II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 April 1975

approving the acquisition by Fried. Krupp Hüttenwerke AG of a majority shareholding in Stahlwerke Südwestfalen AG

(Only the German text is authentic)

(75/298/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 from Fried. Krupp Hüttenwerke AG of 12 September 1974, for authorization to acquire a majority of the shares of Stahlwerke Südwestfalen AG ;

Having obtained the comments of the Government of the Federal Republic of Germany,

WHEREAS :

I

1. Fried. Krupp GmbH of Essen (Krupp), which has a share capital of DM 500 000 000, is mainly a steel using undertaking engaged in the engineering, shipbuilding industries, etc. ; and is also an undertaking engaged in steel distribution within the meaning of Article 80 of the Treaty.

2. Krupp owns 72 % of the share capital of DM 573 000 000 in Fried. Krupp Hüttenwerke AG of Bochum (FKH), an undertaking engaged in steel production within the meaning of Article 80. The National Iranian Steel Industries Co. of Iran owns 25·04 % of the share capital of FKH and the remaining 3·96 % are owned by a number of small shareholders. Krupp is in a position to control FKH within the meaning of Decision No 24/54 and accordingly Krupp and FKH form a concentration within the meaning of Article 66 (1).

3. Krupp or FKH is in a position either alone, or jointly with other shareholders to exercise control over several undertakings, including the following undertakings engaged in the production, distribution or use of steel :

[1] Official Journal of the ECSC, 11. 5. 1954, p. 345.

Undertaking	Nominal capital (DM million)	Main activity	Holding	
			Krupp %	FKH %
Schmiedewerke Christine GmbH, Essen	2·5	Steel forgings		100
Vereinigte Drahtindustrie GmbH, Hamm	35	Steel wire		50
Polysius AG, Neubeckum	21	Industrial plant	82·5	
Aktien-Gesellschaft 'Weser', Bremen	30	Shipbuilding	86·3	
Mak Maschinenbau GmbH, Kiel	40	Mechanical equipment	100	
Horbach & Schmitz GmbH, Köln	6·6	Steel distribution	100	
Maschinenfabrik Buckau R. Wolf AG, Grevenbroich	18	Mechanical equipment	70·4	
VFW-Verwaltungsgesellschaft GmbH, Bremen	136·5	Aircraft	35·2	

4. These undertakings are to be regarded as forming a concentration with Krupp and FKH and with each other (the Krupp group).

5. In 1973, external sales of the Krupp group were DM 7 388 million. The number of persons employed on 31 December 1973 was 76 100. The equivalent figures for FKH alone were DM 2 617 million and 26 162 persons.

6. Stahlwerke Südwestfalen AG of Hüttental-Geisweid (SSW), is an undertaking engaged in steel production and distribution with a share capital of DM 80 million. The shares of SSW are divided as follows :

AGRICOLA Verwaltungsgesellschaft KG (Merck, Finck & Co.)	38·8 %
Allianz Versicherungs-AG	31·6 %
Hoesch Werke AG	26 %
Small shareholdings	3·6 %
	100·0 %

Hoesch Werke AG (Hoesch) is an undertaking engaged in steel production. AGRICOLA Verwaltungsgesellschaft AG (AGRICOLA) and Allianz Versicherungs-AG (Allianz) do not fall under Article 80.

7. SSW owns, *inter alia,* the whole of the share capital in the following undertakings engaged in the production or use of steel :

Undertaking	Nominal capital (DM million)	Main activity
Stahlwerke Brüninghaus GmbH, Westhofen	7	Steel processing
Brüninghaus Hydraulik GmbH, Horb	4	Hydraulic equipment

8. SSW is in a position to exercise control over the undertakings listed above and several other undertakings. All these undertakings are to be regarded as forming a concentration with SSW and with each other (SSW group).

9. In the year ended 30 September 1973 the external sales of the SSW group were DM 1 487 million. The number of persons employed on that date was about 15 000.

10. Subject to the Commission's authorization, FKH has entered into agreements to buy the shares of AGRICOLA, Allianz and Hoesch in SSW. Such acquisition would bring about a concentration between FKH and SSW and between the undertakings composing the Krupp and SSW groups.

