COMMISSION DECISION

of 5 February 1986

authorizing the formation by Röchling Eisenhandel KG, Ludwigshafen, and Possehl Eisen- und Stahl GmbH, Mannheim, of 'Stahlcenter Röchling-Possehl GmbH & Co KG', Mannheim, and the agreement in restraint of competition concluded in connection therewith

(Only the German text is authentic)

(86/30/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 65 and 66 thereof,

Having regard to Decision No 24-54 of the High Authority 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 application filed jointly by Röchling Eisenhandel KG, Ludwigshafen, and Possehl Eisen- und Stahl GmbH, Mannheim, on 11 February 1985, as amended by letter dated 12 August 1985,

Whereas :

I

1. Röchling Eisenhandel KG, Ludwigshafen (Röchling), is a steel-trading undertaking within the meaning of Article 80 of the Treaty with a capital of DM 16 million and a wholly-owned subsidiary of Gebr. Röchling KG, Mannheim. It carries out every kind of commercial transaction, but in particular those involving products of the steel-producing and processing industry.

2. Possehl Eisen- und Stahl GmbH, Mannheim (Possehl), is a steel-trading undertaking within the meaning of Article 80 of the Treaty, with a capital of DM 1 million, engaged in the stocking and marketing of products of the steel industry. It is a wholly-owned subsidiary of the Eisen- und Stahlgesellschaft Saar-Luxemburg mbH, Stuttgart (Saarlux), which in turn belongs to the Sacilor group.

3. Röchling and Possehl intend to form a joint venture under the name of 'Stahlcenter Röchling-Possehl GmbH & Co. KG, Mannheim' (Stahlcenter Röchling-Possehl), with a capital of DM 2 million. The main object of this undertaking will be to trade in steel products in the Mannheim-Ludwigshafen area.

4. The plan is for Possehl's existing depot in Mannheim to be run by the joint venture. The existing depot of Röchling Eisenhandel KG in Ludwigshafen is to be closed. To help it perform its tasks, the joint venture will take over from its shareholders (Röchling and Possehl) the necessary equipment and some of their staff.

5. Röchling will hold a 49 % interest in the joint venture and Possehl will hold a 51 % interest, both as limited partners in Röchling-Possehl GmbH & Co. KG and as shareholders in the general partner Röchling-Possehl GmbH, Mannheim. The relevant agreements provide, however, that resolutions require a majority of *more* than 51 % of the votes cast, so that neither participant can outvote the other under the present division of shareholdings.

6. Accordingly, Röchling and Possehl will exercise joint control over Stahlcenter Röchling-Possehl within the meaning of Decision No 24-54. The proposed transaction will therefore bring about a concentration within the meaning of Article 66 (1) between Stahlcenter Röchling-Possehl and Röchling on the one hand and between Stahlcenter Röchling-Possehl and Possehl on the other, though no concentration will arise between Röchling and Possehl.

7. In addition to forming Stahlcenter Röchling-Possehl, Röchling and Possehl, or Saarlux, have concluded an agreement which provides that the customers of both parties in the Mannheim-Ludwigshafen area will be supplied exclusively by the joint venture. In view of this agreement they have each undertaken, as from 1 March 1985, to conclude no more long-term contracts without the other party's consent and to coordinate purchasing.

II

8. The proposed transaction is intended to increase the efficiency and profitability of the two trading companies directly involved and contribute to their restructuring and consolidation.

The need for this concentration in the trading field has made itself felt owing to the presence of huge overcapacity in the steel stockholding business. It must be viewed in the context of the concentration in the production field principitated by the steel crisis, which requires an — albeit less for-reaching — readjustment in the trading field.

[1] OJ of the ECSC, 11. 5. 1954, p. 345.

The reduced profitability in recent years of the undertakings directly involved in the agreement, which is reflected above all in the downward trend in their sales during the last three years (1982, 1983 and 1984) compared with 1981 and in their financial performance over the same period, forced them to either close both their depots and dismiss the entire workforce or concentrate on one depot (Mannheim) and close the other (Ludwigshafen), thereby remaining in business and saving most of the jobs with the result that the continued existence of another competitor on the market is assured.

As a result of the concentration on one depot outlined above and the consequent reduction in sales facilities, considerable savings will be achieved in marketing, administrative, stocking and staff costs. Better use will also be made of the available staff and facilities, thereby increasing the joint venture's chances of survival as the two depots of Röchling and Possehl are currently less than 50 % utilized. Substantial extra capital expenditure of about DM 6 million, which would otherwise have been needed to modernize the partly obsolete facilities of the Ludwigshafen depot, will also be saved.

