COMMISSION DECISION

of 10 August 1982

settling the dispute between the Grand Duchy of Luxembourg and the French Republic over the renewal of authorizations for certain special regular services

(Only the French text is authentic)

(82/595/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 517/72 of 28 February 1972 on the introduction of common rules for regular and special regular services by coach and bus between Member States (1), hereinafter referred to as 'the Regulation', and in particular Article 14 thereof,

Whereas since 1970 the transport undertaking, Sàrl Société des Anciens Établissements Autocars Emile Frisch — registered address 5 rue Jules Fischer, Luxembourg — has provided transport services between the French border area and the Villeroy & Boch ceramics factory — registered address 330 rue de Rollingergrund — Luxembourg — for that part of the latter's workforce living in the said border area; whereas two special regular services running daily from Mondays to Fridays started operating in 1970, to be joined by a third in 1974; whereas there has been a special regular weekly service on Saturdays since 1976; whereas an open-ended contract between Frisch and Villeroy & Boch for the carriage of the latter's French workers was signed on 6 September 1974; whereas Villeroy & Boch subsidize part of the transport costs of those of its workers using the Frisch services;

Whereas since 1976 the transport undertaking, Sàrl Schiocchet — registered address 27 rue de Ludelange, Boulange (France) — has been running a regular (not special) service, part of whose route covers the same ground as the Frisch services;

Whereas in accordance with the Regulation, transport authorizations to operate these services were granted to Frisch on 21 January 1977; whereas the said authorizations were valid until 31 December 1978;

Whereas on 22 November 1978 Frisch applied for the renewal of the authorizations; whereas Frisch again applied for renewal on 20 December 1979;

Whereas in spite of the provisional issue of authorizations valid from 24 October 1979 to 31 March 1980 the Member States concerned made no final decision on Frisch's applications for renewal;

Whereas in spite of the absence of authorizations Frisch continued to operate the services between 1 January and 23 October 1979 and from 1 April 1980 to the present;

Whereas in view of France's refusal to renew the authorizations, Luxembourg informed the Commission in order to obtain a decision on what course to take in respect of Frisch's application for renewal;

Whereas Luxembourg considers that the authorizations for the services operated by Frisch should be renewed chiefly because they meet the conditions laid down in Article 8 of the Regulation, because the services were operating before Schiocchet began running their services and because the infringement by Frisch does not justify refusing renewal of the authorizations;

Whereas France's main reasons for rejecting the applications for renewal were that the demand catered for by Frisch could have been met by the French company Schiocchet, that the routes of Frisch and Schiocchet overlapped, that competition had been distorted because Villeroy & Boch subsidized the transport costs of those of its workforce using the services provided by Frisch but not those provided by Schiocchet and that, in adding five new pick-up points to one of its services (hereinafter referred to as the 'Audun service') without authorization, Frisch was in breach of the rules;

Whereas Frisch's one weekly and three daily services were introduced in compliance with the rules and were not contested at the time; whereas, moreover, on 21 January 1977 authorizations pursuant to the Regulation were obtained for each of the services with the explicit and unreserved agreement of both the States concerned;

(1) OJ No L 67, 20. 3. 1972, p. 19.

Whereas there were no services on the routes for which Frisch has applied, either when the company began running the services, when the authorizations were issued in 1977, or when applications for renewal were made in 1978 and 1979, whereas the existing passenger services are still not satisfactory, either quantitatively or qualitatively; whereas Frisch's special regular services meet specific, current and foreseeable transport requirements (120 workers use the service); whereas, therefore, the services operated by Frisch fulfil the conditions laid down in Article 8 of the Regulation;

Whereas, although the routes served by Frisch could if necessary have been served by Schiocchet by altering the latter's itinerary and conditions of carriage, this is not the key factor; whereas pursuant to the provisions of Article 8 (3) of the Regulation the possibility of organizing equivalent services may be taken into consideration when the operators already pursue their activities in the areas in question; whereas in this connection it should nevertheless be pointed out that Frisch started operating before Schiocchet;

Whereas, although the Frisch and Schiocchet routes cover some of the same ground, this is not a key factor either; whereas, what is more, the overlap had the agreement of the States concerned; whereas if such duplication was not an obstacle to establishing the services it should not be regarded as an obstacle to renewing the authorizations for the services; whereas in addition the Schiocchet service is intended 'for persons working for various firms in Luxembourg' and for 'residents of Boulange wishing to travel to the Grand Duchy' whilst the French services are solely for the Villeroy & Boch workforce;

Whereas the fact that the Frisch and Schiocchet routes partly overlap should not be regarded as grounds for refusing to renew the authorizations;

Whereas the transport subsidy which Villeroy & Boch extend to those of its workers who use the Frisch services does not in itself constitute a breach of the competition rules in the Treaty and whereas, from the information available to the Commission, there is no evidence within the meaning of Article 85 of the Treaty of any agreement or concerted practice between the two companies having as their object the prevention, restriction or distortion of competition within the common market;

Whereas Frisch continued to operate their services after expiry of the authorizations; whereas, however, the company had submitted its applications for renewal at the right time and the absence of authorizations, due to the inability of the States concerned to reach an agreement, cannot therefore be attributed to Frisch; whereas, in addition, the applications for renewal had not been formally rejected; whereas the company knew that the Member States were negotiating with a view to settling their differences; whereas it was therefore justified in expecting its authorizations to be renewed;

Whereas with the exception of the Audun service Frisch operated its services correctly and in accordance with the provisions of the authorizations; whereas the other two daily services and the weekly service which were previously run correctly continue to comply with Article 8 of the Regulation; whereas they therefore fulfil the conditions for the renewal of authorizations set out in Article 11;

Whereas the same cannot be said of the Audun service, as Frisch did not comply with the conditions subject to which this service was authorized since the company added stops at Aumetz, Ludelange, Tressange, Bure and Nondkeil to the original itinerary without prior authorization; whereas by so doing Frisch was in breach of Article 4 (2) which lays down that the holder of an authorization may not without prior authority in any way vary the conditions subject to which the service is operated;

Whereas on the other hand the irregularity did not commence until 1978, in other words a few months before expiry of the transport authorization; whereas the route was altered to meet changes in the market and was requested by Villeroy & Boch; whereas in the renewal application Frisch applied for a change of route to include the five disputed stops thereby demonstrating their good faith; whereas the Audun service complies with Article 20 of the Regulation and France and Luxembourg could therefore have waived Article 4 (2) of the Regulation, thereby enabling Frisch to change the conditions under which the service may be operated without first obtaining the authorization of the two States; whereas even the French authorities did not regard this as a serious infringement of the rules since it agreed to include the five disputed stops in the provisional authorizations issued to Frisch for the period 24 October 1979 to 30 March 1980;

Whereas under the circumstances the irregularity committed by Frisch is minor ; whereas in view of the mildness of the infringement a refusal to renew the authorization to operate the Audun service would appear excessive ;

Whereas nevertheless the rules were formally infringed and the five pick-up points in respect of which the infringement was committed should be excluded from the authorization ;

HAS ADOPTED THIS DECISION :

Article 1

The renewal of the transport authorizations requested on 20 December 1980 by Sàrl Société des Anciens Etablissements Autocars Frisch — registered address 5 rue Jules Fischer, Luxembourg — is to be granted for the operation of the following special regular services :

1. Errouville, Crusnes, Cantebonne, Villerupt, Esch-sur-Alzette, Luxembourg ;

2. Audun-le-Tiche, Ottange, Rumelange, Tétange, Kayl, Dudelange, Bettembourg, Luxembourg ;

3. Longwy, Gouraincourt, Longlaville, Rodange, Pétange, Differdange, Soleuvre, Esch-sur-Alzette, Schifflange, Luxembourg,

at the rate of five outward and five inward journeys per day.

4. Schifflange, Belvaux, Esch-sur-Alzette, Audun-le-Tiche, Villerupt, Cantebonne, Errouville, Crusnes, Aumetz, Ottange, Rumelange, Tétange, Kayl, Dudelange, Bettembourg, Luxembourg,

at a rate of one inward and one outward journey every Saturday.

The services shall be used solely by workers of Sàrl Villeroy & Boch — registered address 330 rue de Rollingergrund, Luxembourg — possessing a transport pass issued by their employer.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg and to the French Republic.

Done at Brussels, 10 August 1982.

For the Commission

Giorgios CONTOGEORGIS

Member of the Commission