JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)

8 July 2003 *

In Case T-374/00,

Verband der freien Rohrwerke eV, established in Düsseldorf (Germany),

Eisen- und Metallwerke Ferndorf GmbH, established at Kreuztal-Ferndorf (Germany),

Rudolf Flender Gmbh & Co. KG, established at Siegen (Germany),

represented by H. Hellmann, lawyer,

applicants,

v

Commission of the European Communities, represented by W. Mölls and W. Wils, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

supported by

Mannesmann AG, established in Düsseldorf (Germany), represented by K. Moosecker and K. Niggemann, lawyers,

and by

Salzgitter AG, established in Salzgitter (Germany), represented by J. Sedemund and T. Lübbig, lawyers,

interveners,

APPLICATION for the annulment of Decision COMP/M.2045 of 5 September 2000 and Decision COMP/ECSC.1336 of 14 September 2000 whereby the Commission approved, on the basis of Article 6(1)(b) of Regulation (EEC) No 4064/89 and Article 66(2) CS respectively, the acquisition by Salzgitter of control of Mannesmannröhren-Werke,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2003,

gives the following

Judgment

Legal context

A — *Legal context of the ECSC decision*

1 Article 33 CS provides as follows:

'...

Undertakings or associations referred to in Article 48 may, under the same conditions, institute proceedings against decisions or recommendations concerning them which are individual in character or against general decisions or recommendations which they consider to involve a misuse of powers affecting them.

The proceedings provided for in the first two paragraphs of this Article shall be instituted within one month of the notification or publication, as the case may be, of the decision or recommendation.

...'

2 Pursuant to Article 66 CS:

'1. Any transaction shall require the prior authorisation of the Commission, subject to the provisions of paragraph 3 of this Article, if it has in itself the direct or indirect effect of bringing about within the territories referred to in the first paragraph of Article 79, as a result of action by any person or undertaking or group of persons or undertakings, a concentration between undertakings at least one of which is covered by Article 80, whether the transaction concerns a single product or a number of different products, and whether it is effected by merger, acquisition of shares or parts of the undertaking or assets, loan, contract or any other means of control. For the purpose of applying these provisions, the Commission shall, by regulations made after consulting the Council, define what constitutes control of an undertaking.

2. The Commission shall grant the authorisation referred to in the preceding paragraph if it finds that the proposed transaction will not give to the persons or undertakings concerned the power, in respect of the product or products within its jurisdiction:

— to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for those products; or

— to evade the rules of competition instituted under this Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

...'.

3 Finally, Article 80 CS provides as follows:

'For the purposes of this Treaty, "undertaking" means any undertaking engaged in production in the coal or the steel industry within the territories referred to in the first paragraph of Article 79, and also, for the purposes of Articles 65 and 66 and of information required for their application and proceedings in connection with them, any undertaking or agency regularly engaged in distribution other than sale to domestic consumers or small craft industries.'

B — *Legal context of the EC decision*

4 Article 2 of Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1, as rectified in OJ 1990 L 257, p. 13, and as amended by Council Regulation (EC) No 1310/97 of 30 June 1997 (OJ 1997 L 180, p. 1, 'Regulation No 4064/89') provides as follows:

'1. Concentrations within the scope of this Regulation shall be appraised in accordance with the following provisions with a view to establishing whether or not they are compatible with the common market.

In making this appraisal, the Commission shall take into account:

(a) the need to maintain and develop effective competition within the common market in view of, among other things, the structure of all the markets

concerned and the actual or potential competition from undertakings located either within or outwith the Community;

(b) the market position of the undertakings concerned and their economic and financial power, the alternatives available to suppliers and users, their access to supplies or markets, any legal or other barriers to entry, supply and demand trends for the relevant goods and services, the interests of the intermediate and ultimate consumers, and the development of technical and economic progress provided that it is to consumers' advantage and does not form an obstacle to competition.

2. A concentration which does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it shall be declared compatible with the common market.

...'

5 Article 6(1) of Regulation No 4064/89 provides as follows:

'The Commission shall examine the notification as soon as it is received.

...

(b) Where it finds that the concentration notified, although falling within the scope of this Regulation, does not raise serious doubts as to its compatibility with the common market, it shall decide not to oppose it and shall declare that it is compatible with the common market.

...'.

Facts and procedure

6 This application for annulment has been lodged by Verband der freien Rohrwerke eV ('VFR'), an association of undertakings, and two of its members, namely Eisen- und Metallwerke Ferndorf GmbH ('Ferndorf') and Rudolf Flender GmbH & Co KG ('Flender').

7 VFR is an association representing the interests of 10 medium-size undertakings in Germany which produce welded steel pipes from hot-rolled wide strips or quarto plates and do not belong to one of the major European steel groups. The association is, in turn, a member of the Wirtschaftsverband Eisen, Blech und Metall Verarbeitende Industrie eV, an association representing the interests of various branches of the iron, metal sheet and metal manufactuing industry ('EBM').

8 Ferndorf mainly produces steel pipes with a diameter of over 406 mm ('large pipes') with spiral welding. Flender produces steel pipes with a diameter of less than 406 mm ('small pipes') with longitudinal welding. It should be observed that, unlike the other members of the VFR which produce steel pipes from quarto plates, Ferndorf and Flender produce them from hot-rolled wide strips.

9 On 1 August 2000 Salzgitter AG, a major German undertaking which produces and processes steel products on an integrated basis ('Salzgitter'), notified the Commission of its intention to acquire control of Mannesmannröhren-Werke AG ('MRW'), a company owned by Mannesmann AG (99.3%) and Thyssen AG (0.7%), which produces and markets steel pipes and raw materials for the production of pipes (this operation is hereinafter referred to as the 'concentration at issue'). Europipe SA, which produces steel pipes with longitudinal welding and spiral welding, is controlled jointly by MRW and Dillingerhütte ('DH'), which forms part of the Usinor group. In addition, MRW has joint control, with the Vallourec group, of Vallourec & Mannesmann Tubes SA, which also produces steel pipes. Finally, MRW has joint control, with Thyssen Krupp Stahl AG ('TKS'), of Hüttenwerke Krupp Mannesemann GmbH ('HKM'), which produces crude steel and semi-finished products.

10 In so far as the concentration at issue involved steel products which, by virtue of Article 81 CS in conjunction with Annex I to the same Treaty, were subject to the appraisal of concentrations under Article 66 CS, and processed products such as steel pipes, which fell within the scope of the EC Treaty, notification of the project was given pursuant to both Article 4(1) of Regulation No 4064/89 and Article 66 CS.

11 By notice published in the Official Journal on 12 August 2000 the Commission requested interested parties to give their opinion on the concentration at issue within 10 days.

12 Following this notice, EBM and Ferndorf informed the Commission of their reservations with regard to the notified concentration. They stated that they feared that, following the concentration, Salzgitter would no longer be interested in supplying, on competitive terms, quarto plates and hot-rolled wide strips to

pipe producers not belonging to a large integrated steel group ('independent pipe producers'), particularly as they competed with Salzgitter and certain companies controlled by it in the downstream pipe market.

13 On 5 September 2000 the Commission adopted decision COMP/M.2045 — Salzgitter/Mannesmannröhren-Werke whereby the concentration at issue was declared compatible with the common market pursuant to Articles 2(2) and 6(1)(b) of Regulation No 4064/89 ('the EC decision').

14 On 14 September 2000 the Commission adopted decision COMP/ECSC.1336 — Salzgitter/Mannesmannröhren-Werke whereby the concentration at issue was authorised pursuant to Article 66(2) CS ('the ECSC decision', the ECSC decision and the EC decision being referred to together as 'the contested decisions').

15 In the latter decision the Commission stated that there was no foundation for the objections to the proposed concentration raised by various independent manufacturers of large pipes established in Germany, who feared that Salzgitter would discriminate against them with regard to supplying quarto plates and hot-rolled wide strips. The Commission took the view that, if Salzgitter were to discriminate in that way, it would always be possible to take the measures provided for by Articles 65 and 66(7) CS. Nevertheless the Commission took note of the following declaration by Salzgittter:

'The Salzgitter group hereby declares that, in connection with the notification of a concentration pursuant to the regulation on the appraisal of concentrations and Article 66(3) CS, in the event of authorisation of the concentration by the European Commission, Salzgitter will continue to make offers to its customers, in

particular producers of large welded pipes, which conform with market conditions as long as the Salzgitter group produces such goods. It will not take any discriminatory measures against its customers, particularly with regard to price, quality and conditions of delivery. The basis of comparison for non-discrimination is constituted by the terms granted to Europipe so far as quarto plates are concerned and, so far as hot-rolled wide strips are concerned, by the terms at present granted by Salzgitter AG to pipe producers' ('the declaration of non-discrimination').

16 By letter of 25 September 2000, EBM asked the Commission for more detailed information on the decisions approving the concentration at issue and regarding the possibility of submitting observations on those decisions.

17 Following this request, the Commission faxed copies of the contested decisions to EBM on 3 October 2000.

18 EBM responded by letter of 4 October 2000. It pointed out that its members included a number of small steel-pipe producers who were also concerned by the concentration at issue, so that Salzgitter should also give an undertaking not to discriminate against them.

19 By letter of 30 October 2000, the applicants informed the Commission of their criticisms of the contested decisions. In particular, they set out the reasons why they considered that the decisions and also the declaration of non-discrimination reproduced in them did not take sufficient account of the interests of independent pipe producers. They also asked the Commission to send them paper copies of the contested decisions. They received the copies on 14 November 2000.

20 By letter of 23 November 2000, the applicants asked the Commission to give them access to the administrative file of the concentration at issue. The Commission informed them by letter of 1 December 2000 that it was unable to accede to this request. It also confirmed, by letter of 5 December 2000, that Salzgitter refused permission for a copy of the notification, even after deletion of the business secrets which it contained, to be sent to them.

21 The applicants brought the present action by application lodged at the Registry on 12 December 2000.

22 Mannesmann and Salzgitter sought leave to intervene in support of the Commission by letters of 8 and 20 March 2001 respectively.

23 After receiving the parties' observations, the President of the Third Chamber gave leave, by order of 17 May 2001, for Salzgitter and Mannesmann to intervene in support of the Commission ('the interveners'). They lodged their statement in intervention on 2 July 2001.

24 The written procedure ended with the lodging of the rejoinder on 14 December 2001.

25 On the report of the Judge-Rapporteur, the Court (Third Chamber) decided to open the oral procedure and, in the framework of the procedural organisation measures provided for in Article 64 of the Rules of Procedure, requested the parties to produce certain documents and to reply to written questions.

26 The parties presented oral argument and their replies to oral questions from the Court at the hearing on 16 January 2003.

Forms of order sought by the parties

27 The applicants claim that the Court should:

— order the Commission to produce the administrative file of the concentration at issue or, at least, the notification(s) of the concentration;

— annul the contested decisions;

— order the Commission to pay the costs.

28 The Commission, supported by the interveners, contends that the Court should:

— dismiss the application for annulment as inadmissible;

— in the alternative, dismiss the application for annulment as unfounded;

— order the applicants to pay the costs.

Admissibility

A — *Admissibility of the application for annulment of the ECSC decision*

1. *Arguments of the parties*

29 The Commission, supported by the interveners, considers that the application is inadmissible with regard to seeking the annulment of the ECSC decision in so far as the applicants do not have the standing required to bring proceedings. The Commission points out that the applicants are not 'undertakings or... associations referred to in Article 48 [CS]' which, under the second paragraph of Article 33 CS, are the only ones which may institute proceedings against decisions or recommendations adopted on the basis of the ECSC Treaty.

30 In addition, the Commission claims that the action, which was brought on 11 December 2000, is out of time. It observes that, according to the case-law, in a case such as the present, where the contested decision was not notified to the applicants and was not published in the Official Journal either, the period of one month specified in the third paragraph of Article 33 CS begins to run from the moment when the applicant acquires knowledge of the content and of the reasons for the decision (see the judgment in Case 236/86 *Dillinger Hüttenwerke* v *Commission* [1988] ECR 3761, paragraph 14). However, according to the Commission, several factors indicated that the applicants were aware of the entire ECSC decision and its statement of reasons on 30 October 2000 at the latest, and most probably before that date.

