

CANADA,
PROVINCE OF ONTARIO
EASTERN REGION OF ONTARIO

IN THE SUPERIOR COURT OF JUSTICE
(AT OTTAWA)

BETWEEN

HER MAJESTY THE QUEEN

and

RUSSELL E. COSBURN

Accused

AGREED STATEMENT OF FACTS

I. THE ACCUSED

Russell E. Cosburn

1. Russell E. Cosburn was employed by Chinook Group Ltd. ("Chinook") as a Product Manager from December 18, 1967 to February 1, 1982, and as Vice President, Sales from February 1, 1982 to September 30, 1992. Thereafter, until June 5, 1995, he was Vice President, Corporate Affairs. In his capacity as Vice President, Sales, Mr. Cosburn was responsible for all North American and export sales of choline chloride. After he was replaced in that position, he remained aware of contacts with Chinook's competitors until his employment terminated in June 1995.

II. OTHER RELEVANT CORPORATIONS

2. The information set out in paragraphs 3 - 8 has been obtained from sources available to the Commissioner of Competition, which Mr. Cosburn is not necessarily aware of, but for the purposes of this proceeding does not contest.

Chinook Group Ltd.

3. Chinook Group Ltd. ("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 three principal choline chloride suppliers in North America. 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.

Bioproducts Incorporated

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

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

5. 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 was organized and existing under the laws of the State of Illinois. DuCoa is one of the three large North American producers of choline chloride with its principal place of business in Highland, Illinois. During the relevant period, Ducoa manufactured, distributed, sold and supplied choline chloride to customers in Canada and elsewhere.

BASF Aktiengesellschaft

6. 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 an American subsidiary, BASF Corporation, in Mount Olive, New Jersey, and a Canadian subsidiary, BASF Canada Inc., in Etobicoke, Ontario. During the relevant period, BASF sold virtually none of the product in Canada.

Akzo Nobel Chemicals Inc.

7. Akzo Nobel Chemicals Inc. ("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., in Mississauga, Ontario. During the relevant period, Akzo sold virtually none of the product in Canada.

UCB S. A.

8. UCB S.A. ("UCB") is a company organized and existing under the laws of Belgium, with its principal place of business in Brussels, Belgium. UCB is a European manufacturer and marketer 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

9. 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. It is not a substitute for any other feed supplement and has no direct substitutes itself. The six producers identified above supplied a substantial majority of the entire world market for the product during the period of the offence.

IV. THE CANADIAN MARKET FOR CHOLINE CHLORIDE

10. 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.
11. Based on the facts obtained by the Commissioner of Competition, total sales of choline chloride, between 1988 and 1998 (when the offence ultimately ended, according to information obtained by the Commissioner), were approximately \$59 million. Sales by Chinook amounted for approximately \$54 million. The other foreign manufacturers and marketers of choline chloride supplied the remainder of the Canadian market.

V. THE AGREEMENT

12. Beginning in or about January 1988, Mr. Cosburn and other senior representatives of Chinook, Bioproducts, and DuCoa met in Toronto, Ontario, to discuss the market for choline chloride and the prices then prevailing in the market. At that time, and 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 in North America.
13. 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 historically dealt with another, the sales volume lost by the latter would be made up to it by the producer that had acquired "its" customer.
14. The Commissioner asserts that the effect of this agreement was to insulate a very significant proportion of the Canadian market from North American competitors by preserving the dominance of Chinook in supplying the Canadian market, with prices throughout North America maintained at similar levels.
15. In or about October 1992, Mr. Cosburn and other senior representatives of Chinook, Bioproducts and DuCoa met in Mexico City, Mexico, with representatives of BASF, Akzo and UCB. At that meeting, the parties discussed a worldwide market allocation arrangement and the desirability of a price increase for choline chloride.
16. In November 1992, Mr. Cosburn and senior representatives of the six parties met again, at the headquarters of BASF in Ludwigshafen, Germany. At that meeting, the representatives of the six parties reached an agreement that the European producers would terminate their current sales, and refrain from any future sales, in North America, and that the three North American producers would withdraw from the European market. The parties also agreed to an allocation of other markets and to raise the price of choline chloride in Canada and elsewhere.
17. Mr. Cosburn and other representatives of the parties continued to meet at various locations, throughout the world, including a meeting of representatives of the six parties in Toronto. After a meeting abroad in April, 1994, there were no further meetings of all parties. However, according to information available to the Commissioner which Mr Cosburn is not aware of, but does not contest, the

parties continued to communicate on a bilateral basis and by telephone, until June, 1995. Mr Cosburn did not participate in these bilateral and telephone communications.


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, Mr. Cosburn's cooperation with the inquiry has contributed to the investigation of other individuals and corporations for violations of the *Competition Act* in relation to choline chloride.
19. The decision by Mr. Cosburn 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.

VI. CONCLUSION

20. Except where indicated above, Mr. Cosburn admits the above facts, pursuant to section 655 of the *Criminal Code*, for the purpose of dispensing with their proof at trial in this proceeding.
21. Mr. Cosburn acknowledges, on the basis of his admission of the facts set out herein, that with respect to the agreement alleged in the Indictment, all the constituent elements of an indictable offence under subsections 45(1)(c) of the *Competition Act* have been established.

Russell E. Cosburn
September , 1999



The Attorney General of Canada
by her counsel, D. Martin Low, Q.C.
September 14, 1999

Court File No.

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