

Court No. T- 1666-99

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

BETWEEN

HER MAJESTY THE QUEEN

and

RHÔNE-POULENC S.A.

REGISTRY - GREFFE FEDERAL COURT OF CANADA COUR FÉDÉRALE DU CANADA Copy of Document Received Copie du Document Reçu Date <u>September 17, 1999</u> Registry Officer Agent du greffe
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Accused

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AGREED STATEMENT OF FACTS

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I. THE ACCUSED

Rhône-Poulenc S.A.

1. Rhône-Poulenc S.A. is a corporation organized and existing under the laws of France. Rhône-Poulenc S.A. has affiliates which manufacture and supply, for the purpose of animal feed, vitamins A and E around the world. (Hereinafter, Rhône-Poulenc S.A. and its affiliates will collectively be referred to as "Rhône-Poulenc"). Rhône-Poulenc has a Canadian subsidiary, Rhône-Poulenc Canada Inc. of Mississauga, Ontario, which sold these vitamins in Canada during the relevant period, but 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 sale of vitamins A and E solely for animal feed purposes in Canada and elsewhere.

## 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 Rhône-Poulenc 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 certain bulk vitamins, including vitamins A and E. Roche has a Canadian subsidiary, Hoffmann-La Roche Limited/Limitée, located in Mississauga, Ontario which supplied these vitamins in Canada 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 certain vitamins, including vitamins A and E, abroad and sold them in Canada during the relevant period through its Canadian subsidiary, BASF Canada Inc., a company incorporated under the laws of Ontario.

### 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 sells 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.

### III. VITAMINS A AND E 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 (the only product area in which Rhône-Poulenc participates), 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. Rhône-Poulenc did not sell premix in Canada during the relevant period.
9. Roche, BASF and Rhône-Poulenc produced a substantial majority of the world supply of vitamins A and E during the period of the offences. Vitamins A and E were sold in Canada by the participants in illegal agreements referred to herein through wholly owned subsidiaries or through distributors, but no subsidiary or distributor of Rhône-Poulenc is implicated in or charged with an offence herein.
10. Rhône-Poulenc's volume of commerce for feed grade vitamins A and E sold in Canada during the period of the offences was \$112 million.

#### IV. THE AGREEMENTS

##### 11. Vitamin A

The parties to the agreement on vitamin A were Rhône-Poulenc, BASF and Roche, and it existed from January, 1990 to February, 1999. At the outset, senior executives responsible for the vitamins business of each firm met and agreed to allocate market shares or volume of sales for Canada and elsewhere. Over the period of the conspiracy, yearly meetings among these senior executives were held to agree on a "budget" for the following year, to agree on an estimate of future demand for Canada and elsewhere, 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 in Canada and elsewhere.

##### 12. Vitamin E

The parties to the agreement on vitamin E were Rhône-Poulenc, BASF, Roche, and Eisai. The agreement on 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 December 1990 and January 1991, a senior executive of Eisai met separately with senior executives responsible for the vitamins business of Roche, BASF 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.

13. Sales in Canada and elsewhere of vitamins A and E produced by Rhône-Poulenc for use in animal feed were affected by this conspiracy between January, 1990 and February, 1999.


#### 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, Rhône-Poulenc's early and valuable 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 Rhône-Poulenc to appear and submit to the jurisdiction of this Court to plead guilty has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.
16. Rhône-Poulenc has no prior convictions under the *Competition Act*.


#### VI. CONCLUSION

17. Except where specifically indicated above, Rhône-Poulenc 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.

18. Rhône-Poulenc 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.
19. The parties agree that this document may be executed by signatures conveyed by facsimile transmission or in counterparts.

  
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Rhône-Poulenc S.A.  
By Yves Brissy, General Counsel  
September 14, 1999

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

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