

Filed April 5, 2006

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 UNITED STATES OF AMERICA	)	Case No. CR 06-0159 MMC
	)	
13 v.	)	UNITED STATES AND SOLVAY
	)	S.A.'S JOINT SENTENCING
14	)	MEMORANDUM
15 SOLVAY S.A.,	)	
	)	
16 Defendant.	)	DATE: April 19, 2006
	)	TIME: 2:30 p.m.
	)	COURT: Hon. Maxine M. Chesney

17  
18 **JOINT SENTENCING MEMORANDUM**

19 The United States of America and the defendant, Solvay S.A. ("Solvay"), file this Joint  
20 Sentencing Memorandum in support of their recommendation that the Court sentence the  
21 defendant to pay a criminal fine of \$40.87 million. The parties also request that sentence be  
22 imposed on April 19, 2006 based on the current record, without need of an evidentiary sentencing  
23 hearing or a presentence report.

24 **INTRODUCTION**

25 On March 14, 2006, the United States filed a two-count Information charging Solvay with  
26 one count of participating in a conspiracy in the United States and elsewhere to suppress and  
27 eliminate competition by fixing the prices of hydrogen peroxide (Count One) beginning on or  
28 about July 1, 1998 and continuing until on or about December 1, 2001, in violation of the

1 Sherman Antitrust Act, 15 U.S.C. § 1, and also charging Solvay with one count of participating in  
2 a conspiracy to suppress and eliminate competition by fixing the price of sodium perborates sold  
3 to Procter & Gamble (Count Two) beginning on or about June 1, 2000 and continuing until on or  
4 about December 1, 2001, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. Solvay is  
5 scheduled to be arraigned before Chief Magistrate Judge Larson and enter a change of plea before  
6 this Court on April 19, 2006. Solvay will waive indictment and plead guilty under Fed. R. Crim.  
7 P. 11(c)(1)(C).

8 The United States and Solvay jointly submit this Joint Sentencing Memorandum to  
9 request that the Court sentence Solvay on an expedited basis pursuant to Crim. L.R. 32-1(b). This  
10 Memorandum also outlines the material terms of the Plea Agreement between the United States  
11 and Solvay, in the event the Court grants the parties' request to impose a sentence immediately on  
12 April 19, 2006, after accepting Solvay's guilty plea. In conjunction with this Joint Sentencing  
13 Memorandum, the United States and Solvay have filed a Stipulation in Support of Expedited  
14 Sentencing and a Proposed Order for Expedited Sentencing Pursuant to Crim. L.R. 32-1(b).

15 The United States and Solvay respectfully submit that this Memorandum and the Plea  
16 Agreement provide sufficient information for the Court to impose sentence immediately without a  
17 presentence report. In addition, an expedited sentencing would accommodate Solvay's corporate  
18 representative. If the Court finds that the Plea Agreement and this Memorandum do not provide  
19 sufficient information to allow for the imposition of sentence on the scheduled date of the plea  
20 hearing, the parties are prepared to submit additional information requested by the Court. A copy  
21 of the Solvay 11(c)(1)(C) Plea Agreement is attached as Exhibit A to this Memorandum.

#### 22 **MATERIAL TERMS OF SOLVAY PLEA AGREEMENT**

23 The material terms of the Solvay Plea Agreement include:

24 1. Solvay will waive indictment, waive all rights as enumerated in the Plea  
25 Agreement, and plead guilty under Fed. R. Crim. P. 11(c)(1) to a two-count Information. Count  
26 One charges Solvay with participating in a conspiracy in the United States and elsewhere to  
27 suppress and eliminate competition by fixing the price of hydrogen peroxide beginning on or  
28 about July 1, 1998, and continuing until on or about December 1, 2001, (the "relevant period") in

1 violation of the Sherman Antitrust Act, 15 U.S.C. § 1. Count Two charges Solvay with  
2 participating in a conspiracy to suppress and eliminate competition by fixing the price of sodium  
3 perborates sold to Procter & Gamble beginning on or about June 1, 2000 and continuing until on  
4 or about December 1, 2001, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. During the  
5 relevant period, the defendant was a corporation organized and existing under the laws of  
6 Belgium and had its principal place of business in Brussels, Belgium. The defendant was a  
7 producer of hydrogen peroxide and sodium perborates, was engaged in the sale of hydrogen  
8 peroxide and sodium perborates in the United States and elsewhere, and employed 200 or more  
9 individuals. The defendant's sales of hydrogen peroxide to U.S. customers affected by the  
10 charged hydrogen peroxide conspiracy totaled approximately \$231,000,000. The defendant's  
11 sales of sodium perborates to Procter & Gamble affected by the charged sodium perborates  
12 conspiracy totaled approximately \$31,000,000.

