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7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA ) No. CR 06-0160 MMC  
12 )  
v. ) PLEA AGREEMENT  
13 )  
14 AKZO NOBEL CHEMICALS INTERNATIONAL )  
B.V., )  
15 )  
Defendant. )  
16 \_\_\_\_\_ )

17 **PLEA AGREEMENT**

18 The United States of America and AKZO NOBEL CHEMICALS INTERNATIONAL  
19 B.V. (“defendant”), a corporation organized and existing under the laws of the Netherlands,  
20 hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal  
21 Rules of Criminal Procedure (“Fed. R. Crim. P.”):

22 **RIGHTS OF DEFENDANT**

- 23 1. The defendant understands its rights:
- 24 (a) to be represented by an attorney;
- 25 (b) to be charged by indictment;
- 26 (c) as a corporation organized and existing under the laws of the Netherlands,  
27 to decline to accept service of the Summons in this case, and to contest the jurisdiction of  
28 the United States to prosecute this case against it in the United States District Court for

1 the Northern District of California;

2 (d) to plead not guilty to any criminal charge brought against it;

3 (e) to have a trial by jury, at which it would be presumed not guilty of the  
4 charge and the United States would have to prove every essential element of the charged  
5 offense beyond a reasonable doubt for it to be found guilty;

6 (f) to confront and cross-examine witnesses against it and to subpoena  
7 witnesses in its defense at trial;

8 (g) to appeal its conviction if it is found guilty; and

9 (h) to appeal the imposition of sentence against it.

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

12 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph  
13 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agrees  
14 voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in  
15 the United States District Court for the Northern District of California. The defendant also  
16 knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other  
17 writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the  
18 sentence imposed by the Court if that sentence is consistent with or below the recommended  
19 sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by  
20 the Court. This agreement does not affect the rights or obligations of the United States as set  
21 forth in 18 U.S.C. § 3742(b) and (c). Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive  
22 indictment and plead guilty at arraignment to a one-count Information to be filed in the United  
23 States District Court for the Northern District of California. The Information will charge the  
24 defendant with participating in a conspiracy to suppress and eliminate competition by fixing the  
25 price of hydrogen peroxide sold in the United States and elsewhere, beginning on or about July  
26 1, 1998 and continuing until on or about December 1, 2001, in violation of the Sherman Antitrust  
27 Act, 15 U.S.C. § 1.

28 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to

1 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to  
2 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

3 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

6 (a) For purposes of this Plea Agreement, the “relevant period” is that period  
7 beginning on or about July 1, 1998 and continuing until on or about December 1, 2001.  
8 During the relevant period, the defendant was a corporation organized and existing under  
9 the laws of the Netherlands. The defendant has its principal place of business in  
10 Amersfoort, the Netherlands. During the relevant period, the defendant, including its  
11 subsidiaries, was a producer of hydrogen peroxide, was engaged in the sale of hydrogen  
12 peroxide in the United States and elsewhere, and employed 5,000 or more individuals.  
13 Hydrogen peroxide is a chemical compound with strong oxidizing properties that is  
14 widely used as a bleaching agent. Hydrogen peroxide has multiple industrial uses,  
15 including applications in the electronics, energy production, mining, cosmetics, food  
16 processing, textiles, and pulp and paper manufacturing industries. During the relevant  
17 period, the defendant’s sales of hydrogen peroxide to U.S. customers totaled  
18 approximately \$82,900,000.

19 (b) During the relevant period, the defendant, through certain executives and  
20 employees, participated in a conspiracy among major hydrogen peroxide producers, the  
21 primary purpose of which was to suppress and eliminate competition by fixing the price  
22 of hydrogen peroxide sold in the United States and elsewhere. In furtherance of the  
23 conspiracy, the defendant, through certain executives and employees, engaged in  
24 discussions with representatives of other major hydrogen peroxide producers. During  
25 these discussions, agreements were reached to fix the price of hydrogen peroxide to be  
26 sold in the United States and elsewhere.

27 (c) During the relevant period, hydrogen peroxide sold by one or more of the  
28 conspirator firms, and equipment and supplies necessary to the production and

1 distribution of hydrogen peroxide, as well as payments for hydrogen peroxide, traveled in  
2 interstate and foreign commerce. The business activities of the defendant and its  
3 co-conspirators in connection with the production and sale of hydrogen peroxide affected  
4 by this conspiracy were within the flow of, and substantially affected, interstate and  
5 foreign trade and commerce.

6 (d) Hydrogen peroxide affected by this conspiracy was sold by one or more of  
7 the conspirators to customers in this District.

