



U.S. DEPARTMENT OF JUSTICE

American Bar Association

Section of Antitrust Law

48th Annual Spring Meeting

**An Inside Look At A Cartel At Work:
Common Characteristics Of International Cartels**

By

**James M. Griffin
Deputy Assistant Attorney General
Antitrust Division
U.S. Department of Justice**

Presented at

**Omni Shoreham Hotel
Washington, D.C.**

April 6, 2000

AN INSIDE LOOK AT A CARTEL AT WORK: COMMON CHARACTERISTICS OF INTERNATIONAL CARTELS¹

I. Introduction

I would like to talk to you this afternoon about some of the common characteristics of international cartels -- how cartels are initiated; how they operate; and how they attempt to conceal their activity from law enforcement. In order to do this, I am going to rely on some audio and video tapes of actual meetings involving members of the lysine cartel.² These tapes were, of course, made covertly by the FBI with the consent and assistance of a cooperating witness. They were first shown publicly at the trial of three former top executives from Archer Daniels Midland Company ("ADM"). ADM and its co-conspirators from Europe and Asia conspired to fix prices and allocate sales volumes of the food additive citric acid and the feed additive lysine. ADM pled guilty before trial and was sentenced to pay a \$100 million fine - which at the time was nearly seven times larger than the previous record fine in an antitrust case in the United States. The ADM executives were convicted at trial and were recently sentenced to fines of up to \$350,000 and lengthy prison sentences ranging from 24 to 30 months.

¹ The material in this paper draws heavily, and often verbatim, from materials developed and prepared by my predecessor, Gary R. Spratling. It was Mr. Spratling, working closely with James H. Mutchnik, formerly of the Division's Chicago Field Office, Scott D. Hammond, the Division's Director of Criminal Enforcement, and myself, who first developed an International Anti-Cartel Enforcement Educational Program based on the lysine tapes. Mr. Spratling conducted numerous programs based on these materials primarily for our sister foreign law enforcement agencies. Mr. Spratling and I had planned to make these materials publicly available at an international antitrust workshop, but he left the Division before that could be accomplished. It is with sincere gratitude to Mr. Spratling that the Division makes these materials available to the public today.

² Copies of the tape shown today, as well as additional copies of this accompanying booklet containing transcripts of the tape segments, are available at no charge. Please mail or fax (202-616-4529) your request to the United States Department of Justice, Antitrust Division, Freedom of Information Act Unit, 325 Seventh Street, N.W., Suite 200, Washington, D.C., 20530. You should receive your copy within two weeks.

The lysine tapes offer a rare bird's eye view of the inner workings of an international cartel. You will see executives from multi-national firms reaching agreements to carve up the world by allocating sales volumes among the cartel members and agreeing on what prices would be charged to customers worldwide. Before I play the tapes, I want to make one point clear. While the lysine tapes are extraordinary in the sense that they give us an insider's view of the inner workings of an international cartel, the cartel itself is far from extraordinary. The objectives of the lysine cartel and the methods the conspirators used are common among the international cartels that we have detected in the last few years. At their core, international cartels have essentially the same purpose -- to increase profits among the conspirators by carving up world markets -- and they operate pursuant to the same methods -- fixing prices, rigging bids, allocating territories and customers, and allocating sales volumes among the conspirator firms on a worldwide basis.

II. The Importance Of An Effective Antitrust Compliance Program

Before turning to the tapes and the common characteristics of international cartels, let me say a few words about why the Division is presenting this program today and making these materials available to the private bar and corporate counsel. We are doing so because we believe that these materials will be tremendously valuable to the bar and to corporations in conducting antitrust compliance programs, and the Division believes that it is important to American businesses and consumers that there exist effective programs to deter antitrust offenses and to detect as early as possible those violations that are not deterred.

Effective antitrust compliance programs are not only important in protecting potential victims of antitrust crimes, they can literally mean the difference between survival and possible extinction to a corporation whose responsible officers or employees are tempted to engage in -- or are engaging in -- an antitrust conspiracy. In today's enforcement environment, a multinational firm, and its executives, engaged in cartel activity face enormous exposure: criminal convictions in the United States; massive fines for the firm and substantial jail sentences for the individuals; proceedings by other, increasingly active antitrust enforcement agencies around the world where fines may be, individually or cumulatively, as great as or greater than in the United States; private treble damage actions in the United States; damage actions in other countries; and debarment. Given this exposure, it would be difficult to overstate the value of a compliance program that prevented the violation in the first place. Moreover, if such a violation does occur, it again would be difficult to overstate the value of a compliance program in detecting the offense early because amnesty is available to only one firm, the first to successfully apply in each cartel investigation. (See the Antitrust Division's Corporate Leniency Policy at Tab 12.)

