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Chinese Private Ligation Rules and the *Apple v. Pepper* Supreme Court Decision – Standing and Burden of Proof in Private Enforcement

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Introduction

In *Apple v. Pepper*, the U.S. Supreme Court held that consumers who directly purchased applications from the Apple App Store had standing to sue Apple for damages because they were "direct purchasers."[2] The decision distinguishes the App Store's consumers from the consumers in *Illinois Brick v. Illinois.* In *Illinois Brick*, the U.S. Supreme Court held that indirect purchasers could not sue for passed-on overcharges under the U.S. federal antitrust laws.[3] According to the Supreme Court, such a distinction is straightforward because Apple sells iPhone applications ("apps") directly to iPhone owners through its App Store — the only place where iPhone owners may lawfully buy apps. By comparison, in *Illinois Brick*, the customers were two or more steps removed from the violator in a distribution chain.

In other words, the U.S. Supreme Court does not allow indirect purchasers to sue for damages based on passed-on overcharges and only allows standing for damages based on direct overcharges by alleged violators.[4] Direct purchasers are parties negotiating with and purchasing directly from manufacturers. In reality, individual consumers rarely negotiate with, or purchase directly from, manufacturers because many manufacturers use distributors. This situation is further complicated by the use of platforms as distribution channels, such as e-commerce. Such platforms serve two different functions in the distribution chain: first, as a distributor; second, as a third party. Where the platform serves as a third-party platform, consumers may be dealing either with another distributor or with the manufacturer and the platform itself is not a distributor. In this situation, the relevance of the two-sided nature of these platforms makes the platforms "gatekeepers" so two sides of the platforms directly deal with the platforms.

In the *Apple* case, Apple is the "gatekeeper," as in other two-sided platforms. Apple users can only buy apps through Apple. For app developers, if they want to sell, they have to go through Apple. So, Apple is very different from *Illinois Brick* because Apple directly connects both iPhone owners and app developers. Accordingly, both categories of users on the two sides of the platform are viewed as "direct purchasers."

This article asserts that there are two problems with direct purchase standards:

1. The direct purchasers do not have the incentive to bring actions as they are able to pass on the overcharge to downstream customers.[5]
2. Another issue is that the direct purchases may be prohibited from bringing actions due to arbitration clauses or agreements entered into between the direct purchasers and the suppliers.[6]

In *re: Remicade (Direct Purchaser) Antitrust Litigation*,[7] the U.S. Third Circuit Court of Appeals honored an arbitration clause between a distributor and a manufacturer. So, such arbitration clauses in distribution agreements will bar direct purchasers from bringing lawsuits before the courts. If indirect purchasers are also barred, any harm actually caused through passed-on overcharges will not be compensated for by damages in lawsuits.

As discussed below, the Chinese standard on "standing" is based on a litigant having a "direct stake," who can be either direct purchasers, or indirect purchasers provided that actual harms can be proved. In addition, China's Supreme Court, in the *Shell* case, held that that an arbitration clause could not exclude the jurisdiction of Chinese courts over civil antitrust disputes because a finding of an anticompetitive agreement or conduct is beyond personal disputes and has the characteristics of public law.[8] Therefore, the Chinese approach can avoid the above-mentioned two issues under the "direct purchaser approach."

Specifically, this article focuses on two questions: first, who has standing in an antitrust-related civil/private enforcement case; and secondly, whether the plaintiff has the burden of proof for establishing anticompetitive effects in a civil enforcement case. By analyzing the question of "standing" under Chinese Anti-Monopoly Law ("AML"), this article introduces the notion that under the Chinese AML, there are two kinds of standing: one based on actual damages caused by violations of the Chinese AML (where Chinese courts allow any party, direct or indirect purchasers, who incur actual damages to bring an action); and another related to the invalidation of unlawful agreements that violate the Chinese AML. The question of burden of proof hinges on the standing question because in an action for damages, a plaintiff must prove anticompetitive effects, which are the basis of the requested compensation, while in an invalidity-based standing, the plaintiff only bears the burden to prove that there is a violation. However, the burden of proof of a violation does hinge on whether the violation is a *per se* or rule of reason violation.

General Introduction to Standing in Chinese Private Enforcement

The Chinese Supreme Court in its decision[9] in *Liu Xiaowu v. Guangdong Football Association and Guangzhou Zhuchao League Sports Management Company,* states that Article 119 (1) of the Chinese Civil Procedure Law lays out the fundamental principle for finding "standing" in a civil lawsuit.[10] Article 119 (1) provides that a plaintiff must have a "direct stake" in the claim in order to have standing.