8 **POSSIBLE MAXIMUM SENTENCE**

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

12 (a) \$10 million (15 U.S.C. § 1);

13 (b) twice the gross pecuniary gain the conspirators derived from the crime (18  
14 U.S.C. § 3571(c) and (d)); or

15 (c) twice the gross pecuniary loss caused to the victims of the crime by the  
16 conspirators (18 U.S.C. § 3571(c) and (d)).

17 6. In addition, the defendant understands that:

18 (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of  
19 probation of at least one year, but not more than five years;

20 (b) pursuant to § 8B1.1 of the United States Sentencing Guidelines  
21 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”), 18 U.S.C. § 3563(b)(2) or  
22 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and

23 (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the  
24 defendant to pay a \$400 special assessment upon conviction for the charged crime.

25 **SENTENCING GUIDELINES**

26 7. The defendant understands that the Sentencing Guidelines are advisory, not  
27 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,  
28 along with the other factors set forth in 18 U.S.C. §3553(a), in determining and imposing

1 sentence. The defendant understands that the Guidelines determinations will be made by the  
2 Court by a preponderance of the evidence standard. The defendant understands that although the  
3 Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its  
4 sentence must be reasonable based upon consideration of all relevant sentencing factors set forth  
5 in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that  
6 self-incriminating information that the defendant provides to the United States pursuant to this  
7 Plea Agreement will not be used to increase the volume of affected commerce attributable to the  
8 defendant or in determining the defendant's applicable Guidelines range, except to the extent  
9 provided in U.S.S.G. § 1B1.8(b).

### 10 **SENTENCING AGREEMENT**

11 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant  
12 agree that the appropriate disposition of this case is, and agree to recommend jointly that the  
13 Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of  
14 \$32 million, pursuant to 18 U.S.C. § 3571(d), payable in full before the fifteenth (15th) day after  
15 the date of judgment ("the recommended sentence"). The parties agree that there exists no  
16 aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into  
17 consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines  
18 justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any  
19 sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not  
20 set forth in this Plea Agreement. The parties further agree that the recommended sentence set  
21 forth in this Plea Agreement is reasonable.

22 (a) The defendant understands that the Court will order it to pay a \$400  
23 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine  
24 imposed.

25 (b) Both parties will recommend that no term of probation be imposed, but the  
26 defendant understands that the Court's denial of this request will not void this Plea  
27 Agreement.

28 (c) The United States and the defendant jointly submit that this Plea

1 Agreement, together with the record that will be created by the United States and the  
2 defendant at the plea and sentencing hearings, and the further disclosure described in  
3 Paragraph 10, will provide sufficient information concerning the defendant, the crime  
4 charged in this case, and the defendant's role in the crime to enable the meaningful  
5 exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States  
6 and defendant agree to request jointly that the Court accept the defendant's guilty plea  
7 and impose sentence on an expedited schedule as early as the date of arraignment, based  
8 upon the record provided by the defendant and the United States, under the provisions of  
9 Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1, and Rule 32-1(b) of the Criminal  
10 Local Rules. The Court's denial of the request to impose sentence on an expedited  
11 schedule will not void this Plea Agreement.

12 (d) The United States contends that had this case gone to trial, the United  
13 States would have presented evidence to prove that the gain derived from or the loss  
14 resulting from the charged offense is sufficient to justify the recommended sentence set  
15 forth in this paragraph, pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and  
16 sentencing only, the defendant waives its rights to contest this calculation.

17 9. The United States and the defendant agree that the applicable Guidelines fine  
18 range exceeds the fine contained in the recommended sentence set out in Paragraph 8 above.  
19 Subject to the full and continuing cooperation of the defendant, as described in Paragraph 13 of  
20 this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will  
21 make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from the Guidelines  
22 fine range and will request that the Court impose the recommended sentence set out in Paragraph  
23 8 of this Plea Agreement because of the defendant's substantial assistance in the government's  
24 investigation and prosecution of violations of federal criminal law in the hydrogen peroxide  
25 industry and in other chemical industries.

26 10. Subject to the ongoing, full, and truthful cooperation of the defendant described in  
27 Paragraph 13 of this Plea Agreement, and before sentencing in the case, the United States will  
28 fully advise the Court and the Probation Office as to: (i) the fact, manner, and extent of the

1 defendant's cooperation and its commitment to prospective cooperation with the United States'  
2 investigation and prosecutions; (ii) all material facts relating to the defendant's involvement in  
3 the charged offense; and (iii) all other relevant conduct.

