JUDGMENT OF THE COURT (Fifth Chamber)
2 October 2003 *

In Case C-199/99 P,

Corus UK Ltd, formerly British Steel plc, established in London (United Kingdom), represented by P. Collins and M. Levitt, Solicitors, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition) of 11 March 1999 in Case T-151/94 *British Steel* v *Commission* [1999] ECR II-629, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by J. Currall and W. Wils, acting as Agents, assisted by J. Flynn, Barrister, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann (Rapporteur) and S. von Bahr, Judges,

Advocate General: C. Stix-Hackl,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 31 January 2002,

after hearing the Opinion of the Advocate General at the sitting on 26 September 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 25 May 1999, Corus UK Ltd, formerly British Steel plc, brought an appeal under Article 49 of the ECSC Statute of the Court of Justice against the judgment of the Court of First Instance of 11 March 1999 in Case T-151/94 *British Steel* v *Commission* [1999] ECR II-629

('the judgment under appeal'), by which the Court of First Instance dismissed in part its action for annulment of Commission Decision 94/215/ECSC of 16 February 1994 relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams (OJ 1994 L 116, p. 1) ('the contested decision'). By that decision, the Commission imposed a fine on the appellant under Article 65 of the ECSC Treaty.

Facts and the contested decision

2 According to the judgment under appeal, the European steel industry underwent, from 1974 onwards, a crisis characterised by a fall in demand giving rise to problems of excess supply and capacity and low prices.

3 In 1980, after having attempted to manage the crisis by way of unilateral voluntary commitments given by undertakings as regards the amount of steel put on the market and minimum prices ('the Simonet Plan') or by fixing guide and minimum prices ('the Davignon Plan', the 'Eurofer I' agreement), the Commission declared that there was a manifest crisis within the meaning of Article 58 of the ECSC Treaty and imposed mandatory production quotas for, inter alia, beams. That Community system came to an end on 30 June 1988.

4 Long before that date, the Commission had announced in various communications and decisions that the quota system was to be abandoned, pointing out that the end of that system would mean a return to a market characterised by free competition between undertakings. However, the sector continued to be affected by excess production capacity which, according to expert opinion, had to undergo a sufficient and rapid reduction to enable undertakings to meet world competition.

5 From the end of the quota system, the Commission set up a surveillance system involving the collection of statistics on production and deliveries, monitoring of market developments and regular consultation with undertakings on the market situation and trends. The undertakings in the sector, some of which were members of the Eurofer trade association, thus maintained regular contact with DG III (Directorate-General for the 'Internal Market and Industrial Affairs') of the Commission ('DG III') by way of consultation meetings. The surveillance system came to an end on 30 June 1990 and was replaced by an individual and voluntary information scheme.

6 At the beginning of 1991, the Commission carried out a series of inspections in the offices of a number of steel undertakings and associations of undertakings in the sector. A statement of objections was sent to them on 6 May 1992. Hearings were held at the beginning of 1993.

7 On 16 February 1994, the Commission adopted the contested decision, by which it found that 17 European steel undertakings and one of their trade associations had participated in a series of agreements, decisions and concerted practices designed to fix prices, share markets and exchange confidential information on the market for beams in the Community, in breach of Article 65(1) of the ECSC Treaty. By that decision, it imposed fines on 14 undertakings for infringements committed between 1 July 1988 and 31 December 1990.

The proceedings before the Court of First Instance and the judgment under appeal

8 On 13 April 1994, the present appellant brought an action before the Court of First Instance for annulment of the contested decision.

9 By the judgment under appeal, the Court of First Instance granted the present appellant's application in part and reduced the fine imposed on it.

Forms of order sought by the parties

10 The appellant claims that the Court should:

— set aside the judgment under appeal;

— in so far as the circumstances permit, annul the contested decision;

— in the alternative, reduce or cancel the fine set by the Court of First Instance, which was imposed on the appellant by Article 4 of the contested decision;

— order the Commission to pay interest, at such rate as is considered by the Court to be fair and just, on such part of the fine as is repaid as a result of annulment of the judgment under appeal or of the contested decision, in respect of the period from payment of the fine by the appellant on 2 June 1994 until repayment by the Commission; and

— order the Commission to pay the costs.

11 The Commission contends that the Court should:

— dismiss the appeal;

— order the appellant to pay the costs.

The grounds of appeal

12 The appellant raises six grounds of appeal:

1. infringement of the right to a fair hearing within a reasonable period of time;

2. infringement of essential procedural requirements when the contested decision was adopted;

3. infringement of Article 65(1) of the ECSC Treaty;

4. infringement by the Court of First Instance of the rights of the defence in that it failed to censure a breach of the appellant's rights of defence during the administrative procedure;

5. infringement of Article 15 of the ECSC Treaty as regards the statement of reasons for the fines in the contested decision;

6. infringement of Article 33 of the ECSC Treaty in that the Court of First Instance failed to annul Article 1 of the contested decision in so far as it concerns infringements committed prior to 1 July 1988.

13 The paragraphs of the judgment under appeal challenged by each of the grounds of appeal will be indicated as those grounds are examined.

The appeal

The first ground of appeal

14 The first ground of appeal alleges infringement of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, ('the ECHR'). The appellant claims that the Court of First Instance deprived it of its right to a fair hearing within a reasonable period.

15 This ground can be divided into three limbs, which it is appropriate to examine separately.

The first limb of the first ground of appeal

16 The appellant submits that the proceedings before the Court of First Instance were not fair. There was an infringement of the principle of equality of arms, notably on account of the late disclosure of numerous documents. Thus, whereas the hearing began on 23 March 1998, the documents produced by the Commission following the order of the Court of First Instance of 10 December 1997 in Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NMH Stahlwerke and Others* v *Commission* [1997] ECR II-2293 were not made available until 14 January 1998, the method used to calculate the fines was disclosed on 19 March 1998, a copy of the minutes of the Commission meeting during which the contested decision was adopted ('the minutes') was made available to the appellant on 20 March 1998 and further documentation was not produced until the hearing.

17 The Commission observes that the documents produced on 14 January 1998 were thus available two months before the hearing, which gave the appellant ample time to obtain and inspect them, that, while the method of calculating the fines was not disclosed until 19 March 1998, it was, however, in amplification of replies already given on 19 January and 20 February 1998, as is clear from paragraph 66 of the judgment under appeal, and that, while the definitive minutes were not lodged with the Court of First Instance until 19 March 1998 and only made available to the appellant the following day, the draft of those minutes had already been available for some weeks by virtue of the Court of First Instance's order of 16 February 1998, as is pointed out in paragraph 64 of the judgment under appeal. Moreover, the Commission disputes the claim that the appellant experienced difficulty as a result of the late disclosure of documents, observes that the appellant does not identify any specific point on which it was put at a disadvantage by the matters of which it now complains and points out that the appellant made no application to the Court of First Instance for the hearing to be postponed on account of the date of production of any of the material to which it refers.