Concerning the test for a "direct stake," Article 1 of the judicial interpretation by the Chinese Supreme Court (the "Judicial Interpretation") [11] provides that "civil lawsuits that are based on monopolistic conduct refers to civil lawsuits brought by individual, legal entities or other organizations that are harmed by monopolistic conduct or that have disputes because content of a contract or articles of industry association violates Chinese Anti-Monopoly Law." Accordingly, there are two kinds of civil liabilities based on the Chinese AML, i.e. tort liabilities based on Article 14 of the Judicial Interpretation based on actual damages caused by the conduct violating the AML in order to seek compensation; and contractual liabilities based on Article 15 of the Judicial Interpretation based on the violation of the AML in order to invalidate the unlawful agreements.

The first type of standing, based on damages, is similar to the "Article III Standing" established in *Lujan v. Defenders of Wildlife*, in which the U.S. Supreme Court restated the three elements of Article III standing[12] before deciding that the plaintiffs lacked it because the plaintiffs did not demonstrate "actual or imminent" injuries.[13] This article asserts that, without being clearly set out in Chinese rules or court decisions, the injury-causation-redressability elements under the U.S. federal civil procedure rules actually resemble the approach adopted by the Chinese courts for damage-based standing.

A. Standing for Damages

1. Horizontal Agreements

The injured parties can include the following: (1) direct purchasers suffering from overcharges and that do not pass on the overcharge to any downstream parties; (2) end consumers, either as direct or indirect purchasers, suffering from the overcharge, directly or through passed-on overcharges; or (3) excluded competitors in a boycotting cartel. For the first and second categories of injured parties, the overcharges can be caused by the four forms of prohibited conduct set out in Chinese antitrust law, i.e. Articles 13 (1) – (4) of the AML: fixing or modifying prices, limiting production or sales volume, allocating downstream sales market or upstream raw material/input market, limiting purchases of new technology/equipment or restricting new technology/product. The third category

mainly refers to the excluded or foreclosed competitors in a boycotting agreement, (i.e. Article 13 (5) of the AML). In addition, under Article 13 (4) of the Chinese AML, limiting purchases of new technology/equipment or restricting new technology/product may also lead to harm of consumer choices in terms of improved technology, and in this situation, direct downstream customers and end consumers will both have standing based on this harm.

2. Vertical Agreements

In China's 2013 landmark decision in *Rainbow v. Johnson & Johnson*, the Shanghai Higher People's Court held that a distributor that entered into a distribution contract with the defendant manufacturer had standing to bring civil actions against the defendant because the distribution agreement violated Article 14 of the AML as a form of unlawful resale price maintenance ("RPM").[14] Therefore the Court ruled that the plaintiff, as one party to the underlying distribution agreement, had standing based on two reasons: first, the distributor, forced to enter into the RPM agreement, lost an opportunity to gain business by reducing retail prices and thus suffered actual damages; and second, denying standing for an actual contractual party to actions of the same underlying contract will not help discover unlawful agreements because unlawful agreements are usually hard to discover.

3. Abuse of Dominant Position

According to Article 17 of the AML, exploitative conduct includes excessive pricing and tying or imposing unreasonable conditions. Exclusionary conduct refers to predatory pricing, refusal to deal, exclusive dealing, tying and imposing unreasonable conditions, and discriminatory treatment.

In the case of exploitative conduct, plaintiffs with standing include the injured parties, either direct purchasers that do not pass on any overcharge to downstream parties, or end consumers, either as direct or indirect purchasers, suffering from the overcharge, directly or through passed-on overcharges.

In *Shanxi Broadcasting Network Media Company v. Wu Xiaoqin*, the Shanxi High Court confirmed that direct customers have standing in lawsuits related to tying.

In *Yang Zhiyong v. China Telecom Company and Shanghai Company of China Telecom Company* (Shanghai High Court, 2015), the Court ruled that even though the plaintiff was not a customer, the plaintiff had standing in this case because the defendants offered basic and infrastructure services, different from other commercial industries, giving the plaintiff the necessary "stake" to make a claim.

