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Original Filed March 14, 2002

7 Attorneys for the United States

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11  
12 UNITED STATES OF AMERICA, ) No. CR 02 - 0079SI  
13 )  
14 v. ) INFORMATION  
15 ELF ATOCHEM S.A., ) VIOLATIONS:  
16 ) Title 15, United States Code,  
17 Defendant. ) Section 1 (Price Fixing, Market-  
Share Allocation)  
San Francisco Venue

18  
19 The United States of America, acting through its attorneys, charges:

20 COUNT ONE

21 1. ELF ATOCHEM S.A. ("ELF") is made a defendant on the charge  
22 stated below.

23 I.

24 DESCRIPTION OF THE OFFENSE

25 2. Beginning in or about September 1995 and continuing until in or about  
26 August 1999, defendant ELF and its coconspirators entered into and engaged in a

1 combination and conspiracy to suppress and eliminate competition by fixing the  
2 prices and allocating the market shares of monochloroacetic acid and sodium  
3 monochloroacetate (collectively referred to as “MCAA”) to be sold in the United  
4 States and elsewhere. The combination and conspiracy engaged in by the defendant  
5 and its coconspirators was in unreasonable restraint of interstate and foreign trade  
6 and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

7 3. The charged combination and conspiracy consisted of a continuing  
8 agreement, understanding, and concert of action among the defendant and its  
9 coconspirators, the substantial terms of which were:

10 (a) to agree to fix and maintain prices and to coordinate price  
11 increases for MCAA to be sold in the United States and  
12 elsewhere; and

13 (b) to agree to allocate among major MCAA producers the market  
14 shares of MCAA to be sold by each in the United States and  
15 elsewhere.

16 4. For the purpose of forming and carrying out the charged combination  
17 and conspiracy, the defendant and its coconspirators did those things that they  
18 combined and conspired to do, including, among other things:

19 (a) participating in meetings and conversations to discuss the prices  
20 and market shares of MCAA to be sold in the United States and  
21 elsewhere;

22 (b) agreeing, during those meetings and conversations, to charge  
23 prices at certain levels and otherwise to increase and maintain  
24 prices of MCAA to be sold in the United States and elsewhere;

25 (c) agreeing, during those meetings and conversations, to allocate  
26 among major producers of MCAA the market shares of MCAA to

1 be sold in the United States and elsewhere;

2 (d) issuing price announcements and price quotations in accordance  
3 with the agreements reached; and

4 (e) exchanging information on sales of MCAA in the United States  
5 and elsewhere for the purpose of monitoring and enforcing  
6 adherence to the agreed-upon market shares.

7 II.

8 DEFENDANT AND COCONSPIRATORS

9 5. ELF is a corporation organized and existing under the laws of France.  
10 During the period covered by this Count, ELF was engaged in the business of  
11 producing MCAA and selling it to customers in the United States and elsewhere.

12 6. Various corporations and individuals, not made defendants in this  
13 Count, participated as coconspirators in the offense charged in this Count and  
14 performed acts and made statements in furtherance of it.

15 7. Whenever in this Count reference is made to any act, deed, or  
16 transaction of any corporation, the allegation means that the corporation engaged  
17 in the act, deed, or transaction by or through its officers, directors, employees,  
18 agents, or other representatives while they were actively engaged in the  
19 management, direction, control, or transaction of its business or affairs.

20 III.

21 TRADE AND COMMERCE

22 8. MCAA is a reactive chemical compound that is used to form a number  
23 of intermediate chemicals. Markets for MCAA and its derivatives include drilling  
24 fluids, plastic stabilizers, herbicides, and pharmaceuticals.

25 9. During the period covered by this Count, the defendant and its  
26 coconspirators sold and distributed MCAA in a continuous and uninterrupted flow

1 of interstate and foreign trade and commerce to customers located in states or  
2 countries other than the states or countries in which the defendant and its  
3 coconspirators produced MCAA.

4 10. The business activities of the defendant and its coconspirators that are  
5 the subject of this Count were within the flow of, and substantially affected,  
6 interstate and foreign trade and commerce.

7 IV.

8 JURISDICTION

9 11. The combination and conspiracy charged in this Count was carried out  
10 within the five years preceding the filing of this Information.

11 COUNT TWO

12 12. Each and every allegation contained in Paragraphs 1, 6, 7, 10, and 11  
13 is realleged and incorporated by reference as if fully set forth herein.

14 V.

15 DESCRIPTION OF THE OFFENSE

16 13. Beginning in or about August 1997 and continuing until in or about  
17 March 1998, defendant ELF and its coconspirators entered into and engaged in a  
18 combination and conspiracy to suppress and eliminate competition by fixing the  
19 prices of certain organic peroxides, specifically t-butyl perbenzoate and t-butyl  
20 peracetate dedicated to styrene polymerization (ELF brands Luperox P and  
21 Luperox 7M50) (“the Specified OP Products”) to be sold in the United States and  
22 elsewhere. The combination and conspiracy engaged in by the defendant and its  
23 coconspirators was in unreasonable restraint of interstate and foreign trade and  
24 commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

25 14. The charged combination and conspiracy consisted of a continuing  
26 agreement, understanding, and concert of action among the defendant and its

1 coconspirators, the substantial terms of which were to agree to fix and maintain  
2 prices and to coordinate price increases for the Specified OP Products to be sold in  
3 the United States and elsewhere.

4 15. For the purpose of forming and carrying out the charged combination  
5 and conspiracy, the defendant and its coconspirators did those things that they  
6 combined and conspired to do, including, among other things:

7 (a) participating in conversations to discuss the prices of the  
8 Specified OP Products to be sold in the United States and  
9 elsewhere;

10 (b) agreeing, during those conversations, to charge prices at certain  
11 levels and otherwise to increase and maintain prices of the  
12 Specified OP Products to be sold in the United States and  
13 elsewhere; and

14 (c) issuing price announcements and price quotations in accordance  
15 with the agreement reached.

16 VI.

17 DEFENDANT AND COCONSPIRATORS

18 16. ELF is a corporation organized and existing under the laws of France.  
19 During the period covered by this Count, ELF, through its affiliates, was engaged in  
20 the business of producing the Specified OP Products and selling them to customers  
21 in the United States and elsewhere.

22 VII.

23 TRADE AND COMMERCE

24 17. The Specified OP Products are essential chemical inputs used in the  
25 manufacture of certain polystyrene products, such as containers and packaging.

26 18. During the period covered by this Count, the defendant and its

1 coconspirators sold and distributed the Specified OP Products in a continuous and  
2 uninterrupted flow of interstate and foreign trade and commerce to customers  
3 located in states or countries other than the states or countries in which the  
4 defendant and its coconspirators produced the Specified OP Products.

5 ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1.

6 Dated:

7  
8 \_\_\_\_\_ /s/  
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10 Assistant Attorney General

\_\_\_\_\_ /s/  
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11  
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