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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

HOECHST AKTIENGESELLSCHAFT,
Defendant.

No. CR 03-0035 SI
Original Filed 3/11/03

PLEA AGREEMENT

The United States of America and HOECHST AKTIENGESELLSCHAFT
("HOECHST"), a corporation organized and existing under the laws of the Federal
Republic of Germany, hereby enter into the following Plea Agreement under Rule
11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.):

RIGHTS OF DEFENDANT

1. HOECHST 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

1 of the charged offense and the United States would have to prove every
2 essential element of the charged offense beyond a reasonable doubt for it to
3 be found guilty;

4 (e) To confront and cross-examine witnesses against it and to
5 subpoena witnesses in its defense at trial;

6 (f) To be charged within five years of the date of the offense in a
7 State and District where the offense occurred;

8 (g) To appeal its conviction if it is found guilty at trial;

9 (h) To appeal the imposition of sentence against it; and

10 (i) As a corporation organized and existing under the laws of the
11 Federal Republic of Germany, to decline to accept service of the Summons in
12 this case, and to contest the jurisdiction of the United States to prosecute this
13 case against it in United States District Court.

14 **WAIVER OF RIGHTS AND OFFENSE CHARGED**

15 2. HOECHST waives the rights set out in Paragraph 1(b)-(g). HOECHST
16 also waives the right to appeal the imposition of sentence against it so long as the
17 sentence imposed is consistent with the recommendation in Paragraph 8. Further,
18 HOECHST agrees, solely for this case and for this limited purpose only, not to
19 contest the jurisdiction of the United States to prosecute this case against it in
20 United States District Court. Under Rule 7(b), Fed. R. Crim. P., HOECHST will
21 waive indictment. It will plead guilty to a one-count Information filed in the United
22 States District Court for the Northern District of California. The Information will
23 charge HOECHST with participating in a conspiracy to suppress and eliminate
24 competition by fixing the prices and allocating market shares of monochloroacetic
25 acid and sodium monochloroacetate (collectively referred to as "MCAA") to be sold
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1 in the United States and elsewhere, beginning in or about September 1995 and
2 continuing until in or about June 1997, in violation of the Sherman Antitrust Act,
3 15 U.S.C. § 1.

4 3. Under the terms of this Plea Agreement, HOECHST will plead guilty
5 to the criminal charge described in Paragraph 2 and will make a factual admission
6 of guilt to the Court in accordance with Rule 11, Fed. R. Crim. P., as set forth in
7 Paragraph 4.

8 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

11 (a) For purposes of this Plea Agreement, the "Relevant Period"
12 begins in or about September 1995 and continues until in or about June 1997.
13 During the Relevant Period, HOECHST was a corporation organized and
14 existing under the laws of the Federal Republic of Germany. HOECHST has
15 its principal place of business in Frankfurt, Germany. During the Relevant
16 Period, HOECHST was a producer of MCAA and exported MCAA into the
17 United States. MCAA is a reactive compound used to form a number of
18 intermediate industrial chemicals. Markets for MCAA and its derivatives
19 include plastic additives, herbicides, and cosmetics;

20 (b) During the Relevant Period, HOECHST, through several of its
21 executives or employees, participated in a conspiracy among major MCAA
22 producers, the primary terms of which were to fix the prices and allocate the
23 market shares of MCAA to be sold in the United States and elsewhere. In
24 furtherance of the conspiracy, HOECHST, through several of its executives or
25 employees, engaged in discussions and attended meetings with
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1 representatives of other major MCAA producers. During these discussions
2 and meetings, agreements were reached to fix the prices and allocate the
3 market shares for MCAA to be sold in the United States and elsewhere; and

4 (c) During the Relevant Period, MCAA sold by one or more of the
5 conspirator firms, and equipment and supplies necessary to the
6 production and distribution of MCAA, as well as payments for
7 MCAA, traveled in interstate and foreign commerce. The
8 business activities of HOECHST and its coconspirators in
9 connection with the production and sale of MCAA affected by
10 this conspiracy substantially affected interstate and foreign
11 trade and commerce, and the MCAA affected by this conspiracy
12 was within the flow of interstate and foreign trade and
13 commerce.

14 **POSSIBLE MAXIMUM SENTENCE**

15 5. HOECHST understands that, pursuant to 18 U.S.C. § 3571, the
16 maximum penalty that may be imposed against it upon conviction for a violation of
17 the Sherman Antitrust Act is a fine equal to the largest of:

18 (a) \$10 million (15 U.S.C. § 1);

19 (b) Twice the gross pecuniary gain the conspirators derived from
20 the crime; or

21 (c) Twice the gross pecuniary loss caused to the victims of the
22 crime.

