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**SWP 17/87 HOFFMANN-LA ROCHE v STANLEY ADAMS
- CORPORATE AND INDIVIDUAL ETHICS**

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HOFFMANN-LA ROCHE V STANLEY ADAMS

- Corporate and Individual Ethics

"I was a foreigner, which probably helped. I had not been brought up under the Swiss System with the belief that corporate loyalty is inviolable at all times, and what the Company does must be good, because your welfare is dependent on the company's welfare, and the company's welfare is dependent on the welfare of all companies put together, and the chain may not and cannot be broken without grave consequences to all concerned. To me, business was just business. It could be moral or immoral, depending on the way individuals chose to conduct it, and if the good of the company demanded ruthless suppression of the individual or the smaller businesses, then there was something wrong. I had been brought up to question the status quo, not to take things for granted, to explore other ways of doing things. It was second nature to me to ask why something was done this way, and not that way. Ironically, it was just this quality that helped me advance in Roche. Applied to every day problems, it was creative and useful. Applied to the ethics of business, it was embarrassing and challenging and had to be suppressed immediately."¹

Thus wrote Stanley Adams as he reflected on the ten years which followed his decision in February 1973 to act on his conscience and against the interest of his employers, Hoffmann-La Roche, the world's largest drug company.

Stanley Adams was 37 when in the summer of 1964 he joined Hoffmann-La Roche. He had been headhunted from his previous job with the American drug multinational Sterling Winthrop which he joined in 1962, when he began his career in the fast growing pharmaceuticals industry.

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¹ Ibid

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The industry offered Stanley Adams the chance to advance his career as a manager more rapidly than most industries, to enjoy a high salary and the opportunities for overseas travel. He was particularly delighted with the Roche offer, at a yearly salary of around £30,000¹, since the normal company practice was to hire Swiss nationals for senior management. After a three months induction in Roche's Basle Headquarters, Adams was to be sent overseas to manage one of their branches.²

In the initial discussions for the job, Stanley Adams had been particularly impressed with the very full dossier which Roche had on him. This led him to comment later that 'they...seemed to know more about me than I did myself'.³

EARLY CAREER

In his early twenties he came to England to study economics initially in London and then in Oxford. By that time, Stanley Adams spoke fluently Italian, French, Spanish and Arabic, and had already served for two years as a Translating/Interpreting Officer with the British Military Administration in Tripolitania (now Libya). While at Oxford, he developed a life-long interest in politics. The rejection in the post-war general election of Britain's wartime prime minister for the socialist Clement Attlee impressed Stanley Adams deeply with the nature of a 'real' democracy. Following vacation jobs which provided Stanley Adams with experience of business, he went to work in West Africa for a Liverpool based import-export firm. From Africa he went to South America combining a job as a Lloyds shipping insurance agent with that of a British Consul and pursuing his interest in farming at weekends with a small banana plantation. After five years he decided to study agriculture full time and moved to Kenya.

Stanley Adams had enjoyed both the affluent life of an expatriate and the opportunity this gave him to learn languages and about new cultures. The activities of the Mau Mau in Kenya and the poverty he had seen during his travels began to stir in him an awareness that responsibility for a poor country's conditions did not lie just with the indigenous population. His concern did not however affect his style of living. He enjoyed living abroad and in comfort. After his agricultural training, he decided because of the Mau Mau activities that the time was not opportune to buy land and start farming in Kenya. On his return to England, he worked first for AEI at Rugby and then for three years with the American company - Outboard Marine Corporation - in Belgium before going to Sterling Winthrop in 1962.

HOFFMANN-LA ROCHE

Stanley Adams' three months' basic induction with Hoffmann-La Roche in 1964 was followed not by an overseas assignment but by the company's decision to give him a training period in each one of Roche's departments. He retains to this day gratitude to the company for the excellent training he received. Although trained in all Roche's departments, he worked only in the Bulk Vitamin and Chemicals Division. The three sectors of the Division - pharmaceuticals, human nutrition and animal nutrition - sold bulk vitamins and chemicals to the various Roche branches and other customers for the manufacture of tablets or as ingredients to human and animal foods.

