II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 November 1974

approving the acquisition by August Thyssen-Hütte of a shareholding of up to 25 % in SOLMER

(75/135/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 applications of 29 January 1974 by SOLLAC and USINOR and of 11 February 1974 by August Thyssen-Hütte ;

After obtaining the comments of the Governments of the French Republic and the Federal Republic of Germany ;

Whereas :

I

1. SACILOR — Aciéries et Laminoirs de Lorraine S.A., of Paris (formerly Wendel-SIDELOR), is a steel-producing undertaking within the meaning of Article 80 with a nominal capital of FF 401 335 500. SACILOR holds 65 % of the total nominal capital of FF 927 million of the steel-producing undertaking Société Lorraine de Laminage Continu S.A. (SOLLAC), of Paris. Consequently, SACILOR has the power to control SOLLAC within the meaning of Decision No 24/54. There is therefore a concentration between SACILOR and SOLLAC within the meaning of Article 66 (1).

By reason of shareholdings by SACILOR's various holding companies, there is a concentration between SACILOR and SOLLAC and, *inter alia*, the following steel-producing undertakings (the SOLLAC group) :

nominal capital

— Ets. J. J. Carnaud et Forges de Basse-Indre S.A., Boulogne s/Seine FF 103·5 million

— Forges de Gueugnon S.A., Paris FF 103·1 million

— AG der Dillinger Hüttenwerke, Dillingen/Saar DM 157·5 million

2. Union Sidérurgique du Nord et de l'Est de la France S.A. (USINOR), of Paris, is a steel-producing undertaking with a nominal capital of FF 1 429 171 875.

USINOR holds 50 % of the total nominal capital of FF 15 million of the steel-producing undertaking Laminoirs de Strasbourg S.A., of Strasbourg, and consequently has the power to control that undertaking. There is therefore a concentration between USINOR and Laminoirs de Strasbourg (the USINOR group).

3. SOLLAC and USINOR each have a 50 % holding in the steel-producing undertaking Société Lorraine et Méridionale de Laminage Continu S.A. (SOLMER), of Paris, which is expected to have a nominal capital of FF 2 037 million by 31 December 1976.

[1] OJ ECSC No 9, 11. 5. 1954, p. 345.

SOLLAC, USINOR and SOLMER have concluded agreements setting out in detail the rights and obligations of the undertakings concerned.

Under these agreements SOLLAC and USINOR have the power to exercise joint control over SOLMER. Consequently, there is a concentration between SOLMER and all the undertakings in the SOLLAC and USINOR groups (1). However, there is no concentration between the undertakings in the SOLLAC group and those in the USINOR group.

4. August Thyssen-Hütte AG (ATH), of Duisburg—Hamborn, is a steel-producing undertaking with a nominal capital of DM 1 010 million. ATH controls, either alone or jointly with third parties, the following steel-producing undertakings :

	nominal capital (in DM million)
— Rheinstahl AG, Essen	470
— Deutsche Edelstahlwerke GmbH, Krefeld	150
— Thyssen Niederrhein AG, Hütten- und Walzwerke, Oberhausen	125
— Rasselstein AG, Neuwied	56
— Stahlwerke Bochum AG, Bochum	24·2
— Walzwerk 'Grillo Funke' GmbH, Gelsenkirchen	10

Accordingly, there is a concentration between these undertakings and ATH (the Thyssen group).

5. On 13 December 1973, ATH, SOLLAC, USINOR and SOLMER signed agreements, the substance of which is set out below.

6. ATH, SOLLAC and USINOR are 'members of SOLMER'. ATH will hold shares in SOLMER on the same terms as SOLLAC and USINOR. In addition, ATH will acquire a 5 % share in the nominal capital of SOLMER, whereby the holdings of SOLLAC and USINOR will simultaneously be reduced accordingly. Furthermore, SOLLAC and USINOR state their readiness to give ATH the option, on terms to be agreed at the time, of increasing its share in SOLMER. This share, according to the statements of the undertakings concerned, is not to be expected to exceed 25 %. If ATH takes up this option, it will immediately be represented on the supervisory board and board of management of SOLMER in proportion to the size of its shareholding.

(1) Commission Decision of 25. 7. 1973, Doc. COM(73) 1254 fin.

7. (2).

