JUDGMENT OF THE COURT (Fifth Chamber)

2 October 2003 *

In Case C-195/99 P,

Krupp Hoesch Stahl AG, established in Dortmund (Germany), represented by F. Montag, Rechtsanwalt, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-147/94 *Krupp Hoesch* v *Commission* [1999] ECR II-603, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by J. Currall and W. Wils, acting as Agents, assisted by H.-J. Freund, Rechtsanwalt, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges,

Advocate General: C. Stix-Hackl,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 31 January 2002,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 25 May 1999, Krupp Hoesch Stahl AG brought an appeal under Article 49 of the ECSC Statute of the Court of Justice against the judgment of the Court of First Instance of 11 March 1999 in Case T-147/94 *Krupp Hoesch* v *Commission* [1999] ECR II-603 ('the judgment

under appeal'), by which the Court of First Instance dismissed in part its application for partial annulment of Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams (OJ 1994 L 116, p. 1) ('the contested decision'). By that decision, the Commission imposed a fine on the appellant under Article 65 of the ECSC Treaty.

Facts and the contested decision

2 According to the judgment under appeal, the European steel industry underwent, from 1974 onwards, a crisis characterised by a fall in demand giving rise to problems of excess supply and capacity and low prices.

3 In 1980, after having attempted to manage the crisis by way of unilateral voluntary commitments given by undertakings as regards the amount of steel put on the market and minimum prices ('the Simonet Plan') or by fixing guide and minimum prices ('the Davignon Plan', the 'Eurofer I' agreement), the Commission declared that there was a manifest crisis within the meaning of Article 58 of the ECSC Treaty and imposed mandatory production quotas for, inter alia, beams. That Community system came to an end on 30 June 1988.

4 Long before that date, the Commission had announced in various communications and decisions that the quota system was to be abandoned, pointing out that the end of that system would mean a return to a market characterised by free competition between undertakings. However, the sector continued to be affected by excess production capacity which, according to expert opinion, had to undergo a sufficient and rapid reduction to enable undertakings to meet world competition.

5 From the end of the quota system, the Commission set up a surveillance system involving the collection of statistics on production and deliveries, monitoring of market developments and regular consultation with undertakings on the market situation and trends. The undertakings in the sector, some of which were members of the Eurofer trade association, thus maintained regular contact with DG III (Directorate-General for the 'Internal Market and Industrial Affairs') of the Commission ('DG III') by way of consultation meetings. The surveillance system came to an end on 30 June 1990 and was replaced by an individual and voluntary information scheme.

6 At the beginning of 1991, the Commission carried out a series of inspections in the offices of a number of steel undertakings and associations of undertakings in the sector. A statement of objections was sent to them on 6 May 1992. Hearings were held at the beginning of 1993.

7 On 16 February 1994, the Commission adopted the contested decision, by which it found that 17 European steel undertakings and one of their trade associations had participated in a series of agreements, decisions and concerted practices designed to fix prices, share markets and exchange confidential information on the market for beams in the Community, in breach of Article 65(1) of the ECSC Treaty. By that decision, it imposed fines on 14 undertakings for infringements committed between 1 July 1988 and 31 December 1990.

The proceedings before the Court of First Instance and the judgment under appeal

8 On 11 April 1994, the present appellant brought an action before the Court of First Instance for partial annulment of the contested decision.

9 By the judgment under appeal, the Court of First Instance granted the present appellant's application in part and reduced the fine imposed on it.

Forms of order sought by the parties

10 The appellant claims that the Court should:

— set aside the judgment under appeal, in so far as it imposed on the appellant a fine of EUR 9 000 in paragraph (1) of the operative part, dismissed the appellant's action in paragraph (2) of the operative part and ordered the appellant to bear its own costs and to pay half of the Commission's costs in paragraph (3) of the operative part;

— annul Articles 1, 3 and 4 of the contested decision;

— order the Commission to pay the costs of the proceedings at first instance and those of the present appeal.

11 The Commission contends that the Court should:

— dismiss the appeal;

— order the appellant to pay the costs.

The grounds of appeal

12 The appellant raises seven grounds in support of its appeal:

1. infringement of the Commission's Rules of Procedure as laid down in Commission Decision 93/492/Euratom, ECSC, EEC of 17 February 1993 (OJ 1993 L 230, p. 15) ('the 1993 Rules of Procedure');

2. infringement of Article 33 of the ECSC Treaty;

3. infringement of Article 65(1) of the ECSC Treaty as regards the exchange of information, the interpretation of the concept of 'normal competition' and the appellant's participation in the events which were the subject of complaint;

4. error in law as regards the conduct complained of in relation to price-fixing on the German market;

5. infringement of Article 65(5) of the ECSC Treaty as regards the assessment of fault on the part of the appellant;

6. infringement of the obligation to state reasons under Article 15 of the ECSC Treaty;

7. infringement of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), as a result of the allegedly excessive duration of the proceedings before the Court of First Instance.

13 The paragraphs of the judgment under appeal challenged by each of the grounds of appeal will be indicated as those grounds are examined.

The appeal

The first ground of appeal

14 The first ground of appeal can be divided into two limbs. The first limb alleges infringement of Articles 5 and 6 of the 1993 Rules of Procedure and the second alleges infringement of Article 16 of those rules.

The first limb of the first ground of appeal

15 The appellant claims that the Court of First Instance infringed Articles 5 and 6 of the 1993 Rules of Procedure, which lay down respectively the quorum and the

number of votes necessary for a decision to be validly adopted by the Commission. In paragraph 63 of the judgment under appeal, it claims, the Court of First Instance misinterpreted the minutes of the Commission session during which the contested decision was adopted ('the minutes') and, as a result, wrongly concluded that that decision had been adopted in compliance with those articles.

16 Moreover, that interpretation is, the appellant submits, inconsistent with the principle that decisions must be taken collectively, as set out by the Court in Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 64, which requires the presence of the members of the college of Commissioners when decisions are being adopted.

17 The Commission contends that the appellant is challenging findings of fact and the assessment of evidence and that this head of complaint is for that reason inadmissible.

