

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA)	
)	Criminal No. 02-711
v.)	
)	Violation: 15 U.S.C. § 1
IAN G. HUTCHINSON,)	
)	Filed: 9-27-02
)	
Defendant.)	

GOVERNMENT’S RULE 11 MEMORANDUM

The United States and Ian G. Hutchinson have entered into a plea agreement, pursuant to which Mr. Hutchinson will waive indictment and plead guilty to the captioned Information. The one-count Information charges Mr. Hutchinson with a violation of the Sherman Act, 15 U.S.C.

§ 1. The purpose of this memorandum is to provide the Court with sufficient information to accept the plea by setting forth the violated statute, a description of the criminal Information, the terms of the Plea Agreement, and a preliminary statement of facts which supports the agreement.

I
STATUTE VIOLATED

A. 15 U.S.C. Section 1

Section One of Title 15, United States Code, provides:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine not exceeding \$10,000,000 if a corporation, or, if any other person, \$350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

B. The Information

The Information charges Mr. Hutchinson with participating in a conspiracy to suppress and eliminate competition by fixing the price of carbon cathode block sold in the United States and elsewhere in unreasonable restraint of trade and commerce from at least as early as February 1996 and continuing until at least December 1997.

C. Elements of the Offense

The elements of a Sherman Act offense, each of which the United States must prove beyond a reasonable doubt at trial, are:

- (1) the conspiracy charged was formed, and it was in existence at or about the time alleged;
- (2) the defendant knowingly formed or participated in that conspiracy; and
- (3) the activity which was the object of the conspiracy was within the flow of, or substantially affected, interstate or foreign commerce.

D. Maximum Penalty

The maximum penalty Mr. Hutchinson may receive upon his conviction in this case is a period of imprisonment of three years and a fine in an amount equal to the largest of :

(a) \$350,000; (b) twice the gross pecuniary gain derived from the crime; or (c) twice the gross pecuniary loss caused to the victims of the crime.

II

FACTUAL BASIS FOR OFFENSE CHARGED

This statement of facts is intended to be used as a factual basis for the guilty plea of Mr. Hutchinson. It is not intended to be exhaustive in terms of details surrounding the charged conspiracy. Had this case gone to trial, the United States would have presented evidence to

prove the following facts.

A. Background

As alleged in the Information, defendant participated in a conspiracy that began at least as early as February 1996 and continued until at least December 1997, hereinafter the “relevant period.” From the beginning of the relevant period until January 9, 1997, the defendant was the Commercial and Business Development Director of Hepworth Refractories, Ltd. From January 10, 1997, to the end of the relevant period, he was the Director of Marketing Operations and Business Development of Hepworth Refractories, Ltd. Hepworth Refractories, Ltd., was an entity organized and existing under the laws of the United Kingdom, with its principal place of business in Sheffield, England. Also during the relevant period, the defendant was a Director of Hepworth Refractories, Inc., a company organized and existing under the laws of Ohio. During the relevant period, Hepworth Refractories, Ltd., was a producer of carbon cathode block and was engaged in the sale of carbon cathode block in the United States and elsewhere. Hepworth Refractories, Ltd., sold carbon cathode block in the United States through its wholly-owned U.S. subsidiary, Hepworth Refractories, Inc. Carbon cathode block is a carbon product with great strength and resistance to heat and chemical reaction. Because of its superior conductivity properties, it is commonly used in aluminum smelters or pots in the production of primary aluminum in the United States and elsewhere.

B. The Conspiracy

As alleged in the Information, defendant and co-conspirators entered into and participated in a combination and conspiracy that began at least as early as February 1996 and continued through at least December 1997 to suppress and eliminate competition by fixing the price of

carbon cathode block sold in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1). The conspiracy consisted of a continuing agreement, understanding, and concert of action among the conspirators, the substantial terms of which were to agree to fix and maintain prices and to coordinate pricing for the sale of carbon cathode block sold in the United States and elsewhere.

For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did what they combined and conspired to do, including:

- (1) participating in meetings and conversations in Asia and Europe to discuss the prices of carbon cathode block sold in the United States and elsewhere;
- (2) agreeing, during those meetings and conversations, to charge prices at certain levels and otherwise to increase and maintain prices of carbon cathode block sold in the United States and elsewhere; and
- (3) exchanging sales and customer information for carbon cathode block for the purpose of monitoring and enforcing adherence to the terms of the agreement.

