OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 1 JUNE 1965[1]

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Mr President,
Members of the Court,

The applications about which I shall speak today were made by two associations of French undertakings (belonging to the iron industry and the fine steel and special steels industry) and by a series of producer undertakings in this sector, situate in France or in Belgium. They refer to certain provisions in three of the High Authority's decisions, which were adopted under the provisions of the ECSC Treaty, on prices. Until now, this subject was governed by eight decisions in all adopted between 1953 and 1958, of which some (No 30/53, amended by Decision No 1/54) relate to practices prohibited by the Treaty within the common market for coal and steel, whilst others relate to publishing the price lists and conditions of sale applied by 'ordinary' steel and special steels undertakings (Decision No 31/53, supplemented by Decision No 32/53, amended by Decisions Nos 2/54 and 32/56, on the one hand, and Decision No 37/54 supplemented by Decision No 33/58, on the other).

This system was characterized broadly speaking by the fact that the purchasers, the selling agencies and the commission agents were treated on an equal footing in relation to the producer undertakings; only the latter were obliged in their conditions of sale to bind their consumers to observe on resale the rules contained in the various decisions (drawing up of price lists by the purchasers; adherence to these price lists).

At all events, according to the High Authority, the system so established was insufficient to ensure the correct implementation of the Treaty. In particular, it was convinced that its original implementing decisions could not prevent manoeuvres *at trade level* depriving of

1 — Translated from the German.

their efficacy the principles laid down by Article 60 of the Treaty.

For this reason on 11 December 1963, the High Authority adopted Decisions Nos 19, 20 and 21/63 (Official Journal 1963, pp. 2969 et seq.), amending and supplementing the system originally applicable (more precisely, Decision No 19/63 amending Decisions Nos 30/53 and 1/54; Decision No 20/63 amending Decisions Nos 31/53, 32/53, 2/54 and 32/56; Decision No 21/63 amending Decisions Nos 37/54 and 33/58). The essential purpose of the amendments was to adopt special rules for certain selling agencies which were very closely associated with the producer undertakings. These provisions lay down generally that the obligations of producer undertakings arising from the decisions on prohibited practices shall also extend to transactions effected by these selling agencies, the latter being obliged to apply the price lists and conditions of sale of the producer undertakings controlling them (Arts. 1 and 2 of Decision No 19/63) and to ensure that their selling agencies publish their price lists and conditions of sale (Art. 1 of Decisions Nos 20 and 21/63). With regard to the relations between the producer undertakings (and the selling agencies which are always put on an equal footing with the undertakings) and the purchasers, emphasis is placed on a particular category of middlemen (acting *for the account* of producer undertakings). The producer undertakings must see that they observe certain special obligations relating to the application and publication of price lists and conditions of sale. Similarly, the producer undertakings are obliged to supply the High Authority with all information on the commercial activity of these middlemen and to allow it to examine any of the relevant accounting records of the latter. Finally, the undertakings are made responsible for the infringements committed by these middlemen of these contractual obligations.

These are the changes contested by the undertakings and associations of undertakings which I mentioned in opening. According to the type of their production, they claim that the Court should:

1. In Case 3/64:

Annul Article 1 (2) and Article 2 of Decision No 19/63, together with Article 1 (2) and (3), Article 2 (1) and (2) and Article 3 of Decision No 20/63;

2. In Case 4/64:

Annul Article 1 (2) and Article 2 of Decision No 19/63, together with Article 1 (2) and (3), Article 2 and Article 3 of Decision No 21/63.

On the other hand the High Authority has maintained from the outset that the applications did not fulfil the conditions for admissibility required by the Treaty and the case-law of the Court. In the first place it requests the dismissal of the application on these grounds.

With regard to the problems of admissibility, which are easy to define, the Court proposed to the parties that the oral proceedings should be limited in the first instance to the sphere of the admissibility of the applications. This was what was brought before the Court at the hearing of 9 February 1965.

