

Court File No.: T-1654-07

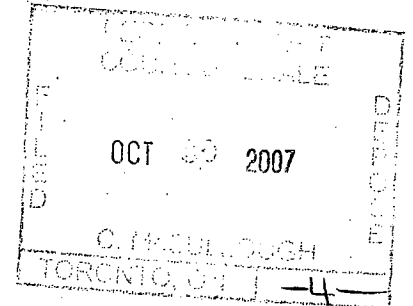
FEDERAL COURT

BETWEEN

HER MAJESTY THE QUEEN

- and -

BAYER CORPORATION



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Accused

Date OCT 29 2007  
Registrar  
Greffier

INDICTMENT

THE ACCUSED, BAYER CORPORATION stands charged:

THAT IT DID, between February 1998 and December 2002, 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 CORPORATION did unlawfully conspire, combine, agree or arrange with a competitor, to prevent or lessen, unduly, competition in the sale of aliphatic polyester polyols made from adipic acid, contrary to section 45(1)(c) of the *Competition Act*, R.S. 1985, c. C-34.

Dated at Ottawa, this <sup>9<sup>th</sup></sup> day of August, 2007.

David A. McKenches  
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 <sup>16<sup>th</sup></sup> day of August, 2007.

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

Court File No. T-

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INDICTMENT

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Luc Boucher  
Senior Counsel  
Public Prosecution Service of Canada  
160 Elgin Street, Suite 800  
Ottawa (ON) K1A 0H8

Telephone: (613) 954-4508  
Facsimile: (613) 957-9043

30 October 2007

Endorsement

This Court orders:

- a) Conviction entered; and
- b) A fine of \$345,000 is imposed payable forthwith.

Judith A Snider  
Judge, Federal Court

FEDERAL COURT OF CANADA

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-and-

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**BAYER CORPORATION**

Date OCT 30 2007  
Registrar  
Greffier

Accused

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

Luc Boucher  
Senior Counsel  
Public Prosecution Service of Canada  
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Accused

**STATEMENT OF ADMISSIONS**  
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I. THE ACCUSED

**BAYER CORPORATION**

1. Bayer Corporation ("Bayer" or the Accused) is a corporation organized and existing under the laws of the state of Indiana, with its principal place of business in Pittsburgh, Pennsylvania. Its parent, Bayer AG is a corporation organized and existing under the laws of the Federal Republic of Germany with its principal place of business in Leverkusen, Germany. Bayer AG 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 sold in Canada aliphatic polyester polyols made from adipic acid ("Adipic-Based Polyester Polyols").

## **II. ALIPHATIC POLYESTER POLYOLS AND THE CANADIAN MARKET**

2. The production of polyurethane products generally requires the use of one or more types of polyols, such as polyester polyols. Polyester polyols generally are classified as aliphatic or aromatic. Aliphatic polyester polyols are usually made using adipic acid.
3. Adipic-Based Polyester Polyols are used to improve tensile strength and resistance to abrasion in a number of products, including flexible foams, synthetic leather and other coatings, adhesives, and rigid plastics. These polyols are used primarily in shoe soles, belts, seals and gaskets, and coatings on plastic grocery bags to prevent sticking.
4. Based on evidence available to the Commissioner, of which Bayer is not aware but does not contest for the purposes of this proceeding, Adipic-Based Polyester Polyols are not produced in Canada. The majority of Adipic-Based Polyester Polyols consumed in Canada is manufactured in the US and shipped to Canada and as such, significant quantities of Adipic-Based Polyester Polyols have been imported from the US in recent years, either by way of direct or indirect sales in Canada.
5. Based on evidence available to the Commissioner, of which Bayer is not aware but does not contest for the purposes of this proceeding, the relevant volume of commerce of direct sales of Adipic-Based Polyester Polyols to Canadian customers, which the Commissioner regards as relevant for the effects on competition in Canada, indicates that Bayer and its principal competitor, who participated in the conspiracy, shared a significant portion of the Canadian sales during the relevant period.

### **III. THE ALIPHATIC POLYESTER POLYOLS AGREEMENT**

6. The conspiracy affecting Adipic-Based Polyester Polyols began in or about February 1998. In or about October 2000, Bayer acquired all of the outstanding shares of one of the corporate participants in the conspiracy and thereby assumed responsibility for that participant's involvement in the conspiracy. Bayer had no prior involvement in the conspiracy. The conspiracy continued until in or about December 2002. During the period of the conspiracy, officers and employees of the corporate participants therein participated in meetings and other communications with their counterparts from its principal competitor. During these meetings and communications, the participants reached agreements to maintain and increase the price of Adipic-Based Polyester Polyols.

### **IV. OTHER CONSIDERATIONS**

7. 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 Adipic-Based Polyester Polyols 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.

8. 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.

**V. CONCLUSION**

9. 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.

10. 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 CORPORATION**

Dated at Toronto

this 17<sup>th</sup> day of October, 2007.

Per: 

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