COMMISSION DECISION

of 22 December 1976

authorizing the acquisition by Klöckner-Werke AG of a majority holding in Eisenwerk-Gesellschaft Maximilianshütte mbH (Article 66 of the ECSC Treaty)

(Only the German text is authentic)

(77/135/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 of 6 May 1954 laying down in implementation of Article 66 (1) of the Treaty a Regulation on what constitutes control of an undertaking [1],

Having regard to the application made on 20 August 1976 by Klöckner-Werke AG for authorization to acquire a majority holding in Eisenwerk-Gesellschaft Maximilianshütte mbH,

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

I

Whereas :

1. Klöckner-Werke AG (KW), Duisburg, a public limited liability company with a capital of DM 347 million, is a steel-producing undertaking covered by Article 80 of the Treaty.

2. KW is in a position to control, within the meaning of Decision No 24-54, either alone or together with others, several undertakings producing, distributing or using steel, including the following :

Undertaking	Capital (DM million)	Business	KW's holding
Klöckner-Ferromatik GmbH, Castrop-Rauxel	15	Mining and steel-making machinery	100 %
Klöckner-Ferroform GmbH, Osnabrück	0·2	Engineering	100 %
Klöckner-Stahl GmbH, Essen	0·02	Steel stockholding	100 %
Klöckner-Ionon GmbH, Cologne	2	Engineering	50 %
Vereinigte Drahtindustrie GmbH, Hamm	35	Wire-drawing	50 %
Vereinigte Drahtseilwerke GmbH, Dortmund	4·5	Cable-making	50 % (Holding of Vereinigte Drahtindustrie GmbH)

[1] OJ of the ECSC No 9, 11. 5. 1954, p. 345/54.

3. These undertakings may be regarded as constituting a concentration within the meaning of Article 66 (1) of the Treaty with Klöckner-Werke and between themselves.

4. KW, through Ferrocontor-Beteiligungsgesellschaft mbH, Hamburg (in which KW has a 50 % holding, the remaining 50 % being in the hands of Hamburgische Landesbank Girozentrale, Hamburg), and Korf Stahl AG, Baden-Baden (KSAG) jointly exercise group control over Hamburger Stahlwerke GmbH, Hamburg (HSW); KW indirectly holds 49 % of HSW, the remaining 51 % being in the hands of KSAG; KW and HSW, which produces wire rod and merchant bars and supplies the KW plant at Hagen-Haspe with semi-finished products, constitute a concentration.

5. In 1974/75 KW's external sales totalled DM 3 386 million; the number of staff employed on 30 September 1975 was 24 954.

6. Eisenwerke-Gesellschaft Maximilianshütte mbH, Sulzbach-Rosenberg (Maxhütte) is a steel-producing undertaking covered by Article 80 of the Treaty; its entire capital of DM 100 million is held by VG-Verwaltungsgesellschaft für industrielle Unternehmungen Friedrich Flick GmbH, Düsseldorf.

7. Maxhütte holds all the shares in the following undertakings engaged in distribution:

Undertaking	Capital (DM million)	Main business
Südferrum Eisenhandelsgesellschaft mbH, Munich	7	Steel stockholding
Fränkischer Eisenhof GmbH, Bamberg	2·5	Steel stockholding
Maxhütte-Eisenhandelsgesellschaft mbH, Sulzbach-Rosenberg	0·1	Steel stockholding

8. Maxhütte is in a position to control these undertakings; all of them may thus be regarded as constituting a concentration within the meaning of Article 66 (1) of the Treaty with Maxhütte and between themselves.

9. In 1975 Maxhütte's external sales totalled DM 895·6 million; the number of staff employed on 31 December 1975 was 7 511.

10. Subject to prior authorization by the Commission, KW and VG have reached an agreement under which KW will initially acquire 51 % of Maxhütte's capital held by VG, with an option to acquire the rest expiring on 31 December 1978; it has been agreed between the parties that KW, after the transfer of the 51 % of Maxhütte's capital, in accordance with the German law and with the statutes of Maxhütte, will exercise control over the latter company; this acquisition will bring about a concentration between KW and Maxhütte and between the undertaking which are concentrated with each of them.

