

# Civil Antitrust Litigation in China

By Sébastien J Evrard

Seven years after the introduction of its Anti-Monopoly Law (AML),<sup>[1]</sup> the People's Republic of China has become one of the world's main jurisdictions for antitrust enforcement, alongside the United States and the European Union.

Public enforcement constitutes the main driver of enforcement activities in China. There are three agencies tasked with enforcing the AML: the Ministry of Commerce (MOFCOM) is responsible for merger enforcement, and the State Administration for Industry and Commerce (SAIC) and the National Development and Reform Commission (NDRC) are both responsible for non-merger enforcement.

Private enforcement is explicitly mentioned in the AML: Article 50 sets out that 'undertakings that implement monopoly acts and cause damages to others shall bear civil liability according to law'. This provision enables the courts to accept and adjudicate civil cases under the AML. However, private enforcement had a slower start and only picked up speed in the past two years.

In the early days, some observers were in fact deeply sceptical about the capacity of Chinese courts to handle private litigation, citing concerns about the lack of judicial independence and weak legal infrastructure, or arguing that the AML 'prefers' administrative to judicial enforcement.<sup>[2]</sup> Chinese judges themselves recognised that they had limited experience in dealing with antitrust issues<sup>[3]</sup> and were in urgent need to build up expertise and resources for handling AML matters.<sup>[4]</sup>

In 2012, the Supreme People's Court set out a basic framework for civil antitrust litigation by publishing its Rules on Civil Litigation under the AML ('SPC Rules').<sup>[5]</sup> The drafting process of these rules took three years, during which the text was regularly amended and submitted to stakeholders for comments.<sup>[6]</sup> While it deals with some important issues, some significant issues have been left out.

The latest available statistics show an increase in private enforcement. In 2010, the courts only accepted 33 AML cases.<sup>[7]</sup> This increased to 55 in 2012, 72 in 2013 and 86 in 2014.<sup>[8]</sup> These numbers are obviously fairly low compared to the level of activity in Europe and the US. This may be due to various factors. First, competition law is still relatively new in China and would-be litigants may not all be aware of possible arguments based on the AML. Secondly, the enforcement agencies have only recently started to tackle large or cross-border cartels, probably because of the initial lack of certainty surrounding China's leniency regime. As a result, there have been very few, if any, follow-on claims so far.<sup>[9]</sup> Third, it is only in the past two years that Chinese courts have taken on increasingly complex cases, such as *Qihoo v Tencent* and *Huawei v InterDigital*, and have convinced would-be plaintiffs of their ability to tackle AML cases. Most of the abuse of dominance lawsuits in the early days were dismissed because plaintiffs could not demonstrate the existence of a dominant position.

Given that China is a relatively litigious society, in particular in the intellectual property arena, we can expect private enforcement to significantly increase in the next few years. One should, however, not expect private enforcement to attain the same level as in the US. The Chinese legal framework includes several features that are likely to constitute an obstacle to the development of private litigation: in particular the limited discovery and the absence of class actions, combined with the uncertainty regarding the access to leniency applications and documents.

This contribution provides an overview of the basic framework for civil antitrust litigation in China and highlights some of the significant questions that are, to date, untested.

## Jurisdictional issues

Pursuant to the SPC Rules, civil antitrust cases are heard

by the intermediate courts. These are established at the prefectural level, in municipalities directly under the provincial governments, and within municipalities directly under the central government (the major cities of Shanghai, Beijing, Tianjin and Chongqing). First instance antitrust cases may also be heard by the provincial high court (ie, high(er) court) if the case has a significant impact in that province.[10] Lower-level people's courts may only hear first instance antitrust cases when authorised by the SPC.[11]

In light of the complexity of AML-related matters and previous expertise in antitrust-related disputes, antitrust litigation is handled by the IP tribunal within the competent court.[12]

According to the SPC Rules, the court's territorial jurisdiction will be governed by the general jurisdictional provisions of the Civil Procedure Law (CPL) and its SPC interpretations in respect of tort, contract and other disputes.[13] Accordingly, several options may exist in any specific case.

First, according to the CPL, civil lawsuits brought against private undertakings may be brought before the court of the defendants' domicile.[14]

Secondly, private monopolistic conduct – monopoly agreements, abuses of dominant market position, and concentrations – may be characterised as tortious (ie, rights-infringing) in nature. Such tort claims also may be brought – in addition to at the defendant's domicile – 'where the infringing act took place',[15] meaning both where the infringing act was performed and where the consequence of (ie, injury from) infringement was incurred.

