COMMISSION DECISION

of 20 December 1976

relating to specialization agreements in the production of finished and final rolled products and to the joint buying of iron ore, involving steel-producing undertakings in south-west Germany and the Grand Duchy of Luxembourg

(Only the German text is authentic)

(77/154/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 made by the companies concerned on 25 June 1976, as amended and amplified on 3 December 1976,

Whereas :

I

1. On 25 June 1976 the following steel companies (hereinafter referred to as 'the companies concerned') :

— Aktiengesellschaft der Dillinger Hüttenwerke, Dillingen (Dillingen) ;

— ARBED — Aciéries réunies de Burbach-Eich-Dudelange, société anonyme, Luxembourg (Arbed), acting on its own behalf and on behalf of :

  — ARBED — Felten & Guilleaume Drahtwerke GmbH, Köln-Mülheim, and
  — Eschweiler Bergwerksverein, Kohlscheid ;

— Stahlwerke Röchling-Burbach GmbH, Völklingen (Röchling-Burbach) ;

— Otto Wolff AG, Cologne (Wolff), acting on behalf of :

  — Rasselstein AG, Neuwied, and
  — Stahlwerke Bochum AG, Bochum ;

— Neunkircher Eisenwerk AG, Neunkirchen (Neunkirchen) ;

applied to the Commission, pursuant to Article 65 (2) of the ECSC Treaty, for authorization of agreements for specialization in the production of finished and final rolled products and for the joint buying of iron ore, contained in a specialization and cooperation contract ; the contract was amended and amplified on 3 December 1976.

2. The agreements for which authorization is requested contain the following main provisions :

— the agreements extend to the following products, which are listed in an annex to the contract :

  — crude steel (including special steels),
  — semi-finished products (including ingots and slabs),
  — permanent way material,
  — sheet piling,
  — sections,
  — broad-flanged beams,
  — merchant bars,
  — reinforcing bars,
  — special sections,
  — wire rods,
  — wide flats,
  — narrow strip,
  — heavy and medium plates,
  — sheets,
  — electrical sheets,
  — galvanized sheets,
  — tinplate,
  — blackplate ;

— the companies concerned are to coordinate their interests in relation to iron ore supply. They agree to group their orders for joint buying, to rationalize storage so as to reduce costs, and to study the feasibility of joint operation of iron-ore preparation and agglomeration facilities ;

— they agree to inform each other of all plans for investment in respect of the finished rolled steel products covered by the agreement at least three months before awarding contracts. If one or more of the companies concerned so requests, the plan will be discussed with a view to ascertaining whether a joint solution is feasible. Their business freedom is not, however, thereby restricted ;

— the companies concerned will continue and broaden their agreements on the reciprocal supply of preliminary products within the wider circle of the parties ;

— Neunkirchen undertakes not to produce :

  — sections (with the exception of pit prop frames),
  — equal and unequal angles and 'U' and 'T' sections,
  — broad-flanged beams,
  — permanent way material (except stay-plates and fish-plates),
  — sheet piling ;

— Röchling-Burbach undertakes not to produce :

  — squares with a section of less than 70 mm,
  — rounds with a section of less than 80 mm ;

— the companies concerned will, in respect of their full production range, seek means of reorganizing their rolling programmes so that their plant may work to optimum capacity.

3. In order to attain the objectives of specialization, the companies concerned agree that, in respect of the various products covered by the contract, provision may be made for quantitative or financial compensation where substantial changes in market or technical conditions entail noticeable changes in production conditions compared with those existing at the time of the contracts.

4. If the Commission at certain times lays down delivery guidelines under Article 46 of the Treaty, which are specified for undertakings, groups of undertakings or combinations of undertakings, and fixes overall guideline figures for the relevant undertakings, the companies concerned will during the time specified allocate orders and coordinate sales on the basis of the tonnages indicated by the Commission.

5. When the system of delivery objectives is not operating, each party will carry out its own marketing of products covered by the agreements.

6. The agreements are applied and operated on the principle of equal treatment for all concerned. Each undertakes to treat as confidential all experience, technical data, papers and any other information obtained from any other of the companies in connection with the agreements and not to disclose them to third parties.

7. The companies concerned have undertaken to inform each other of all matters relating to the performance of the agreement and to exchange such documents as may be necessary. They are obliged to attain the objectives of the agreement and to refrain from any action which may jeopardize them. They may not enter into any agreement with a third party which is inconsistent with the agreement ; accordingly, they will not transfer their plant to an outsider, or use their plant for the production of any of the relevant products on behalf of an outsider, unless they can do so without affecting the performance of the agreement. They enter into all these undertakings likewise on behalf of all those of their respective group companies in which they hold 50 % or more of the shares.