The efficiency of distribution will be improved through better advice and after-sales service for customers. The undertakings concerned intend to introduce modern office technology in the depot of the joint venture and to apply a dialogue system. As a result of this and of the fact that customers will henceforth need to deal with only one depot, ordering will be simplified and handling will be speeded up. The partners will be able to halve the amount of stocks they carry. It will be possible to batch orders and save on transport costs.

The abovementioned consequences of rationalization in the case of sales also apply *mutatis mutandis* to buying, especially as regards the saving of purchasing, administrative, stocking and staff costs, the better use of staff and the available facilities, the saving of capital expenditure, the introduction of modern office technology and the dialogue system, the simplification of ordering and handling, the saving of transport costs, etc.

The parties intend, moreover, to change the marketing structure in such a way that, in future, goods will be sold not only to merchants as in the past but also directly to the consumer.

All in all, implementation of the agreement will create conditions ensuring the most rational distribution of products with a high degree of efficiency, advantages which will ultimately benefit the consumer.

9. To assess the effect of the transaction on the steel market, it is necessary to analyze the businesses of each of the undertakings concerned in the steel trading field, which is the main area of activity both of the two companies directly involved in the joint venture (Röchling and Possehl) and of the planned joint venture itself.

10. The Federal Republic of Germany alone is to be considered the geographically relevant market as the commercial activities both of the joint venture and of the two parent companies are confined to that market.

11. The relevant sales figures are given in the table below :

Sales of rolled finished steel products in the Federal Republic of Germany

(Deals involving sales from stock and direct-to-customer sales)

(in 1 000 tonnes)

	(1)	(2)	(3)	(4)		(5)	(6)	(7)		
	Federal Republic	Gebr. Röchling Group	Sacilor group (Saarlux + Possehl)	Röchling group + Sacilor group		Röchling KG Ludwigshafen establishment (LH)	Possehl	Röchling LH + Possehl		
				Sales	% of (1)			Sales	% of (4)	% of (1)
1981	19 905	306,61	1 005,91	1 312,52	6,6	59,60	40,34	99,94	7,6	0,5
1982	16 453	205,47	780,30	985,77	6,0	37,13	29,35	66,48	6,7	0,4
1983	16 481	165,94	561,93	727,87	4,4	24,82	25,38	50,20	6,9	0,3
1984	15 542	162,13	592,94	754,27	4,8	22,37	18,22	40,59	5,4	0,3

This survey shows that the sales of the two depots of Röchling in Ludwigshafen and Possehl in Mannheim which are to be merged account for a small proportion (5,4 %) of the sales of the two groups indirectly involved (Röchling and Sacilor). Compared with total sales of the products in question by all steel dealers in the Federal Republic of Germany, the market share of the two depots concerned comes to only 0,3 %.

12. In order to assess any group effect, the sales of the two groups to which the two undertakings taking part in the joint venture belong must be lumped together.

13. In 1984, sales by the Gebr. Röchling group (to which Röchling Eisenhandel KG belongs) amounted to 162 130 tonnes.

14. In the same year, the Sacilor group (to which Possehl Eisen- und Stahl GmbH belongs) sold 592 940 tonnes of the relevant products on the German market (where it carries on business through Possehl and its parent company Eisen- und Stahlgesellschaft Saar-Luxemburg mbH, Stuttgart (Saarlux)).

15. The two groups' combined sales amount to 754 270 tonnes, which is the biggest possible group effect of the transaction on the German market. These sales represent approximately 4,8 % of total sales by all firms on this market trading in the relevant products.

16. It is apparent, therefore, that, even allowing for this biggest possible group effect, both groups' market share on the German market remains relatively small. On that market, the parties face keen competition from many larger steel dealers, both members of groups and independent operators.

17. It is concluded from the above that the proposed transaction will not give the undertakings and groups of undertakings concerned the power to determine prices, control or restrict production or distribution or hinder effective competition in a substantial part of the market for the products in question or evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to markets. The proposed transaction therefore satisfies the conditions for authorization set out in Article 66 (2).

III

18. The agreement incorporated in the outline agreement between Röchling and Possehl to the effect that the customers of both parties in the Mannheim-Ludwigshafen area will in future be supplied exclusively by the joint venture restricts free competition between the parties and the joint venture within the common market.

Under this agreement, the parties undertake not to trade on their own account in the Mannheim-Ludwigshafen area.

The restriction consists in the fact that the joint venture will be shielded against competition from the companies concerned (ban on competition).

19. In these circumstances, the agreement falls under the prohibition provided for in principle in Article 65 (1) of the Treaty.

