

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

FILED
MAY 20 1999
NANCY DOHERTY, CLERK
BY P. Shivers
Deputy

UNITED STATES OF AMERICA)
)
 v.)
)
 BASF AKTIENGESELLSCHAFT)
)
 Defendant.)

Criminal No: 99- CR - 200 - R
Filed:
Violation: 15 U.S.C. § 1
Judge:

PLEA AGREEMENT

The United States of America and BASF Aktiengesellschaft ("BASF") hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. BASF understands its right:
 - (a) to be represented by an attorney;
 - (b) to be charged by indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove it guilty beyond a reasonable doubt;
 - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
 - (f) as a corporation organized and existing under the laws of Germany, to contest service of the summons in this case, and to contest the

jurisdiction of the United States to prosecute this case against it in the United States District Court;

- (g) to appeal its conviction if it is found guilty at trial; and
- (h) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. BASF waives the rights set out in Paragraph 1(b)-(g) above. BASF also waives the right to appeal the imposition of sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. Pursuant to Rule 7(b), Fed. R. Crim. P., BASF will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(e)(1)(C) to a one-count Information, to be filed in the United States District Court for the Northern District of Texas. The Information will charge BASF with participating in a conspiracy to suppress and eliminate competition by fixing, increasing, and maintaining the price and allocating the volume of certain vitamins sold in the United States and elsewhere, and allocating among corporate conspirators certain contracts for vitamin premixes for customers located throughout the United States through the submission of rigged and non-competitive bids for such contracts, beginning at least as early as January 1990 and continuing into at least February 1999, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. Pursuant to the terms of this Plea Agreement, BASF will plead guilty at arraignment to the criminal charge described in Paragraph 2 above, and will make a factual admission of guilt to the Court in accordance with Rule 11, Fed. R. Crim. P., as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts.

(a) For purposes of this Plea Agreement, the "relevant period" is that period beginning at least as early as January 1990 and continuing into at least February 1999. Throughout the relevant period, BASF was a corporation organized and existing under the laws of Germany. During the relevant period, BASF was a manufacturer of various vitamins used to enrich human food, pharmaceutical products, and animal feed in the United States and elsewhere. During the relevant period, BASF or its subsidiaries was or were engaged in the sale of these vitamins in the United States and elsewhere.

(b) During the relevant period, BASF, through several of its executives, officers and employees, participated in a conspiracy with other vitamin manufacturers, the primary purpose of which was to fix, increase, and maintain the price and allocate the volume of, and allocate customers for, certain vitamins sold in the United States and elsewhere. In furtherance of the conspiracy, BASF, through a number of its executives, officers and employees, engaged in conversations and attended meetings with representatives of other vitamin manufacturers. During such meetings and conversations, agreements were reached as to the prices at which the conspirators would sell certain vitamins and the timing of price increases, and the volumes of certain vitamins they would sell in the United States and elsewhere. Further, agreements were

reached as to the submission of rigged bids for the award and performance of contracts to supply certain vitamins to customers located throughout the United States.

(c) During the relevant period, vitamins that were the subject of this conspiracy and sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution thereof, as well as payments therefor, traveled in interstate and foreign commerce. The business activities of BASF and its co-conspirators, in connection with the production and sale of the vitamins affected by this conspiracy, were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Substantial quantities of vitamins affected by this conspiracy were sold by members of this conspiracy to customers in the Northern District of Texas.

POSSIBLE MAXIMUM SENTENCE

5. BASF understands that the maximum penalty which may be imposed against it upon conviction for a violation of the Sherman Antitrust Act is a fine in an amount equal to the largest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain derived from the crime; or
- (c) twice the gross pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571(d)).

6. In addition, BASF understands that:

(a) pursuant to §8B1.1(a)(2) of the United States Sentencing Commission Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a four hundred dollar (\$400) special assessment upon conviction for the charged crime; and

(c) a term of probation of at least one year, but not more than five years, may be imposed (18 U.S.C. § 3561(c)(1)).

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. manual in effect on the day of sentencing. Pursuant to U.S.S.G. §1B1.8, self-incriminating information provided to the United States pursuant to this Plea Agreement will not be used in determining the applicable Guidelines range, except to the extent provided for in U.S.S.G. § 1B1.8(b).

