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Working Session

"Damage claims in competition matters: The dawn of a new era?"

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Litigation Commission

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National Report of China

Hazel Yin, Kate Peng, Ruohan Zhang and Shenglan Liu

King & Wood Mallesons
40th Floor, Office Tower A, Beijing Fortune Plaza, 7 Dongsanhuan Zhonglu,
100020, China
+86 10 5878 5588

yinranran@cn.kwm.com

pengheyue@cn.kwm.com

General Reporters:

Sebastian Janka, Noerr LLP, Munich, Germany
Simone Gambuto, Macchi di Cellere Gangemi, Rome, Italy
Anouk Rosielle, Boekel N.V., Amsterdam, the Netherlands
Dina El-Gazzar, Stewarts Law LLP, Leeds, United Kingdom

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- Doe, John B. *Conceptual Planning: A Guide to a Better Planet*, 3d ed. Reading, MA: SmithJones, 1996.
- Doe, John B. *Conceptual Testing*, 2d ed. Reading, MA: SmithJones, 1997

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QUESTIONNAIRE

DISCLAIMER – PLEASE READ BEFORE ANSWERING THE QUESTIONNAIRE BELOW

The list below is intended as a guideline to compiling an overview of the status quo and developments in private enforcement proceedings in the national reporters' respective jurisdictions. It is left to the discretion of you as the national reporter to decide for each of the questions below if answering it is possible and will lead to useful information on the topic in your jurisdiction. The general reporters suggest that the national reporters answer those questions that they deem relevant and noteworthy for their national report. If a question is not answered, please indicate the reason for not including it in your national report.

CHAPTER I: STATUS QUO OF PRIVATE ENFORCEMENT

1. How would you summarize in few lines the status quo of private enforcement in your jurisdiction?

    a. *[For Non-EU Member States]* Can individuals (or only consumer organisations) file an antitrust damage claim? Who can bring an antitrust damages claim? (i.e. are there any requirements or limitations to standing in private enforcement proceedings?)

    Yes, both individuals and consumer organisations can file an antitrust damage claim. Specifically, pursuant to the Provisions of Supreme People's Court on Several Issues concerning the Application of Laws in Civil Dispute Trials Arising from Monopolistic Practice ("***Antitrust Judicial Interpretation***") promulgated by Supreme People's Court and effective as of June 1 2012, any natural person, legal person and other organisations can bring a civil lawsuit before the court for the dispute over losses caused by the monopolistic conduct or the violation of the Anti-monopoly Law ("***AML***") of the People's Republic of China ("***PRC***") arising from the contractual provisions, articles of the trade association etc.

    If yes, what is the legal basis (codified or case law) and are they able to submit both stand alone and follow-on actions?

    Article 50 of the AML sets forth the legal basis for any person or any organisation to bring a civil litigation against the undertaking that commits monopolistic conduct and causes loss to the plaintiff.

    Yes, they can submit both stand alone and follow-on actions. In 2015, a Chinese insurance giant Ping An Property and Casualty Insurance settled a lawsuit brought by a consumer before Hangzhou Intermediate People's

Court, which was the first antitrust follow-on action following a penalty decision in 2014 imposed by the National Development and Reform Commission ("***NDRC***") for price collusion with other 22 domestic insurance companies and the Insurance Association of Zhejiang Province.

b. [*For EU Member States]* Can individuals file an antitrust damage claim regardless of the implementation of Directive 2014/104/EU (private enforcement Directive)?

   If yes, are they able to submit both stand alone and follow-on actions?

2. *[For EU Member States]* Has your country already implemented/started implementing the private enforcement Directive?
   - If No: Do you believe that your country will meet the deadline?
   - If Yes: Please give the status quo of the implementation by highlighting in few lines what you consider the most important aspects of the implementation of the private enforcement Directive into national law in your country.

CHAPTER II: COURT AND PROCEDURE

3. What is (are) the court(s) in charge of antitrust private enforcement?

   a) Is there a specialized court specifically for antitrust based claims?