However, at the request of the applicants, the parties did not limit themselves in this examination to the matter in dispute, but proceeded to a wider discussion in the course of the oral proceedings of 6 May 1965. Therefore there no longer exists any procedural obstacle to restrict the observations which will follow in the sphere of the admissibility of the applications.

However, given the nature of the matters submitted to us, it is evident that we cannot just pass over the problems of admissibility, for example, for reasons of legal policy, as this might call for a considerable extension of the range of applications. They must be carefully examined before we can go on to examine the real points of dispute in the case.

Legal Consideration

I — Admissibility of the applications

It is indisputable that the contested measures are general decisions within the meaning of the ECSC Treaty and are indeed general decisions of the clearest type, a body of *rules*. In these circumstances, it is obvious that undertakings and associations of undertakings in the applicants' category are subject to very strict conditions with regard to bringing an application for annulment. According to the second paragraph of Article 33 of the ECSC Treaty, they must show cause why the contested measures arise from a misuse of powers affecting them (détournement de pouvoir à leur égard').

A detailed analysis of these conditions has already been made in numerous decided cases concerning not only the definition of misuse of powers as such, and what is to be understood by misuse of powers 'affecting them', but also the *statement of reasons* required for this specific plea in the application in order that the appeal may be admissible. I see no reason to depart from that case-law in this instance.

In other words:

We can speak of misuse of powers when they are used for ends other than those provided by the law; this definition has been rendered more flexible in the course of later decisions and expanded in the sense that a misuse of powers is constituted by a serious lack of foresight or of care, amounting to a disregard for the purpose of the law.

The restriction 'affecting them' ('à leur égard'), provided for in the second paragraph of Article 33 must be understood 'in the sense of the words which express it, that is, where it concerns an undertaking which is the subject or at any rate the victim of the misuse of powers alleged by that undertaking' (Case 8/55, Rec. 1955-1956, p. 226).

Finally, for the application to be admissible it is essential in this instance that the applicants *convincingly* plead a 'misuse of powers affecting them' in a sufficiently detailed form, that is to say, that they show the circumstances and reasons which give rise to a strong presumption of the existence of a misuse of powers (Case 8/55, Rec. 1955-1956 p. 201; Joined Cases 55 to 59 and 61 to 63/63, Rec. 1964 p. 413).

If the present applications are considered against the background of that body of case-law, the following observations may be made:

1. The High Authority claims that it must first of all be considered whether the applicants have shown a legal *interest* at all in the annulment of the new decisions taken on the basis of Article 60. In its opinion, it is insufficient generally to allege the infringement of the fundamental interests of the applicant producer undertakings or to aver that it would be easy to show the concrete effects of the disputed measures on these undertakings, or finally to claim that the two applicant associations of undertakings represent the general interests of their members. The High Authority claims that on the contrary it is necessary to give precise details of the *actual structure* of the sales outlets of the applicant undertakings. Only when it is certain that they market their products by means of the sales organizations or the agents within the meaning of Decisions Nos. 19 to 21/63 can they be permitted to contest the aspects of these decisions which relate to the sales outlets.

In my opinion, this objection is not entirely convincing. In the first place, it has been effectively claimed in the course of the proceedings that in France steel products are chiefly sold through selling agencies or middlemen within the meaning of the contested decisions. With regard to the applicant *associations*, which represent the interest of the French steel industry as a whole, the

interest in bringing an action seems sufficiently substantiated.

As regards the individual *producer undertakings* I should certainly not be satisfied with the view that taking proceedings is to be seen as an *implied* assertion that a right of action exists in the sense suggested by the High Authority. So liberal a view of procedural requirements could open the door to every kind of abuse of the right of action and must therefore be dismissed. However it is quite another matter whether the producer undertakings should really be required to prove that they have suffered an injury in the form of interference in the *actual* sales situation (of which detailed evidence has not in fact been given) to be able to contest the general decisions taken on the basis of Article 60, or whether it can be considered sufficient that, by making it possible for the facilities for the organization of sales to be affected from an economic and legal standpoint, the contested decisions are likely to encroach upon the freedom of action of the producer undertakings.