11. According to the parties involved, the main purpose of this concentration is to ensure the supply of semi-finished products to KW's Georgsmarienhütte, Hagen-Haspe and Mannstaedt plants, particularly in view of the cessation of metallurgical activities at the Haspe plant some years ago and Maxhütte's crude-steel producing capacity since the reorganization of the OBM steel plant at Sulzbach-Rosenberg. It is also designed to secure deliveries of wide hot-rolled strip from KW to Maxhütte, which at present are made under a long-term supply contract due to expire in nine years; these deliveries totalled some 280 000 tonnes in 1975, representing a value of around DM 140 million. KW also carries out hire rolling operations for Maxhütte and has a share in Maxhütte's galvanizing line at Salzgitter.

II

12. The position of KW and Maxhütte on the steel market can be assessed for the most part by reference to the nature and volume of their respective outputs and their shares of aggregate production and market shares.

13. The production of pig iron, crude steel and finished steel products by KW and Maxhütte in 1975 can be seen from the following table; this table also shows the proportion of total steel production accounted for by KW and Maxhütte in 1975 in Germany, which is their principal market (55 % of sales in terms of value for Klöckner and 74 % for Maxhütte), the proportion of Community production for which they accounted and their ranking among Community producers.

IRON AND STEEL PRODUCTS WHICH COME UNDER THE ECSC TREATY

Production in 1975 (in '000 tonnes) of KW and Maxhütte, proportion of production accounted for by KW/Maxhütte and ranking of KW/Maxhütte within the Community

Group of products	KW ('000 t)	Maxhütte ('000 t)	KW/Maxhütte combined ('000 t)	Total		Ranking within the Community
				Germany %	Community %	
Pig iron	1 867	673	2 540	8·4	2·9	13
Crude steel	3 024	827	3 851	9·5	3·1	13
Wide hot-rolled strip (total production)	1 490	—	1 490	13·8	4·5	—
Finished rolled products including	2 357	871	3 228	11·2	3·6	—
Permanent way material	123	52	175	26·6	9·9	5
Girders, sections and Zorès sections	19	111	130	10·5	3·0	10
Tube rounds and squares	—	32	32	2·6	1·2	—
Wire rod	314	—	314	10·4	3·4	—
Merchant bars	664	384	1 048	20·5	5·3	5
Sheet	144	—	144	2·6	1·0	9
Plate	589	292	881	14·6	4·1	
Wide hot-rolled strip (as finished product)	504	—	504	17·5	7·0	—
Final products :						
Coated sheet	—	160	160	12·6	4·3	10
Electrical sheet	—	26	26	8·1	2·9	7

14. It is clear from this table that KW's total production of pig iron and crude steel is far larger than Maxhütte's ; the same applies to rolled products. Only KW produces wide hot-rolled strip, while Maxhütte has to have its needs supplied by other companies, notably KW. As regards finished rolled products, several lines complement rather than compete with each other, for KW is the only one of the two to produce wire rod and medium and heavy plate and Maxhütte is not in the markets for these products, while the reverse is true for tube rounds and squares and, to all intents and purposes, for girders and sections and coated and electrical sheets (final products). Maxhütte is, however, an important producer of permanent way material, merchant bars and sheets — though its output is well below that of KW.

15. KW and Maxhütte, as can also be seen from the table, will not have a leading share in the production of any of the main groups of iron and steel products. Their share in the production of pig iron and crude steel will not exceed 9 % in Germany and 3 % in the Community as a whole, thus making them the 13th-ranking producer in the Community. KW does have a relatively important position in respect of wide hot-rolled strip, with a 14 % share of production in Germany and 4·5 % in the Community, but its position will not be altered by the proposed transaction since Maxhütte is not equipped with rolling mills for wide hot-rolled strip. As far as wire rod and medium and heavy plate, tube rounds and squares and, to all intents and purposes, girders and sections are concerned, as well as coated and electrical sheets, the production and market position of KW/Maxhütte will not be changed by the proposed transaction (with the possible exception of girders and sections) for either KW or Maxhütte (depending on the product) is not equipped to produce and is thus absent from the market. As regards girders and sections, the low production of KW added to that of Maxhütte brings their total to 10·5 % in Germany and 3 % in the Community, which ranks them 10th in the Community.