II

11. The position of the Krupp and SSW groups on the steel market can be assessed primarily by reference to the nature and size of their respective outputs ; and to their shares of total production and of the market.

12. The table on the following page shows the output of pig iron, crude steel and finished steel products by the Krupp and SSW groups in 1973 (FKH makes all the ECSC Treaty iron and steel products of the Krupp group).

TABLE 1

ECSC TREATY IRON AND STEEL PRODUCTS

FKH and SSW production 1973 (1 000 metric tons)

Product group	Total production			of which special steels		
	FKH	SSW	FKH/SSW combined	FKH	SSW	FKH/SSW combined
Pig iron (of which all was for steel making)	3 116	169	3 285			
Crude steel	4 295	1 035	5 330	766	945	1 711
of which :						
Fine carbon steels				229	200	429
Alloy steels				537	745	1 282
Rolled finished products	2 222	814	3 036	218	448	662
of which :						
Permanent way material	227	—	227	—	—	—
Steel sheet piling	47	—	47	—	—	—
Sections	132	—	132	—	—	—
Wire rods	216	96	312	32	67	99
Bars	455	380	835	71	282	353
Hot rolled strip	198	214	412	8	30	38
Hot rolled plates, sheets and finished coils	384	18	402	54	18	72
Cold rolled sheets (excluding sheets slit into strip width)	563	106	669	53	51	104

13. It can be seen from Table 1 that FKH's total output of pig iron and crude steel is considerably greater than that of SSW. On the other hand SSW is an important producer of special steels ; over 90 % of its crude steel production is in special steel qualities. For finished steel rolled products, the proportion of special steel qualities in SSW's output drops to about 60 %, because SSW purchases some semi-finished steel of general quality for conversion into finished rolled products. SSW is nevertheless an important producer of special quality bars, strip and cold rolled sheets, of which its output is as great as or greater than that of FKH.

Table 2 which follows shows the combined share of FKH and SSW in the total 1973 steel production of (a) the Federal Republic of Germany, their main sales area (77 % of sales for FKH and 84 % for SSW) ; and (b) the Community of Nine.

TABLE 2

ECSC TREATY PRODUCTS

FKH and SSW production shares, 1973

Product group	as % of FRG		as % of European Community (1)	
	all qualities	special steels	all qualities	special steels
Crude steel	10·7	24·3	3·6	10·0
of which :				
Fine carbon steels		33·9		8·4
Alloy steels		22·6		10·7
Finished rolled steel products	8·4	26·8	2·7	9·0
of which :				
Permanent way material	43·8		16·3	
Sheet piling	14·5		5·6	
Sections	9·4		2·4	
Wire rods	7·3	15·8	2·6	5·8
Bars	13·0	37·3	3·4	11·9
Hot rolled strip	13·6	29·7	4·7	9·0
Hot rolled plates, sheets and finished coils	4·4	30·7	1·7	9·2
Cold rolled sheets	8·1	64·8	2·3	16·8

(1) The special steel shares shown are estimates because the special steel statistics for the three new member countries have not yet been unified with those of the six original member countries.

14. Table 2 indicates that FKH and SSW will not have a particularly important part of the total production (i.e. ordinary and special qualities combined) of any of the main steel product groups, with one exception. That exception is permanent way material, for which the FKH share is 44 % of production in the Federal Republic of Germany and 16 % of the Community production. However, the production and market position of FKH / SSW for this product group is not changed at all by the proposed transaction, since SSW has no production facilities for permanent way material and has no presence in that market.

15. For bars, wire rods, strip, plates and sheets, the position of FKH will be strengthened by the resources of SSW, but their combined production share for any of these products (all qualities), will not reach more than 14 % in the Federal Republic of Germany or 5 % in the Community. It is appropriate to consider production in the Community as a whole and not in the Federal Republic of Germany alone, since the degree of penetration by imports of the Federal German market for rolled steel products tends to run at a high level, ranging between one-third and one-quarter of total consumption in 1972 and 1973. The Community as a whole is therefore the relevant market for this case. FKH / SSW are faced with competition from many other makers within the Community for each of these products (nearly 150 for bars, about 50 for wire rods, about 30 each for plates and strip and about 20 for sheets). There is also competition from imports of steel products from non-member countries. German buyers thus have a wide choice of suppliers.

