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

In Case T-138/94,

Cockerill-Sambre SA, a company incorporated under Belgian law, established in Brussels, represented by Alexandre Vandencasteele, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant,

v

Commission of the European Communities, represented initially by Julian Currall, of its Legal Service, and Géraud Sajust 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 Hans-Joachim Freund, Rechtsanwalt, Frankfurt am Main, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

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 According to the Decision (recital 13), Cockerill-Sambre SA (hereinafter 'Cockerill-Sambre') is Belgium's principal steel producer. During the period to

1 — Only the paragraphs of the grounds of the present judgment which the Court considers it appropriate to publish are reproduced here. Apart from the fact that the infringements of which the applicant in the present case is accused cam to an end on 31 December 1989, the remaining paragraphs are broadly identical or similar to those in the judgment of the Court of First Instance of 11 March 1999 in Case T-141/94 *Thyssen* v *Commission* [1999] ECR II-347, with the exception, in particular, of paragraphs 74 to 120, 413 to 422, 566 to 574 and 614 to 625 of that judgment, which have no equivalent in the present judgment. Likewise, the infringements of Article 65(1) of the Treaty which the applicant is alleged to have committed in certain national markets are not the same as those allegedly committed by the applicant in *Thyssen*. In the present case the partial annulment of Article 1 of the Decision is justified by the fact that there is no evidence that the applicant participated in the infringements referred to in paragraph 1 of the operative part of this judgment.

which the Decision relates, SA Steelinter (hereinafter 'Steelinter') was the main distributor of Cockerill-Sambre which owned — directly or indirectly — all of its shares. Steelinter was taken over by Cockerill-Sambre on 30 September 1989 (application, point 6). In 1990, the Cockerill-Sambre group had a turnover of BEF 203 000 million. In 1989, the last year in which Cockerill-Sambre produced beams, they accounted for BEF 5 740 million, or ECU 132 million, of its turnover in the Community.

...

D — *The Decision*

47 The Decision, which the applicant received under cover of a letter of 28 February 1994 from Mr Van Miert ('the Letter'), contains the following operative part:

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'*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".

...

Cockerill-Sambre

(a) Exchange of confidential information through the Poutrelles Committee (18)

(b) Price fixing in the Poutrelles Committee (18)

(c) Price fixing in the Danish market (12)

(d) Market sharing, "Traverso system" (3)

(e) Market sharing, France (3)

(f) Market sharing, Italy (3)

(g) Harmonisation of extras (x)

(h) Price fixing on the French market

(i) Price fixing on the Italian market

...

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:

...

Cockerill-Sambre SA	ECU 4 000 000

...

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:

...

— Cockerill-Sambre SA

...'.

The alternative claim for annulment of Article 4 of the Decision or, at least, reduction of the fine

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Assessment of the gravity of the infringements

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572 As regards the argument which the applicant derives from its allegedly competitive, indeed aggressive, conduct on the market, the fact that an undertaking which has been proved to have participated in collusion on prices with its competitors did not behave on the market in the manner agreed with its competitors is not necessarily a matter which must be taken into account as a mitigating circumstance when determining the amount of the fine to be imposed (see Case T-2/89 *Petrofina* v *Commission* [1991] ECR II-1087, paragraph 173, and Case T-308/94 *Cascades* v *Commission* [1998] ECR II-925, paragraph 230). An undertaking which, despite colluding with its competitors, follows a more or less independent policy on the market may simply be trying to exploit the cartel for its own benefit. In the present case the evidence provided by the applicant does not support the view that its actual conduct on the market was such as to counteract the anticompetitive effects of the infringements found to have occurred.

...

The applicant's alleged cooperation with the Commission during the administrative procedure

593 As regards the 'unreserved and special cooperation' which the applicant allegedly provided during the investigation carried out by the Commission, it should be noted at the outset that in their reply of 7 November 1991 to a request for information sent to them pursuant to Article 47 of the Treaty, both the applicant and Steelinter stated that they had no list of the participants in the meetings of the Poutrelles Committee and the Eurofer/Scandinavia group, or any of the records, minutes, or reports relating to a number of those meetings referred to in the Commission's request, whereas it is clear from the evidence before the Court that they received such documents on a regular basis.