Thirdly, some AML issues may arise in the context of contractual disputes, such as AML-based defences to the validity or enforcement of allegedly anti-competitive contracts. Contractual disputes present many additional possibilities for territorial jurisdiction beyond the location of defendants' domiciles. For example, contractual disputes generally may be heard 'where the contract is performed'. [16] Contracting parties also may agree in their contract to places that will have jurisdiction, including: (1) where the defendant has their domicile; (2) where the contract is performed; (3) where the contract is signed; (4) where the plaintiff has their domicile;

and (5) where the subject of the contract is located.[17]

In a case where the court in which the AML defence is raised does not itself have jurisdiction over private antitrust litigation, the court will have to decide whether to transfer the case to another court.[18]

Fourthly, in contracts involving 'foreign elements', parties may agree to choose courts located in any place with 'actual connections to the dispute', including both PRC and foreign courts.[19] Absent such agreement, contract actions against foreign defendants without PRC domicile may be brought in the courts of any PRC jurisdiction where the contract was signed or performed; where the defendant has detainable property; or where the defendant has a Chinese representative agency, branch or business agent.[20] For example, in *Huawei v InterDigital*, Huawei sued InterDigital in two separate cases before the Shenzhen Intermediate People's Court. InterDigital challenged the Chinese court's jurisdiction on the ground that it has no domicile and business presence in China. However, the court asserted jurisdiction in the first case because the infringement had effects within its jurisdiction[21] and, in the second case, because that is where the contract was to be performed.[22]

This wide variety of jurisdictional options may permit forum-shopping. If two or more people's courts have jurisdiction over a lawsuit, a plaintiff may choose any one of the courts with jurisdiction. If suits are brought in two or more courts with jurisdiction, it should be handled by the court that first accepted the case.[23] Given the variation of quality and experience among judges in the people's courts in different locations across China, as well as perceptions of local protectionism, it can be expected that forum-shopping will become an important part of AML litigation strategy.

### **Eligible plaintiffs and class actions**

According to the SPC Rules, any victim of an AML violation has standing to sue. This seems to include indirect purchasers. [24]

There are no US-type class actions in China. According to Article 6 of the SPC Rules, where two (or more) plaintiffs

bring a case against the same defendant before the same court on the basis of the same monopoly conduct, the court may combine the cases together.

However, a Chinese sort of ‘class action’ may be an option as the newly revised Consumer Rights Protection Law<sup>[25]</sup> authorises the China Consumers’ Association (CCA) to bring consumer protection and public interest lawsuits. Under the revised Consumer Rights Protection Law, CCA would be the plaintiff, instead of the entire consumer group.<sup>[26]</sup> Article 47 of the Consumer Rights Protection Law now provides that: ‘The China Consumers’ Association and its counterparts in the provinces, autonomous region and the municipalities directly under the central government may bring lawsuits before the people’s courts against conduct that detracts the interests of numerous consumers’.

It remains to be seen whether the courts will accept the use of this new type of class action in cases of violations of the AML.

## Discovery

In China, each party has the responsibility to collect and present evidence.<sup>[27]</sup> Evidence obtained outside of China must be notarised and certified.<sup>[28]</sup> Evidence in a foreign language must have a Chinese translation.<sup>[29]</sup>

Unlike in many common law jurisdictions, parties to Chinese litigation proceedings typically cannot be compelled to disclose evidence in their possession to opposing parties, and there is essentially no US-style ‘discovery’ in China. Thus, it will not be easy for private parties to obtain evidence supporting their claims under the AML – which may involve private defendants’ internal documents – and they may need to rely on judicial assistance.

The draft SPC Rules included a provision for court-assisted evidence gathering to address this difficulty for private plaintiffs. In particular, they specified that plaintiffs may request courts to order defendants to produce relevant evidence if only the defendant is in possession of the evidence that is necessary to prove the plaintiff’s case. Refusal to produce such evidence would have enabled the court to find the allegation to be made out. However, in the final SPC Rules, this provision was

deleted. Presumably, the normal evidence-gathering provisions in other relevant laws should apply to antitrust litigation, which provide only limited options for the parties to seek judicial assistance in evidence gathering as discussed below.