8. Each member of SOLMER is entitled to be supplied, in proportion to the amount of its shareholding, with the products made by SOLMER. In respect of the products supplied by SOLMER, the members will pay the production and processing costs and SOLMER's general and financial overheads including interest, incidental expenses and repayments of the loans contracted by SOLMER.

9. In principle, SOLMER will operate only on behalf of its members. It will not market its own products. The members will market freely and independently through their own sales organizations the SOLMER products they receive.

10. At the steel works at Fos-sur-Mer (Bouches-du-Rhône) SOLMER will construct the necessary plant and facilities for :

(a) the production of pig iron, crude steel, slabs and hot-rolled wide coils and the processing of hot-rolled wide coils ;

(b) the production of plates and sheets ;

(c) the general services connected with the abovementioned operations such as harbours, roads, railways, offices, warehouses, laboratories etc.

The facilities referred to in (a) and (c) will be constructed in two stages' The first stage will correspond to a crude steel capacity of around 3·5 million metric tons per year, while in the second stage annual capacity will be increased to 7 million metric tons.

The decisions concerning the second stage of construction and the rolling mills required for the products referred to in (b) will be reached by mutual agreement between the members of SOLMER. If one or two members do not wish to participate in the extension of an existing facility or the construction of a new one, the other member or members may instruct SOLMER to proceed, provided this is compatible with the efficient operation of SOLMER. Such member or members assume all obligations and rights arising from the implementation of the project and are responsible for its financing, without the necessity to alter or redistribute the capital of SOLMER.

11. It is apparent from the agreements that SOLMER will be controlled jointly by SOLLAC, USINOR and ATH. Consequently, the proposed tran-

(2) The details contained in this paragraph govern the relationship of the partners with each other and with SOLMER ; they are to be considered as a trade secret under Article 47 (2) and cannot therefore be published.

saction brings about a new concentration between the Thyssen group and SOLMER in addition to the concentrations already existing between the SOLLAC group and SOLMER and the USINOR group and SOLMER.

12. The SOLLAC, USINOR and Thyssen groups are controlled by different shareholders. Apart from their joint holding in SOLMER the groups are independent of one another. As a collectively owned production undertaking SOLMER will make for its members certain flat products only (coils, plates and sheets). Most of these flat products and all sectional steel will be produced by each group in its own works. Moreover, it is to be noted that SOLMER does not act as a joint sales agency for its members but that each member will market its share of SOLMER products through its own sales organization.

Accordingly, it is necessary to examine in respect of which products, on which markets and to what extent competition between the three groups is restricted as a result of their joint control of SOLMER.

II

13. For technological reasons the production of hot-rolled wide coils in the Community is concentrated in 12 production units. The increase in rolling speeds and the increase in the numbers of stands and of coilers have tended to lead to the creation of larger units. A modern works producing hot-rolled wide coils and plates needs a continuous wide hot strip mill and a four-high reversing plate mill with annual capacities of 5 million and 1·5 million metric tons respectively. This presupposes crude steel output in the region of 8 million metric tons.

14. Table 1 shows output of crude steel and flat products by the SOLLAC, USINOR and Thyssen groups in 1973.

Table 2 shows the quantities of flat products subsequently processed by the groups themselves for delivery to third parties.

This shows that the percentage of coils subsequently processed by the undertakings themselves is high in relation to total output. In 1973, the Thyssen and USINOR groups processed, respectively, 88 % and 52 % of their coil output while the SOLLAC group had to buy in an additional 418 000 metric tons of coils. The other big groups in the Community also use large amounts of coil.

TABLE 1

Products	SOLLAC			USINOR			Thyssen		
	Output in 1 000 metric tons	% EEC	Position	Output in 1 000 metric tons	% EEC	Position	Output in 1 000 metric tons	% EEC	Position
Crude steel (1)	10 507	7·0	6	9 270	6·2	8	16 435	11·0	2
Coils (total output)	3 135	7·0	6	4 358	9·7	5	6 288	14·0	2
Plates	1 127	7·7	6	1 326	9·0	4	2 469	16·8	1
Sheets	3 150	10·6	4	1 600	5·4	8	4 000	13·5	2

(1) Total crude steel output, including that for rolling into products other than flat rolled products.

