
CHAMBERS GLOBAL PRACTICE GUIDES

Cartels 2024

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China: Law & Practice

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Haiwen & Partners



CHINA

Law and Practice

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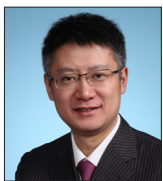
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Haiwen & Partners was founded in 1992, and is one of the leading law firms in China. Haiwen has six offices (Beijing, Shanghai, Shenzhen, Hong Kong, Chengdu and Haikou), and more than 500 professionals. With its creativity and professionalism demonstrated in numerous large-scale, complex and cross-border transactions, Haiwen is one of the most sought-after PRC law firms in many areas. Haiwen has been providing antitrust and competition legal services since 2003 and is one of the first PRC law firms to practise in this area. Haiwen's antitrust

team have assisted a wide range of clients with their professional skills, industry knowledge and international perspective, and are highly praised by many clients. Haiwen can provide the full range of professional legal services, including antitrust administrative investigations, antitrust litigation, the construction of antitrust compliance systems, antitrust compliance consulting and training, as well as merger control notification and the negotiation, implementation and supervision of remedy cases.

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1. Basic Legal Framework

1.1 Statutory Bases for Challenging Cartel Behaviour/Effects

Article 17 of the Anti-monopoly Law (AML) (amended in 2022) stipulates that actual or potential competitors are prohibited from entering into a wide range of agreements and/or concerted practices that eliminate or restrict competition, and is the primary statutory basis for challenging cartel behaviours/effects in China. The AML also provides the exemption, liability, and enforcement procedure for cartels. The Provisions on Prohibition of Monopoly Agreements (the “Provisions on Monopoly Agreement”) implemented in 2023 provide further details and elaborations regarding the same.

There are also certain forms of cartel behaviours elaborated in other laws and regulations, including the Provisions on Prohibition of the Abuse of Intellectual Property to Exclude or Restrict Competition implemented in 2023, the Bidding Law amended in 2017, and the Pricing Law implemented in 1998.

In addition to the above, there are several anti-monopoly guidelines concerning diverse industries and market entities (see **6.2 Guides Pub-**

lished by Governmental Authorities). Though not serving as the statutory basis for challenging cartel behaviours, the guidelines are of essential reference for competition authorities in their administrative enforcement and for undertakings in their compliance efforts.

1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards Enforcement Authorities and Their Jurisdiction

The primary authority for competition enforcement in mainland China is the State Administration for Market Regulation (SAMR), also known as the State Anti-Monopoly Bureau. Within the SAMR, the First Department of Anti-monopoly Enforcement specifically handles cartel conduct. In 2018, the SAMR issued the Notice of the State Administration for Market Regulation on the Authorisation for Anti-monopoly Law Enforcement, empowering the Provincial Administration for Market Regulation (AMR) to take charge of competition enforcement at the provincial level. Therefore, “Competition Authorities” in this article refer to the SAMR and AMR collectively.

The People’s Procuratorate is not traditionally regarded as the law enforcement authority for

cartel conduct. However, since the amendment to the AML in 2022, the People's Procuratorate at or above the level of a city with subordinate districts may file civil public interest litigation with the People's Court based on Article 60 of the AML, if the cartel activities of an undertaking harm social and public interests. The People's Procuratorate, with extensive power to investigate, is expected to play a more important role in antitrust enforcement in the future.

Liabilities and Penalties

Under the AML and the relevant provisions, cartel behaviours are subject to various liabilities and/or penalties, namely administrative liabilities (most common), potential civil liabilities, and possible criminal liabilities.

Administrative liabilities

For an undertaking that enters into and implements a cartel agreement, Article 56 of the AML provides that competition authorities shall order it to:

- cease the illegal act;
- confiscate its illegal gains; and
- impose a fine of:
 - (a) 1%-10% of its sales amount in the previous year;
 - (b) up to CNY5 million in the absence of sales amount in the previous year;
 - (c) up to CNY3 million if the monopoly agreement concluded has not yet been implemented; or
 - (d) up to CNY1 million if the legal representative, principals and directly accountable person of the undertaking are personally accountable for concluding the cartel infringement (such personal liability was introduced by the 2022 amendment); this provision also applies to an undertaking that organises or provides substantial

assistance to other undertakings in the reaching of cartel agreements.

When an undertaking hinders the Competition Authorities' investigation by refusing to provide information, giving false information, hiding, destroying, or transferring evidence, or otherwise obstructing the process, under Article 62 of the AML, the Competition Authorities can:

- order the undertaking to correct its behaviour; and
- impose a fine of:
 - (a) up to 1% of its sales amount in the previous year;
 - (b) up to CNY5 million in the absence of sales amount in the previous year or if the sales amount is difficult to calculate; or
 - (c) up to CNY500,000 in the case of an individual.

The 2022 amendment to the AML (the "2022 amendment") also introduces aggravating factors in the calculation of the fine, permitting an increase in the base fine amount by two to five times if "the circumstances are particularly serious, the impact is especially severe or the consequences are especially serious".

Civil liabilities

If an undertaking violates the AML and causes any loss to others, Article 60 of the AML states that it shall assume corresponding civil liability. This includes liabilities arising from civil public interest litigation initiated by the People's Procuratorate, as well as those arising from private legal actions.

Criminal liabilities

Before 2022, the AML provided for no criminal liabilities. However, the 2022 amendment enhanced the liability framework. Under Article 67, if an

undertaking's violation is grave enough to constitute a criminal offence, it will incur corresponding criminal liability. Such liabilities are pertinent only to violations outlined in the Criminal Law and its amendments, with the People's Procuratorate having exclusive authority to initiate criminal prosecutions. Under the existing criminal legislation regime of the PRC (for the purposes of this article, the "PRC" refers to the mainland of the People's Republic of China, excluding the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan Region of the People's Republic of China), only two types of cartel-related conduct are subject to criminal liability per Articles 223 and 277 of the Criminal Law: bid-rigging, and egregious obstruction of enforcement. Both violations could result in fines and/or imprisonment for up to three years, with penalties initially suggested by the People's Procuratorate and ultimately determined by the People's Court at its discretion.

The 2022 amendment leaves the door open for criminalising other cartel-related misconduct. Further clarification or specific provisions are expected in the future.

1.3 Private Challenges to Cartel Behaviour/Effects

Under the AML, undertakings that breach its provisions and cause losses to others may be subject to private legal actions.