It seems to me possible to adopt the last point of view, without allowing that a *potential* interest in the sense of a remote and vague risk of injury would suffice to bring an action. In any event, I do not consider that the producer undertakings' applications are inadmissible on the grounds that the interest in bringing an action has been insufficiently substantiated.

2. Can the submissions put forward be classified under the heading of misuse of powers?

When we then come to the question whether the submissions advanced in the course of the written and oral procedures satisfy the criteria evolved by case-law to define misuse of powers pure and simple this is certainly not so for part of the applicants' arguments. It is more correct to classify them under the concept of infringement of the Treaty or under that of infringement of the general principles of law.

This holds good for the objection that the High Authority has failed to *demonstrate the necessity* of amending the original form of the decisions taken under Article 60, for example by specifying the discriminations which occurred to the detriment of the consumers who have been supplied through middlemen. Logically, this plea presumes that the High Authority may only reinforce the provisions made under Article 60 when a state of emergency is shown to exist, and not in the case of a threatened or possible infringement of the Treaty. If it is presumed that such a principle existed, its infringement would not have come within the framework of the misuse of powers, but at the most within that of the infringement of the general principles of law, that is to say, in the broadest sense, of the infringement of the Treaty (failure to observe the principle of limiting the measure of intervention to the minimum).

The same applies to the submission that the extension of the obligations of the selling agencies arising from Article 60, provided for by the contested decisions, fails to take account of the first transaction with products leaving the producer undertaking on their way to be sold: for this can only be treated as an alleged infringement of Article 63 of the Treaty (to which the applicants moreover expressly refer) and not as a complaint of misuse of powers.

Similarly in the case of the argument that in the contested decisions the High Authority wrongly sought to take powers affecting undertakings over which the Treaty gave it no power (on this point the supervision of sales organizations and of the middlemen referred to in Decision No 19/63 comes to mind); this must be seen rather as an infringement of the powers conferred on the High Authority or as a case of acting *ultra vires* ('excès de pouvoir') and thus an infringement of the Treaty, but not a

case of misuse of powers ('détournement de pouvoir').

I think that we must appraise in the same way the objection that in Decision No 19/63 of the High Authority neither precisely defined selling agencies, nor indicated clearly enough what is to be understood by 'administered by a producer undertaking', 'regularly employed' or what is meant by the statement that sales operations consist 'primarily' in the distribution of the products of a producer undertaking. It seems that one should rather speak here of infringement of the general principles of law (in the sense of infringement of the Treaty), which require of the legislator clear and unequivocal expressions and the use of precise concepts in the interests of legal certainty, in order that the right of the undertakings concerned to arrange their affairs properly may not be affected.

Finally, I think that the alleged infringement of the rule of equality of treatment or of the prohibition on non-discrimination which is claimed in connection with Article 3 (b) (ensuring that all comparably placed consumers in the Common Market have equal access to the sources of production) of Artcle 4 (b) and Article 5 do not constitute a misuse of powers, but at the most an infringement of the Treaty.

Only the plea of misuse of procedure, which is rightly treated as equivalent to misuse of powers (cf. Lagrange in Case 8/55, Rec. 1955-1956, p. 254; de Laubadère: Traité Elémentaire de Droit Administratif, 1963, No. 902), could justify the admissibility of the application. At the same time the applicants claim that the High Authority was indeed able to act against trading undertakings to ensure compliance with the rules adopted in implementation of Article 60; but under Article 63 of the Treaty the only course open for this purpose is a *recommendation* to the Member States or, if the High Authority is unable or unwilling to take this course, a *revision of the Treaty* in accordance with Article 95. In the pursuit of a specified objective, the High Authority has thus chosen a course other than that provided for and authorized by law.