TABLE 2

Group	Products	Group consumption in 1 000 metric tons (1)	Deliveries				
			Total in 1 000 metric tons (2)	to			
				France (% of 2) (3)	Germany (% of 2) (4)	EEC as whole (% of 2) (5)	Third countries (% of 2) (6)
SOLLAC	Coils	3 553	304	91·9	2·6	99·3	0·7
	Plates		1 034	45·1	29·2	79·5	20·5
	Sheets		1 584	59·8	18·1	84·0	16·0
USINOR	Coils	2 250	1 645	87·0	0·6	98·1	1·9
	Plates		1 400	82·3	2·5	88·3	11·7
	Sheets		1 410	65·1	8·6	82·2	17·8
Thyssen	Coils	5 555	1 245	6·5	42·8	66·3	33·7
	Plates		636	6·9	56·3	74·5	25·5
	Sheets		2 521	2·2	46·3	56·6	43·4

In 1973, the shares held by the groups concerned for sales of the products in question in their main markets (France and the Federal Republic of Germany respectively) and in the common market as a whole were as follows :

Group	Products	Share of the market in %		
		France	Germany	Community
SOLLAC	Coils	45·2	0·1	8·7
	Plates	19·3	6·2	6·6
	Sheets	26·2	3·7	7·4
USINOR	Coils	43·4	0·1	8·7
	Plates	37·2	0·7	8·4
	Sheets	18·5	1·6	5·1
Thyssen	Coils	1·0	43·9	14·3
	Plates	1·5	45·3	16·6
	Sheets	0·9	34·1	11·0

This shows that each group's principal market is its own domestic market. However, deliveries by these groups to other Member States and their exports — particularly from Thyssen — to third countries are also considerable. The groups compete with other Community and non-Community undertakings both in their principal market and in the rest of the common market.

In 1973, France imported 1 298 000 metric tons of coils, 1 564 000 metric tons of plates and 1 231 000 metric tons of sheets, i.e. respectively 17 %, 85 % and 20 % of French production. The FRG for its part imported 1 149 000 metric tons of coils, 1 276 000 metric tons of plates and 1 991 000 metric tons of sheets, i.e. respectively 8 %, 22 % and 24 % of German production. The strong interpenetration of

the steel markets (in 1972, 24 % of total receipts were from other Community countries) will — even before all SOLMER's plant is functioning in 1978 — be further stimulated by the enlargement of the Community resulting from the accession of the new Member States.

For these reasons, the whole of the common market can be considered as the relevant market for the flat products of Thyssen, SOLLAC and USINOR and the position of these groups has to be compared with that of other undertakings and groups in the Community.

15. SOLMER is an undertaking producing flat products which has started production and which, on the basis of its investment plan, will, in 1978, have the following productive capacity :

	in 1 000 metric tons
Crude steel	3 500
Coils	3 000
Plates	1 100
Sheets	500

The members of SOLMER intend to double its output after 1978, although they have not yet reached a formal decision on this. Moreover, once the necessary additional rolling plant has been put into operation after 1978, SOLMER can be expected to process a growing proportion of its coil output into sheets and plate.

16. SOLMER was conceived by its members as a producers' cooperative which would supply its members at cost price with products made for them in proportion to their respective financial holdings and which would not itself operate on the market as a supplier.

Each member will therefore sell its share of SOLMER products through its own sales network, either without further processing or following such further processing in its own plant. The sales networks of the Thyssen, SOLLAC and USINOR groups are, like the groups themselves, completely independent of one another.

In 1978, the production capacity of the groups concerned, including their probable shares in the output of SOLMER (SOLLAC 37·5 %, USINOR 37·5 % and ATH 25 %) is expected to be approximately as follows :

	SOLLAC group		USINOR group		Thyssen group	
	1 000 metric tons	% EEC	1 000 metric tons	% EEC	1 000 metric tons	% EEC
Crude steel	14 340	7·0	14 960	7·3	24 275	11·9
Coils (total output)	4 625	6·9	7 625	11·3	8 550	12·7
Plates	2 622	10·1	3 298	12·7	4 731	18·2
Sheets	3 938	8·7	3 938	7·7	6 581	14·5

17. Because SOLMER will be controlled in common by SOLLAC, USINOR and ATH and because the joint investment in SOLMER is considerable, each group will be guided in its own investment decisions regarding those sectors of production in which both it and SOLMER operate by the investment decisions made jointly with its partners in SOLMER. In planning its production each group will naturally bear in mind its share in SOLMER'S output and regulate its own production accordingly.