Under the PRC civil procedure legislation regime, the Interpretation of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Monopoly-related Civil Dispute Cases (the "2024 Judicial Interpretation"), as amended in 2024, clearly provide that, a natural person, legal person, or any other unincorporated organisation that suffers losses attributed to monopolistic conduct or is involved in monopo-

listic disputes may bring lawsuits claiming compensation or injunctive relief.

1.4 Definition of "Cartel Conduct"

There is no statutory definition of "cartel conduct" in the AML. Article 17 of the AML provides the statutory basis for prohibiting cartel conduct and the manifestations thereof: undertakings with competitive relationships are prohibited from reaching monopolistic agreements on the following matters:

- fixing or changing the price;
- limiting the production or sales amount;
- segmenting the sales market or the raw material procurement market;
- restricting the purchase of new technology or equipment or the development of new technology or product;
- boycotting transactions; and
- other matters as determined by Competition Authorities.

Article 19 further prohibits:

- undertakings from organising other undertakings in the reaching of monopolistic agreements; and
- undertakings from providing substantial assistance to other undertakings in the reaching of such agreements.

Exchanging competitively sensitive information (such as pricing, cost, profit, production data, commercial strategies, revenue projections, etc) can also be considered a cartel arrangement (and, by extension, an antitrust violation) if the purpose of such exchange is to co-ordinate behaviour among competitors.

Justifications and Exemptions

Article 20 of the AML stipulates that an agreement would not be considered a violation of Article 17 if the undertaking can prove that such agreement serves one of the following purposes:

- improving technologies, researching and developing new products;
- improving product quality, reducing cost, improving efficiency, unifying specifications or standards, or carrying out professional labour division;
- improving the efficiency and enhancing the competitiveness of small and medium-sized undertakings;
- realising public interests such as energy conservation, environmental protection and disaster relief and aid;
- mitigating serious decreases in sales or excessive production during economic recessions;
- safeguarding the legitimate interests in international commerce; and
- others as prescribed by laws and the State Council.

Moreover, regarding the first five purposes, the undertaking must also prove that such agreement will not seriously restrict competition and will allow consumers to benefit from the agreement's outcomes.

In addition, per Article 69, the AML will not apply to alliances formed between, or the co-ordinated activities of, agricultural producers and rural economic organisations in the production, processing, sale, transportation, storage and other business activities related to agricultural products.

1.5 Limitation Periods

Limitation Periods of Administrative Liabilities

The AML does not specify any limitation periods for cartel conduct, and the power of Competition Authorities to impose administrative liabilities on those engaged in cartel conduct is subject to Article 36 of the Administrative Penalty Law amended in 2021. No administrative liabilities shall be imposed if the cartel infringement is not discovered within two years, which shall be extended to five years in cases involving personal safety or financial security and resulting in harm. In principle, such limitation period starts from the date the cartel conduct is committed; if the cartel conduct is of a continuous nature, such period starts from the date on which the cartel conduct ceases.

Limitation Periods of Civil Liabilities

For private civil actions, the limitation periods are governed by the Civil Code implemented in 2021 and further clarified by the 2024 Judicial Interpretations.

As prescribed in Article 188 of the Civil Code, civil actions are subject to a three-year limitation period. Such period shall commence from the date when the infringed party becomes aware, or should have become aware, of both the infringement and the identity of the infringer. Under Article 49 of the 2024 Judicial Interpretation, if the infringed party files an administrative complaint with competition authorities, the three-year limitation period is paused and will restart from the moment the complainant becomes aware, or should become aware, of the outcome of the administrative enforcement.

Article 188 of the Civil Code further provides that the civil rights of the infringed party are not protected by the People's Court if more than 20 years have elapsed since the infringe-

ment, except for special circumstances with the approval of the People's Court. Civil claims seeking injunctive relief, however, are not limited to any of the limitation periods per Article 196 of the Civil Code.

Limitation Periods of Criminal Liabilities

Per Articles 87 and 89 of the Criminal Law, the limitation period for current cartel-related crimes is five years. Such period starts from the date the crime is committed; if the crime is of a continuous nature, such period starts from the date on which the crime ceases.

1.6 Extent of Jurisdiction

The PRC antitrust regime has extraterritorial reach. As prescribed by Article 2, the AML shall apply to cartel infringement conduct occurring outside the territory of the PRC, provided that such conduct eliminates or restricts competition within the PRC.

1.7 Principles of Comity

For antitrust enforcement, the PRC antitrust legislation regime does not incorporate the principles of comity. In practice, whether the case has been, or is currently being, considered by their foreign counterparts normally would not necessarily affect the Competition Authorities' discretion to initiate investigations and make administrative decisions. Nevertheless, it is believed that the principles of comity would influence the enforcement process/outcome to a certain extent in cases involving foreign entities or international matters, but the precise degree of such influence, however, remains difficult to quantify.

On the judicial front, the Civil Procedure Law amended in 2023 adopts a general rule of comity applicable to monopolistic disputes. According to Articles 280 through 282 of the Civil Procedure Law, the People's Court may rule on suspension

of the lawsuit where a litigant applies to the PRC court in writing for suspension of the lawsuit, on the ground that a foreign court has accepted the case prior to the PRC court, unless (i) the litigants have agreed on selection of the PRC court with jurisdiction, or the dispute falls under exclusive jurisdiction of the PRC court; or (ii) it is evidently more convenient for a PRC court to try the case. Additionally, under the doctrine of *forum non conveniens*, the People's Court may choose not to accept a lawsuit if it deems itself an inconvenient forum to hear the case.

1.8 Changes in the Regulatory Environment Affecting Competition Regulation

Enforcement actions against cartel behaviour remain robust. It is expected that Competition Authorities will continue to prioritise sectors of public interest and welfare. Simultaneously, they are expanding their enforcement efforts into areas linked with emerging technologies and new economic models.

Since early 2023, competition authorities have initiated a targeted enforcement campaign in the public welfare sector, addressing major monopolistic issues in industries such as pharmaceuticals, insurance, transportation, construction, and utilities – including water, electricity, and heating. These sectors have become focal points for antitrust investigations, which have led, in multiple instances, to fines surpassing CNY100 million.

Meanwhile, sectors like finance, internet, big data, cloud computing, artificial intelligence, and sustainable development are facing increased scrutiny from the Competition Authorities. The authorities have consistently focused on platforms with significant operational scales and direct consumer impacts, encouraging these

platforms to conduct comprehensive reviews of their compliance with antitrust regulations since 2023.

