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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA)

12 v.)

13)
14 HIROHISA IKEDA)
KUNIO KANAI, and)
15 TAKAYASU MIYASAKA,)
16 Defendants.)

No. CR 00-0393 MJJ

17)
Filed: July 25, 2000
INDICTMENT

18)
VIOLATION:
Title 15, United States Code,
Section 1 (Price Fixing,
Volume Allocation)

19)
San Francisco Venue

20 The Grand Jury charges as follows:

21 I.

22 DESCRIPTION OF THE OFFENSE

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

- 25 (a) HIROHISA IKEDA;
26 (b) KUNIO KANAI; and
(c) TAKAYASU MIYASAKA.

1 2. Beginning in or about 1979 and continuing into 1996, the exact dates being
2 unknown to the Grand Jury, the defendants and their coconspirators entered into and
3 engaged in a combination and conspiracy to suppress and eliminate competition by fixing
4 the prices and allocating the volumes of sorbates to be sold in the United States and
5 elsewhere. The combination and conspiracy engaged in by the defendants and their
6 coconspirators was an unreasonable restraint of interstate and foreign trade and
7 commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

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

- 11 (a) to agree to fix and maintain prices and to coordinate price increases for
- 12 sorbates to be sold in the United States and elsewhere; and
- 13 (b) to agree to allocate among major sorbates producers the volumes of
- 14 sorbates to be sold in the United States and elsewhere.

15 II.

16 MEANS AND METHODS OF THE CONSPIRACY

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

20 (a) Meetings, Telephone Conversations, and Discussions

- 21 (1) participating in meetings among major sorbates producers,
- 22 which were held at least twice a year, to discuss the prices and
- 23 volumes of sorbates to be sold in the United States and elsewhere. The
- 24 meetings were held in various locations throughout the world,
- 25 including: Salzburg, Austria; Vienna, Austria; Prague,
- 26 Czechoslovakia; Helsinki, Finland; Athens, Greece; Budapest,

1 Hungary; Tokyo, Japan; Warsaw, Poland; Lisbon, Portugal;
2 Stockholm, Sweden; Interlaken, Switzerland; and Zurich, Switzerland;

3 (2) participating in telephone conversations to discuss the prices
4 and volumes of sorbates to be sold in the United States and elsewhere;
5 and

6 (3) participating in other discussions regarding the prices and
7 volumes of sorbates to be sold in the United States and elsewhere.

8 (b) Agreement to Fix Prices

9 (1) agreeing during the meetings, telephone conversations, and
10 discussions to charge prices at certain levels, known as "target prices,"
11 and otherwise to increase or maintain target prices of sorbates to be
12 sold in four regions of the world: the United States, Europe, the
13 Americas (including Canada, Mexico, and South America), and the
14 region called rest of the world (including Asia) ("the four world
15 regions");

16 (2) agreeing that the target prices for sorbates to be sold in the
17 United States would be the final, delivered prices charged to the end
18 user;

19 (3) agreeing to establish different target prices in the United States
20 based on amounts purchased by the end users, including a separate
21 target price for the largest purchasers, known as the "ultrabigs";

22 (4) agreeing to direct the corporate conspirators' U.S. subsidiaries
23 and trading companies (collectively referred to as "intermediate
24 sellers") to announce new target prices for U.S. end users in the trade
25 magazine *Chemical Market Reporter* ("CMR"), and agreeing on the
26 timing and the order in which the intermediate sellers would

1 announce new target prices in the CMR;

2 (5) directing the intermediate sellers to issue pricing
3 announcements in the CMR in accordance with the target-price
4 agreements;

5 (6) directing the intermediate sellers to charge certain prices and
6 quote certain bid prices in the United States to ensure that the prices
7 charged and the bid prices quoted to end users were in accordance
8 with the target-price agreements;

9 (7) causing sorbates prices to end users and customers to be raised
10 or maintained in the United States and elsewhere;

11 (8) accepting payment for the supply of sorbates sold at collusive,
12 noncompetitive prices to end users and customers in the United States
13 and elsewhere; and

14 (9) agreeing to continue to fix sorbates prices from year to year.