SENTENCING AGREEMENT

8. Pursuant to Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and BASF agree that the appropriate disposition of the case is, and agree jointly to recommend that the Court impose, pursuant to 18 U.S.C. § 3571, a sentence requiring BASF to pay a fine to the United States in the amount of two hundred and twenty-five million dollars (\$225,000,000) payable in full within 120 days of imposition of sentence.

(a) BASF understands that the Court will order it to pay a four hundred dollar (\$400) special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) and

U.S.S.G. §8E1.1 in addition to any fine imposed.

(b) In light of the pendency of civil causes of actions which potentially provide for a recovery of a multiple of actual damages, it is the view of both parties to this agreement that the complication and prolongation of the sentencing process that would result from an attempt to fashion a proper restitution order outweigh the need to provide restitution to any victims (see 18 U.S.C. § 3663(a)(1)(B)(ii)). Therefore, the United States agrees that it will not seek a restitution order with respect to the offense charged in the Information.

(c) The United States and BASF jointly submit that this Plea Agreement, together with the record that will be created by the United States and BASF at sentencing and the further disclosure described in Paragraph 10 of this Plea Agreement, provides sufficient information concerning BASF, the offense charged in this case, and BASF's role in the offense to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and BASF will jointly request that the Court accept BASF's guilty plea and immediately impose sentence on the day of arraignment pursuant to the provisions of Rule 32(b)(1), Fed. R. Crim. P., and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence immediately based upon the record provided by BASF and the United States will not void this Plea Agreement.

9. The United States and BASF understand that the Court retains complete discretion to accept or reject the agreed-upon recommendation provided for in this Plea

Agreement. If the Court does not accept the recommended sentence, this Plea Agreement will be void and BASF will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(e)(4)). If BASF does withdraw its plea of guilty, this Plea Agreement, the guilty plea, and any statements made in connection with or in furtherance of the plea or this Plea Agreement, or in the course of discussions leading to the plea or the Plea Agreement, shall not be admissible against BASF in any criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)).

10. The United States, prior to sentencing in the case, will fully advise the Court of all facts relating to BASF's involvement in the charged offense, all other relevant conduct, and subject to the full and continuing cooperation of BASF described in Paragraph 12 of this Plea Agreement, the fact, manner, and extent of BASF's ongoing cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions.

11. The United States and BASF agree that the Guidelines fine range exceeds the agreed-upon recommended fine. The United States agrees that, based upon BASF's ongoing cooperation, the United States will make a motion pursuant to U.S.S.G. §8C4.1 requesting that the Court depart from the sentence calculated pursuant to the U.S.S.G. and impose the agreed-upon sentence set out above because of the substantial assistance provided by BASF in the investigation of alleged violations of federal criminal law in the vitamins industry. The decision to file a motion pursuant to U.S.S.G. §8C4.1 lies within the sole discretion of the United States.

BASF'S COOPERATION

12. BASF and its subsidiaries will fully and truthfully cooperate with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of the federal antitrust and related criminal laws in the vitamins industry, any other federal investigation concerning the vitamins industry resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). Such cooperation shall include, but not be limited to:

(a) producing to the United States all nonprivileged documents, information, and other materials, wherever located, in the possession, custody, or control of BASF or any of its related entities, requested by the United States in connection with any Federal Proceeding;

(b) securing the ongoing, full and truthful cooperation, as defined in Paragraph 13 of this Plea Agreement, of Manfred Fuchs, Walter Kohler, Gunter Gaus, Helmut Grindel, Wolfgang Mülbert, Eckhard Hilgemann, and Hans Joachim Holzberg, including making such persons available in the United States and at other mutually agreed-upon locations, at BASF's expense, for interviews and the provision of testimony in grand jury, trial and other judicial proceedings in connection with any Federal Proceeding.

(c) using its best efforts to secure the ongoing, full and truthful cooperation, as defined in paragraph 13 of this Plea Agreement, of the current and former officers, and employees of BASF or its subsidiaries, in addition to

those specified in subparagraph (b) above, as may be requested by the United States, including making such persons available in the United States and at other mutually agreed-upon locations, at BASF's expense, for interviews and the provision of testimony in grand jury, trial and other judicial proceedings in connection with any Federal Proceeding.

13. The ongoing, full, and truthful cooperation of each person described in paragraph 12(b) or 12(c) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all non-privileged documents (including claimed personal documents) and other materials requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews in the United States, and at other mutually agreed-upon locations, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information;

(d) otherwise voluntarily providing the United States with any materials or information, not requested in (a) - (c) of this paragraph, that he or she may have related to any such Federal Proceeding; and

(e) when called upon to do so by the United States, testifying in trial and grand jury or other proceedings in the United States, fully, truthfully and

under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503), in connection with any such Federal Proceeding.