31 The applicants contend that they have the capacity required to bring an action for the annulment of the ECSC decision. They observe that the admissibility of an action brought by a third party against a decision adopted on the basis of the ECSC Treaty is subject to the same conditions as the admissibility of an action for the annulment of a decision adopted on the basis of the EC Treaty because, under Article 33 CS, third parties may institute proceedings against 'decisions... concerning them which are individual in character', which is the case here. The applicants also consider that the system established by the ECSC Treaty, which denies access to the courts to all undertakings which do not fall within the scope of that Treaty, even if a decision adopted on the basis of the Treaty is of direct and individual concern to them, has a shortcoming from the viewpoint of constitutional principles and, in particular, the principle of equal treatment.

32 The applicants also reject the Commission's argument that the action is out of time in seeking the annulment of the ECSC decision. They contend that they have not yet been notified of the decision, so that, under the third paragraph of Article 33 CS, the one-month period specified by that provision has not yet begun to run.

2. *Findings of the Court*

33 The second paragraph of Article 33 CS provides that 'undertakings or the associations referred to in Article 48 [CS]' may, under the same conditions as those laid down in the first paragraph, institute proceedings against decisions or recommendations concerning them which are individual in character or against general decisions or recommendations which they consider to involve a misuse of powers affecting them. It has consistently been held that Article 33 provides an exclusive list of the persons entitled to bring an action for annulment, so persons not referred to therein may not validly institute such proceedings (see the judgment in Case 222/83 *Municipality of Differdange and Others* v *Commission* [1984] ECR 2889, paragraph 8, and the orders in Case T-4/97 *D'Orazio and Hublau* v *Commission* [1997] ECR II-1505, paragraph 15, and Case T-70/97 *Région Wallonne* v *Commission* [1997] ECR II-1513, paragraph 22).

34 Furthermore, it is clear from Article 80 CS that the term 'undertakings' refers to undertakings 'engaged in production in the coal or steel industry within [the Community]' and also, for the purposes of Articles 65 and 66 CS and proceedings in connection with them, any undertaking or agency engaged in distribution in the same field.

35 Regarding the 'associations referred to in Article 48 [CS]', this term covers associations which are made up of and represent undertakings within the meaning of Article 80 CS (see, to that effect, the judgments in Joined Cases 7/54 and 9/54 *Groupement des Industries Sidérurgiques Luxembourgeoises* v *High Authority* [1956] ECR 175, 189; Case 67/63 *Sorema* v *High Authority* [1964] ECR 293, 316; Case C-180/88 *Wirtschaftsvereinigung Eisen- und Stahlindustrie* v *Commission* [1990] ECR I-4413, paragraph 23, and Case T-239/94 *EISA* v *Commission* [1997] ECR II-1839, paragraph 28).

36 In the present case, it must be observed that Ferndorf and Flender are not engaged in production or distribution in the coal and steel industry because they produce steel pipes, which are not mentioned in Annex I to the ECSC Treaty and therefore do not fall within its scope. As for VFR, it represents the interests of steel pipe producers.

37 Therefore, even assuming that the applicants were able to show that the ECSC decision is of concern to them, they nevertheless manifestly do not have the standing required to bring an action for the annulment of the decision pursuant to the second paragraph of Article 33 CS.

38 In that connection there is no foundation for the applicants' argument that the limitation of the right to institute proceedings against decisions and recommendations adopted pursuant to the ECSC Treaty to undertakings and associations of undertakings falling within the scope of the Treaty is contrary

to the principle of effective judicial protection and the principle of equal treatment. It is true that, according to settled case-law, the provisions of the ECSC Treaty concerning the rights of individuals to bring an action must be interpreted widely in order to safeguard their legal protection (see the judgments in Case 66/76 *CFDT* v *Council* [1977] ECR 305, paragraph 8, and Joined Cases T-12/99 and T-63/99 *UK Coal* v *Commission* [2001] ECR II-2153, paragraph 53). However, it must be observed that this broad interpretation cannot contradict the clear terms of the ECSC Treaty. As the Community Courts have observed on many occasions, they have no authority to depart from the provisions for the protection of legal rights set out in the Treaties (with specific reference to the remedies provided for by the ECSC Treaty, see the judgment in Case 12/63 *Schlieker* v *High Authority* [1963] ECR 85, 90).

39 It follows from the foregoing that the action is inadmissible with regard to annulment of the ECSC decision, and it is unnecessary to consider whether the application is out of time by reference to the one-month time-limit laid down by the third paragraph of Article 33 CS.

B — *Admissibility of the application for annulment of the EC decision*

1. *Arguments of the parties*

40 The Commission, supported in this respect by the interveners, questions whether the application is admissible. It considers that, contrary to the requirements of the fourth paragraph of Article 230 EC, the EC decision, which is not addressed to the applicants, is not of individual concern to them.

41 The Commission points out, first, that VFR and Flender meet none of the three criteria applied by the Court in the judgment in Case T-2/93 *Air France* v *Commission* [1994] ECR II-323 in reaching its conclusion that the applicant in that case was individually concerned, namely, first, the applicant had, at the stage of the administrative procedure, expressed reservations concerning the notified concentration; second, the Commission had assessed the competition situation on the relevant markets, taking specific account of the applicant's situation, and, third, the applicant had been compelled, under an agreement with the French Government and the Commission, to divest its holding in the company TAT. With regard to Ferndorf, the Commission considers that the mere fact that it took part in the administrative procedure was not sufficient to distinguish it individually because, in accordance with normal practice, the Commission had contacted numerous undertakings in connection with the notified concentration and received some 20 replies.

42 Secondly, the Commission submits that the applicants are wrong in referring to the judgment in Case T-96/92 *CCE de la Société Générale des Grandes Sources and Others* v *Commission* [1995] ECR II-1213, in which the Court took the view that the fact that Article 18(4) of Regulation No 4064/89 expressly designates the recognised representatives of the employees of undertakings concerned by a concentration as being among the third parties having a sufficient interest to be heard by the Commission, is sufficient to regard them as individually concerned by the Commission's decision on the compatibility of that concentration with the common market. The Commission considers that this principle cannot be applied to the present case in so far as, unlike the recognised representatives of employees, the applicants do not belong to a clearly defined group and have no special rights under Regulation No 4064/89.

43 Thirdly, the Commission considers that, contrary to the applicants' submissions, the mere fact that the concentration has adverse effects on the economic situation of Ferndorf and Flender as independent pipe producers is not sufficient to differentiate them from all other persons in so far as, apart from the fact that this

allegation is based partly on incorrect information, there are many independent pipe producers in the Community in a similar situation.

44 Finally, the Commission considers that the applicants are wrong in referring to the judgment in case T-3/93 *Air France* v *Commission* [1994] ECR II-121, in so far as, unlike the present case, the situation of the applicant, Air France, in that case was clearly different from that of other operators in the market.

45 The applicants submit that they have standing to institute proceedings for the annulment of the EC decision.

2. *Findings of the Court*

46 The EC decision is not addressed to the applicants, but only to the parties to the concentration. Accordingly, under the fourth paragraph of Article 230 EC, the applicants may bring an action for the annulment of the decision only if it is of direct and individual concern to them.

47 In the present case it is manifest, and also common ground, that the EC decision is of direct concern to the applicants. Since it enables the proposed concentration to be put into effect, the contested decision is such as to bring about an immediate change in the situation in the markets concerned, depending solely on the wishes of the parties to the concentration (see the judgment in the *Air France* case, cited in paragraph 44 above, paragraph 80).

48 Therefore it is necessary to establish whether the decision is also of individual concern to the applicants.

49 It has consistently been held that 'persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed' (see the judgments in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107, and *Air France*, cited in paragraph 41 above, paragraph 42).

50 In this connection the Court finds, first, that, as appears from paragraphs 37 and 43 of the EC decision, Ferndorf is a direct competitor of the parties to the concentration in the market for large pipes with spiral welding. The concentration at issue is therefore liable to affect Ferndorf as a direct competitor.

51 Secondly, the concentration at issue is also likely to affect Ferndorf as a buyer of raw materials necessary for the production of pipes. It is common ground that, as a pipe producer which does not produce its own hot-rolled wide strips which it needs for making large spirally welded pipes, Ferndorf obtained supplies from Salzgitter to meet its needs on several occasions. Salzgitter's statement in intervention shows that in 1998 and 1999 it supplied Ferndorf with 2 100 tonnes and 10 200 tonnes respectively of hot-rolled wide strips which, at least for 1999, represented a considerable portion of the latter's annual consumption. In addition, in their pleadings and at the hearing, the applicants stated that the adverse effects of the concentration on their supply situation would be all the greater in that, as a result of that transaction, Salzgitter indirectly acquired joint control of Europipe, the biggest pipe producer in the Community, and that it would therefore be tempted to give preference to Europipe, to the applicants' disadvantage, with regard to supplying hot-rolled wide strips. The applicants added that the concentration would also have the effect of creating links between Salzgitter and the other major suppliers of such strips, namely the Usinor group

and the Thyssen group, and that it could not be ruled out that, in the context of those links, the parties to the concentration and the said other suppliers would be prompted to coordinate their activities in the markets for the raw materials necessary for the production of pipes, to the disadvantage of independent pipe producers. Finally, the applicants contended that their fears regarding the adverse effects of the concentration on their supplies of hot-rolled wide strips had been confirmed by the fact that, since the implementation of the concentration in August 2000, the parties to it had refused to supply Flender with hot-rolled wide strips.

52 Furthermore, it must be observed that, following the notification provided for by Article 4(3) of Regulation No 4064/89, Ferndorf actively participated in the administrative procedure.

53 After Ferndorf, on its own initiative, asked the Commission to allow it to reply to the questionnaire which had been sent to various economic operators in order to obtain information on the potential effects of the concentration on the markets in question, Ferndorf raised various objections to the transaction. In particular, in its letters of 22 and 24 August 2000 and likewise in the reply to the questionnaire annexed to the second letter, Ferndorf stated that the concentration would have the effect of strengthening the competitive situation of the parties to the concentration in the market for wide pipes with spiral welding, to the detriment of independent pipe producers who, like itself, did not themselves produce the raw materials necessary for making pipes and who are unable to obtain them at competitive prices from the major integrated steel groups.

54 It is also clear from paragraphs 20 to 23 of the ECSC decision, which forms part of the context of the statement of reasons in the EC Decision (see paragraph 123), and from the Commission's pleadings, that the Commission took account of the

objections of the independent pipe producers such as Ferndorf in assessing the competition situation on the markets for the raw materials necessary for making pipes, as well as on the pipe markets.

55 It must be observed that, in paragraph 23 of the ECSC decision, the Commission noted Salzgitter's declaration of non-discrimination. However, it is clear from that passage, and it is also common ground between the parties, that it was precisely in order to meet the objections raised by various independent pipe producers, such as Ferndorf, that in the declaration in question Salzgitter undertook not to apply discriminatory conditions with regard to supplying independent pipe producers with quarto plates and hot-rolled wide strips.

56 In those circumstances it must be concluded that the EC decision is of direct and individual concern to Ferndorf.

57 In addition, since one and the same application is involved, there is no need to consider whether the other applicants are entitled to bring proceedings (see the judgments in Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 31, and Joined Cases T-127/99, T-129/99 and T-148/99 *Diputación Foral de Álava and Others* v *Commission* [2002] ECR II-1275, paragraph 52).

58 It follows from the foregoing that the action is admissible in so far as it seeks the annulment of the EC decision.

C — *The applicants' submission that the action is admissible in its entirety in so far as it seeks the annulment of two decisions which in reality form a single decision*

1. *Arguments of the parties*

59 The applicants consider that the Commission's arguments seeking to show that the action is inadmissible are based on a mistaken view of the law, namely that the ECSC decision and the EC decision are independent legal acts which are based on different provisions and are therefore subject to different conditions with regard to the admissibility of the applications seeking their annulment. The applicants take the view that in reality the two decisions form a single administrative act to which uniform conditions of admissibility must be applied, so that an application which, as in the present case, meets the admissibility conditions of one of the two treaties must be declared admissible in its entirety.

60 In support of this assertion, the applicants contend, first, that the Commission's view of the law is undermined by the fact that the contested decisions have as their subject one and the same indivisible concentration plan which, pursuant to Article 66(1) CS and Article 7(1) of Regulation No 4064/89, falls within the ambit of the appraisal of concentrations by the Commission and which consequently can be lawful only if it meets the requirements of both. According to the applicants, a single decision ought therefore to have been adopted which fulfilled the requirements of both legislative fields.

61 Second, they consider that the fact that the adoption of separate decisions may possibly lead to contradictory results is contrary to the principle that administrative action must be consistent and lawful. That requires the Commission's decisions to take account of the legal rules which fall within its competence and

which are applicable to the subject-matter of the procedure or which may influence its assessment (see the judgments in Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraphs 41 and 42; Case C-164/98 P *DIR International Film and Others* v *Commission* [2000] ECR I-447, paragraphs 21 and 30, and Case T-156/98 *RJB Mining* v *Commission* [2001] ECR II-337, paragraph 112).

62 Third, the applicants consider that the Commission's approach conflicts with the trends expressed in its Notice concerning alignment of procedures for processing mergers under the ECSC and EC Treaties (OJ 1998 C 66, p. 36, 'the Procedure Alignment Notice') in so far as it is clear from the notice that concentrations falling within the scope of the two prohibitions must be examined from both viewpoints in the course of a single procedure and that the rules of Regulation No 4064/89 and its implementing provisions apply in a similar manner to the present procedure.

63 Fourth, the applicants consider that the Commission's approach is mistaken in so far as, the concentration having probably been the subject of a single notification, the Commission could only have given a ruling on the transaction in a decision adopted within one month of the receipt of notification (Article 10(1) of Regulation No 4064/89). They observe that although, in the Procedure Alignment Notice, the Commission did not accept that the one-month period was generally binding, in a case such as the present the one-month period should be applied because of the requirement of legal certainty and the need to avoid distorting the notification system established by Regulation No 4064/89.

64 Fifth, the applicants contend that the Commission's approach is wrong in view of the expiry of the ECSC Treaty in 2002. An examination from the point of view of merger control presupposes a long-term assessment of the effects of the

concentration on market structures, so that the Commission ought to have taken account, having regard to the law deriving from the EC Treaty relating to the merger control, of the structural changes in competition conditions which the concentration was likely to cause in the steel markets and consumer goods markets situated downstream in the economic process, and ought to have done so with respect to a period extending beyond the period of validity of the ECSC Treaty.

65 Finally, the applicants submit that the Commission's approach restricts their legal protection in so far as there is a possibility that, in certain cases, that approach may mean that an interested party would be compelled to bring an action for the annulment of the first decision before even having any knowledge of the second.

66 The Commission rejects the entire argument that it ought to have authorised the concentration in a single decision.

2. *Findings of the Court*

67 First of all, it must be observed that the concentration at issue falls within the scope of both the ECSC Treaty and the EC Treaty in so far as the parties to the concentration are active not only in the production of steel, as defined in Annex I to the ECSC Treaty, but also in sectors further down the steel-processing line which fall within the scope of the EC Treaty and not the ECSC Treaty (hereinafter referred to as 'a mixed concentration').

68 According to settled case-law, it follows from Article 305(1) EC that the rules of the ECSC Treaty and all the provisions adopted in implementation of that Treaty remain in force as regards the functioning of the common market, notwithstanding the supervening EC Treaty (see the judgments in Case 239/84 *Gerlach* [1985] ECR 3507, paragraph 9, and Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano* v *Commission* [2002] ECR I-7869). Therefore, in so far as Article 66 of the ECSC Treaty lays down specific rules for the appraisal of concentrations, those rules apply, as *lex specialis*, to concentrations or the parties thereto covered by the Treaty. It follows that, in the particular case of a mixed concentration, the aspects of the transaction which fall within the scope of the ECSC Treaty must be examined in the light of the rules laid down by Article 66 CS, while all other aspects of the concentration must be examined in the framework of the general system for the appraisal of concentrations established by Regulation No 4064/89.

69 Moreover, as both Article 66 CS and Regulation No 4064/89 lay down a prior authorisation system for concentrations, the parties to a mixed concentration can implement a notified proposal for a concentration only if they have two separate authorisations, namely one pursuant to Article 66(2) CS for those parts of the concentration covered by the ECSC Treaty, and the other pursuant to Regulation No 4064/89 for those parts which are within the scope of the EC Treaty.

70 Simply in view of those special features, it was therefore open to the Commission to adopt two different decisions for authorising the concentration at issue. In addition, this was all the more justified in that the rules of Article 66 CS and those of Regulation No 4064/89 differ in substantive and procedural respects.

71 Accordingly, the Court finds that the conditions for authorising a concentration which are laid down by those provisions and, consequently, the very object of the

control for which they provide are not the same. Under Article 66(2) CS, the Commission may authorise a concentration falling within the scope of the ECSC Treaty only if the operation does not give the persons or undertakings concerned the power 'to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market for those products' or 'to evade the rules of competition instituted under this Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets'. On the other hand, under Article 2(2) of Regulation No 4064/89, the Commission may declare a concentration compatible with the common market only if it does not create or strengthen 'a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it'.

72 Furthermore, there are many procedural differences. For example, unlike the rules for the appraisal of concentrations laid down in Article 66 CS, Regulation No 4064/89 provides for the publication of notification in the Official Journal (Article 4(3)), for strict time-limits for the adoption of decisions in connection with the control of concentrations (Article 10) and for a statement of objections as well as for access to the file before the Commission adopts a decision declaring a concentration incompatible with the common market or approving a concentration subject to certain conditions (Article 18(1) and (3)).

73 Therefore the Commission manifestly did not err in law by adopting two separate decisions in order to authorise the concentration at issue.

74 This conclusion cannot be refuted by any of the applicants' arguments.

75 First of all, the applicants are wrong in claiming that the Commission was not entitled to adopt two separate decisions in so far as their subject-matter is one and the same indivisible concentration plan which, pursuant to Article 7(1) of Regulation No 4064/89 and Article 66(1) CS, fell within the scope of the system for the appraisal of concentrations by the Commission and which therefore could be lawful only if it satisfied the requirements of both. As has just been stated, the mere fact that different systems of review are laid down in the ECSC Treaty and the EC Treaty in itself permitted the Commission to adopt two separate decisions for authorising a mixed concentration, particularly as the review required by Article 66 CS differs in the procedural and substantive respects from that provided for by Regulation No 4064/89. This conclusion is not called into question by the fact that one and the same indivisible concentration is involved. Although, from an economic viewpoint, a notified mixed concentration generally represents an indivisible whole for the persons giving the notification, this does not remove the need, from a legal viewpoint, for two separate authorisations from the Commission, namely authorisation under Article 66(2) CS for those aspects of the concentration which fall within the ambit of the ECSC Treaty, and authorisation pursuant to Regulation No 4064/89 for the remainder of the concentration.

76 Second, the Court rejects the applicants' argument that the adoption of separate decisions in the case of a mixed concentration is contrary to the Commission's obligation to ensure that its decisions are consistent. Although, according to settled case-law, the Commission must in principle avoid inconsistency which may arise in the implementation of different provisions of Community law (see the judgment in the case of *Matra* v *Commission*, cited in paragraph 61 above, paragraphs 41 and 42, and *DIR International Film and Others* v *Commission*, cited in paragraph 61 above, paragraphs 21 and 30), it must be observed that the mere fact that the Commission adopts two separate decisions in the context of the control of a mixed concentration does not, as such, breach that obligation. Contrary to what the applicants suggest, the possibility that the adoption of separate decisions may ultimately result in the Commission authorising the concentration in its entirety or partly from the ECSC viewpoint and prohibit it in its entirety or partly from the EC viewpoint is not an inconsistency, but rather arises from the fact that concentrations or certain parts of concentrations are

subject to different substantive and procedural rules, depending on whether they fall within the ambit of the ECSC Treaty or the EC Treaty. Moreover, the same applies with regard to the possibility that an application for the annulment of decisions approving a mixed concentration may lead to a different result for the decision adopted under Article 66 CS and for that adopted pursuant to Regulation No 4064/89. Regardless of whether the Commission adopts a single decision or two separate decisions, the Community Courts will necessarily have to review the legality of those decisions in the light of the different rules laid down by the two systems.

77 It is true that, according to the case-law cited above, the Commission must avoid inconsistency when reviewing a mixed concentration in light of the conditions laid down in Article 66 CS and Regulation No 4064/89. However, the applicants have put forward no grounds to show that the Commission failed to fulfil that obligation in the present case. Furthermore, it must be observed that that is not the case here because, as the contested decisions clearly show, they were adopted by the Commission in the context of a coherent, global assessment of the notified concentration. Not only are the descriptions of the parties' activities and of the operation given in paragraphs 3 to 11 of the ECSC decision and paragraphs 3 to 8 of the EC decision almost identical but, in addition, in paragraph 11 of the ECSC decision the Commission clearly stated that the aspects of the concentration which fell within the scope of the EC Treaty were examined in the framework of the EC decision while, in paragraph 8 of the EC decision, it observed that the aspects of the concentration which fell within the scope of the ECSC Treaty were examined in the ECSC decision. Finally, in paragraphs 20 to 23 of the ECSC decision, the Commission discussed the potential effects of the concentration on the ECSC markets situated immediately upstream of the pipe markets which fall within the ambit of the EC Treaty. The Commission took account of the reservations formulated in that respect by the pipe producers, namely that, as a result of the concentration, the parties thereto would no longer be interested in supplying them with the raw materials required for making steel pipes because in that market they were in direct competition with the subsidiary companies of the parties to the concentration. In response to these reservations, the Commission assessed the potential effects which the position of the parties to the concentration in the ECSC markets situated upstream could have on the competition situation in the EC markets situated downstream, namely the pipe markets.

78 Third, the applicants are wrong in referring to the Procedure Alignment Notice as evidence that the Commission was not entitled to adopt separate decisions.

79 It must be observed that, according to the clear wording of the notice, it is 'designed to increase transparency and improve compliance with the rights of the defence in connection with the examination of [proposed] mergers [covered by the ECSC Treaty] and to expedite decision making' (paragraph 1). The notice also aims to meet the expectations of undertakings, in particular as regards mixed merger operations, to simplify procedures and, finally, 'to make it possible for... undertakings to familiarise themselves with the procedures of law against the background of the forthcoming expiry of the ECSC Treaty' (paragraph 2). To attain these objectives, the Commission provided for the application, by analogy, to concentrations covered by the ECSC Treaty, of a certain number of rules laid down by Regulation No 4064/89 and the measures adopted for implementing it. On the other hand, contrary to the applicants' suggestion, at no time did the Commission assert that it would apply, by analogy, all the rules laid down by Regulation No 4064/89 and the measures implementing it. On the contrary, the Commission clearly stated that only a few specific rules would be applied by analogy.

80 It must also be observed that the notice, which contains a number of rules imposed by the Commission on itself, in no way excludes the possibility of adopting separate decisions when the Commission approves a mixed concentration. On the contrary, the notice lays down rules for simplifying procedure and minimising difficulties arising from the fact that the notified concentration is covered by two different treaties and is examined in the light of their differing provisions. This applies, in particular, to the time-limits for the adoption of Commission decisions under the ECSC Treaty (paragraphs 7 to 9 of the notice). Accordingly, although Article 66 CS does not fix a time-limit for the adoption of a decision authorising a concentration covered by that Treaty, the Commission states in paragraph 7 of the notice that it 'will endeavour to adopt its decision within one month of notification'. This undertaking, which is of the nature of an obligation to use best endeavours, ensures that, in the case of a mixed

concentration, the Commission will give its authorisation under the ECSC Treaty by a date as close as possible to that for the issue of authorisation under the EC Treaty which, pursuant to Article 10(1), must be within one month of notification of the concentration.

