COMMISSION

COMMISSION DECISION

of 20 July 1978

authorizing specialization agreements concerning stainless steel flats, squares, round bars and sections between Creusot-Loire SA and Ugine Aciers SA

(Only the French text is authentic)

(78/731/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 joint application made by Creusot-Loire SA and Ugine Aciers SA on 26 September 1977,

Whereas:

I

On 26 September 1977 the following steel-producing companies covered by Article 80 of the Treaty:

— Creusot-Loire, a limited liability company with a capital of FF 368 380 300, based at 42 rue d'Anjou, Paris 8, hereinafter called 'CL', and

— Ugine Aciers, a limited liability company with a capital of FF 900 000 000, based at 10 rue du Général Foy, Paris 8, hereinafter called 'UA',

applied to the Commission, pursuant to Article 65 (2) of the ECSC Treaty, for authorization of agreements contained in a memorandum of agreement, specifying the specialization arrangements and the type of agreements necessary to achieve the desired aims.

The contracting companies give the following financial and industrial reasons for these agreements:

— As far as market-economy countries are concerned, the market in these products, as in all stainless steel products, is now world wide.

— These products, which are relatively expensive and whose basic dimensions and grades are broadly standardized, can be transported over greater distances than other special steel products.

— In order to remain competitive and to reach the output levels they need if they are to face up to expanding competition, the more important manufacturers of long steel products are obliged to set up larger production units, either by expanding their own production capacity or by amalgamating with others.

The memorandum of agreement for which authorization is requested contains the following main provisions:

(a) UA will cease manufacture of hot-rolled stainless steel flats and squares.

(b) UA undertakes not to manufacture stainless steel angles.

(c) CL will cease manufacture of stainless steel round bars.

(d) UA will have the exclusive right to sell round bars ex-works.

(e) CL will have the exclusive rights to sell flats, squares and angles ex-works.

(f) Each of these companies will continue to sell ex-stock all the products covered by the agreement which currently form part of its ex-stock range. Each company undertakes to give preference to the other company's products. Either firm may add any of the products covered by the agreement which are not currently in its ex-stock range to the ranges sold from existing depots or new depots, provided it continues to give preference to the other company's products.

(g) A Liaison Committee with a maximum of six members will be set up to implement the agreement, to handle the exchange of information between the

companies about the products covered by the agreement, and to determine supply and ex-stock sales scheduled for the relevant products.

(h) Should the agreement, or a key clause of it, be found in practice to be seriously detrimental to the interests of either party as a result of circumstances which were unforeseen at the time when the agreement was signed or which are beyond the control of the companies concerned, the agreement will, to restore its impartiality, be revised or amended by agreement between the parties or, failing such agreements, in accordance with the conciliation clause contained in the agreement.

(i) The contracting parties undertake that they will not, without the other party's consent, acquire, either directly or indirectly, a minority or controlling interest in any other company where to do so might be contrary to the letter or spirit of the agreement; this will not affect the companies' freedom of action in their own field. However, the contracting parties may not oppose the acquisition of a minority or controlling interest in a firm whose activities include the manufacture of products covered by the agreement. In such a case, the two parties will agree on one of the following alternatives:

— the acquiring party will, on terms which must so be mutually agreed, assign to the other party his right to manufacture and sell the products which this agreement reserves for the other party,

— the acquiring party will cease manufacturing all products covered by the agreement which are reserved for the other party, and will receive financial compensation from the latter.

The agreement is entered into for a term of 20 years; it will be renewed for successive 10 year terms unless terminated by notice in writing at least two years before the expiry of any such term.

II

The agreements submitted for authorization restrict normal competition between the companies concerned, since they:

— abandon manufacture of particular products in favour of each other,

— grant each other preference when supplying their depots,

— exchange information on their manufacturing and sales policies regarding the products covered by the agreement,

— undertake to refrain from directly or indirectly acquiring firms which produce the relevant products.

The agreements are therefore caught by the prohibition in Article 65 (1) of the Treaty.

