Commission fines participants in concrete reinforcing bars cartel

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On 17 December 2002 the Commission imposed fines totalling more than € 85 million on eight Italian firms for having organised, between 1989 and 2000, a cartel on the market in concrete reinforcing bars, a product used in the construction industry.

The undertakings concerned were Alfa Acciai SpA, Feralpi Siderurgica SpA, Ferriere Nord SpA, IRO Industrie Riunite Odolesi SpA, Riva Acciaio SpA and Siderpotenza SpA, the latter being controlled by Lucchini SpA. Two other firms, Leali SpA and Acciaierie e Ferriere Leali Luigi SpA, were considered together since they formed a single entity until they were split up in 1998 and the latter of the two is in liquidation. Valsabbia Investimenti SpA and Ferriera Valsabbia SpA were also treated as one company since they are the result of a split in early 2000.

Reinforcing bars are a long hot-rolled steel product in coils or bars of 5 mm and over, with a smooth, crenelated or ribbed surface, for reinforcement of concrete. Italy is the first producer of reinforcing bars of the Community, and the turnover of the undertakings addressees of the present decision, which represented almost 80% of the market (in 2000), was to be estimated in 2000-2001 around 900 million euros.

The infringements

Following a detailed investigation during which it carried out on-the-spot inspections in 2000, the Commission found that these eight firms took part, with the aid of the Italian trade association Federacciai, in an agreement aimed at fixing the prices of reinforcing bars in bars or coils in Italy.

National cartels are not normally investigated by the Commission, but the relevant product was covered by the Treaty establishing the European Coal and Steel Community (ECSC) and therefore the Commission had sole jurisdiction to pursue the infringement, as established by article 65, section 4, of that Treaty.

The Commission's investigation demonstrated that, for a period of ten and a half years between 1989 and 2000, the cartel members fixed the size extras to be added to the base price for each product. Reinforcing bars are sold in some twenty diameters ranging from 5 to 40 mm.

From April/May 1992 until 2000, the cartel members also fixed the base price and, until September 1995, agreed on standard terms of payment.

Lastly, between 1995 and 2000, they limited and/or monitored production and/or sales.

Some of the firms did not take part in all the above infringements or did so for only part of the time. Ferriere Nord, for example, took part from 1993 onwards.

All these activities were an infringement of article 65, section 1 of the ECSC Treaty and constituted a single, complex and continuing infringement: complex because some contested behaviours can be regarded as constituting agreements while others can be regarded as concerted practices, continuing because it was brought about through the repetition of the same behaviours during the period under examination, and single because the purpose of all the measures was to increase the price of reinforcing bars in Italy. As regards the possibility that activities having the same anticompetitive purpose and each of which taken in isolation can be included under the concept of ‘agreement’, ‘agreed practice’ or ‘decision by an association of companies’ can be regarded as constituting a single infringement, this has been expressly confirmed by the Court of Justice in particular in the Anic (1) case.

Expiration of the ECSC Treaty

One of the main legal issues of the case was the expiration of the ECSC Treaty in the course of the procedure.

In view of the termination of the ECSC Treaty, the Commission issued on 26 June 2002 a Communication concerning certain aspects of the treatment of competition cases resulting from the expiry of

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the ECSC Treaty (1), in which the Commission explained in which way, on the basis of the general principles of law, the transition between the two treaties would take place.

In fact, the Commission believes that both the EC Treaty and the ECSC Treaty belong to the same legal order, *l’ordre juridique communautaire*, and that in the framework of this new order the ECSC Treaty was to be considered *lex specialis* until the 23 July 2002. Consequently, the procedural applicable law is the one in force at the moment of the adoption of the measure in question, while the substantive law applicable is the one in force at the time of the infringement.

**The position of an association of undertakings under the ECSC Treaty**

The practices in which the concerned firms and Federacciai constituted very serious infringements of Article 65(1) of the ECSC Treaty.

However, Article 65(5) of the ECSC Treaty does not provide for trade associations to be fined. In accordance with the Eurofer (2) case-law, if it is true that the Commission cannot inflict a fine on an association of undertakings, the same association can nevertheless be the addressee of a decision whenever it is certain that it has been involved in the infringement. Therefore, the Commission did not fine Federacciai, which is nevertheless one of the addresses of the decision.

**FINES**

The Commission imposed the following fines (in € million):

- Riva Acciaio SpA: 26,90
- Lucchini SpA and Siderpotenza SpA, jointly: 16,14
- Feralpi Siderurgica SpA: 10,25
- Valsabbia Investimenti SpA and Ferriera Valsabbia SpA, jointly: 10,25
- Alfa Acciai SpA: 7,175
- Leali SpA and Acciaierie e Ferriere Leali Luigi SpA in liquidazione: 7,175
- IRO Industrie Rioniode Odolesi SpA: 3,58
- Ferriere Nord SpA: 3,57

**Calculation of the fines**

In calculating fines, the Commission took into account the seriousness of the infringement, its duration and any aggravating or mitigating circumstances.

Although the infringement was extremely serious, the Commission took account of the specific circumstances of the case, involving a domestic market which was during the period in question subject to the special rules of the ECSC Treaty and on which the firms concerned enjoyed, during the early part of the infringement, a limited market share.

The fines imposed on Riva and Lucchini reflect their overall size, which is much larger than the other firms concerned.

The fine imposed on Ferriere Nord also take account of the fact that its participation in the infringement was of a shorter duration and that the firm had already been fined, in August 1989, for taking part in an agreement on the market in welded steel mesh, which was considered as an aggravating circumstance.

**Leniency**

Although the Commission published a new Leniency Notice on 19 February 2002, the preceding Notice, published in 1996, was applied in this case. In fact, the first firm sought leniency in the current proceeding when the 1996 Notice was still in force. Ferriere Nord was the only undertaking who submitted to the Commission information which lead to a better understanding of the agreement. The Commission considered that the criteria laid down in section D ‘Significant reduction in a fine’, first indent, were met, and therefore granted a reduction of the fine. Therefore, Ferriere was granted a reduction of 20% of amount of the fine.

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(1) Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty, published in Official Journal C 152 of 26 June 2002. In point 31 of the communication the Commission stated that: ‘If the Commission, when applying the competition rules to agreements, identifies an infringement in a field covered by the ECSC Treaty, the substantive law applicable will be, irrespective of when such application takes place, the law in force at the time when the facts constituting the infringement occurred. In any event, as regards procedure, the law applicable after the expiry of the ECSC Treaty will be the EC law’.