COMMISSION DECISION

of 2 October 1974

authorizing the formation by Société Nouvelle des Aciéries de Pompey, Compagnie Universelle d'Acétylène, Société Française d'Électro-Métallurgie and Société Eurominas Electrometalurgia of a Groupement Européen du Manganese

(Only the French text is authentic)

(74/509/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 application submitted on 12 November 1973 by Société Nouvelle des Aciéries de Pompey,

WHEREAS:

I.

1. The Société Nouvelle des Aciéries de Pompey (SNAP), of Neuilly-sur-Seine requested on 12 November 1973 on behalf of itself and of the Compagnie Universelle d'Acétylène (CUA) of Paris, the Société Française d'Électro-Métallurgie (SOFREM) of Paris and the Société Eurominas Electrometalurgia (Eurominas) of Lisbon, in accordance with Article 65 (2) of the ECSC Treaty, Commission authorization for an agreement setting up a 'groupement d'intérêt économique' (economic cooperation group).

2. SNAP and CUA are steel-producing companies, within the meaning of Article 80; and SOFREM is controlled by the steel-producing group Pechiney Ugine Kuhlmann.

3. Eurominas is a mining company producing ferro-manganese with its head office outside the common market. Its capital is held as to 22·5 % each by SNAP and CUA, 16 % by Sofimelec, a member of the Ugine Kuhlmann group, and 14 % by Portuguese banking organizations, the remaining 25 % being dispersed among numerous Portuguese shareholders.

4. In order to carry out the distribution on the world market, including the Community market, of the ferro-manganese produced by their joint undertaking, SNAP, CUA and SOFREM have set up, in association with Eurominas, by an agreement dated 27 January 1974, a 'groupement d'intérêt économique' entitled Groupement Européen du Manganèse (GEM). It has been provided that the agreement in question, which is concluded for a term of 15 years, will not take effect unless it has been approved by the Commission. A further purpose of GEM is to carry out for its members' account market studies concerning ferro-manganese.

5. SNAP, CUA and SOFREM are free to market separately their existing products; they are each however to examine independently the possibility of subsequently transferring to GEM responsibility for the marketing of output from their French plants.

6. SNAP and CUA undertake for a period of 12 years to place at the disposal of GEM their knowledge and commercial experience as regards high-carbon ferro-manganese.

II.

7. The agreement in question restricts normal competition between the undertakings concerned within the common market on the following respects:

— the undertakings bind themselves to sell on the world market, including the common market, ferro-manganese produced by Eurominas exclusively through the intermediary of GEM and undertake not to sell it separately through their own distribution networks; and

— the fixing by the undertakings concerned of the price of the ferro-manganese in question will have an effect on the price level of ferro-manganese produced by SNAP and CUA sold within the common market.

8. The agreement examined is thus prohibited in principle under Article 65 (1) of the Treaty.

III.

9. Nevertheless, under the terms of Article 65 (2) of the Treaty, joint selling agreements may be authorized if the Commission finds that they meet all the conditions provided for in that Article.

10. The agreement in question establishes a joint selling organization; it can thus be authorized under Article 65 (2) of the Treaty if and in so far as it will contribute to a substantial improvement in production

or distribution, and if it is essential to achieve those results and is not more restrictive than is necessary for that purpose ; furthermore, it should not be capable of giving the undertakings concerned the power to determine the prices or to control or limit the production or selling of a substantial part of the products in question within the common market, or of protecting them from effective competition by other undertakings within the common market.

IV.

11. SNAP, CUA and SOFREM have set up GEM for the purpose of carrying out joint distribution on the world market, including the common market, of the ferro-manganese produced in Portugal by their joint undertaking. This operation will constitute in the sales field a simple extension of the situation which already exists in the field of joint production. Such joint selling of the ferro-manganese produced by Eurominas can be expected to result in rational distribution and significant cost savings compared with the situation where each of the undertakings associated in the production carried out its own separate sales. The commercial activity which GEM will carry out for all the undertakings concerned will facilitate better penetration of the common market by the new production which the Eurominas ferro-manganese constitutes. Consequently, this agreement will contribute towards a substantial improvement in the distribution of the product in question.

