II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 July 1975

authorizing an agreement between several steel industry undertakings concerning the joint buying of prereduced iron ore

(Only the French text is authentic)

(75/569/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 by the undertakings concerned on 10 December 1974,

WHEREAS:

I

1. On 10 December 1974, several French undertakings engaged in the production of steel within the meaning of Article 80 of the Treaty applied to the Commission for authorization of an agreement concerning, *inter alia,* the joint buying of prereduced iron ore through the Société Française des Minerais Préréduits S.A., Paris (SFMP), a company with a share capital of FF 1 000 000.

The undertakings concerned are the following:

Undertaking	Registered Office	Capital (FF)
USINOR — Union Sidérurgique du Nord et de l'Est de la France S.A.	Paris	1 429 171 875
SACILOR — Aciéries et Laminoirs de Lorraine S.A.	Hayange	401 335 500
Châtillon-Commentry-Biache S.A.	Paris	175 218 750
S.A. des hauts fourneaux de la Chiers	Longwy-Bas	173 250 000
Creusot-Loire S.A.	Paris	291 701 300
Ugine Aciers S.A.	Paris	225 000 000
Société des aciéries et tréfileries de Neuves-Maisons, Châtillon S.A.	Neuves-Maisons	61 044 300

Undertaking	Registered Office	Capital (FF)
Forges d'Allevard	Paris	21 450 000
S.A. Cockerill Ougrée-Providence et Espérance-Longdoz	Seraing	7 756 850 000 (Bfrs)
S.A. Fabrique de fer de Maubeuge	Louvroil	13 500 500
S.A. Marrel Frères	Les Etaings-Châteauneuf (Loire)	19 200 000
Société nouvelle des aciéries de Pompey S.A.	Neuilly-sur-Seine	71 000 000
Société des aciers fins de l'Est (SAFE)	Paris	57 000 000
Hauts fourneaux réunis de Saulnes et Uckange	Paris	60 000 000
Société métallurgique de Normandie S.A.	Paris	81 000 000
Société lorraine de laminage continu Sollac S.A.	Paris	927 000 000
Société lorraine et méridionale de laminage continu (Solmer)	Paris	750 000 000
Vallourec S.A.	Paris	322 600 000
Pont-à-Mousson S.A.	Paris	369 220 000

2. SFMP will have the following objects :

(1) *Studies :* to keep its shareholders informed of current studies and research on the direct reduction of iron ore ;

(2) *Supplies :* to negotiate, whether in its own name or in the name and for the account of its shareholders or of other firms, medium and long-term supply contracts for prereduced iron ore ;

(3) *Representation :* to represent its shareholders in dealings with foreign undertakings interested in participating in setting up direct reduction plants ;

(4) *Setting up plants :* to study and possibly set up and operate direct reduction plants in its own name, or for account of all or some of its shareholders, acting either alone or with third parties.

3. As regards supplies (object (2) above) SFMP will purchase prereduced material to the order and for the account of its members on a brokerage basis, the commission charged by SFMP going to cover its own costs. SFMP will not have the exclusive right to make such purchases, but any member undertakings intending to obtain supplies direct will inform SFMP's Chairman in advance.

4. In principle, direct reduction plants (object (4) above) would be set up and operated in conjunction with SFMP by undertakings specially formed for the purpose.

5. Subject to the possibility of earlier dissolution, reduction or extension, SFMP will be formed for a period of 99 years running from its incorporation.

6. SFMP will be run by a Board of not less than three and not more than 12 Directors appointed for a maximum term of office of six years by the shareholders in General Meeting.

II

7. The agreement restricts the normal play of competition between the undertakings involved in that they agree :

— to share products and sources of supply by coordinating their purchases of prereduced iron ore through SFMP ; and

— to control investment in and production of prereduced iron ore through SFMP, either alone or together with third parties.

8. Accordingly, the agreement is caught by the prohibition in Article 65 (1), even if to some extent it only constitutes a declaration of intent to be clarified

subsequently as regards the terms on which direct reduction plants will be set up and operated.

