



NEWSLETTER

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Newsletter on Supreme People's Court's Judicial Interpretation of Civil Anti-Monopoly Dispute Cases

Antitrust and Compliance Team of Lifang & Partners

On November 18, 2022, the Supreme People's Court ("SPC") issued the Provisions of the Supreme People's Court on Certain Issues Concerning the Application of Law in the Hearing of Civil Monopoly Dispute Cases (Exposure Draft) ("*Exposure Draft*"). The consultation lasts till December 9, 2022. Drafted on the base of Provisions of Supreme People's Court on Certain Issues Concerning the Application of Law in the Hearing of Civil Dispute Cases Arising from Monopolistic Conducts ("2012 Interpretation"), under the context of Internet platform economy and protection of intellectual property rights, the *Exposure Draft* makes explicit explanations and stipulations on hot issues regarding civil anti-monopoly dispute cases. Lifang antitrust and compliance team interpreted the *Exposure Draft* at the first time and summarized the following key points.

1. The justiciability of anti-monopoly disputes under a contractual arbitration clause

Exposure Draft Art.3 stipulates that, "where a plaintiff files a civil lawsuit to the People's Court in accordance with the Anti-monopoly Law, and the defendant raises an objection on the ground that there is a contractual relationship and an arbitration agreement between the two parties, the acceptance of the civil monopoly dispute case by the People's Court shall not be affected". Previously, the People's Court at all levels had rendered different decisions on the jurisdiction of courts in cases where a contractual arbitration clause exists and a party files an anti-monopoly action to the People's Court. According to Art. 3 in the *Exposure Draft*, even if an arbitration clause is included in a contract, the People's Court may still accept an anti-monopoly claim filed by one of the parties.

2. The jurisdiction of foreign monopolistic

conduct

Exposure Draft Art.7 stipulates that, "where a monopolistic conduct outside the territory of the People's Republic of China has effect of excluding or restricting domestic market competition, and a party concerned files a civil lawsuit in accordance with the Anti-Monopoly Law **against a defendant who has no domicile within the territory of the People's Republic of China**, the lawsuit shall fall under the jurisdiction of the people's court at the place where the result occurs, i.e. at the place where the domestic market competition is directly and materially affected; where it is difficult to determine the place where the result occurs, the lawsuit shall fall under the jurisdiction of the people's court at the place that has other appropriate connection with the dispute or at the domicile of the plaintiff". Previously, there was no certain regulation regarding the considering factors of deciding the governing court in cases where the monopolistic conduct is

implemented by a defendant who has no domicile within the territory of the People's Republic of China. Therefore, the *Exposure Draft* clarifies the decision of governing court should be made based on the place where the result occurs, the place that has other appropriate connection and the domicile of the plaintiff.

3. Disposal of synchronous civil anti-monopoly litigation and anti-monopoly investigation

According to Art. 14 of the *Exposure Draft*, if the plaintiff files a civil anti-monopoly lawsuit before the court, and the anti-monopoly law enforcement agency, ex officio or according to report, is investigating the alleged monopolistic conduct synchronically, the People's Court hearing the case may rule on suspension of the lawsuit in accordance with the specific circumstances of the case.

4. Distribution of burden of proof in anti-monopoly litigation

The *Exposure Draft* has made detailed distribution in several articles regarding the burden of proof between the plaintiff and defendant, for example:

Art. 11 mitigates the plaintiff's burden of proof for the existence of monopolistic conduct in the subsequent anti-monopoly litigation. According to Art. 11, "where a penalty decision made by an anti-monopoly law enforcement agency on ascertaining constitution of a monopolistic conduct has not been subject to administrative litigation within the statutory period or has been confirmed by an effective ruling of a People's Court, and the plaintiff asserts the constitution of

the monopolistic conduct in the relevant civil monopoly dispute case, the plaintiff is not required to provide proof, unless there is overturning evidence to the contrary. Where necessary, the People's Court may require the anti-monopoly law enforcement agency which made the penalty decision to provide an explanation on the relevant information of the decision".

According to Art. 25, if the alleged monopolistic conduct constitutes resale price maintenance monopoly agreement (fixing resale price to a third party/limiting the minimum resale price to a third party), the defendant shall bear the burden of proof that such agreement does not have the effect of excluding or restricting competition. If the plaintiff asserts that the defendant reached other monopoly agreement defined by the anti-monopoly law enforcement agency under the State Council with counterparty, the plaintiff shall bear the burden of proof that such agreement has the effect of excluding or restricting competition.

5. Anti-monopoly issues regarding Internet platforms

It is worth noting that *Exposure Draft* specifically clarifies the factors to be considered when defining relevant market involving Internet platforms. When defining the relevant product market of Internet platforms, the *Exposure Draft* is basically consistent with the Anti-Monopoly Guidelines in Platform Economy Area ("Platform Guidelines") issued by the Anti-Monopoly Committee of the State Council on February 7, 2021, asserting that the definition of relevant product market should be combined with factors such as the characteristics of the alleged monopolistic conduct, specific circum-

stances of exclusion or restriction of competition, type of the internet platforms etc. The People's Court may opt to define the relevant product market based on the specific overall internet platform, or opt to define the relevant product market based on the products on the most relevant side of the said internet platform and the alleged monopolistic conduct. When defining the relevant geographic market of Internet platforms, except for the existed key considering factors stipulated in the Platform Guidelines such as the actual geographical regions where most demanders select products, language preference and consumption habits of demanders and requirements of the relevant laws and regulations, Art. 19 of the *Exposure Draft* also stipulates other factors like status quo of other geographical competitors and timeliness of entry into the market that need to be considered.

The *Exposure Draft* and the Platform Guidelines are also consistent when defining the market share of platform operator in the relevant market, considering product transaction amount, number of users, user usage period, number of visits and number of hits as acceptable indicators to measure the actual competition status of the relevant market. The *Exposure Draft* also points out that the number of data assets can also be included as one of the relevant indicators.

When defining market dominant position of platform operator, Art. 34 of the *Exposure Draft* advances multiple considering factors: (1) the business model of the internet platform and the competition constraints actually faced by the operator; (2) the market share of the internet platform operator in the relevant market and the period of

duration of such market share; (3) whether there is significant network effect, scale effect, scope effect and so on in the internet platform services; (4) the relevant data, algorithms, technologies and so on mastered by the internet platform operator; (5) the impact of the internet platform operator on the adjacent market; (6) the dependence of the users or the business operator using the platform on the internet platform operator as well as the check and balance capability, costs for switching to other internet platform operators; (7) the entry barrier that other platform operators may face when enter the relevant market; (8) the information about innovation and technological changes in the relevant market.

In addition, the *Exposure Draft* also made detailed stipulations (see Art. 38 and Art. 40) in combination with the characteristics of Internet platform when defining the platform operator's abuse of market dominant position (such as selling products at a price below cost and restricting transaction).

6. Intellectual property right

Despite that the Provisions on Prohibition of Abusing Intellectual Property Rights to Exclude and Restrict Competition (*Exposure Draft*) has already made stipulations on the identification of IPR-related market dominant position, the *Exposure Draft* further refines the considering factors when identifying market dominance: (1) the substitutability of specific intellectual property rights and the quantity of substitutable intellectual property rights; (2) the substitutability of the products provided by applying such specific intellectual property rights and the market share of such products; (3) the capability of check and

balance of the transaction counterparty against the business operator who owns such specific intellectual property rights; and (4) the information about innovation and technological changes in the relevant market.

7. Reverse payment in

Specifically, the *Exposure Draft* also adds the provisions on reverse payment agreement in pharmaceutical sector. According to Art. 23 of the *Exposure Draft*, if: (1) the patent holder of the brand-name drugs gives or undertakes to give the generic drug applicant a large amount of monetary or any other form of compensation for benefits; and (2) the generic drug applicant undertakes not to challenge the validity of the patent right of the brand-name drugs or delay to enter the relevant market of the brand-name drugs, such an agreement concluded between and implemented by the patent holder and the generic drug applicant would be deemed as a monopoly agreement.

8. Anti-monopoly-related civil damages

It's worth noting that the *Exposure Draft* adds the civil liability for beneficiaries of administrative monopoly conducts. Art. 4 stipulates that, "where a plaintiff files a civil lawsuit to the People's Court in accordance with the Anti-monopoly Law against a business operator who has benefited from the suspected abuse of administrative power excluding or restricting competition by an administrative agency or an organization authorized by a law or administrative regulation to administer public affairs, requesting the business operator to bear civil liability, and where the relevant administrative conduct has been legally determined as constituting the

abuse of administrative power excluding or restricting competition, the People's Court shall accept the case". This indicates that the plaintiff affected and administrative

This indicates that the plaintiff who is affected by the administrative monopoly and bears the corresponding loss has the right to file a litigation against the beneficiary of the administrative monopoly and demand it to bear the corresponding civil liability. This will be a powerful way for the plaintiff to protect their legitimate interests.

Regarding calculation of damages, according to Art. 45 of the *Exposure Draft*, the losses suffered by the plaintiff due to the alleged monopoly shall include **direct losses and reduced obtainable gains**. When determining losses suffered by the plaintiff due to the alleged monopoly, the following factors may be referred to: (1) product prices, operating costs, profits, market shares etc. in the relevant markets prior to implementation of the alleged monopoly, or after implementation of the alleged monopoly and during the course of implementation thereof; (2) product prices, operating costs, profits etc. in comparable markets which are not affected by the monopoly; (3) product prices, operating costs, profits, market shares etc. of comparable business operators which are not affected by the monopoly.

Remarkably, Art. 45 also stipulates that "where the plaintiff requests for compensation of losses by the defendant, and the defendant is able to prove that the plaintiff has transferred all or part of the losses suffered to others, the People's Court may, when determining the compensation

amount, deduct the transferred losses”.

Regarding the situation where the operator participating in a horizontal monopoly agreement requesting other participating operators reaching and implementing the said agreement to pay for its losses, Art. 48 of the *Exposure Draft* responds that such a operator participating a horizontal monopoly agreement shall not have the right to claim damages from other operators.

Apart from that, the *Exposure Draft* also adds the civil liabilities for damages of industry associations and business operator group. According to Art. 28 of the *Exposure Draft*, where a business operator or a business operator group, etc. organizes other business operators to reach or implement a monopoly agreement, which causes losses to the plaintiff, and the plaintiff claims, in accordance with the provisions of Article 1168 of the Civil Code, that the business operator or business operator group, etc. implementing the

organization behavior shall bear joint and several liability with the other business operators which reach or implement the monopoly agreement, the People’s Court shall uphold the claim.

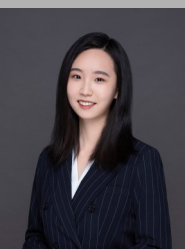
In conclusion, compared to 2012 Interpretation, the *Exposure Draft* adds a lot of articles, absorbs the essence of China’s anti-monopoly administrative law enforcement, judicial adjudication and judicial regulations in recent years, and responds to anti-monopoly issues in the fields of Internet platforms, intellectual property rights, foreign-related anti-monopoly, and pharmaceuticals in recent years, reflects China’s determination and action to further strengthen anti-monopoly judicial proceedings and improve the level of anti-monopoly adjudication.



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最高院反垄断民事诉讼司法解释征求意见稿要点解读

立方反垄断与合规团队

2022年11月18日，最高人民法院（“最高院”）发布了《最高人民法院关于审理垄断民事纠纷案件适用法律若干问题的规定（公开征求意见稿）》（“《征求意见稿》”），公众征求意见截止日期为2022年12月9日。《征求意见稿》在2012年版《最高人民法院关于审理因垄断行为引发的民事纠纷案件适用法律若干问题的规定》（“《2012解释》”）的基础上，考虑互联网经济和保护知识产权的背景，对涉及反垄断民事纠纷中的热点问题进行了针对性的解释及规定。立方反垄断与合规团队在第一时间对《征求意见稿》进行了解读并总结归纳了以下要点：

1. 合同约定仲裁条款情形下的反垄断纠纷可诉性

《征求意见稿》第三条规定，原告依据反垄断法向人民法院提起民事诉讼，被告以双方之间存在合同关系且已有仲裁协议为由提出异议的，不影响人民法院受理垄断民事纠纷案件。此前，各级人民法院对于合同中约定仲裁条款但一方向人民法院提起垄断诉讼情况下的法院管辖权问题产生了不同的裁判。根据《征求意见稿》第三条规定，即便合同中约定了仲裁条款，人民法院仍可以受理一方当事人提起的反垄断诉讼。

2. 境外垄断行为的管辖

《征求意见稿》第七条规定，中华人民共和国境外的垄断行为对境内市场竞争产生排除、限制影响，当事人依据反垄断法对在中华人民共和国境内没有住所的被告提起民事诉讼的，由境内市场竞争受到直接实质性影响的结果发生地的人民法院管辖；结果发

生地难以确定的，由与纠纷存在其他适当联系的地点或者原告住所地的人民法院管辖。此前，对于在中国境内没有住所的被告在境外实施的垄断行为，并未明确确定管辖法院需考量的因素。因此，《征求意见稿》明确了应当从结果发生地、其他适当联系的地点或原告住所地来确认具体的管辖法院。

3. 反垄断民事诉讼及反垄断调查并行情形下的处理

如果原告向法院提起了反垄断民事诉讼，而同时反垄断执法机构对于被诉垄断行为本身依职权/依举报开展了反垄断调查，根据《征求意见稿》第十四条的规定，受理反垄断民事诉讼的人民法院可以根据案件具体情况裁定中止诉讼。

