II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 March 1981

authorizing specialization and coordination agreements between the Belgian steel-producing undertakings Usines Gustave Boël SA, Forges de Clabecq SA and Fabrique de Fer de Charleroi SA (Pôle des Indépendants)

(Only the French text is authentic)

(81/431/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 by the undertakings concerned on 3 November 1980,

Whereas:

I

On 3 November 1980 the following Belgian steel-producing undertakings within the meaning of Article 80 of the Treaty:

— Usines Gustave Boël, a limited liability company with a capital of Bfrs 1 440 million, with registered premises at rue Ducale 21 (Boël), Brussels,

— Forges de Clabecq, a limited liability company with a capital of Bfrs 1 800 million, with registered premises at Clabecq (Clabecq),

— Fabrique de Fer de Charleroi, a limited liability company with a capital of Bfrs 193 456 000, with registered premises at Marchienne-au-Pont (Charleroi),

applied to the Commission, pursuant to Article 65 (2) of the Treaty, for authorization of agreements concluded between them, the objects of which are specialization and coordination in regard to investment production, sales of products of the iron and steel industry and purchases of raw materials.

In essence, the agreements for which authorization is requested stipulate the following:

The undertakings in question state that they have formed, between themselves, a *de facto* association named 'Pôle des Indépendants', having its registered office at rue Montoyer 47, Brussels.

The object of the association is to establish a common policy as between the members in regard to activities in the steel industry and to promote and defend that policy *vis-à-vis* trade organizations, government and Community authorities in the interests of the members. It will ensure more specifically the coordination and rationalization of the following: production, optimum use of plant, new investment policy, commercial policy and its implementation, procurement policy and social policy.

To this end, and in the context of the current restructuring of the European steel industry, the members have agreed to specialize as follows:

— Clabecq and Fabrique de Fer de Charleroi: plates and sheet,

— Usines Gustave Boël: hot-rolled coils and products derived therefrom, and wire rod.

The association may, subject to this specialization, promote the purchase of raw materials required to

manufacture the above or the joint-selling of the products concerned.

The association will also coordinate relations with trade organizations, government and Community authorities.

The association is directed by a coordinating committee comprising one representative, at the highest level, of each of the members. The said representatives will sit *ex officio*. Decisions of the association will be taken unanimously and members will undertake to secure acceptance of such decisions by their respective Boards of Directors.

The association is entered into for a term of five years. It may thereafter be automatically renewed for successive three year terms.

II

The agreements on the formation of 'Pôle des Indépendants' restrict normal competition between the undertakings in question, since the contracting parties have agreed as follows:

— Clabecq is to withdraw from the long products market (concrete reinforcement bars, wire rod, merchant bars) and undertakes not to invest in those products throughout the term of the agreement.

— Boël undertakes to refrain from using its wide strip mill for the production of sheet and plate which could be manufactured more cheaply at the Clabecq mill.

— Charleroi undertakes to refrain from using its four-high mill to manufacture sheet, which could be manufactured more cheaply at the Clabecq plant.

— The three members undertake to reach agreement with each other prior to any investment decision which is liable to bring them into competition with one another, in order to prevent any further overlapping of their respective production ranges.

— Whenever it appears that conditions for producing the semi-finished products required by one of the undertakings may be more favourable at one of the other contracting parties' plants, the undertakings concerned will exchange or transfer the products in question.

— As regards sales, the contracting parties undertake to propose reciprocal execution of orders which, for technical or economic reasons, could be executed more economically in the plants of the other contracting parties.

— The members propose to coordinate their purchases of raw materials, although each of the parties will remain responsible for its own purchases.

In view of the foregoing, the agreements fall within the category of those which, in principle, are prohibited by Article 65 (1) of the Treaty.

III

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

The agreements between the companies in question concerning the undertaking not to manufacture certain products, prior consultation on all investment decisions and the use of the most productive plants are specialization agreements or agreements strictly analogous thereto; the undertaking to propose reciprocal execution of orders is analogous to a joint-selling agreement and the coordination of raw materials purchases is analogous in effect to joint-buying.

Under Article 65 (2) of the Treaty the agreements may be authorized if they make for a substantial improvement in production or distribution and are essential in order to achieve those results without being more restrictive than is necessary for that purpose; such agreements 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.

The agreements submitted to the Commission enable the following conclusions to be reached as regards the substantial improvement in production or distribution:

The production schedules for flat products of Boël, Clabecq and Charleroi overlap to a certain extent. There are wide differences in the age, capacity and productivity of the various undertakings' plants.

A specialization of production as between these undertakings by the expedient of executing orders using the plants which are best equipped and have

the greatest potential for producing at the most economic cost will result in an increase in the rate of utilization of the technical installations and will improve productivity.

The agreement by the undertakings to renounce certain production potential and the joint utilization of some or all of their plant is intended, first, to maintain current specialization and, secondly, to prevent parallel investment which is undesirable from an economic standpoint.

The fact that the three members undertake to consult each other prior to all investment decisions relating to the product range in which they compete is largely unobjectionable in that this is subsidiary to the specialization agreements and because there is over-capacity in this sector.

In proposing to each other the reciprocal execution of orders which, for technical or economic reasons, can be executed more economically at other members' plants, the undertakings concerned wish to overcome together the difficulties arising from the current situation on the steel market, to offer mutual assistance in order better to withstand competition from major producers and to move towards better use of their production capacity.

Coordination of their raw material supplies by bulking orders enables the undertakings concerned to reduce their expenditure in respect of such purchases, particularly as regards purchase prices, transport and storage costs.

