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TWENTY YEARS OF PRICE-FIXING AND COVER-UP?

BY SMOKINGATE ON DECEMBER 9, 2011 · IN THE CARTEL

Our [Marlboro Cartel](#) story describes the massive, widespread cartel operated by the four multinational tobacco companies today. An interesting question remains: how long has this price-fixing conspiracy been going on for? Our own story presents proof of the cartel's operations in the present and the recent past, but what about ten or twenty years ago?

Ten years ago, The Economist published an article titled [The Price is Not Quite Right](#), claiming that price-fixing by the tobacco companies “was widespread in the late 1980s and early 1990s.” The magazine, always careful in its choice of words, came to this blunt conclusion after reviewing internal documents from British American Tobacco placed into public depositories. The documents, according to The Economist, showed that “the big tobacco multinationals colluded to fix prices in as many as 23 countries in Africa, Asia, the Middle East, Latin America and Europe.” However, the magazine at that time had no evidence that price-fixing was on-going: “certainly [the documents from the BAT depositories] are at least five years old. Even if they were to admit that the documents referred to actual price-fixing, the companies might argue that they have changed their ways — and there is no evidence to suggest that any such thing is still going on. If such evidence exists, it would not be found in the depositories, as they only cover the period up to 1995.” Now we know that such

evidence does exist, that the tobacco companies have not changed their ways, and that price-fixing is still going on.

Three years before that, The Los Angeles Times reported, based on the documents dated 1989-1992 from the same BAT depository, that “Philip Morris and British American Tobacco, the world’s two biggest tobacco companies, secretly joined forces to fix cigarette prices and divide markets in Argentina, Venezuela and other Latin American countries, according to internal documents that explicitly describe the deals and the involvement of some of the firms’ most senior executives.” [Tobacco Memos Show Overseas Price Fixing](#). Like The Economist, the LA Times had no recent evidence of price-fixing, and only cited examples from Latin America. Now we know that the price-fixing conspiracy continues to this day, and that it is much more widespread than just Latin America.

By the way, in Latin America, the companies also continue their collusive practices. In Mexico, for example, at the end of 2010, PMI announced to the trade its future price increases to become effective on December 6, 2010. But on December 3, having received no information about its competitor BAT’s future prices, PMI postponed the announced price increases until it could be sure that its competitor BAT would match those price increases.

PMI Announces Price Increases

On December 3rd, PMI announced its decision to postpone the price increase originally announced for December 6th (with December 3, 2010). This action was taken with the objective of avoiding a price disadvantage versus BAT’s brands. The price increase for PMI brands was executed on December 23rd. The price increase is reflected in the table below:

PMI Brand	Price Cat.	Est. Price (USD)	December 2010 (USD)				USD vs. MPPC (USD)		Retailer Market Price (USD)			
			From	To	From	To	From	To	From	To		
			MM\$	MM\$	MM\$	MM\$	MM\$	MM\$	MM\$	MM\$	MM\$	MM\$
5000 100's	High	0.4%	22	22	2.07	26.7	100.0	100.0	418	426	24.94	2.2
5000 20's	High	0.2%	22	22	2.07	26.7	100.0	100.0	418	426	24.94	2.2
5000 10's	High	0.0%	22	22	2.07	27.3	70.2	70.2	427	434	24.34	4.0
5000 5's	High	-0.4%	24	22	2.07	23.3	80.0	84.2	350	348	17.17	-2.0
5000 10's	Low	2.2%	22	22	2.07	40.0	80.7	70.7	365	377	24.35	1.2
5000 20's and 10's	Low	0.7%	22	22	2.07	40.0	70.0	60.0	376	340	18.00	-10.0
5000 10's	Low	0.2%	22	22	2.07	38.0	78.7	68.0	370	348	17.17	-24.4
5000 10's / 20's / 10's / 5's	Low	0.0%	22	22	2.07	40.0	80.7	70.7	370	363	20.00	-3.4
5000 10's	Low	1.0%	18	22	1.70	43.0	50.0	60.0	381	378	23.44	-0.8

* USD vs. MPPC (USD) = (2.07 / USD)

BAT Increases Prices

On December 7th, BAT issued a new suggested retail sales price list to the trade to be effective as of January 3, 2011. The price increase is reflected in the table below:

