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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 March 1974

authorizing the acquisition by Guest Keen & Nettlefolds Ltd of Miles Druce & Co Ltd

(Only the English text is authentic)

(74/233/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66 thereof ;

Having regard to High Authority Decision No 24/54 [1] of 6 May 1954 laying down in implementation of Article 66 (1) of the Treaty a Regulation on what constitutes control of an undertaking ;

Having regard to the application submitted to the Commission on 19 June 1973 by Guest Keen &, Nettlefolds Ltd of Smethwick, Warley, Worcestershire, for authorization to acquire the entire share capital of Miles Druce & Co Ltd of High Wycombe, Buckinghamshire ;

Having obtained the comments of the Government of the United Kingdom of Great Britain and Northern Ireland ;

I

Whereas Guest Keen & Nettelfolds Ltd of Smethwick, Warley, Worcestershire (GKN), is a holding company with an issued capital of £ 103 990 000 ; as holding company it heads a group of more than 200 undertakings covering a wide variety of activities, the main ones being, in the following order : mechanical engineering, the processing of steel and other materials (automotive components, industrial equipment, building and construction, industrial fasteners) the production of rolled steel products and the distribution of finished rolled steel products and fasteners ;

Whereas GKN owns directly or indirectly the entire capital of the steel producing undertakings GKN Rolled & Bright Steel Ltd and GKN (South Wales) Ltd and also the Brymbo Steelworks, acquisition of which was recently authorized [2], together with the steel stockholding company GKN Steelstock Ltd of Wednesbury ; these undertakings come within Article 80 ;

Whereas GKN is thus in a position to exercise control within the meaning of Decision No 24/54 over these undertakings, and accordingly they, with GKN itself and the other undertakings controlled by it are concentrated within the meaning of Article 66 (1) ;

Whereas in 1972 the consolidated turnover of the GKN group was £ 623·2 million, and this makes the

(1) Official Journal of the European Coal and Steel Community, 11. 5. 1954, p. 345.

(2) Commission Decision of 9 January 1974.

group the 14th largest undertaking operating in the United Kingdom ; on 31 December the group employed 109 110 persons ;

Whereas Miles Druce & Co. Ltd of High Wycombe, Buckinghamshire (MD), is a holding company with an issued capital of £ 3 344 000 ;

Whereas MD owns the entire capital of the following steel distributing undertakings :

— Miles Druce Metals Ltd, Smethwick,

— Miles Druce Sheet Processing Ltd, Kidderminster,

— Miles Druce Mulberry Co, Ltd, Kidderminster ;

Whereas MD heads a group which, in addition to its principal activity of steel stockholder, has an Engineering Services Division and a Safety and Security Systems Division ;

Whereas MD is thus in a position to exercise control over these undertakings ; and accordingly they, with MD itself and the undertakings controlled by MD (the MD Group), are concentrated within the meaning of Article 66 (1) ;

Whereas in 1972 the trading turnover of the MD group was £ 45 379 000, which makes the group the 301st largest undertaking in the United Kingdom ; and during that year it employed an average of 2 753 persons ;

Whereas through purchases on the Stock Exchange in late May and early June 1973, GKN, without first requesting authorization from the Commission, increased its holding in Miles Druce from 7·1 % to 39·9 % ;

Whereas, nevertheless, of the shares purchased by GKN on the Stock Exchange those registered in its name amount only to 29·9 % of the shares of MD ; the remaining 10 % have been registered with bank nominees in whose favour GKN has executed irrevocable Powers of Attorney to exercise in their sole discretion the voting rights attaching to the shares until such time as the Commission gives its ruling ;

Whereas GKN has given an undertaking that until the Commission has given its ruling it 'will not take any steps to call a meeting of shareholders of MD to alter the composition of the MD Board or for any other purpose' ;

Whereas at present, therefore, shares representing 29·9 % of MDs' capital are registered in the name of GKN while 44 % are held by banks and other institutions ; this figure becomes 54 % of the 10 % registered by GKN with bank nominees are included ; the remaining 16 % are held by the public at large ;

Whereas, given this distribution of MD's capital, GKN's voting rights at present are minority rights ;

