COMMISSION DECISION

of 21 December 1973

on the authorization of a joint-buying Agreement between a number of Danish steel product distributors

(Only the Danish text is authentic)

(74/42/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 65 thereof;

Having regard to the Act on the Conditions of Accession and the Adjustments to the Treaties, annexed to the Council Decision of the European Communities of 22 January 1972, and in particular Article 156 thereof;

Having regard to the application by the interested parties of 19 March 1973;

I

1. Whereas the following steel product distributors:

Jernkontoret A/S, Copenhagen,

Lemvigh-Müller & Munck A/S, Copenhagen,

S. C. Sørensen A/S, Randers,

A/S Brødrene Edstrand, Hvidovre,

M. J. Grønbech & Sønner A/S, Copenhagen,

P. C. Petersen A/S, Ålborg,

Brødrene Kier A/S, Århus,

Ch. C. Rahr & Co. A/S, Copenhagen,

Lange & Unmack A/S, Ålborg,

Hans Knudsen Jern- & Stålforretning A/S, Svendborg,

in accordance with Article 65 (2) of the ECSC Treaty and Article 156 of the Act on the Conditions of Accession and the Adjustments to the Treaties, annexed to the Council Decision of the European Communities of 22 January 1972, requested on 19 March 1973 the Commission's authorization for an Agreement they had concluded on 2 March 1967;

2. Whereas under the Agreement in question the member firms have set up the company 'Servicelager for Jernbranchen A/S' (SLJ) with an initial capital of Dkr 1 890 000, to be increased later to Dkr 2 975 000; whereas the aim of SLJ is:

— to purchase for resale to the member firms rolled products corresponding to the definition in DIN 17 100 — 42.2;

— to create a stockpile of the grades and categories of the abovementioned steels which the member firms do not normally keep in stock themselves;

— to cut up coils and sheet;

— to carry out studies on the trends in the international market;

3. Whereas 90 % of SLJ's registered capital is held by the firms Jernkontoret A/S, Lemvigh-Müller & Munck A/S and S. C. Sørensen A/S; whereas the remaining 10 % is held by the other seven member firms; whereas in practice the firms holding 90 % of the capital buy the steels in question from the steelworks and sell them to SLJ, which then supplies the member firms according to their needs;

4. Whereas the member firms undertake to abstain from all commercial activity incompatible with the SLJ's or competing with it;

5. Whereas the Agreement is valid for fifteen years;

II

6. Whereas the Agreement in question distorts normal competition between the member firms for the following reasons:

— through SLJ they obtain supplies of rolled steels at uniform conditions and prices which differ from those which each could obtain separately;

— they agree not to keep individual stocks of certain steel products;

— they agree not to equip themselves for cutting up coils and sheet;

— they agree to abstain from all activity competing with the SLJ's;

7. Whereas, under these circumstances, the Agreement in question comes under the ban of which the principle is stated in Article 65 (1) of the Treaty;

8. Whereas, nevertheless, according to Article 65 (2), specialization agreements, joint-buying or joint-selling agreements and agreements strictly analogous in nature and effect may be authorized if the Commission is satisfied that they meet the body of requirements laid down;

9. Whereas the Agreement in question has set up a joint-buying organization for steel products; whereas SLJ's cutting-up activity may be considered as a specialization of the joint venture in an activity no longer exercised by the member firms; whereas this Agreement may therefore be authorized under Article 65 (2) if and in so far as it makes for a substantial improvement in production or distribution and if it is essential in order to achieve those results, while not being more restrictive than is necessary for that purpose; whereas, moreover, it must not be liable to give the undertaking concerned the power to determine the prices, or to control or restrict the production or marketing of a substantial part of the products in question within the common market, or to shield them against effective competition from other undertakings within the common market;

III

10. Whereas the grouping together of the steel purchases of the ten firms has permitted them to obtain better prices and conditions from steel works; whereas the creation of a single stockpile has permitted substantial economies both in capital expenditure and in administrative costs; whereas the cutting-up done by the SLJ represents a useful service to the member firms, which have been able to save the investments necessary for equipping themselves for such a purpose; whereas the overall result of these advantages has been an improvement in the supply conditions of the firms, and hence a significant improvement in the distribution of the products in question;

11. Whereas these improvements cannot be achieved on the same scale by individual procurement and storage of steel by each of the firms concerned; whereas the clause of non-competition with SLJ which has to be observed by the firms is essential to the smooth functioning of SLJ's activities; whereas, accordingly, the Agreement in question is essential for purposes of improvement, while not being more restrictive than is necessary for that end;

12. Whereas the Agreement fulfils the requirements of Article 65 (2a and b) of the Treaty;

IV

13. Whereas in 1972 the SLJ resold about 15 000 metric tons of rolled products, including 8 500 metric tons from purchase and resale of the steels in question to member firms and 6 500 metric tons from the sale of cut-up steel sheet; whereas Danish consumption of the products in question was 700 000 metric tons in 1972; whereas the quantities of rolled steel sold by the dealers of the enlarged Community in 1972 can be estimated at about 40 million metric tons;

14. Whereas the foregoing shows that the firms in question will not have the power to determine the prices, or to control or restrict the production or marketing of a substantial part of the steels in question within the common market, or to shield them against effective competition from other undertakings; whereas the Agreement therefore conforms to the requirements of Article 65 (2c) of the Treaty;

15. Whereas SLJ and the member firms must immediately notify the Commission of all amendments and additions to the Agreement in question, and whereas these cannot be applied until the Commission has declared them admissible or, where appropriate, until it has granted authorization under Article 65 (2) of the Treaty;

16. Whereas the Agreement in question is concluded for fifteen years and expires on 1 March 1982;

17. Whereas the Agreement submitted for authorization is in accordance with Article 65 (2) and the other provisions of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement concluded on 2 March 1967 between the following steel distributors:

— Jernkontoret A/S, Copenhagen,
— Lemvigh-Müller & Munck A/S, Copenhagen,
— S. C. Sørensen A/S, Randers,
— A/S Brødrene Edstrand, Hvidovre,
— M. J. Grønbech & Sønner A/S, Copenhagen,
— P. C. Petersen A/S, Ålborg,
— Brødrene Kier A/S, Århus,
— Ch. C. Rahr & Co A/S, Copenhagen,
— Lange & Unmack A/S, Ålborg,
— Hans Knudsen Jern- & Stålforretning A/S, Svendborg,

setting up the company 'Servicelager for Jernbranchen A/S' is hereby authorized.

Article 2

The firms concerned must immediately notify the Commission of all amendments and additions to the Agreement, and these may not be applied until the Commission has ascertained that they are in accordance with the authorization granted by this Decision, or until the Commission has authorized them in pursuance of Article 65 (2).

Article 3

This Decision shall enter into force on 1 January 1973 and shall expire on 1 March 1982.

Article 4

This Decision is addressed to:

— Jernkontoret A/S, Copenhagen,
— Lemvigh-Müller & Munck A/S, Copenhagen,
— S. C. Sørensen A/S, Randers,
— A/S Brødene Edstrand, Hvidovre,
— M. J. Grønbech & Sønner A/S, Copenhagen,
— P. C. Petersen A/S, Ålborg,
— Brødrene Kier A/S, Århus,
— Ch. C. Rahr & Co. A/S, Copenhagen,
— Lange & Unmack A/S, Ålborg,
— Hans Knudsen Jern- & Stålforretning A/S, Svendborg.

Done at Brussels, 21 December 1973.

For the Commission
The President
François-Xavier ORTOLI