Final report of the Hearing Officer in Case COMP/C.38.907 — Steel beams


(2008/C 235/03)

The draft Decision in the above-mentioned case gives rise to the following observations:

The present case presents a particular feature, since the draft Decision is a readoption of the Commission Decision 94/215/ECSC of 16 February 1994. This follows the ECJ judgment of 2 October 2003, which overturned the judgment of the CFI of 11 March 1999 and the Decision in so far as it concerned Arbed SA on procedural grounds.

On 6 May 1992, the Commission addressed a Statement of Objections to 17 European steel undertakings, including TradeArbed SA, stating on a preliminary basis that they had participated in a cartel on the Community steel beams market, in breach of Article 65, paragraph 1, of the ECSC Treaty.

On 16 February 1994, the Commission adopted Decision 94/215/CECA (the ‘Decision’), imposing fines on 14 undertakings, including Arbed SA the parent company of TradeArbed SA, for infringements committed between 1 July 1988 and 31 December 1990. No fine was imposed on TradeArbed SA.

On 8 April 1994, Arbed SA brought an action before the Court of First Instance (CFI) for, inter alia, annulment of the Decision. On 11 March 1999, the CFI granted Arbed SA’s application in part and reduced the fine imposed on them. Arbed SA subsequently appealed this judgment before the European Court of Justice (ECJ).

In its judgment of 2 October 2003, ECJ found that Arbed SA’s rights of defence had been infringed during the Commission’s administrative procedure, since the Decision imposing fines was addressed to Arbed SA, whilst the Statement of Objections had been sent to TradeArbed SA and had not indicated that fines might be imposed on Arbed SA. Moreover, Arbed SA were denied the right of access to the file as the Statement of Objections was not addressed to them.

As a result of the merger between Arbed, Aceralia and Usinor in 2002, Arbed SA, TradeArbed SA and ProfilArbed SA became respectively Arcelor Luxembourg SA, Arcelor International SA and Arcelor Profil Luxembourg SA.

On 8 March 2006, a new Statement of Objections was addressed to Arbed SA, Arcelor International SA, the wholly-owned subsidiary of Arbed SA, and to ProfilArbed SA, the economic successors of the steel beams activities of Arbed SA and access to the file was provided.

 Replies to the Statement of Objections were submitted within a six week deadline. The Parties waived their right to an oral hearing.

As regards the substance of the draft Decision, it is based on the text of the earlier Commission Decision. In addition, the Commission provides further explanations inter alia on following points:

— the Commission’s power to impose fines is subject to a limitation period of five years which starts to run on the day when the infringements ceased. Pending the final outcome of judicial proceedings the limitation period is suspended. This applies to the legal entity which is party to the judicial proceedings. It is considered that this also applies to other legal persons which are part of the same undertaking (i.e. ‘the same economic entity’). When the administrative proceeding is initiated again after those judicial proceedings are terminated, the Commission may adopt a new decision. That was the case in the present proceedings,

— the ECSC Treaty expired on 23 July 2002. However, it is considered that by virtue of the principle of succession of norms within a single legal order, the Commission remains competent to sanction the infringement committed before the date of expiry.

The draft Decision submitted to the Commission only contains objections in respect of which the parties have been afforded the opportunity of making known their views.

I conclude that the rights of the parties to be heard have been respected in the present case.

Brussels, 24 October 2006.

Karen WILLIAMS