9. Article 65 (2) empowers the Commission to authorize specialization agreements or joint buying or joint selling agreements and certain agreements strictly analogous in nature and effect, where it finds that the tests of that Article are satisfied.

10. The coordination envisaged by the firms, in obtaining supplies of prereduced iron ore through SFMP, is strictly analogous to a joint buying agreement; while coordination of investments and plant operation can be regarded as strictly analogous to specialization.

11. The agreement may thus be authorized under Article 65 (2) if and to the extent that it makes for a substantial improvement in the production or distribution of the products in question, if it is essential in order to achieve these results and if it is not more restrictive than is necessary for that purpose. It must also be shown that the agreement is not liable to give the undertakings concerned the power to determine the prices or to control or to 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

12. The undertakings which are party to the agreement account for some 95 % of crude steel production in France.

13. Prereduced iron ore constitutes a high quality substitute for scrap for all purposes, but particularly in electrical steel furnaces. Prereduction processes have been developed to an important extent only in recent times, with a number of projects being carried out or studied throughout the world, particularly in non-Community countries which are rich in iron ore and/or in hydrocarbons.

14. So far the only Community country in which prereduction of iron ore has reached the stage of industrial production is the Federal Republic of Germany, although a number of major projects are being considered elsewhere in the Community.

15. World production of prereduced iron ore is running at an annual rate of some six million metric tons; of this total, only half a million metric tons are produced in the Community, where total crude steel production in 1973 was 150 million metric tons, using 100 million metric tons of pig iron and about 63 million metric tons of scrap. Consumption of prereduced iron ore in the Community has hitherto been insignificant as compared with total steel production.

16. Taking account of the plants already planned in other Community countries, world prereduced iron ore production could reach some 30 million metric tons by 1980, although a major part of this production will probably be used in steel melting shops downstream from the direct reduction plants themselves. Hence the tonnages available for export to Community countries are likely to remain relatively low.

17. Both in the Community and elsewhere electrical steel melting shops and the continuous casting process are showing a particularly strong upsurge in popularity at a time when, as can be seen from 'Report on Investment in the Community coalmining and iron and steel industries' published by the Commission in September 1974, the decline of the open hearth process is slowing down. As the continuous casting process is adopted by more and more steel works, the quantity of scrap arising in the works will fall noticeably. Both the electrical and open hearth processes are based primarily on scrap. These trends 'will not fail to influence the demand for scrap, a raw material for which supply is not particularly elastic. In addition, the direct reduction of iron ore does not seem likely to supply substitute products in appreciable quantities in the medium term' (op. cit.).

18. Accordingly, although economic pressures are lower in the present time of reduced business activity, it must be assumed that in the medium term there will be a serious shortage of scrap. It is therefore desirable for the largest possible quantities of prereduced iron ore to become available either from non-Community countries or from plants to be set up within the Community, to take the place of some of this scrap.

IV

19. The joint buying of prereduced iron ore envisaged by the parties to this agreement will enable them to order larger tonnages and thus to claim higher bulk discounts and reduce their transport costs; this will permit a cut in supply costs. Medium-term contracts will enable them to guarantee stability both of supplies and of prices, particularly at times of shortage.

20. In view of the circumstances described above, the joint buying agreement must be regarded as

making for a substantial improvement in the production of crude steel and steel products.

21. The agreement is essential in order to achieve these results, for comparable improvements would be out of the question if each individual undertaking purchased prereduced iron ore separately.

22. The joint buying agreement does not give SFMP exclusive control over such purchases. The fact that the member undertakings undertake to inform SFMP's Chairman in advance when they propose to make direct purchases does not give the Chairman any right of veto but simply assists the coordination which is necessary to ensure the improvements referred to in paragraph 19.

23. In these circumstances, the joint buying agreement is no more restrictive than is required for its purpose and it satisfies the tests of Article 65 (2) (a) and (b).

24. The joint buying agreement will not give the undertakings concerned the power to determine the general level of prices or production of prereduced iron ore, for this will be determined rather by the world supply and demand situation and by the current actual and relative prices for scrap and for pig iron (which in many cases can be replaced by scrap and prereduced iron). Joint buying does not 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; accordingly, as regards joint buying, the agreement satisfies the tests of Article 65 (2) (c).

