



Press and Information

Court of Justice of the European Union

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Judgments in Joined Cases C-201/09 P ArcelorMittal Luxembourg v Commission and C-216/09 P Commission v ArcelorMittal Luxembourg and in Case C-352/09 P ThyssenKrupp Nirosta v Commission

The Court of Justice upholds the Commission's decisions fining ArcelorMittal Luxembourg €10 million and ThyssenKrupp Nirosta €3.17 million for anticompetitive conduct

The Commission may, after the expiry of the ECSC Treaty, apply procedural rules adopted on the basis of the EC Treaty to infringements of the ECSC Treaty

In 1994 the Commission imposed fines on the companies that had participated in a cartel in the steel beams market, including ArcelorMittal Luxembourg (formerly ARBED). The Commission adopted that decision¹ under the European Coal and Steel Community Treaty (ECSC), which laid down special rules on competition in the steel sector.

Also on the basis of that Treaty, the Commission, by a decision adopted in 1998², imposed a penalty on ThyssenKrupp Nirosta (formerly ThyssenKrupp Stainless) for participating in a cartel in the stainless steel flat products sector (alloy surcharge).

The two undertakings contested those decisions, and the Court of First Instance (now the General Court) and the Court of Justice annulled them, in 2003 and 2005 respectively, on the ground of breaches of the rights of the defence³.

The Commission thereupon decided to bring fresh proceedings in respect of those infringements of the ECSC Treaty. Thus, by decision of 8 November 2006⁴, the Commission found that ArcelorMittal Luxembourg and its subsidiaries had participated from 1 July 1988 to 16 January 1991 in a series of agreements and concerted practices whose object or effect had been to fix prices, allocate quotas and exchange information in the market concerned. On that basis, the Commission fined them €10 million.

As to ThyssenKrupp, the Commission found by decision of 20 December 2006⁵ that that company had infringed the competition rules by modifying and applying, in a concerted manner, the reference values used to calculate an alloy surcharge, and on that basis fined it €3.17 million.

In those new decisions the Commission applied the substantive rules of the ECSC Treaty, even though it had expired on 23 July 2002, in so far as the actions took place before that date. As regards the procedural rules, however, and its own powers to adopt the penalties it imposed, the

¹ Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams.

² Decision 98/247/ECSC of 21 January 1998 relating to a proceeding pursuant to Article 65 of the ECSC Treaty (Case IV/35.814 – Alloy surcharge).

³ Case [C-176/99 P ARBED v Commission](#), Joined Cases [T-45/98 and T-47/98 Krupp Thyssen Stainless and Others v Commission](#), and Joined Cases [C-65/02 P and C-73/02 P ThyssenKrupp v Commission](#).

⁴ Commission Decision C(2006) 5342 final of 8 November 2006 relating to a proceeding under Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams (Case COMP/F/38.907 – Steel beams).

⁵ Commission Decision of 20 December 2006 relating to a proceeding under Article 65 of the ECSC Treaty (Case No COMP/F/39.234 – Alloy surcharge – readoption).

Commission relied on a regulation adopted after the expiry of the ECSC Treaty, on the basis of the EC Treaty⁶.

The General Court, before which ArcelorMittal and ThyssenKrupp brought actions, annulled the Commission's decision concerning the subsidiaries of ArcelorMittal Luxembourg because the infringement was time-barred in relation to them. However, it rejected all the pleas put forward by the parent company ArcelorMittal Luxembourg⁷ and by ThyssenKrupp⁸.

Before the Court of Justice those two companies challenge in particular the General Court's finding that the Commission was entitled to fine them, after the expiry of the ECSC Treaty, for infringements committed before the expiry of the ECSC Treaty, on the basis of the substantive rules of the ECSC Treaty combined with the procedural rules and rules on competence subsequently adopted under the EC Treaty.

First, **as regards the Commission's powers**, the Court finds that it would be contrary to the objectives and the coherence of the Treaties and irreconcilable with the continuity of the legal order of the European Union if the Commission did not have jurisdiction to ensure the uniform application of the rules deriving from the ECSC Treaty which continue to produce effects even after the expiry of that Treaty.

Next, the Court states that the requirements of the principles of legal certainty and the protection of legitimate expectations mean that the **substantive rules of the ECSC Treaty** must be applied in the present case. That Treaty provided, at the material time, a clear legal basis for the penalties imposed, so that the undertakings could not be unaware of the consequences of their conduct.

In particular, the Court considers that, in so far as the Treaties defined clearly, before the material time, the infringements and the nature and extent of the penalties which could be imposed in respect of them, a diligent undertaking could not at any time be unaware of the consequences of its conduct or count on the fact that the **succession of the legal framework of the EC Treaty to that of the ECSC Treaty** would have the consequence of allowing it to escape all penalties.

As regards the legal basis for imposing the penalties and the procedural rules applicable, the Court recalls that penalties must be based on a legal basis in force at the time when they are adopted. Similarly, procedural rules are generally held to apply from the time of their entry into force.

The Court concludes, first, that the Commission's power to impose the fines did indeed derive from rules adopted on the basis of the EC Treaty and that the procedure had to be conducted in accordance with those rules. It finds, secondly, that the substantive law laying down the penalty applicable was indeed that of the ECSC Treaty.

Consequently, **the Court rejects the grounds of appeal and arguments put forward by ArcelorMittal Luxembourg and ThyssenKrupp and upholds the judgments of the General Court.**

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments ([C-201/09](#) and [C-352/09](#)) is published on the CURIA website on the day of delivery.

⁶ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

⁷ Case [T-405/06](#) *ArcelorMittal and Others v Commission*.

⁸ Case [T-24/07](#) *ThyssenKrupp Stainless v Commission*.

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