JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
11 March 1999 *

In Case T-147/94,

Krupp Hoesch Stahl AG, a company incorporated under German law established in Dortmund (Germany), represented by Otfried Lieberknecht and, at the hearing, by Martin Klusmann, Rechtsanwälte, Düsseldorf, with an address for service in Luxembourg at the Chambers of Alex Bonn, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall and Norbert Lorenz, of its Legal Service, and Géraud de Bergues, a national civil servant on secondment to the Commission, and subsequently by Jean-Louis Dewost, Director-General of its Legal Service, Julian Currall and Guy Charrier, a national civil servant on secondment to the Commission, acting as Agents, assisted by Heinz-Joachim Freund, Rechtsanwalt, Frankfurt, with an address for

* Language of the case: German.

service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION, principally, for the annulment of Commission 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 (OJ 1994 L 116, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of: C.W. Bellamy, acting as President, A. Potocki and J. Pirrung, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 23, 24, 25, 26 and 27 March 1998,

gives the following

Judgment [1]

The facts giving rise to the action

A — *Preliminary observations*

1 The present action seeks the annulment of Commission 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 (OJ 1994 L 116, p. 1, hereinafter 'the Decision'), by which the Commission found that seventeen European steel undertakings and one of their trade associations had participated in a series of agreements, decisions and concerted practices designed to fix prices, share markets and exchange confidential information on the market for beams in the Community, in breach of Article 65(1) of the ECSC Treaty, and imposed fines on fourteen undertakings operating within that sector for infringements committed between 1 July 1988 and 31 December 1990.

2 It is apparent from the Decision (recital 11(d)) that Hoesch Stahl AG (referred to thereafter in the Decision as 'Hoesch') is a wholly-owned subsidiary of Hoesch

1 — The facts giving rise to the present action and the procedure before the Court are described in paragraphs 1 to 70 of the judgment of the Court of First Instance of 11 March 1999 in Case T-141/94 *Thyssen* v *Commission* [1999] ECR II-347. The applicant's pleas and arguments which are identical or similar to those put forward in *Thyssen* v *Commission* are examined, in particular, in paragraphs 121 to 170 (Breach of essential procedural requirements during the procedure for the adoption of the Decision), 366 to 412 (Exchanges of information within the Poutrelles Committee (monitoring of orders and deliveries) and through the Walzstahl-Vereinigung), 457 to 565 (The Commission's involvement in the infringements of which the applicant is accused) and 604 to 613 (The statement of reasons in the Decision explaining the fine) of the *Thyssen* judgment.

AG, whose consolidated turnover was DEM 10 679 million in 1989. In 1992 it merged with Krupp to form Krupp Hoesch Stahl AG, the applicant in these proceedings.

...

D — *The Decision*

17 The Decision, which the applicant received on 3 March 1994 under cover of a letter of 28 February 1994 from Mr Van Miert, contains the following operative part:

'*Article 1*

The following undertakings have participated, to the extent described in this Decision, in the anti-competitive practices listed under their names which prevented, restricted and distorted normal competition in the common market. Where fines are imposed, the duration of the infringement is given in months except in the case of the harmonisation of extras where participation in the infringement is indicated by "x".

...

Hoesch

(a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung (monitoring system) (27)

(b) Price-fixing on the German market (3)

...

Article 4

For the infringements described in Article 1 which took place after 30 June 1988 (31 December 1989 [2] in the case of Aristrain and Ensidesa) the following fines are imposed:

...

Krupp Hoesch Stahl AG ECU 13 000

...

2 — The date mentioned in the French and Spanish versions of the Decision. The German and English versions give the date as 31 December 1988.

Article 6

This Decision is addressed to:

...

— Krupp Hoesch Stahl AG

...'.

...

E — *The fine*

...

The Court's exercise of its unlimited jurisdiction as regards the amount of the fine

203 By its nature, the fixing of a fine by the Court, in the exercise of its unlimited jurisdiction, is not an arithmetically precise exercise. Moreover, the Court is not bound by the Commission's calculations, but must carry out its own assessment, taking all the circumstances of the case into account.

204 In the present case the Court's examination has failed to disclose any error in the Commission's general approach in determining the level of the fines (paragraph 187 et seq. above),[3] even though that approach led to a very small fine being imposed on the applicant.

205 The Court observes that, while the applicant actually took part in the exchanges of statistical information, including that organised by the Poutrelles Committee, it did not attend the meetings of that committee and thus did not participate in the discussions held on the basis of those statistics.

206 The Court considers that those discussions not only demonstrated the anti-competitive nature of the exchange but also aggravated it by increasing the effect of mutual control inherent in that exchange. The various criticisms formulated at the meetings enabled those making them to give their competitors advance warning in specific cases of conduct deemed excessive, and also served to remind those competitors of the existence of a permanent control and the possibility of targeted retaliatory measures.

207 Although the coefficient of 1.5% used by the Commission is justified in the event of an exchange accompanied by such a system of discussions, the same percentage

3 — See *Thyssen* v *Commission*, [1999] ECR II-347, paragraph 577 et seq.

cannot be applied where an undertaking such as the applicant did not participate in that system but merely exchanged statistics, without being present at any of the meetings in question.

208 The Court therefore considers, in the exercise of its unlimited jurisdiction under the second paragraph of Article 36 of the Treaty, that in the applicant's case the coefficient must be reduced to 1% of its turnover. This coefficient is to apply to a period of 24 months out of a theoretical period of 30 months. The applicant's fine will be reduced accordingly.

...

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

1. **Fixes the amount of the fine imposed on the applicant by Article 4 of Commission Decision 94/315/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 at EUR 9 000;**

2. **Dismisses the remainder of the action;**

3. **Orders the applicant to bear its own costs and to pay half of the defendant's costs. The defendant shall bear half of its own costs.**

Bellamy Potocki Pirrung

Delivered in open court in Luxembourg on 11 March 1999.

H. Jung C.W. Bellamy

Registrar President