COMMISSION DECISION

of 27 March 1979

authorizing a specialization agreement concerning rolled steel products between Irish Steel Holdings Ltd and Société métallurgique et navale Dunkerque-Normandie SA

(Only the English and French texts are authentic)

(79/412/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 undertakings concerned — Irish Steel Holdings Ltd and Société métallurgique et navale Dunkerque-Normandie SA — on 5 and 13 December 1978 respectively,

Whereas :

I

1. The following steel producing undertakings covered by Article 80 of the Treaty:

— Irish Steel Holdings Ltd, Haulbowline, Cobh, County Cork, Ireland (hereinafter called 'ISH'), with an issued share capital of £ 5 785 005, and

— Société métallurgique et navale Dunkerque-Normandie SA, 16, boulevard Malesherbes, F-75008 Paris (hereinafter called 'SMNDN'), with a share capital of FF 196 620 600,

have applied to the Commission, pursuant to Article 65 (2) of the Treaty, for authorization of an agreement which they signed on 13 December 1978.

2. The agreement in question, which has been made subject to the prior condition that it receive the Commission's authorization under Article 65, contains the following principal elements:

(a) ISH will exclude from the product range of a new rolling mill, intended to begin operation at Haulbowline Works from about mid-1980, certain types of light-rolled products, namely certain specified sizes of flats and angles (hereinafter called 'specified light sections').

(b) SMNDN will, from the date of commencement of operation of ISH's new rolling mill, gradually transfer to ISH's Haulbowline Works all of its orders for medium sections within the current range of its 450 mm rolling mill at its Mondeville Works, amounting to about 30 000 tonnes a year. SMNDN undertakes to sell, subject to market conditions, all of these medium sections on the French market on behalf of ISH, for which service SMNDN will receive a commission of 2·5% from ISH.

(c) SMNDN's 450 mm rolling mill will thus lose an adequate load and SMNDN will proceed to close that mill.

(d) At the same time, however, the level of steel production at SMNDN will be broadly maintained by increasing the output of other rolling mills at Mondeville Works by 26 500 tonnes a year of light sections and wire rods, including the specified light sections to be excluded from the product range of the new rolling mill at Haulbowline Works. ISH will sell the 26 500 tonnes, again subject to market conditions, on the Irish and UK markets on SMNDN's behalf, receiving in return a 2·5% commission from SMNDN.

(e) SMNDN will use its best endeavours to secure for ISH orders in France for a further 30 000 tonnes a year in sizes outside the current range of the Mondeville 450 mm mill and of the other Mondeville rolling mills. For its part ISH will investigate within its areas of market influence ways by which sales of SMNDN products can be brought closer to the sales of ISH products in France expected to be secured by SMNDN.

(f) Prior to the initial operation of the new rolling mill at Haulbowline and the closure of the 450 mm rolling mill at Mondeville, ISH and SMNDN will assist each other in developing sales of non-conflicting products within their respective areas of market influence.

(g) The agreement will come into operation as soon as authorized under Article 65 of the Treaty, will remain in force for three years as from the commencement of operation of the new rolling mill

at Haulbowline and will continue indefinitely thereafter unless terminated by six months' advance notice given by either party.

II

.3. The agreement submitted for authorization restricts normal competition between the undertakings concerned since they will:

(i) renounce or abandon the production of particular products in favour of each other;

(ii) nominate each other as main distributor for these and other products in their respective areas of market influence;

(iii) assist each other to develop sales of the relevant products in their respective areas of market influence.

The agreement is therefore caught by the prohibition in Article 65 (1) of the Treaty.

III

4. 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.

5. The agreement concerned, relating to reciprocal undertakings by the parties not to make certain products, to appoint each other as main agents in certain areas and to promote the sales of each other's products in those markets of which they have a particularly good knowledge, is a specialization agreement. The agreement may therefore be authorized under Article 65 (2) of the Treaty, provided that it makes for a substantial improvement in production or distribution and that it is essential to achieve these results and is not more restrictive than is necessary for that purpose; in addition, the agreement must not 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

6. On the question whether the agreement will make for a substantial improvement in the production or distribution of the products concerned, it is necessary to consider:

(a) the background to the agreement, which is related to the structural crisis in the steel industry; and

(b) the benefits expected to arise from the proposed product specialization.

