PRICE FIXING (VITAMINS): THE VITAMIN CARTEL CASE

Subject: Price fixing
Market sharing
Information exchanges
Supply restrictions
Fines

Industry: Vitamins; pharmaceuticals
(Implications for most industries)

Parties: Hoffman La Roche and others (listed below)

Source: Commission Statement IP/01/1625, dated 21 November 2001

(Note. The most remarkable feature of this case is the staggering level of fines imposed, not far short of €1 billion. Parallel cases in the United States resulted in similar fines. In other respects, the case follows the usual pattern of classic cartels, with the emphasis on price fixing and the operation of a quota system. After one of the members of the cartel, Aventis, had cooperated with the Commission, others followed; and the Commission makes the fair point that members of a cartel can largely escape the consequences of infringement if they cooperate in this way.)

The Commission has fined eight companies a total of €855.22 million for participating in eight distinct secret market-sharing and price-fixing cartels affecting vitamin products. Each cartel had a specific number of participants and duration, although all operated between September 1989 and February 1999. Because Swiss-based company Hoffman-La Roche was an instigator and participated in all the cartels it was given the highest cumulative fine of €462 million. "This is the most damaging series of cartels the Commission has ever investigated due to the sheer range of vitamins covered which are found in a multitude of products from cereals, biscuits and drinks to animal feed, pharmaceuticals and cosmetics," said Competition Commissioner Mario Monti. "The companies' collusive behaviour enabled them to charge higher prices than if the full forces of competition had been at play, damaging consumers and allowing the companies to pocket illicit profits. It is particularly unacceptable that this illegal behaviour concerned substances which are vital elements for nutrition and essential for normal growth and maintenance of life".

Following the opening of an investigation in May 1999, the European Commission has found that 13 European and non-European companies participated in cartels aimed at eliminating competition in the vitamins A, E, B1, B2, B5, B6, C, D3, Biotin (H), Folic Acid (M), Beta Carotene and carotinoids markets. A striking feature of this complex of infringements was the central role played by Hoffmann-La Roche and BASF, the two main vitamin producers, in

virtually each and every cartel, while other producers were involved in only a limited number of vitamin products.

Fines were imposed on the following eight companies as follows:

F. Hoffmann-La Roche AG (Switzerland):	€ 462 million
BASF AG (Germany):	€ 296.16 million
Aventis SA (France):	€ 5.04 million
Solvay Pharmaceuticals BV (Netherlands):	€ 9.10 million
Merck KgaA (Germany):	€ 9.24 million
Daiichi Pharmaceutical Co Ltd (Japan):	€ 23.4 million
Eisai Co Ltd (Japan):	€ 13.23 million
Takeda Chemical Industries Ltd (Japan):	€ 37.05 million

The five remaining companies, Lonza AG (Germany), Kongo Chemical Co Ltd (Japan), Sumitomo Chemical Co Ltd (Japan), Sumika Fine Chemicals Ltd (Japan) and Tanabe Saiyaku Co Ltd (Japan) were not fined because the cartels in which they were involved – the Vitamin H or Folic Acid cartels - ended five years or more before the Commission opened its investigation. Under European Community law, limitation applies in these circumstances. It also applied to the Vitamin B1 and B6 cartels.

Nature of the infringements

The participants in each of the cartels fixed prices for the different vitamin products, allocated sales quotas, agreed on and implemented price increases and issued price announcements in accordance with their agreements. They also set up a machinery to monitor and enforce their agreements and participated in regular meetings to implement their plans. The *modus operandi* of the different cartels was essentially the same ("target" and "minimum" prices; maintenance of the status quo in market shares and compensation), in particular it included:

- the establishment of formal structure and hierarchy of different levels of management, often with overlapping membership at the most senior levels to ensure the functioning of the cartels;
- the exchange of sales values, volumes of sales and pricing information on a quarterly or monthly basis at regular meetings;
- in the case of the largest cartels, the preparation, agreement and implementation and monitoring of an annual "budget" followed by the adjustment of actual sales achieved so as to comply with the quotas allocated.

The cartel arrangements generally followed this scheme, pioneered in vitamins A and E, with certain variants in other products. Hoffmann-La Roche acted as the agent and representative of the European producers in the meetings and negotiations held in Japan and the Far East. The simultaneous existence of the collusive arrangements in the various vitamins was not a spontaneous or haphazard development, but was conceived and directed by the same persons at the most senior levels of the undertakings concerned.