2. Procedural Framework for Cartel Enforcement – Initial Steps

2.1 Initial Investigatory Steps

In practice, cartel investigations can be triggered in one of the following ways:

- Customers, competitors, and upstream/downstream parties can act as whistleblowers (Article 46 of the AML provides that any entity may report alleged monopolistic conduct to the Competition Authorities).
- The Competition Authorities may open an investigation on their own initiative.
- Other governmental authorities may pass on related information to the Competition Authorities.
- A participant in a cartel arrangement may voluntarily confess their involvement to the Competition Authorities to seek leniency.

Before officially accepting a case, the Competition Authorities typically carry out a preliminary probe into the received information and the alleged cartel conduct. Following the establishment of the “Three Documents and One Letter” system for anti-monopoly enforcement in December 2023, the authorities can now issue a Reminder Letter to the target undertaking and such undertaking must then provide a written report detailing the remedial actions taken in response.

If the remedial actions outlined in the Reminder Letter are not implemented on time, are insufficient, or if the suspected cartel activity has led to public outcry or negative impacts, the authorities

can issue a Notice of Regulatory Talk. The enterprise must then submit a written report on the corrective measures taken. Failure to adequately address the issues within the stipulated timeframe, insufficient rectification, or recurrence of the issue after initial correction will lead the authorities to formally accept the case and initiate a full investigation.

2.2 Dawn Raids

Article 47 of the AML empowers the Competition Authorities to employ various investigation measures, including entering the business premises and other relevant locations of the target undertaking for inspection (aka dawn raids or surprise visits). Dawn raids are commonly employed in cartel-related cases, particularly those that are high-profile and complex or where the evidence is not easy to obtain. Obtaining the approval from the principal of the Competition Authorities would be sufficient to conduct dawn raids.

Throughout the investigation process (including dawn raids), the Competition Authorities may undertake diverse investigation measures (see **2.5 Enforcement Agency’s Procedure for Obtaining Evidence/Testimony**). The undertaking and its employees, or other entity/person related to the case, are required to co-operate and respond to inquiries from the Competition Authorities, to be interviewed and to submit/copy any documents and materials as requested. There are no restrictions on dawn raids or surprise visits under the AML. The competition authorities can have extensive access to all potential sources of evidence, including access to computers and working emails, account books, bank accounts, business agreements, seizure of relevant documents, etc, as deemed necessary by the authorities.

During dawn raids, the target undertaking is permitted to have legal representation, either through outside or in-house counsel, to provide on-site legal assistance. It is typically required that power of attorneys be presented to the authorities to facilitate this (see **2.4 Role of Counsel**).

2.3 Spoliation of Information

The spoliation of information is regarded as non-compliance or interference with the investigation. As the AML mandates full co-operation with Competition Authorities from undertakings being investigated during the investigation, Article 62 provides that the following actions are typically viewed as non-compliance or interference with the investigation:

- refusing to provide materials or information;
- providing false materials or information; and
- hiding, destroying, or transferring evidence.

Engaging in such actions could lead to administrative or even criminal liabilities (see **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**).

2.4 Role of Counsel

The AML and other legislation do not provide clear rules concerning the right to counsel during the cartel investigation, nor detail the scope and limitations of such counsel's role. In practice, any entity involved in the investigation retains the right to counsel, including both in-house and outside counsel, provided that their attorney-client relationship is legally established. Typically, the counsel is allowed to provide legal assistance in a variety of ways. They can assist the entity in preparing the information requested and in responding to inquiries made by the Competition Authorities, and can accompany the individual in interviews conducted by the Competition Authorities.

It is important to note that following the 2022 amendments to the AML, which introduced personal liabilities for involvement in cartel arrangements, potential conflicts of interest may arise between the target undertaking and its legal representatives or directly accountable officers. In such scenarios, these individuals can secure separate legal counsel for themselves if needed.

At the outset of defending against a cartel investigation, the counsel should swiftly prioritise the following actions, which typically involve a swift collection and review of relevant documents, conducting interviews with key personnel and stakeholders, and maintaining effective communication with the Competition Authorities:

- identifying the concerns of the Competition Authorities and the focus of the investigation;
- understanding the fundamental aspects of the undertaking and the business under investigation;
- developing the defence strategy in collaboration with the undertaking, and organising relevant facts and evidence accordingly;
- preparing responses to inquiries from the Competition Authorities; and
- analysing whether any leniency, exemption or suspension may be applied to mitigate the potential penalty.

2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony

Article 47 of the AML allows the Competition Authorities to obtain evidence, both documentary and non-documentary, via a range of measures, provided that a written report has been submitted to and approved by the principal of the Competition Authorities:

- entering the business premises and other relevant locations of the target undertaking for inspection;
- questioning individuals from the target undertaking and other relevant parties involved in the case;
- inspecting and making copies of documents and materials (vouchers, agreements, accounting books, business correspondence, electronic data, etc) of the target undertaking and other relevant parties involved in the case;
- seizing or detaining evidence; and
- inspecting the bank accounts of the target undertaking.

Article 48 further provides that, when investigating alleged monopolistic conduct, there shall be at least two law enforcement officers present. They must show their credentials and keep written records of interviews, signed by the individuals questioned.

The Competition Authorities are also obliged to adhere to the duty of confidentiality. Article 46 of the AML mandates that the Competition Authorities shall protect the confidentiality of the informant's identity. Article 49 stipulates that they shall keep confidential the trade secrets, personal privacy and personal information they learn during the course of their law enforcement activities.

2.6 Obligation to Produce Documents/Evidence Located in Other Jurisdictions

During an antitrust investigation, all relevant entities are required to fully co-operate with the Competition Authorities by providing the requested information. This duty to co-operate extends beyond territorial jurisdictions, indicating an obligation to produce information regardless of its physical location. According to Article 47 of the AML, the Competition Authorities have the

authority to access electronic data from computers. This includes data readily accessible on local computers as well as information that must be retrieved from other jurisdictions upon request.

2.7 Attorney-Client Privilege

Under the PRC antitrust legislation regime, there is no explicit recognition of the attorney-client privilege as it is understood in jurisdictions such as the US and the EU. Although the amended Article 38 of the Lawyers Law (2017) mandates that lawyers must maintain confidentiality for their clients, this requirement only applies to outside counsel who are admitted to practice in the PRC. Moreover, this stipulation is not typically seen as indicative of the attorney-client privilege principle. Furthermore, this confidentiality obligation is not absolute. There are certain situations where lawyers may be compelled or permitted to disclose client information, particularly when the client or others are involved in preparing or carrying out actions that threaten national security, public safety, or seriously jeopardise the personal safety of individuals.

2.8 Non-cooperation With Enforcement Agencies

In the PRC, it is unadvisable for undertakings to resist requests from the Competition Authorities, as such resistance could be interpreted as non-compliance or interference with the investigation. Such resistance could not only result in certain legal liabilities (see 2.3 Spoliation of Information) but could also negatively impact the outcome of the case or result in harsher penalties for the alleged cartel activities under investigation.

