

1997

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Recommended Citation

Charles R. Whitt *International Executives Fined for Sharing Information and Setting Prices with ADM*, 9 Loy. Consumer L. Rev. 68 (1997).

Available at: <http://lawcommons.luc.edu/lclr/vol9/iss2/2>

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ANTITRUST NEWS

by Charles R. Whitt

International executives fined for sharing information and setting prices with ADM

Three Asian corporate executives pled guilty last January to conspiring with Archer-Daniels-Midland Co. ("ADM") to fix prices. Two Tokyo executives, Kanji Mimoto of Ajinomoto Co., and Masaru Yamamoto of Kyowa Hakko Kogyo Co. Ltd, and Jhom Su Kim of Sewon Co., in Seoul, Korea admitted in District Court for the Northern District of Illinois that they violated the Sherman Antitrust Act by sharing market information and holding price-setting meetings with ADM to manipulate the \$600 million lysine market from June 1992 until June 1995.

ADM, the Illinois-based agricultural products processor, pled guilty late last year to criminal price fixing charges and paid a record \$100 million in fines for its role in conspiring to set world prices for lysine, an animal feed supplement, and citric acid. The two-count felony indictment charged ADM with setting lysine and citric acid prices at certain levels and increasing those prices.

United States District Court Judge Ruben Castillo accepted the three Asian executives' plea agreements with the United States Department of Justice. The court ordered Mr. Yamamoto to pay a \$50,000 fine and Mr. Kim and Mr. Mimoto to pay a \$75,000 fine. Although the men potentially faced up to three years in prison, no prison sentences were recommended. In addition, South Korea's Cheil

Jedang Ltd., the alleged fifth member of the lysine price-fixing cartel, also pled guilty to one count of conspiring to fix prices and agreed to pay a \$1.25 million fine. The executives also agreed to help the Department of Justice build its case against former ADM officials who were indicted late last year, including Michael D. Andreas, a former executive vice-president, and Terrance S. Wilson, former head of ADM's corn-processing division. Mark E. Whitacre, former president of ADM's BioProducts division and also the government's undercover informant, was also indicted for price-fixing and defrauding the company of over \$9 million.

In a related class-action lawsuit involving price fixing in the citric acid market, the corporate defendants offered individual settlements totaling \$94.25 million. The five alleged conspirators named in the suit were ADM, a United States unit of Bayer AG of Germany, a United States unit of Hoffmann-La Roche of Switzerland, Jungbunzlauer of Austria, and Cargill Inc. of Minneapolis. Haarmann & Reimer Corp. of Springfield, New Jersey, the United States unit of Bayer AG, agreed to pay \$46 million to settle the customer class-action lawsuit which alleged that the company conspired with ADM and others to control citric acid prices. As part of the settlement agreement, the Haarmann & Reimer Corp. denied any wrongdoing. The class-action

suit, initiated in the summer of 1995, was prompted by a governmental investigation of ADM products including citric acid, lysine and high-fructose corn syrup. ADM settled its portion of the class-action suit for \$35 million while the United States unit of Hoffmann-La Roche Ltd. and Jungbunzlauer settled for \$5.68 million and \$7.57 million respectively. Cargill Inc. has not settled.

Furthermore, ADM officials recently disclosed that the Mexican Federal Competition Commission is investigating the company for allegedly setting the price of synthetic lysine. ADM's quarterly filing requirements with the United States Securities and Exchange Commission disclosed the investigation. ADM's guilty plea in the United States case reportedly triggered the charges by the Mexican government.