

Final report of the Hearing Officer in case COMP/37.956 — Reinforcing bars

(pursuant to Article 15 of Commission Decision (2001/462/EC, ECSC) of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21)

(2006/C 303/02)

The draft decision submitted to the Commission calls for a number of observations regarding the parties' right to be heard.

1. Access to the file

The parties complained repeatedly to the Directorate-General for Competition, and to the Hearing Officer when they reached no agreement with the Directorate-General.

After the firms received the Statement of Objections adopted by the Commission on 26 March 2002, several tens of letters and faxes were exchanged.

The complaints related essentially to the manner of access to the file, and were largely concerned with mistakes made in the CD-ROMs sent to the firms. In several cases papers had been made accessible when they should not have been, and in other cases papers had not been made accessible even though the firms were entitled to see them, as a result of errors in the classification of accessible and non-accessible documents.

These errors were regrettable in themselves; but they were corrected, as far as the documents the firms were entitled to receive were concerned, and further time was allowed in order to prevent any impairment of the right of the firms to be heard.

Altogether, taking account of the extensions allowed, the parties had practically two months to reply, which is sufficient time to analyse the facts and present a defence.

It should be borne in mind that the case is not a particularly complex one, as it might have been if there were a very large number of participants in the restrictive practice, or if the facts were especially difficult to interpret.

It has to be concluded, therefore, that the time allowed to the firms for a reply discharged the obligation on the Commission to allow firms sufficient time to answer the Statement of Objections, and complied with the principles laid down by the Court of First Instance and the Court of Justice, especially as there were hearings at which the parties were able orally to clarify and expand their written replies to the Statement of Objections, and to submit further written explanation.

2. Hearings

In procedural terms this is a special case, because the proceedings began under the ECSC Treaty, under which the formal hearing is not attended by representatives of the Member States. Such a hearing took place on 13 June 2002.

However, the need to assess all the points raised, not least those raised at the hearing itself, meant that the departments were unable to lay a draft final Decision before the Commission before the date on which the ECSC Treaty expired, that is to say 23 July 2002.

A supplementary Statement of Objections was therefore sent to the parties on 12 August 2002.

This was essentially technical; in line with the Communication from the Commission concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty, published on 26 June 2002, it stated that the further proceedings would be governed by the procedural law of the EC Treaty, while the substance would continue to be assessed in accordance with the ECSC Treaty.

A second hearing was then held, to which the representatives of the Member States were invited. The Directorate-General for Competition also sent them the main documents in the case, as is the rule under Article 10(5) of Regulation No 17/62.

3. From a comparison of the Statement of Objections and the final text of the draft decision, I conclude that the draft decision does not contain any new objections not put forward in the Statement of Objections.

Brussels, 9 December 2002

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