

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL D. ANDREAS;
MARK E. WHITACRE;
TERRANCE S. WILSON; and
KAZUTOSHI YAMADA,

Defendants.

)
) **Criminal No.: 96-CR-00762**
)
) **[Filed: 12/3/96]**
)
) **Violation: 15 U.S.C. § 1**
)
) **Judge: Manning**
)
)

INDICTMENT

The SPECIAL JANUARY 1996 Grand Jury charges:

I.

DESCRIPTION OF THE OFFENSE

1. The following individuals are hereby indicted and made defendants on the charge stated below:

- (a) MICHAEL D. ANDREAS;
- (b) MARK E. WHITACRE;
- (c) TERRANCE S. WILSON; and
- (d) KAZUTOSHI YAMADA.

2. Beginning in or about June 1992 and continuing until approximately June 27, 1995, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators, Ajinomoto Co., Inc., Archer Daniels Midland Company, Kyowa Hakko Kogyo Co. Ltd., Sewon America, Inc., and other corporations and individuals, entered into and engaged in a combination

and conspiracy to suppress and eliminate competition by fixing the price and allocating the sales volumes of lysine offered for sale to customers in the United States and other countries (a geographic area referred to hereafter as "worldwide"). The combination and conspiracy, engaged in by the defendants and co-conspirators, is an unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were:

- (a) to agree to fix and maintain prices and to coordinate price increases for the sale of lysine worldwide; and
- (b) to agree to allocate the sales volumes of lysine among the corporate conspirators.

II.

MEANS AND METHODS OF THE CONSPIRACY

4. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

(a) Meetings, Telephone Conversations, And Discussions

- (1) participating in meetings to discuss the prices and volumes of sales of lysine sold worldwide. These meetings were held in various countries, including the United States, and included, but are not limited to, the following: (i) June 23, 1992 meeting in Mexico City, Mexico;
- (ii) October 1, 1992 meeting in Paris, France;

- (iii) April 15, 1993 meeting in Chicago, Illinois;
 - (iv) April 28, 1993 meeting in Chicago, Illinois;
 - (v) April 30, 1993 meeting in Decatur, Illinois;
 - (vi) June 24, 1993 meeting in Vancouver, Canada;
 - (vii) October 25, 1993 meeting in Irvine, California;
 - (viii) December 8, 1993 meeting in Tokyo, Japan;
 - (ix) March 10, 1994 meeting in Makaha, Hawaii;
 - (x) October 13, 1994 meeting in Chicago, Illinois; and
 - (xi) January 18, 1995 meeting in Atlanta, Georgia;
- (2) participating in telephone conversations with co-conspirators to discuss the prices and volumes of sales of lysine sold worldwide; and
 - (3) otherwise discussing with co-conspirators the prices and volumes of sales of lysine sold worldwide.

(b) Agreement To Fix Prices

- (1) agreeing, during the meetings, telephone conversations and discussions, to charge prices at certain levels and otherwise to increase and maintain prices of lysine sold worldwide;
- (2) raising their prices for lysine to be sold worldwide;
- (3) issuing price announcements and price quotations in accordance with the agreements reached;
- (4) supplying lysine to various customers at collusive, noncompetitive prices;

(5) accepting payment for the supply of lysine to various customers sold at collusive, noncompetitive prices; and

(6) agreeing to continue to fix prices from year to year.

(c) Agreement To Allocate Sales Volumes

(1) agreeing, during the meetings, telephone conversations and discussions, to allocate among the corporate conspirators the sales volumes of lysine to be sold by each corporate conspirator worldwide;

(2) allocating each corporate conspirator's worldwide sales volumes of lysine; and

(3) agreeing to continue to allocate sales volumes from year to year.

