COMMISSION DECISION

of 12 January 1979

authorizing an agreement strictly analogous to a specialization agreement between Cockerill SA and Klöckner-Werke AG in respect of wire rod and stainless steel sheet and plate

(Only the French and German texts are authentic)

(79/87/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 made on 8 June 1978 by SA Cockerill-Ougrée-Providence et Espérance-Longdoz,

Whereas :

I

1. SA Cockerill-Ougrée-Providence et Espérance-Longdoz (Cockerill), Seraing, Belgium, with a capital of Bfrs 7 756 850 000, has requested authorization under Article 65 (2) of the ECSC Treaty for an agreement made on 28 March 1978 with Klöckner-Werke AG (Klöckner), Duisburg, Germany, a firm with a capital of DM 447 000 000 ;

2. The main provisions of the agreement, which is made subject to Commission authorization, are as follows :

(a) Cockerill will transfer to Klöckner a 10 % holding in a new company to be set up with its registered office at Seraing under the provisional name of 'Train à Fil du Val' (TFV) to operate a four-strand Morgan mill with an annual capacity of approximately one million tonnes of wire rod. TFV will have a capital of Bfrs 1 920 million. In return for this transfer, Klöckner will assign to Cockerill 118 565 bearer shares in Klöckner of a par value of DM 100. Cockerill will grant Klöckner an option allowing it to increase its holding in TFV to 25 % plus one share provided certain conditions are met.

TFV's operations will be confined to hire-rolling work for its shareholders processing billets supplied by them into wire rod at prices sufficient to cover its costs. Klöckner will have access to processing capacity in proportion to its holding. TFV's fixed charges will be paid by each shareholder in proportion to his holding irrespective of the quantities processed for him. Variable costs will be paid in proportion to the tonnage produced for each shareholder. Klöckner will be entitled to two seats on TFV's board of directors.

(b) Cockerill will transfer to Klöckner a 20 % holding plus one share in its subsidiary ALZ NV, Genk, a stainless steel producer, in return for 168 597 Klöckner shares of a par value of DM 100.

Cockerill will grant Klöckner an option allowing it to increase its holding in ALZ to 25 % plus one share provided certain conditions are met.

Klöckner will be entitled to two seats on ALZ's board.

ALZ undertakes to contract out a tonnage of its stainless steel output corresponding to Klöckner's shareholding in ALZ for hot rolling at Klöckner's Bremen works. The charge for this rolling will be fixed separately for each order, it being understood that the prices free delivered ALZ will be the same for both Cockerill and Klöckner.

If Klöckner should have insufficient hot rolling capacity available, the Cockerill group undertakes to offer Klöckner the use of hot rolling capacity proportionate to the size of Klöckner's holding in TFV.

Cockerill and Klöckner agree to concentrate on ALZ all their production of stainless steel sheet and plate, with the exception of the hot rolling operations in Bremen.

Both firms further undertake to inform ALZ of any scheme to expand output of these products either directly or indirectly. Should such a scheme be beyond ALZ's capacities, the parties agree to offer each other the option of an equal share in its execution.

3. Cockerill has notified the Commission of a wire rod agreement with the ESTEL group that is similar to its agreement with Klöckner.

II

4. The agreement examined here restricts the normal play of competition between the parties in the following respects :

— Klöckner's shareholdings in TFV and in ALZ, together with its right to proportionate shares in these firms' output and to supply proportionate shares of input products, will result in practice in the renunciation by Klöckner of investment in the branches concerned and will, in the case of the lines produced jointly, lead to Klöckner's production costs becoming standardized with those of Cockerill and the other shareholders in TFV.

— The joint undertaking by Cockerill and Klöckner to concentrate their production of stainless steel sheet and plate on ALZ restricts Klöckner's freedom to make that product itself.

— The presence of Klöckner's representatives on the boards of TFV and ALZ alongside representatives from Cockerill and other shareholders entails a risk that the firms involved will concert their investment and marketing policies ;

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

6. Under Article 65 (2) specialization agreements and agreements which are strictly analogous in nature and effect thereto may nonetheless be authorized if the Commission finds that they satisfy certain tests ;

7. The agreement in question will allow Klöckner to use a very modern wire rod mill offering a full product range, obviating any need for new investment to supplement its present wire rod capacity. Consequently this agreement may be considered strictly analogous in nature and effect to a specialization agreement. The agreement further provides for ALZ to specialize in stainless steel sheet and plate production, apart from the hot rolling operations in Bremen. This agreement may therefore be authorized under Article 65 (2) if it makes for a substantial improvement in the production or distribution of the relevant products, is essential in order to achieve these results, is not more restrictive than is necessary for that purpose, and is 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 products in question within the common market, or to shield them against effective competition from other undertakings within the common market.

III

8. With regard to *wire rod,* Cockerill has invested large sums of money in the TFV project but has had to suspend this investment temporarily on account of the poor economic climate ; Cockerill considers that the TFV project can only be completed if other firms are associated with it by sharing in the financing costs and by ensuring outlets for part of the production.

9. Klöckner at present has an outdated mill which produced approximately 220 000 tonnes of wire rod in 1977 ; this mill is not equipped to produce the high-quality wire rod required by the Klöckner Group's customers, nor to offer a complete product range on the market.

10. Access to TFV's more modern works will allow Klöckner to obtain better quality wire rod without having to take the commercial risk of investment to enlarge and modernize its own plant. Furthermore, the resultant fuller utilization of TFV's better equipped and more economical mill will increase its productivity.