   Yes, antitrust based claims are heard at the intellectual property ("***IP***") court or IP division of the relevant court with jurisdiction. Pursuant to the Circular of Supreme People's Court on Earnestly Studying and Implementing the Anti-monopoly Law of the People's Republic of China ("***AML Circular***") promulgated by Supreme People's Court and effective as of July 28 2008, the cause of action for antitrust disputes has been included into IP-related disputes, and the judicial tribunals of the people's court at all levels that are in charge of IP trials shall have jurisdictions over antitrust claims.

   In 2014, the Standing Committee of the National People's Conference set up specialized IP courts in Beijing, Shanghai and Guangzhou, respectively, and pursuant to Provisions of Supreme People's Court on the Jurisdiction of the Intellectual Property Courts of Beijing, Shanghai and Guangzhou over Cases, these IP courts shall have jurisdiction over the antitrust civil litigations in the above three cities. In areas outside of the jurisdictions of the above IP courts, civil actions against monopolistic conduct shall be tried by the IP division of the relevant people's court with jurisdiction.

   If No: are there specific chambers for antitrust claims within the civil/commercial courts?

If Yes: is the court composed only by judges, also economic experts and/or other persons?

The court is only composed of judges, and economic experts are excluded. However, under the PRC Civil Procedure Law ("***Civil Procedure Law***"), the trial court of the first instance may also be composed of judges and jurors.

b) May the court impose interim measures?

Yes, the court can impose interim measures. The court may grant ex officio interim measures or upon the application of a party to the lawsuit under the Civil Procedure Law.

c) May the trial proceed in parallel and independently of a National Competition Authority investigation?

Yes, the trial can proceed with an administrative investigation in parallel. Article 2 of the Antitrust Judicial Interpretation provides that the effective decision of antitrust administrative investigation is not a prerequisite to the antitrust litigation. Therefore, if the trial and the administrative investigation are launched at the same time or in succession, the court and the anti-monopoly enforcement authorities ("***AMEAs***") in principle can proceed the case within their respective limit of competence. In practice, in Huawei vs. IDC case, when the antitrust administrative investigation was pending, the court did not suspend the trial.

If so, how likely it is that the court suspends the case up to the National Competition Authority decision?

However, under certain circumstances, it will not exclude the possibility that the court may refer to the catch-all clause for suspension set forth in Article 150 of the Civil Procedure Law to suspend the trial up to the outcome of the administrative decision on the case.

d) Is the decision subject to appeal?

Yes, the decision of an antitrust claim is subject to appeal under the Civil Procedure Law. When announcing the judgment for the first instance, the court must notify the parties of their right to appeal, the deadline for the appeal and the court of appeal. The judgment for the second instance should be the final decision and cannot be appealed to a higher court.

If Yes, does the 2nd (and/or 3rd) instance court assesses both the merit of the case and the law?

Article 168 of the Civil Procedure Law provides that the court of second instance shall examine the relevant facts and applicable laws for the appeal request(s), based on which, the 2nd instance court assesses both the merit of the case and the law.

4. What nexus with the jurisdiction is required to bring a private action to a court within your jurisdiction (and to keep it there)? Is there room for forum shopping (eg, is an "anchor defendant" sufficient (*cf* ECJ, C-352/13))?

Whether a court has jurisdiction over a private action brought to it is subject to both the jurisdiction by forum level and the territorial jurisdiction.

a. Jurisdiction by forum level

Article 3 of the Antitrust Judicial Interpretation provides that the following courts shall have the jurisdiction to hear the first instance of antitrust civil disputes:

- The intermediate people's courts at municipalities where the people's governments of provinces, autonomous regions and centrally-administered municipalities are located;
- The intermediate people's courts at municipalities with unilateral planning;
- The intermediate people's courts designated by the Supreme People's Court; and
- The basic people's court approved by the Supreme People's Court.