Whereas, however, in view of the representation of shareholders usually present at General Meetings of MD (less than 14 %), it would seem unlikely that the total numbers of shareholders present at an Extraordinary General Meeting of MD would represent more than 60 % of the capital ; hence it must be presumed that the voting rights attaching to its 29·9 % shareholding in MD give GKN the power to control MD within the meaning of Decision No 24/54 and that a concentration between GKN and MD has occurred in contravention of Article 66 (1) ;

Whereas, however, in acquiring 39·9 % of the shares of MD, GKN did not intend to contravene Article 66 ; it believed, being as yet little acquainted with the provisions of the Treaty and of Decision No 24/54, that the acquisition of 39·9 % of the shares of MD would not produce a concentration within the meaning of Article 66 ; immediately after the acquisition it applied to the Commission for authorization indicating in the application that it was considering the question of transferring these shares 'in trust to bankers' ; it then divested itself of 10 % of the shares of MD ; it has undertaken not to make use of the power of control deriving from the voting rights attaching to the 29·9 % of the shares of MD ; in this respect there is therefore no case for finding against GKN ; and in these circumstances the Commission will not impose upon GKN the payment of the fine provided for in the first subparagraph of Article 66 (5) ;

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Whereas the tonnages of Treaty iron and steel products sold in 1972 by the undertakings concerned are shown in the following table :

Deliveries of Treaty iron and steel products

(in 1 000 metric tons)

Undertaking / Products	Deliveries					Production	
	GKN	MD	GKN + MD	United Kingdom	3 as % of 4	Community	3 as % of 6
	1	2	3	4	5	6	7
Rails, joists, heavy sections	142·8	96·3	239·1	2 449	9·8	12 041	2·0
Bars and sections of less than 80 mm	377·9	52·2	430·1	2 850	15·1	20 696	2·1
Wire rod	292·7	—	292·7	1 829	16·0	10 869	2·7
Tube strip	41·1	—	41·1	1 517	2·7	8 013	0·5
Hot-rolled sheet under 3 mm	23·9	26·5	50·4	878	5·7	4 094	1·2
Plates and sheets of 3 mm and over	96·1	104·8	200·9	3 090	6·5	17 403	1·2
Tinplate, blackplate, other coated sheets	29·5	15·3	44·8	1 975	2·3	8 353	0·5
Cold-rolled sheets under 3 mm	71·7	75·2	146·9	2 690	5·5	17 312	0·8
Electrical sheets	3·7	33·8	37·5	229	16·4	1 035	3·6
Total deliveries	1 079·4 (1)	404·1	1 483·5	17 507	8·5	99 816	1·5
— of which outside deliveries :							
(a) direct	428	—	428	14 000	3·05		
(b) from stock	321	404·1	725·1	3 500 (2)	20·7		
(c) total of (a) + (b)	749	404·1	1 153·1	17 500	6·6		

(1) Including intra-group deliveries of 330 400 metric tons.
(2) Estimate to the nearest 100 000 metric tons, from statistics also covering EEC products.

Whereas British users obtained 80 % of their supplies, or 14 million metric tons, by direct deliveries from producers, and 3·5 million tons, or 20 % from stockholders ;

Whereas GKN and MD are engaged in the same activities as stockholders of iron and steel products in a market where demand is largely from small- and medium-sized users whose requirements are not such as to allow them to purchase direct from producers or whose supplies require further processing between production and actual supply ;

Whereas the role played by steel stockholders in the United Kingdom in the further processing of products is highly developed and is growing more extensive ;

Whereas stockholders sell some of their products specially processed at the request of their customers ; purchasers from stockholders include both large users requiring considerable tonnages to be prepared by stockholders and small users ; above a certain level, large users can be supplied direct from producers who are then in competition with stockholders ; in these circumstances there are considerable tonnages in the market for steel products which, depending on the situation or the choice of the user, are supplied either by stockholders or direct by producers ; this situation shows the uncertainty of the line dividing the general steel market from the steel stockholding market and does not justify the existence within the steel stockholder's market of sub-markets depending on the quantities purchased by users from steel stockholders ; the steel stockholder market should therefore be considered as a whole within the more general market for steel products ;

Whereas the stockholder market can be considered to be the relevant market ;

Whereas one of the features of the market is its regional nature ; whereas suppliers meet demand on a regional basis, delivering goods to users who find that it is advantageous to deal with a local supplier and to have direct contact with the stockist ;

whereas nevertheless several undertakings, working from a small number of depots, cover the whole of the United Kingdom ;