III

However, Article 65 (2) empowers the Commission to authorize specialization agreements or joint-buying or joint-selling agreements, and agreements which are strictly analogous in nature and effect, if it finds that they satisfy the requirements specified.

The agreements between the companies concerned, relating to reciprocal undertakings not to manufacture certain products and providing that their depot stocks should reflect a preference for each other's products, are specialization or strictly analogous agreements.

These agreements may therefore be authorized under Article 65 (2) of the Treaty, but only if they make for a substantial improvement in production or distribution and are essential in order to achieve these results and are not more restrictive than is necessary for that purpose; nor must the agreements be liable to give the undertakings concerned 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.

IV

On the question of whether the agreements make for a substantial improvement in the production or distribution of the goods concerned, the following points may be made:

As far as UA is concerned, the benefits of the proposed specialization will be twofold: first, the fact that flats and squares will cease to be produced in the finishing mills and will be replaced by an equivalent quantity of bars will bring about economies of scale; and second, the concentration of operations in the wire mills on the larger diameters used in manufacturing finished products will involve a beneficial internal rationalization between the rolling mills at the Ugine works and the more modern mills at the Fos works.

In steel finishing and cold processing operations, economies of scale will be achieved and product ranges will be rationalized.

UA has estimated that these improvements in manufacturing and finishing — eliminating the work of setting up rolls in its mills, extending production runs and rationalizing manufacturing ranges — will result in a saving to the company of approximately five million French francs.

CL's productivity savings have been estimated at four million French francs. This figure relates solely to the effects of the agreements on the direct cost of manufacturing the products. No allowance has been made for savings on the direct cost of steel-making or on overheads, or for savings resulting from an increase in profit margins due to an expansion of tonnage. The savings which have been estimated relate primarily to setting-up operations and volume increase both in the rolling mills and in the finishing mills.

Each company has the exclusive right to sell its products direct ex-works; in the case of ex-stock sales, which account for approximately half the output, each contracting party will continue to sell ex-stock all the products covered by the agreement which currently form part of its ex-stock range and is at liberty to add any which are not currently in its range, provided it grants preference to the other company's products; this makes it possible to maintain long-standing business links with product users and obviates the need for customers to split their orders along the lines of the future specialization.

The proposed agreement provides for an overall balance, such that, initially, neither contracting party can expect any appreciable increase or decrease in production; but in the long run, the benefits accruing from specialization should give each company a stronger competitive base, as they can concentrate their efforts and build up their knowhow more quickly. The undertaking by both companies to refrain from acquiring, directly or indirectly, a minority or controlling interest in any firm which manufactures products covered by the agreement should safeguard this overall balance and the anticipated benefits of specialization; this clause is therefore an essential element of the specialization agreement.

The agreements submitted for authorization may accordingly make for a substantial improvement in production and distribution.

These agreements, relating to product specialization, reciprocal supply of sales depots and the elimination of competition in the products covered by the agreement, are essential in order to achieve an improvement in production and distribution and are not more restrictive than is necessary for that purpose. Acting individually, the companies concerned could not attain this improvement, or at least the same degree of improvement.

The undertaking entered into by the companies to exchange information on the products in question and to agree jointly on supply and sales schedules for their depots is unobjectionable in the context of specialization agreements, since each company remains free to take its own business decisions regardless of what the other company thinks.

The agreements therefore satisfy the tests of Article 65 (2) (a) and (b).

V

To ascertain whether the agreements for which authorization is requested satisfy the tests of Article 65 (2) (c) of the Treaty, the following points must be considered:

The products covered by the agreements (rounds, squares, flats and angles) come under the category of merchant bars, along with tees, channels, hexagons and octagons. They are manufactured in the same merchant bar mills, so that they come under the same statistical heading, without being itemized by sections.

