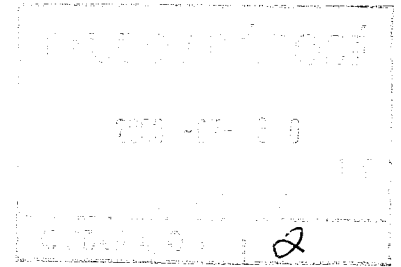


IN THE FEDERAL COURT OF CANADA  
TRIAL DIVISION  
(AT TORONTO)



BETWEEN

HER MAJESTY THE QUEEN

and

BIOPRODUCTS INCORPORATED

Accused

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AGREED STATEMENT OF FACTS

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I. THE ACCUSED

**Bioproducts Incorporated**

1. Bioproducts Incorporated ("Bioproducts") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Fairlawn, Ohio. Bioproducts 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.

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 Bioproducts is unaware of, but does not contest for the purposes of this proceeding.

**Chinook Group Limited**

3. 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.

**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 B.V.**

6. Akzo Nobel Chemicals B.V. ("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. It is not a substitute for any other feed supplement and has no significant substitutes itself. The six producers identified above supplied a substantial majority of the entire world market in the relevant period.

**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 facts obtained by the Commissioner of Competition, of which Bioproducts is not aware, but does not contest for the purposes of this proceeding, total sales of choline chloride during the period of the offence were approximately \$59 million. In that period, approximately 90 percent of the Canadian choline chloride requirements were supplied by Chinook, with the remaining 10 percent having been supplied by other foreign manufacturers and marketers of choline chloride.

## **V. THE AGREEMENT**

11. Beginning in or about January 1988, senior representatives of Bioproducts met in Toronto, Ontario, with senior representatives of Chinook 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 entered into an agreement to allocate specific shares of the 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 November 1992, senior representatives of the parties met at the headquarters of BASF in Ludwigshafen, Germany. At that meeting, they entered into an agreement by which the European producers would terminate their current sales and refrain from any future sales in Canada, and the three North American producers would terminate and refrain from any future sales in Europe. Subsequent to that meeting, on the basis of a recommendation by the representative who had attended the Ludwigshafen meeting, who did not disclose the existence of the Ludwigshafen meeting or the agreement, Bioproducts executive management approved a plan to withdraw from the European market and, except for limited spot sales, did not subsequently sell in Europe. The above described agreement also resulted in raising the price of choline chloride in Canada.
15. The representatives of the six companies continued to meet in various locations throughout the world, including Toronto, until the Spring of 1994. From that time, there were no further meetings of all parties. However, the six parties continued to communicate on a bilateral basis through meetings and by telephone, through to June, 1995.
16. Representatives of the North American producers continued to meet and conducted communications but Bioproducts representatives did not participate in any meetings or communications after June, 1998.

## **VI. OTHER CONSIDERATIONS**

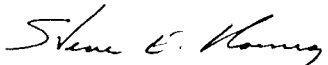
17. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner of Competition has conducted and continues to conduct an extensive inquiry into the choline chloride industry in Canada. Because of the complex nature of this matter, its international ramifications and

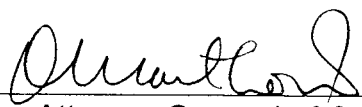
jurisdictional considerations, Bioproducts' cooperation with the inquiry has made a significant contribution to the investigation of other individuals and corporations for violations of the *Competition Act* in relation to choline chloride.

18. The decision by Bioproducts to appear and submit to the jurisdiction of the Canadian Courts 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

19. Except where specifically indicated above, Bioproducts admits the above facts, pursuant to section 655 of the *Criminal Code*, solely for the purpose of dispensing with their proof at trial in this proceeding.
20. Bioproducts acknowledges, on the basis of its 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.
21. The parties agree that this document may be executed in counterparts.

  
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Bioproducts Incorporated  
by President & CEO, Steve E. Koenig  
December 15, 1999

  
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The Attorney General of Canada  
by her counsel, D. Martin Low, Q.C.  
December 9, 1999