23 6. In addition, HOECHST understands that:

24 (a) Under § 8B1.1(a)(2) of the United States Sentencing
25 Commission Guidelines ("U.S.S.G."), the Court may order it to pay restitution
26

1 to the victims of the offense;

2 (b) Under 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the
3 Court is required to order HOECHST to pay a \$400 special assessment upon
4 conviction for the charged crime; and

5 (c) Under 18 U.S.C. § 3561(c)(1), the Court may impose a term of
6 probation of at least one year and not more than five years.

7 **SENTENCING GUIDELINES**

8 7. Sentencing for the offense to be charged will be conducted based on the
9 U.S.S.G. Manual in effect on the day of sentencing. Under U.S.S.G. § 1B1.8, self-
10 incriminating information provided to the United States under this Plea Agreement
11 will not be used to increase the volume of affected commerce attributable to
12 HOECHST or in determining the applicable Guidelines range, except to the extent
13 provided for in U.S.S.G. § 1B1.8(b).

14 **SENTENCING AGREEMENT**

15 8. Under Rule 11(c)(1)(C), Fed. R. Crim. P., the United States and
16 HOECHST agree that the appropriate disposition of the case is, and agree jointly to
17 recommend that the Court impose, under 18 U.S.C. § 3571(d), a sentence requiring
18 HOECHST to pay to the United States a fine of twelve million dollars (\$12 million),
19 payable in full before the fifteenth day after the date of judgment, with no term of
20 probation.

21 (a) HOECHST understands that the Court will order it to pay a
22 \$400 special assessment, under 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G.
23 § 8E1.1, in addition to any fine imposed;

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

13 (c) Section 5K2.0 of the U.S.S.G. provides for a sentence above the
14 range established by the applicable guideline if there exists an aggravating
15 circumstance not adequately taken into consideration in the Guidelines. The
16 United States will make a motion pursuant to U.S.S.G. § 5K2.0 requesting
17 that the Court make an upward departure from the sentence calculated
18 pursuant to the Guidelines and impose the agreed-upon sentence set out
19 above. Defendant HOECHST has previously been convicted of one antitrust
20 conspiracy. Because the Guidelines do not explicitly provide for an increased
21 sentence for that conviction, the applicable Guidelines range does not
22 adequately account for HOECHST's prior history and, on that basis, an
23 upward departure is appropriate in this case; and

24 (d) The United States and HOECHST understand that the Court
25 retains complete discretion to accept or reject the agreed-upon sentence in
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1 this Plea Agreement. If the Court does not accept the agreed-upon sentence,
2 this Plea Agreement will be void and HOECHST will be free to withdraw its
3 guilty plea (Fed. R. Crim. P. 11(d)(2)(A)). If HOECHST does withdraw its
4 plea of guilty, this Plea Agreement, the guilty plea, and any statements made
5 in connection with or in furtherance of the plea or this Plea Agreement, or in
6 the course of discussions leading to the plea or this Plea Agreement, shall not
7 be admissible against HOECHST in any criminal or civil proceeding (Fed. R.
8 Crim. P. 11(f) and Fed.R.Evid. 410).

9 9. Subject to the ongoing, full, and truthful cooperation of HOECHST
10 described in Paragraph 11, and before sentencing in the case, the United States will
11 fully advise the Court of the fact, manner, and extent of HOECHST's ongoing
12 cooperation with the United States' investigation and prosecutions, all material
13 facts relating to HOECHST's involvement in the charged offense, and all other
14 relevant conduct.

15 10. In light of the availability of civil causes of action, which potentially
16 provide for a recovery of a multiple of actual damages, and at least one of which has
17 already been filed, see Crompton Corp. v. Clariant Corp., No. 01-84-B-M2 (M.D. La.
18 filed Jan. 24, 2001), the United States agrees that it will not seek a restitution order
19 for the offense charged in the Information.

