

E.CA Economics

Workshop on EU Cartel Litigation The Economists' Role

Amsterdam, 25 September 2013

Lysine case study: Introduction to the case

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Source: based on Connor (2007), Suslow (2005) and White (1999)

Lysine cartel: Expert debate in the 1996 federal civil proceeding on the overcharge calculation

- Question of the accuracy of the methods used by
 - Lawrence J. White, expert from NYU, representing the Archer Daniels Midland Co. (ADM), and
 - John M. Connor, expert from Purdue University, representing the plaintiffs

- The disparity between the two sides was an order of magnitude:
 - Plaintiffs considering opting out of the federal class had a **\$150-million** overcharge calculation before them
 - Defendants' settlement offer of \$45 million implicitly supposed a **\$15-million** overcharge by the lysine cartel

Lysine cartel: Basic information

- Lysine is an essential amino acid that is an **important component of animal feed**; soybeans is an **alternative** feed containing lysine
- Food grade lysine is a **homogeneous product** produced since the 60's by fermentation from dextrose (which is extracted from corn); significant **technical entry barriers** exists
- Contracts are **negotiated privately** with animal-feeds manufacturer; **large, infrequent procurement patterns**; more than **1000 customers** globally
- **Seasonality of demand** for lysine arises from swine feeding practices
- **Stable growth** in the past (10% per year); **saturation** in the US market foreseeable in the 90ies though
- Market share development:
 - 1960-1980 Ajinomoto (Japan) and Kyowa Hakko (Japan) enjoy duopoly on lysine production
 - 1980 Sewon (Korea) enters and captures 20% of world market by 1990
 - 1990 ADM (USA) and Cheil Sugar (Korea) enter the market, Ajinomoto has about 60% world market share in 1991

The Lysine cartel: ADM's capacity strategy

- Prior to its entry into the lysine industry, ADM had **no overlapping markets** with any of the three incumbents, but was a **major corn supplier** for Japanese producers
- After entry ADM aggressively publicizes a **large investment** into a very efficient plant (30% of world capacity)
- 1991 the plant goes online, but only reaches capacity of 250M by end of 1993, and ADM doesn't come close to using all that capacity until 1995
- In April 1992, ADM has achieved its goal of **30% global market share**
- Ajinomoto and Hyowa Hakko suffer large losses
- Internal contemporaneous documents show that ADM fully intended to put at least one of the incumbents **out of business** in order to achieve its announced goal of market-share parity with Ajinomoto
- There was an **alleged price fixing even before** ADM entered

Source: Suslow (2005)