In the case of exclusionary conduct, in *Wuxi Baocheng Natural Gas Cylinder Company v. Wuxi China Resources Vehicle Gas Company (*Jiangsu High Court, 2012*)*, the plaintiff alleged that the defendant refused to supply natural gas to vehicles registered by the plaintiff. The court at first instance ruled that in a refusal to deal claim, if such conduct would harm the plaintiff's business, either as direct downstream customers or related businesses, the plaintiff will have standing based on Article 50 of the AML, i.e. based on damages. On appeal, the Jiangsu High People's Court did not reverse this ruling on the standing of the plaintiff. Therefore, as long as the plaintiff can prove that the refusal to deal related to its own business, the plaintiff would have standing. It is noteworthy that in a refusal to deal case in a Chinese court, a business operator who is not a competitor of the defendant has a standing under "direct stake" standard. By comparison, a U.S. court may require that the plaintiff is a competitor of the defendant.[15] Similarly, in a 2016 decision by the Guangdong High Court in *Xu Shuqing v. Tencent,* in an appeal brought by an individual against Tencent,[16] the Court ruled that the plaintiff, as a non-competitor to the defendant, had standing because the plaintiff alleged that they incurred damages because of the refusal to deal.

B. Standing for the Invalidity of Agreements

For the second type of standing (relating to the invalidation of unlawful contracts), the Chinese Supreme Court ruled in *Liu Xiaowu v. Guangdong Football Association and Guangzhou Zhuchao League Sports Management Company* that credible evidence for establishing standing could be be found in one of the following situations:

(1) If the plaintiff was a futsal (five-a-side football) operator and thus a competitor to the defendants and excluded from the contract the defendants executed;

(2) If the plaintiff was an individual futsal player and his rights to play were restricted, prohibited or infringed in any other manner.

(3) If the plaintiff is a non-party, i.e. an individual or an organization, that is not a party to a contract or industry association rule, it must prove that the underlying contract or industry association violates the individual or the organization's legal rights. And, the plaintiff must prove that this particular right has been infringed by the underlying contract or article, or

(4) If the plaintiff is a party to the contract.

With that, the "direct stake" standing in the invalidation of unlawful agreements can be either fulfilled by a direct contractual relationship in (4) above without requiring proof of actual damages, that is similar to a "direct purchaser" approach, or fulfilled by harm-based claims in (1)-(3) above.

Burden of Proof of Anticompetitive Effects in Private Enforcement

In Chinese courts, there are three kinds of lawsuits based on the Chinese AML, in which the burden of proof varies:

1. In administrative actions brought by a party against the agency's administrative penalty decision, the agency only bears the burden to prove that there has been a violation of the AML in order to impose administrative fines, the calculation of which has no relation to actual damages.[17]

2. In a private enforcement action based on damages, the plaintiff has the burden of proving two elements: first, that there is a violation of the AML and second, that there has been actual harm which is the basis for the requested damages.

3. In a private enforcement action based on "invalidation of agreements," the plaintiff has the burden of proving only one claim: that the agreement is an unlawful agreement violating Article 13 or Article 14 of the AML (without the requirement to show actual harm).

In the Chinese Supreme Court's decision in *Yutai v. Hainan Provincial Price Bureau,* an administrative case in which a business operator challenged an agency's decision, the Court distinguished administrative cases from civil enforcement cases by reasoning that Article 50 of the AML, which states that, "[w]here the monopolistic conduct of an undertaking has caused losses to another person, it shall bear civil liabilities according to law" — provides the legal basis for imposing civil liability on defendants and for granting compensation to plaintiffs, i.e. actual damages.[18] Specifically, the Court held that the prerequisite condition for granting compensation to the plaintiff in an antitrust-based civil lawsuit is the same as the prerequisite condition for imposing civil liabilities on defendants, i.e. the defendant must be a business operator and its conduct violating the AML must cause damage to the plaintiff. Such damages are directly reflective of the actual effects of eliminating or restricting competition. Therefore, in the context of an agreement, the

agreement must be reached and implemented and have caused actual injury in order to have the effects of eliminating or restricting competition. That said, the Court ruled that in an antitrust-based civil lawsuit, the courts must assess whether an agreement has any effect resulting in the elimination or restriction of competition, and, based on this assessment, the courts should make a ruling on whether or not to grant the plaintiff's request for compensation. Thus, regardless of whether an agreement is subject to a "*per se*" or "rule of reason" approach, in a civil case seeking damages, a plaintiff must prove actual damages while in an administrative case, the agency does not have the burden of proving anticompetitive effects for "*per se*" agreements.

