JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber)

7 July 2004 *

In Joined Cases T-107/01 and T-175/01,

Société des mines de Sacilor — Lormines SA, established in Puteaux (France), represented initially by G. Marty and subsequently by R. Schmitt, lawyers,

applicant,

v

Commission of the European Communities, represented by G. Rozet and L. Ström, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATIONS for failure to act and, in the alternative, for annulment, concerning the Commission's refusal to uphold the applicant's complaint seeking a declaration that the French Republic had infringed the provisions of Articles 4(b) and (c) CS and 86 CS by reason of the imposition on the applicant of allegedly excessive charges in the context of procedures for the abandonment and renunciation of its mining concessions,

* Language of the case: French.

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

composed of: H. Legal, President, V. Tiili and M. Vilaras, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 February 2004,

gives the following

Judgment

Legal background

1 Article 4 CS provides:

'The following are recognised as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty:

...

(b) measures or practices which discriminate between producers, between purchasers or between consumers, especially in prices and delivery terms or transport rates and conditions, and measures or practices which interfere with the purchaser's free choice of supplier;

(c) subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever;

...'

2 Article 33 CS provides:

'The Court of Justice shall have jurisdiction in actions brought by a Member State or by the Council to have decisions or recommendations of the Commission declared void on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The Court of Justice may not, however, examine the evaluation of the situation, resulting from economic facts or circumstances, in the light of which the Commission took its decisions or made its recommendations, save where the Commission is alleged to have misused its powers or to have manifestly failed to observe the provisions of this Treaty or any rule of law relating to its application.

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.

...'

3 Under Article 35 CS:

'Wherever the Commission is required by this Treaty, or by rules laid down for the implementation thereof, to take a decision or make a recommendation and fails to fulfil this obligation, it shall be for States, the Council, undertakings or associations, as the case may be, to raise the matter with the Commission.

The same shall apply if the Commission, where empowered by this Treaty, or by rules laid down for the implementation thereof, to take a decision or make a recommendation, abstains from doing so and such abstention constitutes a misuse of powers.

If at the end of two months the Commission has not taken any decision or made any recommendation, proceedings may be instituted before the Court within one month against the implied decision of refusal which is to be inferred from the silence of the Commission in the matter.'

4 Article 80 CS provides:

'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.'

Facts of the dispute

5 The applicant, then called Lormines, a subsidiary of Usinor, was formed in 1978 to take over Sacilor's concessions and leases of iron mines in Lorraine. It became a public undertaking as a result of the nationalisation of its parent company in 1982. In view of the decline in iron ore extraction in that region, the French Government decided in 1991 to stop production. The applicant's last iron mines ceased operation in July 1993. The applicant was privatised in 1995 and 1997.

6 Owing to the disappearance of the object of the company, the applicant was in a position to be dissolved. It therefore initiated the 'abandonment' and 'renunciation' procedures.

7 The aim of the abandonment procedure is to close and secure former mining installations. In an abandonment, a mining company is required to comply with the special mines policy, the purpose of which is to define the works necessary for making former mining installations safe.

8 The aim of the renunciation procedure is to terminate the concession early. It allows the concessionary to avoid the obligations arising from the application of the special mines policy and frees him from the presumption of liability for any damage which occurs at the surface.

9 Abandonment measures for several of the applicant's mines were carried out in accordance with the provisions of Decree 80-330 of 7 May 1980 on the mines and quarries policy (JORF, 10 May 1980, p. 1179), as amended, as the competent national authorities recorded in 1996.

10 However, the request for early renunciation of the corresponding concessions was not accepted by the competent minister, and the authorities continued to apply the mines policy on the basis of Law 94-588 of 15 July 1994 amending certain provisions of the Mining Code and Article L.711-12 of the Employment Code (JORF, 16 July 1994, p. 10239). The applicant thus continued to have obligations in respect of surveillance and public works measures.