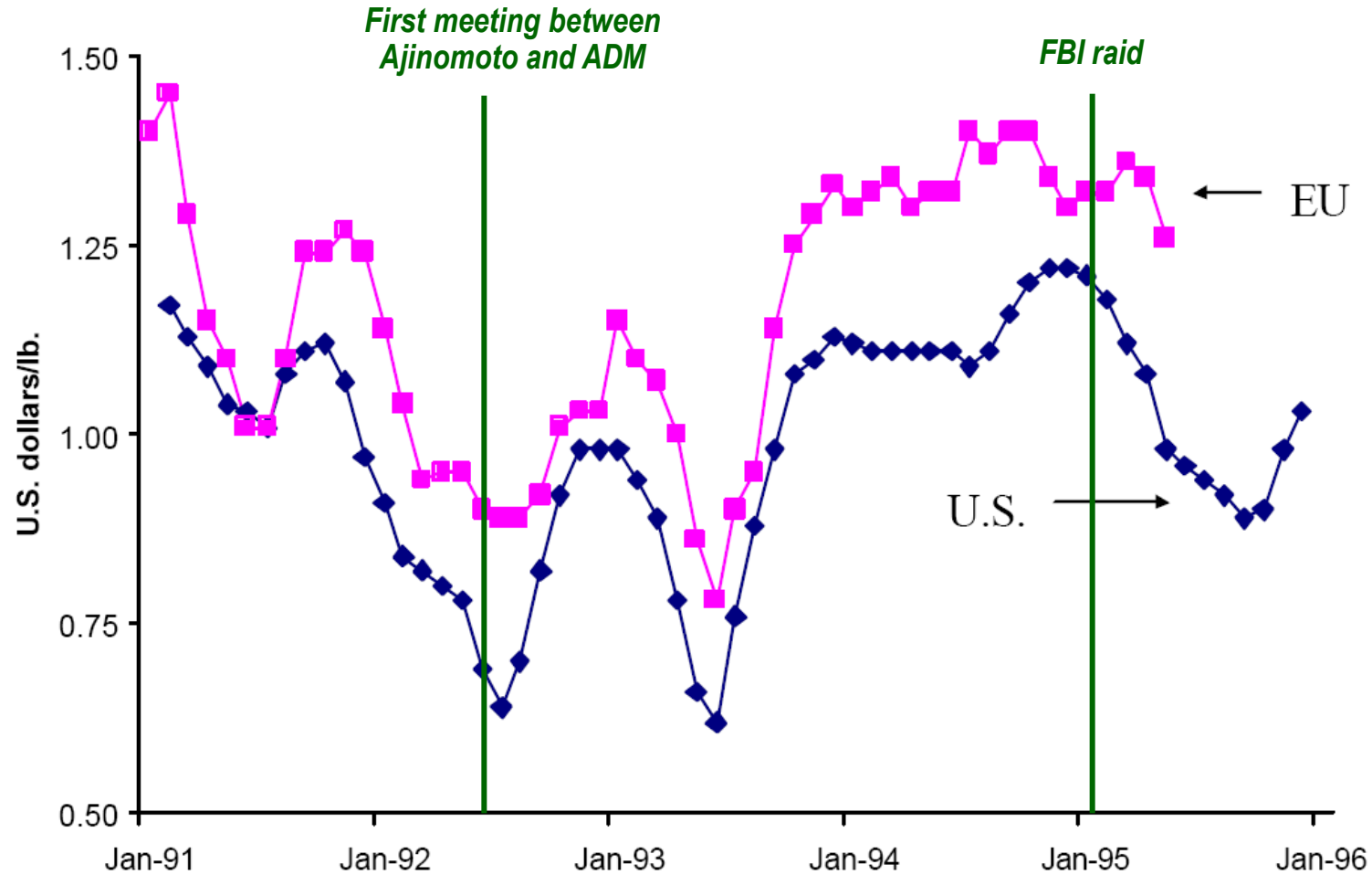
The Lysine cartel: Paving the way to the conspiracy

- ADM takes the rare step of inviting engineers from rival companies (Ajinomoto, Kyowa Hakko, and Sewon) to tour its new plant
- Price 3 months before ADM's entry was \$1.32/lb.; 18 months later the price is \$0.68/lb
- Other firms try to raise price several times in early 1992, but ADM doesn't follow
- ADM executives then fly to meet with Ajinomoto and Kyowa Hakko and begin cartel discussions in Summer 1992
- FBI raid occurs in June 1995

- Plaintiff alleges 1992-1995 explicit price fixing (and setting of quotas)
- Defendant admits price fixing discussions (they were filmed)

Source: Suslow (2005)

Comparison of Lysine prices in the USA and the EU (1991-1996), according to Connor

