IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FILED
MAY 20 1999
NANCY DOHERTY, CLERK
BY P. Shirley
Deputy

UNITED STATES OF AMERICA	)	
	)	Criminal No. 3:99-CR-201-R
v.	)	
	)	Filed:
DR. KUNO SOMMER	)	
	)	Violation: 15 U.S.C. § 1
	)	18 U.S.C. § 1001
Defendant.	)	
	)	Judge:

PLEA AGREEMENT

The United States of America and Dr. Kuno Sommer, the defendant, 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. The defendant understands his right:

(a) to be represented by an attorney;

(b) to be charged by Indictment;

(c) to be charged, as to each offense, in the District where the offense occurred;

(d) to plead not guilty to any criminal charges brought against him;

(e) to have a trial by jury, at which he would be presumed not guilty of the charges against him and the United States would have to prove him guilty beyond a reasonable doubt;

(f) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;

(g) to not be compelled to incriminate himself;

(h) as a citizen and resident of Switzerland, to decline to accept service of the summons in this case and to contest the jurisdiction of the United States to prosecute this case against him in the United States District Court for the Northern District of Texas;

(i) to appeal his convictions if he is found guilty at trial; and

(j) to appeal the imposition of sentence against him.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant waives the rights set out in Paragraph 1(b)-(i) above. The defendant also waives the right to appeal the imposition of sentence against him, so long as the sentence imposed is consistent with the recommendation in Paragraph 9 of this Plea Agreement. Pursuant to Rule 7(b), Fed. R. Crim. P., the defendant will waive indictment and plead guilty pursuant to Fed. R. Crim. P. 11(e)(1)(C) to a two-count Information, to be filed in the United States District Court for the Northern District of Texas. The Information will charge that the defendant's corporate employer, F. Hoffmann-La Roche Ltd, (Roche) and co-conspirators, participated in a conspiracy to suppress and eliminate competition by fixing, increasing, and maintaining the price and allocating the volume of certain vitamins sold in the United States and elsewhere, and allocating among corporate conspirators certain contracts for vitamin premixes for customers located throughout the United States through the submission of rigged and non-competitive bids for such contracts, beginning in part at least as early as January 1990 and continuing in part until February 1999, in violation of the Sherman Antitrust

Act, 15 U.S.C. § 1. The defendant joined and participated in that charged conspiracy from at least as early as January 1991 until at least December 1997. In addition, the defendant will plead guilty that he did knowingly and willfully make and cause to be made false, fictitious, and fraudulent statements and representations as to material facts to law enforcement officials in a matter within the jurisdiction of the United States Department of Justice, a department of the United States, on or about March 12, 1997, in violation of 18 U.S.C. § 1001.

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

COUNT ONE
15 U.S.C. § 1

FACTUAL BASIS FOR OFFENSES 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 at least as early as January 1990 and continuing until at least February 1999. During the relevant period, Dr. Kuno Sommer was first the North American Regional Manager for vitamins and, subsequently, the Director of Worldwide Marketing of vitamins for Roche, a corporation organized and existing under the laws of Switzerland. During the relevant period, Roche was a manufacturer of various vitamins used to enrich human food, pharmaceutical

products, and animal feed in the United States and elsewhere. During the relevant period, Roche and the defendant were engaged in the sale of these vitamins in the United States and elsewhere.

(b) During the relevant period, the defendant participated in a conspiracy with other vitamin manufacturers, and their officers and employees, the primary purpose of which was to fix, increase, and maintain the price and allocate the volume of, certain vitamins sold in the United States and elsewhere and to allocate customers in the United States. In furtherance of the conspiracy, the defendant engaged in conversations and attended meetings with representatives of other vitamin manufacturers. During such meetings and conversations, agreements were reached as to the volumes of certain vitamins the conspirators would sell, and the prices at which they would sell certain vitamins in the United States and elsewhere. Further, agreements were reached resulting in the submission of rigged and non-competitive bids for the award and performance of contracts to supply certain vitamin premixes to customers located throughout the United States.

