II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 June 1978

authorizing Arbed to acquire the whole of the capital of Neunkircher Eisenwerk AG, 25·09 % of the capital of SA Métallurgique et Minière de Rodange-Athus, and to take over the management of the latter company

(Only the French text is authentic)

(78/538/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 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 dated 30 January 1978 from Aciéries Réunies de Burbach-Eich-Dudelange SA,

Having consulted the Governments of the Kingdom of Belgium, the Federal Republic of Germany and the Grand Duchy of Luxembourg,

Whereas :

I

1. Aciéries réunies de Burbach-Eich-Dudelange SA (Arbed), Luxembourg, is a steel-producing undertaking within the meaning of Article 80 of the Treaty, with a capital of Lfrs 6 500 000 000.

2. Arbed has, among others, shareholdings in the following iron and steel manufacturing undertakings :

Undertaking	*Arbed holding*
— Stahlwerke Röchling-Burbach, Völklingen, Germany	50 %
— Sidmar, Ghent, Belgium	84·2 %
— Eschweiler Bergwerks Verein, Eschweiler, Germany	96 %
— Arbed-Felten & Guilleaume, Cologne, Germany	97 %

3. Either alone or together with others, Arbed is in a position to control the above undertakings within the meaning of Decision No 24-54, with which it forms a concentration within the meaning of Article 66 (1).

4. SA Métallurgique et Minière de Rodange-Athus (Rodange) is a company incorporated in accordance with Luxembourg law in which the Belgian companies Financière du Ruau and Cockerill hold 43·7 % and 33·3 % of the shares respectively. Rodange has a 40 % shareholding in Laminoirs de Villerupt (Villerupt), the other 60 % being held by the Marine-Wendel Group.

[1] Official Journal of the ECSC, 11. 5. 1954, p. 345/54.

5. Neunkircher Eisenwerk AG (Neunkirchen), Neunkirchen, is an iron and steel-producing undertaking in which 50 % of the shares are held by Otto Wolff AG and 50 % by the German petroleum company Mabanaft. Neunkirchen has a 32·4 % shareholding in the Saar undertaking Dillinger Hütte (Dilling), which belongs to the French Group Marine-Wendel with a holding of 59·2 %.

II

6. Arbed proposes to :

(a) acquire 25·09 % of the shares in Rodange, and assume control of its technical and financial management. Rodange operates two plants, one at Rodange in Luxembourg and the other nearby at Athus in Belgium.

This company was hit hard by the crisis, and anxious to save it from insolvency, the Belgian and Luxembourg Governments entered into negotiations which on 20 December 1977 culminated in a joint document ; this document, having established that there exist currently and potentially large areas in which Arbed and Rodange can profitably combine their business, recommends in particular that Arbed should take over the management of Rodange with a view to providing efficient management which is capable of responding to the constraints of the new synergistic strategy.

Under the terms of this rescue operation, Rodange's share capital will be increased to Lfrs 1 275 000 000, held as follows :

— Arbed		25·09 %
— Former shareholders		20·00 %
— Financière du Ruau	8·74 %	
— Cockerill	6·66 %	
— Others	4·6 %	
— SNCI Luxembourgeoise		15·69 %
— Consortium of Luxembourg banks		15·69 %
— Compagnie Bruxelles-Lambert		15·69 %
— Société Belge d'Investissement (SBI)		7·84 %
		100·00 %

The Rodange board of directors (Conseil d'administration) will have 15 members, representing the workers (5), the former shareholders and Compagnie Bruxelles-Lambert (3), the SNCI Luxembourgeoise (2), a consortium of Luxembourg banks (2), Arbed (2) and the Société Belge d'Investissement (1).

It will determine the general policy of the undertaking on the basis of the joint document of 20 December 1977.

One of the directors nominated by Arbed will be appointed managing director (Administrateur-délégué). He will ensure that the management of Rodange carries out the policy defined by the Board and that the synergistic strategy agreed between Rodange and Arbed is realized.

(b) acquire the 50 % shareholdings which the Otto Wolff and Mabanaft groups each have in Neunkirchen in consideration of a 5 % aggregate holding in its own shares, the requisite shares being issued in the form of an increase in Arbed's capital.

