In Joined Cases

1. GEITLING RUHRKOHLEN-VERKAUFSGESELLSCHAFT MBH having its registered office in Essen (Case 16/59),

2. MAUSEGATT RUHRKOHLEN-VERKAUFSGESELLSCHAFT MBH having its registered office in Essen (Case 17/59),

3. PRÄSIDENT RUHRKOHLEN-VERKAUFSGESELLSCHAFT MBH having its registered office in Essen (Case 18/59),

each represented by its manager,

4. THE MINING COMPANIES OF THE RUHR BASIN, members of the aforesaid selling agences and represented by them,

assisted by Hans Hengeler and Dr Werner von Simson, both Advocates at the Düsseldorf Bar, with an address for service in Luxembourg at the office of Dr Werner von Simson, at Bertrange,

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY,

represented by its Legal Adviser, Erich Zimmermann, acting as Agent, assisted by Professor Konrad Duden and Heinz Rowedder, both Advocates at the Mannheim Bar, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for annulment of certain provisions of:

(a) Decision No 17/59 of the High Authority dated 18 February 1959 on the extension of the authorizations for the sales organizations of the Ruhr basin published in the Journal Officiel des Communautés Européennes, No 14 of 7 March 1959;

(b) the letter of 21 February 1959 from the President of the High Authority addressed to the management of the applicant selling agencies on the extension of the authorizations for the marketing organizations of the Ruhr basin,

THE COURT

composed of: A. M. Donner, President, L. Delvaux (Rapporteur) and R. Rossi Presidents of Chambers, O. Riese and N. Catalano, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The *applicants* claim that the Court should:

A — Annul the following provisions of Decision No 17/59 of 18 February 1959 (JO of 7.3.1959, p. 279 *et seq.*) and the following matters in the letter from the President of the High Authority of 21 February 1959:

1. Authorization of the agreement of the Ruhr coal selling agencies on the establishment of a common office, the common financial arrangements and the agreement on the establishment of a rules committee (Decision No 8/56 of the High Authority of 15 February 1956) cannot be extended beyond 31 March 1960 (JO, p. 280, second column, fourth paragraph; point 1 in the letter of 21 February 1959);

2. The authorization to the Ruhr coal selling agencies cannot be extended beyond 31 March 1961 (JO, p. 280, second column, fourth paragraph; point 1 in letter of 21 February 1959);

3. The High Authority will see to it that the decisions of the mining companies do not again lead in law or in fact to the establishment of a uniform marketing system based on similar organizations (JO, p. 280, first and second columns, sixth paragraph);

4. There can be no authorization given to any future agreement of the mining companies on joint selling unless some large undertakings decide to market their production independently (point 2 (a) in the letter of 21 February 1959);

5. Where an undertaking belongs simultaneously to several marketing organizations, a selling agency can be authorized only in exceptional circumstances (point 2 (b) of the letter of 21 February 1959);

6. Authorization cannot be given for a selling agency under Article 65 (2) (a) where the undertakings belonging to it market a considerable or varying part of their production through other channels (point 2 (c) of the letter of 21 February 1959);

7. Article 14 (2), second sentence (JO, p. 284);

8. Article 11 (JO, p. 284).

B — *Order the High Authority to bear the costs*

The *defendant* contends that the Court should:

Reject claims 1 to 7 made by the applicants as inadmissible or as unfounded and order the applicants to bear the costs.

After first reserving its position with regard to claim 8, the defendant, by letter dated 23 June 1959, contended that the Court should:

'Declare that claim 8 (annulment of Article 11 of Decision No 17/59) in Cases 16/59, 17/59 and 18/59 has lost its purpose and in substance has been settled.'

By letter dated 3 July 1959 the *applicants* stated they had no objections to this contention by the defendant.

II – Facts

The facts may be summarized as follows:

By Decisions Nos 5/56, 6/56, 7/56 and 8/56 dated 15 February 1956 the High Authority authorized the creation of various organizations for the joint selling of Ruhr coal. These authorizations and the agreements and resolutions of the companies concerned were valid only until 31 March 1959. Subsequently the mining companies extended their agreements and resolutions until 31 March 1960 and applied to the High Authority for authorization of this extension.

