COMMISSION DECISION

of 14 November 1977

authorizing an agreement between several Italian steel firms concerning the joint buying of prereduced iron ore

(Only the Italian text is authentic)

(77/737/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 applications submitted by the firms concerned on 16 November 1976 and 8 March 1977,

Whereas :

I

1. The following Italian steel undertakings :

Undertaking	Registered office	Capital (Lit)
Acciaierie Tubificio Rag. Giovanni Arvedi SpA	Cremona	1 500 000 000
Acciaieria e Tubificio di Brescia SpA	Brescia	5 500 000 000
Officine Fratelli Bertoli SpA	Udine	2 000 000 000
Acciaieria e Ferriera del Caleotto SpA	Lecco	2 300 000 000
Dalmine SpA	Milano	25 000 000 000
Acciaierie e Ferriere lombarde Falck SpA	Milano	33 000 000 000
Fiat SpA	Torino	150 000 000 000
Fabbrica italiana tubi, Ferrotubi SpA	Milano	4 564 000 000
Redaelli Giuseppe & Fratello SpA	Milano	7 500 000 000
Safau, Ferriere Acciaierie di Udine SpA	Udine	6 800 000 000
Sideros Siderurgica Rivoli Osoppo SpA	Osoppo (Udine)	1 500 000 000
Sl.MO. Siderurgica Monfalcone SpA	Monfalcone	1 000 000 000
SISMA Società Industrie siderurgiche meccaniche e affini SpA	Milano	8 000 000 000
Terni società per l'industria e l'elettricità SpA	Roma	85 117 000 000

have applied to the Commission in accordance with Article 65 (2) of the ECSC Treaty for authorization of an agreement concluded between them on 16 February 1977.

2. Under this agreement, the participating firms, which produce molten steel by the electric furnace method, have formed a company called 'Consorzio Italiano dei Minerali Preridotti SpA (COIMPRE)' with a capital of Lit 72 000 000 and a registered office in Rome.

3. COIMPRE's main objects are to :

— prepare studies and proposals with a view to stimulating the consumption of prereduced iron ore and thereby limiting scrap consumption. In this context, COIMPRE will study ways of expanding the production of prereduced iron ore in Italy and of procuring prereduced material from other countries ;

— promote supply from other countries of prereduced ores to the member firms by spot purchases by the conclusion of long-term agreements or by participating financially in companies producing iron ore in other countries. Activities relating to supply will be entrusted to existing agencies or to others which will be set up for the purpose to work in liaison with COIMPRE ;

— promote the study and possibly the setting up in Italy of iron ore direct reduction plant. The studies and plans, their implementation and the operation of the plants will be entrusted to other existing companies or companies to be formed which will act in liaison with COIMPRE ;

— handle such contacts with European firms and organizations interested in prereduction as will be conducive to the attainment of the above objectives.

4. The capital of COIMPRE is held as follows :

Undertakings	%
Acciaierie Tubificio Rag. Giovanni Arvedi SpA	4·2
Acciaierie e Tubificio di Brescia SpA	4·2
Officine Fratelli Bertoli SpA	2·8
Acciaieria e Ferriera del Caleotto SpA	2·8
Dalmine SpA	8·4
Acciaierie e Ferriere lombarde Falck SpA	18·0
Fiat SpA	18·0
Fabbrica italiana tubi, Ferrotubi SpA	5·5
Redaelli Guiseppe & Fratello SpA	5·5
Safau, Ferriere Acciaierie di Udine SpA	2·8
Sideros Siderurgica Rivoli Osoppo SpA	2·8
SI.MO. Siderurgica Monfalcone SpA	4·2
SISMA, Società industrie siderurgiche meccaniche e affini SpA	5·5
Terni società per l'industria e l'elettricità SpA	15·3
	100·0

No member may hold more than 20 % of the capital.

5. Unless extended beyond or terminated before the expiry date, COIMPRE will operate until 31 December 2025 ; it will be run by a board of directors consisting of not less than six or more than 12 members, appointed for three years ; minority members will be represented on the board by means of an appropriate system of election.

6. COIMPRE is a non-profit-making association ; management costs will be met from contributions paid by the members in proportion to their shareholdings.

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 COIMPRE ; and

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

8. In these circumstances, the agreement is caught by the prohibition in Article 65 (1) of the Treaty.

9. But Article 65 (2) stipulates that specialization agreements, joint-buying and joint-selling agreements and agreements which are strictly analogous thereto may be authorized if the Commission finds that they satisfy all the tests of Article 65.

10. The supply agreement between the participating companies in respect of prereduced ore to be procured through COIMPRE or other agencies acting in liaison with COIMPRE is a joint-buying agreement.

11. The agreement can therefore be authorized under Article 65 (2), if and so far as it makes for a substantial improvement in production or distribution, if it is essential in order to achieve these results and if it is not more restrictive than is necessary for that purpose ; the agreement must also be 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. Prereduced iron ore is the product of direct reduction of iron ore by various processes, using mainly oil and natural gas as the reducing agent ; prereduction offers special advantages to countries which do not have the coal required for fuelling blast furnaces.