18 The Commission submits, in the alternative, that this limb of the ground of appeal is unfounded. The statement, on page 40 of the minutes, that the heads of cabinet and a member of the cabinet of two Commissioners attended the meeting in question 'in the absence of the Commission Members' does not cast doubt on the probative value and validity of the attendance list, appearing on page 2 of the minutes, which records which Members of the Commission were present and which absent during the discussion of the contested decision.

Findings of the Court

19 First of all, it should be pointed out that, as is clear from Article 32d(1) CS and Article 51 of the ECSC Statute of the Court of Justice, an appeal lies on a point of law only. Therefore, the Court of First Instance has sole jurisdiction to find and

appraise the relevant facts and to assess the evidence, except where those facts and that evidence have been distorted (see, to that effect, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 49 and 66; Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P, C-251/99 P, C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 194; and Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 69).

20 The appellant is not alleging distortion by the Court of First Instance of the content of the minutes but is merely challenging its assessment of those minutes in paragraph 63 of the judgment under appeal.

21 It must therefore be held that the first limb of the first ground of appeal is inadmissible.

The second limb of the first ground of appeal

22 The appellant submits that the Court of First Instance misapplied Article 16 of the 1993 Rules of Procedure on the authentication and form of Commission decisions. It erred in concluding that the contested decision notified by the Commission to the appellant had been authenticated on 23 February 1994. First, the Court of First Instance established neither that the version of the contested decision notified to the appellant was identical to versions C(94)321/2 and C(94)321/3 of that decision nor that the notified version itself was annexed to the minutes in a due and proper manner. Second, the Commission was unable to produce the minutes with the original signatures of its President and Secretary-General, and the date on which they were signed is missing from the minutes.

23 The appellant claims that the Court of First Instance proceeded on the basis that there had been due and proper authentication and relied, in paragraph 85 of the judgment under appeal, on the presumption that Community measures are valid. It thereby failed to take account of the purpose of that presumption because, in the event of an infringement of formal requirements during the adoption of a decision, the presumption of validity cannot preclude annulment.

24 The Commission contends that the complaint that the versions of the contested decision were not identical is inadmissible on the grounds that the appellant provides no reasons for its criticism of the Court of First Instance's line of argument in that regard and that this ground of appeal relates to the determination of facts for which the Court of First Instance has sole jurisdiction. Similarly, with respect to proof that the contested decision was authenticated, the Commission takes the view that this head of complaint is inadmissible because, save where the evidence has been distorted, such an issue falls within the exclusive jurisdiction of the Court of First Instance.

Findings of the Court

25 By this limb of the first ground of appeal, the appellant again challenges the assessments of the facts and evidence by the Court of First Instance in the judgment under appeal, specifically those in:

— paragraph 83, in which the Court of First Instance assumed that documents C(94)321/2 and C(94)321/3 were annexed to the minutes;

— paragraph 84, in which the Court of First Instance took the view that it had not been established that there was any substantive difference between the notified version of the contested decision and that annexed to the minutes;

— paragraph 85, in which the Court of First Instance ruled that documents C(94)321/2 and C(94)321/3 had to be regarded as having been authenticated by the signatures of the President and the Secretary-General of the Commission on the first page of the minutes;

— paragraph 86, in which the Court of First Instance decided that the certification of authenticity by the titular Secretary-General of the Commission provided sufficient proof for legal purposes that the original version of the minutes bore the original signatures of the President and the Secretary-General of the Commission; and

— paragraph 88, in which the Court of First Instance held that the minutes had been properly signed by the President and the Secretary-General of the Commission on 23 February 1994.

26 With respect to the reference in paragraph 85 of the judgment under appeal to the presumption of validity enjoyed by measures of the Community institutions (see, inter alia, *BASF and Others*, cited above, paragraph 48), suffice it to state that the Court of First Instance did not draw from that presumption any factual or legal conclusion but relied solely on its own assessment of the facts and evidence to conclude that the contested decision had been properly authenticated.

27 It follows that, in so far as the second limb of the first ground of appeal is directed against that reference, it is irrelevant and therefore unfounded.

28 Consequently, it must be held that this limb is in part inadmissible and in part unfounded.

29 In light of the above findings, the first ground of appeal must be rejected as being in part inadmissible and in part unfounded.

The second ground of appeal

30 The second ground of appeal alleges infringement by the Court of First Instance of Article 33 of the ECSC Treaty in so far as it exceeded its jurisdiction to review the contested decision.

31 The first and second paragraphs of Article 33 of the ECSC Treaty are worded as follows:

'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.'

32 The ground of appeal is directed against paragraph 122 of the judgment under appeal, which states:

'It must therefore be concluded that, in recitals 263 to 272 of the [contested] decision, the information exchange systems in question were regarded as being separate infringements of Article 65(1) of the Treaty. In so far as they seek to alter this legal assessment, the arguments submitted by the Commission in its reply of 19 January 1998 and at the hearing must therefore be rejected.'

33 The appellant submits that the Court of First Instance exceeded the jurisdiction conferred on it by Article 33 of the ECSC Treaty in so far as, in paragraph 122 of the judgment under appeal, it rectified the contested decision by interpreting it in a way which, if reference is made to the express explanations of the Commission and to the wording of the decision, does not correspond to its content. The Court of First Instance found that the Commission had regarded the exchange of information as a separate infringement, even though the Commission itself stated, in response to a question put by the Court of First Instance, that it had acted on the basis that the exchange of information had formed part of wider infringements consisting, inter alia, in price-fixing and market-sharing agreements, since that exchange had facilitated the implementation of those agreements.

34 In the opinion of the Commission, this ground of appeal is inadmissible because the classification of the information exchange system by the Commission is not a question of law but one of fact, which the Court has no jurisdiction to review. It submits, in the alternative, that the ground of appeal is unfounded. The appeal is directed against the contested decision and not against the explanations given by the Commission's representatives during the proceedings, which, moreover, the Court of First Instance was not required to take into account.