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

(d) Substantial quantities of vitamins affected by this conspiracy were sold by Roche and other conspirators to customers in the Northern District of Texas.

COUNT TWO
18 U.S.C. § 1001

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

(a) on or about March 12, 1997, the defendant appeared for an interview by law enforcement officials of the United States Department of Justice, Antitrust Division, who were investigating a matter within the jurisdiction of the United States Department of Justice, a department of the United States;

(b) on or about March 12, 1997, the defendant did knowingly and willfully make and cause to be made false, fictitious and fraudulent statements and representations as to material facts to law enforcement officials in a matter within the jurisdiction of the United States Department of Justice, a department of the United States;

(c) on or about March 12, 1997, the defendant stated and represented to law enforcement officials of the United States Department of Justice, Antitrust Division, that: there was no conspiracy among the world's leading vitamins manufacturers, including his own corporate employer, Roche; that the defendant had never participated in meetings, conversations, or agreements to fix, increase, and maintain prices, or allocate sales volumes of, or customers for, certain vitamins with any representative of any other manufacturer of vitamins. The defendant stated and represented that he was not aware of any meetings or

conversations among other representatives of Roche and any other vitamin manufacturer relating to any agreements or conspiracy to fix, increase, or maintain prices, or allocate sales volumes and customers in the vitamin industry;

(d) in truth and in fact, the defendant then and there knew that he, and other employees of Roche, had regularly communicated and met on at least a quarterly basis with competitors, and discussed and agreed to fix, increase, and maintain prices, allocate volumes of, and customers for, certain vitamins manufactured by the defendant's employer, Roche, and its corporate co-conspirators, which products were sold in the United States and elsewhere.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of:

(a) the Sherman Antitrust Act (15 U.S.C. § 1) charged in Count One is:

(i) a term of imprisonment for three (3) years (15 U.S.C. § 1);

(ii) a fine in an amount equal to the greatest of (1) $350,000 (15U.S.C. § 1), (2) twice the gross pecuniary gain derived from the crime, or (3) twice the pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571(d)); and

(iii) a mandatory term of supervised release of not more than one (1) year following any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3583(b)).

(b) the False Statements Statute (18 U.S.C. § 1001) charged in Count

Two is:

(i) a term of imprisonment for five (5) years (18 U.S.C. § 1001);

(ii) a fine in an amount equal to the greatest of (1) $250,000 (18 U.S.C. § 1001), (2) twice the gross pecuniary gain derived from the crime, or (3) twice the pecuniary loss caused to the victims of the crime (18 U.S.C. § 3571(d)); and

(iii) a mandatory term of supervised release of not more than three (3) years following any term of imprisonment. If the defendant violates the conditions of supervised release, the defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3583(b)).

7. In addition, the defendant understands that:

(a) pursuant to United States Sentencing Guidelines (U.S.S.G.) § 5E1.1.(a)(2), the Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3., the Court is required to order the defendant to pay a $100 special assessment upon conviction for each of the charged crimes in Counts One and Two.

SENTENCING GUIDELINES

8. Sentencing for the offenses to be charged will be conducted pursuant to the United States Sentencing Guidelines Manual in effect on the day of sentencing.

SENTENCING AGREEMENT

9. Pursuant to Rule 11(e)(1)(C), Fed. R. Crim. P., the United States and the

defendant agree that the appropriate disposition of this case is, and agree jointly to recommend that: (a) as to Count One the Court impose a sentence of incarceration for a period of four (4) months to be served concurrently with the sentence imposed as to Count Two and the payment of a criminal fine of $100,000 to be paid within thirty (30) days of sentencing; and (b) as to Count Two the Court impose a sentence of incarceration for a period of four (4) months to be served concurrently with the sentence imposed as to Count One and no fine.

(a) The defendant understands that the Court will order him to pay a $100 special assessment for each count, pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. §5E1.3 in addition to any fine imposed.

(b) In light of the availability of civil causes of actions which potentially provide for a recovery of a multiple of actual damages, it is the view of both parties to this agreement that the complication and prolongation of the sentencing process that would result from an attempt to fashion a proper restitution order outweigh the need to provide restitution to any victims in connection with this criminal proceeding (see 18 U.S.C. § 3663(a)(1)(B)(ii)). Therefore, the United States agrees that it will not seek a restitution order with respect to the offenses charged in the Information.

