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SECTION OF ANTITRUST LAW

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CRIMINAL PRACTICE AND PROCEDURE COMMITTEE

Status Report: Criminal Fines

Status Report: International Cartel Enforcement

Status Report: Corporate Leniency Program

**James M. Griffin
Deputy Assistant Attorney General
Antitrust Division
U.S. Department of Justice**

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STATUS REPORT: CRIMINAL FINES

Since the beginning of FY 1997, the Antitrust Division of the U.S. Department of Justice ("Division") has obtained over \$1.7 billion dollars in criminal fines -- many multiples higher than the sum total of all criminal fines imposed for violations of the Sherman Antitrust Act dating back to 1890. Well over 90 percent of these fines were imposed in connection with the prosecution of international cartel activity.

- **Volume Of Affected Commerce.** International cartels affect very large volumes of commerce. In some matters, the volume of commerce affected by the suspected conspiracy is well over \$1 billion per year and in over half of the investigations, the volume of commerce affected is well over \$100 million over the term of the conspiracy.
- **Corporate Fines Have Increased Dramatically.** Because international cartels affect such a large volume of U.S. commerce and the U.S. Sentencing Guidelines fines are based in large part on the amount of commerce affected by the cartel, fines obtained by the Division have increased dramatically in the last several years.
- **Year-End Total Fines.** In the 10 years prior to FY 1997, the Division obtained, on average, \$29 million in criminal fines annually. In FY 1997, the Division collected \$205 million in criminal fines - - which was 500 percent higher than during any previous year in the Division's history. In FY 1998, the Division obtained over \$265 million in criminal fines. In FY 1999, the Division secured over \$1.1 billion, including the record fines against F. Hoffmann-La Roche (\$500 million) and BASF (\$225 million). In FY 2000, the Division obtained over \$150 million in fines.
- **Higher Top-End Fines.** Less than a decade ago, the largest corporate fine ever imposed for a single Sherman Act count was \$2 million. However, in the past five years, fines of \$10 million or more have become commonplace. The five largest fines obtained by the Division thus far are:
 - \$500 million against F. Hoffmann-La Roche (vitamin cartel - May 1999), largest fine ever imposed in a criminal prosecution of any kind;
 - \$225 million against BASF AG (vitamin cartel - May 1999);
 - \$135 million against SGL Carbon AG (graphite electrodes cartel - May 1999);
 - \$110 million against UCAR International (graphite electrodes cartel - April 1998); and
 - \$100 million against Archer Daniels Midland Company (lysine and citric acid cartels - October 1996).
- **International: Fines Of \$10 Million or More.** The Division has obtained fines of \$10 million or more against U.S., Dutch, German, Japanese, Belgian, Swiss, British, and

Norwegian-based companies. In 27 of the 33 instances in which the Division has secured a fine of \$10 million or greater, the corporate defendants were foreign-based. These numbers reflect the fact that the typical international cartel likely consists of a U.S. company and three or four of its competitors that are market leaders in Europe, Asia, and throughout the world. (See Chart of Sherman Act Violations Yielding a Fine of \$10 Million or More, below.)

ANTITRUST DIVISION
Sherman Act Violations Yielding a Fine of \$10 Million or More

Defendant (FY)	Product	Fine (\$ Millions)	Geographic Scope	Country
F. Hoffmann-La Roche, Ltd. (1999)	Vitamins	\$500	International	Switzerland
BASF AG (1999)	Vitamins	\$225	International	Germany
SGL Carbon AG (1999)	Graphite Electrodes	\$135	International	Germany
UCAR International, Inc. (1998)	Graphite Electrodes	\$110	International	U.S.
Archer Daniels Midland Co. (1997)	Lysine & Citric Acid	\$100	International	U.S.
Takeda Chemical Industries, Ltd. (1999)	Vitamins	\$72	International	Japan
Daicel Chemical Industries, Ltd. (2000)	Sorbates	\$53	International	Japan
ABB Middle East & Africa Participations AG (2001)	Construction	\$53	International	Switzerland/Hdq.Italy
Haarmann & Reimer Corp. (1997)	Citric Acid	\$50	International	German Parent
HeereMac v.o.f. (1998)	Marine Construction	\$49	International	Netherlands
Sotheby's Holdings Inc. (2001)	Fine Arts Auctions	\$45	International	U.S.
Eisai Co., Ltd. (1999)	Vitamins	\$40	International	Japan
Hoechst AG (1999)	Sorbates	\$36	International	Germany
Showa Denko Carbon, Inc. (1998)	Graphite Electrodes	\$32.5	International	Japan
Philipp Holzmann AG (2000)	Construction	\$30	International	Germany
Daiichi Pharmaceutical Co., Ltd. (1999)	Vitamins	\$25	International	Japan
Defendant (FY)	Product	Fine (\$ Millions)	Geographic Scope	Country

