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E.C. APPROVES I.B.M. PERSONAL COMPUTER
DISTRIBUTION; INVESTIGATION CONTINUES
ON I.B.M. MAINFRAME COMPUTER PRACTICES

A system used by International Business Machines Corporation (I.B.M.) to distribute personal computers in Europe does not violate European Community antitrust policy, the E.C. Commission has decided.

In an effort to increase its points of sale for personal computers, I.B.M. has created a network of independent dealerships to complement its own sales force and retail outlets. Under this "selective distribution" system, it supplies equipment only to authorized dealers who meet published criteria. In addition, it prohibits those dealers from selling to non-authorized dealers. By the end of 1983, I.B.M. had appointed 777 dealers within the Community.

The company also appoints independent distributors at the wholesale level, offering lower prices to chains that order large quantities and provide to their outlets the delivery and post-sales service normally provided by I.B.M.

The Commission determined that this distribution system does not violate Article 85 of the Treaty Establishing the European Economic Community, which prohibits agreements or practices that restrict competition. It found that the criteria for appointment as an I.B.M. dealer or distributor are objective, relating to the qualifications of applicants and the suitability of their premises. They are uniformly applied without discrimination.

This decision follows the line expressed by the Commission and the European Court of Justice in previous selective distribution cases.

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The action on personal computers does not affect Commission proceedings on another antitrust matter involving I.B.M. Those proceedings, initiated in December 1980, involve charges that the company has abused its dominant position in the European data-processing market by restricting the ability of competitors to supply compatible equipment for I.B.M. mainframe computers.

E.C. antitrust policy does not forbid companies from holding a dominant position, but article 86 of the Treaty prohibits abusive practices that adversely affect trade between the 10 E.C. member states. The Commission opened its investigation after receiving complaints from I.B.M.'s competitors.

The Commission can order a violator of Article 86 to change its behavior. It also has the power to impose fines of up to 1 million European Currency Units* (ECU), or 10 percent of a company's annual world turnover in the previous business year, whichever is greater. The amount of the fine depends on the company's size and the seriousness and duration of the behavior. The Commission can also enforce a decision by imposing penalty payments of up to 1,000 ECUs per day.

A Commission antitrust decision may be appealed to the European Court of Justice. In 1981 the Court dismissed I.B.M.'s application for annulment of the Commission investigation into its alleged abusive practices. The Court stated that it was not proper to interfere with the Commission's administrative procedure prior to a final decision.

I.B.M. does not hold a dominant position in the microcomputer market.

* ECU = \$.83 on April 27, 1984