JUDGMENT OF THE COURT
14 DECEMBER 1972[1]

Boehringer Mannheim GmbH v Commission of the European Communities[2]

Case 7/72

Summary

Competition — Cartels — Prohibition — Infringement of Community rules — Community penalties and national penalties imposed by the authorities of a Member State or of a third State — Cumulation — Taking into account thereof by the Commission — Criteria

(EEC Treaty, Article 85, Regulation No 17 of the Council, Article 15)

In fixing the amount of a fine the Commission must take account of penalties which have already been borne by the same undertaking for the same act in a case where penalties have been imposed for infringements of the cartel law of a Member State and, consequently, have been committed on Community territory.

The fact that the Commission takes into account a penalty imposed by the authorities of a third State presupposes that the facts established against the undertaking accused by the Commission, on the one hand, and the authorities of the third State in question, on the other, are identical.

In Case 7/72

BOEHRINGER MANNHEIM GMBH, having its registered office in Mannheim, represented by its Managers, H. Raiser and H. E. Köbner, assisted by A. Deringer, C. Tessin, H. J. Herrmann and J. Sedemund, Advocates of Cologne, with an address for service in Luxembourg at the Chambers of M. Baden, Advocate, 1 boulevard Prince-Henri,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, E. Zimmermann, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, É. Reuter, 4 boulevard Royal,

defendant,

1 — Language of the Case: German.
2 — CMLR.

APPLICATION for the amendment of the part of the Commission Decision of 25 November 1971 (IV/26 945/Boehringer) relating to the fine imposed on the applicant and, alternatively, for the annulment of that decision.

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner, A Trabucchi (Rapporteur), J. Mertens de Wilmars and H. Kutscher, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and the procedure may be summarized as follows:

On 3 July 1969 an American court fined Boehringer Mannheim GmbH $80 000 for having infringed the anti-trust provisions of the Federal law of the United States by being a member of the international quinine cartel. The applicant discharged that fine on 11 July 1969.
By decision of 16 July 1969 the Commission of the European Communities imposed on the same undertaking a fine of 190 000 u.a. for having infringed Article 85 of the EEC Treaty by being a member of the same cartel.
By judgment of 15 July 1970 the Court of Justice of the European Communities reduced this fine to 180 000 u.a. (Judgment in Case 45/69).
By letter of 3 September 1969 the applicant asked the Commission to set the amount of the fine paid the United States against that which had been imposed on it under Article 15 of Regulation No 17/62.
In the proceedings which it had brought before the Court, Boehringer had asked that the fine incurred in the United States should be set against the amount of the fine imposed by the Commission. The latter, pointing out that it had not yet given a decision on the application to the same effect lodged by the applicant on 3 September 1969, maintained that, as lodged before the Court, that application was inadmissible because the matter was not the subject-matter of the contested decision.
In its judgment, the Court held that it was unnecessary to take account of that application 'in these proceedings' since the fine had been imposed in the United States for restrictions on competition 'which occurred outside the Community'.
Considering that the Court had not intended to give a definitive ruling on the application in question, the substance of

which had not been examined in Case 45/69, the Commission decided this point by decision of 25 November 1971 (OJ L 282 of 23.12.1971, p. 46). On 10 February 1972 the applicant lodged this application against that decision dismissing its application.
After hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without any preparatory inquiry. The parties presented oral argument at the hearing on 18 October 1972.
The Advocate-General delivered his opinion at the hearing on 29 November 1972.

II — Conclusions of the parties

In its originating application the *applicant* claims that the Court should:

'1. amend the defendant's decision of 25 November 1971 (IV/26 945/Boehringer) to the effect that the fine of $80 000 imposed on the applicant by order of the US District Court, Southern District Court of New York on 3 July 1969 is set, by order of the Court, against the fine which the defendant imposed on the applicant by decision of 16 July 1969 and which the Court fixed at 180 000 u.a. in its judgment of 15 July 1970; and, *alternatively*, annul the defendant's decision of 25 November 1971 (IV/26 945/Boehringer);

2. order the defendant to pay the costs of the action.'

In its statement of defence the *defendant* contends that the Court should:

'— dismiss the action as unfounded;

— order the applicant to bear the costs.'

