

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

FEDERAL COURT OF CANADA
COUR FÉDÉRALE DU CANADA

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BETWEEN

HER MAJESTY THE QUEEN

and

CHINOOK GROUP LIMITED

Date: SEP 21 1999

M. Desrosiers

MARIE DESROSIERS
REGISTRY OFFICER
AGENT DU GREFFE

Accused

AGREED STATEMENT OF FACTS

I. THE ACCUSED

Chinook Group Limited

1. Chinook Group Limited ("Chinook") is a corporation incorporated under the laws of Ontario, with its principal place of business in Toronto, Ontario. Chinook is the only Canadian manufacturer of choline chloride and is one of the three principal North American producers of choline chloride. During the relevant period, Chinook Group, an Ontario Limited Partnership, manufactured, distributed, sold and supplied choline chloride to customers in Canada and elsewhere. Chinook is the successor to Chinook Group.

II. OTHER RELEVANT CORPORATIONS

2. The information set out in paragraphs 3 - 7 has been obtained from sources available to the Commissioner of Competition ("Commissioner"), which Chinook is unaware of, but does not contest for the purposes of this proceeding.

Bioproducts Incorporated

3. Bioproducts Incorporated ("Bioproducts") is a corporation organized and existing under the laws of the state of Ohio, with its principal place of business in Fairlawn, Ohio. Bioproducts, a subsidiary of Mitsui & Co. (USA) Inc., is one of the three principal North American producers of choline chloride. During the relevant period, Bioproducts distributed, sold and supplied choline chloride, which it manufactured, to customers in Canada and elsewhere.

DuCoa Animal Health and Nutrition, Division of DCV Inc. (formerly DuCoa, L.P.)

4. DuCoa (DuCoa Animal Health and Nutrition Division) is one of five divisions of DCV Inc. DCV Inc. is organized and existing under the laws of the State of Delaware and its principal place of business is Wilmington, Delaware. Prior to 1997, DuCoa operated as a limited partnership, DuCoa, L.P. ("DuCoa"), with ConAgra Inc. and E.I. DuPont de Nemours & Co. as the partners. DuCoa, L.P. was organized and existing under the laws of the State of Illinois. DuCoa is one of the three principal North American producers of choline chloride, with its principal place of business in Highland, Illinois. During the relevant period, DuCoa distributed, sold and supplied choline chloride, which it manufactured, to customers in Canada and elsewhere.

BASF Aktiengesellschaft

5. BASF Aktiengesellschaft ("BASF") is a company organized and existing under the laws of Germany, with its principal place of business in Ludwigshafen, Germany. During the relevant time period, BASF was one of the principal European manufacturers and marketers of choline chloride. BASF has a Canadian subsidiary, BASF Canada Inc., in Toronto, Ontario. BASF sold none of the product in Canada during the period of the offence.

Akzo Nobel Chemicals BV.

6. Akzo Nobel Chemicals BV. ("Akzo") is a company organized and existing under the laws of the Netherlands, with its principal place of business in Amersfoort, Netherlands. During the relevant period, Akzo was one of the principal European manufacturers and marketers of choline chloride. Akzo has a Canadian subsidiary, Akzo Nobel Chemicals Ltd., Mississauga, Ontario. During the relevant period, Akzo sold virtually none of the product in Canada.

UCB S.A.

7. UCB S.A. ("UCB") is a company organized and existing under the laws of Belgium, with its principal place of business in Brussels, Belgium. During the relevant period, UCB was one of the principal European manufacturers and marketers of choline chloride. UCB has an American subsidiary, UCB Chemicals Corporation, in Atlanta, Georgia, but has no subsidiary in Canada. During the relevant period, UCB sold virtually none of the product in Canada.

III. CHOLINE CHLORIDE

8. Choline chloride is a member of the B-complex group of water-soluble vitamins. It is used as an animal feed additive, especially for poultry and swine, to increase growth, reduce mortality rate, increase feed efficiency, increase egg production

and improve meat quality. The six producers identified above supplied a substantial majority of the entire world market in the period of the conspiracy.