In 1976 the 10 largest companies producing stainless steel merchant bars in the Community accounted for around 80 % of Community output, as shown in the following table:

Producer	Country	Tonnage	% in EEC
1	I	12 784	13·15
Ugine Aciers	F	12 118	12·46
3	D	11 413	11·74
4	D	9 236	9·50
5	F	7 361	7·57
6	I	7 266	7·47
7	D	6 295	6·48
Creusot-Loire	F	6 052	6·23
9	UK	3 724	3·83
10	UK	3 214	3·31
Total	—	79 463	81·74
25 others	—	17 757	18·26
Community	—	97 220	100

The proposed specialization provides for an overall balance such that the production shares of the parties, initially, will not change to any significant extent.

The companies which have signed the agreement sell mainly in France. They compete with five other French companies, other Community companies, and companies in non-member countries.

The companies concerned sell nearly 15 % of their output in other Community countries. The volume of Community inter-State trade in 1975 was 30 869 tonnes, of which France exported 13 157 tonnes and imported 3 592 tonnes.

In view of the close inter-penetration of the domestic markets of the European Community, the Community market as a whole is to be regarded as the relevant market.

On this market the companies concerned are up against competition, not only from more than 35 European producers, some of which are as large or even larger than they are, but also from producers in non-member countries, who supplied the Community market with 33 689 tonnes of stainless steel merchant bars in 1975, i.e. 10 % more than the volume of intra-Community supplies.

Furthermore, while competition between UA and CL in particular products is restricted by the specialization agreements, these products represent only a very small proportion of these companies' total output of products covered by the Treaty, so that some degree of competition will continue to exist between them in the future, particularly as their respective marketing functions will remain separate.

The Commission will see that the companies do not coordinate their distribution business except as required by the specialization agreements.

This being so, the agreements are not liable to give the undertakings concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the merchant bars in question within the common market, or to shield them against effective competition from other undertakings within the common market.

The agreements therefore satisfy the tests of Article 65 (2) (c).

VI

It is necessary to ensure that the business independence of the companies concerned is not compromised. The following conditions should therefore be attached to the authorization:

— there must be no interlocking directorates between steel-producing or marketing companies belonging to one contracting party and any similar company belonging to the other party; however, the Commission should be empowered to authorize exceptions to this prohibition, upon receipt of a reasoned request and where circumstances so warrant,

— the companies must refrain from coordinating their production and sales except as required by the specialization agreements.

The Commission must further ensure that all measures taken by the companies under the agreements notified to it are in conformity with the authorization given by this Decision and with the provisions of the Treaty.

To this end the companies must be required to inform the Commission forthwith of all changes and additions to their agreements. It should be provided that such changes and additions to the agreements may not be put into effect until the Commission has declared them to be admissible or has authorized them under Article 65 (2) of the Treaty.

In view of the rationalization measures introduced by the companies concerned and the results expected from them, authorization should be granted for 10 years in the first instance.

Subject to the conditions attached, the agreements for which authorization has been requested are in conformity with Article 65 (2) and the other provisions of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION:

Article 1

The agreements between the following steel undertakings:

— Creusot-Loire SA, 42 rue d'Anjou, Paris 8, and

— Ugine Aciers SA, 10 rue du Général Foy, Paris 8,

relating to specialization agreements, contained in a memorandum of agreement dated 26 September 1977, are hereby authorized.

Article 2

The following conditions are attached to the authorization:

1. Members of mangagement bodies of the steel-producing and trading companies belonging to one contracting party may not at the same time exercise analogous functions in similar companies or sales organizations belonging to the other party.

2. Where special circumstances so warrant, the Commission may, on receipt of a reasoned request, authorize derogations from paragraph 1.

3. The companies shall refrain from coordinating their production and sales except as required by the specialization agreements.

Article 3

1. The companies shall inform the Commission forthwith of any changes and additions made to the agreements.

2. Effect shall not be given to changes and additions as referred to in paragraph 1 until the Commission has declared that they are in conformity with the authorization given by this Decision, or has authorized them under Article 65 (2).

Article 4

This Decision shall enter into force upon its notification and shall expire on 31 May 1987.

Article 5

This Decision is addressed to the companies specified in Article 1.

Done at Brussels, 20 July 1978.

For the Commission

Raymond VOUEL

Member of the Commission