IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | Criminal No. 04-221 |
| | ) | |
| v. | ) | Violation: 15 U.S.C. § 1 |
| | ) | |
| JO TANKERS B.V., | ) | Filed: April 19, 2004 |
| | ) | |
| Defendant. | ) | |
| | ) | |

**GOVERNMENT'S RULE 11 MEMORANDUM**

The United States and Jo Tankers B.V. ("Jo Tankers") have entered into a plea agreement pursuant to which Jo Tankers will waive indictment and plead guilty to the captioned Information which charges Jo Tankers 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 Jo Tankers with participating in a conspiracy to suppress and eliminate competition by allocating customers, fixing prices and rigging bids for contracts of affreightment for parcel tanker shipping of products to and from the United States and elsewhere beginning at least as early as the second half of 1998 and continuing until as late as November 2002, in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

**C. Elements of the Offense (15 U.S.C. Section 1)**

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 Jo Tankers may receive upon its conviction in this case is a fine in an amount equal to the largest of: (a) $10 million; (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

This statement of facts is intended to be used as a factual basis for the guilty plea of Jo Tankers to the Information. It is not intended to be exhaustive in terms of details surrounding

the charged conspiracy.

## A. Background

Parcel tanker shipping is the ocean transport of bulk liquid chemicals, edible oils, acids and other specialty liquids. Parcel tankers are deep sea vessels equipped with compartments designed to carry shipments of various sizes. The temperature and other specifications of the compartments can be regulated according to the specific requirements of the type of liquid being transported.

## B. The Charged Conspiracy

During the charged period, the defendant was a corporation organized and existing under the laws of The Netherlands with its principal place of business in Spijkenisse, The Netherlands. During the charged period, the defendant was a provider of parcel tanker shipping services and was engaged in parcel tanker shipping of products to and from the United States and elsewhere.

As alleged in the Information, beginning at least as early as the second half of 1998 and continuing until as late as November 2002, the defendant, through its agents, officers and employees, participated in a conspiracy among major providers of parcel tanker shipping, the substantial terms of which were to allocate customers, rig bids and fix prices for contracts of affreightment for parcel tanker shipping of products to and from the United States and elsewhere. A contract of affreightment is a contract between a customer and a parcel tanker shipping company for the transportation of bulk liquids from one port to another. A contract of affreightment typically covers multiple shipments during a certain time period and specifies the price, cargo, destinations and other terms and conditions.

During the charged period and in furtherance of the conspiracy, the defendant, through its

agents, officers and employees, and defendant's co-conspirators attended meetings and engaged in discussions in the United States and Europe concerning customers for contracts of affreightment and prices of parcel tanker shipping of products to and from the United States and elsewhere. The defendant and co-conspirators agreed during those meetings and discussions to allocate customers. The defendant and co-conspirators also agreed during those meetings and discussions not to compete for one another's customers either by not submitting prices or bids to certain customers, or by submitting intentionally high prices or bids to certain customers. Defendant and co-conspirators discussed and exchanged prices to certain customers so as not to undercut one another's prices.

### C. Interstate and Foreign Commerce

At all times during the conspiracy, products shipped by defendant, and parcel tanker shipping vessels, equipment and supplies necessary to providing such parcel tanker shipping, as well as payments for such parcel tanker shipping, traveled in interstate and foreign commerce. The activities of the defendant and its co-conspirators in connection with the parcel tanker shipping services affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

## III
## PLEA AGREEMENT

Jo Tankers' guilty plea to the Information will be entered pursuant to the Plea Agreement between Jo Tankers and the Antitrust Division. The Plea Agreement provides that Jo Tankers will enter a plea of guilty pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

Also pursuant to the Plea Agreement, the United States and Jo Tankers agree to jointly

recommend that the Court impose a sentence requiring Jo Tankers to pay a fine to the United States in the amount of $19.5 million as the appropriate disposition of the case. The fine is payable in the following 6 installments over a period of five years:

(1) Within ninety (90) days of imposition of sentence – $1.0 Million (plus any accrued interest)

(2) At the one-year anniversary – $2.75 Million (plus any accrued interest)

(3) At the two-year anniversary – $4.0 Million (plus any accrued interest)

(4) At the three-year anniversary – $4.0 Million (plus any accrued interest)

(5) At the four-year anniversary – $4.0 Million (plus any accrued interest)

(6) At the five-year anniversary – $3.75 Million (plus any accrued interest)

Although the United States Sentencing Guidelines fine range exceeds the agreed-upon fine, subject to the full and continuing cooperation of the defendant as described in Paragraph 13 of its Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from the guidelines fine range and will request that the Court impose the recommended sentence because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the parcel tanker shipping industry.

Subject to the ongoing, full, and truthful cooperation of the defendant, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

Jo Tankers has agreed to accept the imposition of a period of probation that coincides with the fine payment schedule set forth above. The United States and Jo Tankers will also jointly request that the Court accept Jo Tankers' guilty plea and immediately impose sentence on the day of arraignment. Should the Court reject the agreed-upon disposition of the case, Jo Tankers will be free to withdraw its plea.

Jo Tankers and its subsidiaries have agreed to cooperate fully with the United States in the conduct of the present investigation of the parcel tanker shipping industry and any litigation or other proceedings resulting therefrom to which the United States is a party. Such cooperation includes, but is not limited to, the production of relevant documents under the control of Jo Tankers and its subsidiaries, and securing the cooperation of its officers, directors and employees.

Pursuant to the Plea Agreement in this case, the United States agrees, subject to the continuing full cooperation of Jo Tankers and its subsidiaries, not to bring further criminal proceedings against Jo Tankers or its subsidiaries for any act or offense committed prior to December 2002 that was undertaken in furtherance of an antitrust conspiracy involving parcel tanker shipping. Subject to their continuing cooperation, the United States also agrees not to bring charges against any current advisory board member, director, managing director, officer, or employee of Jo Tankers or its subsidiaries for any act or offense committed before December 2002 while that person was acting as an advisory board member, director, managing director, officer or employee of Jo Tankers or its subsidiaries.

Dated: April 19, 2004

Respectfully submitted,

/S/
ROBERT E. CONNOLLY
Chief

/S/
ANTONIA R. HILL
WENDY BOSTWICK NORMAN
KIMBERLY A. JUSTICE
RICHARD S. ROSENBERG
Attorneys, Antitrust Division
U. S. Department of Justice
Philadelphia Office
The Curtis Center, Suite 650W
170 S. Independence Mall West
Philadelphia, PA 19106
Tel. No.: (215) 597-7401

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | Criminal No. |
| | ) | |
| | ) | Violation: 15 U.S.C. § 1 |
| v. | ) | |
| | ) | Filed: April 20, 2004 |
| JO TANKERS B.V., | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

**CERTIFICATE OF SERVICE**

This is to certify that on the 19th day of April 2004, a copy of the Government's Rule 11 Memorandum has been sent via telefax to counsel of record for the defendant as follows:

Richard J. Rappaport, Esquire
McGuire Woods Ross & Hardies
150 North Michigan Avenue
Suite 2500
Chicago, IL 60601-7567
Fax: 312/920-3696

/S/
ANTONIA R. HILL

Attorney, Antitrust Division
U.S. Department of Justice
Philadelphia Office
The Curtis Center, Suite 650 West
170 S. Independence Mall West
Philadelphia, PA 19106
Tel. No.: (215) 597-1058