18 In its reply, the appellant challenges the Commission's arguments. It submits, in particular, that the replies provided by the Commission in January and February 1998 were incomplete and did not enable the lawfulness of the method used to calculate the fines to be assessed. With respect to the definitive version of the minutes, it adds that the Commission failed to comply with a clear and unambiguous request of the Court of First Instance and did not produce that document until the day before the hearing.

Findings of the Court

19 The principle of respect for the rights of the defence is a fundamental principle of Community law. That principle is infringed where a judicial decision is based on facts and documents which the parties themselves, or one of them, have not had an opportunity to examine and on which they have therefore been unable to comment (Joined Cases 42/59 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53, at p. 84).

20 First of all, the appellant has not established how the allegedly late production of the documents in question adversely affected it, that is to say, how its defence might have been better assured had the documents been available to it earlier.

21 In any event, the documents made available on 14 January 1998 following the order in *NMH Stahlwerke*, cited above, were produced sufficiently in advance of the hearing to allow the appellant to examine them and adopt a position on their content.

22 In paragraph 628 of the judgment under appeal, the Court of First Instance held that the method used to calculate the fine did not constitute an additional statement of reasons for the contested decision. The document setting out the method consisted of a table of one page for each undertaking. It was lodged on 19 March 1998 and supplemented the replies already given in that regard. In view of the length of the arguments presented during the hearing, which lasted from 23 to 27 March 1998, it does not appear that production of that document only four days before the beginning of the hearing adversely affected the appellant by depriving it of an opportunity adequately to inspect its content in order to be able to express its views thereon.

23 Moreover, the draft minutes were made available on 22 January 1998. It was only for the purpose of examining whether the contested decision had been authenticated that a true copy of the original of the minutes was produced on 19 March 1998. Having regard to the arguments put forward by the parties, which the Court of First Instance summarised in paragraphs 104 to 116 of the judgment under appeal, it does not appear that the rights of the defence were adversely affected by the fact that that document was produced only a few days before the hearing.

24 As regards the various documents submitted to the Court of First Instance at the hearing, the nature of which is not specified by the appellant, with the result that it is impossible to examine their relevance to its rights of defence, the minutes of that hearing do not indicate that the appellant objected to their being lodged.

25 It follows that the appellant has failed to establish that the Court of First Instance infringed the principle of the rights of the defence by failing to ensure that the appellant had sufficient time in which to inspect the various documents submitted and to express its views on them.

26 It follows that the first limb of the first ground of appeal is unfounded.

The second limb of the first ground of appeal

27 The appellant submits that the Court of First Instance committed errors as regards the examination of witnesses.

28 The appellant claims that it had no opportunity to question the three witnesses heard by the Court of First Instance prior to the hearing and that it was given no notice of the statements to be made by them. Furthermore, it was denied the right to put questions to those witnesses or otherwise to challenge the evidence given by them. That infringement of the appellant's rights was made more serious because, in the judgment under appeal, the Court of First Instance based its findings to a large extent on the evidence given by those witnesses.

29 The Commission contends that the procedure for examining the witnesses was properly conducted. Moreover, the appellant fails to identify any provision in the Rules of Procedure of the Court of First Instance which might have been infringed. It notes that, in the Community legal system, witnesses are the witnesses of the Community Court and not of the parties. The questions to be put to the witnesses are decided upon by the Court of First Instance alone and it is in that Court's discretion to determine whether the parties should be given an opportunity to question them.

Findings of the Court

30 As the procedure for examination of witnesses is specifically defined by the Rules of Procedure of the Court of First Instance, this limb of the ground of appeal alleging infringement of the appellant's rights of defence can be accepted as being well founded only in so far as the appellant establishes that there was an irregularity in that procedure which adversely affected its interests.

31 The second and fourth subparagraphs of Article 68(4) of the Rules of Procedure of the Court of First Instance are worded as follows:

'The witness shall give his evidence to the Court of First Instance, the parties having been given notice to attend. After the witness has given his main evidence the President may, at the request of a party or of his own motion, put questions to him.

...

Subject to the control of the President, questions may be put to witnesses by the representatives of the parties.'

32 According to the minutes of the hearing which was held before the Court of First Instance on 23 March 1998, the President of the Second Chamber, Extended Composition, announced that that Chamber intended to hear a number of witnesses. The minutes state that the parties did not submit observations in that regard. The witnesses were examined in an open hearing in the presence of all of the parties.

33 The appellant does not show and in no way does it appear that, in this case, the Court of First Instance acted in breach of the procedure for examining witnesses. In particular, the appellant fails to specify any question which the President refused or omitted to pose and the minutes of the hearing of the witnesses do not show that any request to put such a question was made.

34 It is sufficient to state that, at the hearing of oral argument — which, as was noted in paragraph 22 of this judgment, lasted from 23 to 27 March 1998 — the appellant did have an opportunity to discuss the statements made by the witnesses which were used as evidence. In addition, it does not appear that the appellant applied to the Court of First Instance for leave to examine or comment on those statements at an earlier stage.

35 It follows from these findings that the second limb of the first ground of appeal is unfounded.

The third limb of the first ground of appeal

36 The appellant complains that the duration of the proceedings before the Court of First Instance was excessive.

37 The appellant observes that the period from lodging of the application until delivery of the judgment under appeal was 59 months. That judgment was delivered almost one year after the oral procedure had been closed. As a result of

various delays, the identity of the President of the Chamber changed and two of the five judges who were present at the hearing did not take part in the deliberations. This served to hinder continuity in the conduct of the case and a thorough consideration of the issues raised.

38 The Commission contends that, if the duration of the proceedings in this case is compared with that examined by the Court in Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, it must be concluded that the duration of the proceedings before the Court of First Instance in this case was not excessive. At the very least, account should be taken of the 'exceptional circumstances' within the meaning of the *Baustahlgewebe* judgment, such as the new issues raised in relation to access to documents and the number of procedural documents required.

39 The Commission also submits that the change of President of the Chamber was not unusual as it is an annual event. Similarly, the fact that two of the judges did not take part in the deliberations is not out of the ordinary and was merely the result of the expiry of their mandates.

40 The appellant maintains that the overall duration of the proceedings was excessive and that no objective justification for the delays can be advanced. In particular, the 15 months which the Court of First Instance spent examining the small number of documents classified by the Commission as internal cannot be justified. Furthermore, it submits that the Commission's arguments are disingenuous since it itself caused many of the delays.

Findings of the Court

41 The general principle of Community law that everyone is entitled to a fair hearing, and in particular the right to legal process within a reasonable period, is applicable in the context of proceedings brought against a Commission decision imposing fines on an undertaking for infringement of competition law (*Baustahlgewebe*, cited above, paragraph 21, and Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P, C-251/99 P, C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 179).

42 The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities (*Baustahlgewebe*, paragraph 29, and *Limburgse Vinyl Maatschappij and Others*, cited above, paragraph 187).

43 The Court has held in that regard that this list of criteria is not exhaustive and that the assessment of the reasonableness of a period does not require a systematic examination of the circumstances of the case in the light of each of them, where the duration of the proceedings appears justified in the light of one of them. The purpose of those criteria is to determine whether the time taken in the handling of a case is justified. Thus, the complexity of the case or the dilatory conduct of the applicant may be deemed to justify a duration which is prima facie too long. Conversely, the time taken may be regarded as longer than is reasonable in the light of just one criterion, in particular where its duration is the result of the conduct of the competent authorities. Where appropriate, the duration of a procedural stage may be regarded as reasonable from the outset if it appears to be consistent with the average time taken in handling a case of its type (*Limburgse Vinyl Maatschappij and Others*, paragraph 188).

44 In the present case, the proceedings before the Court of First Instance commenced with the lodging on 13 April 1994 of the application bringing the present appellant's action for annulment of the contested decision and were concluded on 11 March 1999, the date of delivery of the judgment under appeal. They thus lasted almost five years.

45 Such a duration is, prima facie, considerable. However, it should be noted that 11 undertakings brought actions for annulment of the same decision in four languages of procedure.

46 As was pointed out in paragraphs 51 to 57 of the judgment under appeal, the Court of First Instance had to rule on a variety of claims regarding access to the documents relating to the administrative procedure. The Commission having lodged, on 24 November 1994, a file containing 11 000 documents relating to the contested decision, submitting that the undertakings in question should not be given access to the documents containing business secrets or to the Commission's own internal documents, the Court of First Instance had to hear the parties on that issue, examine all the documents and decide to which documents each of the applicants might have access.

47 By order of 19 June 1996 in Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 *NMH Stahlwerke and Others* v *Commission* [1996] ECR II-537, the Court of First Instance ruled on the applicants' right of access to the documents in the Commission's file emanating, first, from the applicants themselves and, second, from third parties not involved in the proceedings which the Commission had, in the interests of those parties, classified as confidential.

48 By order of 10 December 1997 in *NMH Stahlwerke and Others* v *Commission*, cited above, the Court of First Instance ruled on the applicants' requests for access to the documents classified by the Commission as 'internal'.

49 The various actions brought by the undertakings affected by the contested decision were joined for the purposes of measures of inquiry and the oral procedure. As is explained in paragraphs 58 to 67 of the judgment under appeal, a number of measures of inquiry were ordered by the Court of First Instance in order to prepare that procedure. In that connection, the Court of First Instance addressed various written questions to the parties and ordered the production of documents and the hearing of witnesses.

50 The oral procedure was closed at the end of the hearing on 27 March 1998.

51 The judgment under appeal was delivered on 11 March 1999, that is to say, on the same day as the other 10 judgments ruling on the actions brought against the contested decision.

52 It follows from the above findings that the duration of the proceedings leading to the judgment under appeal can be explained, inter alia, by the number of undertakings which participated in the concerted practice at issue and brought actions against the contested decision, which made it necessary to examine those different actions simultaneously, by the legal issues relating to access to the Commission's voluminous file, by the in-depth examination of the file by the Court of First Instance and by the linguistic constraints imposed by that Court's Rules of Procedure.

53 It cannot validly be claimed that the Court of First Instance remained inactive for several months even though only a small number of documents had to be examined. It is sufficient to refer to paragraphs 51 to 57 of the judgment under appeal, in which the Court of First Instance explained the procedure necessary to organise access to the Commission's documents.

54 Contrary to what the appellant claims, responsibility for delays in conducting the proceedings cannot be attributed to the Commission. Having been asked to do so by letter of the Registry of the Court of First Instance of 25 October 1994, the Commission lodged its file at the Registry on 24 November 1994. Moreover, the Commission cannot be held responsible for the legal difficulties relating to access to certain documents, which were for the most part new and which the Court of First Instance had to resolve by orders following an examination of the documents which had been the subject of challenge. In addition, it does not appear that the Commission was excessively late in producing the other documents requested by the Court of First Instance.

55 In view of the factors set out in paragraph 52 of this judgment, the period of just under one year which elapsed between closure of the oral procedure and delivery of the judgment cannot be regarded as excessive.

56 It follows from all of the above findings that the duration of the proceedings before the Court of First Instance is justified in the light of the particular complexity of the case.

57 As regards the change of President of the Chamber of the Court of First Instance hearing the case and the fact that two judges were prevented from taking part in the deliberations, the appellant has not established any infringement of the Rules of Procedure of the Court of First Instance.

58 The third limb of the first ground of appeal is therefore unfounded.

59 It follows from these findings that the first ground of appeal is unfounded.

The second ground of appeal

60 The second ground of appeal alleges infringement of essential procedural requirements when the contested decision was adopted.

61 Essentially, the appellant submits, first, that the Court of First Instance erred in law in holding, in paragraph 137 of the judgment under appeal, that there were no substantive differences between the versions C(94)321/2 and C(94)321/3 of the contested decision and the versions of that decision notified to the appellant.

62 Second, the appellant argues that the reasons given by the Court of First Instance for its findings as regards authentication of the contested decision are inadequate and contradictory. In particular, the fact that the photocopy of the minutes was produced to the Commission's agent, and then by him to the Court of First Instance, in the same cardboard box as the copies of documents C(94)321/2 and C(94)321/3, can in no way serve as a basis for the assumption by the Court of First Instance that those documents had been annexed to the original version of the minutes in accordance with the requirements of Article 16 of the Commission's Rules of Procedure as laid down in Commission Decision 93/492/Euratom, ECSC, EEC of 17 February 1993 (OJ 1993 L 230, p. 15). Similarly, the Court of First Instance erred when, in paragraph 149 of the judgment under appeal, it accepted certification of the photocopy by the Secretary-General of the Commission as proof that the minutes had been signed. According to the appellant, a photocopy cannot serve as proof of any matter relating to the

authenticity of the document which it reproduces; only production of the original version of the minutes, it argues, could have established that those minutes satisfied the requirements of the Rules of Procedure.

63 Third, the appellant takes the view that the Court of First Instance ought to have verified the date of authentication because it cannot be assumed that authentication took place on the date on which the minutes were adopted.

64 The Commission contends that the ground of appeal is inadmissible inasmuch as it challenges findings of fact and, in the alternative, that it is unfounded.

Findings of the Court

65 First of all, it should be pointed out that, as is clear from Article 32d(1) CS and Article 51 of the ECSC Statute of the Court of Justice, an appeal lies on a point of law only. Therefore, the Court of First Instance has sole jurisdiction to find and appraise the relevant facts and to assess the evidence, except where those facts and that evidence have been distorted (see, to that effect, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraphs 49 and 66; *Limburgse Vinyl Maatschappij and Others*, paragraph 194; and Case C-312/00 P *Commission* v *Camar and Tico* [2002] ECR I-11355, paragraph 69).

66 The appellant is here challenging the assessment of evidence by the Court of First Instance. The second ground of appeal challenges the following paragraphs of the judgment under appeal:

— paragraph 146, in which the Court of First Instance assumed that documents C(94)321/2 and C(94)321/3 were annexed to the minutes;

— paragraph 147, in which the Court of First Instance took the view that it had not been established that there was any substantive difference between the notified version of the contested decision and that annexed to the minutes;

— paragraph 148, in which the Court of First Instance ruled that documents C(94)321/2 and C(94)321/3 had to be regarded as having been authenticated by the signatures of the President and the Secretary-General of the Commission on the first page of the minutes;

— paragraph 149, in which the Court of First Instance decided that the certification of authenticity by the titular Secretary-General of the Commission provided sufficient proof for legal purposes that the original version of the minutes bore the original signatures of the President and the Secretary-General of the Commission; and

— paragraph 151, in which the Court of First Instance held that the minutes had been properly signed by the President and the Secretary-General of the Commission on 23 February 1994.

67 With respect to the need to request production of the original of the minutes, it is for the Community Court to decide, in the light of the circumstances of the case and in accordance with the provisions of the Rules of Procedure on measures of inquiry, whether it is necessary for a document to be produced. As regards the Court of First Instance, it follows from Article 49 read in conjunction with Article 65(b) of its Rules of Procedure that a request for production of documents is a measure of inquiry which the Court may order at any stage of the proceedings (Case C-286/95 P *Commission* v *ICI* [2000] ECR I-2341, paragraphs 49 and 50).

68 In paragraph 149 of the judgment under appeal, the Court of First Instance examined the photocopy of the minutes which had been submitted to it and concluded that the fact that the first page of that document bore the stamp 'certified to be a true copy, Secretary-General Carlo Trojan' and that this stamp bore the original signature of Mr Trojan, the titular Secretary-General of the Commission, was sufficient to establish that the photocopy was a true copy of the original.

69 As was pointed out in paragraph 65 of this judgment, the Court of First Instance has sole jurisdiction to assess the probative value of a document, as it did in paragraph 149 of the judgment under appeal, and its decision on this issue cannot, in principle, be the subject of review by the Court.

70 Given that this copy of the minutes was available to the Court of First Instance, which it accepted as being a certified true copy of the original, it was under no obligation whatsoever to adopt a further measure for taking evidence in order to obtain the original if it formed the view that such a measure was unnecessary to establish the truth (see, to that effect, *Limburgse Vinyl Maatschappij and Others*, paragraph 404).

71 It follows that the second ground of appeal is in part inadmissible and in part unfounded.

The third ground of appeal

72 The third ground of appeal alleges infringement of Article 65(1) of the ECSC Treaty. It can be divided into two limbs: the first alleges an error in the legal assessment of the evidence and the second alleges misinterpretation of Article 65(1).

The first limb of the third ground of appeal

73 In the appellant's view, the legal appraisal of the evidence on which the Court of First Instance based its finding that the appellant had engaged in agreements and concerted practices to fix prices and exchange information in breach of Article 65(1) of the ECSC Treaty is vitiated by the fact that it did not take into account its own subsequent findings regarding the purpose, context and subject-matter of the discussions in which the undertakings concerned had taken part in connection with the monitoring of the sector introduced after the period of manifest crisis had come to an end.

74 In paragraph 656 of the judgment under appeal, the Court of First Instance stated that, when preparing meetings with the Commission, the undertakings had to meet beforehand and exchange their views on the economic situation of the market and future trends, particularly in relation to prices. Such meetings were, moreover, necessary to the success of the system of monitoring the sector. Furthermore, it appears from the testimony given by Mr Kutscher, a former DG III official heard by the Court of First Instance as a witness, that, in a favourable economic situation, parallel increases in prices may arise without any agreement being necessary. Therefore, in the appellant's view, the judgment under appeal is based on contradictory and inadequate reasoning.

75 The Commission contends that the Court of First Instance meticulously examined each piece of evidence relating to the various infringements and observes that the appellant does not allege distortion of the sense of that evidence.

76 According to the Commission, it is wrong to claim that the fact that meetings were held with it precludes a finding that the appellant was involved in anti-competitive practices. First, that argument can relate only to the infringements allegedly committed within the Eurofer Committee, called the 'Poutrelles Committee' ('the Poutrelles Committee'), and not to price-fixing and market-sharing agreements. Second, the Commission refers to paragraphs 539 and 575 to 579 of the judgment under appeal, from which it is clear that the activities of which the undertakings concerned were accused were entirely separate from the information meetings with the Commission.

Findings of the Court

77 It is appropriate to observe that the appellant invokes no argument calling into question the findings made by the Court of First Instance in paragraphs 539 to 576 of the judgment under appeal. In those paragraphs, the Court of First Instance demonstrated that the undertakings concerned had concealed from the Commission the existence and content of the discussions adversely affecting competition which they had held and of the agreements which they had concluded. In paragraph 577 of the judgment under appeal, it stated that, in any event, the provisions of Article 65(4) of the ECSC Treaty have an objective content and are binding on both undertakings and the Commission, which cannot exempt those undertakings.

78 More specifically, the appellant does not challenge paragraphs 547 to 557 of the judgment under appeal, in which the Court of First Instance took the view that it had not been established that the DG III officials were aware of the price-fixing agreements.

79 Paragraph 656 of the judgment under appeal, on which the appellant bases its argument that the reasoning given in that judgment is contradictory, is contained in the part of that judgment in which the Court of First Instance examines the economic impact of the infringements with a view to determining whether the fine was fixed at a disproportionate amount.

80 Thus, in that part of the judgment under appeal, the Court of First Instance examined one of the criteria normally applied in assessing the seriousness of an infringement, while stating, in paragraph 650, that an infringement of Article 65(1) of the ECSC Treaty may be found and a fine imposed under Article 65(5) even in the absence of anti-competitive effects. As it stated in paragraph 651 of the judgment under appeal, the effect which an anti-competitive practice has is therefore not a conclusive criterion for assessing the proper amount of a fine. Factors relating to the intentional aspect may be more significant than those relating to the effects, particularly where they relate to infringements which are intrinsically serious, such as price-fixing and market-sharing, factors which are present in this case.

81 The finding set out in paragraph 656 of the judgment under appeal cannot be read in isolation but must be placed in the context of the argument developed by the Court of First Instance. That line of argument led to the conclusion, in paragraph 658, that, in light of the Commission's conduct, it was unnecessary to determine the effects of the infringements committed in this case by simply comparing the situation resulting from the anti-competitive agreements with that which would have existed had there been no contact whatever between the undertakings. The Court of First Instance took the view that it was more relevant to compare the situation resulting from those agreements with the situation envisaged and accepted by DG III, in which the undertakings were supposed to meet and engage in general discussions, particularly in regard to their forecasts on future prices.

82 The Court of First Instance therefore did not contradict itself by taking into consideration the Commission's conduct in order to assess the economic effects of

the infringements while stating that that conduct had no bearing on the fact that the undertakings concerned had been fully aware that the practices complained of were anti-competitive.