11 Moreover, by Law 99-245 of 30 March 1999 on liability for damage resulting from mining operations and the prevention of mining risks after mining has ended (JORF, 31 March 1999, p. 4767), the presumption of liability in respect of mining was extended inasmuch as there is now a presumption of perpetual liability on the part of the former concessionary. That law also imposes an obligation on the former mine operator to pay a compensation charge designed to finance public expenditure for 10 years.

12 By decision of an extraordinary general meeting of 3 March 2000, the applicant was put into voluntary liquidation.

13 The applicant considered that the French authorities' refusal to terminate its concessions, which gave rise to liability to new, unpredictable and extraordinary charges, constituted a breach of Articles 4 CS and 86 CS, and lodged a complaint with the Commission, dated 9 February 2001 and registered at the Secretariat-General of the Commission on 21 February 2001.

14 In its complaint the applicant argued that the French authorities had infringed Article 4(c) CS by imposing 'special charges' on it. It claimed that the Commission

should declare, on the basis of Article 88 CS, that the French Republic had failed to fulfil its obligations under that Treaty and order it:

'— to acknowledge that Lormines has not been the holder of its concessions and leases since the date on which it in fact abandoned them;

— to acknowledge that, since the date on which it in fact abandoned its concessions and leases, Lormines cannot be bound by a presumption of liability;

— to cease imposing any charge whatsoever on Lormines in respect of the aforementioned concessions and leases;

— to reimburse Lormines for the charges it has had to pay since it in fact abandoned its concessions and leases'.

15 In its letter of 30 March 2001, which the applicant's legal adviser states that he received on 20 April 2001 and which was signed by the director of the 'State Aid II' directorate in the 'Competition' Directorate-General, the Commission replied as follows:

'On the basis of the information available, the staff of the Directorate-General for Competition have concluded that the matter is not governed by Community law but only French law. The measures criticised, which relate to the conditions imposed by the French State for renunciation of mining concessions by the operating companies, are not measures of implementation specific to ECSC undertakings. They come within the sphere of safety and civil liability, spheres which fall within the

competence of the Member States and not the Community. ECSC undertakings are not excluded from the obligations imposed by States for reasons of public order such as safety, civil liability or the environment. The financial costs arising therefrom cannot, therefore, be regarded as special charges imposed on ECSC undertakings under Article 4(c) [CS].

If you have further evidence to show otherwise, I should be grateful if you would communicate it to my staff as soon as possible.'

16 By letter of 9 May 2001, the applicant's legal adviser responded to the Commission's letter. He maintained the claim that there had been a breach of Article 4(c) CS with respect to the concept of 'special charges' and the imposition of charges only on undertakings covered by the ECSC Treaty. He also submitted that there had been discrimination contrary to Article 4(b) CS. He concluded as follows:

'For that reason, in so far as necessary and for the purposes of Article 35 [CS], I ask the Commission to declare that the French Republic has failed to fulfil its obligations under Articles 4(b) [CS] and 86 [CS].'

17 He also asked for exactly the same measures to be ordered as already requested in his complaint of 9 February 2001 (paragraph 14 above).

18 By letter of 10 July 2001, which the applicant's legal adviser states that he received on 19 July 2001 and which was signed by the director of the 'Environmental aspects of

enterprise policy, resource-based and specific industries' directorate of the 'Enterprise' Directorate-General, the Commission sent him the following reply:

'In your letter of [9] May 2001 you claim, in the alternative, that Lormines has been the victim of discrimination contrary to Article 4(b) [CS]. This matter has been examined by the appropriate members of my staff. It is apparent that Article 4(b) [CS] concerns solely sales of ECSC products. The application of the general rule of non-discrimination was specified in Article 60 [CS] (sale prices) and Article 70 [CS] (transport costs). The special charges imposed following renunciation of mining concessions by the operating companies do not therefore fall within the scope of Article 4(b) [CS].

As to the other aspects of your complaint, I refer to the reply given by the Directorate-General for Competition in its letter of 30 March 2001.'

Procedure and forms of order sought by the parties

19 By applications lodged at the Registry of the Court of First Instance on 9 May 2001 and 31 July 2001, registered under numbers T-107/01 and T-175/01 respectively, the applicant brought the present actions.

20 By separate document lodged at the Court Registry on 19 June 2001, the defendant raised an objection of inadmissibility under Article 114 of the Rules of Procedure of the Court in Case T-107/01. By order of the Court of 11 October 2001, the objection was joined to the substance and costs were reserved.

21 By separate document lodged at the Court Registry on 12 October 2001, the defendant raised an objection of inadmissibility under Article 114 of the Rules of Procedure of the Court in Case T-175/01. By order of the Court of 12 March 2002, the objection was joined to the substance and costs were reserved.

22 By separate document lodged at the Court Registry on 29 May 2002, registered under numbers T-107/01 R and T-175/01 R, the applicant made an application for interim measures. That application was dismissed by order of the President of the Court of 11 July 2002 in Cases T-107/01 R and T-175/01 R *Lormines* v *Commission* [2002] ECR II-3193 and costs were reserved.

23 By order of the President of the Fourth Chamber of the Court of 15 November 2002, Cases T-107/01 and T-175/01 were joined for the purposes of the oral procedure and the judgment in accordance with Article 50 of the Rules of Procedure.

24 On hearing the Report of the Judge-Rapporteur, the Court (Fourth Chamber) decided to open the oral procedure and, as measures of organisation of procedure provided for in Article 64 of the Rules of Procedure, requested the defendant to reply to a written question. That request was complied with within the prescribed period.

25 The parties presented oral argument and answered the questions put by the Court at the hearing on 18 February 2004.

26 In Case T-107/01 the applicant claims that the Court should:

— declare the application admissible;

— annul, principally, on the basis of Article 35 CS, the implied decision of the Commission of 21 April 2001 refusing to uphold its complaint of 21 February 2001;

— annul, in the alternative, on the basis of Article 33 CS, the decision of the Commission of 30 March 2001 refusing to uphold that complaint;

— order the Commission to pay the costs.

27 In Case T-107/01 the defendant contends that the Court should:

— declare the application inadmissible;

— in the alternative, declare the principal claim unfounded and dismiss it, and declare that there is no need to adjudicate on the alternative claim;

— order the applicant to pay the costs.

28 In Case T-175/01 the applicant claims that the Court should:

— declare the application admissible;

— annul, on the basis of Article 35 CS, the implied decision of the Commission of 9 July 2001 refusing to uphold its complaint of 9 May 2001;

— annul, on the basis of Article 33 CS, the express decision of the Commission of 10 July 2001 refusing to uphold that complaint;

— order the Commission to pay the costs.

29 In the reply, the applicant claims, in the alternative, that the Court should declare non-existent the decision of the Commission contained in its letter of 10 July 2001.

30 In Case T-175/01 the defendant contends that the Court should:

— declare the application inadmissible;

— in the alternative, declare the application unfounded and dismiss it;

— order the applicant to pay the costs, including those of the proceedings for interim measures.

Law

31 In both the cases the Commission pleads that the actions for failure to act and the actions for annulment are inadmissible, on the basis of several pleas in law.

32 The plea that the applicant does not have capacity to bring proceedings under Articles 33 CS and 35 CS, since it is not an undertaking within the meaning of Article 80 CS, should be examined, as that question is a preliminary one which is common to the actions for failure to act and the actions for annulment.

An undertaking within the meaning of Article 80 CS

Arguments of the parties

33 The Commission submits that the applicant is not an undertaking within the meaning of Article 80 CS, since it was not engaged in any activity within the ECSC Treaty either at the time of bringing the present actions or at the time when it approached the Commission, or even at the time when the charges in question were

imposed on it. It states that the elements adduced by the applicant show that its activity of iron extraction ceased on 31 July 1993 and that since 31 December 1999 it has had no workforce.

34 The applicant submits that the Commission's plea that it lacks the status of an undertaking within the meaning of Article 80 CS is inadmissible under Article 48(2) of the Rules of Procedure. It submits that the plea was put forward only in the defence in Case T-107/01 and not in the separate document raising the plea of inadmissibility.

35 It adds that the Commission cannot raise this plea, since a person's capacity to bring proceedings may no longer be challenged in the judicial proceedings if it has been accepted by the Community institutions during the prior administrative proceedings (Case 175/73 *Union syndicale and Others* v *Council* [1974] ECR 917; Case T-161/94 *Sinochem Heilongjiang* v *Council* [1996] ECR II-695, paragraph 34).

36 As to the substance of this point, the applicant submits that it is an undertaking within the meaning of Article 80 CS and therefore has capacity to bring proceedings under Articles 33 CS and 35 CS.

37 It submits that that is the only interpretation consistent with the wording and the effectiveness of the ECSC Treaty, which must cover the entire production process from the entry to the actual exit from the coal and steel market, including the cessation of production activities.

38 It further submits that the charges it complained of to the Commission were imposed on it by the French Republic because of its activity of iron ore extraction and its being forced to remain in possession of several iron mine concessions. It considers that an undertaking within the meaning of Article 80 CS which is refused renunciation of its iron mine concessions by the State, when only the acceptance of that renunciation would enable it to withdraw from the market, must enjoy the protection of that Treaty.

39 Replying at the hearing to the question of how the charges it complained of could affect its competition situation if it is no longer active, the applicant submitted that those charges affect its position prior to ceasing activities, since, in particular, if it had been able to predict them when it was still active, it might perhaps not have taken on other concessions, as it did. It added in this respect that the charges in connection with closure of the mines should have been foreseeable during its period of activity, so as to be the subject of provisions and different tax treatment. It also stated that at the time of the entry into force of the Law of 15 July 1994 it still possessed ore.

40 It points out, moreover, that there exists Community legislation on closure aid for steel undertakings. It argues that charges imposed on the ceasing of activity of an undertaking producing coal or steel, as in the present case, should likewise be assessed from the point of view of the provisions of the ECSC Treaty, since the costs of exit from the market, like all direct and indirect costs, form part of the undertaking's economy.

41 It further observes that the Court of First Instance has already accepted that a company, the opening of whose bankruptcy had brought about the cessation of activity before its application was brought before the Community judicature, was an undertaking within the meaning of Articles 33 CS, 35 CS and 80 CS (Case T-37/97 *Forges de Clabecq* v *Commission* [1999] ECR II-859).

42 At the hearing, the applicant submitted that the judgments of the Court of Justice in Case 168/82 *ECSC* v *Ferriere Sant'Anna* [1983] ECR 1681 and Case C-221/98 *Busseni* [1990] ECR I-495 similarly accepted that the High Authority could enter debts (resulting from levies under Articles 49 CS and 50 CS or fines) in the statement of liabilities in insolvency of certain undertakings which had already ceased activities. The applicant submits that, for reasons of consistency, the entry of those debts in the insolvency of those undertakings means that an undertaking in its position must be able to bring an action on the basis of Articles 33 CS and 35 CS.

43 The applicant also asserts that the Commission has accepted that measures adopted by a State with respect to an undertaking on closure of its iron mines were subject to compliance with the ECSC Treaty even after the cessation of mining activity, since those measures were connected with the economic activity covered by that Treaty. It submits that the Commission has intervened in such a situation under Article 95 CS (Commision Decision 96/269/ECSC of 29 November 1995 on aid to be granted by Austria to Voest-Alpine Erzberg Gesellschaft mbH, OJ 1996 L 94, p. 17). That decision concerned aid part of which covered a period subsequent to the withdrawal of the recipient undertakings from the market.

44 The Commission replies that it is aware of the judgment of the Court of Justice in Case 18/57 *Nold* v *High Authority* [1959] ECR 41, in which it was accepted that a company in liquidation had capacity to bring proceedings on the basis of Article 33 CS. It submits, however, that that company was carrying on its activities as in the past, unlike the applicant, which for over 10 years has no longer carried on any activity which could affect the market in products falling under the ECSC Treaty.

45 The Commission then submits that the applicant's argument based on the existence of aid for the closure of steel undertakings is unfounded. It observes that the latest code of aid for the steel industry (Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry, OJ

1996 L 338, p. 42) relates only to aid for undertakings which are still active and cease their steel production activity permanently. The situation obtaining in the present case is not that of an actual withdrawal from the coal and steel market but a situation well after the withdrawal from that market.

46 As to the applicant's argument based on the judgment in *Forges de Clabecq* v *Commission*, cited in paragraph 41 above, the Commission observes that, despite the fact that the undertaking in question had gone bankrupt, the national court had decided that its activity should be continued with a view to its restructuring and a fresh start.

47 As to the argument based on Decision 96/269, the Commission submits that the situation of the undertaking in question in that decision was fundamentally different from that of the applicant. In that decision, it was envisaged that the iron mine would be closed. However, the undertaking was still producing at the time when the aid at issue was granted.

48 In response to the applicant's plea based on Article 48(2) of the Rules of Procedure, the Commission submits that it is not obliged to set out all its pleas of inadmissibility in the objection of inadmissibility raised by separate document, and that it may put forward other pleas of inadmissibility in the defence. In any event, the Court is entitled to examine of its own motion whether there exists any absolute bar to proceeding.

Findings of the Court

49 Before examining whether the Commission's objection of inadmissibility is well founded, the Court considers it necessary to look at its admissibility. It must be recalled that the objection in question was raised by the Commission only in the

defence submitted in Case T-107/01 and in the objection of inadmissibility submitted in Case T-175/01.

50 As regards the applicant's assertion that a person's capacity to bring proceedings can no longer be contested in the judicial proceedings if it has been accepted by the Community institutions in the prior administrative proceedings, it must be observed that the *Union syndicale and Others* v *Council* and *Sinochem Heilongjiang* v *Council* judgments, cited in paragraph 35 above, relied on in support of that assertion are of no relevance. The circumstances of the present case are different from those at issue in those judgments. The point at issue in *Union syndicale and Others* v *Council* was whether the Court of Justice had jurisdiction to hear a direct action brought by a trade association under Article 91 of the Staff Regulations of Officials of the European Communities. In *Sinochem Heilongjiang* v *Council* the question was also not whether the defendant could still raise an objection of inadmissibility at the stage of the judicial proceedings, but whether the applicant was a legal person within the meaning of Article 230 EC, given that it had been treated by the Community institutions as an independent legal entity during the administrative proceedings.

51 As regards the applicant's plea that Article 48(2) of the Rules of Procedure prevented the Commission from raising the point of the applicant not being an undertaking within the meaning of Article 80 CS in the defence submitted in Case T-107/01, because it had not raised it in the objection of inadmissibility, it must be recalled that under Article 113 of the Rules of Procedure the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with an action, including, according to the case-law, the jurisdiction of the Community judicature to entertain the application (Joined Cases 154/78, 205/78, 206/78, 226/78 to 228/78, 263/78, 264/78, 31/79, 39/79, 83/79 and 85/79 *Valsabbia and Others* v *Commission* [1980] ECR 907, paragraph 7; Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] II-2289, paragraph 80). Review by the Court is therefore not limited to absolute bars to proceedings raised by the parties (order in Case T-387/00 *Comitato organizzatore del convegno internazionale* v *Commission* [2002] ECR II-3031, paragraph 36).

52 In the present case the point raised by the Commission, in so far as it concerns the applicant's capacity to bring proceedings and its access to certain remedies, gives rise to the question whether there is an absolute bar to proceeding with the case, and, in accordance with the abovementioned case-law, may therefore be considered by the Court of its own motion (Case T-239/94 *EISA* v *Commission* [1997] ECR II-1839, paragraph 27).

53 As to whether the objection of inadmissibility is well founded, it must be noted that the second paragraph of Article 33 CS provides that 'undertakings or associations referred to in Article 48 [CS]' may, under the same conditions as those set out in the first paragraph of that article, institute proceedings for annulment 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. According to settled case-law, the enumeration in that article of the persons entitled to bring an action for annulment is limitative, so that persons who are not referred to there may not validly institute such proceedings (Case 222/83 *Municipality of Differdange and Others* v *Commission* [1984] ECR 2889, paragraph 8; Case T-374/00 *Verband der freien Rohrwerke and Others* v *Commission* [2003] ECR II-2275, paragraph 33).

54 It must also be noted that, by virtue of Articles 80 CS and 81 CS, only undertakings engaged in production in the coal or the steel industry are governed by the rules of the ECSC Treaty and that, in that respect, the expressions 'coal' and 'steel' cover only those products listed in Annex I CS (Case C-334/99 *Germany* v *Commission* [2003] ECR I-1139, paragraph 77).

55 An action for failure to act is likewise, by virtue of Article 35 CS, admissible only if the applicant has the status of an undertaking within the meaning of Article 80 CS (Joined Cases 9/60 and 12/60 *Vloeberghs* v *High Authority* [1961] ECR 197, at 211).

56 It is true that, according to the case-law of the Court of Justice, it is not required that the applicant has that status at the time of bringing the action (Case C-480/99 P *Plant and Others* v *Commission and South Wales Small Mines* [2002] ECR I-265, paragraph 44).

57 In that judgment the Court of Justice rejected the Commission's plea that an action brought by operators of mines was inadmissible on the ground that they had not adduced any evidence to show that they were still engaged in coal production at the time of bringing the action before the Community judicature (paragraphs 37 and 44).

58 The Court of Justice observed that it was not disputed that the appellants were undertakings within the meaning of Article 80 CS at the time of the practices which were the subject of their complaint which the Commission rejected, and held that '[t]he fact that they subsequently ceased to be undertakings cannot deprive them of their interest in obtaining a finding that the competition rules had been infringed, an infringement whose consequences affected them at a time when they were undertakings and in respect of which they were entitled to lodge a complaint' (paragraph 44).

59 In the present case, it is common ground that the applicant ceased its production activity in July 1993.

60 Moreover, its complaints to the Commission of 9 February and 9 May 2001, which are at the origin of the present proceedings, concern charges which, since they were created by French laws 94-588 of 15 July 1994 and 99-245 of 30 March 1999, did not exist at the time when the applicant ceased production.

61 In those circumstances, it must be concluded that the applicant cannot be regarded as an undertaking within the meaning of Article 80 CS, since the mere fact that it still possessed ore at the time of the entry into force of the Law of 15 July 1994 cannot invalidate that conclusion.

62 Furthermore, as the charges the applicant complains of derive from provisions subsequent to the cessation of its mining activity, it did not feel the effects of the alleged breaches of the ECSC Treaty when it was still an undertaking within the meaning of Article 80 CS. Consequently, the practices which were the subject of its complaints had no effect on the Community coal and steel market.

63 The finding that the applicant lacks the status of an undertaking within the meaning of Article 80 CS is not called into question by the applicant's other arguments.

64 As regards the applicant's arguments based on the fact that the ECSC Treaty must cover the entire production process and on the economic link between the charges it complains of and its earlier activity, none of those arguments calls into question the fact that, contrary to the requirements of Article 80 CS, the applicant did not carry on production activity in the coal and steel sector at the time of the practices which were the subject of its complaints or at the time when it approached the Commission to complain of the charges imposed by the French Republic. Moreover, these were not infringements which could have affected the applicant when it still had the status of an undertaking within the meaning of Article 80 CS.

65 The applicant's argument that the judicial protection afforded by the ECSC Treaty should be enjoyed by the undertaking until its actual withdrawal from the market cannot be accepted either. As the Community courts have stated on numerous occasions, it is not for them to depart from the judicial system set out in the Treaties

(see, with specific reference to the remedies provided for by the ECSC Treaty, Case 12/63 *Schlieker* v *High Authority* [1963] ECR 85, at 90, and *Verband der freien Rohrwerke and Others* v *Commission*, cited in paragraph 53 above, paragraph 38).

66 While the conditions for bringing proceedings before the Community courts must be interpreted in the light of the principle of effective judicial protection, such an interpretation cannot have the effect of setting aside a condition expressly laid down in the ECSC Treaty without going beyond the jurisdiction conferred by that Treaty on the Community judicature (order in Case C-75/02 P *Diputación Foral de Alava and Others* v *Commission* [2003] ECR I-2903, paragraph 34).

67 Nor can the applicant's arguments based on the judicial protection of the ECSC Treaty for the entire production process from entry to actual withdrawal from the market, that is, up to the cessation of the undertaking, be justified by the existence of Community legislation on closure aid for steel undertakings. The Commission is right to point out that the latest code of aid for the steel industry (Decision No 2496/96) is addressed to undertakings which are still active. Article 4(2) of that decision provides that '[a]id to steel undertakings which permanently cease production of ECSC iron and steel products may be deemed compatible with the common market, provided that ... they have been regularly producing ECSC iron and steel products up to the date of notification of the particular aid in accordance with Article 6 ...'. It is apparent from the preamble to that decision that the aim of authorisation of that aid is 'to encourage the partial closure of plants or finance the definitive cessation of all ECSC activities by the least competitive enterprises'.

68 As to the applicant's argument that the Court accepted that a bankrupt undertaking was an undertaking within the meaning of Article 80 CS in *Forges de Clabecq* v *Commission*, cited in paragraph 41 above, it must be observed that that judgment concerned a steel undertaking which, when the Commission adopted the decision

on the aid granted to it, was the subject of a recovery plan aimed at averting bankruptcy and enabling it to continue its activity. Moreover, the Commission's decision in that case, dated 18 December 1996, preceded the bankruptcy by acknowledgement, declared by a judgment of the competent commercial court dated 3 January 1997 (paragraphs 6 to 11, 18 and 19 of that judgment). That situation differs radically from that in the present case.

69 As regards the applicant's arguments based on *ECSC* v *Ferriere Sant'Anna* and *Busseni*, cited in paragraph 42 above, it suffices to note that the question in those cases was whether or not claims of the High Authority could be entered as privileged debts in the statements of liabilities in insolvency of certain undertakings. It must therefore be pointed out that those judgments relate to a question unrelated to that at issue in the present case and that the applicant has not shown how the fact that such claims could be entered in the statement of liabilities in insolvency of an undertaking within the meaning of Article 80 CS means that it may validly bring an action for annulment. Moreover, it should be observed that the claims in question corresponded to financial obligations of undertakings towards the High Authority in connection with their activity.

70 Finally, as regards Decision 96/269, it must be stated that it authorised aid for an undertaking which, unlike the applicant, was still active at the time when the Commission took its decision (see point II of the decision).

71 In those circumstances, the applicant's arguments that it should be regarded as an undertaking within the meaning of Article 80 CS must be rejected.

72 It follows from all the foregoing that the applicant's applications must be dismissed as inadmissible.

Costs

73 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. Since the applicant has been unsuccessful, it must be ordered to pay the costs, including those of the procedure for interim measures, as applied for by the defendant.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the actions as inadmissible;

2. Orders the applicant to pay the costs, including those of the procedure for interim measures.

Legal Tiili Vilaras

Delivered in open court in Luxembourg on 7 July 2004.

H. Jung H. Legal

Registrar President