BAT Brand	Price Cat.	Est. Price (USD)	December 2010 (USD)				USD vs. MPPC (USD)		Retailer Market Price (USD)			
			From	To	From	To	From	To	From	To		
			MM\$	MM\$	MM\$	MM\$	MM\$	MM\$	MM\$	MM\$		
5000 10's	High	0.0%	22	22	2.07	23.5	100.0	100.0	418	426	24.94	2.2
5000 20's	High	0.0%	22	22	2.07	26.7	100.0	100.0	418	426	24.94	2.2
5000 10's	High	0.0%	22	22	2.07	26.0	81.3	80.7	383	380	20.00	-7.3
5000 20's	High	0.0%	22	22	2.07	24.0	86.7	100.0	370	380	24.29	2.0
5000 10's	High	0.2%	27	27	2.74	27.0	90.0	87.4	394	380	18.40	-3.2
5000 10's / 20's	High	4.4%	24	22	2.07	20.0	80.0	84.2	350	348	17.17	-2.0
5000 10's / 20's	High	3.0%	20	22	2.07	40.0	80.7	70.7	370	360	20.00	-3.4
5000 10's / 20's / 10's / 5's	High	4.0%	22	22	2.07	40.0	70.0	68.2	383	340	18.00	-10.0
5000 10's	Low	0.0%	18	22	1.40	42.0	40.7	50.0	370	380	23.24	6.4

* USD vs. MPPC (USD) = (2.07 / USD)

- *Latin America Report, December 3, 2010*: “On November 26, PMM [Philip Morris Mexico] issued a suggested price list effective December 6, 2010 Until now, no information on BAT’s pricing changes has been detected”

- *Latin America Report, January 7, 2011*: “On December 3, PMM announced its decision to postpone the price increase originally announced for December 6. This action was taken with the objective of avoiding a price disadvantage versus BAT’s brands”
- *Latin America Report, January 7, 2011*: “On December 7, BAT issued a new suggested retail price list to the trade to be effective as of January 3, 2011. . . . The price increase for the Company’s brands was executed on December 20.”

In the United States too, early suspicions of price-fixing abound but the proof of it was lacking. Ralph Nader had written several letters to the U.S. Department of Justice — in 1997, 1998 and then again in 1999 — urging “an investigation into whether the tobacco companies have engaged in criminal price-fixing.” Mr. Nader’s letters argued that “the most likely explanation for simultaneous, identical price increases — especially a clear pattern of simultaneous, identical price increases — is illegal collusive activity,” but he did not cite any concrete evidence, and his complaints were not acted upon by the authorities.

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September 1, 1999

Assistant Attorney General Joel Klein
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 950 Pennsylvania Avenue, NW
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Dear Assistant Attorney General Klein:

Yesterday's newspapers reported yet another instance of lock-step price increases by the tobacco industry. An 18-cent-per-pack price increase by Philip Morris was immediately followed by identical price increases by R.J. Reynolds, Brown & Williamson and Lorillard.

We are writing for the third time to request that the Justice Department launch an investigation into price-fixing by the tobacco companies. (We made similar requests following a five-cent-a-pack increase in May 1998, and a seven-cent-a-pack increase in August 1997.)

For the same reasons, just last year the Supreme Court of New Mexico dismissed a class action against the US tobacco companies for alleged price-fixing: “although plaintiffs offered evidence of parallel pricing, they failed to establish a genuine issue of material fact regarding whether any evidence, in addition to the parallel pricing, tended to exclude independent conduct on defendants’ part.”

Today, we know that evidence of tobacco companies’ price-fixing cartel does exist, vindicating those earlier suspicions of price-fixing. What’s more, this new evidence — and we can authenticate every single bit of it cited on our website – viewed together with the earlier documents unearthed by The Economist and Los Angeles Times, makes clear that the multinational tobacco companies have not

changed their collusive ways since the late 1980s, and have indeed been running what appears to be one of the longest and most durable international price-fixing cartels in history.

And during all that time, nobody from the industry has ever come out to reveal the existence of that cartel, until now. Instead, the industry has created the myth of its unique pricing power to hide this illegal collusion, fooling investors and regulators for more than twenty years.

Think it's all too far-fetched? Take a look at the unfolding Olympus scandal: a two-decade scheme to cover up losses occurring in the late 1980s; management stands accused of being "rotten at the core"; entire board intends to resign; the company is preparing to investigate over 70 former and current directors and executives and take legal actions against anyone responsible for the cover-up; and even the company's external auditors are being investigated for failure to expose the long-running cover-up. Speaking of which, PMI's own external auditors would be well-advised to take a close look at this matter before they sign off on PMI's next financial statement or issue another unqualified opinion about its internal controls.

And stay tuned for more to come . . .