PRICE FIXING (CONCRETE BARS): THE FEDERACCIAIA CASE

Subject: Price fixing
Production restrictions
Trade associations
ECSC Treaty

Industry: Concrete reinforcing bars

Parties: Federacciai (and members listed below)

Source: Commission Statement IP/02/1908, dated 17 December 2002

(Three points of interest arise in this otherwise standard cartel case: first, the fact that the case fell under the now defunct ECSC Treaty; second, the fact that the case was limited to national infringements which, had the products not fallen outside the scope of the ECSC Treaty, would have been dealt with by national authorities; and, third, the fact that under the ECSC Treaty there is no power to fine trade associations, only the members.)

The Commission has imposed fines totalling more than €85 million on eight Italian firms for having organised, between 1989 and 2000, a cartel on the market in concrete reinforcing bars, a product used in the construction industry.

Following a detailed investigation during which it carried out on-the-spot inspections in 2000, the Commission found that eight firms took part, with the aid of the Italian trade association Federacciai, in an agreement aimed at fixing the prices of reinforcing bar in bars or coils in Italy. Reinforcing bars are a long steel product, usually with a ribbed surface, for strengthening columns and other concrete structures in buildings.

The firms include Alfa Acciai SpA, Feralpi Siderurgica SpA, Ferriere Nord SpA, IRO Industrie Riunite Odolesi SpA, Riva Acciaio SpA and Siderpotenza SpA, the latter being controlled by Lucchini SpA. Two other firms, Leali SpA and Acciaierie e Ferriere Leali Luigi SpA, were considered together since they formed a single entity until they were split up in 1998, the latter being in liquidation. Valsabbia Investimenti SpA and Ferriera Valsabbia SpA were also treated as one company since they are the result of a split in early 2000.

These firms accounted for around 30% of reinforcing bar produced in Italy in 1989 and more than 80% in 2000, the number of market operators having fallen from about 40 to fewer than a dozen. National cartels are not normally investigated by the Commission; but the relevant product is covered by the Treaty establishing the European Coal and Steel Community (ECSC), under which the Commission has exclusive jurisdiction. Although the ECSC Treaty expired on 23 July 2002, the Commission is entitled to take a decision because the facts took place before that date. (See the Communication from the Commission

concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty, published in Official Journal C 152 of 26 June 2002. Point 31 of the Communication states: "If the Commission, when applying the competition rules to agreements, identifies an infringement in a field covered by the ECSC Treaty, the substantive law applicable will be, irrespective of when such application takes place, the law in force at the time when the facts constituting the infringement occurred. In any event, as regards procedure, the law applicable after the expiry of the ECSC Treaty will be the EC law".)

The Commission's investigation demonstrated that, for a period of ten and a half years between 1989 and 2000, the cartel members fixed the amounts to be added to the base price for each product according to their size: reinforcing bars are sold in some twenty diameters ranging from 5 to 40 mm. From April/May 1992 until 2000, the cartel members also fixed the base price and, until September 1995, agreed on standard terms of payment. Lastly, between 1995 and 2000, they limited and/or monitored production and/or sales.

Some of the firms did not take part in all the above infringements or did so for only part of the time. Ferriere Nord, for example, took part from 1993 onwards. The practices in which Federacciai and the firms concerned engaged constitute extremely serious infringements of Article 65(1) of the ECSC Treaty. However, in accordance with the *Eurofer* case-law, the Commission has not fined Federacciai, as Article 65(5) of the ECSC Treaty does not provide for fines to be imposed on trade associations. The Commission imposed the following fines (in € million): Riva Acciaio SpA, 26.9; Lucchini SpA and Siderpotenza SpA, 16.14; Feralpi Siderurgica SpA, 10.25; Valsabbia Investimenti SpA and Ferriera Valsabbia SpA, 10.25; Alfa Acciai SpA 7.175; Leali SpA and Acciaierie e Ferriere Leali Luigi SpA in liquidazione, 7.175; IRO Industrie Riunite Odolesi SpA, 3.58; Ferriere Nord SpA, 3.57.

In calculating fines, the Commission takes account of the seriousness of the infringement, its duration and any aggravating or mitigating circumstances. It also bears in mind the market share and overall size of each firm in order to ensure that the fine has a deterrent effect. Although the infringement was extremely serious, the Commission took account of the specific circumstances of the case, involving a domestic market which was during the period in question subject to the special rules of the ECSC Treaty and on which the firms concerned enjoyed, during the early part of the infringement, a limited market share.

The fines imposed on Riva and Lucchini reflect their overall size, which is much larger than the other firms concerned. The fine imposed on Ferriere Nord is the result of a number of considerations. On the one hand, its participation in the infringement was of shorter duration; on the other hand, the fact that the firm had already been fined, in August 1989, for taking part in an agreement on the market in welded steel mesh was an aggravating circumstance. Lastly, Ferriere having been the only firm which provided the Commission with information enabling it to gain a better understanding of how the cartel operated, it was granted a reduction of 20% under the Commission's 1996 leniency notice. ■