IV

20. Article 65 (2) of the Treaty provides, however, that specialization agreements or joint-buying or joint-selling agreements and agreements which are strictly analogous in nature and effect may be authorized if the Commission finds that they meet the requirements of the provision.

21. The non-competition agreement must be viewed against the background of the restructuring of the undertakings concerned by means of the hiving-off of their operations in the Mannheim-Ludwigshafen area. Like specialization agreements or joint-buying or joint-selling agreements, it conduces to the rationalization of commercial processes. It is therefore strictly analogous in nature and effect to those agreements and can therefore be authorized under Article 65 (2) of the Treaty if and in so far as it makes for a substantial improvement in the production or distribution of those products, if the agreement in question is essential in order to achieve these results and is not more restrictive than is necessary for that purpose, and if it 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.

22. The non-competition agreement will make for a substantial improvement in the distribution of the products concerned as it is closely connected with the formation of the joint venture and is designed to facilitate its commercial success and prevent the beneficial effects expected of its formation (see paragraph 8 above) from being undermined by competing activities on the part of the parent companies.

The agreement therefore satisfies the requirement set out in Article 65 (2) (a).

23. It must also be examined whether the non-competition agreement is essential in order to achieve these results.

As already indicated (paragraph 8 above), the turnover, the sales revenue and hence the gross trading profit of Possehl and Röchling (Ludwigshafen establishment) are constantly diminishing. This can best be seen from their financial results: whereas a profit was made in 1982, mounting losses were incurred in 1983 and 1984.

The formation of the joint venture and the related restructuring constitute an appropriate means of stopping and reversing this downward trend. A precondition for this, however, is the maintenance of the viability of the joint venture. The non-competition agreement serves this very purpose. Without the concentration of supply on the joint venture, reduced profitability and inefficiency would ensue owing to turnover being insufficient to cover costs. To that extent the agreement is essential in order to achieve these results.

24. The non-competition agreement is not more restrictive than is necessary for the purpose described above.

The further restriction contained in clause 9 of the outline agreement, which provides for mutual coordination of purchasing and the need for the other party's consent in the event of the conclusion of long-term contracts (see paragraph 7 above), has no separate competition-restraining effect. It applies only to the interval between the conclusion of the agreement and the formation and bringing into operation of the joint venture and is simply intended to prevent the ban on competition from being circumvented by the parent companies before the joint venture starts operating.

The requirement laid down in Article 65 (2) (b) is therefore also satisfied.

25. Lastly, it must be examined whether the agreement is 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.

These effects of the implementation of the agreement in question will be limited for the most part to the area in which the joint venture operates, i.e. the Mannheim-Ludwigshafen area. Outside this area, both of the groups indirectly involved in the agreement (the Gebr. Röchling group and the Sacilor Group via Saarlux) will continue to carry on business as independent competitors. This competition will not be affected substantially by the agreement because, firstly, marketing conditions are different in the various territories supplied by the parent companies or by the joint venture and, secondly, the quantities which the undertakings concerned will continue to sell independently are much larger than the quantities sold by the joint venture, which account for only 5,4 % of both groups' total sales (see table at paragraph 11). Moreover, the participants face stiff competition everywhere in the Federal Republic of Germany from other, in some cases much bigger, suppliers. It therefore follows from the above that the agreement in question satisfies the requirement of Article 65 (2) (c).

26. The agreement for which authorization is sought is open-ended. In order to be able to monitor the impact of the agreement and the influence it has on market conditions, the Commission considers it appropriate to grant the authorization for an initial period of eight years.

27. In view of the time restriction, the agreement for which authorization is sought is therefore compatible with Article 65 (2) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The formation by Röchling Eisenhandel KG, Ludwigshafen, and Possehl Eisen- und Stahl GmbH, Mannheim, of 'Stahlcenter Röchling-Possehl GmbH & Co. KG', Mannheim, is hereby authorized.

Article 2

The agreement between Röchling Eisenhandel KG, Ludwigshafen, and Possehl Eisen- und Stahl GmbH, Mannheim, or Eisen und Stahlgesellschaft Saar-Luxemburg mbH, Stuttgart, concerning the exclusive supply of both parties' customers in the Mannheim-Ludwigshafen area by Stahlcenter Röchling-Possehl GmbH & Co. KG, Mannheim, is hereby authorized until 31 December 1993.

Article 3

This Decision is addressed to Röchling Eisenhandel KG, Richard-Wagner-Straße 9, D-6800 Mannheim, and Possehl Eisen- und Stahl mbH, Rotterdamer Straße 21-23, D-6800 Mannheim.

Done at Brussels, 5 February 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission