

Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Cases Caused by Monopolistic Conducts was passed on the 1539th meeting of the Judicial Committee of the Supreme People's Court on Jan 30, 2012, and is hereby announced. It will come into effect on Jun 1st, 2012.

May 3rd, 2012

Judicial Interpretation 【2012】 No.5

**Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in Hearing Civil Cases Caused by Monopolistic Conducts**

(Passed on the 1539th meeting of the Judicial Committee of the Supreme People's Court on Jan 30, 2012)

For the purpose of properly hearing civil cases caused by monopolistic conducts, prohibiting monopolistic behaviors, protecting and promoting fair competition in the market, and protecting interests of consumers and the public, the Provisions herein are formulated in accordance with Anti-Monopoly Law of the PRC, Tort Liability Law of the PRC, Contract Law of the PRC, Civil Procedure Law of the PRC and other related laws.

**Article 1** The civil cases caused by monopolistic conducts mentioned in the Provisions (hereinafter referred to as civil dispute cases on monopoly), refer to civil cases filed before the People's Court by any natural person, legal entities or other organizations that suffer losses by monopolistic conducts or have disputes because the contents of contract and articles of trade associations, etc., allegedly violate Anti-Monopoly Law.

**Article 2** The People's Court should accept and hear the case when the plaintiff directly bring a civil action before the People's Court, or bring a civil action before the People's Court after the determination of the Anti-Monopoly Law Enforcement Authority on the identification of monopolistic conducts becomes legally effective, and other acceptance conditions specified by law are all met.

**Article 3** The first instance of civil dispute cases on monopoly belongs to the jurisdiction of the Intermediate People's Courts of provincial capital cities, autonomous region capital cities, municipalities directly under the Central Government and municipalities with independent planning status, and Intermediate People's Courts designated by the Supreme People's Court.

With approval of the Supreme People's Court, Primary People's Courts may have jurisdiction over the first instance of civil dispute cases on monopoly.

**Article 4** The territorial jurisdiction over civil dispute cases on monopoly shall be determined in accordance with the specific facts of the case and the provisions of Civil Procedure Law and relevant judicial interpretations on jurisdiction over tort dispute and contractual dispute cases.

**Article 5** If the cause of action is not monopoly dispute at the time of initiation, and that the defendants raise the defenses or counterclaims based on the claim that the plaintiff had conducted monopolistic behaviors with supported evidences, or if the judgment has to be made based on the *Anti-Monopoly Law*, the People's Court that have accepted the case, if it has no jurisdiction over civil dispute cases on monopoly, shall refer the case to the People's Court that has such jurisdiction.

**Article 6** The People's Court may consolidate the cases into one case, provided that several actions against the same monopolistic conduct are brought by two or more than two plaintiffs to the same People's Court that has jurisdiction.

Provided that two or more than two plaintiffs have brought actions before different People's Courts that have jurisdictions on the same monopolistic conduct, the People's Court that initiated the case later shall make the order to refer the case to the People's Court that has initiated the case earlier, within seven days after it learns the situation. The People's Court accepting the referred case may consolidate the cases into one case. The defendant shall provide on its own initiative the information about other actions in other courts on same monopolistic conduct to the People's Court that has accepted the case during the defending stage.

**Article 7** The plaintiff shall bear the burden of proof on the alleged fact that the agreement does not constitute the effect of eliminating and restricting competition, provided the alleged monopolistic conduct belongs to monopoly agreements specified in Article 13, Paragraph 1, Section 1 to 5 of Anti-Monopoly Law.

**Article 8** If the alleged monopolistic conduct belongs to the abuse of market dominant position specified by Article 17, Paragraph 1 of the Anti-Monopoly Law, the plaintiff shall bear the burden of proof on the dominant position of the defendant in the relevant market, and its abuse of dominant market position.

The defendant shall bear the burden of proof if it defends that the conduct is justifiable.

**Article 9** Provided the alleged monopolistic conduct is the abuse of dominant market position attributed to a public enterprise or other undertaking legally possessing the dominant position, the People's Court may on the basis of market structure and competition conditions identify that the defendant possesses dominant position in relevant market, unless otherwise overthrown by countervailing evidences.

**Article 10** Plaintiff shall take the information publicly released by the defendant as the evidence of its possessing of dominant marketing position. The People's Court may make affirmation on this ground if the information publicly released by the defendant can prove its dominant market position in relevant market, unless otherwise overthrown by countervailing evidences.

**Article 11** the People's Court shall, based on the party's application or its own discretion, adopt measures, such as trial in private, copy restriction or prohibition, limiting materials to agents, asking parties to sign letter of confidentiality undertaking etc. to protect the evidence which involves national secrets, business secrets, personal privacy or any other information that shall be kept confidential according to law.

**Article 12** Parties shall apply to the People's Court to have one or two specialists with relevant knowledge appear in court to make explanations on specialty issues about the case.

**Article 13** Parties shall apply to the People's Court to entrust independent specialist agencies or specialized persons to make market research or produce economic analysis report on specific issues of the cases. With permission of the People's Court, the parties shall make an agreement to choose specialist agencies or specialized persons. If the agreement cannot be achieved, the People's Court shall appoint the specialist agencies or specialized persons.

The People's Court shall examine and make judgment on the market research or economic analysis report mentioned in the preceding provision with reference to relevant provisions on expert conclusions of the Civil Procedure Law and relevant judicial interpretation.

**Article 14** According to the claim of the plaintiff and the proved facts, the People's Court shall order the defendant to cease the infringing act, to pay for the damages, or to take other civil responsibilities, provided that the monopolistic conduct of the defendant existed and has caused losses to the plaintiff.

Upon the request of the plaintiff, the People's Court may include the reasonable expenses paid by the plaintiff for investigation and prohibition of monopolistic conduct in the compensation for damages.

**Article 15** If the contents of contracts or articles of trade associations are found to have violated Anti-Monopoly Law or the mandatory provisions of other laws and

administrative laws and regulations, the People's Court shall rule it invalid pursuant to the law.

**Article 16** The time limitation for the plaintiff to claim his right for the damages compensation generated by the alleged monopolistic conduct begins to count on the day that the plaintiff knows or should know the infringement of rights and interests.

The time limitation of legal proceedings shall suspend from the day that the plaintiff reports to the Anti-Monopoly Enforcement Authorities about the complained monopolistic conduct. If the Anti-Monopoly Enforcement Authorities decide not to initiate a case, or decide to annul the case or terminate the investigation, the time limitation of legal proceeding shall be recalculated from the day that the plaintiff knows or should know the non-initiation, the annulment or termination of the investigation. Provided that Anti-Monopoly Enforcement Authorities have investigated the accused monopolistic conduct and have determined that the monopolistic conduct constitutes a violation of the Anti-Monopoly Law, the time limitation of legal proceeding shall be recalculated from the day when the plaintiff knows or should know that the determination of Anti-Monopoly Enforcement Authorities to affirm the monopolistic conduct comes into effect.

Provided that the alleged monopolistic conduct has been for more than two years when the plaintiff takes action before People's Court, the calculation of damages shall cover the two years before the day that the plaintiff brings the action to the People's Court.

Key Words: Civil Justice; Monopoly Dispute Case; Judicial Interpretation

Total: 100 copies

Secretary Division 1, General Office of Supreme People's Court

Printed and Distributed on May 4, 2012