4. 反垄断诉讼举证责任分配

《征求意见稿》中多项条款对反垄断诉讼中原被告的举证责任进行了细致分配。举例而言：

第十一条规定弱化了反垄断后继诉讼中原告对于垄断行为存在的举证责任。根据第十一条的规定，反垄断执法机构认定构成垄断行为的处理决定在法定期限内未被提起行政诉讼或者已为人民法院生效裁判所确认，原告在相关垄断民事纠纷案件中据此主张该垄断行为成立的，无需再行举证证明，但有相反证据足以推翻的除外。必要时，人民法院可以要求作出处理决定的反垄断执法机构对该处理决定的有关情况予以说明。

根据第二十五条规定，如果被诉垄断行为属于达成固定向第三人转售商品价格的垄断协议或者达成限定向第三人转售商品的最低价格的垄断协议，则应由被告承担该协议不具有排除、限制竞争效果的举证责任。如果原告主张被告与交易相对人达成国务院反垄断执法机构认定的其他垄断协议，则由原告承担该协议具有排除、限制竞争效果的举证责任。

5. 互联网平台反垄断相关问题认定

值得注意的是，《征求意见稿》特别明确了在界定互联网平台所涉相关市场时需考虑的因素。在分析界定互联网平台所涉相关商品市场时，《征求意见稿》基本与国务院反垄断委员会2021年2月7日发布的《关于平台经济领域的反垄断指南》（“《平台指南》”）中的规定保持一致，认为需要结合被诉垄断行为的特点、产生或者可能产生排除、限制竞争效果的具体情况、互联网平台的类型等因素，可以选择根据特定互联网平

台整体界定相关商品市场，也可以选择依据该互联网平台与被诉垄断行为最相关一边的商品界定相关商品市场。在分析界定互联网平台所涉相关地域市场时，除《平台指南》中已有规定的重点考虑多数需求者选择商品的实际区域、需求者的语言偏好和消费习惯、相关法律法规的要求外，《征求意见稿》第十九条还规定了需要考虑其他地域竞争者的现状及其进入市场的及时性等因素。

分析界定互联网平台经营者在相关市场的市场份额，《征求意见稿》和《平台指南》也保持了基本一致，认为可以采用能够反映相关市场实际竞争状况的商品交易金额、用户数量、用户使用时长、访问量、点击量等指标作为基准，《征求意见稿》还指出可以将数据资产数量纳入相关指标。

认定互联网平台经营者的市场支配地位，《征求意见稿》第三十四条提出了多项可以综合考虑的参考因素：平台企业的商业模式和竞争约束，平台企业的市场份额及市场份额持续时间，平台服务是否存在显著的网络效应、规模效应和范围效应等，平台企业掌握的数据、算法、技术等情况，平台企业对相邻市场的影响，用户/平台内经营者对平台企业的依赖程度和制衡能力以及转换成本等，其他平台企业进入相关市场的市场进入障碍，以及相关市场中的创新和技术变化情况等等。

除此之外，《征求意见稿》在认定互联网平台经营者的滥用市场支配地位行为（例

如低于成本价格销售行为、限定交易等行为)时,亦针对互联网平台的特点作出了详细规定(具体详见第三十八、第四十条)。

6. 知识产权领域

尽管《禁止滥用知识产权排除、限制竞争行为规定(征求意见稿)》对于知识产权领域市场支配地位的认定作出了相关规定,但本次发布《征求意见稿》则是进一步细化了市场支配地位认定时需考虑的因素:(1)特定知识产权的可替代性及替代性知识产权的数量;(2)利用该特定知识产权所提供的商品的可替代性及该商品的市场份额;(3)交易相对人对拥有该特定知识产权的经营者的制衡能力;(4)相关市场的创新和技术变化情况。

7. 药品行业反向支付

特别需要说明的是,本次《征求意见稿》中还特别增加了对于医药行业反向支付行为的规定。根据《征求意见稿》第二十三条规定,如果(1)被仿制药专利权利人给予或者承诺给予仿制药申请人高额的金钱或者其他形式的利益补偿,且(2)仿制药申请人承诺不挑战被仿制药专利权的有效性或者延迟进入被仿制药相关市场,则相关被仿制药专利权利人与仿制药申请人达成、实施的协议会被认定为是垄断协议。

8. 反垄断民事赔偿

特别值得注意的是,《征求意见稿》本次增加了针对行政垄断行为受益方的民事责

任。《征求意见稿》第四条规定,原告以因行政机关和法律、法规授权的具有管理公共事务职能的组织涉嫌滥用行政权力排除、限制竞争行为而受益的经营者为被告,依据反垄断法向人民法院提起民事诉讼,请求该经营者承担民事责任,相关行政行为已经被依法认定构成滥用行政权力排除、限制竞争行为的,人民法院应予受理。这表明受到行政垄断行为影响并承担相应损失的原告有权针对行政垄断行为受益方提起诉讼,要求其承担相应的民事责任。这对于原告而言,将会是维护自身合法利益的一个强有力途径。

对于损失赔偿计算而言,根据《征求意见稿》第四十五条规定,原告因被诉垄断行为受到的损失包括**直接损失和减少的可得利益**。在确认原告因被诉垄断行为受到的损失时,可以参照:(1)被诉垄断行为实施之前或者结束以后与实施期间的相关市场的商品价格、经营成本、利润、市场份额等;(2)未受垄断行为影响的可比市场的商品价格、经营成本、利润等;(3)未受垄断行为影响的可比经营者的商品价格、经营成本、利润、市场份额等。

特别值得注意的是,《征求意见稿》第四十五条同样规定如果“原告请求被告赔偿损失,被告能够证明原告已经将其所受损失全部或者部分转嫁给他人的,人民法院在确定赔偿数额时对于转嫁的损失可以予以扣减”。

对于横向垄断协议的经营者以达成、实

施该协议的其他经营者为被告主张损失的情形，《征求意见稿》第四十八条亦作出了回应，即横向垄断协议的经营者无权向其他经营者主张损害赔偿。

除此之外，《征求意见稿》还特别增加了行业协会、经营者团体的民事赔偿责任。根据《征求意见稿》第二十八条规定，经营者、经营者团体等组织其他经营者达成、实施垄断协议，给原告造成损失，原告依据民法典第一千一百六十八条的规定主张实施组织行为的经营者、经营者团体等与达成、实施垄断协议的其他经营者承担连带责任的，人民法院应当予以支持。

总的来看，相对于《2012解释》，本次《征求意见稿》增加了大量篇幅，吸收了近年来中国反垄断行政执法、司法裁判以及司法规定的精华，回应了近年来在互联网平台、知识产权、涉外反垄断、医药等领域的反垄断问题主要关切，体现了中国进一步加强反垄断司法审理力度、提高反垄断裁判水平的决心和行动。



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Judicial Interpretation on Monopoly Civil Litigations 2012 v. 2022 Exposure Draft

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<p>Provisions of Supreme People’s Court on Certain Issues Concerning the Application of Law in the Hearing of Civil Dispute Cases Arising from Monopolistic Conducts</p> <p>(SPC issued on May 3, 2012, amended on December 29, 2020) ^[1]</p>	<p>Provisions of the Supreme People’s Court on Certain Issues Concerning the Application of Law in the Hearing of Civil Monopoly Dispute Cases (<i>Exposure Draft</i>)</p> <p>(SPC issued on November 18, 2022)</p>
<p>Article 1</p> <p>For the purpose of the Provisions, "civil dispute cases caused by monopolistic conduct" (hereinafter referred to as civil monopoly dispute cases) refer to the cases filed to the people’s courts by natural persons, legal persons or other organizations for disputes over losses caused by monopolistic conduct or contract contents or articles of association of industry associations violating the <i>Anti-monopoly Law</i>.</p>	<p>Article 1</p> <p>For the purpose of the Provisions, "civil monopoly dispute cases" refer to the cases filed to the people’s courts by natural persons, legal persons or unincorporated organizations in accordance with the <i>Anti-monopoly Law</i> for disputes over losses caused by monopolistic conduct or contract contents or articles of association, resolutions and decisions of the business operator group violating the <i>Anti-monopoly Law</i>.</p> <p>For the purpose of the Provisions, "business operator group" includes a combination or consortium formed by two or more business operators for a common purpose, such as an industry association.</p>
<p>Article 2</p> <p>Where a plaintiff files a civil lawsuit directly to the people’s court or files a civil lawsuit to the people’s court after a penalty decision made by an anti-monopoly law enforcement agency determining the constitution of a monopolistic conduct coming into effect, and the lawsuit satisfies other conditions for acceptance prescribed by law, the people’s court shall accept the lawsuit.</p>	<p>Article 2</p> <p>Where a plaintiff files a civil lawsuit directly to the people’s court in accordance with the <i>Anti-monopoly Law</i> or files a civil lawsuit to the people’s court after an anti-monopoly law enforcement agency determining the constitution of a monopolistic conduct, and the lawsuit satisfies other conditions for acceptance prescribed by law, the people’s court shall accept the lawsuit.</p>

[1] Since the 2022 Exposure Draft is drafted on the base of 2012 Judicial Interpretation, the 2012 Judicial is compared with the 2022 Exposure Draft hereinunder.

	<p>Article 3</p> <p>Where a plaintiff files a civil lawsuit to the people’s court in accordance with the <i>Anti-monopoly Law</i>, and the defendant raises an objection on the ground that there is a contractual relationship and an arbitration agreement between the two parties, the acceptance of the civil monopoly dispute case by the people’s court shall not be affected. However, if the people’s court finds that the case is not a monopoly civil dispute case after review after accepting the case, the people’s court may reject the lawsuit in accordance with the law.</p>
	<p>Article 4</p> <p>Where a plaintiff files a civil lawsuit to the people’s court in accordance with the <i>Anti-monopoly Law</i> against a business operator who has benefited from the suspected abuse of administrative power excluding or restricting competition by an administrative agency or an organization authorized by a law or administrative regulation to administer public affairs, requesting the business operator to bear civil liability, and where the relevant administrative conduct has been legally determined as constituting the abuse of administrative power excluding or restricting competition, the people’s court shall accept the case.</p>
<p>Article 3</p> <p>Intermediate people’s courts at municipalities where the people’s governments of provinces, autonomous regions and centrally administered municipalities are located and intermediate people’s courts at municipalities with unilateral planning and intermediate people’s courts designated by the Supreme People’s Court shall be the court of first instance for monopoly civil dispute cases.</p> <p>Upon approval by the Supreme People’s Court, grass-root people’s courts may be the court of first instance for monopoly civil dispute cases.</p>	<p>Article 5</p> <p>The intellectual property court and the intermediate people’s court designated by the Supreme People’s Court shall be the court of first instance for civil monopoly dispute cases.</p>

<p>Article 4</p> <p>The territorial jurisdiction over civil monopoly dispute cases shall be determined in accordance with the specific situation of the cases and in accordance with the provisions of the <i>Civil Procedure Law</i> and relevant judicial interpretations on the jurisdiction for tort disputes, contract disputes, etc.</p>	<p>Article 6</p> <p>The territorial jurisdiction over civil monopoly dispute cases shall be determined in accordance with the specific situation of the cases and in accordance with the provisions of the <i>Civil Procedure Law</i> and relevant judicial interpretations on the jurisdiction for tort disputes, contract disputes, etc.</p>
	<p>Article 7</p> <p>Where a monopolistic conduct outside the territory of the People's Republic of China has effect of excluding or restricting domestic market competition, and a party concerned files a civil lawsuit in accordance with the Anti-Monopoly Law against a defendant who has no domicile within the territory of the People's Republic of China, the lawsuit shall fall under the jurisdiction of the people's court at the place where the result occurs, i.e. at the place where the domestic market competition is directly and materially affected; where it is difficult to determine the place where the result occurs, the lawsuit shall fall under the jurisdiction of the people's court at the place that has other appropriate connection with the dispute or at the domicile of the plaintiff.</p>
<p>Article 5</p> <p>Where the cause of action of a civil dispute case is not a monopoly dispute at the time of case filing, and the defendant defends or counterclaims on the grounds that the plaintiff has engaged in monopolistic practices with supporting evidence, or a ruling for the case is required to be made in accordance with the Anti-Monopoly Law, but the people's court that accepts the case does not have the jurisdiction over civil monopoly dispute cases, the case shall be transferred to the people's court with competent jurisdiction.</p>	<p>Article 8</p> <p>Where the cause of action of a civil dispute case is not a monopoly dispute at the time of case filing, and the defendant defends or counterclaims on the grounds that the plaintiff has engaged in monopolistic practices with supporting evidence, or a ruling for the case is required to be made in accordance with the Anti-Monopoly Law, but the people's court that accepts the case does not have the jurisdiction over civil monopoly dispute cases, the case shall be transferred to the people's court with competent jurisdiction.</p>

<p>Article 6</p> <p>Where two or more plaintiffs separately file lawsuits to the same court with competent jurisdiction for the same monopolistic conduct, the people’s court may consolidate the cases.</p> <p>Where two or more plaintiffs file lawsuits separately to different courts with competent jurisdiction for the same monopolistic conduct, and after the court that accepts the case later finding out that another court has already accepted the case, it shall rule to transfer the case to the people’s court that accepts the case earlier within 7 days; the court to which the case has been transferred may consolidate the trials. During the defense stage, the defendant shall take the initiative to provide the people’s court accepting the lawsuit with the information on the same conduct being involved in lawsuits before other courts.</p>	<p>Article 9</p> <p>Where two or more plaintiffs separately file lawsuits to the same people’s court with competent jurisdiction for the same alleged monopolistic conduct, the people’s court may consolidate the cases.</p> <p>Where two or more plaintiffs file lawsuits separately to different people’s courts with competent jurisdiction for the same alleged monopolistic conduct, and the people’s court that accepts the case later finds out that another people’s court with jurisdiction has already accepted the case, it shall rule to transfer the case to the people’s court that accepts the case earlier; the people’s court to which the case has been transferred may consolidate the trials.</p> <p>During the defense stage, the defendant shall take the initiative to provide the people’s court accepting the lawsuit with the information on the same alleged monopolistic conduct being involved in lawsuits before other people’s courts.</p>
<p>Article 7</p> <p>Where the monopoly conduct for which a lawsuit is filed is a monopoly agreement stipulated in item (1) to item (5) of the first paragraph of Article 13 of the <i>Anti-monopoly Law</i>, the defendant shall bear the burden of proof to show that the agreement does not exclude or restrict competition.</p>	
	<p>Article 10</p> <p>The same plaintiff shall file a lawsuit for the same alleged monopolistic conduct in the same case. Where several lawsuits are filed to split the same alleged monopolistic conduct without proper reason based on factors such as the geographical region affected, duration, implementation occasion and scope of damages, the people’s court shall only hear the lawsuit which is accepted first and shall not accept the other lawsuits; where the people’s court has accepted the other lawsuit, it shall rule to reject the lawsuit.</p>