Joint control of SOLMER will thus lead to a restriction of competition between the groups when it comes to making decisions concerning investment and production in the flat products sector. This restriction of competition will directly affect the SOLMER joint undertaking but will also indirectly affect the competitive position of the partners themselves. However, it must be borne in mind that most of the products in question will be made by each group in its own works and will consequently not be the subject of joint decisions, as is shown in the following table :

Productive capacity in 1978

	Total productive capacity in 1 000 metric tons	In own works (%)	Share in SOLMER (%)
		SOLLAC group	
Coils	4 625	72·7	27·3
Plates	2 622	84·3	15·7
Sheets	3 938	95·2	4·8
		USINOR group	
Coils	7 625	85·2	14·8
Plates	3 298	87·5	12·5
Sheets	3 513	94·6	5·4
		Thyssen group	
Coils	8 550	91·2	8·8
Plates	4 731	94·2	5·8
Sheets	6 581	98·1	1·9

Even if SOLMER's output were doubled while their own capacity remained the same after 1978 each group, in particular the two largest producers, Thyssen and USINOR, would continue to make most of its flat products in its own works.

Furthermore, it is important that SOLMER is not to market its own production. Each group will receive its share of SOLMER's output at cost price and will reach decisions independently regarding further processing in its own works and the marketing of the products through its own sales organization.

It should be borne in mind that the Thyssen group is principally active in a different market from the two French groups. In addition, particular account should be taken of the Thyssen group's relatively large exports to third countries.

Since SOLMER is a producer's cooperative without its own sales organization and each group produces the greater part of its flat rolled steel output in its own works, it can be assumed that the undertakings concerned will each pursue an independent pricing policy in the markets for flat products. This applies particularly to ATH, which joins the SOLLAC and USINOR groups in their participation in SOLMER. After the enlargement of the production plant of SOLMER to a capacity of 7 million metric tons of crude steel the deliveries of SOLMER to ATH will comprise 16 %, 11 % and 4 % respectively of the ATH's total production of coils, heavy plates and sheets respectively.

Users of coils, plate and sheet do not have their choice restricted by ATH's holding in SOLMER, since the number of suppliers within the common market remains unchanged and the market continues to be open to the considerable imports from third countries (coils 2 %, plates 12 % and sheets 5 % of EEC supplies).

18. The joint investment in SOLMER certainly restricts the ability of each group to invest independently. However, the Commission has already repeatedly called attention to the trend in the steel industry, and in the flat steel sector in particular, to split up investment between a large number of nationally conceived production units which can only slowly reach their optimum size (1). The Commission basically favours the creation of large multinational steel undertakings by means of joint investment in order to uphold the competitive position of the Community steel industry in the face of growing competition from third countries.

Competition plays a decisive role in the marketing of the products. The groups are here in competition with one another in the areas where their market zones overlap.

In view of the foregoing considerations, there are no grounds for measuring the extent of the restrictions of competition arising as a result of joint control of SOLMER by aggregating the shares of the three groups and of SOLMER in the output of flat products.

For the purpose of assessing the competitive position of each group its productive capacity together with its share in the productive capacity of SOLMER — as

(1) cf. Memorandum on the General Objectives for Steel for 1975 to 1980, OJ No C 96, 29. 9. 1971, p. 72 *et seq.*

shown in the table in paragraph 16 — must be compared with the productive capacity of other undertakings and groups in the Community in 1978.

19. As a producer of coils, the Thyssen group in 1978 will drop from second place (in 1973) to third place with 13 % of Community production. The USINOR group will remain in fifth place with 11 % (as in 1973) and the SOLLAC group in sixth place with 7 %. The other Community producers will in 1978 have shares of 16 %, 15 %, 13 %, 6 %, 5 %, 5 % and 4 % respectively and the largest undertakings will manufacture 95 % of Community production.