(a) **Background (structural crisis)**

7. ISH is the only steel producing undertaking in Ireland and is faced with the need to modernize its works if it is to remain competitive in the steel market. In order to be viable a modern mill for bars and sections including the medium sizes needs to have a capacity of at least 250 000 tonnes a year combined with a reasonably high and continuous rate of operation. In 1977, ISH notified to the Commission an investment project for replacing its old steelmaking and rolling facilities with modern plant, including a new combined bar and section mill, providing an increase in production potential for bars and sections from the existing 90 000 tonnes to a level of about 300 000 tonnes. In a reasoned opinion sent to ISH on 23 December 1977, under Article 54 of the Treaty, the Commission drew attention to its view that section mill capacities in the Community are likely to exceed demand in the medium term by a large margin and invited ISH to reconsider the scheme.

8. Subsequently a Working Party was set up comprising representatives of the Irish Government, ISH and the Commission, in which it was agreed that the project could be rendered more consistent with Community steel policy if the increase in capacity for sections proposed under the project could be reduced through cooperation with another Community producer. The agreement between ISH and SMNDN, in that it involves the closure of the 450 mm mill at Mondeville Works, with a capacity of about 60 000 tonnes, will have the effect of reducing the net increase in Community section mill capacity resulting from the implementation of the ISH investment scheme. In a further reasoned opinion dated 10 January 1979, under Article 54, the Commission has indicated to ISH that, having regard to the agreement between ISH and SMNDN (subject to its authorization under Article 65) and to a certain limitation in the increase in ISH finished product output between 1981 and 1985, the Commission considers the ISH project to be consistent with the Community's general objectives for the steel industry.

(b) **Benefits from rationalization**

9. Both ISH and SMNDN will obtain economies of scale as a result of the product specialization provided for under the agreement. In ISH's case, the elimination of the specified light sections from the product range of the new rolling mill, and their replacement by 30 000 tonnes a year of medium sections and up to 30 000 tonnes of other products within its reduced range, will enable the mill to have longer production runs for each roll change. In SMNDN's case its light bar and section mill (train à petits fers) and its wire rod mill will be more fully loaded by the 26 500 tonnes of light sections and wire rods and the further quantities of suitable products secured for the Mondeville mills by ISH. The SMNDN rolling mills, therefore, will likewise benefit from production rationalization in securing the cost economies which flow from longer production runs.

10. The efforts which each party will make in its own geographical area to secure business for its partner will be necessary to ensure the required additional loading of the mills with the products concerned. Each partner will need to apply its specialized market knowledge to secure this objective. Similarly the provision in the agreement for preliminary promotion by the partners of each other's interests in their respective areas of market influence is necessary in order to prepare the way in the market for the situation which will arise when the new ISH mill begins to roll and then builds up production leading to the closure of the 450 mm mill at SMNDN.

11. It is not yet possible to quantify precisely the cost benefits which will accrue to the undertakings concerned as a result of the product specialization proposed, but they will be considerable. In addition there should be some improvement in capacity utilization in Community section mills generally as a result of the closure of the 450 mm mill, giving certain cost savings.

12. It appears, therefore, that the agreement may make for 'substantial improvement' in production and distribution of the products concerned. The agreement is also essential in order to achieve that result and is not more restrictive than is necessary for that purpose. If they acted on their own and without the degree of cooperation specified, the undertakings could not achieve this improvement, or at least the same degree of improvement.

13. The agreement therefore satisfies the tests of Article 65 (2) (a) and (b).

V

14. On the question whether the agreement meets the tests of Article 65 (2) (c) the relevant points are set out in paragraphs 15 to 20 below.