81 In this connection it is necessary to reject the applicants' argument that the principle of legal certainty and the need to maintain the notification system resulting from Regulation No 4064/89 mean that, in the case of a mixed concentration, the one-month period laid down by Article 10(1) of the Regulation should also have been applied to the decision adopted on the basis of the ECSC Treaty. It is true that, as opposed to the system for the appraisal of concentrations covered by the EC Treaty, the Commission is not bound by strict time-limits when it adopts a decision relating to the appraisal of concentrations covered by the ECSC Treaty, and this may have the effect of placing the parties to a mixed concentration in a difficult position. This applies particularly where the Commission has already approved the part of the concentration covered by the EC Treaty, but not yet the part covered by the ECSC Treaty. Where that is the case, although the interested parties have an authorisation in relation to the part covered by the EC Treaty, they must wait until the Commission also approves the part of the concentration falling within the scope of the ECSC Treaty before they implement the entire operation. However, it is clear that, contrary to what the applicants suggest, the uncertainty of this situation does not give rise to any legal uncertainty whatever for the operation in question because, from the viewpoint of Community law, it has not yet been possible to put it into effect. Furthermore, it is precisely in order to keep this situation of uncertainty as short as possible that the Commission states, in the notice on the alignment of procedures, that it will endeavour to adopt ECSC decisions within one month of notification.

82 Fourth, the applicants' argument that the adoption of separate decisions restricts their legal protection must also be rejected. It must be observed that, in the present case, the ECSC decision was adopted nine days after the EC decision, that is to say, within a particularly short period. In this way the Commission adhered to its announcement, in paragraph 7 of the notice on the alignment of procedures,

that it would 'endeavour to adopt its decision [under the ECSC Treaty] within one month of notification'. Likewise the Commission's adoption of the ECSC decision shortly after the EC decision de facto rules out the situation mentioned by the applicants in which they would have been compelled to bring an action for the annulment of the EC decision before the ECSC decision was... adopted. In the present case, the applicants learnt of the contested decisions by fax of 4 October 2000, so that the two-month time-limit for the institution of proceedings pursuant to the fifth paragraph of Article 230 EC had not begun to run when the Commission adopted the ECSC decision.

83 Finally, it must be noted that, contrary to the applicants' assertion, the fact that the ECSC Treaty was going to expire in the course of 2002 did not prevent the Commission from adopting two separate decisions for authorising the concentration at issue. The expiry of the ECSC Treaty cannot hide the fact that, so long as it was in force, it was incumbent on the Commission to ascertain, in the light of the conditions laid down in Article 66 CS, whether the concentrations or parts of concentrations covered by that Treaty could be authorised. It is common ground that the ECSC Treaty was in force on the date of adoption of the ECSC decision by the Commission. Furthermore, at no time have the applicants shown in what way the impending expiry of the Treaty prevented the Commission from making a correct appraisal, by reference to the conditions set out in Article 66(2) CS, of the notified concentration.

84 In view of the foregoing, there is no foundation for the applicants' submissions seeking to show that, in a case such as the present, it is sufficient that the conditions for admissibility are fulfilled with regard to one of the two decisions authorising the concentration at issue for the action to be ruled admissible in its entirety and those submissions must be dismissed. It must also be found that there was nothing illegal in the Commission's adoption of two separate decisions for authorising the concentration at issue.

D — *Admissibility of Mannemann's statement in intervention*

1. *Arguments of the parties*

85 The applicants contend that Mannesmann's statement in intervention breaches the second subparagraph of Article 116(4) of the Rules of Procedure and the obligation to state reasons, and that it must therefore be ruled inadmissible in so far as the intervener refrained from giving its own reasons in its statement in intervention, but merely referred to Salzgitter's statement.

2. *Findings of the Court*

86 The second subparagraph of Article 116(4) of the Rules of Procedure reads as follows:

'The statement in intervention shall contain:

(a) a statement of the form of order sought by the intervener in support of or opposing, in whole or in part, the form of order sought by one of the parties;

(b) the pleas in law and arguments relied on by the intervener;

(c) where appropriate, the nature of any evidence offered.'

87 In the present case, Mannesmann informed the Court, by letter of 2 July 2001, that it fully supported the Commission's arguments and that it also agreed with the form of order sought, namely to dismiss the action as inadmissible or unfounded and to order the applicants to pay the costs. However, Mannesmann added that, to avoid repetition, it wished to refer to the arguments in Salzgitter's statement of intervention, which it had helped to prepare.

88 Contrary to the applicants' assertion, this approach is not contrary to Article 116(4) of the Rules of Procedure and the obligation to state reasons.

89 In acting in this way, Mannesmann merely referred to a pleading which contains all the particulars required by the second subparagraph of Article 116(4) of the Rules of Procedure. Furthermore, that pleading was lodged on the same day, in the same case before the same chamber of the Court of First Instance. Consequently there is no risk of confusion. In addition, this method saves the limited resources of the Community Courts. Finally, as the intervener did not refer to future decisions or decisions the content of which it could not have known, this method is not incompatible with the responsibility of each party for the content of the pleadings which it lodges.

90 It must be added that the case-law cited by the applicants in support of their assertion is irrelevant.

91 Although, in the judgment in Case T-37/91 *ICI* v *Commission* [1995] ECR II-1901, the Court did not accept that the applicant in that case could refer generally to the applications which it had lodged in two other cases, that refusal

was nevertheless based on the finding that the pleas in law and the arguments in those two applications concerned 'two separate markets and two different infringements' (paragraph 46 of the judgment) and, above all, two different actions the files of which had not been joined, which constituted a reference to a document not forming part of the file. That is manifestly not the case here, where the reference is to a pleading in the same case and before the same chamber. In addition, in paragraph 47 of that judgment, the Court accepted a reference to the statements which had been lodged in a different case because 'the parties, the agents and the lawyers are identical, the two actions were brought before the Court on the same day,... the two cases have been pending before the same Chamber and have been assigned to the same Judge-Rapporteur and, finally,... the contested decisions concern the same market'. Therefore, if the Court rightly accepted that the reference to statements lodged in another case could be authorised, this applies all the more to a reference to a pleading lodged in the same case and before the same chamber, as is the case here.

92 The judgments in Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747 and Case C-43/90 *Commission* v *Germany* [1992] ECR I-1909 do not support the assertion that Mannesmann's method was irregular. In those cases the Commission, which had asked the Court of Justice to find that the States concerned had failed to fulfil their obligations, referred to a number of complaints which were set out only in letters of formal notice addressed to those States. The Court ruled that such a reference to complaints which did not appear in the applications was inadmissible because it clearly contravened Article 19 of the Protocol on the Statute of the Court of Justice and Article 38(1)(c) of the Rules of Procedure of the Court of Justice, which provides that the application must include, inter alia, a summary of the pleas in law on which the application is based (*Commission* v *Greece*, paragraphs 28 and 29, and *Commission* v *Germany*, paragraphs 5 to 9).

93 Finally, the order of the Court of Justice in Case C-338/93 P *De Hoe* v *Commission* [1994] ECR I-819, paragraphs 28 to 30, does not confirm the

applicants' claims. In the context of an appeal against the judgment of the Court of First Instance dismissing his action, Mr De Hoe complained that the Court of First Instance was mistaken in maintaining that the reproduction in the body of the application of the entire content of the complaint did not satisfy either the requirements of the first paragraph of Article 19 of the Statute of the Court of Justice or those of Article 44(1)(c) of the Rules of Procedure. The judgment of the Court of Justice dismissed this complaint, observing that, in the circumstances of the case, the mere reproduction in the body of the application of the entire content of the complaint could not mitigate the failure to state the grounds on which the action was based (paragraph 29 of the order). It is clear that this reasoning cannot be applied to the present case, which concerns a reference to a statement in intervention lodged by another intervener in the same contentious proceedings.

The substance of the case

A — *Plea relating to error of assessment concerning the effects of the concentration at issue on the market for large welded steel pipes*

1. *Arguments of the parties*

94 The applicants contend that the Commission erred in its assessment of the effects, both horizontal and vertical, of the concentration at issue on the market for large welded steel pipes.

95 Regarding the horizontal effects, the applicants claim that the accuracy of the size of the shares held by the parties to the concentration in the large pipes market,

given in the EC decision, is doubtful in so far as the Commission took into account the sales volume of an undertaking which was never active in that market (Linde), another undertaking which has not operated in that market since 1993 (Gräbener) and, finally, an undertaking which was the subject of insolvency proceedings at the date of adoption of the contested decision (Klöckner Muldenstein). In addition, the applicants observe that, assuming that the Commission's figures are correct, it follows that, with a market share of 30.5% (paragraph 36 of the EC decision) and in view of the considerable gap between them and the other competitors, the parties to the concentration dominate the large welded pipe market.

96 With regard to the vertical effects of the concentration at issue, the applicants submit that it is clear from Form CO annexed to Regulation No 447/98 and from Article 2(1)(b) and (c) of Regulation No 4064/89 that, in the appraisal of concentrations, the Commission must take account not only of the horizontal effects, but also the vertical effects of the notified concentration on a given market. They consider that this assessment is all the more important in the present case in so far as, following the concentration at issue, the very strong position of the parties to the concentration on the large welded pipes market was strengthened by their position in the market for the raw materials intended for the production of such pipes, namely, first, hot-rolled wide strips and, secondly, quarto plates. The applicants claim that the Commission did not take account, or sufficient account, of these vertical effects.

97 Accordingly, with regard to quarto plates used in the production of large pipes with longitudinal welding, the applicants observe that, as appears from paragraphs 17 to 19 of the ECSC decision, the parties to the concentration have a very strong position in that market because, together with Usinor/DH and Riva, they have a market share of 96%, which indicates that they form an oligopoly in that market. According to the applicants, this factor is all the more important in that the three undertakings in question, with a market share of 50%, occupy a strong position in the market downstream of the market for large pipes with longitudinal welding. However, they observe that the Commission omitted to take account of that factor in the EC decision which, according to the applicants, is a breach of Article 2(1) of Regulation No 4064/89.

98 Regarding hot-rolled wide strips for the production of pipes, the applicants consider that the concentration at issue has fundamentally changed the situation of the parties to the concentration in that market because, thanks to Salzgitter's production of hot-rolled wide strips, MRW now has an independent source of supply of raw materials, which strengthens its position in the market downstream of the market for large pipes with spiral welding, to the detriment of independent producers, including Ferndorf.

99 The applicants add that Salzgitter's assertion that the parties to the concentration have only a 4.2% share of the market for hot-rolled wide strips is based on the mistaken assumption that this market brings together all such strips, disregarding their intended use. The applicants observe that, from the viewpoint of the relevant technical and standardisation constraints, the production of hot-rolled wide strips for the production of steel pipes differs so much from the production of such strips for other purposes such as, for example, vehicle manufacture, that there is no interchangeability between the two categories of products. According to the applicants, the lack of interchangeability is made more acute by the fact that the steel producers charge different prices according to whether the hot-rolled wide strips are for making pipes or for other purposes. The applicants add that this error regarding the definition of the market for reference products has numerous repercussions on the statement of Salzgitter and the Commission because, if the definition of the product market proposed by the applicants is applied, it transpires that Salzgitter's market share is much larger that it claims. They observe that, in the footnote on page 20 of the statement in defence, the Commission implicitly recognised the accuracy of the definition of the product market proposed by the applicants.

100 The applicants likewise assert that the Commission erred in its assessment concerning the definition of the geographical market for hot-rolled wide strips. According to the applicants, there are several indications that the market does not extend to the whole of the Community, but is limited to national markets: first, only a small part of the production of hot-rolled wide strips in the Community is the subject of intra-Community trade; second, imports of such strips from non-member countries was limited by the imposition of very high anti-dumping

duties [Commission Decision No 283/2000/ECSC of 4 February 2000 imposing a definitive anti-dumping duty on imports of certain flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in Bulgaria, India, South Africa, Taiwan and the Federal Republic of Yugoslavia and accepting undertakings offered by certain exporting producers and terminating the proceedings concerning imports originating in Iran (OJ 2000 L 31, p. 15); Commission Decision No 1758/2000/ECSC of 9 August 2000 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of non-alloy steel originating in the People's Republic of China, India and Romania, accepting an undertaking with regard to India and Romania and collecting definitively the provisional duties imposed (OJ 2000 L 202, p. 21)]; third, in the course of 2000 the prices invoiced by Salzgitter for supplying hot-rolled wide strips had risen by almost 74% and, finally, there were considerable differences in the prices charged in the different Member States for hot-rolled wide strips and quarto plates.

101 In addition, the applicants consider that, in calculating market shares with respect to hot-rolled wide strips, the Commission ought also to have taken account of the production of such strips by MRW, even if the latter sub-contracts such work to TKS. According to the applicants, the mere fact that MRW is not authorised to sell those strips to third parties by reason of public obligations imposed on it by the Commission does not alter that conclusion because, in the event of the cancellation of those obligations, MRW would in any case be a potential seller of hot-rolled wide strips and therefore a potential competitor of Salzgitter and other undertakings.