As noted in Question 3, the specialised IP courts established in Beijing, Shanghai and Guangzhou shall have the jurisdiction to hear antitrust civil actions of the first instance.

b. Territory jurisdiction

Article 4 of the Antitrust Judicial Interpretation provides that the territory jurisdiction of the antitrust civil action shall be determined in accordance with the provisions of Civil Procedure Law and relevant judicial interpretations on the jurisdiction for tort disputes and contractual disputes etc.

If the antitrust claim is brought on the basis of the tortious act, the case should be heard by the court at the place of the occurrence of the tortious act or at the place of the domicile of the defendant. More specifically, the place where the tort occurs includes the place where the tort is committed or where the tortious consequence takes place.

If the claim is brought on a contractual basis, the case should be heard by the court at the place of performance of contract or at the place of the domicile of the defendant. Nevertheless, the parties to a contract can agree in writing on selecting the court at the place of the defendant domicile, or the place of performance of contract, or the place of execution of contract, or the domicile of the plaintiff, or

the place where the subject matter is located, or a venue which has actual connection with the dispute to hear the case.

Based on the above scenarios, there is room for forum shopping in China.

5. How long does a single (or collective) antitrust private enforcement action in first instance usually take?

   Article 149 of the Civil Procedure Law provides that a civil litigation applying the general procedure shall be completed within six months from the date for the formal acceptance of the case. Under certain circumstances, such period can be extended for six months upon the approval of chief judge of the court. If further extension is needed, an approval from the superior court is required.

   It should be noted that the above provisions are for the trial of pure domestic cases. For foreign-related cases, such as a foreign party, a foreign subject matter or foreign conditions occurring outside of China, they are not subject to the above trial time limits.

   In practice, for typical antitrust litigation, the time taken in first instance can range from a few months to several years. For example, the time to get the first instance judgment in the *Huawei v. InterDigital* case was 1 year and 2 months; 1 year and 7 months in the *Qihoo v. Tencent* case; and 1 year and 9 months in the *Rainbow v. Johnson & Johnson* case.

6. Who bears the legal costs (court fees, the own representation costs and the representation costs of the opposite party)?

   Pursuant to the Measures for the Payment of Litigation Costs promulgated by the State Council and effective as of April 2007, the litigation fee, which is paid to the court to adjudicate the case, should be undertaken by the losing party, unless the prevailing party voluntarily undertakes it. The litigation fee prepaid by the prevailing party can be recovered from the losing party. If the plaintiff partially wins the lawsuit, both the plaintiff and the defendant should jointly undertake the litigation fee, the proportion of which shall be determined by the court on a case-by-case basis.

7. In your jurisdiction, are there any alternative funding options or fee arrangements that can be put in place by the plaintiff (for example conditional fee or damages based agreements)? Please outline and give examples if so. What rules on the assignment/bundling of claims exist in your jurisdiction that could allow third parties to buy claims from cartel victims?

   Yes, pursuant to the Administrative Measures on Fees for Lawyer Services promulgated by NDRC and Ministry of Justice and effective as of December 1, 2006, where a civil case involves a property relationship, the client can choose the contingency fee, where the law firm and the client shall enter into a contingency fee

contract to agree on the risk liabilities for both parties, charging standards and fee percentage. The contingency fee shall not exceed 30% of the total amount of the subject matter agreed in the contract.

Third parties could not buy claims from cartel victims, because only those actually suffered from the monopolistic conduct/contractual provisions have the standing to bring a civil lawsuit and there are no rules on the assignment or bundling of claims that could allow third parties to do so in China.

8. Beside antitrust private actions, does your jurisdiction dispose of a collective redress system?

Under the current civil procedure regime, there is no exact equivalent to a class action. Instead, the Civil Procedure Law sets forth the joint action and representative action mechanism. If plaintiffs have a common object of action or if their object of action belongs to the same category, they may file a case to a court jointly. This right to file joint action is contingent upon the court's approval of such a joint action and upon the plaintiffs' agreement to file such an action together. Where there are numerous plaintiffs in a joint application, representatives may be selected by and from the group of plaintiffs. After obtaining special authorisation from the plaintiffs that they represent, the representatives may change or waiver claims, recognise claims of the opposing party, settle with the opposing party or enter into a settlement agreement with the opposing party, or lodge a counterclaim or appeal. Actions undertaken by such representatives shall have the same binding force to all the joint plaintiffs.

