Identification of Price-fixing Behavior through Electronic Evidence

Introduction of PVC price-fixing case

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Official of Anti-Monopoly Division II of Price Supervision and Anti-Monopoly Bureau, NDRC

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I. Background Information

Violation of the China’s “Anti-Monopoly Law”
18 companies involved
Monopoly agreements hidden in the Wechat group
The involved 18 companies received the largest fine in anti-monopoly cases
I. Background Information

The Anti-Monopoly Bureau of NDRC has always attached great importance to the reports/tip-offs on price-fixing practices. From July to September this year, the Bureau confirmed in public 4 price-fixing cases, 3 of which occurred in the sector with over-capacity. These companies conducted the price-fixing practice in order to “get warmth by sticking together for warmth”.

Investigations on these cases has necessity, given the context of the new economic development. The policy orientation during the process of structural reform on the supply side has been clearly pointed out: knocking out of the outdated capacity and enhancing innovation. Under such circumstance, some companies still intended to “stick together for getting warmth”, through price-fixing. This is obviously unworkable.

In order to effectively promote structural reform on the supply side, and to knock out outdated capacities, the enforcing bodies will crack down the so-called “sticking together for warmth behavior” or in another word price-fixing practices.

PVC is one of the most raw materials for general plastics in China. It is widely applied in building materials, medical equipment, household applications, and industrial production. It is closely linked to the people’s daily life.
I. Background Information

According to statistics, the total production capacity of PVC reached 26 million ton in 2016, with overcapacity. The total capacity of involved companies in 2016 reached 12 million ton, 3 fourths of the national total, which indicates their strong market power.

Since last year, the price on the PVC market has shown drastic fluctuation.

Investigations

Based on the collected clues in the earlier period, there were 18 companies involved in the price-fixing practice. From January this year, we have organized supervisions in 10 provinces, and conducted investigations to the 18 companies, that are widely spreaded in different provinces: 6 in the Inner Mongolia Autonom Region; 2 each in Xinjiang Autonom Region, Nixia Autonom Region and Sichuan; 1 each in Shaanxi, Shandong, Hubei, Shanxi, Hebei and Anhui (mostly are located in the North-west).

Suspected companies that are involved in the price-fixing practice, have increased in collusion the PCV prices.
Main Content

I. Background Information

II. Involving companies working towards an agreement on price-fixing

III. 

IV. 

The Civil Procedure Law of P.R. Of China

Article 63

Evidences include:

1. Party's statements;
2. Written statements;
3. Audio-visual materials;
4. Physical evidence;
5. Electronic evidence;
6. Witness testimony;
7. Experts' opinions;
8. Records of on-site investigation

Interpretation of the Supreme People's Court on applicability of The Civil Procedure Law of P.R. Of China

（法释〔2015〕5号）

Article 116

Audio-visual materials includes sound recordings and image data

Electronic data refers to the information obtained through emails, electronic data exchange, online chatting, Blogger Wechat, sms and domain names, or stored in the electronic media.

Sound recordings and image data stored in the electronic media are applicable for the definition of the electronic data.
II. Involving companies working towards an agreement on price-fixing

Advantages of using electronic data as evidence
1. Once it forms, it will maintain its original, authentical status and can truthfully reflect the facts.
2. It can be stored endlessly and retrieved at any time.
3. Compared to that of the e-evidence, the nature of physical evidence can be more easily influenced by the surrounding environment, a written evidence can be easily damaged or contain a slip of a pen, or can be misrepresented, misguided or misnoted by the witness, or with subjectivity. On the contrary, the e-evidence is more objective and stable.

Disadvantages of using electronic data as evidence
Electronic evidence could be easily destructed, stolen, tampered, or even destroyed and could be difficult to trace or recover afterwards.

In this case, a lot of attentions are paid to saving and intercepting of Wechat messages, to verifying actually information from the group members, to the sales agreements, sales accounts and invoices. All these form the complete chain of evidence.

Reaching monopoly agreement through Wecha

An Alliance of the 18 companies led the communication through the Wechat group, involving 93 persons and containing more than 3800 messages. They made 13 times of agreement on price-fixing.
II. Involving companies working towards

Reaching monopoly agreement via Wechat

On March 21, 2016, Hubei Yihua proposed a price increase, and published the “Price Executing List”, which was followed and supported by the other companies. An agreement on price is reached.

After communication and consultation with the responsibilities of all member companies of this alliance, the implementing standards of this week’s prices will be concluded. Please strictly follow the concluded standards. Meanwhile, we welcome mutual monitoring among member companies. In case of any breach, the sale information of this company will be published in the group.

2018年3月21日 下午11:19

坚决执行，要涨大家一起涨，一致性很重要。

鄂尔多斯氯碱100

将严格执行。若涨幅，大家都要涨。一致性很重要。

Will be firmly executed. If increase, everyone should follow. Consistency is of great importance.
II. Involving companies working towards an agreement on price-fixing

On July 31, 2016, Xinjiang Zhongtai proposed a price increase, which was supported by other enterprises. A price monopoly agreement was reached.

We support price raise!

A timely proposal!

Agree!

Support!
II. Involving companies working towards an agreement on price-fixing

On July 31, 2016, Xinjiang Zhongtai proposed a price increase, which was supported by other enterprises. A price monopoly agreement was reached.