102 The applicants also observe that, in paragraph 14 of the ECSC decision, the Commission left open the question whether there was any overlapping between the market for hot-rolled wide strips and quarto plates. According to the applicants, there cannot be the slightest doubt that, even in the Commission's concept, supplies of hot-rolled wide strips and quarto plates are available on the same market so that, for the purpose of calculating shares in the quarto plate

market, the Commission ought to have included the quantities of hot-rolled wide strips sold by Salzgitter. Consequently the applicants consider that, as the Commission made no findings whatever concerning the market for hot-rolled wide strips, its assessment of the quarto plates market is flawed. According to the applicants, this conclusion is inevitable particularly as, in paragraph 17 of the ECSC decision, the Commission found that the parties to the concentration had a 28% market share in sales of quarto plates alone, so that the share would have been even greater if the Commission had taken account of Salzgitter's sales of hot-rolled wide strips.

103 Finally, the applicants consider that Salzgitter's declaration of non-discrimination is not sufficient to mitigate the shortcomings of the decision regarding the assessment of the vertical effects of the concentration at issue, even if only because of the non-binding nature of the declaration and the resultant difference in treatment of the interested parties. The applicants also observe that their criticisms give rise to so many doubts as to the factual findings and the legal assessment in the EC decision that the very existence of that decision should be doubted.

104 The Commission, supported in this respect by the interveners, disputes the whole of the applicants' argument that it erred in its assessment of the horizontal and vertical effects of the concentration at issue on the market for large welded pipes.

2. *Findings of the Court*

105 First, it must be observed that the basic provisions of Regulation No 4064/89, in particular Article 2 thereof, confer a discretion on the Commission, especially

with respect to assessments of an economic nature. Consequently, review by the Community judicature of the exercise of that discretion, which is essential for defining the rules on concentrations, must take account of the discretionary margin implicit in the provisions of an economic nature which form part of the rules on concentrations (Joined Cases C-68/94 and C-30/95 *France and Others* v *Commission* [1998] ECR I-1375, paragraphs 223 and 224; Case T-102/96 *Gencor* v *Commission* [1999] ECR II-753, paragraph 165, and Case T-221/95 *Endemol* v *Commission* [1999] ECR II-1299, paragraph 106).

106 The applicants' argument that the Commission erred in its assessment of the horizontal effects of the concentration at issue on the market for large welded pipes and, then, the same argument in relation to the vertical effects must be examined in the light of these principles.

(a) The horizontal effects of the concentration at issue on the market for large welded pipes

107 In paragraph 11 et seq. of the EC decision, the Commission examined the market for large pipes with longitudinal welding and with spiral welding. In this connection, the Commission stated that the question whether large pipes with longitudinal welding and large pipes with spiral welding form a single market or separate markets, and the question whether the relevant geographical market is the European Economic Area (EEA) or the world market could be left open in so far as, in the present case, none of the market definitions was conducive to a finding that a dominant position had been created or strengthened as a result of the concentration.

108 In particular, the Commission found that, assuming that the relevant market is defined as the market for large pipes with longitudinal welding and with spiral welding at the world level or at the EEA level, the concentration at issue did not have the effect of creating or strengthening a dominant position. If the market in question was a world market, the Commission observed that, although the parties to the concentration had the leading position with a market share of 17%, first, the other competitors had a total market share of more than 80%, second, in the period 1997-1999 only 36% on average of the production capacity for large pipes at the world level was used and, third, the major international oil and gas companies had a very strong position in terms of demand. Likewise the Commission stated that, on the assumption that the market in question was confined to the EEA, the concentration would again not lead to the creation or strengthening of a dominant position even though the parties to the concentration had the leading position with a market share of 30.5%. First, the other competitors had a total market share of approximately 70%, second, in the period 1997-1999 only 51% on average of the production capacity for large pipes in the EEA was used, third, the claim under consideration, namely that the market is limited to the EEA, is based mainly on specific segments such as water and construction, which represent only a secondary activity of the parties to the concentration and in which they have numerous competitors, and, fourth, the major international oil and gas companies have a very strong position in terms of demand in this market too.

109 In addition, the Commission considered that the concentration at issue did not have the effect of creating or strengthening a dominant position in the (narrower) market of large pipes with spiral welding at the world level or that of the EEA. At the world level, the combined market share of the parties to the concentration was only 8.6%. At the EEA level, the concentration likewise did not have the effect of creating or strengthening a dominant position although the parties to the concentration had a leading position in the EEA with a market share of 21.2%. First, they had a relatively limited market share and they had significant competitors, second, in the period 1997-1999 only 51% on average of the production capacity for large pipes in the EEA was used, third, the case under consideration, namely that the market is limited to the EEA, is based mainly on specific segments such as water and construction, which represent only a secondary activity of the parties to the concentration and in which they have

numerous competitors, and, fourth, the major international oil and gas companies have a very strong position in terms of demand in this market too.

110 The foregoing grounds show, clearly and unequivocally, that, with regard to horizontal effects on the market for large welded pipes, the concentration at issue was not such as to raise serious doubts concerning its compatibility with the common market.

111 This conclusion is not invalidated by any of the applicants' arguments in that respect.

112 Contrary to the applicants' assertion, the mere fact that, according to paragraph 36 of the EC decision, the parties to the concentration together have a 30.5% share of the EEA market for large pipes with longitudinal welding and spiral welding does not mean, as such, that the concentration has the effect of creating or strengthening a dominant position in that market. Although the relationship between the market shares of the undertakings involved in the concentration and those of their competitors, especially those of the next largest, is relevant evidence of the existence of a dominant position (see the judgment in *Gencor* v *Commission*, cited in paragraph 105 above, paragraph 202), in the present case the Commission nevertheless set out clearly and unambiguously the reasons why it found that there was no dominant position (see paragraph 108 above). The applicants have failed to produce any evidence which would refute those grounds.

113 In addition, it is necessary to reject the applicants' argument that the accuracy of the size of the shares held by the parties to the concentration in the longitudinally welded and spirally welded large pipes market is doubtful in so far as, for the

purpose of calculating market shares, the Commission took into account the sales volumes of Linde, which was never active in that market, of Gräbener, which has not operated in that market since 1993 and, finally, of Klöckner Muldenstein, which was the subject of insolvency proceedings on the date of notification.

114 Leaving aside Gräbener, which confirmed in a letter of 7 September 2001 that it had ceased the production of pipes in 1997, the applicants' allegations concerning Linde and Klöckner Muldenstein are not based on any concrete evidence and are furthermore refuted by the information provided by the Commission. The 2000 edition of the study *Tube Mills of the World*, various extracts from which were produced by the Commission, clearly mentions the names of those companies and carefully describes the nature and extent of their activities in the pipe production sector. Moreover, although Klöckner Muldenstein, which replied to the Commission's questionnaire, was the subject of insolvency proceedings on the date of adoption of the EC decision, that did not prevent the Commission from taking account of its market position. There was nothing to stop all or part of that company's pipe production from being continued, particularly if its business was taken over by another undertaking.

115 In any case, it must be observed that, in reply to a written question from the Court, the Commission showed clearly and convincingly that, even if the market shares of the three companies in question were not to be taken into account, the situation of the parties to the concentration in the market for large welded pipes would not have been fundamentally different, so that this circumstance would not have affected the Commission's assessment of the compatibility of the concentration with the common market. This statement of the Commission has not been challenged by the applicants.

116 Therefore the applicants' argument that the Commission erred in its assessment of the horizontal effects of the concentration at issue on the market for large welded pipes must be dismissed.

(b) The vertical effects of the concentration at issue on the market for large welded pipes

117 The parties' submissions concerning the vertical effects of the concentration at issue on the market for large pipes with longitudinal welding must be considered separately from such submissions in relation to the market for large pipes with spiral welding. It is clear from paragraphs 12 and 13 of the EC decision that large pipes with longitudinal welding are made from quarto plates, whereas large pipes with spiral welding are made from hot-rolled wide strips.

The vertical effects of the concentration at issue on the market for large pipes with longitudinal welding

118 According to the applicants, the Commission erred in its assessment of the vertical effects of the concentration at issue on the market for large pipes with longitudinal welding in so far as it appears from paragraphs 17 to 19 of the ECSC decision that the parties to the concentration have a very strong position in the upstream market for quarto plates used in the production of large pipes with longitudinal welding, which strengthens their position in the latter market. Together with Usinor/DH and Riva, they have a 96% share of the market for quarto plates used in the production of large pipes with longitudinal welding, which indicates that they form an oligopoly in that market.

119 However, the Court observes that the Commission pointed out, in its pleadings and in reply to a written question from the Court, that the market shares mentioned in paragraphs 17 to 19 of the ECSC decision were not market shares in the technical sense of the term because, in addition to deliveries of quarto plates to third parties, they also included deliveries of quarto plates which were

internal to the group. According to the Commission, the market shares of the parties to the concentration in the open market for quarto plates for all uses and in the (narrower) market for quarto plates used in the production of large pipes with longitudinal welding were distinctly smaller because they fluctuated between 6.2% and 7.3% for quarto plates for all uses and were 10.6% for 1997 and 9.1% for 1999 for plates used in the production of large pipes with longitudinal welding.

120 In view of these figures, which have not been challenged by the applicants, the Commission was justified, without making an erroneous assessment, in considering that the position of the parties to the concentration in the upstream market for quarto plates was not capable of creating or strengthening a dominant position of any kind in the downstream market for large pipes with longitudinal welding and, therefore, of giving rise to serious doubts as to the compatibility of the concentration at issue with the common market.

121 Next it must be observed that, even accepting that the market shares mentioned in paragraphs 17 to 19 of the ECSC decision are shares in the open market, the mere fact that three undertakings together have a very large share of a given market is not, as such, proof that they form an oligopoly. It has consistently been held that a finding of a collective dominant position depends on three conditions being fulfilled: first, each member of the dominant oligopoly must have the ability to know how the other members are behaving in order to monitor whether or not they are adopting the common policy; second, the situation of tacit coordination must be sustainable over time, that is to say, there must be an incentive not to depart from the common policy on the market; third, the foreseeable reaction of current and future competitors, as well as of consumers, should not jeopardise the results expected from the common policy (see Case T-342/99 *Airtours* v *Commission* [2002] ECR II-2585, paragraph 62). The applicants have produced no evidence to show that these conditions are fulfilled in the present case.

122 Finally, it must be observed that, in paragraphs 20 to 22 of the ECSC decision, the Commission gave the reasons why it considered that the concentration at issue would not have the effect of threatening the supply of quarto plates to undertakings competing with the parties to the concentration in the market for large pipes with longitudinal welding. In particular, the Commission pointed out, first, that Salzgitter's share of supplies of quarto plates to the open market was too small for its possible withdrawal from the market to be a cause of concern, second, that pipe manufacturers obtained quarto plates from a number of producers other than DH, third, that any reduction by DH in deliveries of quarto plates to third parties in order to give preference to Europipe would affect the profitability of its rolling mills and would therefore automatically affect Europipe's competitive position in the downstream market for large pipes with longitudinal welding and, fourth, very little use was being made of the capacity of quarto plate rolling mills in Europe, so that the other producers of quarto plates for large pipes with longitudinal welding could perfectly well supply pipe manufacturers who at present obtained supplies from Salzgitter.

123 It must be observed that these reasons form part of the context in which the EC decision was adopted. According to settled case-law, the statement of reasons is not required to discuss all the issues of fact and of law in so far as the question whether a statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see Case T-290/94 *Kaysersberg* v *Commission* [1997] ECR II-2137, paragraph 150, and the cases cited there). This means that, where a decision-making authority is competent to adopt, in simultaneous procedures, two separate decisions concerning the same factual situation and that authority gives notice of the decisions to one and the same interested party within a short interval, each decision may, from the viewpoint of the duty to state reasons to that party, be regarded as forming part of the context of the other decision and may therefore properly serve as an additional statement of reasons in relation to that party.

