JUDGMENT OF THE COURT (Fifth Chamber)
22 September 1988 *

In Case 69/87

Società Laminazione a freddo pA, of Corso Mortara, Turin, in the person of its Managing Director, Carlo Barbieri, represented by Sergio Carbone and Roberto Barabino, avvocati, with an address for service in Luxembourg at the Chambers of Nico Schaeffer, 12 avenue de la Porte-Neuve,

applicant,

v

Commission of the European Communities, represented by its Legal Advisers, Rolf Wägenbaur and Gianluigi Campogrande, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission's decision of 9 January 1987 (No C(87) 51 def. 8) imposing a fine pursuant to Article 64 of the ECSC Treaty for infringement of Commission Decision No 3715/83/ECSC of 23 December 1983 fixing minimum prices for certain steel products (Official Journal L 373, p. 1) is void,

THE COURT (Fifth Chamber)

composed of: G. Bosco, President of Chamber, J. C. Moitinho de Almeida, U. Everling, Y. Galmot and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: Italian.

having regard to the Report for the Hearing and further to the hearing on 19 April 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 1 June 1988,

gives the following

Judgment

1 By application lodged at the Court Registry on 5 March 1987, Società Laminazione a Freddo pA (LAF) brought an action under the second paragraph of Article 33 and Article 36 of the ECSC Treaty for, primarily, a declaration that Decision No C(87) 51 def. 8, of 9 January 1987, in which the Commission found that the applicant had committed infringements of the minimum price system set up by Commission Decision No 3715/83/ECSC (Official Journal L 373, p. 1) and therefore imposed a fine of ECU 50 000, is void and, in the alternative, a reduction of that fine.

2 The applicant is a company set up by FIAT when it decided to abandon the production of certain special steels hitherto carried out within its group and to transfer the production facilities for such steels to newly formed companies, the share capital of which was subsequently to be purchased by companies within the Finsider group. The share capital of the applicant company at present belongs to Nuova Italsider, a Finsider company, which acquired one half in October 1982 and the remaining half in December 1985.

3 According to the contested decision the applicant, during the first quarter of 1985, sold uncoated, cold-rolled sheet and wide strip to FIAT, an Italian automobile manufacturer, without complying with the minimum prices and therefore in infringement of Article 3 of the above decision.

4 Those sales took place under 13 contracts for the supply of goods concluded for a period of 10 years between LAF and Italian companies in the FIAT group, which

provide that the applicant is to be informed in good time of changes in the contracting companies' product requirements and of product specifications. In those contracts the applicant, for its part, undertook to keep its technology up to the level required for compliance with the appropriate European standards of quality and service. The contracts also provide that, in the event of any disagreement over prices, they are not to be suspended, but the dispute is to be referred to a panel of arbitrators against whose ruling there is no appeal.

5 In support of its action, the applicant submits that Articles 60 and 61 of the ECSC Treaty and Articles 1 and 3 of Commission Decision No 3715/83/ECSC have been infringed, that the grounds of the contested decision are inadequate and inconsistent and that the principle of equal treatment has been breached.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

A — Infringement of Articles 60 and 61 of the ECSC Treaty and Articles 1 and 3 of Commission Decision No 3715/83/ECSC

7 According to the applicant, the minimum price system set up by Commission Decision No 3715/83/ECSC, cited above, only applies to comparable transactions entered into on the basis of undertakings' price-lists. The nature of the contracts concluded between LAF and FIAT, outlined above, and the situation in which LAF, whose share capital is controlled by FIAT and 65% of whose production is for FIAT companies, is thereby placed combine to preclude any such comparability.

8 It should be noted in that regard, as the Commission rightly pointed out, that the concept of 'comparable transactions' relates only to the prohibition of discrimination under Article 60 (1) of the ECSC Treaty, which refers to the application by a seller of dissimilar conditions to comparable transactions, especially on grounds of the nationality of the buyer.

9 The fixing of minimum prices by the Commission, covered by Article 61 of the Treaty, is made dependent on the condition that that institution must find that a manifest crisis exists or is imminent and that such a decision is necessary to attain the objectives set out in Article 3 of the ECSC Treaty. The Commission exercised that power in adopting Decision No 3715/83/ECSC, which prescribes minimum prices for all transactions while providing for the possibility of derogations for steel undertakings which concluded long-term contracts with steel users before 9 November 1983 in respect of deliveries to be effected after 30 June 1984 if those contracts include industrial cooperation clauses or fix the prices precisely. Under Article 3 (2) of Decision No 3715/83/ECSC, undertakings concerned were to submit an application to the Commission by 31 January 1984.

10 Contrary to the applicant's contention, therefore, Commission Decision No 3715/83/ECSC applies to all transactions and not only to those entered into on the basis of undertakings' price-lists. That interpretation is confirmed by Article 2 of the above decision, paragraph 3 of which prohibits increases in discounts or rebates, of whatever kind, published in the price-lists and conditions of sale or notified to the Commission, and paragraph 4 of which requires undertakings whose published price-lists and notified conditions give rise to prices lower than the minimum prices to publish or notify new conditions to bring them into line with Decision No 3715/83/ECSC within 15 days of its entry into force.

11 The minimum price system thus covers both transactions entered into on the basis of the price-lists and those which relate to individual consumer groups and are subject to price differentials not published in the price-lists but notified to the Commission in accordance with Article 5 of Decision No 31/53 of 2 May 1953 (amended text, published in Official Journal 1973, C 29, p. 32).

12 In order to obtain a derogation from the minimum prices fixed by the Commission in Decision No 3715/83/ECSC, the applicant should have submitted the application provided for in Article 3 (2) of that decision, but did not do so.

13 It follows from the foregoing that the submission based on infringement of Articles 60 and 61 of the ECSC Treaty and Articles 1 and 3 of Commission Decision No 3715/83/ECSC must be dismissed.

B — Failure to state grounds for, and contradictory nature of, the contested decision. Breach of the principle of equal treatment

14 According to the applicant, the Commission did not state the grounds on which it claimed that LAF's sales were comparable and contradicted itself by first accepting and subsequently denying the non-comparable nature of the transactions at issue, and infringed the principle of equal treatment by applying the same rules to transactions which were not comparable.

15 In that regard, it should be observed that the concept of comparable transactions is not applicable to the fixing of minimum prices, so that the submission based on failure to state the grounds of the decision and the contradictory nature of those grounds cannot in any event be relied upon to challenge the contested decision and must therefore be dismissed.

16 With regard to the claim of breach of the principle of equal treatment it should be noted, as was stated above, that Commission Decision No 3715/83/ECSC provided for the possibility of derogations in respect of transactions of a certain kind, a possibility of which the applicant did not avail itself.

17 That submission must also therefore be rejected.

C — The amount of the fine

18 With regard to the alternative conclusion that the fine should be reduced, it should be noted that the fine of ECU 50 000 is identical to that imposed on 16 other undertakings in a similar position. It was fixed in accordance with the provisions of Article 64 of the ECSC Treaty and at an amount considerably lower than the limit laid down in that article.

19 The alternative conclusions must therefore be dismissed.

20 It follows from all the foregoing considerations that the application must be dismissed.

Costs

21 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since Società Laminazione a Freddo pA (LAF) has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

(1) Dismisses the application.

(2) Orders the applicant to pay the costs.

Bosco Moitinho de Almeida

Everling Galmot Joliet

Delivered in open court in Luxembourg on 22 September 1988.

J.-G. Giraud
Registrar

G. Bosco
President of the Fifth Chamber