	<p>Article 11</p> <p>Where a penalty decision made by an anti-monopoly law enforcement agency on ascertaining constitution of a monopolistic conduct has not been subject to administrative litigation within the statutory period or has been confirmed by an effective ruling of a people's court, and the plaintiff asserts the constitution of the monopolistic conduct in the relevant civil monopoly dispute case, the plaintiff is not required to provide proof, unless there is overturning evidence to the contrary. Where necessary, the people's court may require the anti-monopoly law enforcement agency which made the penalty decision to provide an explanation on the relevant information of the decision.</p>
<p>Article 11</p> <p>For evidence which involves national secrets, commercial secrets, personal privacy or any other contents which should be kept confidential pursuant to the law, the people's court may, at their discretion or the application of a party concerned, adopt protective measures such as private hearing, restriction or prohibition of replication, showing to attorneys only, ordering parties to execute letter of confidentiality, etc.</p>	
<p>Article 12</p> <p>party concerned may apply to the people's court for one to two persons with corresponding special knowledge to appear in court and provide explanations on the technical issues involved in the case.</p> <p>Article 13</p> <p>A party concerned may apply to the people's court for engagement of a professional organization or professionals to issue market research report or economic analysis in respect of the technical issues of the case. Upon consent of the people's court, the professional organization or professionals may be determined by both parties upon negotiation; where such negotiation fails, the people's court shall make the designation.</p> <p>The people's court may refer to the provisions of the Civil Procedural Law and the relevant judicial interpretations on authentication conclusions, examine and make a judgment on the market research report or economic analysis opinions stipulated in the previous paragraph.</p>	<p>Article 12</p> <p>party concerned may apply to the people's court for one to two persons with case-related industry expertise and economics knowledge to appear in court and provide explanations on the technical issues involved in the case.</p> <p>A party concerned may apply to the people's court for engagement of a professional organization or professionals to issue market research report or economic analysis opinions in respect of the technical issues of the case. The professional organization or professionals may be determined by both parties upon negotiation; where such negotiation fails, the people's court shall make the designation. The people's court may refer to the provisions of the Civil Procedural Law and the relevant judicial interpretations on authentication opinions, examine and make a judgment on the market research report or economic analysis opinions issued by the professional organization or professionals.</p> <p>Where a party concerned entrusts a relevant professional organization or professionals to issue market research report or economic analysis opinions in respect of the technical issues of the case, but such opinions lack reliable facts, data or any other necessary basic information or lack reliable analysis method, or the overturning evidence or reasons provided by the other party concerned are sufficient to rebut such opinions, the people's court shall not accept such opinions.</p>

	<p>Article 13</p> <p>Where a business operator commits any monopolistic conduct which infringes upon the public interest, and the people’s procuratorate at the level of city divided into districts or above files a public interest lawsuit pursuant to the law, the <i>Interpretations of the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues Concerning the Application of Law in Procuratorial Public Interest Lawsuits</i> shall apply. However, where these Provisions have special provisions on the jurisdiction of civil monopoly dispute cases, the Provisions shall apply.</p>
	<p>Article 14</p> <p>Where the anti-monopoly law enforcement agency is investigating an alleged monopolistic conduct, the people’s court may rule on suspension of the lawsuit in accordance with the specific circumstances of the case.</p>
	<p>Article 15</p> <p>Where the people’s court, in the trial of a civil dispute case, discovers that the relevant conduct of a party concerned is suspected of violation of the Anti-monopoly Law, or deems that the alleged monopolistic conduct is in violation of the Anti-monopoly Law and may be subject to administrative penalty, but the anti-monopoly law enforcement agency has not investigated, the people’s court may transfer clues on the alleged illegal conduct to the anti-monopoly law enforcement agency.</p>
	<p>Article 16</p> <p>Where the plaintiff asserts that the alleged monopolistic conduct violates the Anti-monopoly Law, it shall generally define the relevant market affected by the alleged monopolistic conduct, and provide evidence or state the reason.</p> <p>Where the plaintiff asserts that the alleged party has significant market power or market dominance in the ground of its market share in the relevant market, it shall define the relevant market and provide evidence or state the reason.</p> <p>Where the evidence provided by the plaintiff is sufficient to directly prove that the business operator signing the alleged monopoly agreement has significant market power, the business operator which is alleged to abuse its market dominant position has market dominance, or the alleged monopolistic conduct has the effect of excluding or restricting competition, the plaintiff may waive the burden of proof for definition of the relevant market.</p> <p>Where the alleged monopolistic conduct falls under the circumstances stipulated in item (1) to item (5) of Article 17 and item (1) and item (2) of the first paragraph of Article 18 of the Anti-monopoly Law, the plaintiff may waive the burden of proof for definition of the relevant market.</p>

	<p>Article 17</p> <p>For definition of the relevant product market and the relevant geographic market in which business operators compete with respect to specific products or services (hereinafter collectively referred to as the "products") within a certain period, the people's court may, in accordance with the specific circumstances of the case and on the basis of the specific products directly involved in the alleged monopolistic conduct, carry out demand substitution analysis from the perspective of demanders; where the competition constraint arising from supply substitution on business operator conduct is similar to demand substitution, the people's court may also carry out supply substitution analysis from the perspective of suppliers.</p> <p>For definition of the relevant product market and the relevant geographic market, the people's court may adopt the analysis method of hypothetical monopolist test, and generally adopt the SSNIP method; where the competition between business operators is mainly non-price competition such as quality, diversity, innovation, etc., the hypothetical monopolist test method of declining quality, rising cost, etc. may be adopted.</p>
	<p>Article 18</p> <p>When analyzing and defining a relevant product market from the perspective of demand substitution, the people's court generally determines a market comprised of a group or category of products that are considered to have close substitution relationship by demanders as a relevant product market based on such factors as demanders' demand for the characteristics, functions and uses of products, recognition of quality, acceptance of price and difficulty in acquiring such products. When analyzing and defining the relevant product market from the perspective of supply substitution, the people's court may take into account the intent and ability of other business operators to enter the market, costs and risks borne, market barriers to be overcome, time required etc.</p> <p>When analysing and defining the relevant product market involved in an internet platform, taking into account the characteristics of the alleged monopolistic conduct, specific circumstances of exclusion or restriction of competition, type of the internet platform etc., the people's court may opt to define the relevant product market based on the specific overall internet platform, or opt to define the relevant product market based on the products on the most relevant side of the said internet platform and the alleged monopolistic conduct. Where a specific internet platform has cross-border network effects, and imposes adequate competition constraints on the said internet platform business operator, the people's court may define the relevant product market based on the said internet platform as a whole, or define multiple relevant product markets respectively based on the multilateral markets involved in the cross-border network effects, and take into account the mutual relationship and impact between the respective relevant product markets.</p>

	<p>Article 19</p> <p>When analyzing and defining the relevant geographic market from the perspective of demand substitution, the people’s court may take into account factors such as the situation where demanders purchase products from other geographical regions due to changes in product price or other competition factors, transportation costs and transportation characteristics of products, actual geographical regions where most demanders select products and sales distribution of main business operators’ products, market barriers between geographical regions, preference of demanders in specific geographical regions etc.</p> <p>When analyzing and defining the relevant geographic market from the perspective of supply substitution, the people’s court may take into account factors such as the responses of business operators in other geographical regions to changes in competition factors such as product prices, timeliness and feasibility of supply or sale of the relevant products by business operators in other geographical regions etc.</p> <p>When analyzing and defining the relevant geographic market involved in an internet platform, the people’s court may take into account factors such as the actual geographical regions where most demanders select products, language preference and consumption habits of demanders, requirements of the relevant laws and regulations, status quo of other geographical competitors and timeliness of entry into the market.</p>
	<p>Article 20</p> <p>To determine "other concerted conduct" stipulated in Article 16 of the Anti-monopoly Law, the people’s court shall take into account the following factors:</p> <ol style="list-style-type: none"> (1) Whether there is consistency or relative consistency in the market behavior of the business operators; (2) Whether there has been contact or information exchange between the business operators; (3) The market structure, competition status, market changes etc. of the relevant market; and (4) Whether the business operators can provide a reasonable explanation for the consistency or relative consistency of their conduct. <p>Where the preliminary evidence provided by the plaintiff in item (1) and item (2) or the preliminary evidence provided by the plaintiff in item (1) and item (3) of the preceding paragraph can prove that there is a relatively high possibility of concerted conduct of the business operators, the business operators implementing the alleged monopolistic conduct shall provide evidence or provide adequate explanation for the consistency or relative consistency of their conducts; where the business operators are unable to provide a reasonable explanation, the people’s court may rule that there is concerted conduct.</p> <p>Reasonable explanation referred to in this Article shall include the relevant conduct implemented by a business operator independently based on changes to market and competition conditions etc.</p>

	<p>Article 21</p> <p>For the purpose of Article 17 of the Anti-Monopoly Law, the term "competing business operator " refers to two or more actual or potential business operators that are at the same stage in the process of production and operation of the products, provide products with close substitution relationship, independently make business decisions and assume legal liability.</p> <p>Where two or more business operators shall be deemed as a single economic entity, they shall not constitute competing business operators referred to in the preceding paragraph. When making a specific determination, the people’s court shall take into account the specific facts of a case, and take into account factors such as whether a specific business operator has control over other business operators or is able to exert decisive influence over such other business operators, whether such two or more business operators are controlled by the same third party or have decisive influence over such two or more business operators.</p>
	<p>Article 22</p> <p>Where competing business operators make use of data, algorithms, technologies etc. to carry out contact or exchange of information, or make use of data, algorithms, technologies, platform rules etc. to achieve consistency or relative consistency of conduct for conclusion and implementation of a monopoly agreement, the people’s court may review and determine pursuant to the provisions of Article 17 of the Anti-monopoly Law.</p>
	<p>Article 23</p> <p>Where an agreement reached and implemented by the patent holder of the brand-name drugs and the generic drug applicant satisfies the following criteria concurrently, the people’s court may preliminarily rule that the agreement constitutes a monopoly agreement stipulated in Article 17 of the Anti-monopoly Law:</p> <p>(1) The patent holder of the brand-name drugs gives or undertakes to give the generic drug applicant a large amount of monetary or any other form of compensation for benefits;</p> <p>(2) The generic drug applicant undertakes not to challenge the validity of the patent right of the brand-name drugs or delay to enter the relevant market of the brand-name drugs.</p> <p>Where there is evidence to prove that the compensation for benefits referred to in the preceding paragraph is only made up for the costs of resolving the relevant dispute over the patent of the brand-name drugs or there are other proper reasons, the people’s court may rule that the agreement does not constitute a monopoly agreement stipulated in Article 17 of the Anti-monopoly Law.</p>

	<p>Article 24</p> <p>Where an agreement between an internet platform operator and a business operator using the platform requires the business operator using the platform to provide transaction conditions on the internet platform which are the same as or more favorable than those provided for other transaction channels, the people's court may, based on the plaintiff's litigation request and the details of the case, deal with the case as follows based on different circumstances:</p> <p>(1) Where there is competition relationship between the internet platform operator and the business operator using the platform, the case shall be reviewed and determined in accordance with the provisions of Article 17 of the Anti-monopoly Law;</p> <p>(2) Where there is no competition relationship between the internet platform operator and the business operator using the platform, the case shall be reviewed and determined in accordance with the provisions of Article 18 of the Anti-monopoly Law;</p> <p>(3) Where the plaintiff asserts that the internet platform operator abuses its dominant market position, the case shall be reviewed and determined in accordance with the provisions of Article 22 of the Anti-monopoly Law and Article 22 of the E-commerce Law;</p> <p>(4) Where the plaintiff asserts that the internet platform operator violates the provisions of Article 35 of the E-commerce Law, the case shall be dealt with in accordance with the said Article.</p>
	<p>Article 25</p> <p>Where the monopolistic conduct for which a lawsuit is filed is a monopoly agreement stipulated in item (1) and item (2) of the first paragraph of Article 18 of the Anti-monopoly Law, the defendant shall bear the burden of proof that the said agreement does not exclude or restrict competition.</p> <p>Where the monopolistic conduct for which a lawsuit is filed is a monopoly agreement stipulated in item (3) of the first paragraph of Article 18 of the Anti-monopoly Law, the plaintiff shall bear the burden of proof that the said agreement has an effect of exclusion or restriction of competition.</p> <p>Where the monopolistic conduct for which a lawsuit is filed is a monopoly agreement stipulated in the first paragraph of Article 18 of the Anti-monopoly Law, and the defendant can prove that its market share in the relevant market is lower than the standard stipulated by the anti-monopoly enforcement authority of the State Council and satisfies other criteria stipulated by the anti-monopoly enforcement authority of the State Council, the plaintiff shall further provide evidence to prove that the said agreement has an effect of excluding or restricting competition.</p>