C. Interstate and Foreign Commerce

During the relevant period, carbon cathode block sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of carbon cathode block, as well as payments for carbon cathode block, traveled in interstate and foreign commerce.

At all times during the conspiracy, the co-conspirators sold a substantial quantity of carbon cathode block to customers located in states or countries other than the states or countries in which the carbon cathode block was produced. Hepworth's sales alone of carbon cathode

block in the United States during the term of the conspiracy charged were \$2,767,000. The business activities of Hepworth and co-conspirators, in connection with the production and sale of carbon cathode block affected by this conspiracy, were within the flow of and substantially affected, interstate and foreign trade and commerce.

D. Jurisdiction and Venue

During the relevant period, sales and other acts in furtherance of this conspiracy were carried out within the District of New Jersey.

III PLEA AGREEMENT

The guilty plea in this case will be entered pursuant to the Plea Agreement between Mr. Hutchinson and the Antitrust Division. The Plea Agreement provides that Mr. Hutchinson will enter a plea of guilty in the District of New Jersey pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, to a one-count criminal Information charging him with participating in a conspiracy to restrict competition by fixing the price of carbon cathode block sold in the United States and elsewhere from at least as early as February 1996 and continuing until at least December 1997, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

Also pursuant to the Plea Agreement, the United States and Mr. Hutchinson agree to jointly recommend that the Court impose a sentence requiring Mr. Hutchinson to pay a fine to the United States in the amount of \$30,000, to be paid within ten business days of the date of the imposition of sentence; to be sentenced within the range of zero (0) to six (6) months; and to pay no restitution. The United States and defendant agree that the United States will make no specific recommendation to the Court regarding a sentence within the agreed-upon range and that the defendant can argue for no confinement.

The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3 in addition to any fine imposed.

The United States and Mr. Hutchinson agree (a) that the recommended fine of \$30,000 is a Guidelines fine and requires no departure, and (b) that the applicable United States Sentencing Guidelines range of confinement exceeds the term contained in the recommended sentence set out in Paragraph 8 of the Plea Agreement. Therefore, the United States and Mr. Hutchinson further agree that subject to his full and continuing cooperation, as described in Paragraph 12 of the Plea Agreement, and prior to sentencing in this case, the United States will move, pursuant to U.S.S.G. § 5K1.1, for a downward departure from the Guidelines sentence in this case and will request that the Court impose the recommended sentence set out in Paragraph 8 of the Plea Agreement, because of the defendant's substantial assistance in the Government's investigation and prosecutions of violations of federal criminal law in the carbon cathode block and other industries.

If the Court rejects the recommended sentence set forth in the Plea Agreement, the United States and Mr. Hutchinson further agree that Mr. Hutchinson may withdraw his plea and the Plea Agreement shall be rendered void.

Mr. Hutchinson has agreed to cooperate fully with the United States in the conduct of the present investigation of cathode block products used in the production of primary aluminum and other products, including those set forth in Appendix A to the Plea Agreement¹, and any litigation or other proceedings to which the United States is a party resulting therefrom. Such cooperation

¹ In order to prevent the premature disclosure to the public of these investigations, the Government will seek to file a redacted Appendix A, subject to the Court's approval.

includes, but is not limited to, the production of relevant documents under the control of Mr. Hutchinson and making himself available for interviews and testimony when called upon to do so by the United States, including testifying truthfully in trial and grand jury proceedings.

Also pursuant to the Plea Agreement, the United States agrees, subject to the continuing full cooperation of Mr. Hutchinson not to bring further criminal proceedings against him for any act or offense committed prior to the date of the Plea Agreement undertaken in connection with any antitrust conspiracy involving the sale or manufacture of any cathode block products used in the production of primary aluminum or such other products as set forth in Appendix A of the Plea Agreement. Finally, the United States has agreed to immigration and other relief for Mr. Hutchinson so that he may remain in or travel to and from the United States despite his felony conviction, subject to his continuing and full cooperation (Paragraph 14 of the Plea Agreement).

Dated:

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

This is to certify that on the 27th day of September 2002, a copy of the Government's Rule 11 Memorandum has been faxed/mailed to counsel of record for the defendant as follows:

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/s/

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