

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

BETWEEN

HER MAJESTY THE QUEEN

and

AKZO NOBEL CHEMICALS BV

Accused

AGREED STATEMENT OF FACTS

I. THE ACCUSED

Akzo Nobel Chemicals BV

1. Akzo Nobel Chemicals BV ("Akzo") is a company organized and existing under the laws of the Netherlands with its principal place of business in Amersfoort, Netherlands. During the relevant period, Akzo was one of the principal European manufacturers and marketers of choline chloride (or "the product"). During the relevant period, Akzo sold none of the product in Canada. Akzo asserts, and the Commissioner of Competition (the "Commissioner") is unaware, but does not contest for purposes of this proceeding that Akzo has a Canadian subsidiary, Akzo Nobel Chemicals Ltd., of Mississauga, Ontario which is not implicated in any way in these charges, has never sold choline chloride in Canada, and is not charged with any offence herein.

II. OTHER RELEVANT CORPORATIONS

2. The information set out in paragraphs 3 - 8 has been obtained from sources available to the Commissioner, of which Akzo is unaware, but does not contest for the purposes of this proceeding.

Bioproducts Incorporated

3. Bioproducts Incorporated ("Bioproducts") is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Fairlawn, Ohio. Bioproducts is one of the three principal North American producers of choline chloride. During the relevant period, Bioproducts distributed, sold and supplied choline chloride, which it manufactured, to customers in Canada and elsewhere.

Chinook Group Limited

4. Chinook Group Limited ("Chinook") is a corporation incorporated under the laws of Ontario, with its principal place of business in Toronto, Ontario. Chinook is the only Canadian manufacturer of choline chloride and is one of the three principal North American producers of choline chloride. During the relevant period, Chinook Group, an Ontario Limited Partnership, manufactured, distributed, sold and supplied choline chloride to customers in Canada and elsewhere. Chinook is the successor to Chinook Group.

DuCoa Animal Health and Nutrition, Division of DCV Inc.

(formerly DuCoa, L.P.)

5. DuCoa (DuCoa Animal Health and Nutrition Division) is one of five divisions of DCV Inc. DCV Inc. is organized and existing under the laws of the State of Delaware and its principal place of business is Wilmington, Delaware. Prior to 1997, DuCoa operated as a limited partnership, DuCoa, L.P. ("DuCoa"), with ConAgra Inc. and E.I. DuPont de Nemours & Co. as the partners. DuCoa, L.P. was organized and existing under the laws of the State of Illinois. DuCoa is one of the three principal

North American producers of choline chloride, with its principal place of business in Highland, Illinois. During the relevant period, DuCoa distributed, sold and supplied choline chloride, which it manufactured, to customers in Canada and elsewhere. In June 2001 certain assets relating to the choline animal feed, human choline nutrient, and encapsulated products businesses of DCV Inc. and DuCoa L.P. were purchased by Balchem Corporation of Slate Hill, New York.

BASF Aktiengesellschaft

6. BASF Aktiengesellschaft ("BASF") is a company organized and existing under the laws of Germany, with its principal place of business in Ludwigshafen, Germany. During the relevant time period, BASF was one of the principal European manufacturers and marketers of choline chloride. BASF has a Canadian subsidiary, BASF Canada Inc., in Toronto, Ontario. BASF sold none of the product in Canada during the period of the offence.

UCB S.A.

7. UCB S.A. ("UCB") is a company organized and existing under the laws of Belgium with its principal place of business in Brussels, Belgium. During the relevant period, UCB was one of the principal European manufacturers and marketers of choline chloride. UCB has an American subsidiary, UCB Chemicals Corporation, in Atlanta, Georgia, but has no subsidiary in Canada. During the relevant period, UCB sold little or none of the product in Canada.
8. In this Agreed Statement of Facts, Bioproducts, Chinook, and DuCoa may be referred to as the "North American producers" and Akzo, BASF, and UCB may be referred to as the "European producers".

III. CHOLINE CHLORIDE

9. Choline chloride is a member of the B-complex group of water-soluble vitamins. It is used as an animal feed additive, especially for poultry and swine, to increase growth, reduce mortality rate, increase feed efficiency, increase egg production and improve meat quality. It is not a substitute for any other feed supplement and has no direct substitutes itself. The six producers identified above supplied a substantial majority of the entire world market for the product during the period of the conspiracy.

IV. THE CANADIAN MARKET FOR CHOLINE CHLORIDE

10. Choline chloride for use as a feed additive is typically marketed in either an aqueous solution of 70 percent choline chloride or is sprayed on a dry cereal carrier (or silica) for a choline chloride potency of 50 to 60 percent. In Canada, most choline chloride is sold in a 60 percent formulation.
11. Based upon facts obtained by the Commissioner which Akzo does not contest for purposes of this proceeding, the total sales of the product in Canada during the 18-month period (approximately November, 1992 to April, 1994) of the offence in which Akzo is implicated were approximately \$8.8 million. In that period, approximately 90 percent of the Canadian choline chloride requirements were supplied by Chinook, with the remaining 10 percent having been supplied by other foreign manufacturers and marketers of the product.
12. Between 1992 and 1994, Akzo did not sell any choline chloride in the Canadian market. Akzo is not accused of allocating to itself any share of the Canadian choline chloride market.

