

Court No. T-16 65-99

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

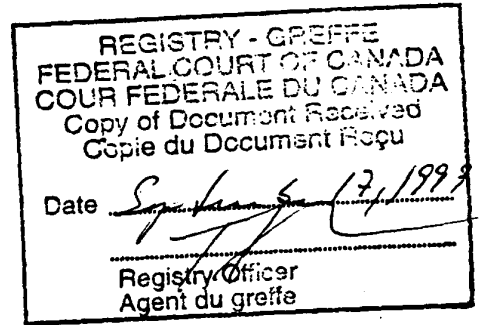
BETWEEN

HER MAJESTY THE QUEEN

and

F. HOFFMANN-LA ROCHE LTD

Accused



AGREED STATEMENT OF FACTS

A BULK VITAMINS

I. THE ACCUSED

F. Hoffmann-La Roche Ltd

1. F. Hoffmann-La Roche Ltd ("Roche") 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, but it is not implicated in or charged with any offence herein.

2. Throughout the relevant time period, the accused 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 betacarotene and vitamin premixes, referred to, herein, as "bulk vitamins") in Canada and elsewhere. The accused

also manufactured citric acid abroad through a subsidiary, not implicated or charged herein, and sold it in Canada and elsewhere.

II. OTHER RELEVANT CORPORATIONS

3. The information set out in paragraphs 4-9 and 17-19 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 Roche may not be aware, but for the purposes of this proceeding, does not contest.

BASF Aktiengesellschaft

4. 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 which is not implicated in or charged with any offence herein.

Rhône-Poulenc S.A.

5. Rhône-Poulenc S.A., ("Rhône-Poulenc") is a corporation organized and existing under the laws of France. Rhône-Poulenc manufactures and sells 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, but it is not implicated in or charged with any offence herein.

Eisai Co., Ltd.

6. 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.

7. 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.

Takeda Chemical Industries, Ltd.

8. Takeda Chemical Industries, Ltd. ("Takeda") is a corporation organized and existing under the laws of Japan. Takeda manufactures certain bulk vitamins 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.

Merck KGaA

9. Merck KGaA ("Merck") is a company organized and existing under the laws of Germany with its head office located in Darmstadt. Merck produces certain bulk vitamins abroad, which it sells in Canada through BDH Inc., located in Etobicoke, Ontario.

III. BULK VITAMINS AND THE CANADIAN MARKET FOR BULK VITAMINS

10. 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 the volume of synthetic output that is marketed in Canada and world wide.

11. Vitamins are used in food, animal feed 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. For some animal feed applications, vitamins are distributed as a product known as "premix"; 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.

12. 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;
Betacarotene	Fall 1991 to December 1998;
Vitamin premixes	1991 to December 1997.

As more fully described in paragraph 15, the above dates represent the duration of the agreement for each product that constitutes the offence.

13. The producers identified above manufactured the substantial majority of the supply of the above listed products during the period of the offence. Vitamin products were sold in Canada by the participants in the illegal agreements through wholly owned subsidiaries or through distributors, but no subsidiary or distributor of Roche is implicated in or charged with an offence herein.

14. Based upon facts obtained by the Commissioner of which Roche is not necessarily aware, but for the purposes of this proceeding, does not contest, the relevant volume of commerce in Canada of bulk vitamins during the period of the offences for the three largest producers was \$646 million, with Roche's relevant sales at \$382 million.

IV. THE AGREEMENTS

15. For each of the vitamin products listed herein and during the time period stated above, senior executives and employees of Roche engaged in conversations and attended meetings with other senior executives and employees of the other major bulk vitamin producing companies named herein. In these conversations and meetings, unlawful agreements were reached: 1) to allocate the market share or to set specific volumes of certain bulk vitamins that each company would supply for the world, by region, which included Canada; 2) to fix, increase and maintain prices and to coordinate the price increases for the world, by region, which included Canada, at which each company would sell bulk vitamins to customers. The agreements for each specific product may be summarized as follows:

Vitamin A

- (a) The agreements on vitamin A involved Roche, BASF and Rhône-Poulenc and existed from January, 1990 to February, 1999. At the outset, senior executives from each firm met and agreed to allocate market shares or volume of sales for the world, by region, which included Canada. Over the period of the conspiracy, yearly meetings among senior executives were held to agree on a "budget" for the following year, to agree on an estimate of future demand for the world, by region, which included Canada, based on sales information exchanged during quarterly meetings of lower level employees of each firm. At the meetings, the participants also agreed to fix, increase and maintain the prices at which vitamin A would be sold for the world, by region, which included Canada.

Vitamin E

- (b) The parties to the conspiracy on vitamin E were Roche, BASF, Rhône-Poulenc and Eisai. The agreement of vitamin E among the European producers operated from January, 1990 to February 1999, but the participation of Eisai was confirmed only in late 1990. The nature of the agreement on vitamin E was essentially the same as vitamin A, as both products were discussed, at least among the European manufacturers, at the same meetings. In late 1990, a senior executive of Eisai met separately with senior executives of BASF, Roche and Rhône-Poulenc and confirmed that it would participate in the vitamin E agreement. Eisai representatives subsequently met bilaterally, on a continuing basis, with Roche representatives to exchange information prior to or following the trilateral meetings of the European producers and to confirm its continuing agreement.

