


## Recent ruling confirms that monopoly disputes are not arbitrable in China

The arbitrability of monopoly disputes in China is a long-debated issue, given the lack of clarity under Chinese law and the inconsistent practice of various Chinese courts. In a recent ruling from the Supreme People's Court ("the SPC", which is the highest court in China), the SPC finally confirmed that monopoly disputes cannot be arbitrated in China.

The dispute arose from a distribution agreement between a major global oil and gas company ("the Company") and one of its Chinese distributors. The distributor brought a claim against the Company before the Intermediate People's Court of Hohhot for violation of the Anti-Monopoly Law through monopolistic conduct. The Company then challenged the jurisdiction of the Intermediate People's Court on the basis that there is an arbitration agreement between the Company and the distributor. The Intermediate People's Court overruled the Company's jurisdictional challenge on the basis that (i) the monopoly dispute was closely related to public interest and therefore cannot be submitted to arbitration and (ii) there is no Chinese law expressly confirming the arbitrability of monopoly disputes.



The Company then appealed the above ruling before the SPC, which again rejected the Company's challenge. The SPC stated in its ruling that (i) the Anti-Monopoly Law provides for only two dispute resolution methods (i.e., administrative enforcement and civil litigation), and not arbitration, (2) it is obvious that the Anti-Monopoly Law is public law in nature and determining monopolistic conduct needs to go beyond the rights and obligations under the contract, and (3) there is no Chinese law expressly confirming the arbitrability of monopoly disputes. Before the SPC's ruling, most of the PRC courts also shared the view that monopoly disputes cannot be arbitrated for similar reasons.

For example, in 2015, a local distributor of an Asia-based electronics company also brought a claim for abuse of dominant market position against the electronics company in the Jiangsu province pursuant to the Anti-Monopoly Law. In that case, the Jiangsu Higher People's Court overruled the electronics company's jurisdictional challenge based on the arbitration clause under the distribution agreement on the grounds that (i) the monopoly dispute was closely related to the public interest and shall therefore be subject to the Chinese court's jurisdiction and (ii) there is no Chinese law expressly confirming the arbitrability of a monopoly dispute.

Interestingly, before the SPC issued the above ruling, the Company had been involved in a similar monopoly dispute with another Chinese distributor where the parties also fought on jurisdiction, given that there was an arbitration agreement between the Company and that distributor too. Contrary to the SPC's ruling, the Beijing Higher People's Court confirmed that the distributor's claim regarding monopolistic conduct falls within the scope of the arbitration clause, given that the dispute is closely related to the rights and obligations under the contract between the Company and the distributor. The Beijing Higher People's Court ruling is the first time a Chinese court confirmed the arbitrability of a monopoly dispute and therefore was intensively discussed among the arbitration community in China. Following the SPC's recent ruling, however, it is expected that other Chinese courts will follow suit in the future.