Dezhou Shihua Chemical Co., Ltd will raise our factory price of Type7 and Type8 product to 5750 yuan.
II. Involving companies working towards an agreement on price-fixing

Reaching monopoly agreement through Wechat

On July 31, 2016, Xinjiang Zhongtai proposed a price increase, which was supported by other enterprises. A price monopoly agreement was reached.

2016年7月31日 下午5:47

唐山王总

杨总提议涨价时间恰到好处，机会难得，三友完全赞同，并坚决执行！！

Mr. Yang always proposed the price increase at the optimal time. Sanyou totally agree that it's a great opportunity, and we will firmly carry out this plan.

刘中海

哈哈哈！建议本群改名为一致行动调价群。

Ha ha! I suggest this group be renamed as the ‘Actingconcertedly in adjusting price’ group.

According to statistics, 18 enterprises involved participated in the WeChat group and have reached the above price monopoly agreements, 13 times in total (including publishing 11 pieces of “Price Statement”, although no statements were published in the other two times, the mark-up was also expressly prescribed).
III. Involving companies conducting price-fixing practice

In terms of implementation, it mainly manifests itself in two ways:

I. A part of the companies involved will hold an internal pricing meeting to increase the price of PVC sale price after reaching a monopoly agreement.

II. To carry out the agreed price in the actual sales process.
III. Involving companies conducting price-fixing practice

Implementation of Monopoly Agreement

After reaching the July 2016 monopoly agreement, Ordos Electroforming Company raised the price of PVC by printing and distributing Notice on the adjustment of sales guiding price of calcium carbide and PVC product (Carry out on August 2). The adjusted price is in line with the monopoly agreement.

III. Involving companies conducting price-fixing practice

Implementation of Monopoly Agreement

In the actual sales process, PVC products are sold in accordance with the agreed price agreed upon in the monopoly agreement.
### III. Involving companies conducting price-fixing practice

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Implementation of Monopoly Agreement</th>
<th>Fines</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hubei Yihua Group Co., Ltd</strong></td>
<td>March 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>China Salt Jilantai Salinization Group Co., Ltd</strong></td>
<td>March 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Inner Mongolia Yili Chemical Industries Co., Ltd</strong></td>
<td>July 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Erdos chloric Electricity and Metallurgy Group Co., Ltd, Alkaline Branch</strong></td>
<td>May 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Wuhai Benyuan Trade Co., Ltd</strong></td>
<td>July 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Baotou Sea Level Macromolecule Industrial Co., Ltd</strong></td>
<td>August 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Xinjiang Tianye (Group) Co., Ltd</strong></td>
<td>August 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Xinjiang Zhongtai Chemical Co., Ltd</strong></td>
<td>March 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Ningxia Yinglite Chemical Co., Ltd</strong></td>
<td>July 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Ningxia Jinuyuan Chemical Group Co., Ltd</strong></td>
<td>September 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
<tr>
<td><strong>Sichuan Jinlu Group Co., Ltd</strong></td>
<td>August 2016</td>
<td>$500, $500, $500, $500</td>
</tr>
</tbody>
</table>

**Implementation of Monopoly Agreement**

- March 2016
- July 2016
- August 2016
- September 2016

**Fines**

- March 2016: $500, $500, $500, $500
- July 2016: $500, $500, $500, $500
- August 2016: $500, $500, $500, $500
- September 2016: $500, $500, $500, $500
III. Involving companies conducting price-fixing practice

<table>
<thead>
<tr>
<th>Company Name</th>
<th>Year</th>
<th>Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yibin Tianyuan Group Co., Ltd</td>
<td>2016</td>
<td>June</td>
</tr>
<tr>
<td>Dezhou Shihua Chemical Co., Ltd</td>
<td>2016</td>
<td>July</td>
</tr>
<tr>
<td>Shanxi Beiyuan Chemical Co., Ltd</td>
<td>2016</td>
<td>August</td>
</tr>
<tr>
<td>Tangshan Sanyou-Chlorine alkali Co., Ltd</td>
<td>2016</td>
<td>July</td>
</tr>
<tr>
<td>Anhui Huaxing Co., Ltd</td>
<td>2016</td>
<td>July</td>
</tr>
<tr>
<td>Shanxi Yushe Chemical Co., Ltd</td>
<td>2016</td>
<td>July</td>
</tr>
</tbody>
</table>

The 18 companies involved in the case have increased the price of PVC sales and actual sales in accordance with the agreed price or price increase of the monopoly agreement.
IV. Qualitative Analysis and Penalty Decision

Qualitative Analysis

The behavior of the above 18 companies involved, pushing up the PVC sales price, has violated Article 13 (1) Item (1) of the Anti-Monopoly Law, which is an unlawful act conducted by business operators with competitive relationships to agree and implement price monopoly agreement.

Harm

- Restrained chemical industry from 'cutting overcapacity'
- Hindered downstream firms from 'lowering the cost'
- Damaged consumers' legal rights and interests
IV. Qualitative Analysis and Penalty Decision

For the 18 companies that agreed to the price monopoly agreement, they will be fined 1-2% of the relevant market sales in 2016. (4,573.497 million yuan)

The penalty of 2 per cent was imposed on the lead Hubei Yihua and Zhongyan jilantai, which was 526.198 million yuan, 330.328 million yuan. The subtotal is 856.526 million yuan.

A penalty of 1 percent was imposed on 16 subordinate firms, including Xinjiang Zhongtai. The subtotal is 3,716.971 million yuan.

Thank you for your attention