COMMISSION DECISION

of 18 June 1981

authorizing the joint creation of the undertaking Roheisengesellschaft Saar mbH ('Rogesa') by AG der Dillinger Hüttenwerke and Stahlwerke Röchling-Burbach GmbH

(Only the German text is authentic)

(81/492/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66 thereof,

Having regard to High Authority Decision No 24/54 of 6 May 1954 laying down, in implementation of Article 66 (1) of the Treaty, a Regulation on what constitutes control of an undertaking [1],

Having regard to the applications by Stahlwerke Röchling-Burbach GmbH, dated 14 May 1980 and 24 February 1981, and the application by AG der Dillinger Hüttenwerke dated 2 April 1981,

Having regard to Commission Decision 78/538/ECSC of 6 June 1978, authorizing Arbed to acquire the whole of the capital of Neunkircher Eisenwerk AG, 25·09 % of the capital of SA Métallurgique et Minière de Rodange-Athus, and to take over the management of the latter company [2],

Having obtained the comments of the Government of the Federal Republic of Germany,

Whereas :

I.

1. Aktien-Gesellschaft der Dillinger Hüttenwerke, Dillingen, Saar ('Dillingen'), is an undertaking engaged in steel production within the meaning of Article 80 of the Treaty, with a capital of DM 157 500 000.

2. Société Financière Sidérurgique, Paris ('SFS'), is a financial holding company which owns a majority of the shares in and is in a position to control, within the meaning of Article 66, Sacilor-Aciéries et Laminoirs de Lorraine, Hayange ('Sacilor'), a steel-producing undertaking which is also in a position to control certain other steel-producing undertakings in the SFS/Sacilor group.

3. The financial structure of Dillingen is currently being reorganized, as a result of which Dillingen, with its capital increased to DM 178 500 000, will be controlled by the SFS/Sacilor group.

4. Stahlwerke Röchling-Burbach GmbH ('Röchling-Burbach') is a steel-producing undertaking with a capital of DM 330 000 000, which is controlled, within the meaning of Article 66, together with certain other steel-producing undertakings, by Arbed SA, Luxembourg, in the Arbed group.

5. Dillingen and Röchling-Burbach intend to set up jointly the Roheisengesellschaft Saar mbH, Dillingen ('Rogesa'), with the object of producing pig iron and supplying it to the partners ('Gesellschafter') on a non-profit basis.

6. The founding partners will each subscribe half the capital of Rogesa and will be represented equally on its supervisory board ('Beirat'), to which *inter alia* §§ 5 to 8 of the Iron and Steel Co-determination Act ('Gesetz über die Mitbestimmung der Arbeitnehmer in den Aufsichtsräten und Vorständen der Unternehmer des Bergbaues und der Eisen und Stahl erzeugenden Industrie') will be applied by the parties. The supervisory board will appoint the directorate ('Geschäftsführung') comprising up to four members.

7. In these circumstances Dillingen and Röchling-Burbach will be in a position to exercise joint control over Rogesa. The proposed transaction will bring about a concentration within the meaning of Article 66 (1) between Rogesa, Dillingen and the rest of the SFS/Sacilor group on the one hand, and between Rogesa, Röchling-Burbach and the rest of the Arbed group on the other, without leading, however, to a concentration between SFS/Sacilor and Arbed.

II.

8. The Rogesa project is an important part of the restructuring plans for the steel industry in the Saarland. The pig iron capacity in the iron and steel works of the Saar totalled about 7·9 million tonnes in 1980 and was distributed among 17 blast furnaces in four different locations — the Dillingen works and the

[1] Official Journal of the ECSC, 11. 5. 1954, p. 345.
[2] OJ No L 164, 21. 6. 1978, p. 14.

Völklingen, Burbach and Neunkirchen works of Röchling-Burbach. Most of these blast furnaces are small and relatively inefficient by modern technical standards. Only at Dillingen is there a blast furnace with a 10-m hearth diameter and two others with diameters exceeding eight metres. The ore preparation plants too are scattered and rather small with eight sinter plants spread over four locations. The purpose of Rogesa is to concentrate all sinter and pig iron production in the Saarland on one site — Dillingen — by increasing the efficiency of the largest of the existing blast furnaces and building two new blast furnaces in stages with 11·0-m and 11·5-m hearth diameters. By 1988, after closure of the other blast furnace plants in Völklingen, Burbach and Neunkirchen, pig iron capacity in the Saar will be centred on three modern and efficient production units with a reduced total capacity of about 6·2 million tonnes a year. Hot metal will be supplied direct from the blast furnaces to the steelworks in Dillingen and by rail in torpedo wagons to the steelworks of Röchling-Burbach. Supporting the new blast furnace complex there will be three new sinter plants with a combined capacity of 9·5 million tonnes compared with 7·9 million tonnes at present. The resulting higher proportion of sinter in the burden will increase the productivity of the blast furnaces. Coupled with the scheme is the construction of a harbour, which depends in turn on the canalization of the Saar river, which will yield further useful cost reductions in ore transport costs. Overall the project is expected to produce considerable improvements in efficiency and to provide a valuable contribution towards restoring the competitiveness of the Saarland steel industry.

