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Global Price Fixing

2nd Updated and Revised Edition

With 37 Figures and 26 Tables

 Springer

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For my loving son Timo

Preface

I have devoted myself to studying the economic organization of industries for thirty years. It has been my good fortune to work at places that tolerated my gadfly approach to research. So long as I produced a few publications each year and wooed a few graduate students to share those interests, I was free to sample a smorgasbord of economic delights: why firms diversify, the competitive role of advertising, strategies for selling in overseas markets, measuring market power, and many others. Although firmly anchored in the eclectic analytical framework of industrial economics and focused on the food system, I traversed a wide field at will.

A decade ago I had pretty much convinced myself that naked price fixing was not a high priority for scholarship. True, collusion was rife in a few industries, such as bid-rigging among suppliers of fluid milk to school districts in isolated rural districts. Ripping off milk money from school children is reprehensible enough, but the size of the economic losses from localized price fixing paled besides other sources of imperfect competition. Moreover, there were no great policy debates about the wisdom or methods of enforcing the price-fixing prohibitions in the Nation's antitrust laws. The more exciting areas of research for the field were behaviors placed under the rubric of "non-cooperative" or tacit collusion. These were more subtle forms of conduct that were the subjects of research on the frontier of the discipline's expanding frontier of knowledge, and they were more policy-relevant. No, I had decided, naked horizontal price fixing was largely a thing of the past, well under control by the century-old Sherman Act.

My attitude on the importance of cartels in the food and agriculture system did a *volte-face* in 1996. Like hundreds of thousands of other readers of the *Wall Street Journal*, I read with increasing fascination the legal travails of what was one of the nation's most admired agribusiness firms, the Archer Daniels Midland Company. When ADM and two other makers of lysine proposed settling with lysine buyers, the amount they offered seemed to me woefully inadequate, so I wrote a letter to a *Journal* writer expressing that opinion. That letter was never published, but serendipitously it became the instrument of my personal entrée into the burgeoning field of forensic economics.

Beginning with the federal class-action antitrust case in lysine, I have served as an expert in several cases that alleged global price fixing. I

have worked behind the scenes to write expert reports on cartels in the markets for lysine, citric acid, vitamins, sorbates, smokeless tobacco, corn sweeteners, methionine, ready-mix cement, and dynamic random access memory devices. These cases gave me access to internal company documents, most of which are confidential and protected by court seal. While those cases may have affected some of my views, in this book I support my arguments solely from public documents.

The longer I followed the news on the exposure and prosecution of these global cartels, the more convinced I became of their historical importance. Unlike the historical instances of localized price fixing in the U.S. food industries with which I was familiar, these cartels were different. They were huge, complex, geographically extensive, culturally pluralistic, illustrative of a major technological shift, and objects of heavy sanctions by antitrust enforcers. Perhaps equally important, the vast publicity generated by government indictments and civil litigation provided a paper trail about price fixing that was unsurpassed in the history of trusts, monopoly, and cartels. What might have been viewed as simply another sordid example of corporate crime and personal venality began to evolve in quite another direction. As my notes, clippings and e-files on the new cartels began to mount, I became consumed with the desire to tell their stories, first in a series of talks at professional conferences, later in refereed journal articles, and then in the first edition of *Global Price Fixing (2001)*.

Immersion in these cases gave me a valuable cross-cartel perspective. There were a large number of similarities to the schemes, though the differences were also instructive. I decided to limit the scope of this book primarily to three of the largest, precedent-setting global cartels: lysine, citric acid, and vitamins. These were the best documented cartels in the public record, and indeed as a group very likely the best documented price-fixing cases ever from the economic perspective. The economic details that have emerged into the public record permit a degree of precision of measurement of the cartels' sizes and impacts that is unequalled. At this writing, new global cartels continue to be investigated, prosecuted, and litigated. Many others go undetected.

Much has happened in the field of cartels since the first edition was written in 2000. The greater part of the vitamins story has been released. The DOJ's Corporate Leniency has been a smashing global success. At least a dozen other countries have adopted leniency policies that are quite similar, and all of them are proving to be highly productive in discovering secret cartels. At least 300 international cartels have been discovered by authorities since 1990 and almost half of them since 2000. With all this new material, the field of cartel studies is blooming. International cartels have touched most people, though often they are unaware of it (see Box).

Professional economists may find my writing style somewhat unconventional at times. The chapters that follow display much of the cool, rational, and dispassionate style that is the norm. Yet, interwoven with more orthodox legal-economic discourse are narratives of the events surrounding the formation, operation, and legal prosecutions of these global cartels. Narrative is rarely employed in scientific writing in the social sciences. My purposes are to make the material more accessible to lay audiences, to relieve tedium that can come from bloodless economic writing, and to add to the readers' understanding of personal motives and corporate strategies. In my view, narrative can add a richness of psychological detail that lends credibility and explanatory power to putatively rational decision making. The stories told here are meant to illustrate the explanatory power of economic models of real world phenomena. While economic abstractions and jargon are kept to a minimum, there are some.

It is not uncommon for medical scientists to devote their bodies in quests to test experimental compounds, but giving one's body to achieve a social-science objective may be unprecedented. In an ironic twist of events I, an author of several articles on the evils of international cartels, became a guinea pig in a medical experiment prompted by the discovery of an international cartel.

In December 2004, I volunteered for a clinical trial at a local hospital. A small Italian manufacturer sponsored the trials. The researchers were interested in evaluating the effectiveness of a new radiological contrast agent based on gadolinium compounds for MRIs (magnetic resonance images). MRIs have become a popular technique for diagnosing heart disease. A reason for the test was that a former contrast agent was being made by only one company in the world, making supply conditions perilous. When I researched Medline, several articles published in the 1960s and 1970s refer to salts of Methylglucamine as the "standard ionic contrast agent" for cardiologists to use in angiography (a diagnostic imaging procedure).

In 2002, the EU had fined two manufacturers of Methylglucamine for a global price-fixing conspiracy in the 1990s. (One of them since dropped out of the market, making the remaining firm a monopolist). It appears that gadolinium compounds are being tested to assist the Italian firm to enter the formerly cartelized market for imaging contrast media. For me, 30 minutes of stress in an MRI machine was worth it.

I hope that the episodes narrated in this book will strike the readers as more than a historical footnote. It is intended to be more than a voyeuristic examination of criminal behavior, profit-seeking gone awry, and the tragic destruction of managerial careers and corporate reputations. It will become, I hope, a permanent reminder of the constant vigilance that must be exercised by a modern nation's legal system to restrain and correct the behaviors of companies that wield power in their markets.

Zionsville, Indiana
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* Dear Reader: Detailed economic data presented in the Appendix Tables of the 1st edition of this book can be found at the following Web site: www.springer.com. Look for the title *Global Price Fixing* with the ISBN 3-540-34217-6 and you will find a button marked "Appendix Tables".

Acknowledgements

Many of my students and colleagues helped me write this book by tolerating my role as raconteur about these global cartels with at least feigned interest. Indeed, the first time that I put some thoughts on global cartels to paper was in a Departmental Seminar at Purdue University in March 1997. The enthusiasm of that audience helped persuade me that there was a need for this book.

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