ANTITRUST DIVISION
Sherman Act Violations Yielding a Fine of \$10 Million or More

Nippon Gohsei (1999)	Sorbates	\$21	International	Japan
Pfizer Inc. (1999)	Maltol/Sodium Erythorbate	\$20	International	U.S.
Fujisawa Pharmaceuticals Co. (1998)	Sodium Gluconate	\$20	International	Japan
Dockwise N.V. (1998)	Marine Transportation	\$15	International	Belgium
Dyno Nobel (1996)	Explosives	\$15	Domestic	Norwegian Parent
F. Hoffmann-La Roche, Ltd. (1997)	Citric Acid	\$14	International	Switzerland
Merck KgaA (2000)	Vitamins	\$14	International	Germany
Degussa-Huls AG (2000)	Vitamins	\$13	International	Germany
Ueno Fine Chemicals Industry, Ltd. (2001)	Sorbates	\$11	International	Japan
Eastman Chemical Co. (1998)	Sorbates	\$11	International	U.S.
Jungbunzlauer International AG (1997)	Citric Acid	\$11	International	Switzerland
Lonza AG (1998)	Vitamins	\$10.5	International	Switzerland
Akzo Nobel Chemicals, BV & Glucona, BV (1997)	Sodium Gluconate	\$10	International	Netherlands
ICI Explosives (1995)	Explosives	\$10	Domestic	British Parent
Mrs. Baird's Bakeries (1996)	Bread	\$10	Domestic	U.S.
Ajinomoto Co., Inc. (1996)	Lysine	\$10	International	Japan
Kyowa Hakko Kogyo, Co., Ltd. (1996)	Lysine	\$10	International	Japan

**STATUS REPORT:
INTERNATIONAL CARTEL ENFORCEMENT**

The Antitrust Division of the U.S. Department of Justice ("Division") has employed a strategy of concentrating its enforcement resources on international cartels that victimize American businesses and consumers. This enforcement emphasis has led to remarkable success in terms of cracking international cartels, securing the convictions of major conspirators, and obtaining record-breaking fines. For example:

- **Grand Jury Investigations.** During FY 2000, the Division conducted approximately 30 grand jury investigations of suspected international cartel activity. Currently, approximately one-third of the Division's criminal investigations involve suspected international cartel activity.
- **Geographic Scope.** The subjects and targets of the Division's international investigations are located on 5 continents and in over 20 different countries. However, the geographic scope of the criminal activity is even broader than these numbers reflect. Our investigations have uncovered meetings of international cartels in *107 cities in 35 countries*, including most of the Far East and nearly every country in Western Europe.
- **Numerous Sectors of Economy Affected.** The Division has prosecuted international cartels operating in a number of sectors including vitamins, food and feed additives, food preservatives, chemicals, graphite electrodes (used in steel making), and marine construction and marine transportation services.
- **Volume Of Affected Commerce.** In some matters, the volume of commerce affected by the suspected conspiracy is well over \$1 billion per year; and in over half of the investigations, the volume of commerce affected is well over \$100 million over the term of the conspiracy.
- **Estimated Harm.** Since the beginning of FY 1997, the Division has prosecuted international cartels affecting well over *\$10 billion* in U.S. commerce. It is clear that the cartel activity in these cases has cost U.S. businesses and consumers many hundreds of millions of dollars annually. For example:
 - **Lysine** - Prices increased by 70% in first 6 months; doubled over course of conspiracy; defendants agreed to pay U.S. customers more than \$45

million in damages.

- **Citric Acid** - Prices increased by over 30% during duration of conspiracy;
 - **Graphite Electrodes** - Prices increased by over 60% during duration of conspiracy;
 - **Vitamins** - Defendants agreed to pay U.S. customers more than \$1 billion in damages.
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- **Percentage Of Foreign Defendants**. Since the beginning of FY 1998, roughly *50 percent* of corporate defendants in criminal cases brought by the Division were foreign-based.
 - **Conviction Of Foreign Executives**. The Division has convicted foreign executives from Germany, Belgium, The Netherlands, England, France, Switzerland, Italy, Canada, Mexico, Japan, and Korea for engaging in cartel activity, resulting in heavy fines and, in some cases, imprisonment. Business executives from Germany and Switzerland recently have served prison sentences in U.S. jails, and a Japanese executive, in a case filed in February 2001, will be the first business executive from that country to plead guilty and face a potential jail sentence in the United States for an antitrust violation.
 - **Individual Jail Sentences Have Increased**. Individual defendants were sentenced to more jail days in FYs 1999 and 2000 (12,246 days) than in the prior five years combined (9,920 days). That equates to nearly 34 years of jail time imposed in FYs 1999 and 2000, including 15 sentences of 12 months or more. Of course, the majority of those sentences were imposed against U.S. business executives. However, as noted above recent cases have resulted in the imprisonment of foreign executives for antitrust violations.