Findings of the Court

35 The appellant does not establish, and, moreover, does not seek to establish, how the Court of First Instance infringed Article 33 of the ECSC Treaty and exceeded its jurisdiction by interpreting itself the contested decision rather than relying on the explanations provided by the Commission's representatives in the reply of 19 January 1998 and at the hearing.

36 It is sufficient to point out in this connection that, where the Court of First Instance rules on an application for annulment of a Community measure, it must interpret that measure itself.

37 It follows that, in interpreting the contested decision, the Court of First Instance did not exceed its jurisdiction and that the second ground of appeal is unfounded.

The third ground of appeal

38 The third ground of appeal alleges infringement by the Court of First Instance of Article 65(1) of the ECSC Treaty. It can be divided into four limbs. The first limb of this ground of appeal alleges erroneous classification of the exchange of information as a separate infringement, the second misinterpretation of the concept of 'normal competition', the third an error of law with regard to the taking into account of the U sections manufactured exclusively by the appellant and the fourth an error in law in assessing the appellant's participation in the exchange of information.

The first limb of the third ground of appeal

39 The first limb of the third ground of appeal alleges infringement by the Court of First Instance of Article 65(1) of the ECSC Treaty in so far as — even if it were to be taken as established that the exchange of information was a separate infringement, which was disputed in the second ground of appeal — the Court of First Instance neither explained nor demonstrated the effect which that exchange of information was alleged to have had on competition.

40 This limb of the ground of appeal is directed against paragraphs 124 to 150 of the judgment under appeal and, more specifically, paragraphs 135 and 142.

41 In paragraph 126 of the judgment under appeal, the Court of First Instance observed that 'the idea that every undertaking must determine independently the market policy which it intends to pursue, without collusion with its competitors, is inherent to the ECSC Treaty and in particular Articles 4(d) and 65(1) thereof'.

42 In the following paragraphs of the judgment under appeal, the Court of First Instance found that the information distributed was detailed (paragraph 128) and had been updated and sent out frequently (paragraphs 129 to 131), that the information had been sent only to a certain number of manufacturers, to the exclusion of consumers and other competitors (paragraph 132), that the products in question were homogenous (paragraph 133) and that the structure of the market was oligopolistic, which could itself reduce competition (paragraph 134).

43 The Court of First Instance thus held in paragraph 135 of the judgment under appeal:

'The matters set out in recitals 49 to 60 of the [contested] decision confirm that, having regard to all the circumstances of the case, in particular the fact that the information distributed was up-to-date, broken down and intended only for producers, the product characteristics, and the degree of market concentration, the arrangements in question clearly affected the participants' decision-making independence.'

44 Next, the Court of First Instance observed, in paragraph 136 of the judgment under appeal, that the information distributed had been the subject of regular discussions within the Eurofer Committee, called the 'Poutrelles Committee' ('the Poutrelles Committee'), during which some undertakings had been criticised. In paragraph 137 of the judgment under appeal, it concluded that the information received under the arrangements in question was capable of appreciably influencing the conduct of the undertakings.

45 In paragraph 139 of the judgment under appeal, the Court of First Instance held that the mutual control inherent in this exchange of information operated by reference to a previous policy of the Commission, which tended towards the maintenance of 'traditional flows' of trade. Paragraph 141 of that judgment related to the exchange of information through the Walzstahl-Vereinigung, an association of manufacturers of laminated products.

46 In paragraph 142 of the judgment under appeal, the Court of First Instance concluded that:

'It follows that the information exchange systems in question appreciably reduced the decision-making independence of the participating producers by substituting practical cooperation between them for the normal risks of competition.'

47 The appellant takes the view that the Court of First Instance was wrong to invoke the case-law relating to the tractor market (Case T-34/92 *Fiatagri and New Holland Ford* v *Commission* [1994] ECR II-905, Case T-35/92 *John Deere* v *Commission* [1994] ECR II-957, Case C-7/95 P *John Deere* v *Commission* [1998] ECR I-3111, and Case C-8/95 P *New Holland Ford* v *Commission* [1998] ECR I-3175) when assuming that, as had been the case with that market, the structure of the beams market was likewise characterised by a narrow oligopoly and thus justifying its finding that the information exchange systems, even considered in isolation, amounted to a breach of competition law. As the Court of First Instance itself found, in paragraph 134 of the judgment under appeal, the 10 largest undertakings participating in that system accounted for only two thirds of the beams market, which indicated strong competition between several undertakings. In any event, this precludes any assumption of a simple oligopolistic structure and *a fortiori* any assumption of a highly concentrated market.

48 The Commission contends that the first limb of the third ground of appeal, which is worded in a very general manner, is inadmissible because it states neither which part of the judgment under appeal is challenged by the criticism it contains nor the legal argument relied on.

49 According to the Commission, the heads of complaint raised by the appellant against the findings of the Court of First Instance regarding the structure of the beams market are inadmissible since they are directed against assessments of fact. It submits further that the appellant itself described the beams market as an oligopolistic market during the proceedings before the Court of First Instance.

50 The Commission also disputes the appellant's criticism of the references to the cases concerning the tractor market. In the judgments delivered in those cases, which are cited in paragraph 47 of this judgment, the Court of First Instance expressly stated that a positive effect on competition of transparency between traders is dependent on an atomisation of supply on the market, which was not the case with regard to the beams market.

51 In addition, the Commission notes that the appellant criticises only one factor, whereas the Court of First Instance based its finding that the exchange of information was anti-competitive on several circumstances. The Commission submits that the beams market can be distinguished from the tractor market since the products on the former market are more homogenous, which limits competition on the basis of product characteristics.

52 In its reply, the appellant submits that its criticism relates to the legal conclusions drawn from the structure of the market as established by the Court of First Instance. It therefore concerns a question of law subject to review by the Court of Justice.

53 The appellant claims that there are no grounds for comparing the beams market with that for tractors and that the criterion of homogeneity of the products is irrelevant in the present case. In the decision giving rise to the judgments cited in paragraph 47 of this judgment, the Commission viewed tractors as homogenous products on the ground that they fulfil the same functions and are compatible with all other agricultural machines to be attached to a tractor. The structure of the market which was the subject of those judgments was exceptional, something which cannot be said of the market at issue in the present case.