Since the High Authority took the view that the authorizations had not led to the expected results and that in particular the three selling agencies had applied a uniform marketing system contrary to the provisions of the Treaty, it resolved to terminate the existing marketing system after the expiration of a transitional period. Accordingly by Decision No 17/59 of 18 February 1959 it consented to the extension requested until 31 March 1960, but amended and supplemented its authorizations in several respects.

By Decisions Nos 7/58, 8/58 and 9/58 of 18 June 1958 the High Authority authorized the selling agencies, subject to certain conditions, to conclude long-term delivery contracts. Articles 2 to 4 of Decision No 17/59 maintain this arrangement in so far as the duration of the agreements does not exceed ten years.

Decisions Nos 16/57, 17/57 and 18/57 had made direct deliveries by wholesale coal merchants through the Ruhr coal selling agencies subject to strict conditions. Articles 5 to 11 of Decision No 17/59 amend the trading rules so that the conditions for delivery by wholesale merchants are made substantially less strict.

Articles 12 and 13 of decision No 17/59 authorize the decision of the rules committee dated 10 December 1958 on a partial amendment of the decision relating to companies' own consumption dated 13 December 1955 and extend the validity of Decision No 8/56 to 31 March 1960.

Finally Article 14 of Decision No 17/59 provides that the High Authority shall examine the individual organizations and the participating mining companies to determine whether they are keeping to the terms of the authorizations and whether it is necessary to revoke or amend the authorizations for the purpose of restructuring the Ruhr coal marketing.

By letter of 21 February 1959 the President of the High Authority sent the three applicant selling agencies a copy of Decision No 17/59. The letter draws attention to the principles of the decision and states that the names of the officials who will be entrusted with carrying out the checking in accordance with Article 14 of the decision willl be given shortly.

On 25 March 1959 the three selling agencies, Geitling, Mausegatt and Präsident together with their member mining companies, brought an action before the Court for the annulment of certain provisions of Decision No 17/59 and of the letter of the President of the High Authority dated 21 February 1959 (Cases 16/59, 17/59 and 18/59).

By order dated 17 April 1959 the Court jointed the three cases.

On 17 June 1959 the High Authority issued Decision No 36/59 (JO of 8.7.1959) on the partial revocation and supplemention of Decision No 17/59 with regard to the trading rules of the Ruhr coal selling agencies. On the publication of this decision the parties stated in supplemental applications that the application for annulment of Article 11 of Decision No 17/59 had lost its purpose; further the applicants brought an action against Decision No 36/59 (Joined Cases 36/59, 37/59 and 38/59).

The applicants had, moreover, brought an application for the adoption of interim measures (Case 19/59 R) seeking postponement of the entry into force of Article 11 (application of the quantitative criteria laid down by the High Authority for authorizing wholesale merchants to buy directly from the selling agencies) and Article 14 (2), second sentence (dispatch of officials of the

High Authority to examine the restructuring of the Ruhr coal marketing) of Decision No 17/59 until final judgment in Cases 16/59, 17/59 and 18/59. This application for a stay of execution was rejected by the Court by order of 12 May 1959.

III — Submissions and arguments of the parties

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

A — Admissibility

1. Claims 1 to 6 (relating to the grounds of Decision No 17/59 and to the letter of 21 February 1959).

The *defendant* considers the claims by the applicants to be inadmissible for the following reasons:

(a) Since the High Authority has extended the agreements by a year, it has already to this extent satisfied the applicants' claims who accordingly have in no way suffered damage.

(b) Since only the operative part of a decision is binding (Articles 14 and 15 of the Treaty) and not the statement of the grounds thereof, the latter cannot be the subject of an application for annulment.

(c) By publishing the general principles on the basis of which a future, comprehensive restructuring of the Ruhr coal marketing should take place, the High Authority has created no rule applicable to a particular case. According to the case-law of the Court (Joined Cases 1/57 and 14/57, Rec. 1957, pp. 221 to 223) general principles cannot be the subject of an application for annulment.

The *applicants* counter that the application is admissible on the basis of Articles 33 and 80 of the Treaty.

(a) The contested provisions are decisions within the meaning of Articles 33 and 14 of the Treaty.

According to the case-law of the Court (Case 8/55, Rec. 1955-1956, pp. 224 and 225, and Joined Cases 1/57 and 14/57, Rec. 1957, pp. 219 to 223) there is a decision within the meaning of Article 14 of the Treaty where the High Authority expresses its intention in the statement of grounds not to extend beyond 31 March 1960 or 31 March 1961 the authorizations already granted and to take measures to prevent a single marketing system on the basis of similar organizations (Claims 1 to 3).