It is not the purpose of this paper to give a detailed exposition of the content of an effective compliance program and I do not intend to speak at length on the subject. But I do want to make two brief points about antitrust compliance programs and how these materials may be incorporated into a successful program. First, an organization's compliance program should provide for affirmative steps to detect price fixing, bid rigging, and market allocation, steps premised on the possibility, or even the assumption, that education and admonition will not deter personnel determined, for whatever reason, to act in bad faith. An example of an affirmative step would be active monitoring of employee conduct -- of, say, particular pricing and bidding decisions and practices -- to improve the chance of detecting and deterring questionable conduct. The program should also provide for both regular and unannounced audits of price changes, discount practices, and bid sheets, conducted by those familiar with the firm's past and present business practices and trained in recognizing divergence. Furthermore, in our view, it is critical to have both regular (scheduled) and unannounced audits of front-line pricing and bidding personnel to test their level of understanding of the antitrust laws and their degree of compliance with a program's requirements and standards relating to prevention and detection, backed up by disciplinary mechanisms and potential penalties for failures. Finally, the compliance program should include any additional provisions that are designed to unearth violations in the context of the firm's specific organization, operation, personnel, and business practices.

Second, firms, particularly multinational firms, should be thinking about the common characteristics of international cartels discussed in this paper when conducting compliance monitoring and audits. For example, many of the international cartels the Division has prosecuted have used trade association meetings as an effective "cover" for their secret cartel meetings. With that in mind, counsel will want to scrutinize international trade association meetings, which typically bring together every significant producer/seller of a particular product on the planet. Counsel will certainly want to review the association's official antitrust compliance policy and by-laws, advise the client's executives to avoid discussing competitively sensitive information with their competitors, and review meeting agendas and minutes. But counsel also should take a very close look at the purpose of association meetings, personally attend association meetings, and ask hard questions about what's going on there. Counsel also may want to consider the possibility that agendas and minutes of association or committee meetings are fictitious, and being used as a cover for illicit conduct. Further, counsel may want to inquire into what the executives intend to do during periods of time at these gatherings when there are no scheduled association activities, or even inquire into the travel itineraries of executives from other firms in order to assess the opportunities for meetings among executives of two or more firms at places and times other than those officially scheduled. Many of the international cartels prosecuted by the Division could not have functioned in the manner they did, if at

all, under this degree of compliance scrutiny with respect to trade association meetings.

We believe that the materials being made available today -- particularly the tape -- will be useful in impressing upon corporate executives, as well as counsel, that cartels are pervasive in today's global economy; that they are sophisticated in their understanding and manipulation of the markets they affect; that they employ elaborate methods to avoid detection; that they often involve senior management of huge multinational corporations; and that they do get caught, prosecuted, and punished. In addition to their educational value as part of an antitrust compliance program, we believe that these materials also will be useful to the private bar and corporate counsel in planning other aspects of the program. For example, having the opportunity to see this cartel at work, we hope will assist counsel in focusing on audit areas that might previously have been overlooked. I have no doubt that those of you who are far more experienced than we in planning and conducting antitrust compliance programs will think of many creative uses for these materials and we are delighted to make them available to you for that purpose.

III. Early Detection Of Antitrust Violations Through Compliance Programs

As noted earlier, effective antitrust compliance programs have two goals: (1) the prevention of antitrust violations in the first instance; and (2) the early detection of violations that do occur. It is this second objective, which is often overlooked, that I want to briefly address. If, despite the existence of a compliance program, an antitrust offense occurs, then the most significant benefit of a compliance program is early detection of the offense. Early detection affords the organization the opportunity to apply to the Antitrust Division's Corporate Leniency Program ("Amnesty Program"). Acceptance into the Program can result in a complete pass from criminal prosecution for the company as well as all of its officers, directors, and employees who cooperate with the Division's investigation.

A. The Antitrust Division's Revised Amnesty Program

In August 1993, the Antitrust Division expanded its Amnesty Program to increase the opportunities and raise the incentives for companies to self-report and cooperate with the Division. Under the old policy that was put into place in 1978, the grant of amnesty was not automatic, but rather an exercise of prosecutorial discretion, and was not available to any company once an investigation had begun. In 1993, the Amnesty Program was revised in three major respects: (1) amnesty is automatic if there is no pre-existing investigation; (2) amnesty may still be available even if cooperation begins after the investigation is underway; and (3) all officers, directors, and employees who cooperate are protected from criminal prosecution. The Division's revised Amnesty Program was, and is, unique. No

other U.S. governmental voluntary disclosure program offers as great an opportunity or incentive for companies to self-report and cooperate.³

Today, the Amnesty Program is the Division's most effective generator of large cases, and it is the Department's most successful leniency program. Prior to 1993 the Division received amnesty applications at the rate of approximately one per year. Over the past several years we have received on average more than one per month. Moreover, in the last two years, cooperation from amnesty applications has resulted in dozens of convictions and over one billion dollars in fines.

B. A Head Start In The Race For Amnesty

Many of the Division's recent amnesty applications were initiated as a result of early detection by the firm's antitrust compliance program -- which, ultimately, saved some of these companies tens of millions of dollars and one company at least one hundred million dollars. In these cases, the applicants understood that early detection gave them a head start in the race for amnesty, and they were unwilling to gamble that the activity would not be detected by another company which would take advantage of the Amnesty Program.

Our hope is that these materials being made available today will assist the private bar and corporations in conducting effective antitrust compliance programs -- programs that actually deter antitrust violations, or failing that, lead to the early detection of such violation so that the corporation is in the best position to minimize its exposure through the Division's Corporate Leniency Policy.

IV. Common Characteristics Of International Cartels

Now let me turn to a discussion of some of the common characteristics of international cartels and to the tapes, which so vividly depict a cartel at work.

³ For a more detailed discussion of the Antitrust Division's application of its Corporate Leniency Policy, see, "The Corporate Leniency Policy: Answers To Recurring Questions," speech by Gary R. Spratling, Deputy Assistant Attorney General, Antitrust Division, before ABA Antitrust Section 1998 Spring Meeting (April 1, 1998) attached at Tab 13; and "Making Companies An Offer They Shouldn't Refuse," speech by Gary R. Spratling, Deputy Assistant Attorney General, Antitrust Division, before Bar Association of the District of Columbia's 35th Annual Symposium on Associations and Antitrust (February 16, 1999) attached at Tab 14.

A. Brazen Nature of Cartels

One of the characteristics we see over and over again in international cartels is the brazen nature of the conspiracies. By that, I refer to the contempt and utter disregard that the members of the cartel typically have for antitrust enforcement. I think this is a good place to begin, because we are often asked by defense counsel to treat a certain member of a cartel more favorably because he/she resides in a country where cartel activity is treated differently than it is in the United States. The fundamental problem with this argument is that it is our experience, without exception, that the conspirators are fully aware that they are violating the law in the United States and elsewhere, and their only concern is avoiding detection. The international cartels that we have cracked have not involved international business persons who for cultural, linguistic or some other innocent reason find themselves mistakenly engrossed in a violation of U.S. antitrust laws. Rather, the cartels that we have prosecuted criminally have invariably involved hardcore cartel activity -- price fixing, bid-rigging, and market- and customer-allocation agreements. The conspirators have discussed the criminal nature of their agreements; they have discussed the need to avoid detection by antitrust enforcers in the United States and abroad; and they have gone to great lengths to cover-up their actions -- such as using code names with one another, meeting in secret venues around the world, creating false "covers" -- *i.e.* facially legal justifications -- for their meetings, using home phone numbers to contact one another, and giving explicit instructions to destroy any evidence of the conspiracy. In one cartel, the members were reminded at every meeting -- "No notes leave the room."

B. Involvement of Senior Executives

Moreover, the cartels typically involve senior executives at firms -- executives who have received extensive antitrust compliance counseling, and who often have significant responsibilities in the firm's antitrust compliance programs. For example, the vitamin cartel was led by the top management at some of the world's largest corporations, including one company -- F. Hoffmann-La Roche -- which continued to engage in the vitamin conspiracy even as it was pleading guilty and paying a fine for its participation in the citric acid conspiracy. Just imagine - some senior executives of this multi-national firm knew about the firm's participation in international cartels in two industries. When the firm's illegal activities were uncovered in one industry, and the firm had to plead guilty and pay millions of dollars in fines, those executives could have and should have terminated the firm's cartel activities in the second (and larger) industry. Instead, those executives orchestrated false statements to enforcement authorities, took steps to further conceal the firm's illegal activities, and continued to lead the world's other producers in a global cartel -- actions which will end up costing the firm billions of dollars in fines and damages. This amazing and costly failure to heed a warning

takes us back to the characteristic I just mentioned: the contempt of cartel members for antitrust enforcement and the brazenness with which they perpetrate their offenses.