However, in practice, if undertakings have reservations or concerns about the requests made by the Competition Authorities, they are permitted to engage in discussions with the authori-

ties. This dialogue can explore the possibility of excluding information that is either irrelevant or unobtainable.

2.9 Protection of Confidential/Proprietary Information

The Competition Authorities are obliged to comply with their duty of confidentiality regarding trade secrets, personal privacy and personal information (see 2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony). Furthermore, Article 66 of the AML and Article 27 of the Provisions on Prohibiting the Acts of Eliminating or Restricting Competition by Abuse of Administrative Power generally stipulate that officers of the Competition Authorities who violate these confidentiality obligations shall be disciplined in accordance with relevant regulations.

2.10 Procedure for Defence Counsel to Raise Arguments Against Enforcement

Throughout the entire process of a cartel investigation, defence counsel may assist the target undertaking in raising legal and factual arguments and reasonable defence. To facilitate this, defence counsel may accompany the target undertaking to participate in the interviews conducted by the Competition Authorities, reply to information requests, and even proactively apply for and arrange meetings with the Competition Authorities.

Upon receiving the preliminary notice of administrative penalties, defence counsel can help the target undertaking exercise its rights to make statements, defend itself and request a hearing if the target undertaking is dissatisfied with the administrative penalties.

After the administrative penalties are finalised and the enforcement decision is issued, defence counsel may assist the target undertaking in

pursuing administrative reconsideration and/or applying for judicial review (ie, initiating court actions against the decision), if the target undertaking is not satisfied with the outcome.

2.11 Leniency and/or Immunity Regime Leniency Regime

Competition Authorities may waive or reduce the liabilities for the first undertaking that voluntarily reports the cartel conduct it has participated in or is participating in and that provides essential evidence. It may reduce the liabilities to varying degrees for subsequent undertakings that do the same. The leniency regime is generally outlined in Article 56 of the AML, and further detailed in the Guidelines for Application of the Leniency Programme to Cases Involving Horizontal Monopolistic Agreements (the "Leniency Guidelines") published in 2019.

Qualifications and requirements to obtain leniency

Undertakings must apply for leniency before receiving a preliminary notice of administrative penalties. Early reporting of cartel involvement is encouraged, and undertaking(s) can, before filing an official leniency application, engage with the Competition Authorities either anonymously or under their real name.

To obtain leniency, the undertaking(s) must provide information and substantial evidence about the cartel conduct not already known to the Competition Authorities. It is important to note that the requirements for the scope of the information and evidence vary for the first and subsequent undertakings.

In addition, to secure leniency, the undertaking(s) must also meet all of the following requirements:

- immediately cease the cartel conduct after applying for leniency, unless the Competition Authorities require the continuation of conduct to ensure the smooth progress of the investigation, and report to the Competition Authorities any existing application for leniency to foreign Competition Authorities and any requirements to continue the cartel conduct (if any);
- swiftly, continuously, comprehensively, and sincerely co-operate with the investigation;
- properly preserve and provide relevant evidence and information, and refrain from concealing, destroying or falsifying relevant information;
- refrain from disclosing, without the Competition Authorities' consent, the fact that leniency was applied; and
- refrain from any other conduct that could affect the investigation.

Exemption or reduction bands for fines under the leniency regime

For qualified applicants, the Competition Authorities may grant exemptions or reductions in fines within the following bands:

- The first undertaking providing essential evidence will obtain a reduction of 80%-100%. If this undertaking submits the application and receives the Competition Authorities' written confirmation for its application as the first in line before the initiation of the investigation, the reduction shall be 100%, provided that it has neither organised nor coerced others into reaching and implementing the cartel agreement.
- The second undertaking will obtain a reduction of 30%-50%.
- The third undertaking will obtain a reduction of 20%-30%.

- Subsequent undertakings will obtain a reduction of no more than 20%.

Immunity Regime

The AML also establishes the exemption system for monopolistic agreements, and the justifications and exemptions are specified in Article 20 of the AML (see 1.4 Definition of “Cartel Conduct”).

2.12 Amnesty Regime

There is no separate amnesty regime applicable for any cartel-related violations under PRC legislation.

3. Procedural Framework for Cartel Enforcement – When Enforcement Activity Proceeds

3.1 Obtaining Information Directly From Employees

During an antitrust investigation, all individuals related to the case, including company employees, shall fully co-operate with the Competition Authorities, furnishing the information and materials as requested (see 2.2 Dawn Raids, and 2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony).

3.2 Obtaining Documentary Information From the Target Company

During an antitrust investigation, the Competition Authorities can inspect and make copies of documentary information from the target undertaking and others related to the case, including working emails, account books, bank accounts, business agreements, etc. The target company and others shall fully co-operate with the Competition Authorities, furnishing all requested information (see 2.2 Dawn Raids, and 2.5

Enforcement Agency's Procedure for Obtaining Evidence/Testimony).

3.3 Obtaining Information From Entities Located Outside This Jurisdiction

In practice, if the target undertaking located outside the PRC has domestic affiliates, Competition Authorities typically first approach these domestic entities. If the target undertaking has no domestic presence, Competition Authorities may request information directly from the foreign entities, provided that the suspected cartel conduct eliminates or restricts competition within the PRC, as stipulated by Article 2 of the AML (see 1.6 Extent of Jurisdiction).

3.4 Inter-agency Co-operation/Co-ordination

There are various forms of inter-agency co-operation/co-ordination within the PRC antitrust jurisdiction.

First of all, regarding the initiation of cartel investigations, some investigations originate from referrals by other government agencies. As these agencies might identify potential antitrust violations while performing their duties, they may subsequently pass on clues and related information to the Competition Authorities. Such cases are not rare in practice, and this type of information passed on by other agencies could enhance the sources available to the Competition Authorities for detecting antitrust violations.

Throughout the entire investigation process, the Competition Authorities may co-operate or co-ordinate with other agencies in various forms. To evaluate the anti-competitive impact of the case under investigation, the Competition Authorities may engage with other agencies to solicit comments and insights on market- or industry-related issues. Further, the Competition Authori-

ties may also request manpower or technology support from other agencies, especially in dawn raids where it is common for personnel from different agencies to form a special task group.

In addition, it is worth mentioning that co-operation and integration between the Competition Authorities and prosecutorial and judicial bodies are being strengthened. For example, on 1 November 2023, the SAMR and the Beijing Intellectual Property Court held a conference on the mechanism for linking antitrust administrative enforcement and judicial proceedings, during which they agreed to, *inter alia*:

- establish a routine communication and liaison mechanism;
- strengthen data and information sharing; and
- explore a mechanism for the better use of case clues and investigative evidence.