By 1967, Stanley Adams was beginning to get restless. Despite the increases in salary and the elegance of his lifestyle, he wanted to work abroad. Following a complete

¹ Exchange rate in 1964 was around Sfrs2 to £1 sterling

² For information on the company, see the section below on Roche and the UK Monopolies Commission

³ Op cit

survey of the Latin American markets for Bulk Vitamins and Chemicals, which took eight months, he was invited to implement one of his own recommendations and start a new branch in Venezuela for Bulk Vitamins and Chemicals.

While working at Hoffmann-La Roche he met his future wife - Marilène Morandi, the Swiss-French daughter of the owner of a medium sized public works contractor. Marilène, an accomplished linguist, painter and musician, had been educated in Switzerland, Germany, France and England. Shortly before taking up his new appointment, he married her and then set up home in Caracas in a seventeenth floor penthouse on the Avenida Miranda overlooking, at the front the national park and at the rear, the Avila Mountains.

Over the next three years, the first two of his three daughters were born. Meanwhile, Stanley Adams settled into his job of managing Roche's Venezuelan subsidiary. His salary continued to increase steadily. Unlike and unknown to his Venezuelan colleagues, he was able to benefit from an additional monthly payment to his Swiss Bank in Basle, and a double salary bonus payment each June and a treble salary bonus payment each December. These additional payments were not subject to Swiss tax. Venezuelan tax was paid on the amount paid in Venezuela. More important, from the company's point of view, this system enabled Roche to maintain the appearance that its overseas managers received no more than a normal differential to salaries paid to Venezuelan staff, reflecting the job status and location.

In three years and starting from scratch, the Bulk Vitamins business in Venezuela reached a turnover of some six million Swiss Francs with a workforce of one hundred and twenty. Apart from a sales force of twenty-five, the rest of the employees included some hundred women employed in the packing department.

In common with other company managers, Stanley Adams's job was strictly controlled by the Swiss headquarters. For example, top and bottom limits for wages payments to the women packers were decided in Basle, thus Stanley Adams could not pay the wages he thought the workers deserved. One rather roundabout way he found for increasing their earnings was to encourage his workers to save some of their money and invest in the company. With Basle's eventual agreement, these savings were matched by an equal amount deposited by the company.

Just before Christmas 1970, Stanley Adams and his family left for Europe. His success in Venezuela merited the thanks of Roche's President, Dr Adolf Jann and the offer of a bigger job in Mexico. After four months leave in Italy and Switzerland, Stanley Adams returned to the Basle office to prepare for taking over the Mexican Bulk Vitamins operations. The Mexican assignment did not materialise. Despite his capabilities, of which he was assured by the President, a board level conflict had failed to remove the previous well-connected incumbent. At the time, Stanley Adams thought that Roche was no exception to the importance in business of the 'who you know' over the 'what you know'.

WORLD PRODUCT MANAGER

A number of other overseas appointments at a comparable level to the Venezuelan post were offered together with the alternative of staying in Basle. After consulting his wife, he decided, in the interests of his young family, to remain in Basle. Roche accepted his decision and appointed him as Regional Manager responsible for American regional sales operations covering Canada and Latin America. (The USA market was always left alone, precisely because of the strict anti-trust laws). His other two colleagues who, as

divisional managers for the Bulk Vitamins and Chemical Division controlled the rest of the world sales, were both Swiss. Stanley Adams now recognised that he had reached a significant level of management in the company. The formal recognition of this was his getting the 'Prokura', in effect a power of attorney which enabled him to commit Roche to major decisions.