Whereas between them the depots of GKN and MD extend to the whole territory of the United Kingdom ; whereas this territory, which is itself a major part of the Common Market for steel, should be considered as the relevant geographical market ;

Whereas in 1972 GKN as re-roller produced the following tonnages of finished rolled products :

(in 1 000 metric tons)

Products \ Undertakings	Production				
	GKN	United Kingdom	1 as % of 2	EEC	1 as % of 4
	1	2	3	4	5
Heavy sections and joists	99·5	2 449	4·1	12 041	0·8
Bars and sections of less than 80 mm	371·7	2 850	13·0	20 696	1·8
Wire rod	300·7	1 829	16·4	10 869	2·8
Hot rolled strip	40·8	1 517	2·7	8 013	0·5

Whereas of the undertakings concerned, only GKN is a steel producer ; and as such it makes direct sales to users ; whereas MD is active on the steel market only as a stockholder, and only in this capacity meets competition from GKN in the market for steel products ; whereas the proposed operation would not affect GKN's position as producer and direct seller ;

Whereas MD's share in the UK stockholders' market for ECSC products in 1972 was about 10·5 % while that of GKN was about 9·5 %, giving a total of approximately 20 % ;

Whereas in assessing the situation in the market of the undertakings concerned following the proposed transaction, account should be taken of all special features of the relevant market and of the characteristics of the undertakings concerned ; whereas these special features can be summed up as follows for 1973 :

(a) the structure of the steel industry in the United Kingdom is such that one undertaking, the British Steel Corporation (BSC), accounts for 89 % of British production of ordinary steels and 65 % of production of special steels (91 % of flat products). At present BSC accounts for the same percentages of supplies to dealers. BSC holds a dominant position *vis-à-vis* these dealers.

(b) in addition to the 230 000 metric tons which it uses as a stockholder, GKN purchases some 1 700 000 metric tons from BSC for its own use in its industrial activities as a manufacturer of numerous steel products and as a re-roller. Taken together these two tonnages make it far and away BSC's largest customer. Its total purchases represent — % of BSC's turnover in the United Kingdom.

(c) of the stockholders competing with GKN and MD some 10 are undertakings whose total shares of the UK market are lower than those of MD and GKN (7 % or less) but which are part of groups of considerable financial strength and which, in the areas where they are most firmly established, hold market shares comparable with, or in some cases larger than, those of GKN and MD. This is the position, as regards ordinary steels, with undertakings such as C. Walker, Glynwed, Tube Investments, Lye Trading, Cohen 600 Group, H. E. Perry and Ductile. In the United Kingdom special steels market five or six undertakings hold shares of the market greater than those of GKN or MD and of these at least two hold shares greater than those of GKN and MD together.

It is estimated that the 10 largest stockholders after GKN and MD control approximately 40 % of the United Kingdom market.

The other stockholders competing with GKN and MD, of which there are about 300 in the United Kingdom, are medium and small regional or local undertakings.

(d) GKN is an integrated undertaking whose industrial, commercial and financial power is illustrated by its turnover of £ 623·2 million, making

it the 14th largest undertaking operating in the United Kingdom, as well as by the fact that in many areas of production (fasteners, steel forgings and castings, engineering etc.) it occupies a very strong position in the United Kingdom and even, for certain products, in the Common Market as whole ;

Whereas a concentration between GKN and MD would leave within the stockholders' market the following : the new group, which would control 20 % of the market ; BSC, the dominant producer and direct supplier of 70 % of the products used in the United Kingdom, and itself a stockholder ; some 10 dealers who, while not individually holding a large share of the national market, enjoy considerable local power and account for some 40 % of the United Kingdom stockholders' market ; some 300 medium and, more frequently, small undertakings, of which many are well established locally ; and the merchants representing continental producers ;

Whereas 80 % of the market would not be controlled by GKN/MD ; and in areas of high consumption in the United Kingdom, GKN/MD's share of the market is not substantially above 20 % ; and this uncontrolled 80 % constitutes an adequate counterweight to GKN/MD on the stockholders' market and is sufficient to prevent the GKN/MD group from hindering effective competition ;

