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Court File No.: T-1656-07

FEDERAL COURT

FEDERAL COURT BETWEEN

COUR FÉDÉRALE

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HER MAJESTY THE QUEEN

- and -

OCT 30 2007

Date _____
Registrar _____
Greiffier _____

BAYER AG

Accused

INDICTMENT

THE ACCUSED, **BAYER AG** stands charged:

THAT IT DID, between July 1995 and September 2001, in Canada, commit an offence contrary to section 45(1)(c) of the *Competition Act*, R.S. 1985, c.C-34, as amended, in that the said BAYER AG did unlawfully conspire, combine, agree or arrange with other competitors, to prevent or lessen, unduly, competition in the sale of certain rubber chemicals, contrary to section 45(1)(c) of the *Competition Act*, R.S. 1985, c. C-34.

Dated at Ottawa, this ^{30th} day of August, 2007.

David A. McKee

for Luc Boucher
Senior Counsel
Public Prosecution Service of Canada

I hereby consent to the preferment of this Indictment pursuant to section 577 of the *Criminal Code of Canada*, R.S.C. 1985, c. C-46.

Dated at Ottawa, Ontario this ^{30th} day of August, 2007.

Brian Saunders

Brian Saunders
Acting Director of Public Prosecutions
and Deputy Attorney General of Canada

30 October 2007

*Endorsement
This Court orders:*

- (a) Conviction entered;*
- (b) A fine of \$2,900,000 is imposed to be paid forthwith.*

Judith A. Snider
Judge, Federal Court

FEDERAL COURT OF CANADA

BETWEEN:

HER MAJESTY THE QUEEN

- and -

BAYER AG

Accused

STATEMENT OF ADMISSIONS

pursuant to section 655 of the *Criminal Code*

I THE ACCUSED

BAYER

1. Bayer AG ("Bayer" or the Accused) is a corporation organized and existing under the laws of the Federal Republic of Germany with its principal place of business in Leverkusen, Germany. It has subsidiaries or affiliates throughout the world including a wholly owned Canadian subsidiary, Bayer Inc. ("Bayer Inc"). Bayer Inc. had no direct involvement or role in the matters hereinafter referred to. During the relevant period, Bayer manufactured various chemical products, including certain "rubber chemicals", being a group of additives used to improve the elasticity, strength and durability of rubber products and used primarily in the manufacture of tires, outdoor furniture, hoses, belts and footwear.

II. OTHER RELEVANT CORPORATIONS

2. The information set out in paragraphs 3-5 relates to parties who produce and sell certain rubber chemicals whose conduct is relevant to the present proceeding. This information has been obtained from sources available to the Commissioner of Competition ("Commissioner"), of which Bayer may not be aware, but for the purposes of this proceeding, does not contest.

Crompton Corporation

3. Crompton Corporation is a corporation organized and existing under the laws of Delaware, USA ("Crompton"). Crompton is a significant manufacturer of rubber chemicals and carries on business in Canada through its subsidiary Crompton Co./Cie., formerly Uniroyal Chemical Co./Cie.

Flexsys NV

4. Flexsys NV ("Flexsys") is an incorporated joint venture formed in 1995 between what was then Akzo Nobel NV and Monsanto Inc. and is organized and existing under the laws of Belgium, with its principal place of business located in Woluwe, Belgium. Flexsys has two principal affiliates involved in the sale of rubber chemicals, Flexsys America LP and Flexsys Rubber Chemicals Ltd. Flexsys maintains manufacturing and distribution facilities around the world. Flexsys sells rubber chemicals directly to some customers in Canada, but also distributes its product through intermediaries.

Duslo AS

5. Duslo AS ("Duslo") is a corporate entity organised and existing under the laws of the Slovak Republic with its primary place of business in Bratislava. It is a significant producer of rubber chemicals. Duslo distributes rubber chemicals in Canada principally through Struktol Canada Ltd.

