



# DEPARTMENT OF JUSTICE

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**OECD Competition Committee  
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**“Caught in the Act: Inside an International Cartel”**

**By**

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# **Caught in the Act – Inside an International Cartel**

## **I. Introduction**

The focus of today's program is to examine how competition authorities and public prosecutors can work effectively together to deter, detect, prosecute, and punish hardcore cartels. Before addressing these challenging issues, it is important that we have a shared understanding of the tremendous harm caused by hard core cartels to businesses and consumers, and why it is vitally important to succeed in the fight against them. However, rather than simply preaching to you about the evils of hardcore cartel offenses, I am going to show you one so that you can judge the risks for yourselves.

In order to do this, I am going to rely on some audio and video tapes of secretly recorded meetings of an international cartel caught in the act. Today you will experience the sensation of being a fly on the wall, watching as a crime is being committed. Actually, to be precise, you will be looking through the lens of a hidden camera, and the view is not from the wall but rather from a lamp tucked away in the corner of the room. However, the effect is still the same -- these tapes will put you in the smoke-filled rooms with the members of an international price-fixing cartel as they formulate, agree upon, attempt to conceal, and carry out their conspiracy.

The undercover audio and video tapes that you will see today were recorded by U.S. Federal Bureau of Investigation (FBI) agents with the help of a cooperating witness. The tapes capture an international cartel in the act of fixing prices and carving up the worldwide market for the feed additive, lysine, a product used by farmers around the world. Worldwide sales of lysine were over \$600 million annually. The tapes reveal how the world's major lysine producers were able to secretly meet at trade association meetings around the world and agree on the exact tonnage each of them would produce and sell the next year, and then fix the price of it down to the penny in the United States and countries around the world, effective the very next day.

There are still some commentators, although their numbers are rapidly fading, who will characterize cartel activity as merely "gentlemen agreements" that cause little, if any, harm. However, I predict that when you see these tapes you will be left with the distinct impression that what you are witnessing is a crime -- no different than common fraud or theft. Make no mistake about it, the executives and the companies captured on these tapes stole money from farmers around the world just as if they had lifted cash right out of their wallets.

The tapes are also useful because they vividly demonstrate the warning signs to look for in order to detect international cartel activity.<sup>1</sup> While the lysine tapes are unusual in the sense that they provide an insider's view of the inner workings of an international cartel, the operation of the cartel itself is far from extraordinary. The modus operandi used by the lysine cartel -- such as holding bogus trade association meetings, making worldwide volume and pricing agreements, and using score sheets and compensation schemes to carry out the agreement -- has turned up again and again in our international cartel investigations. With each audio or video tape that I will be showing, I will highlight one of these common characteristics.

## **II. Common Characteristics of International Cartels**

Now let me turn to a discussion of some of the common characteristics of international cartels and give you a ringside seat to an international cartel at work.

### **A. Brazen Nature of Cartels**

One of the characteristics we see over and over again in international cartels is the brazen or lawless nature of the conspiracies. By that, I refer to the contempt and disregard that the members of the cartel typically have for antitrust laws and enforcement. I think this is a good place to begin because we are sometimes 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 engaged in a violation of U.S. antitrust laws. Rather, the cartels that we have prosecuted criminally have invariably involved hard core 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. Moreover, the cartels typically involve senior executives at firms -- executives who

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<sup>1</sup>Copies of the tape and transcripts are available at no charge by mailing or faxing (202/616-4529) your request to the United States Department of Justice, Antitrust Division, Freedom of Information Act Unit, 325 Seventh Street, NW, Suite 200, Washington, D.C., 20530.

have received extensive antitrust compliance counseling, and who often have significant responsibilities in the firm's antitrust compliance programs.

The first tape segment captures this lawlessness and the contempt that the members of the cartel have for law enforcement and their victims. 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 Tyson Foods, the largest purchaser of lysine in the United States, and that another chair was for ConAgra Foods, 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.

- *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, Archer Daniels Midland's ("ADM") 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.

#### B. 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 often have a particular fear of detection and prosecution by U.S. antitrust authorities resulting in jail sentences. Shortly after this investigation became public in 1995 and cartel members realized that the FBI

might be watching, we learned from cooperating defendants in several investigations that the cartels changed their practices in order to avoid having meetings or calls in the United States and tried, where possible, to exclude the participation of U.S. personnel in the conspiracies. These same cartels continued to target U.S. businesses and consumers, but the meetings, the calls, the documents, and the participants largely resided safely overseas, or so they thought. This next segment demonstrates the initial reluctance of one of the foreign cartel members in the lysine conspiracy 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.

- *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)*

#### C. 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.

- *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 8) 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 the agenda item listed as “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.

#### D. 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.

- *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. All prices to be effective the very next day. Later in the meeting, they did the same thing for other countries.

## E. Worldwide Volume-Allocation Agreements

Many 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?

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

## F. Audits and the Use of Score Sheets

Many 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 9.

## G. 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 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.

- *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 6)*

## H. Budget Meetings

Cartels may also conduct “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 may 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.

- *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 7)*

### III. Conclusion

These tapes demonstrate the awesome power of cartels to rip-off businesses and consumers. Unbeknownst to their customers, five executives sitting in a hotel room can raise and fix prices around the world effective the very next day. International cartels, like the one involving vitamins, can operate profitably for a decade or more wholly undetected. The fact is that the obstacles to cracking cartels are huge. These are sophisticated, premeditated crimes committed by highly-educated individuals in absolute secrecy. In most cases, there will be no smoking guns left around and no cameras hidden in the lamps to capture the moment. Today's workshop will examine effective strategies for fighting cartels, but their successful deployment in a particular jurisdiction depends in large part on how seriously the jurisdiction views the threat posed by cartels to its economy. I hope that viewing these tapes has set the stage for today's program by making the case that hardcore cartel offenses deserve to be treated as crimes and that, wherever possible, competition authorities and public prosecutors must work closely together to prosecute these harmful offenses.

### IV. Epilogue

The three U.S. executives representing ADM at the meetings -- defendants Andreas, Wilson, and Whitacre<sup>2</sup> -- were convicted by a jury of violating the Sherman Antitrust Act (15 U.S.C. § 1) and were sentenced to lengthy terms of imprisonment. The investigation also resulted in the conviction of all of the world's major lysine producers -- including one U.S. company, two Japanese companies, and two Korean companies. All of the producers pled guilty before trial and received substantial fines, including what was then a record-breaking \$100 million fine imposed on ADM. Two Japanese executives and a Korean executive also agreed to plead guilty and cooperate after the search warrants were executed in the investigation, and they paid heavy individual fines. The lysine investigation eventually led the Division to evidence that exposed additional worldwide cartels operating in other chemical markets, including citric acid, sodium gluconate, sodium erythorbate, and maltol. In all, 10 companies and 11 individuals from 7 different countries were convicted and paid over \$225 million in criminal fines (in the United States alone) as a result of the these five inter-connected investigations.

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<sup>2</sup>Mark Whitacre, who was the cooperating witness from ADM who gave his consent to the recordings, lost his non-prosecution protection agreement with the government when it was later learned that he had embezzled over \$10 million from ADM -- some of it while he was cooperating with the government.