

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

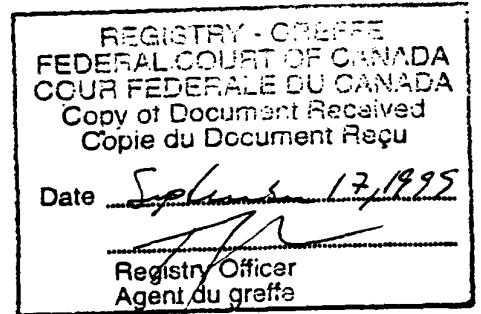
BETWEEN

HER MAJESTY THE QUEEN

and

DAIICHI PHARMACEUTICAL CO., LTD.

Accused



AGREED STATEMENT OF FACTS

I. THE ACCUSED

Daiichi Pharmaceutical Co., Ltd.

1. Daiichi Pharmaceutical Co., Ltd. ("Daiichi") is a corporation organized and existing under the laws of Japan.
2. Throughout the relevant time period, the accused was engaged in the manufacture abroad of certain bulk vitamins, including vitamins B5 ("Calpan") and B6, which it supplied in Canada and elsewhere. Daiichi's vitamin B5 and B6 was distributed in Canada through Sumitomo Canada Ltd. of Toronto, Ont.

II. OTHER RELEVANT CORPORATIONS

3. The information set out in paragraphs 4-6 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 Daiichi 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. Roche manufactures and supplies a wide range of bulk vitamins, including vitamins B5 and B6, for human food and animal feed products. Roche has a Canadian subsidiary, Hoffmann-La Roche Limited/Limitée, located in Mississauga, Ontario which supplied the Canadian market for bulk vitamins with Roche products throughout the relevant period.

BASF Aktiengesellschaft

5. BASF Aktiengesellschaft ("BASF") is a company organized and existing under the laws of Germany. BASF's principal place of business is in Ludwigshafen, Germany. BASF has a Canadian subsidiary, BASF Canada Inc., in Toronto, Ontario. It produces a wide range of vitamins and related products, including vitamins B5 and B6, abroad which it sold in Canada during the relevant period through its Canadian subsidiary, BASF Canada Inc., a company incorporated under the laws of Ontario.

Takeda Chemical Industries, Ltd.

6. Takeda Chemical Industries, Ltd. ("Takeda") is a corporation organized and existing under the laws of Japan. Takeda manufactures certain bulk vitamins, including vitamin B6, abroad and, since 1993, has distributed them in Canada through its wholly owned subsidiary, Takeda Canada Vitamin and Food Inc., headquartered in Toronto, Ontario. Prior to that time, Takeda sold these bulk vitamins in Canada through Chorney Chemical Co.

III. VITAMINS B5 AND B6 AND THE CANADIAN MARKET FOR THESE VITAMINS

7. Vitamins are organic substances which are necessary for the growth, vitality and well-being of human and animal life. They are essential to the normal

functioning of the body which cannot produce or synthesize them internally. On a commercial basis, these products are produced synthetically through highly sophisticated processes. There are natural sources of certain of the relevant vitamins, but they are not economic substitutes for all of the volume of synthetic output that is marketed in Canada and elsewhere.

8. Vitamins are widely used in animal feed, food and pharmaceuticals. In animal feed products, vitamins are added to compound feeds to obtain optimal growth, to aid in disease prevention and to promote healthy growth of each species. 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.
9. Daiichi, Roche and BASF produced a substantial majority of the world supply of vitamin B5 and Daiichi, Roche and Takeda produced a substantial majority of the world supply of vitamin B6 during the period of the offences. Daiichi supplied its vitamins B5 and B6 in Canada through its distributor.
10. Daiichi's volume of commerce for vitamins B5 and B6 sold in Canada during the period of the offences was approximately \$12 million.

IV. THE AGREEMENTS

11. Sales of vitamins B5 and B6 produced by Daiichi were affected by this conspiracy in Canada and elsewhere in the period of the offence.

12. **Vitamin B5 (Calcium d-Pantothenate or "Calpan")**

This product was sold mainly in the feed industry. The participants in the Calpan conspiracy were Daiichi, Roche and BASF. The conspiracy was initiated in January, 1991. At or about that time, and at other times in the relevant period, representatives of the three producers met and agreed to volume allocations (including market shares) and pricing agreements that were applicable to Canada and elsewhere. Periodic meetings and telephone conversations were conducted to exchange sales information on the agreed upon volumes. Periodic agreements on prices were reached between 1991 and 1998. The Calpan conspiracy concluded at the end of 1998.

13. **Vitamin B6 (Pyridoxine)**

Based upon facts obtained by the Commissioner, of which Daiichi is not necessarily aware, but for the purposes of this proceeding, does not contest, the vitamin B6 conspiracy was initiated at a meeting in Japan among representatives of Daiichi, Roche and Takeda in January 1991. The parties agreed to volume allocations and pricing agreements for vitamin B6 that were applicable to Canada and elsewhere. They exchanged sales and pricing information on a periodic basis throughout the period of the conspiracy, which came to an end in the latter half of 1994.

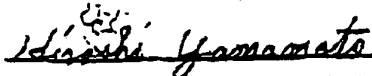
V. **OTHER CONSIDERATIONS**

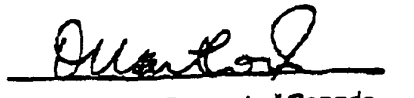
14. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted and continues to conduct extensive inquiries into the bulk vitamins industries in Canada. Because of the complex nature of the industry, its international ramifications and jurisdictional considerations, Daiichi's early cooperation with this inquiry has made a significant contribution to the investigation of other individuals and corporations for violations of the *Competition Act* in relation to bulk vitamins.

15. The decision by Daiichi 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.

VI. CONCLUSION

16. Except where specifically indicated above, Daiichi 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.
17. Daiichi acknowledges, on the basis of its admission of the facts set out herein, that with respect to the agreements alleged in each count of the indictment, all the constituent elements of an indictable offence under subsection 45(1)(c) of the *Competition Act* have been established.
18. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.


Daiichi Pharmaceutical Co., Ltd.
By
September 7, 1999


The Attorney General of Canada
by her counsel, D. Martin Low, Q.C.
September 18, 1999

No. T-

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(TRIAL DIVISION)

BETWEEN:

HER MAJESTY THE QUEEN

- and -

DAIICHI PHARMACEUTICAL CO., LTD.

Accused

AGREED STATEMENT OF FACTS

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