

FEDERAL COURT OF CANADA
(TRIAL DIVISION)

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

and

ROUSSEL CANADA INC.

Accused

AGREED STATEMENT OF FACTS

I. THE ACCUSED

Roussel Canada Inc.

1. Roussel Canada Inc. ("Roussel") is a corporation organized and existing under the laws of Canada. Roussel is a wholly owned indirect subsidiary of Hoechst Marion Roussel S.A. ("HMR"), a corporation organized and existing under the laws of France. Roussel imported into Canada pharma-grade vitamin B₁₂, (cyanocobalamin) that was produced by Roussel Uclaf S.A. ("Roussel Uclaf"), a precursor of HMR, and sold the product, either directly to Canadian customers, or indirectly through Canadian distributors.

II. OTHER RELEVANT CORPORATIONS

Note: Roussel has no direct knowledge of the facts set out in paragraph 2 which are based on information obtained by the Commissioner of Competition (the "Commissioner")

Rhône-Poulenc Rorer S.A.

2. Rhône-Poulenc Rorer S.A. ("RPR") is a corporation organized and existing under the laws of France. RPR is a wholly owned subsidiary of Rhône-Poulenc S.A. ("RP"), a corporation organized and existing under the laws of France. RPR

exported pharma-grade vitamin B₁₂, also known as cyanocobalamine, to Canada, and sold the product, either directly to Canadian customers, or indirectly through Canadian distributors. RPR has a Canadian subsidiary, Rhône-Poulenc Rorer Canada Inc., of St. Laurent, Quebec. RP has a Canadian subsidiary, Rhône-Poulenc Canada Inc., of Mississauga, Ontario.

III. THE CANADIAN MARKET FOR VITAMIN B₁₂

4. Vitamin B₁₂ is a water-soluble vitamin necessary for the normal and healthy growth and development of both humans and animals. The commercially available, synthetic form of vitamin B₁₂ is known as cyanocobalamin and is produced and marketed in three primary forms: 1) pharma-grade, for human use; 2) feed-grade, for use in animal feed; and 3) derivative products.
5. Pharma-grade cyanocobalamin is the sole subject of the agreements between the competitors. The term "vitamin B₁₂", as used hereafter, refers only to the pharma-grade of cyanocobalamin.
6. According to information obtained by the Commissioner, total imports of all forms of vitamin B₁₂ and its derivatives into Canada amounted to approximately \$21.5 million during the period of the offence, namely, 1990-1997. The total volume of Roussel's Canadian sales of pharma-grade vitamin B₁₂ during that period was approximately \$1.85 million.

IV. THE VITAMIN B₁₂ AGREEMENT AND DIRECTIVES

7. During the period between January, 1990 and December, 1997, representatives of Roussel Uclaf engaged in conversations and attended meetings with representatives of RPR. The meetings took place two to four times a year, outside of Canada, most frequently in the offices of either Roussel Uclaf or RPR in Paris, France.
8. As a result of these conversations and meetings, an unlawful conspiracy was reached to allocate customers for pharma grade B₁₂ between the two producers and to set the price at which each company would sell vitamin B₁₂. Roussel Uclaf and RPR accounted for a substantial majority of all pharma-grade vitamin B₁₂ sales in Canada during the relevant period.
9. Throughout the period, Roussel implemented, in Canada, directives, instructions and other communications from representatives of Roussel Uclaf in France, who had the authority to give directions to Roussel as to prices and sales of vitamin B₁₂ in Canada. The directives, instructions and other communications were for the purpose of giving effect to the conspiracy.

V. OTHER CONSIDERATIONS

10. 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 vitamins industry in Canada. He considers that Roussel's cooperation with the inquiries has assisted in the investigation of other individuals and corporations for violations of the *Competition Act*.
11. The decision by Roussel to plead guilty has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.

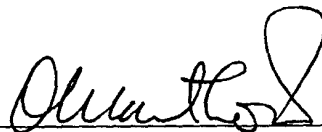
VI. CONCLUSION

14. Roussel 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.
15. Roussel acknowledges, on the basis of its admission of the facts set out herein, that all the constituent elements of an indictable offence under subsection 46(1) of the *Competition Act* have been established.
16. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.



Roussel Canada Inc.
by its counsel, Lawson A.W. Hunter, Q.C.

October 20, 1999



The Attorney General of Canada
by her counsel, D. Martin Low, Q.C.
Josephine A.L. Palumbo

October 22, 1999

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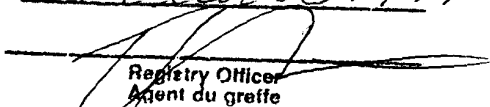
AGREED STATEMENT OF FACTS

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FEDERAL COURT OF CANADA
COUR FÉDÉRALE DU CANADA
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Filed in the Registry
Déposé au Greffe

le 21 October 1999


Registry Officer
Agent du greffe

T. J. Breton
Registry Officer
Agent du greffe