The first segment on the tape demonstrates not only the brazen nature of the lysine cartel, but the utter contempt that the conspirators exhibited towards their victims and the law enforcement community. The meeting that you are about to see was attended by executives from the world's five dominant lysine producers. As you will see in this tape, the cartel members took steps to conceal their meeting, including staggering their arrival and departure times for the meeting so as not to arouse suspicion by having the entire group enter and leave the room at the same time. The members of the cartel had to be careful because the meeting coincided with the largest poultry industry trade association convention, so all of their customers were in town for the trade show. But, as you will see, the lysine executives laughed at the thought of being observed by their customers or by law enforcement. The videotaped recording of this meeting shows that, as the meeting begins, there are some empty seats around the table because of the staggered arrival times. The cartel members are captured on tape jokingly discussing who will fill those empty seats. One cartel member offered that one empty chair was for Tysons Foods, the largest purchaser of lysine in the United States, and that another chair was for Con Agra, also a large U.S. customer. Another cartel member mocked, ironically, that one chair was for the FBI, and a third cartel executive added that the remaining chairs were for the Federal Trade Commission.

C *Tape Segment One: January 18, 1995 Cartel Meeting in Atlanta, Georgia -- The Lysine Cartel Members Show Disdain For Customers And Antitrust Enforcement (Transcript at Tab 1)*

The knock at the door heard at the very end of this tape segment, in fact, was an FBI agent, disguised as a hotel employee returning to the cooperating witness the briefcase containing a hidden audio recorder he had mistakenly left in the hotel restaurant.

In another tape played at the lysine trial, ADM's President summed up the company's attitude toward its customers in a single phrase, when he told a senior executive from his largest competitor that ADM had a corporate slogan that "penetrated the whole company": "Our competitors are our friends. Our customers are the enemy." Imagine, one of the world's largest companies, which bills itself as "the supermarket to the world," having such a disdainful slogan as its internal corporate trademark.

Not only are cartel members disdainful of their customers and law enforcement authorities, some are even defiant of their own company's rules -- rules

adopted to protect the company and them from criminal conduct. Clearly, some executives will go to great lengths to make sure that you, as inside or as outside counsel, don't find out about their criminal activity. For example, consider the impressive, yet unsuccessful, antitrust compliance efforts of the general counsel of a corporation we recently prosecuted for its participation in an international cartel.

This general counsel had instituted a comprehensive antitrust compliance program, and had made sure that the senior executives were well schooled on the antitrust laws. He had laid out specific rules to follow and adopted stiff penalties for failure to follow those rules. When a top executive at his firm arranged a meeting with his chief foreign competitor to discuss exchanging technological information, the executive, as required by the policy, notified the general counsel's office of the meeting. The general counsel (perhaps suspecting the worst) insisted on accompanying the executive to the meeting and remaining at his side throughout the meeting -- never letting him out of his sight even when the executive went to the bathroom. He was certain that this way there could be no chance conversation between the company executive and his competitor, and the general counsel would be a witness to everything said. Surely no antitrust problems could arise in such a setting. And the general counsel must have taken some comfort when he, the executive, and the executive from the competitor firm greeted one another at the start of the meeting and the two executives introduced themselves to each other, exchanged business cards, and engaged in small talk about their careers and families that indicated that the two had never met each other before. Imagine how that general counsel must have felt when he learned, during the course of our investigation, that the introduction between the two executives had been completely staged for his benefit -- to keep him in the dark. In fact, the two executives had been meeting, dining, socializing, playing golf, and participating together and with others in a massive worldwide price-fixing conspiracy for years. Furthermore, other employees at the company knew of this relationship and were instructed to keep the general counsel in the dark by referring to the competitor executive by a code name when he called the office and the general counsel was around.

We hope that, armed with these materials and the glimpse inside an international cartel at work that they provide, all of you will be able to avoid the repetition of this shameful conduct on the part of senior executives of your corporate clients.

