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# Anti-Monopoly Litigation in China: A Review for the Year of 2016

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**Abstract:** *The year of 2016 has witnessed the conclusion of 14 cases of abuse of dominant market position and 5 cases of monopoly agreement in all levels of courts in China. This article comprehensively reviews the key points embodied in the judgments of those cases, and provides comments on certain important issues such as the legality of RPM, the probative value of administrative enforcement decisions before courts and the arbitrability of monopoly disputes.*

## I. Introduction

2016 has seemed to be a relatively insipid year for anti-monopoly litigations in China. It is first reflected in the small number of cases. Chinese courts have adjudicated on 18 monopoly disputes nationwide, rendering 20 judgements or rulings.[2] It is also reflected in the lack of landmark cases like *Huawei v. IDC* and *360 v. Tencent* in previous years. Nevertheless, the adjudicated cases in 2016 have certain features, and some of them are either of important referential value or have provoked heated discussion or even criticism.

In the **procedural aspect**, the Supreme People's Court concluded 2 retrial cases, which signals its determination to reinforce judicial supervision and its efforts towards more judicial consistency. With respect to **regional difference**, Guangdong Province and Beijing Municipality have adjudicated the largest numbers of cases with 5 and 4 cases respectively, while around 20 provinces/municipalities have heard no case at all. The **cause of action** is diversified. 14 cases concern abuse of dominant market position, where specific monopoly behaviours involved include unfairly high prices, exclusive dealing, tie-in sales and refusal to trade. 5 cases concern monopoly agreements, of which 3 are vertical and 2 are horizontal. In one case the plaintiff even accused the defendant to have violated provisions of Article 20 of the *Anti-Monopoly Law* regarding concentration of undertakings. As to the **results, there is only 1 case where the plaintiff prevailed ultimately,** i.e. *Wu Xiaoqin v. Shaanxi Broadcasting Media*. It is also worthy to note that **objections to jurisdiction have been frequently raised** (6 cases), and

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[2] Statistics by the author according to information published by the Website of China Judgements and Rulings (http://wenshu.court.gov.cn).

the ratio of **withdrawal of claims** is surprisingly high (6 cases, accounting one third of the total).

Below we will review the monopoly cases in 2016 and provide comments from the aspect of abuse of dominant market position, monopoly agreement, objections to jurisdiction and the relationship between monopoly disputes and other type of disputes in turn.

## II. Abuse of Dominant Market Position

### 1. Determination of Dominant Market Position

In ***Changsha Zhenshanmei Ltd. v. Ningbo Bull Electric***[3], the Supreme People's Court held that the relevant market cannot be defined as, as Plaintiff alleged, the Bull brand switch market in the Changsha city. To start with, experience from daily life suggests that there exist other competing and closely substitutable switch products against the Bull brand switch. Given that the Plaintiff cannot substantiate its claim of relevant product market, there would be no need to determine the relevant geographic market. Even assuming that the relevant market is the switch market in Changsha, the Plaintiff has failed to provide with sufficient evidence about the defendant's market share to prove its dominant position in the relevant market.

In ***Yang Zhiyong v. China Mobile***[4], Shanghai Intellectual Property Court ruled that Plaintiff did not prove China Mobile has dominant position in the relevant market. In the area of mobile communication service, there are other domestic operators such as China Unicom, China Telecom. In addition, China Mobile, the Defendant, also provides various packages of service for consumers to choose from. Therefore, the Defendant does not possess the capability to manipulate price and gain monopoly profits in the relevant market.

In ***Wu Xiaoqin v. Shaanxi Broadcasting Media***, the Supreme People's Court determined without hesitation that the Defendant held dominant position in the cable TV transmission market, given that the Defendant is the only legally permitted operator of cable TV transmission service in the Shaanxi Province.