In 1978, Thyssen will be the largest producer of plate (as in 1973) with 18 % of EEC production. USINOR will be in fourth place with 13 % and SOLLAC with 10 % will rise from sixth to fifth place. The other Community producers will in 1978 have shares of 15 %, 13 %, 9 %, 6 %, 5 %, 4 % and 3 % respectively. The 10 major plate producers will account for 95 % of EEC production.

As a producer of sheets, Thyssen will be in second place in 1978 (as in 1973) with 14·5 %. SOLLAC will remain in fourth place with 9 % and USINOR will be sixth with 8 % (eighth in 1973). Other undertakings will have shares of 18 %, 14 %, 9 %, 8 %, 5 %, 3 % and 3 % respectively. The 10 largest sheet producers will account for 89 % of Community production.

20. To sum up, joint control of SOLMER leads to some restriction of competition between the three groups as regards their investment and production decisions and strengthens the position of each group in the sectors concerned. However, the groups continue to compete in their respective markets.

As a result of the proposed transaction, the market position of the undertakings concerned will only be changed to a small extent and the competitive situation between the Community flat steel producers will not be affected to a significant extent. As is indicated in section 19 above, there are still enough producers of comparable size in the common market to ensure effective competition.

In order to maintain this situation it is essential that, apart from their joint control of SOLMER, the three groups should remain completely autonomous and independent of one another, particularly in the sales field. To achieve this objective it is furthermore necessary that the share of each group in the output of SOLMER should not exceed its own production of the products in question. Accordingly the Commission must be able to scrutinize from this point of view an increase in the production capacity of SOLMER.

Consequently, the following requirements should be imposed on the parties :

— The members of the management bodies of the steel producing and the steel distribution undertakings belonging to any one of the groups controlling SOLMER may not simultaneously hold similar posts in similar undertakings belonging to any other of the groups or in third undertakings. However, the Commission should be able, in response to a duly reasoned application, to authorize exceptions from this ban where this is justified by special circumstances.

— The groups concerned must not jeopardize their commercial independence within the common market.

— Any planned increase in SOLMER's production capacity over 7 million metric tons a year for crude steel and 6 million metric tons a year for coils must be reported to the Commission for prior authorization.

21. All these statements hold good only on condition that SOLMER produces exclusively flat steel products, as was indicated in the agreements of 13 December 1973.

The flat product sector is in itself a separate part of the steel industry with special production facilities. Any extension into other sectors, especially the production of heavy and light sections, would require the construction of new substantial facilities and significantly change the character of the undertaking. The authorization of the concentration must therefore be limited in scope. It is valid only for the production of flat steel products by Solmer.

22. Finally it is necessary to emphasize that any concerted practices and agreements between the parties which go beyond what is contained in the agreements will come under the ban contained in Article 65 (1).

23. If these requirements are met, the proposed transaction does 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 for flat products.

Neither, in view of the size and structure of like undertakings in the Community, does the proposed transaction give the undertakings concerned the power to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

24. The proposed transaction thus fulfils the conditions for authorization laid down in Article 66 (2) and may therefore be authorized,

HAS DECIDED AS FOLLOWS :

Article 1

The acquisition of a participation of up to 25 % in the share capital of the flat rolled steel producing undertaking Société Lorraine et Méridionale de

Laminage Continu S.A. (SOLMER) by August Thyssen-Hütte AG is hereby authorized.

Article 2

Authorization shall be subject to the following conditions :

1. The members of the management bodies of the steel-producing and the steel-distribution undertakings belonging to any one of the groups controlling SOLMER may not simultaneously hold similar posts in similar undertakings belonging to any other of the groups or in third undertakings.

   In special circumstances the Commission may, in response to an application containing adequate reasons, authorize exceptions from the ban contained in the preceding paragraph.

2. The groups concerned shall be required to organize their sales in such a way that their respective independence within the common market is jeopardized neither directly nor indirectly.

3. Any proposed extension of the production capacity of SOLMER over 7 million metric tons a year for crude steel and 6 million metric tons a year for coils must be reported to the Commission for prior authorization.

Article 3

This Decision is addressed to August Thyssen-Hütte AG, of Duisburg-Hamborn, Société Lorraine de Laminage Continu S.A. (SOLLAC), of Paris, and l'Union Sidérurgique du Nord et de l'Est de la France S.A. (USINOR), of Paris.

Done at Brussels, 20 November 1974.

For the Commission

The President

François-Xavier ORTOLI