In addition, the Civil Procedure Law also provides for the public interest litigation, i.e. the institution and organization prescribed by law may institute an action before the court for the conduct that, among others, infringes the legitimate rights and interests of the vast consumers. The Law on Protection of Consumer Rights and Interests further specifies that China Consumers' Association and the consumer associations incorporated in provinces, autonomous regions, and municipalities directly under the Central Government may file lawsuits in the court for the infringement of the legitimate rights and interests of vast consumers. Therefore, it is generally interpreted that Consumers' Association could institute an antitrust action before the court where interests of vast consumers were infringed.

- If Yes, how it is applicable to antitrust private enforcement, (e.g. direct/indirect purchasers, consumers and/or clients)?

  As explained in Question 1 above, any natural person, legal person or other organisation that has suffered loss from monopolistic conduct or has a dispute over the contractual provisions, articles of the trade associations can bring a civil action before the court. Therefore, both direct and indirect purchasers and consumers who have suffered from the monopolistic conduct and contractual provisions have a standing to bring a civil lawsuit.

- Do collective redresses operate through an opt-in or an opt-out system? In case of an opt-out system, how is the class defined?

  The joint and representative action process as previously noted operates through an opt-in system.

- How is it coordinated with the individual actions' framework?

  Subject to the court's approval, plaintiffs could choose to file a joint and representative action instead of individual actions. Meanwhile, except for "necessary joint actions" (i.e. actions with the same subject matter based on which the court believes it is necessary to have a joint action), plaintiffs who choose to opt-out could still file an individual action separately and will not be bound to the decision made in the joint and representative action.

CHAPTER III: EFFECT OF NATIONAL DECISIONS, BURDEN OF PROOF, LIMITATION PERIODS, JOINT AND SEVERAL LIABILITY

9. Are National Competition Authority decisions relevant for individual antitrust claims, in particular
   - as presumption / proof of the infringement in the follow-on case? (f.i. does it matter for the division of the burden of proof between parties if the action is a follow on damages case or a stand-alone action? If so, please elaborate on any difference with regard to the burden of proof)
   - in terms of the *quantum* of the compensation?
   - for the limitation period?
   - else?

   The decisions of the AMEAs have no binding force on the court. Pursuant to the Civil Evidence Provisions promulgated and amended by Supreme People's Court and effective as of December 16, 2008, documents issued by administrative authorities ex officio have higher evidentiary value than other forms of evidence. Accordingly, an effective decision made by the AMEAs and the facts described therein would have probative value to serve as the basis for the plaintiff to pursue follow-on claims. However, the plaintiff in a follow-on action shall still bear the burden to prove that he/she has suffered losses from the infringement ascertained in the decisions.

   Where the AMEAs rule that the conduct constitutes monopolistic conduct following the investigation, the limitation of period shall be re-calculated from the date on which the plaintiff knows or should have known that the decision by the AMEAs on affirming the monopolistic conduct has come into force.

10. What are the relevant limitation periods (taking into account question 9 above)?

The Antitrust Judicial Interpretation provides that the limitation period for claims to seek compensation of damages arising from monopolistic conduct is two (2) years from the date on which the plaintiff knows or should have known about the monopolistic conduct that gives rise to the action.

The Antitrust Judicial Interpretation further provides that where the plaintiff reports monopolistic conduct to the AMEAs, the limitation period for bring an action shall be interrupted from the date of such report. Where the AMEAs decide not to proceed with case filing or decide to revoke the case or to terminate the investigation, the limitation period shall re-commence from the date on which the plaintiff is aware or should have been aware of the decision of not proceeding with the case filing, the revocation of the case or the termination of investigation. Where the AMEAs rule that the conduct constitutes monopolistic conduct following the investigation, the limitation of period shall be re-calculated from the date on which the plaintiff knows or should have known that the decision by the AMEAs on affirming the monopolistic conduct has come into force.

