

THE HIGH AUTHORITY

DECISION No 3-58

of 18 March, 1958

on alignment of prices for sales of coal in the common market

THE HIGH AUTHORITY,

Having regard to Article 60 (2) (b) and 47 of the Treaty;

Having regard to Decision No 30-53 of 2 May 1953 concerning practices prohibited in the common market for coal and steel under Article 60 (1) of the Treaty (*Official Journal of the Community* of 4 May 1953, p. 109);

Whereas in view of the special conditions of production and sale in the coal industry, and the structure of the common market for coal, unrestricted alignment by undertakings on the more advantageous delivered prices of some competitors can be expected to give rise, in the whole or any part of the common market, to disturbances contrary to the objectives laid down in Articles 2 and 3 of the Treaty;

Whereas there may be a danger that if the right to align were to be exercised without restriction, producers would be ousted from their customary sales areas, that local price reductions resulting from alignment would be set off by increased list prices, and that the most rational distribution of production and sale of coal would thereby permanently be jeopardised;

Whereas, the alignment of coal prices in the common market must, therefore, be subject to special conditions and restrictions in order to avoid such disturbances;

Whereas the right to align must to this end be confined to the price lists of undertakings and selling agencies which, because of the volume of production, are influential in the formation of prices in the common market; whereas, furthermore, the tonnages which undertakings may supply under alignment in the common market should be limited;

Whereas the exercise of the right to align presupposes that the fuels to be supplied are comparable to those in the price list of competitors; whereas criteria enabling fuels to be compared by category and grade should be laid down;

Whereas in order to prevent illicit under-quotation, undertakings are required under Article 3 of Decision No 30-53 to have regard to all the terms of the competitor's price list when calculating the delivered price;

Whereas, since there are differences in the quality of the products of undertakings in the Community coal industry, special rules must be adopted having regard to the ash and water contents of these products and quality surcharges;

Whereas, in order that delivered prices may be calculated accurately, undertakings must be required to know the exact amount of the transport costs; whereas; however, the special nature of road transport necessitates that alignment should be barred where this mode of transport is used;

Whereas Community undertakings apply different rules to sales, and also have different ways of fixing the commission for negotiating sale; whereas undertakings must, therefore, in respect of deliveries to customers, be required to take into account where appropriate the additional charge represented by this commission in calculating the delivered price;

Whereas so that the effect of the transactions carried out by undertakings as a result of alignment may be assessed and so that a check may be kept as to whether this Decision is applied correctly, undertakings must be required to notify the High Authority at regular intervals of the character and amount of the transactions that they carry out under alignment;

After consulting the Consultative Committee;

DECIDES:

Article 1

1. Undertakings in the coal industry may use their right to align their prices on a competitor's price-list established on another basing point and securing for the buyer the most advantageous conditions at the place of delivery (alignment) only in accordance with the provisions of the following Articles of this Decision.

2. This Decision shall also apply to the selling agencies of undertakings in the coal industry.

3. Article 3 of Decision No 30-53 shall remain unchanged.

Article 2

1. Undertakings in the coal industry shall align their prices on the price-lists of none other than the undertakings and selling agencies listed below:

- Geitling Ruhrkohlen-Verkaufsgesellschaft mbH, Essen
- Mausegatt Ruhrkohlen-Verkaufsgesellschaft mbH, Essen
- Präsident Ruhrkohlen-Verkaufsgesellschaft mbH, Essen
- Aachener Kohlenverkauf GmbH, Aachen
- Saarbergwerke AG, Saarbrücken
- Houillères du bassin du Nord et du Pas-de-Calais, Douai
- Houillères du bassin de Lorraine, Metz
- Houillères du bassin d'Aquitaine, Toulouse
- Houillères du bassin d'Auvergne, Clermont-Ferrand
- Houillères du bassin de Blanzay, Montceau-les-Mines
- Houillères du bassin des Cévennes, Alès
- Houillères du bassin de la Loire, St. Etienne
- Comptoir belge des charbons, Bruxelles
- Domaniale Mijn-Maatschappij, Kerkrade
- Nederlandse Steenkolenmijnen Willem-Sophia, Spekholzerheide
- Mattschappij Laura and Vereniging, Eygelshoven
- Maatschappij Oranje-Nassau, Heerlen
- Verkoopkantoor der Staatsmijnen in Limburg, Den Haag

— Rheinischer Braunkohlenbrikett-Verkauf GmbH, Köln.

2. Alignment shall not be allowed between undertakings belonging to the same selling agency.

Article 3

1. Sales effected under alignment in any coal industry financial year shall not exceed 20% of the tonnage of coal marketed in the common market by the undertaking or selling agency during the preceding financial year.

2. In each of the sales areas listed below, undertakings may align only up to the tonnage marketed by them in that area during the preceding coal industry financial year.

By way of exception, for the financial year 1958/59 the reference figures used as the basis for calculation shall be the tonnages marketed during the financial year 1956/57.

The sales areas for purposes of this provision shall be the following:

(a) *In the Federal Republic of Germany:*

- the North German coastal region bounded on the south by the railway line (and including places on that line): Charlottenpolder, Ihrhoven, Leer, Oldenburg, Delmenhorst, Bremen (including the area belonging to the Free State of Bremen), Manndorf, Langwedel, Soltau, Uelzen, Oldenstadt, Dannenburg-Ost;
- Lower Saxony to the south of that railway line;
- North Rhineland-Westphalia;
- Rhineland-Pfalz north of the Mosel and the Lahn (including places on those rivers);
- Hesse north of the railway line (and including places on that line): Limburg, Weilburg, Gießen, Alsfeld, Fulda, Gersfeld;
- the remainder of the territory of the Federal Republic i.e. the remainder of Rhineland-Pfalz and of Hesse, Saarland, the Länder of Baden, Württemberg and Bavaria.

(b) *Belgium and Luxembourg*

(c) *In France:*

- Eastern France i.e. the following departments: Bas-Rhin, Haut-Rhin, Moselle, Meurthe-et-Moselle, Vosges, the Territory of Belfort, Haut-Saône, Doubs, Meuse, Haute-Marne, Ardennes, Marne-et-Aube.

- the regions of Northern and north-western France bounded on the east by the following departments (and inclusive thereof): Loire-Inférieure, Maine-et-Loire, Indre-et-Loire, Loire-et-Cher, Loire-et-Yonne.
- the regions of Southern and south western France: i.e. all other French departments.

(d) *Italy*

(e) *The Netherlands*

3. The tonnages referred to in paragraphs 1 and 2 shall apply separately to each of the following products:

- | | |
|---|---|
| (a) high volatile bituminous coals
gas coals
bituminous coals | } larger than 10 mm
} smaller than 10 mm |
| (b) semi-bituminous coals
low volatile coals
anthracite | } larger than 10 mm
} smaller than 10 mm |
| (c) coke | |
| (d) briquettes. | |

4. Upon receipt of an application setting out the reasons therefor the High Authority may, in favour of certain undertaking or selling agencies, increase the maximum tonnages indicated in the preceding paragraphs.

Article 4

1. Undertakings which have several production sites in different geographical areas and do not have a single point of delivery for sales purposes, and which intend to align their price-lists on those of certain competitors, shall, for purposes of alignment, choose one of the points of delivery of the competitors.
2. In making this choice undertakings shall take account of the geographical location of the production sites of the various categories of coal and of the points of delivery in relation to the sales areas.
3. The High Authority may dispute the choice of point of delivery if this does not meet the requirements set out in the preceding paragraph.

Article 5

1. Alignment shall be permitted only if the undertaking is able to ascertain exactly the amount of the transport costs to the place of destination.
2. If the undertaking which is aligning does not know the transport costs it shall ascertain by examin-

ing the actual vouchers that the details supplied by the purchaser or carrier concerning the amount of transport costs are accurate. If such evidence is not supplied, transport costs shall be calculated on the basis of published rates.

3. The delivered price of the competitor shall not be calculated on the basis of carriage by road. Alignment shall not be allowed where the fuel supplied is carried by road.

Article 6

Alignment on a competitor's more favourable delivered price shall be allowed only if the fuels to be delivered and the fuels in the competitor's price list are comparable in category and grade.