Findings of the Court

54 First of all, the first limb of the third ground of appeal cannot call into question, even indirectly, the Court of First Instance's finding, examined in connection with the second ground of appeal, that the exchange of information was treated as a separate infringement in the contested decision.

55 Moreover, it should be borne in mind that, although as a general rule the Community judicature undertakes a comprehensive review of the question whether or not the conditions for applying the competition provisions of the EC and ECSC Treaties are met, its review of complex economic appraisals made by the Commission is necessarily limited to verifying whether the relevant rules on procedure and on the statement of reasons have been complied with, whether the facts have been accurately stated and whether there has been any manifest error of appraisal or misuse of powers (see, to that effect, with respect to Article 85 of the EC Treaty (now Article 81 EC), Case 42/84 *Remia and Others* v *Commission* [1985] ECR 2545, paragraph 34, and Joined Cases 142/84 and 156/84 *BAT and Reynolds* v *Commission* [1987] ECR 4487, paragraph 62).

56 Such a rule is laid down in the first paragraph of Article 33 of the ECSC Treaty, which provides that '[t]he Court of Justice may not... 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'.

57 The present limb of the ground of appeal must be considered in the light of those factors.

58 According to the case-law relating to the tractor market, referred to in paragraph 47 of this judgment, in which the Court of First Instance and the Court of Justice examined for the first time an agreement on the exchange of information in the context of the EC Treaty, and the general findings of which can be applied to the ECSC Treaty, such an agreement is incompatible with the rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted (see, in particular, Case C-7/95 P *John Deere*, cited above, paragraph 90).

59 The criteria of coordination and cooperation necessary for determining the existence of a concerted practice, far from requiring an actual 'plan' to have been worked out, are to be understood in the light of the concept inherent in the provisions of the EC and ECSC Treaties on competition, according to which each trader must determine independently the policy which he intends to adopt on the common market and the conditions which he intends to offer to his customers (see Case C-7/95 P *John Deere*, paragraph 86 and the case-law cited therein).

60 While it is true that this requirement of independence does not deprive traders of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, however, strictly preclude any direct or indirect contact between such traders, the object or effect of which is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market (Case C-7/95 P *John Deere*, paragraph 87 and the case-law cited therein).

61 In paragraphs 88 to 90 of that *John Deere* judgment, the Court confirmed the general premiss on which the Court of First Instance based its reasoning, namely that:

— in principle, where there is a truly competitive market, transparency between traders is likely to lead to intensification of competition between suppliers, since the fact that in such a situation a trader takes into account information on the operation of the market, made available to him under the information exchange system, in order to adjust his conduct on the market, is not likely, having regard to the atomised nature of the supply, to reduce or remove for the other traders all uncertainty about the foreseeable nature of his competitors' conduct;

— however, on a highly concentrated oligopolistic market, the exchange of market information is liable to enable undertakings to be aware of the market positions and strategies of their competitors and thus to impair appreciably the competition which exists between traders.

62 In paragraph 89 of its *John Deere* judgment, the Court also noted that the Court of First Instance had taken account of the detailed and confidential nature of the information exchanged, of the frequency of its exchange and of the fact that it was intended only for the undertakings participating in the exchange, to the exclusion of their competitors and of consumers.

63 Contrary to what the appellant claims, an information exchange system may constitute a breach of competition rules even where the relevant market is not a highly concentrated oligopolistic market. It is true that, in its judgment in Case T-35/92 *John Deere*, cited above, which was upheld in this regard by the Court's judgment in *John Deere*, the Court of First Instance concluded that the tractors market was such a market. However, those judgments take into consideration a number of criteria in that regard, the only general principle applied in relation to the market structure being that supply must not be atomised.

64 It follows that, in choosing the oligopolistic structure of the relevant market as one of the criteria of assessment, without seeking to establish whether the market was highly concentrated, the Court of First Instance did not infringe Article 65(1) of the ECSC Treaty as it must be interpreted in the light of the Court's case-law relating to exchanges of information.

65 The finding that, in the present case, the beams market was oligopolistic in structure is an assessment of fact which is not subject to review by the Court in

appeal proceedings. That is true also of the finding that the products were homogenous.

66 In light of the case-law referred to in paragraphs 58 to 62 of this judgment and given the various findings made by the Court of First Instance in paragraphs 128 to 134 of the judgment under appeal, from which it is clear that the information exchange systems in question reduced the degree of uncertainty as to the operation of the market, the Court of First Instance was right to conclude, in paragraph 135 of that judgment, that those systems clearly affected the participants' decision-making independence. Similarly, having regard to the findings made in paragraphs 136 to 139 of the judgment under appeal, the Court of First Instance was entitled to hold, in paragraph 142 of that judgment, that the decision-making independence of the undertakings participating in those systems had been appreciably reduced.

67 It follows from the above findings that the first limb of the third ground of appeal is unfounded.

The second limb of the third ground of appeal

68 The appellant submits that, in particular in paragraphs 147 and 149 of the judgment under appeal, the Court of First Instance infringed Article 65(1) of the ECSC Treaty in so far as it assumed, on the basis of a misinterpretation of the criterion of effect on 'normal competition', that such competition had been affected by the systems of exchanging information on orders and deliveries. It thus failed to take account of the fact that, from July 1988 to June 1990, 'normal competition' within the meaning of that article was determined by a surveillance system introduced by the Commission, under which undertakings were to provide

it with joint forecasts of market parameters and therefore necessarily had to discuss their individual data amongst themselves. The Court of First Instance erred in law in failing to take account of the fact that the undertakings concerned were obliged to act in this way in order to satisfy the requirements of cooperation with the Commission.

69 The Commission takes the view that the question whether the exchange of data on orders and deliveries was necessary for the purpose of that cooperation is an issue of fact and not of law. This limb of the ground of appeal is therefore inadmissible.

70 In the alternative, the Commission submits that it is in no way clear from the judgment under appeal that an exchange of individual data on orders and deliveries was necessary for the purpose of that cooperation.