8. All tasks incidental to the operation of the agreements are entrusted to a joint secretariat.

9. At least once in each year each of the parties will be subject to scrutiny by an independent accountant, who will verify whether it is complying with its obligations under the agreement. If any breach is thereby ascertained, the accountant will simply furnish all directly relevant facts.

10. The agreement shall run until 30 June 1981 ; it will be renewed automatically from year to year unless renounced by one of the parties one year before expiration.

II

11. The agreements for which authorization is requested restrict the normal play of competition between the companies concerned since the companies :

— coordinate their interests in iron-ore supply ;

— inform and confer with each other on all planned investments relating to the products covered by the agreement ;

— continue and broaden reciprocal deliveries of preliminary products ;

— undertake not to produce certain products or certain specifications in favour of each other ;

— agree on quantitative or financial compensation in the event of substantial changes in market conditions or production techniques ;

— share out orders and coordinate sales if the Commission, at times of poor trade, indicates to those concerned an overall delivery objective under Article 46.

12. The agreements therefore fall within the prohibition of Article 65 (1) of the Treaty.

III

13. However, under Article 65 (2) of the Treaty, the Commission may authorize specialization agreements or joint-buying or joint-selling agreements, and agreements strictly analogous in nature and effect, if it finds that they satisfy all the specified conditions.

14. The agreement between the companies concerned providing for coordination of their interests in the supply of iron ore is strictly analogous to a joint-buying agreement. The agreements relating to reciprocal undertakings not to roll certain products or certain specifications and to the reciprocal supply of preliminary products and other changes to production programmes are specialization agreements or strictly analogous thereto.

15. The agreements referred to in paragraph 14 may therefore be authorized under Article 65 (2) of the Treaty, but only if they make for a substantial improvement in production or distribution and are essential in order to achieve these results, without being more restrictive than is necessary for that purpose; nor must the agreements be liable to 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, or to shield them against effective competition from other undertakings within the common market.

IV

16. On the question whether the agreements make for a substantial improvement in the production or distribution of the relevant products, the following points can be made.

Arbed, Arbed-Felten & Guilleaume, Eschweiler Bergwerksverein and Röchling-Burbach constitute a concentration for the purpose of Article 66 (1) and form a group (Konzern) with other undertakings which process finished and final rolled products.

Specialization within the various undertakings belonging to the group has led to a high degree of both horizontal and vertical integration.

The same can be said of Neunkirchen, Bochum and Rasselstein, which form the Otto Wolff Group.

The Arbed, Röchling-Burbach and Neunkirchen programmes overlap as regards heavy sections and permanent way material. Arbed, Arbed-Felten & Guilleaume, EBV and Neunkirchen also produce light sections and wire rods. Dillingen and OW specialize in flat products, but there is little duplication in their programmes. Since the producers of heavy and light sections and wire rods operate similar rolling mills, they have additional opportunities of harmonizing their production programmes and concentrating the manufacture of certain products on a small number of producers.

Through the provision for reciprocal undertakings not to roll entire product categories, such as broad-flanged beams, merchant bars, sections, and heavy and medium plates, and through the provisions allocating work in relation to certain section-types and certain product-sizes, the production specialization agreements enable larger rolling lots to be built up so that rolling mills can work closer to capacity. This applies notably to permanent way material, sections and merchant bars.

By coordinating their interests in the supply of iron ore through grouped orders, the companies concerned can reduce their expenditure on this important raw material. This applies both to the basic purchase price and to carriage and storage costs.

By undertaking not to produce for the time being some of the preliminary products they require but to have them supplied by neighbouring companies, they obviate the need for heavy investment which, in view of the scale of their own requirements, would not be used to optimal capacity; secondly, their suppliers can increase use of their own facilities and thereby reduce costs.

The allocation of orders and coordination of sales between the companies concerned in a period of poor trade, when the Commission indicates to them an overall delivery objective, should allow them to share out among themselves this overall figure in a way which will secure the specialization objectives of the present agreements and, in the case of single-product companies, to safeguard their market position without having to give up the pursuit of their specialization. This allocation of orders and coordination of sales in such circumstances constitute an essential element in the specialization agreement.

17. However, the Commission has to check whether the agreements will actually have these effects. The companies concerned will therefore be required to report annually to the Commission on the savings made and on the reasons for them.

18. It may accordingly be concluded that the agreements for production specialization, joint buying of iron ore and allocation of orders for the products covered by the agreements may make for a substantial improvement in production and distribution.

19. The said agreements are the indispensable means of attaining these objects — the improvement of production and distribution — and are no more restrictive than is necessary for that purpose. Acting individually, the companies concerned could not attain this improvement, or at least the same degree of improvement.