16. The situation described in paragraphs 14 and 15 for all qualities combined is also effectively the situation for ordinary steels, because these constitute nearly 90 % of Community steel production (86 % in the Federal Republic). For ordinary steels FKH / SSW do not have a particularly important position and do not have the ability to hinder effective competition. Moreover, the position of FKH / SSW in respect of ordinary steels is not expected to change significantly during the next few years. The Commission's Survey of Investment in the Community Coal and Steel Industries 1974, indicates that the FKH / SSW share of Community steel capacity is expected to rise only marginally from 3·6 % in 1973 to 3·9 % of the total in 1977.

17. In the case of special steels, however, the market position of FKH and SSW has to be considered more closely, because both are producers of significance in that field.

18. As can be seen from Table 2 above, FKH / SSW are important for various special steel products. The Federal Republic of Germany is again their main market, taking 85 % of their special steel sales. With regard to individual products the combined production shares of FKH / SSW within the Federal Republic of Germany for special rods, bars, strip, hot rolled wide flat products and cold rolled sheets are 16 %, 37 %, 30 %, 31 % and 65 % respectively ; and their corresponding shares for those products in the Community as a whole are 6 %, 12 %, 9 %, 9 % and 17 % respectively ;

19. Accordingly, the position of FKH and SSW combined for special rods, bars, strip, hot rolled wide flat products and cold rolled sheets is shown in more detail in Table 3. The table indicates the production share of FKH / SSW and their order of importance among Community producers in three main special steel quality groupings.

TABLE 3

SPECIAL STEEL PRODUCTION, 1973

Relative importance of FKH/SSW

Product	In FRG		In Community		
	% share	Order of importance	% share (1)	Order of importance	% held by first 10 producers
Wire rods					
Fine carbon	19·6	3	4·4	9	86
Alloy, Total	13·8	3	7·4	3	85
of which stainless	8·0	3	2·6	9	94
Bars					
Fine carbon	36·4	1	7·7	4	82
Alloy, Total	37·4	1	14·6	1	71
of which stainless	29·0	2	10·4	3	72
Hot rolled strip					
Fine carbon	9·2	4	2·1	8	93
Alloy, Total	45·4	1	18·1	2	93
of which stainless	53·0	1	3·2	5	97
Hot rolled wide flat products					
Fine carbon	27·3	2	11·8	2	90
Alloy, Total	31·1	2	9·1	4	89
of which stainless	31·0	2	19·5	2	97
Cold rolled sheets					
Fine carbon	—	—	—	—	—
Alloy, Total	65·0	1	16·8	2	96
of which stainless	65·0	1	17·4	2	98

(1) Community shares estimated — see footnote to Table 2.

20. It can be seen from Table 3 that for fine carbon steels FKH/SSW will not have a particularly important position, except in the case of bars, for which they will be the largest Federal German producer with 36 % of German output of such bars. Their share of Community output is, however, only 8 % and there are three producers in other member countries with a larger production of these fine carbon bars — each with about double the FKH/SSW tonnage. The Federal German market is supplied by 12 other German producers of fine carbon bars and by imports (6 %). FKH/SSW have a share of about 30 % in that German market.

21. For alloy bars, FKH/SSW will be the largest producer, both in Federal Germany (37 % share) and in the Community as a whole (15 % share). There is, however, a relatively large number of other producers, including 10 in Germany. The 10 largest producers have 71 % of the Community output and there are about 50 small makers. There is also a fair degree of penetration of the German market by alloy bar

imports, which account for about one-fifth of consumption, compared with the FKH/SSW share of about one-third in that market.

22. For alloy hot rolled strip, FKH/SSW will have 45 % of Federal German production but this percentage falls to 18 % of Community production. There are six other German producers, including three of medium size ; and elsewhere in the Community one producer is larger than FKH/SSW, having a 20 % share of Community production of alloy hot rolled strip. The degree of concentration for this product in the Community is relatively high, the 10 largest producers being responsible for 93 % of the output. Imports into the Federal German market are small (6 %) and FKH/SSW have nearly half that market. However, potential competition for this product is a significant factor, since other producers with wide hot strip mills are in a position to slit the coils from those mills into hot rolled strip widths ; two other German producers have more hot wide coil capacity than FKH/SSW.