A. Burden of Proof on Anticompetitive Effects of Unlawful Monopoly Agreements as Violations

As discussed above, for standing in actions for damages, the plaintiff has the burden of proving effects. This section also discusses standing in actions based on "invalidation of agreements," the plaintiff has the burden of proving only one claim: that the agreement is an unlawful agreement violating Article 13 or Article 14 of the AML (without the requirement to show actual harm). In order to prove that there is a violation, the plaintiff has the burden of proving the elements of unlawful monopoly agreements under Article 13 or Article 14 of the AML. This article focuses on whether anticompetitive effect is an element of an unlawful agreement The Chinese Supreme Court recently decided the case *Yutai v. Hainan Provincial Price Bureau*.[19] Even though it is the first final judicial review by the Chinese Supreme Court of the administrative approach to RPM, for the first time, without a distinction between a civil lawsuit and an administrative lawsuit, clearly held that the legal elements of all unlawful horizontal or vertical monopoly agreements as violations of Article 13 or Article 14 of the AML include the effects eliminating or restricting competition. In addition, the Chinese Supreme Court held that the element of eliminating or restricting competition refers to the *possibility* of eliminating or restricting competition, rather than any actual effects in this regard. With that said, in civil/private enforcement and in administrative lawsuits, the issue will be which party bears the burden to prove these anticompetitive effects.[20]

Concerning the burden of proof for the element of the possibility of eliminating or restricting competition, the Chinese Supreme Court for the first time clearly adopted the *per se* and rule of reason principles. In this decision, the *per se* rule means that the plaintiff or the enforcement agency does not need to prove the possibility of eliminating or restricting competition. In addition, without being very clear, the decision implies that the *per se* rule has another meaning, i.e. that parties do not have the right to a defense based on the impossibility of eliminating or restricting competition. The Court clearly held that the *per se* illegality principle usually applies to certain horizontal agreements concerning price-fixing, production limitation, and market allocation.[21] The Court did make a distinction on the burden of proofing the anticompetitive effects between a civil lawsuit and an administrative lawsuit relating to the horizontal agreements under the *per se* rule: the plaintiff is still required to prove anticompetitive effects as a basis for compensation according to Art. 50 of Chinese AML while an agency does not bear such burden to prove a violation of Art. 13 or Art. 14 of Chinese AML as a basis for administrative fines[22]. In addition, the Court provide some guidance on a debated question whether an RPM agreement should be subject to the *per se* illegality principle and the *rule of reason* principle. The Court clearly states that RPM agreements can have procompetitive effects. However, given China's current market conditions and the lack of experience of the State Administration for Market Regulation ("SAMR"), the agency should enjoy a presumption of violation, i.e. once the SAMR provides sufficient evidence that an agreement on RPM is reached, the burden shifts to the party to prove that either there were no anticompetitive effects or the agreement qualifies for one of the Art. 15 exemptions. If the party cannot meet this burden, there should be a finding of a violation of Art.14 of the AML.[23] The Court clearly states that "By reference to Art. 15 of Chinese AML, under which the operators are subject to the inversion of

burden of proof because the operators bear the burden to prove the existence of one of [the] Article 15 exemptions, although when the SAMR discovers sufficient facts by investigations that infer an unlawful vertical agreement," the operators still have two means to avoid the application of Article 14: first, by showing that Article 14 is not violated because the agreement does not eliminate or restrict competition; or secondly, the operators may accept the finding that Article 14 is violated but argue that they should be exempt from the application of Article 14 because of one of the 15 exemptions. Given that, as discussed above, one difference between a *per se* principle for hardcore cartels and a presumption for RPM is whether the parties have a defense based on the lack of the possibility of eliminating or restricting competition, it seems that in discussing whether a RPM agreement should be subject to the "*per se*" or "rule of reason" approach under Article 14 of Chinese AML, the Court holds the opinion that the burden of proof should be on the agency to prove anticompetitive effects. However, the Court allows for an "inversion of the burden of proof" by shifting the burden to the defendants to prove a lack of anticompetitive effects. With that, it seems that the Court holds the opinion that RPM agreements should be subject to the *rule of reason*. In addition, the Court clearly held that non-RPM vertical agreements should be dealt with under the rule of reason.[24]

However, the Chinese Supreme Court reasoned that the basis for the presumption of a violation is the current Chinese market status and the lack of experience of the Chinese SAMR. The Court states that the current status of the Chinese market is not sound enough to be able to correct anticompetitive behavior and the lack of experience of the Chinese SAMR leads to a high administrative burden on the SAMR relating to the complex economic studies needed to show the possibility of eliminating or restricting competition. This reasoning leaves a question unanswered, i.e. whether this presumption of violation only applies to administrative lawsuits. And, two relevant questions are first, in an administrative lawsuit, whether this presumption will be eliminated once the SAMR gains more experience or market conditions change; second, whether a plaintiff in a civil lawsuit will enjoy this presumption if the plaintiff sues to invalidate an RPM agreement without requesting damages. Actually, such a presumption of violation would not change the burden on the plaintiff to prove actual damages if the plaintiff asks for damages.