124 It follows that, in a case such as the present, where the Commission adopts two separate decisions in simultaneous procedures in order to authorise one and the

same concentration and the applicants are notified of the decisions simultaneously, the statement of reasons given in one of the decisions must necessarily be assessed in the light of the statement of reasons in the other. In such a case, although the appraisal carried out by the Commission in the decisions is based on different substantive and procedural rules (see paragraphs 70 to 72 above), the separate decisions nevertheless relate to one and the same concentration, so that in some respects the Commission's assessment may overlap.

125 In view of the foregoing, the applicants' argument that the Commission erred in its assessment of the vertical effects of the concentration at issue on the market for large pipes with longitudinal welding must be dismissed as unfounded.

The vertical effects of the concentration at issue on the market for large pipes with spiral welding

126 According to the applicants, the Commission erred in its assessment in so far as it did not take account of the fact that the concentration at issue altered the situation of the parties to the concentration in the market for large pipes with spiral welding because, thanks to the production of hot-rolled wide strips by Salzgitter, MRW would thereafter have a secure source of supply, which would strengthen its position in the said market to the detriment of independent producers such as Ferndorf.

127 However, it must be observed that the Commission, in its pleadings and in reply to questions from the Court, pointed out that it was clear from the notification and from various information in its possession at the date of the notification that, first, MRW did not sell hot-rolled wide strips to third parties and, second, that Salzgitter had a market share of distinctly less than 25% because it sold to third parties only a small proportion of the hot-rolled wide strips which it produced. These figures were confirmed by the interveners who stated, in their pleadings

and at the hearing, that Salzgitter's share of the Community market for hot-rolled wide strips was of the order of 4.2% for 1999.

128 In view of these figures, the Commission was justified, without making a manifestly erroneous assessment, in considering that the position of the parties to the concentration in the upstream market for hot-rolled wide strips was not capable of creating or strengthening a dominant position of any kind in the downstream market for large pipes with spiral welding and, therefore, of giving rise to serious doubts as to the compatibility of the concentration at issue with the common market.

129 This conclusion is not invalidated by any of the applicants' arguments.

130 In the first place, the applicants are wrong in claiming that, apart from the quantities of hot-rolled wide strips sold to third parties by Salzgitter, the Commission ought to have taken into account those produced by MRW.

131 As the applicants themselves admit, at the date of notification MRW was not making hot-rolled wide strips, but subcontracted that work to Thyssen. The Commission pointed out, without being contradicted by the applicants, that it is extremely unlikely that a manufacturer with no production plant of its own for hot-rolled wide strips could be a significant competitor in that market. Furthermore, it must be observed that, although the applicants had received copies of Commission decision COM(70)25 of 20 January 1970 on the acquisition of certain parts of Mannesmann AG by August Thyssen-Hütte AG and the formation of the joint venture Mannesmannröhren-Werke and another joint venture by Thyssen-Hütte AG and Mannesmann AG, to which they referred in their pleadings and which was produced by the Commission before the

hearing, the applicants have never been able to show to what extent that decision confirmed their view that the Commission required MRW not to sell hot-rolled wide strips to third parties. In those circumstances, the Commission did not err in its assessment in concluding that, with regard to such strips, there was no reason to take account of MRW, even as a potential competitor.

132 Second, it is necessary to reject the applicants' submissions seeking to show that the assertion by the Commission and the interveners that the parties to the concentration had a very limited share of the market for hot-rolled wide strips is based on an erroneous delimitation of the market for reference products. Although, contrary to the Commission's allegation, this submission cannot be deemed to be out of time, having been raised in sufficient detail in paragraphs 61 and 62 of the application, it nevertheless proves to be completely unfounded.

133 It must be observed that, in its pleadings, the Commission pointed out that, in its established practice [see, in particular, the Commission decisions authorising a concentration, 28 July 1997 (Case IV/ECSC.1243 — Krupp Hoesch/Thyssen, paragraph 19); 4 February 1999 (Case IV/ECSC.1268 — Usinor/Cockerill Sambre, paragraph 16) and 15 July 1999 (Case IV/ECSC.1310 — British Steel/Hoogovens, paragraph 13)], it has found that hot-rolled wide strips and the other hot-rolled products belong to one and the same market in so far as their production is characterised by a high degree of flexibility and capacity for adaptation which enables producers to offer and sell different types and qualities of hot-rolled wide strips without substantially increasing their costs. The applicants have not successfully challenged that finding. Contrary to the applicants' assertion, the mere fact that end users do not consider the different types and qualities of hot-rolled wide strips to be interchangeable does not show that those types and qualities belong to different markets, as the lack of interchangeability at the demand level is compensated for by interchangeability with regard to supply.

134 It must, moreover, be observed that certain passages of the application confirm that the Commission's findings are correct. For example, at paragraph 21 of the application, the applicants asserted that, when car sales are good, production capacities of hot-rolled wide strips are fully used, so that the demand from independent pipe producers encounters considerable bottlenecks with the main European suppliers. Furthermore, although the definition of the reference markets was mentioned in the questionnaire sent by the Commission in the administrative procedure, neither Ferndorf nor any other party claimed that hot-rolled wide strips for the production of pipes formed a market separate from that of strips for other purposes.

135 In this connection, the Court must reject the applicants' submission that, in footnote 20 of the defence, the Commission implicitly admitted that the market definition which they approve accords with its administrative practice. In the footnote the Commission merely stated that it was aware 'that demand exists in the car industry for products with greater value added, in particular demand for cold-rolled sheets. These are in turn made from hot-rolled wide strips. The Commission has consistently considered, and also in the present case, that these sheets should not be included in the market for hot-rolled wide strips'. Contrary to the applicants' assertion, this passage does not at all confirm their market definition with regard to hot-rolled wide strips. In it the Commission does not assert that such strips intended for the production of pipes and such strips intended for other uses form two separate markets, but it does say that hot-rolled wide strips on the one hand and cold-rolled sheets obtained from hot-rolled wide strips — which are therefore on a market situated downstream of the latter — on the other hand, do not belong to one and the same market.

136 For the same reason, it is also necessary to reject the applicants' argument that the price comparisons which they produced in paragraphs 52 to 54 of the reply confirm the existence of separate markets, depending on the intended use of hot-rolled wide strips. It must be observed that those comparisons are not of the prices of different types and qualities of hot-rolled wide strips according to their use, but merely compare, on the one hand, the prices of hot-rolled wide strips

with those of cold-rolled products with or without tinning and, on the other hand, the prices of cold-rolled products in different Member States. In no way do such comparisons make it possible to confirm the applicants' arguments regarding the definition of the market for hot-rolled wide strips.

137 Finally, it must be noted that, even if the applicants' proposed narrower definition of the product market had to be accepted, it would not have the repercussions they attribute to it. In particular, their statement that the total volume of sales to third parties of hot-rolled wide strips intended for the production of pipes is 300 000 tonnes per year turns out to be incorrect. As the interveners point out and as appears from table no. 6 entitled 'Share of Community sales in 1999 of flat hot-rolled carbon steel products' on page 29 of the Commission decision authorising a concentration, of 21 November 2001 (COMP/ECSC.1351 — Usinor/Arbed/Aceralia) produced by the Commission, the total sales volume of hot-rolled wide strips at Community level was approximately 21.26 million tonnes in 1999 and Salzgitter's share of that market was smaller than 5%. Contrary to the applicants' argument, that figure relates only to sales of hot-rolled wide strips to third parties and does not include such sales within groups. Therefore, even assuming, as the applicants say, that in 1999 only 28% of the total volume of hot-rolled wide strips at Community level were used in the production of pipes, nevertheless the total volume of that market in 1999 was 6 050 000 tonnes and not 300 000 tonnes.

138 In this connection it should, however, be observed that the applicants' figure of 300 000 tonnes is not convincing because of the calculation method used, which consists in adding the volume of hot-rolled wide strips purchased by Ferndorf and Flender to the presumed volume of the same products purchased by the four other independent pipe producers still operating in the Community (according to the applicants), namely Technotubi, Tubemeuse, De Boer Buizen and Wilson Byard. As shown by the documents produced by the Commission and the interveners, there are in the Community many more than six undertakings producing pipes from hot-rolled wide strips which do not belong to a large integrated steel group.

139 Likewise the applicants' argument that the purchases of hot-rolled wide strips by the large integrated steel groups should not be taken into account must be rejected. Although the large groups have substantial internal production of those raw materials, they still find it necessary to buy such strips from their competitors in order to cover temporary requirements. On this point, the applicants' argument that these purchases should not be taken into account because they take place outside the market in accordance with procedures which are not subject to supply and demand is not based on concrete evidence.

140 Third, the applicants' argument that the Commission's assessment regarding the position in the upstream market for hot-rolled wide strips of the parties to the concentration is also based on an incorrect definition of the geographical reference market must be rejected.

141 It has been consistently held that the relevant geographical market is a defined geographical area in which the product concerned is marketed and where the conditions of competition are sufficiently homogeneous for all economic operators, so that the effect on competition of the concentration notified can be evaluated rationally (see Case 27/76 *United Brands* v *Commission* [1978] ECR 207, paragraphs 11 and 44, and the judgment in *France and Others* v *Commission*, cited in paragraph 105 above, paragraph 143).

142 In the present case the Commission has put forward a number of considerations to show that, as also appears from its established practice (see, in particular, paragraph 25 of decision IV/ECSC.1243, paragraph 26 of decision IV/ECSC.1268 and paragraph 20 of decision IV/ECSC.1310, cited in paragraph 133 above), the geographical reference market for hot-rolled wide strips covers, at the very least, the territory of the entire Community. In particular, the Commission observed that transport costs are not very high, there are no barriers

to entry and customers show only little preference for certain Community producers.

143 This viewpoint is confirmed by the study of the situation in the steel industry carried out by the Commission in 2001 ('the steel industry study'), extracts from which were reproduced in the annex to the Commission's reply. It appears from the summary table of visible consumption in the Member States and imports into each of them (page 23 et seq. of the study) that, contrary to the applicants' assertion, imports are especially high when compared with the total volume of consumption of hot-rolled wide strips in the Community.

144 Furthermore, the existence of a Community market for hot-rolled wide strips is confirmed in various passages of the applicants' submissions. In paragraph 21 of the application, they point out that Flender obtained supplies of hot-rolled wide strips from 'European sources' and had asked 'well-known European suppliers' to supply it. The applicants added, in paragraphs 74 and 75 of the reply, that approximately 25% to 30% of their imports of hot-rolled wide strips were from producers in other Member States, which confirms the hypothesis that a Community market in hot-rolled wide strips exists.

145 On this point the applicants are wrong in claiming that their price comparison in the reply shows that the geographical reference market is national rather than Community. It must be noted that, in paragraph 80 of the reply, they compare the prices of quarto plates with those of hot-rolled wide strips, which is irrelevant for assessing the geographical reference market for hot-rolled wide strips. It is true that, in paragraph 81 of the reply, the applicants compare the prices of hot-rolled wide strips which are charged in the Community. However, it must be observed that the comparison relates only to minimum and maximum prices for those products, which gives a distorted picture of the true situation. Moreover, even assuming that this comparison is accepted, the applicants state that price

differences are of the order of 10% to 15%. As the Commission correctly points out, such an order of magnitude does not rule out the existence of a Community market.

146 Furthermore, it is also necessary to reject the applicants' allegation that, in paragraph 16 of the ECSC decision, the Commission wrongly referred to the importance of imports from non-member countries to support the argument concerning a Community market in hot-rolled wide strips. In actual fact, it is clear from the general context of the decision that the passage in question did not relate to hot-rolled wide strips, but only to quarto plates and semi-finished products. The previous sentence states clearly that the definition of the geographical market in question relates to quarto plates and semi-finished products, which seems logical in so far as the Commission pointed out, in paragraph 13, that the activities of the parties to the concentration did not overlap so far as those products were concerned. It also seems clear, from reading this passage, that, by reference to imports from non-member countries, the Commission did not intend to show that the geographical market covered the territory of the Community, but that it could possibly have a world dimension. In addition, the Commission's steel industry study makes it clear that, contrary to the applicants' assertion, the imposition of anti-dumping duties on imports of hot-rolled wide strips from non-member countries on the basis of decisions 283/2000/ECSC and 1758/2000/ECSC did not lead to a reduction in such imports. On the contrary, it appears from page 7 of the study that they actually increased.