III — Submissions and arguments of the parties

The submission and arguments of the parties may be summarized as follows:

A — *The possibility under Community law of setting fines imposed by the courts of third States against later fines*

The *applicant* complains that the decision at issue infringes the prohibition on cumulation of penalties which is one of the general principles of unwritten law which must govern the application of Community law. It makes a comparative examination of the legislations of the Member States and maintains that protection against double penalties is incorporated in all those legal systems and is also applied, although in different forms, in relations with the legal systems outside the Community. The applicant refers in particular to the first sentence of Paragraph 60(3) of the German Penal Code, Article 138 of the Italian Penal Code, Article 68(2) of the Netherlands Penal Code, Article 692 of the French Code of Criminal Procedure and Article 13 of the Belgian Law of 17 April 1878. It points out that in its judgment in Case 14/68 (*Walt Wilhelm and others* v *Bundeskartellamt*) the Court of Justice based the duty of Community institutions to take account, for the purpose of determining any penalty, of 'any previous punitive decision' as a 'general requirement of natural justice'. The scope of the general principle laid down in that judgment cannot therefore be limited to the relations between Community law and the legal systems of the Member States.
The argument of the defendant that in the relations with some third countries territorial fields of application do not overlap is incorrect in fact and, in any case, irrelevant. With regard to the application of the general principle referred to above it suffices for the same action to have already been penalized under another legal system.
The *defendant* objects that the principle of natural justice referred to by the applicant was stated by the Court in its judgment in Case 14/68 with regard to the special situation which may result from the competing jurisdiction of the Member States and the Community within the Common Market. It cannot therefore be alleged that the question of the applicability of that principle in relations with

third countries was already settled by the said judgment.

The defendant observes that in German and Italian law a criminal conviction abroad is no obstacle to domestic criminal proceedings, but in the case of a further conviction the fine incurred abroad is set against the further penalty. However, in the other four Member States a final foreign judgment prevents the institution of domestic proceedings where, if the person charged was convicted, he has paid the fine or it has become time-barred. In addition, in France, Belgium and Luxembourg, the application of the *non bis idem* rule is modified by the principle of territoriality: a foreign conviction cannot prevent a futher conviction in the home country if the crime was committed there. In such a case, it is at least doubtful whether the duty to set a penalty already pronounced abroad against a later can apply. In any case, such setting of one penalty against another can only apply in relation to punishment by imprisonment and not to fines.

In view of the very different scope of the *non bis in idem* rule in the legal systems of Member States the defendant considers that in relation to the fundamental right invoked by the applicant it is impossible to speak of constitutional traditions common to the Member States. It is therefore to no purpose for the applicant to seek to rely on the case-law of the Court on the scope of fundamental rights, in view also of what the Court has stated in its judgment in Case 11/70 ([1970] ECR 1125).

In its reply the *applicant* raises the objection that the result of the argument which the defendant bases on the differences between the rules applied by Italy and Germany (*non bis poena in idem*) and the four other Member States (*non bis in idem*) is that in view of the greater judicial protection in the latter States, the weaker protection in the other two States cannot itself be incorporated into Community law as a general principle of law.

The Commission completely misunderstands the alternative nature of the principle of setting one penalty against another which the applicant invokes as a compensating criterion for cases where the *non bis in idem* principle is not fully applied. On the international level, although it is possible for States still to have legitimate reasons for giving their sovereign interests precedence over the *non bis in idem* principle there is on the other hand no similar reason for rejecting the more limited principle of setting one penalty against another (*non bis poena in idem*) which is based solely on the principles of natural justice and proportionality of fines. There is no sovereign Community interest which can justify a refusal to set a penalty previously imposed on account of the same action against another. Having regard to the judgment of the Court in Case 14/68 which, while rejecting the applicability of the *non bis in idem* principle, confirmed the principle of setting one penalty against another, a general principle of natural justice cannot be applied differently from one State to another. The Convention of the Council of Europe of 28 May 1970, Article 53 of which provides for the application of the *non bis in idem* rule, and which has already been signed by, among others, four Member States (Belgium, Italy, the Netherlands and the Federal Republic of Germany), proves the existence, even internationally, of a common legal principle. It must therefore be accepted that at the very least Community law must set previous penalties against later, which is the weakest protection against cumulation of penalties. In view of the importance of the legal guarantees in question it is not permissible to make their recognition dependent on the enactment of an express provision by the Community legislature.

