

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
500-

SUPERIOR COURT  
(CRIMINAL DIVISION)

Her Majesty the Queen

- and -

Yoshiyuki Ebara

Accused

---

## AGREED STATEMENT OF FACTS

---

### I. THE ACCUSED

#### Yoshiyuki Ebara

1. Yoshiyuki Ebara is citizen of Japan, resident at all material times outside Canada. During the relevant period, he was employed by Ueno Fine Chemicals Industry, Ltd. ("Ueno"), in the capacity of Assistant Manager of No. 1 Chemical Department until May 1, 1984 and Manager of No. 2 Sales Department of Chemical Division until May 20, 1988.

Ueno is a Japan-based corporation which 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. Mr. Ebara was responsible for the marketing of sorbates on behalf of Ueno in Canada.

### II. OTHER RELEVANT CORPORATIONS

Note: The Accused 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

### **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 Yoshiyuki Ebara is unaware but does not contest for the purposes of this proceeding, total sales of sorbates in Canada from January 1979 to April 1996, the period for which Ueno is charged, 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 June, 1981 and May, 1988, Yoshiyuki Ebara and other representatives of Ueno engaged in conversations and attended meetings with senior 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 Yoshiyuki Ebara 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

13. Yoshiyuki Ebara 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.
14. The parties agree that this document may be executed by signature conveyed by facsimile transmission or in counterparts.

---

Yoshiyuki Ebara

---

The Attorney General of Canada  
by Manon Lapointe

Date

Date