

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA )  
v. ) Criminal No. 3-02CR00291N  
DUCOA, L.P., ) Filed: 09/30/2002  
Defendant. ) Violation: 15 U.S.C. § 1  
 ) Judge:

## PLEA AGREEMENT

The United States of America and DuCoa, L.P. (“defendant”), a corporation organized and existing under the laws of Delaware, hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

## **RIGHTS OF DEFENDANT**

1. DuCoa, L.P. understands its rights:
    - (a) to be represented by an attorney;
    - (b) to be charged by Indictment;
    - (c) to plead not guilty to any criminal charge brought against it;
    - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;
  - (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

- (f) to appeal its conviction if it is found guilty at trial; and
- (g) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY**  
**AND WAIVE CERTAIN RIGHTS**

2. The defendant waives the rights set out in Paragraph 1(b)-(f) above.

The defendant also waives the right to appeal the imposition of sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. Further, pursuant to Fed. R. Crim. P. 7(b) the defendant will waive indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Northern District of Texas. The Information will charge the defendant with participating in a conspiracy to suppress and eliminate competition by fixing the price of, allocating customers for, and allocating the volume of choline chloride manufactured by the defendant and its co-conspirators and sold by them in the United States and elsewhere, beginning in part at least as early as January 1988 and continuing until at least September 29, 1998, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

## **FACTUAL BASIS FOR OFFENSE CHARGED**

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is that period beginning as early as January 1988 and continuing until at least September 29, 1998. During the relevant period, the defendant was first a joint venture between DuPont De Nemours and Company and ConAgra, Inc. and then later a limited partnership organized and existing under the laws of Delaware. The defendant has its principal place of business in Highland, Illinois. During the relevant period, the defendant was a producer of choline chloride and was engaged in the sale of choline chloride in the United States and elsewhere. Choline chloride is a vitamin of the B-complex group (vitamin B4) used to enrich animal feed products in the United States and elsewhere.

(b) During the relevant period, the defendant, through several of its executives, officers, and employees, participated in a conspiracy among major choline chloride producers, the primary purpose of which was to fix the price, allocate customers for, and the volume of choline chloride manufactured by the defendant and its co-conspirators and sold by them in the United States and elsewhere. In furtherance of the conspiracy, the defendant, through several of its executives, officers, and employees, engaged in discussions and attended meetings with representatives of other major choline chloride producers. During these discussions and meetings, the defendant and its co-

conspirators reached agreements as to the volumes of choline chloride the conspirators would sell and the prices at which they would sell choline chloride in the United States and elsewhere. Further, agreements were reached resulting in the submission of rigged bids for the award and performance of contracts to supply choline chloride to customers located throughout the United States.

(c) During the relevant period, choline chloride sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of choline chloride, as well as payments for choline chloride, traveled in interstate and foreign commerce. The business activities of the defendant and its co-conspirators in connection with the production and sale of choline chloride affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Substantial quantities of choline chloride affected by this conspiracy were sold by one or more of the conspirators to customers in the Northern District of Texas.

**POSSIBLE MAXIMUM SENTENCE**

5. The defendant understands that the maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, the defendant understands that:

- (a) pursuant to § 8B1.1(a)(2) of the United States Sentencing Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order the defendant to pay a \$400 special assessment upon conviction for the charged crime; and
- (c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years.

### **SENTENCING GUIDELINES**

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that the defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to the defendant or in determining the defendant's applicable sentencing guidelines range, except to the extent provided for in U.S.S.G. § 1B1.8(b).

## **SENTENCING AGREEMENT**

8. Pursuant to Fed. R. Crim. P. 11(e)(1)(C), the United States and the defendant agree that the appropriate disposition of the case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of five hundred thousand dollars (\$500,000), pursuant to U.S.S.G. § 8C3.3(b)(Inability to Pay), payable in full within 180 days after the date of judgment, with interest accruing on any unpaid balance after 15 days under 18 U.S.C. § 3612(f)(1)-(2) (“the recommended sentence”). The defendant understands that the Court will order it to pay a \$400 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in addition to any fine imposed.

9. The United States and the defendant agree that the applicable sentencing guidelines fine range exceeds the fine contained in the recommended sentence set out in Paragraph 8 above. The United States and the defendant further agree that the recommended fine is appropriate, pursuant to U.S.S.G. § 8C3.3(b), due to the inability of the defendant to pay a fine greater than that recommended without substantially jeopardizing its continued viability.

10. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 13 of this Plea Agreement, 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.

11. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 11(b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(e)(4)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Crim. P. 11(e)(6). In addition, the defendant agrees that if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 15 of this Plea Agreement will be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

12. In light of the availability of civil causes of actions, which potentially provide for a recovery of a multiple of actual damages, the United States agrees that it will not seek a restitution order for the offense charged in the Information.

**DEFENDANT'S COOPERATION**

13. The defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of the federal antitrust and related criminal laws involving the manufacture and sale of choline chloride, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (“Federal Proceeding”). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- (a) producing to the United States all documents, information, and other materials in the possession, custody, or control of the defendant requested by the United States in connection with any Federal Proceeding; and
- (b) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 14 of this Plea Agreement, of the current and former directors, officers, and employees of the defendant as may be requested by the United States, but excluding Lindell Hilling, John “Pete Fischer, Antonio Felix, Ernie Porta, and Daniel Rose, including making these persons available in the United States, at the defendant’s expense, for

interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

14. The ongoing, full, and truthful cooperation of each person described in paragraph 13(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

- (a) producing in the United States all documents, including claimed personal documents, and other materials requested by attorneys and agents of the United States;
- (b) making himself or herself available for interviews in the United States, not at the expense of the United States, upon the request of attorneys and agents of the United States;
- (c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);
- (d) otherwise voluntarily providing the United States with any material or information not requested in (a) - (c) of this paragraph that he or she may have that is related to any such Federal Proceeding;
- (e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, or other proceedings in the United States fully, truthfully, and under oath, subject to

the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503); and

(f) agreeing that, if the agreement not to prosecute him or her in this Plea Agreement is rendered void under Paragraph 16(c), the statute of limitations period for any relevant offense as defined in Paragraph 16(a) will be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

**GOVERNMENT'S AGREEMENT**

15. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirement of Paragraph 13 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of choline chloride. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

16. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence and subject to the exceptions noted in Paragraph 16(c), the United States will not bring criminal charges against any current or former director, officer, or employee of the defendant (excluding Lindell Hilling, John "Pete" Fischer, Antonio Felix, Ernie Porta, and Daniel Rose) for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of choline chloride ("Relevant Offense");

(b) Should the United States determine that any current or former director, officer, or employee of the defendant may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;

(c) If any person requested to provide cooperation pursuant to Paragraph 16(b) fails to comply with his or her obligations under Paragraph 14, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement,

shall be rendered void;

(d) Except as provided in Paragraph 16(e), information provided by a person described in Paragraph 16(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. § 1623), or obstruction of justice (18 U.S.C. § 1503);

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 14 of this Plea Agreement, the agreement in Paragraph 16(d) not to use that information or any information directly or indirectly derived from it, against that person in a criminal case shall be rendered void;

(f) The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence; and

(g) Documents provided under Paragraphs 13(a) and 14(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant.

17. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea

Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant as a matter for such agency to consider before determining what administrative action, if any, to take.

**REPRESENTATION BY COUNSEL**

18. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

**VOLUNTARY PLEA**

19. The defendant's decision to enter into this Plea Agreement and tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

**VIOLATION OF PLEA AGREEMENT**

20. The defendant agrees that, should the United States determine in good faith, during the period any Federal Proceeding is pending, that the defendant has failed to provide full and truthful cooperation, as described in Paragraph 13 of this

Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any offense referred to in Paragraph 15 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

21. The defendant understands and agrees that in any further prosecution of it resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by it or current or former directors, officers, or employees of it to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it in any such further prosecution. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Crim. P. 11(e)(6)

and Fed. R. Evid. 410.

**ENTIRETY OF AGREEMENT**

22. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

23. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

24. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

25. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED:

Respectfully submitted,

BY: \_\_\_\_\_ /s/  
DuCoa, L.P.

BY: \_\_\_\_\_ /s/  
MITCHELL R. CHITWOOD

BY: \_\_\_\_\_ /s/  
JIM J. SHOEMAKE  
Counsel for DuCoa, L.P.  
Guilfoil, Petzall, & Shoemake, L.L.C.  
100 South 4<sup>th</sup> Street, Suite 500  
St. Louis, Missouri 63102-1822  
Tel.: (314) 241-6890

BY: \_\_\_\_\_ /s/  
GLENN A. HARRISON  
Attorneys, Antitrust Division  
U.S. Department of Justice  
Dallas Field Office  
Thanksgiving Tower  
1601 Elm Street, Suite 4950  
Dallas, TX 75201-4717  
Tel.: (214) 880-9401