It is therefore justifiable to conclude that the agreements setting up 'Pôle des Indépendants' can make for a substantial improvement in the production and distribution of the products in question.

The results expected derive mainly from channelling manufacture of the products concerned towards the plants which are best equipped and have the greatest potential for producing at the lowest cost and from bulking orders for raw materials; these measures of coordination of production, sales and purchases do not restrict the individual liberty of each of the parties more than is necessary.

In these circumstances, the agreements are essential in order to achieve these results, namely an improvement in production and distribution, and they do not contain any provisions which are more restrictive than is necessary for that purpose.

These agreements therefore satisfy the conditions laid down in Article 65 (2) (a) and (b) of the Treaty.

IV

For the purposes of determining whether the agreements submitted for authorization satisfy the requirements of Article 65 (2) (c) of the Treaty, account must be taken of the following factors:

The undertakings which are party to the agreements are, directly or indirectly, associated with other steel-producing or trading undertakings through concentrations within the meaning of Article 66 (1) of the Treaty; those undertakings will not, however, be directly concerned by the specialization, joint-buying and joint-selling measures which are the subject of these agreements;

The undertakings directly concerned by the agreements are located in Belgium, but, on account of the limited size of that market, sell over 75 % of their products in other Community countries, where they face competition not only from local producers and producers from other Member States but also from non-Community producers;

In view of this and the close interpenetration of the domestic markets of the European Community, the Community market as a whole should be regarded as the market in question;

The 1979 figures for iron and steel produced by the undertakings directly concerned by the agreements are set out in the following table:

Product	Production (in 1000 tonnes)	Percentage of Community production			
		Total	Boël	Charleroi	Clabecq
Pig iron	1 888	1·92	1·08	—	0·84
Crude steel	2 587	1·83	0·91	0·19	0·73
Hot-rolled wide strip (total production)	871	1·77	1·77	—	—
Rolled finished products	1 832	1·77	0·83	0·22	0·72
including:					
— wire rod	200	1·70	1·70	—	—
— concrete reinforcement bars	16	0·17	0·17	—	—
— hoop and strip	10	0·14	—	—	—
— sheets over 3 mm	1 034	8·32	0·50	1·82	6·00
— sheets under 3 mm	202	0·69	0·69	—	—
— hot-rolled wide strip (finished products)	370	2·94	2·94	—	—

No special observations need be made on the relevant undertakings' shares of pig iron, crude steel, hot-rolled wide strip, wire rod, concrete reinforcement bars, hoop and strip or sheet production and of the total production of rolled finished products in general;

The undertakings concerned account, together, for approximately 8·3 % of total Community output of sheets and plate over 3 mm from wide strip or other mills; this makes them the fifth largest producer in the Community, behind four integrated groups of undertakings which produce 14·4, 12·7, 12·1 and 9·5 % of Community production respectively, that is, just under 50 % of the total, the rest being shared between over 30 undertakings, including the three in question.

Under these circumstances, the said 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 rolled finished products in question within the common market, or to shield them against effective competition from other undertakings within the common market.

The agreements therefore comply with the provisions of Article 65 (2) (c) of the Treaty.

V

It is necessary to ensure that the autonomy and independence of the undertakings concerned are not put at risk. Authorization should therefore be made subject to the following condition:

Persons exercising a function with the management or executive bodies of the steel-producing or marketing undertakings directly and indirectly concerned may not at the same time exercise a similar function within any similar undertaking which is not concerned; however, the Commission should be empowered to authorize exceptions to this prohibition upon receipt of a reasoned request, should special circumstances warrant such action;

The Commission must also ensure that all measures taken by the undertakings concerned under the agreements. In this connection, provision should be tion granted by this Decision and with the provisions of the Treaty.

To this end, the undertakings concerned are under an obligation to notify the Commission without delay of all additions and amendments made to the agreements. In this connection, provision should be made to ensure that amendments and additions to the agreements cannot enter into force until the Commission has declared them to be permissible or, where appropriate, until it has granted authorization under Article 65 (2) of the Treaty.

The agreements submitted for authorization have been concluded for an initial term of five years and may be renewed automatically beyond that period for successive three-year terms. It appears that having regard to the agreements implemented by the undertakings concerned, authorization may be granted for the entire initial term.

Subject to compliance with the conditions imposed, the agreements, authorization of which is sought,

comply with the provisions of Article 65 (2) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The agreements between the following steel undertakings:

— Usines Gustave Boël SA, Brussels,

— Forges de Clabecq SA, Clabecq,

— Fabrique de Fer de Charleroi SA, Marchienne-au-Pont,

concerning specialization and coordination of investment, production, sales of iron and steel products and purchases of raw materials are hereby authorized.

Article 2

1. Authorization shall be subject to the condition that members of the management or executive bodies of the steel-producing and trading undertakings directly or indirectly concerned shall not at the same time exercise analogous functions in undertakings and sales organizations of the same type which are not concerned.

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

Article 3

1. The undertakings concerned shall notify the Commission forthwith of any additions and amendments made to the agreements.

2. The additions and amendments referred to in paragraph 1 shall not apply until the Commission has declared that they comply with the authorization granted by this Decision or has authorized them under Article 65 (2) of the Treaty.

Article 4

This Decision shall enter into force upon its notification to the undertakings concerned and shall expire on 16 September 1985.

Article 5

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

Done at Brussels, 31 March 1981.

For the Commission

F. H. J. J. ANDRIESSEN

Member of the Commission