147 Fourth, it must be noted that there is no concrete evidence for the applicants' statement concerning Salzgitter's alleged policy in relation to Flender concerning deliveries and prices of hot-rolled wide strips. The documents produced by the parties show that the price increases referred to by the applicants related not only to the hot-rolled wide strips supplied to them but to all steel products and that the increases were at least partly attributable to the boom in the whole of that market during 1999 and 2000. Furthermore, even assuming that the applicants' information is correct, they have by no means shown how Salzgitter's alleged

acts are proof of a manifest error of assessment by the Commission regarding the effects of the concentration at issue.

148 Finally, it is necessary to reject the applicants' assertion that the Commission ought to have taken account of overlapping in the activities of the parties to the concentration in relation to the production of hot-rolled wide strips and quarto plates and that the Commission ought to have included, for the purpose of calculating market shares, the quantities of hot-rolled wide strips sold by Salzgitter on the open market. It must be observed, first, that this argument contradicts the applicants' argument concerning the definition of the market for reference products for hot-rolled wide strips. It is contradictory to suggest on the one hand that the Commission ought to have found that hot-rolled wide strips for the production of pipes and such strips intended for other purposes form separate markets and, on the other hand, that the Commission ought to have found that there was a wider market bringing together hot-rolled wide strips and quarto plates. Second, the Commission correctly pointed out in its pleadings that where, in paragraph 14 of the ECSC decision, it left open the possibility of replacing, for certain uses, quarto plates by plates cut in hot-rolled wide strips, that is precisely because it considered that, even by reference to the narrower definition of the market, the concentration did not give rise to competition problems. As noted above, the market shares of the parties to the concentration in the market for quarto plates (paragraph 119) and in that for hot-rolled wide strips (paragraph 127), taken separately, were very limited.

Conclusion concerning the vertical effects of the concentration at issue on the market for large welded pipes

149 In light of all the foregoing, it must be concluded that the applicants have not shown that there was a manifest error of assessment on the Commission's part with regard to the vertical effects of the concentration at issue on the market for large welded pipes.

150 It is also clear from the foregoing reasoning that the applicants are mistaken in criticising the alleged shortcomings of Salzgitter's declaration of non-discrimination. As it has been shown that there was no manifest error of assessment by the Commission in finding that the vertical effects of the concentration at issue on the market for large welded pipes were unlikely to raise serious doubts as to the compatibility of the concentration with the common market, the question whether Salzgitter's declaration was or was not sufficient to mitigate those effects is irrelevant. In the circumstances, it was not even necessary to provide for such an undertaking on the part of Salzgitter. There was even less need to provide that the concentration at issue should be conditional upon such an undertaking.

(c) General conclusion

151 Having regard to the foregoing, the plea that there was an error of assessment concerning the effects of the concentration on the markets for large welded pipes must be dismissed in its entirety.

B — *Plea relating to error of assessment concerning the effects of the concentration on the market for small pipes with longitudinal welding*

1. *Arguments of the parties*

152 The applicants consider that the EC decision contains an error of assessment concerning the effects of the concentration at issue on the market for small pipes with longitudinal welding. They submit that the Commission cannot claim, in that respect, that it did not have to assess the effects of the concentration on that market because the parties' activities did not overlap. The applicants observe that

such an approach, which is confined to the purely horizontal effects of a concentration, is contrary to the principle expressed in form CO annexed to Regulation No 447/98 and in Article 2(1)(a) and (b) of Regulation No 4064/89, namely that when appraising concentrations, the vertical effects must also be taken into account. According to the applicants, this is the necessary conclusion particularly in the present case, where the concentration constitutes a threat to the existence of independent producers of small pipes who, first, depend on Salzgitter for supplies of raw materials and, second, compete with Salzgitter in the downstream market for the production of small pipes. In this connection the applicants dispute the Commission's statement that the market shares of the parties to the concentration in the upstream markets for raw materials were not such as to give rise to doubts concerning the strengthening of their position in the downstream market for small tubes. According to the applicants, that statement is based on incorrect delimitation of the market for hot-rolled wide strips and on miscalculation of the volume of the market.

153 The applicants add that the fact that the Commission appraised the effects of the concentration on the market for the production of large pipes without taking account of the situation in the market for small pipes is all the more surprising in that, when appraising the pipe distribution market (paragraphs 18 to 20 of the EC decision), the Commission did not distinguish between trade in large pipes and that in small pipes, although such a distinction was essential in so far as the production and distribution of pipes coexist in the same market. They also consider that, in the EC decision, the Commission was wrong to treat pipe distribution 'as an independent reference market to be distinguished from the pipe production market' on the basis of its previous decision of 7 April 1999 declaring a concentration compatible with the common market (Case IV/M.1369 — Thyssen/Mannesmann, mentioned in paragraph 18 of the EC decision).

154 The Commission, supported in this respect by the interveners, denies that it erred in its assessment of the effects of the concentration at issue on the market for small pipes with longitudinal welding.

2. *Findings of the Court*

155 Regarding the horizontal effects of the concentration at issue on the market for small pipes with longitudinal welding, it is sufficient to observe that, as the applicants themselves admitted in paragraph 70 of the application, the activities of the parties to the concentration did not overlap in that market because only MRW operated in it through two of its subsidiaries, Mannesmann Präzisrohr GmbH and Röhrenwerk Gebrüder Fuchs GmbH.

156 As for the vertical effects of the concentration at issue on the market for small pipes with longitudinal welding, it must be observed that, as shown in paragraph 127 above, the parties to the concentration at issue had a share of less than 5% of the upstream market of hot-rolled wide strips and the Commission could reasonably take the view that such effects could not give rise to serious doubts as to the compatibility of the concentration at issue with the common market. Furthermore, it must be borne in mind that, as appears from paragraph 132 et seq. above, the applicants are wrong in claiming that, with regard to hot-rolled wide strips, the calculation of volume and the definition of the reference market accepted by the Commission and the interveners are erroneous.

157 In addition, it is necessary to reject the applicants' argument that the exclusion of small pipes when appraising the effects of the concentration on the pipe production market conflicts with the fact that, in the appraisal of the pipe distribution market in paragraphs 18 to 20 of the EC decision, the Commission did not distinguish between trade in large pipes and trade in small pipes.

158 This argument is based on the erroneous premiss that pipe production and pipe distribution constitute one and the same market and are therefore subject to the same considerations regarding the definition of narrower markets. The Commission pointed out that, in past decisions and, in particular, in paragraph 7 of

decision IV/M.1369, cited in paragraph 153 above, it found that the pipe production market constituted a separate market from the pipe distribution market because of the different customer structure, differences in the quantities sold and the difference in the ability to react to customers' wishes. In answer to this, the applicants put forward no effective argument to show that this finding was mistaken. In this connection, the mere fact that, as the applicants contend, the pipe distributor sells the same product as the pipe producer does not prove that pipe production and pipe distribution constitute a single market.

159 In view of the foregoing, it must be found that the Commission did not commit a manifest error of assessment in finding that the effects of the concentration at issue on the market for small pipes with longitudinal welding could not give rise to serious doubts as to the compatibility of the concentration with the common market.

160 Consequently this plea must be dismissed.

C — *Plea relating to failure to take account of the links between Salzgitter and various other undertakings that resulted from the concentration at issue*

1. *Arguments of the parties*

161 In essence, the applicants contend that the Commission erred in its assessment in so far as, when examining the notified concentration, it omitted to investigate,

with reference to Article 81 EC and Article 2 of Regulation No 4064/89, the harmful consequences for competition of the corporate ties between Salzgitter and other undertakings resulting from the concentration at issue. In particular, the applicants refer to the fact that, as a result of the operation, first, Salzgitter controls, jointly with Usinor/DH, the joint venture Europipe, which produces large welded pipes from quarto plates and hot-rolled wide strips, and, secondly, Salzgitter controls, jointly with Thyssen/TKS, the joint venture HKM which produces crude steel, slabs and quarto plates. The applicants consider that under Article 81 the Commission must take account of the relationships between the parties concerned and must investigate the relevant consequences for competition in each of the markets in question. Furthermore, according to the applicants, the Commission has an obligation, when investigating concentrations, to take account of the degree of the potential risk to effective competition arising from the fact that competing producers form a joint venture in view of their common interests, which may affect their trading practices in spheres of joint or related activities.

162 The Commission, supported by the interveners, considers this plea unfounded (defence, paragraphs 54 to 75; statement in intervention, paragraphs 32 to 35; report for the hearing, paragraphs 96 to 108).

2. *Findings of the Court*

163 Through the concentration at issue Salzgitter acquired control of MRW which, in turn, had joint control, with DH which forms part of the Usinor group, of Europipe. As is apparent from paragraph 30 of the EC decision Europipe is the world leader in the production of large pipes with longitudinal welding and spiral welding.

164 In addition, as appears from paragraph 6 of the EC decision, Salzgitter also acquired indirectly joint control of HKM by taking control of MRW. Before the concentration at issue, MRW already held directly 20% and indirectly 30% of the shares of HKM through Vallourec & Mannesmann Tubes, of which it has joint control. Salzgitter now shares control with TKS, which is part of the Thyssen group. HKM produces mainly semi-finished products.

165 It follows that, by means of joint control of Europipe and HKM, the concentration at issue has had the effect of creating indirect links between Salzgitter and, respectively, Usinor/DH and Thyssen/TKS.

166 Therefore it is necessary to establish whether, as the applicants claim, the Commission erred in its assessment in so far as it omitted to appraise the consequences of those indirect links in relation to Article 81 EC and Article 2 of Regulation No 4064/89.

(a) Assessment by reference to Article 81 EC

167 The applicants contend that the Commission neglected to take account, by reference to Article 81 EC, of the fact that, as a result of the indirect acquisition of

joint control of Europipe and HKM, there is a risk that the parent companies of those joint ventures will coordinate their activities in the markets where the joint ventures operate or in associated markets.

168 However, it must be observed that, as the Commission rightly points out, the concentration was notified on 1 August 2000 on the basis of Article 4 of Regulation No 4064/89 and not on the basis of Article 81 EC.

169 It is true that, as mentioned in paragraph 76 above, according to settled case-law, the Commission must in principle avoid inconsistency which may arise in the implementation of different provisions of Community law (see the judgments in the cased of *Matra* v *Commission,* cited in paragraph 61 above, paragraphs 41 to 47, and *DIR International Film and Others* v *Commission*, cited in paragraph 61 above, paragraphs 21 and 30), and that the Court of First Instance has inferred from this principle that, in adopting a decision on the compatibility with the common market of a concentration between undertakings, the Commission cannot ignore the consequences which the grant of State aid to those undertakings has on the maintenance of effective competition in the relevant market (*RJB Mining* v *Commission*, cited in paragraph 61 above, paragraph 114). According to the applicants, it follows from this case-law that the Commission has the same obligation if, when assessing the compatibility of a concentration with the common market, it is informed of the existence of a cartel binding one of the parties to the concentration.

170 However, it must be noted that, in the present case, the Commission had no information on the existence of such a cartel and the applicants have not shown, or even asserted, that the parties to the concentration had concluded restrictive agreements with Usinor and/or Thyssen. The latter merely refer to the risk that, by virtue of their participation in Europipe and HKM, those companies may be

tempted to act in that way. However, it is clear that, when assessing the compatibility of a notified concentration with the common market, the Commission cannot be obliged, under Article 81 EC, to consider the hypothetical risk that the parties to the concentration may be required to conclude such restrictive agreements as a result of the concentration. According to the clear wording of Article 81(1) EC, the prohibition which it lays down applies only when anti-competitive agreements have actually been concluded. Furthermore, it has consistently been held that the appraisal by the Commission of the compatibility of a concentration with the common market must be carried out solely on the basis of matters of fact and law existing at the time of notification of that transaction, and not on the basis of hypothetical factors, the economic implications of which cannot be assessed at the time when the decision is adopted (*Air France* v *Commission*, cited in paragraph 41 above, paragraph 70).

171 It follows from the foregoing that the Commission had no obligation to assess the consequences, if any, of the indirect links between Salzgitter and various other undertakings by reference to the prohibition laid down by Article 81(1) EC and therefore the Commission made no error of assessment in that respect.