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[3] Supreme People's Court (2015) Civ. Retrial Civil Ruling No. 3569, made on March 4th 2016.
[4] Shanghai Intellectual Property Court (2015) SH IP Civ. F.I. Civil Judgement No. 508, made on April 25th 2016.

### 2. Determination of Tie-In Sales

In ***Wu Xiaoqin v. Shaanxi Broadcasting Media***[5], having confirmed the Defendant's tie-in sale practice of selling basic TV programs and other programs requiring extra payment as a package, the Supreme People's Court ruled that the Defendant has conducted tie-in sales without justifiable reasons because the two type of programs are independent from each other and the Defendant has not proven that it is trade practice to do so or to charge the two types of programs separately would result in detriment to the performance or use value of the two.

### 3. Determination of the Unfairly High Price

In ***Yang Zhiyong v. China Mobile***, the Plaintiff alleged that the Defendant China Mobile's 4 types of practices, namely charge of monthly fee, charge of roaming service, billing method that approximates second to minute and pricing at 0.39 yuan per minute, constitute "selling commodities at unfairly high prices" prohibited by *Anti-Monopoly Law*.[6] Shanghai Intellectual Property Court decided that the Plaintiff did not provide evidence to prove its claim.

Regarding the 0.39 yuan per minute call charges, the Court considered that, the Defendant provides various packages of service for consumers to choose from, where the price varies from 0.1 yuan to 0.39 yuan. The Plaintiff is free to opt for other packages.

In terms of whether the monthly fee and domestic roaming charge is overly high and whether it is reasonable in relation to its operating costs, the Court considered that the Plaintiff should have submitted evidence to establish the Defendant's operating costs and profitability and what would be the reasonable level of profit.

As to the billing method that approximates second to minute, the Court held that this method is recognized by the competent authority and that the Plaintiff provided no proof regarding whether charging by minute or by second is more economic and efficient and whether the current charging method imposes a negative effect on competition.

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[5] Supreme People's Court (2016) Civ. Retrial Civil Judgement No. 98, made on May 31st 2016.

[6] In this case the Plaintiff also claimed that the Defendant's prohibition on number portability amounts to an exclusivity agreement, which was rejected by the Court.

### 4. Brief Comments

An impression the above cases have left us is that, burden of proof is one of the key factors in winning a case of abuse of dominant market position. Article 7 of *Provisions of the Supreme People's Court on Application of Laws in the Trial of Civil Disputes arising from Monopolistic Practices* (hereinafter, as *Provisions for Monopoly Case*) allocates the burden of proof as follows: *Plaintiff bears the burden to prove Defendant's dominant market position in the relevant market, and its abuse and Defendant shall bear the burden to prove its behaviors are justifiable in defense.*

The above cases seem to suggest that plaintiffs bear a relatively heavier burden of proof. Particularly in the case of ***Yang Zhiyong***, in order to prove that the monthly fee and the roaming service charge are unfairly high, the Plaintiff was expected to provide evidence proving the Defendant's operational costs, profitability and its reasonable level of profit, which might be an impossible task for an individual consumer.

It is also worthy to note that, except for the evidence submitted by the parties, the Court may take into consideration "common sense" and attach importance to documents issued by competent authorities.

## III. Monopoly Agreements

### 1. RPM Is Not a Monopoly Agreement *Per Se*

In ***Dongguan Guochang Electrical Appliance Shop v. Dongguan Shengshi Ltd. and Dongguang Heshi Ltd.***[7], Guangzhou Intellectual Property Court held, although it contains provisions that restrict the minimum resale price (RPM), the agreement concerned does not constitute a monopoly agreement as prohibited under the *Anti-Monopoly Law*.

First of all, the common sense suggests that there are various comparable domestic brands and foreign brands that compete with Gree in the air conditioner market in the Dongguan city. Evidence submitted by the Defendant regarding Gree's participation in promotions also establishes the sufficiency of competition in the air conditioner market in Dongguan and that

[7] Guangzhou Intellectual Property Court (2015) GD IP Comm. Civ. Civil Judgement No. 33, made on 30th August 2016; High People's Court of the Guangdong Province (2016) GD Civ. Jurisd. Final Civil Ruling No. 273.