16. As regards permanent way material, merchant bars and sheet, KW's position will be strengthened by Maxhütte's production capacities, but the share represented by their joint production of each of these groups of products will not exceed 26 %, 20 % and 15 % respectively in Germany and 10 %, 5 % and 4 % respectively in the Community, where KW/Maxhütte will rank fifth in respect of the first two groups of products and ninth for the third. It is Community production as a whole and not only that of Germany that should be taken into account, since the proportion of imported rolled steel products on the German market is a high one, accounting for more than a quarter of total consumption in 1975, while KW/Maxhütte's share of the German market in terms of value does not exceed 26 % for permanent way material, 14 % for bars, 12 % for concrete reinforcing bars and 14 % for sheet. The Community as a whole is therefore the relevant market. KW/Maxhütte has to face competition in respect of each of these products from a relatively large number of other producers in the Community — some 15 in respect of permanent way material, close to 150 in respect of merchant bars and 25 in respect of sheet — some of whom represent powerful groups with a much larger output. There is competition from iron and steel products imported from countries outside the Community as well, so German buyers have an adequate choice of suppliers.

17. In respect of ordinary steel products, then, KW/Maxhütte does not hold a particularly important position and is not able to hinder effective competition. The same applies to special steel products, for only in respect of special steel bars is KW in a relatively important position ; the addition of Maxhütte's low output will not noticeably change KW's market share, which does not exceed 12 % in Germany and 4 % in the Community.

18. KW/Maxhütte's position should not change significantly over the next few years. The inquiry into investments in the Community's coal and steel industries carried out by the Commission in 1975 shows that any increase in the share held by KW/Maxhütte in the Community's iron and steel production capacity is likely to be small, with that share remaining at about 3 % in 1979.

19. These facts apply equally to Germany, the main market for KW and Maxhütte, and to the other parts of the Community steel market. As regards KW's total market deliveries, 45 % of which are exported, only 17·5 % go to other Community countries, and this percentage is not exceeded for any of KW's principal groups of products, KW's position on the Community market will not be noticeably altered by the proposed transaction, for only 0·6 % of Maxhütte's total deliveries are for other Community countries. Even if KW/Maxhütte's overall export capacity should be strengthened by the transaction, this would in no way jeopardize the maintenance of effective competition.

20. Consequently, examination of KW/Maxhütte's share of production and its market position shows that the proposed transaction 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 market in steel.

III

21. In 1975 KW's internal consumption of finished rolled products from its own plants totalled some ... (1) tonnes, ... (1) tonnes of that being special steels ; this represents less than 5 % of the total deliveries of finished products made by KW. Maxhütte consumes none of its own finished products. It does not seem that the planned concentration would allow the undertakings concerned to make a significant increase in the aggregate internal consumption of finished products by the new group.

22. Maxhütte already obtains part of its requirements of wide hot-rolled strip from KW ; KW's deliveries of this product to Maxhütte amounted in 1975 to some 280 000 tonnes, while its deliveries to the market were about twice that amount. Even if KW should be in a position to increase its deliveries as a result of the proposed transaction, this would not significantly alter the existing pattern of supply.

23. The undertakings concerned expect the proposed transaction to put them in a position to increase consumption within the new group of semi-finished products for making sections — products which are now bought outside but will be supplied to KW by Maxhütte. Trade in semi-finished steel products between groups of the same type and the same size are customary in the Community ; KW's internal deliveries of semi-finished products in 1975 totalled 57 000 tonnes (with 93 000 tonnes put on the market), compared with Maxhütte's 79 000 tonnes of external deliveries.

24. Consequently, even if the planned concentration results in a strengthening of vertical integration and may lead to an increase in self-sufficiency which cannot at present be computed, it will not give the undertakings concerned an artifically privileged position involving a substantial advantage in access to supplies or markets or provide them with other means of evading the rules of competition instituted under the Treaty.

25. The transaction therefore satisfies the tests of Article 66 (2) and may be authorized,

HAS ADOPTED THIS DECISION :

Article 1

Klöckner-Werke AG, Duisburg, is authorized to acquire a majority holding in Eisenwerk-Gesellschaft Maximilianshütte mbH, Sulzbach-Rosenberg.

Article 2

This Decision is addressed to Klöckner-Werke AG, Duisburg.

Done at Brussels, 22 December 1976.

For the Commission

R. VOUEL

Member of the Commission

(1) The undisclosed data are covered by trade secrecy.