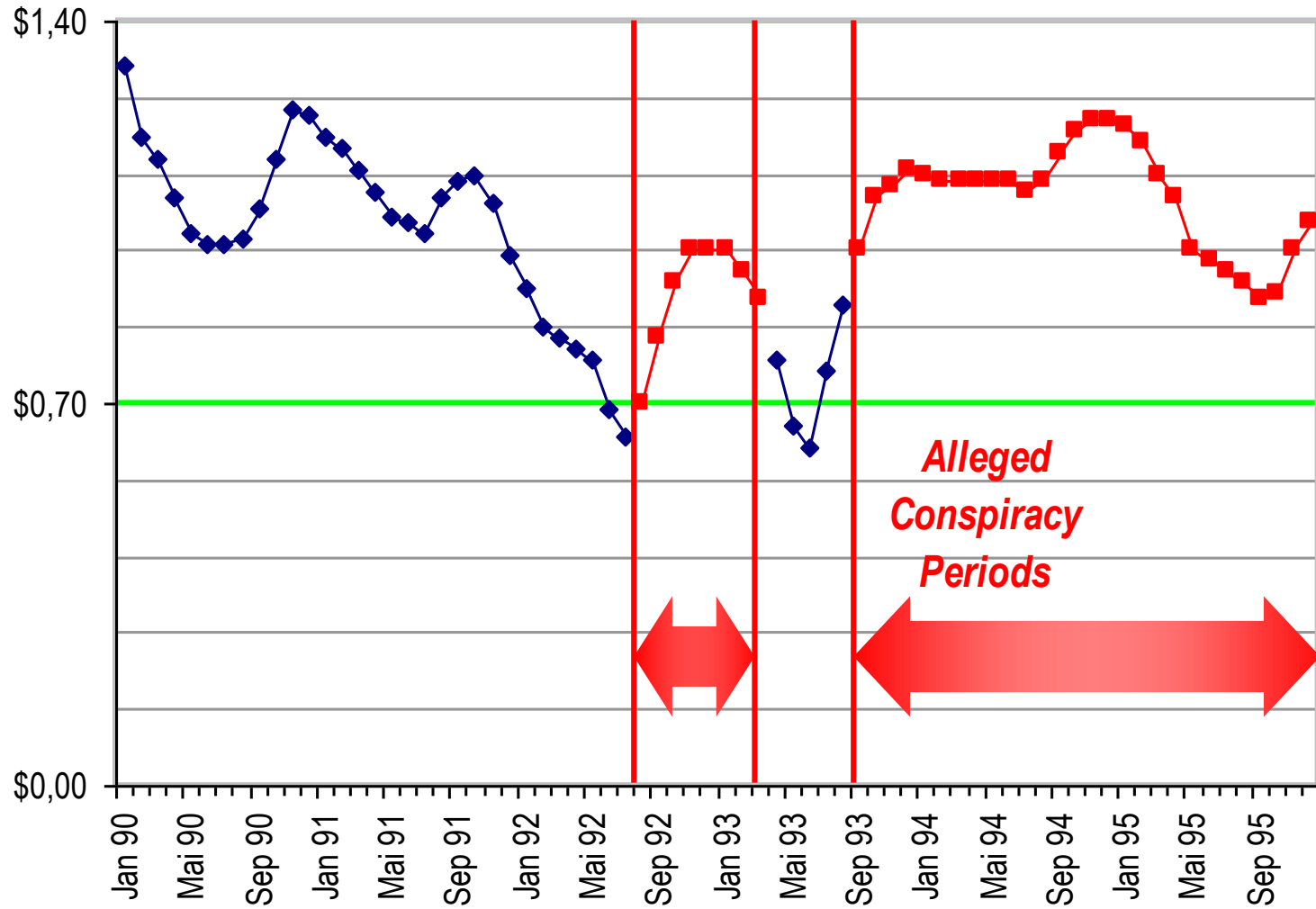


Source: Connor (1997)