Gree does not possess dominant market position. Even though Gree restricts resale prices, consumers are fully free to opt for other similar brands. In addition, no evidence suggests that competition in the other industries related to air conditioners has been affected by Gree's RPM practice. Therefore, the agreement concerned does not have the effect of eliminating or restricting competition.

Furthermore, although the Defendant's RPM practice may have affected the intra-brand price competition among distributors, the Plaintiff and other distributors can still compete among one another in terms of pre-sale marketing, sale promotions and after-sale services.

### 2. The Probative Value of Administrative Penalty Decisions in Anti-Monopoly Litigations

In ***Tian Junwei v. Carrefour Shuangjing Branch and Abbott Ltd.***[8], the Plaintiff mainly relied on the Decision on Penalty made by NDRC against Abbott in September 2013. According to that Decision, Abbott has fixed resale prices through contract arrangements since 2011, and thus constituting vertical monopoly agreements.

The Beijing High Court rejected the Plaintiff's appeal. Acknowledging that the Decision may, *prima facie*, establish Abbott's vertical monopoly agreements with downstream undertakings, the Court considered that given **the Decision fails to identify the counterparty of the monopoly agreements, it cannot serve to prove the existence of a vertical monopoly agreement between Carrefour Shuangjing Branch and Abbott.**

### 3. Brief Comments

The Judgement of ***Dongguan Guochang Electrical Appliance Shop*** **again highlights the once-existing (probably still exists) inconsistency between courts and administrative agencies as to the legality of RPM**. Following the case *Beijing Ruibangyonghe v. Johnson and Johnson China*[9], this judgment adopts the rule of reason doctrine, which means that RPM only constitutes vertical monopoly agreement when it eliminates or restricts competition in the relevant market. In this case, the Court, on the basis that the air conditioner market in Dongguan is a

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[8] High People's Court of the Beijing Municipality (2016) BJ Civ. Final Civil Judgement No. 214, made on 22nd August 2016.

[9] High People's Court of the Shanghai Municipality (2012) SH HC Civ. 3 (IP) Final Civil Judgement No. 63, made on 1st August 2013.

market with full competition and Gree does not possess dominant market position therein, held that the RPM agreement does not constitute a monopoly agreement because it neither restrains inter-brand competition, nor eliminates intra-brand competition other than price competition.

Administrative law enforcement prior to 2016 seems to have adopted the rule of illegal *per se* with respect to RPM. For example, in Shanghai Municipal Price Bureau's penalty decisions on 3 distributors of Haier Electronics[10] and SAIC-GM[11], the law enforcement agency concluded that the parties under investigations violated the anti-monopoly law immediately following its findings that they entered into and implemented RPM agreements. However, certain law enforcement decisions in 2016 have appeared to switch to the rule of reason to some extent. One example is Shanghai Price Bureau's penalty decision on Smith & Nephew[12], where analysis was made as to the price-restricting agreement's effect of eliminating and restricting intra-brand competition. A more noteworthy case is NDRC's penalty decision on Medtronic[13]. This Decision analyzed more in detail how the RPM concerned had eliminated or restricted both the intra-brand and inter-brand competition. That said, it remains to be seen whether convergency is emerging between the administrative agencies and the courts in determining the legality of RPM.

**The focus of *Tian Junwei* is whether a plaintiff may discharge his burden of proof by relying on NDRC's decisions on penalty.** Notwithstanding administrative decision is not a prerequisite to file a case before the court, facts recorded in instruments prepared by State organs within their competence shall be presumed to be true in court proceedings[14], which means administrative decisions might help a plaintiff to establish certain facts and result in an enhanced chance to prevail.

