COMMISSION DECISION

of 22 January 1974

authorizing an agreement between British steelmaking undertakings for the establishment of a joint buying agency for ferrous scrap and other steelmaking materials

(Only the English text is authentic)

(74/77/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 request submitted by the undertakings concerned on 3 May 1973;

1. Whereas the private sector steelmaking companies:

— Balfour Darwins Ltd., Sheffield,

— Brown Bayley Steels Ltd., Sheffield,

— Dunford Hadfield's Ltd., Sheffield,

— Duport Steel Works Ltd., Llanelli, Carmarthenshire,

— Thos. Firth & John Brown Ltd., Sheffield,

— Osborn Steels Ltd., Ecclesfield,

— The Patent Shaft Steel Works Ltd., Wednesbury, Staffordshire,

— Round Oak Steel Works Ltd., Brierley Hill, Staffordshire,

— Sanderson Kayser Ltd., Sheffield,

— Sheerness Steel Co. Ltd., Sheerness, Kent,

— Spartan Steel & Alloys Ltd., Aston, Birmingham,

— Spear & Jackson Ltd., Sheffield,

— Wolsingham Steel Co. Ltd., Wolsingham,

have, by their letter of 3 May 1973, requested the Commission of the European Communities to authorize, in accordance with Article 65 (2) of the ECSC Treaty, the conclusion of an agreement in relation to ferrous scrap and other steelmaking raw materials;

2. Whereas the parties to the agreement wish to cooperate to protect their interest in the purchase of ferrous scrap and other steelmaking raw material by the creation of a joint buying and consultative agency which is to be registered as a limited company in the UK under the name of 'Steelmaking Supplies Limited' (SSL);

3. Whereas the essence of the proposed agreement is as follows: 'The parties or such of them as may so agree shall employ SSL to make joint purchases of ferrous scrap and other steelmaking raw materials as may be determined on their behalf by the management committee of SSL, especially by entering into contracts or making other arrangements for the purchase and acquisition of ferrous scrap or other steelmaking raw materials within the ECSC or elsewhere which could not be more satisfactorily achieved by the parties acting independently. The parties may also engage SSL on their behalf in similar collective activities for their mutual benefit, for example:

(i) by entering into contracts for the import of ferrous scrap or other steelmaking raw material,

(ii) by entering into contracts for ship-breaking and the disposal of scrap material thereby produced';

Whereas in order to determine the need for the employment of SSL, the parties are to regularly exchange information on the prices paid for ferrous scrap according to grade and quality, and are also to exchange similar information on such other steelmaking raw materials as may be agreed by them from time to time;

Whereas SSL may also be employed by the parties to further their studies of the direct reduction of iron ore for use as a steelmaking raw material and to make arrangements for the supply of such material;

4. Whereas each party to the proposed agreement shall have the power to appoint a representative to the management committee of SSL which is to have the power to direct SSL to take action under the agreement;

5. Whereas the proposed agreement is to remain in existence for a period of three years from the date of authorization by the Commission, and shall continue thereafter as may be agreed subject to the right of any party to give six months' notice of withdrawal at any time;

6. Whereas this agreement concerns undertakings engaged in production or distribution in the steel industry, as defined in Article 80 and within the area laid down thereby;

Whereas this agreement restricts normal competition within the common market in that the parties undertake to allocate products and sources of supply by the use of SSL and the common consultation procedure it provides;

Whereas this agreement is therefore prohibited by Article 65 (1);

7. Whereas in accordance with Article 65 (2) authorization may be given to specialization agreements or joint buying or joint selling agreements or to agreements which are strictly analogous in nature and effect to these if the Commission finds that such agreements fulfil the requirements laid down in the said Article 65 (2);

Whereas the proposed agreement is to be considered as strictly analogous in nature and effect to a joint buying agreement;

8. Whereas the proposed agreement can be authorized under the provisions of Article 65 (2) in so far as it makes a substantial improvement in production or distribution and is essential to achieve these results without being of a more restrictive nature than is necessary for the achievement of this purpose; furthermore, the agreement must not be liable to give the undertakings 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;

9. Whereas the parties are small and medium-sized undertakings who utilize open hearth and electric furnaces for their crude steelmaking and are entirely reliant upon the supplies of scrap for their ferrous raw material;

Whereas stability of the supply of scrap and market conditions are essential for the parties to enable them to maintain a continuous and efficient production of crude steel;