The conditions set out in the letter of 21 February 1959 for the issue of a new authorization in accordance with Article 65 of the Treaty (Claims 4 to 6) must also be regarded as a decision, for in so far as the High Authority expresses its intention not to issue authorizations in particular circumstances, it makes quite clear what its attitude will be in certain circumstances and it is laying down rules which can be applied in given cases.

(b) The contested decision is an individual decision since it directly concerns the applicants, it has been notified to them and contains directions which are intended to apply solely to a particular and limited section of the mining undertakings of the common market.

(c) The defendant wrongly denies the existence of damage and of legal interest on the part of the applicants. They certainly had an interest in obtaining an annulment since this was the only way in which a declaration, which might possibly in future be an obstacles to the establishment of a marketing organization, could be prevented from having legal force.

2. Claim 7 (objecting to article 14 (2) of Decision No 17/59 providing for the carrying out of checks by officials of the High Authority).

The *defendant* considers the claim inadmissible. It states that the applicants have no need *at present* to bring the matter before the Court since the contested article contains no particulars of the intended checks. To carry out these checks further measures

are necessary. Only after such measures have been adopted and the officials concerned with checking have required information to be supplied will recourse to the Court be appropriate.

The *applicants* counter that by providing for checks the High Authority has ordered a general examination, the scope and limits of which have not been determined in detail. Claim 7 is admissible since the contested provision could take effect and cause serious damage to the applicants. The intention of the High Authority on the issue of this provision matters little: what does matter is the objective meaning and content of the measure and its effect on third parties.

3. Claim 8 (contesting Article 11 of Decision No 17/59 on the trade regulations).

Following the publication of Decision No 36/59 which revoked the provisions of Decision No 17/59 on trading rules the parties unanimously agreed that Claim 8 had lost its purpose.

B — Substance

1. Claims 1 to 6 (objecting to the statement of grounds in Decision No 17/59 and the letter of 21 February 1959).

The *applicants* allege:

(a) Lack of competence vested in the High Authority

(b) Infringement of essential procedural requirements

(c) Infrigement of various provisions of the Treaty.

(a) The applicants take the view that the High Authority cannot of its own motion give or refuse authorization. It can do so only where there is an application by the undertakings concerned. A decision which refuses authorization in future circumstances without regard to future trends does not constitute an application of Article 65 of the Treaty but further legislation which the High Authority has power to enact only in the cases provided for in the Treaty. The competence of the High Authority is limited to the checking of actual cases; an individual decision can apply only to an existing situation.

(b) The applicants allege that essential procedural requirements have been infringed first because of insufficient grounds and further because of the absence of an application by the undertakings affected and finally because of the general authorization in one and the same decision of the applications by the applicants.

(c) Further the High Authority has infringed the general principles of the second paragraph of Article 2, Article 3 (a) (b) and (c), Article 4 (b) and the first paragraph of Article 5.

Moreover the High Authority in various ways has not had regard to the provisions of Article 65 of the Treaty.

In answer the *defendant* says that the applicants object solely to the fact that binding legal effects could be attributed to the observations of the High Authority contained in the statement of grounds of the contested decision. This was however never the intention of the High Authority. The declarations contained in the statement of grounds and in the letter of 21 February 1959 are simply general, non-binding directives for the applicant undertakings.

2. Claim 7 (objecting to Article 14 (2) of Decision No 17/59 providing for checks by officials of the High Authority).

The *applicants* allege:

(a) Lack of competence vested in the High Authority.

(b) Misuse of the right to information by the High Authority.

(c) Infringement of provisions of the Treaty.

(a) The High Authority is competent to require information and to make inquiries

with regard to the actual conditions of joint selling only where there is an application for an authorization under Article 65 (2).

(b) The wording of Articles 47 and 65 (3) of the Treaty makes it clear that the High Authority may exercise the rights provided for therein only in carrying out certain clearly defined tasks. In the present case intervention by the High Authority on the basis of Article 65 and general inquiries are ruled out since information can be required and checks undertaken only in fulfilment of a particular task of the administration.

(c) Further the High Authority infringes Article 4 (b) of the Treaty which prohibits discrimination. The continued presence of officials to make checks would unjustifiably place the applicants in a worse position and they are already at a disadvantage in comparison with the majority of mining companies in other areas of the common market.

Moreover the High Authority is incorrectly applying the provisions of Articles 47 and 65 (3) of the Treaty. Both provisions lay down that the High Authority may put questions to enable it to carry out its task. A right to check arises only when a reply has been received from the person under an obligation to provide information. The High Authority is therefore infringing the Treaty when it procures information directly from the applicants without having previously put specific questions.

The *defendant* in answer says:

(a) If the High Authority, as the applicants allege, were restricted to requiring information only after an application for authorization, such a limited power would make it impossible to judge existing marketing agreements properly. It would be necessary for the High Authority every time within a short period before the expiry of an agreement to rule on the applications of the undertakings which are parties to that agreement. A proper application of the provisions in accordance with the economic circumstances justifying an authorization would be impossible under these conditions.

(b) There can be no misuse of the right to information in carrying out the checking provided for. The High Authority does not wish to check what it already knows but to procure reliable information on the conditions of the Ruhr coal marketing to ensure compliance with Article 65 (2) of the Treaty in the future.

(c) The complaint that Article 4 (b) of the Treaty (discrimination) has been infringed is unfounded. Limiting the checks to the applicants is justified by the fact that no basic restructuring such as is to be undertaken by the applicants at the end of 1959 is expected of the marketing organizations in the other areas of the Community. The High Authority has complied with the provisions of Articles 47 and 65 (3) of the Treaty by giving notice of its checks. The first paragraph of Article 47 gives the High Authority not only the right to obtain information but also the power to have any necessary checks made. The wording and intent of this provision give no ground for inferring that the right is subject to the condition that the High Authority shall previously have asked for and received information on the same subject-matter.

Grounds of judgment

Admissibility

Claims 1 and 2 are directed against the seventh recital to Decision No 17/59 of the High Authority (JO of 7.3.1959, p. 280, second column, fourth paragraph) and point 1 of the letter of the High Authority of 21 February 1959. Complaint is made

that the defendant decided in advance that the common establishments of the selling agencies of the Ruhr basin could not be authorized beyond 31 March 1960 nor the selling agencies themselves beyond 31 March 1961, although it had not had applications for authorization in respect of this and agreement on this subject had not been reached.

Claims 3 to 6 are directed against the fifth recital to Decision No 17/59 (JO of 7.3.1959, p. 280, first column, fifth and sixth paragraphs and second column, first and second paragraphs) and point 2 (a), (b) and (c) of the letter of the High Authority of 21 February 1959 in so far as, without any agreement having been needed, conditions were laid down in advance in respect of authorizations of future organizations for the marketing of Ruhr coal.

Claim 7 is for the annulment of the second sentence of Article 14 (2) of Decision No 17/59 whereby the High Authority will instruct officials to inform it whether and to what extent revocation or amendment of an authorization prolonged by the decision is necessary and also to make inquiries about the details to be taken into account in a restructuring of the marketing of Ruhr coal.

The objective of claim 8 was the annulment of Article 11 of Decision No 17/59 whereby the more extensive applications of the mining companies concerned relating to the trading regulations were rejected. The parties are unanimously agreed however that this claim has in the meantime lost its purpose as the contested decision has in this respect been replaced by Decision No 36/59 of 17 June 1959 since the application was brought.

Admissibility of claims 1 to 6

On 11 and 12 December 1958 the mining undertakings affiliated to the selling agencies applied for the previous authorization to be extended by a year, that is until 31 March 1960. The High Authority dealt with these applications by Decision No 17/59 of 18 February 1959 which was published in the Journal Officiel of the European Communities of 7 March 1959 and notified to each of the three selling agencies by letter of 21 February 1959.

Articles 1 and 12 of Decision No 17/59 grant the prolongation of the authorization for the period requested. Articles 2 to 10 however amend the conditions for authorization of long-term delivery contracts and the trading rules and prescribe new conditions, applicable at once, with which the agreements must comply.

In giving the abovementioned grounds for its decision the High Authority has simply set out why the selling agencies were authorized for the period for which application was made, although it takes the view that the working method of these

organizations does not accord with the requirements of the Treaty and in particular with Article 65.