B. Burden of Proof concerning Abusive Conduct

When analyzing the effect of Tencent's conduct in the *Qihoo v. Tencent* decision (including Tencent's "either-or" request and its bundling), the Chinese Supreme Court only focused on the actual effects, and not on the likely effects, of such conduct.[25] This approach is somewhat different from that of in the EU and the U.S. The European Court of Justice and the European Commission give great importance to the potential anti-competitive effects of the conduct in question, especially the foreclosure effect in dominance cases. The U.S. antitrust cases indicate that the American courts also pay close attention to the potential effects of conduct by dominant undertakings and the object of eliminating and diminishing competition. The Chinese Supreme Court's approach was perhaps specific to the particular circumstances in that case. Given that the Court decided that Tencent did not have a dominant position in the relevant market, it may be that its findings that Tencent's conduct did not eliminate or restrict competition was only to corroborate its findings about Tencent's dominance.

In addition, the Supreme Court tried to distinguish harm to "competitors" from harm to "competition" in its analysis. Although there was evidence that Qihoo's market share on the security software market had declined to some extent and that Tencent's market share on the security software market had risen, the Supreme Court maintained that the focus of the AML is on whether normal market conditions have been distorted or destroyed, rather than on the harm to individual operators. However, the Supreme Court did not elaborate on this point. Given that the two harms

are often intertwined in practice, it would have been very valuable if the Supreme Court had clarified the difference between these two types of harm in principle. However, based on the landmark case *Qihoo 360 v. Tencent*,[26] the abusive conduct regime is usually viewed as being under "rule of reason" principle and the plaintiff does have the burden to prove anticompetitive effects.

Conclusion

Concerning the relationship between administrative enforcement and private enforcement, one question that arose from the first international cartel decision in China, a decision issued on January 4, 2013 by the former National Development and Reform Commission (the "NDRC" which is now combined into the SAMR) on six liquid crystal display panel manufacturers,[27] is whether a party already receiving compensation from administrative enforcement but claims that such compensation is not enough to cover actually incurred harms still has standing in a civil lawsuit for uncompensated harms. In addition to this question, another relevant question is whether the SAMR may initiate an administrative investigation following a civil lawsuit that finds a violation of the AML.

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[2] *Apple, Inc. v. Pepper*, 139 S. Ct. 1514 (2019).

[3] *Illinois Brick Co. v. Illinois* 431 U.S. 720 (1977).

[4] Hovenkamp, Herbert J., "Apple v. Pepper: Rationalizing Antitrust's Indirect Purchaser Rule," (2019). Faculty Scholarship at Penn Law. 2082. https://scholarship.law.upenn.edu/faculty_scholarship/2082, citing

Illinois Brick, 431 U.S. at 718 n. 7:

Because we find Hanover Shoe dispositive here, we do not address the standing issue, except to note, as did the Court of Appeals below, that the question of which persons have been injured by an illegal overcharge for purposes of § 4 [of the Clayton Act] is analytically distinct from the question of which persons have sustained injuries too remote to give them standing to sue for damages under §4.

[5] Herbert Hovenkamp, "Apple vs. Pepper: Rationalizing Antitrust's Indirect Purchaser Rule," Research Paper No. 19-27, Institute for Law and Economics, University of Pennsylvania Law School (2019).

[6] Market A. Lemley & Christopher R. Leslie, "Antitrust Arbitration and Illinois Brick," 100 IOWA L. REV. 2115 (2015).

[7] No. 18-3567 (3d Cir. 2019).

[8] *Shell (China) Limited v. Hohhot Huili Material Co., Ltd*. (Chinese Supreme People's Court August 21, 2019), Supreme Court Civil Decision, [Zui Gao Fa Zhi Min Xia Zhong (2019) No. 47], Shell appealed the first-instance decision of Huhehaote Intermediate People's Court decision on a procedural matter whether an arbitration clause in an agreement excludes the courts' jurisdiction on lawsuits arisen from the underlying agreement.

[9] *Liu Xiaowu v. Guangdong Football Association and Guangzhou Zhuchao League Sports Management Company* (Chinese Supreme People's Court Hainan Provincial Price Bureau (Chinese Supreme People's Court Nov. 13, 2015) [Zui Gao Ren Min Fa Yuan Min Shen Zi Di (2013) No. 2312].