(c) The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at sentencing and the further disclosure described in Paragraph 11 of this Plea Agreement, provides sufficient information concerning the defendant's role in the offense to enable the meaningful exercise of sentencing

authority by the Court under 18 U.S.C. § 3553. The United States and the defendant will jointly request that the Court accept the defendant's guilty pleas and immediately impose sentence on the day of arraignment pursuant to the provisions of Rule 32(b)(1), Fed. R. Crim. P., and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence immediately based upon the record provided by the defendant and the United States will not void this Plea Agreement.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the agreed-upon recommendations provided for in this Plea Agreement. If the Court does not accept the recommended sentence, this Plea Agreement, with the exception of Paragraph 15, will be void and the defendant will be free to withdraw his guilty pleas (Fed. R. Crim. P. 11(e)(4)). If the defendant does withdraw his pleas of guilty, the United States will dismiss this Information without prejudice, and this Plea Agreement, the guilty pleas, and any statements made in connection with or in furtherance of the pleas or this Plea Agreement, or in the course of discussions leading to the pleas or the Plea Agreement, shall not be admissible against the defendant in any criminal or civil proceeding (Fed. R. Crim. P. 11(c)(6)).

11. The United States and the defendant understand that the imposition of a sentence of the agreed-upon sentences set out in Paragraph 9 of this Plea Agreement will require the Court to depart from the United States Sentencing Guidelines. Subject to the full and continuing cooperation of the defendant described in Paragraph 12 of this Plea Agreement, and prior to sentencing in this case, the United States will file a motion to depart downward from the Guidelines, pursuant to U.S.S.G. § 5K1.1.

because of the defendant's prior and promised substantial assistance in the investigation and prosecution of other individuals and corporations for violations of the federal antitrust and related criminal laws in the vitamin industry. The United States will fully advise the Court of all facts relating to the defendant's involvement in the charged offenses, all other relevant conduct, and subject to the full and continuing cooperation of the defendant, described in Paragraph 12 of this Plea Agreement, the fact, manner, and extent of the defendant's ongoing cooperation and commitment to prospective cooperation with the United States' investigation and prosecutions. The decision to file a motion pursuant to U.S.S.G. § 5K1.1. lies within the sole discretion of the United States.

DEFENDANT'S COOPERATION

12. The defendant will fully and truthfully cooperate 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 in the vitamin industry, any other federal investigation resulting therefrom, and any litigation or other proceeding arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). Such cooperation shall include, but not be limited to:

(a) producing to the United States all documents, information, and other materials, wherever located, in the possession, custody, or control of the defendant, requested by the United States in connection with any Federal Proceeding;

(b) making himself available, not at the expense of the United States, for interviews in the United States, and at other mutually agreed-upon locations,

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;

(d) otherwise voluntarily providing the United States with any materials or information, not requested in (a) - (c) of this Paragraph, that he may have, which relate to any such Federal Proceeding: and,

(e) when called upon to do so by the United States, testifying in trial and grand jury 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), in connection with any such Federal Proceeding.

GOVERNMENT'S AGREEMENT

13. Subject to the defendant's full and continuing cooperation, as described in Paragraph 12 above and upon the Court's acceptance of the defendant's guilty pleas and imposition of sentence in this case, the United States agrees not to bring further criminal charges against the defendant for any violations committed before the date of this Plea Agreement relating to or arising out of the defendant's participation in any attempted or completed antitrust conspiracy involving the sale of vitamins as charged in Count One of the Information or his giving of false statements as charged in Count Two the Information. The non-prosecution terms of this agreement do not apply to any civil liability of any kind, to any violation of the federal tax or securities laws, or to any crime

of violence.