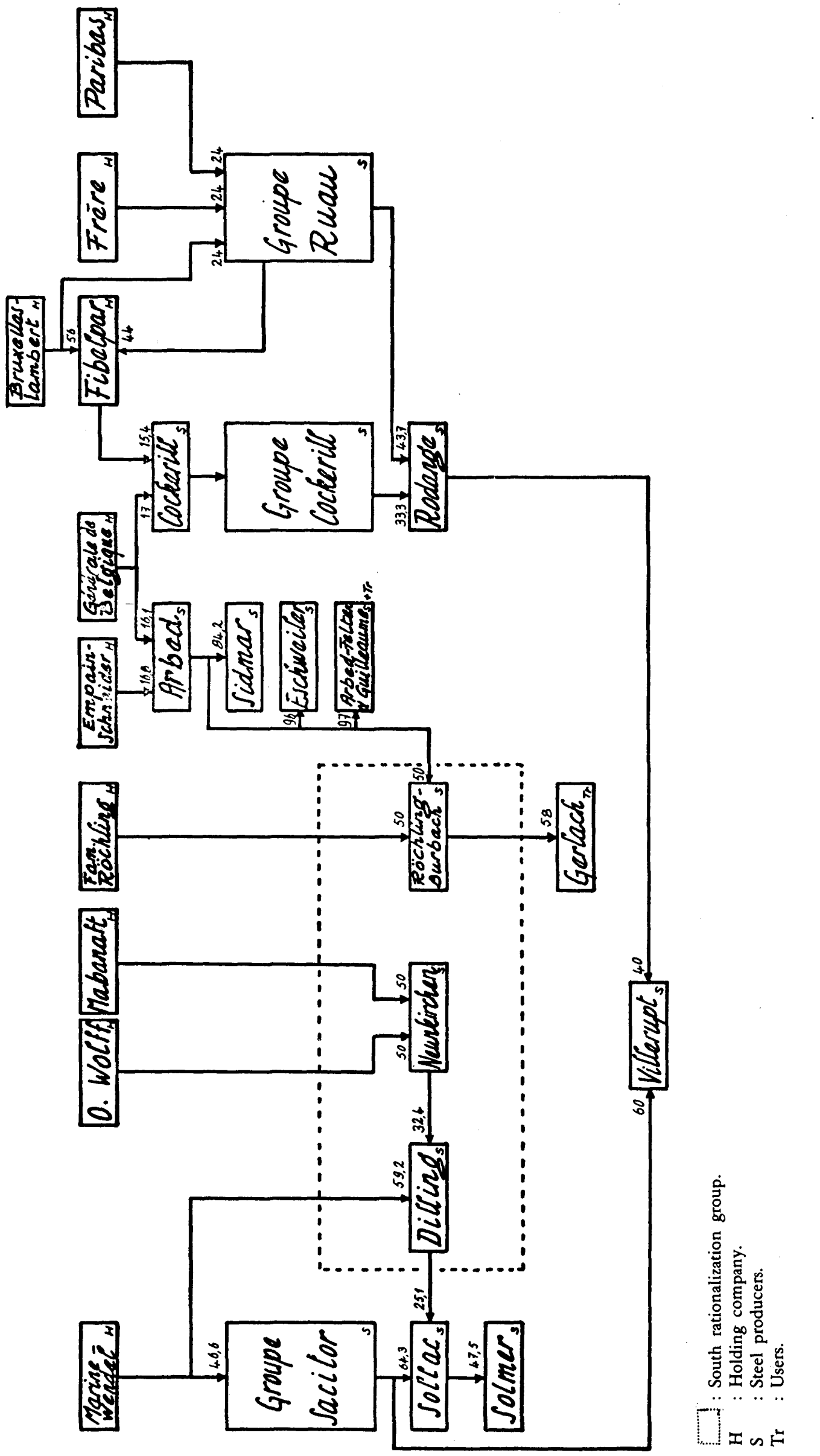
The holding in Neunkirchen will subsequently be transferred to Röchling-Burbach GmbH, Völklingen, their value being credited to Arbed against Röchling-Burbach ;

(c) acquire the 50 % shareholding which the Röchling family, grouped within Röchling Industrie Verwaltung GmbH, has in Röchling-Burbach. Arbed, which already held half the shares in Röchling-Burbach, will thus become its sole shareholder.