	<p>Article 26</p> <p>When examining and determining whether the monopolistic conduct for which a lawsuit is filed has an effect of excluding or restricting competition pursuant to the provisions of the first paragraph of Article 18 of the Anti-monopoly Law, the people’s court may take into consideration the following factors:</p> <p>(1) whether the defendant has significant market power in the relevant market;</p> <p>(2) whether the agreement has adverse competition effects such as raising market entry barriers, hindering more efficient distributors or distribution models, or restricting inter-brand competition; and</p> <p>(3) whether the agreement has beneficial competition effects such as preventing free-riding, promoting inter-brand or intra-brand competition, safeguarding brand image, improving pre-sale or after-sale service standards, promoting innovation etc.</p> <p>Where the defendant has significant market power in the relevant market, and the beneficial competition effects proven in the documented evidence do not exceed the adverse competition effects, the people’s court shall rule that the agreement has an effect of excluding or restricting competition.</p>
	<p>Article 27</p> <p>Where the defendant is able to prove that the alleged agreement falls under any of the following circumstances, the people’s court may rule preliminarily that the agreement does not constitute a monopoly agreement stipulated in the first paragraph of Article 18 of the Anti-monopoly Law:</p> <p>(1) the transaction counterparty of the agreement is the agent of the business operator, and does not bear any substantive business or business risks;</p> <p>(2) the market share of the defendant in the relevant market is lower than the standard stipulated by the anti-monopoly enforcement authority of the State Council, and the defendant satisfies any other criteria stipulated by the anti-monopoly enforcement authority of the State Council; and</p> <p>(3) the agreement is implemented within a reasonable period to encourage the transaction counterparty to promote new products.</p>

	<p>Article 28</p> <p>Where a business operator or a business operator group, etc. organizes other business operators to reach or implement a monopoly agreement, which causes losses to the plaintiff, and the plaintiff claims, in accordance with the provisions of Article 1168 of the <i>Civil Code</i>, that the business operator or business operator group, etc. implementing the organization behavior shall bear joint and several liability with the other business operators which reach or implement the monopoly agreement, the people's court shall uphold the claim.</p> <p>Where a business operator or business operator group, etc. provides substantive assistance to other business operators for reaching or implementing a monopoly agreement, which causes losses to the plaintiff, and the plaintiff claims, in accordance with the provisions of Article 1169 of the <i>Civil Code</i>, that the business operator or business operator group, etc. providing assistance shall bear joint and several liability with the other business operators which reach or implement the monopoly agreement, the people's court shall uphold the claim. However, exceptions shall be applied to the cases where the business operator or business operator group, etc. can prove that it does not know and should not have known that other business operators have reached or implemented a monopoly agreement.</p> <p>For the purpose of Paragraph 1 of this Article, the term "organization" shall refer to the acts such as establishing, leading, planning, manipulating, directing and initiating that play a decisive and dominant role in reaching or implementing a monopoly agreement.</p> <p>For the purpose of Paragraph 2 of this Article, the term "substantive assistance" shall refer to the acts such as guiding the occurrence of illegal intent, providing convenience, serving as an information channel and assisting in imposing punishment, which play a direct and important role in promoting the reaching or implementation of a monopoly agreement.</p>
	<p>Article 29</p> <p>Where the party that is alleged to have engaged in monopolistic conduct raises a defense in accordance with Items 1 to 5, Paragraph 1, Article 20 of the Anti-monopoly Law, it shall provide evidence to prove the following facts:</p> <ol style="list-style-type: none"> (1) The alleged monopoly agreement is necessary for achieving relevant purposes or effects; (2) The alleged monopoly agreement can achieve relevant purposes or effects; (3) The alleged monopoly agreement will not significantly restrict competition in the relevant market; and (4) Consumers can share the benefits arising therefrom.

	<p>Article 30</p> <p>"The business operator has the ability to control the price, quantity or other transaction conditions of the products in the relevant market" referred to in Paragraph 3 of Article 22 of the Anti-monopoly Law shall mean that the business operator is, to a considerable extent, not subject to the restriction of its competitors and transaction counterparties, and may freely decide the transaction conditions of the products such as price, quantity, quality, payment conditions, delivery method, after-sale service, etc.</p> <p>"Ability to hinder or affect the ability of other business operators to enter the relevant market" referred to in Paragraph 3 of Article 22 of the Anti-monopoly Law shall mean that the business operator has a significant market power relative to other business operators, and can exclude or delay other business operators' entry into the relevant market within a reasonable time, or can raise the market entry costs of other business operators, making it difficult for other business operators to carry out effective competition.</p> <p>"The market share of the business operator in the relevant market" referred to in Article 23 and Article 24 of the Anti-monopoly Law shall be determined based on the ratio of the transaction amount, transaction volume, production capacity or any other indicator of the business operator in the relevant market within a certain period at the time of occurrence of the alleged monopoly.</p> <p>When determining the market share of an internet platform operator in the relevant market, the people's court may adopt the product transaction amount, number of users, user usage period, number of visits, number of hits, number of data assets or other indicators which can reflect the actual competition status of the relevant market as the calculation basis.</p>
<p>Article 8</p> <p>Where the alleged monopoly is an abuse of market dominant position stipulated in the first paragraph of Article 17 of the Anti-monopoly Law, the plaintiff shall bear the burden of proof that the defendant has dominant market position in the relevant market and its abuse of market dominant position.</p> <p>Where the defense of the defendant is based on the legitimacy of its action, the defendant shall bear the burden of proof.</p>	<p>Article 31</p> <p>Where the alleged monopoly is an abuse of market dominant position stipulated in the first paragraph of Article 22 of the Anti-monopoly Law, the plaintiff shall bear the burden of proof that the defendant has dominant market position in the relevant market and that the defendant has abused its market dominant position. Where the defense of the defendant is based on the legitimacy of its action, the defendant shall bear the burden of proof.</p>

<p>Article 10</p> <p>The plaintiff may use the information released to the public by the defendant as evidence proving that the defendant has market dominance. If the information released by the defendant can prove that it has market dominance within the relevant market, the people's court may rule based on such information, unless there is evidence to the contrary sufficient to overturn the judgment.</p>	<p>Article 32</p> <p>Based on the market structure and actual competition status of the relevant market in a specific case, taking into account daily life experience and economic knowledge, the people's court may rule preliminarily that the business operator has dominance in the relevant market based on the following evidence:</p> <p>(1) The business operator maintains a price which is evidently higher than market competition level for a relatively long period of time, and the relevant market evidently lacks competition, innovation and new entrants;</p> <p>(2) The business operator maintains a relatively high market share which is evidently higher than other business operators for a relatively long period of time, and the relevant market evidently lacks competition, innovation and new entrants.</p> <p>The information released to the public by the defendant may serve as <i>prima facie</i> evidence proving that the defendant has market dominance <i>by the plaintiff</i>. If the information can prove that <i>the defendant</i> has dominance in the relevant market, the people's court may rule based on such information, unless there is evidence to the contrary sufficient to overturn the judgment.</p>
<p>Article 9</p> <p>Where the alleged monopolistic conducts involve that public utility enterprises or other business operators with monopoly status pursuant to the law abuse their market dominance, the people's court may rule that the defendant has dominant market position in the relevant market in light of the specific circumstances of market structure and competition, unless there is evidence to the contrary sufficient to overturn the judgment.</p>	<p>Article 33</p> <p>Where the <i>plaintiff claims</i> that public utility enterprises or other business operators with monopoly status pursuant to the law abuse their market dominance, the people's court may rule that the defendant has dominant market position in the relevant market in light of the specific circumstances of market structure and competition, unless there is evidence to the contrary sufficient to overturn the judgment.</p>

	<p>Article 34</p> <p>When determining the market dominance of an internet platform operator in accordance with Article 23 of the Anti-monopoly Law, the people’s court may consider the following factors:</p> <ol style="list-style-type: none"> (1) The business model of the internet platform and the competition constraints actually faced by the operator; (2) The market share of the internet platform operator in the relevant market and the period of duration of such market share; (3) Whether there is significant network effect, scale effect, scope effect and so on in the internet platform services; (4) The relevant data, algorithms, technologies and so on mastered by the internet platform operator; (5) The impact of the internet platform operator on the adjacent market; (6) The dependence of the users or the business operator using the platform on the internet platform operator as well as the check and balance capability, use habits, concurrent use of multiple internet platforms, costs for switching to other internet platform operators, etc.; (7) The willingness and capability of other internet platform operators to enter the relevant market, and the market access barriers they face such as the scale requirements, technical requirements and legal restrictions etc.; (8) The information about innovation and technological changes in the relevant market; and (9) Other factors that need to be considered.
	<p>Article 35</p> <p>When determining the market dominance of a business operator in the intellectual property sector in accordance with Article 23 of the Anti-monopoly Law, the people’s court may consider the following factors:</p> <ol style="list-style-type: none"> (1) The substitutability of specific intellectual property rights and the quantity of substitutable intellectual property rights; (2) The substitutability of the products provided by applying such specific intellectual property rights and the market share of such products; (3) The capability of check and balance of the transaction counterparty against the business operator who owns such specific intellectual property rights; (4) The information about innovation and technological changes in the relevant market; and (5) Other factors that need to be considered.

	<p>Article 36</p> <p>Where the people's court presumes that two or more business operators have joint market dominance in accordance with Item (2) and Item (3), Paragraph 1, Article 24 of the Anti-monopoly Law, the aforesaid presumption may be overturned if the business operators have evidence to prove that they fall under any of the following circumstances:</p> <p>(1) There is substantial competition between such two or more business operators; or</p> <p>(2) Such two or more business operators, as a whole, are subject to effective competition constraints from other business operators in the relevant market.</p>
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Article 37

Where the people's court rules that a business operator is "selling products at an unfairly high price or purchasing products at an unfairly low price" as stipulated in Item (1), Paragraph 1, Article 22 of the Anti-monopoly Law, the following factors may be considered:

- (1) Whether the profit derived by the business operator from such products is evidently higher than the reasonable return on capital in the competitive market;
- (2) Whether the price of such products determined by the business operator evidently deviates from its economic value;
- (3) Whether the price of products sold or purchased by the business operator to the transaction counterparty is evidently higher or lower than the price of identical or comparable products sold or purchased by the said business operator in the upstream and downstream markets;
- (4) Whether the price of products sold or purchased by the business operator to the transaction counterparty is evidently higher or lower than the price of identical or comparable products sold or purchased by other business operators under identical or similar conditions;
- (5) Whether the price of products sold or purchased by the business operator to the transaction counterparty is evidently higher or lower than the price of identical or comparable products sold or purchased by the said business operator at other geographic markets under identical or similar conditions; and
- (6) Whether the price increase of products sold by the business operator to the transaction counterparty is evidently higher than the cost increase of the said business operator, or the price reduction of products purchased by the business operator is evidently higher than the costs reduction of the transaction counterparty.

For determination of identical or similar criteria referred to in item (4) and item (5) of the preceding paragraph, the factors such as transaction channel, transaction model, transaction quantity, transaction phases, cost structure, status of supply and demand, regulatory environment etc. may be considered

Where a business operator with market dominance satisfies all of the following criteria, the people's court may rule preliminarily that the business operator constitutes "selling products at an unfairly high price or purchasing products at an unfairly low price" as stipulated in Item (1), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) The price of products sold or purchased by the business operator to the transaction counterparty is higher or lower than the price of identical or comparable products sold or purchased by the said business operator in the upstream and downstream markets; and
- (2) The difference between the two prices mentioned in the preceding item significantly compresses the profit space of the transaction counterparty, and is adequate to exclude or restrict the transaction counterparty of equivalent efficiency from carrying out effective competition in the relevant market.

	<p>Article 38</p> <p>Where a business operator with market dominance satisfies any of the following circumstances, the people’s court may preliminarily rule that the business operator constitutes "selling products at a price below cost" as stipulated in Item (2), Paragraph 1, Article 22 of the Anti-monopoly Law:</p> <p>(1) The business operator sells products at a price lower than the average variable costs or average avoidable costs continuously for a long period of time; or</p> <p>(2) The business operator sells products at a price higher than the average variable costs or the average avoidable costs but lower than the average total costs continuously for a long period of time, and there is other evidence to prove that the business operator has clear intent to exclude or restrict other business operators of equivalent efficiency from carrying out effective competition in the relevant market.</p> <p>For determination that the business operator of an internet platform sells products at a price lower than cost, the multilateral costs involved in the said internet platform services and the relationship shall also be considered.</p> <p>Under any of the following circumstances, the people’s court may deem that the conduct of a business operator constitutes a proper reason stipulated in Item (2), Paragraph 1, Article 22 of the Anti-monopoly Law:</p> <p>(1) low-price disposal of fresh products, seasonal products, obsolete products, products which will soon expire their shelf life or overstocked products etc.;</p> <p>(2) low-price sale of products for the purpose of debt repayment, change of business, closedown etc.;</p> <p>(3) low-price promotion within a reasonable period for the purpose of promoting new products or developing new business; or</p> <p>(4) any other reason which can prove that the business operator’s conduct is proper.</p>
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Article 39

Where a business operator with market dominance satisfies all of the following criteria, the people's court may preliminarily rule that the business operator has "refused to trade with the transaction counterparty" stipulated in Item (3), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) the business operator directly refuses to trade with the transaction counterparty or proposes transaction conditions which are unacceptable to the transaction counterparty, resulting in the failure to conclude a transaction;
- (2) it is economically, technically and legally feasible for the business operator to trade with the transaction counterparty; and
- (3) the act of refusing to trade obviously eliminates or restricts effective competition in the upstream market or downstream market.