Further, on 27 March 2024, the Beijing AMR and the Beijing Municipal People's Procuratorate signed a memorandum and reached a consensus on strengthening the transferring of case clues, enhancing collaboration, and conducting joint personnel training, etc.

There are no separate and special rules specifying the limitations on the exchange of information regarding inter-agency co-operation/co-ordination. During the process of antitrust enforcement, when co-operation and co-ordination between agencies are involved, the Competition Authorities must still comply with the confidentiality obligation under Article 49 of the AML (see 2.9 Protection of Confidential/Proprietary Information).

3.5 Co-operation With Foreign Enforcement Agencies

The Competition Authorities actively engage in communications and co-operation with numerous foreign agencies concerning general competition policy. For instance, the Competition Authorities have signed memoranda of understanding with many enforcement agencies in other jurisdictions, including the EU, the USA, Singapore, South Korea, Japan, Brazil, etc. In terms of co-operation on specific cases, while this is more common in the area of merger control reviews, there has been a growing trend in recent years towards collaborations and exchanges of information on cross-border behavioural investigations, including those related to cartel conduct.

Additionally, the Competition Authorities and enforcement agencies from other jurisdictions engage in mutual visits and meetings from time to time. To date, the SAMR and the European Commission have successfully hosted 27 sessions of the China-EU Competition Policy Week. Most recently, on 18 March 2024, the Competition Authorities hosted the European Commission's delegation in Beijing, where they conducted the China-EU competition policy dialogue and discussed fair competition review and other related issues. Previously, in 2019, the SAMR led delegations to Serbia, Morocco, Portugal, South Korea, Japan, and the Philippines, engaging in high-level exchanges on competition policy and antitrust enforcement. Through these activities, the Competition Authorities and foreign enforcement agencies exchange information about their significant policies, legislative updates, and enforcement actions. Meanwhile, informal interactions and exchanges of views on specific competition issues between officials from the Competition Authorities and foreign enforcement agencies may also take place.

3.6 Procedure for Issuing Complaints/Indictments in Criminal Cases

Only the People's Procuratorate has the authority to initiate criminal proceedings against specific cartel-related activities (see **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**), and such criminal proceedings follow the general rules of criminal procedure. According to the Criminal Procedure Law amended in 2018, jurisdiction over a criminal case lies with the court located either in the place where the crime was committed or where the defendant resides, based on which location's court is deemed more appropriate for the handling of the case. The severity of the crime determines the level at which cases are brought. Minor offences may be heard by Basic People's Court, while more severe cases may escalate to intermediate or high courts, or even the Supreme People's Court (SPC).

During the trial, the burden of proof lies with the People's Procuratorate, which must demonstrate the defendant's criminal conduct and present pertinent evidence to the People's Court. Defendants have the right to request that the People's Court exclude evidence collected through illegal methods, providing relevant clues or materials to support their claims. The attorney of the defendants may gather information related to the case from consenting entities and can also request the People's Procuratorate or the People's Court to collect and obtain further evidence. Additionally, defendants can apply to the People's Court to compel witnesses to appear and testify.

3.7 Procedure for Issuing Complaints/Indictments in Civil Cases

In the PRC, according to the Civil Procedure Law, civil proceedings are initiated by submitting a complaint to a competent court. This complaint should detail the parties involved, the

factual basis of the claim, and the relief sought. Under the AML, the civil proceedings could be initiated by the entity that suffers losses due to the cartel conduct or by the People's Procuratorate at or above the level of a city with subordinate districts, in cases where the cartel conduct harms social and public interests.

For the hierarchical jurisdiction and territorial jurisdiction, please see **5.1 Private Right of Action**.

During the trial phase, both parties are required to present all relevant evidence to support the claims they have made, and the People's Court may also actively engage in collecting evidence. This evidence shall be presented in the courtroom and be subject to examination/cross-examination by both the plaintiff and the defendant. While there is no formal discovery process as seen in common law jurisdictions, parties have the option to request that the People's Court gather evidence if it is deemed crucial by the People's Court and cannot be obtained by the requesting party through other means.

3.8 Enforcement Against Multiple Parties

Administrative investigations against multiple entities are typically conducted in a single proceeding to enhance efficiency, while the decisions on the administrative penalty are usually issued separately, due to the varying degrees of illegal conduct and considerations of whether leniency has been granted.

In civil litigation cases concerning cartel conduct, according to Article 55 of the Civil Procedure Law, civil actions against multiple entities are typically consolidated into a single proceeding unless the People's Court deems consolidation inappropriate or the parties object.

3.9 Burden of Proof

In administrative investigations, Competition Authorities shall bear the burden of proof of the existence of the competitive relationship between the involved entities and the cartel conduct. In judicial proceedings, the burden of proof lies with the plaintiffs in civil litigation cases and the People's Procuratorate in criminal litigation cases.

Nevertheless, the defendants have the opportunity to defend themselves by presenting justifications or claiming exemptions (see **1.4 Definition of "Cartel Conduct"**) and the burden of proof shifts to the defendants accordingly if they choose to do so.

3.10 Finders of Fact

In administrative proceedings, the Competition Authorities serve as the finders of fact, which means they are responsible for determining the facts of the case and applying the relevant laws to those facts.

In judicial proceedings, it is the People's Court – specifically, the judge – who acts as the finder of fact, similarly applying the relevant law based on the established facts of the case.

3.11 Use of Evidence Obtained From One Proceeding in Other Proceedings

The People's Court may request and use evidence obtained in administrative proceedings, which could be indirectly supported by the Civil Procedure Law, the 2024 Judicial Interpretation, as well as a civil litigation case related to a vertical monopoly agreement. Although the PRC antitrust legislation regime does not explicitly prescribe the admissibility of evidence obtained from administrative investigations/proceedings in judicial proceedings, the general rules of the Civil Procedure Law and relevant rules offer some guidance. In

particular, based on Article 67 of the Civil Procedure Law and Article 94 of the Supreme People's Court's Interpretation on the Application of the Civil Procedure Law, the People's Court should investigate and collect evidence that parties cannot obtain on their own due to objective reasons, which includes evidence held by relevant state departments that parties and their legal representatives do not have the right to access or retrieve. In addition, according to Article 10 of the 2024 Judicial Interpretation, when necessary, the People's Court may require the Competition Authority, who made the decision related to the monopolistic offence, to explain the relevant circumstances of the decision. Furthermore, the SPC has also indirectly confirmed this point in its ruling on a vertical monopoly agreement (case No (2020) Supreme Law Zhi Min Zhong No 1137).