The problem is that, as revealed by this case, administrative decisions normally do not

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[10] Administrative Decision on Penalty No.2520160009, Shanghai Municipal Price Bureau, made on 8th August 2016.

[11] Administrative Decision on Penalty No.2520160027, Shanghai Municipal Price Bureau, made on 19th December 2016.

[12] Administrative Decision on Penalty No.2520160028, Shanghai Municipal Price Bureau, made on 29th December 2016.

[13] National Development and Reform Commission [2016] Administrative Penalty Decision No. 8, December 2016.

[14] See Article 14 of Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China.

disclose the identification of the counterparties of the monopoly agreements. A plaintiff thus cannot rely on such a decision to establish that a particular distributor who sold products to the plaintiff had participated in fixing resale prices, but has to do so by himself. **Questions that follow would be: Is a plaintiff entitled to, or does a court have the power to, request the relevant anti-monopoly law enforcement agency to disclose relevant information?**

## IV. Objections to Jurisdiction

Objections to jurisdiction can be divided into 2 categories: (1) objections in relation to hierarchy jurisdiction and territorial jurisdiction of courts; and (2) the arbitrability of civil monopoly disputes.

### 1. Hierarchy Jurisdiction of Courts

The *Provisions for Monopoly Case* in its Article 3 provides: First-instance Monopoly Civil Disputes shall be under the jurisdiction of intermediate people's courts in municipalities where the people's governments of provinces, autonomous regions and municipalities directly under the Central Government are located or municipalities separately designated in the State plan, or intermediate people's courts otherwise designated by the Supreme People's Court. Furthermore, according to Article 3 of *Notice on Intellectual Property Courts Jurisdictional Matters* issued by Supreme People's Court, Beijing Intellectual Property Court, Shanghai Intellectual Property Court and Guangzhou Intellectual Property Court shall exercise jurisdiction on first instance cases of anti-monopoly civil disputes within the Beijing municipality, Shanghai municipality and the province of Guangdong(except for Shenzhen).

In ***Dongguan Guochang Electrical Appliance Shop v. Dongguan Shengshi Ltd. And Dongguang Heshi Ltd.***[15], High Court of the Guangdong province confirmed that because the dispute at hand is a monopoly civil dispute and 2 defendants' domiciles are in the city of Dongguan, Guangzhou Intellectual Property Court had jurisdiction to hear the case. In ***Huazhou Chen Yawang Farming Cooperative v. Huazhou Food Ltd., Huazhou Bayberry Food Ltd.***[16], Maoming Intermediate Court held that the dispute concerns abuse of dominant market position over

[15] Guangzhou Intellectual Property Court (2015) GD IP Comm. Civ. F.I. Civil Judgement No. 33, made on 30th August 2016; High People's Court of the Guangdong Province (2016) GD Civ. Jurisd. Final Civil Ruling No. 273.

[16] High People's Court of the Guangdong Province (2016) GD Civ. Final Civil Ruling No. 1978, made on 23rd December 2016.

which the Court did not have jurisdiction, and thus declined to hear the case. In the subsequent appeal, High Court of the Guangdong province upheld that decision.[17] In ***Yulong Telecom Ltd. v. Ericsson Ltd.***[18], in response to jurisdictional objections raised by Ericsson, Intermediate Court of the Shenzhen municipality held, as "an intermediate people's court of a municipality separately designated in the State plan", it has jurisdiction over the dispute. In ***Corporation X v. Corporation Y***[19], the Plaintiff filed the case before People's Court of Qufu County, and the case was then transferred to Beijing Intellectual Property Court.

## 2. Territorial Jurisdiction of the Court

The *Provisions for Monopoly Case* in its Article 4 provides: *The territorial jurisdiction over Monopoly Civil Disputes shall be determined pursuant to the provisions on jurisdiction over tort disputes and contract disputes as prescribed in the Civil Procedure Law and relevant judicial interpretations, and in light of the specific circumstances of the cases*. Regarding provisions on jurisdiction relating to tort, Article 28 of *Civil Procedural Law* stipulates: *Dispute of torts shall be under the jurisdiction of the people's court of the place where the tort is committed or where the defendant has his domicile*.

