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Liaoning Province  
Building Materials Industry Association  
Cement Branch member units  
Agreement monopoly case

Liaoning Provincial Administration for Industry and  
Commerce

2013/10/22

# ABSTRACT

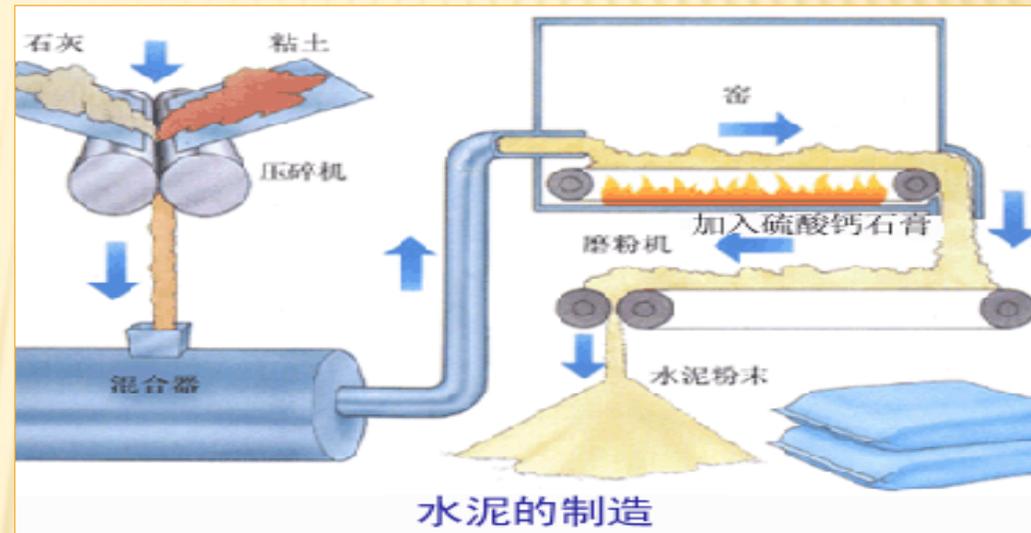
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2011, authorized by Competition Enforcement Bureau of SAIC, the Administration for Industry and Commerce of Liaoning Province had investigated more than a dozen agreements monopoly cases in Building Materials Industry Association. Since the "anti-monopoly law" enacted, This is the first monopoly case investigated by Liaoning Provincial Administration for industry and commerce, fined them 16.37 million yuan.

# Case background - the general production process of cement

Cement manufacturing process is usually divided into three general steps:

- 1, raw material preparation.
- 2, clinker calcification.
- 3, cement grinding and leave the factory.



## Case background – the structure of Liaoning cement industry

Depending on the standard of whether the enterprises can produce clinker or not, Liaoning cement production enterprises can be divided into clinker production enterprise and grinding enterprise. In Liaoning cement market, cement clinker production enterprises are in market dominance. The production enterprises which involved in this case are all clinker production enterprises.



## Case background – Overview of Liaoning Cement Industry

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The status of Liaoning cement industry  
before the crime

- × Overcapacity
- × Backward production capacity
- × energy conservation and emission reduction
- × Industry losses
- × Strong seasonality

# INDUSTRY BACKGROUND: OVERCAPACITY

- ✘ Since 2009 Liaoning Province cement highlights the overcapacity, the problem of overcapacity has reflected in the various regions of the province. the excess rigidity capacity began resulting in vicious competition in the industry, the consequences are industry-wide losses in 2009 and 2010, and in 2011 the industry was able to profit for limited production.
- ✘ In recent years, large domestic Cement Group have entered Liaoning. Currently, the proportion of new dry cement has reached more than 97% in Liaoning Province, which is the highest in the country.

# INDUSTRY BACKGROUND: CLOSE DOWN BACKWARD PRODUCTION FACILITIES

- ✘ “Bulletin of the Ministry of Industry and Information about eliminate enterprises which have backward production capacity of in 2011”: Liaoning Province is the core province to eliminate overcapacity, Most of the company investigated in this case have been included in the backward grinding production capacity list. in the type of business involved in this case : two state-owned holding, ten private capital (including six listed companies), one foreign company



# INDUSTRY BACKGROUND: ENERGY CONSERVATION AND EMISSION REDUCTION

- ✘ "Building Materials Industry" twelve five "development plan": Energy conservation is an important measure to protect the natural environment, national sustainable and scientific development. Cement industry is the key industry that currently in the state's energy conservation plan, Liaoning cement industry is also faced with such a situation.



# INDUSTRY BACKGROUND: INDUSTRY LOSS

- ✘ In 2010, cement production enterprises in Liaoning facing a comprehensive loss, some individual enterprises face a severe loss of a billion Yuan.
- ✘ The kiln production capacity on average only have 70% of productivity。



## INDUSTRY BACKGROUND: STOP THE KILN IN WINTER TO OVERHAUL

Due to the seasonal impact, the cement production companies in Northeast involved need to stop the kiln in winter to overhaul

- 1, Northeast winter has low temperatures, and high cost of production of cement clinker
- 2, fewer construction projects in the Northeast winter, and low demand in cement
- 3, cement production equipment requires periodic repair and maintenance



# CASE INTRODUCTION

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- ✘ Cause of action: on February 22, 2011, the Liaoning province administration of industry and commerce received a reflection of some cement enterprises, said the building materials industry in our province industry association organize cement production enterprise in central part of the Liaoning to sign "self-discipline", require enterprises to stop the cement clinker production and fixed cement market prices, to exclude the same industry competitors, and destroy the normal market order.

