Chapter 9

ECONOMIC EFFECTS OF THE LYSINE CARTEL

This chapter documents the economic effects of the operation of the lysine cartel on prices, production levels, international trade, and buyers’ incomes. Monetary estimates of these effects typically play a key role in legal actions to punish cartels or compensate their victims. The legal ramifications of the lysine cartel are discussed in Chapters 13 to 16. Chapter 13 covers the U.S. government’s criminal investigation that began in November 1992, Chapter 14 non-U.S. prosecutions, and Chapter 15 details the sentencing of three ADM officers in July 1999. Chapter 16 concentrates on the many parallel civil actions by parties seeking compensation for economic injuries they alleged they received at the hands of the lysine conspirators. The impacts on the companies themselves, the individual conspirators, and on the antitrust legal apparatus are reserved for the final chapter.

The principal objective of the lysine cartel was to raise selling prices around the world, thereby generating profits well in excess of the profits cartel members would have earned if the normal forces of demand and supply had been allowed to play out. For the participants the decision to collude or not to collude involves a weighing of benefits and costs. The corporate benefits are primarily the increases in company profits above normal levels adjusted for some subjective probability of the likelihood of success. Personal benefits may accrue to participants as well through enhanced job promotions or profit sharing. The costs are mostly some vague notion of the social and economic pain that might be imparted by prison time or fines for antitrust violations adjusted downward by the probability of being caught, indicted, and found guilty. The probability of discovery is certainly less than 100 percent (see Box).

PRICE EFFECTS

Civil antitrust proceedings and the criminal trial of Andreas, Wilson, and Whitacre released abundant information on prices charged for lysine from 1991 to 1995. Without these legal documents, the behavior of prices would remain hidden or cloudy to this day.
Weighing Benefits and Costs

Take, for example what might have gone on in Terrance Wilson’s head. On the benefits side, Wilson was caught on tape asserting that the lysine industry was giving up $200 million in profits by not agreeing to raise their price to $1.20 per pound (Tr. 712-714). ADM’s share would be about $60 million per year, and these extra profits would propel ADM’s stock prices upwards, which would monetarily benefit nearly all ADM officers. Perhaps he guessed that price-fixing cartels last an average of four years. Wilson had helped get the citric acid cartel going the previous year, and it had been performing admirably well in his eyes. Even if the lysine conspiracy was going to be more of a challenge, perhaps Wilson thought that it had an 80 percent chance of success. This means that the probable benefits to his employer would be $192 million over four years.

The cost calculation is rather more difficult on which to put a dollar figure. It had been 35 years since a major price-fixing case had affected a major U.S. company, so it would be natural for Wilson to ignore the costs to ADM. At worst, if Wilson was sentenced to the full extent of the law, he would face three years in prison, and be fined $350,000 and pay legal defense costs. In fact, most conspirators spend no time in prison and pay smaller fines than the maximum. Wilson may have mused on his poor health (a serious heart condition) and the few years he had remaining until retirement. And the chances of being caught? Probably less than 10 percent. Pain and suffering? He was a Marine. Loss of his ADM pay? Less than $5 million for sure. Wilson might well have valued all these possible costs at no more than $10 million, of which 10 percent is $1 million. The net benefits are $192 – 1 = $191 million.

The decision is clear. Take the risk.

U.S. transaction prices for dry feed-grade lysine in 1991 to 1995 are shown in figure 9.1. This price series is the weighted average price received by the four largest suppliers of lysine, that is, all five members except Cheil, the smallest producer. Only sales to customers located in the United States are included, though a tiny share of those sales might have been purchased by U.S. wholesalers for export. These prices reflect all contract sales (and customer rebates) at prices below list as well as a small portion of spot sales at list prices. Without the compulsory legal process known as “discovery,” there would be no practical alternative to the prices shown. During 1990-1995, the secretive nature of lysine dealing meant that trade magazines rarely reported transaction prices and that those reports were usually inaccurate.