



Leniency and post-cartel market conduct: Preliminary evidence from parcel tanker shipping

John Asker

NYU Stern School of Business, KMC 7-79, 44 W4th St., New York NY 10012, USA

ARTICLE INFO

Available online 2 March 2010

JEL classification:

K21
L41
L12

Keywords:

Shipping
Bid rigging
Ring
Cartel
Damages

ABSTRACT

This paper provides preliminary observations from data involving a cartel in the international maritime shipping of chemicals. These data provides a setting in which to consider how the presence of a cartel affects market conduct following its dissolution and, in turn, how this might be affected by the obligations imposed on firms who seek leniency. The patterns in the data are consistent with cartel distortions persisting in the post-cartel period, possibly due to the presence of long-term contracts. An implication is that, in addition to terminating involvement in cartel activity, some social benefit may accrue from requiring firms seeking leniency to mitigate the harm caused by cartel actions.

© 2010 Elsevier B.V. All rights reserved.

1. Introduction

Cartel enforcement continues to be a significant focus of competition authorities globally. In many jurisdictions involvement in a cartel carries with it the possibility of a jail sentence for individuals, in addition to fines for the companies involved. In the US criminal culpability is accompanied by a leniency program that allows a company and its employees to gain immunity from prosecution if they are the first to alert the DoJ to the presence of the cartel and take 'prompt and effective action to terminate [the firm's] part in the anticompetitive activity being reported upon discovery of the activity.'¹ Similar programs have been adopted in several other jurisdictions.²

A significant body of research has arisen seeking to understand the incentives created by leniency and the optimal structure of these programs (see, for instance, [Aubert et al. \(2006\)](#), [Chang and Harrington \(2009\)](#), [Chen and Harrington \(2005\)](#), [Harrington \(2008\)](#), [Motta and Polo \(2003\)](#) and the survey by [Spagnolo \(2008\)](#)). At the same time, a stream of recent empirical work on cartel activity has examined specific cartels leveraging high quality data on the internal structure of the cartel in an effort to gain an empirical understanding

of how cartels' structure interacts with their impact on markets. For instance, in [Asker \(2009\)](#) a bidding cartel that operated in the auctions for collectable postage stamps was examined. This cartel used a knockout auction to coordinate ring activity, the design of which reflected the cartel design proposed by [Graham et al. \(1990\)](#), which considered a bidding cartel that used a mechanism implementing the Shapley value to arrive at a division of surplus within the cartel. An interesting implication of this cartel structure is that bidders in the auction who bid against the cartel appear to suffer damages of at least the same magnitude as the sellers of the stamps for sale. The detailed record of bidding in the knockout auction, side payments, and purchase prices at auction allows the quantification of these effects. Other recent studies of cartels that leverage similarly detailed data on the internal working of cartels include [Genesove and Mullin \(2001\)](#) and [Roller and Steen \(2006\)](#).

This paper provides preliminary observations from data that speak to both of these streams of the cartel literature. The data is drawn from one particular case, involving a cartel in the international maritime shipping of chemicals. This case is interesting in that there was a lag of nine months between one of the firms in the cartel discovering (and stopping) the illegal activity and that firm's application for leniency. This provides a provocative setting in which to consider how the presence of a cartel affects market conduct following its dissolution and, in turn, how this might be affected by the obligations imposed on firms who seek leniency.

The paper proceeds by describing the cartel, then describing the data set used to examine post-cartel conduct. The patterns in the data are consistent with cartel distortions persisting in the post-cartel

E-mail address: jasker@stern.nyu.edu.

¹ The US Department of Justice (DoJ) leniency program was introduced in 1978. The current version is due to a revision in October 1993.

² Jurisdictions with similar programs include: the European Community (including most member states), Canada, Japan, South Africa and Brazil.

period due to the presence of long-term contracts.³ The corollary to this observation is that, in addition to terminating involvement in cartel activity, some social benefit may accrue from requiring firms seeking leniency to mitigate the harm caused by cartel actions.

2. The cartel and the parcel tanker industry

The cartel considered in this paper occurred in the parcel tanker industry. Parcel tankers are ships that transport a variety of chemical and liquid products. They are distinguished from commodity or bulk chemical tankers in that they have many holds on the one ship and carry many different types of chemicals or liquids at the same time. For instance, among the 59 ships in the deep-sea fleet operated by Odfjell Tankers (one of the conspirators) in 2002, ships had between 22 and 52 separate holds. Indeed, the Odfjell 2002 annual report claims that:

'Odfjell carries over 500 different generic products every year, ranging from various organic chemicals such as alcohols, acrylates, aromatics as well as fuel oil, lubricating oils, vegetable oils and inorganic chemicals like sulphuric and phosphoric acids and caustic soda.' [at p. 47]

Transported chemicals can require special handling conditions, including stainless steel tanks, and controlled temperatures and pressures.⁴ Individual loads shipped via parcel tankers typically range from 150 tons to 40,000 tons. Ships collect and deliver chemicals at specialized terminals, some of which are owned by the same company as owns the ship.

Contracting for transportation services occurs in one of two ways: Companies seeking to ship chemicals can either buy transportation on a specific ship in a spot market or can enter into a contract of affreightment, which is an agreement to transport set quantities of cargo during a given time period, where the shipping company has discretion over the ships to be used to fulfill the contract. These contracts typically last for a year.⁵ In its 2002 Annual Report Odfjell claims that 55% of shipping was covered by a contract of affreightment, leaving 45% for the spot market.⁶

Companies seeking to ship chemicals via contract of affreightment invite shipping companies to submit bids for the service. Subject to satisfying various quality measures, the lowest cost bidder wins.