GOVERNMENT'S AGREEMENT

14. The United States agrees to the following.

(a) Subject to the exceptions noted in Paragraph 14(d), the United States will not bring criminal charges against any current or former director, officer, or employee of BASF or its subsidiaries (except for Dr. Reinhard Steinmetz, former Head of Fine Chemicals Division; Dr. Dieter Suter, Head of Fine Chemicals Division; Dietz Kaminski, former Head of Marketing; and Hugo Strotmann, Head of Marketing; who are all specifically excluded from each and every term of paragraphs 12, 13 and 14 of this Plea Agreement) for any act or offense committed prior to the date of this Plea Agreement and while such person was employed by BASF or its subsidiaries, that was undertaken in furtherance of or in connection with any attempted or completed antitrust conspiracy involving the sale of vitamins or vitamin products or in connection with any investigation thereof ("Relevant Offense").

(b) Should the United States determine that any current or former officer, or employee of BASF or its subsidiaries may have information relevant to any Federal Proceeding, the United States may request such person's cooperation pursuant to the terms of this Plea Agreement by written request

delivered to counsel for the individual (with a copy to the undersigned counsel for BASF) or, if the individual is not known by the United States to be represented, to the undersigned counsel for BASF.

(c) The United States agrees that when any person travels to the United States for interviews, grand jury appearances or court appearances pursuant to this Plea Agreement, the United States will take no action, based upon any offense subject to this Plea Agreement, to subject such person to arrest, service of process or prevention from departing the United States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503) or contempt (18 U.S.C. §§ 401-402) in connection with any testimony provided in trial, grand jury or other judicial proceedings in the United States.

(d) In the event that any person requested to provide cooperation pursuant to Paragraph 14(b) fails to comply with such person's obligations under Paragraph 13 of this Plea Agreement, the terms of this Plea Agreement as they pertain to such person shall be rendered null and void, and the agreement not to prosecute such person granted in this Plea Agreement shall be void.

(e) Except as provided in Paragraph 14(f), information provided to the United States pursuant to the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from such information, may not be used against such person in a criminal case, except a

prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503) in connection with the provision of information to the United States pursuant to this Plea Agreement.

(f) In the event a person who provides information to the United States pursuant to this Plea Agreement fails to comply fully with his obligations under Paragraph 13 of this Plea Agreement, the agreement in Paragraph 14(e) not to use such information, or any information directly or indirectly derived from such information, against such person in a criminal case shall be void.

(g) Documents provided pursuant to Paragraphs 12(a) or 13(a) of this Plea Agreement shall be deemed responsive to outstanding grand jury subpoenas.

(h) The non-prosecution terms of this paragraph do not apply to any civil liability to the United States, to any violation of the federal tax or securities laws, or to any crime of violence.

15. Upon acceptance of the guilty plea called for by this Plea Agreement, imposition of the agreed-upon sentence, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against BASF or its subsidiaries for any act or offense committed prior to the date of this Plea Agreement that was undertaken in furtherance of or in connection with any attempted or completed antitrust conspiracy involving the

sale of vitamins or vitamin products or in connection with any investigation thereof. The non-prosecution terms of this paragraph do not apply to any civil liability to the United States, to any violation of the federal tax or securities laws, or to any crime of violence.

16. BASF understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon any conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, such other agencies may take. However, the United States Department of Justice, Antitrust Division, agrees that, if requested, it will advise the appropriate officials of any governmental agency considering administrative action against BASF, based upon any conviction resulting from this Plea Agreement, of the fact, manner, and extent of the cooperation of BASF, as described herein, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to BASF.

REPRESENTATION BY COUNSEL

17. BASF has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. BASF has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEA

18. BASF's decision to enter into this Plea Agreement and BASF's decision to tender a plea of guilty are freely and voluntarily made and are not the result of force,

threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. There have been no promises or representations to BASF as to whether the Court will accept or reject this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

19. BASF agrees that, should the United States determine in good faith, during the period any Federal Proceeding is pending, that BASF has failed to provide full cooperation (as described in Paragraph 12 of this Plea Agreement) or otherwise has violated any other provision of this Plea Agreement, the United States may void any of its obligations under this Plea Agreement (except its obligations under this paragraph) by notifying counsel for BASF in writing by personal or overnight delivery, or facsimile transmission. BASF may seek court review of any determination made by the United States under this paragraph.