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

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

10 (b) If the Court does not accept the recommended sentence, the defendant  
11 will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the  
12 defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any  
13 statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the  
14 guilty plea or this Plea Agreement or made in the course of plea discussions with an  
15 attorney for the government shall not be admissible against the defendant in any criminal  
16 or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the  
17 defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the  
18 Plea Agreement, the statute of limitations period for any offense referred to in Paragraph  
19 15 of this Plea Agreement will be tolled for the period between the date of the signing of  
20 the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of  
21 sixty (60) days after the date of the signing of the Plea Agreement, whichever period is  
22 greater.

23 12. In light of the civil class action cases filed against the defendant, which potentially  
24 provide for a recovery of a multiple of actual damages, the United States agrees that it will not  
25 seek a restitution order for the offense charged in the Information.

#### 26 **DEFENDANT'S COOPERATION**

27 13. The defendant and its parents and subsidiaries that are engaged in the sale or  
28 production of hydrogen peroxide (collectively, "related entities") will cooperate fully and

1 truthfully with the United States in the prosecution of this case, the conduct of the current federal  
2 investigation of violations of federal antitrust and related criminal laws involving the  
3 manufacture or sale of hydrogen peroxide, any other federal investigation resulting therefrom,  
4 and any litigation or other proceedings arising or resulting from any such investigation to which  
5 the United States is a party (“federal proceeding”). The ongoing, full, and truthful cooperation  
6 of the defendant shall include, but not be limited to:

7 (a) producing to the United States all non-privileged documents, information,  
8 and other materials, wherever located, in the possession, custody, or control of the  
9 defendant or any of its related entities, requested by the United States in connection with  
10 any federal proceeding; and

11 (b) using its best efforts to secure the ongoing, full, and truthful  
12 cooperation, as defined in Paragraph 14 of this Plea Agreement, of the current and former  
13 directors, officers, and employees of the defendant or any of its related entities as may be  
14 requested by the United States, but excluding Dag Strömquist and Börje Andersson,  
15 including making such persons available in the United States and at other mutually  
16 agreed-upon locations, at the defendant’s expense, for interviews and the provision of  
17 testimony in grand jury, trial, and other judicial proceedings in connection with any  
18 federal proceeding.

19 14. The ongoing, full, and truthful cooperation of each person described in Paragraph  
20 13(b) above will be subject to the procedures and protections of this paragraph, and shall  
21 include, but not be limited to:

22 (a) producing in the United States and at other mutually agreed-upon  
23 locations all non-privileged documents, including claimed personal documents, and other  
24 materials, wherever located, requested by attorneys and agents of the United States;

25 (b) making himself or herself available for interviews in the United States and  
26 at other mutually agreed-upon locations, not at the expense of the United States, upon the  
27 request of attorneys and agents of the United States;

28 (c) responding fully and truthfully to all inquiries of the United States in



1 connection with any federal proceeding, without falsely implicating any person or  
2 intentionally withholding any information, subject to the penalties of making false  
3 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

4 (d) otherwise voluntarily providing the United States with any non-privileged  
5 material or information not requested in (a) - (c) of this paragraph that he or she may  
6 have that is related to any federal proceeding;

7 (e) when called upon to do so by the United States in connection with any  
8 federal proceeding, testifying in grand jury, trial, and other judicial proceedings fully,  
9 truthfully, and under oath, subject to the penalties for perjury (18 U.S.C. § 1621), for  
10 making false statements or declarations in grand jury or court proceedings (18 U.S.C. §  
11 1623), for contempt (18 U.S.C. §§ 401-402), and for obstruction of justice (18 U.S.C. §  
12 1503); and

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

### 19 **GOVERNMENT'S AGREEMENT**

20 15. Upon acceptance of the guilty plea called for by this Plea Agreement and the  
21 imposition of the recommended sentence, and subject to the cooperation requirements of  
22 Paragraph 13 of this Plea Agreement, the United States agrees that it will not bring further  
23 criminal charges against the defendant or any of its related entities for any act or offense  
24 committed before the date of this Plea Agreement that was undertaken in furtherance of an  
25 attempted or completed antitrust conspiracy involving the manufacture or sale of hydrogen  
26 peroxide. The nonprosecution terms of this paragraph do not apply to civil matters of any kind,  
27 to any violation of the federal tax or securities laws, or to any crime of violence.