[10] Civil Procedure Law of People's Republic of China, [Zhonghua Renming Gongheguo Min Shi Su Song Fa], passed by National People's Congress on April 9, 1991, recently amended on August 31, 2012, art. 119 (1), [hereinafter "Chinese Civil Procedure Law"].

[11] Chinese Supreme Court on Matters Regarding Interpretations of Laws for Civil Disputes Caused by Antitrust Behaviors, [Zui Gao Ren Min Fa Yuan Guan Yu Shen Li Yin Long Duan Xing Wei Yin Fa De Min Shi Jiu Fen An Jian Ying Yong Fa Lv Ruo Gan Wen Ti de Gui Ding], issued by Chinese Supreme Court on May 3, 2012 and became effective on June 1, 2012, article 1. (hereinafter "Fashi [2012] No.5" or "Judicial Interpretation").

Article 14: Defendant implements antirust behaviors, causing damages on the plaintiff, based on the requests of the plaintiff and facts discovered by the courts, the courts can order the defendants to cease the tort behaviors and award compensations for damages as civil liabilities. The plaintiff can request the reasonable expenses incurred for investigating and ceasing antitrust behaviors be included into the damages to be awarded by the courts.

Article 15: Contractual liabilities do not include any awards of compensations for damages. Contractual liabilities include invalidating contractual clauses or article of association of industry associations that violate antitrust law or other mandatory rules in other laws or other regulations.

According to Chinese Legislation law, laws refers to the rules passed by Chinese National People's Congress or its standing committee. Regulations refers to the rules promulgated by the State Council.

[12] 504 U.S. 555, 560-61 (1992).

[13] *Id*. at 562.

[14] *Rainbow v. Johnson & Johnson* (Shanghai Higher People's Ct. Aug. 1, 2013), http://www.hshfy.sh.cn/shfy/gweb2017/flws_view.jsp?pa=adGFoPaOoMjAxMqOpu6a438PxyP0o1qop1tXX1rXaNjO6xSZ3c3hoPTUPdcssz (in Chinese).

[15] *Intergraph Corp. v. Intel Corp.*, 195 F.3d 1346 (Fed. Cir. 1999).

[16] *Xu Shuqing v. Shen Zhen Tencent Computer System Co., Ltd*. (Guangdong Higher People's Ct., 2016), http://www.gdcourts.gov.cn/web/content/40604-?lmdm=1040 (in Chinese) (Yu Civil Final [2016] No. 1938 (Yu Min Zhong [2016] No. 1938).

[17] If there is actual damage, the agency can disgorge the illegal gains in addition to the administrative fines, the calculation of which has relationship to the actual damages. However, in an administrative lawsuit, it is the business operator's burden to prove that the calculation of the disgorgement in the underlying administrative decision is wrong.

[18] *Yutai v. Hainan Provincial Price Bureau* (Chinese Supreme People's Court Dec.18, 2018), Supreme Court Administrative Decision, [Zui Gao Ren Min Fa Yuan Xing Zheng Cai Ding Shu Di (2018) Zui Gao Fa Xing Shen No. 4675], available at http://zscq.court.gov.cn/sfjs/201304/t20130408_183102.html (hereinafter "*Yutai v. Hainan Provincial Price Bureau* (Sup. People's Ct. 2018)").

[19] *Yutai v. Hainan Provincial Price Bureau* (Sup. People's Ct. 2018).

[20] *Id*. At page 12-13.

[21] *Id*. Page 13.

[22] As part of an administrative penalty, the disgorgement of illegal gains is based on anticompetitive effects.

[23] *Id.* Page 13-14.

[24] *Id.* Page 13-14.

[25] *Qihoo v. Tencent* (Chinese Supreme Court 2013), http://www.court.gov.cn/wenshu/xiangqing-7973.html (in Chinese). (Civil Final [2013] No.4) (the Court provided that "it is not necessary to have a definite and clear definition of a relevant market in every abuse of dominant lawsuit." However, this article argues that a precise understand of this statement is that a definition of a relevant market is a required burden on the plaintiff but this definition does not need to be definite and precise, provided that the Plaintiff can provide direct evidence of anticompetitive effects.).

[26] *Id.*

[27] official press release available at http://www.ndrc.gov.cn/fzgggz/jgjdyfld/jjszhdt/201301/t20130117_523206.html and news available at https://tech.qq.com/a/20130105/000010.htm.