3. However, it appears that even in construing thus the line of argument put forward in the course of the action all objections are not removed: in fact, an application against general decisions is only admissible if the applicants convincingly show that they in particular are the subjects or the victims of the alleged misuse of powers (a misuse of powers *affecting them*) ('détournement de pouvoir *à leur égard*'). In so broadening the scope of the question, we may even wonder whether the plea of misuse of procedure, which is *generally* described as misuse of powers, has any place in the particular category of 'misuse of powers *affecting them*'.

However, if the application is to be regarded as admissible, the infringement of the particular interests of a group of applicants must be cogently evidenced therein. That has plainly not been done in this case with regard to the misuse of procedure.

But even leaving aside this particular aspect of the misuse of powers and concentrating on the submissions of infringement of the principle of non-discrimination or the other submissions under the second paragraph of Article 33, it is difficult to decide in favour of the applicants the question whether they have convincingly alleged a misuse of powers *affecting them.*

The submissions put forward bear essentially on an alleged discrimination affecting the French producers as the contested decisions do not apply to the special sales networks ('Direkthändler') in the Federal Republic. The applicants allege that on the whole German steel production is distributed by middlemen who, although from an economic point of view fulfilling the same functions as the selling agencies and middle-

men referred to by Decision No 19/63, are nevertheless considered as purchaser for resale; they are thus subject to less stringent rules and checks on the part of the High Authority and, owing to the scope of their activity, they increase the German producers' opportunities for reselling.

This emphasis on the submission is however insufficient for the purposes of the second paragraph of Article 33. Basically, the applicants only claim a privileged position for the German producers (who used these sales networks), a preferential treatment (on the assumption that the applicants' argument is accurate) amounting to an injury to *all* the undertakings in the Community and not only to the French producer undertakings. According to the case-law on Article 33, the applicants must on the contrary put forward a *specific* injury affecting their individual interests (Joined Cases 55 to 59 and 61 to 63/63), an injury which distinguishes them from all other undertakings; in fact, as the Court has expressly emphasized in Case 8/55 (Rec. 1955-1956, p. 227) the right to appeal provided for in the second paragraph of Article 33 is an exception 'explained by the fact that, in this case, it is still the *individual* factor which prevails'.

As that submission has plainly not been put forward in this case, the applications must be dismissed as inadmissible because, however the pleas invoked are seen individually, at least the applicants have not shown in a sufficiently convincing and detailed form a 'misuse of powers *affecting them*'.

II — The substance of the case

As a subsidiary matter, I shall consider the substance of the applications to see whether, in this sphere at least, they have a chance of success.

Nevertheless, I propose to consider only those arguments connected, however remotely, with the specific plea of misuse of power ('détournement de pouvoir').

Broadly speaking the grounds are:

— Unlawful extension of the High Authority's powers by specially equating selling agencies with distribution departments of producer undertakings;

— Unlawful extension of the High Authority's powers of supervision;

— Infringement of the principle of non-discrimination;

— Misuse of procedure.

On the other hand, I shall not delay over the question whether the decisions in implementation of the Treaty can only be supplemented or amended lawfully when infringements show the need for it; in fact, ignoring the doubts about the legal nature of this plea, it seems to me plain that such a principle does not exist: the legislature and any administrative authority can, on the other hand, take *preventive measures*.

Nor shall I delay over the complaint that the selling agencies were vaguely defined by the High Authority. This has no connexion whatsoever with the plea of misuse of powers, likewise, it seems obvious that this complaint is unfounded since, in its choice of terms in Decision No 19/63, the High Authority has not departed from what is provided for by the Treaty itself, as it has shown by examples in the course of the written and oral procedures; contrary to what the applicants claim, the Treaty does not lay obligations only on *Member States*.

