COMMISSION DECISION

of 20 December 1974

concerning the application of special tariff No 214 of the 'Deutsche Bundesbahn' for the carriage of solid fuels from Ahlen (Westphalia) to Alsdorf (Aachen region)

(Only the German text is authentic)

(75/96/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community (ECSC), and in particular Articles 2 to 5 and 70 thereof;

Having regard to Commission Decision No 72/93/ECSC [1] of 21 January 1972 authorizing the application until 31 December 1974 of a special 'Deutsche Bundesbahn' tariff for the carriage of solid fuels from Ahlen (Westphalia) to Alsdorf (Aachen region);

Having regard to the letter of 24 April 1974 from the German permanent representation to the European Communities, in which the German Government asked the Commission to extend the validity of the authorization to apply that tariff (now No 214), in the first instance, until 31 December 1978;

I

Whereas in its Decision of 21 January 1972 the Commission limited the validity of its authorization to 31 December 1974, considering it necessary to re-examine the special tariff in question and its authorization within three years at the most, even if there were no change in the situation on which that authorization was based;

Whereas, in its request of 24 April 1974 for an extension of the validity of the authorization, the German government stated that the reasons for applying special tariff No 214 remained unchanged and stressed that its application was still necessary in the interests of the 'Deutsche Bundesbahn' to enable it to continue to operate such services;

Whereas in that request, as well as at the meeting held on 18 November 1974 between representatives of the Commission of the European Communities and of the German Government, the latter stated that the following changes had occurred in the situation described in the Decision adopted in 1972:

— supplies of coal from Ahlen to Alsdorf, which in 1971 amounted to 269 000 metric tons and in 1972 to 208 000 metric tons, rose to 401 000 metric tons in 1973 and 518 000 metric tons in 1974 as a result of geological faults in certain mines of the Eschweiler Bergwerks-Verein in the Aachen coalfield,

— the quantities of coal exchanged between Eschweiler Bergwerks-Verein and Kempense Steenkolenmijnen NV of Zolder have been fixed at 220 000 metric tons per annum on the basis of a new contract valid until 31 December 1976,

— the freight rate under special tariff No 214 is currently DM 14·60 per metric ton, following rate increases which have occurred in the meantime, which represents a reduction of 13 to 16 % compared with the normally applicable rates, depending on the metric tonnage carried by complete trains and the frequency with which such carriage is effected,

— the freight rate under international tariff No 1235 for the carriage of coal exchanged between Kempense Steenkolenmijnen NV of Zolder and Eschweiler Bergwerks-Verein of Alsdorf is currently Bfrs 100 per metric ton, with DM 2·40 per metric ton being paid by the DB,

— the stoppage of the carriage of coal from Ahlen to Alsdorf and therefore also from Alsdorf to Zolder would mean a loss of revenue of some DM 8 million per annum in view of the quantities of coal which are currently transported over that route.

Whereas in reply to the Commission's written question of 18 July 1974, the German Government confirmed in a letter of 4 October 1974 from its permanent representation that the revenue from the application of special tariff No 214 covered the costs of the carriage concerned and helped to improve the financial position of the 'Deutsche Bundesbahn'; whereas the tariff is applied solely in the interests of the 'Deutsche Bundesbahn'; whereas the German Government has not supplied the necessary supporting documents on the ground that, pursuant to Section 14 of the Federal Railways Law, the Federal Minister for Transport had examined the tariff in question; whereas it was therefore not the Commission's responsibility to check the statements made by the German Government;

II

Whereas pursuant to Article 70 (4) of the ECSC Treaty, the application of special internal rates and conditions in the interest of one or more coal-or-steel-producing undertakings requires the prior agree-

[1] OJ No L 33, 7. 2. 1972.

ment of the Commission; whereas this provision relates not only to special rates adopted in the interest of coal and steel undertakings but to all special rates which, whatever the reasons for their introduction, benefit one or more of such undertakings; whereas the Commission must agree to the introduction of such rates if they are in accordance with the principles of the ECSC Treaty; whereas in principle the Commission can be expected to agree wherever its application can be justified by reference to the particular conditions on the transport market; whereas a transport undertaking's wish to apply a special tariff in order to keep a particular service in operation cannot be considered if it is not compatible with the proper functioning of the common market in coal and steel pursuant to the provisions of the ECSC Treaty;

Whereas special tariff No 214 is governed by Article 70 (4) of the ECSC Treaty since, on account of its limited field of application, it is solely in the interests of Eschweiler Bergwerks-Verein, a subsidiary of ARBED, i.e. one particular undertaking in the coal and steel industry, in that that undertaking benefits from a rate which is lower than the normally applicable rate;

III

Whereas the only coal transported from Ahlen to Alsdorf under special tariff No 214 is coking coal from the Westfalen mine (Ruhr) which is intended to meet part of the requirements of the Anna coking plant belonging to Eschweiler Bergwerks-Verein in the Aachen coalfield;

Whereas the Anna coking plant and the mines in the Ruhr and in the Aachen coalfield belonging to Eschweiler Bergwerks-Verein are not independent, but are merely production departments of that undertaking;

Whereas, when the Commission adopted its Decision of 21 January 1972, it had no reason to fear that the introduction of the special tariff would have negative effects on the proper functioning of the common market in coal and steel;

Whereas in the course of the period of application of that Decision (January 1972 to December 1974) the situation on the coal market, and in particular on the market in coking coal has changed in such a way that it would seem necessary to examine carefully the possible implications for the functioning of the common market of maintaining special tariff No 214;