In March 1972, Roche changed their organisation so that the three regional managers no longer held a geographical responsibility but became 'World Product Managers' responsible world wide for a group of vitamins and chemicals. Stanley Adams was now dealing world wide with Roche branches and with large multinationals buying in the interest of the economies of scale, vitamins and chemicals from Roche. Among the major vitamin producers there existed a collusive oligopoly. Roche exploited the system through secret 'Fidelity Contracts'. These rewarded loyalty by giving additional rebates of between 5 and 10 per cent, if their most important customers bought around 90 to 95 per cent of their requirements from Roche.¹

Stanley Adams was often concerned in negotiating 'Fidelity Contracts' and in their drafting, since these were generally drawn up in English. One clause required buyers to inform Roche if they were offered a better price by other manufacturers. This gave the customer the option of going elsewhere without loss of rebate if Roche did not meet the price. It also provided Roche with effective market intelligence. Another incentive for inducing customer loyalty used by Adams and his colleagues was to point out to the customer that if they felt unable to buy all their requirements from Roche, then they might be advised to buy elsewhere. Given Roche's strength as a supplier, the method of inducing customer loyalty amounted to persuasion through potential shortage. An internal circular in August 1971 contained the following:

"...precarious Vitamin C situation, of which customers will soon become aware, provides an excellent opportunity - and possibly the last one for a long time - to convince even the most reluctant firm of the advantage of such a 'partnership' between manufacturers and users of the goods. Fidelity contracts, which are in the first place designed to give security to the customer, may therefore help you to penetrate the market....without a collapse of the present price levels".²

Through this system, Roche developed secret contracts with most of the large multinationals who used the vitamins.

At this stage, Stanley Adams began to sense that rather than competing effectively, Roche's aim was to eliminate competition. Moreover, as a result of increasing travel among poor countries of the world, he also began to become concerned with the policies of those drug companies which, in the face of epidemics, instead of supplying more of a particular vitamin in greater quantities and at lower prices, would control supplies and raise prices.

Periodically Stanley Adams was summoned to a presidential 'talk'. Together, senior Roche executives would sit in darkness while the President 'stood alone in a pool of light shining down from the spotlights above' and urged his audience to make more money for the company. In the absence of new products, new ways of increasing turnover had to be found.³

¹ See Appendix A

² Op cit

³ Ibid

Stanley Adams felt the message was always the same, and one with which he felt increasingly unsympathetic. At the same time, he recognised that in common with other large multinationals, Roche's prime aim was to make money. He had a good job, he was well paid, why not just get on with his job - particularly now that his family commitments had increased with the birth of a third daughter. He was also aware that as a public benefactor, Roche were highly regarded, particularly in Basle.

THE EEC FREE TRADE AGREEMENT

Around the middle of 1972, a Free Trade Agreement was being negotiated between the EEC and Switzerland. This would bind Switzerland to the EEC rules of competition. The agreement was ratified in December 1972. One particular part of the Treaty of Rome which at the time concerned Adams was Articles 85 and 86 which forbade any firm to 'abuse a dominant position in the market'.

Stanley Adams discussed with his wife his misgivings about the way Roche conducted its business. In order that he could give his young family a more settled education, he had already taken the first exploratory steps to start up his own business. This included the decision to leave Roche.

Towards the end of February 1973, Stanley Adams with his wife at his side in their home typed out the following letter to the EEC Commissioner for Competition, Mr Albert Borschette.

PERSONAL AND CONFIDENTIAL¹

P.O.Box 40
CH-4002 Basle
Switzerland

Mr Albert Borschette
Commissioner for Competition
EEC Commission, Bruxelles

Dear Sir,

Re: Offences against Article 86
In the sale of Bulk Vitamins
and Chemicals in Europe

I am writing this letter out of a sense of duty, and I trust that you will be able to take some action in the matter. I am not after any position in the EEC institutions, nor am I in any way interested in compensation of any kind. I am a British citizen², economist by training, and for the last ten years employed in the International Business Division of F Hoffmann-La Roche and Co Ltd, of Basle, Switzerland, dealing exclusively in the Bulk Vitamins and Chemicals pricing and marketing. I am still with the named company. However, I plan to leave around July 1973 and start my own meat-industry near Rome, Italy.