First, if a party is unable to obtain specific evidence, it may request the courts to assist in collecting evidence and examining its veracity.<sup>[30]</sup> Such an application must be made no later than seven days prior to the expiry of the time limit for evidence submission, which generally is no earlier than 30 days after the plaintiff has received the case acceptance notice and the defendant has been served, and in advance of setting a hearing or trial date.<sup>[31]</sup> If the application is rejected, the party may make a written application to the court for reconsideration. The court shall make a decision on the reconsideration application within five days after the court receives the application.<sup>[32]</sup>

Secondly, parties may apply for ‘evidence preservation’. Article 81 of the Civil Procedure Law allows them to request courts to preserve evidence that is likely to be destroyed, lost or may be too difficult to obtain later. The party seeking the preservation order must provide security, such as a sum of money.<sup>[33]</sup> Common methods of evidence preservation include, but are not limited to sealing up, detaining, taking photos, making sound recordings or visual recordings, making copies, authenticating and taking transcripts.<sup>[34]</sup>

In practice, it has proven difficult in most cases to obtain court orders for preservation of evidence. Because there is no clear legal provision about how to determine that evidence is likely to be destroyed, lost, or too difficult to obtain later on, such determinations are up to the trial judge’s discretion in each individual case. With the limited exception of infringement cases brought by a rights holder, Chinese civil procedure does not yet generally accommodate civil evidence preservation orders at the beginning of a civil litigation, including *ex parte* orders.<sup>[35]</sup> It is therefore unclear to what extent courts will entertain applications for evidence preservation in antitrust lawsuits.

One of the burning issues is the extent to which the courts will allow the disclosure of leniency materials provided to the NDRC or the SAIC under their respective leniency

programmes. This is one of the significant issues that has not been addressed by the SPC Rules. According to Article 64 of the CPL and Article 17 of the SPC Provisions on Evidence in Civil Procedure, courts may order government entities, which should include the AML enforcement agencies, to turn over documents. This ability will have to be balanced against the enforcement agencies' duty under Article 41 of the AML, to keep confidential the 'business secrets' obtained in the course of enforcement. It is unclear to what extent the regulators will consider leniency applications as constituting business secrets.

Another issue is the absence of legal privilege in China. This means that any document, including leniency applications, prepared by outside counsel should, in principle, be accessible through court-mandated discovery. It should be noted though that, so far, according to public resources, courts have not ordered the disclosure of documents prepared by outside counsel.

## **Burden of proof**

Generally speaking, in Chinese civil litigation, a party that asserts a fact must prove it to the satisfaction of the court.

The SPC Rules provide, however, some specific rules for AML-related litigation.

In particular, for horizontal monopoly agreements specifically prohibited in Article 13 of the AML,[36] Article 7 of the SPC Rules provides that defendants bear the burden to prove that such agreements are not anti-competitive. Most of the agreements under Article 13 of the AML are 'hardcore' cartels that would be treated as per se illegal in most other jurisdictions. However, Article 13 also includes agreements that are normally viewed as non-hardcore violations, such as the agreements that restrict the purchase and development of new technologies or new products[37] and, thus, are likely to be treated under the rule of reason in other jurisdictions.

For vertical agreements, however, the SPC Rules are silent as to who bears the burden of proof. Presumably it should be the plaintiff's responsibility in proving that such agreements are anti-competitive.[38]

In cases alleging abuse of dominance under Article 17, the SPC Rules require the plaintiff to prove dominance and abuse and require the defendant to prove the justification for such behaviour as a defence.[39]

In the early abuse of dominance cases before the introduction of the SPC Rules, the courts appeared to be very reluctant to find that the defendant held a dominant position, mostly because the defendant's dominance was not proved with sufficient evidence.[40] This difficulty might be eased to some extent by the SPC Rules as they provide a relatively easy and straightforward means for the plaintiff to prove the defendant's dominant position. In the *Renren v Baidu* case, which was decided before the introduction of the SPC Rules, the plaintiff submitted Baidu's statement of itself being 'the world's largest search engine' as evidence of its dominant position but the court believed that it was insufficient for such a finding.[41] Article 10 of the SPC Rules now allows the plaintiff to use information published by the defendant as evidence of defendant's dominance and once such information is provided supporting the defendant's dominant position in the relevant market, the court can make such a ruling unless rebutted by sufficient contrary evidence.

Pursuant to Article 9 of the SPC Rules, the courts will also be more active in abuse of dominance cases in making a finding that a dominant market position is held by public utility companies or other companies with a monopoly granted by law. The courts will not require the plaintiff to provide any evidence showing the defendant's dominance in such cases, and may find the defendant's dominance based on the market structure and competitive conditions unless the defendant can prove otherwise.