STATUS REPORT: CORPORATE LENIENCY PROGRAM

In August 1993, the Antitrust Division of the U.S. Department of Justice ("Division") revised its Corporate Leniency Program to make it easier for and more attractive to companies to come forward and cooperate with the Division. Three major revisions were made to the program: (1) amnesty is automatic if there is no pre-existing investigation; (2) amnesty may still be available even if cooperation begins after the investigation is underway; and (3) all officers, directors, and employees who cooperate are protected from criminal prosecution. As a result of these changes, the Amnesty Program is the Division's most effective generator of international cartel cases, and it is the Department's most successful leniency program.

- **Application Rate.** The revised Corporate Amnesty Program has resulted in a surge in amnesty applications. Under the old amnesty policy the Division obtained roughly one amnesty application per year. Under the new policy, the application rate has been more than one per month. As a result of this increased interest, the Division frequently encounters situations where a company approaches the government within days, and in some cases less than one business day, after one of its co-conspirators has secured its position as first in line for amnesty. Of course, only the first company to qualify receives amnesty.
- **Case Generator.** In the last few years, cooperation from amnesty applications have resulted in scores of convictions and over \$1 billion in fines. In fact, the majority of the Division's major international investigations have been advanced through the cooperation of an amnesty applicant.
- **Amnesty - A Corporate "Super Saver".** The vitamin, graphite electrodes, fine arts auctions, and marine construction investigations offer four prime examples of the stunning financial advantages for companies that take advantage of the Amnesty Program. In each of these matters, the amnesty applicant paid zero dollars in criminal fines.
 - **Vitamins.** In the vitamin investigation, the applicant's cooperation directly led to F. Hoffmann-La Roche's and BASF's decision to plead guilty and pay fines of \$500 million and \$225 million, respectively.
 - **Graphite Electrodes.** In the graphite electrodes investigation, the next company in the door after the amnesty applicant paid a \$32.5 million fine, the third company in paid a \$110 million fine, and a fourth company pled guilty and paid a \$135 million fine. Mitsubishi was recently convicted at trial for its role in the cartel and is scheduled to be sentenced in May 2001.

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- Fine Arts Auctions. The amnesty applicant's cooperation directly resulted in Sotheby's decision to plead guilty and pay a \$45 million fine.
- Marine Construction. In the marine construction investigation, a corporate co-conspirator agreed to plead guilty and cooperate with the government's investigation shortly after the investigation went overt based on information provided by the amnesty applicant. Though the company provided very valuable cooperation and received a significant reduction in its fine for that cooperation, it still paid a fine of \$49 million.
- **Amnesty Plus**. Of the more than 30 grand jury investigations of international cartel activity conducted by the Division in FY 2000, approximately one-half were initiated by evidence obtained as a result of an investigation of a completely separate industry. For example, a new investigation results when a company approaches the Division to negotiate a plea agreement in a current investigation and then seeks to obtain more lenient treatment by offering to disclose the existence of a second, unrelated conspiracy. Under these circumstances, companies that chose to self report and cooperate in a second matter can obtain what we refer to as "Amnesty Plus." In such a case, the company will receive amnesty, pay zero dollars in fines for its participation in the second offense, and none of its officers, directors, and employees who cooperate will be prosecuted criminally in connection with that offense. Plus, the company will receive a substantial additional discount by the Division in calculating an appropriate fine for its participation in the first conspiracy.
- **Confidentiality Policy**. The Division's policy is to treat as confidential the identity of amnesty applicants and any information obtained from the applicant. Thus, the Division will not disclose an amnesty applicant's identity, absent prior disclosure by or agreement with the applicant, unless authorized by court order. In the three cases noted above -- vitamins, graphite electrodes, and marine construction -- the amnesty applicants issued press releases announcing their conditional acceptance into the corporate amnesty program thereby obviating the need to maintain their anonymity.