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DECISION No 30-53

of 2 May 1953

on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel

(OJ A 6, 4.5.1953, p. 109)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Decision No 1-54 of 7 January 1954	A 1	217	13.1.1954
► <u>M2</u> Decision No 19-63 of 11 December 1963	P 187	2969	24.12.1963
► <u>M3</u> Commission Decision of 22 December 1972 (72/440/ECSC)	L 297	39	30.12.1972
► <u>M4</u> Commission Decision No 1834/81/ECSC of 3 July 1981	L 184	7	4.7.1981

Corrected by:

► **C1** Corrigendum, OJ L 344, 14.12.1976, p. 39 (72/440/EC)

▼B**DECISION No 30-53****of 2 May 1953****on practices prohibited by Article 60 (1) of the Treaty in the common market for coal and steel**

THE HIGH AUTHORITY,

Having regard to Article 60 and Article 63 (2) of the Treaty;

Whereas compliance with the obligations of non-discrimination involves uniform application by undertakings of the conditions shown in their price lists with no other increases or reductions and no evasion of those obligations by allowing longer periods for settlement without a corresponding increase in price;

Whereas the exception to this rule, namely the option of aligning a quotation on a competitor's price list, must not cause that quotation to work out lower than the delivered price calculable from the conditions of the price list on which it is aligned;

Whereas inclusion, in the price, of taxes or charges which ultimately are not chargeable in respect of the transaction constitutes an increase as compared with the conditions applicable by the seller to a similar transaction which is in fact taxable;

Whereas, apart from differences related to the value or volume of procurements by the purchaser from the seller himself, the application of dissimilar conditions to comparably placed purchases is incompatible with the unity of the Community.

Whereas the effective operation of the common market requires that the rules of non-discrimination be applied alike to resale in an unaltered state and to sales by producers;

After consulting the Consultative Committee and the Council;

DECIDES:

*Article 1***▼M2**

(1) This Decision shall apply to Community undertakings in respect of their transactions within the common market in the products specified in Annex I to the Treaty, with the exception of scrap.

(2) Where Community undertakings sell such goods within the common market through selling agencies, the obligations created by this Decision shall apply to transactions by such selling agencies.

For the purposes of this Decision, 'selling agencies' means:

- joint selling agencies (Article 65 (2) of the Treaty) operating on behalf of several producer undertakings;
- distributor undertakings which are administered by a producer undertaking and regularly employed by it to sell all or some of its products, and whose sales operations consist primarily in the distribution of that undertaking's products.

▼M4

- distributor undertakings which are directly or indirectly controlled by a producer undertaking, within the meaning of Decision No 24/54, where they effect 'direct sales' of products manufactured by the producer undertaking in question. A sale is 'direct' when, under contracts of sale concluded between the producer undertaking and the distributor undertaking on the one hand and between the distributor undertaking and its customer purchasing the products on the other, the products are shipped directly from the producer undertaking to the customer of the distributor undertaking or in accordance with the instructions of the customer.

▼M3

Article 2

1. It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for a seller to apply in the common market dissimilar conditions (Article 4) to comparable transactions (Article 3).
2. The preceding paragraph shall be without prejudice to the application of Article 60 (2) (b) of the Treaty and of decisions adopted in connection therewith.

Article 3

1. Transactions shall be considered comparable within the meaning of Article 60 (1) if
 - (a) they are concluded with purchasers,
 - who compete with one another, or
 - who produce the same or similar goods, or
 - who carry out similar functions in distribution,
 - (b) they involve the same or similar products,
 - (c) in addition, their other relevant commercial features do not essentially differ.
2. Transactions shall not be considered comparable within the meaning of Article 60 (1) if between the dates of their being agreed upon a lasting change occurred in the seller's prices and conditions of sale.

Article 4

1. Conditions shall not be considered dissimilar within the meaning of Article 60 (1) of the Treaty if different conditions, which make appropriate allowance for differences in the services rendered, or in the carrying out of transactions, are applied by a seller to comparable transactions.
2. Conditions shall be considered dissimilar if, without a corresponding increase in price, a seller allows periods for payment more favourable than those generally applied to comparable transactions.

Article 5

Undertakings which allege that transactions are not comparable (Article 3) or that conditions are not to be considered dissimilar (Article 4) shall, at the request of the Commission, set out the facts and circumstances which may justify this.

Article 6

1. Where, under Article 60 (2) (b) of the Treaty, a seller aligns his quotation on a competitor's price list or, in so far as there exists no obligation or there exists only a limited obligation to publish prices, on the prices and conditions actually applied by a competitor, it shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for him to apply conditions affording the purchaser a delivered price lower than that at which the purchaser could obtain the goods from the competitor.
2. In calculating delivered prices account shall be taken of transport costs, surcharges or taxes borne by the purchaser, less rebates or drawbacks allowed him, in addition to the prices and conditions.
3. Where, under the last subparagraph Article 60 (2) (b) of the Treaty, the seller aligns his quotation on the conditions quoted by undertakings outside the Community, the provisions of paragraphs 1 and 2 shall apply correspondingly.
4. Undertakings which allege that pursuant to Article 60 (2) (b) they have aligned their quotation on a lower delivered price of a competitor in the common market or an undertaking outside the common market, shall, at the request of the Commission, show that the conditions for

▼ M3

alignment had been obtained and that they had complied with the provisions of paragraphs 1 to 3 of this Article in calculating the price.

The condition for alignment under the last subparagraph of Article 60 (2) (b) is that alignment has been imposed by the effective competition of the undertaking outside the Community.

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Article 7

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It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty to include in the price charged to the purchaser the amount of any taxes or charges in respect of which the seller is entitled to exemption or drawback.

▼ M3

Article 8

▼ M2

It shall be a prohibited practice within the meaning of Article 60 (1) of the Treaty for an undertaking to sell the products specified in Annex I, with the exception of scrap, through its selling agencies (Article 1 (2)) at prices and on conditions which do not correspond to its own prices and conditions of sale.

▼ M3

Article 9

▼ M2

(1) Undertakings and their selling agencies shall require middlemen selling the products specified in Annex I, with the exception of scrap:

- either in the name and on behalf of the undertakings or their selling agencies (e.g. employees, agents, representatives); or
- in their own name but on behalf of the undertakings or their selling agencies (e.g. commission agents, agents for goods on consignment),

to apply in their transactions the price lists ► M3 or the prices ◀ and conditions of sale of the undertakings or of their selling agencies and to observe the provisions of Articles ► M3 2 to 7 ◀ of this Decision.

(2) Undertakings shall be held responsible for infringements of the above obligations by such middlemen.

Undertakings and their selling agencies shall furnish ► M3 the Commission ◀, at its request, with all particulars of the commercial operations of the middlemen referred to in paragraph (1) and enable it to consult any of their records which could help it to assess the nature of such transactions.

▼ M3

Article 10

▼ M2

Undertakings and their selling agencies shall frame their conditions of sale in such a way that their customers (dealers), in reselling their products in the unaltered state other than by sale from stock in the case of steel and by retail in the case of coal, are under an obligation to comply with the rules set out in ► M3 Articles 2 to 7 ◀ of this Decision.