Though unrelated to cartel conduct, this case still provides some insights. In this instance, after the Competition Authorities had determined that the defendant engaged in a vertical monopoly agreement, violating the AML, the plaintiff subsequently initiated a civil lawsuit. The judicial opinion reveals that the trial court retrieved some evidence from the Competition Authorities, including the distribution contracts, on which the administrative decision was based (for the role of a governmental decision in civil proceedings, see also **4.3 Collateral Effects of Establishing Liability/Responsibility**).

It is not explicitly specified in the AML and relevant rules whether the Competition Authorities could request evidence from the courts. Though further observation is needed, there is reason to believe that they may also request and use the relevant evidence gathered in civil litigation. The 2022 amended AML is aiming to address this gap and the detailed rules and regulations can be anticipated – Article 11 provides that China

is improving the mechanism for connecting governmental enforcement and judicial proceedings. In particular, the Competition Authorities and judicial bodies are enhancing their co-operation and integration in terms of sharing case clues and co-ordinating evidence gathering (see **3.4 Inter-agency Co-operation/Co-ordination**).

3.12 Rules of Evidence

There are detailed rules of evidence applied in various types of proceedings, as elaborated in several laws, including the AML, the 2024 Judicial Interpretation (see **2.5 Enforcement Agency's Procedure for Obtaining Evidence/Testimony**), the Administrative Penalty Law, the Civil Procedure Law, and the Criminal Procedure Law.

However, under PRC legislation, for evidence to be admissible in administrative or judicial proceedings, three fundamental criteria must be satisfied: authenticity, legality, and relevance. Authenticity means the evidence must objectively exist and not be falsified or forged. Legality means the evidence must be obtained legally and must be in a form that is acceptable according to the legal procedures of the PRC. Relevance means the evidence must be directly or indirectly related to the case at hand, and should have a clear connection to the facts under investigation or litigation, contributing meaningfully to the resolution of the matter. Evidence that fails to meet the criteria would be excluded from the proceedings.

3.13 Role of Experts

Experts can be engaged in all types of legal proceedings, and their statements or research may be used as evidence, provided they adhere to established rules of evidence (see **3.12 Rules of Evidence**). It is common in investigations and civil litigations for economists to be engaged in order to demonstrate how alleged cartel behav-

our affects markets and competition in practice. Experts from other fields are equally important; for instance, technical experts from specific industries are often brought in to explain and clarify the definitions of relevant markets. These experts help to provide a clearer understanding of the industry context and technical details, which are crucial for accurately assessing the implications of the conduct under investigation or subject to litigation.

3.14 Recognition of Privileges

See 2.7 Attorney-Client Privilege.

3.15 Possibility for Multiple Proceedings Involving the Same Facts

It is possible for multiple or simultaneous legal proceedings to occur concerning the same or related facts involving a cartel infringement. Cartel infringements can lead to administrative investigations by the Competition Authorities, civil actions by affected entities, and criminal prosecution if the conduct violates the Criminal Law.

In fact, such cases are not uncommon in practice. For example, when antitrust litigation is initiated, it not only faces scrutiny from the courts but may also attract the attention of the Competition Authorities, potentially leading to an antitrust investigation. Moreover, the imposition of administrative penalties can embolden entities that have suffered losses due to cartel activities, or are embroiled in disputes over such activities, to pursue civil litigation with increased confidence of success. Additionally, if the cartel behaviour amounts to a criminal offence, the case might also be subject to criminal prosecution by the People's Procuratorate.

4. Sanctions and Remedies in Government Cartel Enforcement

4.1 Imposition of Sanctions

The Competition Authorities have the authority to impose sanctions directly.

In accordance with the AML, the Competition Authorities can order the undertaking to cease the illegal act, confiscate illegal gains, and impose a fine of up to 10% of its sales in the previous year. The 2022 amendment also introduces aggravating factors in the calculation of the fine, permitting an increase in the base fine amount by two to five times if “the circumstances are particularly serious, the impact is especially severe or the consequences are especially serious” (for details of administrative liability, see **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**).

Prior to the imposition of sanctions, the Competition Authorities shall notify the target undertaking in writing of the proposed sanction and the basis thereof and notify it of its right to make statements, right to defend and right to request a hearing pursuant to the law. If such undertaking requests a hearing within the stipulated time frame, the Competition Authorities must hold a hearing before imposing any sanctions.

4.2 Procedure for Plea Bargaining or Settlement

Article 53 of the AML has established “the Undertakings’ Commitments Regime”. During the administrative investigation of the alleged cartel conduct, the AML allows the target undertaking to commit to adopting specific measures to eliminate the impact of its behaviour within a time limit approved by the Competition Authorities and apply for suspension of the investigation. Where the commitments are sufficiently and

fully fulfilled, the Competition Authorities may then issue a decision to terminate the investigation.

The Provisions on Monopoly Agreement have set out detailed criteria and aspects regarding the Undertakings' Commitments Regime and the application for suspension:

- Timing for the application matters as the Competition Authorities will not suspend the investigation if they have collected and verified sufficient evidence to conclude that the alleged cartel behaviour constitutes a monopoly agreement under the AML.
- Not all types of cartels are eligible for suspension. Applications for suspension from cartels involved in price fixing, market allocation, or output/sales restrictions will typically be rejected by the Competition Authorities.
- Upon receiving an application for suspension, the Competition Authorities will evaluate several factors to decide whether to grant the suspension. These factors include the nature, duration, and consequences of the alleged behaviour, the social impact, the measures committed by the target undertaking, and the expected effects of these measures. Additionally, in their enforcement practice, the Competition Authorities may also consider whether the undertaking admits to the existence of an infringement.

Though the Competition Authorities may decide to suspend the investigation, such suspension may not always be followed by a termination. Article 53 of the AML and Article 35 of the Provisions on Monopoly Agreement stipulate that the Competition Authorities may resume the investigation under the following circumstances:

- the target undertaking does not comply or does not fully comply with the commitments;
- there is a significant change to the facts on which the decision on suspension of investigation is based; or
- the decision on suspension of investigation is based on incomplete or untrue information provided by the target undertaking.

4.3 Collateral Effects of Establishing Liability/Responsibility

If liability or responsibility is established in cartel cases, there could be collateral effects in follow-on private civil litigation or the undertaking's credit record and business activities.

