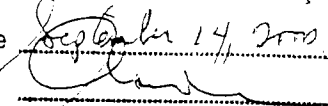


FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

REGISTRY - GREFFE FEDERAL COURT OF CANADA COUR FÉDÉRALE DU CANADA Copy of Document Received Copie du Document Reçu Date <u>September 14, 2000</u>  Registry Officer Agent du greffe
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

BETWEEN:

HER MAJESTY THE QUEEN

and

DAICEL CHEMICAL INDUSTRIES, LTD.

Accused

---

AGREED STATEMENT OF FACTS

---

I. THE ACCUSED

Daicel Chemical Industries, Ltd.

1. Daicel Chemical Industries, Ltd. ("Daicel") is a Japan-based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbic acid and potassium sorbate ("sorbates") during the relevant period. Throughout the period, Daicel sold its sorbates in Canada through distributors, currently, St. Lawrence Chemical Inc./Les Produits Chimiques St. Lawrence Inc.

II. OTHER RELEVANT CORPORATIONS

**Note:** Daicel has no direct knowledge of the facts set out in paragraphs 2 - 7 which are based on information obtained by the Commissioner of Competition (the "Commissioner").

Eastman Chemical Company

2. Eastman Chemical Company ("Eastman") is a Kingsport, Tennessee based corporation organized and existing under the laws of the State of Delaware.

Eastman produces and exports sorbates to its Canadian subsidiary, Eastman Chemical Canada, Inc. of Toronto, Ontario. In addition, Van Waters & Rogers Ltd./Van Waters & Rogers Ltée sold sorbates produced by Eastman Chemical Company, Inc., in Canada.

#### Hoechst AG

3. Hoechst AG ("Hoechst") is a corporation organized and existing under the laws of Germany. Throughout the relevant period, Hoechst produced, manufactured, distributed, sold and supplied sorbates, which it exported into Canada through its Food Ingredients Business Unit.

#### Nippon Gohsei

4. The Nippon Synthetic Chemical Industry Co., Ltd. ("Nippon Gohsei") is a Japan-based corporation engaged in the production and export of sorbates. From time to time during the relevant period, Nippon Gohsei exported sorbates into Canada through distributors, currently, Mitsui & Co. (Canada) Ltd.

#### Ueno Fine Chemicals Industry, Ltd.

5. Ueno Fine Chemicals Industry, Ltd. ("Ueno") is a Japan-based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Ueno sold sorbates in Canada through a distributor, currently, Ashland Canada Inc.

#### Chisso Corporation

6. Chisso Corporation ("Chisso") is a Japan-based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Chisso sells sorbates in Canada through a distributor, Tomen Canada Inc.

#### Cheminova Agro A/S

7. Cheminova Agro A/S ("Cheminova") is a Danish corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates, during the relevant period. Cheminova sells sorbates in Canada through a distributor, Quadra Chemicals Ltd./Quadra Chimie Limitée.

### III. SORBATES AND THE CANADIAN MARKET FOR SORBATES

8. Sorbates are chemical preservatives used primarily as mold inhibitors in high moisture and sugar foods such as dairy and bakery products, fruit, berry and vegetable products, flavours, spices, syrups and pet foods. There are no manufacturing or refining facilities for sorbates in Canada. Daicel and the other companies identified in paragraphs 2 - 7 above produce and supply a substantial majority of the total volume of sorbates sold in Canada and elsewhere.
9. Based on the facts obtained by the Commissioner, of which Daicel is unaware but does not contest for the purposes of this proceeding, total sales of sorbates in Canada throughout the period of the offence were approximately \$37 million. The total volume of sales of sorbates in Canada by Daicel during the relevant period was approximately \$8 million.

### IV. THE 1979-1996 AGREEMENT

10. At various times in the period between approximately January, 1979 and September, 1996, senior representatives of Daicel engaged in conversations and attended meetings with the representatives of the other sorbate producing companies. The meetings during the relevant period generally occurred in locations in Europe and Japan.
11. As a result of these conversations and meetings, an unlawful conspiracy amongst the producers identified herein was reached in relation to the sale and supply of sorbates which was maintained throughout the period. The parties periodically agreed to fix, raise and maintain the prices at which each company would sell sorbates, and they also agreed on an allocation among themselves of the volume of sorbates that each company would supply, in Canada and elsewhere.

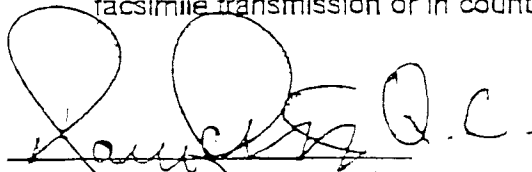
### C. OTHER CONSIDERATIONS

12. 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 sorbates industry, and certain other industries, in Canada. He considers that Daicel's cooperation with these inquiries will assist in the investigation of other individuals and corporations for violations of the *Competition Act*.
13. The decision by Daicel 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

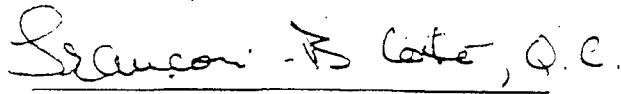
- 14. Daicel admits the above facts, pursuant to section 655 of the *Criminal Code*, solely for the purpose of dispensing with their proof at trial in this proceeding.
- 15. Daicel acknowledges, on the basis of its admission of the facts set out herein, with respect to the agreement alleged in the Indictment, that all the constituent elements of an indictable offence under paragraph 45(1)(c) 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.

 Q.C.

Daicel Chemical Industries, Ltd.

by: Counsel for DAICEL  
title

Se p 12<sup>th</sup>, 2000

 Q.C.

for The Attorney General of Canada  
by D. Martin Low, Q.C.

September 1, 2000

FEDERAL COURT OF CANADA  
(TRIAL DIVISION)

IN THE MATTER OF section 45 of the  
*Competition Act*, R.S.C. 1985, c. C-34  
(as amended)

BETWEEN:

HER MAJESTY THE QUEEN

- and -

DAICEL CHEMICAL INDUSTRIES, 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  
Competition Law Division  
Place du Portage, Phase 1  
50 Victoria Street, 22<sup>nd</sup> Fl.  
Hull, Quebec K1A 0C9

Telephone: (819) 997-3325  
Facsimile: (819) 953-9267