9. In addition there is a plan for the construction of a central coke oven plant at Dillingen, to be controlled jointly by Dillingen, Röchling-Burbach and the Saarbergwerke AG, which will be the subject of a separate application under Article 66 on behalf of the three parties concerned.

10. Rogesa will essentially be a producers' cooperative supplying its members at cost price with one of the two main raw materials for steelmaking, namely pig iron (the other being scrap). Rogesa will not normally itself operate on the market as a supplier to third parties outside the Sacilor and Arbed groups. The market for steelmaking pig iron, whether in the form of cold iron or of hot metal, is nowadays very limited and in any case will not be affected by the transaction, since third parties have not been supplied hitherto by the participating groups.

11. So far as the market for steel products is concerned, the project will improve the efficiency of the parties by improving their cost base, but it will not affect competition between the parties to a perceptible extent, because the joint production of a raw material can only have a marginal effect on the play of competition between the partners so far as their final products are concerned and in the present case, these are, in any event, different products. In fact Dillingen is interested in the production and sale of flat products (plates and sheets — the latter hire-rolled elsewhere in the Sacilor group), while Röchling-Burbach is interested in the production and sale of long products, in particular wire rods, bars and sections. It is true that the Arbed group is concerned with the production of flat products elsewhere in the Community, particularly at Sidmar in Belgium, but the position of Sidmar will not be affected by the project, which involves the supply of hot metal, necessarily over relatively short distances.

12. So far as access to supplies is concerned, the transaction will not place Dillingen and Röchling-Burbach in an artificially privileged position or give them any substantial advantage. The project provides for the supply of up to 2·4 million tonnes a year of pig iron to Dillingen and up to 3·2 million tonnes a year to Röchling-Burbach. If the two partners maintain their present share of German and Community pig iron production, which will depend upon being able to retain their share of steel production and the steel market, the output of Rogesa will represent about 12 % of German pig iron production and 4 % of Community pig iron production. The whole Sacilor group including Dillingen represents 8·6 % and the whole Arbed group including Röchling-Burbach represents 8·7 % of Community production of pig iron (1979 figures). In view of the geographical limitations on the movement of hot metal and the different product and market interests of the two groups, there are no grounds for aggregating the shares of the two groups in order to measure the actual or potential restrictions on competition arising from the transaction. The project needs to be regarded rather as an indispensable means of helping to assure that the two Saarland partners will be able to continue to compete against the various like undertakings in the Community with works more favourably located on coastal sites, on larger waterways or nearer to principal markets.

13. Under these circumstances, and taking into account the arguments mentioned above under point 11, it seems fully justified to accept the joint production of a raw material for steelmaking by two important steel groups of the Community. It is essential, however, that Arbed and Sacilor — who are two such

steel groups of considerable importance — should remain autonomous and independent of each other in the production and distribution of steel products, apart from permanent-way material for which joint control and management in the Société des Laminoirs de Villerupt ('Villerupt') [1] has already been authorized by the Commission.

14. Accordingly no manager or member of a managing or supervisory body in the Dillingen/SFS/Sacilor group should exercise any such functions in the Röchling-Burbach/Arbed group or vice versa, except in Rogesa (or in undertakings concerned with the preparatory stages of iron-making) and in Villerupt.

15. Finally it is necessary to emphasize that if Rogesa were to be used as a forum for concerted practices or agreements influencing the mutual independence of the two groups beyond the stage at which pig iron is produced and supplied to steelworks, such practices or agreements would fall under the prohibition of Article 65 (1).

16. Having regard to the circumstances described in points 8 to 13 above, and if the requirements described in points 14 and 15 are met, the proposed transaction will not give the undertakings concerned the power to determine prices, to control or restrict production or distribution or to hinder the maintenance of effective competition in the common market, or to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

17. The proposed transaction accordingly meets the requirements for authorization laid down in Article 66 (2) and may therefore be authorized,

HAS ADOPTED THIS DECISION :

Article 1

The joint creation of the undertaking Roheisengesellschaft Saar mbH ('Rogesa') by AG der Dillinger Hüttenwerke and Stahlwerke Röchling-Burbach GmbH is hereby authorized.

Article 2

The following obligation is attached to the authorization :

No manager or member of a managing or supervisory body in the Dillingen/SFS/Sacilor group shall exercise any such functions in the Röchling-Burbach/Arbed group or vice versa. This obligation does not apply to any undertaking authorized to be controlled jointly by the two groups. If special circumstances so justify, the Commission may, in response to a reasoned request, authorize exceptions from this obligation.

Article 3

This Decision is addressed to AG der Dillinger Hüttenwerke, Dillingen ; Société Financière Sidérurgique, Paris ; Stahlwerke Röchling-Burbach, Völklingen ; and Arbed SA, Luxembourg.

Done at Brussels, 18 June 1981.

For the Commission

F. H. J. J. ANDRIESSEN

Member of the Commission

[1] Commission Decision 74/1438/ECSC of 13 September 1974 (not published) and 78/538/ECSC of 6 June 1978 (OJ No L 164, 21. 6. 1978, p. 14).