1. *Treatment of the selling agencies*

It is by no means clear to me that this first submission will be upheld in the final analysis. If it has been precisely set forth in the application, then the inference from the oral debates is that basically the applicants have no objection to put forward against a strengthening of the High Authority's powers of checking the producers' sales networks; all that must be guaranteed is that all selling

agencies, including the German 'Direkthändler', must be treated alike without any discrimination.

I think that only this moderated view should be taken seriously into consideration and then only as a starting point.

In fact Decision No 19/63 does not provide for any illegal extension of the High Authority's jurisdiction. As has been rightly emphasized in the course of proceedings, the purpose of the provisions of the Treaty relating to prices (Articles 60 et seq.) is to regulate certain essential functions of producers, namely the sale and distribution of their products. If the adoption of certain legal forms of organization causes these functions of the producing undertakings to be transferred to distributor organizations in such a way that the former always exercise effective control over the latter, the High Authority has not only the right but also the duty to ignore the outward legal form in order directly to take economic reality of the situation in hand. In so doing the High Authority merely has recourse to a long-standing usage applied in their economic and financial legislation by a number of national legal systems: it takes no account of the juridical form of legal persons and goes to the controlling forces behind them. In this respect I refer to the numerous examples quoted by the High Authority in the course of the proceedings and taken from jurisprudence and case-law and above all to my opinion in Case 16/61 *Acciaierie Ferriere e Fonderie di Modena* v *High Authority*, Rec. 1962, p. 596), in which I approved this process of going behind the juridical form of a legal person. It cannot be clearly established that such action is possible only as part of the case-law of the courts and not by way of *legislation*.

Consequently, it is not possible in principle to criticize the High Authority's aim of re-establishing a measure of association between certain selling agencies and producer undertakings, although they are legally distinct, for the purpose of applying the provisions of Article 60, which results in increasing from a legal, though not from an economic, standpoint the number of transactions effected at various stages beginning with the undertaking over which the High Authority has a sovereign right of control. Whether the High Authority observed the limits imposed upon it in every detail of its decisions is something which can only be usefully tested in course of time by an examination of their application in individual cases and this will afford ample opportunity to contest the High Authority's power to impose sanctions and penalties having regard to possible lack of precision in terms employed.

2. *Extension of the High Authority's powers of supervision*

Another disputed point is whether, in Decision No 19/63, the High Authority has tried illegally to extend its powers of control in ordering that the undertakings and their selling agencies shall be bound to 'furnish the High Authority, at its request, with all particulars of the commercial operations of the middlemen referred to in paragraph (1) and enable it to consult any of their records which could help it to assess the nature of such transactions'.

In this respect the applicants refer to statements by officials of the High Authority and other official announcements (12th General Report) from which it can be taken that Decision No 19/63 has the purpose to which the applicants are objecting. It is moreover emphasized that the Treaty does not provide for the direct control of business by the High Authority except in clearly specified cases (Article 66).

In this connexion two separate questions arise:

It seems beyond doubt that the High Authority must be *informed* of certain operations at business level in view of

the fact that in terms of the Treaty it is entitled to decide that 'undertakings *shall be held responsible* for infringements of this obligation [that is to say, by reason of the conditions of sale of the undertakings] by their direct agents or by commission agents *acting on their behalf*'. As the High Authority emphasizes, this opportunity of obtaining information is in fact the indispensable corollary of the undertakings' liability, of which I have just spoken.

The sole question is, then, of knowing *by what method* the High Authority may obtain the data necessary to establish liability: by addressing itself to the producers alone or carrying out checks directly on the trade and asking it for information.

The High Authority has given an assurance in the course of proceedings that it contemplated only the former of these possibilities.

In fact, the wording of Article 8 of Decision No 19/63 only provides that the producer undertakings and their selling agencies are obliged to give information (with regard to the latter I refer to my discussion of the foregoing submission and to the possibility of going behind the judicial form of legal persons): that is to say, *the wording* of Article 8 by no means gives grounds for the conclusion that the High Authority would address itself directly to the business undertakings to request information from them.

