COMMISSION

COMMISSION DECISION

of 7 June 1978

authorizing Ruhrkohle Handel GmbH, Düsseldorf, to acquire a 12·5 % interest in Bayerischer Brennstoffhandel GmbH & Co. KG, coal wholesalers of Munich

(Only the German text is authentic)

(78/570/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 66 and 80 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 made by Ruhrkohle Handel GmbH, Düsseldorf on 26 October 1976 and 15 April 1977 for authorization to acquire a 12·5 % interest in Bayerischer Brennstoffhandel GmbH & Co. KG, Munich,

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

Whereas :

Bayerischer Brennstoffhandel GmbH & Co. KG (hereinafter referred to as 'Bayerischer Brennstoffhandel') is a joint venture in which the coal wholesale enterprises :

Klöckner & Co., Duisburg,
Harpen-Gruppe, Essen,
Rheinstahl Handel und Verkehr GmbH, Duisburg,
VEBA, Düsseldorf,

have shareholdings of between 20 and 35 % each.

In 1972 these wholesalers transferred to Bayerischer Brennstoffhandel part of their solid fuels business in Bavaria and now carry on this business jointly. Bayerische Brennstoffhandel is accordingly an undertaking covered by Article 80 and is jointly controlled by the founder companies, which thus act as a group in the pursuit of their common business interests. The merger between the founder companies and Bayerischer Brennstoffhandel was authorized by Commission Decision of 17 May 1972. In 1975 Bayerischer Brennstoffhandel sold 325 000 tonnes of Community coal and 110 000 tonnes of imported coal.

Ruhrkohle Handel GmbH is proposing to merge with Bayerischer Brennstoffhandel a solid fuels business carried on in the Munich area, with 1975 sales of 12 000 tonnes.

The proposed entry of Ruhrkohle Handel GmbH will change the constitution of the controlling group and thence the distribution of voting rights within the group. It will involve a concentration within the meaning of Article 66 (1) of Ruhrkohle Handel GmbH with Bayerischer Brennstoffhandel. The effects of control by Ruhrkohle Handel GmbH of Bayerischer Brennstoffhandel on competition in the wholesale business must therefore be examined.

The Federal German Government, consulted under the fourth subparagraph of Article 66 (2), recommends that the entry of Ruhrkohle Handel into Bayerischer Brennstoffhandel should be authorized only on condition that VEBA divests itself of its holding in Bayerischer Brennstoffhandel. The reasons given are that competition would be affected at the solid fuels distributive level and that the market share of Bayerischer Brennstoffhandel would be expanded at the expense of independent local dealers, while at the same time an interlocking relationship would be created between VEBA and Ruhrkohle, both of whom are solid fuel dealers, which would tend to lessen competition between them generally.

[1] OJ ECSC No 9, 11. 5. 1954, p. 345.

Ruhrkohle Handel GmbH is a wholly owned subsidiary of Ruhrkohle AG. Like the other subsidiaries of Ruhrkohle AG, with which it is linked through the parent company, it does business in solid fuels and is therefore an undertaking covered by Article 80 of the Treaty. The share of the German solid fuels wholesale market accounted for by Ruhrkohle AG and its subsidiaries can be estimated at approximately 52 %. But this figure alone is not sufficiently indicative of Ruhrkohle's market position. The bulk of former users of solid fuels have converted their facilities to fuel oil consumption, or use convertible facilities which enable them to go over to liquid fuels if they so wish. Sales of solid fuels for domestic consumption and other industries have fallen by 70 % since 1962. Tonne for tonne, then, less than 30 % of the sales of coal wholesale merchants are now of solid fuels, for they are doing far more business in fuel oil. Ruhrkohle's share of this market, where solid and liquid fuels compete with each other, is therefore no more than 20 %. These circumstances should be taken into consideration in the assessment of the state of competition on this market.

Since the prices for solid fuels tend to follow the prices of light and heavy fuel oils, Ruhrkohle is not in a position to determine prices for the purpose of Article 66 (2). Nor can it control distribution, for in the circumstances prevailing on the solid fuels market under the competitive pressure exerted by fuel oil for nearly 20 years now, Ruhrkohle does not have adequate power over the distribution market to determine where sales will go, how much of what product will be sold or how the market will be shared, nor to create artificial shortages of supply.

Nor is there anything to suggest that the planned transaction would give Ruhrkohle AG the power to evade the rules of compeitition instituted under the Treaty. With sales of only 325 000 tonnes of Community coal in 1975, over 60 % being Ruhrkohle AG products already, Bayerischer Brennstoffhandel will not give Ruhrkohle AG any substantial advantage in access to outlets.

Ruhrkohle Handel's proposed participation in Bayerischer Brennstoffhandel is linked to its transfer to the latter of a wholesale business with annual sales of only some 12 000 tonnes.

The market position of Bayerischer Brennstoffhandel in relation to its competitors will thus not be altered to such an extent as to exclude authorization under Article 66 (2). This follows from the fact that the relevant market for the purposes of Bayerischer Brennstoffhandel cannot be regarded as a substantial part of the market in the relevant products, while the planned merger would not give Bayerischer Brennstoffhandel the power to evade the rules of competition instituted under the Treaty. The same conclusion applies to the question of the weakening of independent trade in the relevant area. Bayerischer Brennstoffhandel sells virtually nothing but solid fuels in a regionally confined territory of the common market where substitute competition is particularly keen, and all the customers it supplies have the technical capacity to convert their facilities to other sources of energy. Accordingly it is exposed to competition not only from other companies that deal primarily in fuel oil, but also from the oil companies themselves. Since it was formed in 1972, Bayerischer Brennstoffhandel's solid fuel sales have approximately halved. Its market share in Bavaria following the entry of Ruhrkohle AG's wholesale firm will still amount to less than 27 % and less than 15 % if fuel oil istaken into consideration as a substitute source of energy.

The merger will have no anti-competitive effects on the other solid fuel business done by the firms involved in Bayerischer Brennstoffhandel. The main aim of the operation is to strengthen the position of merchants dealing with solid fuels in a particular geographical area where there is substantial competition from liquid and gas fuels because of distance from the collieries and the resulting high transport costs. The joint sales activity in Bayerischer Brennstoffhandel exercised by the controlling firms therefore extends to no more than a fraction of their aggregate solid fuels sales business. No group effect can therefore be expected to result. Nor is there any reason for expecting effects on compeititon between the firms that control Bayerischer Brennstoffhandel as regards their non-article 80 business in shipping, cooking by-products, petrochemicals and electricity generation.

The objections expressed by the Federal German Government consequently do not provide sufficient grounds on which to base a decision either to withhold approval or to grant approval subject to conditions. The planned operation satisfies the tests for authorization in Article 66 (2) and may be authorized,

HAS ADOPTED THIS DECISION :

Article 1

Ruhrkohle Handel GmbH, Düsseldorf, is authorized to acquire 12·5 % of the shares in Bayerischer Brennstoffhandel GmbH & Co. KG, coal wholesalers of Munich.

Article 2

This Decision is addressed to Ruhrkohle Handel GmbH, Düsseldorf.

Done at Brussels, 7 June 1978.

For the Commission

Raymond VOUEL

Member of the Commission