83 It follows that the first limb of the third ground of appeal is unfounded.

The second limb of the third ground of appeal

84 In the appellant's view, the Court of First Instance's interpretation of Article 65(1) of the ECSC Treaty is based on contradictory reasoning and a misunderstanding of the context in which that article is to be applied.

85 The appellant complains that the Court of First Instance's reasoning is tautological. Having found, solely on the basis of the evidence, that the infringements of Article 65(1) of the ECSC Treaty had been established, the Court of First Instance concluded that the appellant's arguments concerning the interpretation of that article were irrelevant. Thus, it denied the relevance of Articles 46 to 48 and 60 of the ECSC Treaty to that interpretation. In the appellant's view, the Court of First Instance ought to have considered the question of the interpretation of Article 65(1) of that Treaty before examining whether the infringements had been established.

86 The appellant goes on to argue that the Court of First Instance misinterpreted the concept of 'normal competition' in that it failed to take account of either the effect which pursuit of the different objectives of the Treaty may have on the content of that concept or the impact of Articles 46 to 48 of the ECSC Treaty.

87 The grounds of the judgment under appeal are, the appellant submits, contradictory in that regard as the Court of First Instance, in paragraph 658 of that judgment, took account of the ambiguity introduced by the Commission into the scope of the concept of 'normal competition' when fixing the level of the fines but failed to do so when interpreting Article 65 of the ECSC Treaty.

88 As a result of its misinterpretation of the concept of 'normal competition', the Court of First Instance wrongly found, in paragraph 256 of the judgment under appeal, that the appellant had engaged in concerted practices relating to prices on the United Kingdom market even though the appellant's conduct was a result of the monitoring system set up by the Commission.

89 The Court of First Instance was, the appellant argues, also wrong to hold that it had committed a separate infringement of Article 65(1) of the ECSC Treaty by participating in an information exchange system within the Poutrelles Committee, even though that Court had failed to demonstrate that this constituted a separate breach of Article 65(1) by drawing a coherent distinction between the allegedly anti-competitive effects of the price-fixing and market-sharing agreements, on the one hand, and the information exchange system, on the other.

90 Furthermore, the Court of First Instance failed, in its assessment, to take account of the negotiations which it had been necessary to hold in the context of the monitoring system set up by the Commission.

91 Moreover, the Court of First Instance's assessment of the structure of the market in question is based on inadequate reasoning, which is set out entirely in paragraph 390 of the judgment under appeal. In that paragraph, the Court of First Instance stated that the market was oligopolistic, without carrying out an economic evaluation of its structure. That structure is very different from that which is considered to be an oligopoly in the practice of the Commission under

Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1), in Commission Decision 92/157/EEC of 17 February 1992 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.370 and 31.446 — UK Agricultural Tractor Registration Exchange) (OJ 1992 L 68, p. 19) or in Germany's *Gesetz gegen Wettbewerbsbeschränkungen* (Law prohibiting restraints of competition).

92 The Commission refers to paragraph 156 of the judgment under appeal, in which the Court of First Instance set out the approach it would be taking in its examination of the action, which consisted of ascertaining the correctness of the facts before reviewing whether the legal characterisation of those facts in the contested decision was sound in law. It submits that such an approach entails a stringent review and did not lead the Court of First Instance to draw conclusions in the first stage of that examination which made the outcome of the second stage a foregone conclusion.

93 The Commission argues that the appellant is distorting the clear sense of paragraphs 658 to 660 of the judgment under appeal, in which the Court of First Instance concluded not that the concept of 'normal competition' should be adjusted, but merely that the Commission had exaggerated the economic impact of the price-fixing agreements established in the contested decision.

94 With regard to Articles 46 to 48 of the ECSC Treaty, the Commission observes that the Court of First Instance found, in paragraph 587 of the judgment under appeal, that the issue of discussions between the undertakings with a view to providing the Commission with information was irrelevant. The Court of First Instance pointed out that that had not been the purpose of the agreements and concerted practices in question, that those discussions had not formed part of the Commission's complaint and that such discussions on market trends did not necessarily entail commission of the infringements confirmed in the contested decision. The Court of First Instance was therefore right to hold that the activities of the undertakings concerned should be treated as infringements of Article 65(1) of the ECSC Treaty and that they were not covered by the concept of 'normal competition'.

95 As regards the information exchange system, the Commission states that the Court of First Instance was careful to demonstrate, in paragraphs 391 to 397 of the judgment under appeal, that this system had restricted competition in the form of independent decision-making by the undertakings participating in the exchange and, in paragraph 396, that it had tended to partition markets along the lines of traditional flows of trade. It is therefore incorrect to claim that the Court of First Instance failed to show that this constituted a separate infringement.

96 The Commission takes the view that the argument disputing the oligopolistic structure of the market in question is inadmissible as it was raised for the first time in the appeal. Furthermore, it observes that the Court of First Instance referred to the judgment in Case 13/60 *Geitling Ruhrkohlen-Verkaufsgesellschaft and Others* v *High Authority* [1962] ECR 83, in which the Court held that the oligopolistic structure of a market rendered it all the more important that residual competition on that market be protected.

Findings of the Court

97 The second limb of the third ground of appeal is composed of a variety of criticisms of the judgment under appeal.

98 First of all, some of the arguments raised in connection with this limb of the third ground of appeal have already received a response in connection with the examination of the first limb of that ground. These concern the criticisms of the judgment under appeal by which the appellant complains that the Court of First Instance failed to take account of the conduct of DG III when finding that there had been infringements of Article 65(1) of the ECSC Treaty and that that Court contradicted itself in finding that there had been an infringement of Article 65 while at the same time taking account, for the purpose of fixing the fine, of the ambiguity created by the Commission.

99 It is appropriate to examine in turn the arguments alleging, first, erroneous grounds for the judgment under appeal, second, misinterpretation of the concept of 'normal competition' and, third, an error in law in the finding that there had been a separate infringement.

100 With respect, first, to the allegation that the Court of First Instance erred in the grounds of the judgment under appeal in holding that there had been infringements before even considering the question of how Article 65(1) of the ECSC Treaty was to be interpreted, suffice it to state that, in paragraphs 155 and 156 of the judgment under appeal, the Court of First Instance outlined how it intended to respond to the numerous pleas and arguments raised by the appellant with regard to infringement of Article 65(1). In paragraph 156, it stated that it would examine the correctness of the facts allegedly constituting the infringements before determining whether the legal classification of those facts was sound in law.

101 In paragraph 239 of the judgment under appeal, the Court of First Instance concluded that the findings of fact in the contested decision were well founded, that it had been established that there had actually been agreements and concerted practices and that the appellant's participation in those agreements and concerted practices had been proven.

102 It follows that, when the Court of First Instance ruled on those findings of fact, it did not decide that there had been infringements before even examining the question of how to interpret Article 65(1) of the ECSC Treaty. It merely considered the factual evidence before reviewing, in a second step, the classification of the conduct found to have occurred.