Collateral Effects on Follow-on Private Civil Litigation

The SPC has already established in its past rulings that if an administrative decision made by the Competition Authorities on rendering a monopolistic behaviour unlawful has not been subject to administrative litigation within the statutory period or has been confirmed by a court, there is no need for the plaintiff to provide additional evidence to prove the constitution of monopolistic behaviour, unless there is evidence to the contrary that is sufficient to overturn the conclusion.

SPC re-confirmed this basic stance and principle specifically in its 2024 Judicial Interpretation, despite some variations in wordings regarding how the exemption of the plaintiff's burden of proof would affect the civil litigation - According to Article 10 of the 2024 Judicial Interpretation, the plaintiff is exempted from providing additional evidence to claim the authenticity of the basic facts established by the administrative decision (instead of the claim of the constitution of monopolistic behaviour).

Collateral Effects on the Undertaking's Credit and Business Activities

The administrative penalty decision will be announced to the public and recorded in the undertaking's credit record in accordance with Article 64 of the AML, having a profound impact on the undertaking's business activities, including but not limited to:

- Potential trading partners may be more cautious when considering business co-operation with such undertaking.
- If the penalty is severe, or if the undertaking refuses to comply with the administrative decision despite having the capability to do so, it may be added to a blacklist. This inclusion can disqualify the undertaking from participating in government procurement or bidding projects, as outlined in the Measures for the List of Subjects with Seriously Illegal or Dishonest Acts under Market Regulation.
- The undertaking may face difficulties in the listing process.

The Undertakings' Commitments Regime may potentially mitigate these collateral effects if the Competition Authorities decide to terminate the investigation based on the undertakings' commitments.

4.4 Sanctions and Penalties Available in Criminal Proceedings

If the undertaking's cartel-related infringement is serious enough to constitute a criminal offence, criminal liabilities would arise (see **1.2 Public Enforcement Agencies and Scope of Liabilities, Penalties and Awards**).

4.5 Sanctions and Penalties Available in Civil Proceedings

The Competition Authorities, instead of the People's Court, have the authority to impose sanc-

tions and penalties on an undertaking's cartel behaviour.

However, where an undertaking implementing cartel behaviour causes any loss to others, it may face civil litigation initiated by others and shall assume the civil liability thereof. In this scenario, the People's Court plays a neutral role in reviewing antitrust civil cases, that is, resolving disputes between the plaintiff and the defendant. Its responsibilities are to decide whether and to what extent it is in favour of the reliefs sought by the plaintiff.

The reliefs sought by the plaintiff, traditionally, include cessation of infringement, compensation of losses, etc. New changes have been introduced in this regard by the newly-amended judicial interpretation. According to the 2024 Judicial Interpretation, where the ruling that the defendant ceases the alleged monopolistic behaviour is insufficient to eliminate the effect of exclusion or restriction of competition, the People's Court may also, based on the reliefs sought by the plaintiff and the specific circumstances of the case, order the defendant to bear the legal liability of making necessary acts to restore competition. This change has substantially broadened the range of civil remedies available to the People's Court and may significantly influence the future conduct of undertakings.

Individuals may also be ruled to bear civil liability. First, according to Article 15 of the AML, "undertakings" refer to natural persons, legal persons and other unincorporated associations engaged in the production or operation of commodities or the provision of services. Hence, if an individual's cartel conduct were to cause losses to others, she/he could be named as a defendant in an antitrust civil proceeding. Second, according to Article 191 of the Company Law (revised in

2023), directors or senior executives who cause damage to others through actions taken in their professional capacity, and who do so intentionally or through gross negligence, are also liable for compensation. Thus, it is possible that directors or senior executives could be co-defendants in antitrust civil proceedings.

4.6 Relevance of “Effective Compliance Programmes”

There is no statutory basis under the Chinese antitrust law regime for Competition Authorities to consider an undertaking’s “effective compliance programme” as a factor in determining sanctions and penalties for cartel infringement.

However, the Guidelines on Anti-monopoly Compliance for Undertakings, revised in 2024, have introduced compliance incentives mechanism, where the Competition Authorities may conduct a substantive review of the target undertaking’s antitrust compliance programme in terms of completeness, authenticity and effectiveness and consider the review outcome as a mitigating factor when evaluating suspension application, leniency application and making sanctions and penalties.

The criteria for this substantive review are comprehensive. They include but are not limited to:

- whether there is a systematic management system, a full-fledged compliance management organisation, and a proportionate compliance risk management mechanism;
- whether the undertaking has strictly implemented the compliance programme and truly fulfilled its antitrust compliance commitments; and
- whether the undertaking has adopted effective compliance supervision and supporting measures.

4.7 Mandatory Consumer Redress

Sanctions in the administrative penalty decision will not extend to mandatory consumer redress. However, a consumer can file a lawsuit and request compensation pursuant to the law before the People’s Court if the cartel infringement has resulted in damages.

4.8 Available Forms of Judicial Review or Appeal

Article 65 of the AML allows an undertaking that disagrees with the administrative decision against its cartel infringement made by the Competition Authorities to either apply for administrative reconsideration, or to apply for judicial review. According to the Administrative Reconsideration Law and the Administrative Procedure Law, the administrative reconsideration can be applied for within 60 days from the date of receiving the decision; the judicial review can be applied for within six months from the date of receiving the decision. In addition, if the undertaking applies for administrative reconsideration and is not satisfied with the outcome, it can also apply for judicial review within 15 days from the date of receiving the reconsideration outcome. For judicial review, if the undertaking is not satisfied with the judgment of first instance, it can appeal to a court of a higher level.

Compared to the number of antitrust civil litigation, the number of judicial reviews against administrative decisions on monopolistic conduct is relatively low. Cartel infringement cases account for a large proportion of such judicial reviews.

5. Private Civil Litigation Involving Alleged Cartels

5.1 Private Right of Action

According to Article 60 of the AML and Article 1 of the 2024 Judicial Interpretation, any private firms and/or individuals who suffer losses attributed to a cartel infringement may bring a civil lawsuit before the People's Court. The People's Court may accept the case if it meets the standard for case acceptance set out in the Civil Procedure Law, namely the plaintiff has a direct interest in the case, and there is/are specific defendant(s) and specific claims, facts and reasons. Importantly, it is not necessary for the Competition Authorities to have formally determined the existence of a cartel infringement for these private actions to proceed.

The 2024 Judicial Interpretation further stipulate the hierarchical jurisdiction and territorial jurisdiction for a private right of action against cartel infringement. For hierarchical jurisdiction, the court of first instance would be (i) intellectual property courts and (ii) intermediate People's Court designated by the SPC. For territorial jurisdiction, it shall be determined in accordance with the provisions of the Civil Procedure Law and the relevant judicial interpretations on the jurisdiction for tort disputes, contractual disputes, etc, based on the specific circumstances of the case.