## **Statute of limitations**

The general statute of limitations for civil cases is two years from the time when the entitled person knew or should have known that their rights were infringed by the defendant.[42]

The SPC Rules on civil litigation are consistent with the general rules and also provide more details on the statute of limitations period for AML violations.[43]

Under Article 140 of the General Principles of the Civil Code, the statute of limitations may be suspended once a lawsuit is brought or when one party makes a claim for, or agrees to perform, the obligations claimed. A new limitation period then begins to run from the time of the suspension. Consistent with this general principle, the SPC Rules provide that if the plaintiff reports potential monopoly conduct to an AMEA, the statute of limitations will be suspended from the date of such report. Where the AMEA decides not to accept the case, to revoke the case, or decides to terminate the investigation, the statute of limitations will restart from the date that the plaintiff knows or should have known such administrative decision. Where the AMEA makes a finding of monopoly conduct after investigation, the statute of limitations will be calculated from the date the plaintiff knew or should have known the effective date of the AMEA's decision.[44]

For continuing violations, this two-year period will be extended. According to the SPC, if the plaintiff files the lawsuit after the two-year period but the alleged monopoly conduct still continues at that time, the court will not dismiss the case over the defendant's defence of the expiry of the statute of limitations. The court, however, will calculate the amount of damages only from the preceding two years before the date when the plaintiff files the lawsuit.[45] This is similar to the treatment in the context of patent and other IPR infringement, where the SPC has provided for 'extension' of the statute of limitations for continuing violations.[46]

Pre-AML violations continuing after 2008 would still be actionable under the AML. For example, the auto-parts cartel happened between January 2000 and February 2010, but NDRC ruled that orders relating to China, which was the subject of the collusion, continued until the end of 2013 and thus still fined the 12 companies subject to the collusion CNY 1.2bn.[47]

## Interplay between administrative procedure and civil litigation

Many open questions remain about how the courts will handle AML litigation, especially the interplay with possible NDRC or SAIC investigations.

Plaintiffs generally will have the option to file a civil lawsuit

or to file a complaint with one of the enforcement agencies, or both. As the SPC Q&A states: 'the AML provides for dual remedy, in other words, the victim can either institute civil proceedings, or the counterparty in an administrative action may also initiate administrative litigation.'[48]

It is, however, at this stage unclear how courts will actually react in case of dual proceedings.

Article 150 of the CPL give courts the ability to suspend proceedings, among other reasons, if 'other circumstances warrant the suspension of the suit'. This provision is sufficiently broad to enable a court to suspend proceedings when one of the enforcement agencies is investigating the same facts.

The judge in charge of the SPC's Administrative Tribunal noted some of these questions in an informal 2008 Q&A entitled 'Strengthening AML Judicial Review and Protecting Fair Competition':

'At present, with respect to the judicial review in AML cases, there are many issues that need pressing study. For example, how to determine the jurisdiction over the first instance anti-monopoly administrative case; how to define the eligibility of defendants in AML administrative cases; how to differentiate concrete and abstract administrative actions during judicial review; how to conduct an overall review by the people's court of the administrative action under suit, mainly how to allocate the burden of proof in the anti-monopoly case; how to deal with the overlapping of civil and administrative procedures; and the subject and criterion of the judicial review and so on'. [49]

In the *Huawei v Interdigital* case, the plaintiff filed both a lawsuit before the local court in Shenzhen and a complaint to the NDRC.[50] The courts did not suspend their proceedings pending the investigation.

Another key issue will be whether and to what extent courts will defer to the enforcement agencies' rules and guidance or specific case decisions. The draft SPC Rules included a provision (Article 11) according to which plaintiffs could rely on a finding of the enforcement agencies to demonstrate the existence of an AML violation before the court. This provision

was removed from the final draft so that it is yet unclear to what extent the courts will defer to the finding of facts by the enforcement agencies.[51]

## Conclusion

Private litigation in China experienced a slow start but is picking up speed. As the awareness of the AML continues to increase in the next few years, we can expect private litigation to significantly increase.

So far, there have been very few, if any, cases of follow-on damages cases. This is likely due to the legal uncertainty surrounding the leniency programmes in the early years of the AML. Most would-be leniency applicants are now fully aware of the necessity to file for leniency in China, even if the legal certainty is not optimal. In addition, in the early years, cartel enforcement was limited to local cartel activities where damages were probably limited and not a sufficient incentive for plaintiffs to sue for damages.

Once NDRC starts issuing more decisions in more prominent cartel cases, we can expect more follow-on damage cases. Likely the most important issue will be whether the courts will order the disclosure of leniency applications (or documents) to private plaintiffs.