103 Second, with respect to the alleged misinterpretation of the concept of 'normal competition', the Court of First Instance examined, in paragraphs 289 to 296 of the judgment under appeal, the context of Article 65(1) of the ECSC Treaty. In

paragraphs 297 to 309, it also examined whether Article 60 of that Treaty was relevant to the assessment, in the light of Article 65(1), of the conduct alleged against the appellant. In paragraph 310 of the judgment under appeal, it examined Articles 46 to 48 of the ECSC Treaty and concluded, in paragraph 311, that none of the articles referred to in this paragraph allowed the undertakings to breach the prohibition in Article 65(1) by concluding agreements or engaging in concerted practices relating to price-fixing such as those at issue in the present case.

104 The Court finds that all of the reasons set out by the Court of First Instance in that regard were correct in law. The argument alleging misinterpretation of the concept of 'normal competition' is therefore unfounded.

105 Third, according to the case-law relating to the tractor market (Case T-34/92 *Fiatagri and New Holland Ford* v *Commission* [1994] ECR II-905, Case T-35/92 *John Deere* v *Commission* [1994] ECR II-957, Case C-7/95 P *John Deere* v *Commission* [1998] ECR I-3111, and Case C-8/95 P *New Holland Ford* v *Commission* [1998] ECR I-3175), in which the Court of First Instance and the Court of Justice first examined an agreement on the exchange of information in the context of the EC Treaty and the general findings of which can be applied to the ECSC Treaty, such an agreement is incompatible with the rules on competition if it reduces or removes the degree of uncertainty as to the operation of the market in question with the result that competition between undertakings is restricted (see, in particular, Case C-7/95 P *John Deere*, cited above, paragraph 90).

106 The criteria of coordination and cooperation necessary for determining the existence of a concerted practice, far from requiring an actual 'plan' to have been worked out, are to be understood in the light of the concept inherent in the provisions of the EC and ECSC Treaties on competition, according to which each trader must determine independently the policy which he intends to adopt on the

common market and the conditions which he intends to offer to his customers (see Case C-7/95 P *John Deere*, paragraph 86, and the case-law cited therein).

107 While it is true that this requirement of independence does not deprive traders of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors, it does, however, strictly preclude any direct or indirect contact between such traders, the object or effect of which is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the products or services offered, the size and number of the undertakings and the volume of the said market (Case C-7/95 P *John Deere*, paragraph 87, and the case-law cited therein).

108 In paragraphs 88 to 90 of that *John Deere* judgment, the Court confirmed the general premiss on which the Court of First Instance based its reasoning, namely that:

— in principle, where there is a truly competitive market, transparency between traders is likely to lead to intensification of competition between suppliers, since the fact that in such a situation a trader takes into account information on the operation of the market, made available to him under the information exchange system, in order to adjust his conduct on the market, is not likely, having regard to the atomised nature of the supply, to reduce or remove for the other traders all uncertainty about the foreseeable nature of his competitors' conduct;

— however, on a highly concentrated oligopolistic market, the exchange of market information is liable to enable undertakings to be aware of the market positions and strategies of their competitors and thus to impair appreciably the competition which exists between traders.

109 In paragraph 89 of its *John Deere* judgment, the Court also noted that the Court of First Instance had taken account of the detailed and confidential nature of the information exchanged, of the frequency of its exchange and of the fact that it was intended only for the undertakings participating in the exchange, to the exclusion of their competitors and of consumers.

110 The finding that, in the present case, the beams market was oligopolistic in structure is an assessment of fact which, for the reasons set out in paragraph 65 of this judgment, cannot be subject to review by the Court in appeal proceedings.

111 In light of the case-law referred to in paragraphs 105 to 109 of this judgment and given the various findings made by the Court of First Instance in paragraphs 383 to 390 of the judgment under appeal, from which it is clear that the information exchange systems in question reduced the degree of uncertainty as to the operation of the market, the Court of First Instance was right to conclude, in paragraph 391 of that judgment, that those systems clearly affected the participants' decision-making independence. Similarly, having regard to the findings made in paragraphs 392 to 396 of the judgment under appeal, the Court of First Instance was entitled to hold, in paragraph 397 of that judgment, that the decision-making independence of the undertakings participating in those systems had been appreciably reduced.

112 The Court of First Instance was therefore right to conclude that the system for exchanging information constituted a separate infringement.

113 It follows from all of the foregoing that the second limb of the third ground of appeal is unfounded.

114 Consequently, the third ground of appeal is unfounded.

The fourth ground of appeal

115 The fourth ground of appeal alleges that the Court of First Instance erred in law when examining and rejecting, in paragraphs 77 to 103 of the judgment under appeal, the arguments alleging that the Commission had infringed the appellant's rights of defence during the administrative procedure.

116 According to the appellant, the case-law concerning rights of access to the file, as established in Case T-30/91 *Solvay* v *Commission* [1995] ECR II-1775, Case T-31/91 *Solvay* v *Commission* [1995] ECR II-1821, Case T-32/91 *Solvay* v *Commission* [1995] ECR II-1825, Case T-36/91 *ICI* v *Commission* [1995] ECR II-1847 and Case T-37/91 *ICI* v *Commission* [1995] ECR II-1901, requires that the following be taken into consideration:

— the nature of the allegations made by the Commission against the undertaking concerned;

— the principle that it is not for the Commission to determine which documents are or might be relevant to the undertaking's defence against those allegations;

— the principle of equality of arms, which requires that the undertaking must have access to the same information as the Commission.

117 The appellant submits that, in the present case, several documents and testimonies concerning the role of DG III were made available only during the judicial proceedings. Those documents were, the appellant argues, relevant to its defence during the administrative procedure.

118 The appellant also argues that the Court of First Instance's finding that the Commission's investigation into its own involvement satisfied the applicable procedural requirements is vitiated by an error of law. In particular, the Court of First Instance contradicted itself in holding that the documents relating to the Commission's internal investigation were irrelevant to the appellant's defence during the administrative procedure even though it had ordered production of those documents during the judicial proceedings and relied on them at several points in the judgment under appeal.

119 The appellant goes on to submit that, contrary to what the Court of First Instance held in paragraph 101 of the judgment under appeal, the procedural rights of undertakings are not sufficiently guaranteed by the possibility open to them of bringing an action before that Court.

120 In that connection, the appellant claims that there is a contradiction between paragraph 320 of the judgment under appeal, in which the Court of First Instance rejected the appellant's argument that the Commission was aware of and tolerated the harmonisation of the structure and the prices of extras, and paragraph 558, in which, relying on a document drawn up by the Commission, it

stated that the Commission had indeed been aware of the practice of harmonising 'extras'. According to the appellant, the Court of First Instance could have assessed the issue only by ordering measures of inquiry and by examining all the relevant documents and not just some of them.

