

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
500-

SUPERIOR COURT  
(CRIMINAL DIVISION)

Her Majesty the Queen

- and -

Ueno Fine Chemicals Industry, Ltd

Accused

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## AGREED STATEMENT OF FACTS

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### I. THE ACCUSED

#### **Ueno Fine Chemicals Industry, Ltd**

1. Ueno Fine Chemicals Industry, Ltd (“Ueno”) is a Japan-based corporation engaged in the production, manufacturing, distribution, sale and/or supply of sorbic acid and potassium sorbate (“sorbates”) during the relevant period. Throughout the period, Ueno sold its sorbates in Canada through distributors.

### II. OTHER RELEVANT CORPORATIONS

Note: Ueno has no direct knowledge of the facts set out in paragraphs 2-6 which are based on information obtained by the Commissioner of Competition (the “Commissioner”).

#### **Hoechst AG**

2. 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**

3. The Nippon Synthetic Chemical Industry Co. (“Nippon Gohsei”) is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates during the relevant period. Nippon Gohsei produces sorbates in Japan and it sells these products in Canada through distributors.

#### **Chisso Corporation**

4. 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.

#### **Daicel Chemical Industries, Ltd.**

5. Daicel Chemical Industries, Ltd. (“Daicel”) is a Japan based corporation engaged in the production, manufacturing, distribution, sale and supply of sorbates during

the relevant period. Throughout the period, Daicel sold sorbates in Canada through a distributor, St. Lawrence Chemical Inc./Les Produits Chimiques St. Lawrence Inc.

### **Eastman Chemical Company**

6. 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.

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

7. 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. Ueno and the other companies identified in paragraphs 2 - 6 above produce and supply a substantial majority of the total volume of sorbates sold in Canada and elsewhere.
8. Based on the facts obtained by the Commissioner, of which Ueno is unaware but does not contest for the purposes of this proceedings, total sales of sorbates in Canada throughout the period of the offence were approximately \$37 million and the total volume of sales of sorbates in Canada by Ueno during the relevant period was approximately \$8 million.

### **IV. THE AGREEMENT**

9. At various times in the period between approximately January, 1979 and April, 1996, senior representatives of Ueno engaged in conversations and attended meetings with the representatives of some of the other sorbates producing companies identified herein. The meetings during the relevant period generally occurred in locations in Europe and Japan.
10. 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 in Canada.

### **C. OTHER CONSIDERATIONS**

11. The decision by Ueno 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.
12. After consideration of the information received relating to the financial circumstances of Ueno, the Commissioner and the Attorney General have concluded that Ueno's inability to pay is a significant factor which must be taken into account in determining the proper fine to be paid and the payment of the fine over a period of time pursuant to section 735 of the *Criminal Code*.

### **D. CONCLUSION**

14. Ueno 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. Ueno 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.

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Ueno Fine Chemicals Industry, Ltd

by:

date:

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The Attorney General of Canada  
by Manon Lapointe

date: