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Press and Information

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Judgment of the Court of Justice in Case C-57/02 P and Joined Cases C-65/02 P and C-73/02 P

*Compañía española para la fabricación de aceros inoxidables SA (Acerinox), ThyssenKrupp Stainless GmbH (TKS) and ThyssenKrupp Acciai Speciali Terni SpA (AST) v Commission of the European Communities*

**THE COURT OF JUSTICE ESSENTIALLY CONFIRMS THE JUDGMENT OF THE COURT OF FIRST INSTANCE CONCERNING THE PARTICIPATION OF PRODUCERS OF STAINLESS STEEL FLAT PRODUCTS IN A CARTEL IN THE COMMON MARKET**

*However, the Court of Justice has partially annulled the judgment of the Court of First Instance on grounds of an inadequate statement of reasons*

Acerinox, a Spanish company, ThyssenKrupp Stainless GmbH, a German company, and ThyssenKrupp Acciai Speciali Terni SpA, an Italian company, produce stainless steel flat products.

Following reports in the specialised press and complaints from consumers, in 1995 the Commission asked a number of stainless steel flat product producers for information concerning the application of a general price increase known as the 'alloy surcharge'.

The alloy surcharge is a price supplement which is calculated on the basis of the prices of the alloying materials (nickel, chromium and molybdenum) and is added to the basic price for stainless steel. The cost of the alloying materials used by stainless steel producers forms a very large proportion of their total production costs.

After carrying out a number of inspections, the Commission found that the prices of the alloying materials fell considerably in 1993. When, as from September 1993, the price of nickel increased, producers' profit margins were considerably reduced. In order to respond to that situation, most of the producers of stainless steel flat products agreed, at a meeting held in December 1993 (referred to as the 'Madrid meeting'), to increase their prices on a concerted basis by changing the parameters for calculating the alloy surcharge. To that end they decided to apply, as from February 1994, an alloy surcharge based on the reference values for the

alloying materials prevailing in September 1993. That decision was applied by all the producers to their sales in Europe as from 1 February 1994, except in Spain and Portugal.

Considering that that practice had both the object and the effect of restricting and distorting competition within the common market and therefore constituted an infringement of Article 65(1) of the ECSC Treaty, the Commission, by decision of 21 January 1998, imposed on six producers of stainless steel flat products fines ranging from ECU 810 000 to ECU 8 100 000 (including fines of ECU 3 530 000 on Acerinox, of ECU 4 540 000 on ThyssenKrupp Acciai Speciali Terni SpA and of ECU 8 100 000 on ThyssenKrupp Stainless GmbH).

Acerinox, ThyssenKrupp Acciai speciali Terni SpA and ThyssenKrupp Stainless Steel GmbH brought actions before the Court of First Instance for annulment of the Commission's decision and, in the alternative, for a substantial reduction of the fines imposed on them. The Court of First Instance largely confirmed the Commission's decision. On the other hand, it held that the Commission had infringed the principle of equal treatment by taking the view that the three undertakings had not produced any new information within the meaning of the Commission's 'Leniency Notice', even though they had admitted the existence of the Madrid meeting. The Court of First Instance considered that it was appropriate to reduce the fines imposed on those undertakings. It reduced the fine imposed on Acerinox to EUR 3 136 000 and those imposed on ThyssenKrupp Acciai speciali Terni SpA and ThyssenKrupp Stainless Steel GmbH to EUR 4 032 000 each.

Those three undertakings appealed to the Court of Justice of the European Communities, alleging errors of assessment and defective statements of reasons in the judgments delivered by the Court of First Instance.

As regards Acerinox's appeal, the Court of Justice considered that, by failing to reply to an argument concerning that undertaking's participation in a cartel in Spain, the Court of First Instance failed to fulfil its obligation to state reasons. It therefore annulled the judgment of the Court of First Instance to the extent to which it found that Acerinox had participated in a cartel in the Spanish market, and decided to give judgment itself on that aspect of the case.

In assessing the alleged lack of evidence of Acerinox's participation in the infringement in the Spanish market, it concluded that the Commission had been entitled, without committing any error of assessment, to reach the conclusion that Acerinox had participated in the cartel in Spain.

For the rest, the Court of Justice dismissed Acerinox's appeal. The amount of the fine imposed on Acerinox therefore stands at EUR 3 136 000.

The Court of Justice dismissed the appeals brought by ThyssenKrupp Acciai speciali Terni SpA and ThyssenKrupp Stainless Steel GmbH. It also dismissed the cross-appeal brought by the Commission requesting annulment of the judgment of the Court of First Instance in so far as it held that the Commission had breached the rights of the defence by imposing on ThyssenKrupp Acciai speciali Terni SpA and ThyssenKrupp Stainless Steel GmbH a fine relating to the conduct of a separate undertaking, namely Thyssen Stahl AG.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: FR, DE, EN, ES, IT, PL, CS, SK*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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