Where a business operator with market dominance refuses to make its products, platform or software system etc. compatible with the specific products, platforms or software systems etc. provided by other business operators without proper reasons, or refuses to open its technologies, data or platform interface, the people's court may rule pursuant to the provisions of Item (3), Paragraph 1, Article 22 of the Anti-monopoly Law taking into account the following factors:

- (1) the economic, technical and legal feasibility of the business operator's implementation of compatibility or opening of its technologies, data and platform interface;
- (2) the substitutability of its products, platform or software system etc. and the rebuilding costs of platform or software system;
- (3) the degree of dependence of other business operators on the business operator's products, platform or software system etc. for effective competition to be carried out in the upstream market or downstream market;
- (4) the impact of refusal of compatibility or openness on innovation and launch of new products;
- (5) whether the refusal of compatibility or openness substantially eliminates or restricts effective competition in the relevant market; and
- (6) the impact of implementation of compatibility or openness on the business operators' own business activities and legitimate rights and interests.

Under any of the following circumstances, the people's court may determine that the conduct of a business operator is justified as provided for in Item (3), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) the business operator is unable to carry out a transaction or the transaction terms or results are evidently unfair due to objective reasons such as force majeure and change in circumstances;
- (2) the transaction counterparty loses or may lose the ability to perform the transaction due to serious deterioration of business conditions, transfer of assets or surreptitious withdrawal of funds to evade debts, or has poor credit records or has lost commercial goodwill, which affects the security of the transaction;
- (3) transaction with the transaction counterparty will seriously undermine the legitimate interests of the business operator;
- (4) the transaction counterparty fails to raise or refuses to accept the appropriate transaction terms, or fails to comply with the reasonable requests raised by the business operator; and
- (5) any other reasons which can prove that the business operator's conduct is justified.

Article 40

Where a business operator with market dominance meets all of the following criteria, the people's court may preliminarily rule that it has "restricted its transaction counterparties to trade only with the business operator or with a business operator designated by the business operator" as stipulated in Item (4), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) the business operator directly restricts or restricts its transaction counterparties in a disguised form such as setting transaction conditions to trade only with it or with a business operator designated by it, or restricts its transaction counterparties not to trade with a specific business operator; and
- (2) the act of restricting transaction eliminates or restricts competition in the relevant market.

To determine whether the act of restricting transaction eliminates or restricts competition, the following factors may be considered comprehensively:

- (1) the market coverage rate and duration of the transaction;
- (2) whether the act of restricting transaction raises the barriers to market entry or increases the costs of competitors, resulting in a market blockade effect;
- (3) the substitutability of the business operator using the platform targeted by the transaction, the use of multiple internet platforms by the platform users, and the costs for switching to other internet platforms when the operator of the internet platform is involved; and
- (4) any other factors which need to be considered.

Under any of the following circumstances, the people's court may determine that the conduct in question constitutes a legitimate reason stipulated in Item (4), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) it is necessary for protecting the interests of the transaction counterparties and consumers;
- (2) it is necessary for satisfying product safety requirements;
- (3) it is necessary for protecting intellectual property or data security;
- (4) it is necessary for protecting the specific inputs for the transaction;
- (5) it is necessary for maintaining the reasonable business model of the internet platform;
- (6) it is necessary for preventing improper conduct which has a negative impact on the internet platform as a whole; and
- (7) any other reasons which can prove that the business operator's conduct is justified.

Article 41

Where a business operator with market dominance meets all of the following criteria, the people's court may preliminarily rule that it has constituted "tying" stipulated in Item (5), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) the business operator sells its own independent goods in bundles;
- (2) the business operator forces, directly or under any pretext, the transaction counterparties to accept the tied goods; an
- (3) the tying acts eliminate or restrict competition in the relevant market.

"Any other unreasonable transaction conditions" stipulated in Item (5), Paragraph 1, Article 22 of the Anti-monopoly Law shall include the following circumstances:

- (1) impose unreasonable restrictions on transaction conditions, service methods, payment methods, after-sale protection etc.;
- (2) seek fees or benefits which lack reasonable basis in addition to the transaction price; and
- (3) the transaction conditions of no relevance with the transaction involved.

Under any of the following circumstances, the people's court may determine that the act in question constitutes a legitimate reason stipulated in Item (5), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) comply with proper transaction practices, consumption habits or business practices;
- (2) it is necessary for protecting the interests of the transaction counterparties and consumers;
- (3) it is necessary for satisfying product safety requirements;
- (4) it is necessary for implementation of a specific technology;
- (5) it is necessary for improving the quality of the goods and ensuring the use value or efficiency of the goods;
- (6) it is necessary for maintenance of normal operation of the internet platform; and
- (7) any other reasons which can prove that the business operator's conduct is justified.

Article 42

Where a business operator with market dominance meets all of the following criteria, the people’s court may preliminarily rule that it has constituted "differential treatment for transaction counterparties with identical conditions in terms of transaction conditions such as transaction price" as stipulated in Item (6), Paragraph 1, Article 22 of the Anti-monopoly Law:

- (1) the business operator implements differential treatment for its transaction counterparties in terms of transaction conditions such as transaction price;
- (2) compared with other transaction counterparties of the business operator, the said transaction counterparties have no substantive difference in terms of transaction security, transaction costs, scale and capabilities, credit status, transaction phase, transaction duration etc., which may affect the transaction; and
- (3) the differential treatment eliminates or restricts competition in the relevant market.

To determine whether the differential treatment has the effect of eliminating or restricting competition, the following factors may be considered comprehensively:

- (1) whether the differential treatment eliminates or restricts competition between the business operator and its competitors;
- (2) whether the differential treatment causes the transaction counterparties to be at a competitive disadvantage;
- (3) whether the differential treatment harms the interests of consumers and the public;
- (4) whether the differential treatment will increase the total output of the goods or the number of consumers; and
- (5) any other factors which need to be considered.

Under any of the following circumstances, the People’s Court may determine that a legitimate reason stipulated in Item (6), Paragraph 1, Article 22 of the Anti-monopoly Law is constituted:

- (1) implement differential treatment in accordance with the actual needs of its transaction counterparties, and conform to proper transaction practices, consumption habits or business practices;
- (2) carry out promotion activities for special users within a reasonable period of time; and
- (3) any other reason which can prove that the conduct is legitimate.

	<p>Article 43</p> <p>Where a business operator using a platform files a lawsuit as a plaintiff, alleging that the internet platform operator has abused its market dominance or carried out other illegal activities by making use of data and algorithms, technologies and platform rules, the people’s court may, according to the claims of the plaintiff and the specific circumstances of the case, handle the case as follows:</p> <p>(1) where the internet platform operator restricts business operators using the platform to trade through punitive or incentive measures, imposes unreasonable transaction conditions on the business operators using the platform, implements differential treatment on transaction conditions such as transaction price for the business operators using the platform with the same conditions, provides products on the internet platform that are competitive with the business operators using the platform and gives preferential treatment to itself, and the plaintiff alleges that the internet platform operator abuses its market dominance, the case shall be reviewed and determined in accordance with the provisions of Paragraph 1, Article 22 of the Anti-monopoly Law; and</p> <p>(2) where the plaintiff alleges that the internet platform operator which has committed the aforesaid act violates the provisions of Article 35 of the E-commerce Law, the case shall be handled in accordance with such provisions.</p>
<p>Article 14</p> <p>Where the defendant has implemented a monopoly conduct and causes the plaintiff to suffer losses, the people’s court may, based on the claims of the plaintiff and the facts investigated, rule pursuant to the law that the defendant shall bear civil liability such as cessation of infringement, compensation of losses etc.</p> <p>The People's Court may, based on the plaintiff's request, include reasonable expenses incurred by the plaintiff for investigation and curbing of the monopoly in the scope of losses for compensation.</p>	<p>Article 44</p> <p>Where the defendant has implemented a monopoly conduct and causes the plaintiff to suffer losses, the people’s court may, based on the claims of the plaintiff and the facts investigated, rule pursuant to the law that the defendant shall bear civil liability such as cessation of infringement, compensation of losses etc.</p> <p>Where the ruling that the defendant ceases the alleged monopoly is insufficient to eliminate the effect of exclusion or restriction of competition, the people’s court may, based on the claims of the plaintiff and the specific circumstances of the case, order the defendant to bear the legal liability of making specific act to resume competition.</p>

	<p>Article 45</p> <p>The losses suffered by the plaintiff due to the alleged monopoly shall include direct losses and reduced obtainable gains.</p> <p>For determination of losses suffered by the plaintiff due to the alleged monopoly, the following factors may be referred to:</p> <p>(1) product prices, operating costs, profits, market shares etc in the relevant markets prior to implementation of the alleged monopoly, or after implementation of the alleged monopoly and during the course of implementation thereof;</p> <p>(2) product prices, operating costs, profits etc. in comparable markets which are not affected by the monopoly;</p> <p>(3) product prices, operating costs, profits, market shares etc. of comparable business operators which are not affected by the monopoly; and</p> <p>(4) any other factors which can reasonably prove that the plaintiff has suffered losses due to the alleged monopoly.</p> <p>Where the plaintiff has evidence to prove that the alleged monopoly has caused it losses but the amount is difficult to be determined, the People’s Court may, based on the plaintiff’s assertion and the evidence of the case, determine a reasonable compensation amount, taking into account the nature, extent, duration and gains derived etc. of the alleged monopoly.</p> <p>Where the plaintiff requests for compensation of losses by the defendant, and the defendant is able to prove that the plaintiff has transferred all or part of the losses suffered to others, the People’s Court may, when determining the compensation amount, deduct the transferred losses.</p>
<p>Article 14</p> <p>Where the defendant has implemented a monopoly conduct and causes the plaintiff to suffer losses, the people’s court may, based on the claims of the plaintiff and the facts investigated, rule pursuant to the law that the defendant shall bear civil liability such as cessation of infringement, compensation of losses etc.</p> <p>The People's Court may, based on the plaintiff's request, include reasonable expenses incurred by the plaintiff for investigation and curbing of the monopoly in the scope of losses for compensation.</p>	<p>Article 46</p> <p>The People's Court may, based on the plaintiff's claims and specific facts of the case, include reasonable expenses incurred by the plaintiff for investigation and curbing of the monopoly in the scope of losses for compensation.</p>

	<p>Article 47</p> <p>Where multiple alleged monopolies are combined and cause indivisible overall losses to the plaintiff in the same relevant market, the People’s Court shall take into account the overall losses when determining the losses.</p> <p>Where multiple alleged monopolies are independent and cause losses to the plaintiff in different relevant markets, the People’s Court may take into account the losses separately when determining the losses.</p>
	<p>Article 48</p> <p>Where a business operator participating in a horizontal monopoly agreement files a claim for compensation of losses during the period of participation in the agreement against the defendant other business operators which conclude and implement the said agreement pursuant to the provisions of Article 60 of the Anti-monopoly Law, the People’s Court shall not support the claim.</p>
<p>Article 15</p> <p>Where the contract contents, articles of association of the industry association etc. violate the mandatory provisions of the Anti-monopoly Law or other laws and administrative regulations, the People’s Court shall rule pursuant to the law that it is invalid.</p>	<p>Article 49</p> <p>Where the contract contents, articles of association of the industry association, resolution or decision, etc. involved in the alleged monopolistic conduct violate the mandatory provisions of the Anti-monopoly Law or other laws and administrative regulations, and the parties concerned claim that the contract, articles of association, resolution or decision, etc. are invalid on such basis, the People’s Court shall examine and determine in accordance with the provisions of Article 153 of the <i>Civil Code</i>.</p> <p>Where certain terms in the contracts, the articles of association of the industry association, and the resolutions and decisions involved in the alleged monopoly are invalid due to their violation of the mandatory provisions of the Anti-Monopoly Law or other laws and administrative regulations, and the party concerned alleges that other terms which are closely related to such certain terms and do not have independent significance or other terms which substantially serve the implementation of the alleged monopoly are invalid as a result thereof, the people’s court shall support the assertion.</p>

<p>Article 16</p> <p>The limitation of action for claiming damages arising from a monopoly shall commence from the date on which the plaintiff knows or ought to know the damage to its rights and interests.</p> <p>Where the plaintiff reports the alleged monopoly to the anti-monopoly law enforcement agency, the limitation of action shall be suspended from the date of the report. Where the anti-monopoly law enforcement agency decides not to file the case, decides to revoke the case or decides to terminate the investigation, the limitation of action shall re-commence from the date on which the plaintiff knows or ought to know the decision not to file the case, revocation of the case or termination of investigation. Where the anti-monopoly law enforcement agency determines that a monopoly is constituted upon investigation, the limitation of action shall re-commence from the date on which the plaintiff knows or ought to know that a handling decision by an anti-monopoly law enforcement agency affirming constitution of a monopoly takes legal effect.</p> <p>Where the alleged monopoly has taken place for more than two years consecutively at the time of filing of lawsuit by the plaintiff, and the defendant raises a defense of limitation of action, compensation for damages shall be computed by reckoning back two years before the date on which the plaintiff files the lawsuit with the People's Court.</p>	<p>Article 50</p> <p>The limitation of action for claiming damages arising from a monopoly shall commence from the date on which the plaintiff knows or ought to know the damage to its rights and interests and the obligor.</p> <p>Where the plaintiff reports the alleged monopoly to the anti-monopoly law enforcement agency, the limitation of action shall be suspended from the date of the report. Where the anti-monopoly law enforcement agency decides not to file the case, decides to revoke the case or decides to terminate the investigation, the limitation of action shall re-commence from the date on which the plaintiff knows or ought to know the decision not to file the case, revocation of the case or termination of investigation. Where the anti-monopoly law enforcement agency determines that a monopoly is constituted upon investigation, the limitation of action shall re-commence from the date on which the plaintiff knows or ought to know that a handling decision by an anti-monopoly law enforcement agency affirming constitution of a monopoly is confirmed to take legal effect.</p> <p>Where three years have elapsed since the plaintiff knows or ought to know the damage to its rights and interests and the obligor, if the alleged monopoly is still continuing at the time of filing the lawsuit, and the defendant raises a defense of limitation of action, compensation for damages shall be computed by reckoning back three years before the date on which the plaintiff files the lawsuit with the People's Court.</p> <p>Where 20 years have elapsed since the date of the damage, the People's Court shall deal with the case in accordance with the provisions of the second paragraph of Article 188 of the Civil Code.</p>
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	<p>Article 51</p> <p>The People’s Court shall apply the laws effective at the time of occurrence of the alleged monopoly in the trial of civil monopoly cases. Where an alleged monopoly has occurred before the effectiveness of the Decision of the Standing Committee of the National People’s Congress on Amending the Anti-monopoly Law of the People’s Republic of China and continues after the said Decision comes into force, the amended Anti-monopoly Law shall apply.</p>
	<p>Article 52</p> <p>These Provisions shall come into force as of mm/dd/yy, <i>The Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Civil Dispute Cases Arising from Monopolistic Conduct</i> shall be repealed simultaneously.</p> <p>After the effectiveness of these Provisions, these Provisions shall apply to the cases of first instance and second instance that are heard by the People’s Court; these Provisions shall not apply to the cases for which effective judgments or rulings have been made before the effectiveness of these Provisions but the parties concerned apply for retrial or retrial under the trial supervision procedures.</p>

