

**FEDERAL COURT**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**- and -**

**CROMPTON CORPORATION**

**Accused**

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**AGREED STATEMENT OF FACTS**

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**I THE ACCUSED**

**CROMPTON CORPORATION**

1. Crompton Corporation (“Crompton”) is a corporation organised and existing under the laws of the State of Delaware, one of the United States of America, with its principal place of business in Middlebury, Connecticut, USA. It has other offices and manufacturing facilities throughout the world. One of its principal subsidiaries, Uniroyal Chemical Company, Inc. (“Uniroyal Chemical”), was a separate entity acquired by Crompton in August, 1996. Crompton has accepted liability (for the purpose of this proceeding only) for the conduct of Uniroyal Chemical prior to acquisition. Crompton carries on business in Canada through its subsidiary Crompton Co./Cie, formerly Uniroyal Chemical Co./Cie. During the relevant period, Crompton manufactured various chemical products, including certain “rubber chemicals” used substantially by the tire industry in the manufacture of tire quality rubber. A not insignificant amount of such rubber chemicals are used in non-tire rubber applications such as automobile parts, conveyor belts, weather stripping, and rubber latex gloves.

## **II. OTHER RELEVANT CORPORATIONS**

2. The information set out in paragraphs 3-8 relates to parties which produce and sell certain rubber chemicals whose conduct is relevant to the present proceeding. This information has been obtained from sources available to the Commissioner of Competition (“Commissioner”), of which Crompton may not be aware, but for the purposes of this proceeding, does not contest.

### **Bayer AG**

3. Bayer AG (“Bayer”) is a corporation organized and existing under the laws of Germany, with its principal place of business in Leverkusen. Bayer is a significant manufacturer of rubber chemicals. It has several subsidiaries involved in the sale of rubber chemicals, Bayer Polymers LLC, Bayer Material Science AG, and in North America, Bayer Corp. Its subsidiary, Bayer Inc., sells rubber chemicals in Canada. Bayer Inc. has its headquarters in Etobicoke, Ontario, and a major manufacturing facility in Sarnia, Ontario which imported Bayer rubber chemicals during the relevant period.

### **Flexsys NV**

4. Flexsys NV (“Flexsys”) is an incorporated joint venture formed in 1995 between what was then Akzo Nobel NV and Monsanto Inc. and is organized and existing under the laws of Belgium, with its principal place of business located in Woluwe, Belgium. Flexsys has two principal affiliates involved in the sale of rubber chemicals, Flexsys America LP and Flexsys Rubber Chemicals Ltd. Flexsys maintains manufacturing and distribution facilities around the world. Flexsys sells rubber chemicals directly to some customers in Canada, but also uses an agent in Canada to import and sell its rubber chemical products, namely Univar Inc.

### **Duslo AS**

5. Duslo AS (“Duslo”) is a corporate entity organized and existing under the laws of the Slovak Republic with its primary place of business in Bratislava. It is a significant producer of rubber chemicals. Duslo distributes rubber chemicals in Canada principally through Struktol Canada Ltd.

6. Duslo and other smaller manufacturers are more regional in scale than the other rubber chemical manufacturers.
7. All of the aforesaid rubber chemical producers are organised to serve the principal tire manufacturers in the world, namely, Goodyear, Michelin, Bridgestone/Firestone, Continental, Pirelli, and some of the more regional brands and manufacturing plants (the "Tire Producers"). Based on evidence available to the Commissioner, which Crompton does not contest for the purposes of this proceeding, the principal tire manufacturers accounted for about 70% of the world-wide purchases of rubber chemicals throughout the substantial portion of the conspiracy herein.

### **III. RUBBER CHEMICALS AND THE CANADIAN MARKET FOR RUBBER CHEMICALS**

8. On a commercial basis, rubber chemicals are produced synthetically through highly sophisticated processes. It is apparent that rubber chemicals are now a commodity product and over capacity in the industry has been a constant restraint upon profitable operation and re-investment. Rubber chemicals are significant in the production of useable modern rubber products, principally tires. There are no practical or reasonable economic substitutes to certain rubber chemicals which are the subject of this proceeding, although innovation in both application and production does from time to time cause some products to be superseded. The accused and its co-conspirators are best situated from the perspective of size, experience and incentive to participate in such developments. Based upon facts obtained by the Commissioner, which Crompton is not aware of but does not contest for the purposes of this proceeding, rubber chemicals are said to constitute about 1% of the value of finished tires, they are a practical sine qua non to the manufacture of over \$2 billion worth of tires produced in Canada annually. An additional approximately 30% of rubber chemical sales are devoted to non-tire uses in various automobile parts, surgical gloves and other commercial, industrial and health applications.
9. The rubber chemical producers identified above manufactured and/or sold the substantial majority of the rubber chemicals that were sold or distributed in Canada during the period

of the offence for use in the tire, automobile parts, industrial applications and health industries. Indeed a significant amount (approaching 50% in some instances) of the rubber chemicals manufactured in Canada are exported. Each of the above referred to entities participate, to varying degrees, in the globally organized tire manufacturing industry. The principal Tire Producers buy centrally (not in Canada) for delivery to their regional production facilities. The rubber chemical producers in turn organize their delivery logistics to best meet customer demands and their own production facilities. There is significant buyer power within the tire-destined rubber chemical business.

10. Based upon facts obtained by the Commissioner, which Crompton is not aware of but does not contest for the purposes of this proceeding, the relevant volume of commerce of rubber chemicals, manufactured, sold or distributed in Canada which the Commissioner regards as relevant for the effects on competition reveals that Flexsys, Crompton and Bayer share approximately 90% of the annual Canadian volume of commerce of approximately CDN \$45 million per year over the period of the conspiracy (total Canadian sales of rubber chemicals by all the producers implicated in the illegal agreement during the period of the offence were approximately \$292 million).

#### **IV. THE RUBBER CHEMICAL AGREEMENT**

11. The conspiracy affecting certain rubber chemicals lasted from at least July 1995 to 2001. The participants in this conspiracy included Crompton, Bayer, Flexsys, and Duslo. From at least July 1995, senior and mid-level executives of Crompton participated in meetings and other communications with their counterparts from various other producers at various times. All such meetings took place outside Canada. The parties agreed to coordinate the timing and amounts of price increases for certain rubber chemicals known as accelerators and antidegradants and to allocate customers and sales volumes. They also exchange sales data and customer information on a periodic basis in order to monitor and enforce adherence to the agreement.
12. It is a matter of some debate between Crompton and the Commissioner as to the quantum of commerce affected by the illegal activity herein referred to. This requires specifically a consideration of the “lasting effect” of various price increases on certain specific rubber

chemicals. This analysis however, given the prevailing conditions in the market, does not give credit to the fact that price increases may not have been appropriate at all and one or more producers may have had to exit the market, in the absence of such restraints upon the normal market processes. If Crompton's analysis is correct the gap between the opposing views of affected commerce may be measured in hundreds of millions of dollars. In any event it is agreed that the assessment of competitive injury is largely one of judgment in all of the relevant circumstances.

## V. OTHER CONSIDERATIONS

13. Pursuant to her responsibilities for the administration and enforcement of the *Competition Act*, the Commissioner has conducted and continues to conduct extensive inquiries into the rubber chemicals industry in Canada and elsewhere, along with inquiries into other matters of competitive concern. All these matters are of a complex nature, with significant international ramifications and jurisdictional considerations. Crompton has agreed to provide its full cooperation to the Commissioner in connection with these matters, which will assist in the investigation of other individuals and corporations for violations of the *Competition Act*. In that regard Crompton has made extraordinary efforts to provide documentation and employees' evidence, conduct internal audits, remove or discipline participating employees and executives, promptly discontinue and make public its participation in anti-competitive activity related to these and other products, introduce new compliance programs, and act in a seldom-observed responsible manner in these matters. Crompton has sought and received immunity on other chemical products in which its audit revealed anti-competitive conduct.
14. Crompton has voluntarily appeared and submitted to the jurisdiction of the Canadian Courts solely for the purposes of pleading guilty herein. It has also agreed with the Attorney General that a fine of \$9 million is appropriate in all the circumstances. This has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.

**VI. CONCLUSION**

15. Crompton 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 and for no other purpose. This document may be executed in counterparts.

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Title  
Crompton Corporation

May , 2004

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The Attorney General Of Canada  
by her counsel

May , 2004

**Court File No. T-**

**FEDERAL COURT**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

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**CROMPTON CORP**

**Accused**

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**AGREED STATEMENT OF FACTS**

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