In consideration of the transfer of its 50 % shareholding in Röchling-Burbach, the Röchling family will receive, in addition to a payment in cash, a 5·6 % shareholding in Arbed, which will increase its capital accordingly, and Arbed's credit against Röchling-Burbach. This will be settled by the transfer to the Röchling family of Röchling-Burbach's 58 % shareholding in Gerlach-Werke GmbH, Homburg.

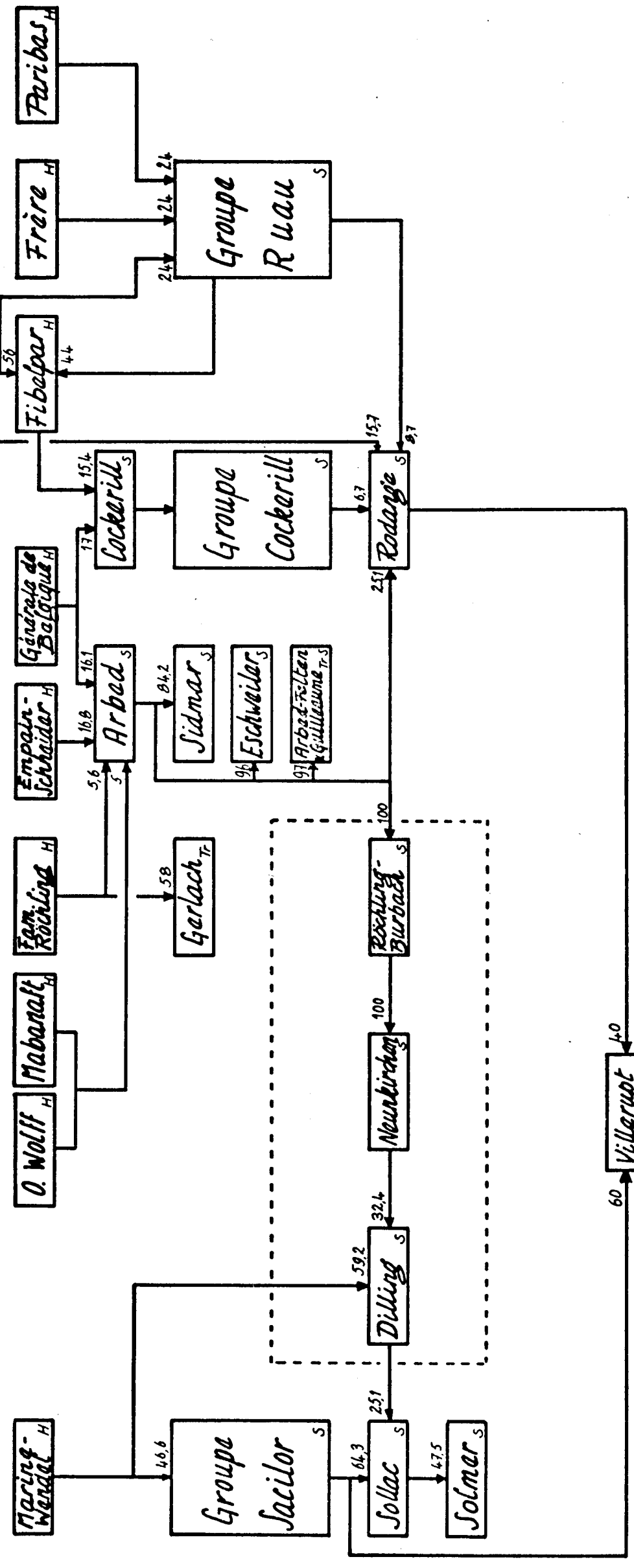
7. The pattern of shareholdings of the undertakings concerned before and after the proposed transactions is set out in the two tables below :

BEFORE



: South rationalization group.
H : Holding company.
S : Steel producers.
Tr : Users.

AFTER (*)



: South rationalization group.
H : Holding company.
S : Steel producers.
Tr : Users.
(*) : Disregarding conditions and obligations.

8. Following the proposed acquisition of 25·09 % of the shares in Rodange and assumption of its technical and financial management, Arbed will be in a position to control Rodange within the meaning of Decision No 24-54. This transaction will therefore entail a concentration between Arbed and Rodange within the meaning of Article 66 of the Treaty. Following its acquisition of all the shares in Neunkirchen, Arbed will be in a position to control it and will thus be in concentration with it. Acquisition of 50 % of the shares in Röchling-Burbach will not, however, give rise to a new concentration as Arbed, by reason of its previous holding of 50 %, was already considered to be in a concentration with it.

III

9. Assessment of the effects of this operation on the steel market requires an examination of the nature and volume of production of the undertakings concerned, and also their share of production and sales on the iron and steel market.

10. The undertakings in question are located in Belgium, the Federal Republic of Germany and the Grand Duchy of Luxembourg. They are long-standing suppliers of large quantities of steel to other Community countries. They compete with other suppliers both from the Community and from non-member States on their home markets and in other Member States. It follows that the relevant market is the whole Community.

11. The table below gives figures for the production and Community market share accounted for by Arbed, Rodange and Neunkirchen, and by the group resulting from the proposed transactions :

Production 1976

Products	Community	Arbed group		Rodange		Neunkirchen		Total Arbed + Rodange + Neunkirchen	
	1 000 tonnes	1 000 tonnes	% Cty	1 000 tonnes	% Cty	1 000 tonnes	% Cty	1 000 tonnes	% Cty
Crude steel	134 155	9 030	6·7	549 (a)	0·4	1 004	0·8	10 583	7·9
Coils (total production)	43 007	2 102	4·9	—	—	—	—	2 102	4·9
Rolled finished products	97 174	6 557	6·8	508 (b)	0·5	770	0·8	7 835	8·1
Permanent-way material	1 556	42	2·7	168 (b)	10·8	1	0·1	211	13·6
Sheet piling	878	157	17·9	—	—	—	—	157	17·9
Wide-flanged beams	2 376	558	23·5	17	0·7	—	—	575	24·2
Other sections	4 155	506	12·2	115	2·8	20	0·4	641	15·4
Tube rounds and squares	2 262	—	—	—	—	68	3·0	68	3·0
Wire rod	10 429	962	9·2	35	0·3	298	2·9	1 295	12·4
Merchant bars	20 617	1 556	7·5	173	0·8	301	1·5	2 030	9·8
Wide flats	566	82	14·5	—	—	2	0·3	84	14·8
Hot rolled strip and tube strip	7 056	848	12·0	—	—	80	1·1	928	13·1
Heavy plate	11 919	255	2·1	—	—	—	—	255	2·1
Sheet	26 768	1 466	5·5	—	—	—	—	1 466	5·5
Coils (finished products)	8 591	125	1·5	—	—	—	—	125	1·5
End products									
Tinplate and other tinned plate	3 964	—	—	—	—	—	—	—	—
Blackplate	72	—	—	—	—	—	—	—	—
Coated plate and sheet	4 733	57	1·2	—	—	—	—	57	1·2
Electrical sheet	1 106	—	—	—	—	—	—	—	—

(a) Including 28 000 tonnes from Villerupt.
(b) Including 68 000 tonnes of rails from Villerupt.

12. The result of the proposed transactions will be a 1·2 % increase in Arbed's share of crude steel output. As regards individual products, the largest increases will be for permanent-way material (+ 10·9 %), other shapes and sections (+ 3·2 %), wire rod (+ 3·2 %), tube rounds and squares (+ 3 %) and merchant bars (+ 2·3 %). There are smaller increases for hot rolled strip and tube strip (+ 1·1 %), wide-flanged beams (+ 0·7 %) and wide flats (+ 0·3 %).

13. In the case of *crude steel,* the new group with its 7·9 % share will rank fifth among the largest manufacturers in the Community, preceded by four undertakings which hold respective shares of 14·6 %, 10·2 %, 9·9 % and 8·3 % and followed by five other undertakings with market shares of 7·7 %, 6·8 %, 4 %, 3·9 % and 3·9 %.

14. In the case of *permanent-way material* with its 13·5 % share, the group will rank second after Marine-Wendel, which has a 25·7 % share of the Community market, being followed by four undertakings with respective shares of 13·4 %, 12·8 %, 9·1 % and 8·6 %. The 10 largest undertakings together account for approximately 95 % of production with five other undertakings responsible for the remaining 5 %. Although Marine-Wendel is in joint control of Villerupt with Rodange, the two groups' production does not have to be aggregated because, in the Commission Decision of 13 September 1974 authorizing the formation of Villerupt, any group effect between Sacilor of the Marine-Wendel group and Rodange-Athus was excluded by reason of the fact that these two undertakings would preserve their full business autonomy and continue to compete on the market, while, in view of the characteristic structure of the market for rails, they operate on substantially separate markets and have done so for a long time.

15. In the case of *other shapes and sections* the new group, with 15·4 % of production, will rank first among Community manufacturers followed by two undertakings with respective shares of 14·5 % and 14·1 %. Four other undertakings account for 8·9 %, 8·8 %, 7·8 % and 6·3 % of production respectively. The 10 largest manufacturers are responsible for 84·5 % of Community production, with the other 15·5 % shared by 20 others. As the market here is for specialized products, demand is somewhat restricted and there is a correspondingly limited number of manufacturers supplying it.

16. In the case of *wire rod,* the new group, with a 12·4 % share of the Community market, will rank third among manufacturers, the two undertakings with larger shares producing 15·8 % and 13·6 %, the fourth having an 11·8 % share of production. The 10 largest Community manufacturers account for 73·5 % of production, with 40 others responsible for the remaining 26·5 %.

17. Neither Arbed nor Rodange manufactured *tube rounds and squares.* With the addition of Neunkirchen production the new group will rank ninth among Community manufacturers with 3 %. The largest accounts for 37 % of production, followed by three other undertakings with shares of 17·2 %, 16·4 % and 7·2 %. The 10 top manufacturers are responsible for 95·5 % of Community production, the remaining 4·5 % being shared among eight others.

18. The new group will become the leading manufacturer of *merchant bars,* with 9·8 % followed by four undertakings with respective market shares of 8·6 %, 8·3 %, 7·6 % and 7·5 %. the 10 top manufacturers account for 55 % of Community production, with approximately 150 other undertakings responsible for the remaining 45 %. There is very strong competition on this market, since merchant bars are manufactured and sold by almost all producers.

19. In the case of hot rolled strip and tube strip, wide-flanged beams and wide flats, the proposed transactions will not alter Arbed's position on the market.

20. Taking an aggregate view of the relevant *rolled finished products,* the new group will account for 8·1 % of Community production, thus ranking fifth after manufacturers with market shares of 13 %, 10·1 %, 8·8 % and 8·8 % respectively. The top 10 manufacturers account for 73·3 % of Community production, the remaining 26·7 % being shared among some 170 others.

21. As as result of the transactions discussed above, Arbed will be very strongly placed on the market for certain products. There are, however, in the Community other competing manufacturers with comparable or larger market shares, and the same products are also imported from non-member countries at highly competitive prices. The order of magnitude and balance existing among the large iron and steel manufacturers in the Community will not be affected in a manner detrimental to competition.

22. Arbed's acquisition of a shareholding in Rodange and assumption of control of its technical and financial management is essential to the Rodange rescue operation, which takes account of the need to restructure the iron and steel industries in Belgium and Luxembourg. One of the objects of the exercise is that Rodange should specialize its manufacturing business as part of the plan to pool resources with Arbed in accordance with the joint document of 20 December 1977. As a result of the concentration with Neunkirchen, the newly-rationalized production of the group will enable Arbed to utilize some very modern rolling-mills at Neunkirchen and Röchling-Burbach for items currently produced in Luxembourg and to make its heavy section works available to the Saar undertakings. The effect ot this rationalization will be to reduce production costs.

23. These operations will, by a process of rationalization, help to boost the competitiveness of the undertakings concerned without expanding productive capacity, and hence they are in conformity with the Commission's policy for restructuring the iron and steel industry.

24. In the light of all the facts given above, the operation in question will not give the undertakings concerned the power to determine prices, to control or restrict production or distribution or to hinder the maintenance of effective competition in the common market, or to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

IV

25. In order to maintain effective competition in an oligopolistic market such as the steel market, the Commission has to ensure that the independence and autonomy of the large groups competing in the market are not affected by interlocking shareholdings or other links.

26. Neunkirchen holds a 32·4 % share in the Saar undertaking Dilling, the majority of whose shares are held by the Marine-Wendel Group. Such a holding will give Arbed a blocking minority within Dilling. This holding, together with representation on the board of directors of Dilling, will give Arbed the power to coordinate its activities with the Marine-Wendel Group, at least as regards production of product lines which both groups manufacture, namely heavy and medium plate and sheet steel, thereby restricting competition between the two groups.

27. In order to maintain competition between the two groups the authorization must be made subject to the condition that Arbed reduces its shareholding in Dilling to a maximum of 25 %, so that it no longer holds a blocking minority. Having regard to the present economic climate, which may make it difficult to dispose of the Dilling shares quickly and since Arbed has specific medium-term investment plans proposals (notified to the Commission on 16 February 1978) in the Saar region for the financing of which it intends, at least in part, to use its shareholding in Dilling, it is necessary to allow Arbed an extended period of time to enable it to reduce its shareholding in Dilling. A period of four years appears justified. During this period of four years Arbed must refrain from exercising the voting rights attaching to the shares held by it over and above 25 % of Dilling's capital.

28. The existence of interlocking directorates between Arbed group companies and other undertakings of the same type may be prejudicial to competition in the steel market. They give particular cause for concern as they may expose other groups to the influence of the Arbed Group in its substantially strengthened configuration following the proposed concentrations. The Commission's authorization must therefore be conditional upon abandonment of interlocking directorates between Arbed Group production and distribution undertakings and competing undertakings. This does not apply to iron and steel undertakings jointly controlled with outsiders prior to the proposed transactions.

However the Commission should retain the power to authorize exemptions from this prohibition in response to a reasoned request if special circumstances justify this.

29. Arbed, Röchling-Burbach, Neunkirchen and Dilling are linked with Otto Wolff AG in the South Rationalization Group authorized by the Commission on 20 December 1976. At the time of the authorization there were no links between Arbed and the Marine-Wendel Group. The circumstances which obtained at the time of the authorization are substantially altered by the proposed transactions. The presence of undertakings from both groups within the South Rationalization Group gives further opportunities for coordination and restriction of competition. The Commission must therefore require Arbed and its group companies to withdraw from the South Rationalization Group before 31 July 1978.

30, The concentration between Arbed and Rodange will give the former the power to control Villerupt, a major manufacturer of permanent-way material, jointly with Sacilor of the Marine-Wendel Group. However, it should be noted that Arbed manufactures very little permanent-way material, that this market is very much in a class of its own, and that the Commission excluded any group effect between Sacilor and Rodange when it authorizes the joint control of Villerupt. It follows that the link in question does not affect the independence of the two groups.

V

31. Having regard to the conditions and obligations imposed, the Commission finds that the proposed transactions satisfy the tests of Article 66 (2) and may accordingly be authorized,

HAS ADOPTED THIS DECISION :

Article 1

The following transactions are authorized :

(a) acquisition by Arbed of 25·09 % of the shares in SA Métallurgique et Minière de Rodange-Athus and assumption of control by Arbed of its technical and financial management ;

(b) acquisition by Arbed of all the shares in Neunkircher Eisenwerk AG.

Article 2

Authorization is given on condition that by May 1982 Arbed reduces its shareholding in Dillinger Hütte to a maximum of 25 % ; Arbed must notify the Commission without delay on fulfilment of this condition.

Article 3

The following obligations are attached to the authorization :

(a) members of the management bodies of the Arbed Group iron and steel production and distribution undertakings shall not belong to management bodies of outsider undertakings or holding companies of the same type. This does not apply to iron and steel undertakings jointly controlled with outsiders prior to the transactions authorized by this Decision, or to the Société des Laminoirs de Villerupt. If special circumstances so justify, the Commission may, in response to a reasoned request, authorize exemption from the obligation imposed by this paragraph ;

(b) during the period up to May 1982 Arbed shall refrain from exercising the voting rights attaching to such of its shares in Dillinger Hütte as exceed 25 % of that company's capital ;

(c) Arbed and the undertakings under its control shall by 31 July 1978 withdraw from the South Rationalization Group. The Commission shall be notified upon fulfilment of this obligation.

Article 4

This Decision is addressed to Aciéries Réunies de Burbach-Eich-Dudelange SA, Luxembourg.

Done at Brussels, 6 June 1978.

For the Commission

Raymond VOUEL

Member of the Commission