

FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

BETWEEN:

HER MAJESTY THE QUEEN

and

EASTMAN CHEMICAL COMPANY

Accused

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AGREED STATEMENT OF FACTS

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I. THE ACCUSED

Eastman Chemical Company

1. Eastman Chemical Company ("Eastman") is a Kingsport, Tennessee, based corporation, organized and existing under the laws of the State of Delaware. Eastman produces and exports sorbates to its Canadian subsidiary, Eastman Chemical Canada, Inc. of Toronto, Ontario. In addition, Van Waters & Rogers Ltd./Van Waters & Rogers Ltée and Daminco Inc. sold sorbates produced by Eastman Chemical Company, Inc., in Canada.

II. OTHER RELEVANT CORPORATIONS

**Note:** Eastman has no direct knowledge of the facts set out in paragraphs 2 -7 and paragraphs 10 and 11, which are based on information obtained by the Commissioner of Competition (the "Commissioner").

Hoechst AG

2. Hoechst AG ("Hoechst") is a corporation organized and existing under the laws of Germany. Hoechst produced and exported sorbates into Canada through its Food Ingredients Business Unit between 1979 and 1996.

**Daicel Chemical Industries, Ltd.**

3. Daicel Chemical Industries, Ltd. ("Daicel") is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Daicel sells sorbates in Canada through a distributor, St.Lawrence Chemical Inc./Les Produits Chimiques St.Lawrence Inc.

**Ueno Fine Chemicals Industry, Ltd.**

4. Ueno Fine Chemicals Industry, Ltd. ("Ueno") is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Ueno sells sorbates in Canada through a distributor, Ashland Canada Inc.

**Chisso Corporation**

5. Chisso Corporation ("Chisso") is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Chisso sells sorbates in Canada through a distributor, Tomen Canada Inc.

**Nippon Gohsei**

6. Nippon Gohsei is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Nippon Gohsei sells sorbates in Canada through distributors, Mitsui & Co. (U.S.A.), Inc.

**Cheminova Agro A/S**

7. Cheminova Agro A/S ("Cheminova") is a Danish corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Cheminova sells sorbates in Canada through a distributor, Quadra Chemicals Ltd./Quadra Chimie Limitée.

**III. SORBATES AND THE CANADIAN MARKET FOR SORBATES**

8. Sorbates are chemical preservatives used primarily as mold inhibitors in high moisture and sugar foods such as dairy and bakery products, fruit, berry and vegetable products, flavours, spices, syrups and pet foods. There are no manufacturing or refining facilities for sorbates in Canada. Hoechst and the other companies identified in paragraphs 2 - 7 above produce and supply a substantial majority of the total volume of sorbates sold in Canada and elsewhere.

9. Based on the facts obtained by the Director, total sales of sorbates in Canada during the entire period of the offence were approximately \$37 million. The total volume of sales of sorbates in Canada by Eastman during the shorter period in which it was a participant in the conspiracy was approximately \$3.9 million

#### IV. THE AGREEMENT

10. At various times in the period between approximately January, 1979 and December, 1996, representatives of sorbates producing companies other than Eastman engaged in conversations and attended meetings relating to the marketing of these products in Canada and elsewhere. All meetings during the relevant period occurred in locations in Europe and Japan.
11. As a result of these conversations and meetings, an unlawful conspiracy amongst the producers identified herein was reached in relation to the sale and supply of sorbates. The parties also agreed to fix, raise and maintain the prices at which each company would sell sorbates, and they also agreed on an allocation among themselves of the volume of sorbates that each company would supply, in Canada and elsewhere.
12. Commencing in January 1995, representatives of Eastman engaged in conversations with representatives of one or more of the parties to the on-going conspiracy. The result of these conversations was that Eastman agreed to establish prices for its products in Canada and elsewhere at the levels set by the other conspirators. Pricing announcements were coordinated as a result of these contacts. Specifically, Eastman by agreement followed the prices announced by the other parties. Eastman's participation in the agreement came to an end in mid-1997.

#### C. OTHER CONSIDERATIONS

13. 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 sorbates industry in Canada. He considers that Eastman's cooperation with this inquiry has assisted in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to sorbates.
14. The decision by Eastman 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.

**D. CONCLUSION**

- 15. Eastman 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.
- 16. Eastman acknowledges, on the basis of its admission of the facts set out herein, with respect to the agreement alleged in the Indictment, that all the constituent elements of an indictable offence under paragraph 45(1)(c) of the *Competition Act* have been established.
- 17. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.

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Eastman Chemical Company

by

  
GLENN LESLIE COUNSEL  
October 21, 1999

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The Attorney General of Canada

by her counsel, D. Martin Low, Q.C./  
Josephine A.L. Palumbo

October 18, 1999

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HER MAJESTY THE QUEEN

Applicant

- and -

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Accused

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AGREED STATEMENT OF FACTS

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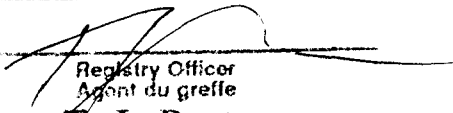
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FEDERAL COURT OF CANADA  
COUR FÉDÉRALE DU CANADA

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Déposé au Greffe

Date

*21 October 1999*

  
Registry Officer  
Agent du greffe

**T. J. Breton**  
Registry Officer  
Agent du greffe