COMMISSION DECISION

of 28 July 1978

authorizing an agreement coordinating sales of concrete reinforcing bars and merchant bars by certain Italian steel undertakings (UCRO)

(Only the Italian text is authentic)

(78/711/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 by the undertakings concerned received on 26 June 1978,

I

The Italian undertakings listed in the Annex (hereinafter referred to as 'the undertakings'), which are covered by Article 80 of the Treaty, applied on 26 June 1978, pursuant to Article 65 (2) of the ECSC Treaty, for authorization by the Commission of an agreement they had entered into for the purpose of coordinating sales in other member and non-member countries of the concrete reinforcing bars and merchant bars they produce, and for the purpose of carrying out administrative and statistical work on their behalf.

By means of this agreement the undertakings are proposing to remedy the difficulties currently facing the Community and world steel markets, and more particularly the market in such mass-produced items as ordinary steel concrete reinforcing bars and merchant bars. The main problem is that a surplus of steel products has in recent years given rise to particularly fierce competition and caused a considerable drop in prices and earnings, which has in turn led the Commission to fix minimum prices [1] under Article 61 and to prepare forward programmes under Article 46 of the Treaty in respect of the two products most immediately concerned, which constitute the entire production of the majority of the undertakings.

The undertakings have submitted that they are finding it difficult to observe these measures and at the same time maintain their traditional patterns of trade with purchasers in other Community countries. The primary aim of the agreement submitted for authorization is to make it easier for the undertakings to maintain these trade flows while continuing to comply with the Commission's decisions and recommendations.

The main terms of the said agreement are described below.

An office for coordinating and allocating orders (Ufficio Coordinamento e Ripartizione Ordini), UCRO for short, is set up in Milan. Its services are available on request to all Italian undertakings covered by Article 80 of the Treaty that produce concrete reinforcing bars and merchant bars.

The office's function will be to carry out on its members' behalf all the administrative and statistical work necessitated by the anti-crises measures enacted by the Commission and, where necessary, to seek out new sales outlets in other member and non-member countries and fairly distribute any orders placed as a result therefrom; UCRO's activities would not, however, interfere with the business activities of any of its members.

UCRO will under no circumstances be authorized to communicate to any member any information relating to the business of another member.

A file will be kept on each member. The following records for each commercial transaction will be kept in the file:

— a copy of the order or a *pro forma* slip for orders placed over the telephone,

— a copy of the acknowledgment of the order,

— a copy of the certificate of conformity,

— a copy of the dispatch note,

— a copy of the invoice,

— a copy of the 'benestare bancario'.

— a copy of the banker's certificate confirming that the transaction has been completed.

The acknowledgment of the order will be countersigned by UCRO and sent to the customer. The certificate of conformity introduced by the Commission

[1] OJ No L 114, 5. 5. 1977, p. 1; OJ No L 352, 31. 12. 1977, p. 1.

Decision No 3003/77/ECSC (1) will be issued on UCRO stationery. It will be drafted on UCRO's responsibility and released only if the conditions of sale conform to the Commission's decisions.

The other documents in the file will be drawn up on the responsibility of the member itself and the Italian banking authorities.

Orders placed with UCRO will be distributed among the members according to the products they have available for sale.

The agreement is valid only as long as the Commission's anti-crisis measures remain in force.

II

The agreement setting up UCRO restricts normal competition between the undertakings in that they :

— join forces to seek out new purchasers in member and non-member countries,

— agree to distribute among themselves orders received via UCRO,

— set up a centralized system to deal with their administrative and statistical work.

The agreement is accordingly caught by the general prohibition laid down in Article 65 (1) of the Treaty.

However, Article 65 (2) of the Treaty provides that specialization agreements, joint-buying or joint-selling agreements and agreements that are strictly analogous in nature and effect may be authorized if the Commission finds that they meet the requirements of that Article.

The agreement in question sets up a body that is strictly analogous to a joint-selling body for the undertakings ; it provides for joint exploration of new marketing outlets and centralization for administrative purposes of the commercial operations relating to the sale of the relevant products.