20 **DEFENDANT'S COOPERATION**

21 11. HOECHST and its Related Entities (for the purposes of this Plea
22 Agreement, "Related Entities" shall refer collectively to HOECHST's subsidiaries
23 that have engaged in the sale or production of MCAA and to HOECHST's
24 successors) will fully and truthfully cooperate with the United States in the
25 prosecution of this case, the current federal investigation of violations of federal
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1 antitrust and related criminal laws in the MCAA industry, any other federal
2 investigation resulting from these current investigations, and any litigation or other
3 proceedings arising or resulting from any such investigation to which the United
4 States is a party ("Federal Proceeding"). This cooperation shall consist of:

5 (a) Producing to the United States all non-privileged documents,
6 information, and other materials, wherever located, in the possession,
7 custody, or control of HOECHST, or any of its Related Entities, requested by
8 the United States in connection with any Federal Proceeding; and

9 (b) Using its best efforts to secure the ongoing, full, and truthful
10 cooperation, as defined in Paragraph 12, of the current and former directors,
11 officers, or employees of HOECHST or any of its Related Entities (excluding
12 Gerard Duwe, Rainier Grubert, and Dieter Heck), including making these
13 persons available in the United States and at other mutually agreed-upon
14 locations, at HOECHST's expense, for interviews and testimony in grand
15 jury, trial, and other judicial proceedings in connection with any Federal
16 Proceeding.

17 12. The ongoing, full, and truthful cooperation of each person described in
18 Paragraph 11(b) will be subject to the procedures and protections of this paragraph,
19 and shall consist of:

20 (a) Producing in the United States and at other mutually
21 agreed-upon locations all non-privileged documents, including claimed
22 personal documents, and other materials requested by the United States;

23 (b) Making himself or herself available for interviews in the United
24 States and at other mutually agreed-upon locations, upon the request of the
25 United States;
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1 (c) Responding fully and truthfully to all inquiries of the United
2 States in connection with any Federal Proceeding, without falsely implicating
3 any person or intentionally withholding any non-privileged information,
4 subject to the penalties of making false statements or declarations (18 U.S.C.
5 § 1001) or obstruction of justice (18 U.S.C. § 1503);

6 (d) Otherwise voluntarily providing the United States with any
7 non-privileged materials or information not requested in (a) - (c) of this
8 paragraph that he or she may have that is related to any Federal Proceeding;
9 and

10 (e) When called upon to do so by the United States in connection
11 with any Federal Proceeding, testifying in grand jury, trial, and other judicial
12 proceedings in the United States fully, truthfully, and under oath, subject to
13 the penalties of perjury (18 U.S.C. § 1621), making false statements or
14 declarations in grand jury or court proceedings (18 U.S.C. § 1623), and
15 contempt (18 U.S.C. §§ 401-402).

16 **GOVERNMENT'S AGREEMENT**

17 13. The United States agrees to the following:

18 (a) Upon acceptance of the guilty plea called for by this Plea
19 Agreement and imposition of the agreed-upon sentence, and subject to the
20 exceptions noted in Paragraph 13(c), the United States will not bring
21 criminal charges against any current or former director, officer, or employee
22 of HOECHST or its Related Entities for any act or offense committed before
23 the Court's acceptance of this Plea Agreement and while that person was
24 acting as a director, officer, or employee of HOECHST or its Related Entities
25 that was undertaken in furtherance of an attempted or completed antitrust
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1 conspiracy involving the manufacture or sale of MCAA ("Relevant Offense"),
2 except that the protections granted in this paragraph shall not apply to
3 Gerard Duwe, Rainier Grubert, or Dieter Heck;

4 (b) Should the United States determine that any current or former
5 director, officer, or employee of HOECHST or its Related Entities has
6 information relevant to any Federal Proceeding, the United States may
7 request that person's cooperation under the terms of this Plea Agreement by
8 written request delivered to counsel for the individual (with a copy to the
9 undersigned counsel for HOECHST) or, if the individual is not known by the
10 United States to be represented, to the undersigned counsel for HOECHST;

11 (c) If any person requested to provide cooperation under Paragraph
12 13(b) fails to comply with his or her obligations under Paragraph 12, then the
13 terms of this Plea Agreement as they pertain to that person, and the
14 agreement not to prosecute that person in this Plea Agreement, shall be
15 rendered void;

16 (d) Except as provided in Paragraph 13(e), information provided by
17 a person described in Paragraph 13(b) to the United States
18 under the terms of this Plea Agreement pertaining to any
19 Relevant Offense, or any information directly or indirectly
20 derived from that information, may not be used in a criminal
21 case against that person, except in a prosecution for perjury (18
22 U.S.C. § 1621), making a false statement or declaration
23 (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §
24 1503), or contempt (18 U.S.C. §§ 401-402);

25 (e) If any person who provides information to the United States
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1 under this Plea Agreement fails to comply fully with his or her obligations
2 under Paragraph 12 of this Plea Agreement, the agreement in Paragraph
3 13(d) not to use that information or any information directly or indirectly
4 derived from it against that person in a criminal case shall be rendered void;

5 (f) The non-prosecution terms of this paragraph do not apply to any
6 civil liability to the United States, to any violation of the federal tax or
7 securities laws, or to any crime of violence; and

8 (g) Documents provided under Paragraphs 11(a) and 12(a) shall be
9 deemed responsive to outstanding grand jury subpoenas issued to HOECHST
10 or any of its Related Entities.

