

CANADA,
PROVINCE OF ONTARIO
TORONTO REGION

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN

and

ANDREAS HAURI

Accused

AGREED STATEMENT OF FACTS

A BULK VITAMINS

I. THE ACCUSED

Andreas Hauri

1. Andreas Hauri is a Swiss national, resident at all material times outside Canada. From at least the 1980s to mid-1994, the accused was employed by F. Hoffmann-La Roche, Ltd ("Roche"), a large Swiss corporation, latterly as the Global Marketing Manager for the Vitamins and Fine Chemicals Division of Roche. In that capacity, the accused was responsible for the marketing throughout the world and in Canada of certain bulk vitamins and citric acid produced by Roche outside Canada. During the relevant period, the accused reported to Dr Roland Brönnimann, a Swiss national who was his immediate superior at Roche. The accused stopped attending meetings with competitors in mid-1994 and retired from Roche at the end of 1994. He was replaced by Dr Kuno Sommer, also a Swiss national.

2. Throughout the relevant time period, Roche was engaged in the manufacture abroad and the sale of bulk vitamins and related products (including Vitamins A,

B2, B5, C, and E , as well as beta carotene and vitamin pre-mixes, referred to, herein, as "bulk vitamins") in Canada and elsewhere.

II. OTHER RELEVANT PARTIES AND INFORMATION

3. The information set out in paragraphs 4 - 9 and 17 - 19 relates to a number of the parties whose conduct is relevant to the present proceeding. Some of the information contained in paragraphs 12 and 14 relates to products and activities that occurred subsequent to the employment of the accused at Roche or information that is otherwise outside his knowledge. The information in these paragraphs has been obtained from sources available to the Commissioner of Competition ("Commissioner"), and the accused may not be aware of this information, but for the purposes of this proceeding, does not contest it.

F. Hoffmann-La Roche Ltd

4. F. Hoffmann-La Roche Ltd is a corporation organized and existing under the laws of Switzerland. Roche has a Canadian subsidiary, Hoffmann-La Roche Limited/Limitée, located in Mississauga, Ontario which ultimately was responsible for the marketing of bulk vitamins in Canada as part of the marketing organisation headed by the accused. Hoffmann-La Roche Limited/Limitée is not implicated in or charged with any offense herein.

BASF Aktiengesellschaft

5. BASF Aktiengesellschaft ("BASF") is a company organized and existing under the laws of Germany and it produces bulk vitamins and related products outside Canada. BASF's principal place of business is in Ludwigshafen, Germany. BASF has a Canadian subsidiary, BASF Canada Inc., in Toronto, Ontario which distributes BASF vitamins and related products in Canada.

Rhône-Poulenc S.A.

6. Rhône-Poulenc S.A., ("Rhône-Poulenc") is a corporation organized and existing under the laws of France. Rhône-Poulenc manufactures and supplies certain bulk vitamins, including vitamins A and E, around the world. Rhône-Poulenc has a Canadian subsidiary, Rhône-Poulenc Canada Inc. of Mississauga, Ontario, which sold these vitamins in Canada during the relevant period.

Eisai Co., Ltd.

7. Eisai Co., Ltd. ("Eisai") is a corporation organized and existing under the laws of Japan. Eisai manufactures vitamin E abroad, which it sells around the world. Eisai distributes vitamin E in Canada through its wholly owned subsidiary, Eisai U.S.A. Inc., a corporation organized and existing under the laws of the State of California.

Daiichi Pharmaceutical Co., Ltd.

8. Daiichi Pharmaceutical Co., Ltd. ("Daiichi") is a corporation organized and existing under the laws of Japan. Daiichi manufactures certain bulk vitamins abroad, including vitamins B5 and B6, which it distributes in Canada through Sumitomo Canada Ltd., of Toronto, Ontario.
9. On September 22, 1999, Roche, BASF, Rhone-Poulenc, Eisai and Daiichi were convicted of certain offences under s.45(1)(c) of the *Competition Act*, R.S.C. 1985 c. C-34 in the Federal Court of Canada (Trial Division).

III. BULK VITAMINS AND THE CANADIAN MARKET FOR BULK VITAMINS

10. On a commercial basis, vitamins are produced synthetically through highly

sophisticated processes. There are natural sources of certain of the relevant vitamins, but they are not economic substitutes for the synthetic products that are marketed in Canada and world wide.

11. Vitamins are essential to proper human and animal nutrition and they are used in food, animal feed, and pharmaceuticals. In animal feed products, vitamins are added to compound feeds to obtain optimal growth, to prevent diseases, including conditions attributable to vitamin deficiencies, and to promote optimal healthy growth of each species. For some animal feed applications, vitamins are distributed as a product known as "pre-mix"; that is, a specific formulation or mixture of vitamins and other nutritional additives which is supplied on a vegetable or other carrier. 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. Because of the absence or the depletion of vitamins in the processing of human foods and because of the absence of the requisite requirements in common animal feeds, humans and animals do not obtain the essential inputs of vitamins without supplements of synthetic vitamins

12. Among the bulk vitamins affected by these conspiracies that were sold in Canada and elsewhere are the following:

Vitamin A	January 1990 to February 1999;
Vitamin E	January 1990 to February 1999;
Vitamin B2 (Riboflavin):	July 1991 to the Fall 1995;
Vitamin B5 (Calpan):	January 1991 to December 1998;
Vitamin C:	January 1991 to the Fall 1995;

Beta carotene: Fall 1991 to December 1998;

Vitamin premixes: 1991 to December 1997.

Other vitamins and related products involving other parties not named herein are the subject of an on-going inquiry by the Commissioner of Competition.