14. Subject to the full and continuing cooperation of the defendant, as described in Paragraph 12 of this Plea Agreement, and upon the Court's acceptance of the defendant's guilty pleas and imposition of sentence in this case, the United States agrees not to seek to remove the defendant from the United States under section 240 of the Immigration and Nationality Act, based upon the defendant's guilty pleas and convictions in this case, should the defendant apply for or obtain admission to the United States as a nonimmigrant (hereinafter referred to as the "agreement not to seek to remove the defendant"). The agreement not to seek to remove the defendant is the equivalent of an agreement not to exclude the defendant from admission to the United States as a nonimmigrant or to deport the defendant from the United States. (Immigration and Nationality Act, § 240(e)(2));

(b) The Antitrust Division of the United States Department of Justice has consulted with the Immigration and Naturalization Service of the United States Department of Justice ("INS"). The INS, in consultation with the United States Department of State, has agreed to the inclusion in this Plea Agreement of this agreement not to seek to remove the defendant;

(c) So that the defendant will be able to obtain any nonimmigrant visa that he may need to travel to the United States, the INS and the Visa Office, United States Department of State, have concurred in the granting of a nonimmigrant waiver of the defendant's inadmissibility. This waiver will remain in effect so long as this agreement not to seek to remove the defendant remains in effect. While the waiver remains in effect, the Department of State will not deny

the defendant's application for a nonimmigrant visa on the basis of the defendant's guilty pleas and convictions in this case, and the INS will not deny his application for admission as a nonimmigrant on the basis of his guilty pleas and convictions in this case;

(d) This agreement not to seek to remove the defendant will remain in effect so long as the defendant:

(i) acts and has acted consistently with his cooperation obligations under this Plea Agreement;

(ii) is not convicted of any felony under the laws of the United States or any state, other than the convictions resulting from the defendant's guilty pleas under this Plea Agreement or any conviction under the laws of any state resulting from conduct constituting an offense subject to this Plea Agreement; and

(iii) does not engage in any other conduct that would warrant his removal from the United States under the Immigration and Nationality Act.

The defendant understands that should the Antitrust Division become aware that the defendant has violated any of these conditions, the Antitrust Division will notify the INS. The INS will then determine, in consultation with the Antitrust Division, whether to rescind this agreement not to seek to remove the defendant;

(e) The defendant agrees to notify the Assistant Attorney General of the Antitrust Division should the defendant be convicted of any other felony under the laws of the United States or of any state; and

(f) Should the United States rescind this agreement not to seek to

remove the defendant because of the defendant's violation of a condition of this Plea Agreement, the defendant irrevocably waives his right to contest his removal from the United States under the Immigration and Nationality Act on the basis of his guilty pleas and convictions in this case, but retains his right to notice of removal proceedings.

15. The United States agrees that when, at the request of the United States, the defendant travels to the United States for any interviews, grand jury appearances, or Court appearances pursuant to this Plea Agreement, the United States will take no action, based upon any offense subject to this Plea Agreement, to subject the defendant to arrest, service of process, or prevention from departing the United States. This paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or Court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony provided in trial, grand jury or other judicial proceedings in the United States.

REPRESENTATION BY COUNSEL

16. The defendant has been represented by counsel and is fully satisfied that his attorney has provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised him of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEA

17. The defendant's decision to enter into this Plea Agreement and his decision to tender pleas of guilty are freely and voluntarily made and are not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. There have been no promises or representations to the defendant as to whether the Court will accept or reject this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

18. The defendant agrees that should he fail to provide full and truthful cooperation and substantial assistance or otherwise violate any other provision, the United States, in its sole discretion, may void any of its obligations under this Agreement and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, perjury, obstruction of justice, and the substantive offenses arising from the investigation resulting in this Plea Agreement. This prosecution may be based upon information provided by the defendant during the course of his cooperation, and this information and any leads derived from this information may be used as evidence against him. Should this Agreement become void, the defendant agrees that he will waive any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act from the date of the execution of this Plea Agreement.

ENTIRETY OF AGREEMENT

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

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

DATED: 5/19/99

Respectfully submitted,

/S/

GREGORY B. SLOFF
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/S/ May 19, 1999

DR. KUNO SOMMER (DATE)

/S/

HENRY F. SCHUELKE, III, ESQ. (DATE)