

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

**FMC Corporation and
Asahi Chemical Industry Co., Ltd.,
corporations**

DOCKET NO.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that FMC Corporation and Asahi Chemical Industry Co., Ltd., corporations, hereinafter sometimes collectively referred to as "respondents," have engaged in conduct, as described herein, that violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

1. Respondent FMC Corporation ("FMC") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 200 East Randolph Drive, Chicago, Illinois 60601.

2. Respondent Asahi Chemical Industry Co., Ltd. ("Asahi Chemical") is a corporation organized and existing under and by virtue of the laws of Japan, with its office and principal place of business located at 1-2 Yurakucho 1-chome, Chiyoda-ku, Tokyo, Japan. Asahi Chemical does business in the United States both directly and through Asahi Chemical Industry America, Inc. ("Asahi America"). Asahi America is a wholly-owned subsidiary of Asahi Chemical, with its office and principal place of business located at 535 Madison Avenue, 33rd Floor, New York, New York 10022.

3. The acts and practices of FMC and Asahi Chemical, including the acts and practices alleged herein, are in commerce or affect commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

4. For the purpose of this complaint, "MCC" means microcrystalline cellulose. For the purpose of this complaint, "Asia Pacific" refers to the following countries: South Korea, Taiwan, Hong Kong, the Philippines, Indonesia, New Zealand, China, North Korea, Vietnam, and Australia.

5. The line of commerce relevant to assessing respondents' anticompetitive conduct is the manufacture and sale of pharmaceutical MCC worldwide. Pharmaceutical MCC is derived from purified wood cellulose, and is used primarily as a binder in the manufacture of pharmaceutical tablets (prescription and OTC drugs). Pharmaceutical MCC is a component of nearly all pharmaceutical tablets sold in the United States today. Other binders are not acceptable substitutes for pharmaceutical MCC for several reasons, including differences in quality, consistency, performance, efficacy, and stability. Entry into the relevant market is difficult and time-consuming.

6. FMC was the first, and for several years the only manufacturer of MCC in the world. To this day, FMC remains the largest manufacturer and seller of MCC in the world. During the period from 1984 to 1995, FMC's share of the relevant market has exceeded

70 percent.

7. FMC operates facilities for the production of MCC in Newark, Delaware and Cork, Ireland. FMC utilizes several trademarks in connection with its marketing of MCC. The most commonly used grades of MCC are sold by FMC in the United States and elsewhere under the trade name "Avicel."

8. Asahi Chemical operates a facility for the production of MCC in Nobeoka, Japan. During the period from 1984 to 1995, Asahi Chemical has been the dominant supplier of MCC in Japan and the second largest seller of MCC in the world.

9. FMC engaged in a course of conduct designed to neutralize or eliminate competing sellers of MCC and to secure monopoly power. FMC entered into a conspiracy with Asahi Chemical to divide territories. In addition, FMC invited three smaller producers of MCC to join with FMC in collusive and anticompetitive conduct. The three firms solicited by FMC were Ming Tai Chemical Co., Ltd. ("Ming Tai"), Wei Ming Pharmaceutical Mfg. Co., Ltd. ("Wei Ming"), and the Mendell division of Penwest, Ltd. ("Mendell").

10. In or about 1984, FMC and Asahi Chemical entered into both a written agreement governing the shared use of the trademark Avicel and a covert non-written agreement or understanding governing the sale and marketing of MCC.

11. The parties' written agreement, termed a Letter of Understanding, continued a trademark license first entered into by FMC and Asahi Chemical in 1968. In the 1984 Letter of Understanding, FMC granted Asahi Chemical, for an additional term of years, the exclusive right to use the trademark Avicel in Japan and Asia Pacific in connection with the sale of MCC products. FMC continued to reserve to itself the exclusive right to use the Avicel mark in North America and Europe.

12. In the parties' non-written agreement, FMC and Asahi Chemical agreed to a territorial division of markets for MCC products. FMC agreed that it would not sell MCC to customers located in Japan or Asia Pacific without the consent of Asahi Chemical. In return, Asahi Chemical agreed that it would not sell MCC to customers located in North America or Europe without the consent of FMC.

13. The market division agreement was in effect from 1984 until 1995. During this period, Asahi Chemical refrained from selling MCC to potential customers located in North America or Europe. During this period, FMC refrained from selling MCC to potential customers located in Japan or Asia Pacific. For example, several of the largest multinational pharmaceutical manufacturers requested that FMC enter into "global agreements" to supply MCC to all of their manufacturing facilities worldwide. Pursuant to its non-written agreement with Asahi Chemical, FMC declined to supply MCC to manufacturing facilities located in Japan and Asia Pacific.

14. In or about 1994, two Taiwan-based manufacturers of MCC, Ming Tai and Wei Ming, emerged as significant suppliers of MCC to portions of the Asian MCC market. FMC was concerned that these Taiwanese manufacturers would next compete for FMC's MCC accounts in North America and Europe. In or about January 1995, FMC proposed to Ming Tai that it grant FMC the exclusive right to distribute all MCC exported from Taiwan by Ming Tai. Ming Tai did not accept FMC's invitation. Also in or about January 1995, FMC proposed to Wei Ming that it sell MCC to FMC on an exclusive basis. Wei Ming did not accept FMC's invitation.

15. Later in 1995, FMC joined with Wei Ming to market an MCC product that, as

compared to FMC's Avicel-brand MCC, had a lower quality and a lower price. The venture targeted certain customers of Ming Tai. FMC's purposes were to discipline Ming Tai for its aggressive pricing and to pressure Ming Tai to ally itself with FMC. This arrangement was terminated by the parties in 1996.

16. In 1995, Mendell posed a competitive threat to FMC's position as the dominant seller of MCC to pharmaceutical manufacturers in North America and Europe. Mendell had recently opened an MCC manufacturing facility in the United States, and was actively seeking to expand its sales. In April 1995, FMC proposed to Mendell that the two firms enter into a market division agreement. Mendell did not accept FMC's invitation.

17. At all relevant times herein, FMC had either monopoly power or a dangerous probability of achieving monopoly power in the world pharmaceutical MCC market.

18. The acts and practices of respondents, as alleged herein, were engaged in by respondents with the specific intent to exclude competition and to achieve or maintain monopoly power.

19. The acts and practices of respondents, as alleged herein, have had the purpose and effect, or the tendency and capacity, to restrain competition in the manufacture and sale of pharmaceutical MCC and to injure consumers in the United States and worldwide.

Violations Alleged

20. As set forth in Paragraphs 12, 13, and 19 above, FMC and Asahi Chemical conspired to divide markets and unreasonably restrained trade, in violation of Section 5 of the Federal Trade Commission Act, as amended.

21. As set forth in Paragraphs 6, 8, 12, 13, 18 and 19 above, FMC and Asahi Chemical conspired to monopolize the relevant market, in violation of Section 5 of the Federal Trade Commission Act, as amended.

22. As set forth in Paragraphs 6 through 19 above, FMC attempted to monopolize the relevant market in violation of Section 5 of the Federal Trade Commission Act, as amended.

23. As set forth in Paragraph 16 above, FMC invited its competitor Mendell to agree not to compete with FMC in violation of Section 5 of the Federal Trade Commission Act, as amended.

24. The conspiracy, acts and practices of respondents, as alleged herein constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such conspiracy, acts and practices, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this day of , 2001, issues its complaint against respondents.

By the Commission.

Donald S. Clark
Secretary

SEAL: