

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 17 December 2002

**relating to a proceeding under Article 65 of the ECSC Treaty against Alfa Acciai SpA, Feralpi Siderurgica SpA, Ferriere Nord SpA, IRO Industrie Riunite Odolesi SpA, Leali SpA, Acciaierie e Ferriere Leali Luigi SpA in liquidazione (in liquidation), Lucchini SpA, Siderpotenza SpA, Riva Acciaio SpA, Valsabbia Investimenti SpA, Ferriera Valsabbia SpA and the association of undertakings Federacciai (Federazione delle Imprese Siderurgiche Italiane)**

(Case C.37.956 — Reinforcing bars)

(notified under document number C(2002) 5807)

(Only the Italian text is authentic)

(2006/894/EC)

On 17 December 2002 the Commission adopted a decision relating to a proceeding under Article 65 of the ECSC Treaty. In accordance with the provisions of Article 30 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, <sup>(1)</sup> the Commission herewith publishes the names of the parties concerned and the main content of the decision, including the penalties imposed, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision is available in the authentic language and in the Commission's working languages at the website of the Directorate-General for Competition: [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html).

## I. SUMMARY OF THE INFRINGEMENT

## Attribution of liabilities

**Addressees and nature of the infringement**

- (1) The Decision is addressed to Alfa Acciai SpA, Feralpi Siderurgica SpA, Ferriere Nord SpA, IRO Industrie Riunite Odolesi SpA, Leali SpA, Acciaierie e Ferriere Leali Luigi SpA in liquidazione (in liquidation), Lucchini SpA, Siderpotenza SpA, Riva Acciaio SpA, Valsabbia Investimenti SpA, Ferriera Valsabbia SpA and the association of undertakings Federacciai (Federazione delle Imprese Siderurgiche Italiane).
- (2) The addressees took part in a single, complex and continuous infringement of Article 65(1) of the Treaty establishing the European Coal and Steel Community (hereinafter 'the Treaty') which had as its object or effect the fixing of prices and which provided the basis for agreements limiting or controlling output or sales on the Italian market for concrete reinforcing bar in bars or coils.
- (3) The addressee Alfa Acciai SpA is an undertaking to which can be attributed not only the behaviour of Alfa Acciai SpA but also the behaviour of Acciaieria Meghara SpA (as from 1996), Alfa Acciai srl (before 1996) and Acciaierie di Sicilia SpA.
- (4) The addressee Feralpi Siderurgica SpA is an undertaking to which can be attributed not only the behaviour of the existing Feralpi Siderurgica SpA but also the behaviour of Feralpi Siderurgica srl (from 1990) and the former Feralpi Siderurgica SpA.
- (5) The addressees Leali SpA and Acciaierie e Ferriere Leali Luigi (in liquidation) are undertakings to which can be attributed not only the behaviour of Leali SpA and Acciaierie e Ferriere Leali Luigi SpA but also the behaviour of Acciaierie e Ferriere Leali Luigi SpA (until November 1998), which they replaced. After that date, Leali SpA is solely liable for the behaviour objected to.

<sup>(1)</sup> OJ L 1, 4.1.2003, p. 1.

- (6) The addressees Lucchini SpA and Siderpotenza SpA are undertakings to which can be attributed not only the behaviour of Lucchini SpA and Siderpotenza SpA but also the behaviour of the joint undertakings Siderpotenza SpA (until 1991) and Lucchini Siderurgica SpA (until the end of 1997).
- (7) The addressee Riva SpA is an undertaking to which can be attributed not only the behaviour of Riva SpA but also the behaviour of Fire Finanziaria SpA, Riva Prodotti Siderurgici SpA, Acciaierie e Ferriere di Galtarossa SpA and Acciaierie del Tanaro SpA.
- (8) The addressees Valsabbia Investimenti SpA and Ferriera Valsabbia SpA are undertakings to which can be attributed not only the behaviour of Valsabbia Investimenti SpA and Ferriera Valsabbia SpA but also the behaviour of the former Ferriera Valsabbia SpA (until 2000) and the even earlier Ferriera Valsabbia SpA (until 1990).
- (9) As regards the other addressees of the Decision, they are the same undertakings and the same association, as well as the same legal persons with the same business name, that operated on the market for reinforcing bar since the start of the infringement (from 1993 as regards Ferriere Nord SpA).

