II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 July 1977

concerning checks to be made pursuant to the second sentence of the first paragraph of Article 47 of the ECSC Treaty at Stahlwerke Röchling-Burbach GmbH, Völklingen/Saar

(Only the German text is authentic)

(77/595/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 47, 65, 80 and 81 thereof,

Whereas :

On the basis of complaints and of its own inquiries, the Commission has reason to believe that agreements or concerted practices have been and still are being applied on the common market for steel in such a way as to restrict or distort normal competition within the meaning of Article 65 (1) of the ECSC Treaty. In particular there are grounds for suspecting that there have been and still are agreements or concerted practices between steel-producing undertakings, between steel-distributing undertakings and between steel-producing and distributing undertakings, fixing production and supply quotas, supply channels and prices and sharing out markets.

In order to ascertain the facts, the Director-General for Competition has ordered checks to be made at a number of steel-producing or distributing undertakings pursuant to the second sentence of the first paragraph of Article 47 of the ECSC Treaty.

The investigation at Stahlwerke Röchling-Burbach GmbH, Völklingen, planned for 7 September 1976, was to have extended to books and papers which were withheld from officials of the Federal Cartel Office during an investigation carried out on 25 August 1976 at the same undertaking, of the grounds that the Federal Cartel Office had no authority in respect of the relevant products. However, Commission investigators discovered during their investigation that the files described by the Federal Cartel Office were no longer kept in the Richardstraße 12 premises.

The company's management stated that the books and papers had been destroyed on its instructions.

The fact that no written explanation of this behaviour, as required by the Commission and promised by the undertaking, was ever provided, despite a written reminder on 21 September 1976, gives grounds for suspecting that the books and papers in which the Commission is interested are being kept elsewhere. It is accordingly necessary, to require the undertaking by Decision to submit them for inspection.

The undertaking must guarantee that the Commission officials carrying out the investigation will be permitted, during normal office hours, to enter its premises, to inspect the books and papers described in Article 1, to take copies and photocopies as they may require, and to call for immediate verbal and written explanations regarding the matter under investigation.

Article 47 of the ECSC Treaty, the full text of which is annexed hereto, empowers the Commission to impose fines of up to one per cent of annual turnover, or periodic penalty payments of up to five per cent of average daily turnover for each day's delay on undertakings which evade their obligations under decisions taken in pursuance of that Article, or which knowingly furnish false information,

HAS ADOPTED THIS DECISION :

Article 1

Stahlwerke Röchling-Burbach GmbH, Völklingen, is hereby required to permit checks to be made in its business premises in Völklingen. It shall, in particular, allow Commission officials empowered to carry out the checks to enter its premises during normal office hours, produce for examination the books and papers demanded by those officials for the period beginning with the last quarter of 1970, particularly those which were in the upper storey of Richardstraße 12 in Völklingen on 25 August 1976, including :

— the 'forging' agreement,
— the structural-steel agreement,
— the Luxembourg agreement (crude-steel quotas and procedures for fixing them),
— statistics of the rolled-steel joint-selling agencies, rationalization groups and the German-Luxembourg-Belgian-Dutch Business Association,
— European market protection agreement,
— books and papers relating to the agreement between German producers of rolled-steel products made within the Rolled Steel Association, concerning prices to be charged in Germany and other Community countries,

allow the officials to take copies or photocopies, and give immediate oral and written explanations of matters related to the subject of the checks. Furthermore, the Commission officials shall be allowed entry to the company's archives.

Article 2

The checks shall be carried out at the company's business premises at Völklingen and shall begin on 18 August 1977.

Article 3

This Decision is addressed to Stahlwerke Röchling-Burbach GmbH, Völklingen/Saar. It shall be notified by being handed over personally to a representative of that undertaking by the Commission's officials immediately before the checks are to begin.

Article 4

Proceedings may be instituted against this Decision under Article 33 of the ECSC Treaty. As stated in the first paragraph of Article 39 of the Treaty, such proceedings shall not have suspensory effect.

Done at Brussels, 27 July 1977.

For the Commission

Raymond VOUEL

Member of the Commission

Annex to the Commission Decision of 27 July 1977

Article 47

The High Authority may obtain the information it requires to carry out its tasks. It may have any necessary checks made.

The High Authority must not disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components. Subject to this reservation, it shall publish such data as could be useful to Governments or to any other parties concerned.

The High Authority may impose fines or periodic penalty payments on undertakings which evade their obligations under decisions taken in pursuance of this Article or which knowingly furnish false information. The maximum amount of such fines shall be 1 per cent of the annual turnover, and the maximum amount of such penalty payments shall be 5 per cent of the average daily turnover for each day's delay.

Any breach of professional secrecy by the High Authority which has caused damage to an undertaking may be the subject of an action for compensation before the Court, as provided in Article 40.