# China to Reinterpret Civil Procedures for Anti-Monopoly Law Cases

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The Supreme People's Court of China may soon adopt two measures that will dramatically change the civil procedural regime for suits brought forth under the Anti-Monopoly Law.

The Supreme People's Court of China (SPC) is drafting its judicial interpretations of civil procedures for lawsuits launched in accordance with the Anti-Monopoly Law of China. (See China to Draft Civil Procedures for Suits Under Anti-Monopoly Law for more information.) According to an article in *China Business* on 30 October 2010, the SPC plans to adopt two important measures: one awarding double damages to plaintiffs, and one shifting the burden of proof to defendants to prove they do not have a dominant market position. The measures will be plaintiff friendly and will increase the risk exposure of deep-pocket defendants.

The reason the SPC is considering adopting such plaintiff-friendly measures is due to an awkward record. In the past two-plus years since the Anti-Monopoly Law came into effect 1 August 2008, ten civil lawsuits and one administrative lawsuit were launched in accordance with it, but none of the concerned plaintiffs ever won . It seems the SPC regards this zero-plaintiff-winning record as rather awkward. Apparently, in the eyes of the SPC, the Anti-Monopoly Law and the current Civil Procedure Law put plaintiffs in a disadvantaged position.

For example, on 25 December 2008, Tangshan Renren Information Service Co. Ltd. filed a complaint against Baidu Inc., a Chinese counterpart of Google, with the First Intermediate People's Court of Beijing. Renren alleged that Baidu's conduct constituted an abuse of dominance because Baidu blocked the webpages of Renren unjustifiably and sought compensation of 1.106 million RMB, as well as the unblocking of its webpages. The court ruled in favor of Baidu, judging that the plaintiff failed to prove Baidu's dominant position in the market despite figures the plaintiff produced from business journals estimating Baidu's market share of around 70 per cent. The court considered this was insufficient to determine the market share as the underlying data and methodology were not provided based on "scientific and objective analysis".

In this and other cases, plaintiffs lost because they failed to prove the dominant power of the concerned defendants. Therefore, the SPC will shift the burden of proof onto defendants to prove they do not have dominant market

positions. The SPC is also mulling over double damages to winning plaintiffs, which means two times the amount of actual losses as are determined by the jurisdictional Chinese court.

It appears the upcoming interpretations will greatly change the civil procedural regime for suits under the Anti-Monopoly Law. With their adoption, the number of civil lawsuits under the Anti-Monopoly Law is expected to increase dramatically. It remains to be seen whether or not the new measures (if adopted) will bring up frivolous suits. It is quite certain the multinational “deep pockets” will have to prepare their risk management as early—and as well—as possible.

Currently, a new case is being tried. Dongfeng Nissan Passenger Vehicle Company and one of its distributors, the Huayuan 4S motor shop, were recently sued by a consumer for abuse of dominant position under the Anti-Monopoly Law . The consumer alleged Huayuan 4S refused to sell spare parts to him, insisting that it was due to Dongfeng Nissan policy, which disallows all 4S motor shops of Dongfeng Nissan to sell spare parts to Dongfeng Nissan’s customers. As the parts were not available elsewhere in the market, consumers were left with no choice but to use the parts and services offered by the 4S motor shops of Dongfeng Nissan, which, as the consumer alleged, were three times higher than similar parts (repairing fees were allegedly seven times higher). With the alliance of its distributors, Dongfeng Nissan can foreclose the market and explore high profits from the consumers, all in breach of the Anti-Monopoly Law.