ENTIRETY OF AGREEMENT

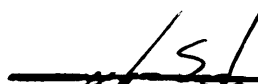
20. This Plea Agreement constitutes the entire agreement between the United States and BASF concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing signed by the United States and BASF.

21. The undersigned corporate representative of BASF is authorized to enter this Plea Agreement on behalf of BASF as evidenced by the Resolution of the Board of Directors of BASF attached hereto and incorporated herein by reference.

22. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement.

DATED: 5/19/99


Respectfully submitted,



GREGORY S. CLUFF
MITCHELL R. CHITWOOD

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FOR DEFENDANT BASF Aktiengesellschaft



KENNETH S. PRINGE
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BASF Aktiengesellschaft

Dr. Eckart Sünner

**BASF Aktiengesellschaft
Zentralbereich Recht, Steuern und Versicherung
67066 Ludwigshafen
Telefon (0621) 80-49985
Telefax (0621) 80-20640**

CERTIFICATE

I, Dr. Eckart Sünner, attorney at law, acting in my capacity as General Counsel of BASF Aktiengesellschaft, Ludwigshafen am Rhein, Federal Republic of Germany, hereby certify that the annexed pages 1 and 2 represent a true excerpt (the "Excerpt") from the Minutes of Meeting of the Board of Executive Directors of BASF Aktiengesellschaft held on Tuesday, May 18, 1999 in Ludwigshafen, which I have attended. The annexed pages 3 and 4 contain a true and fair translation of the Excerpt into English.

Ludwigshafen, May 18, 1999

/s/

**Eckart Sünner
(General Counsel)**

AUSZUG

aus der

Niederschrift über die Sitzung des Vorstands der BASF Aktiengesellschaft

am 18. Mai 1988, 9:30 - 17:05 Uhr

Anwesend: Strube (Vorsitzender)
Kley (stellvertretender Vorsitzender)
Becks
Hambrecht
Marcinowski
Oakley
Trautz
Voscherau
Sönnner (Protokoll)

Gäste: ...

2. ZR, ME/ Vitaminkartellverfahren USA

....

Nach ausführlicher Aussprache werden hierauf die folgenden Beschlüsse gefaßt:

- Dem Abschluß (execution, delivery and performance) des sogenannten Plea Agreement zwischen BASF Aktiengesellschaft (die "Gesellschaft") und dem United States Department of Justice auf Basis des vorliegenden Entwurfs - Anlage 1 - wird zugestimmt.
- Dr. Eckart Sünner, Leiter des Zentralbereichs Recht, Steuern und Versicherung und General Counsel der Gesellschaft, wird hiermit bevollmächtigt und beauftragt, das Plea Agreement für die Gesellschaft zu zeichnen und abzuschließen.
- Dr. Eckart Sünner wird hiermit bevollmächtigt, die Gesellschaft in jedweder Anhörung oder Verhandlung zu vertreten um auf indictment zu verzichten und sich für die Gesellschaft in Übereinstimmung mit den Bestimmungen des obengenannten Plea Agreement schuldig zu bekennen.
- Dr. Eckart Sünner oder jedes Vorstandsmitglied wird hiermit bevollmächtigt, jede von ihm für notwendig erachtete oder angemessene Maßnahme zu treffen, um den Inhalt oder den Zweck der vorstehenden Beschlüsse auszuführen.

2. **ZR, ME/ U.S. Antitrust Proceedings Regarding Vitamins**

....
Thereupon, after extensive discussion, the following resolutions are passed:

- The execution, delivery and performance of the so-called Plea Agreement between BASF Aktiengesellschaft (the "Corporation") and the United States Department of Justice, in substantially the form of the presented draft, as appended hereto as Annex 1, is hereby approved.
- Dr. Eckart Sünner, Head of the Central Law, Tax and Insurance Division and General Counsel of the Corporation, hereby is authorized and directed to execute and deliver, in the name and on behalf of the Corporation, the Plea Agreement.
- Dr. Eckart Sünner may represent the Corporation at any hearing in order to waive indictment and plead guilty in accordance with the provisions of the above referenced Plea Agreement.
- Dr. Eckart Sünner and/or any of the directors of the Corporation are hereby authorized and empowered to take any and all actions reasonably required or appropriate in order to carry out the intent and purpose of the preceding resolutions.

....