In its rejoinder the *defendant* states that in order to extract general legal principles it is necessary to adopt the principle which appears the most progressive and not to seek the common minimum in the legal systems of the Member States. That applies in this case with regard to the *non bis in idem* principle which furthermore affords the greatest protection for individuals. The applicant is therefore wrong in basing its case on the principle of setting penalties one against the other as a common minimum. In its judgment in Case 14/68 the Court recognized the legality of parallel

procedures in Member States for reasons appertaining to the special features of Community law; it in no way rejected the *non bis in idem* principle. This principle does not apply in the international field to the institution of parallel criminal proceedings but means solely that a penalty pronounced abroad having the authority of *res judicata* and discharged abroad prevents the institution of fresh domestic criminal proceedings with regard to the same action. Furthermore, the defendant does not understand how Community law and its application can be adversely affected when such a common principle which is also valid in the Community system cannot be derived from the laws of the Member States.

B — *The concept of 'same action' or 'same offence'*

The *applicant* complains that the decision at issue refused to recognize as the 'same offence' an event forming a historical unity, as is the conclusion of a cartel agreement, and that it artificially separated the transactions to which that agreement led according to the country in which they were adopted. This view conflicts with Article 85(1) of the EEC Treaty which prohibits agreements the object of which is to restrict competition *per se*, without regard to their effects. The American penalty was also imposed on the basis of the restrictive agreements themselves, regardless of their effects.

The applicant adds that German law considers that the 'same offence' within the meaning of Paragraph 269 of the Strafgesetzbuch is the event which forms a historical unity. Even where the action is not a natural unit, a number of actions always constitutes a single offence when the links between those actions are such that to judge them separately would be unnaturally to split a single phenomenon. With regard to the duty to set the previous penalty against a later one, Italian law takes into consideration the subject-matter of the judgment which can consist only in the same 'azione o omissione' on which judgment was delivered (Article 6 of the Codice Penale).

In Case 19/68 the difference found by the Court between the criteria and impact of Community cartel law and those of the cartel laws of the Member States did not prevent it from holding that there is a duty to take into account the previous penalty. The assertion contained in the contested decision to the effect that by imposing the fine on the applicant the Commission had taken into account only the application of the export cartel agreement in Italy and Belgium is incorrect. There is no such restriction in the decision of 16 July 1969 and, furthermore, during the procedure in Case 45/69, the defendant gave to understand that even the application of the export agreement outside the common market constituted an offence.

The *defendant* makes a comparative examination of the prevailing concepts in the various Member States as to when actions should be regarded as constituting the 'same action' from the point of view of criminal law and it points out that there are important differences in this respect. Moreover, it considers that the uncertain and divergent principles which have been developed in this area of criminal law should be used only with circumspection in relation to competition.

The laws on competition, which are based on concepts less universally accepted than criminal law, are limited in their application to restrictions on competition occurring within a specific territory. The parties to an international agreement are aware that their conduct is necessarily contravening the laws of the variouts States which prohibit such conduct.

The defendant claims that, having regard to this territorial nature of competition law, if the parties to an international cartel restrict, for example, competition, first, in the United States and, secondly, within the common market, those are two different actions, within the natural meaning of the word, and they constitute distinct breaches of two different categories of protected interests. If rules on competition are infringed internationally no national court has jurisdiction to appraise all the international effects of the violations and to put an end to them. It is therefore in the interest of the protection of competition

internationally that the parties to international cartels may be penalized wherever they have infringed the current rules on competition by their actions.

The Commission's decision imposing fines on the parties to the international quinine cartel was based on actions taken within the common market whereby competition within that market was in fact restricted. It is not solely the making of the agreements which the Commission fined; what it considered as constituting an infringement is in fact 'the working out and implementation' of the various agreements, as is clear from Article 1 of the decision. Those actions, which had restricted competition within the common market, are not the same as those on which the American court based its judgment.

In its reply the *applicant* maintains first of all that it is apparent from the wording of the American decision that the penalty pronounced in the United States relates, at least in part, to the same actions as those which the Commission intended to penalize by means of a fine.

The applicant is opposed to the restrictive interpretation which the Commission gives to the concept of 'same action' as it is an interpretation which, it claims, is contrary to the case-law of the Court (Case 14/68).