In ***Shenzhen Daotong Ltd., et al. v. General Motors China Ltd., et al.*** **(4 parties)**[20], 2 of the defendants including General Motors China protested that Intermediate Court of Shenzhen does not has jurisdiction over the case. Their reasons were, despite that Shenzhen Tangren Car Area and Baoyilai are domiciled in Shenzhen, these two defendants are irrelevant to the tort actions alleged by the Plaintiffs and the Court should not exercise jurisdiction by establishing a connecting point that does not exist.

High Court of Guangdong held that part of the plaintiffs' claims and the facts therein are based on joint torts of the 4 defendants. Given that the 2 defendants including Tangren Park Area are domiciled in Shenzen, Intermediate Court of Shenzhen has jurisdiction over the dispute.

[17] It is open to discussion whether the trial court should transfer the case to Guangzhou Intellectual Property Court, instead of refusing to hear the case.

[18] Intermediate People's Court of Shenzhen, Guangdong (2015), SZ INTMD IP Civ. F.I. Civil Ruling No. 1089, made on 1st April 2016

[19] People's Court of the Qufu County, Shandong (2016) SD0881 Civ. F.I. Civil Ruling No. 1800, made on 14th July 2016.

[20] High People's Court of the Guangdong Province (2016) GD Civ. Jurisd. Final Civil Rulings No. 162 and 163, made on 26th April 2016

Whether these 2 defendants conducted the torts is a substantive matter that should be decided in the subsequent trial procedure and need not be decided at the stage of jurisdiction.

### 3. Arbitrability of Monopoly Civil Disputes

There have been 2 cases in 2016 that involve arbitrability of monopoly civil disputes. They both receive negative answers from the courts.

The judgement of ***Nanjing Songxu Ltd. v. Samsung China Ltd.***[21], is a more representative one.[22] In this case, the Plaintiff filed a lawsuit in Intermediate Court of Nanjing against Samsung over its unfairly high price, compulsive tie-in sale and other monopolistic acts. Samsung raised objection to jurisdiction on the ground that both parties have concluded an arbitration clause that covers "any disputes" between them. The Intermediate Court of Nanjing held that monopoly disputes are arbitrable under the Arbitration Law, but the arbitration agreement was void because it did not designate one and only arbitration institution.

**In the second instance, High Court of Jiangsu held that monopoly civil disputes are not arbitrable.** The reason are:

(1) Anti-monopoly law enforcement in China is currently accomplished mainly through administrative agencies. Supreme People's Court's *Provisions for Monopoly Case* only provides civil litigations as a mean of private enforcement of anti-monopoly law and even makes special restrictions on jurisdiction.

(2) Anti-monopoly law is of a strong "public policy" character. In China, it was not long ago when anti-monopoly law came into force, and not many experiences have been accumulated in administrative and judicial enforcement of anti-monopoly law. Under these circumstances, the "public policy" character is of considerable importance. Currently, there is no explicit provision in law that allows private remedies of monopoly disputes through arbitration and so far there has been no relevant practice of arbitrating monopoly disputes.

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[21] High People's Court of the Jiangsu Province (2015) JS IP Civ. Jurisd. Final Civil Ruling No. 00072, made on 29th August 2016

[22] The other case is Yulong Telecom v. Sony Ericsson, Intermediate People's Court of Shenzhen, Guangdong (2015), SZ INTMD IP Civ. F.I. Civil Ruling No. 1089, made on 1st April 2016.

(3) The case involves public interests, such as the sale relationships between Samsung and all its distributors, and also directly affects the benefits of the consumers of Samsung products. The arbitration clause concluded by the parties applies only to their contractual disputes. It cannot be the basis to arbitrate a monopoly dispute.