C. Fear Of Detection By U.S. Enforcers

While cartel members know full well that their conduct is illegal under the antitrust laws of many countries, they have a particular fear of U.S. antitrust authorities. For that reason, international cartels try to minimize their contacts in

the United States by conducting their meetings abroad. This has been particularly true since 1995, when the lysine investigation became public. In fact, cooperating defendants in several recent cases have revealed that the cartels changed their practices and began avoiding contacts in the United States at all costs once the Division began cracking and prosecuting international cartels. However, the cartel members continue to target their agreements at U.S. businesses and consumers; the only thing that has changed is that they conduct nearly all of their meetings overseas. This next segment demonstrates the reluctance of foreign cartel members to conduct cartel activity in the United States for fear of detection. The conversation is between an ADM executive, who also was a cooperating witness, and an executive at the Japanese firm, Ajinomoto. They are discussing the location for the next cartel meeting. As you will hear, the Ajinomoto executive is clearly reluctant to have a cartel meeting in Hawaii, but ultimately agrees to consider it because Hawaii is a convenient location for everyone and because of the lure of the golf courses located near the meeting site. The Ajinomoto executive's reluctance was well founded, as the meeting was video taped by the FBI and became a critical piece of evidence in the prosecution of the lysine conspirators.

C *Tape Segment Two: July 13, 1993 Telephone Call From ADM Headquarters -- Foreign Co-Conspirator Expresses Reluctance To Meet In The United States (Transcript at Tab 2)*

D. Using Trade Associations As Cover

Another characteristic of international cartels is that they frequently use trade associations as a means of providing "cover" for their cartel activities. In order to avoid arousing suspicion about the meetings they attended, the lysine conspirators actually created an amino acid working group or subcommittee of the European Feed Additives Association, a legitimate trade group. The sole purpose of the new subcommittee was to provide a false, but facially legitimate, explanation as to why they were meeting.

As I mentioned, the lysine cartel members did end up meeting in Hawaii, and the FBI was there to video tape the meeting. As you are about to see, the executives discussed how they would use the trade association as the "perfect cover" for their price-fixing meetings. They also talked about such details as preparing false agendas and false minutes of the meeting to send to the parent association based in Brussels. In addition, they discussed their shared concern that the EU authorities not discover their activities.

C *Tape Segment Three: March 10, 1994 Cartel Meeting In Maui, Hawaii --
Cartel Members Use Trade Association As A Cover For Conspiracy Meetings
(Transcript at Tab 3)*

In your binders (at Tab 10) is an example of one of the false agendas that was created by the lysine conspirators and submitted to the parent trade association, listing legitimate topics that, according to witnesses at trial, were never discussed at the meetings. None of the items on the agenda were addressed at the meeting except agenda item "Miscellaneous" -- a euphemism for the negotiations by cartel members to divide up the world lysine business among themselves and to fix the prices they charged their customers worldwide.

Similarly, the citric acid cartel used a legitimate industry trade association to act as a cover for the unlawful meetings of the cartel. The cartel's so-called "masters," *i.e.*, the senior decision-makers for the cartel members, held a series of secret, conspiratorial, "unofficial" meetings in conjunction with the official meetings of ECAMA, a legitimate industry trade association based in Brussels. At these unofficial meetings, the cartel members agreed to fix the prices of citric acid and set market share quotas worldwide. A former ADM executive testified that the official ECAMA meetings provided a "combination of cover and convenience" for the citric acid cartel. As he explained it, ECAMA provided "cover" because it gave the citric acid conspirators "good cause" to be together at the particular location for the official meetings -- which were held in Belgium, Austria, Israel, Ireland, England, and Switzerland. Since the cartel members were all attending those meetings anyway, it was convenient to meet secretly, in an "unofficial capacity" for illegal purposes, during the time period set aside for the industry association gathering.

E. Fixing Prices Globally

Another common characteristic of an international cartel is its power to control prices on a worldwide basis effective almost immediately. Prosecutors got an unprecedented view of the incredible power of an international cartel to manipulate global pricing in the lysine videotapes. Executives from around the world can be seen gathering in a hotel room and agreeing on the delivered price, to the penny per pound, for lysine sold in the United States, and to the equivalent currency and weight measures in other countries throughout the world, all effective the very next day. Our experience with the vitamin, citric acid, and graphite electrode cartels, to name a few, shows that such pricing power is typical of international cartels and that they similarly victimize consumers around the globe. Cartel members often meet on a quarterly basis to fix prices. In some cases the price is fixed on a worldwide basis, in other cases on a region-by-region basis, in still others on a country-by-country basis. The fixed prices may set a range, may establish a floor, or may be a specific price, fixed down to the penny or the

equivalent. In every case, customer victims in the United States and around the world pay more because of the artificially inflated prices created by the cartel.