- 1) As you are probably aware, Roche is the largest world producer of bulk vitamins for the Pharmaceutical, Human Nutrition and Animal Nutrition sectors. Roche's own production of all vitamins on its own is more than sufficient for the present

¹ Source: Stanley Adams

² Technically speaking, Stanley Adams had allowed his British citizenship to lapse. "That did not mean I felt any less of a British citizen than previously".

demand of the entire world. It has production facilities in Switzerland, the USA, Germany and UK, France, Italy and Japan. Its headquarters is, of course, in Basle, Switzerland. In addition, it has branches all over the world.

- 2) Other manufacturers of bulk vitamins for the same sectors are American (such as Pfizer, MSD, Grain Processing); German (such as BASF); French (such as Rhone Poulenc and AEC) and Japanese (such as Takeda, Tanabe, Fugi, Sumitomo, Yodogawa and others); Danish (such as Syntetic Ltd); British (such as Roche at Dalry) and Dutch (Philips).
- 3) With its expanded production all over the world, and the consequent reduction of costs of production, Roche could see a price-fight coming some years ago. Thus, Roche first embarked on persuading the smaller producers to close down their production facilities and purchase bulk vitamins from Roche, at specially reduced prices. Examples of closure are Hoechst Vitamin C production as well as Rhone-Poulenc. These companies at the same time agreed to sell at the same prices as Roche at all costs.
- 4) Then those manufacturing companies which could not be persuaded to stop production of bulk vitamins, were eventually persuaded to agree to selling prices identical to Roche's own, world wide. Furthermore, when one or other of these producers started cutting into the market share of Roche, they were persuaded to agree to fixed market shares for each individual vitamin for each individual market. In the case of companies with HQ in the USA (where anti-trust laws are applied rather rigidly) Roche was able to make arrangements with the European HQs of said USA companies (for example Pfizer in Brussels).
- 5) Among the production companies situated in Europe, there is complete control of selling prices, and regular meetings take place (almost monthly) at one or other company HQ (sometimes in Switzerland, sometimes in Paris, Germany, Denmark, Holland or even Tokyo). Roche is almost always the instigator of these meetings and agreements, since of course Roche has the major interest in high prices. As far as Roche's own subsidiaries are concerned (all over Europe and all round the globe), strict price control is maintained by the issue of price lists from Basle at regular intervals. The prices are known and called by Roche "Personal Limits".
- 6) Now we have the situation where world production of all bulk vitamins and fine chemicals are far greater than world demand, yet selling prices are now in 1973 far greater than they were ten years or even three years ago. On the other hand, increased and modernised production facilities have reduced costs of all producers very considerably. Such examples can be mentioned as for example d-Biotin (Vitamin H) costs US \$0.56 per gram to produce, yet it is marketed at \$10 per gram. Vitamin B2 (Riboflavin) cost of production is around \$6 per kilo and now selling at \$33 per kilo. Ascorbic Acid (Vitamin C) costs \$1 per kilo, sells at \$5.5 per kilo outside the USA; yet in the USA this same Vitamin C sells for \$3.80 per kilo, since the Price Commission intervened there.
- 7) It is clear that Roche, with the co-operation of the other bulk vitamin producers, has eliminated fair competition; and that where competition could not be eliminated, Roche with the co-operation of the rest of the vitamin industry, has distorted competition completely.
- 8) Around 75% of all sales of bulk vitamins go for Animal Nutrition, thus they have a direct bearing on food costs (such as meat in the EEC). Since the annual market for

bulk vitamins has a value of over 700 million dollars outside the USA alone, and since Europe consumes the major part of this total, you will readily see the importance of lack of competitive prices.

I request you not to let my name be connected with this matter. However, I remain at your entire disposal for further information as well as documentary evidence about every point which I have raised in this letter. Furthermore, I am prepared to discuss any point with your assistants or yourself at any time, and if necessary I am prepared to fly to Belgium or Rome for this purpose. Additionally, after I leave Roche around July 1973, I would be prepared even to appear before any Court to give sworn evidence on my statements.

