden of proof is one of those significant obstacles in competition damages actions. Information published in China Judgments Online, an official website that regularly publishes judicial rulings rendered by Chinese courts, indicates that it is very difficult for plaintiffs to prevail in competition litigations mainly due to the failure of proof.

In addition, neither AML nor AML Judicial Interpretation provides calculation method of competition damages, which makes it ambiguous for the plaintiff to specify the competition damage caused by the alleged monopolistic conducts, which is also one of the main factors leading to the relatively low rate of victory competition damages claims. Other obstacles include the period of concluding a competition damages case is usually much longer than that of other types of private actions, and there is no class action mechanism existed in China so far.

### 25. What, in your opinion, are likely to be the most significant developments affecting competition litigation in the next five years?

More supplementary legal rules, including both substantive and procedural ones, will enhance the legal transparency and legal certainty, which could further positively affect the development of competition litigations in China. We believe such a tendency could be reasonably expected in the next five years with the Chinese courts and antitrust enforcement agencies have been accumulating increasing experience in the past 14 years.,

Also, as the Amended AML added to emphasize strengthening the interplay between private and public enforcement, we believe that further measures may be taken to streamline the coordination between the court and the antitrust enforcement authorities in the next few years, which may to some extent reduce the litigation costs of the claimant, better balance the evidentiary arms of the litigation parties, and mitigate the institutional costs of enforcing the AML as a whole.

Furthermore, as pointed out under Question 11, the Amended AML provides that "if an undertaking injures the public interest by committing a monopolistic conduct, the people's procuratorates may file civil public interest litigation in the people's court in accordance with the law." If public interest litigations against monopolistic conduct are commenced in the near future, it may remedy the current situation that suffering consumers usually do not have incentives to initiate the antitrust damage action due to the high litigation cost and difficulty of winning in the proceeding. Accordingly, antitrust infringers will face a much higher infringement costs considering the potential compensation in the public interest litigations.

 

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