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COMPLAINT AGAINST TYING CLAUSES IN PATENT LICENCE AGREEMENTS

THE EEC COMMISSION HAS DROPE THE PROCEEDINGS INSTITUTED FOR AN ALLEGED INFRINGENT OF THE CARTEL AND MONOPOLY RULES OF THE TREATY (ARTICLE 85 AND 86) ON A COMPLAINT FILED BY A FRENCH CHEMICAL MANUFACTURER AGAINST TWO OF ITS COMPETITORS IN THE COMMON MARKET.

THESE TWO FIRMS HAVE INFORMED THE COMMISSION THAT THEY HAVE GIVEN UP THE PRACTIVES CONCERNEND.

THE FIRMS W WITH HEADQUARTERS IN GERMANY AND FRANCE, WERE OWNERS OF PATENTS ON THE APPLICATION OF A PLASTICS PROCESS. THEY HAD EXCHANGED LICENCES IN REPECTS OF THESE PATENTS, TOGETHER WITH THE RIGHT TO GRANT SUB-LICENCES SUBJECT TO THE PROVISE THAT THE SUB-LICENSESES BOUGHT FROM THE TWO LICENSERS NON-PATENTED PRODUCTS USED IN THE PROCESS. ON THE BASIS OF THIS AGREEMENT THE TWO FIRMS GRANTED LICENCES TO OTHER FIRMS. IF CERTAIN OF THE PRODUCTS USED IN THE PROCESS WERE BOUGHT FROM THE LICENSER, THE LICENCES WERE GRANTED FREE. IF THE LICENSEES WISHED TO PURCHASE PRODUCTS FROM A MANUFACTURER OTHER THAN THE LICENSER, A LICENCE FEE HAD TO BE PAID.

THESE STIPULATIONS FORCED LICENSEES TO ORDER THE PRODUCTS CONCERNED FROM THE LICENSERS AND TO REJECT OFFERS MADE BY COMPETING FIRMS IN OTHER COMMON MARKET COUNTRIES.

THE PLAINTIFF, A FORMER SUPPLIER OF SOME OF THE LICENSEES, REGARDED THIS OBLIGATION OF LICENSEES TO OBTAIN FROM THE LICENSOR, NON-PATENTED PRODUCTS THAT WERE NOT ESSENTIAL TO A TECHNICALLY PERFECT APPLICATION OF THE PROCESS AS AN INADMISSIBLE EXTENSION OF THE PATENT MONOPOLY, BY WHICH THE SALES OF OTHER FIRMS ON THE RELEVANT MARKET SUFFERED UNWARRANTED RESTRICTION. BEFORE ANY DECISION WAS HANDED DOWN, THE DEFENDANTS NOTIFIED THE COMMISSION THAT THEY HAD CANCELLED THE AGREEMENTS CONTAINING THE CLAUSES COMPLAINED OF AND UNDERTOOK TO ALLOW THEIR PROCESSES TO BE USED IN FUTURE WIHTOUT IMPOSING CONDITIONS OF THIS NATURE.

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