III. RUBBER CHEMICALS AND THE CANADIAN MARKET FOR RUBBER CHEMICALS

6. All of the aforesaid rubber chemical producers are organized to serve the principal tire manufacturers in the world, namely, Goodyear, Michelin, Bridgestone/Firestone, Continental, Pirelli, and some of the more regional brands and manufacturing plants (the "Tire Producers"). Based on evidence available to the Commissioner, of which Bayer is not aware but does not contest for the purposes of this proceeding:

- a) the Tire Producers accounted for about 70% of the worldwide purchases of rubber chemicals throughout the substantial portion of the conspiracy herein;
- b) rubber chemicals are said to constitute about 1% of the value of finished tires, being over \$2 billion annually produced in Canada. Approximately 30% of rubber chemical sales are devoted to non-tire uses in various automobile parts, surgical gloves and other commercial, industrial and health applications; and
- c) the relevant volume of commerce of rubber chemicals, manufactured, sold or distributed in Canada which the Commissioner regards as relevant for the effects on competition indicates that Flexsys, Crompton and Bayer share approximately 90% of the annual Canadian volume of commerce of approximately CDN \$45 million per year over the period of the conspiracy (total Canadian sales of rubber chemicals by all the producers implicated in the illegal agreement during the period of the offence was approximately \$292 million).

7. On a commercial basis, rubber chemicals are produced synthetically through highly sophisticated processes. Based on evidence available to the Commissioner, of which Bayer is not aware but does not contest for the purposes of this proceeding, Bayer, together with the other rubber chemical producers identified in paragraphs 3 through 5 above, manufactured and/or sold the substantial majority of the rubber chemicals that were sold or distributed in Canada during the period of the offence for use in the tire, automobile parts, industrial applications and health industries. There are no practical or reasonable economic substitutes for certain rubber chemicals which are the subject of this proceeding, although innovation in both application and production does from time to time cause some products to be superseded. The accused and its co-conspirators are best situated from the perspective of size, experience and incentive to participate in such developments.
8. Based on evidence available to the Commissioner, of which Bayer is not aware but does not contest for the purposes of this proceeding, a significant amount of the rubber chemicals manufactured in Canada (approaching 50% in some instances) is exported. Bayer and each of the entities identified in paragraphs 3 through 5 above participates, to varying degrees, in the tire manufacturing industry. Rubber chemicals have become a commodity product and over capacity in the industry has been a constant restraint upon profitable operation and re-investment. There is significant buyer power within the tire-destined rubber chemical business.
9. Bayer does not manufacture rubber chemicals in Canada and imports such products into Canada in a quantity that is a relatively minor proportion of the Canadian market/ quantum of commerce affected by the illegal activity herein referred to.

IV. THE RUBBER CHEMICAL AGREEMENT

10. The conspiracy affecting certain rubber chemicals lasted from July 1995 to September 2001. The participants in this conspiracy included Crompton, Bayer, Flexsys, and Duslo. From July 1995, senior and mid-level executives of Bayer participated in meetings and other communications with their counterparts from various other producers at various times. All such meetings took place outside Canada. The parties agreed to coordinate the timing and amounts of price increases for certain rubber chemicals and to allocate customers and sales volumes. They also exchanged sales data and customer information on a periodic basis in order to monitor and enforce adherence to the agreement.

V. OTHER CONSIDERATIONS

11. Pursuant to her responsibilities for the administration and enforcement of the Competition Act, the Commissioner has conducted and continues to conduct extensive inquiries into the rubber chemicals industry in Canada and elsewhere, along with inquiries into other matters of competitive concern. All these matters are of a complex nature, with significant international ramifications and jurisdictional considerations. Bayer has agreed to provide its full cooperation to the Commissioner in connection with these matters, which will assist in the investigation of other individuals and corporations for violations of the Competition Act. In that regard Bayer has provided ongoing, full and truthful cooperation, documentation and employees' evidence, conducted internal audits, removed or disciplined participating employees and executives, promptly discontinued and reported its participation in anti-competitive activity related to these and other products, and introduced new compliance programs.

12. Bayer has voluntarily appeared and has attorned to the jurisdiction of the Canadian Courts solely for the purposes of entering its plea of guilty herein. This conduct has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.

VI. CONCLUSION

13. Bayer admits the above facts, except where otherwise indicated, pursuant to section 655 of the *Criminal Code*, solely for the purpose of dispensing with their proof at trial in this proceeding and for no other purpose.
14. Bayer acknowledges, on the basis of the admissions set out herein with respect to the Agreement, that all constituent elements of an indictable offence under section 45(1)(c) of the Act have been established.

FRASER MILNER CASGRAIN LLP
Counsel to BAYER AG

Dated at Toronto

this 17th day of October, 2007.

Per: 

Court File No. T-1656-07

FEDERAL COURT OF CANADA

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HER MAJESTY THE QUEEN

-and-

BAYER AG

Accused

STATEMENT OF ADMISSIONS
pursuant to section 655 of the *Criminal Code*

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