11 14. Upon acceptance of the guilty plea called for by this Plea Agreement
12 and imposition of the agreed-upon sentence, and subject to the cooperation
13 requirements of Paragraph 11, the United States agrees that it will not bring
14 further criminal charges against HOECHST or any of its Related Entities for any
15 Relevant Offense committed before the Court's acceptance of this Plea Agreement.
16 The non-prosecution terms of this paragraph do not apply to any civil liability to the
17 United States, to any violation of the federal tax or securities laws, or to any crime
18 of violence.

19 15. The United States agrees that, when any person travels to the United
20 States for interviews, grand jury appearances, or court appearances under this Plea
21 Agreement, the United States will take no action, based upon any offense subject to
22 this Plea Agreement, to subject that person to arrest, service of process, or
23 prevention from departing the United States. This paragraph does not apply to an
24 individual's commission of perjury (18 U.S.C. § 1621), making false statements or
25 declarations (18 U.S.C. § 1001), making false statements or declarations in grand
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1 jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. §
2 1503), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony
3 provided under this Plea Agreement in trial, grand jury or other judicial
4 proceedings in the United States.

5 16. HOECHST understands that it may be subject to administrative
6 action by federal or state agencies other than the United States Department of
7 Justice, Antitrust Division, based upon convictions resulting from this Plea
8 Agreement, and that this Plea Agreement in no way controls whatever action, if
9 any, other agencies may take. However, the United States agrees that, if requested,
10 it will advise the appropriate officials of any governmental agency considering
11 administrative action against HOECHST based upon any conviction resulting from
12 this Plea Agreement of the fact, manner, and extent of the cooperation of
13 HOECHST and its Related Entities as a matter for that agency to consider before
14 determining what administrative action, if any, to take.

15 **REPRESENTATION BY COUNSEL**

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

21 **VOLUNTARY PLEA**

22 18. HOECHST's decision to enter into this Plea Agreement and to tender a
23 plea of guilty is freely and voluntarily made and is not the result of force, threats,
24 assurances, promises, or representations other than the representations contained
25 in this Plea Agreement. The United States has made no promises or
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1 representations to HOECHST as to whether the Court will accept or reject this Plea
2 Agreement.

3 **VIOLATION OF PLEA AGREEMENT**

4 19. HOECHST agrees that should the United States determine in good
5 faith, during the period any Federal Proceeding is pending, that HOECHST has
6 failed to provide full cooperation, as described in Paragraph 11, or has otherwise
7 violated any other provision of this Plea Agreement, the United States may notify
8 counsel for HOECHST in writing by personal or overnight delivery or by facsimile
9 transmission of its intention to void its obligations under this Plea Agreement
10 (except its obligations under this paragraph). HOECHST may seek court review of
11 any determination made by the United States under this paragraph.

12 **ENTIRETY OF AGREEMENT**

13 20. This Plea Agreement constitutes the entire agreement between the
14 United States and HOECHST concerning the disposition of the criminal charge in
15 this case. This Plea Agreement cannot be modified except in writing, signed by the
16 United States and HOECHST.

17 21. The undersigned are authorized to enter this Plea Agreement on
18 behalf of HOECHST as evidenced by the certification in the Commercial Register of
19 the Lower Court of Frankfurt am Main Section B, under the number 14500 for the
20 company Hoechst Aktiengesellschaft, attached to, and incorporated by reference in,
21 this Plea Agreement.

22 23. A facsimile signature shall be deemed an original signature for the
23 purpose of executing this Plea Agreement.

24 DATED: January 20, 2003
25 _____

26 Respectfully submitted,

1 **HOECHST AKTIENGESELLSCHAFT**

**U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION**

2
3
4 BY: /s/
Dr. Thomas Kühlnhorn
5 Prokurist

/s/
BY: _____
Marc Siegel
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6 /s/
7 _____
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9 **COUNSEL FOR HOECHST**

10
11 /s/
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