13         2.         The United States and Solvay agree that the appropriate sentence in this case is a  
14 criminal fine of \$40.87 million and a special assessment of \$800 (\$400 for each count). The fine  
15 is to be paid in full within 15 days of the imposition of sentence. Both parties recommend that no  
16 term of probation be imposed. Solvay agrees to have its sentence determined under the United  
17 States Sentencing Guidelines ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines"), although  
18 Solvay understands the Guidelines are advisory, not mandatory. The United States contends that  
19 had this case gone to trial, the United States would have presented evidence to prove that the gain  
20 derived from or the loss resulting from the charged offense is sufficient to justify a fine of \$40.87  
21 million, pursuant to 18 U.S.C. § 3571(d). For purposes of this plea and sentencing only, the  
22 defendant waives its right to contest this calculation.

23         3.         The United States will not seek restitution in this case in light of the civil class  
24 action cases filed against defendant, including In re Hydrogen Peroxide Antitrust Litigation, No.  
25 05-666, MDL No. 1682, in the United States District Court, Eastern District of Pennsylvania,  
26 which potentially provide for recovery of a multiple of actual damages.

27         4.         The United States agrees that it will not bring further criminal charges against  
28 Solvay and its current or former officers, directors, and employees (except for Gareth L. Hall,

1 Robert M. Monsen and Jean-Marie Demoulin, who have been specifically excluded from the Plea  
2 Agreement) for their participation in the hydrogen peroxide and sodium perborates conspiracies.  
3 In return, Solvay agrees to cooperate fully in the ongoing hydrogen peroxide and sodium  
4 perborates investigations. Solvay has already produced documents and made available some of  
5 its employees for extensive interviews by Antitrust Division attorneys and agents. Moreover,  
6 Solvay has agreed to make additional employees available to the United States for interviews and  
7 to produce documents located outside the country, which are beyond the jurisdictional reach of  
8 the government's grand jury subpoenas. The documents produced and interviews conducted, as  
9 well as additional proffered cooperation, have substantially assisted the United States in  
10 furthering its investigations.

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1 **UNITED STATES SENTENCING GUIDELINES CALCULATIONS**

2 The parties agree to the following Sentencing Guidelines calculations, which are based on  
3 the affected hydrogen peroxide and sodium perborates sales in the United States. Pursuant to  
4 U.S.S.G. § 3D1.2(d), Counts One and Two must be grouped in order to determine the proper fine  
5 amount. The combined volume of commerce for hydrogen peroxide (\$231 million) and sodium  
6 perborates (\$31 million) is \$262 million.

7	1.	Base Fine (20% of \$262 million (Volume of Affected Commerce) (§ 2R1.1(d)(1) & § 8C2.4(b))	\$52.2 million
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9	2.	Culpability Score	
10	i.	Base (§ 8C2.5(a))	5
11	ii.	Involvement in or Tolerance of Criminal Activity (§ 8C2.5(b)(1))	3
12			
13	iii.	Prior History (§ 8C2.5(c))	0
14	iv.	Violation of Order (§ 8C2.5(d))	0
15	v.	Obstruction of Justice (§ 8C2.5(e))	0
16	vi.	Effective Program to Prevent and Detect Violations of Law (§ 8C2.5(f))	0
17			
18	vii.	Self-Reporting, Cooperation, and Acceptance of Responsibility (§ 8C2.5(g)(2))	-2
19			
20	c.	Total Culpability Score:	6
21	d.	Minimum and Maximum Multipliers (§ 8C2.6)	1.2 - 2.4
22	e.	Minimum and Maximum Fine Range (§ 8C2.7)	\$62.64 - \$125.28 million
23			

24 The United States will move, pursuant to § 8C4.1 of the Sentencing Guidelines, for a  
25 downward departure from the minimum Guidelines fine to a fine of \$40.87 million due to  
26 Solvay’s substantial assistance in the United States’ hydrogen peroxide and sodium perborates  
27 investigations. Additionally, Solvay has agreed to produce relevant documents from the United  
28 States and abroad, and has made available several employees for extensive interviews as a

1 condition to the government entering into the Plea Agreement. The Solvay witnesses have  
2 advanced the government's investigation, and the defendant has agreed to continue to assist in the  
3 government's investigation.

4  
5 DATED: April 4, 2006

Respectfully submitted,

6  
7 SOLVAY S.A.

U.S. DEPARTMENT OF JUSTICE

8  
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12 Solvay America, Inc.

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