23. For alloy hot rolled wide flat products (plates, sheets and finished coils) FKH/SSW have 31 % of Federal German production and 9 % of Community production. However, they are not the principal Federal German producer and they must face strong competition from imports, which accounted for nearly 40 % of consumption in the Federal German market in 1973, coming in broadly equal quantities from other Community countries and from non-member countries. For stainless qualities, FKH/SSW have 19 % of Community production but another German producer has a much larger share (with 29 %) and a further German producer has a 10 % share of Community production.

24. For alloy cold rolled sheets, sales of which are almost entirely in stainless quality, FKH/SSW are the largest Federal German producer with 65 % of German production. There will remain one other German producer of importance for this product with 31 %, leaving 4 % of German production to be divided among five other makers. In the Community as a whole the first 10 makers of cold rolled stainless sheets are responsible for 98 % of production. FKH/SSW will stand in second place among these makers with 17 % of Community production, after a maker which is already much more important with 26 % of production. The market for this product has tended to become oligopolistic because the capacity of modern cost-saving equipment for the hot and cold rolling and finishing of stainless sheets is large in relation to total demand. Inter-trading between Community countries and imports from non-member countries are considerable in the case of stainless sheets : Federal German producers export about half their output and 42 % of the German market demand is met by imports (16 % from Community countries ; 26 % from non-Community countries). FKH/SSW have a share of about one-half of the German market ([1]).

25. There are certain producers outside the Community with capacity for stainless steel sheet production considerably in excess of that available to any Community producer. Significant economies of scale can be obtained from such large installations provided that they are well loaded. Against this background, the combined capacity of FKH/SSW is not particularly great — indeed one Community producer already has more capacity. Expansion and development of stainless sheet production possibilities are planned by FKH/SSW and by other important stainless steel producers in the Community both to compete for a share in the expected growth of total demand and to enhance their ability to compete against imports from non-Community countries, which are at present considerable. FKH/SSW are not expected to have a larger share of Community capacity for stainless sheet production at the end of this development phase and there will remain a sufficient number of substantial producers to ensure the maintenance of effective competition.

26. The production and market position of FKH/SSW may be summarized as follows :

(a) for general quality steels and products they are not large enough to be able to influence the free play of competition in the common market ;

(b) for special steels their position is important, particularly for alloy bars and hot rolled strip and for stainless cold rolled sheets. Even for these three products, however, there is enough actual and potential competition from other makers in the member countries and/or from third country imports to ensure that FKH/SSW will not be able to pursue their own pricing and sales policy regardless of others in the market. This applies both in Federal Germany, their main sales area, and in the other parts of the Community steel market.

It is also relevant to note that, although individual production percentages are high for the three products mentioned in (b) above, these products constitute only about 15 % of FKH/SSW's total production of finished rolled steel products.

([1]) In addition to stainless cold rolled sheets FKH/SSW also produce a small quantity (9 000 metric tons a year) of stainless cold rolled plates over 3 mm thick. FKH/SSW have a share of 39 % of supplies of these plates to the German market. However, imports are important with 33 % and for many uses hot rolled plates can be substituted for cold rolled plates.

27. Consequently, the proposed concentration will 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 steel market. However, this appreciation is based on the knowledge that FKH is committed by signed agreements with Hoesch to purchase all the shares which Hoesch holds in SSW provided that the Commission's prior authorization is obtained. If, for any reason, FKH were not to purchase those shares, a fresh examination would be necessary, since Hoesch is a major steel producer.

III

28. In 1973, internal consumption within the Krupp group of its Treaty steel products for conversion into non-Treaty products amounted to about 500 000 metric tons, including 400 000 metric tons of ordinary steels and 100 000 metric tons of special steels. This represented about 17 % of FKH's total deliveries of Treaty steel products.

29. Internal consumption within the SSW group of its Treaty steel products for conversion into non-Treaty products amounted to about 100 000 metric tons, mainly in special steel qualities. This represented about 11 % of SSW's deliveries of Treaty steel products.