#### Duration of the infringement

- (10) The undertakings participated in the infringement during at least the following periods:

Alfa Acciai SpA, from 6 December 1989 to 4 July 2000;

Feralpi Siderurgica SpA, from 6 December 1989 to 27 June 2000;

Ferriere Nord SpA, from 1 April 1993 to 4 July 2000;

IRO Industrie Riunite Odolesi SpA, from 6 December 1989 to 27 June 2000;

Leali SpA and Acciaierie e Ferriere Leali Luigi SpA (in liquidation), from 6 December 1989 to 27 June 2000;

Lucchini SpA/Siderpotenza SpA, from 6 December 1989 to 27 June 2000;

Riva SpA, from 6 December 1989 to 27 June 2000;

Ferriera Valsabbia SpA and Valsabbia Investimenti SpA, from 6 December 1989 to 27 June 2000;

Federacciai (Federazione delle Imprese Siderurgiche Italiane), from 6 December 1989 to 24 July 1998.

#### The market for reinforcing bars

- (11) Reinforcing bars are a long hot-rolled steel product in coils or bars of 5 mm and over, with a smooth, crenellated or ribbed surface, used to reinforce concrete. The conventional form in which reinforcing bars are supplied is straight reinforcing bar that has been hot-rolled in a bar mill. The bars may be 12 m, 6 m, 14 m or, more rarely, 18 m long.
- (12) Reinforcing bar in coils takes the form of superimposed coil, which the user straightens and cuts to the desired length. It usually costs slightly more than the straight bar form but the price nevertheless tends to fall into line with that of straight bars.
- (13) All these types of reinforcing bar are manufactured in circular cross sections of 5 mm to 40 mm, to be used in structures with different requirements. Reinforcing bar in coil does not exceed a diameter of 16 mm. On top of the base price for reinforcing bars there is a supplement to be paid depending on the diameter, which is known as a 'size extra'.
- (14) Reinforcing bar is used principally in the construction industry to strengthen concrete.
- (15) Of the fifteen Member States of the European Union, the country in which the largest volume of reinforcing bar is manufactured is Italy. Turnover for reinforcing bar achieved by the addressees of this Decision, which, towards the end of the infringement period, accounted for some 80 % of the Italian market, totalled some EUR 900 million in 2000-01.

#### Functioning of the cartel

- (16) From at least the end of 1989 Federacciai and the other firms cooperating with it decided on and applied standard size extras for reinforcing bar in Italy. From April 1992 the firms, with the support of Federacciai, extended their decisions and behaviour to cover the base price for reinforcing bar in Italy. From that date until September 1995 the agreement extended to the fixing of payment terms.
- (17) From at least the end of 1994 Federacciai structured its business activities more systematically, as regards both the prices and quantities of reinforcing bar produced and sold.
- (18) From 1995 the parties to the agreement started colluding on reducing or controlling output or sales in order to reduce the quantities of reinforcing bar on the market. Some of them set up a more detailed and systematic system of multilateral mutual control of quantities produced and sold by each firm.
- (19) The Commission does not have sufficient evidence to show that the competition rules were infringed in the period after 4 July 2000. It is pointed out that not all the firms necessarily took part in all the behaviour described here

and that some of them took part for a shorter time.

## II. FINES

### Basic amount

- (20) The infringement consists in a single, complex and continuous restrictive practice which, having as its object the fixing of prices and the limiting or controlling of production or sales, constitutes a very serious infringement of Article 65(1) of the ECSC Treaty. The cartel covered the whole of Italy. The cartel arrangements were put into practice and had effects on the market, although the hoped-for effects were not always fully achieved. The Commission considers therefore that the addressees committed a very serious infringement. The fact that the restrictive practice was confined solely to the Italian market does not mean that the gravity of the infringement can be regarded as serious rather than very serious, since account must be taken of the volume of Italian production.
- (21) However, without prejudice to the very serious nature of the infringement, The Commission has, in determining the basic amount of the fine, taken account of the specific characteristics of the case, involving a national market that was subject at the time to the rules of the ECSC Treaty and on which the firms in question accounted for a limited share of the relevant market during the first period of the infringement.
- (22) Pursuant to Article 65(5) of the ECSC Treaty, an association of undertakings cannot be made the subject of a fine or periodic penalty payment. However, there is nothing in the wording of Article 65(1) to support the view that an association which has adopted a decision tending to prevent, restrict or distort normal competition is not itself covered by the prohibition laid down in that provision. Accordingly, whilst Federacciai cannot be fined for the above-mentioned anti-competitive behaviour, it is an addressee of this Decision.

### Differential treatment

- (23) Within the category of very serious infringements, the scale of fines applicable makes it possible to treat firms differently in order to take account of the effective economic capacity of the offenders to impair competition significantly, as well as to set the fine at a level that ensures sufficient deterrence.
- (24) The Commission considers that the market shares acquired by the addressees of this Decision in the last full calendar year of the infringement (1999) are not representative of their actual presence on the relevant market in the reference period. Between 1990 and 1999 the market shares of the firms virtually tripled. On the basis of the average market shares in the period 1990-99, it is possible to identify three

groups of firms in descending order of presence on the market. In the first group are Feralpi and Valsabbia, and in the second Lucchini/Siderpotenza, Alfa, Riva and Leali (with an average market share of some 70 % of that of the firms in the first group). In the third group are IRO and Ferriere Nord (with an average market share of some 35 % of that of the firms in the first group).

- (25) As regards Riva and Lucchini/Siderpotenza, the basic amount of the fine calculated in relation to the relative size of the relevant market must be increased in order to take account of the size and global resources of the firms. The turnover in ECSC products achieved by these firms is very much higher (some EUR 3,5 billion for Riva in 2001 and about EUR 1,2 billion for Lucchini) than that of the other firms involved. It should also be pointed out how the documents in the case show that, on many occasions, the heads of these firms were directly involved in the infringements objected to. In order to ensure a level of sufficient deterrence, the basic amount of the fine should be increased by 225 % in the case of Lucchini/Siderpotenza because its turnover in ECSC products is some three times greater than that of the larger of the other firms and by 375 % in the case of Riva, which has a total turnover in ECSC products that is about three times higher than that of Lucchini/Siderpotenza. These multipliers take account of the significant disparity in size and overall resources between the two firms and the other addressees of the Decision.

### Duration

- (26) The infringement lasted for more than ten years and six months as regards all the firms with the exception of Ferriere Nord SpA, where the infringement lasted for more than seven years. The basic amount of the fine is thus increased by 105 % for all the firms, with the exception of Ferriere Nord, where it is increased by 70 %.

### Aggravating circumstances

- (27) In the present case the Commission has identified only one aggravating circumstance, i.e. the fact that Ferriere Nord has already been the subject of a Commission decision of 2 August 1989 concerning its involvement in an agreement to fix prices and limit sales in the welded steel mesh sector. <sup>(2)</sup>
- (28) The Commission therefore considers it necessary to impose an increase of 50 % of the basic amount in respect of Ferriere Nord.

### Attenuating circumstances

- (29) The Commission has not identified any attenuating circumstances.

<sup>(2)</sup> OJ L 260, 6.9.1989, p. 1.

**Application of the 1996 leniency notice**

- (30) None of the firms to which the Decision is addressed qualifies for the non-imposition of, or a substantial or significant reduction in, the fine pursuant to points B and C of the 1996 Leniency Notice <sup>(3)</sup> as none of the conditions provided for therein have been met. None of the firms disclosed the cartel either before or after the Commission started its investigation or provided any decisive evidence of the existence of the restrictive practice.
- (31) With regard to point D of the 1996 Notice, the Commission acknowledges that Ferriere Nord provided it with useful information that allowed it to gain a better understanding of the details of the restrictive practice. It considers that this satisfies the first paragraph of point D of the Notice, which states that a reduction in the amount of a fine is possible if, before a statement of objections is sent, an enterprise provides the Commission with information, documents or other evidence which materially contribute to establishing the existence of the infringement.
- (32) The Commission considers that it would be justified to grant Ferriere Nord a reduction of 20 % in the amount of the fine.

**Decision**

1. The following fines are imposed:
 

— Feralpi Siderurgica SpA.:	EUR 10,25 million,
— Valsabbia Investimenti SpA and Ferriera Valsabbia SpA, jointly and severally liable:	EUR 10,25 million,
— Lucchini SpA and Siderpotenza SpA, jointly and severally liable:	EUR 16,14 million,
— Alfa Acciai SpA:	EUR 7,175 million,
— Riva Acciaio SpA:	EUR 26,9 million,
— Leali SpA and Acciaierie e Ferriere Leali Luigi SpA in liquidazione (in liquidation), jointly and severally liable:	EUR 6,093 million,
— Leali SpA <sup>(4)</sup>	EUR 1,082 million,
— IRO Industrie Riunite Odolesi SpA:	EUR 3,58 million,
— Ferriere Nord SpA:	EUR 3,57 million,
2. Federacciai and the firms listed must forthwith put an end to the infringement if they have not already done so. They must refrain from repeating the acts or behaviour that constituted the infringement and from adopting measures having equivalent effect.

<sup>(4)</sup> A distinction should be made between the behaviour of Acciaierie e Ferriere Leali Luigi SpA until it entered into liquidation and the behaviour of Leali SpA from the date it was set up: the former can be attributed jointly and severally to Acciaierie e Ferriere Leali Luigi SpA (in liquidation) and to Leali SpA, the latter solely to Leali SpA. The amount of the fine is accordingly subdivided into two periods, in proportion first to the period from the start of the infringement to 25 November 1998 and second from that date to the end of the infringement. The amount of the fine relating to the first period is imposed on Leali SpA and Acciaierie e Ferriere Leali Luigi SpA (in liquidation), jointly and severally, while that relating to the second period is imposed solely on Leali SpA.

<sup>(3)</sup> OJ C 45, 19.2.2002, p. 3.