But as regards consultation of business records, it is only a question of the undertakings and selling agencies *enabling* (the High Authority). They will be subject to checking only to the extent that they are in possession of records relating to transactions carried out by their middlemen acting on their behalf and accountable to them. It is therefore impossible to conclude from this that the High Authority is endeavouring to extend its powers of control over persons who do not come under its jurisdiction.

Moreover, it seems obvious that when the High Authority obtains information by these means of transactions effected by persons outside its jurisdiction it is bound to secrecy by Article 47. The fact that Decision No 19/63 does not list in detail the documents to which the High Authority may refer for its checks can no longer give rise to doubts. The High Authority's administrative practice, subject to review by the Court, will gradually define the limits to be imposed.

Finally, assuming that the applications were admissible, this plea could not have helped the applicants' claims to prevail.

3. Misuse of procedure

I shall now consider how the plea of misuse of procedure stands.

Basically, this plea has already been exhaustively discussed, if it is admitted that the outcome of my foregoing observations is correct. I have shown that in fact a reasonable interpretation of the Treaty perfectly justifies the way in which the High Authority has dealt with the selling agencies and indirect control of commercial transactions carried out by certain commercial middlemen for which the producer undertakings may be made liable. If this is so, the High Authority cannot be logically asked to attain that objective by the other, less rapid and effective means of a recommendation to the Member States.

Such a recommendation is only possible for a basic extension of the High Authority's powers of supervision at trade level. It emerged in the course of the oral procedure that, from the summer of 1963, that is to say, prior to the adoption of the contested decisions, all the necessary measures had been taken within the framework of the Council of Ministers in order to reinforce by this method the powers of the High Authority and these efforts continue at the present moment. The High Author-

ity has thus exhausted all the possibilities at its disposal, by combining direct action with its endeavours to supplement the Treaty but has not chosen *one* procedure in order thereby to neglect *another*.

4. *Infringement of the principle of non-discrimination*

It now only remains for me to examine the complaint that the High Authority failed to observe the requirement of non-discrimination, a fundamental principle of the Treaty. This would result in a diminution of the opportunities for sale by the undertakings using the sales outlets covered by the contested decisions with their strict regulations, that is to say an infringement of Article 3 (b) (equal access to the sources of production), since sales outlets which allow the dealers to whom they apply a measure of freedom to grant rebates and favourable treatment are naturally more advantageous to both purchasers and consumers.

In the first instance this complaint is of a general nature to the extent that the applicants simply allege a differing system, for the sellers on the one hand, and for the selling agencies and certain middlemen on the other.

It seems evident without recourse to a lengthy discussion that from this point of view the plea is unfounded. As the High Authority rightly emphasizes, the Treaty itself establishes a differentiation between purchasers for resale on the one hand and the middlemen referred to by the applicants (Article 63) on the other, thus explicitly indicating to the High Authority those differentiations which its decisions contain. The selling agencies referred to in Decision No 19/63 are specific economic and legal bodies. Precisely because they are basically only sales departments which are legally independent but economically dependent on and controlled by producers, from a legal point of view they cannot be treated in the same way as purchasers for resale who, in relation to producer undertakings, are really independent commercial partners in the full sense of the term. In this matter, then, it is impossible to talk of an infringement of the principle of non-discrimination.

It remains for me finally to consider the situation in relation to the organization of the sales outlets, which according to the applicant exist in the Federal Republic and, being outside the ambit of Decision No 19/63, place the German undertakings in a privileged position in relation to their French competitors. At this point the 'Direkthändler' comes on the scene; he is distinguished from the usual French selling agencies and middlemen, not according to the economic functions which he fulfils, but according to the position which he occupies in Community law.

Unless I am mistaken, the applicants have dropped much of their original argument on this point. They claim initially that in the Federal Republic the 'Direkthändler' enjoyed certain privileges (direct access to the sources of production) *pursuant to the law* in whose eyes he has the status of a purchaser for resale, despite his actual economic functions; it has in the meantime emerged that not only did the texts cited[1] have a different meaning (they were limited rather to providing for certain reductions within the framework of the law on prices), but in addition they ceased to have effect as long ago as 1952.[2]

That is why the line of argument put forward in the course of the last oral proceedings made no reference to the state of the law and considered only the economic reality in the Federal Republic. The sole charge now levelled against the High Authority is that of

1 — Verordnung PR No 58/52 of 28 July 1952, Bundesanzeiger No 145.
2 — Verordnung PR No 59/52 of 30 July 1952, Bundesanzeiger No 146.

having misconceived that economic reality and, as seems to be unavoidable, of having introduced it into the new rules for the implementation of Article 60 of the Treaty on the same footing as the system of sales prevailing in France.

In this respect it must in the first place be observed that, according to the data provided by the High Authority, there also exist in the Federal Republic selling agencies within the meaning of Decision No 19/63 for the sale of steel products (according to the declarations of the undertakings themselves, who are certainly discreet on this point, though we are concerned with a total of 22 selling agencies). There are also commission agents for the distributive trade, in particular for foreign trade, that is to say, middlemen within the meaning of Decision No 19/63.

Perhaps it is correct after all that the other sales outlets for steel products are more important from an economic point of view, that is to say, the quantities distributed through purchasers for resale are higher than those distributed through selling agencies and commission agents.

With regard to these dealers whom the applicants describe in this case en bloc as 'Direkthändler', I have indeed the impression that for them this is an ambiguous concept. According to their declarations, they also include among them middlemen who should be *objectively* described as selling agencies according to the definition given by the High Authority. This might be the case to the extent that dependence on *several* producers is alleged (cf. Decision No 19/63, Article 1) and certainly this could be so, to the extent that the applicants talk of a relationship of an 'Organschaft', since according to the definition in German tax law an 'Organschaft' exists only when one legal person is controlled by another undertaking to the point where it loses its own independence and is incorporated in the controlling undertaking, financially, economically and organizationally. In this case a single entity is presumed for the purposes of fiscal law: the Organgesellschaft is considered from the fiscal point of view as a controlled subsidiary of the controlling company ('Kommentar zur Reichsabgabenordnung' by Tipke-Kruse, 1961, Note 20 on paragraph 97, Note 1 on paragraph 114; 'Kommentar zur Reichsabgabenordnung' by Hübschmann—Hepp—Spitaler, 5 A, note 16 on paragraph 97; Holtmeier, 'Die Organtheorie im System des Rechts und ihre aktuellen Probleme', 1959, pp. 27 et seq., 34, 37, 44 and 67; Mestmäcker, 'Verwaltung, Konzerngewalt und Rechte der Aktionäre', 1958, p. 291).

Under these conditions, the applicants are certainly right when they talk of the identical economic functions carried out by the 'Direkthändler' and the French selling agencies. However, they must admit that in reality, with regard to *such conceptions,* the High Authority's decisions do not treat the French selling agencies differently.

For the other 'Direkthändler' who do not come within this definition, I merely admit that they are really economically independent distribution undertakings with which the High Authority cannot deal directly, either by recourse to the general principles of law (such as the principle of 'disregard of legal entity'), or by another means. Owing to the partial integration of the production of coal and steel, they necessarily remain outside its jurisdiction.

I thus find that it is not true that, as a consequence of its disregard of economic facts, the contested decisions of the High Authority have established a system which is incomplete and thus discriminatory at a national level.

5. For this reason I think that none of the pleas on the substance put forward is such as to call in question the High Authority's decisions, always assuming that the applicants are in fact able to surmount the hurdle of admissibility.

III—Summary and conclusion

I therefore arrive at the following opinion:

The applications brought in Cases 3 and 4/64 by the various applicants must be dismissed on the grounds of inadmissibility, and the applicants ordered to pay the costs.