I trust to hear from you soon to know in what direction I can be of further help, and in the meantime I remain, dear Sir,

Yours faithfully

Stanley Adams

Following a reply from Mr Borschette's Deputy, Mr Willi Schlieder, a meeting was arranged for 5 April in Brussels. Most of the following day was spent with Mr Schlieder and his four or five assistants discussing the papers which Adams had brought with him as evidence of the policies of Roche and the other multinationals with whom Roche had dealings.

After Mr Schlieder had consulted Mr Borschette, he told Adams that they were prepared to investigate, given his co-operation and his willingness to provide more detailed information. Stanley Adams gave his agreement to stay in Roche longer if necessary to help, in exchange for the assurance that everything would be treated with the utmost confidence and the source of the information would remain undisclosed. Adams was concerned to ensure that, since he still worked at Roche, his own and his family's situation would not be jeopardised.

ROCHE AND THE UK MONOPOLIES COMMISSION

A week after Stanley Adams had his first meeting with the EEC officials, the Monopolies Commission in the United Kingdom presented a report¹ on the supply of chlordiazepoxides and diazepam - the generic names of Roche's two tranquilisers Librium and Valium.²

At the time of the report, F Hoffmann-La Roche was considered to be the world's largest producer of ethical drugs. Although turnover figures had never been publicly

1 Chlordiazepoxide and Diazepam - A report on the Supply of Chlordiazepoxide and Diazepam. The Monopolies Commission, April 1973, Her Majesty's Stationery Office, London.

2 See also the case study F Hoffmann-La Roche & Co AG by Channon D F and Constable C J (1979) available from the Case Clearing House of Great Britain and Ireland.

available, sales were estimated to be in excess of \$1 billion and earnings around \$200 million.³ The 16,000 voting shares representing around 23% of the equity were closely held by the members of the family of the founder, Fritz Hoffmann-La Roche.

In virtually all major markets, Roche was one of the top drug companies employing 30,000 in its 60 subsidiaries in over 30 countries. The Roche world wide organisation consisted of the two holding companies F Hoffmann-La Roche & Co AG of Basle and SAPAC Corporation Ltd incorporated in Canada with its principal offices in Montevideo, Uruguay. Tax legislation in these two countries favoured this arrangement. The Basle company included all operations in continental Europe, North Africa and the Middle East. SAPAC included British, American, Far Eastern, Pacific and group interests elsewhere. SAPAC was an associate company and each share of F Hoffmann-La Roche & Co AG was inseparably linked with a SAPAC share. There were four common directors on the boards of the Basle company and SAPAC. Dr Adolf Jann was chairman of both companies.

Around two thirds of Roche sales came from ethical drugs, about one quarter from the supply of bulk vitamins and the rest from aromatics and flavours. In common with other drug firms, Roche claimed that the bulk of sales were from one or two drugs. In 1970 these were the reference drugs Librium and Valium which accounted for some 70 per cent of Roche world drug sales. UK sales amounted to 4 per cent of the world total.

The group's UK subsidiary Roche Products Ltd with a £20 million investment produced in 1970 sales of £18.6 million and profits of £886,000. This profit was computed after the deduction of £979,000 for rebates from Basle. Rebates were part of Roche's normal business practice. These had been paid to the UK's Department of Health and Social Security since 1967 following a request by the DHSS for Roche to reduce its prices and Roche Products' decision not to participate in the Voluntary Price Regulation Scheme (VPRS).

The Commission's main case against Roche was that the UK subsidiary was charged for a kilo of raw materials £370 for Librium and £922 for Valium whereas in Italy charges were respectively £9 and £20. The Monopolies Commission estimate of Roche Products profits on Valium and librium alone was £4.8 million in 1971 whereas according to a survey of drug industry profits Roche showed a loss.