Defining the scope of competitors in the parcel tanker industry is difficult. At the broadest level parcel tankers compete against all chemical and combined oil and chemical tankers, as well as providers of tank containers (the analog to the cargo container, for transporting liquid loads of less than 150 tons). By this definition the global market consists of just under 2000 ships. A more conservative measure is offered in the 2002 Annual Report of Stolt-Nielsen (another conspirator) who report that: 'the fleet of [Stolt-Nielsen]'s core competitors, which includes a total of 16 operators including [Stolt-Nielsen], is composed of 327 ships totaling 8.6 million dwt.'⁷

In the late 1990s, through 2001 and 2002, the two largest parcel tanker operators were Stolt-Nielsen and Odfjell Tankers ('Stolt' and 'Odfjell' hereafter). A third company, Jo Tankers, was a smaller, but active market participant. In August 1998 executives from Stolt and

Odfjell met to establish a cartel to rig the bidding for contracts of affreightment. This was done by dividing existing clients between the two companies according to the various trade routes that the companies operated. This market division agreement was recorded in a set of lists. Each company was able to bid for the affreightment contract of the companies allocated to them, on the routes indicated, without competition from the other. For instance, in this first set of lists Stolt was allocated Dupont on US Gulf to Far East routes. This meant that Stolt could bid an Dupont contracts to ship chemicals from US Gulf ports to Far East ports without competitive pressure from Odfjell. In practice this would work by Odfjell not entering a bid. In the event that they were specifically asked to bid, Odfjell would contact Stolt first to make sure that their bid would not win. The customer lists were revised in 2000 and again in March through May of 2001.⁸

Some time shortly after the 1998 agreement between Odfjell and Stolt, Jo Tankers began participating in the cartel, although on a less formal basis, without explicit customer lists being drawn up.

Importantly, the bid rigging was only for contracts of affreightment and only for existing customers. New customers' contracts were competitively bid. Similarly, regional trade, on routes not covered by the customer lists, was competitively bid.

In April 2001, the chairman of the tanker division of Stolt asked an employee to evaluate the profitability of the cartel agreement of Odfjell. The report, concluding that the agreement was profitable, was discovered by the Stolt general counsel in mid January, 2002. After reading the report the general counsel reported his concerns about a potential antitrust violation to the chairman of the Stolt tanker division. On March 1st the general counsel resigned and filed a constructive-discharge lawsuit. In a subsequent revision, on November 1, 2002, of the claims made in pursuit of this lawsuit the general counsel alleged 'ongoing criminal conduct in violation of antitrust laws'.

In February 2002, Stolt terminated their collusive conduct, rewrote their antitrust compliance guidelines, and engaged in a series of internal seminars that communicated the importance of antitrust compliance. This compliance activity occurred through April 2002. The effectiveness of this activity was disputed by the US Department of Justice in *US v Stolt-Nielsen et al*; however, the judge in that matter found that 'The Antitrust Compliance Policy was effective in transforming Stolt-Nielsen's corporate culture and reforming its business practices. It drastically altered the nature of Stolt-Nielsen's contacts with its competitors. While competitors continued to initiate collusive contacts, Stolt-Nielsen employees repeatedly refused to engage in anticompetitive discussions with them, and reported any such contacts to their superiors in compliance with the Antitrust Compliance Policy.'⁹ In March 2002, Stolt executives met with Odfjell and Jo Tanker executives to inform them of their exit from the cartel.

Importantly, there is no evidence that clients of any of Stolt, Odfjell or Jo Tanker were aware of the cartel at the time that Stolt ceased to participate in the cartel. Indeed, the first evidence of clients being aware of the cartel followed an approach by a class-action attorney to a Stolt client, prompted by the revised claims in the dismissal case initiated by the Stolt general counsel on November 1, 2002.

On November 22 Stolt external counsel contacted the US Department of Justice regarding the alleged cartel activity.¹⁰ A 'marker' was granted on December 17, 2002.¹¹ On January 15, 2003 the US Department of Justice granted leniency to Stolt in relation to

³ Other explanations are also explored including capacity constraints, equilibrium selection and Harrington's (2004) idea that firms may strategically manipulate post-cartel conduct to reduce estimated damages (and hence, fines) in any subsequent prosecution.

⁴ The ships used to transport these chemicals on deep sea routes range from 10,000 to 45,000 deadweight tons (dwt) and average 170 m long and 25 m wide. Deadweight tons measure of the weight carrying capacity of the ship. The total dwt is the weight of the cargo the ship can carry plus fuel, fresh water, spare parts and similar operational needs. By way of comparison, the largest crude oil carriers are around 500,000 dwt, 420 m long and 60 m wide.

⁵ See Stolt-Nielsen Annual Report 2002, at p. 20.

⁶ Similarly, in its 2002 Annual Report Stolt reports that in 2002 67% of all tanker revenue was collected under a contract of affreightment. In 2001 the figure was 54%.

⁷ Ibid, at p. 17.

⁸ This account of the cartel's conduct is taken from the transcript of the criminal trial *US v. Stolt-Nielsen et al*, in the US District Court for the Eastern District of Pennsylvania (docket #06-cr-466), the US pleadings in that case (where facts were undisputed), and the finding of fact in the judgment of Kauffman J., dated November 6, 2007.

⁹ *US v. Stolt-Nielsen et al*, in the US District Court for the Eastern District of Pennsylvania (docket #06-cr-466). Memorandum and order dated November 6, 2007, at p. 3.

¹⁰ This coincided with a Wall Street Journal article about the allegations made by the Stolt ex-general counsel.

¹¹ A 'marker' gives an applicant first place in line for leniency.

Download English Version:

<https://daneshyari.com/en/article/5078293>

Download Persian Version:

<https://daneshyari.com/article/5078293>

[Daneshyari.com](https://daneshyari.com)