The fifth recital is intended to explain how the present working of the organizations for the marketing of Ruhr coal infringes the provisions of the Treaty and to indicate what amendments are required to bring these organizations within the provisions of Article 65. On the other hand, the High Authority obviously had no intention of laying down in advance the conditions for a future authorization.

This interpretation is confirmed by the wording of the fifth recital which simply stresses the objectives which must be attained to comply with the provisions of Article 65, but the defendant expressly reserves to itself the formulation of the precise rules to be adopted in the future 'The High Authority will see to it by appropriate provisions...; marketing is to be made as effective as possible...; the High Authority will authorize... such procedures and arrangements as it shall deem appropriate').

Although the same cannot be said with such certainty of the concluding part of the seventh recital, nevertheless this interpretation is justified if account is taken of the fact that the High Authority was obviously guided by the general intention to indicate simply the defects of the earlier system and at the same time to point out to the parties how the existing marketing system had to be restructured.

The conditions set out in the fifth and at the end of the seventh recitals are not a decision but simply a notice which does not bind the High Authority for the future and in no way rules out its amending its viewpoint set out above after thorough examination of subsequent applications by the parties; moreover in such an event it would be under an obligation to make such an examination.

The applicants have not gone into the correctness of the findings of fact contained in the recitals or into the relevance of the interpretation of the Treaty; they have simply challenged the abovementioned recitals maintaining that they represent an administrative act which contains a premature decision separable from the authorization.

As appears from the above observations these objections are unfounded since the said grounds represent a material part of the grounds for the authorization.

Moreover neither these grounds themselves nor the contested parts of the letter of notification of 21 February 1959 are such as to affect the applicants adversely because they are not binding on the addresses of the decision and on the other hand they do not bind the High Authority on exercising in the future its power of authorization.

In view of the above claims 1 to 6 are inadmissible.

Admissibility of claim 7

The second sentence of Article 14 (2) of Decision No 17/59 contains no provisions giving rise to legal effects of a legislative or individual nature. It is simply an internal measure which the High Authority has taken on the basis of its power under Article 47 of the Treaty and of which it has notified the parties.

In so far as this internal direction does not lead to implementation provisions which conflict with Article 47 it cannot a affect the applicants adversely.

Claim 7 is accordingly also inadmissible.

The position of the parties with regard to claim 8

It is questionable whether from the legal point of view claim 8 has in fact 'lost its purpose' since the contested decision has not been 'revoked with retroactive effect' in respect of the trading rules but has been 'revoked' with effect only 1 July 1959; thus Article 11 of Decision No 17/59 remains in force for the period from 1 April to 30 June 1959.

The declarations of the applicants on this matter are therefore to be interpreted as a withdrawal of the claim of which the Court takes note.

Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. In the present case the applicants have failed in respect of admissibility.

Nevertheless the drafting of the seventh recital to Decision No 17/59 in such imperative terms could well give the impression that it was already definitive and thus a genuine decision. This fact could have led the applicants to bring the present action thus involving them in unnecessary costs. As a result the costs of the action should in part be borne by the defendant.

Further the defendant stated in the course of the oral procedure that it is prepared to meet the costs involved in claim 8. The agreement announced by the parties in the course of the proceedings that the defendant would meet the costs attributable to claim 8 should therefore be noted and taken into account in apportioning the costs in the manner mentioned below.

The applicants failed in an interim application in the action; nevertheless a similar apportionment to that mentioned above of the costs of the interim application appears appropriate.

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 2, 3, 4, 5, 14, 15, 33, 47, 48, 65, 80 and 86 of the Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to the Rules of Procedure of the court of Justice of the European Communities,

THE COURT

hereby:

1. **Dismisses claims 1 to 7 as inadmissible;**

2. **Takes note of the withdrawal of claim 8;**

3. **Takes note of the agreement of the parties that the defendant should bear the costs attributable to claim 8;**

4. **Orders that costs of the action including the costs of the interim application shall be borne as to two-thirds by the applicants and as to one third by the defendant.**

Donner Delvaux Rossi

Riese Catalano

Delivered in open court in Luxembourg on 12 February 1960.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 26 NOVEMBER 1959[1]

Mr President,
Members of the Court,

The very complete written procedure and the very clear oral observations which you heard last week facilitate what I have to say in this case. I think I can omit even a summary history of the joint marketing organizations of the Ruhr which we are all beginning to know quite well.

Let us recall only that the present organiza-

1 — Translated from the French.