71 It submits further that, in paragraphs 168 and 175 of the judgment under appeal, the Court of First Instance found that the undertakings had concealed from the Commission the existence of the information exchange systems in issue.

Findings of the Court

72 The appellant invokes no argument calling into question the assessment made by the Court of First Instance in paragraphs 168 to 177 of the judgment under appeal. In those paragraphs, the Court of First Instance demonstrated that the undertakings concerned had concealed from the Commission the existence and the content of the anti-competitive discussions which they had held and of the agreements which they had concluded.

73 It follows that the appellant cannot validly claim that the Court of First Instance erred in law when interpreting the concept of 'normal competition' within the meaning of Article 65(1) of the ECSC Treaty by not taking account of the alleged need for the undertakings to exchange information amongst themselves in connection with their cooperation with the Commission.

74 Consequently, the second limb of the third ground of appeal is unfounded.

The third limb of the third ground of appeal

75 This limb of the ground of appeal is directed against paragraph 143 of the judgment under appeal, which is worded as follows:

'The argument that the applicant's participation in the systems at issue had no anti-competitive effect as a result of the small market share which it held and of the fact that the statistics in question did not include figures on sales of U sections, the only product relevant to the applicant, must also be rejected. Although the applicant held only a small market share, its participation in the systems at issue nevertheless enabled the other participating undertakings to obtain a comprehensive and up-to-date overview of all orders and deliveries of beams on the various national markets, thus increasing the value and reliability of the information systems in question. More specifically, by their very nature, the data provided by the applicant enabled the other undertakings producing U sections to ascertain in a very precise manner how its sales of those products were developing on the various geographical markets and, in particular, to determine to what extent the applicant was respecting traditional flows of trade. Finally, if, as the applicant maintains, the data received by it were of no use to it, it would be difficult to explain why it participated in the systems concerned.'

76 The appellant claims that the Court of First Instance erred in law in concluding that its participation in the information exchange system was anti-competitive even though, in view of its general nature, it was unable to draw from the exchanged information any conclusions with regard to the products which it manufactured, namely U sections. Moreover, the Court of First Instance was not entitled to hold against the appellant the fact that the data which it supplied had enabled the other undertakings to obtain an overview of the entire market situation.

77 The Commission contends that this argument is inadmissible as it is directed against the finding and assessment of facts by the Court of First Instance. It submits, in the alternative, that the argument is unfounded. First of all, by participating in the information exchange systems, the appellant enabled the other undertakings to determine to what extent it was respecting traditional flows of trade. Further, the transfer of normally confidential information and the reduction of the uncertainty which generally exists for other undertakings constituted a separate infringement of the competition rules. Finally, the appellant fails to explain why it participated in the systems in question if the information which it received as a result was of as little use as it claims.

Findings of the Court

78 In paragraph 143 of the judgment under appeal, the Court of First Instance found that the information supplied by the appellant increased the value and reliability of the information exchange systems in question and made it possible to determine to what extent it was respecting traditional flows of trade. In the light of those findings of fact, which are not subject to review by the Court in appeal proceedings, the Court of First Instance was entitled to conclude, in that paragraph of the judgment under appeal, that the appellant's participation in those systems had an anti-competitive effect.

79 It follows that the third limb of the third ground of appeal is unfounded.

The fourth limb of the third ground of appeal

80 This limb of the ground of appeal alleges an error in law in assessing the appellant's participation in the information exchange systems.

81 It is directed against paragraphs 143 and 149 of the judgment under appeal. The first of those paragraphs was quoted in connection with the third limb of this ground of appeal. The second is worded as follows:

'The Court observes, finally, that, having regard to the nature of the discussions conducted within the Poutrelles Committee, of which the applicant was regularly informed by way of the minutes made available to it by the Walzstahl-Vereinigung, and to the wording of the 1968 communication, the undertakings involved could not have had any reasonable doubt that the exchanges in question tended to prevent, restrict or distort normal competition and that they were consequently prohibited under Article 65(1) of the Treaty. The same conclusion also follows from the considerations set out by the Court in Part C below. In any event, the alleged difficulties which might exist in assessing the prohibited nature of a course of conduct cannot affect the prohibition itself, which is objective in nature. The Court also takes the view that, in recitals 266 to 271 of the [contested] decision, the Commission has provided adequate legal grounds to support its view that the arrangements in question were contrary to normal competition.'

82 The appellant contests paragraphs 143 and 149 of the judgment under appeal by claiming that the simple fact that it was aware of the anti-competitive conduct of other undertakings or that it may have provided them with mere support cannot justify the complaint raised against it of infringement of Article 65(1) of the ECSC Treaty. Since there are no Community rules extending to instigators or accomplices responsibility for acts complained of and penalised under that article, the Court of First Instance infringed the principle of '*nullum crimen, nulla poena sine lege*'.

83 The Commission contends that the fact that the appellant did not take part in certain meetings and discussions does not preclude its having participated in the information exchange systems in question, a fact which the Court of First Instance established in paragraphs 101 to 103 of the judgment under appeal.

Findings of the Court

84 It is appropriate, first of all, to quote paragraphs 101 to 106 of the judgment under appeal, in which the Court of First Instance concluded that the appellant had participated in the agreement on the information exchange systems at issue:

'101 The Court observes, first, that the U sections manufactured by the applicant were covered by the system of monitoring orders and deliveries organised by the Poutrelles Committee. It is also undisputed that U sections fall within the definition of "beams" used by the Commission for the purposes of the [contested] decision (see recital 3).

102 Second, the parties are agreed that, in the present case, the applicant regularly sent to the Walzstahl-Vereinigung, during the period of infringement, figures relating to its orders and deliveries of U sections and that that association forwarded those figures, together with the individual figures on the orders and deliveries of the other German producers of beams, to the secretariat of the Poutrelles Committee, provided at that time by Usinor Sacilor.