The forms of relief available in a private civil action are detailed in Section 4.5 **Sanctions and Penalties Available in Civil Proceedings**.

5.2 Collective Action

The types of collective actions against cartel infringement include public interest litigation and representative action.

Public Interest Litigation

Article 60 of the 2022 amended AML empowers the People's Procuratorate at or above the level of a city with subordinate districts to bring a civil public interest litigation before the People's Court, if the cartel infringement harms social and public interests.

Representative Actions

The representative actions mechanism within the civil procedure legal regime can theoretically be applied against cartel infringement if several individuals or companies suffered damages caused by the same cartel infringement (eg, several buyers of price-fixed products).

According to Articles 56 and 57 of the Civil Procedure Law, in a representative action, the representative plaintiff can be elected by consensus or the People's Court may assist in appointing a representative plaintiff. The judgment or ruling made by the People's Court shall be binding on all the right holders being represented, and those unregistered right holders who file a lawsuit within the limitation of action.

5.3 Indirect Purchasers and "Passing-On" Defences

At present, there is no statutory basis dictating how the People's Court would handle claims brought by indirect purchasers or "passing-on" defences. There are limited precedents in this regard. Despite this, as mentioned in 5.1 **Private Right of Action**, any natural person, legal person, or unincorporated organisation, regardless of being direct or indirect purchasers, who suffer losses attributed to a cartel infringement is entitled to file an antitrust civil lawsuit.

There is one well-known judgment addressing this issue to a certain extent, involving a vertical monopoly agreement reviewed by the Beijing Intellectual Property Court in 2015 (case

No (2014) Jing Zhi Min Chu Zi No 146). In this case, the court found that the current antitrust legislation framework “does not exclude indirect purchasers’ right to bring an anti-monopoly civil litigation”. However, Beijing IP Court did not expand further on any specific rules such as the standard for recognising an indirect purchaser or the process to be applied.

5.4 Admissibility of Evidence Obtained from Governmental Investigations/Proceedings

The general rules of the Civil Procedure Law, the 2024 Judicial Interpretation and SPC’s past rulings indicate that evidence obtained from governmental investigations/proceedings could be used/admitted in civil litigation (see 3.11 Use of Evidence Obtained From One Proceeding in Other Proceedings).

5.5 Frequency of Completion of Litigation

Based on publicly available information, the People’s Court has accepted a total of around 1,000 first-instance cases concerning antitrust disputes since the implementation of the AML in 2008. There are no official statistics as to the ratio of cases being dismissed or settled. Among those, cases relating to cartels only amount to a small portion of less than 20%.

As regards the typical timeframe of cartel-related litigations from the acceptance of the cases by the People’s Court to resolution, according to the Civil Procedure Law, cases of first instance are generally subject to ordinary procedures and the People’s Court should complete the review within six months from the date of case acceptance. The review of cases of second instance should be completed within three months from the date of case acceptance for the second instance. The aforementioned timeframes can be extended upon approval. However, it is

important to note that cases involving foreign elements are not bound by these timelines and can last for several years.

5.6 Compensation of Legal Representatives

According to Article 45 of the 2024 Judicial Interpretation, the People’s Court may, upon the plaintiff’s request, include reasonable expenses incurred by the plaintiff for investigation and curbing of the anti-competitive behaviour (including cartel infringement) in the scope of compensable losses, and the aforementioned reasonable expenses include fees for attorneys, economic analysis and market investigation.. Therefore, successful and reasonable attorney fees paid by the plaintiff can be compensated by the defendant. Usually, the plaintiff needs to submit the engagement agreement and relevant invoices, etc, to substantiate its claim.

5.7 Obligation of Unsuccessful Claimants to Pay Costs/Fees

Typically, unsuccessful claimants are not obliged to pay defence costs and/or attorney fees to the defendant, but would need to bear litigation fees.

5.8 Available Forms of Judicial Review of Appeal of Decisions Involving Private Civil Litigation

Trial of Second Instance

According to the Civil Procedure Law and relevant rules, any litigants who disagree with the judgment of the first instance relating to an antitrust dispute can appeal to the Intellectual Property Tribunal of the SPC within the timeframe set by the Civil Procedure Law. To start the proceedings, the litigant shall formulate a petition per Article 172 of the Civil Procedure Law and submit the petition to the court that originally heard the case, which would then transfer the petition, together with the case files and evidence, to the

SPC. The SPC would then examine the relevant facts and applicable laws relating to the appeal.

Re-trial

Re-trial is targeted at a judgment or ruling that has already come into effect. A litigant who deems that there is an error in such judgment or ruling may apply for re-trial. The standards for the People's Court to successfully initiate a re-trial are rather strict (more details are provided in Article 211 of the Civil Procedure Law) and a re-trial in relation to a cartel infringement is rarely seen in practice.

6. Supplementary Information

6.1 Other Pertinent Information

There are no other items of information that are pertinent to an undertaking of the process, scope and adjudication of claims involving alleged cartel conduct.

6.2 Guides Published by Governmental Authorities

The following regulations/rules/guides can help to understand China's practice in dealing with cartel conduct:

- [Anti-monopoly Guidelines of the Anti-monopoly Commission of the State Council in the field of Automotive](#) (2019);
- [Guidelines of the Anti-monopoly Commission of the State Council to the Application of the Leniency System to Horizontal Monopoly Agreement Cases](#) (2019);
- [Guidelines of the Anti-monopoly Commission of the State Council on Undertakings' Commitments in Monopoly-related Cases](#) (2019);
- [Interpretation of the SPC on Several Issues concerning the Application of Law in the Trial of Monopoly-related Civil Dispute Cases](#) 2024;
- [Anti-monopoly Guidelines of the Anti-monopoly Commission of the State Council in the field of Platform Economy](#) (2021);
- [Anti-monopoly Guidelines of the Anti-monopoly Commission of the State Council in the field of Active Pharmaceutical Ingredients](#) (2021);
- [Guidelines for Overseas Anti-monopoly Compliance of Enterprises](#) (2021);
- [Provisions on Prohibiting Monopoly Agreements](#) (2023);
- [Provisions on Prohibiting Abuse of Intellectual Property Rights to Eliminate or Restrict Competition](#) (2023);
- [The Notice of the Anti-Monopoly Commission and the SAMR on Establishing a System of "Three Documents and One Letter" for Anti-Monopoly](#) (2023); and
- [Guidelines on Anti-monopoly Compliance for Undertakings](#) (2024).

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