Whereas this is particularly important for the eight parties who also produce special steel and who are reliant upon purchases of high grade low residual scrap for which demand is higher in relation to supply than is the case for lower grades of scrap;

Whereas the particular situation in the British scrap market has to be taken into consideration where one undertaking uses 80 % of the supplies of scrap and has, therefore, a dominant position as a buyer on the British scrap market; whereas for many years the distribution of scrap in the UK has been stabilized by means of a tripartite scrap agreement between the British Steel Corporation (BSC), the British Independant Steel Producers' Association (BISPA) and the British Scrap Federation; whereas this agreement has been put to an end on 1 July 1973 by the parties concerned as not being compatible with the dispositions of Article 65;

Whereas the scrap market is a highly speculative market which shows great price fluctuations dependent on economic activity;

Whereas the proposed agreement and in particular the joint buying agency SSL will provide a collective and more effective means of intervention in the scrap market to ensure the stability of supply and price for the parties, especially in times of shortage; whereas the agreement can obviate the need for the individual parties to carry unduly high stocks of scrap in order to ensure a consistent supply thereof;

Whereas under the abovementioned circumstances the joint buying agreement is to be considered as contributing to a substantial improvement in the production of crude steel and its derivatives for the parties involved;

10. Whereas the agreement is essential to achieve the required result — an improvement in supplies of ferrous scrap — taking into consideration the size of the parties and the particular structure of the British scrap market;

Whereas the agreement is not more restrictive than is necessary for the achievement of its purpose as the agreement confines the joint buying activity to transactions which could not be more satisfactorily achieved by the parties acting individually, the parties being free to participate in the joint purchases and the power of SSL being accordingly limited;

Whereas the stipulated possibility to extend the agreement to 'other steelmaking raw materials' is not more restrictive than necessary as it concerns particularly the eventual supply of a substitute material for ferrous scrap, namely pre-reduced ore, joint studies of the production and supply of which are being undertaken by certain of the parties;

whereas for the parties the conditions of supply of this or other raw material for steelmaking will be analogous to those for scrap;

11. Whereas in relation to total common market production, the private sector producers concerned are responsible for 2 % of total crude steel production and their impact on total Community purchases of scrap is about 5 %;

Whereas the parties produce 10 % of the total UK crude steel production and purchase approximately 20 % of the total weight of ferrous scrap for steelmaking purposes in the UK;

Whereas the parties' main competitor for steelmaking scrap in the UK is the British Steel Corporation, as is shown by the following statistics:

Receipts of home-bought steelmaking scrap — 1972	Private Sector	BSC	National
Low residual grades	257·1	271·5	528·6
Other grades	1 497·2	4 929·4	6 426·6
Total	1 754·3	5 200·9	6 955·2

Whereas the proposed agreement is therefore not 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;

12. Whereas the proposed agreement can be authorized for the planned initial period of three years to prove its expected favourable effects;

13. Whereas the proposed agreement conforms to the conditions laid down in Article 65 (2) and can, therefore, be authorized,

HAS ADOPTED THIS DECISION:

Article 1

Authorization is given for the conclusion of the agreement communicated to the Commission by letter of 3 May 1973 establishing a joint buying agency for ferrous scrap and other steelmaking raw material between:

— Balfour Darwins Ltd., Sheffield,

— Brown Bayley Steels Ltd., Sheffield,

— Dunford Hadfield's Ltd., Sheffield,

— Duport Steel Works Ltd., Llanelli, Carmarthenshire,

— Thos. Firth & John Brown Ltd., Sheffield,

— Osborn Steels Ltd., Ecclesfield,

— The Patent Shaft Steel Works Ltd., Wednesbury, Staffordshire,

— Round Oak Steel Works Ltd., Brierley Hill, Staffordshire,

— Sanderson Kayser Ltd., Sheffield,

— Sheerness Steel Co. Ltd., Sheerness, Kent,

— Spartan Steel & Alloys Ltd., Aston, Birmingham,

— Spear & Jackson Ltd., Sheffield,

— Wolsingham Steel Co. Ltd., Wolsingham.

Article 2

The authorization of this Agreement is granted until 1 January 1977.

Article 3

This Decision is addressed to the undertakings mentioned in Article 1.

Done at Brussels, 22 January 1974.

For the Commission

The President

François-Xavier ORTOLI