103 Third, it is likewise undisputed that, through the Walzstahl-Vereinigung, the applicant received tables drawn up by the secretariat of the Poutrelles Committee on the basis of the figures provided by the applicant and the corresponding figures supplied by its competitors. Those tables contained figures for the orders and deliveries of beams, broken down for each undertaking and for each country, of all the undertakings participating in the system, including the applicant. In those circumstances, the only possible explanation for the regular transmission of the applicant's figures is that it consented to their being communicated to its competitors and, more generally, to a mutual exchange with the other participating undertakings.

104 It is true that, according to the [contested] decision (recital 38), the applicant did not attend the meetings of the Poutrelles Committee, so that, in the absence of evidence to the contrary, the discussions held on the basis of the figures obtained under the monitoring system (see recitals 268 and 49 to 60 of the [contested] decision) did not form part of the complaint raised against the applicant. However, the fact that the applicant was not an active member of the Poutrelles Committee does not establish that it did not act in line with the agreement which was the subject of complaint. Its actual participation in a system of reciprocal exchanges, of the operation of which it was aware, is sufficient to establish that it acted in accordance with the agreement on that system. The applicant has not denied that it was kept informed by the Walzstahl-Vereinigung of all the deliberations of the Poutrelles Committee (see recital 33 of the [contested] decision).

105 Finally, the applicant has not denied its participation, through the Walzstahl-Vereinigung, in the exchange of information referred to in recital 272 of the [contested] decision.

106 Accordingly, the applicant's argument denying its participation in the exchange of information in question must be rejected.'

85 In ruling, in paragraph 104 of the judgment under appeal, that actual participation of the appellant in a system of reciprocal exchanges of information, of the operation of which it was aware, was sufficient to establish that it had acted in accordance with the agreement on that system, the Court of First Instance properly applied Article 65(1) of the ECSC Treaty.

86 Article 65(1), which provides in general terms that '[a]ll agreements... tending... to prevent, restrict or distort normal competition... shall be prohibited', is to be applied even where the party to an agreement did not profit from that agreement.

87 It follows that the fourth limb of the third ground of appeal is unfounded.

88 In light of the above findings, the third ground of appeal must be rejected as unfounded.

The fourth ground of appeal

89 The fourth ground of appeal alleges an error in law regarding the conduct complained of in relation to price-fixing on the German market.

90 It is directed against the conclusion, reached in paragraph 163 of the judgment under appeal, that the Commission had properly established that the appellant had participated in the agreements to fix prices on the German market of which it was accused in the contested decision.

91 The Court of First Instance reached that conclusion at the end of the examination in paragraphs 156 to 162 of the judgment under appeal, which are worded as follows:

'156 In recital 152 (facts) and the fourth indent of recital 273 (law) of the [contested] decision, the Commission accuses the applicant of having concluded an agreement on fixing prices on the German market with TradeARBED. The Commission bases its accusation on a hand-written note on the meeting of the VA Profilstahl group of 18 April 1989, which was drafted by the Walzstahl-Vereinigung.

157 The applicant submits, first, that it was not represented at the meeting in question. Second, the hand-written note on that meeting, drafted by the Walzstahl-Vereinigung (recital 152 of the [contested] decision), does not permit the conclusion to be drawn that the applicant participated in a pricing agreement prior to that meeting. In view of the oligopolistic structure of the market, the fact that TradeARBED expected the applicant to apply certain agreed prices does not necessarily mean that it was bound

by any agreement on those prices. Moreover, according to the wording of that note, the applicant was to "respect" ("respektieren") the prices in question (an expression which could apply to a third party) and not to "comply with" ("einhalten") "contractual" obligations (which expression is generally used for parties to an agreement). The link between the abovementioned meeting and that held in Düsseldorf on 20 January 1988, relied on by the Commission to challenge that reasoning, has, the appellant submits, been fabricated by the defendant.

158 In addition, there is no sufficiently specific indication in the Walzstahl-Vereinigung's note as to when the alleged agreement on prices was concluded, its specific purpose or the undertakings party to it. That failure to state specific details is prejudicial to the applicant's rights of defence and precludes the argument that the alleged infringement has become time-barred from being excluded.

159 In any event, the applicant argues, it is clear from the abovementioned note that it did not respect any prices which might have been agreed, which shows that it was not a party to the alleged agreement.

160 The Court notes that the relevant passage of the note on the meeting of 18 April 1989 (document No 56) reads as follows:

"Arbed vetoed higher size extras for UPN 320 and larger sizes (the other producers — especially Hoesch [Stahl AG, a company which merged with Krupp Stahl to form the appellant company] — should first respect the agreed prices)."

161 It is clear from the fourth indent of recital 273 of the [contested] decision that the Commission is not alleging that the applicant participated in an agreement on prices concluded at the meeting of 18 April 1989 but that it was party to a prior agreement concluded with TradeARBED. The parties also agree that the applicant produced the "UPN 320" sections to which the note on the meeting of 18 April 1989 refers.

162 The Court takes the view that, in the context of the present case, that note provides sufficient proof for legal purposes that TradeARBED and Hoesch concluded an agreement on prices at a date prior to 18 April 1989. The fact that the Commission was able neither to determine the date of that agreement nor its specific purpose (except that it concerned products manufactured by Hoesch) does not affect the finding that there was such an agreement at that time.'

92 The appellant maintains that, by finding, in paragraph 162 of the judgment under appeal, that it had concluded an agreement on prices before 18 April 1989, without establishing its content or the date of its conclusion, the Court of First Instance infringed its rights of defence, Article 15 of the ECSC Treaty and its right to adequate judicial protection. It disputes that a note such as that referred to in paragraphs 156 to 160 of that judgment can prove that it concluded an agreement.

93 The Commission takes the view that this argument is inadmissible as it contests an assessment of facts without establishing that the substance of the findings of the Court of First Instance are inaccurate or that that Court distorted the evidence. Moreover, the appellant raises no argument capable of calling into question the probative value of the note.

Findings of the Court

94 It is sufficient to state that, by its fourth ground of appeal, the appellant is challenging the assessment of evidence by the Court of First Instance without alleging distortion of that evidence.