The system of transfer pricing which enabled the company to show a reduced profit applied to Roche products other than tranquilisers. Roche headquarters set the price of raw materials for the subsidiary not in relation to manufacturing costs but in relation to the taxation levels and the political situation at the particular time in individual companies. This enabled the company to avoid a large amount of taxation, and it allowed them to overcharge without appearing to do so.¹

One extreme example of the use of transfer pricing was in the case of Colombia, where government investigation claimed that Roche were overpricing Librium by 6478%. The profit reported to the government was 6% and not the actual amount which was estimated to be 79%.

³ Sales turnover for the financial year 1983 was SFrs 7510m and net income SFrs 328.4m.

¹ Op cit

THE FINAL MONTHS

In the six months between his first meeting with the EEC officials and his departure from Roche at the end of October 1973, Adams' main contact was with the Director of Inspection Aldo Carisi, an Italian lawyer, to whom he wrote as follows of 21st July:

"Monsieur Aldo Carisi¹
200 Rue de la Loi
Bruxelles 4

Dear Mr Carisi

With reference to my letter of April 15th 1973, I am sending you some additional information about Roche's doings in the Bulk Chemicals and Vitamins Division.

- 1) As I have already explained to you, the pressure placed by Roche on other producers of vitamins and chemicals in Europe has obliged the following companies to stop production:

E.Merck, Darmstadt/Germany
Hoechst/Germany
Bayer/Germany
Rhone Poulenc/France
Glaxo/Great Britain

After stopping production each of these companies signed a contract with Roche (a co-manufacturer's agreement) to buy from Roche all the vitamins and chemicals which they needed both for internal consumption and for re-sale on the international market. Obviously, this co-manufacturer's agreement meant that these companies are buying their products from Roche at a secret and very low price. As they are selling Roche products under their own labels, it is clear that competition has been eliminated.

- 2) Besides that, the following companies, which are the most important consumers of chemicals and vitamins in the areas of animal nutrition, human nutrition and pharmaceuticals, have signed contracts to buy everything they need exclusively from Roche.

- | | |
|-----------------------------|---------------------------------------|
| 1. Abbott Laboratories | 10. Unilever (Nutrition) |
| 2. Cyanamid Laboratories | 11. Ralston Purina (Animal Nutrition) |
| 3. Organon Laboratories | 12. Dawe's International (--"--) |
| 4. Parke Davis Laboratories | 13. Trouw (Animal Nutrition) |
| 5. Upjohn Laboratories | 14. Protector (Animal Nutrition) |
| 6. Richardson Merrell Labs | 15. Provimi (Animal Nutrition) |
| 7. Squibb Laboratories | 16. Central Soya (Animal Nutrition) |
| 8. Glaxo Laboratories | 17. Wander (Human Nutrition) |
| 9. Sandoz Laboratories | 18. Nestle (Human Nutrition) |

I am sending you as an example a copy of the contract between Nestle and Roche dated August 5th 1968, accompanied by a letter changing certain clauses, dated July 8th 1970. I attach as well a copy of a letter of 30th May 1973 which will give

¹ Source: Stanley Adams

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you an idea of the extent of the rebate and a list of all Nestle's subsidiaries in the whole world.

- 3) The photocopies of a letter written by the president of Roche on June 25th 1973 and of a customer profile concerning Cyanamid Laboratory will give you additional information. This letter, and its annex, has been sent to the managing director of each Roche branch in every country where Cyanamid has a branch. (See page 3 of the annex).

In fact Roche Basle is in the process of preparing a customer profile about each company mentioned under No.2 of this letter. When these Customer Profiles have been drawn up, an example will be sent to every Roche branch.

- 4) The conversations and secret arrangements between Roche, BASF, Syntetic and Tanabe continue regularly. In fact they are in the process of agreeing to a general increase of price for Vitamins A, E, B2 and C. This increase will be announced shortly to customers from all the European markets.

I'm taking this opportunity to tell you that I will be at Roche Basle until the end of October 1973.

I remain willingly at your disposal and send you my regards and best wishes.

Please pass my regards onto M Rihoux."