28 16. The United States agrees to the following:

1 (a) Upon the Court’s acceptance of the guilty plea called for by this Plea  
2 Agreement and the imposition of the recommended sentence and subject to the  
3 exceptions noted in Paragraph 16(c), the United States will not bring criminal charges  
4 against any current or former director, officer, or employee of the defendant or its related  
5 entities for any act or offense committed before the date of this Plea Agreement and  
6 while that person was acting as a director, officer, or employee of the defendant or its  
7 related entities that was undertaken in furtherance of an attempted or completed antitrust  
8 conspiracy involving the manufacture or sale of hydrogen peroxide (“relevant offense”),  
9 except that the protections granted in this paragraph shall not apply to Dag Strömqvist or  
10 Börje Andersson;

11 (b) Should the United States determine that any current or former director,  
12 officer, or employee of the defendant or its related entities may have information relevant  
13 to any federal proceeding, the United States may request that person’s cooperation under  
14 the terms of this Plea Agreement by written request delivered to counsel for the  
15 individual (with a copy to the undersigned counsel for the defendant) or, if the individual  
16 is not known by the United States to be represented, to the undersigned counsel for the  
17 defendant;

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

22 (d) Except as provided in Paragraph 16(e), information provided by a person  
23 described in Paragraph 16(b) to the United States under the terms of this Plea Agreement  
24 pertaining to any relevant offense, or any information directly or indirectly derived from  
25 that information, may not be used against that person in a criminal case, except in a  
26 prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration  
27 (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

28 (e) If any person who provides information to the United States under this

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

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

8 (g) Documents provided under Paragraphs 13(a) and 14(a) shall be deemed  
9 responsive to outstanding grand jury subpoenas issued to the defendant or any of its  
10 related entities.

11 17. The United States agrees that when any person travels to the United States for  
12 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for  
13 meetings with counsel in preparation therefor, the United States will take no action, based upon  
14 any relevant offense, to subject such person to arrest, detention, or service of process, or to  
15 prevent such person from departing the United States. This paragraph does not apply to an  
16 individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §  
17 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §  
18 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in  
19 connection with any testimony or information provided or requested in any federal proceeding.

20 18. The defendant understands that it may be subject to administrative action by  
21 federal or state agencies other than the United States Department of Justice, Antitrust Division,  
22 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in  
23 no way controls whatever action, if any, other agencies may take. However, the United States  
24 agrees that, if requested, it will advise the appropriate officials of any governmental agency  
25 considering such administrative action of the fact, manner, and extent of the cooperation of the  
26 defendant and its related entities as a matter for that agency to consider before determining what  
27 administrative action, if any, to take.

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**POWER OF ATTORNEY**

The undersigned, Mr. P.J.F. Gommers and Mr. C.W. van Zuijlen, directors of Akzo Nobel Management B.V., which is the sole director of Akzo Nobel Chemicals International B.V. (the "Company"),

herewith decide,

- That Mr. A.J.A.J. Eijsbouts, General Counsel of the Akzo Nobel Group, is authorized, empowered and directed to execute and deliver, in the name of and on behalf of the Company, the Plea Agreement between Akzo Nobel Chemicals International B.V. and the United States of America in substantially the form of the draft appended hereto; and further
- That Mr. A.J.A.J. Eijsbouts, General Counsel of the Akzo Nobel Group, Mr. Gary R. Spratling, a partner of the firm of Gibson, Dunn & Crutcher LLP (the "Law Firm"), Mr. Daniel G. Swanson, also a partner of the Law Firm, Mr. Stephen C. McKenna, an associate of the Law Firm, and any other member of the Law Firm may represent the Company at any hearing in order to waive indictment and plead guilty in accordance with the provisions of the above-referenced Plea Agreement; and further
- That Mr. A.J.A.J. Eijsbouts, General Counsel of the Akzo Nobel Group, Mr. Gary R. Spratling, a partner of the Law Firm, Mr. Daniel G. Swanson, also a partner of the Law Firm, Mr. Stephen C. McKenna, an associate of the Law Firm, and any other member of the Law Firm are hereby authorized and empowered on behalf of the Company to waive the preparation of a presentence report and proceed immediately to sentencing, to provide information to the Court in conjunction with sentencing, and to represent the Company at any sentencing hearing; and further
- That Mr. A.J.A.J. Eijsbouts, General Counsel of the Akzo Nobel Group, any of the officers of the Company, Mr. Gary R. Spratling, a partner of the Law Firm, Mr. Daniel G. Swanson, also a partner of the Law Firm, Mr. Stephen C. McKenna, an associate of the Law Firm, and any other member of the Law Firm are hereby authorized and empowered to take any and all actions reasonably required or appropriate in order to carry out the intent and purpose of the preceding resolutions.

AKZO NOBEL CHEMICALS INTERNATIONAL B.V.

By:

  
P.J.F. Gommers  
Director, Akzo Nobel Management B.V.

and

By:

  
C.W. van Zuijlen  
Director, Akzo Nobel Management B.V.