95 In view of the case-law referred to in paragraph 19 of this judgment, the fourth ground of appeal is therefore inadmissible.

The fifth ground of appeal

96 The fifth ground of appeal alleges infringement of Article 65(5) of the ECSC Treaty as regards the assessment of fault on the part of the appellant.

97 This ground of appeal is directed against paragraph 149 of the judgment under appeal, which was quoted in paragraph 81 of the present judgment.

98 By this ground of appeal, the appellant claims that the Court of First Instance infringed Article 65(5) of the ECSC Treaty, which authorises the Commission to impose fines on undertakings, and the fault principle in that it exaggerated the degree of fault on the part of the appellant. In particular, it argues that the Court of First Instance failed to take account of the ambiguity created by the Commission's conduct in relation to the concept of 'normal competition' within the meaning of Article 65(1). In paragraph 149 of the judgment under appeal, it

wrongly supposed that the appellant had been entirely aware that its conduct was illegal. When fixing the fine, the Court of First Instance was wrong not to take into account, as a mitigating circumstance, the fact that the appellant was not actually entirely aware that it was acting illegally.

99 The Commission contends that, in paragraphs 101 to 103 of the judgment under appeal, the Court of First Instance demonstrated that the appellant had itself participated in the information exchange systems in question. Moreover, the information exchanged among the producers did not consist of the summary statistics communicated to the Commission but rather of individual data on the undertakings' orders and deliveries, of which the Commission had no knowledge, as was explained in paragraph 168 of the judgment under appeal, and in respect of which its conduct therefore could not have created any ambiguity.

Findings of the Court

100 It should be borne in mind that, in connection with the first limb of its third ground of appeal, the appellant failed to challenge successfully the finding that the exchange of information at issue was anti-competitive.

101 Moreover, the appellant cannot call into question Part C of the judgment under appeal, which relates to the Commission's involvement in the infringement of which the appellant was accused in relation to the exchange of information on orders and deliveries within the Poutrelles Committee, and more specifically paragraphs 167 to 177 of that judgment, in which the Court of First Instance established that the information in question consisted of individual data specific to each undertaking and national market and not of the summary data provided monthly to the Commission and that the Commission was unaware that the undertakings were exchanging information amongst themselves.

102 It follows that the appellant cannot validly challenge paragraph 149 of the judgment under appeal, in which the Court of First Instance concluded from the nature of the discussions within the Poutrelles Committee, of which the appellant was regularly informed, and from the finding that the Commission was not involved in the exchanges of information in question that the undertakings concerned could not have had any reasonable doubt that those exchanges tended to prevent, restrict or distort normal competition.

103 On the contrary, it is clear from all of those findings that the Court of First Instance was right to reach that conclusion and that it did not thereby infringe Article 65(5) of the ECSC Treaty or the principle of fault.

104 It follows that the fifth ground of appeal must be rejected.

The sixth ground of appeal

105 The sixth ground of appeal alleges infringement of Article 15 of the ECSC Treaty.

106 The appellant claims that the Court of First Instance failed to take account of the scope of the obligation to state adequate reasons with regard to the calculation of fine in finding, in paragraph 196 of the judgment under appeal, that adequate reasons had been given for the contested decision in that regard.

107 The Court of First Instance, the appellant submits, also contradicted itself in finding, in paragraphs 198 and 199 of the judgment under appeal, that the

undertakings must have been able to determine in detail the method of calculating the fine, without being obliged, in order to do so, to bring an action, while at the same time finding, in paragraphs 200 and 201 of that judgment, that the figures relating to the calculation of the fine did not form part of the statement of reasons.

108 The Commission points out that the Court of First Instance examined the statement of reasons for the level of the fine, in particular in paragraph 197 of the judgment under appeal. The Court of First Instance did not, in its opinion, contradict itself. In paragraph 198 of that judgment, the Court of First Instance took the view that it was 'desirable' for the method of calculation to be set out in the decision imposing a fine but it did not find that there was an obligation to do so. It was therefore entitled to find that the Commission had fulfilled its obligation to state reasons since all the criteria for determination of the level of the fine had been set out in the contested decision.

Findings of the Court

109 The first paragraph of Article 15 of the ECSC Treaty provides that '[d]ecisions, recommendations and opinions of the Commission shall state the reasons on which they are based and shall refer to any opinions which were required to be obtained'.

110 It is settled case-law that the purpose of the obligation to state the reasons on which an individual decision is based is to enable the Court to review the legality of the decision and to provide the person concerned with sufficient information to make it possible to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested (Case 32/86 *Sisma* v *Commission* [1987] ECR 1645, paragraph 8).

111 In the present case, the Court of First Instance was correct in law to take the view, in paragraph 196 of the judgment under appeal, that the contested decision contained, in recitals 300 to 312, 314 and 315 of its grounds, an adequate and relevant statement of the factors taken into account in assessing the general gravity of the various infringements alleged.

112 The grounds of the contested decision refer, in recital 300, to the gravity of the infringements and state the factors taken into consideration in fixing the fine. Account was thus taken, in recital 301, of the economic situation of the steel industry, in recitals 302 to 304, of the economic impact of the infringements, in recitals 305 to 307, of the fact that at least some of the undertakings were aware that their conduct was or might have been contrary to Article 65 of the ECSC Treaty, in recitals 308 to 312, of misunderstandings which might have arisen during the period of the crisis regime and, in recital 316, of the duration of the infringements. The contested decision also sets out in detail the participation of each undertaking in each infringement.

113 It must be concluded that the information contained in the contested decision enabled the undertaking concerned to ascertain the reasons for the adopted measure in order to assert its rights and allows the Community judicature to review the legality of that decision. It follows that the Court of First Instance did not infringe Article 15 of the ECSC Treaty in finding that adequate reasons had been given in the contested decision with regard to the calculation of the level of the fines.

114 With regard to statements of figures relating to the calculation of fines, it is appropriate to point out that, however useful and desirable such figures may be, they are not essential to compliance with the duty to state reasons for a decision imposing fines; in any event, the Commission cannot, by mechanical recourse to arithmetical formulas alone, divest itself of its own power of assessment (Case C-291/98 P *Sarrió* v *Commission* [2000] ECR I-9991, paragraphs 75 to 77, and *Limburgse Vinyl Maatschappij*, cited above, paragraph 464).

