COMMISSION DECISION

of 5 April 1977

authorizing the joint-buying of rolled steel products by the steel distribution undertakings participating in 'Stahlring GbR' and the purchasing company called 'Stahlring GmbH, Stahleinkaufsgesellschaft'

(Only the German text is authentic)

(77/290/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 High Authority Decision No 15/67 of 14 June 1967 [1] and Commission Decision 72/153/ECSC of 22 March 1972 [2], respectively authorizing and renewing the authorization for the joint-buying of rolled steel products by the steel distribution undertakings participating in 'Stahlring GbR' and 'Stahlring GmbH, Stahleinkaufsgesellschaft',

Having regard to the application submitted on 18 August 1976 by 'Stahlring GmbH, Stahleinkaufsgesellschaft', Düsseldorf,

WHEREAS :

1. By Decision No 15/67 of 14 June 1967 the High Authority authorized under Article 65 (2) the joint-buying of rolled steel products by the steel distribution undertakings participating in the 'Gesellschaft bürgerlichen Rechts Stahlring' (Stahlring GbR) and in the 'Stahlring GmbH, Stahleinkaufsgesellschaft' (Stahlring GmbH) for the period ending on 31 December 1971.

2. By Decision 72/153/ECSC of 22 March 1972, the Commission renewed this authorization for a further period ending on 31 December 1975.

3. By letter of 18 August 1976, Stahlring GmbH stated on behalf of the parties concerned that they wished to continue their joint buying cooperation on the basis of their previous agreements (already submitted to the Commission) for an indefinite period and requested the corresponding authorization.

4. Stahlring GmbH explained that at the end of 1975, when the Commission's previous authorization expired, the parties were doubtful whether they should continue their cooperation on the previous basis, or whether it would be more advantageous for them, particularly for tax reasons, to alter their agreements. The new application for an authorization was therefore deferred until they had clarified this problem. The parties did not apply for a temporary extension of the previous authorization to cover them until such time as any new agreements might have been worked out.

5. The agreements provide for cooperation between the parties in buying products of the iron and steel industry in internal and external markets in order to replenish their stocks. For this purpose the parties have come together as members of the Stahlring GbR. The buying is carried out by the commercial organization, Stahlring GmbH.

6. The Stahlring GbR agreement includes the following matters :

(i) On entering Stahlring GbR each member is obliged to obtain through Stahlring GmbH, on its delivery conditions, at least 25 % of its previous year's total receipts into stock of bars, ferro-concrete bars, sections, broad-flanged beams, plates and sheets at its own choice. The Council of Stahlring GmbH can increase this obligation unless the members reject such an increase by a two-thirds majority.

(ii) The members contribute towards the costs of Stahlring GmbH in accordance with their obligations.

(iii) The executive bodies of Stahlring GbR are the Members' General Meeting and the Board.

(iv) The Members' General Meeting elects the Council of Stahlring GmbH. In this connection at least one Council Member should if possible be elected from each of the North, West and South regions of Germany. The Members' General Meeting decides by a three-quarters majority of all members' votes on an application by the Board on the acceptance of new members. In addition the Members' General Meeting has to approve the annual report and accounts submitted by the Board. Any profit resulting from the year's activities is to be distributed.

[1] OJ No 127, 27. 6. 1967, p. 2517/67.
[2] OJ No L 85, 11. 4. 1972, p. 17.

(v) The Board comprises the Chairman and two Deputies. The Board has the exclusive responsibility for conducting the business of the Society and is responsible for presiding over the Members' General Meeting. It is the particular task of the Board to conclude trust agreements with the members of Stahlring GmbH and to supervise their execution.

(vi) Stahlring GbR has been formed to continue for an indefinite period of time.

7. Stahlring GmbH exists to purchase steel and other products of the iron and steel industry and to sell them to the members of Stahlring GbR, and also to promote any efforts to increase the use of steel and to carry on all business associated therewith. The capital of Stahlring GmbH is one million DM. The capital contributions are held by trustees in favour of Stahlring GbR.

The executive bodies of Stahlring GmbH are the Members' General Meeting, the Council and the Management. The Council lays down the general principles for the conduct of the business and appoints and supervises the Management. Stahlring GmbH is represented by a Manager or by two Managers acting jointly.

8. The agreements concerning Stahlring GbR and Stahlring GmbH restrict the normal play of competition between the participating companies because the latter are obliged to buy a certain minimum quantity of their receipts into stock exclusively through Stahlring GmbH.

9. As these agreements have joint-buying as their object, they may be authorized if it is established that they meet the conditions set out in Article 65 (2) (a), (b) and (c).

10. By Decision No 15/67 of 14 June 1967 the High Authority authorized agreements which correspond in all essential points with the agreements now submitted. This authorization was extended until 31 December 1975 by Commission Decision 72/153/ECSC of 22 March 1972. The present agreements contain no new restrictive elements.

