

European BACKGROUND INFORMATION Community

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BACKGROUND NOTE

No. 25/1976

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HOFFMAN-LAROCHE FINED BY EUROPEAN COMMUNITY FOR DISTORTING COMPETITION

The Commission of the European Communities has issued a cease and desist order and has fined F. Hoffman-La Roche and Co. AG of Basle, Switzerland, 300,000 units of account (about \$360,000) for abusing its dominant position on the Community vitamins market.

Hoffman-Laroche, the world's leading vitamin manufacturer, holds a dominant position in the Community market for seven types of vitamins (A, B2 B6, C, E, Biotin (H), and pantothenic acid (B3)). The company had concluded exclusive or preferential supply contracts with a number of major bulk vitamin users which add the vitamins to their own medicines, foods, and feedstuffs. In this way, the company cornered the market and virtually prevented its chief competitors from selling to these important customers.

The contracts provided for fidelity rebates based on the share of the customer's requirements purchased from Hoffman-Laroche and not on differences in the costs

related to the quantities supplied by the company. The rebates were not calculated separately for each type of vitamin but were aggregated over all purchases from the company. Thus, the company benefited from the fidelity arrangement even for vitamins for which it does not hold a dominant market position. One clause in the contract allowing it to lower prices to meet competition could have made the arrangement less restrictive, but because only prices offered by "reputable" manufacturers in the customer's own country could be considered, Hoffman-Laroche, in practice could decide whether or not to lower prices.

The Commission's decision, made under Article 86 of the Rome Treaty creating the European Economic Community, is in line with findings upheld by the European Court of Justice in the sugar cartel case December 16, 1975. In that case the Court found that fidelity rebates given by companies holding a dominant position are incompatible with the Common Market because they reinforce that dominance. This ruling applies to any company holding a dominant position in the Community market, no matter where its headquarters are located.