Article 7

1. The comparability of the various categories of coal shall be by reference to their content of volatile matter. The volatile matter content shown in the price lists for the various categories of coal shall be the determining factor.
2. Fuels with a volatile matter content exceeding 33% shall be comparable both mutually and with fuels having a lower volatile matter content.
3. Fuels having a content of volatile matter of not more than 33% shall be comparable if their minimum contents of volatile matter, as shown in the price lists, are equal. If these are not equal, fuels which are in the same category shall nevertheless be comparable provided the difference between their minimum contents of volatile matter is of no more than 2%. In the case of anthracite and low volatile coal this margin shall be limited to 1%.

Article 8

1. The comparability of the various grades of coal shall be by reference to size. Grades of coal shall be comparable if the difference in size does not exceed 20% in respect of the lower limit and 10% in respect of the upper limit.
2. Grades of manufactured fuels shall be comparable if they have the same weight per unit.
Ovoids shall be comparable if their differences in weight per unit and in ash content do not exceed 10%.
Brown coal briquettes and hard coal briquettes shall not be comparable.
3. Washed grades of coal shall not be comparable with unwashed grades.

4. If the price list of the undertaking effecting alignment includes grades of coal the size of which corresponds exactly to those of the competitor's grades, and also grades of coal the size of which is comparable with those of the competitor's grades, having regard to the tolerance indicated in paragraphs 1 and 2 then in such case only the grades of coal which correspond exactly shall be comparable.

Article 9

In calculating the delivered price at the point of destination, undertakings effecting alignment shall take account of all such terms in the competitor's price list as go to determine the amount of the delivered price. This shall apply in particular to increases or reductions in prices in respect of ash and water contents and to quality surcharges.

Article 10

1. If the price of the competitor does not contain indices for price correctives in respect of ash and water contents, the High Authority may, upon application setting out the reasons thereof, authorise an undertaking wishing to align on that competitor's price list to use, when calculating the delivered price, the indices for price correctives having regard to ash and water contents as contained in its own price list.

2. Before granting this authorisation the High Authority shall obtain the opinion of the competitor and possibly that of other undertakings.

Article 11

If indices for price correctives in respect of ash and water contents are used to calculate the delivered price of the competitor, the undertaking effecting alignment shall provide the buyer with a certificate of analysis. This certificate shall confirm that the fuel invoiced and the fuel delivered correspond.

Article 12

If the price list of the undertaking effecting alignment provides for quality surcharge for certain grades of coal, while the price list of the competitor does not provide for such surcharge or provides for a smaller surcharge for comparable grades of coal, the undertaking effecting alignment shall, in calculating the delivered price of the competitor, take into account the quality surcharge provided for in its own price list.

Article 13

When delivering to consumers who would be supplied through a dealer under the competitor's terms

of sale, the undertaking effecting alignment shall, in calculating the delivered price of the competitor, take account of the additional commission which the consumer would have to pay to the dealer if the consumer had a delivery of the competitor's fuel.

Article 14

1. Undertakings or selling agencies which intend to align their prices on the delivered prices of certain competitors, shall give general notification to the High Authority of the following:

- (a) the undertakings or selling agencies on whose price lists alignment is to be effected;
- (b) the sales areas to which deliveries are to be made as a result of alignment;
- (c) the points of delivery chosen in accordance with Article 4 of this Decision.

2. The High Authority shall communicate this information to the undertakings concerned.

Article 15

On 15 January, 15 July and 15 October of each year, undertakings shall inform the High Authority of the following:

- (a) the tonnages of fuel and the agreed delivery periods for which supply contracts were concluded under alignment during the preceding quarter;
- (b) the total tonnages of fuel supplied during the preceding quarter in the common market and in each of the sales areas listed in Article 3 (2); the quantities supplied in transactions effected under alignment shall be shown separately.

Article 16

This Decision shall not prevent undertakings from aligning their prices in accordance with the last subparagraph of Article 60 (2) on conditions offered by undertakings outside the Community.

Article 17

This Decision shall enter into force in the Community on 1 April 1958.

This Decision was considered and adopted by the High Authority at its meeting on 18 March 1958.

For the High Authority

The President

Paul FINET