Whereas the changes in the situation on the market in coking coal can be attributed mainly to the fact that since 1972 the demand for coal in the coke-producing undertakings in the Community has risen, while the production of Community coal has declined noticeably; whereas the proportion of Community coal used for coking has therefore increased; whereas the relatively large demand has, since the end of 1973, led to a sharp reduction — and in some cases the complete disappearance — of the coal and coke stocks which existed until then in the Community, and particularly in Germany; whereas several undertakings are now unable to comply fully with the terms of the long-term contracts which they have concluded with consumers in the Community for the supply of coking coal and coke to the iron and steel industry;

Whereas, in order to facilitate the production of coking coal and the marketing thereof in areas situated at a distance from the coalfields and also intra-Community trade, the Commission on 25 July 1973 adopted Decision No 73/287/ECSC [1] concerning coal and coke for the iron and steel industry in the Community; whereas in that Decision, which is valid until 31 December 1978, the Member States are authorized to grant coal undertakings under their jurisdiction aids to facilitate production up to the amount of the difference between the average costs of production in each coalfield and the national delivered price of coking coal from non-member countries in the principal sales area of the coalfield concerned; whereas, in view of the movement of these delivered prices, which reflects the situation on the international coking-coal market, the German Government refrained from exercising the powers granted to it in Decision No 73/287/ECSC of 25 July 1973, i.e. to grant production aids to its coal undertakings in respect of coking coal for 1974; whereas the available coking coal in the Community is generally sold on terms which enable the producers to obtain sufficient return to cover the costs of an increasing part of their production;

Whereas, in order to cover any alignment discounts which might prove necessary at points of coking coal consumption in areas which are situated at a distance from coalfields or are in another Community country, the Decision mentioned above authorizes governments to grant aids to their coal undertakings which may amount to three or 1·6 units of account per metric ton of coal, depending on whether or not the undertaking concerned is situated on the coast; whereas this provision is still being applied;

Whereas the development of supply and demand on the coking coal market as a whole is leading several undertakings in the Community to purchase normal or occasional amounts at prices which sometimes exceed — occasionally considerably — the costs of producing Community coal;

[1] OJ No L 259, 15. 9. 1973.

Whereas the maintenance of the special tariff by the 'Deutsche Bundesbahn' places one single undertaking in the Community at an advantage over other undertakings, and whereas this advantage is in addition to the state aids which may be granted under the system of aids for coking coal and coke for the iron and steel industry ;

Whereas for 1972 the financial effects of the reduction in freight rates were estimated at less than DM 700 000 per annum ; whereas, in view of the increase in the amount transported under the said freight tariff and the reduced rates applied thereunder, the financial effects can be estimated at DM 1·1 to 1·4 million for 1974 ;

Whereas the representatives of Eschweiler Bergwerks-Verein present in the German delegation at the meeting held on 18 November 1974 stated that the expected reduction in the transport rate under special tariff No 214 was the 'condition *sine qua non*' for the allocation of some 400 000 metric tons of good coking coal from the Westfalen mine for use in the Anna coking plant.

Whereas the application of the special tariff would create a captive market, while the application of the normal 'Deutsche Bundesbahn' rate would enable the coal in question to be offered for sale on the open market, on which there would be various potential buyers and the normal terms of competition would apply ; whereas the maintenance of the special rate would therefore alter the situation as regards the risks run by individual undertakings and also affect the normal play of economic forces ;

Whereas the maintenance of special tariff No 214 would thus result, directly or indirectly, in the elimination of equal access to a source of production for all consumers in the common market who are in a comparable situation ; whereas this is not compatible with the objectives of the ECSC Treaty ;

Whereas the representatives of Eschweiler Bergwerks-Verein have stated that even if the coal from the Westfalen mine ceased to be used in the Anna coking plant, the exchange of certain quantities of coking coal between Eschweiler Bergwerks-Verein and the Belgian undertaking Kempense Steenkolenmijnen, which helps to supply the Anna coking plant, would be continued under conditions which were satisfactory to both sides ; whereas consequently the abolition of the special tariff would in itself not have any harmful consequences for the mining undertakings referred to above ;

Whereas the conclusions drawn by the Commission as indicated above are compatible with the 'Medium-term guidelines for 1975 to 1985 in respect of coal', which the Commission has recently adopted and transmitted to the Council ;

IV

Whereas, in view of the distorting effects which the maintenance of special tariff No 214 would have on the proper functioning of the common market in coal and steel, the fact that the application of the rate is in the interests of the 'Deutsche Bundesbahn' can no longer be used as a valid argument ;

Whereas, moreover, in view of the current situation on the coal market, it is no longer clear that Eschweiler Bergwerks-Verein would have to cease to supply the Anna coking plant in Alsdorf with coal from the Westfalen mine, and whereas in consequence the argument that the maintenance of the tariff would be in the interests of the 'Deutsche Bundesbahn' no longer seems incontestable ; whereas, furthermore, the German Government has not produced evidence required of it by the Commission establishing that the application of this tariff actually improves the 'Deutsche Bundesbahn's' financial position ; whereas the reasons given for failing to provide such evidence cannot be considered valid arguments for not complying with the provisions of the Treaty ;

V

Whereas it follows from the foregoing that special tariff No 214 of the 'Deutsche Bundesbahn' can accordingly no longer be considered compatible with the principles of the ECSC Treaty ; whereas the Commission cannot therefore authorize the continued application of that tariff,

HAS ADOPTED THIS DECISION :

Article 1

The application of special tariff No 214 of the 'Deutsche Bundesbahn' for the carriage of solid fuels from Ahlen (Westphalia) to Alsdorf (Aachen region) shall cease to be authorized after 31 December 1974.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 December 1974.

For the Commission

The President

François-Xavier ORTOLI