11. This agreement may accordingly make for a substantial improvement in the production of wire rod.

12. With regard to *stainless steel sheet and plate,* Klöckner possesses a wide hot strip mill in Bremen with spare capacity which it uses to carry out hire rolling work for several firms. Cockerill's hot rolling capacity, however, is insufficient to handle its steel output. The arrangement by which 20 % of the stainless steel produced by ALZ is hot rolled by Klöckner in Bremen therefore provides a means of satisfying both Klöckner's requirement for additional rolling work to improve the rate of utilization of its mill and Cockerill's need to achieve a balance between its steel production and its rolling requirements.

13. The concentration of all production of cold rolled stainless steel sheet and plate on ALZ, together with the hot rolling to be carried out in Bremen, should lead to increased levels of utilization of the most efficient mills, with a beneficial effect on costs. This agreement may therefore make for a substantial improvement in the production of both cold and hot rolled stainless steel sheet and plate.

14. The agreement in question is essential to the attainment of the improvements described above, which could not be achieved to the same extent by each firm operating independently in its own sphere, taking into account the structural crisis and the size of the investments concerned. The agreement in question is limited to the production side and is not more restrictive than is necessary for its purpose.

15. Nevertheless, the Commission must ensure that improvements do actually occur; to this end the parties will be required to provide the Commission every two years with details and evidence of all savings obtained.

16. Subject to this condition the agreement satisfies the tests of Article 65 (2) (a) and (b).

IV

17. In 1977 the parties' output of products covered by the agreement was as follows:

(in 1 000 tonnes)

	Community	Klöckner		Cockerill		Total
Wire rod	10 246	221	2·2 %	354	3·5 %	5·7 %
Stainless steel sheet and plate	950	(51)	(5·4 %)	56	6·0 %	(11·4 %)

18. Both Cockerill and Klöckner export a large proportion of their output of the relevant products outside their home markets to other Community countries, where they face competition from local producers, producers from other Member States and producers from non-member countries.

19. In view of the interdependence of national markets within the Community, the Community market as a whole constitutes the relevant market.

20. As regards *wire rod,* the parties rank fifth among Community producers with 5·7 % of total output: the four largest firms or groups have respective shares of 14·1 %, 13·6 %, 12·6 % and 12 %. The 10 largest producers account for 73·4 % of Community output, the remainder being shared amongst approximately 45 other firms.

21. In respect of wire rod Cockerill has entered into an agreement with the ESTEL group which is similar to the one examined here; the cumulative effect of these two agreements must therefore be taken into account. If ESTEL is included, the group's total share of the Community market is 6·3 %, which does not affect its ranking on the Community wire rod market.

22. Klöckner does not supply the *stainless steel sheet and plate* market, since its activities in respect of this product are confined to hire rolling for outside firms using their materials, for the purpose of increasing its hot rolling capacity utilization. It is therefore unnecessary to add its output to that of Cockerill, which has a market share of 6 %, ranking sixth among Community producers of stainless steel sheet and plate.

23. The interpretation of the above figures must reflect the fact that they refer to the cumulative output of the firms involved. While competition at the production stage has been limited by the agreement, it will continue to exist at the distribution stage; the Commission will therefore ensure that the parties do not coordinate their distribution activities.

24. The agreement is accordingly not liable to give the firms concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the wire rod and stainless steel sheet and plate within the common market, or to shield them against effective competition from other firms within the common market.

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

V

26. To ensure that the parties' freedom of action on the market is not affected, authorization of this agreement must be made subject to the condition that the firms do not coordinate their distribution activities.

27. The Commission must ensure that all measures taken by the firms concerned on the basis of the agreement examined here are consonant with the authorization hereby given. To that end the parties will be required to inform the Commission of all amendments or additions to the agreement, which may then be put into effect only when the Commission has declared them compatible with Articles 65 and 66 of the Treaty.

28. It is Commission policy to allow interlocking directorates and share holdings or contractual links between large firms only in exceptional cases, and then only if normal competition is not affected. The steel market is at present suffering from a structural crisis with considerable excess capacity and very keen competition, and specific cooperation between firms in certain fields, such as that between Cockerill, ESTEL and Klöckner, may provide a means of restoring Community firms to profitability. It is, however, essential for such forms of cooperation to be regularly reviewed in the light of market trends and of restructuring operations in the Community steel industry. Provisions must therefore be made for the Commission to review its authorization after a reasonable period of time, to take account of the effects of cooperation between the parties and of the market situation; consequently this authorization will be granted for a limited period, expiring on 31 December 1983.

29. Subject to the attached condition, the agreement satisfies the tests of Article 65 (2) of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION:

Article 1

The agreement made on 28 March 1978 between SA Cockerill-Ougrée-Providence et Espérance-Longdoz, Seraing, and Klöckner-Werke AG, Duisburg, in respect of wire rod and stainless steel sheet and plate is hereby authorized.

Article 2

This authorization is subject to the condition that the firms involved shall refrain from coordinating their distribution activities.

Article 3

Every two years the firms involved shall provide the Commission with a report giving details and evidence of the improvements achieved during that period in the relevant products.

Article 4

1. The firms concerned shall forthwith inform the Commission of all amendments and additions to the agreement of 28 March 1978.

2. Such amendments or additions may be put into effect only when the Commission has confirmed that they are consonant with the authorization hereby given or has authorized them under Articles 65 or 66 of the Treaty.

Article 5

This Decision is addressed to SA Cockerill-Ougrée-Providence et Espérance-Longdoz, Seraing, and to Klöckner-Werke AG, Duisburg.

It shall enter into force on the day of its notification by the Commission and shall expire on 31 December 1983.

Done at Brusels, 12 January 1979.

For the Commission

Raymond VOUEL

Member of the Commission