(d) Monitoring And Enforcing The Conspiracy

(1) participating in meetings, telephone conversations, and discussions about prices and volumes of sales of lysine sold worldwide for the purpose of monitoring and enforcing adherence to the agreed-upon prices and sales volumes;

(2) directing subordinates to coordinate with their co-conspirator counterparts concerning the implementation of the price increases and sales volume agreements by meeting

with them in regional meetings or otherwise
contacting them to implement, monitor, and
police the agreements; and

(3) sending to and receiving from co-conspirators
tabulations containing a comparison of the actual
monthly sales volumes of each corporate conspirator
with each corporate conspirator's allocated sales
volumes.

(e) Concealing The Conspiracy

- (1) organizing and maintaining a trade association as a
pretense for the purpose of promoting, facilitating,
policing, concealing, covering-up and otherwise
furthering, aiding and abetting the combination and
conspiracy; and
- (2) attempting to conceal the conspiracy and conspiratorial
contacts through various other means.

III.

DEFENDANTS AND CO-CONSPIRATORS

5. During the period covered by this Indictment, defendant MICHAEL D. ANDREAS was the Vice Chairman of the Board of Directors and Executive Vice President of Archer Daniels Midland ("ADM"). ADM is a corporation organized and existing under the laws of Delaware with its principal place of business in Decatur, Illinois. MICHAEL D. ANDREAS supervised all of ADM's operations, including ADM's BioProducts Division which was responsible for the production, sale, and distribution of lysine. During the period covered by

this Indictment, ADM produced lysine at its plant located in Decatur, Illinois and sold and distributed lysine to customers worldwide.

6. During the period covered by this Indictment, TERRANCE S. WILSON was an ADM Group Vice President and the President of ADM's Corn Processing Division and reported to MICHAEL D. ANDREAS.

7. During the period covered by this Indictment, MARK E. WHITACRE was an ADM Corporate Vice President and the President of ADM's BioProducts Division and reported to MICHAEL D. ANDREAS.

8. During the period covered by this Indictment, KAZUTOSHI YAMADA was the Managing Director of Ajinomoto Co., Inc. ("Ajinomoto"). Ajinomoto is a corporation organized and existing under the laws of Japan with its principal place of business in Tokyo, Japan. Ajinomoto operates a wholly owned United States subsidiary, Heartland Lysine, Inc., which has headquarters in Chicago, Illinois. Ajinomoto, through Heartland Lysine, sells and distributes lysine in the United States produced at Heartland Lysine's plant located in Eddyville, Iowa. During the period covered by this Indictment, Ajinomoto produced, sold, and distributed lysine to customers worldwide.

9. Various corporations and individuals, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of it.

10. Whenever in this Indictment reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, employees, agents, or other representatives while

they were actively engaged in the management, direction, control, or transaction of its business or affairs.

IV.

TRADE AND COMMERCE

11. Lysine is an amino acid produced through a fermentation process and used primarily as a protein additive in swine and poultry feed. Lysine is used by swine and poultry farmers to supplement a diet of corn and thereby ensure proper growth of swine and poultry.

12. During the period covered by this Indictment, the defendants and co-conspirators produced virtually all of the lysine produced worldwide. Total worldwide sales of lysine by ADM during the period covered by this Indictment was approximately \$454 million, of which approximately \$197 million was sales to customers in the United States.

13. During the period covered by this Indictment, the defendants and co-conspirators sold and distributed lysine in a continuous and uninterrupted flow of interstate and foreign commerce to customers located in states and countries other than the states and countries in which the defendants and co-conspirators produced lysine.

14. In particular, during the period covered by this Indictment, ADM manufactured lysine in Decatur, Illinois, and sold and distributed lysine to customers in states other than Illinois and countries other than the United States.

15. The business activities of the defendants and co-conspirators that are the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

V.

JURISDICTION AND VENUE

16. The combination and conspiracy charged in this Indictment was carried out, in part, in the Northern District of Illinois, Eastern Division, within the five years preceding the return of this Indictment.

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

A TRUE BILL

DATED:

_____/s/_____
FOREPERSON

_____/s/_____
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