

CANADA,
PROVINCE OF ONTARIO
EASTERN REGION

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN

and

ROLAND BRÖNNIMANN

Accused

AGREED STATEMENT OF FACTS

I THE ACCUSED

Roland Brönnimann

1. Roland Brönnimann is a Swiss national, resident at all material times outside Canada. The accused was employed by F. Hoffmann-La Roche, Ltd ("Roche"), a large Swiss corporation, latterly as the President, Vitamins and Fine Chemicals Division and was a member or Roche's Executive Committee from May 1989 until at least May 1999. In his capacity as President, the accused oversaw the marketing throughout the world and in Canada of certain bulk vitamins produced by Roche abroad.

2. Throughout the relevant time period, Roche was engaged in the manufacture abroad and the sale of bulk vitamins and related products (including Vitamins A, B2, B5, C, and E , as well as beta carotene and vitamin pre-mixes, referred to, herein, as "bulk vitamins") in Canada and elsewhere.

II. OTHER RELEVANT PARTIES

3. The information set out in paragraphs 4 - 9 relates to parties whose conduct is relevant to the present proceeding. This information has been obtained from sources available to the Commissioner of Competition ("Commissioner"), of which the accused may not be aware, but for the purposes of this proceeding, does not contest.

F. Hoffmann-La Roche Ltd

4. F. Hoffmann-La Roche Ltd ("Roche") is a corporation organized and existing under the laws of Switzerland which produces and markets a range of bulk vitamins abroad. Roche has a Canadian subsidiary, Hoffmann-La Roche Limited/Limitée, located in Mississauga, Ontario which ultimately was responsible for the supply of bulk vitamins in Canada as part of the marketing organisation overseen by the accused, but it is not implicated in or charged with any offence herein.

BASF Aktiengesellschaft

5. BASF Aktiengesellschaft ("BASF") is a company organized and existing under the laws of Germany which produces and markets a range of bulk vitamins, including those identified in paragraph 2. BASF's principal place of business is in Ludwigshafen, Germany. BASF has a Canadian subsidiary, BASF Canada Inc., in Toronto, Ontario which distributes in Canada vitamins produced by BASF abroad.

Rhône-Poulenc S.A.

6. Rhône-Poulenc S.A., ("Rhône-Poulenc") is a corporation organized and existing under the laws of France. Rhône-Poulenc manufactures and supplies certain

bulk vitamins, including vitamins A and E, around the world. Rhône-Poulenc has a Canadian subsidiary, Rhône-Poulenc Canada Inc. of Mississauga, Ontario, which sold these vitamins in Canada during the relevant period.

Eisai Co., Ltd.

7. Eisai Co., Ltd. ("Eisai") is a corporation organized and existing under the laws of Japan. Eisai manufactures vitamin E abroad, which it sells around the world. Eisai distributes vitamin E in Canada through its wholly owned subsidiary, Eisai U.S.A. Inc., a corporation organized and existing under the laws of the State of California.

Daiichi Pharmaceutical Co., Ltd.

8. Daiichi Pharmaceutical Co., Ltd. ("Daiichi") is a corporation organized and existing under the laws of Japan. Daiichi manufactures certain bulk vitamins abroad, including vitamins B5 and B6, which it distributes in Canada through Sumitomo Canada Ltd., of Toronto, Ontario.
9. On September 22, 1999, Roche, BASF, Rhône-Poulenc, Eisai and Daiichi were convicted of certain offences under s.45(1)(c) of the *Competition Act*, R.S.C. 1985 c.C-34, in the Federal Court of Canada (Trial Division).

III. BULK VITAMINS AND THE CANADIAN MARKET FOR BULK VITAMINS

10. On a commercial basis, vitamins are produced synthetically through highly sophisticated processes. There are natural sources of certain of the relevant vitamins, but they are not economic substitutes for the volume of synthetic output that is marketed in Canada and world wide.
11. Vitamins are used in food, animal feed, and pharmaceuticals. In animal feed products, vitamins are added to compound feeds to obtain optimal growth, to aid

in disease prevention, and to promote optimal healthy growth of each species. For some animal feed applications, vitamins are distributed as a product known as "pre-mix" ; that is, a specific formulation or mixture of vitamins and other nutritional additives which is supplied on a vegetable or other carrier. In food products, vitamins are used mainly to replace losses in processing or to fortify the products and thus supplement the nutritional value of human foods. Vitamins are also used in food as antioxidants or colorants. In the pharmaceutical industry, vitamins are used for the production of vitamin supplements such as tablets and capsules.

12. Representatives of Roche participated in conspiracies with respect to bulk vitamins that were sold in Canada and elsewhere as follows:

Vitamin A	January 1990 to February 1999;
Vitamin E	January 1990 to February 1999;
Vitamin B2 (Riboflavin):	July 1991 to the Fall 1995;
Vitamin B5 (Calpan):	January 1991 to December 1998;
Vitamin C:	January 1991 to the Fall 1995;
Beta carotene:	Fall 1991 to December 1998;
Vitamin premixes:	1991 to December 1997.

13. The producers identified above manufactured the substantial majority of the supply of the above listed products during the period of the offences. Vitamin products were sold in Canada by the participants in the illegal agreements through wholly owned subsidiaries or through distributors.

14. Based upon facts obtained by the Commissioner, the relevant volume of commerce in Canada of bulk vitamins during the period of the offences for the producers identified above was nearly \$700 million, with Roche's sales at approximately \$382 million.

IV. THE AGREEMENTS

15. With respect to certain vitamins produced by Roche, during the period between 1990 and early 1998, the accused conducted conversations and met with senior executives and employees of the other major bulk vitamin producing companies named herein and/or had knowledge of and approved some of the said conversations and meetings. In these conversations and meetings, the companies entered into unlawful agreements: 1) to allocate the market share or to set specific volumes of certain bulk vitamins that each company would supply for the world, by region, including Canada; and 2) to fix, increase and maintain prices and to coordinate the price increases at which each company would sell bulk vitamins to customers for the world, by region, including Canada. The accused was aware of and had managerial responsibility for the actions of individuals employed by Roche who participated in conversations and meetings which led to the formation and implementation of these agreements.

OTHER CONSIDERATIONS

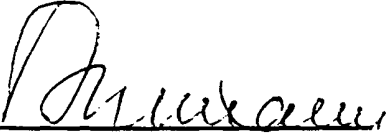
16. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted and continues to conduct extensive inquiries into the bulk vitamins industry in Canada and elsewhere in the world. Because of the complex nature of these industries, their international ramifications and jurisdictional considerations, the cooperation of the accused with these inquiries has assisted in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to bulk vitamins
17. The decision by the accused to appear and submit to the jurisdiction of the Canadian Courts to plead guilty has saved considerable costs of further investigation, extradition and trial which would otherwise have been incurred by the Government of Canada.

CONCLUSION

18. The accused 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.

19. The accused acknowledges that with respect to the agreements alleged in the Indictment, all the constituent elements of an indictable offence under subsection 45(1)(c) of the *Competition Act* have been established.

20. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.



Roland Brönnimann
October 24, 1999



The Attorney General of Canada by
her counsel, D. Martin Low, Q.C.
October 15, 1999

Court File No.

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HER MAJESTY THE QUEEN

- against -

ROLAND BRÖNNIMANN
Accused

AGREED STATEMENT OF FACTS

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