The difficulties which are raised by the definition of the concept of 'same action' should not prevent judgments delivered abroad from being taken into consideration as extensively as possible.

The applicant points out finally that it has asked that the fine imposed in the United States be set against the later fine only to the extent to which the actions penalized by the American fine and the Community fine are identical, in other words, in so far as the American court has imposed penalties with regard to actions affecting the common market and in so far as the Commission itself has imposed a fine on the ground of the export agreement relating to third countries.

In its rejoinder the *defendant* contends that the abovementioned question has not been resolved by the Court in Case 14/68 since it was possible to presume, because of the subject-matter of the request for interpretation submitted to the Court in the said case, that the action was identical without it being necessary for the Court to deliver judgment on that specific point.

In view of the fact that an international cartel restricts competition on a world-wide basis simultaneously and for the period of its validity, in the absence of an international court having jurisdiction to take proceedings against these infringements, to consider all the actions taken under an agreement of that nature as a single action would amount to placing international cartels in a privileged position. As the concept of 'action' in criminal law is rather restrictive, except in Germany, and as the rules on the matter are different in the various Member States, there is no reason to apply to members of international cartels the rules which had been laid down in criminal law for the purpose of avoiding cumulation of penalties.

C — *The question whether the American court based its judgment on actions identical to those which the Commission considered as infringements of the EEC Treaty*

The *applicant* objects to the statement contained in paragraph 14 of the contested decision whereby the American penalty must be ascribed especially to points (f) and (g) (the agreement on the supply of bark and the agreement on the acquisition of the American stockpile) of Head 14 of the indictment, which the Commission did not consider as infringements, and maintains that according to the record of the oral procedure the American court said nothing from which it could be supposed that it did not intend to penalize all the counts by way of a single fine. It points out that of the seven individual agreements cited in the indictment only the last two are not covered by the decision of the Commission of 16 July 1969. It is therefore in accordance with the principles of natural justice to set against the penalty imposed by the Commission at least 5/7 of the amount of the American penalty. Further, the defendant laid down, as a fine imposed on the applicant in addition to the basic amount corresponding to the quota,

70 000 u.a. because of the preponderating influence which the applicant held over the market in raw materials. In these circumstances, it is appropriate to set against the fine in question 6/7 of the American fine which also relates specifically to the market in raw materials. In its opinion the Court could, acting within the limits of its unlimited jurisdiction, set that amount against the other fine.

The applicant asks finally that the file in Case 45/69 be produced at the hearing.

The *defendant* contends that, unlike the American court, in imposing the fine in question it had not considered either the agreements on bark and on the purchase of strategic stocks or the application of particularly high selling prices within the United States as infringements of Article 85. In addition, the Commission had fixed the end of the infringements at February 1965 and not the middle of 1966. It appears on the other hand from the decision of 16 July 1969 and the judgment of the Court in Case 45/69 that the penalty imposed by the Commission covered essentially the application of restrictions contained in gentlemen's agreements, namely territorial protection, the system of quotas and the prohibition on French manufacturers against producing synthetic quinidine.

Although the provisions of the gentlemen's agreement were also cited in the indictment before the American court, it cannot however be accepted that the provisions relating to the common market restricted competition within the United States. In this connexion the defendant emphasizes the special nature of the American procedure of acceptance (*nolo contendere*), and the resulting uncertainty as to the facts forming the basis for the imposition of the penalty, since the American court, within the context of such procedure, does not examine the substance of the case and does not give the reasons on which its decision imposing the fine is based. The defendant assumes that if it had had to give a decision in normal criminal proceedings the American court would have reached the conclusion that the restriction on competition within the common market stemming from the gentlemen's agreement did not have important effects on the American domestic market or on the external trade of the United States. On this basis the defendant accepts that only the restrictions on competition resulting from the export agreement, the agreement on quinquina bark and the agreement on strategic stocks may concern the American market. It is principally the latter agreement which attracted the attention of the American authorities and public opinion and in addition this was the only agreement mentioned in the record of the hearing at which the American court imposed the fine on the applicant

In its reply, the *applicant*, having observed that it would be absolutely unjust to penalize it because there was no written statement of the reasons on which the American judgment was based, maintains that it is possible to deduce from the proceedings before the American court that the territorial division of the markets for the sale of quinine and quinidine, the restriction of synthetic quinidine production the the Nedchem, Boehringer and Büchler undertakings and the export agreement concluded with regard to third countries constituted the basis of the American fine and that in this respect the American penalty has been superimposed on the Community penalty.