Stanley Adams with his access to Roche's wealth of information on customers and competition was able over the next few months to provide information in writing and in a number of meetings with members of the Commission's Legal Department. These meetings were always arranged outside Switzerland. Adams at the time thought this a matter of convenience to the investigators. He was unaware that the EEC officials were concerned that they risked arrest. Although the EEC could investigate complaints, a visit to Adams in Switzerland could have been construed as an attempt to solicit information, something which the Commission were not empowered to do.

By the end of October 1973, Adams had provided the EEC with all the information they required. He resigned from Roche and with their best wishes, he began the process of setting up his own business as an industrial pig farmer in Italy.

In July 1983 Stanley Adams became the first individual to sue the European Commission for damages for negligence and breach of confidence over his disclosures. In its judgement in November 1985, the European Court of Justice held that the EEC had a duty to Adams to keep his identity a secret and awarded Adams considerable financial damages.

The twelve years between Adams leaving Roche and the Court's judgement constitute a remarkable story of individual persistence in the face of adversity. When Adams left Roche, he and his family moved south of Rome. With his life's savings, some bank finance and a grant from the Italian Government, he began preparations for his new venture into pig farming. On New Year's Eve 1974, while crossing the Swiss border with his family to visit his wife's relatives, he was arrested by the Swiss police and charged with industrial espionage. Upon release from three months in custody, he learned that his wife had committed suicide when she was told he would receive a twenty years' imprisonment. His efforts to set up the pig farm led to his being declared bankrupt not because of his own inefficiency, but through the Italian Government's bureaucratic incompetence.

The European Court's award to Adams in November 1985 of around £500,000 was half his claim. The Court gave three reasons for not accepting the EEC's total liability: knowing his identity from the documents was possible, he did not inform the EEC; he failed to ask the EEC to keep him informed of the progress of their investigations and the purposes to which the documents were being put, and finally, in returning to Switzerland, he knew he risked prosecution.

The European Court's powers did not extend to the Swiss authorities responsible for arresting and imprisoning Adams on a charge of industrial espionage. As for Hoffmann-La Roche, the result of Adam's exposures had led to their being fined in 1976 some £250,000 for unfair trading practices under Article 86 of the Treaty of Rome.

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Hoffmann-La Roche Fidelity Contracts¹

"According to the experience of various Roche companies, fidelity contracts provide a very efficient protection against competition, especially as far as BASF² are concerned. In our today's Management Information we have therefore made a special provision for such contracts and would like to give you a brief definition of their content and a short description of their advantages. A fidelity contract should cover the following points:

- The customer undertakes to purchase at least 90% of his total requirements of vitamins from Roche.
- Roche applies automatically to all purchases of customers their best price for the quantity involved. Should the customer receive a lower quotation from another vitamin manufacturer, he will give Roche the possibility to meet this quotation before he places the order with the competitor in question. Should Roche not be willing to meet the price submitted to them, the customer is free with regard to this particular purchase without losing his fidelity status. The same principle applies if Roche are unable to cover the entire requirements of the customer due to a shortage.
- At the end of the year, the customer receives a fidelity rebate on his overall purchases during the year. This rebate will be cancelled entirely if the customer has not complied with the above principle for any single vitamin required by him and manufactured by Roche. Since the fidelity rebate is being paid at the end of the year, there is no need for a written contract in cases where customers are not favourable to such a formal way of negotiating (or don't want anyone to know what they are doing.....).

The advantages of such agreements are obvious. If a feed mill for instance is purchasing Vitamins A, E, B2, Carophyll etc., even the most tempting offer from a competitor like BASF for Vitamin A and E alone cannot induce the customer to change his supplier, because he would otherwise lose the fidelity rebate for Carophyll and for the vitamins BASF are not manufacturing. For the same reason, it is in many cases possible to make the customer accept somewhat higher prices for individual items than the one offered by the competition, because the overall deal is still favourable for him."

1 Source: Roche v Adams op.cit

2 The largest German multinational chemical company