It must therefore be ordered to bear the costs.

On those gounds,

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 the Treaty establishing the European Coal and Steel Community, especially Articles 33, 47 and 53;
Having regard to the Protocol on the Statute of the Court of Justice annexed to the Treaty establishing the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69 (2),

THE COURT

hereby:

1. **Dismisses Application 50/65 as unfounded;**

2. **Orders the applicant to pay the costs.**

Hammes Delvaux

Donner Lecourt Monaco

Delivered in open court in Luxembourg on 16 June 1966.

A. Van Houtte Ch. L. Hammes

Registrar President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 18 MAY 1966[1]

Mr President,
Members of the Court,

The company Acciaiere e Ferriere di Solbiate was incorporated in 1955 by Emilio Bertone, the head of the Metalsider undertaking, and by his son Guido, who owned an interest in this undertaking. On the incorporation of the company, Metalsider was trading in metal products and ferrous scrap.

Solbiate states that it began its activities in the field of iron and steel in February 1957. At all events, its first ferrous scrap declarations were made during this year: it declared its initial stocks at 1 February 1957 to be 1 300 metric tons and its consumption for the period February 1957 to November 1958

1 — Translated from the French.

7 866 metric tons. A provisional assessment for this period resulted in a credit of 4 090 686 lire in favour of Solbiate, but subsequent investigations revealed the company to have carried on activities in the field of iron and steel even before February 1957 and determined its consumption of ferrous scrap at 2 434 metric tons for the period from June 1956 to January 1957 and at 13 399 metric tons for the period from February 1957 to November 1958. A fresh assessment was notified to the company and then corrected on subsequent investigation. Finally, the High Authority fixed the consumption for these two periods at 1475 and 9 102 metric tons respectively. On 19 May 1965 the High Authority made two individual decisions, one of which fixed the total assessable metric tonnage at 10 577 metric tons whilst the other called upon the company to pay the sum of 5 882 957 lire.

These are the two decisions of which Solbiate requests the annulment in an application which contains a single conclusion and is based on one submission, that is, the infringement of Articles 3, 4, 5 and 6 of Decision No 2/59. At first the company had also requested you to annul, as far as is necessary, general Decisions Nos 2/57 and 7/63 and to refer the matter back to the High Authority for it to repay the sums overpaid with the relevant interest and to award damages. In support of its request for annulment, it had also raised the question whether the assessment notified to it was provisional or final and concluded that, if it were final, it was irregular in that it was based on a general measure of a provisional nature. In the opinion of the applicant, such an irregularity constitued a misuse of powers.

Following objections of inadmissibility made against certain points by the High Authority and the information provided by that body in respect of certain others, the applicant company restricted its criticism to the two related individual decisions of 19 May 1965 and relied solely on the infringement of Decision No 2/57.

The dispute is now clearly defined. The High Authority has treated as *bought scrap* the stocks which Solbiate had in its possession when it commenced its business activities.

The company maintained, first, that the equalization scheme only takes into consideration transfers of ownership made in consideration for a price, there being excluded all transactions which give rise to no payment and result solely in a transfer of ownership between two companies having the same members. This is all the more so when a new undertaking formed by the same family group succeeds that which was formerly the owner and which is ceasing to exist. More precisely, according to the applicant, in 1955 the two partners in Metalsider incorporated the Solbiate company and gave up their previous dealings in ferrous scrap to begin fresh activities in the field of iron and steel. It is this same 'family group' which began by using stocks already available at Metalsider.

On a more legal level, the applicant claims to deduce from Article 4 of Decision No 2/57 that stocks of ferrous scrap in existence at the beginning of the first accounting period should not be taken into consideration in assessing the contribution payable. If those undertakings already in existence on the entry into force of the equalization scheme were not bound to pay contributions as regards the consumption of ferrous scrap derived from existing stocks, then, short of infringing the principle of non-discrimination, those undertakings which commenced their activities after the creation of the scheme should also not be bound to pay contributions as regards the stocks they had available when the furnaces were first charged.

The applicant's arguments are based on these three ideas, which do not require extensive treatment.

1. It is claimed that the private undertaking known as Metalsider and the SpA Solbiate are in fact a single undertaking, with the result that the 1300 metric tons in dispute coming from the former belong also to the latter and are, therefore, excluded from equalization.

However, as this Court has already stated, 'the concept of an undertaking within the meaning of the Treaty may be identified with that of a natural or legal person'. (Joined Cases 42 and 49/59, Rec., 1961, p. 101).

Since a private undertaking and a company

limited by shares each have legal personality, they cannot be treated as a single undertaking within the meaning of the Treaty. The same can be said of the 'family group' to which the applicant company refers, which may be a sociological fact but is not a legal entity.

Once it is admitted that these two undertakings are independent, the ferrous scrap owned by Solbiate at the beginning of its activities must be regarded as 'bought' scrap, even though no cash transaction was involved. The object of the concept of purchase is merely to distinguish ferrous scrap derived from external sources from an undertaking's own resources.

2. The second point of its argument is that the ferrous scrap in question constituted stocks which are not subject to assessment. All bought scrap, that is, scrap coming from the market, is as a whole subject to equalization as soon as it is received by the purchaser, the sole exception being that which is either sold or transferred to third parties. This is laid down in Articles 3 of Decision No 22/54 and 2 and 3 of Decision No 14/55. Since a part of these purchases is not immediately utilized but goes into stock, it is necessary to avoid a second assessment being made later when it is put into the furnaces. It is for this reason that Article 4 of Decision No 2/57 provides that in assessing the equalization contribution, the consumption of scrap purchased must be calculated for each accounting period by deducting from the total consumption the reductions in the stocks.

In this instance, the scrap in dispute was 'consumed' and had been 'purchased' within the meaning of the decisions on equalization. It had subsequently been recorded, when the first declaration was made, under the heading 'stocks as at the first day of the month', but the applicant was unjustified in describing it in this way rather than as 'bought scrap received', which would, as such, have been subject to contribution. Finally, there is no justification for the applicant's argument that the scrap in question was already in the possession of Metalsider when the equalization scheme came into force. There is no evidence to support this allegation and it is, at all events, of no effect since Metalsider and Solbiate are two entirely different undertakings.

3. There remains, as a last point, the discrimination allegedly suffered by certain undertakings which commenced their activities after the equalization scheme came into being as compared to undertakings already in existence. Stocks owned by the former are assessed when they are received; existing undertakings, however, are subject to a different arrangement.

This difference of treatment is easily explained. Undertakings which were in existence prior to the equalization scheme paid a market price on which equalization had no influence; the others benefited from equalization on purchasing the scrap. As the factual situations are different, there can be no discrimination.

Contrary to the applicant's allegation, the High Authority neither acted in error nor infringed Decision No 2/57 when it assessed as bought scrap the stocks with which this company commenced its activities.

I am therefore of the opinion that

— the application must be dismissed,

— the costs must be borne by the applicant.