15. The production by ISH and SMNDN of the relevant products in 1977 is shown in the following table:

(tonnes)

Product	ISH	SMNDN
Bars and sections	28 467 (1)	81 860
Reinforcing bars	—	151 023 (2)
Wire rods	—	354 870 (2)

(1) ISH production in 1977 was seriously affected by an extended strike. In the previous two years production had been about 50 000 tonnes a year.

(2) SMNDN production figures include 50% of the output of Société des aciéries de Montereau (Montereau-Fault-Yonne), which is owned as to 50% by SMNDN and as to 50% by another steel producer.

16. ISH at present exports a few thousand tonnes to other Community countries. When its new mill is in operation, however, it will expect to sell more than half of its output in other Community countries, including a proportion (under the agreement) in France. In the Irish market, ISH, although the sole producer in Ireland, will not be in any specially privileged position regarding the relevant products. Imports into Ireland of products in ISH's existing range of bars and sections have consistently exceeded ISH's output of those products in recent years, although that output has been well below the capacity of the mill. The agreement will exclude competition from SMNDN for certain sizes, but ISH will still have to face competition from imports from all other sources over the whole range of its production.

17. SMNDN at present sells about half of its output of the relevant products in France, about 10% to other Community countries and the remainder to third countries. As a result of the agreement, the proportion which it sells to other Community countries will rise, i.e. allowing for its additional sales in Ireland and the United Kingdom. In France SMNDN is responsible for about 10% of French production of the relevant products and there is strong competition from imports.

18. Having regard to the situation described in paragraphs 16 and 17 above, and to the fact that there is considerable interpenetration of all the national markets of the Community in the relevant products, it is appropriate to regard the Community market taken as a whole as the relevant market.

19. So far as bars and sections are concerned, SMNDN represents a 0·5% share and ISH a 0·2% share of Community production. The ISH share may rise to say 1·5% of Community production when its new mill is in full operation. So far as wire rods and reinforcing bars are concerned, SMNDN represents 3·5 and 2% respectively of Community production. The partners are faced with the competition of more than 100 other Community producers of the light bars and sections and of reinforcing bars, some 30 other producers of medium sections and over 50 other producers of wire rods, including several much larger makers of the relevant products.

20. In these circumstances, the agreement is not liable to give the undertakings concerned the power to determine prices, or to control or restrict the production or marketing of a substantial part of the products concerned within the common market, or to shield them against effective competition from other undertakings within the common market. The agreement therefore satisfies the tests of Article 65 (2) (c).

VI

21. The Commission must ensure that all measures taken by the undertakings concerned under the agreement examined here are in conformity with the authorization given by this Decision and with the terms of the Treaty. To this end the undertakings concerned must be required to inform the Commission forthwith of all changes and additions to the agreement. It should be provided that such changes and additions may not be put into effect until the Commission has declared them to be admissible within the framework of this Decision or has authorized them under Article 65 (2) of the Treaty.

22. In view of the expected time span (1981 to 1985) in the full build-up of production on the ISH new mill and the need to allow a further period to obtain the full benefits from the rationalization, it is appropriate to grant an authorization for 10 years in the first instance.

23. The agreement for which authorization has been requested is in conformity with Article 65 (2) of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION:

Article 1

The agreement made on 13 December 1978 between Irish Steel Holdings Ltd, Haulbowline, Cobh, County Cork, Ireland, and Société métallurgique et navale Dunkerque-Normandie SA, 16, boulevard Malesherbes, F-75008 Paris, concerning rolled steel products, is hereby authorized.

Article 2

1. The undertakings concerned shall inform the Commission forthwith of any changes and additions made to the agreement.

2. Effect shall not be given to the changes 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) of the ECSC Treaty.

Article 3

This Decision shall enter into force upon its notification and shall expire on 31 March 1989.

Article 4

This Decision is addressed to the undertakings referred to in Article 1.

Done at Brussels, 27 March 1979.

For the Commission

Raymond VOUEL

Member of the Commission