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## Commission imposes fines on vitamin cartels

***The European Commission today 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 vitamin 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, whilst other players 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 – Vitamin H or Folic Acid -- ended five years or more before the Commission opened its investigation. Under EU law, prescription applies under these circumstances.

Prescription also applied to cartels in vitamins B1 and B6.

### **The Cartels**

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 if not identical ("target" and "minimum" prices; maintenance of the status quo in market shares and compensation arrangements), 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 Players**

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).

### **Destination of the fines**

Fines imposed by the Commission as a result of infringements of EU competition law are accounted into the general budget of the European Union once they have become definitive. The overall EU budget is pre-defined and therefore any unscheduled revenues is be deducted from the contributions made by Member States to the EU budget, ultimately to the benefit of the European tax payer.

### **Calculation of the fines**

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 EU competition law. Furthermore, most of the cartel participants committed infringements of long duration, i.e. more than five years (see table below).

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.

"The fact that the Commission has granted, for the first time, a total exemption of fines to a company illustrates its willingness to grant companies that actively co-operate at the earliest stage a unique opportunity to get off the hook. Those companies that do not seize this chance must be aware of the responsibilities they will face", Mr Monti said.

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 players of 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.

**TABLE A**

Participants, product, duration

Vitamin	Participants	Duration*	
		From	To
Vitamin A	Roche, BASF, Rhône-Poulenc (Aventis)	September 1989	February 1999
Vitamin E	Roche, BASF, Rhône-Poulenc (Aventis), Eisai	September 1989	February 1999
Vitamin B1 (Thiamine)	Roche, Takeda, BASF	January 1991	June 1994
Vitamin B2 (Riboflavin)	Roche, BASF, Takeda	January 1991	Sept. 1995
Vitamin B5 (Calpan)	Roche, BASF, Daiichi	January 1991	February 1999
Vitamin B6	Roche, Takeda, Daiichi	January 1991	June 1994
Folic Acid (B)	Roche, Takeda, Kongo, Sumika	January 1991	June 1994
Vitamin C	Roche, BASF, Takeda, Merck	January 1991	August 1995
Vitamin D3	Roche, BASF, Solvay Pharm, Rhône-Poulenc (Aventis)	January 1994	June 1998
Vitamin H (Biotin)	Roche, Merck, Lonza, Sumitomo, Tanabe, BASF	October 1991	April 1994
Beta Carotene	Roche, BASF	September 1992	December 1998
Carotinioids	Roche, BASF	May 1993	December 1998

\* the duration is not necessarily the same for all participants

**TABLE B - PARTICIPANTS BY PRODUCT**

	Vit A (1)	Vit E (2)	Vit B1 (3)	Vit B2 (4)	Vit B5 (5)	Vit B6 (6)	Folic Acid (7)	Vit C (8)	Vit D3 (9)	Vit H (10)	Beta Carot ene (11)	Caroti noids (12)
ROCHE	●	●	●	●	●	●	●	●	●	●	●	●
BASF	●	●	●	●	●			●	●	●	●	●
R-P (AVENTIS)	●	●							●			
LONZA										●		
SOLVAY PHARM									●			
MERCK								●		●		
DAIICHI					●	●						
EISAI		●										
KONGO							●					
SUMIKA							●					
SUMITOMO										●		
TAKEDA			●	●		●	●	●				
TANABE										●		

**TABLE C - Fines imposed on participants by product (in millions of euro)**

	Vit A	Vit E	Vit B1	Vit B2	Vit B5	Vit B6	Folic Acid	Vit C	Vit D3	Vit H	Beta Carotene	Carotenoids
<b>Roche</b>	<b>85,5</b>	<b>99,75</b>	NA	<b>42</b>	<b>54</b>	N A	NA	<b>65,25</b>	<b>21</b>	NA	<b>48</b>	<b>46,5</b>
<b>BASF</b>	<b>46,17</b>	<b>89,78</b>	NA	<b>18,9</b>	<b>34,02</b>			<b>14,68</b>	<b>7,56</b>	NA	<b>43,2</b>	<b>41,85</b>
<b>Aventis</b>	<b>0</b>	<b>0</b>							<b>5,04</b>			
<b>Lonza</b>										NA		
<b>Solvay Pharm</b>									<b>9,1</b>			
<b>Merck</b>								<b>9,24</b>		NA		
<b>Daiichi</b>					<b>23,4</b>	N A						
<b>Eisai</b>		<b>13,23</b>										
<b>Kongo</b>							NA					
<b>Sumika</b>							NA					
<b>Sumitomo</b>										NA		
<b>Takeda</b>			NA	<b>8,78</b>		N A	NA	<b>28,28</b>				
<b>Tanabe</b>										NA		
<b>TOTAL</b>	<b>131,67</b>	<b>202,76</b>		<b>69,68</b>	<b>111,42</b>			<b>117,45</b>	<b>42,7</b>		<b>91,2</b>	<b>88,35</b>

N.A.: Non applicable

**TABLE D**

<b>Previous 10 largest cartel fines: <u>Total amount</u> per case</b>		
*fines reduced by Court judgments		
<b>Year</b>	<b>Case</b>	<b>Total amount (€ million)</b>
2001	Vitamins	855.22
1998	TACA	272.940
2001	Graphite Electrodes	218.8
1994	Cartonboard*	139.280
1994	Cement*	113.377
2000	Amino acids	109.990
1999	Seamless steel tubes	99.000
1998	Preinsulated pipes	92.210
1994	Steel beams*	79.549
1986	Polypropylene*	54.613