IV. THE AGREEMENT

13. In or about October 1992, a senior representative of Akzo met in Mexico City, Mexico, with executives from UCB, BASF, Bioproducts, Chinook and DuCoa. At that meeting, the persons present discussed, but did not agree on, a market allocation arrangement and the desirability of a price increase for choline chloride.
14. In November 1992, senior representatives of these companies met again, at the headquarters of BASF in Ludwigshafen, Germany. At that meeting, which was organized by BASF, the representatives of these companies entered into an agreement (the "Agreement") that the European producers who were selling or had sold choline chloride into North America would terminate any current sales and refrain from any future sales into North America, including Canada, and that the North American producers would withdraw from the European market. The representatives of the companies who were selling choline chloride into North America also agreed to raise the price of choline chloride in Canada. While Akzo maintains that it had no interest in choline chloride sales or prices in North America, including Canada, Akzo did not dissent from, nor disagree with the positions taken by the representatives of the other five companies in forming the Agreement.
15. Akzo knew the objects and purposes of the Agreement and although it did not have sales of choline chloride into Canada, Akzo supported and encouraged the Agreement through having a senior representative attend and participate in the discussions at meetings of the parties throughout the period described in the indictment.
16. Akzo hosted a meeting of the representatives of these companies at Akzo's headquarters in Amsterdam, The Netherlands in May of 1993. At that meeting, they reported upon their sales for the previous period in order to monitor progress of the Agreement, the progress of retreat from various regions and the status of the

agreed upon price increases.

17. Representatives of the parties continued to meet at various international locations including (on the basis of information available to the Commissioner of which Akzo is unaware but does not contest for purposes of this proceeding) a meeting in Toronto, Ontario Canada in June of 1993. After April 1994, Akzo did not attend further meetings at which all the companies who participated in the conspiracy were in attendance.
18. The Commissioner asserts that the effect of the Agreement was to insulate a very significant proportion of the Canadian market from foreign competition by preserving the dominance of Chinook in supplying the Canadian market.

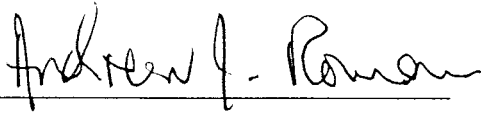
V. OTHER CONSIDERATIONS

19. The decision by Akzo to appear and submit to the jurisdiction of the Canadian courts for the purposes of this proceeding, to plead guilty and to consent to a prohibition order has saved considerable costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.
20. 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 choline chloride industry in Canada. Akzo has agreed to provide the Commissioner with its continued cooperation in the investigation of other individuals and corporations for violations of the *Competition Act* in relation to choline chloride.
21. Because of the international ramifications of this inquiry and the related jurisdictional considerations, this cooperation will assist in the investigation of other individuals

and corporations for violations of the *Competition Act* in relation to the manufacture, production, distribution, sale and supply of choline chloride.

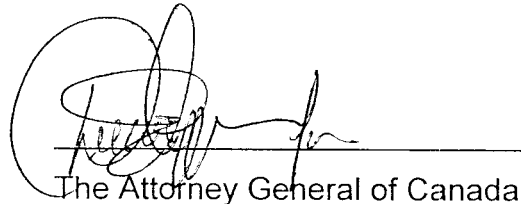
VI. CONCLUSION

22. Except where specifically indicated above, Akzo 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.
23. Akzo acknowledges, on the basis of its admission of the facts set out herein, that with respect to abetting the unlawful Agreement alleged in the Indictment, the Indictment, alleging a violation of s.45 (1)(c) of the *Competition Act* by virtue of s. 21(1)(c) of the *Criminal Code* has been established.
24. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.



Akzo Nobel Chemicals BV
By its counsel, Miller Thompson LLP
Per Andrew J. Roman

This 20th day of June, 2003



The Attorney General of Canada
by his counsel,
D.D. Graham Reynolds, Q.C.

This 30th day of July, 2003

Court File No. T-

FEDERAL COURT OF CANADA
(TRIAL DIVISION)

BETWEEN:

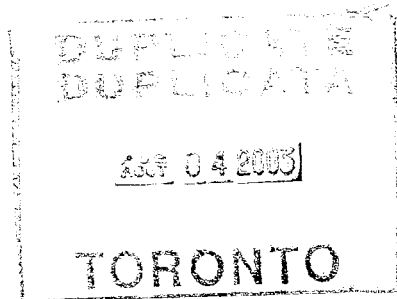
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- and -

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AGREED STATEMENT OF FACTS



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