15 (c) Agreement to Allocate Sales Volumes

16 (1) agreeing during the meetings, telephone conversations, and
17 discussions to allocate among the corporate conspirators the volumes
18 of sorbates to be sold in the four world regions;

19 (2) allocating each corporate conspirator's volumes of sorbates to be
20 sold in each of the four world regions, using an agreed-upon formula to
21 calculate each corporate conspirator's allocated share by region;

22 (3) agreeing to exchange, on a regular basis, the actual
23 volumes of sorbates sold by each corporate conspirator in the
24 four world regions, for the purpose of monitoring and enforcing
25 the volume-allocation agreements; and

26 (4) agreeing to continue to allocate sales volumes of sorbates from

1 year to year.

2 (d) Monitoring and Enforcing the Agreements

3 (1) participating in meetings, telephone conversations, and
4 discussions to discuss the actual prices and volumes of sorbates sold by
5 each corporate conspirator in each of the four world regions for the
6 purpose of monitoring and enforcing adherence to the target-price and
7 volume-allocation agreements;

8 (2) discussing and agreeing to certain bid prices to be quoted to end
9 users in the United States to ensure that the bid prices would be in
10 accordance with the target-price agreements; and

11 (3) exchanging the actual volumes of sorbates sold by each
12 corporate conspirator in each of the four regions of the world to ensure
13 that the sorbates sales of each corporate conspirator did not exceed its
14 allocated sales volume.

15 (e) Concealing the Conspiracy

16 (1) agreeing at the meetings to stagger the order and the timing of
17 price announcements in the CMR to avoid detection by U.S. antitrust
18 authorities;

19 (2) agreeing at the meetings to avoid holding meetings in certain
20 countries, including the United States and member countries of the
21 European Commission, to avoid detection by those countries' antitrust
22 authorities;

23 (3) agreeing at the meetings on the need to dispose of notes
24 memorializing the meetings or other documents referring to the
25 meetings or other activities of the conspiracy; and

26 (4) attempting to conceal the conspiracy and conspiratorial contacts

1 through various other means.

2 III.

3 DEFENDANTS AND COCONSPIRATORS

4 5. Defendant HIROHISA IKEDA is a resident and citizen of Japan. During
5 part of the period covered by this Indictment, defendant HIROHISA IKEDA was the
6 General Manager for the Organic Chemicals Division of Daicel Chemical Industries Ltd.
7 ("Daicel"). During the period covered by this Indictment, Daicel was a Japanese company,
8 which engaged in the business of producing sorbates and, through its trading company,
9 selling sorbates to customers in the United States and elsewhere.

10 6. Defendant KUNIO KANAI is a resident and citizen of Japan. During part of
11 the period covered by this Indictment, defendant KUNIO KANAI was the General
12 Manager of Daicel's Organic Chemicals Division.

13 7. Defendant TAKAYASU MIYASAKA is a resident and citizen of Japan.
14 During part of the period covered by this Indictment, defendant TAKAYASU MIYASAKA
15 was the General Sales Manager, and, later, the Deputy General Manager of Daicel's
16 Organic Chemicals Division.

17 8. Various corporations and individuals, not made defendants in this
18 Indictment, participated as coconspirators in the offense charged in this Indictment and
19 performed acts and made statements in furtherance of it.

20 9. Whenever in this Indictment reference is made to any act, deed, or
21 transaction of any corporation, the allegation means that the corporation engaged in the
22 act, deed, or transaction by or through its officers, directors, employees, agents, or other
23 representatives while they were actively engaged in the management, direction, control,
24 or transaction of its business or affairs.

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1 IV.

2 TRADE AND COMMERCE

3 10. Sorbates are chemical preservatives used primarily as mold inhibitors in
4 high-moisture and high-sugar food products. All references to sorbates in this Indictment
5 include the products potassium sorbate and sorbic acid.

6 11. During the period covered by this Indictment, the defendants and their
7 coconspirators sold and distributed sorbates, and caused the sale and distribution of
8 sorbates, in a continuous and uninterrupted flow of interstate and foreign trade and
9 commerce to customers located in states or countries other than the states or countries in
10 which the defendants and their coconspirators produced sorbates.

11 12. The business activities of the defendants and their coconspirators that are
12 the subject of this Indictment were within the flow of, and substantially affected,
13 interstate and foreign trade and commerce.

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V.

JURISDICTION AND VENUE

13. The combination and conspiracy charged in this Indictment was carried out, in part, in the Northern District of California within the five years preceding the return of this Indictment.

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

A TRUE BILL

_____/s/_____
FOREPERSON

_____/s/_____
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Assistant Attorney General

_____/s/_____
James M. Griffin
Deputy Assistant Attorney General

_____/s/_____
Scott D. Hammond
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