COMMISSION DECISION

of 12 January 1979

authorizing an agreement strictly analogous to a specialization agreement between Cockerill SA and Estel NV in respect of wire rod

(Only the French and Dutch texts are authentic)

(79/88/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 5 June 1978 with Estel NV, Nijmegen, the Netherlands, a firm with a capital of Fl 1 000 004 000.

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

(a) Cockerill will transfer to Estel, for payment in cash, a 5 % 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, which will replace the obsolete facilities used at present. TFV will have a capital of Bfrs 1 920 million. Cockerill will grant Estel an option allowing it to increase its holding in TFV to 10 %, 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. Estel will have access to processing capacity in proportion to its holding. TFV's fixed charges will be paid by each shareholder in proportion to the latter's holding, irrespective of the quantities processed. Variable costs will be paid in proportion to the tonnage produced for each shareholder. Estel will be entitled to one seat on TFV's board of directors.

(b) Cockerill undertakes to buy from certain subsidiary companies to be determined by Estel, a volume of billets, slabs and blooms equivalent to the tonnage of billets which Estel will supply to TFV for hire-rolling into wire rod.

3. Cockerill has notified the Commission of a wire rod agreement with the German firm Klöckner-Werke AG, Duisburg, that is similar to its agreement with Estel.

II

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

(i) Estel's shareholding in TFV, together with its right to a proportionate share in that firm's output and to supply a proportionate share of intermediate products, will result in its virtual withdrawal from investment in the wire rod sector and will lead to its production costs becoming standardized with those of Cockerill and the other shareholders in TFV.

(ii) The presence of a representative of Estel on TFV's board 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 Estel to use a very modern wire rod mill with a full product range, obviating any need for new investment to replace its present obsolete wire rod mills. Consequently this agreement may be considered strictly analogous in nature and effect to a specialization agreement and 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. 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, it considers that the TFV project can only be completed if other firms are involved in its financing and in marketing a proportion of its output.

9. Estel at present possesses an old single-strand mill, which produced 62 000 tonnes of wire rod in 1977 but is due to be scrapped in 1980 because it is obsolete. Access to TFV's more modern works will allow Estel to obtain better quality wire rod without having to take the commercial risk of investment to replace its own mill. Furthermore, the resultant fuller utilization of TFV's mill, already better equipped and more profitable, will further increase its productivity.

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

11. The agreement is essential to the attainment of the improvements described, above, which could not be achieved without cooperation of the firms concerned, in view of the structural crisis and the size of investment involved. The agreement is limited to production and is not more restrictive than is necessary for its purpose.

12. 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.

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

IV

14. In 1977 Cockerill produced 354 000 tonnes of wire rod (3·5 % of Community output of that product), while in the same year Estel produced 62 000 tonnes (0·60 % of Community output).

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

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

17. The firms concerned account for 4·1 % of Community production of wire rod, which ranks them sixth behind five other firms or groups with respective shares of 14·1 %, 13·6 %, 12·6 %, 12 % and 5·2 %. The 10 largest producers account for 73·4 % of Community output, the rest being shared amongst approximately 45 other firms.

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

19. 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.

20. 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 within the common market, or the shield them against effective competition from other firms within the common market.

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

V

22. 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.

23. The Commission must furthermore 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.

24. It is Commission policy to allow interlocking directorates and shareholdings 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. Provision 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.

25. 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 5 June 1978 between SA Cockerill-Ougrée-Providence et Espérance-Longdoz, Seraing, and Estel NV, Nijmegen, in respect of wire rod 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 production of wire rod.

Article 4

1. The firms concerned shall forthwith inform the Commission of all amendments and additions to the agreement of 5 June 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, Seraing, and to Estel NV, Nijmegen.

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

Done at Brussels, 12 January 1979.

For the Commission

Raymond VOUEL

Member of the Commission