The agreement therefore qualifies for authorization under Article 65 (2) of the Treaty if it makes for a substantial improvement in production or distribution and is essential in order to achieve these results and is not more restrictive than is necessary for that purpose. Furthermore, the agreement must not be liable to give the undertakings 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.

From its perusal of the agreement submitted to it the Commission has ascertained, with regard to the substantial improvement in production or distribution, that :

— by far the majority of the undertakings are small, integrated works reprocessing ferrous scrap into molten steel, billets and rolled steel ; they are usually small in terms of both investment and workforce. Thus they produce only one or two different steel products, such as concrete reinforcing bars, merchant bars or wire rod in a small range of sizes and qualities,

— the introduction by the Commission of minimum prices and target tonnages for deliveries by undertakings necessarily has an influence on the undertakings' position outside the Italian market and requires them to make an additional effort to maintain their traditional trade flows with purchasers in other Community countries.

The agreement should give the parties the opportunity, in centralizing the administrative and statistical work required by the Commission's measures and in seeking out new sales outlets in other member and non-member countries, to overcome by joining forces the difficulties resulting from the present state of the Community steel market and to compete more effectively with major producers as well as making better use of their production capacities.

There is therefore good reason to conclude that the UCRO agreement may make for a substantial improvement in the production and distribution of the relevant products.

The expected results will be derived primarily from the centralization of administrative and statistical work and from the joint exploration of new sales outlets for the firms' output. Apart from this the undertakings do not surrender to UCRO any freedom of action, and the office's activities do not interfere with any of the members' own business activities.

The agreement is accordingly essential in order to achieve the result of improved production and distribution, and it is no more restrictive than is necessary for that purpose.

The agreement accordingly satisfies the tests of Article 65 (2) (a) and (b) of the Treaty.

(1) OJ No L 352, 31. 12. 1977, p. 11.

The following facts should be taken into consideration for the purposes of assessing whether the agreement submitted for authorization satisfies the tests of Article 65 (2) (c) of the Treaty :

In 1977 Italy produced 52 % of total Community production of concrete reinforcing bars and 25 % of Community production of merchant bars.

The Italian producers of concrete reinforcing bars and merchant bars sell approximately 80 % of their output on the Italian market. However, some of them rely heavily on their sales to other Community and non-Community countries.

A total of 4 176 213 tonnes of concrete reinforcing bars and 2 182 327 tonnes of merchant bars were sold by Italian undertakings in 1977. In the case of concrete reinforcing bars, 82 % of the total was sold in Italy, 4·6 % in Germany, 3·9 % in France, 1 % in Belgium and 8·6 % in non-member countries. For merchant bars, the figures were as follows : 80 % sold in Italy, 6·1 % in Germany, 6·4 % in France and 6 % in non-member countries. In the same year, smaller quantities of both products were also sold in Community countries other than those mentioned above.

If the corresponding figures for 1976 [1] are compared with those for all the steel-producing undertakings in the Community, it emerges that Italian steelworks accounted for the following proportion of sales in the following countries : for concrete reinforcing bars, 14 % of total sales in Germany, 17·6 % in France and 8·2 % in Belgium ; for merchant bars, 7·6 % of total sales in Germany, 11·9 % in France and 4·1 % in Belgium.

The agreement was conceived principally to help the undertakings to keep up their sales, both in Community countries, while observing the minimum prices, and in non-member countries, while not interfering with their sales on the Italian market, where, in view of the structure of the market — which has a large number of suppliers, — it appears unlikely that the agreement will have a restrictive effect. The Italian market may therefore be left out of this assessment of the agreement.

Concrete reinforcing bars and merchant bars are in surplus supply in the Community and are the object of particularly fierce competition between large and small undertakings in the countries concerned and in non-member countries.

In these market conditions and in view of the Commission's rules on prices and quantities, the undertakings will not be in a position to determine the prices, or to control or restrict the production or marketing of a substantial part of steel products within the common market, or to shield themselves against effective competition from other undertakings within the common market.

The agreement accordingly satisfies the tests of Article 65 (2) (c).

Care must be taken to ensure that all the steps taken by the undertakings through UCRO on the basis of the agreement will respect the terms on which authorization is granted by this Decision and the rules laid down in the Treaty. Authorization should therefore be made subject to the following conditions :

— UCRO and its member undertakings shall notify the Commission immediately of any proposed additions or other changes to the agreement. Effect must not be given to any addition or other change until approved by the Commission or, where necessary, until authorized by the Commission under Article 65 (2) of the Treaty.

— The member undertakings shall refrain from jointly coordinating their production and sales activities except under the agreement and in respect of the products here considered.

The agreement submitted to the Commission is valid only as long as the Commission's anti-crisis measures remain in force,

HAS ADOPTED THIS DECISION :

Article 1

The agreement between the Italian steel undertakings listed in the Annex, the purpose of which is to coordinate sales of concrete reinforcing bars and merchant bars in Community countries other than Italy and in non-member countries, is hereby authorized.

Article 2

Authorization is given subject to the following conditions :

— UCRO and its member undertakings shall notify the Commission immediately of any proposed additions or other changes to the agreement. Effect shall not be given to any addition or other change until approved by the Commission or, where necessary, until authorized by the Commission under Article 65 (2) of the Treaty.

[1] 1977 foreign trade statistics are not yet available.

— The member undertakings shall refrain from jointly coordinating their production and sales activities except under the agreement and in respect of the products here considered.

Article 3

This Decision shall enter into force on the day of its notification to the undertakings concerned.

Article 4

This Decision is addressed to the undertakings listed in the Annex.

Done at Brussels, 28 July 1978.

For the Commission

Raymond VOUEL

Member of the Commission

ANNEX

Members of UCRO

Acciaierie ferriere alpine S.p.A. — AFB, Borgane di Susa (Torino)
Ferriera Alto Milanese S.p.A., Caronno Pertusella (Varese)
Acciaieria e ferriera vicentine Beltrame S.p.A, Vicenza
Breda siderurgica S.p.A, Milano
Ferriera bulloneria italiana srl, Udine
Ferriera Castellana S.p.A, Vallà di Riese Pio X (Treviso)
Acciaierie ferriere P.M. Ceretti S.p.A, Villadossola (Novara)
Compagnia generale metalli — Co. Ge. Me. — S.p.A, Casalmaggiore (Cremona)
Acciaierie ferriere trafilerie Cravetto S.p.A, Torino
Ferriere di Domegliara S.p.A, Domegliara Dolce (Verona)
Acciaierie e ferriere Fenotti & Comini S.p.A, Nave (Brescia)
Acciaierie e laminatoi Feralpi S.p.A, Lonato (Brescia)
Acciaierie Ferrero S.p.A, Torino
Ferrosider S.p.A, Ospitaletto B. (Brescia)
Officine e fonderie Galtarossa S.p.A, Milano
Italsider S.p.A, Genova
Acciaierie e ferriere Lucchini S.p.A, Brescia
Acciaierie di Modena S.p.A, Modena
Ferriera Olifer srl, Odolo (Brescia)
Acciaieria e ferriera ORI Martin S.p.A, Brescia
Ferriera padana sas, Padova
Acciaierie di Piombino S.p.A (Livorno)
Acciaierie e ferriera Predalva srl, Piancamuno (Brescia)
Profilatinave S.p.A, Nave (Brescia)
SISMA, Società industrie siderurgiche meccaniche e affini S.p.A, Milano
Acciaierie e ferriere Stefana Antonio S.p.A, Brescia
Acciaierie e ferriere Stefana Fratelli fu Girolamo S.p.A, Nave (Brescia)
Acciaierie e ferriere del Tanaro S.p.A, Milano
Terni, Società per l'industria e l'elettricità S.p.A, Terni
Acciaierie e ferriera Valsabbia srl, Odolo (Brescia)
Ferriere Vattolo Ciessebi S.p.A, Buia (Udine)