11. Since 1972 the membership of Stahlring GbR has fallen slightly in number from 41 to 39 undertakings (five firms have left and three have been admitted into membership). This change in the membership of Stahlring GbR is not suitable for strengthening the market position of the parties significantly in the buying and selling of rolled steel products.

12. Taken together, the parties have a market share for finished rolled steel products in the Federal Republic of Germany of about 7 %, which does not exceed the market shares held by some steel distributors on their own. The parties were able to maintain an undiminished market share between 1972 and 1975, although in the meantime the process of concentration between steel distribution and steel production continued. The parties would not have been able to achieve this result without their cooperation in Stahlring GbR and Stahlring GmbH and the advantages which this yielded for their competitiveness. The cost reductions and the improved product choice brought about by the joint-buying have produced benefits for consumers and contributed towards a substantial improvement in distribution. The present agreements will enable the parties to continue to achieve these positive effects.

13. The Commission must continue to ensure that all the measures which the undertakings concerned and the executive bodies of Stahlring GbR and Stahlring GmbH take on the basis of the agreements are in accordance with this authorization.

14. In these circumstances, the grounds on which the High Authority authorized the agreements of the parties by Decision No 15/67 and the reasons for the obligations imposed by the Commission upon the parties under Decision 72/153/ECSC also apply to the present agreements. Consequently the requirements of Article 65 (2) (a) to (c) continue to be satisfied.

15. The parties have applied for an extension of the authorization unlimited in time. However, the Commission must be in a position to check its Decision again after an appropriate lapse of time in the light of the structural and economic development of Stahlring GbR and Stahlring GmbH. Accordingly the Commission considers it necessary to limit the extension of the authorization to the period ending on 31 March 1982.

16. Subject to the time limit, the agreements therefore continue to meet the requirements for an authorization under Article 65 (2) of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION :

Article 1

The agreements on the joint-buying of rolled steel through 'Stahlring GbR' and 'Stahlring GmbH Stahleinkaufsgesellschaft', entered into by the steel distribution undertakings listed in the Annex hereto are hereby authorized.

Article 2

The undertakings concerned shall notify the Commission without delay of :

(a) all changes and additions in the membership agreements concerning Stahlring GbR and Stahlring GmbH ;

(b) any decisions to accept new members ;

(c) all decisions to change the members' obligations regarding their receipts into stock ;

(d) any withdrawal of members.

Article 3

This Decision shall come into force on the date of its adoption by the Commission and shall remain in force until 31 March 1982.

Article 4

This Decision is addressed to 'Stahlring GmbH, Stahleinkaufsgesellschaft', Mindener Straße 36, D — 4 Düsseldorf 1.

Done at Brussels, 5 April 1977.

For the Commission

Raymond VOUEL

Member of the Commission

ANNEX

Members of Stahlring GbR on 1 January 1977

Firm

1. C. W. Adam & Sohn GmbH, Goslar.
2. Richard Bernhard Augustin GmbH & Co., Peine.
3. Johann Becker GmbH, Saarbrücken.
4. P. H. Brauns, Hannover.
5. Wilhelm Bredermeier GmbH & Co. KG, Braunschweig.
6. Louis Coers, Lünen.
7. Louis Eilers & Co., Hannover.
8. Wilhelm Gauer, Kitzingen.
9. Gebrüder Glatt, Freiburg.
10. Konrad Haller KG, Stuttgart.
11. E. Hochapfel GmbH, Saarbrücken.
12. Heinz Höing GmbH, Dortmund.
13. Hollinde & Boudon KG, Dortmund-Aplerbeck.
14. Eric Hoselmann, Hannover
15. Heinrich Hottenrott, Goslar.
16. Wilhelm Josten Söhne, Neuss
17. August Kirberg, Wuppertal.
18. Ulrich Adam Knapp, Reutlingen.
19. Lindemann & Frankfurth, Kassel-Bettenhausen.
20. W. Logemann GmbH, Oldenburg.
21. Gebr. Lotter KG, Ludwigsburg.
22. Louis Marburg & Söhne GmbH, Frankfurt/Main.
23. Friedrich W. Markmann, Düsseldorf.
24. Montanhandelsgesellschaft Richter & Co., Düsseldorf.
25. Nagel & Merz, Saarbrücken.
26. Gebr. Reinhard, Würzburg.
27. Rheineisen GmbH, Düsseldorf.
28. SEG Saarbrücker Eisenhandelsgesellschaft mbH, Saarbrücken.
29. Seiler & Schläfke GmbH, Hannover.
30. Schedler Stahlhandel GmbH & Co., Heilbronn.
31. C. Schrade KG, Neckarsulm.
32. August Schroeder, Hannover.
33. F. W. Schwemann, Hildesheim.
34. Schwemann & Stücke KG, Hannover.
35. Eisen-Stähle KG, Nürnberg.
36. Vetter & Co, Bremerhaven.
37. Walzstahlhandel Nord Erich Frei KG, Salzgitter-Immendorf.
38. Wullbrandt & Seele, Braunschweig.
39. Leopold Hugo Zell, Wuppertal.