11. What is the liability regime as regard parents for the infringement of their subsidiaries?

    A parent company shall not be liable for the infringement of its subsidiaries. Under the Company Law regime, the liability of a shareholder shall be limited to the amount of its capital contribution or the number of its subscribed shares.

12. Please describe limits and scope of joint and several liability for antitrust infringements performed by undertakings (in particular between cartelists) in civil litigation. Does this differ from liability vis-à-vis the authorities?

    Where defendants assume joint and several liabilities, the plaintiff shall be entitled to claim any or all of the defendants to assume the liability. The amounts of compensation shall be determined in line with the liabilities assumed by the defendants. Where it is difficult to determine their respective liabilities, the defendants shall bear the compensation liabilities equally.

    Undertakings do not bear joint and several liabilities in administrative penalty decisions. AMEAs impose penalty against liable undertakings on individual basis only.

CHAPTER IV: DISCLOSURE OF EVIDENCE

13. What evidence is admissible in individuals' actions for antitrust infringements?

    - Is there any pre-trial discovery procedure available?
    - Is there any evidence protected by legal privilege?

Pursuant to the Civil Procedure Law, the admissible evidence in antitrust action include (1) statements of parties, (2) documentary evidence, (3) physical evidence, (4) audio-visual materials, (5) electronic data, (6) testimony of witness, (7) appraisal opinions and (8) written records of inquests. Besides the above, written reports issued by economic experts, legal experts and industry experts are also admissible.

The court may, upon the application of the parties concerned, arrange for the exchange of evidence prior to the court hearing.

No, there is no legal privilege in China.

14. Can the court order the discovery of evidence to defendants or to third parties? Please describe its limits and scope.

Yes, the court can order the discovery of evidence under the following two circumstances:

- where a party and his agent ad litem are unable to collect evidence on their own due to objective reasons; or
- where the court deems the relevant evidence as necessary for the court hearing.

The party may apply to the court for evidence collection where the relevant evidence (i) is kept by the relevant governmental agencies and is only obtainable by a court; (ii) concerns state secrets, trade secrets or privacy; or (iii) is impossible for that party or its counsel to obtain due to objective circumstances.

The court may also conduct ex officio evidence collection in case the evidence is deemed by the court as necessary for the hearing. Such evidence includes evidence concerning national or public interests, personal identities etc.

15. Do the claimants and/or courts have access to the National Competition Authority's files? If so, also during a pending investigation? Please describe its limits and scope.

As noted in Question 14, the court may, upon the party's application, conduct ex officio evidence collection from the AMEAs, including the evidence obtained during the investigation. However, it is still unclear that how the AMEAs would respond to such evidence collection.

CHAPTER V: THE PASSING-ON OF OVERCHARGES

16. Are indirect purchasers entitled to claim compensation, and which limitation do they face?

As noted in Question 1, any natural person, legal person and other organisation that has suffered losses from the monopolistic conduct or the violation of the AML arising from the contractual provisions or articles of trade associations may bring a lawsuit in front of the court. Accordingly, indirect purchasers are also entitled to

claim compensation as long as they can prove that they have suffered losses from the antitrust infringement.

17. Are victims of "umbrella damages" entitled to protection against antitrust infringements and to compensation in court?

    The current AML regime does not provide for "umbrella damages", and we are not aware of any relevant precedents where the court recognized such claim.

18. Is the passing-on defence allowed?

    The passing-on defence is applicable in principle considering both direct and indirect purchasers are allowed to bring an antitrust action under the AML. If the defendant can prove that the plaintiff has not actually suffered any loss due to the passing-on effect, the court would then not support the plaintiff's claim for a damages award.

CHAPTER VI: DAMAGES

19. What form of compensation can be granted by national courts for antitrust violations?

    In particular, can national courts accord punitive damages or treble damages or compensatory function exclusively?