13. The producers identified above along with other unnamed co-conspirators manufactured the substantial majority of the supply of the above listed products during the period of the offences. Vitamin products were sold in Canada by the participants in the illegal agreements through wholly owned subsidiaries or through distributors, and in Canada and elsewhere, the supply and marketing of vitamins produced by Roche and its affiliates was directed by the accused or by persons under his direct authority.
14. Based upon facts obtained by the Commissioner, during the period of participation by the accused, the relevant volume of commerce of bulk vitamins sold in Canada by the companies implicated to date in the offences was over \$350 million, with Roche's sales at approximately \$209 million.

IV. THE VITAMINS CONSPIRACIES

15. For each of the vitamin products listed above, and from the times indicated up to June 1994, the accused conducted conversations and met with senior executives and employees of the other major bulk vitamin producing companies, who participated in the conspiracies. In these conversations and meetings, the accused entered into unlawful agreements: 1) to allocate the market share or to set specific volumes of certain bulk vitamins that each company would supply in Canada and elsewhere; and 2) to fix, increase and maintain prices and to coordinate the price increases at which each company would sell bulk vitamins

to customers in Canada and elsewhere. The accused was instrumental in bringing about the agreements with each of the parties identified above and with other parties engaged in the manufacture and sale of other vitamins and related products. The individuals who participated in the conspiratorial meetings and communications acted in a covert and clandestine manner, aimed at avoiding detection of the conspiracy and in full knowledge of the illegal nature of the agreements reached. The agreements were implemented in Canada by Roche, under the direction of the accused.

B CITRIC ACID

I. RELEVANT PARTIES

F. Hoffmann-La Roche Ltd

16. Roche produces citric acid through its subsidiary S.A. Citrique Belge N.V., a Belgian corporation, located in Tienen, Belgium. Roche's Canadian subsidiary supplied citric acid to the Canadian market, as part of the marketing organisation headed by the accused. Roche's Canadian Subsidiary is not implicated in or charged with any offense herein.

Jungbunzlauer International AG

17. Jungbunzlauer International AG ("JBL") is a corporation organized and existing under the laws of Switzerland. JBL exported citric acid to Canada that was manufactured in Austria by an affiliate.

Haarmann & Reimer Corporation

18. Haarmann & Reimer Corporation ("H&R") is a corporation organized and existing under the laws of the State of Delaware. H&R is a subsidiary of Bayer Corporation, an Indiana corporation. H&R sold citric acid produced by it at various locations outside Canada to the Haarmann and Reimer business of

Bayer Inc., or its predecessors, in Canada.

Archer Daniels Midland Company

19. Archer Daniels Midland Company ("ADM") is a Delaware corporation principally engaged in the production, manufacturing, distribution, sale and supply of agricultural commodities, including, during the relevant period, citric acid. ADM sells citric acid in Canada through distributors and through one of its divisions, ADM Bioproducts, located in Toronto, in the Province of Ontario.
20. Between March, 1998 and September 22, 1998, Roche, JBL, H&R and ADM were each convicted of an offence under s. 45 (1)(c) of the *Competition Act* in relation to the supply of citric acid in Canada and elsewhere.

III. CITRIC ACID AND THE CANADIAN MARKET FOR CITRIC ACID

21. Citric acid is an organic acid which is used in its refined form in food products, beverages, cosmetics, medicine, detergents and cleaning agents, chemicals and textiles, both in Canada and throughout the world. There are no manufacturing or refining facilities for citric acid in Canada. Roche and the other companies identified in paragraphs 17-19 above produced and supplied a substantial majority of the total volume of citric acid sold in Canada.
22. Based on the facts obtained by the Commissioner, total sales of citric acid in Canada during the period of the offence were approximately \$104,600,000. Roche's share of the Canadian market during the period was approximately 10.5%. The total volume of sales of citric acid in Canada by Roche during that period was in the order of approximately \$11 million.

IV. THE CITRIC ACID CONSPIRACY

23. At various times in the period between approximately July, 1991 and mid-1994 the accused initiated and participated in conversations and attended meetings with senior representatives of the other citric acid producing companies. The conversations and meetings generally occurred in locations outside Canada. Based on information available to the Commissioner, meetings and conversations among representatives of these companies continued until June 27, 1995.

24. As a result of these conversations and meetings, unlawful agreements were reached as to the prices at which each company would sell citric acid, and as to the volume of citric acid that each company would supply, to their customers in Canada and elsewhere. The parties coordinated their activities on pricing and participated in an arrangement that ensured that no party would exceed its agreed allocated volume of sales.

B OTHER CONSIDERATIONS

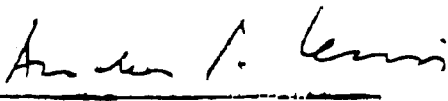
25. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted and continues to conduct extensive inquiries into the bulk vitamins industry in Canada. Because of the complex nature of this industry, its international ramifications and jurisdictional considerations, the cooperation of the accused with these inquiries will assist in the on-going investigation of other individuals and corporations for violations of the *Competition Act* in relation to bulk vitamins.

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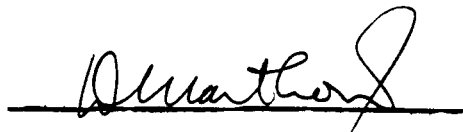
26. The decision by the accused to appear and submit to the jurisdiction of the Canadian Courts to plead guilty has saved considerable costs of further investigation, extradition and trial which would otherwise have been incurred by the Government of Canada.

C CONCLUSION

27. The accused admits the above facts, except where otherwise indicated, pursuant to section 655 of the *Criminal Code*, solely for the purpose of dispensing with their proof at trial in this proceeding.
28. The accused acknowledges 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.
29. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.



Andreas Hauri
October 25, 1999



The Attorney General of Canada by
her counsel, D. Martin Low, Q.C.
October 22, 1999

Court File No. F888/99

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