Vitamin B2 (Riboflavin)

- (c) The parties to this conspiracy were Roche, BASF and Takeda. The conspiracy started in July, 1991, with an agreement on market shares and prices for the world, by region, which included Canada, which was reached among senior representatives, followed by periodic bilateral and trilateral meetings of other employees of the three companies. The riboflavin conspiracy ended in the Fall of 1995.

Vitamin B5 (Calcium d- Pantothenate or "Calpan")

- (d) This product was sold mainly in the feed industry. The participants in the Calpan conspiracy were Roche, BASF and Daiichi. The conspiracy was initiated in January, 1991 when senior executives of the three producers met and agreed to a detailed world wide market sharing agreement. The participants allocated a specific market share or volume quota for the world, by region, which included Canada. Periodic meetings were held 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.

Vitamin C

- (e) Vitamin C is primarily used in the food and pharmaceutical industries. The conspiracy on this product lasted from 1991 to 1995. The participants in this conspiracy were Roche, Takeda, Merck and BASF. From January, 1991, the representatives of the four producers met periodically and agreed to allocate their market shares for the world, by region, which included Canada. At these meetings, the parties periodically agreed to raise and maintain prices between 1991 and the Fall of 1995.

Betacarotene

- (f) Betacarotene is not technically a vitamin but is used as a nutrient in foods and animal feed, and to give colour to foods, beverages and pharmaceutical products. The participants in the conspiracy were Roche and BASF whose representatives agreed to allocate sales volumes for the world, by region, which included Canada. This agreement commenced as early as the Fall of 1991. Annual budget meetings were held among senior executives of each firm, who agreed on market shares. At these meetings the parties also agreed to fix, increase and maintain the price of betacarotene for the world, by region, which included Canada. The betacarotene agreement ended in late 1998.

Vitamin Premix

- (g) This product is a mixture containing minerals, vitamins and trace elements for animal feed formulations. Vitamins A and E are a significant portion of vitamin premixes ("premix"). Between 1991 and 1997, senior representatives of Roche and BASF periodically met and agreed upon the price for premix sales in Canada and elsewhere. This conspiracy ended in December 1997.

B CITRIC ACID**I. THE ACCUSED****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, but it is not implicated in or charged with any offence herein.

II. OTHER RELEVANT CORPORATIONS

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.

III. CITRIC ACID AND THE CANADIAN MARKET FOR CITRIC ACID

20. Citric acid is an organic acid which is used in its refined form in a wide variety of 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 produce and supply a substantial majority of the total volume of citric acid sold in Canada.

21. 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 AGREEMENT

22. At various times in the period between approximately July, 1991 and June 27, 1995, senior representatives of Roche, including one or more officers, engaged in conversations and attended meetings with the representatives of the other citric acid producing companies. While the conversations and meetings generally occurred in locations outside Canada, the parties met in Toronto on at least one occasion during this period.
23. As a result of these conversations and meetings, an unlawful agreement was 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 throughout the world, by region, which included Canada.

C OTHER CONSIDERATIONS

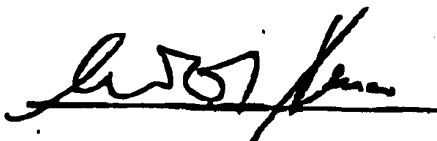
24. Pursuant to his responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted and continues to conduct extensive inquiries into the bulk vitamins industry in Canada and elsewhere

in the world. The citric acid inquiry has now been completed. Because of the complex nature of these industries, the international ramifications and jurisdictional considerations, Roche's early and valuable cooperation with these inquiries has assisted in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to bulk vitamins.

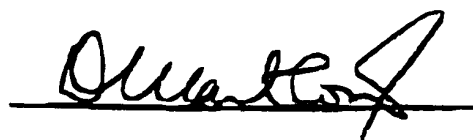
25. The decision by Roche to appear and submit to the jurisdiction of the Canadian Courts to plead guilty has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.

D CONCLUSION

26. Roche admits the above facts, except where otherwise indicated, solely for the purpose of dispensing with their proof at trial in this proceeding.
27. Roche 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.
28. The parties agree that this document may be executed by signatures conveyed by facsimile transmission or in counterparts.



F. Hoffmann-La Roche Ltd
September 15, 1999



The Attorney General of Canada
by her counsel D. Martin Low, Q.C.
September 13, 1999

No. T-

**FEDERAL COURT OF CANADA
(TRIAL DIVISION)**

BETWEEN:

HER MAJESTY THE QUEEN

- and -

F. HOFFMANN-LA ROCHE LTD

Accused

AGREED STATEMENT OF FACTS

D. Martin Low, Q.C.
Counsel for the Attorney General
of Canada
Department of Justice
Industry Canada
Legal Services
Place du Portage, Phase 1
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-3325
Facsimile: (819) 953-9267