## About the author

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[1] The Anti-Monopoly Law of the People's Republic of China, adopted at the 29th Session of the Standing Committee of the 10th National People's Congress and promulgated on 30 August 2007. It became effective on 1 August 2008.

[2] See S Harris, P Wang, M Cohen, Y Zhang and S Evrard, *Anti-Monopoly Law and Practice* (Oxford University Press 2011) 302–303 and the many citations there.

[3] See, for example, Supreme People's Court (SPC) Q&A on Judicial Review of AML Cases (2008) ('Due to the reason that our country is still in its primary stage of socialism, the development of market is immature, operating activities of enterprises are not soundly regulated, the governmental function is still under transformation, there exists misunderstandings of AML, relevant laws and regulations are not perfect etc, the implementation of the AML could be a very formidable and complicated task, and it also brings huge challenges to the people's court hearing Anti-monopoly administrative cases').

[4] Ibid('The AML has very few provisions on the judicial trial by the court, therefore, the people's court is under more pressing need to continuously research and explore the application of the AML and relevant laws in its practice so as to establish a sound trial system.').

[5] Rules by the Supreme People's Court on Certain Issues Relating to the Application of Laws for Adjudicating Cases of Civil Disputes Caused by Monopoly Conduct, promulgated by the Supreme People's Court on 3 May 2012 and effective as of 1 June 2012. See P Wang, S Evrard, Y Zhang and B Zhang, *Competition Law in China, laws, regulations and cases* (Oxford University Press 2014) 243.

[6] Li Zhu, *Taking a closer look at the Supreme People's Court Guidance for Private Antitrust Litigation, in China's Anti-Monopoly Law, the First Five Years* (Wolters Kluwer 2013) 289 and following.

[7] In China, a court will formally 'accept' a case only if the conditions spelled out in Art 108 of the Civil Procedure Law are met, namely (1) the plaintiff has a direct interest in the case, (2) there is a specific defendant, (3) there must be specific claims, facts and causes of action, and (4) the case must be within the jurisdiction of the court. On the case acceptance procedure, see Nanping Liu and Michelle Liu, *Justice Without Judges: the Case Filing Division in the People's Republic of China*, available at: <http://jilp.law.ucdavis.edu/issues/volume-17-2/Liu.pdf>.

[8] See: [www.saic.gov.cn/jgzf/fldyfbzljz/201507/t20150701\\_158420.html](http://www.saic.gov.cn/jgzf/fldyfbzljz/201507/t20150701_158420.html).

[9] Most cases involved claims of abuses of a dominant position.

[10] For example, *Qihoo v Tencent*, was heard by the High People's Court of Guangdong Province.

[11] See SPC Rules, Art 3, 'The first instance court for civil monopoly disputes shall be the intermediate People's courts of cities where the capital of a province, autonomous region, provincial level municipality, or specifically

designated city in the state plan is located, or at other intermediate People's courts designated by the Supreme People's Court. When authorised by the Supreme People's Court, the lower-level People's courts may hear in first instance civil monopoly disputes.'

[12] See the Supreme People's Court Provisions on Causes of Action for Civil Case, Order No 11 of 2008, as last amended on 18 February 2011.

[13] SPC Rules, Art 4.

[14] CPL, Art 21 ('A civil lawsuit brought against a legal person or any other organization may be under the jurisdiction of the people's court in the place where the defendant has its domicile.').

[15] CPL, Art 28.

[16] CPL, Art 23.

[17] CPL, Art 34.

[18] See n6 above, 296.

[19] CPL, Art 34, Art 259.

[20] CPL, Art 265.

[21] See *InterDigital v Huawei* (Guangdong Higher People's Court, 2012), available in Chinese at: [www.gdcourts.gov.cn/gdcourt/front/front!content.action?lmdm=LM41&gjid=20121010090340884597](http://www.gdcourts.gov.cn/gdcourt/front/front!content.action?lmdm=LM41&gjid=20121010090340884597), last visited 10 September 2015.

[22] *InterDigital v Huawei* (Guangdong Higher People's Court, 2012), available in Chinese at: [www.gdcourts.gov.cn/gdcourt/front/front!content.action?lmdm=LM43&gjid=20121010090311607472](http://www.gdcourts.gov.cn/gdcourt/front/front!content.action?lmdm=LM43&gjid=20121010090311607472), last visited 10 September 2015.

[23] CPL, Art 35.