    The form of compensation available to the plaintiffs depends on the claims they brought. Regarding antitrust claims based on contractual provisions, if the alleged contract or articles of trade associations violate(s) the AML or the mandatory provisions of other laws and administrative regulations, the court may annual the contract or the articles of trade associations in accordance with the law. Further, the court can order the defaulting party to compensate the losses suffered by the non-defaulting party. If both parties have breached the contract, each party shall bear their respective liability. With respect to tort claims, if the monopolistic conduct has caused losses to the plaintiff, the court may rule the defendant to bear civil liabilities, such as cessation of infringement, compensation of losses, etc.

    The court can only accord compensatory function, and there is no punitive or treble damages regime in China.

CHAPTER VI: QUANTIFICATION OF HARM

20. What do individuals have to prove in court in order to successfully obtain compensation for antitrust damages, who bears the burden of proof?

    The Antitrust Judicial Interpretation provides a clear guidance on the allocation of burden of proof in case of alleged cartel violations and abuse of dominant position. With respect to cartel violations, the plaintiff shall bear the burden of providing the

existence of the cartel agreement, while the defendant shall bear the burden of proving that such agreement does not have the effect of excluding or restricting competition. As for the abuse of dominance, the plaintiff shall prove that the defendant has a dominant market position in the relevant market and that the defendant has abused such dominant position, while the defendant shall prove the justification for its abusive conduct. In Qihoo 360 vs. Tencent case, the Supreme People's Court also requires the plaintiff to bear the burden of proving the anti-competitive effect of the defendant's behaviour. With regard to RPM violations, the general principle provided in the Civil Evidence Provisions is applicable, i.e. the parties concerned shall be responsible for providing evidence to prove the facts on which their own claims are based or the facts on which the claims of the other party are refuted, otherwise they shall undertake the unfavourable consequences. In *Rainbow v. Johnson & Johnson* case, the court took the view that the plaintiff should bear the burden of proving that a RPM agreement exists and that the RPM agreement has eliminated or restricted market competition.

21. Is there a difference between stand alone and follow-on actions?

    In contrast to stand alone actions, plaintiffs in follow-on actions do not have to prove with evidence facts that have been ascertained in an administrative decision, unless otherwise proved by the defendant.

22. How is damage quantified?

    As there is no specific rule on the calculation of damage in antitrust private litigation, the general principle recognized in calculation of damage in civil litigation applies, i.e. the damage will be either (1) the actual loss sustained by the plaintiff as a direct result of the tortious activity or contract violation, or (2) where such actual loss is difficult to calculate, the actual benefit obtained by the defendant. With respect to the calculation of actual loss, the court ruled in *Rainbow v. Johnson & Johnson* (where the defendant supplier refused to supply to the plaintiff distributor for the latter's failure to follow the minimum resale price requirement imposed by the defendant) that the actual loss shall not be calculated based on the profit that the plaintiff could obtain had it followed the price requirement, but rather should be calculated based on the normal profit in the relevant market.

23. What defence is recognized, if any, for defendants (besides the passing-on defence (question 18 above), if applicable)?

    For monopoly agreement cases, the defendant could defend on the basis that alleged monopoly agreement (1) does not have the effect of excluding or restricting competition; or (2) falls in the exemption provision under the AML. To apply for exemption under the AML, the defendant shall prove that the alleged monopoly agreement does not seriously restrict competition in the relevant market and enables consumers to share the benefits therefrom, and that such agreements are concluded for one of the following purpose (1) advancing technology, or researching and developing new products; (2) improving product quality, lowering

cost, increasing efficiency, unifying specifications and standards, or implementing a division of labor based on specialization; (3) improving the operation efficiency and competitiveness of small- and medium-sized operators; (4) realizing public interests such as energy conservation, environmental protection, and rescue and relief efforts; (5) alleviating problems related to a serious drop in sales or obvious overproduction during an economic downturn; (6) protecting legitimate interests during foreign trade or foreign economic cooperation; or (7) other circumstances specified by laws or the State Council.