20. The undertaking entered into by the companies concerned to inform and confer with each other on investment plans for the products covered by the agreements is unobjectionable in the context of the specialization and joint-buying agreements, since each company remains free to take its own business decisions regardless of what the others think.

21. Under the agreement, to safeguard the objectives of specialization, the companies may give quantitative or financial compensation where major changes in market conditions or production techniques lead to circumstances differing substantially from those obtaining at the time of the agreement.

This is justified in that the parties cannot tell exactly how the market for each product will develop during the currency of the agreements. Where circumstances change considerably, they must be in a position to adapt the specialization agreements in respect of each product, specification, dimension and quality; they must therefore be in a position to offset the economic implications of any such change in circumstances through quantitative or financial compensation. Such compensation is in any event simply a possibility, there being no advance obligation imposed on the partners. Compensation is therefore an indispensable component of the specialization agreement, and is no more restrictive than is necessary for its purpose.

The agreements relating to quantitative and financial compensation do not allow the companies concerned to establish a quota system; if they did, the restriction would go beyond what was required for the specialization and rationalization objectives.

The Commission would be obliged to revoke the authorization if it found that the companies were applying quotas or that the agreement was substantially impeding rationalization. The Commission must therefore require the companies to provide regular information on the scale of the quantitative or financial compensation given.

22. The agreements therefore satisfy the tests of Article 65 (2) (a) and (b).

V

23. To ascertain whether the agreements for which authorization is requested satisfy the tests of Article 65 (2) (c), the following points must be considered.

24. The companies which are party to these agreements are directly or indirectly concentrated within the meaning of Article 66 (1) with other steel-producing undertakings which are not parties to the agreements. These other undertakings will not be directly affected by the specialization or by the allocation of orders, either because they themselves constitute highly structured and homogeneous groups which are integrated down to the distribution stage to a degree which ensures their independence, or because they produce only a limited range of products, meaning that they are already highly specialized integrated undertakings which could not specialize further.

25. In 1975 the companies concerned produced the quantities of the relevant products for which statistics are available set out in the table below. These tonnages show the aggregate and individual shares of these companies in common market output. The figures include the proportions used within the companies themselves (a considerable proportion) and exports.

26. The companies concerned sell mainly in the Federal Republic of Germany. They compete with other German undertakings, other Community undertakings and undertakings in non-member countries.

Furthermore, these companies sell a substantial proportion of their products in other Community countries, where they face competition from local producers, producers from other Member States and producers in non-member countries.

In view of the close interpenetration of the domestic markets of the European Community, the Community market as a whole is to be regarded as the relevant market.

Product	Production (in 1 000 t)	Percentage share of Community production			
		Aggregate	Arbed, EBV Felten & Guilleaume Röchling-Burbach	Dillingen	Neunkirchen, Bochum Rasselstein
Crude steel	8 835	7·0	5·3	1·0	0·7
Wide hot-rolled strip/coils (total production)	479	1·5	1·5	—	—
Finished rolled products, of which :	7 649	8·6	5·4	0·9	2·3
— permanent way material	58	3·3	3·3	—	0
— sheet piling	133	17·9	17·9	—	—
— broad-flanged beams	489	22·9	22·9	—	—
— other beams	646	15·1	14·6	—	0·5
— wire rods	1 075	11·6	8·8	—	2·8
— merchant bars	1 749	8·8	7·4	—	1·4
— wide flats	75	11·0	10·3	—	0·7
— narrow strip and tube strip	826	15·1	14·1	—	1·0
— heavy and medium hot-rolled plates	954	7·0	1·3	5·7	—
— cold-rolled sheets	1 532	7·1	1·0	—	6·1
Final products :					
— tinplate and other tinned plates	475	13·6	—	—	13·6
— galvanized sheets	56	1·9	1·9	—	—
— lead-coated sheets	13	20·0	—	—	20·0
— electrical sheets	179	19·9	—	—	19·9

27. No particular comment is called for on shares accounted for by the companies concerned in the production of crude steel, wide hot-rolled strip/coils, permanent way material, merchant bars, heavy and medium hot-rolled plates, cold-rolled sheets and galvanized sheets.

28. All production of sheet piling, broad-flanged beams, other beams and wide flats is in the Arbed Group's hands ; the agreements will therefore make no change to the Arbed Group companies' market shares in respect of those products.

29. For all the final products concerned, the principal producers are Rasselstein AG and Stahlwerke Bochum AG, members of the Otto Wolff Group. In view of this pre-existing specialization, the agreements will make no change to present market positions, as under paragraph 28.

30. In wire-rod production, the companies concerned, with an 11·6 % market share, rank fourth among Community producers, behind three other groups with respective shares of 15·5, 13·6 and 13·2 %. The five top Community groups produce around 60 % of total output ; a large part of the wire-rod output is processed in wire-drawing plants belonging to the producer groups, so that relatively little is actually sold on the market.