V

25. As regards the building and operating of prereduction plants, the agreement provides only a framework and the details will have to be filled in before a final decision can be given as to its compatibility with Article 65 (2) or, as the case may be, Article 66 (2). Among other things, it will have to be established with certainty that no proposals to cooperate on such plants would give the undertakings concerned the power to determine the prices or to control or restrict the production or marketing of a substantial part of prereduced iron ore in the common market.

26. Consequently, SFMP and the member undertakings will be required to inform the Commission of any proposal for building or operating a direct reduction plant within the Community. Such a proposal may not become operational until the Commission has granted an authorization under Article 65 or 66 of the Treaty.

VI

27. The objects of the studies and the representation function to be carried out by SFMP (objects (1) and (3) referred to in paragraph 2 above) will be to keep abreast of developments in the various prereduction processes, to study the technical and economic possibilities for siting plants, either in France or in other countries, to assess processes and products and to provide the necessary contacts with third parties for the attainment of these objects. On these points the agreement is not restrictive of competition.

VII

28. The Commission needs to be in a position to monitor the development of cooperation between steel undertakings regarding the joint supply of prereduced iron ore. SFMP and the undertakings concerned will therefore have to notify the Commission without delay of any change in the number of shareholders of SFMP and of any change or addition to the agreement or to the Memorandum and Articles of Association of SFMP and to refrain from operating them until the Commission has stated that they are acceptable, or, as the case may be, has authorized them under Article 65 of the Treaty.

29. Having regard to the conditions imposed above the agreement is compatible with Article 65 (2) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The agreement between the following undertakings:

USINOR — Union Sidérurgique du Nord et de l'Est de la France S.A., Paris,
SACILOR — Aciéries et Laminoirs de Lorraine S.A., Hayange, Châtillon-Commentry-Biache, S.A., Paris,
S.A. des hauts fourneaux de la Chiers, Longwy-Bas, Creusot-Loire S.A., Paris,
Ugine Aciers S.A., Paris,
Société des aciéries et tréfileries de Neuves-Maisons, Châtillon S.A., Neuves-Maisons,
Forges d'Allevard, Paris,
S.A. Cockerill Ougrée-Providence et Espérance-Longdoz, Seraing,
S.A. Fabrique de fer de Maubeuge, Louvroil,
S.A. Marrel Frères, Les Étaings-Chateauneuf (Loire),
Société nouvelle des aciéries de Pompey S.A., Neuilly-sur-Seine,
Société des aciers fins de l'Est (SAFE), Paris,
Hauts fourneaux réunis de Saulnes et Uckange, Paris,
Société métallurgique de Normandie S.A., Paris,
Société lorraine de laminage continu Sollac S.A., Paris,
Société lorraine et méridionale de laminage continu (Solmer), Paris,
Vallourec S.A., Paris,
Pont-à-Mousson S.A., Paris,

notified to the Commission by letter of 10 December 1974 and concerning the joint buying of prereduced iron ore is hereby authorized.

Article 2

The following conditions are attached to the authorization :

1. Société Française des Minerais Préréduits S.A. and its member undertakings shall without delay inform the Commission of :

   (a) any proposal for building or operating a direct reduction plant within the Community ;

   (b) any change in the number of shareholders of Société Française des Minerais Préréduits S.A. ;

   (c) any change or addition to their agreement or to the Memorandum and Articles of Association of Société Française des Minerais Préréduits S.A.

2. The proposals, changes and additions to be notified pursuant to paragraph 1 may not become operational until the Commission has confirmed that they are within the terms of the authorization given by this Decision or has authorized them under Article 65 (2) or, as the case may be, Article 66 (2) of the Treaty.

Article 3

This Decision is addressed to the undertakings named in Article 1 and to Société Française des Minerais Préréduits S.A.

Done at Brussels, 3 July 1975.

For the Commission

The President

François-Xavier ORTOLI