# CASE INTRODUCTION

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- ✘ **The case facts:** on November 30, 2010, cement building materials industry branch association organize more than ten cement production enterprise enterprises in central Liaoning province join the meeting, based on the reason of "energy conservation and emissions reduction, overcapacity" to signed the "convention on the self-discipline". Its content mainly involves the following three aspects of monopoly agreement clause:
  - ✘ **1, Production restriction in winter.** All participating companies need to stop production on December 15, 2010 to February 28, 2011, for equipment repair and maintenance, and sign contract default margin.

# CASE INTRODUCTION

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- × **2, Price of self-discipline.** Production will start on March 1, 2011, lowest price for clinker is 260 Yuan per ton.
- × **3, Stop kiln margin will return to enterprise on March 1, 2011.**

# CASE INTRODUCTION

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- ✘ Controversy: agreement production behavior is an act of the enterprise itself, or a form of monopoly agreement, whether it is applicable for "anti-monopoly law" in the provisions of article 15:
- ✘ Operators can prove that the agreement belongs to one of the following circumstances, shall not apply to article 13 of this law, the provisions of article 14:
  - ✘ (5) because of the recession, to alleviate the severe decline in sales or production overcapacity;
  - ✘ Belong to the first paragraph of the preceding paragraph to the fifth, the specified in article 14, article 13 of this law shall not apply to, and must also prove, that the agreement will not seriously limits the competition of the relevant market, and can make consumers share the resulting profits.

## THE INFLUENCE OF “THE SELF-DISCIPLINE CONVENTION”

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- ✘ The price of cement clinker has a great increase, from 260 Yuan / ton, to 380 Yuan / ton.
- ✘ Due to liquidity problems, some grinding enterprises are in the state of stop production or semi-shutdown position. The competitive landscape has changed in Grinding enterprises and kiln enterprises.
- ✘ The price of the finished cement also have varying degrees of growth.
- ✘ Contract companies had began to profit.

# THE INVESTIGATION FOR THE EXEMPTION SYSTEM

- **The effects of monopoly agreement for industry chain**
  - The price of cement clinker and finished cement prices have a substantial growth
- **The expectations of future market in the industry**
  - Increased market access threshold, some dominate companies will be more powerful
- **The understanding of the effect of antitrust enforcement in the industry**
  - Procedures and criteria for exemption system lacks institutional design

# CASE INTRODUCTION

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- × RELEVANT EVIDENCE
- × Evidence One: "self-discipline" Text and minutes of meetings
- × Evidence two: on stop production inventory finance certificates and documents
- × Evidence three: the deposit documents
- × Evidence four: information record of the companies involved in the case
- × Evidence five: evidence for the investigation of exemption system

# CASE INTRODUCTION

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- ✘ Identified - penalties: Cement industry associations involved in signing and implementation of internal members' "self-discipline", seriously affected the sales of the cement market in our province, limiting fair market competition, and reached an agreement on the purpose of monopoly. Its behavior violate the "anti-monopoly law," 13 and 16 of the Rules, constitute the illegal monopoly agreement among the organization of the industry operators.
- ✘ According to "anti-monopoly law," the provisions of Article 46, given associations and members of the unit which involved in this case a certain economic penalties.

# Reflections after the case

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- ✘ Industry Association is the "disaster area" to generate monopolistic behavior
- ✘ Forensics for Exemption agreement monopoly case is an important procedure
- ✘ Abide by the procedure is the premise to ensure the smooth progress of cases

## Pay attention to industry association

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- Industry association cannot be a substitute for government departments to publish industry policy decision, cannot put additional mandatory requirements to member company, in the name of "self-discipline" to require the industry enterprise to stop production, fix price, zoning and other agreements which are clearly illegal. From the cases in our province and the national monopoly cases, industry association played an important supporting role for companies involved in monopoly agreement cases. For this, in the process of daily antitrust enforcement, we should focus on the tandem behavior of industry association, this is a good breakthrough for antitrust cases.

# Exemptions Clauses Forensics

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- ✘ According to China's "anti-monopoly law," Article 15 stipulates that the case can be made for exemption of the provisions cited, and requirements to meet two basic premise, while requiring participating companies have to bear the burden of proof. In practice, however, with regard to the applicable exemption the parties have a major antitrust investigation defenses, it is possible reconsideration or litigation on the part of the main defenses. Therefore, it is necessary for the industrial and commercial authorities found violations on whether to grant exemptions for defensive evidence investigation.

# ABIDE BY THE PROCEDURES

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- Internal procedures: According to the law, before the formal filing, investigation and evidence gathering are all illegal, law enforcement agencies must be strictly abide this rule
- External procedures: hearing (hearing the case twice), reconsideration and litigation. The whole case must withstand the supervision under the parties involved in and the relevant administrative and judicial remedies sector

Thank you!