12. The ferro-manganese produced by Eurominas, SNAP and CUA is sent to different customers ; Eurominas because of its location and lower costs will be basically concerned with export trade and, so far as the common market is concerned, it will tend to supply coastal steelworks ; SNAP mainly serves steelworks in Eastern France, in Belgium and in the Saar ; CUA sells its ferro-manganese essentially to small steelworks in Northern Italy.

13. The agreement in question is essential if distribution is to be improved in this way ; such a result cannot be achieved to the same degree by separate distribution of the products by each of the undertakings concerned ; nor can it be achieved by other types of agreement.

14. The agreement is not more restrictive than is necessary for that purpose ; GEM will distribute only ferro-manganese produced by Eurominas ; each of the undertakings belonging to GEM will continue to distribute its own production.

15. The agreement consequently fulfils the conditions required by Article 65 (2) (a) and (b) of the Treaty.

V.

16. The probable sales within the EEC of the ferro-manganese produced by Eurominas will be between 30 000 and 40 000 metric tons per year. The consumption of Community ferro-manganese was 1 150 000 metric tons in 1973. GEM's sales of ferro-manganese within the Community will thus represent between 2·6 and 3·4 % of Community consumption.

17. If the production of ferro-manganese by SNAP (110 000 metric tons) and that of CUA (15 000 metric tons) is also taken into consideration, the total production achieved will amount to 165 000 metric tons, which is 32 % of French production ; the remaining 68 % is in the hands of a single other undertaking. France exports some 70 % of its ferro-manganese production.

18. Community production of ferro-manganese is distributed among eleven undertakings ; in 1973 the first and second largest undertakings produced respectively 37·8 % and 17·6 % of Community production ; production by SNAP and CUA, added to GEM imports, makes up 15·5 % of Community production ; no financial link exists between the undertakings belonging to GEM and the other ferro-manganese producing Community undertakings.

19. Under these conditions, the agreement in question is not liable to give the undertakings concerned the power to determine prices or to control or restrict the production or distribution 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, the agreement in question is therefore in accordance with the provisions laid down in Article 65 (2) (c).

VI.

20. GEM and the member undertakings must notify the Commission without delay of any variations or adjustment of the agreement, and these will be applicable only if the Commission raises no objection, or if necessary, following receipt of Commission authorization in application of Article 65 (2) of the Treaty.

21. The agreement in question has been concluded for a period of 15 years ; but in order to be able to examine the results of the agreement and its effects on market conditions, the Commission deems it necessary to limit the authorization to a period of five years.

22. The agreement submitted for authorization is in accordance with the provisions laid down in Article 65 (2) and with the other provisions of the Treaty.

HAS ADOPTED THIS DECISION :

Article 1

The agreement between the iron and steel undertakings Société Nouvelle des Aciéries de Pompey of Neuilly-sur-Seine, Compagnie Universelle d'Acétylène of Paris, Société Française d'Électro-Métallurgie of Paris, and Eurominas Electrometalurgia, of Lisbon establishing the Groupement Europeen du Manganèse having as its main object the distribution of ferromanganese, is hereby authorized.

Article 2

The undertakings concerned shall notify the Commission without delay of any variation or adjustment of the agreement.

Article 3

This Decision shall enter into force on the date of its adoption and shall expire five years thereafter.

Article 4

This Decision is addressed to :

— Société Nouvelle des Aciéries de Pompey, Neuilly-sur-Seine,

— Compagnie Universelle d'Acétylène, Paris,

— Société Française d'Électro-Métallurgie, Paris,

— Société Eurominas Electrometalurgia, Lisbon.

Done at Brussels, 2 October 1974.

For the Commission

The President

François-Xavier ORTOLI