

Chinese E-Commerce Company Sues Amazon Europe Under China's Anti-Monopoly Law

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On August 22, 2023, the Guangzhou Intellectual Property Court announced that it has accepted a case brought by Mengbian, a Chinese e-commerce firm that operates an online store on the Amazon marketplace, against Amazon Europe for violation of China's Anti-Monopoly Law. Foreign companies should be aware that Chinese companies may attempt, and Chinese courts may accept, these types of cases despite the existence of forum selection and choice-of-law provisions in a contract.

According to the announcement, Mengbian alleges that Amazon Europe has a dominant position in the e-commerce market within Europe, and Amazon Europe abused that position by closing Mengbian's online store, blocking its account, and refusing to trade with it without justifiable reasons. At the time of the announcement, Amazon Europe had not been served with the complaint.

Background

It has been widely publicized that Amazon has removed a number of Chinese sellers from its platform in recent years. The Shenzhen Cross-Border E-Commerce Association estimates that at least 50,000 Chinese vendors' accounts have been negatively impacted and Chinese e-commerce firms had suffered losses of over 100 billion yuan (approximately US\$13B).

As a result, affected Chinese companies have been exploring various avenues to obtain remedies, including utilizing Chinese courts, often despite choice-of-law and choice-of-forum provisions in the contract. In such circumstances, arguments typically include invalidity of contract or some sort of tort. Mengbian's approach against Amazon Europe could be the first attempt to use China's Anti-Monopoly Law.

Considerations for Foreign Companies

JURISDICTION OF CHINA COURTS

Chinese courts may assert jurisdiction over a cross-border antitrust matter based on (i) the general provisions of jurisdiction applicable to contract or tort claims, or (ii) the extra-territoriality provision of the Anti-Monopoly Law. For tort claims, jurisdiction can be established either where the defendant is located or at the location of the infringing

conduct. The latter can include the place where the violation was committed and the place where the results of the violation occurred. Here, the court explicitly identified Mengbian’s domicile in Guangzhou as “the place where the results of the violation occurred,” and, therefore, the court asserted jurisdiction.

The Anti-Monopoly Law has an independent basis to assert extraterritorial jurisdiction, which applies when the monopolistic behavior outside of China has an “exclusionary or restrictive effect on competition in the domestic market.” Based on this provision, Chinese courts may assert subject matter jurisdiction over companies located outside of China.

AVOIDANCE OF CHOICE-OF-FORUM AND CHOICE-OF-LAW PROVISIONS

Chinese courts have been known to disregard or hold invalid forum selection and choice-of-law provisions and to assert jurisdiction on a number of occasions. Moreover, Chinese courts have previously scrutinized the validity of jurisdiction clauses in Amazon’s business-to-consumer contracts before. For example, in *Gao v Amazon Zhuoyue Co.*, the Beijing Internet Court dismissed Amazon Zhuoyue’s jurisdictional challenge and invalidated the contract’s jurisdictional provisions based on China’s doctrine of “standard form contract,” which is analogous to unconscionability. Pursuant to China’s Civil Code, if the party providing the boilerplate clause exempts its liability, increases the liability of the other party, or excludes the main rights of the other party, the clause shall be invalid.

THE COURT’S ANNOUNCEMENT IS UNIQUE

At the time of the announcement, service upon Amazon Europe had not been completed. Nonetheless, the court made the decision to announce its acceptance of the case. The court is under no obligation to publicize its acceptance of a case. This may signal the court’s interest in protecting the rights of the Chinese plaintiff. However, based on the announcement, plaintiff’s claim appears to fall under the “abuse of dominance” provision of the Anti-Monopoly Law. Claims of abuse of dominance present a high burden of proof for the party alleging such abuse.

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Authors

[Kevin B. Goldstein](#)

[Jacob Harding](#)

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Kevin B. Goldstein



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