31. The joint market share of the companies concerned as regards narrow and tube strip will rise by 1 % to 15·1 % ; the largest group in the Community accounts for 16 % of total output ; the companies concerned rank second behind this group, and the next five manufacturers have respective shares of 11·5, 10·3, 8·3, 5·3 and 5·2 %. These seven undertakings or groups account for more than 70 % of Community output. Here it should be mentioned that narrow and tube strip, used as a preliminary product, is processed into tubes in works generally integrated in the producer groups, and that substantial tonnages are obtained from the stockholders through the slitting of wide coils.

32. In the interpretation of the foregoing percentages, it should be borne in mind, however, that the figures represent aggregates for all the various companies concerned. While competition between these companies is admittedly restricted by the specialization agreements, and even more so in time of crisis, by the sales coordination agreements, there are some

products where rolling programmes continue to overlap so that at least some degree of competition will exist in the future.

33. The Commission will watch out that the companies do not coordinate their distribution business, either as between themselves — except at times when the system of delivery objectives set by the Commission is in operation — or with third parties, during the whole period of the contract.

34. This being so, the agreements are not liable to give the companies concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of finished rolled products in the common market, or to shield them against effective competition from other undertakings within the common market.

35. The agreements therefore satisfy the tests of Article 65 (2) (c).

VI

36. It is necessary to ensure that the autonomy and business independence of the companies concerned are not compromised. The following conditions should therefore be attached to the authorization :

— no member of a management body of any steel production or distribution undertaking directly or indirectly concerned may exercise a similar function in an undertaking of the same type not so concerned ; however the Commission should be empowered, in response to a duly reasoned request, to authorize exceptions to this prohibition, if special circumstances warrant this ;

— the companies concerned must refrain from coordinating their production and sales except in the areas covered by the specialization agreements and when the system of delivery objectives set by the Commission is in operation ;

— the companies concerned must refrain from coordinating their production and sales with third parties ; this will apply in particular to cooperation within associations of undertakings.

37. The Commission must further ensure that all measures taken by the companies under the agreements notified to it are in conformity with the authorization given by this Decision and with the provisions of the Treaty.

38. To this end the companies concerned must be required to inform the Commission forthwith of all changes and additions to their agreements. It should be provided that such changes and additions to the agreements may not be put into effect until the Commission has declared them to be admissible or has authorized them under Article 65 (2) of the Treaty.

39. The agreements notified are valid until 30 June 1981. In view of this restricted duration and of the rationalization measures taken by the companies, the authorization may be given for the full duration of the agreements.

40. Subject to the conditions attached, the agreements for which authorization has been requested are in conformity with Article 65 (2) and the other provisions of the Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The agreements concluded between the following steel undertakings :

— Aktiengesellschaft der Dillinger Hüttenwerke, Dillingen ;

— ARBED-Aciéries réunies de Burbach-Eich-Dudelange, société anonyme, Luxembourg ;

— Stahlwerke Röchling-Burbach GmbH, Völklingen ;

— Otto Wolff AG, Köln ;

— Neunkircher Eisenwerk AG, Neunkirchen (Saar) ;

for specialization in the field of rolled steel products and for the joint buying of iron ore, contained in the contract of 25 June 1976 as amended on 3 December 1976, are hereby authorized.

Article 2

The following conditions are attached to the authorization :

1. members of management bodies in the steel-production and distribution companies directly and indirectly concerned may not at the same time exercise similar functions in companies or sales organizations of the same type which are not concerned ;

2. where special circumstances warrant this, the Commission may on receipt of a reasoned request authorize derogations from paragraph 1 ;

3. the companies concerned shall refrain from coordinating their production and sales except in areas covered by the specialization agreements and when the system of delivery objectives set by the Commission is in operation ;

4. the companies concerned shall refrain from entering into any agreement relating to production and sales with third parties, particularly within associations of undertakings.

Article 3

Each year the companies shall provide the Commission with information on and reasons for :

— improvements made during the year in the sale and production of the relevant products by virtue of the agreements ; and

— the quantitative or financial amount of any compensation given.

Article 4

1. The companies concerned shall forthwith inform the Commission of any changes and additions made to the agreements.

2. Effect shall not be given to changes and additions referred to in paragraph 1 until the Commission has declared that they are in conformity with the authorization given by this Decision or has authorized them under Article 65 (2).

Article 5

This Decision shall have effect from 1 January 1977 to 30 June 1981.

Article 6

This Decision is addressed to the companies listed in Article 1.

Done at Brussels, 20 December 1976.

For the Commission

The President

François-Xavier ORTOLI