Disagreeing with the argument of the Commission that the American judgment is not directed against the agreements as such but solely their effects the applicant asserts that as regards American law it is clear that by virtue of the first section of the Sherman Act the subject-matter of the penalty is the unlawful agreement whereas its effects are not constituent elements of the infringement but only a pre-condition for the purpose of establishing the American court's jurisdiction over the matter.

With regard to the argument advanced by the Commission in relation to Community law, the applicant observes that by virtue of Article 85(1) of the EEC Treaty, the agreement by itself, if it restricts competition, constitutes an infringement, without it being necessary to take account of its effects. The decision of 16 July 1969 states further, in relation to the gentlemen's

agreements, that an examination of them 'suffices to show that their object was to restrict competition... so that for the purpose of establishing the applicability of Article 85(1) it is no longer necessary to study their actual repercussions'. The fact that the Commission penalized agreements as such is apparent also from heading 24 of the rejoinder of the Commission in Case 45/69.

In its rejoinder the *defendant* points out that although it is true, with regard to the application of export prices fixed jointly within the context of the agreement relating to the export cartel, that the American court and the Commission imposed a fine as a result of the same actions, it is on the other hand a matter for discussion how the gentlemen's agreements must be appraised from the point of view of cumulation of penalties. It is most uncertain whether the indictment drawn up by the American prosecution also took into account the gentlemen's agreements the field of application of which was limited to the common market. The general and vague terms of headings 14(a) and (b) of the indictment to which the applicant refers (fixing, maintaining and increasing the prices of quinine and quinidine and operating a territorial division of the markets for the sale of those products) does not necessarily prove that such a conclusion is justified. A detailed examination of the various counts of the indictment shows, according to the defendant, that only the effects on competition in the United States were taken into account.

Even accepting that the indictment related also to the protection of territorial markets under the gentlemen's agreement, it would be impossible to conclude further that the Commission must set a part of the fine imposed in the United States against the later fine since no inferences can be drawn from the American judgment itself as to the offence which it is penalizing. The defendant maintains in this connexion that the American anti-trust laws are directed towards restrictions on competition agreed outside the United States only to the extent to which they have appreciable effects on the domestic market or on the American external market. With regard to the gentlemen's agreement concluded between the quinine producers concerning their conduct within the common market, the Commission does not understand how the resulting restrictions on competition could have had such effects.

In conclusion, the defendant considers that the American court penalized the applicant for having been a party to the export agreement, the agreement on strategic stocks and the agreement on bark, whereas the Commission imposed the fine on the applicant for having been a party to the gentlemen's agreements and having implemented the export agreement in certain common market countries.

The defendant counters the applicant's argument that it is consistent with the principle of natural justice to take account also of the penalty imposed by the American court in so far as it relates to the market in raw materials, on the ground that the reason stated by the commission for the fine was the position held by the applicant in the market in raw materials, by pointing out that the applicant is disregarding the fact that the Commission's decision had not considered the stock of bark referred to in the American indictment as constituting an infringement of the provisions of Article 85 of the Treaty. In determining the amount of the fine the Commission took account of the strong position held by the applicant in the market in raw materials only with regard to the infringements which were found in the decision.

The defendant concludes from all the above considerations that the facts on which the American court and the Commission based their decisions to impose a fine are essentially different. In consequence, in this case the principle of natural justice prohibiting double penalties is inapplicable. A merely partial identity of facts, as in the case of the export agreement, is irrelevant.

Grounds of judgment

1 By decision of 16 July 1969 the Commission of the European Communities fined Boehringer Mannheim GmbH 190 000 u.a. for infringement of Article 85 of the EEC Treaty. This amount was reduced to 180 000 u.a. by judgment of the Court of 15 July 1970 in Case 45/69. On 3 July 1969 a New York District Court fined Boehringer $80 000 for infringement of the provisions of the Federal law of the United States of America on restriction of competition. The applicant paid this fine on 11 July 1969. By letter of 3 September 1969 the company asked the Commission to set the amount of the fine paid in the United States against that imposed by the decision of the Commission of 16 July 1969. By decision of 25 November 1971 the Commission rejected that request.