121 The Commission contends that the case-law relied on by the appellant relates to documents which are in the Commission's possession whereas the documents referred to by the appellant in its appeal are internal documents of the Commission, that is to say, documents which the Commission is under no obligation to forward to undertakings which are the subject of an investigation.

122 The appellant has failed to establish how the arguments which it adduced during the administrative procedure might have been reinforced had it had access to the documents in question and, more particularly, has failed to indicate which documents could have helped it in putting its views across.

123 As regards the documents relating to its internal investigation, the Commission submits that there is no inconsistency between the Court of First Instance's finding that the documents in question did not have to be disclosed during the administrative procedure and the fact that it ordered their production during the judicial proceedings. Those documents were not evidence on which the Commission intended to rely against any of the undertakings concerned. Moreover, the Court of First Instance held that the Commission had taken proper account of those undertakings' observations during the investigation.

124 As regards the harmonisation of extras, the Commission takes the view that the appellant is attempting to have the Court review facts already assessed by the Court of First Instance. Furthermore, in the light of the latter's careful analysis of

the evidence and consideration of the legal arguments presented, the Commission claims that the fact that the Court of First Instance did not order further measures of enquiry in that regard cannot be treated as constituting an infringement of the rights of the defence.

Findings of the Court

125 Access to the file in competition cases is intended, in particular, to enable the addressees of statements of objections to acquaint themselves with the evidence in the Commission's file so that, on the basis of that evidence, they can express their views effectively on the conclusions reached by the Commission in its statement of objections (Case C-51/92 P *Hercules Chemicals* v *Commission* [1999] ECR I-4235, paragraph 75 and the case-law cited therein, and *Limburgse Vinyl Maatschappij and Others*, paragraph 315).

126 The right of access to the Commission's file is therefore designed to ensure effective exercise of the rights of the defence (see *Hercules Chemicals*, cited above, paragraph 76). Those rights are not only fundamental principles of Community law but are also enshrined in Article 6 of the ECHR (*Limburgse Vinyl Maatschappij and Others*, paragraph 316).

127 Failure to respect the right of access to the Commission's file during the procedure prior to adoption of a decision can, in principle, cause the decision to be annulled if the rights of defence of the undertaking concerned have been infringed (*Hercules Chemicals*, paragraph 77, and *Limburgse Vinyl Maatschappij and Others*, paragraph 317).

128 In such a case, the infringement committed is not remedied by the mere fact that access to the file was made possible during the judicial proceedings relating to an action by which annulment of the contested decision is sought. Where access has been granted at that stage, the undertaking concerned does not have to show that, if it had had access to the non-disclosed documents, the Commission decision would have been different in content, but only that those documents could have been useful for its defence (see, to that effect, *Hercules Chemicals*, paragraphs 78, 80 and 81, and *Limburgse Vinyl Maatschappij and Others*, paragraph 318).

129 In the present case, the documents referred to by the appellant in connection with its fourth ground of appeal are not part of the file compiled by the Commission for the purpose of investigating whether competition rules had been breached but rather internal documents of the Commission, which are by their very nature confidential.

130 Despite the confidential nature of those documents, the Court of First Instance rightly examined whether the refusal to release them was justified and whether it prejudiced the appellant's rights of defence. It thus properly examined whether the documents in question could have been useful to the appellant's defence.

131 In paragraph 100 of the judgment under appeal, the Court of First Instance held that the internal documents of the Commission clearly contained no exonerating evidence. It does not appear from any of the documents referred to by the appellant in its appeal that the Court of First Instance erred in law or distorted the facts or evidence in concluding that there was no exonerating evidence in those documents. Those documents describe general trends on the steel market but in no way show that the DG III officials were aware of or even encouraged the unlawful practices of which the appellant was accused.

132 Contrary to the appellant's contention, it is not possible to draw from the adoption by the Court of First Instance of a measure of inquiry any conclusion whatsoever as to whether the documents in question might have been useful to the appellant's defence during the administrative procedure. Moreover, the various citations from those documents in the judgment under appeal in no way demonstrate that they could have been useful for its defence.

133 In any event, the Court of First Instance also found, in paragraph 97 of the judgment under appeal, that the undertakings concerned had been in a position to comment on the allegedly exonerating documents in their possession in their reply to the statement of objections. That finding has not been challenged by the appellant.

134 Given that, as the Advocate General rightly pointed out in paragraphs 43 to 45 of her Opinion, the appellant could have obtained the information in the documents in question by consulting other sources, including its own documentation, it cannot legitimately claim that access to the Commission's documents was necessary or even useful to its defence during the administrative procedure.

135 It follows that the appellant's argument that its rights of defence were infringed as a result of its being denied access to the Commission's file during the administrative procedure is unfounded.

136 With respect to the appellant's argument concerning the agreements on the harmonisation of the structure and the prices of extras, suffice it to state that this argument relates to the assessment of evidence by the Court of First Instance and that, as was pointed out in paragraph 65 of this judgment, such an assessment is not, in principle, subject to review by the Court.

137 As regards the need for the Court of First Instance to order production of other documents, the Court refers to the principle set out in paragraph 67 of this judgment. Since the documents which the Court of First Instance considered to be of probative value were available to it, it was under no obligation whatsoever to adopt further measures for taking evidence if it formed the view that such measures were unnecessary to establish the truth.

138 Consequently, the fourth ground of appeal is in part inadmissible and in part unfounded.

The fifth ground of appeal

139 The fifth ground of appeal, which can be divided into two limbs, alleges misapplication of Article 15 of the ECSC Treaty as regards the statement of reasons for the level of the fines in the contested decision.

The first limb of the fifth ground of appeal

140 By the first limb of the fifth ground of appeal, the appellant takes issue with paragraphs 629 and 630 of the judgment under appeal. It submits that the Court of First Instance erred in law in holding that the absence in the contested decision of specific information relating to the calculation of the fine did not constitute a breach of the duty to state reasons under Article 15 of the ECSC Treaty which could justify cancellation, in whole or in part, of the fine imposed.

141 The Commission points out that the appellant is not challenging paragraphs 624 and 625 of the judgment under appeal, which, in themselves, provide the basis for the Court of First Instance's finding, the other paragraphs of that judgment concerning the statement of reasons for the fine having to be considered supererogatory. It follows that, even if the Court were to rule that those other paragraphs were erroneous, it could not overturn that judgment so long as it did not consider those paragraphs to be essential stages in the Court of First Instance's reasoning.

142 The Commission observes that the Court of First Instance held that it was desirable but not legally necessary that information on the calculation of the fine be contained in the decision imposing that fine. It also states that, following the contested decision, it adopted guidelines for the calculation of fines.

143 In its reply, the appellant submits that, as is clear from paragraphs 690 and 691 of the judgment under appeal, it was the additional information provided by the Commission which made it possible to identify the errors committed by it in calculating the fine imposed on the appellant. It maintains that the Court of First Instance erred in law in holding that there had been no breach of the duty to state reasons for the level of the fine in the contested decision.

Findings of the Court

144 The first paragraph of Article 15 of the ECSC Treaty provides that '[d]ecisions, recommendations and opinions of the Commission shall state the reasons on which they are based and shall refer to any opinions which were required to be obtained.'

145 It is settled case-law that the purpose of the obligation to state the reasons on which an individual decision is based is to enable the Court to review the legality of the decision and to provide the person concerned with sufficient information to make it possible to ascertain whether the decision is well founded or whether it is vitiated by a defect which may permit its legality to be contested (Case 32/86 *Sisma* v *Commission* [1987] ECR 1645, paragraph 8).

146 In the present case, the Court of First Instance was correct in law to take the view, in paragraph 624 of the judgment under appeal, that the contested decision contained, in recitals 300 to 312, 314 and 315 of its grounds, an adequate and relevant statement of the factors taken into account in assessing the general gravity of the various infringements alleged.

147 The grounds of the contested decision refer, in recital 300, to the gravity of the infringements and state the factors taken into consideration in fixing the fine. Account was thus taken, in recital 301, of the economic situation of the steel industry, in recitals 302 to 304, of the economic impact of the infringements, in recitals 305 to 307, of the fact that at least some of the undertakings were aware that their conduct was or could have been contrary to Article 65 of the ECSC Treaty, in recitals 308 to 312, of misunderstandings which might have arisen during the period of the crisis regime and, in recital 316, of the duration of the infringements. The contested decision also sets out in detail the participation of each undertaking in each infringement.

148 It must be concluded that the information contained in the contested decision enabled the undertaking concerned to ascertain the reasons for the adopted measure in order to assert its rights and allows the Community judicature to review the legality of that decision. It follows that the Court of First Instance did not infringe Article 15 of the ECSC Treaty in finding that adequate reasons had been given in the contested decision with regard to the calculation of the level of the fines.

149 With regard to statements of figures relating to the calculation of fines, it is appropriate to point out that, however useful and desirable such figures may be, they are not essential to compliance with the duty to state reasons for a decision imposing fines; in any event, the Commission cannot, by mechanical recourse to arithmetical formulas alone, divest itself of its own power of assessment (Case C-291/98 P *Sarrió* v *Commission* [2000] ECR I-9991, paragraphs 75 to 77, and *Limburgse Vinyl Maatschappij and Others*, paragraph 464).

150 The fact that it was possible to detect a number errors in the calculation only once those figures had been provided is insufficient for a finding that the statement of reasons in the contested decision is inadequate since, when reviewing such a decision, the Community Court may order that all the evidence which it requires be submitted to it. It is common ground that, in the present case, the Court of First Instance requested and received from the Commission all the figures which it required to allow it to carry out a detailed review of the method by which the fine was calculated.

151 It follows that the first limb of the fifth ground of appeal is unfounded.

The second limb of the fifth ground of appeal

152 By the second limb of the fifth ground of appeal, the appellant submits that there is a contradiction between paragraph 676 of the judgment under appeal, in which the Court of First Instance stated that 'there can be no question... of any possible misunderstanding as to the scope of Article 65(1) of the Treaty', and paragraphs 658 and 659, in which it acknowledged that DG III introduced a degree of ambiguity into the meaning of the concept of 'normal competition' as used in the ECSC Treaty. The appellant argues that the Court of First Instance ought to have made a further reduction in the fine in the light of its finding that the Commission had introduced a degree of ambiguity into the interpretation of Article 65(1). The

refusal by the Court of First Instance to concede that the appellant could rely on extenuating circumstances was based on contradictory reasoning which justifies annulment of the judgment under appeal.

153 The Commission takes the view that there is no contradiction in the judgment under appeal as regards the interpretation of 'normal competition' in view of the Court of First Instance's finding that the undertakings concerned were careful to conceal the true nature and extent of their discussions from the Commission and in view of the fact that those undertakings could have approached DG IV (Directorate-General for 'Competition') of the Commission had they had the slightest doubts as to the legality of those discussions. A further reduction in the fine could not therefore have been justified on that account.

Findings of the Court

154 This limb of the fifth ground concerns questions which have already been answered in connection with the consideration of the first limb of the third ground in paragraphs 77 to 83 of this judgment.

155 It follows that the fifth ground of appeal must be rejected as unfounded.

The sixth ground of appeal

156 The appellant submits that the Court of First Instance failed properly to exercise the jurisdiction to review and declare void the contested decision which is conferred on it by Article 33 of the ECSC Treaty. It failed to annul Article 1 of

that decision, according to which the appellant had infringed Article 65(1) of the ECSC Treaty during the period prior to 1 July 1988, even though it had found, in paragraph 524 of the judgment under appeal, that 'the Commission has failed to establish that the applicant is guilty of any infringement connected with the activities of the Poutrelles Committee prior to 1 July 1988'.

157 The Commission points out that the only infringement prior to 1 July 1988 of which the appellant was actually accused in the contested decision was participation in the agreement to increase prices in Germany and France which is at issue in recital 224 of the grounds of the contested decision. However, the Court of First Instance held, in paragraph 170 of the judgment under appeal, that the appellant's participation in that agreement had not been proven to the requisite legal standard.

158 The Commission contends that, in any event, no fine was imposed on the appellant in respect of infringements prior to 1 July 1988.

159 In its reply, the appellant submits that the reasons given by the Commission cannot justify a refusal to annul Article 1 of the contested decision in so far as it concerns the agreement to increase prices in Germany and France.

Findings of the Court

160 As the Advocate General rightly pointed out in paragraph 114 of her Opinion, the infringement period referred to in Article 1 of the contested decision does not

include the period prior to 1 July 1988. It is undisputed that no fine was imposed on the appellant in respect of that period.

161 It follows that the Court of First Instance could not have annulled Article 1 of the contested decision with respect to pricing agreements prior to 1 July 1988.

162 Suffice it to state that recital 224 in the grounds of the contested decision had no effect on the operative part of that decision and that, therefore, the Court of First Instance was not required to annul it specifically. The appellant's interests were adequately safeguarded by the Court of First Instance's finding, in paragraph 170 of the judgment under appeal, that the appellant's participation in the agreement to fix prices in Germany and France had not been proven to the requisite legal standard.

163 It follows that the Court of First Instance did not err in law in failing to annul Article 1 of the contested decision in respect of the period prior to 1 July 1988.

164 The sixth ground of appeal is therefore unfounded.

165 It follows from all of the above findings that the appeal must be dismissed.

Costs

166 Under Article 69(2) of the Rules of Procedure, which is applicable to the appeal procedure by virtue of Article 118 of those Rules, the unsuccessful party is to be

ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the appellant and since that party has been unsuccessful in all of its grounds of appeal, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the appeal;**

2. **Orders Corus UK Ltd to pay the costs.**

Wathelet **Edward** **La Pergola**

Jann von Bahr

Delivered in open court in Luxembourg on 2 October 2003.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber