COMMISSION

COMMISSION DECISION

of 20 December 2006

relating to a proceeding under Article 65 of the Treaty establishing the European Coal and Steal Community

(Case No COMP/F/39.234 — Alloy surcharge — readoption)

(notified under document number C(2006) 6765)

(Only the German version is authentic)

(2007/486/EC)

On 20 December 2006 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 ([1]), the Commission herewith publishes the names of the parties and the main content of the decision, including the penalty imposed, having regard to the legitimate interest of undertakings in the protection of their business interests. The full text of the decision, reduced by those passages for which the company may legitimately claim confidentiality, can be found on the Competition DG's web-site at http://europa.eu.int/comm/competition/index_en.html in the authentic language of the case.

ADDRESSEE, OFFENDER AND INFRINGEMENT

(1) The decision is addressed to TKS (ThyssenKrupp Stainless AG) for the behaviour of TS-AG (Thyssen Stahl AG). TKS voluntarily took over the liability for TS-AG's conduct, at least for the years 1993/1994, by an explicit statement to the Commission on 23 July 1997.

(2) TS-AG participated from 16 December 1993, until it ceased to be economically active in the stainless steel sector on 31 December 1994, in a single and continuous infringement contrary to Article 65 of the ECSC Treaty by fixing prices for alloys used in the stainless steel sector in Western Europe.

PROCEDURE

(3) The decision concerns the readoption of Commission Decision 98/247/CECA of 21 January 1998 ([2]). This decision was partly annulled by the Courts ([3]) on procedural grounds. The Courts found that the Commission fined TKS in 1998 for the behaviour of TS-AG without having given it the possibility to comment on this behaviour prior to the imposition of a fine. This infringed the right to be heard for TKS.

(4) On 24 April 2006 the Commission issued a Statement of Objections to TKS with the aim to correct the procedural error as mentioned by the Courts.

FUNCTIONING OF THE CARTEL

(5) The alloy surcharge is a price element which was calculated on the basis of the prices of alloys and was added to the basic price for stainless steel. The cost of the alloys used by stainless steel producers (nickel, chromium and molybdenum) formed a very large proportion of the total production costs. The prices for these alloys were extremely volatile.

(6) The prices for alloys and stainless steel fell sharply in 1993. When the nickel prices started to rise in September 1993, producers' profits were considerably reduced. To remedy this, the producers of stainless flat products agreed to hold a meeting in Madrid on 16 December 1993. Subsequently a number of contacts took place between the producers regarding the calculation and implementation of the alloy surcharge.

([1]) OJ L 1, 4.1.2003, p. 1.
([2]) Case IV.35.814, Alloy Surcharge (OJ L 100, 1.4.1998, p. 55.)
([3]) T-45/98 and T-47/98, 13.12.2001, Krupp Thyssen Stainless GmbH und Acciai Terni SpA/Commission, ECR 2001, II-3757 and C-65/02 P and C-73/02 P, 14.7.2005, ThyssenKrupp Stainless GmbH und ThyssenKrupp Acciai speciali Terni SpA/Commission.

(7) The decision found that TS-AG together with other undertakings modified and applied in a concerted fashion the reference value used to calculate the alloy surcharge. This has both the object and effect of restricting and distorting competition within the common market.

APPLICATION OF THE ECSC TREATY

(8) The Commission considers that the substantive rules of the ECSC Treaty are to be applied to the cartel infringement given that the ECSC Treaty was in force at the time of the infringement (1993/1994). There was no indication to apply the *lex mitior* principle.

THE LIABILITY OF TKS FOR TS-AG

(9) The decision holds TKS liable for the behaviour of TS-AG in view of TKS' statement of 23 July 1997 and clarifies that it does not invoke the concepts of legal or economic succession.

(10) The statement of 1997 has not been called into question in the ECJ's judgement nor would such a statement be contrary to general principles of law or the Commission's decisional practice.

LIMITATION PERIOD

(11) The decision concludes that there is no prescription of the limitation period given the suspension during the Court proceedings.

FINES

Basic Amount

Gravity

(12) In order to guarantee non-discrimination between the addressees of Commission Decision 98/247/CECA, the infringement is considered to be of a serious nature (starting amount EUR 4 million).

Duration

(13) The starting amount is increased by 10 % as the infringement was committed during more than one year (from 16 December 1993 to 31 December 1994).

Attenuating circumstances

(14) In line with Commission Decision 98/247/CECA the starting amount is decreased by 10 % because the economic situation of the sector was critical.

Application of the 1996 Leniency Notice

(15) In application of the 1996 Notice on immunity from fines and reduction of fines in cartel cases and in the light of the judgment of the CFI [1], the fine is further reduced by 20 % given the participation of TKS to help the Commission in establishing the facts. Therefore, the fine is EUR 3 168 000.

[1] Para 281 of T-45/98 and T-47/98, 13.12.2001, Krupp Thyssen Stainless GmbH und Acciai Terni SpA/Commission, ECR 2001, II-3757.