115 It follows that the sixth ground of appeal is unfounded.

The seventh ground of appeal

116 The seventh ground of appeal alleges infringement of Article 6 of the ECHR by reason of the allegedly excessive duration of the proceedings before the Court of First Instance.

117 The appellant claims that, by the excessive duration of the proceedings, lasting almost five years, the Court of First Instance infringed its right to legal protection within a reasonable period. It submits that, in Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, the Court came to the conclusion that the duration of proceedings lasting five years and six months could not be justified.

118 The appellant argues that the total duration of the proceedings must be taken into account. In the present case, the Court must rule on events which took place almost 15 years before delivery of its judgment. A decision adopted after such a lapse of time will no longer relate to an undertaking as it existed when the complaints were made or to the persons who actually managed it but would amount to a denial of justice.

119 The Commission takes the view that, compared with the proceedings in the case leading to the judgment in *Baustahlgewebe*, cited above, the present proceedings have not been of excessive duration. The duration of proceedings must be assessed having regard to the circumstances specific to each case and, in particular, to the importance of the case for the parties involved, the complexity of the case-file and the conduct of the applicant and that of the competent authorities.

120 The Commission points out that, in the present case, the fine imposed on the appellant was ECU 13 000, the case was complex, as demonstrated by the length of the contested decision, 11 actions were brought in four languages and 65 files containing 10 563 numbered documents were lodged. In order to deal with the appellant's requests for access to the Commission's internal documents, it was necessary to take the measures of organisation of procedure set out in paragraphs 20 to 25 of the judgment under appeal.

Findings of the Court

121 The general principle of Community law that everyone is entitled to a fair hearing, and in particular the right to legal process within a reasonable period, is applicable in the context of proceedings brought against a Commission decision imposing fines on an undertaking for infringement of competition law (*Baustahlgewebe*, paragraph 21, and *Limburgse Vinyl Maatschappij*, paragraph 179).

122 The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (*Baustahlgewebe*, paragraph 29, and *Limburgse Vinyl Maatschappij*, paragraph 187).

123 The Court has held in that regard that the list of criteria is not exhaustive and that the assessment of the reasonableness of a period does not require a systematic examination of the circumstances of the case in the light of each of them, where the duration of the proceedings appears justified in the light of one of them. The purpose of those criteria is to determine whether the time taken in the handling of a case is justified. Thus, the complexity of the case or the dilatory conduct of the

applicant may be deemed to justify a duration which is prima facie too long. Conversely, the time taken may be regarded as longer than is reasonable in the light of just one criterion, in particular where its duration is the result of the conduct of the competent authorities. Where appropriate, the duration of a procedural stage may be regarded as reasonable from the outset if it appears to be consistent with the average time taken in handling a case of its type (*Limburgse Vinyl Maatschappij*, paragraph 188).

124 In the present case, the proceedings before the Court of First Instance commenced with the lodging on 11 April 1994 of the application bringing the present appellant's action for annulment of the contested decision and were concluded on 11 March 1999, the date of delivery of the judgment under appeal. They thus lasted almost five years.

125 Such a duration is, prima facie, considerable. However, it should be noted that 11 undertakings brought actions for annulment of the same decision, in four languages of procedure.

126 As pointed out in paragraphs 19 to 25 of the judgment under appeal, the Court of First Instance had to rule on various claims regarding access to the documents relating to the administrative procedure. The Commission having lodged, on 24 November 1994, a file containing 11 000 documents relating to the contested decision, submitting that the undertakings in question should not be given access to the documents containing business secrets or to the Commission's own internal documents, the Court of First Instance had to hear the parties on that issue, examine all the documents and decide which documents each of the applicants might have access to.

127 By order of 19 June 1996 in Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NMH Stahlwerke and Others* v *Commission* [1996] ECR II-537, the Court of

First Instance ruled on the applicants' right of access to the documents in the Commission's file emanating, first, from the applicants themselves and, second, from third parties not involved in the proceedings which the Commission had, in the interests of those parties, classified as confidential.

128 By order of 10 December 1997 in Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NMH Stahlwerke and Others* v *Commission* [1997] ECR II-2293, the Court of First Instance ruled on the applicants' requests for access to the documents classified by the Commission as 'internal'.

129 The various actions brought by the undertakings affected by the contested decision were joined for the purposes of measures of inquiry and the oral procedure. As is explained in paragraphs 26 to 35 of the judgment under appeal, a number of measures of inquiry were ordered by the Court of First Instance in order to prepare that procedure. In that connection, the Court of First Instance addressed various written questions to the parties and ordered the production of documents and the hearing of witnesses.

130 The oral procedure was closed at the conclusion of the hearing on 27 March 1998.

131 The judgment under appeal was delivered on 11 March 1999, that is to say, on the same day as the other 10 judgments ruling on the actions brought against the contested decision.

132 It follows from the above findings that the duration of the proceedings leading to the judgment under appeal can be explained, inter alia, by the number of undertakings which participated in the concerted practice at issue and brought

actions against the contested decision, thereby making it necessary to examine those different actions simultaneously, by the legal issues relating to access to the Commission's voluminous file, by the in-depth examination of the file by the Court of First Instance and by the linguistic constraints imposed by that Court's Rules of Procedure.

133 It follows that the duration of the proceedings before the Court of First Instance is justified in the light of the particular complexity of the case.

134 The seventh ground of appeal is for that reason unfounded.

135 It follows from all of the foregoing that the appeal must be dismissed.

Costs

136 Under Article 69(2) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 118 of those Rules, 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 Commission has applied for costs to be awarded against the appellant and since that party has been unsuccessful in all of its grounds of appeal, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the appeal;**

2. **Orders Krupp Hoesch Stahl AG to pay the costs.**

Wathelet Edward La Pergola

Jann von Bahr

Delivered in open court in Luxembourg on 2 October 2003.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber