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## DECISION No 19-63

of 11 December 1963

amending Decision No 30-53 of 2 May 1953 on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel

THE HIGH AUTHORITY,

Having regard to Articles 4, 60 and 63 (2) of the Treaty;

Having regard to Decision No 30-53 of 2 May 1953 on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel (*Official Journal of the ECSC* of 4 May 1953, p. 109 *et seq.*), as amended by Decision No 1-54 of 7 January 1954 (*Official Journal of the ECSC* of 13 January 1954, p. 217);

## I

Whereas experience has shown that Decision No 30-53, in which the High Authority specified the practices that are prohibited by Article 60 (1) of the Treaty, did not accurately and fully define the obligations of undertakings with regard to their selling agencies and to middlemen acting on their behalf; whereas it is therefore necessary to amend and supplement those provisions;

Whereas undertakings producing coal and steel (producer undertakings) are required in selling their products to observe the prohibition on discriminatory practices as defined in Article 60 (1) of the Treaty, and also in Decisions Nos 30-53 and 1-54;

Whereas producer undertakings are also subject to this requirement where they do not sell their products themselves but employ selling agencies to do so; whereas, if it were not so, such separation between production and distribution operations would in so far as it exists have the effect of nullifying the prohibition on discrimination by producer undertakings;

Whereas the selling agencies referred to above are:

— joint selling agencies (Article 65 (2) of the Treaty) operating on behalf of several producer undertakings;

— distributor undertakings which are administered by a producer undertaking and regularly employed by it to sell all or some of its products, and whose sales operations consist primarily in the distribution of that undertaking's products.

Whereas, therefore, producer undertakings may not sell their products through their selling agencies at prices and on conditions departing from those in their own price lists;

Whereas producer undertakings would be in breach of the prohibition on price discrimination if they were to charge different prices to comparably-placed customers depending on whether the transactions were effected by those undertakings themselves or on their behalf by middlemen such as employees, agents, representatives, commission agents acting on behalf of those undertakings but in their own names, or agents for goods on consignment (allowance being made for remuneration paid to such middlemen); whereas, accordingly, undertakings must ensure that middlemen acting on their behalf apply in their transactions the price lists and conditions of sale of the undertakings or of their selling agencies;

Whereas under Article 63 (2) (b) of the Treaty undertakings are held responsible for infringements committed by their direct agents and commission agents acting on their behalf; whereas the High Authority can only hold undertakings responsible for such infringements under that provision if it can also investigate the activities of middlemen; whereas it is therefore necessary to require undertakings to furnish the High Authority, at its request, with particulars of the operations of such middlemen, where they are acting on behalf of the undertakings or their selling agencies, and to enable the High Authority to consult their business records for this purpose;

## II

Whereas under Article 60 (2) (b) of the Treaty, Community undertakings are authorised to grant rebates on their list prices for comparable

transactions in so far as this enables them to align their quotation on whatever price list established on different basing point offers the customer the most advantageous delivered terms; whereas, furthermore, undertakings may align their quotations on the terms of undertakings outside the Community;

Whereas these concessions are derogations from the provisions of Article 60 (1) and (2) of the Treaty which prohibit undertakings from applying dissimilar conditions to comparable transactions and departing from their price lists in comparable transactions;

Whereas if the conditions required to benefit from such derogations are not fulfilled the charging of prices departing from the list prices is a prohibited practice within the meaning of Article 60 (1);

Whereas the High Authority has already decided, in the case of the exceptions and departures specified in Article 1 (1) of Decision No 1-54, that undertakings must furnish evidence in support of the application of prices or conditions departing from their price list;

Whereas in the case of alignment on the price list of a Community undertaking evidence must be furnished that the conditions for alignment are fulfilled, in particular as regards the lower delivered price of the competitor and the correct calculation of the aligned price;

Whereas alignment on the terms of undertakings outside the Community presupposes that undertakings in their quotations to customers in the common market actually are in competition with foreign sellers; whereas accordingly Community undertakings must show in any given case that this actual competition from undertakings outside the Community did in fact exist;

After consulting the Consultative Committee and the Council;

DECIDES:

#### PART ONE

#### Obligations of undertakings towards selling agencies and middlemen and dealers acting on their behalf

##### Article 1

Article 1 of Decision No 30-53 shall be amended to read as follows:

(1) This Decision shall apply to Community undertakings in respect of their transactions within the common market in the products

specified in Annex I to the Treaty, with the exception of scrap.