《关于审理垄断民事纠纷案件适用法律若干问题的规定（公开征求意见稿）2022》vs《关于审理因垄断行为引发的民事纠纷案件适用法律若干问题的规定 2012》

立方反垄断与合规团队

<p>《最高人民法院关于审理因垄断行为引发的民事纠纷案件适用法律若干问题的规定》 (2012年5月3日最高人民法院法释[2012]第5号公布，后于2020年12月29日发布修订版)^[1]</p>	<p>《最高人民法院关于审理垄断民事纠纷案件适用法律若干问题的规定（公开征求意见稿）》 (最高人民法院2022年11月18日征求意见稿)</p>
<p>第一条 本规定所称因垄断行为引发的民事纠纷案件（以下简称垄断民事纠纷案件），是指因垄断行为受到损失以及因合同内容、行业协会的章程等违反反垄断法而发生争议的自然人、法人或者其他组织，向人民法院提起的民事诉讼案件。</p>	<p>第一条 本规定所称垄断民事纠纷案件，是指因垄断行为受到损失以及因合同内容或者经营者团体的章程、决议、决定等违反反垄断法而发生争议的自然人、法人或者非法人组织，依据反垄断法向人民法院提起民事诉讼的案件。 本规定所称经营者团体，包括行业协会等由两个或者两个以上经营者为了实现共同目的而组成的结合体或者联合体。</p>
<p>第二条 原告直接向人民法院提起民事诉讼，或者在反垄断执法机构认定构成垄断行为的处理决定发生法律效力后向人民法院提起民事诉讼，并符合法律规定的其他受理条件的，人民法院应当受理。</p>	<p>第二条 原告依据反垄断法直接向人民法院提起民事诉讼，或者在反垄断执法机构认定构成垄断行为的处理决定作出后向人民法院提起民事诉讼，并符合法律规定的其他受理条件的，人民法院应当予以受理。</p>
<p>第三条 第一审垄断民事纠纷案件，由省、自治区、直辖市人民政府所在地的市、计划单列市中级人民法院以及最高人民法院指定的中级人民法院管辖。 经最高人民法院批准，基层人民法院可以管辖第一审垄断民事纠纷案件。</p>	<p>第五条 第一审垄断民事纠纷案件，由知识产权法院和最高人民法院指定的中级人民法院管辖。</p>

[1] 因《最高人民法院关于审理垄断民事纠纷案件适用法律若干问题的规定（公开征求意见稿）》系在2012年版《最高人民法院关于审理因垄断行为引发的民事纠纷案件适用法律若干问题的规定》基础上起草，因此以2012年版司法解释与此次征求意见稿进行对比。

<p>第四条 垄断民事纠纷案件的地域管辖，根据案件具体情况，依照民事诉讼法及相关司法解释有关侵权纠纷、合同纠纷等的管辖规定确定。</p>	<p>第六条 垄断民事纠纷案件的地域管辖，根据案件具体情况，依照民事诉讼法及相关司法解释有关侵权纠纷、合同纠纷等的管辖规定确定。</p>
	<p>第七条 中华人民共和国境外的垄断行为对境内市场竞争产生排除、限制影响，当事人依据反垄断法对在中华人民共和国境内没有住所的被告提起民事诉讼的，由境内市场竞争受到直接实质性影响的结果发生地的人民法院管辖；结果发生地难以确定的，由与纠纷存在其他适当联系的地点或者原告住所地的人民法院管辖。</p>
<p>第六条 两个或者两个以上原告因同一垄断行为向有管辖权的同一法院分别提起诉讼的，人民法院可以合并审理。</p> <p>两个或者两个以上原告因同一垄断行为向有管辖权的不同法院分别提起诉讼的，后立案的法院在得知有关法院先立案的情况下，应当在七日内裁定将案件移送先立案的法院；受移送的法院可以合并审理。被告应当在答辩阶段主动向受诉人民法院提供其因同一行为在其他法院涉诉的相关信息。</p>	<p>第九条 两个或者两个以上原告因同一被诉垄断行为向有管辖权的同一人民法院分别提起诉讼的，人民法院可以合并审理。</p> <p>两个或者两个以上原告因同一被诉垄断行为向有管辖权的不同人民法院分别提起诉讼的，后立案的人民法院发现其他有管辖权的人民法院已先立案的，裁定将案件移送先立案的人民法院；受移送的法院可以合并审理。</p> <p>被告应当在答辩阶段主动向受诉人民法院提供其因同一被诉垄断行为在其他人民法院涉诉的相关信息。</p>
<p>第七条 被诉垄断行为属于反垄断法第十三条第一款第（一）项至第（五）项规定的垄断协议的，被告应对该协议不具有排除、限制竞争的效果承担举证责任。</p>	
	<p>第十条 同一原告应当就同一被诉垄断行为在一个案件中提起诉讼。无正当理由而根据影响地域、持续时间、实施场合、损害范围等因素对同一被诉垄断行为予以拆分，分别提起数个诉讼的，人民法院仅审理其中最先受理的诉讼，对其余起诉不予受理；已经受理的，裁定驳回起诉。</p>

	<p>第十一条 反垄断执法机构认定构成垄断行为的处理决定在法定期限内未被提起行政诉讼或者已为人民法院生效裁判所确认，原告在相关垄断民事纠纷案件中据此主张该垄断行为成立的，无需再行举证证明，但有相反证据足以推翻的除外。必要时，人民法院可以要求作出处理决定的反垄断执法机构对该</p>
<p>第十一条 证据涉及国家秘密、商业秘密、个人隐私或者其他依法应当保密的内容的，人民法院可以依职权或者当事人的申请采取不公开开庭、限制或者禁止复制、仅对代理律师展示、责令签署保密承诺书等保护措施。</p>	
<p>第十二条 当事人可以向人民法院申请一至二名具有相应专门知识的人员出庭，就案件的专门性问题进行说明。</p> <p>第十三条 当事人可以向人民法院申请委托专业机构或者专业人员就案件的专门性问题作出市场调查或者经济分析报告。经人民法院同意，双方当事人可以协商确定专业机构或者专业人员；协商不成的，由人民法院指定。</p> <p>人民法院可以参照民事诉讼法及相关司法解释有关鉴定结论的规定，对前款规定的市场调查或者经济分析报告进行审查判断。</p>	<p>第十二条 当事人可以向人民法院申请一至二名具有案件所涉领域、经济学等专门知识的人员出庭，就案件的专门性问题进行说明。</p> <p>当事人可以向人民法院申请委托专业机构或者专业人员就案件的专门性问题出具市场调查或者经济分析意见。该专业机构或者专业人员可以由双方当事人协商确定；协商不成的，由人民法院指定。人民法院可以参照民事诉讼法及相关司法解释有关鉴定意见的规定，对该专业机构或者专业人员出具的市场调查或者经济分析意见进行审查判断。</p> <p>一方当事人就案件的专门性问题自行委托有关专业机构或者专业人员出具市场调查或者经济分析意见，该意见缺乏可靠的事实、数据或者其他必要基础资料佐证，或者缺乏可靠的分析方法，或者另一方当事人提出证据或者理由足以反驳的，人民法院不予采信。</p>
	<p>第十三条 经营者实施垄断行为侵害社会公共利益，设区的市级以上人民检察院依法提起公益诉讼的，适用《最高人民法院、最高人民检察院关于检察公益诉讼案件适用法律若干问题的解释》。但是，本规定对垄断民事纠纷案件管辖有特别规定的，适用本规定。</p>

	<p>第十四条 反垄断执法机构对被诉垄断行为正在进行调查的，人民法院可以根据案件具体情况，裁定中止诉讼。</p>
	<p>第十五条 人民法院审理民事纠纷案件，发现当事人相关行为涉嫌违反反垄断法，或者认定被诉垄断行为违反反垄断法且可能需要予以行政处罚，反垄断执法机构尚未调查的，可以向反垄断执法机构移送涉嫌违法行为线索。</p>
	<p>第十六条 原告主张被诉垄断行为违反反垄断法的，一般应当界定被诉垄断行为所影响的相关市场并提供证据或者说明理由。</p> <p>原告以被诉垄断行为人在相关市场的市场份额为由主张其具有显著的市场力量或者市场支配地位的，应当界定相关市场并提供证据或者说明理由。</p> <p>原告提供证据足以直接证明被诉垄断协议的经营者具有显著的市场力量，被诉滥用市场支配地位的经营者具有市场支配地位，或者被诉垄断行为具有排除、限制竞争效果的，原告可以不再对相关市场的界定承担证明责任。</p> <p>被诉垄断行为属于反垄断法第十七条第一项至第五项和第十八条第一款第一项、第二项规定的情形的，原告对相关市场界定不承担证明责任。</p>
	<p>第十七条 人民法院界定经营者在一定时期内就特定商品或者服务（以下统称商品）进行竞争的相关商品市场和相关地域市场，可以根据案件具体情况，以被诉垄断行为直接涉及的特定商品为基础，从需求者角度进行需求替代分析；供给替代对经营者行为产生的竞争约束类似于需求替代的，也可以从供给者角度进行供给替代分析。</p> <p>人民法院界定相关商品市场和相关地域市场，可以采用假定垄断者测试的分析方法，一般选择使用价格上涨的假定垄断者测试方法；经营者之间的竞争主要表现为质量、多样性、创新等非价格竞争的，可以选择质量下降、成本上升等假定垄断者测试方法。</p>

	<p>第十八条 人民法院从需求替代的角度分析界定相关商品市场时，一般根据需求者对于商品特性、功能和用途的需求、质量的认可、价格的接受以及获取的难易程度等因素，确定由需求者认为具有较为紧密替代关系的一组或者一类商品所构成的市场为相关商品市场。从供给替代的角度分析界定相关商品市场时，可以综合考虑其他经营者进入市场的意图和能力、承担的成本与风险、克服的市场障碍、需要的时间等因素。</p> <p>分析界定互联网平台所涉相关商品市场时，结合被诉垄断行为的特点、产生或者可能产生排除、限制竞争效果的具体情况、互联网平台的类型等因素，可以选择根据特定互联网平台整体界定相关商品市场，也可以选择依据该互联网平台与被诉垄断行为最相关一边的商品界定相关商品市场。特定互联网平台存在跨边网络效应，并给该互联网平台经营者施加了足够的竞争约束的，可以依据该互联网平台整体界定相关商品市场，也可以根据跨边网络效应所涉及的多边市场分别界定多个相关商品市场，并考虑各个相关商品市场之间的相互关系和影响。</p>
	<p>第十九条 人民法院从需求替代的角度分析界定相关地域市场时，可以综合考虑需求者因商品价格或者其他竞争因素的变化而转向其他地域购买商品的情况、商品的运输成本和运输特征、多数需求者选择商品的实际区域和主要经营者的销售分布、地域间的市场障碍、特定区域需求者偏好等因素。</p> <p>从供给替代的角度分析界定相关地域市场时，可以综合考虑其他地域的经营者对商品价格等竞争因素的变化作出的反应、其他地域的经营者供应或者销售相关商品的及时性和可行性等因素。</p> <p>分析界定互联网平台所涉相关地域市场，可以重点考虑多数需求者选择商品的实际区域、需求者的语言偏好和消费习惯、相关法律法规的要求、其他地域竞争者的现状及其进入市场的及时性等因素。</p>
	<p>第二十条 人民法院认定反垄断法第十六条规定的其他协同行为，应当综合考虑下列因素：</p> <ul style="list-style-type: none"> （一）经营者的市场行为是否具有一致性或者相对一致性； （二）经营者之间是否进行过意思联络或者信息交流； （三）相关市场的市场结构、竞争状况、市场变化等情况； （四）经营者能否对行为的一致性或者相对一致性作出合理解释。 <p>原告提供前款第一项和第二项的初步证据或者第一项和第三项的初步证据，能够证明经营者存在协同行为的可能性较大的，实施被诉垄断行为的经营者应当提供证据或者进行充分说明，对其行为的一致性或者相对一致性作出合理解释；不能作出合理解释的，人民法院可以认定协同行为成立。</p> <p>本条所称合理解释，包括经营者系基于对市场和竞争状况变化等而独立实施相关行为。</p>

	<p>第二十一条 反垄断法第十七条规定的具有竞争关系的经营者，是指在商品生产、经营过程中处于同一阶段、提供具有较为紧密替代关系的商品、独立经营决策并承担法律责任的两个以上实际或者潜在的经营者。</p> <p>两个以上经营者应当视为单一经济实体的，不构成前款所称具有竞争关系的经营者。具体判断时，人民法院应当结合具体案情，考虑其中特定经营者对其他经营者是否具有控制权或者能够施加决定性影响、该两个以上经营者是否被同一第三方控制或者施加决定性影响等因素。</p>
	<p>第二十二条 具有竞争关系的经营者利用数据、算法、技术等手段进行意思联络或者信息交流，或者利用数据、算法、技术、平台规则等手段实现行为一致性或者相对一致性，达成、实施被诉垄断协议的，人民法院可以依照反垄断法第十七条的规定审查认定。</p>
	<p>第二十三条 被仿制药专利权利人与仿制药申请人达成、实施的协议同时具备下列条件的，人民法院可以初步认定其构成反垄断法第十七条规定的垄断协议：</p> <p>（一）被仿制药专利权利人给予或者承诺给予仿制药申请人高额的金钱或者其他形式的利益补偿；</p> <p>（二）仿制药申请人承诺不挑战被仿制药专利权的有效性或者延迟进入被仿制药相关市场。</p> <p>有证据证明前款所称的利益补偿仅系为弥补被仿制药专利相关纠纷解决成本或者具有其他正当理由的，人民法院可以认定其不构成反垄断法第十七条规定的垄断协议。</p>
	<p>第二十四条 互联网平台经营者与平台内经营者的协议要求平台内经营者在该互联网平台上提供与其他交易渠道相同或者更优惠交易条件的，根据原告的诉讼请求和具体案情，人民法院可以区别情形作如下处理：</p> <p>（一）互联网平台经营者与平台内经营者之间具有竞争关系的，依照反垄断法第十七条的规定审查认定；</p> <p>（二）互联网平台经营者与平台内经营者之间不具有竞争关系的，依照反垄断法第十八条的规定审查认定；</p> <p>（三）原告主张互联网平台经营者滥用市场支配地位的，依照反垄断法第二十二条、电子商务法第二十二条的规定审查认定；</p> <p>（四）原告主张互联网平台经营者违反电子商务法第三十五条的规定的，依照该条规定处理。</p>

	<p>第二十五条 被诉垄断行为属于反垄断法第十八条第一款第一项、第二项规定的垄断协议的，应当由被告对该协议不具有排除、限制竞争效果承担举证责任。</p> <p>被诉垄断行为属于反垄断法第十八条第一款第三项规定的垄断协议的，应当由原告对该协议具有排除、限制竞争效果承担举证责任。</p> <p>被诉垄断行为属于反垄断法第十八条第一款规定的垄断协议，被告能够证明其在相关市场的市场份额低于国务院反垄断执法机构规定的标准并符合国务院反垄断执法机构规定的其他条件的，应当由原告进一步提供证据证明该协议具有排除、限制竞争效果。</p>
	<p>第二十六条 人民法院依照反垄断法第十八条第一款的规定审查认定被诉垄断行为是否具有排除、限制竞争效果时，可以综合考虑下列因素：</p> <p>（一）被告在相关市场是否具有显著的市场力量；</p> <p>（二）该协议是否具有提高市场进入壁垒、阻碍更有效率的经销商或者经销模式、限制品牌间竞争等不利竞争效果；</p> <p>（三）协议是否具有防止搭便车、促进品牌间竞争或者品牌内竞争、维护品牌形象、提升售前或者售后服务水平、促进创新等有利竞争效果。</p> <p>被告在相关市场具有显著的市场力量，在案证据能够证明的有利竞争效果不足以超过不利竞争效果的，人民法院应当认定该协议具有排除、限制竞争效果。</p>
	<p>第二十七条 被告能够证明被诉协议具有下列情形之一的，人民法院可以初步认定该协议不构成反垄断法第十八条第一款规定的垄断协议：</p> <p>（一）该协议中的交易相对人系经营者的代理人且不承担任何实质性商业或者经营风险；</p> <p>（二）被告在相关市场的市场份额低于国务院反垄断执法机构规定的标准并符合国务院反垄断执法机构规定的其他条件；</p> <p>（三）为激励交易相对人推广新产品而在合理期间内实施该协议。</p>

	<p>第二十八条 经营者、经营者团体等组织其他经营者达成、实施垄断协议，给原告造成损失，原告依据民法典第一千一百六十八条的规定主张实施组织行为的经营者、经营者团体等与达成、实施垄断协议的其他经营者承担连带责任的，人民法院应当予以支持。</p> <p>经营者、经营者团体等为其他经营者达成、实施垄断协议提供实质性帮助，给原告造成损失，原告依据民法典第一千一百六十九条的规定主张提供帮助行为的经营者、经营者团体等与达成、实施垄断协议的其他经营者承担连带责任的，人民法院应当予以支持。但是，经营者、经营者团体等能够证明其不知道且不应当知道其他经营者达成、实施垄断协议的除外。</p> <p>本条第一款所称组织，是指对垄断协议达成或者实施起到决定性、主导性作用的组建、领导、策划、操纵、指挥、发起等行为。</p> <p>本条第二款所称实质性帮助，是指对垄断协议达成或者实施具有直接、重要促进作用的引导产生违法意图、提供便利条件、充当信息渠道、帮助实施惩罚等行为。</p>
	<p>第二十九条 被诉垄断行为人依据反垄断法第二十条第一款第一项至第五项的规定提出抗辩的，应当提供证据证明如下事实：</p> <ul style="list-style-type: none"> （一）被诉垄断协议为实现相关目的或者效果所必需； （二）被诉垄断协议能够实现相关目的或者效果； （三）被诉垄断协议不会严重限制相关市场的竞争；
	<p>第三十条 反垄断法第二十二条第三款所称“经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件”，是指经营者可以在相当程度上不受竞争者及交易相对人的约束，自由决定商品价格、数量、质量、付款条件、交付方式、售后服务等交易条件。</p> <p>反垄断法第二十二条第三款所称“能够阻碍、影响其他经营者进入相关市场能力”，是指经营者相对于其他经营者具有显著的市场力量，能够排除或者延缓其他经营者在合理时间内进入相关市场，或者能够提高其他经营者的市场进入成本致使其难以开展有效竞争。</p> <p>反垄断法第二十三条和第二十四条所称的“经营者在相关市场的市场份额”，可以根据被诉垄断行为发生时经营者一定时期内的相关商品交易金额、交易数量、生产能力或者其他指标在相关市场中所占的比例确定。</p> <p>人民法院认定互联网平台经营者在相关市场的市场份额时，可以采用能够反映相关市场实际竞争状况的商品交易金额、用户数量、用户使用时长、访问</p>

<p>第八条 被诉垄断行为属于反垄断法第十七条第一款规定的滥用市场支配地位的，原告应当对被告在相关市场内具有支配地位和其滥用市场支配地位承担举证责任。</p> <p>被告以其行为具有正当性为由进行抗辩的，应当承担举证责任。</p>	<p>第三十一条 被诉垄断行为属于反垄断法第二十二条第一款规定的滥用市场支配地位的，原告应当对被告在相关市场内具有支配地位和被告滥用市场支配地位承担举证责任。被告以其行为具有正当性为由进行抗辩的，应当承担举证责任。</p>
<p>第十条 原告可以以被告对外发布的信息作为证明其具有市场支配地位的证据。被告对外发布的信息能够证明其在相关市场内具有支配地位的，人民法院可以据此作出认定，但有相反证据足以推翻的除外。</p>	<p>第三十二条 根据具体案件中相关市场的结构和实际竞争状况，结合日常生活经验和经济学常识，人民法院可以依据下列证据初步认定经营者在相关市场具有支配地位：</p> <p>（一）经营者在较长时间内维持明显高于市场竞争水平的价格且相关市场明显缺乏竞争、创新和新进入者；</p> <p>（二）经营者在较长时间内维持明显超过其他经营者的较高市场份额且相关市场明显缺乏竞争、创新和新进入者。</p> <p>被告对外发布的信息可以作为原告证明被告具有市场支配地位的初步证据。该信息能够证明被告在相关市场具有支配地位的，人民法院可以据此作出认定，但有相反证据足以推翻的除外。</p>
	<p>第三十条 反垄断法第二十二条第三款所称“经营者在相关市场内具有能够控制商品价格、数量或者其他交易条件”，是指经营者可以在相当程度上不受竞争者及交易相对人的约束，自由决定商品价格、数量、质量、付款条件、交付方式、售后服务等交易条件。</p> <p>反垄断法第二十二条第三款所称“能够阻碍、影响其他经营者进入相关市场能力”，是指经营者相对于其他经营者具有显著的市场力量，能够排除或者延缓其他经营者在合理时间内进入相关市场，或者能够提高其他经营者的市场进入成本致使其难以开展有效竞争。</p> <p>反垄断法第二十三条和第二十四条所称的“经营者在相关市场的市场份额”，可以根据被诉垄断行为发生时经营者一定时期内的相关商品交易金额、交易数量、生产能力或者其他指标在相关市场中所占的比例确定。</p> <p>人民法院认定互联网平台经营者在相关市场的市场份额时，可以采用能够反映相关市场实际竞争状况的商品交易金额、用户数量、用户使用时长、访问量、点击量、数据资产数量或者其他指标作为计算基准。</p>

<p>第九条 被诉垄断行为 属于公用企业或者其他依法具有独占地位的经营 者滥用市场支配地位的，人民法院可以根据市场结构和竞争状况的具体情况，认定被告在相关市场内具有支配地位，但有相反证据足以推翻的除外。</p>	<p>第三十三条 原告主张公用企业或者其他依法具有独占地位的经营 者滥用市场支配地位的，人民法院可以根据市场结构和竞争状况的具体情况，认定被告在相关市场具有支配地位，但有相反证据足以推翻的除外。</p>
	<p>第三十四条 依照反垄断法第二十三条的规定认定互联网平台经营 者的市场支配地位，人民法院可以综合考虑下列因素：</p> <ul style="list-style-type: none"> （一）互联网平台的商业模式及其经营者实际受到的竞争约束； （二）互联网平台经营者在相关市场的市场份额及该市场份额的持续时间； （三）互联网平台服务是否存在显著的网络效应、规模效应、范围效应等； （四）互联网平台经营者掌握的相关数据、算法、技术等情况； （五）互联网平台经营者对相邻市场或者在相邻市场的影响； （六）用户或者平台内经营者对互联网平台经营者的依赖程度及制衡能力、使用习惯、同时使用多个互联网平台的情况、转向其他互联网平台经营者的成本等； （七）其他互联网平台经营者进入相关市场的意愿、能力及所面临的规模要求、技术要求、法律限制等市场进入障碍； （八）相关市场的创新和技术变化情况； （九）其他需要考虑的因素。
	<p>第三十五条 依照反垄断法第二十三条的规定认定知识产权领域经营者的市场支配地位，人民法院可以综合考虑下列因素：</p> <ul style="list-style-type: none"> （一）特定知识产权的可替代性及替代性知识产权的数量； （二）利用该特定知识产权所提供的商品的可替代性及该商品的市场份额； （三）交易相对人对拥有该特定知识产权的经营者的制衡能力； （四）相关市场的创新和技术变化情况； （五）其他需要考虑的因素。

	<p>第三十六条 人民法院依照反垄断法第二十四条第一款第二项、第三项推定两个以上经营者共同具有市场支配地位，经营者有证据证明其符合下列情形之一的，可以推翻上述推定：</p> <p>（一）该两个以上经营者之间存在实质性竞争；</p> <p>（二）该两个以上经营者作为整体在相关市场受到来自其他经营</p>
	<p>第三十七条 人民法院认定反垄断法第二十二条第一款第一项规定的经营者“以不公平的高价销售商品或者以不公平的低价购买商品”，可以考虑下列因素：</p> <p>（一）经营者因该商品获得的利润是否明显高于竞争性市场中的合理资本收益率；</p> <p>（二）经营者确定的该商品的价格是否明显背离其经济价值；</p> <p>（三）经营者向交易相对人销售或者购买商品的价格是否明显高于或者低于该经营者在上下游市场中销售或者购买相同或者可比较商品的价格；</p> <p>（四）经营者向交易相对人销售或者购买商品的价格是否明显高于或者低于其他经营者在相同或者相似条件下销售或者购买相同商品或者可比较商品的价格；</p> <p>（五）经营者向交易相对人销售或者购买商品的价格是否明显高于或者低于该经营者在相同或者相似条件下的其他地域市场销售或者购买相同商品或者可比较商品的价格；</p> <p>（六）经营者向交易相对人销售商品的价格增长幅度是否明显高于该经营者成本增长幅度，或者购买商品的价格降低幅度明显高于交易相对人成本降低幅度。</p> <p>认定前款第四项、第五项所称相同或者相似条件，可以考虑交易渠道、交易模式、交易数量、交易环节、成本结构、供求状况、监管环境等因素。</p> <p>具有市场支配地位的经营者，同时具备下列条件的，人民法院可以初步认定其构成反垄断法第二十二条第一款第一项规定的经营者“以不公平的高价销售商品或者以不公平的低价购买商品”：</p> <p>（一）经营者向交易相对人销售或者购买商品的价格高于或者低于该经营者在上下游市场中销售或者购买相同或者可比较商品的价格；</p> <p>（二）前项所述两个价格之间的差值显著压缩交易相对人的利润空间，足以排除、限制同等效率的交易相对人在相关市场开展有效竞争。</p>