Whereas GKN is a major customer of BSC and will remain so, despite its recent acquisition of the Brymbo steelworks, which reduces its share of total BSC sales from — to — % following the proposed transaction, GKN/MD would be purchasing on aggregate some two million tons or 13 % of BSC's total sales in crude steel equivalent ; this percentage is evidence of the extent of the mutual dependence of GKN and BSC ; medium term forecasts of supply and demand in the United Kingdom steel market suggest that, in view of ESC's dominant position and of the large number of stockholders, the relative strength of BSC and GKN/MD, whether as suppliers of semi-finished products or of finished products to stockholders, would not place GKN/MD in a privileged position ; in the longer term, in the context of the growing extent to which the United Kingdom will be integrated into the Common Market and the rise in the volume of trade in steel products which will flow from this GKN's independence of the BSC will be strengthened at the same time as competition becomes more intense in the United Kingdom steel market ;

Whereas the relative strength of BSC and GKN/MD and the application of the rules contained in Article 60 would prevent GKN/MD from obtaining unduly favourable terms from BSC as regards prices ; as regards quantities, BSC, the dominant undertaking, cannot use its position for purposes contrary to the Treaty (see Article 66 (7)) ; it is in particular strictly forbidden to discriminate between its customers, which means notably that in periods of strong demand it may not treat one customer more favourably than another ; as producers, GKN and BSC compete in the market for certain finished rolled products ; GKN's position as producer would not be altered by the proposed transaction ; within the Common Market as a whole there are other distributors whose ex-stock sales substantially exceed the GKN/MD figure of 700 000 tons and where activity extends to the United Kingdom ; the proposed transaction would not give the undertakings concerned the power to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market in finished rolled products ;

Whereas the position of GKN as a buyer of steel is a natural consequence of its high degree of vertical integration and of its triple role as re-roller, consumer and stockist of steel ; the proposed transaction, although it would double GKN's share of the stockholders' market, would not modify the degree and the extent of the vertical integration of the GKN Group ; GKN is a medium-sized steel producer which processes in its own works the greater part of its production ; the MD distribution network, to the extent that GKN would use it to sell a small part of its own production, would give GKN an additional outlet of only minor importance ; thus the proposed transaction would not give GKN a substantial advantage in access to supplies or markets ;

Whereas the proposed transaction would accordingly not enable GKN/MD to establish an artificially privileged position and would only have a limited effect in increasing the role played by GKN on the stockholders' market ;

Whereas GKN is primarily a manufacturer and supplier of automotive components, industrial equipment, fasteners and construction materials ; as a result of its operations in these sectors it constitutes a group of considerable economic and financial importance ; the proposed transaction will have relatively little effect in these areas ; it will not alter

GKN's position as a purchaser of products for re-rolling and further processing, while in the field of steel stockholding it will not give GKN/MD the powers referred to in the first subparagraph of Article 66 (2) ; steel stockholding accounts only for some 3·5 % of GKN's turnover, a figure which will be increased to some 7 % by the takeover of MD ; in terms of economic and financial power, acquisition of control over MD will make no notable change to GKN's position ;

Whereas, in the circumstances, the acquisition by GKN of control over MD will not put GKN/MD in a position to evade the rules of competition in the Treaty ;

Whereas, having regard to all the circumstances of the proposed GKN/MD transaction, the Commission finds that this transaction satisfies the conditions for authorization set out in Article 66 (2) and may accordingly be authorized ;

Whereas MD, which is directly affected by the concentration has, through its Board of Directors, indicated its opposition to the transaction proposed by GKN and stated its intention of bringing proceedings to have any Decision authorizing the transaction declared void ; whereas MD might find itself deprived of its right of action in this matter if this Decision were to take effect immediately upon its notification to GKN ; whereas it is therefore necessary to provide that the Decision is not to take effect until three weeks after it has been notified ; during that period GKN may neither exercise any control over MD nor acquire further shares in MD,

HAS ADOPTED THIS DECISION :

Article 1

The acquisition by Guest Keen & Nettlefolds Ltd of Smethwick, Warley, Worcestershire, of Miles Druce & Co Ltd, of High Wycombe, Buckinghamshire, is hereby authorized.

Article 2

This Decision is addressed to Guest Keen & Nettlefolds Ltd of Smethwick, Warley, Worcestershire, and to Miles Druce & Co Ltd of High Wycombe, Buckinghamshire.

Article 3

This Decision shall take effect three weeks after its notification to the parties concerned.

Done at Strasbourg, 14 March 1974.

For the Commission

The President

François-Xavier ORTOLI