In the next two tape segments you will see international cartel activity at its core -- price fixing and market allocation on a global basis. In the first segment the lysine cartel members agree upon the prices to be set for the United States and Canada.

C *Tape Segment Four: March 10, 1994 Cartel Meeting In Maui, Hawaii -- Cartel Members Fix Prices On A Global Basis (Transcript at Tab 4)*

The lysine cartel used the U.S. price as the primary benchmark for the world price, and then specific prices were fixed on a country-by-country basis at the meetings. As you just saw, the cartel became very efficient in fixing prices, and it did not take them long to agree on price increases. Remember that these cartel members were not discussing general price levels or a range of prices; rather the lysine cartel fixed the price to a specific penny per pound in the United States or, in the case of the Canadian market, to the penny per kilogram. These executives sitting in a room in Hawaii decided that the truckload price in the United States and Canada would be \$1.16; not \$1.10, not \$1.20, but \$1.16. All prices to be effective the very next day. Later in the meeting, they did the same thing for other countries.

F. Worldwide Volume-Allocation Agreements

The members of most cartels recognize that price-fixing schemes are more effective if the cartel also allocates sales volume among the firms. For example, the lysine, vitamin, graphite electrode, and citric acid cartels prosecuted by the Division all utilized volume-allocation agreements in conjunction with their price-fixing agreements. Cartel members typically meet to determine how much each producer has sold during the preceding year and to calculate the total market size. Next, the cartel members estimate the market growth for the upcoming year and allocate that growth among themselves. The volume-allocation agreement then becomes the basis for (1) an annual "budget" for the cartel, (2) a reporting and auditing function, and (3) a compensation scheme -- three more common characteristics of international cartels.

In this next tape segment, you will see the lysine cartel members divide up the world's lysine market. The meeting was attended by two high-ranking ADM executives. Representing all of the Japanese and Korean cartel members were two senior executives from Ajinomoto. Earlier in the meeting, the cartel members had determined how much each producer had sold in the prior year. Then, they used those figures to determine the total market size. Next, they estimated what they

believed the sales growth would be in the coming year. All of these figures were written down on the easel board by one of the cartel members. On the tape, you'll see them decide how they are going to allocate that sales growth among the five cartel members. As you will hear, the growth in the market is estimated to be 14,000 tons, and the question posed by the senior ADM executive is: how do we divide this market growth?

C *Tape Segment Five: October 25, 1993 Cartel Meeting In Irvine, California -- Cartel Members Allocate Worldwide Sales Volumes (Transcript at Tab 5)*

G. Retaliation Threats -- Policing The Agreement

As is often said, there is no honor among thieves. Thus, cartel members have to devise ways -- or even make threats -- to keep their co-conspirators honest, at least with respect to maintaining their conspiratorial agreements. It is common for cartel members to try to keep their co-conspirators in line by retaliating through temporary price cuts or increases in sales volumes to take business away from or financially harm a cheating co-conspirator. Sometimes, the mere threat of such retaliation is enough to keep would-be cheaters in line. In this next tape segment, you will see one of the ADM conspirators pose such a threat in order to get his co-conspirators to agree to his proposed volume-allocation scheme.

C *Tape Segment Six: October 25, 1993 Cartel Meeting In Irvine, California -- Co-Conspirator Threatens Retaliation If Others Don't Agree To Proposed Market-Allocation Scheme (Transcript at Tab 6)*

H. Audits And The Use Of Scoresheets

Most cartels develop a "scoresheet" to monitor compliance with and enforce their volume-allocation agreement. Each firm reports its monthly sales to a co-conspirator in one of the cartel firms -- the "auditor." The auditor then prepares and distributes an elaborate spread sheet or scoresheet showing each firm's monthly sales, year-to-date sales, and annual "budget" or allocated volume. This information may be reported on a worldwide, regional, and/or country-by-country basis and is used to monitor the progress of the volume-allocation scheme. Using the information provided on the scoresheet, each company will adjust its sales if its volume or resulting market share is out of line. An example of such a scoresheet from the lysine cartel can be found at Tab 11.