2 The applicant complains that the Commission thereby violated a general principle of law prohibiting double penalties for the same action.

3 In fixing the amount of a fine the Commission must take account of penalties which have already been borne by the same undertaking for the same action, where penalties have been imposed for infringements of the cartel law of a Member State and, consequently, have been committed on Community territory. It is only necessary to decide the question whether the Commission may also be under a duty to set a penalty imposed by the authorities of a third State against another penalty if in the case in question the actions of the applicant complained of by the Commission, on the one hand, and by the American authorities, on the other, are identical.

4 Although the actions on which the two convictions in question are based arise out of the same set of agreements they nevertheless differ essentially as regards both their object and their geographical emphasis.

5 The Community conviction was directed above all towards the gentlemen's agreement for the division of the common market and Great Britain and towards the restriction of the production of synthetic quinidine to the Nedchem, Boehringer and Büchler undertakings. Although the conviction incurred in the United States may have been based in part on those factors, it related to a wider body of facts and was directed in particular against the agreement on quinquina bark and the acquisition and division of American strategic stocks by the cartel, and the successive application of particularly high selling prices in the United States until the middle of 1966. The parties disagree as to the appraisal of the actions on which this latter conviction was based in substance because the judgment against the applicant was delivered on the basis of a plea of *nolo contendere* so that only the indictment is available and not the arguments put forward or a reasoned judgment which is capable of removing the doubts as to the scope of the conviction.

It is for the applicant to establish that the actions are identical, which it was for this reason unable to do.

6 In any case the argument whereby the action penalized consists in the cartel agreement itself and not in its application cannot be accepted. In this connexion it is sufficient to recall that the judgment of the Court of 15 July 1970 between the same parties adopted a contrary point of view when, having established that the agreement had in several respects been 'in abeyance' between certain dates, it concluded that the infringements of the Treaty were more limited than the Commission had considered and drew the appropriate conclusions with regard to the fixing of the fine. In accordance with Article 85 of the Treaty, that judgment took account only of such instances of application of the cartel as may have affected trade between Member States or have distorted competition within the common market. Furthermore, the applicant has put forward nothing capable of confirming the argument that the conviction in the United States was directed against the application or effects of the cartel other than those occurring in that country. Nor, consequently, has it been established in this respect that the alleged actions were identical.

7 There are therefore no grounds for setting even part of the amount of the fine imposed on the applicant in the United States against the fine of 180 000 u.a. which it was ordered to pay for infringement of Article 85 of the Treaty.

8 Accordingly, the application must be dismissed.

Costs

Under Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant has failed in its pleas.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 85 and 173;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Dismisses the action as unfounded;**

2. **Orders the applicant to bear the costs of the action.**

Lecourt Monaco Pescatore

Donner Trabucchi Mertens de Wilmars Kutscher

Delivered in open court in Luxembourg on December 14 1972.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL MAYRAS DELIVERED ON 29 NOVEMBER 1972[1]

Mr President,
Members of the Court,

I — Introduction

A — *Review of the facts*

You are already aware of the facts giving rise to these proceedings.
Upon the outcome of administrative proceedings instituted under the conditions laid down in Council Regulation No 17, Boehringer Mannheim, a member of the international quinine cartel, was fined 190 000 u.a. for infringement of the provisions of Article 85 of the Treaty of Rome, by a decision of the Commission of the European Communities dated 16 July 1969.
Shortly before that date, this undertaking had been the object of criminal proceedings for infringement of the anti-trust legislation in the United States of America. In September 1968 the Grand Jury of the Southern District Court of New York (a Federal court) had preferred a bill of indictment against it, containing five counts. In the first the undertaking was accused of having, between the end of 1958 and the summer of 1966, unjustifiably restricted, by means of a concerted infringement, the internal and external trade of the United States, and of having thereby violated the provisions of Section 1 of the Sherman Act.
In the second count it was accused of committing the same infringement, over the same period, for the purpose of monopolizing the internal and external trade of the United States, and of having thereby violated the provisions of Section 2 of the Sherman Act.
The other counts dealt with, in particular, the violation of the Wilson Tariff Act, and with fraud which was committed against

[1] — Translated from the French.