For abusive conduct cases, the defendant could defend on the basis that (1) it does not have dominance in the relevant market; or (2) its alleged abusive conduct could be reasonably justified.

24. What is the role of economic experts, if any?

    The Antitrust Judicial Interpretation provides that a party to the lawsuit can apply to the court to call one or two persons with relevant expertise to explain certain special issues in the court. The economic expert can produce market investigation or economic analysis report on special issues of the case.

25. What other types of experts are typically engaged in your jurisdiction?

    Besides economic experts, legal experts and industry experts are also engaged to issue written reports to the court and appear in court hearings to explain certain special issues.

26. In case of follow-on claims, are the fines imposed by the national – or supranational – competition authority taken into account in evaluating the quantification of damages?

    Under the AML regime, the administrative fines and civil damages bear different goals. The goal of administrative fines is to punish the business operator for its violation of the AML, while the goal of civil damages is to compensate the losses suffered by the plaintiff. Therefore, the imposition of fines by the AEMAs shall not affect the calculation of damages, and the court shall have full discretion in evaluating the quantification of damages.

CHAPTER VII: ALTERNATIVE DISPUTE RESOLUTION

27. Is there any form of alternative dispute resolution available in your jurisdiction? If yes, in which form, and how do they coordinate with the civil and criminal proceedings regarding antitrust infringements?

    Under the Chinese law, disputes over contracts and other property rights and interests between citizens, legal persons and other organisations with equal standing may be submitted for arbitration. The law, however, is silent on whether antitrust claims can or cannot be submitted for arbitration. It is still controversial as to

whether antitrust claims can be resolved through arbitration. Considering that antitrust claims are generally contractual disputes or tortious disputes over property rights and interests between parties with equal standing, it appears that at least in theory, some antitrust claims may be resolved through arbitration.

If there is an effective arbitration clause in place, the dispute shall be resolved through arbitration only and shall not be brought before the court, unless (1) the dispute exceed the range of arbitrable matters as specified by law; (2) either of the parties that concluded the arbitration clause has no capacity for civil conducts or has limited capacity for civil conducts; or (3) one party coerced the other party into concluding the arbitration clause. Please note that in China, there is only civil proceeding regarding antitrust infringements and no criminal proceeding shall apply.

CHAPTER VIII: SETTLEMENTS

28. Please briefly set out the settlement mechanisms (if any) in your jurisdiction, for instance:
    - settlements requiring court approval;
    - settlements outside of proceedings;
    - timing of settlement;
    - etc.

    Both parties to a lawsuit may settle throughout the whole proceedings either on their own or under the mediation by the court. Where both parties reach a settlement agreement prior to the pronouncement of judgment, the plaintiff should apply to the court for the withdrawal of the lawsuit, and the court shall issue a verdict on whether to grant the approval. During the enforcement process, where both parties reach a settlement agreement, the enforcement officials shall include the agreement in writing record and have both parties to sign or affix seal thereon.

    Besides, the court may conduct mediation under the principle of free will and legality. When an agreement is reached through mediation, the court shall prepare a mediation letter, which shall be signed by the judge(s) and the court clerk, be affixed with the court's seal, and be served on both parties to the lawsuit.

CHAPTER IX: RECENT CASE LAW

29. Please give an example of noteworthy cases or authorities in your jurisdiction rendered in the last 18 months which are relevant to the content of this questionnaire.

    In October 2014, the Supreme People's Court made its final decision on the lawsuit between Qihoo 360 and Tencent, marking the beginning of the first anti-monopoly case in the Internet arena. In November 2011, Qihoo 360 launched proceedings against Tencent in the Guangdong Higher Court, asserting that Tencent had abused its dominant position in the instant messenger software and service market

in mainland China, by coercing customers to choose either of them and remove the other. This was the first anti-monopoly case heard by the Supreme People's Court, and the Supreme People's Court's judgment elaborates on the fundamental principles of the AML, including SSNIP test, the purpose and approach of market definition and evaluation and determination of market dominance.