The Parties

The prime mover and main beneficiary of these schemes was Hoffmann-La Roche, the largest vitamin producer in the world, with some 50% of the overall

market. The cartel arrangements covered its full range of vitamin products. The involvement of some of its most senior executives tends to confirm that the arrangements were part of a strategic plan conceived at the highest levels to control the world market in vitamins by illegal means.

BASF, the next largest vitamin producer worldwide, assumed a paramount role in following Hoffmann-La Roche's lead. Both major European producers effectively formed a common front in conceiving and implementing the arrangements with the Japanese producers concerned. Together, for example, they recruited Eisai to their "Club" in vitamin E.

Takeda, as one of the main world producers of bulk vitamins, was fully involved in the cartel arrangements for vitamins B1, B2, B6, C and Folic Acid. Takeda's involvement in the arrangements in each of these vitamin products was instrumental to Hoffmann-La Roche's designs to secure the illegal coordination of the vitamin markets it was active in, including those in the range of vitamin products it shared with Takeda. The other vitamin producers were all active members of the cartel arrangements in the respective vitamin product markets in which they operated.

The Products

The cartels concerned bulk synthetic substances which belong to the following groups of vitamins and closely related products: A, E, B1, B2, B5, B6, C, D3, Biotin (H), Folic Acid (M), Beta Carotene and carotinoids. Vitamins are vital elements for human and animal nutrition. They are essential for normal growth, development and maintenance of life. There are some 15 major vitamins, each has specific metabolic functions and is therefore not interchangeable with the others. In addition, the various group of vitamins when combined have a complementary synergistic effect. Vitamins are added to both compound animal feeds and human food products. Vitamins for pharmaceutical purposes are marketed to the public as diet supplements in tablet or capsule form. In the cosmetics industry, vitamins are added to skin- and health-care products.

The Commission estimates that the European Economic Area (EEA) market for the products covered in the decision was worth around € 800 million 1998. This includes vitamin E, which in 1998 was worth approximately €250 million in the EEA and vitamin A, which represented some €150 million. Strikingly, European revenues in vitamin C slumped from €250 million in the last year the cartel arrangements were in place (1995) to less than half, €120 million, three years later (1998).

The calculation and destination of the fines

Fines imposed by the Commission as a result of infringements of the European Community's rules on competition are accounted into the general budget of the European Community once they have become definitive. The overall budget is pre-defined and therefore any unscheduled revenue is be deducted from the

contributions made by Member States to the budget, ultimately to the benefit of the European tax payer.

Given the continuity and similarity of method, the Commission has considered it appropriate to treat in one and the same procedure the complex of agreements covering the different vitamins. The Commission therefore covers several infringements in a single decision. When setting fines, the Commission takes into account the gravity of the infringement, its duration, any aggravating or mitigating circumstances as well as the cooperation of a company. It also takes account of a company's market share in the product market concerned and its overall size. The upper limit of any fine is established at 10% of a company's total annual turnover. Companies have three months in which to pay any fine imposed.

The Commission considers that each cartel in this case represents a very serious infringement of competition law. Furthermore, most of the cartel participants committed infringements of long duration, that is, more than five years. The Commission considers that Hoffmann-La Roche and BASF were joint leaders and instigators of the collusive arrangements affecting the common range of vitamin products they produced and therefore their role in the different cartels is an aggravating factor. The combination of the market power that the leading participants held in each of the individual vitamin markets increased their overall ability to implement and maintain the anti-competitive agreements.

Aventis (formerly Rhône-Poulenc) was granted full immunity in regard to its participation in the cartels in vitamins A and E because it was the first company to co-operate with the Commission and provided decisive evidence in the case of these two products. This is the first time that the Commission has granted a 100% reduction of a fine under the terms of the Leniency Notice. A fine was, however, imposed on Aventis for its passive participation in the vitamin D3 infringement, on which it provided no information to the Commission. According to the Commission, the fact that it had granted, for the first time, a total exemption of fines to a company illustrated its willingness to grant companies actively co-operating at the earliest stage a unique opportunity to escape the full consequences of infringement. Both Hoffmann La Roche and BASF also co-operated with the Commission at an early stage of the investigation providing crucial information on all of the vitamins cartels they have been involved in. The Commission granted a 50 percent reduction of the fines to each company. All other companies on which fines have been imposed have co-operated with the Commission during the course of its investigation and their corresponding fines have been reduced in accordance with the level of their co-operation.

In 1999 the main parties in the cartels covered in the Commission's decision pleaded guilty to similar anti-competitive conduct in the US and paid heavy fines, including $500 million for Hoffmann La Roche, $225 million for BASF and $72 million for Takeda. ■