[24] See S Ning, K Peng and L Jia, 'How the Judicial Interpretation of the Supreme People's Court Affects Civil Antitrust Actions in China', in *CIIAI, First Annual Antitrust Symposium* (Lexis Nexis 2013) 287.

[25] Law of the People's Republic of China on the Protection of Consumer Rights and Interests, promulgated by the Standing Comm. Nat'l People's Cong, 31 October 1993, last amended on 25 October 2013.

[26] Yingying Sun, 'On Civil Public Litigation Subject Qualification – from the consumer protection point of view' (2014) 9 *Shenzhou*.

[27] CPL, Art 64.

[28] See Some Provisions of the Supreme People's Court on Evidence in Civil Procedure, No 33/2001 (referred to as 'SPC Provisions on Evidence in Civil Procedure'), Art 11.

[29] CPL, Art 70.

[30] CPL, Art 64; Civil Evidence Rule, Art 18.

[31] SPC Provisions on Evidence in Civil Procedure, Arts 19 and 33.

[32] SPC Provisions on Evidence in Civil Procedure, Art 19.

[33] *Ibid.*

[34] *Ibid.*

[35] See n2 above, 315.

[36] Namely, price-fixing, output restriction, market division, restriction on the purchase or development of new technologies and joint boycott.

[37] AML, Art 13(4).

[38] See MOFCOM website, 2012 Annual Conference on Competition Policy and Law – Rules of Evidence and Burdens of Proof in Antitrust Civil Litigation, available in Chinese at: [www.mofcom.gov.cn/article/zt\\_jzzcfnh/lanmuthree/201301/20130100003562.shtml](http://www.mofcom.gov.cn/article/zt_jzzcfnh/lanmuthree/201301/20130100003562.shtml), last visited 27 August 2015.

[39] See SPC Rules, Art 8: 'Where the monopolistic act sued falls under any of the acts of abusing market dominant position as prescribed under Paragraph 1 of Article 17 of the Anti-monopoly Law, the plaintiff concerned shall bear the burden of proof to show that the defendant is dominant in the relevant market and has abused its market dominant position.'

[40] See A Emch and J Ling, 'Private Antitrust Litigation in China – The Burden of Proof and its Challenges' (2013) 2(1) *CPI Antitrust Chronicle*. The authors refer to the low quality of lawyering as one element explaining why plaintiffs could not prove the existence of dominance.

[41] Renren v Baidu, (Beijing High People's Court, 2010), available in Chinese at: <http://bjgy.chinacourt.org/paper/detail/2011/08/id/542054.shtml>, last visited 19 September 2015 (PRC).

[42] See SPC Rules, Art 16. See also PRC General Principles of Civil Code (promulgated by the Standing Comm Nat'l People's Cong, 12 April 1986, amended 27 August 2009) Art 135, 2009 Standing Comm Nat'l People's Cong Gaz, Issue No 6, available in Chinese at: [www.npc.gov.cn/npc/lfzt/rlys/2014-10/28/content\\_1883354.htm](http://www.npc.gov.cn/npc/lfzt/rlys/2014-10/28/content_1883354.htm), last visited 10 September 2015.

[43] The draft SPC Rules provided that the statute of limitations for civil AML disputes is two years, starting from when the plaintiff knew or should have known of the alleged monopoly conduct. However, this provision was deleted in the final Rules.

[44] SPC Rules, Art 16.

[45] *Ibid.*

[46] Article 23 of SPC Provisions on Issues Concerning Application of Law in Trying Cases Involving Patent Disputes states that where the patent-holder files the action after the two-year limitations period, and the act of the infringement is still continuing when the action is filed, the People's Court shall rule that the defendant must stop the act of infringement during the period of patent validity, and the amount of compensation for the damages caused by the infringement shall be that of two years counting backward from the day on which the patent holder filed the action. Similar provisions exist for copyright and trademark infringement.

[47] NDRC website, China Brought the Greatest Punishment that 12 Japanese Companies fined 1.235 Billion Yuan for price monopoly on auto parts and bearings, 20 August 2014, available in Chinese at: [www.ndrc.gov.cn/xwzx/xwfb/201408/t20140820\\_622759.html](http://www.ndrc.gov.cn/xwzx/xwfb/201408/t20140820_622759.html), last visited 19 September 2015.

[48] See n3 above.

[49] *Ibid.*

[50] See Interdigital's Form 10-Q dated 1 May 2014, available at: <http://ir.interdigital.com/secfiling.cfm?filingid=1405495-14-17&cik=>.

[51] See n24 above, 302.