13. Prereduced iron ore is high quality material which can be used as a substitute for scrap in all steel manufacturing processes ; because of its low copper and tin content, it can be used in electric furnaces to produce high quality steels.

14. Scrap-consuming steelmaking processes are either gaining popularity, as in the case of electric steels, or are declining less rapidly, as in the case of open hearth steels. At the same time, more and more steelworks are adopting the continuous casting process, which produces less scrap.

This means that, despite the present economic situation, the balance between scrap supply and demand is likely to deteriorate in the medium and long term.

15. World production of prereduced iron ore stands at some 7 000 000 tonnes a year, of which almost 500 000 tonnes is produced in the Community. World production is expected to be around 20 000 000 tonnes in 1980, with about 3 000 000 tonnes produced in the Community.

16. In 1975 the COIMPRE member firms produced 3 600 000 tonnes of electric-furnace steel, which represents 38·4 % of aggregate Italian production of this type of steel and 16·5 % of Italian crude steel production.

17. Italy is the Community's biggest producer of electric steel, supplying 38·7 % of all production in 1975. With 5 600 000 tonnes of scrap imported in 1973, she is also the Community's biggest importer of scrap, and is expected to import 7 500 000 tonnes in 1985. Since it is the most vulnerable to any disruption of the world scrap market, Italy's steel industry could find that prereduced ore will help to stabilize its supply.

IV

18. The joint-buying of ore through COIMPRE will enable the member companies to obtain more advantageous prices and terms from producers and save money on carriage and supply; through long-term agreements, they will be able to secure stable sources of supply.

19. The joint-buying agreement will accordingly make for a substantial improvement in production by the members of COIMPRE.

20. The same degree of improvement could not be attained if each of the firms were to obtain its prereduced ore individually. The agreement is therefore essential to achieve the desired results and is not more restrictive than is necessary for that purpose. It thus satisfies the tests of Article 65 (2) (1) (a) and (b) of the Treaty.

21. The prices of prereduced ore are determined by supply and demand on the world market and by the prices of its chief substitutes, pig iron and scrap. Any quantity of prereduced ore which COIMPRE might buy on behalf of its members will not be sufficiently large to determine the level of ore prices. Joint-buying is therefore 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.

V

22. As regards the provision in the agreement for COIMPRE to acquire shareholdings in foreign firms and to set up and operate direct ore reduction plants, the Commission cannot decide whether these arrangements are compatible with Articles 65 and 66 of the Treaty until the details and conditions of these operations have been clearly specified. COIMPRE must therefore submit to the Commission any proposals to buy into other companies that produce or market prereduced ore and any proposals to build and operate direct reduction plant in the Community. Proposals so notified may not be implemented until the Commission has approved them in accordance with Articles 65 and 66 in the Treaty.

VI

23. The Commission must be in a position to follow the course of cooperation in the Community steel industry in respect of joint supply and joint production of prereduced iron ore. COIMPRE and its member firms must therefore promptly notify the Commission of any change in the number of COIMPRE's shareholders and any other change or addition to the agreement or to the articles of COIMPRE. No such changes or additions may take effect until the Commission has decided that they are compatible with Articles 65 and 66 of the Treaty.

24. Subject to the conditions to be imposed, the agreement is compatible with Article 65 (2) of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION :

Article 1

The agreement entered into on 16 February 1977 between the following steel undertakings :

Acciaierie Tubificio Rag. Giovanni Arvedi SpA, Cremona,

Acciaieria e Tubificio di Brescia SpA, Brescia,

Officine Fratelli Bertoli SpA, Udine,

Acciaieria e Ferriera del Caleotto SpA, Lecco,

Dalmine SpA, Milano,

Acciaierie e Ferriere lombarde Falck SpA, Milan,

Fiat SpA, Turin,

Fabbrica italiana tubi, Ferrotubi spA, Milan,

Redaelli Giuseppe & Fratello SpA, Milan,

Safau, Ferriere Acciaierie di Udine SpA, Udine,

Sideros Siderurgica Rivoli Osoppo SpA, Osoppo (Udine),

SI.MO. Siderurgica Monfalcone SpA, Monfalcone,

SISMA, Società industrie siderurgiche meccaniche e affini SpA, Milan,

Terni società per l'industria e l'elettricità SpA, Rome,

concerning the joint buying of prereduced iron ore is hereby authorized.

Article 2

The following conditions are attached to the authorization :

1. The Consorzio Italiano dei Minerali Preridotti SpA and its member undertakings shall without delay inform the Commission of :

   (a) any proposals to acquire shareholdings in undertakings producing or marketing prereduced iron ore ;

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

   (c) any change in the number of shareholders of the Consorzio Italiano dei Minerali Preridotti SpA ;

   (d) any change or addition to the documents constituting the Consorzio Italiano dei Minerali Preridotti SpA.

2. The proposals, changes and additions to be notified pursuant to paragraph 1 may not be put into effect 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) of the Treaty.

Article 3

This Decision is addressed to the undertakings listed in Article 1 and to the Consorzio Italiano dei Minerali Preridotti SpA.

Done at Brussels, 14 November 1977.

For the Commission

Raymond VOUEL

Member of the Commission