European Communities
Commission
Press Release

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THE NATIONAL COAL BOARD, NATIONAL SMOKELESS FUELS LIMITED

AND THE NATIONAL CARBONISING COMPANY LIMITED

Decision of the Commission of October 29, 1975, concerning interim measures

On October 29, the Commission adopted interim measures to enable the National Carbonising Company Ltd (NCC) at Manvers to continue the operation of its hard coke coking plants until the outcome of proceedings now before the Court of Justice. The question revolves around a conflict of interest between NCC and the National Coal Board (NCB) concerning the price structure of coking coal and domestic hard coke.

The interim measures are that NCB should reduce by £2.79 per tonne, for a period of 12 weeks from October 22, the effective price of coal supplied to NCC and used for the production of domestic coke for sale within the Community, provided that, to ensure fairness to NCB, NCC provides adequate guarantees. This decision was of course without prejudice to the final decision of the Court of Justice in the main action.

NCC is a public company producing, inter alia, industrial and domestic hard coke at two plants at Barnsley and Rotherham. NCC has about 7% of the total hard coke market in the United Kingdom. This includes 9% of the market for domestic hard coke.

NCB has a virtual monopoly of coal production in the United Kingdom and about 95% of the market. Its wholly owned subsidiary, National Smokeless Fuels Limited ("NSF") produces inter alia industrial and domestic hard coke. NSF has approximately 84% of the market for industrial and domestic hard coke and 88% of the market for domestic hard coke in the United Kingdom.

NCC buys all the coal it requires for coke production from NCB. As NSF is price-leader for industrial and domestic hard coke in the United Kingdom, NCC is unable to sell its identical products above NSF's prices

The background of this matter is as follows:

By letter of July 21, 1975, NCC complained to the Commission that it was encountering difficulties in covering its costs of production of domestic coke.

According to NCC its losses arose from the inadequacy of the margin between the high prices of coking coal and the prices of domestic coke which were fixed too low.

According to NCC, the behaviour of NCB amounted to an abuse of a dominant position, as set out in Art. 66, paragraph 7, of the Treaty of Paris.

On October 11, 1975, the National Coal Board increased the price of domestic coke by £2.30 per tonne and announced an increase in the price of coking coal of £1.40 per tonne. That is an increase of £2.00 for the quantity of coking coal necessary to produce one tonne of coke In order to increase the margin available to NCC, the services of the Commission requested and obtained from NCB a withholding of the application of the coal price increase until October 15.

On October 16, the services of the Commission, after an examination of the facts and of information available to it, notified NCC that they had concluded that the complaint that NCB had abused its dominant position was without foundation. NCC then appealed to the Court of Justice of the European Communities against the opinion of the services of the Commission.

On October 16, NCC requested that the Court of Justice grant interim measures for the protection of the two coking plants until the completion of the proceedings before the Court. At the hearing by the Court on October 21 NCC requested, by way of interim measures, a rebate of £2.79 per tonne of coking coal for the production of domestic coke.

The Court of Justice decided that the Commission should take such interim measures as it considered to be strictly necessary for the survival of NCC until a final decision on the matter and should fix all adequate guarantees for the repayment by NCC of the costs of the interim measures should the Court ultimately decide against that company. These interim measures were to take effect from October 22, 1975. In the hope of contributing to an improvement of the situation the NCB offered to withhold further the application of its announced increase in the price of coking coal until October 27.

Main points of the decision

The decision of the Commission obliges NCB to reduce by £2.79 per tonne, the effective price of coal supplied to NCC and used for the production of domestic coke for sale within the Community.

This obligation on NCB is conditional on NCC providing an adequate guarantee for the repayment to NCB of the sum corresponding to the total of the price reduction of coking coal. This guarantee is necessary because the case is pending before the Court and the difficulties of NCC might be attributed to other causes than an abuse of a dominant position by NCB. Accordingly the enterprise in the dominant position must have a guarantee whose nature and extent assures that it will not have to bear the costs of the interim measures if there has been no violation of the Treaty. For the same reason the guarantee must be adequate and sound, as would be assured for example, by a bank guarantee, the deposit of adequate funds in a blocked bank account or a guarantee from a third party of undoubted solvency. However, the Commission would not object to any other form of guarantee that was acceptable to NCB.

These reciprocal obligations have been imposed on the parties by the Commission in order to maintain the status quo during the proceedings before the Court and in order to balance equitably the obligations and risks which are entailed in interim measures for both parties.

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