第三十八条 具有市场支配地位的经营者，符合下列情形之一的，人民法院可以初步认定其构成反垄断法第二十二条第一款第二项规定的“以低于成本的价格销售商品”：

（一）经营者在相当长期限内持续以低于平均可变成本或者平均可避免成本的价格销售商品；

（二）经营者在相当长期限内持续以高于平均可变成本或者平均可避免成本，但低于平均总成本的价格销售商品，且有其他证据证明其具有排除、限制同等效率的其他经营者在相关市场开展有效竞争的明确意图。

认定互联网平台经营者以低于成本的价格销售商品，还应当考虑该互联网平台服务所涉及的多边成本及其相互关系。

具有下列情形之一的，人民法院可以认定构成反垄断法第二十二条第一款第二项规定的正当理由：

（一）低价处理鲜活商品、季节性商品、淘汰商品、即将超过有效期限的商品或者积压商品等；

（二）因清偿债务、转产、歇业等低价销售商品；

（三）为推广新商品、发展新业务在合理期限内低价促销；

（四）能够证明行为具有正当性的其他理由。

第三十九条 具有市场支配地位的经营者，同时具备下列条件的，人民法院可以初步认定其构成反垄断法第二十二条第一款第三项规定的“拒绝与交易相对人进行交易”：

- （一）经营者直接拒绝与交易相对人交易或者提出交易相对人难以接受的交易条件致使无法达成交易；
- （二）经营者与交易相对人进行交易在经济、技术和法律上具有可行性；
- （三）拒绝交易行为明显排除、限制上游市场或者下游市场的有效竞争。

具有市场支配地位的经营者没有正当理由拒绝将其商品、平台或者软件系统等其他经营者提供的特定商品、平台或者软件系统等相兼容，或者拒绝开放其技术、数据、平台接口的，人民法院可以综合考虑下列因素，依照反垄断法第二十二条第一款第三项的规定予以认定：

- （一）该经营者实施兼容或者开放其技术、数据、平台接口在经济、技术、法律上的可行性；
- （二）商品、平台或者软件系统等的可替代性及平台或者软件系统的重建成本；
- （三）其他经营者在上游市场或者下游市场开展有效竞争对该经营者商品、平台或者软件系统等的依赖程度；
- （四）拒绝兼容或者开放对创新以及推出新商品的影响；
- （五）拒绝兼容或者开放是否实质性地排除、限制相关市场的有效竞争；
- （六）实施兼容或者开放对经营者自身经营活动和合法权益的影响。

具有下列情形之一的，人民法院可以认定构成反垄断法第二十二条第一款第三项规定的正当理由：

- （一）因不可抗力、情势变更等客观原因无法进行交易或者导致交易条件、结果明显不公平；
- （二）交易相对人具有经营状况严重恶化、转移财产或者抽逃资金以逃避债务等丧失或者可能丧失履行交易能力的情形，或者具有不良信用记录、丧失商业信誉等情形，影响交易安全；
- （三）与交易相对人交易将严重减损经营者的正当利益；
- （四）交易相对人未提出或者拒绝接受适当的交易条件，或者不遵守经营者提出的合理要求；
- （五）能够证明行为具有正当性的其他理由。

第四十条 具有市场支配地位的经营者，同时具备下列条件的，人民法院可以初步认定其构成反垄断法第二十二条第一款第四项规定的“限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易”：

（一）经营者直接限定或者以设定交易条件等方式变相限定交易相对人只能与其进行交易或者只能与其指定的经营者进行交易，或者限定交易相对人不得与特定经营者进行交易；

（二）限定交易行为排除、限制相关市场的竞争。

认定限定交易行为是否具有排除、限制竞争效果，可以综合考虑下列因素：

（一）限定交易的市场覆盖率及持续期限；

（二）限定交易是否提高市场进入壁垒或者增加竞争对手的成本，产生市场封锁效应；

（三）涉及互联网平台经营者时，限定交易所针对的平台内经营者的可替代性和平台用户使用多个互联网平台的情况及其转向其他互联网平台的成本；

（四）其他需要考虑的因素。

具有下列情形之一的，人民法院可以认定构成反垄断法第二十二条第一款第四项规定的正当理由：

（一）为保护交易相对人和消费者利益所必需；

（二）为满足产品安全要求所必需；

（三）为保护知识产权或者数据安全所必需；

（四）为保护针对交易进行的特定投入所必需；

（五）为维护互联网平台合理的商业模式所必需；

（六）为防止对互联网平台整体具有消极影响的不当行为所必需；

（七）能够证明行为具有正当性的其他理由。

第四十一条 具有市场支配地位的经营者，同时具备下列条件的，人民法院可以初步认定其构成反垄断法第二十二条第一款第五项规定的“搭售商品”：

- （一）经营者将各自独立的商品捆绑销售；
- （二）经营者强制或者变相强制交易相对人接受被搭售商品；
- （三）搭售行为排除、限制相关市场的竞争。

反垄断法第二十二条第一款第五项规定的“其他不合理的交易条件”，包括下列情形：

- （一）对交易条件、服务方式、付款方式、售后保障等附加不合理限制；
- （二）在交易价格之外索取缺乏合理依据的费用或者利益；
- （三）与所涉交易缺乏关联性的交易条件。

具有下列情形之一的，人民法院可以认定构成反垄断法第二十二条第一款第五项规定的正当理由：

- （一）符合正当的交易习惯、消费习惯或者商业惯例；
- （二）为保护交易相对人和消费者利益所必需；
- （三）为满足产品安全要求所必需；
- （四）为实施特定技术所必需；
- （五）为提升商品质量、保障商品使用价值或者效率所必需；
- （六）为维护互联网平台正常运行所必需；
- （七）能够证明行为具有正当性的其他理由。

第四十二条 具有市场支配地位的经营者，同时具备下列条件的，人民法院可以初步认定其构成反垄断法第二十二条第一款第六项规定的“对条件相同的交易相对人在交易价格等交易条件上实行差别待遇”：

（一）经营者对于交易相对人在交易价格等交易条件上实行差别待遇；

（二）与经营者的其他交易相对人相比，该交易相对人在交易安全、交易成本、规模和能力、信用状况、所处交易环节、交易持续时间等方面不存在影响交易的实质性差异；

（三）差别待遇行为排除、限制相关市场的竞争。

认定差别待遇是否具有排除、限制竞争效果，可以综合考虑下列因素：

（一）差别待遇是否排除、限制经营者与其竞争对手之间的竞争；

（二）差别待遇是否致使交易相对人处于不利竞争地位；

（三）差别待遇是否损害消费者利益和社会公共利益；

（四）差别待遇是否提高商品总产出或者增加消费者数量；

（五）其他需要考虑的因素。

具有下列情形之一的，人民法院可以认定构成反垄断法第二十二条第一款第六项规定的正当理由：

（一）根据交易相对人的实际需求实行差别待遇且符合正当的交易习惯、消费习惯或者商业惯例；

（二）针对特殊用户在合理期限内开展优惠活动；

（三）能够证明行为具有正当性的其他理由。

	<p>第四十三条 平台内经营者作为原告提起诉讼，主张互联网平台经营者利用数据和算法、技术以及平台规则等实施滥用市场支配地位或者其他违法行为，根据原告的诉讼请求和具体案情，人民法院可以区别情形作如下处理：</p> <p>（一）互联网平台经营者通过惩罚性或者激励性措施等限定平台内经营者交易、对平台内经营者附加不合理的交易条件、对条件相同的平台内经营者在交易价格等交易条件上实行差别待遇、在互联网平台上提供与平台内经营者相竞争的商品并对自身给予优惠待遇，原告主张该互联网平台经营者滥用市场支配地位的，依照反垄断法第二十二条第一款的规定审查认定；</p> <p>（二）原告主张实施前项行为的互联网平台经营者违反电子商务法第三十五条的规定的，依照该规定处理。</p>
<p>第十四条 被告实施垄断行为，给原告造成损失的，根据原告的诉讼请求和查明的事实，人民法院可以依法判令被告承担停止侵害、赔偿损失等民事责任。</p> <p>根据原告的请求，人民法院可以将原告因调查、制止垄断行为所支付的合理开支计入损失赔偿范围。（下移至第四十六条）</p>	<p>第四十四条 被告实施垄断行为，给原告造成损失的，根据原告的诉讼请求和查明的事实，人民法院可以依法判令被告承担停止侵害、赔偿损失等民事责任。</p> <p>判令被告停止被诉垄断行为并不足以消除排除、限制竞争效果的，根据原告的诉讼请求和具体案情，人民法院可以判令被告承担作出特定行为以恢复竞争的法律责任。</p>

	<p>第四十五条 原告因被诉垄断行为受到的损失包括直接损失和减少的可得利益。</p> <p>确定原告因被诉垄断行为受到的损失，可以参考下列因素：</p> <p>（一）被诉垄断行为实施之前或者结束以后与实施期间的相关市场的商品价格、经营成本、利润、市场份额等；</p> <p>（二）未受垄断行为影响的可比市场的商品价格、经营成本、利润等；</p> <p>（三）未受垄断行为影响的可比经营者的商品价格、经营成本、利润、市场份额等；</p> <p>（四）其他可以合理证明原告因被诉垄断行为所受损失的因素。</p> <p>原告有证据证明被诉垄断行为已经给其造成损失但数额难以确定的，人民法院可以根据原告的主张和案件证据，考虑被诉垄断行为的性质、程度、持续时间、获得利益的情况等因素，确定合理的赔偿数额。</p> <p>原告请求被告赔偿损失，被告能够证明原告已经将其所受损失全部或者部分转嫁给他人的，人民法院在确定赔偿数额时对于转嫁的损失可以予以扣减。</p>
<p>第十四条 被告实施垄断行为，给原告造成损失的，根据原告的诉讼请求和查明的事实，人民法院可以依法判令被告承担停止侵害、赔偿损失等民事责任。（在前第四十四条第一款）</p> <p>根据原告的请求，人民法院可以将原告因调查、制止垄断行为所支付的合理开支计入损失赔偿范围。</p>	<p>第四十六条 根据原告的诉讼请求和具体案情，人民法院可以将原告因调查、制止垄断行为所支付的合理开支计入损失赔偿范围。</p>

	<p>第四十七条 多个被诉垄断行为相互结合，在同一相关市场给原告造成难以分割的整体性损失的，人民法院在确定损失时应当整体考虑。</p> <p>多个被诉垄断行为各自独立、在不同的相关市场给原告造成损失的，人民法院在确定损失时可以分别考虑。</p>
	<p>第四十八条 横向垄断协议的经营者以达成、实施该协议的其他经营者为被告，依据反垄断法第六十条的规定请求赔偿其参与该协议期间的损失的，人民法院不予支持。</p>
<p>第十五条 被诉合同内容、行业协会的章程等违反反垄断法或者其他法律、行政法规的强制性规定的，人民法院应当依法认定其无效。</p>	<p>第四十九条 被诉垄断行为涉及的内容、行业协会章程、决议、决定等违反反垄断法或者其他法律、行政法规的强制性规定，当事人据此主张该合同、章程、决议、决定等无效的，人民法院依照民法典第一百五十三条的规定审查认定。</p> <p>被诉垄断行为所涉合同、行业协会章程、决议、决定中的部分条款因违反反垄断法或者其他法律、行政法规的强制性规定而无效，当事人主张与该部分条款具有紧密关联、不具有独立存在意义的其他条款，或者实质上服务于被诉垄断行为实施的其他条款一并无效的，人民法院可予支持。</p>

<p>第十六条 因垄断行为产生的损害赔偿请求权诉讼时效期间，从原告知道或者应当知道权益受侵害之日起计算。</p> <p>原告向反垄断执法机构举报被诉垄断行为的，诉讼时效从其举报之日起中断。反垄断执法机构决定不立案、撤销案件或者决定终止调查的，诉讼时效期间从原告知道或者应当知道不立案、撤销案件或者终止调查之日起重新计算。反垄断执法机构调查后认定构成垄断行为的，诉讼时效期间从原告知道或者应当知道反垄断执法机构认定构成垄断行为的处理决定发生法律效力之日起重新计算。</p> <p>原告起诉时被诉垄断行为已经持续超过二年，被告提出诉讼时效抗辩的，损害赔偿应当自原告向人民法院起诉之日起向前推算二年计算。</p>	<p>第五十条 因垄断行为产生的损害赔偿请求权诉讼时效期间，从原告知道或者应当知道权益受到损害以及义务人之日起计算。</p> <p>原告向反垄断执法机构举报被诉垄断行为的，诉讼时效从其举报之日起中断。反垄断执法机构决定不立案、撤销案件或者决定终止调查的，诉讼时效期间从原告知道或者应当知道不立案、撤销案件或者终止调查之日起重新计算。反垄断执法机构调查后认定构成垄断行为的，诉讼时效期间从原告知道或者应当知道反垄断执法机构认定构成垄断行为的处理决定确定发生法律效力之日起重新计算。</p> <p>原告知道或者应当知道权益受到损害以及义务人之日起超过三年，如果起诉时被诉垄断行为仍然持续，被告提出诉讼时效抗辩的，损害赔偿应当自原告向人民法院起诉之日起向前推算三年计算。自权利受到损害之日起超过二十年的，人民法院依照民法典第一百八十八条第二款的规定处理。</p>
	<p>第五十一条 人民法院审理垄断民事案件，适用被诉垄断行为发生时的法律。被诉垄断行为在《全国人民代表大会常务委员会关于修改〈中华人民共和国反垄断法〉的决定》施行之前发生，持续到该决定施行之后的，适用修改后的反垄断法。</p>
	<p>第五十二条 本规定自 年 月 日起施行。《最高人民法院关于审理因垄断行为引发的民事纠纷案件应用法律若干问题的规定》同时废止。</p> <p>本规定施行后，人民法院正在审理的第一审、第二审案件适用本规定；本规定施行前已经作出生效裁判，当事人申请再审或者依照审判监督程序再审的案件，不适用本规定。</p>

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