I. Compensation Schemes

Another common feature of international cartels is the use of a compensation scheme to discourage cheating. The compensation scheme used by the lysine cartel is typical and worked as follows. Any firm that had sold more than its allocated or budgeted share of the market at the end of the calendar year would compensate the firm or firms that were under budget by purchasing that quantity of lysine from any under-budget firms. This compensation agreement reduced the incentive to cheat on the sales volume-allocation agreement by selling additional product, which, of course, also reduced the incentive to cheat on the price-fixing agreement by lowering the price on the volume allocated to each conspirator firm.

In this next segment, one of the lysine conspirators from ADM explains the importance of a compensation scheme to the cartel and gives the other cartel members a motivational speech that has to be one of the best pieces of evidence ever obtained in a cartel investigation.

C *Tape Segment Seven: March 10, 1994 Cartel Meeting In Maui, Hawaii -- Co-Conspirator Explains How End-Of-Year Compensation Scheme Eliminates Incentive To Cheat On Cartel (Transcript at Tab 7)*

J. Budget Meetings

Cartels nearly always have budget meetings. Like division managers getting together to work on a budget for a corporation, here senior executives of would-be competitors meet to work on a budget for the cartel. Budget meetings typically occur among several levels of executives at the firms participating in the cartel; their frequency depends on the level of executives involved. The purpose of the budget meetings is to effectuate the volume-allocation agreement -- first, by agreeing on the volume each of the cartel members will sell, and then periodically comparing actual sales to agreed-upon quotas. Cartel members often use the term “over budget” and “under budget” in comparing sales and allocations. Sales are reported by member firms on a worldwide, regional, and/or country-by-country basis. In our experience, the executives become very proficient at exchanging numbers, making adjustments, and, when necessary, arranging for “compensation.”

The last tape segment that I am going to play will give you a ringside seat at one of the quarterly lysine cartel budget meetings where the members reported their sales on a regional and worldwide basis. The numbers you will hear are monthly and year-end tons of lysine sold by each conspirator firm. As you are watching this video, consider how comfortable the cartel members are with each other and the precision with which this cartel operated.

- C *Tape Segment Eight: January 18, 1995 Cartel Meeting In Atlanta, Georgia -- Cartel Members Report End-Of-Year Sales Figures And Find That Sales Volumes Were "Right On Target" (Transcript at Tab 8)*

V. Another "Textbook" Example - The Vitamin Cartel

Implementing a volume allocation agreement to restrict output and to maximize the incentives of the cartel members to sell at or above the agreed-upon price was not unique to the lysine cartel. The same practice was used in the citric acid cartel, the vitamins cartel, and others. As with lysine, graphite electrodes, and other cartels, the vitamin conspiracy was not limited merely to a few products, customers or currencies; rather, the cartel members discussed and agreed upon prices and sales volumes for every major vitamin used for human or animal consumption sold throughout the world.

In order to carry out the vitamin conspiracy, the cartel members stopped competing and, instead, worked together as if they were sales divisions of the same company -- a company that one of the conspirators referred to hypothetically as "Vitamins, Inc." Once a year, for nearly 10 years, the global marketing heads, the product managers, and the regional managers from each conspiring company would get together for two- to three-day summit meetings. At such meetings, the cartel members would discuss and agree on price increases and sales volumes on a global basis for the upcoming year. The cartel also held annual meetings where the members' global marketing heads and division presidents met and reviewed the results of the preceding year, taking stock, in particular, of the profitability of the continuing conspiracy to each cartel member. In addition to these meetings, lower-level executives, who were charged with the implementation of the global cartel, met with their counterparts around the world on at least a quarterly basis to ensure that the cartel ran smoothly. And it did. Documents prepared by members of the cartel for various meetings reveal that the cartel, over the course of a full decade, was nearly always successful in coordinating and implementing the agreed-upon or "budgeted" price increases for the many products controlled by the cartel and in adhering to the precisely allocated market shares around the world.

VI. Conclusion

Hopefully, this tape and the accompanying binder will assist you in developing compliance programs that deter executives of your corporate clients from becoming involved in cartel activity in the first place and in detecting that illegal conduct that is not deterred. In today's environment, antitrust compliance is increasingly important to American businesses and consumers and to the corporations that might become involved in illegal conduct.