

# The Steel Cartel

# Decision 08-D-32 (december 2008) of the French competition authority

- The Conseil de la concurrence imposed a fine of 575, 4 million euros on 11 steel merchant firms.
- The cartel began in 1999 and ended in 2004.
- Disguised as a union activity : all the meetings used to take place during union meetings where general topics were supposed to be discussed.
- Use of the union hierarchy in order to monitor the agreement.
- The 3 main firms of the sector were the leaders of the cartel : PUM-Arcelor (i.e. Arcelor-Mittal), KDI (a german group), Descours et Cabaud.
- The cartel activities covered between 80 and 90% of the quantities sold.

# The case (1)

- Discovered through a leniency procedure : Descours et Cabaud, one of the leaders, brought to the conseil a number of elements that revealed the existence of a cartel.
- Dawn-raids brought a number of proofs, material evidence.
- These elements show that there is a very sophisticated cartel, very well organised, that concerns :
  - The definition of collusive prices for each type of products and clients, with the maximum rebate that can be granted according to the product/client;
  - The distribution of clients between the members of the cartel;
  - The detection mechanism of deviants;
  - The retaliation mechanism.

# The case (2)

## The operation of the cartel

- 1) National territory divided into 11 regions; each region has a « president », and is in turn divided into smaller territories supervised by other « officials » of the cartel.
- 2) Clients are distributed into categories reflecting their « potential » in terms of turnover, ability to resist price increases...
- 3) Meetings occur at each level at least once a month : reporting, decisions about what should be done in case of deviations...

# The case (3)

- 4) Products are also divided into categories, for which there are special working groups for the definition of prices, relative prices etc.
- The prices: defined for each region/type of client/product.
  - For each category, the benchmark price and the maximum discount rates are defined.
  - Rules according to which it is possible to deviate from the prescribed pricing rule are also defined, on order to allow for adaptation to « special circumstances » (these special circumstances were themselves defined) in order to guarantee the stability of the cartel.

# The case (4)

- Measures were taken in order to hide the existence of the cartel with regard to clients, like covering bids.
- The most interesting : the organisation of retaliation in case of deviations
- In general, the retaliation mechanism takes the form of a « trigger price strategy » :
  - « Once a deviation is detected (and identified as a deviation and not as an answer to special circumstances), return forever to Bertrand competition ( $p=c$ ) »
  - Problem : it is very costly to punish deviation for the non deviating firms (zero profit).

# The case (5)

- If firms don't want to punish the deviant, then the cartel is vulnerable to deviation and cannot operate.
- Here this problem is solved by the following mechanism.
- Each time a deviation is detected, one, and only one firm is designated to punish the deviant one.
- This designated firm should offer against the deviant a very low price to deprive the deviant from its « normal » market (i.e. a price just at the marginal cost).
- In order to avoid any deviation from the punishment mechanism, the designated firm is thereafter compensated
  - on the next markets, the firm that was designated to punish the deviant, and has therefore incurred losses, receives « quotas » (clients, parts of the client's demand...).
  - There is also a compensation mechanism for those firms who have suffered from the deviant.

# The case (6)

- The punishment mechanisms are very efficient : the firm who is in charge with the punishment does not suffer much since it is compensated for its losses.
- Examples of the implementation of this mechanism in the documents found by the firms.
- The result : a very long and stable cartel.

# Analysis

- In a case where evidence is so strong, and where there are a great many documents, no need for much economic analysis of the case.
- In cases that involve « tacit collusion », a lot of economic arguments have to be developed in order to prove that there are deviation and retaliation mechanisms.
- Here the main problem is to determine the sanctions : these sanctions have to be proportionate to the competitive damage (and to the situation of each firm).

# Assessment of the competitive harm

- Problem : what is the magnitude of the price increase due to the cartel practice?
- Price benchmark?
- Uni-variate methods : difficult to apply because the end of the cartel (2004) coincides with changes in the steel sector.
  - At the upstream level : prices at which the merchant buy the steel went up ++ from december 2003 to 2005, then down and up again in 2006.
  - At the downstream level : demand when up ++ from 2004 on.

# Assessment of the competitive harm (2)

- Comparison of the margin rates (purchase price – sale price)/purchase price during the cartel (2000-2005) and after (2005-2007) : -23% to -34%.
- Parties say : this is due to the increase of the purchase price.
  - But in fact, the margin (and not only the margin rate) also decreased between these two periods.
  - Moreover, the increase of the purchase price starts in december 2003 and the decrease of the margin in may 2004.
  - The parties say that the cartel is a defence vis à vis a decrease of demand : the effects of the cartel are most probably a brake on the price decrease rather than a price increase.
  - Evolution of margins show stable levels of margin during the cartel and volatile and « random » levels after.

# The economic study of Arcelor Mittal

- Uni- and Multi-variate studies.
- Try to isolate the effects of the cartel on prices from other factors that influence prices.
- Takes into account purchase prices, transport costs, quantities bought through long term contracts, the type of clients ...
- Uni-variate study : the cartel raises the margins from 2 to 7% of the product prices compared to the non cartel period.
- Multi-variate study : price increase of 5 to 7%.

# The economic study of Arcelor Mittal

- Other problems with the assumptions of the study :
  - period during which the cartel is supposed to operate (2000-december 2004 instead of may 2004), which increases the non cartel price and lowers the discrepancy between cartel and off - cartel prices.
  - The demand parameter is supposed to be the construction business index, but this does not reflect the whole demand for steel products.

# Other economic studies

- Descours et Cabaud provides a study that estimates the effects of the cartel on the price of one type of product only (« girders »).
- But the demand for that type of products did not vary according to the same shape as for other products (existence of substitutes).
- Statement of one of the officials of the cartel : « since Descours et Cabaud initiated their leniency procedure, prices fell down of 40€/ton »
- This leads to an estimate of at least 720 million € of losses for clients.

# Qualitative arguments

- Role of intermediaries on the steel market (concentrated, in touch with the clients, good knowledge of their characteristics).
- Size of the market affected by the cartel : 1,3 to 2 billion €.
- Diffusion effects on downstream markets.
- Barriers to the entry of new firms on the market:
  - coordinated answer to new entrants by collusive deviation with regards to cartel prices.

# As a result:

- Large competitive harm.
- Duration of the cartel ++ (58 months).
- Almost the whole market was affected.
- Role ++ of the 3 leaders.