(b) Assessment by reference to Article 2 of Regulation No 4064/89

172 The applicants allege that the Commission failed to take account, by reference to Article 2 of Regulation No 4064/89, of the degree of potential risk to effective competition arising from the fact that competing producers may take part in a joint venture in view of common interests which may affect their trading practices in spheres of joint or related activities.

173 On this point it must be stressed that, generally, it cannot be ruled out that indirect links such as those called into question by the applicants in this case may affect the competition behaviour of undertakings connected in that way in certain markets. In exercising joint control of a joint venture, the parent companies will necessarily have to agree on the commercial management of the venture and, to some extent, on their own positions in relation to the joint venture in certain markets.

174 It follows that the existence of such indirect links of a financial and structural nature is a factor which must be taken into account when assessing a concentration by reference to the conditions laid down in Article 2(2) and (3) of Regulation No 4064/89 (see, to that effect, in relation to collective dominant positions, the judgment in *Gencor* v *Commission*, cited in paragraph 105 above, paragraph 277 et seq.).

175 However, in the present case it has not been shown that the indirect links referred to by the applicants between Salzgitter and various other undertakings were likely to give rise to serious doubts as to the compatibility of the concentration at issue with the common market.

176 The applicants have produced no evidence to show that the existence of indirect links between Salzgitter and Thyssen/TKS arising from control of the joint venture HKM was capable of having any effect whatever on the markets for slabs, quarto plates and hot-rolled wide strips and, therefore, of raising serious doubts as to the compatibility of the concentration at issue with the common market. As the Commission rightly points out, that cannot have been the case

here because, at the date of notification, HKM was not producing quarto plates or hot-rolled wide strips and was not selling slabs to third parties.

177 Likewise the applicants have produced no evidence to show that the existence of indirect links between Salzgitter and Usinor/DH arising from control of the joint venture Europipe was capable of having any effect whatever on the markets for quarto plates and hot-rolled wide strips and, therefore, of raising serious doubts as to the compatibility of the concentration at issue with the common market. As the Commission points out, that can hardly have been the case here because the shares of the parties to the concentration in those markets were very small.

178 In addition, it must be observed that, in response to the doubts expressed by third parties who feared that, because of the links between Salzgitter and Usinor/DH arising from the concentration at issue, they might be tempted to limit their supplies of quarto plates to competitors of Europipe, the Commission set out, in paragraphs 20 to 22 of the ECSC decision, the reasons why it considered that those links could not possibly have any such effect. First, it pointed out that, as Salzgitter's deliveries of quarto plates in 1999 were only 33 000 tonnes, the complete withdrawal of that company would not have a noticeable effect on the market for quarto plates in any case and/or on the (narrower) market for quarto plates intended for the production of large pipes with longitudinal welding. Second, the Commission observed that, although Usinor/DH already had joint control of Europipe before the concentration at issue, that company had continued to supply quarto plates to pipe producers competing with Europipe. Furthermore, if Usinor/DH stopped supplying those producers, that would have the effect of increasing the production costs of quarto plates and, thereby, damaging Europipe's competitiveness. Consequently, there was no need to fear that Usinor/DH would act in that way. Third, the Commission pointed out that plate production capacity in Europe is largely under-used, so that other producers of quarto plates for the production of pipes could supply quarto plates to pipe producers previously supplied by Salzgitter. Finally, the Commission noted that there were no obstacles to entry which would prevent plate producers from switching to the production of quarto plates.

179 These various reasons, which are not disputed by the applicants and which form part of the context of the EC decision (see paragraph 123 above), show clearly and unambiguously that the links between Salzgitter and Usinor/DH arising from the concentration at issue could not, in any case, have the disastrous vertical effects attributed to them by the applicants.

180 Therefore it must be concluded that the Commission did not commit a manifest error of assessment in finding that the links between Salzgitter and various other undertakings could not give rise to doubts concerning the compatibility of the concentration at issue with the common market.

(c) Conclusion

181 In view of the foregoing, the present plea must be dismissed as unfounded.

D — *Plea of breach of the obligation to state reasons*

1. *Arguments of the parties*

182 The applicants submit that, when adopting the EC decision, the Commission breached its obligation to state reasons in so far as it gave no reasons for its

appraisal of the vertical effects of the concentration at issue on the markets for large welded pipes and of the horizontal and vertical effects of the concentration on the markets for small pipes with longitudinal welding. In addition, the applicants consider that the Commission breached its obligation to state reasons in so far as the EC decision contains no reasons regarding its assessment of the effects of the links between Salzgitter and various other undertakings.

183 The Commission, supported on this point by the interveners, denies that it breached its obligation to state reasons when adopting the EC decision.

2. *Findings of the Court*

184 It has consistently been held that the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (see Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and the judgments cited there).

185 It follows that, when the Commission declares a concentration compatible with the common market on the basis of Article 6(1)(b) of Regulation No 4064/89, it is a necessary and sufficient condition in relation to the duty to state reasons that

the decision states clearly and unequivocally the reasons why the Commission considers that the concentration at issue does not raise serious doubts as to its compatibility with the common market. However, contrary to what the applicants suggest, it cannot be inferred from that obligation that, in such a hypothetical case, the Commission must provide reasons for its assessment of all the matters of law and of fact which may be connected with the notified concentration and/or which were raised during the administrative procedure (see, to that effect, the judgment in the case of *Air France* v *Commission*, cited in paragraph 41 above, paragraph 92).

186 Not only is such a requirement difficult to reconcile with the need for promptness on the Commission's part when it exercises its power to examine concentrations and, in particular, when it approves a concentration on the basis of Article 6(1)(b) of Regulation No 4064/89, but, in addition, such a requirement is difficult to justify from the viewpoint of the very nature of that power. It must be observed that, in the framework of the system established by Regulation No 4064/89, the Commission is obliged to assess, using a prospective analysis of the reference markets, whether the concentration which has been referred to it creates or strengthens a dominant position with the consequence that effective competition is significantly impeded in the common market or a substantial part thereof. Such a procedure requires that there be a close examination in particular of the circumstances which, in each individual case, are relevant for assessing the effects of the concentration on competition in the reference markets (see the judgment in *Air France and Others* v *Commission*, cited in paragraph 105, paragraph 222). It follows that, if a concentration does not modify, or modifies only to a very limited extent, the competition situation in a given market, the Commission cannot be required to set out specific reasoning on that point. Likewise, the Commission does not fail in its duty to state reasons if, in its decision, it does not include specific reasons concerning the assessment of a number of aspects of the concentration which seem to it manifestly irrelevant or insignificant or plainly of secondary importance for the assessment of the concentration (see, to that effect, the judgment in the case of *Sytraval and Brink's France*, cited in paragraph 184 above, paragraph 64).

187 It follows from the foregoing that the mere fact that a decision declaring a concentration compatible with the common market on the basis of Article 6(1)(b) of Regulation No 4064/89 does not give reasons in relation to some matters of fact or of law does not mean, as such, that the Commission failed in its duty to state reasons when it adopted that decision (see, to that effect, the judgments in *Air France* v *Commission*, cited in paragraph 41 above, paragraph 92, and *Kaysersberg* v *Commission*, cited in paragraph 123 above, paragraph 150). The absence of reasons may also be interpreted as meaning that, in the Commission's opinion, those matters cannot raise serious doubts as to the compatibility of the concentration at issue with the common market.

188 It is necessary to determine, in the light of those principles, whether, as the applicants submit, the Commission failed in its obligation to state reasons by not including in the EC decision explicit reasons regarding its appraisal of the vertical effects of the concentration at issue on the markets for large welded pipes and its horizontal and vertical effects on the market for small pipes with longitudinal welding, and its appraisal of the links between Salzgitter and various other undertakings.

189 On this point the Court finds that, as is clear from its examination of the different pleas relating to alleged errors of assessment, the Commission set out clearly and unequivocally in the EC decision the reasons why it considered that the concentration at issue did not raise serious doubts as to its compatibility with the common market.

190 Although the EC decision gives no reasons for the Commission's appraisal of the vertical effects of the concentration at issue on the market for large welded pipes, it must nevertheless be observed that, as found in paragraph 117 et seq. above, mainly by reason of the parties' very small shares of the upstream markets for hot-rolled wide strips and quarto plates, those factors could not raise serious

doubts as to the compatibility of the concentration at issue with the common market.

191 Moreover, in response to the submissions of EBM and Ferndorf during the administrative procedure, the Commission set out, in paragraphs 20 to 22 of the ECSC decision, which form part of the context of the EC decision (see paragraph 123 above), the reasons why it considered that the concentration at issue did not have the effect of threatening the supply of quarto plates for undertakings competing with the parties to the concentration on the downstream market for large pipes with longitudinal welding. Furthermore, in paragraph 23, the Commission took note of Salzgitter's declaration of non-discrimination, which sought to respond to the concerns of independent producers of pipes with regard to their raw material supplies from Salzgitter.

192 Accordingly the Commission did not breach its obligation to state reasons regarding the vertical effects of the concentration at issue on the market for large welded pipes.

193 Likewise it must be concluded that the Commission did not fail to fulfil its obligation to state reasons by not including in its decision reasons for, first, its appraisal of the horizontal and vertical effects of the concentration at issue on the market for small pipes and, second, its appraisal of the links between Salzgitter and various other undertakings. As found in paragraphs 155 et seq. and 163 et seq. above, those factors could not give rise to serious doubts as to the compatibility of the concentration at issue with the common market. Furthermore, it must be noted that during the administrative procedure neither EBM nor Ferndorf raised any objections in that respect.

194 In view of the foregoing, this plea must be dismissed.

E — *Plea that the adoption of separate decisions was illegal*

1. *Arguments of the parties*

195 On the basis of the arguments summarised in paragraph 59 et seq. above, the applicants submit that it was illegal for the Commission to adopt two separate decisions to authorise the concentration at issue.

196 The Commission rejects the applicants' arguments in their entirety.

2. *Findings of the Court*

197 As is clear from paragraph 67 et seq. above, it was not illegal for the Commission to adopt separate decisions to authorise the concentration at issue. Therefore this plea must be dismissed.

F — *Application for production of documents*

1. *Arguments of the parties*

198 The applicants submit that Salzgitter and the Commission are not entitled to rely on material statements contained in the notification of the concentration because neither the Court nor the applicants have had an opportunity to examine the document. According to the applicants, the references to such material statements are inadmissible by virtue of the second paragraph of Article 116(4)(c) of the Rules of Procedure. As a precaution, should the Court consider that such references are nevertheless admissible, the applicants request the Court to order the Commission to produce the administrative file relating to the concentration at issue for the purpose of taking evidence or, at least, to order the Commission to produce the notification(s) of the concentration.

199 The Commission considers it inexpedient for the Court to take such measures for the organisation of procedure in so far as, irrespective of their legal basis, they form part of an action which, according to the Commission, is manifestly inadmissible.

2. *Findings of the Court*

200 First of all, it must be observed that the request for production of the notification of the concentration at issue has become devoid of purpose because the Commission produced a copy of the notification, annexed to its letter of 16 December 2002, a copy of which was sent to the applicants.

201 With regard to the request for production of the administrative file for the concentration at issue, although, as the applicants claim, the Commission and the interveners cannot rely on documents to which neither the Court nor the applicants have had access, it must be observed that this circumstance alone does not, as such, justify an order by the Court for the production of documents on the basis of Article 64 of the Rules of Procedure. The Court may order such a measure for the organisation of procedure only if the applicants make out a plausible case that the documents are necessary and relevant for the purposes of judgment. In the present case the applicants have made no submissions at all to that effect. Moreover, not only do the applicants not specify what they mean by 'administrative file' of the concentration, but the Commission and the interveners have never referred to any such file.

202 Consequently there are no grounds for granting the applicants' request for production of the administrative file.

Costs

203 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have failed in their submissions, they must be ordered to pay the costs, in accordance with the form of order sought by the Commission and the interveners.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. **Declares the action inadmissible in so far as it seeks the annulment of decision COMP/ECSC.1336 of 14 September 2000;**

2. **Declares the action admissible but unfounded in so far as it seeks the annulment of decision COMP/M.2045 of 5 September 2000;**

3. **Orders the applicants to pay their own costs together with those of the Commission and those of Salzgitter and Mannesmann.**

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 8 July 2003.

H. Jung K. Lenaerts

Registrar President

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