IV. THE CANADIAN MARKET FOR CHOLINE CHLORIDE

9. Choline chloride for use as a feed additive is typically marketed in either an aqueous solution of 70 percent choline chloride or is sprayed on a dry cereal (or silica) carrier for a choline chloride potency of 50 to 60 percent. In Canada, most choline chloride is sold in a 60 percent formulation.
10. Based on the facts obtained by the Commissioner, of which Chinook is unaware but does not contest for the purpose of this proceeding, total sales of choline chloride during the period of the offence were approximately \$59 million. Chinook's sales were approximately \$54 million. Other foreign manufacturers and marketers of choline chloride supplied the remainder.

V. THE AGREEMENT

11. Beginning in or about January 1988, senior representatives of Chinook met in Toronto, Ontario, with senior representatives of Bioproducts and DuCoa, to discuss the market for choline chloride and the prices then prevailing in the market. In a succession of subsequent meetings and other communications, including direct contacts in person and by telephone, the three producers agreed on an allocation of the North American market, by which each producer would have approximately one-third of the total market. The participants also reached agreement on a price increase, and periodically, through successive meetings and contacts, adjusted the price to be charged to customers.

12. The market-sharing agreement was intended to be implemented by an agreement that each producer would respect the customer relationships of the other producer. They further agreed that if one producer acquired a customer that dealt with another, the sales volume lost by the latter would be made up to it by the producer that had acquired "its" customer.
13. The Commissioner asserts that the effect of this agreement was to insulate a very significant proportion of the Canadian market from foreign competition by preserving the dominance of Chinook in supplying the Canadian market.
14. In or about October 1992, senior representatives of Chinook met in Mexico City, Mexico, with executives from Akzo, UCB, Bioproducts, BASF and DuCoa. At that meeting, the parties discussed, but did not agree on, a market allocation arrangement and the desirability of a price increase for choline chloride.
15. In November 1992, senior representatives of the parties met again, at the headquarters of BASF in Ludwigshafen, Germany. At that meeting, they agreed that the European producers would terminate their current sales and refrain from any future sales in North America, including Canada, and that the three North American producers would withdraw from portions of the European market. The parties also agreed to an allocation of other markets and they further agreed to raise the price of choline chloride in Canada and elsewhere.
16. The representatives of the six companies continued to meet, until the Spring of 1994, in various locations throughout the world, including, on the basis of information obtained by the Commissioner, of which Chinook is unaware but does not contest, a meeting in Toronto, Ontario. After April, 1994, there were no further meetings of all parties. However, the parties continued to communicate on a bilateral basis through meetings and by telephone, through to June, 1995.

17. Representatives of the North American producers continued to meet and conducted communications on a tri-lateral and bi-lateral basis until September 1998.

VI. OTHER CONSIDERATIONS

18. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner of Competition has conducted and continues to conduct extensive inquiries into the choline chloride industry in Canada. Because of the complex nature of this matter, its international ramifications and jurisdictional considerations, Chinook's cooperation with the inquiries has made a significant contribution to the investigation of other individuals and corporations for violations of the *Competition Act* in relation to choline chloride.
19. The decision by Chinook to cooperate with the inquiry and to plead guilty has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.

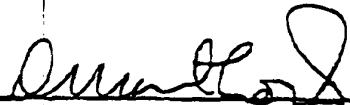
VII. CONCLUSION

20. Except where specifically indicated above, Chinook admits the above facts, pursuant to section 655 of the *Criminal Code*, solely for the purpose of this proceeding and for the purpose of dispensing with their proof at trial.
21. Chinook acknowledges, for the purpose of this proceeding only, that on the basis of its admission of the facts set out herein, all the constituent elements of an indictable offence under subsections 45(1)(c) of the *Competition Act* have been established.

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



Chinook Group Limited
by W. Patrick Stayner
September 3, 1999



The Attorney General of Canada
by her counsel, D. Martin Low, Q.C.
September 3, 1999

Court No. T-

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