Main questions

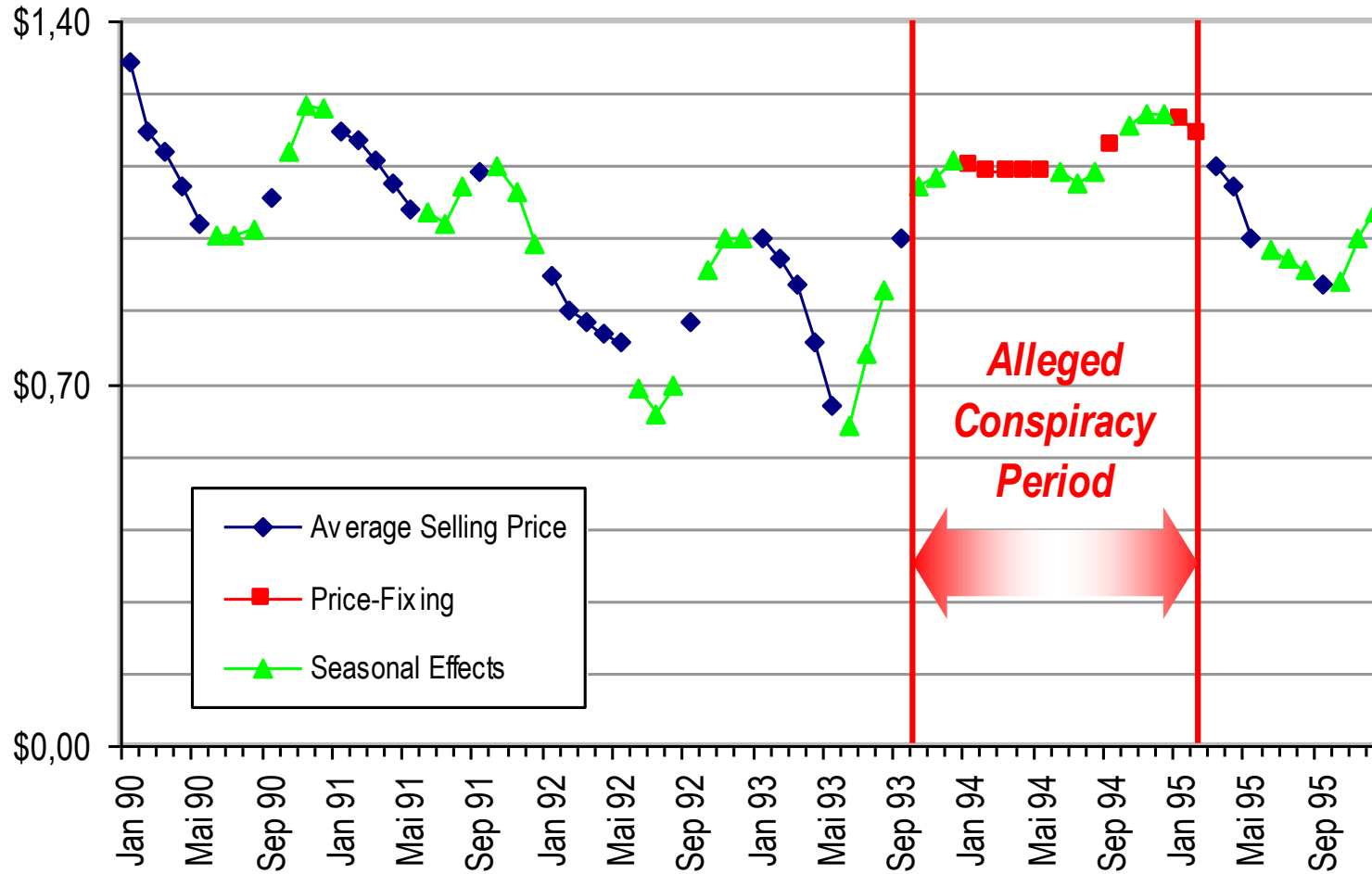
- **What is the actual affected period?**
 - One single conspiracy between summer 1992 and the dawn raid?
 - Lasting effects thereafter?
- **What is the right counterfactual?**
 - Is this industry prone for collusion? Explicit or implicit?
 - What would have happened without explicit communication?

Plaintiff expert



Source: White (1999)

Defendant



Source: White (1999)

ADM cartel profits (losses)

- ADM cartel excess profits over 3 years
 - \$80 million estimated US overcharges
 - \$50 million estimate European overcharges
 - \$50 million estimate rest of world overcharges
- ADM fines and recoveries
 - \$70 million fine to US government
 - \$49 million in US private enforcement settlements to direct purchasers
 - \$45 million fine to European Commission
 - \$15 million in US private enforcement settlements to indirect purchasers
 - \$ 8 million fine to Canadian FTC
- Net losses to ADM from lysine cartel
 - ~\$7 million

About E.CA Economics

E.CA Economics is working on central topics in the field of competition policy and regulation. These include case-related work on European competition matters, e.g. merger, antitrust or state aid cases, economic analysis within regulatory procedures and studies for international organisations on competition policy issues. E.CA Economics applies rigorous economic thinking with a unique combination of creativity and robustness, in order to meet the highest quality standards of international clients.

Located in Berlin, E.CA Economics is a partner of ESMT European School of Management and Technology. As partner of an international business school, E.CA Economics benefits from in-depth business experience of ESMT's faculty as well as from the exceptional research capabilities of ESMT professors specialised in industrial economics, finance and quantitative methods.

E.CA Economics cooperates with Bates White, LLC, a leading US economic consulting firm with more than 150 professionals, to address clients' concerns arising in international and transnational competition matters within the purview of EU and US regulatory authorities.

Thank you!

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