594 Furthermore, apart from the fact that it participated in a number of the meetings in question, the applicant did not accept that any of the allegations of fact made against it had a sound basis.

595 The Commission correctly considered that the applicant, by replying in that way, did not conduct itself in a manner which justified a reduction in the fine on grounds of cooperation during the administrative procedure. A reduction on that ground is justified only if the conduct enabled the Commission to establish an infringement more easily and, where relevant, to bring it to an end see (*Cascades* v *Commission*, cited above, paragraph 255 et seq.).

...

The Court's exercise of its unlimited jurisdiction

597 The Court has already annulled Article 1 of the Decision in so far as it finds that the applicant participated in a market-sharing agreement on the Italian market (see paragraph 364 above). The fine imposed by the Commission for that infringement was set at ECU 59 400.

598 For the reasons set out in paragraphs 402 and 411 [3] above, the period from 1 July 1988 to 31 December 1988 must also be excluded in calculating the fine relating to the infringement of price-fixing on the Danish market, which, in the case of the applicant, means a reduction of the fine by ECU 13 200, following the method used by the Commission.

3 — See *Thyssen* v *Commission*, [1999] ECR II-347, paragraph 451.

599 Finally, for the reasons explained in paragraph 561 et seq.[4] above, the Court considers that the total amount of the fine imposed for the price-fixing agreements and concerted practices should be reduced by 15% in view of the fact that the Commission exaggerated to some extent the anti-competitive effects of the infringements which it found to have occurred. If account is taken of the reductions already mentioned concerning the pricing agreements on the Danish market, that reduction comes to ECU 338 600, following the method of calculation used by the Commission.

600 Applying the Commission's method, the fine imposed on the applicant should therefore be reduced by ECU 411 200.

601 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.

602 The Court considers that the Commission's general approach in determining the level of the fines (paragraph 522 et seq.[5] above) is justified by the circumstances of the case. The infringements involving price-fixing and market-sharing, which are expressly prohibited by Article 65(1) of the Treaty, must be treated as particularly serious since they involve direct interference with the essential parameters of competition on the market in question. Likewise, the systems for the exchange of confidential information, in which the applicant is accused of having been involved, had a purpose similar to market-sharing according to traditional flows. All of the infringements taken into account for the purpose of the fine were committed, following the end of the crisis regime, after the undertakings had received appropriate warnings. As the Court has found, the general objective of the agreements and practices in question was precisely to prevent or distort the return to normal competition entailed by the ending of the manifest crisis regime. The undertakings, moreover, were aware of their unlawful nature and deliberately concealed them from the Commission.

4 — See *Thyssen* v *Commission*, [1999] ECR II-347, paragraph 640 et seq.
5 — See *Thyssen* v *Commission*, [1999] ECR II-347, paragraph 577 et seq.

603 Having regard to all of the foregoing and the entry into effect, on 1 January 1999, of Council Regulation (EC) No 1103/97 of 17 June 1997 laying down certain provisions concerning the introduction of the euro (OJ 1997 L 162, p. 1), the amount of the fine must be fixed at EUR 3 580 000.

...

On those grounds,

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

hereby:

1. Annuls Article 1 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 in so far as it finds that the applicant participated in a market-sharing agreement on the Italian market which lasted three months and in an infringement involving price-fixing on the Danish market between 1 July 1988 and 3 November 1988;

2. Fixes the amount of the fine imposed on the applicant by Article 4 of Decision 94/215/ECSC at EUR 3 580 000;

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

4. **Orders the applicant to bear its own costs and to pay four fifths of the defendant's costs. The defendant shall bear one fifth of its own costs.**

Bellamy Potocki Pirrung

Delivered in open court in Luxembourg on 11 March 1999.

H. Jung C.W. Bellamy

Registrar President