## V. Brief Comments

The Supreme People's Court's interpretation regarding hierarchy jurisdiction and territorial jurisdiction in monopoly civil dispute cases is clear. The ratio of objections is expected to decline in the future. The so called "**circumvention of jurisdiction**" that appeared in *Shenzhen Daotong Ltd., et al. v. General Motors China Ltd., et al.*, is a general issue in civil procedures and not of much relevance to anti-monopoly law. What merits a further discussion is whether monopoly civil disputes are arbitrable. Below are some of our thoughts.

**First, the *Arbitration Law* of China allows parties to submit monopoly civil disputes to arbitration.** Article 2 of *Arbitration Law* stipulates: *Contractual disputes and other disputes over rights and interests in property between citizens, legal persons and other organizations that are equal parties are arbitrable*. Also, Article 3 provides, *the following disputes may not be arbitrated: (1). marital, adoption, guardianship, support and succession disputes; (2). administrative disputes within the competence of administrative agencies as prescribed by law.* Monopoly dispute cases are monetary claims between equal parties. Neither are they family law disputes nor do they pertain to administrative disputes within the competence of administrative agencies. They are, consequently, arbitrable under *Arbitration Law*.

**Further, *Anti-Monopoly Law* and relevant judicial opinions do not contain provisions forbidding monopoly civil disputes to be submitted to arbitration.** Article 55 of *Anti-Monopoly Law* provides: *Where the monopolistic conduct of an undertaking has caused losses to another person, it shall bear civil liabilities according to law*. It does not exclude arbitration from the means of private enforcement. Neither does *Provisions for Monopoly Case* deny the arbitrability of monopoly disputes. Its Article 2 provides, *a people's court shall accept a civil lawsuit directly filed by a plaintiff, or filed by a plaintiff after the decision affirming the relevant act as constituting a monopolistic act by the anti-monopoly law enforcement agency*

*concerned has become legally effective, as long as such lawsuit satisfies other case acceptance conditions prescribed by law*. This provision prescribes the procedure to initiate a legal action in courts, with the emphasis that administrative decision is not a prerequisite to file a monopoly suit;[23] it does not imply that a court shall hear the dispute as long as the plaintiff initiates an action, regardless of the existence of an arbitration clause.

**Third**, given that *Arbitration Law*, *Anti-Monopoly Law* and relevant judicial opinions do not exclude monopoly civil disputes from being arbitrable, **it might not be appropriate for a particular court to deny the arbitrability of monopoly civil disputes in a particular case on the basis that anti-monopoly law involves public policy or third party interests.** First, it is within the competence of legislative body to decide the arbitrability of a certain type of disputes on grounds of public policy. Next, monopolistic conduct may harm the interests of various distributors or consumers, but arbitral awards are only binding on the parties and do not affect third parties such as other distributors or consumers, and may in no way prevent the administrative enforcement agencies from investigating and punishing the monopolistic behaviours. Therefore, resolving monopoly disputes through arbitration would not prejudice public interests. In any event, a competent court has the power to set aside an arbitral award under Article 58 Paragraph 2 of *Arbitration Law* when it finds that the award violates the public policy. It is not necessary to reject the arbitrability of monopoly disputes at the very beginning.

## VI. Relationship Between Monopoly Disputes and Other Disputes

### 1. Monopoly Claims Shall Be Made Separately from Contractual and Other Claims

In various cases of 2016, the courts required the plaintiffs to split monopoly claims from others such as contractual claims or tort claims, and declined to hear other claims in deciding a monopoly case. For example, in ***Changsha Zhenshanmei Ltd. v. Ningbo Bull Electric***[24], the Supreme People's Court held in its judgement that the case is an monopoly dispute that concerns abuse of dominant market position, which is distinct from other issues proclaimed by the plaintiff, e.g. breach of contract and torts relating to right to reputation. It upheld the decisions of the courts of the first and second instance to tell the plaintiff to initiate separate

[23] See, press release of the Interpretation of Supreme People's Court. http://www.law-lib.com/fzdt/newshtml/yjdt/20120508152415.htm, last visited on 5th January 2017.
[24] Supreme People's Court (2015) Civ. Retrial Civil Ruling No. 3569, made on 4th March 2016.

lawsuits.