(2) Where Community undertakings sell such goods within the common market through selling agencies, the obligations created by this Decision shall apply to transactions by such selling agencies.

For the purposes of this Decision, "selling agencies" means:

- joint selling agencies (Article 65 (2) of the Treaty) operating on behalf of several producer undertakings;
- distributor undertakings which are administered by a producer undertaking and regularly employed by it to sell all or some of its products, and whose sales operations consist primarily in the distribution of that undertaking's products.

##### Article 2

The following Articles 7, 8 and 9 shall be substituted for Article 7 of Decision No 30-53:

##### Article 7

It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for an undertaking to sell the products specified in Annex I, with the exception of scrap, through its selling agencies (Article 1 (2)) at prices and on conditions which do not correspond to its own prices and conditions of sale.

##### Article 8

(1) Undertakings and their selling agencies shall require middlemen selling the products specified in Annex I, with the exception of scrap:

- either in the name and on behalf of the undertakings or their selling agencies (e.g. employees, agents, representatives); or
- in their own name but on behalf of the undertakings or their selling agencies (e.g. commission agents, agents for goods on consignment),

to apply in their transactions the price lists and conditions of sale of the undertakings or of their selling agencies and to observe the provisions of Articles 2 to 6 of this Decision.

(2) Undertakings shall be held responsible for infringements of the above obligations by such middlemen.

- (3) Undertakings and their selling agencies shall 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.

#### Article 9

Undertakings and their selling agencies shall frame their conditions of sale in such a way that their customers (dealers), in reselling their products in the unaltered state other than by sale from stock in the case of steel and by retail in the case of coal, are under an obligation to comply with the rules set out in Articles 2 to 6 of this Decision.'

### PART TWO

#### Obligations of undertakings with respect to sales by alignment

##### Article 3

1. Article 2 (2) of Decision No 30-53, as amended by Decision No 1-54, is hereby repealed.

2. Article 2 of Decision No 30-53, as amended by Decision No 1-54 shall be supplemented by the following paragraphs (2) and (3):

- '(2) It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to align his quotation on the price list of a competitor in the common market under Article 60 (2) (b) of the Treaty, where the seller cannot show that the conditions for alignment were fulfilled and that as regards the mode of quotation he has observed the requirements of Article 3 (1) and (2) of this Decision.

- (3) It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to align his quotation on the terms offered by undertakings outside the Community under the last subparagraph of Article 60 (2) (b) of the Treaty, where the seller cannot show that alignment was necessitated

by actual competition from the undertaking outside the Community and that as regards the mode of quotation he has observed the requirements of Article 3 (3) of this Decision.'

#### Article 4

The following shall be substituted for Article 3 (3) of Decision No 30-53:

- '(3) Where a seller aligns his quotation on the terms of an undertaking outside the Community under the last subparagraph of Article 60 (2) (b) of the Treaty, the provisions of paragraphs (1) and (2) of this Article shall apply.'

### PART THREE

#### Final provisions

##### Article 5

Article 8 of Decision No 30-53, as adopted on 2 May 1953, is hereby repealed.

##### Article 6

This Decision shall be published in the *Official Journal of the European Communities*.

It shall enter into force on 20 January 1964.

The text of Decision No 30-53 as in force following this Decision shall be published in the form of a Communication in the *Official Journal of the European Communities*.

This Decision was considered and adopted by the High Authority at its meeting on 11 December 1963.

*For the High Authority*

*The President*

Dino DEL BO