30. SSW purchases 2 to 300 000 metric tons a year of semi-finished steel for conversion into finished steel products. FKH already supplies part of this tonnage and would be able to increase its deliveries of semi-finished steel to SSW following the proposed transaction. The concentration would not, however, provide scope for the combined groups to increase significantly their total internal consumption of finished steel products, since the special steels used in the SSW group are already supplied by SSW and the steels used in the Krupp group are either already supplied by FKH or, if bought from outside, fall neither in the FKH nor the SSW product range.

31. Following the concentration, therefore, the combined groups would have an internal consumption of about 600 000 metric tons, or 15 %, of their combined deliveries of Treaty steel products for conversion into non-Treaty products. They would have to sell the remaining 85 % on the outside market.

32. There are already several groups in the Community steel industry with an internal consumption exceeding that of the Krupp and SSW groups, using in some cases about one million metric tons a year or more. Also there are many groups with an internal consumption exceeding 15 % of their steel deliveries because the further processing by producers of their own finished steel products is a fairly widespread practice. In the case of the Krupp group its degree of vertical integration, as measured by the proportion of its steel production, which it uses itself in later stages of manufacture, will actually fall slightly after the inclusion of the SSW group.

33. In these circumstances the proposed concentration would not give the undertakings concerned an artificially privileged position involving a substantial advantage in access to supplies or markets or in other ways enable them to evade the rules of competition instituted under the Treaty.

IV

34. It is important to ensure that effective competition will continue to exist in the alloy steel market of the Community. Having regard to the significant position of the Krupp and SSW groups in that market, particularly for alloy bars, alloy hot rolled strip and alloy cold reduced sheets, any further substantial acquisition by Krupp/FKH/SSW affecting those three products might have an unduly restrictive effect on competition in the already oligopolistic market for those products. Accordingly, authorization of the concentration should be made subject to certain conditions, viz :

1. that no member of a management organ of any steel production or steel distribution undertaking in the Krupp group or the SSW group shall be a member of a management organ of any Community steel production or steel distribution undertaking not in one of those groups ;

2. that if special circumstances justify it, the Commission may, in response to a duly reasoned request, authorize exceptions to the application of paragraph 1 above ;

3. that the acquisition by any undertaking in the Krupp group or the SSW group of 10 % or more of the share capital of any Community undertaking engaged in the production or distribution of alloy bars, alloy hot rolled strip or alloy cold rolled sheets shall be subject to prior authorization by the Commission ;

4. that the acquisition by any undertaking in the Krupp group or the SSW group of 10 % or more of the share capital of any Community undertaking which has an annual consumption of alloy bars, alloy hot rolled strip and alloy cold rolled sheets exceeding 10 000 metric tons in total shall be subject to prior authorization by the Commission.

35. Subject to these conditions, the Commission finds that the proposed concentration will 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 steel market for Treaty steel products, or 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.

The proposed transaction accordingly meets the requirements for authorization laid down in Article 66 (2) and may therefore be authorized,

HAS ADOPTED THIS DECISION :

Article 1

The acquisition by Fried. Krupp Hüttenwerke AG of the majority of the share capital in Stahlwerke Südwestfalen AG is hereby authorized.

Article 2

The following conditions are attached to the authorization :

1. No member of a management organ of any steel production or steel distribution undertaking in the Krupp group or the SSW group shall be a member of a management organ of any Community steel production or steel distribution undertaking not in one or other of those groups.

2. If special circumstances justify it, the Commission may, in response to a duly reasoned request, authorize exceptions to the application of paragraph 1 above.

3. The acquisition by any undertaking in the Krupp group or the SSW group of 10 % or more of the share capital of any Community undertaking engaged in the production or distribution of alloy bars, alloy hot rolled strip or alloy cold rolled sheets shall be subject to prior authorization by the Commission.

4. The acquisition by any undertaking in the Krupp group or the SSW group of 10 % or more of the share capital of any Community undertaking whose annual consumption of alloy bars, alloy hot rolled strip and alloy cold rolled sheets exceeds 10 000 metric tons in total shall be subject to prior authorization by the Commission.

Article 3

This Decision is addressed to Fried. Krupp Hüttenwerke AG, of Bochum, and to Fried. Krupp GmbH, of Essen.

Done at Brussels, 2 April 1975.

For the Commission

The President

François-Xavier ORTOLI