In ***Wu Xiaoqin v. Shaanxi Broadcasting Media***[25], the Supreme People's Court explained how to distinguish monopoly disputes from other disputes. It stressed that courts should consider the specific claims that plaintiff puts forward, the defendant's defending opinions and the evidence they have submitted in ascertaining the nature of the dispute. It decided that in the case at hand, Wu Xiaoqin specified clearly in its complaint that Shaanxi Broadcasting Media violated anti-monopoly law by conducting tie-in sales. Wu did not seek damages under consumer protection. Therefore, it is not inappropriate to apply anti-monopoly law to this case.

### 2. Correlated Monopoly Suits and IP Suits

The relationship between exercise of intellectual property rights and abuse of dominant market position has been a hot topic. In 2016, 2 monopoly disputes are related to exercise or abuse of patent or trademark rights respectively. In ***ZTE v. Vringo, et al.***[26], ZTE filed a lawsuit at Intermediate Court of Shenzhen in 2014 against Vringo alleging the latter abused its patent rights. The factual background was that, Vringo concluded a patent purchase agreement with Nokia in August 2012, through which the former obtained more than 500 patents in areas of 2G, 3G and 4G, and since then it initiated patent litigations against ZTE in UK and other jurisdictions all over the world. In December 2015, Vringo and ZTE reached global settlement and ZTE withdrew its claim from Intermediate Court of Shenzhen. Another case ***Hubei Deyu Ltd. v. Haining Ltd., Jinlian Ltd.***[27] concerns monopoly dispute arising out of trade mark rights.

In addition to ***ZTE v. Vringo, et al.***, in 2016 there have been another 5 cases that ended up with withdrawals of the claims. Signs show that withdrawals of claims do not necessarily mean that the plaintiffs gain nothing. Rather, they are usually accompanied by concessions made by the defendants. For a defendant, monopoly lawsuit tends to impose a spillover effect or domino effect, which makes the defendant inclined to settle outside the court even the likelihood to lose the case is not high. To this extent, to force a defendant to settle may have

[25] Supreme People's Court (2016) Civ. Retrial Civil Judgment No. 98, made on 31st May 2016.

[26] Intermediate People's Court of Shenzhen, Guangdong (2014) SZ INTMD IP Civ. F.I. Civil Ruling No. 167-2, made on 19th January 2016.

[27] Intermediate People's Court of Wuhan (2015) HB WH INTMD IP F.I. Civil Ruling No. 02615, made on 26th April 2016; Court of Haining (2015) JX HN IP F.I. Civil Judgment No. 44, made on 7th March 2016.

been one of the driving factors for a plaintiff's decision to sue.

## VII. Conclusion

With the increasing awareness about the anti-monopoly law, and especially with the increasing number of administrative enforcement cases, victims of monopoly practices, including down-stream distributors, other types of undertakings or consumers, will gain more willingness and confidence to take legal actions. In January 2017 Apple Inc. filed a suit over Qualcomm's abuse of dominant market position in Beijing Intellectual Property Court, which probably heralds 2017 will be a "bumper year" of anti-monopoly civil litigations.

To make anti-monopoly private enforcement as strong as administrative enforcement, joint efforts from the anti-monopoly community are needed. In addition to plaintiffs who have the courage to stand up and safeguard their rights, more qualified anti-monopoly lawyers are needed, and courts and administrative enforcement agencies are encouraged to adopt appropriate measures to ease the heavy burden of proof of plaintiffs.